Racism in Canadian Immigration Policy

Part One: The History

Up to April 10, 1978, to talk of racism *in* Canadian immigration policy is over generous to the Government of Canada. Rather we should talk of racism *as* Canadian immigration policy.

The Canadian Immigration Act of 1910 quite boldly gave Cabinet power to prohibit immigrants belonging to any race. The wording changed from time to time but the power remained intact from 1910 to 1978. In 1919 the law stated Cabinet could bar immigrants of any race because the immigrants were deemed undesirable "owing to their peculiar customs, habits, modes of life and methods of holding property and because of their probable inability to become readily assimilated".

One example of the use of this power was a March 14, 1919 Order in Council to prohibit immigrants of the German, Austrian, Hungarian, Bulgarian or Turkish races, except with the permission of the Minister of Immigration. That prohibition was different from the enemy alien prohibition. There was a separate prohibition on entry for those who had been enemy aliens during the war. The March 14 prohibition was strictly racial.

Another example, again from 1919, was the power invoked to prohibit the landing in Canada of Dukhobors, Hutterites, and Mennonites.

The Asian race was prohibited from entry in 1923. Exceptions were made for farm labourers and domestics. As well, a Canadian male could sponsor an Asian wife and their children under eighteen. In 1930 exceptions for farmers, farm labourers and domestics were taken away. All that remained was the exception for immediate family. This Asian prohibition lasted until 1956. At that time it was replaced by agreement with the Governments of India, Pakistan and Ceylon, limiting entry from each of these countries to 150 from India, 100 from Pakistan and 50 from Ceylon annually, in addition to immediate relatives of Canadian citizens. In 1958 the figure was changed to 300 from India. The limitations remained in effect till 1962.

The Government did not need the positive prohibiton in order to prevent citizens of particular countries from entering. It could and it did restrain admission to nationals of certain listed countries. Nationals of all other countries were, by implication, prohibited. The 1954 immigration regulations limited admissions to citizens of the U.K., Australia, New Zealand, South Africa, Ireland, the U.S. and France. Citizens of these countries had to have sufficient means to maintain themselves until they secured employment.

In 1956, citizens of the other countries of Western Europe were added to the list, provided the person came to Canada for governmental placement or the government had given approval of his employment. People from Europe, the Middle East, or the Americas, could come if they had extended family here. Others could come, notably those from Africa and Asia, only if they had immediate family here.

The prohibition by implication lasted until 1962. In that year a general entry requirement was applied to everyone. Anyone could come if he could show he was able to successfully establish himself in Canada. Even with this change, preference was given to people from Europe, the Middle East or the Americas who had extended family here.

Besides the power to prohibit explicitly and implicitly, the Immigration Act contained power to restrict according to race.

The Immigration Act of 1906 stated that Cabinet may provide as a condition to permission to enter Canada that immigrants shall possess money to a prescribed minimum amount, which amount may vary accoding to the class of the immigrant.

That power was first used in a racist way in 1908. A January 1908 Order in Council required $25 for everyone. A June 1908 Order in Council increased the minimum dollar requirement to $200 in the case of all Asiatic immigrants, other than those for which there were special regulations or arrangements. That exception covered China and Japan. The recital to the regulations said the language and mode of life of immigrants from Asia render them unsuited for settlement in Canada when there are no colonies of their own people to ensure their maintenance in case of their inability to secure employment.

The 1910 Act gave Cabinet powers to provide as a condition of admission to land in Canada that the immigrants shall possess in their own right money to a prescribed minimum, and the amount could vary according to race. That power lasted till 1956.

In 1914, under the 1910 Act, Cabinet again passed an Order in Council that no immigrant of any Asiatic race would be permitted to land in Canada unless the immigrant possessed in his own right money to the amount of $200.

This regulation became the subject of some bizarre litigation that went all the way to the British Columbia Court of Appeal. Munshi Singh appeared at the Canadian Port of Vancouver in May of 1914 a few months after the Order in Council had been passed. He had only $20 with him. He was detained and ordered deported on the basis that he was of an Asian race and had less than $200 with him. Munshi Singh appealed this order to the Supreme Court and to the Court of Appeal of B.C. He lost at both courts.

McPhillips, J.A., in a long judgement in the Court of Appeal, said, among other things, "the better classes of the Asiatic races are not given to leave their own countries...and those who become immigrants are...undesirables in Canada". "Their ways and ideas may well be a menace to the well being of the Canadian people".

"The Parliament of Canada...may well be said to be safeguarding the people of Canada from an influx which it is no chimera to conjure up might annihilate the nation...introduce Oriental ways as against European ways...and all the results that would naturally flow therefrom".

"In their own interests their proper

place of residence is within the confines of their respective countries in the continent of Asia, not in Canada, where their customs are not in vogue and their adherence to them here only gives rise to disturbances destructive to the well being of society. . ."

