

Colour Coded: A Legal History of Racism in Canada, 1900-1950

by Constance Backhouse

EXTENDED ENDNOTES

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ENDNOTES TO ACKNOWLEDGEMENTS

1. Constance Backhouse Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada (Toronto: The Osgoode Society and Women's Press, 1991).

2. See, for example, Vijay Agnew Resisting Discrimination: Women from Asia, Africa and the Caribbean and the Women's Movement in Canada (Toronto: University of Toronto Press, 1996); Himani Bannerji, Linda Carty, Kari Dehli, Susan Heald and Kate McKenna eds. Unsettling Relations: The University as a Site of Feminist Struggles (Toronto: Women's Press 1991); Himani Bannerji Returning the Gaze: Essays on Racism, Feminism and Politics (Toronto: Sister Vision Press, 1993); Himani Bannerji Thinking Through: Essays on Feminism, Marxism and Anti-Racism (Toronto: Women's Press, 1995); Derrick Bell And We Are Not Saved: The Elusive Quest for Racial Justice (New York: Basic Books, 1989); Derrick Bell Faces at the Bottom of the Well: The Permanence of Racism (New York: Basic Books, 1992); Dionne Brand Bread Out of Stone (Toronto: Coach House Press, 1994); Peggy Bristow et al. We're Rooted Here and They Can't Pull Us Up (Toronto: University of Toronto Press, 1994); Carol Camper Miscegenation Blues: Voices of Mixed Race Women (Toronto: Sister Vision, 1994); Patricia Hill Collins Black Feminist Thought (Boston: Unwin Hyman, 1990); Angela Davis Women, Race and Class (New York: Vintage, 1983); Richard Delgado ed. Critical Race Theory: The Cutting Edge

(Philadelphia: Temple University Press, 1995); bell hooks Ain't I A Woman: Black Women and Feminism (Boston: South End Press, 1981); bell hooks Feminist Theory: From Margin to Center (Boston: South End, 1984); bell hooks Yearning: Race, Gender and Cultural Politics (Toronto: Between the Lines, 1990); bell hooks Black Looks: Race and Representation (Toronto: Between the Lines, 1992); bell hooks Teaching to Transgress: Education as the Practice of Freedom (New York: Routledge, 1994); Gloria I. Joseph and Jill Lewis Common Differences: Conflicts in Black & White Feminist Perspectives (Boston: South End Press, 1981); Audre Lorde Sister Outsider: Essays and Speeches (Trumanburg: Crossing Press, 1984); Mari Matsuda Where Is Your Body? And Other Essays on Race and Gender in the Law (Boston: Beacon Press, 1996); Patricia Monture-Angus Thunder in My Soul: A Mohawk Woman Speaks (Halifax, Fernwood, 1995); Toni Morrison ed. Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality (New York: Pantheon, 1992); Roxanna Ng The Politics of Community Service: Immigrant Women, Class and State (Toronto: Garamond, 1986); M. Nourbese Philip Frontiers: Essays and Writings on Racism and Culture (Stratford, Ont.: Mercury Press, 1992); Sherene H. Razack Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms (Toronto: University of Toronto Press, 1998); Makeda Silvera Silenced (Toronto: Williams-Wallace, 1983); Cornel West Race Matters (New York: Vintage, 1994); Patricia Williams The Alchemy of Race and Rights (Cambridge: Harvard University Press, 1991); Patricia J. Williams The Rooster's Egg: On the Persistence of Prejudice (Cambridge: Harvard University Press, 1995).

3. On the importance of identity and experience in interpreting historical and other information, see Brand Bread Out of Stone at 145-68, 173-80; Beth Brant "From the Inside -

Looking at You" Canadian Woman Studies 14:1 (Fall 1993) 16-17; Ann du Cille "The Occult of True Black Womanhood: Critical Demeanor and Black Feminist Studies" Signs 19:3 (Spring 1994) 591-629; J. Larbalestier "The Politics of Representation: Australian Aboriginal Women and Feminism" Anthropological Forum v.6 (1990) 143-57; Comments of Maria Campbell and Lenore Keeshig-Tobias in Harmut Lutz Contemporary Challenges: Conversations with Canadian Native Authors (Saskatoon: Fifth House, 1991) at 54-65, 79-86; Ann McGrath and Winona Stevenson "Gender, Race and Policy: Aboriginal Women and the State in Canada and Australia" Labour/Le Travail v.38 (Fall 1996) 37 at 38; May Yee "Finding the Way Home Through Issues of Gender, Race and Class" in Bannerji Returning the Gaze 3 at 4, 36.

ENDNOTES TO CHAPTER ONE

1. Instructions to Officers taking the Dominion Census, Introduction to the Census Report of Canada for 1901, Fourth Census of Canada 1901 (Ottawa: S.E. Dawson, 1902) v.1, sections 47-54, p.xviii-xix, as quoted in In re Coal Mines Regulation Act and Amendment Act, 1903 (1904) 10 B.C.R. 408, (B.C.S.C.) at 427. The census was taken as of midnight, 31 March 1901. The instructions also contain a fifth category: "Persons of mixed white and red blood - commonly known as 'breeds' - will be described by the addition of the initial letters 'f.b.' for French breed, 'e.b.' for English breed, 's.b.' for Scotch breed, 'i.b.' for Irish breed.... Other mixtures of Indians besides the four above specified are rare, and may be described by the letters 'o.b.' for other breed." Thomas F. Gossett Race: The History of an Idea in America (Dallas: Southern Methodist University

Press, 1963) notes at 37-8 that it was Johann Friedrich Blumenbach, a professor of medicine at the University of Gottingen in the 18th century, who first "coined the word **Caucasian** to describe the white race." The term is based upon a single skull in Blumenbach's collection, that came from the Caucasian mountain region of Russia. Noting resemblances between this skull and some German skulls, Blumenbach speculated that the Caucasus regions may have been the original home of the Europeans. Gossett notes at 37 that "most often, the races are named by colors: white, yellow, black, red, and brown."

2. Curiously, the Fourth Census of Canada, 1901 does not actually report the findings of the colour survey. Instead, it includes tables described as "Origins of the People," broken down into "British," "French," "German," "Dutch," "Scandinavian," "Russian," "Austro-Hungarian," "Italian," "Jewish," "Swiss," "Belgian," "Half-breeds," "Indian," "Chinese and Japanese," "Negro," "Various Origins" and "Unspecified." Based on the survey, the "red" race, which must presumably have been composed of the "Half-breeds" and "Indians," totals 127,941. The "yellow" race, which presumably was composed of the "Chinese and Japanese" totals 22,050. The "black" race, presumably composed of the "Negroes," totals 17,437. The "white" race presumably included all of the other designations except "Various Origins" and "Unspecified," and totals 5,168,562. The latter two categories comprise 35,319. The overall total is 5,371,309. On the colour terminology found in contemporary Canadian novels and poetry, see Terrence Craig Racial Attitudes in English-Canadian Fiction, 1950-1980 (Waterloo: Wilfrid Laurier University Press, 1987). On the colour terminology used by historians, see James W.St.G. Walker "The Indian in Canadian Historical Writing" Canadian Historical

Association Historical Papers (Ottawa, 1971) 21-51.

3. "General Review" Ninth Census of Canada, 1951 (Ottawa: Edmond Cloutier, 1953) v.10 at 131-2.

4. Ninth Census of Canada, 1951, v.10 at 133; v.1 at 31-1, Table 31 "Population by origin for Canada, 1871, 1881, 1901-1951." Those describing themselves as being of "British Isles origins" and "other European origins" total 13,582,574. Those who are listed as being of "Native Indian and Eskimo origins" comprise 165,607. Those of "Asiatic origins" (now listed as "Chinese," "Japanese" and "other") constitute 72,827. "Negroes" total 18,020. The category of "Other and not stated" totals 170,401. The Canadian population is listed as 14,009,429.

5. Some sources in the voluminous literature on the historical analysis of "race" include Theodore W. Allen The Invention of the White Race (London: Verso, 1994); Tomas Almaguer Racial Fault Lines: The Historical Origins of White Supremacy in California (Berkeley: University of California Press, 1994); Hanna Franziska Augstein ed. Race: The Origins of an Idea, 1760-1850 (Bristol: Thoemmes Press, 1996); Michael Banton Racial and Ethnic Competition (Cambridge: Cambridge University Press, 1983); Michael Banton "The Classification of Races in Europe and North America: 1700-1850" International Social Science Journal 39:1 (February 1987) 45-60; Elazar Barkan The Retreat of Scientific Racism: Changing Concepts of Race in Britain and the United States Between the World Wars (Cambridge: Cambridge University Press, 1992); Hamilton Cravens The Triumph of Evolution, American Scientist and the Heredity-Environment

Controversy, 1900-1941 (Philadelphia: University of Pennsylvania Press, 1978); Carl N. Degler In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought (New York: Oxford University Press, 1991); Thomas G. Dyer Theodore Roosevelt and the Idea of Race (Baton Rouge: Louisiana State University Press, 1980); Jack D. Forbes Black Africans and Native Americans: Race, Class and Color in the Evolution of Red-Black Peoples (Oxford: Basil Blackwell, 1988); Jack D. Forbes "The Manipulation of Race, Caste and Identity: Classifying Afro-Americans, Native Americans and Red-Black People" The Journal of Ethnic Studies 17:4 (Winter 1990) 1-51; George M. Fredrickson The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914 (New York: Harper & Row, 1971); David Theo Goldberg Racial Subjects: Writing on Race in America (New York: Routledge, 1997) at 27-58; Gossett Race: The History of an Idea in America; John S. Haller, Jr. Outcasts from Evolution: Scientific Attitudes of Racial Inferiority, 1859-1900 (Urbana: University of Illinois Press, 1971); Reginald Horsman Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism (Cambridge: Harvard University Press, 1981); Nicholas Hudson "From 'Nation' to 'Race': The Origin of Racial Classification in Eighteenth-Century Thought" Eighteenth-Century Studies 29:3 (1996) 247-64; Ian F. Haney Lopez White by Law: The Legal Construction of Race (New York: New York University Press, 1996); Kenan Malik The Meaning of Race: Race, History and Culture in Western Society (Basingstoke: MacMillan, 1996); Ashley M.F. Montagu Man's Most Dangerous Myth: The Fallacy of Race (New York: Columbia University Press, 1942); Peggy Pascoe "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America" Journal of American History v.83 (June 1996) 44-69; David R.

Roediger The Wages of Whiteness: Race and the Making of the American Working Class (London: Verso, 1991); Alexander Saxton The Rise and Fall of the White Republic: Class Politics and Mass Culture in Nineteenth-Century America (London: Verso, 1990); Audrey Smedley Race in North America: Origin and Evolution of a Worldview (Boulder: Westview Press, 1993); Nancy Stepan The Idea of Race in Science (Hamden, Connecticut: Archon Books, 1982); Nancy Stepan "Race, Gender, Science and Citizenship" Gender & History 10:1 (April 1998) 26-52; George W. Stocking, Jr. Race, Culture, and Evolution: Essays in the History of Anthropology (New York: Free Press, 1968).

6. Pierre L. van den Berghe "The African Diaspora in Mexico, Brazil, and the United States" in Audrey W. Bonnett and G. Llewellyn Watson eds. Emerging Perspectives on the Black Diaspora (London: University Press of America, 1990) 125-48 describes the emergence of varying degrees of "racial caste" from the slave cultures of Mexico, Brazil and the United States. On the racialization of Saxon, Celtic, Norman, Irish, Welsh, Scottish and English communities, see Barkan The Retreat of Scientific Racism at 23; Barbara Solomon Ancestors and Immigrants (Cambridge: Harvard University Press, 1956). On the contestation of the "whiteness" of people from Syria, Armenia, Arabia, India and the Phillipines in American legal doctrine, see Lopez White by Law. Religious intolerance directed against the Jews, Mennonites and Doukhobours in Canada was often depicted in racial terms; see Craig Racial Attitudes in English-Canadian Fiction. The 1941 Canadian census bases some of its statistical findings on the existence of the "Jewish" and "Ukrainian" races: "Racial Origin" Eighth Census of Canada, 1941 (Ottawa: Edmond Cloutier, 1950) v.1 at 219.

7. Stepan "Race, Gender, Science and Citizenship" notes at 37 that the identity of those who offered critical analysis of the "scientific" racial understandings may also be key: "...it is worth remarking that much of the change was fuelled by the entry into science (especially in the UK and the USA where the chief critiques were made) of individuals from groups who were situated at some distance from the mainstream scientific culture of the times, and were themselves the targets of the racial/sexual science of difference and inequality of their day - were themselves stereotyped in the languages of biology (e.g. Jews)." On the semantic nature of such shifting categorizations, see Stocking Jr. Race, Culture, and Evolution at 266: "All that was necessary to make the adjustment to the new situation...was the substitution of a word. For 'race' read 'culture' or 'civilization;' for 'racial heredity' read 'cultural heritage,' and the change had taken place." Malik The Meaning of Race notes at 7 that although biological theories of race were discredited, this "did not destroy the underlying belief that humanity is divided into discrete groups, each defined in some manner by immutable and ahistorical characteristics, and that human interaction is determined by the nature of these immutable differences. Rather, the idea of difference was transposed on to the concept of culture."

8. James W.St.G. Walker "Race," Rights and the Law in the Supreme Court of Canada (Waterloo: The Osgoode Society and Wilfrid Laurier University Press, 1997) chronicles some of the key documents at 197: "The Atlantic Charter of 14 August 1941, though it did not yet use the term 'human rights,' delineated certain rights and freedoms which should belong to everyone regardless of the inclinations of their own particular government. By 1945 the United Nations Charter could declare its 'faith in fundamental human rights, in the dignity and worth of the human person,' and dedicate the new world

organization to 'promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.' Then on 10 December 1948 the UN issued the Universal Declaration of Human Rights, which set out both the rationale and the direction for human rights programs in the postwar world...."

