

Human Rights Law and Sexual Discrimination in British Columbia, 1953–84

DOMINIQUE CLÉMENT

■ **“Human rights commissions,”** proclaimed the editors of the *Globe and Mail* in February 2008, “were never intended to serve as thought police.... It’s time to rein them in before further damage is done to Canadians’ right to free expression.”¹ The media’s portrayal of the role of human rights commissions in recent years has presented an image of overzealous, bureaucratic do-gooders who have lost touch with Canadian values. While George Jonas of the *National Post* characterized human rights commissions as a “complainants forum” for providing free counsel to complainants, Rex Murphy and Margaret Wenté have dedicated numerous columns in the *Globe and Mail* to what the latter has called “self-perpetuating grievance machines.”² In response to a case involving a man with bipolar disorder who successfully launched a human rights complaint against an employer for dismissing him because he failed to show up at work (for three months), Wenté suggested that human rights commissioners were “more and more disconnected from common sense. They’re taking on cases that would strike most of us as absurd.... These bodies are fast losing their legitimacy.”³

In 2002 British Columbia eliminated its human rights commission, severely restricted the mandate of the new tribunal, cut staff, and streamlined the process for dismissing complaints.⁴ Ontario followed suit with comparable reforms in 2006, and many other provinces are considering similar initiatives.⁵ If the twentieth century was a period of human rights innovation, the twenty-first century may be a period of retrenchment, if not the complete dismantling, of the human rights state.

Human rights laws and their enforcement mechanisms constitute what is referred to herein as the “human rights state.” The most visible manifestations of the human rights state are provincial and federal human rights statutes. Each statute is enforced by a state agency, which, as we will see below, is more accessible to a broad range of citizens than the courts.⁶ The human rights state is today constituted of a system of comparably similar provincial and federal human rights statutes and commissions. Canada’s Charter of Rights and Freedoms represents another pillar of the human rights state. To a lesser degree, equal pay legislation, multiculturalism, and official language statutes also form the human rights state. They all share one key principle: these laws oblige the state to promote and enforce human rights.

Human rights ideals are not new to Canadians, but the creation of a state apparatus that binds governments to enforcement and education did not emerge until the 1960s. The human rights state, as well as the welfare state, is premised on the idea that the state should intervene in civil society to alleviate social inequality, among other things. This represents an important transformation of the role of the state. A rich literature has emerged in recent years to document the struggles minorities faced in attempting to confront discrimination using litigation and the courts, and how human rights statutes and the Charter have provided more effective avenues for redress.⁷ But the concept of a human rights state goes beyond public policy. The first anti-discrimination statutes referred only to racial, religious, and ethnic discrimination; by the 1980s, human rights laws also prohibited discrimination on the basis of, for example, sex, sexual orientation, disability, and age. The human rights state thus epitomizes a revolutionary change in Canadians’ values and beliefs about human dignity and equality.⁸

Several studies of human rights law and activism have attempted to capture a sense of Canada’s changing rights culture by documenting important legal victories or successful campaigns to amend human rights legislation.⁹ Gay rights activists, for instance, point to the symbolism of including sexual orientation in human rights statutes (beginning with Quebec in 1977). Still, most studies fail to take into account the impact of human rights legislation. In other words, does the human rights state represent an effective vehicle for redressing

human rights violations? Moreover, few of these studies account for political and ideological divisions that have shaped human rights policies, and most historians have concentrated on Ontario where the first laws were introduced.¹⁰

No jurisdiction better epitomizes the historical conflict surrounding the human rights state more than British Columbia. The limitations of the Social Credit government's weak 1969 *Human Rights Act* led the New Democratic Party (NDP) to introduce a far more expansive Human Rights Code in 1973 soon after it was elected. However, a decade later, another Social Credit (Socred) government introduced a variation of its original *Human Rights Act*. Not to be outdone, when the NDP returned to power in the 1990s, they replaced the Socreds' human rights legislation with a variation of the NDP's original statute. The law lasted only a handful of years. The Liberal Party replaced the statute in 2002 with a *Human Rights Act* that had a great deal in common with the Socreds' 1969 and 1984 statutes.

The following article explores the origins of the human rights state in British Columbia in a local and national context, from the 1953 *Equal Pay Act* to the controversy surrounding the 1984 *Human Rights Act*. British Columbia became the focal point of a national debate on human rights law reform in the 1980s. The province has historically possessed a diverse workforce in manufacturing and primary resources, and it was the most unionized province in the country. Between 1961 and 1968, the provincial labour force grew faster than any other province in the country (to 796,000 workers).¹¹ It was a major immigration port and the site of decades of conflict surrounding Asian immigration; 90 percent of Chinese immigrants to Canada lived in British Columbia. Moreover, the province's political culture was dominated by the right-wing Social Credit Party and the left-wing New Democratic Party, and this led to acute divisions over human rights policy. It was also a hotbed of social activism by the 1960s. The province was one of the major centres of feminist mobilization, the birthplace of Greenpeace and the first gay rights organizations in the country, and the site of dramatic student protests.¹² British Columbia's demographics, labour force, political culture, and social movement sector informed many of the debates surrounding human rights and undoubtedly contributed to the creation of remarkably progressive, and remarkably regressive, human rights laws.

The following piece also focuses on sexual discrimination: how women experienced discrimination and the efficacy of the human rights regime in combatting sexual discrimination. Since their creation in the 1960s, human rights agencies in Canada have investigated more sexual discrimination complaints than any other category. And, again, British Columbia provides a useful context for this study. The province was one of the first jurisdictions to enact human rights legislation and the first to prohibit sexual discrimination, and it estab-

lished precedents in areas such as gay rights and sexual harassment. Two-thirds of all jobs in the province were in service industries in 1981 (from one-quarter in 1911); many of these jobs, particularly the low-paid ones, were dominated by women. By the early 1980s, a majority of adult women were working outside the home, and almost half the provincial labour force was female. In fact, according to Jean Barman, “demographic data suggest that British Columbian women were in the forefront in moving back out of the home, if not into the work-force at least to pursue further education.”¹³ The polarized nature of the province’s political culture in the post-war period is also an important consideration. The Socreds’ male-dominated governments rarely included women. In contrast, thanks to the work of the NDP’s Women’s Rights Committee, female election candidates received support during provincial elections and the party platform included a promise to create a Ministry of Women’s Rights.¹⁴ British Columbia had also long been a major site of organizing for the women’s movement, and the NDP had strong ties to the movement.¹⁵

The human rights state was a significant advancement in public policy. Both policy makers and social activists played a key role in creating the human rights state. However, the human rights state in Canada, as represented in the British Columbia experience, was ultimately flawed. It was poorly positioned to confront systemic discrimination, and there were many ways in which politicians and bureaucrats could (and did) hamper the activities of human rights commissions.

Sexual discrimination

BY THE 1960S, there were few venues where women could seek restitution from discrimination. The courts were inaccessible unless an individual had the time, energy, and money to pursue a criminal or civil complaint. Human rights legislation was therefore an important public policy innovation for victims of discrimination seeking redress. As the files of the British Columbia human rights branch reveal, women faced an astonishing array of discriminatory practices in the workplace and in securing services or accommodation.

Women in Canada acutely experienced the contradiction between the promises of education and the realities of the workplace. Fifty women for every one hundred men had a university degree in 1971, and in 1981 that number had risen to sixty-five women per one hundred men. Yet in 1980 a woman with a university degree was more likely to earn less than a man with no high school degree. The female workforce in British Columbia increased 83.9 percent between 1959 and 1968 (the male workforce increased 30 percent); by 1981 more than half of all women in British Columbia (52.7 percent) participated in the workforce, and women represented 42.1 percent of the total workforce. Still,

women continued to struggle against the glass ceiling. Women earned 57 percent of a male wage in 1971 and only 62 percent ten years later. Men earned most of the total wages in the province (77.6 percent) and women were ghettoized in low-paying clerical and service jobs (in 1980 more than 56 percent of women workers were in clerical and service jobs, and an additional 20 percent were in sales and nursing).¹⁶ The discrimination women faced in the workplace was a result, in part, of longstanding presumptions regarding gender roles and the difficulties employers faced in adapting to the influx of female labour. After generations of gender-based labour divisions, often sanctioned (if not required) by law, both employers and women struggled to cope with the new realities of the changing labour force.