"Better that people of non-assimilative . . . race should not come to Canada, but rather that they shall remain of residence in their country of origin, and do their share, as they have in the past, in the preservation and development of the empire".

Besides the power to prohibit and the power to require financial requirements by race, there was a third power that was neutral on the face of it, but discriminatory in intent. The Immigration Act from 1908, up till 1978, gave Cabinet the power to impose a continuous passage rule.

The Governor in Council used this power to pass an Order in Council, in 1914, prohibiting the landing of any immigrant who came to Canada otherwise than by continuous journey from the country of which he was a native or naturalized citizen with a through ticket purchased in that country or prepaid. At that time, it was impossible to purchase in India or prepay in Canada for a continuous journey from India to Canada.

Munshi Singh, who was ordered deported because he had only $20 rather that $200, was also ordered deported because he had not made a continuous journey from India. He stopped at Hong Kong first. The Court of Appeal ruled that Mr. Singh was validly ordered deported under that provision too.

Aside from the general immigration acts, with their racial provisions, there were a whole series of Chinese immigration acts that were directed particularly against persons of Chinese origin. Chinese immigrants did not just have to have money in their pocket. They had to pay it over. The Chinese Immigration Act of 1885 required each Chinese immigrant to pay $50. That figure was increased to $100 in 1900, and $500 in 1903. In 1923, Chinese immigration was prohibited altogether.

The entry to or landing in Canada of persons of Chinese origin or descent was prohibited, irrespective of allegiance or citizenship. The only exceptions were diplomats, Chinese born in Canada, merchants and students. That statute remained on our books till 1947.

At least in form, if not in effect, the most extreme form of racism in immigration was directed against the Japanese, during and after World War II.

Regulations passed under the authority of the War Measures Act did not merely restrict entry of Japanese from abroad. They provided for the deportation of Canadian citizens of Japanese descent who had been born in Canada. Every natural born British subject of the Japanese race 16 years of age or over resident in Canada who had made a request for repatriation could be deported to Japan. The wife and children under 16 of any person for whom the Minister made an order for deportation could be included in the order. Any request for repatriation would be deemed final and irreversible after a fixed delay.

In other words, a natural born Canadian could be ordered deported if he had requested to be sent to Japan, and if he subsequently changed his mind. His family could be sent to Japan, whether they had made a request or not.

This regulation was challenged before the Supreme Court of Canada and the Privy Council in England on appeal, on the ground that Canada could not deport citizens born in Canada. It could only deport aliens. Both courts ruled that Canada had the power to deport its own citizens.

The final historical instance of racial discrimination in immigration I will mention is the discrimination against the Jews. Harold Troper and Irving Abella recount in chilling detail the determination of the immigration authorities to keep out every single Jew, fleeing first Nazi persecution, then the Holocaust, and finally the aftermath of the Holocaust.

Let me just point out to you the distinctive legal feature of this prohibited immigration. What was different about it was that there was no law. There was no Jewish Immigration Act like the Chinese Immigration Act, prohibiting immigration altogether. There was no regulation like the regulation about Mennonites, saying that Jews were not suitable for Canada. There was no head tax against Jews, like the earlier Chinese immigration acts, requiring Jews to pay so much per person for entry. There was no financial requirement like that for Asians, requiring that Jews have so much in their pockets before they were allowed entry. There was no requirement neutral on its face, but discriminating in effect, directed against Jews, like the continuous voyage requirement directed against Indians.

One could search the laws in vain for discrimination against Jews. Yet the discrimination was incontestable. It was done not through exercise of express powers, but through abuse of powers. Whatever the immigration requirements were, Jews could not meet them. The law allowed for entry of families with sufficient capital to establish farms. But Jewish families with capital were not allowed entry.

Immigration was headed by an avowed antisemite, Fred Blair. He transferred the responsibility for processing Jewish applicants from other government offices to his own where he personally scrutinized each application, deciding its eligibility. But in virtually every case the answer was "no".

The Jewish experience, from the perspective of racism in immigration law, is illuminating. The Jewish experience tells us that you do not need laws to have racial discrimination in immigration. All you need is unlimited discretion. An unsympathetic public, or unmotivated public leadership or racists in office are enough to lead to racism in immigration even with laws neutral on their face.

This lesson is particularly relevant now, because all racist appearances in our immigration laws have disappeared. The present Immigration Act has as one of its obligations "to ensure that any person who seeks admission to land is subject to standards of admission that do not discriminate on the grounds of race, national or ethnic origin, colour, religion or sex".

The power to prohibit entry by race is gone. The power to impose a financial requirement by race is gone. The continuous passage rule is gone. Yet the danger of racism remains.

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