A report issued by UNESCO in 1950 claimed that the mental capacities of all races were similar, that there was no evidence of biological deterioration from race-mixing, and that there was no correlation between national or religious groups and race. The conclusion, that there was "no scientific justification for race discrimination" was widely accepted by the scientific community, but debate continued over whether race had a biological underpinning, or whether it was solely a "social myth." See Barkan The Retreat of Scientific Racism at 341-2. Craig Racial Attitudes in English-Canadian Fiction notes at 144 that this led to a "post-war reversal of values in theory if not in practice." Being described as a "racist" took on such detrimental overtones that even members of the Ku Klux Klan disavowed the label; see Smedley Race in North America at 20.

9. On the "repetitious and simplistic" portrayal of racial designations through colour, see J.A. Mangan ed. The Imperial Curriculum: Racial Images and Education in the British Colonial Experience (London: Routledge, 1993) at 17; John M. MacKenzie Propaganda and Empire (Manchester: Manchester University Press, 1984) at 190-3. On the unshakeable belief of most people that they "know it when they see it," despite their inability to articulate the underlying basis for their racial designations, see Evelyn Brooks Higginbotham "African-American Women's History and the Metalanguage of Race" Signs 17:2 (Winter 1992) 251 at 253; Malik The Meaning of Race at 2.

10. Erica Chung-Yue Tao "Re-defining Race Relations - Beyond the Threat of 'Loving Blackness'" Canadian Journal of Women and the Law 6:2 (1993) 455 notes at 457: "Language and conventions in writing are integral to internalized colonization. The capitalization of Black and Blackness becomes a disruption in reading, because it breaches the standard way of communicating in textual format. In this way, capitalization of Black represents a perverse usage of the colonizer's language, and is, therefore, a visual and linguistic subversion of white supremacy. At the same time, capitalizing Black also affirms pride and power in group identity. For example, we say we are Canadians, not canadians. Finally, the word 'white' will not be capitalized on the grounds that white and whiteness are the reference points by which all other colours or racially defined groups are measured, named, described, and understood. To capitalize white would be, in effect, to say the obvious and affirm the norm." See also Kimberle Williams Crenshaw, who notes in "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law" Harvard Law Review v.101 (1988) 1331 at 1332 that the upper-case "B" reflects the view that "Blacks, like Asians, Latinos, and other 'minorities,' constitute a specific cultural group and, as such, require denotation as a proper noun."

11. Lopez White by Law notes at 158, citing Barbara Flagg "'Was Blind, But Now I See': White Race Consciousness and the Requirement of Discriminatory Intent" Michigan Law Review v.91 (1993) 953 at 969 and Trina Grillo and Stephanie Wildman "Obscuring the Importance of Race: The Implications of Making Comparisons Between Racism and Sexism (or Other -Isms)" Duke Law Journal (1991) 397 at 405: "Transparency 'may be a defining characteristic of whiteness: to be white is not to think

about it.... White supremacy makes whiteness the normative model. Being the norm allows whites to ignore race, except when they perceive race (usually some else's) as intruding on their lives.' ... Indeed, for many Whites their racial identity becomes uppermost in their mind only when they find themselves in the company of large numbers of non-Whites, and then it does so in the form of a supposed vulnerability to non-White violence, rendering Whiteness in the eyes of many Whites not a privileged status but a victimized one." See also Ruth Frankenberg White Women, Race Matters: The Social Construction of Whiteness (Minneapolis: University of Minnesota Press, 1993); Cheryl Harris "Whiteness as Property" Harvard Law Review v.106 (1993) 1707; Toni Morrison Playing in the Dark: Whiteness and the Literary Imagination (Cambridge: Harvard University Press, 1993); David Roediger Towards the Abolition of Whiteness (London: Verso, 1994); Vron Ware Beyond the Pale: White Women, Racism and History (London: Verso, 1992).

12. Given the repetitive saturation of such commentary in historical literature, I do not think it is productive to cite the specific publications in which such statements appear, or to name the authors involved. Some of these statements come from Canadian historians, others from American and British historians. All seem to share the same perspectives.

13. Brooks Higginbotham "African-American Women's History" at 267.

14. Malik The Meaning of Race notes at 1 that "The term 'racism' entered the popular language for the first time in the interwar years." Barkan The Retreat of

Scientific Racism notes at 2-3 that the use of "racism" as a derogatory neologism was first recorded in English in the 1930s. The word "racialism," a precursor to "racism," denoting prejudice based on race difference, was "introduced into the language at the turn of the century."

15. In 1944, the Halifax Colored Citizens Improvement League "argued that the state should promote better race relations by including materials in the curriculum which represented an accurate history of Africans, including their contributions to society:" Agnes Calliste "Blacks' Struggle for Education Equity in Nova Scotia" in Vincent D'Oyley ed. Innovations in Black Education in Canada (Toronto: Umbrella, 1994) at 25. Carrie M. Best That Lonesome Road: The Autobiography of Carrie M. Best (New Glasgow: Clarion, 1977) describes the absence of Black historical research in Canada, and expresses the importance of redressing the omission. In 1976, the National Congress of Black Women decried the lack of attention to Black history in Canada, and demanded that "Black history should be included in the curriculum at all levels in the schools." See Lawrence Hill Women of Vision: The Story of the Canadian Negro Women's Association 1951-1976 (Toronto: Umbrella Press, 1996) at 64-5. The Women's Book Committee of the Chinese Canadian National Council notes that although Canada's Chinese community possesses a long and rich past in this country, "little of our history has been recorded" with Canadian history texts "ignoring aboriginal peoples" and "people of other racial and cultural backgrounds." See The Women's Book Committee Jin Guo: Voices of Chinese Canadian Women (Toronto: Women's Press, 1992) at 11. Aboriginal communities add that when they have been included in traditional historical materials, the accounts are generally more hurtful than helpful.

16. Howard Adams, a Saskatchewan Metis, is scathing in his indictment of the history written by whites about Aboriginal peoples: "White social scientists have written extensively on native people, but from the perspective of ethnocentrism and white supremacy. Such ideological writings have little validity in regard to the daily lives of Indians and Metis in their colonized communities. [...] The native people in a colony are not allowed a valid interpretation of their history, because the conquered do not write their own history. They must endure a history that shames them, destroys their confidence, and causes them to reject their heritage. Those in power command the present and shape the future by controlling the past, particularly for the natives. A fact of imperialism is that it systematically denies native people a dignified history." See Howard Adams Prison of Grass: Canada from a Native Point of View (Saskatoon: Fifth House, 1989, orig. pub. 1975) at 6, 43. George Erasmus and Joe Sanders "Canadian History: An Aboriginal Perspective" in Diane Engelstad and John Bird eds. Nation to Nation: Aboriginal Sovereignty and the Future of Canada (Concord, Ont.: House of Anansi Press, 1992) 3 note at 6: "Non-native people have...distorted history. It is very difficult to find a history textbook in any province of this country that accurately tells the story of how our two peoples came together. Instead, there are books in which we are still being called pagans and savages, without an accurate reflection of the solemn agreements that were made and which indicate that indigenous people were to continue to govern themselves." Walker "The Indian in Canadian Historical Writing" surveyed a cross-section of books on Canadian history published from 1829 to 1970, and found them depicting "Indians" as "savage," "cruel," "treacherous," "fiendish," "bloodthirsty," "superstitious" and "grotesque." See also Georges E. Sioui For an Amerindian

Autohistory: An Essay on the Foundations of a Social Ethic (Montreal: McGill-Queen's University Press, 1992) and Bruce G. Trigger Natives and Newcomers: Canada's 'Heroic Age' Reconsidered (Montreal: McGill-Queen's University Press, 1985).

17. Robin W. Winks The Blacks in Canada: A History (New Haven: Yale University Press, 1971).

18. For fuller details, see the bibliography that follows.

19. See, for example, B. Singh Bolaria and Peter S. Li Racial Oppression in Canada (Toronto: Garamond, 1988); Angus McLaren Our Own Master Race: Eugenics in Canada, 1885-1945 (Toronto: McClelland and Stewart, 1990); Ormond McKague Racism in Canada (Saskatoon: Fifth House, 1991); Julian Sher White Hoods: Canada's Ku Klux Klan (Vancouver, New Star, 1983); Martin Robin Shades of Right: Nativist and Fascist Politics in Canada 1920-1940 (Toronto: University of Toronto Press, 1992); Walker "Race," Rights and the Law.

20. See, for example, the discussion in chapter 3 regarding the failure of local judicial figures to take down evidence and file written references to cases involving the prosecution of Aboriginal dance.

21. On the culling of racialized legal records, see, for example, the destruction of files regarding Sero v. Gault discussed in chapter 4.

22. Dionne Brand Bread Out of Stone (Toronto: Coach House Press, 1994) at 178.

See also George J. Sefa Dei "The Politics of Educational Change: Taking Anti-Racism Education Seriously" in Vic Satzewich ed. Racism and Social Inequality in Canada: Concepts, Controversies and Strategies of Resistance (Toronto: Thompson Educational Publishing, 1998) 299-314.

ENDNOTES TO CHAPTER TWO

1. Richard J. Diubaldo "The Absurd Little Mouse: When Eskimos Became Indians" Journal of Canadian Studies 16:2 (Summer 1981) 34 at 34.

2. Re Eskimos [1939] 80 S.C.R. 104; [1939] 2 D.L.R. 417.

3. Jenness held an M.A. degree in honours classics from the University of New Zealand, and an honours M.A. in classics from Oxford. In 1910, he was awarded a diploma in the "relatively new field" of anthropology under Dr. R.R. Marett. At the time of testifying, he held an honorary doctorate of literature from New Zealand University, and served as a Fellow of the Royal Society of Canada, an honorary corresponding member of the Danish Geographical Society, and President of the Society for American Archaeology: "Foreword" by William E. Taylor, Jr., Director, National Museum of Man, Ottawa, Canada, July 1977, in Diamond Jenness Indians of Canada (Ottawa: National Museum of Canada, 1932; repub. Ministry of Supply & Services Canada, 1977) at p.v; "Case on Behalf of the Attorney General of Canada, in the Supreme Court of Canada, In

the Matter of a Reference as to Whether the Term 'Indians' in Head 24 of Section 91 of the British North America Act, 1867, Includes Eskimo Inhabitants of the Province of Quebec" (Ottawa: King's Printer, 1938) [hereafter "Canada Case"] at 16; B.L. Clark "Diamond Jenness 1886-1969" in Development of Caribou Eskimo Culture - A Diamond Jenness Memorial Volume (Ottawa: National Museum of Canada, 1977); W. Stewart Wallace ed. "Jenness, Diamond" The Macmillan Dictionary of Canadian Biography 4th ed. (Toronto: Macmillan of Canada, 1978) at 390.

4. "Factum on Behalf of the Attorney General of Canada" In the Supreme Court of Canada, In the Matter of a Reference as to whether the term "Indians" in Head 24 of Section 91 of the British North America Act, 1867, includes Eskimo inhabitants of the Province of Quebec, at 26-27 [hereafter Canada Factum]; "Exhibit C-47, Canada Case" at 303; Jenness Indians of Canada at 6.

5. Canada Factum at 19-20. Jenness was not the first to draw a comparison between the English and the Italians on one hand, and the Indians and Eskimo on the other. In 1927, W.H.B. Hoare, a Department of the Interior fieldman living in the Barren Lands, had written to his superior, O.S. Finnie, the first director of the Northwest Territories Branch of the Department of the Interior, arguing that "the Inuit could not treated or dealt with like the Indians, as they were as widely different from one another as is the Englishman from the Italian. [...] The Indian is of low mentality, and seems a dour, discontented fellow with no ambition to better his conditions either materially or intellectually. [...] The Eskimo looks upon himself as the equal of any white man." See Public Archives of Canada, RG22/253/40-8-1/1.

6. On the group cohesiveness of Englishmen, Scotsmen, Welshmen and Ulstermen who immigrated to Canada, and the development of the pan-British identity in North America, see Ross McCormack "Cloth Caps and Jobs: The Ethnicity of English Immigrants in Canada 1900-1914" in J.M. Bumsted Interpreting Canada's Past: Vol. II, After Confederation (Toronto: Oxford University Press, 1986) 175-91. Duff's father, Reverend Charles Duff, born in England, was of Scottish and English descent; his mother Isabella Johnson was born in Iowa of parents who had immigrated from Scotland but were of Irish descent. Cannon's father, Lawrence John Cannon, was Irish and his mother, Aurelie Dumoulin, was French; he was Roman Catholic by religion. Kerwin's parents, Patrick Kerwin and Ellen Gavin, were of Irish Catholic background. Crocket's parents, William and Marion Crocket, were of Scottish descent. Davis was born in Brockville, to Anglican parents named William Henry Davis and Eliza Dowsley, whose ethnic origins were British. Hudson, whose parents were Albert and Elizabeth Hudson, was a Presbyterian of British origin. The ethnic and religious diversification of the Supreme Court of Canada would not begin until more than thirty years later. Bora Laskin became the first Jewish Supreme Court justice, when he was appointed in 1970. John Sopinka, whose parents emigrated from the Ukraine, appears to have been the first appointee to the Supreme Court of Canada to identify himself as a member of an "ethnic minority." His appointment in 1988 followed a promise from the Prime Minister to the Ethno-Cultural Council to appoint more minority members of the court. Frank Iacobucci, whose parents were Italian-Canadian, was appointed in 1991. Gerald A. Beaudoin The Supreme Court of Canada: Proceedings of the October 1985 Conference (Cowansville, Que.: Editions Y. Blais, 1986) at 398-400; Ian Bushnell The Captive Court: A Study of the

Supreme Court of Canada (Montreal: McGill-Queen's University Press, 1992) at 246, 343-4, 488, 491; correspondence from Ian Bushnell to the author, 5 February 1998; David R. Williams Duff: A Life in the Law (Vancouver: University of British Columbia Press, 1984) at 2 and 4.