Some jobs, for example, were simply not open to women. Kathleen Strenja, a young mother living in Vancouver whose husband was on welfare following a workplace injury, responded to an advertisement for replacement taxi drivers in May 1980. She was hired the day she arrived, and, after driving for a few hours, returned to the company office where she was confronted by the owner's son who asserted that he and his father, Bob Bennett, did not like woman driving cabs. He insisted that she park the car; a few minutes later, Bob Bennett, out walking his dog, became agitated when he saw Mrs. Strenja. He insisted that he would never hire a woman. Bennett removed the municipal license plate from the taxi and threw it into the garbage. Undeterred, Mrs. Strenja jumped into the car and headed for the nearest RCMP station, with Bennett (and his dog) chasing her in another taxi. At the station, Bennett and Strenja engaged in a heated argument. According to the officer on the scene, "He [Bennett] said that his policy was not to hire women, that this was Company policy, that he had been with the taxi business since 1954 and that women attracted too much trouble. He also told Corporal Geisser that women drivers just don't work out in this town. He said that he hired women as dispatchers, but not as drivers because they're 'just trouble'; he mentioned the risk of rapes."¹⁷

When women did secure employment, it was rarely at the same pay level as men. The introduction of provincial equal pay legislation (discussed below) in 1953 forced Nabob Foods Limited to discontinue its differential wage scale for men and women in its meat processing plant. By replacing the gendered wage scale with separate job classifications, the company avoided any change to its payroll. When Billy Linton began working for Nabob Foods in 1973, all the packers were women and order-selectors were men (packers made less money than order-selectors). Due to seniority, Linton was temporarily promoted to order-selector but was soon demoted back to her old job. An investigation into the case uncovered that the warehouse supervisor believed that "the warehouse was no place for a woman as it was too cold and too dusty" and that

“a boxcar was no place for a woman.”¹⁸ Loraine Warren discovered in 1976 that her employer, Creditel (a credit-reporting agency), offered her male colleagues an extra two thousand dollars annual salary in starting pay for the same work. Creditel insisted that the company negotiated separate salaries for each employee, and Warren simply failed to secure a better contract.¹⁹ Several years later, in 1981, workers in a Burnaby trucking company temporarily went on strike to secure higher wages for data processors. All the data processors were women earning \$7.07 an hour despite the \$8.17 paid to unskilled summer help. But the employer refused to budge because “it was a matter of principle” (although which principle was unclear) and it was not their responsibility to correct “the ills of society.”²⁰

Working conditions for many women were intolerable, and in the case of twenty-four-year-old Jean Tharpe, her employer sought to avoid accommodating the needs of its female employees. Lornex Mining Corporation agreed in 1974 to submit to an order from the provincial Human Rights Commission to make its worksite accommodations in northern British Columbia accessible to its female employees. Tharpe, a laboratory technologist, moved into the company’s accommodations later that year only to discover that Lornex had complied with the order with the simple expedient of allowing women to shower and sleep in the same facilities as men. Tharpe submitted a complaint against Lornex. The company agreed to deal with the problem although once again its remedy was evasive. The company added a partition within the bunkhouse to separate Tharpe from the rest of the workers, which her male co-workers promptly ignored because her section was a faster route to the dining area. Tharpe spent most of her days sleeping and showering in a nearby town and commuting to work.²¹

Discrimination was not always an explicit act. Perhaps the most difficult issue to resolve was job requirements that applied equally to all employees but indirectly discriminated against some. One of the reasons Nabob Foods refused to allow Billy Linton to work as an order-selector was because, according to the company, the work was too physically strenuous to be performed safely by a woman.²² B.C. Forest Products Limited refused to allow Janice Foster to work at its mill in Youbou on Vancouver Island in 1977 because of her height and weight. The company informed Foster, who was five feet tall and weighed 115 pounds, that she would be unable to complete the task of manually removing lumber from a conveyor belt and placing the lumber in a nearby pile. The height and weight requirements were purely arbitrary for work that required more dexterity than physical strength.²³

Sexual harassment, as the former editor of *Chatelaine* magazine insists in her memoirs, was for many men “a perk of being boss—whether it involved

gross and demeaning comments, nude pictures on the wall, or sleeping privileges.... Every single woman I knew had been propositioned at some time, mostly by married men.”²⁴ Perhaps because sexual harassment was commonplace at work, because victims feared reprisals for speaking out, because they were humiliated, or because they did not want their families to know, a code of silence surrounded sexual harassment in the workplace.²⁵ Julie Webb challenged that silence in 1975. She accused her employer, the owner of Cypress Pizza in Vancouver, of sexual harassment. Webb testified before an inquiry that her boss, Rajinder Singh Roopra, repeatedly touched her hair; put his arm around her and held her against her will; made suggestive sexual remarks; leered, ogled, and made suggestive gestures; asked her several times for dinner dates; asked her to visit a motel and watch pornographic videos; and asked her numerous questions about her sex life.²⁶

Pregnancy was another obstacle to employment.²⁷ H.W. (her full name is unknown) launched the first successful human rights complaint in Canada for discrimination on the basis of pregnancy. She was working for a travel agency in Vancouver when, on 25 July 1975, her boss asked her if she was pregnant. She honestly did not know, and her boss insisted that she consult a doctor. When she informed her boss that she was indeed pregnant, she was immediately fired, although he later claimed that the cause was incompetence.²⁸

Inadequate child care facilities, occupational ghettos, limited mobility, declining service-sector jobs as a result of new technologies, family obligations, limited training opportunities—these and many other factors created obstacles for women seeking employment. These difficulties were acute for women in rural British Columbia. Opportunities for training were limited outside of Terrace or Prince George, and many women simply did not have the resources to temporarily relocate. Alcan (a major employer in the region) commissioned a report in 1982 on the labour force in northern British Columbia for its Kemano hydroelectric plant. One section of the report dealt with sexual discrimination in the north. According to the report, business proprietors and first-line supervisors’ attitudes were perceived as a major barrier to employing women, and “systemic discrimination was seen as more pervasive in the northwest.”²⁹

Women also experienced discrimination in services and accommodation. Insurance companies, for instance, sometimes refused to continue coverage for women after a divorce; because women lived longer, they were charged higher premiums for life insurance. Norene Warren could not rent an apartment in Vancouver for herself and her two children in 1975 because she was a single mother. The landlord refused to rent the unit to her out of concern that she could not afford the rent and could not, as a single mother with a job, properly maintain the house.³⁰

The human rights state

WHEN THE ONTARIO GOVERNMENT passed the first anti-discrimination statute in Canada, the man responsible for introducing the legislation, Premier George Drew, stood in the legislature and cautioned his colleagues that laws could not prevent discrimination: “The best way to avoid racial and religious strife is not by imposing a method of thinking, but by teaching our children that we are all members of a great human family.”³¹ Yet the 1944 *Racial Discrimination Act*, which prohibited any display of discriminatory signs (the law was partly in response to a now-famous newspaper article titled “No Jews, No Dogs” after a sign the reporter saw in a tavern window in Toronto), set an important legal precedent. A 1932 amendment to Ontario’s insurance laws banned discrimination in the assessment of insurance on the basis of race and religion, and in the same year, British Columbia prohibited discrimination on the basis of race, religion, and political affiliation in the disbursement of unemployment relief. Otherwise, human rights laws did not exist in Canada.³² However, this situation changed dramatically soon after 1944.

Pressured by victims of discrimination, guided by international human rights norms and a belief in social justice, and reacting to controversies involving gross abuses of human rights, Canadian governments quickly embraced the idea of anti-discrimination legislation.³³ Tommy Douglas and the Co-operative Commonwealth Federation passed the Saskatchewan Bill of Rights in 1947. With no effective enforcement mechanism, however, the statute was primarily symbolic.³⁴ Ontario later set the pace for more substantive legislation with Fair Employment Practices and Fair Accommodation Practices legislation in the 1950s to prohibit discrimination in employment and services (modelled on similar laws passed in New York in 1945 and 1952).³⁵ The Ontario legislation was the product of intensive lobbying efforts from a coalition of labour, ethnic, religious, and political organizations. The Jewish community, in particular, was a key player; Premier Leslie Frost asked labour law professor Jacob Finkelman (a member of the lobbying coalition) to draft the *Fair Employment Practices Act*.³⁶

Within a decade, most provinces in Canada introduced similar legislation to ban discrimination on the basis of race, religion, and ethnicity.³⁷ In each case, the minister (usually the minister of labour) could appoint an independent ad hoc board to investigate accusations of discrimination and enforce a remedy (e.g., a fine). Such laws, however, were vaguely worded, cumbersome, poorly enforced, and ultimately ineffective.³⁸ Prime Minister John Diefenbaker introduced a federal Bill of Rights in 1960. Unfortunately, as one leading constitutional expert quipped, “that pretentious piece of legislation has proven as ineffective as many of us predicted.”³⁹

Ontario set a new standard again, this time in 1962, with the Ontario Human Rights Code. It was a unique creation inspired in large part by community activists campaigning for more expansive legislation and an effective enforcement agency.⁴⁰ Canada's modern human rights regime has since evolved from the Ontario model. Why Ontario? The province boasted a racially and ethnically diverse population; Ontario's rapid economic growth absorbed most of the post-war immigrants to Canada. Toronto's vibrant social movement sector included organized labour, civil libertarians, churches, organizations representing minorities and women, and an influential Jewish community determined to improve earlier legislation.⁴¹ The Ontario CCF's election platforms included a strong human rights policy, and the Conservative government was not averse to stealing its opponents' ideas.