7. "Exhibit C-47, Canada Case" at 303, citing Jenness Indians of Canada at 6.

8. Jenness Indians of Canada at 405.

9. "An Act for the better protection of the Lands and Property of the Indians in Lower Canada" S.Prov.C. 1850, c.42, s.5. The statute appointed a Commissioner of Indian Lands who was authorized to concede, lease or charge lands held by the Crown in trust for Indians.

10. "An Act to repeal in part and to amend an Act, intituled, An Act for the better protection of the Lands and property of the Indians in Lower Canada" S.Prov.C. 1851, c.59, s.2. This definition is also utilized in "An Act respecting Indians and Indian Lands" C.S.L.C. 1861, c.14, s.11.

11. "An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands" S.C. 1868, c.42, s.15.

12. "An Act for the gradual enfranchisement of Indians, the better management of

Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42" S.C. 1869, c.6, s.4. Section 6 also spells out the gender-based marital provision more explicitly: "Provided always that any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act; Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe, band or body to which she formerly belonged, and become a member of the tribe, band or body of which her husband is a member, and the children, issue of this marriage, shall belong to their father's tribe only." See also "An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia" S.C. 1874, c.21, s.8.

"An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter" 42 S.C. 1869, c.6, s.13 also establishes a process for "enfranchisement" whereby an "Indian" could obtain the right to own land in fee simple. See also "The Indian Act, 1876" S.C. 1876, c.18, s.3(5), 86-88, 93; "An Act further to amend 'The Indian Act, 1880'" S.C. 1884, c.27, s.16; "The Indian Act" R.S.C. 1886, c.43, s.2(j). The "Indian Act" R.S.C. 1906, c.81, s.107-23 stipulates that an "enfranchised Indian," his wife, and his minor unmarried children would "no longer be deemed Indians." See also "Indian Act" R.S.C. 1927, c.98, s.114(2); "The Indian Act" S.C. 1951, c.29, s.12, 109.

13. "The Indian Act, 1876" S.C. 1876, c.18, s.3. See also "The Indian Act" R.S.C.

1886, c.43, s.2(h); "Indian Act" R.S.C. 1906, c.81, s.2(f); "An Act respecting Indians" R.S.C. 1927, c.98, s.2(d). The first major change to this definition came in "An Act respecting Indians" S.C. 1951, c.29, s.2(g) which defines "Indian" as "a person who pursuant [sic] to this Act is registered as an Indian or is entitled to be registered as an Indian." Section 5 establishes an "Indian Register," to record "the name of every person who is entitled to be registered as an Indian." Section 11 provides: "Subject to section twelve, a person is entitled to be registered if that person

(a) on the twenty-sixth of May, eighteen hundred and seventy-four, was, for the purposes of An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, chapter forty-two of the statutes of 1868, as amended by section six of chapter six of the statutes of 1869, and section eight of chapter twenty-one of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,

(b) is a member of a band

(i) for whose use and benefit, in common, lands have been set apart or since the twenty-sixth day of May, 1874 have been agreed by treaty to be set apart, or

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act,

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b),

(d) is the legitimate child of

(i) a male person described in paragraph (a) or (b), or

(ii) a person described in paragraph (c).

(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered, or

(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e)."

14. Section 3(c) states: "Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but this income may be commuted to her at any time at ten years' purchase with the consent of the band." Section 3(d) states: "Provided that any Indian woman marrying an Indian of any other band, or a non-treaty Indian shall cease to be a member of the band to which she formerly belonged, and become a member

of the band or irregular band of which her husband is a member." An earlier version of this is found in "An Act for the gradual enfranchisement of Indians, the better management of Indian Affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42" S.C. 1869, s.6. See also "The Indian Act, 1880" S.C. 1880, c.28, s.12-13; "The Indian Act" R.S.C. 1886, c.43, s.11-12; "Indian Act" R.S.C. 1906, c.81, s.14-15. "An Act to amend the Indian Act" S.C. 1919-20, c.50, s.2 takes away from the band the power to consent to buying out a woman's rights with a ten year payment, and places it exclusively with the Superintendent-General. See also "An Act respecting Indians" R.S.C. 1927, c.98, s.14-15; "An Act respecting Indians" S.C. 1951, c.29, s.12(1)(b), 14.

15. Section 3(a) states: "Provided that any illegitimate child, unless having shared with the consent of the band in the distribution moneys of such band for a period exceeding two years, may, at any time, be excluded from the membership thereof by the band, if such proceeding be sanctioned by the Superintendent-General." "The Indian Act, 1880" S.C. 1880, c.28, s.10 revises this so that the exclusion is completely under the control of the Superintendent-General. See also "The Indian Act" R.S.C. 1886, c.43, s.9; "Indian Act" R.S.C. 1906, c.81, s.12; "An Act respecting Indians" R.S.C. 1927, c.98, s.12; "An Act respecting Indians" S.C. 1951, c.29, s.11(d) and (e). Section 3(b) states: "Provided that any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent-General, cease to be a member thereof and shall not be permitted to become again a member thereof, or of any other band, unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained; but this provision shall not apply to any professional man, mechanic, missionary, teacher or interpreter, while discharging his or her duty as such." See also

"The Indian Act, 1880" S.C. 1880, c.28, s.11; "The Indian Act" R.S.C. 1886, c.43, s.10; "Indian Act" R.S.C. 1906, c.81, s.13; "An Act respecting Indians" R.S.C. 1927, c.98, s.13.

16. Section 3(e) states: "Provided also that no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and that no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty), shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty." Additional provisions are added in "The Indian Act, 1880" S.C. 1880, c.28, s.14: "any half-breed who may have been admitted into a treaty shall be allowed to withdraw therefrom on refunding all annuity money received by him or her under the said treaty, or suffering a corresponding reduction in the quantity of any land, or scrip, which such half-breed, as such, may be entitled to receive from the Government." See also s.14(2): "The Half-breeds who are by the father's side either wholly or partly of Indian blood now settled in the Seigniory of Caughnawaga, and who have inhabited the said Seigniory for the last twenty years, are hereby confirmed in their possession and right of residence and property, but not beyond the tribal rights and usages which others of the band enjoy." See also "The Indian Act" R.S.C. 1886, c.43, s.13; "Indian Act" R.S.C. 1906, c.81, s.16; "An Act to amend the Indian Act" S.C. 1914, c.35, s.3-4; "An Act respecting Indians" R.S.C. 1927, c.98, s.16; "An Act respecting Indians" S.C. 1951, c.29, s.12(1).

17. "The Indian Act, 1876" S.C. 1876, c.18, s.3(12) states: "The term 'person'

means an individual other than an Indian, unless the context clearly requires another construction." "The Indian Act" R.S.C. 1886, c.43, s.2(c) states: "The expression 'person' means any individual other than an Indian." See also "Indian Act" R.S.C. 1906, c.81, s.2(c); "An Act respecting Indians" R.S.C. 1927, c.98, s.2(i). This offensive provision was not removed until 1951: see "An Act respecting Indians" S.C. 1951, c.29. In The Queen v. Murdock (1900), 4 C.C.C. 82, at 86 the Ontario Court of Appeal indicated that "person" must encompass "a white man, woman, or child, a non-treaty Indian, and perhaps an enfranchised Indian."

18 "An Act to amend 'The Indian Act'" S.C. 1887, c.33, s.1 states: "The Superintendent General may, from time to time, upon the report of an officer, or other person specially appointed by him to make an inquiry, determine who is or who is not a member of any band of Indians entitled to share in the property and annuities of the band; and the decision of the Superintendent General in any such matter shall be final and conclusive, subject to an appeal to the Governor in Council." Given the proviso that "person" did not include "Indian," it appears that only non-Indians are authorized to investigate or decide such matters. See also "An Act respecting Indians" R.S.C. 1927, c.98, s.18. Bradford W. Morse ed. Aboriginal Peoples and the Law (Ottawa: Carleton University Press, 1985) notes at 1 that "The registration system was implemented by sending an Indian agent, appointed by the government, to the Indian nations to enumerate persons in order to develop treaty payment lists or band lists. If people were away on hunting parties, out on their traplines, or off fishing, or if bands were in remote areas, then they simply were not registered under the Indian Act."

19. George Manuel and Michael Posluns The Fourth World: An Indian Reality (Don Mills, Ont.: Collier-Macmillan Canada, 1974) note at 21 that "The Indian Act...was passed into law by Parliament without any reference to the realities of Indian life as Indian spokesmen might have explained them." Critiquing the narrowing of definition, they state at 22: "It was no longer a question of a person being 'reputed to be an Indian,' a phrase that could be taken to mean accepted by the band as a member, rather than a strict tracing of male blood line, an English way of tracing lineage not accepted by very many Indian societies." Manuel and Posluns add at 241: "Indian customs of inheritance and for defining identity have varied from nation to nation according to political and economic structure and religious beliefs. Many trace through the mother's line, some through the father's. My own people [Shushwap Nation] work through a mixture of both, as do many of our neighbours."

20. "An Act to consolidate and amend the law respecting the qualification and registration of Electors, the regulation of Elections of Members of the Provincial Legislative Assembly, and the Trial of Controverted Elections" S.B.C. 1903-04, c.17, s.3. See also "An Act respecting Elections of Members of the Legislative Assembly" S.B.C. 1920, c.27, s.2(1). For a full account of the electoral restrictions for First Nations' peoples, see discussion of Sero v. Gault in chapter 4.

21. "An Act to amend and consolidate the 'Public Schools Act'" S.B.C. 1922, c.64, s.2.

22. "An Act for the Protection of Women and Girls in certain Cases" S.B.C. 1923,

c.76, s.2.

23. "An Act authorizing an Inquiry into the Status and Rights of Indians in the Province" S.B.C. 1950, c.32, s.2, also noting "unless the context otherwise requires...."

24. Robert Berkhofer The White Man's Indian: Images of the American Indian from Columbus to the Present (New York: Knopf, 1978) suggests that as Europeans developed the idea of "Indian," they collapsed into a single group all of the diverse cultures, societies, language groups and identities of indigenous peoples of the Americas - people who did not think of themselves as one group or one continental people when they were first encountered.

25. "An Act respecting Elections of Members of the Legislative Assembly" S.S. 1908, c.2, s.2(12) states: "Indian" means and includes all persons of Indian blood who belong or are reputed to belong to any band or irregular band of Indians; and the words "band" and "irregular band" as used in this clause shall have the meaning given to them respectively by The Indian Act, being chapter 81 of The Revised Statutes of Canada 1906. See also "An Act respecting Elections of Members of the Legislative Assembly" R.S.S. 1930, c.4, s.2(12). The Alberta statute, exactly the same, is "An Act respecting Elections of members of the Legislative Assembly" S.A. 1909, c.3, s.2(12). "An Act for the protection of Game" S.A. 1946, c.4, s.2(y) is somewhat more fulsome, but also follows the federal format, defining "Indian" as: (i) any male person of Indian blood reputed to belong to a particular band or an irregular band; (ii) any child of such person; (iii) any person who is or was lawfully married to such person.

26. "An Act Respecting the Metis Population of the Province" S.A. 1938 (2nd Sess.), c.6, s.2(a), with the proviso "unless the context otherwise requires." Some individuals of mixed white and Aboriginal ancestry appear to have identified primarily with either their First Nations' or their European inheritance. Others established a unique racial identity described as "Metis," especially in the fur trade areas of Rupert's Land and the Great Lakes region. On the creation of the separate Metis identity in Canada, see Jennifer S.H. Brown Strangers in Blood: Fur Trade Company Families in Indian Country (Vancouver: University of British Columbia Press, 1980); Sylvia Van Kirk "Many Tender Ties": Women in Fur-trade Society, 1670-1870 (Winnipeg: Watson & Dwyer, 1980); Jacqueline Peterson and Jennifer S.H. Brown The New Peoples: Being and Becoming Metis in North America (Winnipeg: University of Manitoba Press, 1985); John E. Foster "The Origins of the Mixed Bloods in the Canadian West" in Lewis H. Thomas ed. Essays on Western History, in Honour of Lewis Gwynne Thomas (Edmonton: University of Alberta Press, 1976) 71-80; John E. Foster "The Metis: The People and the Term" Prairie Forum v.3 (1978) 79-90; Olive P. Dickason "From 'One Nation' in the Northeast to 'New Nation' in the Northwest: A Look at the Emergence of the Metis" in Peterson & Brown eds. New Peoples 19-36; Jacqueline Peterson "Prelude to Red River: A Social Portrait of the Great Lakes Metis" Ethnohistory v.25 (1978) 41-67; Jacqueline Peterson "The People in Between: Indian-White Marriage and the Genesis of a Metis Society and Culture in the Great Lakes Region, 1680-1830" Ph.D. Thesis (University of Chicago: 1981); Jacqueline Peterson "Many Roads to Red River: Metis Genesis in the Great Lakes Region, 1680-1815" in Peterson and Brown eds. The New Peoples 31-71; R. David Edmunds "'Unacquainted with the Laws of the Civilized World': American

Attitudes Toward the Metis Communities in the Old Northwest" in Peterson & Brown eds. The New Peoples 185-93; Robert E. Bieder "Scientific Attitudes Toward Indian Mixed-Bloods in Early Nineteenth Century America" Journal of Ethnic Studies v.8 (1980) 17-30; John E. Foster "The Plains Metis" in Bruce Morrison and R.C. Wilson eds. Native Peoples: The Canadian Experience (Toronto: McClelland & Stewart, 1986) 375-403; Sylvia Van Kirk "'What if Mama is an Indian?' The Cultural Ambivalence of the Alexander Ross Family" in Peterson & Brown eds. The New Peoples 207-17; John E. Foster "Some Questions and Perspectives on the Problem of Metis Roots" in Peterson & Brown eds. The New Peoples 73-91; Irene M. Spry "The Metis and Mixed-Bloods of Rupert's Land Before 1870" in Peterson & Brown eds. The New Peoples 95-118; Jennifer S.H. Brown "Women as Centre and Symbol in the Emergence of Metis Communities" Canadian Journal of Native Studies v.3 (1983) 39-46; Carol M. Judd "Moose Factory was not Red River: A Comparison of Mixed-Blood Experiences" in Duncan Cameron ed. Exploration in Canadian Economic History: Essays in Honour of Irene M. Spry (Ottawa: University of Ottawa Press, 1985) 251-68; K.S. Coates and W.R. Morrison "More Than a Matter of Blood: The Federal Government, the Churches and the Mixed Blood Populations of the Yukon and the Mackenzie River Valley, 1890-1950" in F. L. Barron and James B. Waldram eds. 1885 and After: Native Society in Transition (Regina: Canadian Plains Research Center, 1986) 253-77; Dennis F.K. Madill "Riel, Red River, and Beyond: New Developments in Metis History" in Colin G. Calloway ed. New Directions in American Indian History (Norman, Oklahoma: University of Oklahoma Press, 1988) 49-78.

27. "An Act to Amend and Consolidate The Metis Population Betterment Act"

S.A. 1940, c.6, s.2.

28. "An Act respecting the Game, Fur-bearing Animals and Fisheries of Ontario"
S.O. 1927, c.86, s.3. See also "The Game and Fisheries Act, 1946" S.O. 1946, c.33,
s.1(s).

29. Rex v. Tronson (1931), 57 C.C.C. 383 (B.C. County Ct.).

30. Rex v. Tronson at 518-21.

31. See Jan Noel Canada Dry: Temperance Crusades Before Confederation (Toronto: University of Toronto Press, 1995) at 183, 187-90; Robert A. Campbell Demon Rum or Easy Money: Government Control of Liquor in British Columbia From Prohibition to Privatization (Ottawa: Carleton University Press, 1991) at 9; Andre Vachon "L'eau-de-vie dans la societe indienne" Canadian Historical Association Annual Report 23-32; Peter C. Mancall Deadly Medicine: Indians and Alcohol in Early America (Ithaca, N.Y.: Cornell University Press, 1995); Edwin M. Lemert Alcohol and the Northwest Coast Indians (Berkeley: University of California Press, 1954); J.F. Mosher "Liquor Legislation and Native Americans: History and Perspective" (Berkeley: University of California, Boalt Hall School of Law, 1975); Anastasia Shkilnyk A Poison Stronger than Love: The Destruction of an Ojibwa Community (New Haven: Yale University Press, 1985); Arthur Ray Indians in the Fur Trade (Toronto: University of Toronto Press, 1974); Sidney L. Harring Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century (New York:

Cambridge University Press, 1994) at 163, 278.

32. For a more detailed account of the legislation regarding alcohol and First Nations' peoples, which was punitive in its effect and failed miserably in its capacity to offer support to First Nations' communities, see Constance Backhouse "'Your Conscience Will Be Your Own Punishment:' The Racially-Motivated Murder of Gus Ninham, Ontario, 1902" in Blaine Baker and Jim Phillips eds. Essays in the History of Canadian Law (Toronto: The Osgoode Society, 1999). Provincial governments enacted a series of statutes to outlaw the sale of alcohol to Aboriginal peoples. The first legislative prohibition appeared in Quebec in 1777: "An Ordinance to prevent the selling of strong Liquors to the Indians in the Province of Quebec" 17 Geo. III, c.7 (reprinted in R.S.L.C. 1845 at 572); see also "Ordinances of the Late Province of Quebec" R.S.U.C. 1792-1840; "An Act respecting Indians and Indian Lands" C.S.L.C. 1861, c.14, s.1-3. Other jurisdictions began by prohibiting liquor sales to specific Aboriginal groups [see the 1801 statute "An Act to prevent the sale of spirituous liquors and strong waters in the tract occupied by the Moravian Indians on the river Thames, in the Western district" R.S.U.C. 1792-1840, c.8] and then legislating more broadly [see the 1840 statute "An Act to amend and make permanent an Act passed in the 5th year of His late Majesty's reign, intituled, 'An Act to prevent the sale of Spirituous Liquors to Indians'" R.S.U.C. 1792-1840, c.13.] Additional statutes passed in the geographic area that came to be known as Ontario include: "An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury" S. Prov. C. 1850, c.74, s.6-7; "An Act respecting Civilization and Enfranchisement of certain Indians" C.S.C. 1859, c.9, s.3-4; "An Act to amend the ninth chapter of the

Consolidated Statutes of Canada, intituled: 'An Act respecting Civilization and Enfranchisement of Certain Indians'" S. Prov. C. 1860, c.38, s.2. Nova Scotia first legislated in 1829: "An Act to prevent the Sale of Spirituous Liquors to Indians, and to provide for their Instruction" S.N.S. 1829, c.29, s.1-3. See also "Of Licenses for the Sale of Intoxicating Liquors" R.S.N.S. 1864, c.19, s.30; "Of Licenses for the Sale of Intoxicating Liquors" R.S.N.S. 1884, c.75, s.46. British Columbia prohibitions are contained in: "An Act Prohibiting the Gift or Sale of Intoxicating Liquours to Indians" Colony of Vancouver Island, Passed by Council 3 Aug. 1854; "Proclamation respecting sale or gift of Intoxicating Liquors to Indians" Colony of British Columbia, 6 Sept. 1858; "Indian Liquor Act, 1860" Colony of Vancouver Island, 1860, No. 16, s.2-3; "The Indian Liquor Ordinance, 1865" Colony of British Columbia, 1865, No. 16; "The Indian Liquor Ordinance, 1867" Colony of British Columbia, 1867, No. 28 [reprinted in Laws of British Columbia 1871, No. 85]; "Indian Liquor Ordinance, 1867" C.S.B.C. 1877, c.87; "An Act respecting Liquor Licences" S.B.C. 1900, c.18, s.2(g) and (h), 37; "An Act to amend the 'Liquor Licence Act, 1900'" S.B.C. 1902, c.40, s.2; "An Act Respecting Liquor Licences and the Traffic in Intoxicating Liquors" S.B.C. 1910, c.30, s.65(c), 75(i); "An Act respecting Municipalities" R.S.B.C. 1911, c.170. s.349(f); "An Act respecting Liquor Licences and the Traffic in Intoxicating Liquors" R.S.B.C. 1911, c.142; "An Act to amend the 'Liquor Licence Act'" S.B.C. 1912, c.20, s.5; "An Act to amend the 'Liquor Licence Act'" S.B.C. 1913, c.40, s.8; "An Act to provide for Government Control and Sale of Alcoholic Liquors" S.B.C. 1921 (First Session), c.30, s.36; "An Act to provide for Government Control and Sale of Alcoholic Liquors" R.S.B.C. 1924, c.146, s.41; "An Act to amend the 'Government Liquor Act'" S.B.C. 1926-27, c.38, s.11; "An Act to provide

for Government Control and Sale of Alcoholic Liquors" R.S.B.C. 1936, c.160, s.43; "An Act to amend the 'Government Liquor Act'" S.B.C. 1947, c.53, s.16; "An Act to provide for Government Control and Sale of Alcoholic Liquors" R.S.B.C. 1948, c.192. Newfoundland's prohibition is found in "An Act Regulating Sale of Intoxicating Liquors on the Coast of Labrador" S.Nfld. 1882, c.8, s.6. After the turn of the century, other jurisdictions followed suit. Prairie province enactments include: "An Act to Provide for Government Control and Sale of Liquor" S.M. 1928, c.31, s.38(1)(e); "An Act to amend The Liquor License Act" S.S. 1909, c.38, s.12; "An Act to amend The Government Liquor Control Act of Alberta" S.A. 1927, c.35, s.5. The Northwest Territories prohibited liquor sales to Indians and Eskimos: "An Ordinance to Provide for the Control, Regulation and Sale of Liquor in the Northwest Territories" Ord. N.W.T. 1948, c.23, s.15(1)(e), 26-28. Prince Edward Island prohibited "Indians" from voting on prohibition: "An Act to Provide for a Plebiscite on Questions Relating to the Control and Suppression of Traffic in Alcoholic Liquors" S.P.E.I. 1929, c.15, s.6. When the federal government obtained constitutional jurisdiction over "Indians" after confederation, it enacted a host of prohibitions as well: "An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands" S.C. 1868, c.42, s.9, 12-13; "An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42" S.C. 1869, c.6, s.3; "An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia" S.C. 1874, c.21, s.1; "The Indian Act, 1876" S.C. 1876, c.18, s.27, 68, 79-85; "The Indian Act, 1880" S.C. 1880, c.28, s.90; "An

Act to further amend 'The Indian Act, 1880'" S.C. 1882, c.30, s.5; "The Indian Act" R.S.C. 1886, c.43, s.94-105; "An Act to amend 'The Indian Act'" S.C. 1887, c.33, s.10; "An Act to further amend 'The Indian Act,' Chapter forty-three of the Revised Statutes" S.C. 1888, c.22, s.4; "An Act further to amend 'The Indian Act,' Chapter forty-three of the Revised Statutes" S.C. 1890, c.29, s.8; "An Act further to amend 'The Indian Act'" S.C. 1894, c.32, s.6-7; "The Indian Act" R.S.C. 1906, c.81, s.135-46; "An Act to amend the Indian Act" S.C. 1919-20, c.50, s.4; "Indian Act" R.S.C. 1927, c.98; "An Act to amend the Indian Act" S.C. 1930, c.25, s.13-14; "An Act to amend the Indian Act" S.C. 1936, c.20, s.6-12; "The Indian Act" S.C. 1951, c.29, s.93-102.

33. Regina v. Howson (1894), 1 Terr. L.R. 492.

34. Regina v. Howson at 493-6.

35. "An Act further to amend 'The Indian Act'" S.C. 1894, c.32, s.6. See also "Indian Act" R.S.C. 1906, c.81, s.135. The federal provisions were not altered until "The Indian Act" S.C. 1951, c.29, s.93 reconstructed the offence to prohibit the sale or supply of liquor to "any person on a reserve" or "an Indian outside a reserve." Strangely enough, some of the earlier provincial statutes prohibiting the sale of alcohol to Indians had failed to define the term "Indian" at all. Most striking is "The Indian Liquor Ordinance, 1867" Colony of British Columbia, 1867, No. 28 [reprinted in Laws of British Columbia 1871, No. 85], which contains an intricate "interpretation clause" as follows:

s.14. In the construction of this Ordinance, the word "Governor" shall be held to

mean the Governor of this Colony, or other Officer administering the Government of this Colony for the time being, and whenever in this Ordinance in describing or referring to any person or party, matter or thing, any word importing the masculine gender or singular number is used, the same shall be understood to include and be applicable to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it be otherwise provided or there be something in the subject or context repugnant to such construction.

Clearly the legislators turned their minds to questions of definition, and yet there is no attempt to define "Indian" whatsoever.

36. The Queen v. Mellon (1900), 7 C.C.C. 179.

37. The Queen v. Mellon at 180-1. On the **mens rea** requirements for the offence, see Rex v. Brown (1930), 55 C.C.C. 29 (Toronto Police Court), where it is stated at 32-3: "Under the decisions, **mens rea** must be proved. ... The evidence must amount to positive knowledge on the part of the accused as to the nationality of the purchaser, no matter how stupid he may have been." See also Rex v. Hughes (1906), 12 B.C.R. 290 (New Westminster County Court); Rex v. Webb (1943), 80 C.C.C. 151 (Sask. K.B.).

38. The King v. Pickard (1908), 14 C.C.C. 33.

39. The King v. Pickard at 33-5. Rex v. Bennett (1930), 55 C.C.C. 27 (Ont.

County Ct.) would tangle with the issue of deceptive appearances as well. The accused had been convicted of selling wine to Jack Post, an "Indian." On appeal, the defence argued that the accused "did not know or believe or suspect him to be an Indian," but thought he "was a Japanese." The appeal court adjourned the hearing so that the judge might take a look at the individual concerned. "He is typically Indian in appearance," pronounced the presiding judge, "and I do not see how the accused could have very well taken him for other than an Indian. Certainly his appearance would at least cause the accused to suspect him to be an Indian."

40. The King v. Pickard at 33-5.

41. Rex v. Verdi (1914), 23 C.C.C. 47.

42. Emma LaRoque states that "there are some words that are not reclaimable and 'squaw' is one of them, representing 'rapist imagery, where rape and murder merge' and 'the grossest acts of objectification of human beings.'" Harmut Lutz notes that one of the definitions of "squaw" from the Oxford English Dictionary is "a kneeling figure used for target practice," and also "a certain position in which a barrel is held when it is tapped," so that it is "a term denoting sexual penetration and violence." See the text of this conversation in Harmut Lutz Contemporary Challenges: Conversations with Canadian Native Authors (Saskatoon: Fifth House, 1991) at 191-2, 201-2.

43. Rex v. Verdi at 48-9. The court held: "The fact that this man voted last summer and did not since resign from the tribe, together with the other facts in evidence,

satisfy me that he is an 'Indian.'"