The Ontario Human Rights Code incorporated existing anti-discrimination laws in the province into a single statute that was enforced through a Human Rights Commission. The commission was staffed by full-time human rights officers working for the government. Offenders might pay a fine, offer an apology, reinstate an employee, or agree to a negotiated settlement. Human rights commissions in Canada were further mandated to educate the public about human rights. By 1977 every jurisdiction in Canada had introduced similar human rights legislation.⁴² Unlike the courts, the human rights state comprised a series of specialized government agencies that were more efficient, faster, and more accessible, and bore the cost of investigating and resolving conflicts (human rights commissions, in effect, functioned similarly to regulatory agencies). Human rights adjudication was also less elitist than the courts. Specially trained human rights officers investigated complaints, and the staffs of human rights commissions were drawn from the ranks of academia, media, social activists, churches, and the legal community.⁴³

British Columbia followed a similar pattern. The Social Credit government introduced an *Equal Pay Act* (1953), a *Fair Employment Practices Act* (1956), and a *Fair Accommodation Practices Act* (1961).⁴⁴ But it was in 1969 that the province broke new ground with the *Human Rights Act*, which, for the first time in Canada, prohibited discrimination on the basis of sex.⁴⁵ Despite the achievements of the previous decade, none of the early anti-discrimination laws, including the 1962 Ontario Human Rights Code, incorporated sex as a prohibited ground of discrimination. This oversight was not simply a political failure. Many of the leading social advocates for anti-discrimination laws in Canada embraced "prevailing ideas about the necessity of differential treatment for women and men in many areas of life."⁴⁶ The editors of the *Vancouver Sun* hailed the 1969 *Human Rights Act* as a "Charter of Women's Rights."⁴⁷ Skeptics, however, including the editors of the other major newspaper in British Columbia, were convinced that

there was “no way to eliminate such discrimination, outside of blind-folding employers or requiring that female applicants wear veils and walk around in barrels while being interviewed.... [Matrimony] is the most important career of all for a woman—the most vital and, hopefully, long-lasting.”⁴⁸

The events surrounding the International Year for Human Rights in 1968 had highlighted the failings of the existing human rights regime in British Columbia.⁴⁹ With federal and provincial government funding, a provincial commission had been formed to celebrate the anniversary through workshops, surveys, and a major conference in December 1968. One of the key recommendations arising from the conference was to consolidate all existing anti-discrimination legislation in the province into a single statute and expand the scope of the legislation.⁵⁰ The Social Credit government acted quickly and introduced the *Human Rights Act* in 1969. Still, crass political opportunism was likely another contributing factor. The government was struggling to maintain support after two decades in office, and it would soon be defeated in the 1972 election. Although the women’s movement had not yet organized a sustained campaign to amend provincial human rights legislation in the 1960s, the Socreds’ opponent, the NDP, campaigned on a platform to ban sexual discrimination and expand the scope of the legislation.

The *Human Rights Act*, which was hastily introduced before the provincial election, did little more than integrate existing legislation into a single statute and prohibit sexual discrimination. Nothing in the legislation suggested a substantial departure from the government’s already tepid interest in anti-discrimination legislation. Attempts by the NDP to strengthen the legislation with an independent enforcement agency and a more expansive definition of sexual discrimination were defeated.⁵¹ And yet the Social Credit government promoted the legislation as a major advancement in the cause of human rights. Pictures of the minister of labour sitting on his desk holding a phone to his ear appeared in all the major newspapers, with captions indicating that the minister waited to hear complaints about discrimination. The government also spent more than \$42,000 in public monies to promote the legislation during the election.⁵²

Ideology and disgust with the 1969 act appear to have been the NDP’s primary motivation for introducing the 1974 Human Rights Code (the Social Credit party formed the government between 1952 and 1991, except for a brief NDP interregnum between 1972 and 1975).⁵³ After introducing the new legislation to coincide with the twenty-fifth anniversary of the Universal Declaration of Human Rights, Minister of Labour William S. King noted several deficiencies with the 1969 act: too few grounds for discrimination were recognized; a poor enforcement mechanism; weak penalties; no mandate to educate the public; and the human rights commission’s lack of independence from the Depart-

ment of Labour.⁵⁴ Women's organizations and many other groups had lobbied extensively over the past few years for new legislation, and Rosemary Brown, a former ombudswoman for the Vancouver Status of Women and an NDP member of the legislature, was an influential proponent of the new code.⁵⁵ King also invited University of British Columbia law professor Bill Black to organize a class to debate and prepare an initial draft human rights code.⁵⁶

The code was a significant departure from the 1969 act. The *Human Rights Act* provided few options for redress, whereas the code emphasized conciliation and negotiation. The code also created a commission to promote human rights education and a branch with full-time human rights investigators to process and investigate complaints. Another important innovation was that the branch was required to investigate *all* complaints. Once a complaint was received, the Human Rights Branch would dispatch a human rights investigator to speak to the complainant and the alleged perpetrator. If the investigator found merit in the complaint, they would initially attempt an informal conciliation. Thousands of complaints were handled in this fashion under the authority of the Human Rights Code.⁵⁷ Most complaints were resolved with a private or public apology, an agreement to reinstitute the victim in a job or provide a service, or an informal monetary award.⁵⁸ If conciliation failed, the branch could ask the minister of labour to appoint a board of inquiry. A board of inquiry was a quasi-judicial proceeding in which one or a few individuals appointed by the minister would meet with the complainant and the accused, hear their arguments, and render a decision in favour of one of the parties. One of the commission's primary responsibilities, in addition to education, was to represent the complainant during the proceedings, therefore guaranteeing that people who had limited resources would be adequately represented.⁵⁹ If the board of inquiry ruled in favour of the complainant, the board was empowered to force the respondent to remedy the situation (e.g., offer a job or service) and to assess monetary damages. The board's decision had the full force of law although it could be appealed in the courts.

The Human Rights Code also included a blanket prohibition on all forms of discrimination unless the accused could demonstrate "reasonable cause." This was a significant innovation. All other anti-discrimination laws in Canada were limited to specific grounds for discrimination, such as race or gender. H.W. and Julie Webb were able to use the reasonable cause section to set new precedents in areas such as pregnancy, marital status, and sexual harassment.⁶⁰ The first gay rights case to reach the Supreme Court of Canada, *GATE v. Vancouver Sun*, emerged from a 1976 board of inquiry appointed under the British Columbia Human Rights Code.⁶¹ The code made no reference to sexual orientation in 1976, but the board attempted to employ the reasonable cause section to prohib-

it this form of discrimination. Although the decision was ultimately overturned in the Supreme Court of Canada (for, among other things, restricting freedom of the press), it was an important symbolic victory for gay rights.⁶²

Once again, social activists played an important role in the development of the human rights state. Organized labour, Jews, African Canadians, churches, and various other pressure groups lobbied extensively for the first anti-discrimination statutes in Ontario.⁶³ In British Columbia, women's organizations were especially important in the development and the enforcement of the Human Rights Code. The Vancouver Status of Women (VSW), for instance, prepared briefs and lobbied the government, assigned people to attend all-candidates meetings during elections to raise the issue of human rights law reform, and flooded the media with material on human rights reform.⁶⁴ One of the functions of the VSW's full-time ombudswoman was to prepare human rights complaints. Rosemary Brown, a former ombudswoman, was a vigorous supporter of the code. Many other organizations including the Status of Women Action Group, B.C. Federation of Women, Young Women's Christian Association, and NDP Women's Rights Committee also lobbied for human rights legislation.⁶⁵ Even the radical Vancouver Women's Caucus, which generally eschewed legal reform, presented a brief before the Human Rights Commission in 1969 demanding revisions to the *Human Rights Act*.⁶⁶ Kathleen Ruff, the first chair of the Human Rights Branch, was formerly the president of the Status of Women Action Group.