44. Pauktuutit The Inuit Way: A Guide to Inuit Culture (Ottawa: Pauktuutit, Inuit Women's Association, 1989) at 4; David Damas ed. "Arctic" in vol. 5, William C. Sturtevant ed. Handbook of North American Indians (Washington: Smithsonian Institution, 1984) at 6-7. Marie Wadden Nitassinan: The Innu Struggle to Reclaim Their Homeland (Vancouver: Douglas & McIntyre, 1991) notes at 26: "According to [ethnolinguist] Jose Mailhot, it was the Innu, in conversation with the Basques, who coined the term **aiskimeu** to refer to their Inuit neighbours. She believes the word meant 'those who speak a strange language,' not 'eaters of raw meat' as is popularly believed. The Innu word was eventually spelled 'esquimaux' by the French and 'eskimo' by the English." Damas also suggests another possible First Nations' source: the Ojibwa "e-skipot." Damas mentions additional alternate spellings: Esquimawes, Esquimaud, Esquimos, Eskemoes, Eskima, Eskimeaux, Esquimeaux, Excomminquois, Exquimaux, Ehuskemay, Uskemau, Uskimay, Eusquemay and Usquemow.

45. Pauktuutit The Inuit Way at 4. Damas ed. "Arctic" notes at 7 that the commonest self-designation within the Canadian Arctic is "Inuit," with several other terms also in use: "Inupiat (for those of North Alaska), Yupik (southwestern Alaska), and Yuit (Siberia and Saint Lawrence Island). The 1977 Inuit Circumpolar Conference in Barrow, Alaska officially adopted "Inuit" as a designation for all, regardless of local usages.

46. "An Act to amend the Quebec fish and game laws" S.Q. 1919, c.31, s.5,

amending Article 2313 of the Revised Statutes, 1909, as enacted by the act 7 George V, chapter 26, section 1, and amended by the act 8 George V, chapter 36, section 2, provides:

2313. It is forbidden...to hunt, kill or take [...]

(c) At any time of the year, any wild swan, wood duck, eider duck, curlew, sand-piper or other shore bird or wader (except woodcock, snipe, black-breasted or golden plover and the greater and lesser yellow-legs), or any of the following species of migratory non-game birds: auks, auklets, bitterns, fulmars, gannets, grebes, guillemots, gulls, herons, jaegers, loons, murre, petrels, puffins, shearwaters, and terns. Nevertheless, Eskimos and Indians may take at any time auks, auklets, guillemots, murre and puffin and their eggs for food and their skins for clothing; but any birds or eggs so taken shall not be sold or offered for sale.

47. "An Ordinance Respecting the Protection and Care of Eskimo Ruins" Ord. N.W.T., 5 February 1930, s.1 provides: "No Eskimo ruins shall be excavated or investigated nor shall any objects of archaeological or ethnological importance or interest be exported or taken from the Territories save by permission of and in accordance with regulations made by the Commissioner of the Northwest Territories."

48. "An Act respecting the Franchise of Electors at Elections of Members of the House of Commons" S.C. 1934, c.51, s.4 states: "Provided that the following persons are disqualified from voting at an election and incapable of being registered as electors and

shall not be so registered, that is to say-- (vi) every Esquimaux person, whether born in Canada or elsewhere." See also "An Act respecting the Franchise of Electors and the Election of Members of the House of Commons" S.C. 1938, c.46, s.14(2)(e).

49. "An Ordinance to Provide for the Control, Regulation and Sale of Liquor in the Northwest Territories" Ord. N.W.T. 1948, c.23, s.15(1)(e), 26-28.

50. "An Act Regulating Sale of Intoxicating Liquors on the Coast of Labrador" S.Nfld. 1882, c.8, s.6 states: "No Intoxicating Liquors shall be sold, given or delivered to any Esquimaux Indian, under a penalty of Two Hundred Dollars." Later versions of this legislation would alter the wording to prohibit sales of alcoholic liquor "to any Esquimaux or Indian;" see "Alcoholic Liquors Act" S.Nfld. 1924, c.9, s.23(e); S.Nfld. 1933, c.19, s.27(1)(e); R.S.Nfld. 1952, c.93, s.69(1)(i). Surprisingly, the 1882 statute would be the only one cited by the Supreme Court of Canada in its ultimate decision: Re Eskimos at 114. The judges ignored the 1924 amendment to the Newfoundland statute separating "Esquimaux" from "Indian."

51. The Minister of the Interior, Hon. Charles A. Stewart, initially proposed to add the following section to the Indian Act: "The Superintendent General of Indian Affairs shall have the control and management of the lands and property of the Eskimos in Canada and the provisions of Part I of the Indian Act shall apply to the said Eskimo in so far as they are applicable to their condition and mode of life, and the Department of Indian Affairs shall have the management, charge and direction of Eskimo affairs." Stewart's explanation was that with the expansion of the fur trade, there was increasing

connection between whites and Eskimos, police posts were being set up in the north, and there was need to establish greater governmental coordination in dealing with the Eskimo. Several legislators objected to the draft provision. One questioned whether "any request had been made to the government by the Eskimos through their chiefs that they be brought within the provisions of the Indian Act." No answer was forthcoming. The Leader of the Opposition, Arthur Meighen, objected strenuously to equating Eskimos with Indians, arguing that decades of governmental wardship had not improved the status of Indians, and that there was no need to "put our wings all around [the Eskimo's] property and tell him he is our ward and that we will look after him. [...] My own opinion would be to leave them alone - make them comply with our criminal law and give them all the benefit of our civil law; in other words, treat them as everybody else is treated. I should not like to see the same policy precisely applied to the Eskimos as we have applied to the Indians." Meighen's position carried the day, and the provision was shortened to state only that the Superintendent General should have charge of Eskimo affairs. See Hansard Parliamentary Debates House of Commons, 10 June 1924 at 2992-3; 30 June 1924 at 3823-7; 14 July 1924 at 4409-13.

52. "An Act to amend the Indian Act" S.C. 1924, c.47, s.1; Debates 14 July 1924 at 4409.

53. "An Act to amend the Indian Act" S.C. 1930, c.25, s.1. "The Indian Act" S.C. 1951, c.29, s.4(1) provides: "This Act does not apply to the race of aborigines commonly referred to as Eskimos." Debates 31 March 1930 at 1091-1101.

54. Debates 31 March 1930 at 1092. The "Scotch" reference was supplied by the Hon. Charles A. Dunning, Minister of Finance.

55. Diamond Jenness Eskimo Administration: II. Canada (Arctic Institute of North America, 1964) at 10, 22; Bobbie Kalman and Ken Faris Arctic Whales & Whaling (New York: Crabtree, 1988).

56. Jenness Eskimo Administration adds at 10-13, 26 that the sexual intermixture was accentuated by the "moral code" of Inuit culture, which "permitted [Eskimo women] the same freedom as prevailed among the Polynesian islanders in the days of Captain James Cook." K.S. Coates "Furs Along the Yukon: Hudson's Bay Company-Native Trade in the Yukon River Basin, 1830-1893" M.A. Thesis (University of Manitoba: 1979) notes at 153-4 that within Inuit culture, sexual relationships between Inuit women and European whalers and traders were frequently encouraged as a systemic mechanism to solidify trading ties. See also William R. Morrison Under the Flag: Canadian Sovereignty and the Native People in Northern Canada (Ottawa: Indian and Northern Affairs Canada, 1984) at 71-4.

57. On the eastern Arctic, see "Factum on Behalf of the Attorney General of the Province of Quebec" In the Supreme Court of Canada, In the Matter of a Reference as to Whether the Term "Indians" in Head 24 of Section 91 of the British North America Act, 1867, Includes Eskimo Inhabitants of the Province of Quebec at 24, [hereafter Quebec Factum] citing Jenness. On the western Arctic, see Eموke J.E. Szathmary "Human Biology of the Arctic" in Sturtevant Handbook of North American Indians at 64.

Dorothy Harley Eber Images of Justice (Montreal: McGill-Queen's University Press, 1997) describes at 51 the travels of Morris Pokiak, "half Inuk, half black" who used to trade by boat along the Arctic coast in the 1920s and 1930s.

58. Quebec Factum at 7. The original reference comes from Jenness Indians of Canada at 247.

59. For example, "An Act respecting the Franchise of Electors at Elections of Members of the House of Commons" S.C. 1934, c.51, s.4 distinguishes between "Esquimaux persons" and "Indian persons," when disqualifying both from voting. Other statutes drawing a distinction without further explanation include: "An Act respecting the Franchise of Electors and the Election of Members of the House of Commons" S.C. 1938, c.46, s.14(2); "An Ordinance to Provide for the Control, Regulation and Sale of Liquor in the Northwest Territories" Ord. N.W.T. 1948, c.23, s.15(1)(e); "An Act respecting the Esquimaux and Indians resident in Labrador" S.Nfld. 1911, c.4, s.1; "Of the Protection of Esquimaux and Indians" C.S.Nfld. 1916, c.80; "An Ordinance Respecting the Preservation of Game in the Northwest Territories" Ord. N.W.T. 1949, c.12, s.2(1)(d), 12, 24(2), 33(1), 44(1), 66(5); "An Ordinance to Amend an Ordinance Respecting the Preservation of Game in the Northwest Territories" Ord. N.W.T. 1949, c.27, s.1; "An Act to amend the Quebec fish and game laws" S.Q. 1919, c.31, s.5.

60. "An Act respecting the Esquimaux and Indians resident in Labrador" S.Nfld. 1911, c.4 provides:

s.1. Without the permission of the Governor in Council first obtained, it shall be unlawful for any person to enter into any agreement with an Esquimaux, Nascopee, or Mountaineer Indian to leave this Colony or its dependencies for the purpose of performing any services in any place outside this Colony or its dependencies, or to pay or promise to pay any money, or give or promise to give any article to any Esquimaux, Nascopee or Mountaineer Indian as a reward or inducement for leaving this Colony, or to transport or furnish the means of transporting any Esquimaux, Nascopee or Mountaineer Indians from this Colony to any place outside this Colony; provided that nothing in this section shall prevent the employment of Esquimaux, Nascopee, or Mountaineer Indians by any person for the purpose of fishing, hunting or exploring upon any part of the coast or territories of the Canadian Labrador.

s.2. Any person violating any one of the provisions of the first section of this Act shall be liable to a penalty not exceeding five hundred dollars, or in default of payment, to imprisonment not exceeding six months, to be removed or imposed upon the complaint of any person in a summary manner before a stipendiary Magistrate.

s.3. In this Act, "Esquimaux" shall mean native residents of the Coast of Labrador who are commonly known as Esquimaux.

See also "Of the Protection of Esquimaux and Indians" C.S.Nfld. 1916, c.80.

The impetus for the statute was a desire to prevent the exploitation of Eskimo in travelling exhibitions in Europe and the United States. Certain Eskimo had

contracted with wild animal exhibitors to participate in such displays, and been left destitute without funds to return home. On one occasion, the Newfoundland government had to pay return travel costs to Labrador. On another, an Eskimo contracted "a most loathsome disease" during the time away. The motivation to include the "Indian" groups came from the Right Honourable Sir Robert Bond, who suggested that if deportation of Eskimo was prohibited, exhibitors would turn to groups such as the Mountaineer Indians. See House of Assembly Proceedings 24 February 1911 at 204-6; St. John's Daily News 21 March 1911.

61. "An Ordinance Respecting the Preservation of Game in the Northwest Territories" Ord. N.W.T. 1949, c.12, s.2(1)(d) provides:

s.12. No person shall employ or enter into a contract or agreement with an Indian, Eskimo or other person to hunt, kill, or take game or to take any egg or nest or part thereof contrary to the provisions of this Ordinance.

s.24(1). Except as authorized by this Ordinance, no person shall hunt in a game preserve.

(2). An Indian or Eskimo who was born in the Territories and who holds a general hunting licence may hunt in a game preserve.

s.33(1). An Indian or Eskimo who holds a general hunting licence may take or kill male barren-ground caribou during the month of March in the year for which

the licence was issued to provide meat for food for himself and his immediate family, but not for sale or barter.

s.44(1). A general hunting licence may be issued to a person over the age of sixteen years who is,

(a) an Indian or Eskimo and who

(i) has resided continuously in the Territories since his birth, or

(ii) is a member of a family or group of Indians or Eskimos that, prior to the commencement of this Ordinance, hunted in the Territories as a means of livelihood;

s.66(5) The widow of an Indian or Eskimo in needy circumstances, or the head of a family who is the holder of a general hunting licence may be issued a licence to take not more than ten beaver.

See also "An Ordinance to Amend an Ordinance Respecting the Preservation of Game in the Northwest Territories" Ord. N.W.T. 1949, c.27, s.1, which provides: "An Indian or Eskimo who holds a general hunting licence may take or kill male barren-ground caribou in any part of the Territories except Baffin Island and Bylot Island during the month of March in the year for which the licence was issued to provide meat for food for himself and his immediate family, but not for sale or barter."

62. "The Indian Act" S.C. 1951, c.29, s.4(1).

63. Alan D. McMillan Native Peoples and Cultures of Canada (Vancouver: Douglas & McIntyre, 1988) at 240-6. James S. Frideres Aboriginal Peoples in Canada: Contemporary Conflicts 5th ed. (Scarborough: Prentice-Hall, 1998) notes at 391 that approximately 10,000 years ago the "people of the Small Knife" entered the valleys and plateaus of Alaska and Yukon. They were replaced by the "Long Spear People" some 7,000 years ago, and followed by the "Denbigh People," who moved into the east shore of the Bering Strait about 5,000 years ago. The "People of the Old Rock" were resident in northern Quebec and Keewatin until about 3,000 years ago. This group was replaced by the "People of the Arrowhead" and the "Harpoon People," who entered the region approximately 2,000 years ago. In about 1,000 B.C. the "Dorset people" moved to Baffin Island and spread rapidly across the Arctic. They were displaced by the "Thule Inuit" between A.D. 800 and 1300, who are the direct ancestors of modern Canadian and other Arctic Inuit.