Sexual discrimination complaints dominated the work of the Human Rights Branch. Almost 50 percent of the complaints investigated by the branch between 1974 and 1982 involved sexual discrimination. The trend was consistent across the country except in Ontario and Nova Scotia; sexual discrimination constituted the second-largest number of complaints in both jurisdictions after racial discrimination.⁶⁷

The Socreds returned to power in 1975 and in less than a decade, they replaced the code with a regressive *Human Rights Act* as part of a broad program of fiscal restraint.⁶⁸ The Social Credit party had fully embraced neo-liberal economic and social policies, and their reforms in the 1980s severely restricted government spending and social services. The infamous "restraint package" of 1983–84 included twenty-six pieces of legislation that, among other things, allowed the government to dismiss thousands of civil servants and cut wages, eliminate services such as the Residential Tenancy Board and the Alcohol and Drug Commission, and increase taxes.⁶⁹ The 1984 *Human Rights Act* was one of the major bills in the package. True, the act incorporated, for the first time, physical and mental disability. But the reasonable cause section was removed, the maximum possible fine was reduced from \$5,000 to \$2,000, the Human Rights Commission was eliminated, and the process for submitting complaints

was streamlined to allow bureaucrats to dismiss complaints without an investigation. The human rights investigators, who worked full-time and had developed an expertise in human rights adjudication, were all dismissed. Overworked industrial relations officers with no human rights training were appointed to investigate complaints.⁷⁰ The new regime de-emphasized informal conciliation and concentrated on formal adjudication of complaints. The only member of the government who chose to defend the legislation in the legislature was the minister of labour, only because one person had to at least table the legislation.⁷¹ As R. Brian Howe and David Johnson suggest, “this was the furthest any Canadian government has ever gone in restructuring its human rights policy.”⁷²

Many of the stakeholders who supported the code, albeit insisting that it had many limitations, sharply criticized the reforms. The NDP Women’s Rights Committee stated that the amendments to the code were “the most serious aspect of the new legislative package [of fiscal restraint].”⁷³ The Status of Women Action Group accused the government of pandering to a small but vocal segment of the business community and called for the full reinstatement of the code.⁷⁴ The Nanaimo Women’s Resource Centre feared that the “elimination of the human rights office means that there are little or no protections within provincial jurisdiction.”⁷⁵ The major women’s organizations in the province—including the Vancouver Status of Women, the B.C. Federation of Women, Rape Relief, and many more—vigorously opposed the *Human Rights Act*.⁷⁶ Criticism of the reforms was widespread and included organized labour, civil libertarians, anti-racism associations, churches, and seniors’ groups.⁷⁷ The *Vancouver Sun* lamented the government’s efforts to “trivialize protection of human rights.”⁷⁸

Opposition mobilized outside the province. The 1984 reforms created a national debate on the direction of human rights policy. Gordon Fairweather, the chairman of the federal Human Rights Commission, campaigned against reforms he characterized as “emblematic of a police state.”⁷⁹ Another chief commissioner of a human rights commission, Ken Norman in Saskatchewan, claimed that “tearing apart the institutional fabric of the human rights commission and human rights branch is a very regressive step.”⁸⁰ Many prominent political figures outside British Columbia were outspoken critics of the reforms, including Manitoba Attorney General Roland Penner, the national leader of the NDP (Ed Broadbent), and federal Minister of Justice Mark MacGuigan.⁸¹ Several members of the federal cabinet—including Secretary of State Serge Joyal, Minister of Labour Charles Caccia, and the minister responsible for women, Judy Erola—in a rare example of direct interference in provincial politics, called on the government to withdraw the legislation.⁸² In a letter to the provincial minister of labour, Joyal described their vision for a human rights regime: a reasonable cause section to engage with unforeseen forms of discrimination, as

well as systemic discrimination; a commission to represent victims of discrimination before boards of inquiry and to promote human rights education; and full-time human rights officers who could develop an expertise in conciliation.⁸³

Some of the leading human rights and law reform agencies in Canada and abroad also joined the opposition. The Canadian Association of Statutory Human Rights Agencies described the act as a “tragic mistake” and insisted that it be reversed.⁸⁴ Meeting in Philadelphia, the International Association of Human Rights Agencies passed a resolution expressing opposition to the proposed amendments.⁸⁵ The Canadian Bar Association, which has a long history of lobbying for legal reform; the Canadian Advisory Council on the Status of Women; and the Canadian Civil Liberties Association were among the many diverse organizations defending the Human Rights Code.⁸⁶

The Socreds’ legislation represented a sharp break from the system designed by the NDP, which was based on accessibility, conciliation, education, and an expansive interpretation of human rights. The NDP government hired full-time human rights investigators, introduced the reasonable cause provision, provided funding for human rights education, and ensured that complainants had representation before boards of inquiry. In contrast, the Socreds balked at aggressive enforcement of a human rights law that favoured complainants: they eliminated the commission, reduced funding, fired the investigators, and placed the onus on victims to pursue complaints. The Socreds argued that the code was too cumbersome, created extensive delays that hurt employers, and facilitated frivolous complaints by providing individuals with free representation. The 1984 *Human Rights Act* had no mandate for education and no provisions to provide complainants with representation or counsel before inquiries.

The 1984 *Human Rights Act* did not become a precedent. The human rights state remained relatively unchanged outside British Columbia, and the NDP replaced the act in 1996. New grounds for discrimination, such as sexual orientation, were later added to provincial human rights codes, and innovations such as permanent boards of inquiry were established in many provinces. Nonetheless, the fundamental underpinning of human rights adjudication—quasi-judicial bodies investigating citizen complaints with a priority on conciliation and a mandate to educate the public—remains the predominant model today.

The human rights state and gender equality

WITHOUT A DOUBT, the original anti-discrimination statutes in British Columbia, modeled on similar initiatives across Canada, were a complete failure. The *Equal Pay Act* (1953–69) barred employers from paying lower wages to women who did the same work in the same establishment. Only thirty-three women

(involving eleven employers) successfully applied for restitution under the *Equal Pay Act*. The *Fair Employment Practices Act* (1953–69) and the *Public Accommodation Practices Act* (1961–69) were even feeble.⁸⁷ A mere six complaints were received under the former and only three under the latter. Four of the six employment complaints under the *Fair Employment Practices Act* and two of the three under the *Public Accommodation Practices Act* were dismissed for falling outside the scope of the legislation.⁸⁸ The B.C. experience was not unique. Only two complaints had been sustained in Ontario under its *Fair Employment Practices Act* (1951–62).⁸⁹ Still, these statutes were a symbolic first step, and the failure of these early initiatives provided a basis for justifying future reforms.⁹⁰

The *Human Rights Act* of 1969 was only moderately more effective. Already over-burdened industrial relations officers with no expertise in human rights were responsible for investigating complaints. An average of seven hundred complaints were received each year between 1969 and 1973, and only thirty to eighty of these cases were assigned to investigators. Furthermore, the minister of labour rarely appointed boards of inquiry to adjudicate complaints after conciliation had failed. Of the 2,345 complaints received between 1970 and 1973, ninety-two were settled informally by the investigating officers, six were withdrawn, fifty-three were found to be without merit, and only twenty-three were decided by a board of inquiry.⁹¹ “The legislation,” insisted the B.C. Civil Liberties Association, “did little to foster or safeguard civil rights in British Columbia.”⁹²

The 1973 Human Rights Code transformed the provincial human rights regime. The number of complaints increased from seven hundred in 1973 to thirty-five hundred in 1976, and in 1982 the branch received 10,391 complaints.⁹³ Dozens of human rights officers were hired to enforce the code, and they developed an expertise in human rights conciliation. These officers conducted on average six hundred investigations per year. The NDP appointed more boards of inquiry, and boards generally favoured the complainant.⁹⁴ Of a sample of twenty boards of inquiry appointed between 1975 and 1979 dealing with sexual discrimination, sixteen complaints were upheld. In some cases, the victim was offered a job or a service, and in ten cases, the board assessed monetary damages. But the statistics only reveal one small part of the larger narrative. Human rights officers informally adjudicated thousands of complaints between 1974 and 1984.⁹⁵

After defeating the NDP in the 1975 election, the Socreds were able to restrict the activities of the Human Rights Branch and Commission. The Human Rights Code became the victim of a male-dominated government with close ties to business and whose electoral base was primarily in rural British Columbia.⁹⁶ Several ministers of labour, for instance, delayed appointments, were recalcitrant in approving boards of inquiry, reduced the number of investiga-

tors (and in some cases continued to use industrial relations officers), and hired people who had little or no experience in human rights adjudication.⁹⁷ The Status of Women Action Group expressed a common grievance with the Socreds' management when the association insisted that the "B.C. Human Rights Commission is an embarrassment and a bad joke. They have done nothing except show their appalling ignorance and insensitivity to human rights."⁹⁸

The Human Rights Commission lost all credibility in the late 1970s as a result of the Socreds' appointments. At one point, in 1979, the *Vancouver Sun* reported that the commissioners (composed of only white men) exchanged sexist and homophobic comments during a public hearing.⁹⁹ The chair of the commission in 1979, Joseph Katz, suggested at one point that women were not needed on the commission—the men could solicit feedback from their wives.¹⁰⁰ And Jack Henrich, the former minister of labour, insisted during a television interview in 1984 that a complaint involving a ban on women at a local golf course on weekends was "frivolous." Men work and women do not, he insisted, and the policy was a legitimate restriction (at the time, 52.7 percent of women in the province worked).¹⁰¹ Unsurprisingly, the president of the United Fisherman and Allied Workers' Union complained that workers "lack confidence that justice will be done or will even be seen to be done while you, as Minister and/or the Commission, continue to display flagrant unconcern for even the appearances of impartiality in the highly sensitive area of human rights."¹⁰²

The NDP's expansive Human Rights Code also contained significant flaws. Boards of inquiry, for instance, rarely provided sufficient restitution. Among the twenty cases noted earlier, only a few resulted in damages over a thousand dollars. Jean Tharpe was awarded \$250 after years of fighting Lornex Mining Corporation. And boards could not always be counted on to see beyond the most direct forms of discrimination. Billy Linton, who was denied the opportunity to work as an order-selector, lost her case because there was no evidence that the company's managers explicitly stated that they refused to hire women. The lone dissenter on the board of inquiry observed that it was "trite to state that discrimination is seldom susceptible of direct proof. Seldom is there an open admission of discrimination by the respondent. Once a prima facie case of discrimination is established, the onus of proving a non-discriminatory cause as well as the reasonableness of the cause shifts to the respondent."¹⁰³ Constant delays also hampered the branch's work. Janice Foster, who was denied a job because of her height and weight, had to wait two years before her complaint was resolved. Loraine Warren's equal pay case would be considered a speedy resolution at the time—it was eighteen months before a hearing was scheduled.

The 1984 *Human Rights Act* represented a significant departure from the previous regime and did nothing to address the weaknesses of the Human

Rights Code. Julie Webb won her sexual harassment case against her boss at the pizzeria under the reasonable cause section of the code. In the same year, Andrea Fields' sexual harassment complaint was brought before the new Human Rights Council as constituted under the 1984 *Human Rights Act*. Fields, a waitress at a Victoria restaurant, testified that her boss, Wilhelm Ueffing, attempted to pinch or grab her, wrote her notes suggesting that she had a sexy body, and frequently asked her to have sex with him. The council dismissed her complaint, in part because Ueffing "frequently greeted staff and customers with a hug and a kiss" and because there was insufficient evidence to support her testimony.¹⁰⁴ It was a complicated case (other waitresses contradicted her testimony), but it was also a powerful symbolic defeat for the council's first case and the "new" human rights regime in British Columbia.

Conclusion

ULTIMATELY, the fundamental flaw of the B.C. human rights regime was the same failure inherent in similar legal regimes across the country. The Canadian human rights state was never designed to deal with any form of *systemic* inequality. Quebec was the only province to recognize economic, social, and cultural rights in its human rights legislation, and, in practice, few people in Quebec submitted claims under these provisions. Moreover, human rights codes in Canada conceived of human rights in terms of individual rights. Commissions were not pro-active; individuals such as H.W., who was fired for being pregnant, had to initiate complaints themselves. Human rights codes also did not allow for class-action suits on behalf of aggrieved minorities. As a result, the human rights state was unable to respond to job ghettos (for example, all-Caucasian fire departments) and rarely provided for collective remedies. The Ontario Human Rights Commission published a scathing critique of the Ontario Human Rights Code in 1977. Its concerns could easily apply to the other regimes in Canada at the time:

The most pervasive discrimination today often results from unconscious and seemingly neutral practices which may, none the less, be as detrimental to human rights as the more overt and intentional kind of discrimination. These practices perpetuate the discriminatory effects of past discrimination, even when overt acts of discrimination have ceased. Unfortunately, the Commission does not have the power, under the present Code to deal effectively with such practices despite their clearly discriminatory consequences.¹⁰⁵

Several provinces, including Ontario, Quebec, Saskatchewan, and Nova Scotia, eventually amended their respective human rights codes and incorporated a mandate to investigate systemic discrimination.¹⁰⁶ But economic recession in the 1980s led to extensive government cutbacks. Investigations into systemic discrimination were long and costly, and during a period of fiscal restraint, individual complaints dominated the human rights agenda. As Howe and Johnson note, “financial constraints are compelling some provincial commissions to re-evaluate their support of systemic initiatives.... The critical factor is held to be the amount of time, effort, and funding required to assess and demonstrate systemic discrimination.”¹⁰⁷

The modern human rights state represents an impressive advancement in public policy. Employers such as Bob Bennett could no longer refuse women the right to work, and the human rights state provided an accessible forum for women to seek redress. Statistics can never fully capture the significance of the daily activities of human rights officers who informally conciliated thousands of human rights violations. Still, the human rights state struggled in its primary activity: employment discrimination against women. Between 1971 and 1981, the number of women in the labour force increased 22 percent and the number of working mothers increased from 36.2 percent to 50.7 percent. Yet in 1981 the average woman made barely 62 percent of a man’s wage, a small rise of 5 percent from the 1971 figure. Women in 1981 continued to be represented disproportionately in low-paying jobs or “pink ghettos.” Six percent of physicians, dentists, lawyers, and managers in 1971 were women, and 60.2 percent of clerical and service workers were women. The gap had barely shifted by 1981: women represented 9.6 percent of the former and 57.7 percent of the latter.¹⁰⁸

Of course, human rights legislation has important symbolic value. “Organizations and individuals,” according to Didi Herman, “have proceeded on the law front with the belief that law reflects societal fears and prejudices.... [P]rogressive law reform signals to bigots, and to those who would discriminate, that such attitudes and behaviours are no longer acceptable.”¹⁰⁹ But there is a difference between human rights declarations, which are an expression of consensus within a community, and human rights law. These legal innovations were designed to be enforced and to mobilize the resources of the state to actively discourage (and, if necessary, punish) discriminatory acts. Human rights legislation should not be judged solely on its potential for legitimation, but the law’s capacity to fulfill a concrete mandate. The question is significant in light of the limits of the human rights state. *

Notes

- 1 “Human Rights Commissions: Shake that Role of Policing Ideas,” editorial, *Globe and Mail*, 4 February 2008.
- 2 George Jonas, “George Jonas on the Trouble with Human Rights Commissions,” *National Post*, 8 April 2008; George Jonas, “Speech Commissars are the Problem,” *National Post*, 5 May 2006; Margaret Wenté, “A Day at the Theatre of the Absurd,” *Globe and Mail*, 15 February 2008; Margaret Wenté, “The Rights Revolution Run Amok,” *Globe and Mail*, 26 February 2008. See also Rex Murphy, “Coming to a Human Rights Commission Near You,” *Globe and Mail*, 25 January 2006.
- 3 Wenté, “Rights Revolution Run Amok.”
- 4 *Human Rights Code Amendment Act, Statutes of British Columbia* 2002, chap. 62.
- 5 *An Act to Amend the Human Rights Code, Statutes of Ontario* 2006, chap. 30.
- 6 “Within Canada, the human rights commissions came to be the preferred means for implementing human rights policy; in effect, the ordinary courts were rejected as the best mechanism for addressing legally proscribed social behaviour.” Brian Howe and David Johnson, *Restraining Equality: Human Rights Commissions in Canada* (Toronto: University of Toronto Press, 2000), 38.
- 7 Christopher MacLennan, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929–1960* (Montreal: McGill-Queen’s University Press, 2003); Joel Bakken, *Just Words: Constitutional Rights and Social Wrongs* (Toronto: University of Toronto Press, 1997); George Egerton, “Writing the Canadian Bill of Rights: Religion, Politics and the Challenge of Pluralism 1957–1960,” *Canadian Journal of Law and Society* 19, no. 2 (2002); James B. Kelly, *Governing with the Charter: Legislative and Judicial Activism and Framers’ Intent* (Vancouver: UBC Press, 2005); James Walker, “Race,” *Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Toronto: Wilfrid Laurier University Press, 1997); Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999); Carmela Patrias, “Race, Employment Discrimination, and State Complicity in Wartime Canada, 1939–1945,” *Labour/Le Travail* 59 (Spring 2007).
- 8 On Canada’s rights culture, refer to Evelyn Kallen, *Ethnicity and Human Rights in Canada: A Human Rights Perspective on Ethnicity, Racism and Systemic Inequality*, 3rd ed. (Don Mills: Oxford University Press, 2003); Michael Ignatieff, *The Rights Revolution* (Toronto: House of Anansi Press, 2000); Dominique Clément, *Canada’s Rights Revolution: Social Movements and Social Change, 1937–1982* (Vancouver: UBC Press, 2008).
- 9 Ruth Frager and Carmela Patrias, “‘This Is Our Country, These Are Our Rights’: Minorities and the Origins of Ontario’s Human Rights Campaigns,” *Canadian Historical Review* 82, no. 1 (2001); Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971–1995* (Toronto: University of Toronto Press, 1999); James Walker, “The ‘Jewish Phase’ in the Movement for Racial Equality in Canada,” *Canadian Ethnic Studies* 34, no. 1 (2002); Rainer Knopff and F.L. Morton, *The Charter Revolution and the Court Party* (Peterborough, ON: Broadview Press, 2000); Christopher Manfredi, *Feminist Activism in the Supreme Court: Legal*