64. Kaj Birket-Smith The Eskimos (London: Methuen, 1959, orig. pub. 1936, 1st Danish edition 1927) notes at 8: "A common speech is one of the strongest human bonds, and it is above all their common language which unites the Eskimos. The various dialects along the whole stretch from Greenland to Alaska are so similar, that their relation is obvious, both to the Eskimos themselves and to the most superficial outside observer. The position of Aleut is somewhat different, for there is a considerable difference between it and Eskimo proper. But the distinctions lie rather in vocabulary than in grammar.all modern authorities...regard the Aleut language as a separate

branch of the Eskimo stock." For reference to Birket-Smith's text, see Canada Factum at 27; Quebec Factum at 19-21. The Eskimo-Aleut family of languages shows a high degree of distinctness from other languages either in the Old World or in the New World: Damas ed. "Arctic" at 1. See also McMillan Native Peoples at 240, 251-7.

65. Jenness Eskimo Administration at 25, 146; "Exhibit C-47, Canada Case" at 305-20. This heroic portrayal ought to be juxtaposed with some of the other passages Jenness concocted, which were distinctly patronizing and dismissive in tone. See, for example, at 128: "[The Eskimo] are a fragmented, amorphous race that lacks all sense of history, inherits no pride of ancestry, and discerns no glory in past events or past achievements. Until we Europeans shattered their isolation four centuries ago they were more rigidly confined than the dwellers in Plato's cave: no shadowy figures from the outer world ever flickered on their prison wall to provoke new images and new ideas, and not even a Mohammed could have drawn them out of that prison to unite them into a nation." For a critical assessment of Jenness's contributions to Inuit culture, see Sidney L. Haring "The Rich Men of the Country: Canadian Law in the Land of the Copper Inuit, 1914-1930" Ottawa Law Review 21:1 (1989) 1 at 30-9.

66. "What Great Creatures Are These: Early Contact Literature" in chapter 2, Penny Petrone ed. Northern Voices: Inuit Writing in English (Toronto: University of Toronto Press, 1988) at 55-99; Jenness Eskimo Administration at 9-10; McMillan Native Peoples at 250, 264-66; Damas ed. "Arctic" at 4; Frideres Aboriginal Peoples at 391-4; Keith J. Crowe A History of the Original Peoples of Northern Canada (Montreal: McGill-Queen's University Press, 1974) at 111; Richard Diubaldo The Government of Canada

and the Inuit: 1900-1967 (Canada, Research Branch, Corporate Policy, Indian and Northern Affairs Canada, 1985) 9-11.

67. Jenness Eskimo Administration at 35-6; McMillan Native Peoples at 266-7; Diubaldo Government of Canada and the Inuit at 29-30; Morrison Under the Flag at 113-18; William R. Morrison "Canadian Sovereignty and the Inuit of the Central and Eastern Arctic" Etudes/Inuit/Studies 10:1-2 (1986) 245-259; Frideres Aboriginal Peoples at 394.

68. Petrone ed. Northern Voices: Inuit Writing in English at 103-286; W.C.E. Rasing "Too Many People": Order and Nonconformity in Iglulingmiut Social Process (Nijmegen: Katholieke Universiteit, Faculteit Der Rechtsgeleerdheid, 1994) at 63; McMillan Native Peoples at 264-6; Jenness Eskimo Administration at 10-25, 50-2; Crowe Original Peoples of Northern Canada at 111; Diubaldo Government of Canada and the Inuit at 12.

69. Zebedee Nungak "Quebecker?? Canadian? ...Inuk!" in Bruce W. Hodgins and Kerry A. Cannon eds. On the Land: Confronting the Challenges to Aboriginal Self-Determination in Northern Quebec and Labrador (Toronto: Betelgeuse, 1995) at 19. Mary Ellen Turpel-Lafond notes in "Oui the People? Conflicting Visions of Self-Determination in Quebec" in Hodgins and Cannon On the Land 43 at 66, that these land transfers fly in the face of Inuit national heritage: "The Inuit in Quebec have stated that they are part of one Inuit nation in Canada and part of a larger Inuit nation in the Circumpolar Region." See also the comments of Grand Chief Matthew Coon Come "Clearing the Smokescreen" in Hodgins and Cannon On the Land 7 at 8-9; Resolution of

the Nunavik Leaders Conference, Montreal, 8 December 1994.

70. "Views from Outside" in Hodgins and Cannon eds. On the Land at 95-6.

71. Nungak "Quebecker?? Canadian? ...Inuk!" at 19; Bernard Saladin D'Anglure "Inuit of Quebec" in Sturtevant ed. Handbook of North American Indians at 505; Louis-Jacques Dorais Quaqtaq: Modernity and Identity in an Inuit Community (Toronto: University of Toronto Press, 1997) at 32.

72. Jenness Eskimo Administration at 52. Unofficially, the federal Department of Indian Affairs had been providing some relief to Inuit deemed destitute since about 1880. Jenness notes at 32-33 and 40 that the police and traders from the Hudson's Bay Company and Revillon Freres, who served as intermediaries, distributed approximately \$4700 annually for medical attention and education at mission schools on Herschel Island between 1918 and 1923. A full-time physician was installed on Baffin Island in 1926.

73. The estimated total Inuit population of the Canadian Arctic was 6,250; Canada Factum at 6, citing the Dominion Bureau of Statistics, based on 1935 data.

74. D'Anglure "Inuit of Quebec" at 500-5; Jenness Eskimo Administration at 50; Dorais Quaqtaq at 21-1.

75. Jenness Eskimo Administration at 38-9, 47; Crowe Original Peoples of Northern Canada at 115; D'Anglure "Inuit of Quebec" at 505-6.

76. Jenness Eskimo Administration at 52, citing Canada Department of the Interior Annual Report, 1933-34 at 35 and W.C. Bethune Canada's Eastern Arctic, its History, Resources, Population and Administration (Ottawa: Department of Interior, 1934) filed as Exhibit Q-3 in "Case on Behalf of the Attorney General of Quebec, in the Supreme Court of Canada, In the Matter of a Reference as to Whether the Term 'Indians' in Head 24 of Section 91 of the British North America Act, 1867, Includes Eskimo Inhabitants of the Province of Quebec" (Ottawa: King's Printer, 1938) [hereafter "Quebec Case"] at 161. Jenness also notes that the 500 green buffalo hides that were distributed in addition to the meat "were too thick for clothing, but made tolerable bed-robbs, rather heavy, however, to carry on the back during the summer months."

77. Jenness Eskimo Administration at 40; Diubaldo Government of Canada and the Inuit at 37. On the starvation along the Ungava Coast, which continued well into the 1940s, see Dorothy Mesher Kuujuaq: Memories and Musings (Duncan, B.C.: Unica, 1995) at 36.

78. 30-31 Vict., c. 3 (U.K.)

79. "Supreme Court and Exchequer Court Act" S.C. 1875, c.11, s.52 provides: "It shall be lawful for the Governor in Council to refer to the Supreme Court for hearing or consideration, any matters whatsoever as he may think fit; and the Court shall thereupon hear and consider the same and certify their opinion thereon to the Governor in Council...." The statute was amended, S.C. 1891, c.25, s.4, to specify that all interested parties should be heard, that the court must give reasons, and to clarify the right of appeal

to the Privy Council. See also S.C. 1906, c.50, s.2; R.S.C. 1927, c.35, s.55.

80. Barry L. Strayer The Canadian Constitution and the Courts: The Function and Scope of Judicial Review 3rd ed. (Toronto: Butterworths, 1988) at 313.

81. Notice of the reference was apparently given to the Provinces of Quebec, Ontario, Manitoba, Alberta and Saskatchewan. Why these provinces were singled out is not indicated. Quebec Factum at 1.

82. In the 1930s, most Inuit were dispersed throughout the north, with a small number living at the missions and the Hudson's Bay Company outposts. The most knowledgeable voices about Inuit history, culture and perspective would have come from the elders, shamans, and camp leaders drawn from the most successful hunters. The Inuit Tapirisat of Canada was first formed as an association separate from the Indian Brotherhood of Canada in 1971. This information was drawn from interviews with Inuit elders - Emile Immaroituk, Mariano Aupilarjuk, Marie Tulemaa and Akeeshoo Joamie - during the "Traditions Seminar" of the Legal Studies Program, Nunavut Arctic College, Nunatta Campus, Iqaluit, NT, 20 July - 2 August 1997, and an Interview with Paul Quassa, negotiator for the Nunavut Land Claim Agreement, Iqaluit, NT, 11 September 1997. See also Peter Pitseolak and Dorothy Harley Eber People From Our Side: A Life Story with Photographs and Oral Biography (Montreal: McGill-Queen's University Press, 1993) at 77, where Peter Pitseolak notes: "Before the [Hudson's] Bay [Company] arrived, there was no real boss in an area. Each camp would have a leader - the biggest man and the best hunter would be head. He'd be respected. After the Bay came...the white men

made their own appointments. Sometimes the white men picked a man we didn't like too well. But...I have always thought that the white men picked a boss who could talk well, who had a good mind. The white men looked for the reliable man." Pauktuutit The Inuit Way notes at 15: "Inuit society was largely egalitarian with no hierarchy or formal authority. Individuals were largely free to do as they wished as long as their actions did not disturb others. The basic system of making decisions for the group was based on consensus. Major decisions affecting the group would be discussed among the adults. People would voice their view and compromise the final decision to ensure that everyone accepted it. People with special skills, talents or knowledge, such as a respected hunter, an elder or a shaman, could be solicited for their opinion on a particular issue but their advice was not binding. Their ability to influence others was limited by the degree to which people chose to follow their advice."

83. Jenness Eskimo Administration at 17, 30, 43, 49, 55, 90. One of the few exceptions, according to Jenness at 23, was the first director of the Northwest Territories Branch of the Department of the Interior, O.S. Finnie.

84. "Stewart, James McGregor" in H.E. Durant National Reference Book on Canadian Business Personalities 10th ed. (Canadian Newspaper Service, 1954) at 96-97. Stewart was assisted in the case by C.P. Plaxton, K.C., the federal Deputy Minister of Justice.

85. "Desilets, Auguste, Q.C." in Durant National Reference Book at 698-700. Desilets was assisted in the case by C.A. Seguin, K.C. and Edouard Asselin, Deputy

Attorney-General of the Province of Quebec.

86. "Order of Reference by the Deputy of the Governor General in Council, dated the 2nd day of April, 1935" (P.C. 867). According to federal counsel C.P. Plaxton, K.C., the delay in scheduling the first hearing was largely attributable to Quebec. See "Canada Case" at 31.

87. Quebec Factum at 3, 31. See also the comment at 6: "Of course, in this as in a great many other matters relating to science, there is no absolute unanimity. Nowhere else than in the field of science does the axion **tot capita tot sententiae** receive a more frequent application." The Factum takes issue at 23 with Dr. Hooton, apologizing at the outset for "lacking reverence to such an eminent scientist." See 55 for one reference to "our humble opinion."

88. Quebec Factum at 23-4, 27, 53-4.

89. See, for example, Canada Factum at 4, 7, 19-21, 23; Correspondence from Stewart to C.P. Plaxton, Q.C., 18 September 1934, Department of Justice files, Ottawa, as cited in Diubaldo Government of Canada and the Inuit at 40.

90. Canada Factum at 16-20.

91. Canada Factum at 20-3; "Canada Case" at 96.

92. Quebec Factum at 32-4.

93. Quebec Factum at 35-53.

94. Quebec Factum at 46-51.

95. Quebec Factum at 22, 52; "Exhibit Q-180, Quebec Case" at 591-4. Diamond and Eileen Jenness were married in 1919, and raised three sons in Ottawa: see Taylor, Jr. "Foreword" in Jenness Indians of Canada at p.v.

96. Eileen Jenness The Indian Tribes of Canada (Toronto: Ryerson Press, 1933) at 6, 9, 102-4. The extract from "Exhibit Q-180, Quebec Case" at 594 ends after the first paragraph of this quote.

97. Quebec Factum at 2-3, 22.

98. Quebec Factum at 31.

99. Otto Klineberg Race Differences (New York: Harper, 1935) at 17. On Klineberg's Canadian origins and his intellectual career, see Carl N. Degler In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought (New York: Oxford University Press, 1991) at 179-86. Elazar Barkan The Retreat of Scientific Racism (Cambridge: Cambridge University Press, 1992) notes at 199 that Klineberg did research on the racial implications of intelligence testing, and later became

"one of the central figures in the UNESCO statements on race after World War II and was instrumental in the Brown versus Board of Education case in the Supreme Court in 1954."

100. Ivan Hannaford Race: The History of an Idea in the West (Baltimore: Johns Hopkins University Press, 1996); Colette Guillaumin Racism, sexism, power and ideology (London: Routledge, 1995) at 101. On the linguistic derivation of race, see Michael Banton "The Classification of Races in Europe and North America: 1700-1850" International Social Science Journal 39:1 (February 1987) 45-60.

101. "Exhibit C-100, Canada Case" at 384, citing C. Linnaeus Systema Naturae (London, 1747) 5th ed.

102. Klineberg Race Differences at 20, citing J.F. Blumenbach Anthropological Treatises (London, 1865), J.C. Nott and G.R. Gliddon Types of Mankind (Philadelphia, 1854), M. Muller Lectures on the Science of Language (London, 1864), M. Muller Biographies of Words and the Home of the Aryas (London, 1888) and J. Deniker The Races of Man (New York, 1900). For reference to Blumenbach's research, see "Exhibit C-46, Canada Case" at 267-302; "Exhibit C-100, Canada Case" at 384. For reference to Nott and Gliddon's text, see Canada Factum at 24 and 27, and extracts produced in "Exhibit C-99, Canada Case" at 383; "Exhibit C-114, Canada Case" at 397-9.

103. George W. Stocking, Jr. Race, Culture and Evolution (New York: Free Press, 1968) 112-32, 121-2; George W. Stocking Victorian Anthropology (New York: Free

Press, 1987); Roy Harvey Pearce Savagism and Civilization: A Study of the Indian and the American Mind (Baltimore: Johns Hopkins University Press, 1965); Gail Bederman Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917 (Chicago: University of Chicago Press, 1995) at 25.