- Mobilization and the Women's Legal Education and Action Fund* (Vancouver: UBC Press, 2004); Miriam Smith, "Social Movements and Judicial Empowerment: Courts, Public Policy, and Lesbian and Gay Organizing in Canada," *Politics and Society* 33, no. 2 (2005); Carmela Patrias, "Socialists, Jews, and the 1947 Saskatchewan Bill of Rights," *Canadian Historical Review* 87, no. 2 (2006); Stephanie Bangarth, *Voices Raised in Protest: Defending North American Citizens of Japanese Ancestry, 1942–49* (Vancouver: UBC Press, 2007); Didi Herman, *Rights of Passage: Struggles for Lesbian and Gay Legal Equality* (Toronto: University of Toronto Press, 1994); Tom Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002); Valerie Korinek, "'The Most Openly Gay Person for at Least a Thousand Miles': Doug Wilson and the Politicization of a Province," *Canadian Historical Review* 84, no. 4 (2003); Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930–1960* (Toronto: University of Toronto Press, 2005); Matt James, *Misrecognized Materialists: Social Movements in Canadian Constitutional Politics* (Vancouver: UBC Press, 2006).
- 10 An exception is the work of Carmela Patrias and Ruth Frager on early innovations in human rights laws and policy in Saskatchewan.
 - 11 British Columbia, Department of Labour Annual Report (Report of the Women's Bureau), 1968, 35.
 - 12 Clément, *Canada's Rights Revolution*; Dominique Clément, "'I Believe in Human Rights, Not Women's Rights': Women and the Human Rights State, 1969–1984," *Radical History Review* 101 (2008): chap. 1.
 - 13 Jean Barman, *The West Beyond the West: A History of British Columbia* (Toronto: University of Toronto Press, 1991), 303.
 - 14 Five women were elected under the NDP banner in 1972 (one Social Credit elected), http://www.elections.bc.ca/docs/rpt/1871-1986_ElectoralHistoryofBC.pdf.
 - 15 By the 1970s, the province boasted the country's first rape crisis centre, the first feminist newspaper (*Kinesis*), the first national conference of human rights ministers, the first Black woman elected to a provincial legislature, the only woman in the federal parliament in 1970, and one of the first women's liberation groups in the country, and it was the first province to legislate against sex discrimination. Women from British Columbia led the most visible protest against the abortion laws in Canadian history in 1969: a caravan from Vancouver to Ottawa carrying a coffin to symbolize the deaths of women from backstreet abortions. Clément, "'I Believe in Human Rights.'"
 - 16 Ministry of Labour Women's Programs, "Women in British Columbia, 1971–1981" (Victoria: Ministry of Labour, 1984).
 - 17 British Columbia Archives (hereafter cited as BCA), Department of Labour fonds, G85-158, box 5, acc. 8800573715, Human Rights Case—Kathleen Strenja v United Cabs-Comox Taxi, 1981.
 - 18 University of Victoria Archives (hereafter cited as UVA), British Columbia Human Rights Board of Inquiry Collection, AR017, box 97-159, Billie Linton v Nabob Foods Ltd., 1977; British Columbia, *Labour Relations Bulletin* (1977): 32–33.

- 19 UVA, British Columbia Human Rights Board of Inquiry Collection, AR017, box 97-159, *Lorraine Warren v D. Becket and Credit of Canada Ltd.*, 1977; British Columbia, *Labour Relations Bulletin* (1977): 62–63.
- 20 British Columbia, *Debates of the Legislative Assembly* (1980), 3493.
- 21 UVA, British Columbia Human Rights Board of Inquiry Collection, AR017, box 97-159, *Jean Tharpe v Lornex Mining Corporation*, 1976; British Columbia, *Labour Relations Bulletin* (1976): 85–86.
- 22 British Columbia, *Labour Relations Bulletin* (1977): 32–33.
- 23 It was the opinion of the board of inquiry—after speaking with the employer, visiting the site and contacting people familiar with the industry—that the height and weight requirements were arbitrary. In its final report, the board insisted that “general rules based on meaningless attributes and not rationally related to the qualifications necessary to do the job are inimical to the equality of opportunity which Section 8 of the Code mandates.” British Columbia, *Labour Relations Bulletin* (1979): 52–53.
- 24 Doris Anderson, *Rebel Daughter: An Autobiography* (Toronto: Key Porter Books, 1996), 173.
- 25 For these and other reasons, including the possibility that many women did not “understand, at least in the first instance, that their experience falls within the parameters of sexual harassment,” the first Canadian study on sexual harassment appeared only in 1978. In their study, Backhouse and Cohen discuss briefly why sexual harassment was a “recent” phenomenon by the 1970s: “One is that since more women are working there are more instances of sexual harassment, and this has brought the problem to a head. Another is that middle-class women have begun to recognize they will continue to work outside their homes for the majority of their lives. This, it is argued, causes them to take threats to their working status—such as sexual harassment—more seriously.” They also suggest that the efforts of women activists to raise awareness of rape has also led to greater awareness of sexual harassment. Constance Backhouse and Leah Cohen, *The Secret Oppression: Sexual Harassment of Working Women* (Toronto: Macmillan, 1978), 1–2, 71–72.
- 26 “Julie Webb v Cyprus Pizza,” *Canadian Human Rights Reporter*, vol. 6, decision 444 (Toronto: Canadian Human Rights Reporter, 1985): D2794–97.
- 27 In her memoirs, Doris Anderson provides a vivid discussion of the obstacles facing women, including senior executives, who wanted both to have children and to work. Anderson, *Rebel Daughter*.
- 28 British Columbia, *Labour Relations Bulletin* (1976): 69–71.
- 29 BCA, Department of Labour fonds, G85-168, box 8, acc. 8800573718, *Women and Youth in Northwest B.C. Labour Markets, Summary Report*, Associated Economic Consultants Ltd., December 1982.
- 30 UVA, British Columbia Human Rights Board of Inquiry Collection, AR017, box 97-159, *Norene Warren v F.A. Cleland & Son, and David Fowler*, 1975.

- 31 Walker, “Jewish Phase.”
- 32 The idea of entrenching rights in the constitution, as the Americans had done nearly two centuries earlier, was antithetical to Canada’s tradition of parliamentary supremacy. According to A.V. Dicey, the famed legal philosopher whose ideas were highly influential in England and, by extension, Canada, parliament was the supreme legal authority. Constitutional rights such as free speech would empower the judiciary to overturn laws passed in parliament. According to Dicey, the “principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.” A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: St. Martin’s Press, 1962), 39–40. In their recent study of human rights commissions in Canada, R. Brian Howe and David Johnson suggest that resistance to human rights legislation was rooted in a widespread belief in social *laissez-faire* and voluntarism in social relations: “This belief can be summarized as follows: While prejudice and discrimination might be morally wrong or socially undesirable, human rights legislation or legal action against discrimination would do more harm than good. It would involve unwarranted state interference with individual freedom, property rights, and the right to contract.” Howe and Johnson, *Restraining Equality*, 4.
- 33 For a history of human rights legislation in Canada, refer to Howe and Johnson, *Restraining Equality*; Clément, *Canada’s Rights Revolution*; Lambertson, *Repression and Resistance*.
- 34 The 1944 Ontario *Racial Discrimination Act* and the 1947 Saskatchewan Bill of Rights were designed as quasi-criminal statutes; they were enforced similar to criminal law, through the police and the courts.
- 35 Walker, “Jewish Phase.”; Lambertson, *Repression and Resistance*, 219–20.
- 36 Walker, “Jewish Phase,” 13.
- 37 *Fair Employment Practices Acts* appeared later in Manitoba (1953), Nova Scotia (1955), New Brunswick (1956), British Columbia (1956), Saskatchewan (1956), and Quebec (1964). The Ontario *Fair Accommodation Practices Act* was passed in 1954 and replicated in Saskatchewan (1956), New Brunswick (1959), Nova Scotia (1959), Manitoba (1960), and British Columbia (1961). British Columbia enacted a more restricted statute in 1961, while Quebec avoided passing Fair Accommodation Practices legislation. Walter Surma Tarnopolsky, *Discrimination and the Law in Canada* (Toronto: De Boo, 1982), 27–28.
- 38 Judges, who found it difficult to conceive of discrimination as a criminal act, were reluctant to convict. Fines did not help victims find new jobs, and most minorities were unaware of the existence of the legislation. For an overview of the weaknesses of these early initiatives, refer to Dominique Clément, “Rights without the Sword Are but Mere Words’: The Limits of Canada’s Rights Revolution,” in *A History of Human Rights in Canada*, ed. Janet Miron (Toronto: Canadian Scholars Press, 2009).

- 39 Critics lamented that Diefenbaker did not seek to entrench the Bill of Rights in the constitution. Instead, it was passed as a federal statute. As a result, any future government could overturn the Canadian Bill of Rights, and the law was only binding on the federal government. The courts largely ignored the federal Bill of Rights. LAC (Library and Archives Canada), Frank Scott Papers, MG30, D211, vol. 47, Frank Scott to Gordon Dowding, 20 September 1964. Walter Tarnopolsky, *The Canadian Bill of Rights* (Toronto: Carswell, 1966).
- 40 Lambertson, *Repression and Resistance*, 220.
- 41 “[T]heir [Jews] greater integration into Canadian society, as well as sheer numbers, allowed them to be the most influential and effective campaigners against discrimination. By the 1940s many of them were English-speaking, and their ranks included academics and lawyers who undertook to do the necessary human rights research and become spokespersons for the campaigns for human rights. While most Jews lived in larger urban areas, some Jews (mostly small-business owners) could be found throughout Ontario. Frequently active members of the Canadian Jewish Congress, the small-town Jews provided the Jewish community with a provincewide communication network unparalleled by any other minority group.” Frager and Patrias, “‘This Is Our Country,’” 17.
- 42 The Ontario Human Rights Code (1962) was followed by similar initiatives in Nova Scotia (1963), Alberta (1966), New Brunswick (1967), Prince Edward Island (1968), British Columbia (1969), Newfoundland (1969), Manitoba (1970), Quebec (1975), Saskatchewan (1979), and Yukon (1987).
- 43 The files of the B.C. Human Rights Branch indicate the professions of the board members in many cases. However, no one has completed a systematic survey of people who have participation in the human rights adjudication process across the country.
- 44 *An Act to Ensure Fair Remuneration to Female Employees, British Columbia Statutes 1953*, chap. 6; *An Act to Prevent Discrimination in Regard to Employment and in Regard to Membership in Trade-Unions by Reason of Race, Religion, Colour, Nationality, Ancestry, or Place of Origin, British Columbia Statutes 1956*, chap. 16; *An Act Respecting Public Accommodation Practices, British Columbia Statutes 1961*, chap. 50.
- 45 *An Act for the Promotion and Protection of the Fundamental Rights of the People of British Columbia, British Columbia Statutes 1969*, chap. 10.
- 46 Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press, 2005), 260.
- 47 *Vancouver Sun*, 28 February 1969.
- 48 *The Province*, 25 March 1969.
- 49 For further information on nation-wide celebrations in 1968, refer to Clément, *Canada's Rights Revolution*. See also Donald Anderson, “The Development of Human Rights Protections in British Columbia” (master’s thesis, University of Victoria, 1986), 60-62.

- 50 British Columbia Commission for International Year for Human Rights, "Report" (1968).
- 51 Anderson, "Development of Human Rights Protections," 62–64.
- 52 *Vancouver Sun*, 31 October 1969; Anderson, "Development of Human Rights Protections," 66.
- 53 As Howe and Johnson note, "political party indeed does appear to make a difference." Howe and Johnson, *Restraining Equality*, 92. NDP governments consistently provided greater funding to human rights commissions. And, in British Columbia, the NDP revised the human rights legislation in 1973 and 1996 to expand the scope and mandate of the human rights regime.
- 54 The elected members of the NDP criticized, in detail, the 1969 *Human Rights Act* during the 1973 debates in the legislature surrounding the proposed Human Rights Code. In particular, Minister of Labour W.S. King offered a useful overview of the NDP's position on the 1969 act. See British Columbia, *Debates of the Legislative Assembly* (1973), 1256–57.
- 55 Clément, "I Believe in Human Rights."
- 56 Unfortunately, a copy of the proposed draft produced by the UBC law students no longer exists. The provincial (NDP) government commissioned Black in 1994 to provide an extensive review of the human rights system, which resulted in a significant overhaul of the system. ; Bill Black, *B.C. Human Rights Review: Report on Human Rights in British Columbia* (Vancouver: Government of British Columbia, 1994).
- 57 Shelagh Day, the first human rights officer hired in British Columbia, later described the investigatory process as follows: "The investigating officer gathers available information relating to the complaint from all parties and, on the basis of this information, determines whether a contravention of the Code has occurred. If the Officer has evidence that discrimination has occurred, he or she makes a recommendation that the complaint be settled by the respondent. On the other hand, if there is no evidence of discrimination, the officer recommends to the Director that no further action be taken." Shelagh Day, "Recent Developments in Human Rights," *Labour Relations Bulletin* (1977): 16.
- 58 "A recommendation to settle a complaint can take many forms. Depending on the circumstances of the complaint, and the circumstances of the complainant and respondent, settlement may involve lost wages, reinstatement or re-instatement in a job, reinstatement in tenancy in an apartment, a payment of damages or expenses, a formal agreement with the Human Rights Branch to discontinue discriminatory practices that have been uncovered, an agreement to inform and educate the pertinent officials of a respondent company of the provisions of the Code, or a simple apology to the complainant." *Ibid.*
- 59 Unlike the courts, this significant innovation would ensure that employers, with more resources than an employee who was recently dismissed, would not have an unfair advantage. Moreover, victims of discrimination, such as racial minorities and women, often struggled on the margins of the labour market. The code was designed to make the process accessible to everyone.

- 60 “This is the first case in Canada to deal with employment discrimination against a pregnant woman and the B.C. human rights legislation is singularly able to provide protection to pregnant women because Section 8 prohibits discrimination without reasonable cause.” Day, “Recent Developments in Human Rights.” See also British Columbia, *Labour Relations Bulletin* (1976): 69–71; British Columbia, *Labour Relations Bulletin* (1977): 62–63; British Columbia, *Labour Relations Bulletin* (1976): 51–52; British Columbia, *Labour Relations Bulletin* (1980): 24–25; “Julie Webb v Cyprus Pizza”; Peter Comparelli and Glen Schaefer, “Two Women Sexually Harassed, Inquiries Rule,” *Vancouver Sun*, 28 July 1984.
- 61 The board concluded that the newspaper had discriminated on the basis of sexual orientation when it refused to publicize an advertisement for the Gay Alliance Towards Equality’s newsletter. *Gay Alliance Towards Equality v Vancouver Sun* (1979) 2 S.C.R. 435.
- 62 Quebec, in 1977, was the first jurisdiction to include sexual orientation as a prohibited ground of discrimination in its human rights legislation.
- 63 Walker, “Jewish Phase”; Dominique Clément, “Searching for Rights in the Age of Activism: The Newfoundland-Labrador Human Rights Association, 1968–1982,” *Newfoundland Studies* 19, no. 2 (2003); Ross Lambertson, “The Dresden Story: Racism, Human Rights, and the Jewish Labour Committee of Canada,” *Labour/Le Travail* 47 (Spring 2001).
- 64 Rare Books and Special Collections, University of British Columbia (hereafter cited as RBSC UBC), Vancouver Status of Women (VSW) Papers, Grant Application to the Provincial Secretary of BC, 1 April 1977 to 31 March 1978.
- 65 RBSC UBC, Rosemary Brown Papers, v. 8, f. 9, briefs and correspondence by the Vancouver Young Women’s Christian Association, British Columbia Federation of Labour Women’s Rights Committee, and the University of British Columbia Women’s Action Group; Canadian Women’s Movement Archives, British Columbia Federation of Women, vols. 5–6, materials on the British Columbia human rights code and commission, 1979; Donald Anderson, “The Development of Human Rights Protections in British Columbia” (master’s thesis, University of Victoria, 1986), 69–70.
- 66 Simon Fraser University Archives, Frances Wasserlein Papers, f. 162-3-3-0-4, Vancouver Women’s Caucus Brief to the Human Rights Commission, 3 December 1969.
- 67 British Columbia, Department of Labour Annual Reports, 1970–82; British Columbia, Human Rights Commission, Annual Reports, 1979–82; Nova Scotia, Annual Reports of the Human Rights Commission, 1977–82; Ontario, Annual Reports of the Human Rights Commission, 1977–80.
- 68 *Human Rights Act, British Columbia Statutes* 1984, chap. 22.
- 69 See Bryan Palmer, *Solidarity: The Rise and Fall of an Opposition in British Columbia* (Vancouver: New Star Books, 1987). “Few were more willing in the early 1980’s to take up the cause of dismantling the welfare state and curbing the ‘excessive’ power of the trade unions than the populist neo-conservatives of the Canadian hinterland, the petty commodity hucksters, interest magnates and speculators

of British Columbia's Social Credit Party, recently re-elected to rule in a 1983 parliamentary contest" (p. 19). Bryan Palmer provides a detailed discussion of the restraint package and the movement against the reforms.