104. Cynthia Eagle Russett Sexual Science: The Victorian Construction of Womanhood (Cambridge: Harvard University Press, 1989) at 4-7. For critique of Herbert Spencer's work, which borrowed heavily from the observations of travellers about the physique, emotions, education, political structures, rites, habits, superstitions, weapons, implements and aesthetic products of various peoples, see John S. Haller Jr. Outcasts from Evolution: Scientific Attitudes of Racial Inferiority, 1859-1900 (Urbana: University of Illinois Press, 1971) at 128-32.

105. Minnie Aodla Freeman "Living in Two Hells" in Petrone ed. Northern Voices: Inuit Writing in English at 241. Freeman, born in 1936 on Cape Horn Island in James Bay, adds: "Over the years scientists have always been very welcome in Inuit communities. Some have been adopted by Inuit - in fact I adopted one permanently. [...] As scientists are often willing to admit, Inuit have clothed them, fed them, taken them to wherever they wanted to go to do their studies. Often Inuit have taken chances, in matters of life and death, because they felt responsible for a particular scientist. We Inuit have met many different kinds of scientists, in terms of personality as well as what they wanted to study. We have studied them while they studied us. [...] Personally I have been involved with scientists since I was born. [...] But that doesn't mean I have to like everything scientists do - does it? [...] My question is, when are you scientists going to

start to include in your budgets funds to have the information you gather translated into **inuktitut** and send back north?"

106. See, for example, H.L. Shapiro The Alaskan Eskimo: A Study of the Relationship Between the Eskimo and the Chipewyan Indians of Central Canada (New York: The American Museum of Natural History, 1931).

107. Griffith Taylor Environment, Race and Migration (Toronto: University of Toronto Press, 1945) at 252. See also "Extract from M'Culloch Geographical Dictionary" (London, 1866), Exhibit Q-138 at 444; "Extract from Encyclopedia Americana (1919), Exhibit Q-169 at 549, from "Quebec Case" Bruce G. Trigger Natives and Newcomers: Canada's "Heroic Age" Reconsidered (Montreal: McGill-Queen's University Press, 1985) notes at 14-15 that distinctions in skin colour reflected the degree of racial prejudice operating within society: "...in the early days of European exploration and settlement, there was little evidence of racial prejudice against the Indians. They were often described as physically attractive, and their skin colour was not perceived to be notably different from that of Whites. It was widely maintained that they were born white and became sun-tanned or dyed themselves brown. [...] As disputes over land rights envenomed relations between English settlers and native peoples...[t]hey were increasingly referred to as tawny pagans, swarthy Philistines, copper-coloured vermin, and by the end of the eighteenth century redskins."

108. John Beddoe's formula, " $D+2ND+2N-R-F=Index$," is described in Alfred C. Haddon The Study of Man (London: Bliss Sands, 1989) at 22-40. For reference to

Haddon's research, published as The Races of Man in 1924, see Canada Factum at 27.

109. Thomas F. Gossett Race: The History of an Idea in America (Dallas: Southern Methodist University Press, 1963) at 69, citing Paul Broca, who founded the Anthropological Society in Paris in 1859.

110. See, for example, Exhibit C-125, Extract from "The Polar Regions" by Sir John Richardson (1861) at 298-303, in "Canada Case" at 138; and Exhibit C-100, Extract from "Crania Americana;" or a Comparative View of the Skulls of Various Aboriginal Nations of North and South America: to which is prefixed An Essay on the Varieties of the Human Species, by Samuel George Morton, M.C. (1839) also from "Quebec Case" at 385, where he notes that "the color" of "the Polar family" is "brown, lighter or darker, but often disguised by accumulated filth."

111. Canada Factum at 25; Quebec Factum at 13-19; Shapiro The Alaskan Eskimo. See also Taylor Environment, Race and Migration who notes at 51: "The most obvious, but least satisfactory, of these physical criteria is the colour of the skin. For scientific purposes this should be judged on the inside of the forearm and not from the face." See also extracts of Shapiro's work produced as "Exhibit Q-190, Quebec Case" at 663-72; "Exhibit Q-192, Quebec Case" at 694; "Exhibit Q-193, Quebec Case" at 695-700.

112. Eugene Pittard Race and History: An Ethnological Introduction to History (New York: Alfred A. Knopf, 1926) at 33, citing Haeckel's classification model of 1879.

113. Taylor Environment, Race and Migration at 59-60.

114. Canada Factum at 24; "Exhibit C-100, Canada Case" at 384-7; "Exhibit C-114, Canada Case" at 397-9; Stephen Jay Gould "American Polygeny and Craniometry Before Darwin: Blacks and Indians as Separate, Inferior Species" in Sandra Harding ed. The "Racial" Economy of Science (Bloomington: Indiana University Press, 1994) at 99-102. Klineberg Race Differences notes at 36 that "from the hindsight of our present knowledge that up to 80 percent of the brain's volume is extracellular space and that preserving...methods are particularly vulnerable in the amount of shrinkage which they cause, we are able to see how extremely unreliable was all of this early data on brain weight and volume."

115. Gisela Kaplan and Lesley J. Rogers "Race and Gender Fallacies: The Paucity of Biological Determinist Explanations of Difference" in Ethel Tobach and Betty Rosoff eds. Challenging Racism and Sexism: Alternatives to Genetic Explanations (New York: The Feminist Press, 1994) at 71.

116. Klineberg Race Differences at 36, 77. Although Klineberg recognized the illogical nature of such conclusions, he was unable to refrain from ethnocentric judgments himself: "It is interesting...to note that the largest brains, on the average, were found among the Eskimo, whose culture is comparatively simple." See also William I. Thomas "The Scope and Method of Folk-Psychology" American Journal of Sociology v.1 (November 1895) 434 at 436-7, where he notes that the five heaviest brains recorded by Topinard were those of Tourgenieff (2020 gr.), a day labourer (1925 gr.), a

brickmason (1900 gr.), a person with epilepsy (1830 gr.), and the illustrious Georges Cuvier (1830 gr.) When the idol of French anthropologists, Gambetta, died and willed them his brain, they were mortified to find it weighed only 1100 grammes, "just 100 grammes above the point of imbecility."

117. Birket-Smith The Eskimos at 42; H.L. Shapiro "Extract from Some Observations on the Origin of the Eskimo" (Toronto, 1934), Exhibit Q-190 at 665; Shapiro "Monograph on the Indian Origin of the Eskimo" (New York, 1937), Exhibit Q-193 at 698, both in "Quebec Case."

118. Paul Broca "Sur les proportions relatives du bras, de l'avant bras et de la clavicule chez les negres et les europeens" Bulletin Societe d'Anthropologie Paris 3:2 (1862) 1 at 11. See A. Fullerton & Co. "Extracts from Gazetteer of the World" (London, 1857) Exhibit Q-133, in "Quebec Case" at 401, for reference to the "diminutive stature" of "Eastern Esquimaux" attributed to "their mode of living, which continually exposes them to every hardship and privation."

119. "Exhibit C-47, Canada Case" at 304; and citing Jenness Indians of Canada at 247.

120. Canada Factum at 27, citing Kaj Birket-Smith The Eskimos (London: Methuen, 1959, orig. pub. 1936, 1st Danish edition 1927) at p.vi. Birket-Smith notes at 43-4 that "most pure-blooded Indians, both in North and South America, belong to the O-type in an overwhelming degree, whereas among the Japanese and a North Asiatic tribe

such as the Tungusian Orok less than one-third are O." See also extracts from Birket-Smith's work produced in "Exhibit C-98, Canada Case" at 382 and "Exhibit Q-191, Quebec Case" at 673-93.

121. Klineberg Race Differences at 36, citing K. Landsteiner and C.P. Miller "Serological Studies on the Blood of the Primates" J. Exp. Medicine v.42 (1925) 841-72. Klineberg notes an exception at 43-44, where American Indians were shown to have a high percentage of Group O blood type, although the research suggests some difficulty in separating "pure blood" Indians from "mixed blood" Indians.

122. Birket-Smith The Eskimos at 30-1.

123. For reference to Cuvier's racial research, see "Exhibit C-100, Canada Case" at 384. Over one hundred and fifty years after her death, Saartje Baartman's genitalia still floated in formalin in a bell-jar on a shelf in the Musee de l'Homme in Paris. In 1995, a campaign was launched in South Africa to have her remains returned for burial. See Susie Prestney "Inscribing the Hottentot Venus: generating data for difference" in Phillip Darby ed. At the Edge of International Relations: Postcolonialism, Gender and Dependency (London: Pinter, 1997) 86-105; Londa Schiebinger Nature's Body: Gender in the Making of Modern Science (Boston: Beacon Press, 1993) at 160-73; Percival Kirby "The Hottentot Venus" Africana Notes and News 6 (1949) 55-62; Percival Kirby "More About the Hottentot Venus" Africana Notes and News v.10 (1953) 124-34; Stephen Jay Gould The Flamingo's Smile: Reflections in Natural History (New York: Norton, 1985) at 291-305; Sander Gilman Difference and Pathology: Stereotypes of

Sexuality, Race and Madness (Ithaca: Cornell University Press, 1985) at 83-8; Sander Gilman "Black Bodies, White Bodies: Toward an Iconography of Female Sexuality in Late Nineteenth-Century Art, Medicine, and Literature" in Henry Louis Gates, Jr. ed. "Race," Writing, and Difference (Chicago: University of Chicago Press, 1986) 223-61; Sander L. Gilman Sexuality: An Illustrated History (New York: John Wiley, 1989). On the exhibition of "far-distant peoples" as popular culture, see William Schneider "Race and Empire: The Rise of Popular Ethnography in the Late Nineteenth Century" Journal of Popular Culture 11:1 (Summer 1977) 98-109.

124. "Exhibit C-48, Canada Case" at 327-42; Klineberg Race Differences at 25. The absurdity of the search for the pure racial prototype is underscored by an account of a late 19th-century exchange between two white anthropologists, as described by Stocking Jr. Race, Culture, and Evolution at 58: "In the thirty-five years after Paul Broca founded the Societe d'Anthropologie de Paris in 1859, twenty-five million Europeans were subjected to anthropometric measurement; yet when William Z. Ripley wrote to Otto Ammon asking for a photograph of a 'pure' Alpine type from the Black Forest, Ammon was unable to provide one. 'He has measured thousands of heads, and yet he answered that he really had not been able to find a perfect specimen in all details. All his round-headed men were either blond, or tall, or narrow-nosed, or something else that they ought not to be.'"

125. Klineberg Race Differences at 25. Klineberg was critical of other researchers for arbitrarily assigning racial designations to certain percentages of various nationalities and then making measurements based on these assumptions. One of

Klineberg's most elaborate research project entailed travelling to Europe "to locate villages in which the ancestry was as pure as he could find." See Degler In Search of Human Nature at 184. While this constituted some effort to control the population data base, just as in the Arctic, there was no fully reliable mechanism to ensure that racial mixing had not occurred.

126. The exhibits submitted by counsel in the case point this out; see, for example, Exhibit C-129, Extracts from "Report on Explorations in the Labrador Peninsula" by A.P. Low, Geological Survey of Canada, Ottawa (1896), published in "Canada Case" at 148: "Along the Atlantic coast, as far north as Hopedale, few or none of the Eskimo are pure blooded. [...] In Ungava Bay and on Hudson Bay there are, around the Hudson Bay posts, many half-breeds, the result of marriage between the employees and Eskimo women." Exhibit C-146, Extracts from Address Entitled "Life in Labrador" by Rev. Henry Gordon, of Cartwright Labrador, at 172 adds: "The first serious attempt to settle the coast of Labrador dates from the opening up of trade relations by Mayor Cartwright, some one hundred and fifty years ago. During sixteen years of varying fortunes, Cartwright did much to establish very friendly relations with the natives, and it may be said that from his day dates the gradual cross-breeding of English and Esquimaux which has produced the modern Labrador 'Livvère.' Out of a total population of some four thousand it is very doubtful if now one third is of pure Esquimaux blood, and the day will not be very long before the Esquimaux stock is totally eliminated from the coast."

127. Taylor Environment, Race and Migration at 257. For another example, see Birket-Smith The Eskimos at 176-7, where he mentions the musings of anthropologist

Collins concerning photographs of the Caribou Eskimo: "He even writes that my photographs 'leave no doubt of the considerable amount of white [sic!] blood present among the Caribou Eskimos,' although it seems rather puzzling how it should have been introduced." See also Exhibit Q-169 in "Quebec Case" and "Extract from Encyclopedia Americana: North America (Indians)" (1919) at 551, which notes: "The Eskimo of Greenland have intermarried with the whites (Danish fathers, native mothers), so that except in the parts remote from settlements no pure-blood Eskimo exists; and the same is true of a good deal of Labrador, where the contact has been with fishermen of English descent."

128. Birket-Smith The Eskimos at 36-7. For an early reference to "flaxen" haired Eskimo, see Exhibit Q-88 in "Quebec Case" at 216: Thomas Jeffreys "Extract from the Natural and Civil History of the French Dominions in North and South America...." (London, 1760).

129. As recounted by Birket-Smith The Eskimos at 30.

130. Taylor Environment, Race and Migration at 257.

131. Ruth Hubbard "Race and Sex as Biological Categories" in Tobach and Rosoff eds. Challenging Racism and Sexism 11 at 14 and Linda Burnham "Race and Gender: The Limits of Analogy" in Tobach and Rosoff eds. Challenging Racism and Sexism 143 at 150; Gloria A. Marshall "Racial Classifications: Popular and Scientific" in Harding ed. "Racial" Economy of Science at 118-19.