- 70 For a detailed review and critique of the 1984 *Human Rights Act*, refer to Black, *B.C. Human Rights Review*.
- 71 Minister of Labour Robert McClelland offered the following explanation for the amendments: "Since becoming the minister responsible for the Human Rights Commission about a year ago I've done an exhaustive review of the operation of both the commission and the human rights branch, as I have with every other operation under the control of the Ministry of Labour, and I came to the conclusion, as I've said publicly on a number of occasions, that the system was not working, that justice wasn't being served, that justice delayed was justice denied, and that a totally new system was necessary in order that we could move in a very meaningful way towards the day when we wouldn't have to worry about discrimination in this province." British Columbia, *Debates of the Legislative Assembly* (1983), 769.
- 72 Howe and Johnson, *Restraining Equality*, 158.
- 73 *Sisterhood* 7, no. 2 (August 1983).
- 74 RBSC UBC, Solidarity Coalition Papers, v. 2, f. 12, Status of Women Action Group, Brief to the People's Commission on Social and Economic Policy Alternatives, 7 December 1984.
- 75 RBSC UBC, Solidarity Coalition Papers, v. 5, f. 6, Nanaimo Women's Resources Society, Brief Submitted to the People's Commission for Policy Alternatives, September 1984. The VSW was a key member of the coalition and a staunch opponent of the Social Credit government's so-called austerity package. British Columbia, *Debates of the Legislative Assembly* (1984), 4471-72.
- 76 On opposition from women's organizations to the 1984 *Human Rights Act*, see *Sisterhood* 7 (August 1983); RBSC UBC, Solidarity Coalition Papers, v. 2, briefs to the People's Commission on Social and Economic Policy Alternatives; British Columbia, *Debates of the Legislative Assembly* (1984), 4471-72. In addition, refer to media coverage on the following dates in the *Vancouver Sun*: 24 November 1984; 27 November 1984; 29 November 1984; 12 December 1984.
- 77 "Angry Crowd Wants Anti-Gov't Protest," *The Province*, 13 July 1983; Marc Edge. "Thousands Join Call to Battle Socreds' Budget," *The Province*, 24 July 1983.
- 78 "The new act would replace a process of conciliation and negotiation with an adversarial and confrontational system of handling complaints, a change that can only heighten hostility to human rights rather than further public acceptance of the concept." "Preserving Human Rights," *Vancouver Sun*, editorial, 16 July 1983.
- 79 Fairweather believed that the reforms set the stage for American-style social polarization and lamented attempts to "import this kind of thinking in Canada." "Critics Rap Socreds over Rights Record," *Vancouver Sun*, 22 September 1984; "B.C. Rights Move Rapped in Ottawa," *The Province*, 9 September 1983.

- 80 University of British Columbia, Rare Books and Special Collections, Solidarity Coalition Papers, f. 19-1, Ken Norman to William Bennett, 2 July 1983.
- 81 “B.C. Rights Move Rapped in Ottawa,” *The Province*, 9 September 1983; “Five Provinces Reject Call,” *Vancouver Sun*, 10 September 1983.
- 82 Ann Silversides, “Four Federal Ministers Ask B.C. to Reconsider Human Rights Bill,” *Globe and Mail*, 9 May 1984.
- 83 RBSC UBC, Solidarity Coalition Papers, f. 19-1, Serge Joyal to R.H. McClelland, 7 October 1983.
- 84 “CASHRA deplors this ill-advised proposal and urges the Government of British Columbia to reconsider it. If it were implemented the powerless would be deprived of an advocate in the struggle against racism and bigotry.... To disband an organization that has proven expertise in providing such protection would be tragic.” “Ottawa Steps Up Rights Pressure on B.C.,” *The Province*, 17 July 1983; Vaughn Palmer. “A Strong Defence of a New Rights Act,” *Vancouver Sun*, 5 June 1984; *Vancouver Sun*, 23 September 1983; RBSC UBC, f. 19-1, Press Release, CASHRA, 14 July 1983.
- 85 RBSC UBC, Solidarity Coalition Papers, f. 19-1, Press Release, CASHRA, 14 July 1983.
- 86 *Vancouver Sun*, 26 September 1983; RBSC UBC, Solidarity Coalition Papers, f. 19-1, Press Release, Canadian Advisory Council on the Status of Women, 25 July 1983. The Canadian Bar Association often participated in debates surrounding human rights violations, from government restrictions on civil liberties during the Second World War to the negotiations surrounding the creation of the Charter of Rights and Freedoms. Dominique Clément, “Rights in the Age of Protest: A History of the Human Rights and Civil Liberties Movement in Canada, 1962–1982” (PhD diss., Memorial University of Newfoundland, 2005), 141–43.
- 87 The provincial government added age as a prohibited ground for discrimination in an amendment to the *Fair Employment Practices Act* in 1964. *An Act to Prevent Discrimination in Regard to Employment and in Regard to Membership in Trade-Unions by Reason of Race, Religion, Colour, Nationality, Ancestry, or Place of Origin; An Act Respecting Public Accommodation Practices; An Act to Amend the Fair Employment Practices Act; An Act to Ensure Fair Remuneration for Female Employees*
- 88 British Columbia, Department of Labour, Annual Reports, 1953–69.
- 89 *Toronto Star*, 3 August 1961.
- 90 Many workers and employers did not know the law existed. Members of the British Columbia Commission for International Year for Human Rights, who were drawn from a wide spectrum of community organizations, criticized the lack of human rights education in the province and the lack of publicity for the anti-discrimination legislation. The British Columbia Federation of Labour also claimed that “very many [employers] had not known the Act existed.” B.C. Federation of Labour, *Summary of Proceedings of the 1969 Annual Convention (Human Rights Committee Report)*; Rights, “Report.”

- 91 British Columbia, Department of Labour, Annual Reports, 1970–84.
- 92 *Democratic Commitments (BCCLA Newsletter)* 10 (June 1969).
- 93 British Columbia, Department of Labour Annual Reports, 1970–82; British Columbia, Human Rights Commission, Annual Reports, 1979–82.
- 94 British Columbia, Department of Labour, *Annual Reports*, 1970–84; British Columbia Human Rights Commission, Annual Reports, 1980–82.
- 95 UVA, British Columbia Human Rights Board of Inquiry Collection, AR017, box 97-159, 1976.
- 96 According to Jean Barman, “Social Credit was also [a] male government.” The party elected the fewest number of female candidates in the province, and less than 20 percent of the women who ran for public office during this period ran under the Social Credit banner. Soon after their 1975 election victory, the Socreds eliminated the office of the Coordinator for the Status of Women, fired the consultant on sex discrimination in the Ministry of Education, and disbanded the Committee on Sex Discrimination in Ministry of Education. UVA, Status of Women Action Group fonds, AR 119, 2004-005, f. 1.2, “Human Rights Commission Unfit to Serve” letter to membership, 7 April 1979; Barman, *West Beyond the West*, 279.
- 97 G. Scott Wallace, a Progressive Conservative member of the legislative assembly, explained to the legislature in 1977 the frustrations victims felt when dealing with industrial relations officers: “I just want to bring to the minister’s attention that I was made aware as recently as this morning of a case where an industrial relations officer was allocated to investigate a complaint by an individual. This woman discovered that she ended up answering all kinds of questions as to whether she suffered from a neurosis, or if she had ever been considered by her friends to be paranoid, and questions of this nature, which seem to me to be ranging far away and beyond the preliminary kind of discussion that should take place when a man or a woman wants a complaint investigated by the human rights branch.” British Columbia, *Debates of the Legislative Assembly (1977)*, 4198.
- 98 UVA, Status of Women Action Group fonds, AR 119, 2004-005, f. 1.2, “Human Rights Commission Unfit to Serve” letter to membership, 7 April 1979.
- 99 *Ibid.*; *Victoria Times-Colonist*, 4 April 1979, 2 May 1979.
- 100 British Columbia, *Debates of the Legislative Assembly (1979)*, 1787.
- 101 *Ibid.*, 4463.
- 102 UVA, British Columbia Human Rights Board of Inquiry Collection, AR017, box 97-159, Susan Jorgensen v BC Ice and Cold Storage Ltd and the United Fishermen and Allied Workers Union, J.H. Nicol to Allan Williams, 4 June 1979.
- 103 UVA, British Columbia Human Rights Board of Inquiry Collection, AR017, box 97-159, Billie Linton v Nabob Foods Ltd., 1977; British Columbia, *Labour Relations Bulletin (1977)*: 32–33.
- 104 Nancy Knickerbocker and Peter Comparelli, “Harassment Complainant to Fight Ruling,” *Vancouver Sun*, 27 November 1984.

- 105 Ontario Human Rights Commission, *Life Together: A Report on Human Rights in Ontario* (July 1977), 33.
- 106 See, for instance, the Ontario Human Rights Review Task Force report on the need to investigate systemic discrimination: Ontario Human Rights Code Review Task Force, *Achieving Equality: A Report on Human Rights Reform* (Toronto: Ministry of Citizenship, 1992).
- 107 Howe and Johnson also found that the most common complaint among advocacy groups was the failure of human rights commissions to adequately deal with systemic discrimination. Howe and Johnson, *Restraining Equality*, 142–44.
- 108 Statistics on women in the labour force are available in the *Human Rights Act*, formally Statutes of British Columbia. *An Act for the Promotion and Protection of the Fundamental Rights of the People of British Columbia*, 1969, c. 10.
- 109 Herman, *Rights of Passage*, 4.