132. Klineberg Race Differences at 17-19; A. Pritchard The Natural History of Man (London, 1885) at 644.

133. Jack Forbes "The Manipulation of Race, Caste and Identity: Classifying Afro-Americans, Native Americans and Red-Black People" The Journal of Ethnic Studies 17:4 (Winter 1990) 1 at 37-8. Audrey Smedley Race in North America: Origin and Evolution of a Worldview (Boulder: Westview, 1993) notes at 288 that even the most up-to-date research on genetics has failed to differentiate racial groupings: "[T]here is greater variation among peoples within a geographical race than there is between them. Indeed, some experts have discovered that only a minor amount of variation in known genetic traits exists between the major 'racial' groups." Smedley concludes that the study of genes has also failed to explain how previous generations transmit "racially" distinct characteristics: "We know comparatively little about the mode of inheritance of such polymorphic traits (determined by more than a single gene or position on the DNA) as skin color, hair form, nose shape, and so forth."

134. Diamond Jenness "The Problem of the Eskimo" in Diamond Jenness The American Aborigines: Their Origin and Antiquity (Toronto: University of Toronto Press, 1933) at 374.

135. "Exhibit C-47, Canada Case" at 303-4, citing Jenness Indians of Canada at 246-7.

136. Birket-Smith The Eskimos at 44. Extracts of this publication are quoted in

"Exhibit Q-191, Quebec Case" at 673-93.

137. The most up-to-date analysis from the Smithsonian Institute chronicles continuing debate. Damas ed. "Arctic" at 2 notes that there is still "controversy over whether or not Eskimos are an identifiable racial type." Lawrence Oschinsky "Facial Flatness and Cheekbone Morphology in Arctic Mongoloids: A Case of Morphological Taxonomy" Anthropologica 4:2 (1962) 349-377 has posited an Arctic Mongoloid racial type to be separated from New World and Old World Mongoloid types. Etno J.E. Szathmary "Genetic Markers in Siberian and Northern North American Populations" Yearbook of Physical Anthropology v.24 (1981) 37-73 sees the Reindeer Chukchi, all Eskimo populations (but not the Aleut, for whom comparable data are lacking) and Athapaskan speakers as forming a definite cluster in genetic traits as distinct from Algonquian speakers. Szathmary sees considerable continuity within Eskimo groups and maintains that although "Eskimos do not seem to have any gene that is unique to them, with the exception of variants in the GC (Group Specific a-Globulin) system," Eskimos are "genetically identifiable." Crowe Original Peoples of Northern Canada notes at 8: "We do not know whether Indians and Eskimos were once the same people. We do not know whether the people of the northern forests and barrens 10,000 years ago were the ancestors of the present Indians, though it is likely. All that the stone tools and fires tell us is that the prehistoric peoples worked out several main cultures."

138. Canada Factum at 23, 27; Quebec Factum at 2, 22, 25, 62.

139. Jenness Eskimo Administration at 40.

140. Re Eskimos at 123, per Kerwin, J. The selection of 1867 as the pivotal point was something both counsel had conceded early on in their arguments, when they agreed that it was important to assess the question according to the original intent of the legislators who penned the phrase "Indians and lands reserved for Indians." [See Quebec Factum at 60; Canada Factum at 4-6, 10 in part quoting Strong, J. in St. Catherines Milling and Lumber Co. v. The King (1887), 13 S.C.R. 577 at 606-7.] A more progressive perspective was articulated by the English Privy Council in the celebrated 1930 case of Edwards v. Attorney-General of Canada, where the Law Lords decided it was wrong to apply rigid judicial reasoning of earlier centuries to changing perspectives and circumstances. "The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits," they noted, and the courts "must take care not to interpret legislation meant to apply to one community by a rigid adherence to the customs and traditions of another." Edwards v. Attorney-General of Canada, [1930] A.C. 136 (P.C.). That case was based on an application by five Canadian feminists to have the word "person" interpreted to include "women" for the purpose of appointment to the Canadian Senate. The decision of the Supreme Court of Canada to refuse the application was overruled by the Judicial Committee of the Privy Council.

141. Re Eskimos at 117, per Cannon, J.

142. Re Eskimos at 114, citing an 1849 report from the Bishop of Newfoundland that was published in London for the Society for the Propagation of the Gospel by the Bishop of London, Exhibit Q-197 of the "Quebec Case."

143. Quebec Factum at 63-4. On the perceived importance of the 1879 correspondence, see Diubaldo "Absurd Little Mouse" at 38-9.

144. Jenness Eskimo Administration at 40. Debates also occurred before the North West Territories Council; see Diubaldo Government of Canada and the Inuit at 48-9, citing PAC RG85/1676/250-1-1/2A, Extracts of Minutes of 92nd Session of the N.W.T. Council, 27 April 1939, 9 January 1940, 15 February 1940, 2 April 1940. See also RG85/1870/540-1/2, 8 November 1946, 17 July 1947; RG85/1234/250-1-1-4A, 14 June 1950. "The Indian Act" S.C. 1951, c.29, s.4(1) provides: "This Act does not apply to the race of aborigines commonly referred to as Eskimos." See also "The Indian Act" R.S.C. 1970, c.149, s.5(4)(1).

145. Diubaldo Government of Canada and the Inuit notes at 51-2 that federal government Inuit policy witnessed a "take-off" period after the Department of Northern Affairs and Natural Resources was created in 1953. Dorais Quaqtaq notes at 32 that the Quebec government refused to have anything to do with the Nunavik Inuit until the election of the provincial Liberals in 1960, on a platform of increased economic and social autonomy for Quebec. Due to its mineral base and hydroelectric potential, the new government considered Nunavik a strategic area. In 1960, the Quebec Provincial Police replaced the RCMP in Kuujjuaq and Great Whale River (Kuujjuaraapik), and in 1961 the Direction generale du Nouveau-Quebec was set up under the Minister of Natural Resources, Rene Levesque. In time, the issue would become entangled in the on-going debates over secession and sovereignty-association, with the two levels of government taking positions quite contrary to the ones they adopted in Re Eskimos.

146. Jenness Eskimo Administration at 40-1.

ENDNOTES TO CHAPTER THREE

1. Rapid City Historical Book Society Rapid City and District: Our Past for the Future (Altona, Manitoba: Friesen Printers, 1978) at 1-23, 82. The first agricultural fair in western Canada was held at Fort Garry in 1871. Rapid City held its first rural fair in 1880. By 1882, seventeen towns were holding fall agricultural exhibitions: Ken Coates and Fred McGuinness Pride of the Land: An Affectionate History of Brandon's Agricultural Exhibitions (Winnipeg, Peguis Publishers, 1985) 1-47. John W. Bennett and Seena B. Kohl Settling the Canadian-American West, 1890-1915 (Lincoln: University of Nebraska Press, 1995) indicate at 31-2 that census data from 1910 show "a plurality of Canadian-born settlers in western Canada came from Ontario." Overall, the British Isles and Scandinavia furnished the "lion's share of European-born residents of the northern plains" from 1900-1920, with Russia and Poland furnishing "sizeable numbers for Saskatchewan" as well.

2. Rapid City Historical Book Society Rapid City at 7, 22-25, 69. On the development of prairie towns and villages during this period, the jockeying for competitive position between them, and the role such centres played in the servicing of nearby rural areas, see Gerald Friesen The Canadian Prairies: A History (Toronto: University of Toronto Press, 1987) at 320-7; Paul Voisey "The Urbanization of the

Canadian Prairies, 1871-1916" in R. Douglas Francis and Howard Palmer eds. The Prairie West: Historical Readings (Edmonton: University of Alberta Press, 1985) 383-407.

3. Peter Douglas Elias The Dakota of the Canadian Northwest: Lessons for Survival (Winnipeg: University of Manitoba Press, 1988) describes at 71-115 some of the agricultural history of the area.

4. Rapid City Historical Book Society Rapid City at 8-25. On the significance of festivals in the cultural anthropological sense, see Alessandro Falassi ed. Time Out of Time: Essays on the Festival (Albuquerque: University of New Mexico Press, 1987).

5. Rapid City Historical Book Society Rapid City at 8, 14, 21, 35, 136-7, 363-4. Friesen Canadian Prairies describes at 324-25 the emerging social divisions among the residents of prairie towns, noting that "the people with status were merchants and professionals, many of whom would be only slightly above the lower orders in wealth but all of whom could claim independent status. The poorest among them might own a barber shop or a small smithy and have a net worth of between \$500 and \$3,000. The dozen wealthiest men might have businesses worth \$5-10,000 in the 1880s, double that sum by 1910, and triple by 1930. These were the individuals who dominated the town council, served on the executives of the clubs and associations, and thus set the tone of the 'better class.' Any one of their number might build a great brick mansion on the edge of town, purchase a grand piano, take a holiday in 'the East,' or send his children to school in Winnipeg, Regina, or Calgary." On the "boosterism" of "founding fathers" of

prairie towns during this era, see Bennett and Kohl Settling the Canadian-American West at 159, 184; Alan F.J. Artibise "Boosterism and the Development of Prairie Cities, 1871-1913" in Francis and Palmer eds. Prairie West 408-34.

6. Although some whites employed First Nations' people on a casual basis as waged labourers, most encountered the Aboriginal people only when they came into town to trade, selling wild strawberries in the summer and frozen fish, woven baskets and beaded buckskin moccasins in the winter: Rapid City Historical Book Society Rapid City at 18, 134. Carolyn Strange and Tina Loo "Spectacular Justice: The Circus on Trial, and the Trial as Circus, Picton, 1903" Canadian Historical Review 77:2 (1996) 159 note at 177-80 that the racial divisions between whites and Blacks were also drilled into spectators when itinerant circuses passed through the countryside, with their strict racial boundaries between the white performers who exhibited their acts of daring under the Big Top and the Black labourers who assembled and dismantled the heavy tents and performed, if at all, in the sideshow displays, presented as "freaks of nature, missing links between animals and humans."

7. Coates and McGuinness Brandon's Agricultural Exhibitions at 29; Jon Whyte Indians in the Rockies (Banff: Altitude Publishing, 1985) at 71-80; Keith Regular "On Public Display" Alberta History 34:1 (1986) at 1-10. Edward Ahenakew in Ruth M. Buck ed. Voices of the Plains Cree (Regina: Canadian Plains Research Center, University of Regina, 1995) describes at 86 the diversions of prairie fairs, "to which the Indians were always invited, with special camping privileges at the grounds." Rapid City Historical Book Society Rapid City notes at 34 that Malcolm Turriff was "one of [Chief] J.

Antoine's earliest acquaintances."

8. Rapid City Historical Book Society Rapid City at 34 describes Antoine's funeral: "A most amazing personality, James Antoine, one of the oldest members of the Oak River Sioux Reserve, was buried with sombre pomp and ceremony. Granting his request, the citizens of Rapid City who realized his unique contribution, laid him to rest in the King's uniform and wrapped in a Union Jack."

9. Rapid City Historical Book Society Rapid City notes at 7-8 the participation of the "Indians of the region" at the Dominion Day celebrations in the late 1870s. G.F. Barker Brandon: A City, 1881-1961 (Altona, Manitoba: D.W. Friesen & Sons Ltd., 1977) describes at 9 (in patronizing tone) the presence of the Oak River Dakota in Brandon during the summer of 1885: "Now, the Northwest uprising quelled and its leaders under arrest, Indians of the Oak River reserve, attired in bright colors, feathers, beads and war-paint, descended on the City. Bearing a Union Jack and 'accompanied by tom-tom martial music,' the mounted band paused before the 'boss of the town (Mayor Smart)' while their two chiefs - using an interpreter - sought permission to express, through a pow-wow, their allegiance to the Queen. A reporter described the performance as an 'effort unsurpassed by anything ever attempted here...the monotonous beating of the drums by musicians seated in a circle...dancers moving, barking, hooting.' Of course, the hat was passed around a few times, with remarkable success." See also Sarah Carter "Agriculture and Agitation on the Oak River Dakota Reserve, 1875-1895" Manitoba History 6:2 (Fall 1983) at 4.

10. Hopper, born in 1883, recounts this memory in Rapid City Historical Book Society Rapid City at 127. Dave McNaught recollects at 134: "[The Indians] always came on Citizens Day in the summer and put on a pow-wow on the corner, where the Union Bank was built afterwards, singing and dancing to the steady beat of the drum."

11. Rapid City Historical Book Society Rapid City at 24-25.

12. See, for example, "The Sun Dance: Thrilling Scenes among the Indians of the Assiniboine Reserve" Qu'Appelle Progress 16 June 1887; "Frightful Cruelties at the Manufacture of Braves: A Sun Dance, Revolting Scenes" Regina Leader 26 July 1883, p.1; and similar discussion in Regina Leader 14 June 1894, p.8; "Indians Perishing: Dying from the Practices of their Heathen Religion" Ottawa Evening Journal 9 December 1896; "Red Men Observe Weird Ceremony" and "Scene in Hall Where Indians Dance Continuously for Forty-Eight Hours Beggars Description: Former Barbarous Custom of Initiating Braves Left Out" Edmonton Journal 21 July 1923.

13. Lethbridge Herald 23 August 1911. Equally indicative of these conflicting emotions are the number of white authority figures who seem to have been captivated by Aboriginal ceremonies. For one account, see the reference in Fine Day My Cree People (Invermere, B.C., Good Medicines Books, 1973) at 26 describing how the Chief of Police wanted to witness a Sun Dance ceremony. The Chief "quietly encouraged" Fine Day to go ahead with it, although the Indian Agent threatened to imprison Fine Day for seven months and Thunderchild for three months. The Sun Dance was held near Battleford. Fine Day does not give the date.

14. W. Keith Regular "'Red Backs and White Burdens': A Study of White Attitudes Towards Indians in Southern Alberta, 1896-1911" M.A. Thesis (University of Calgary: 1985) notes at 41 and 152 that during the first decade of the 20th century, as the First Nations began to move out of the "reserves," the greater contact with whites in surrounding towns led to a realization by some segments of white society that "Indians were a resource that could be exploited, especially to the benefit of the numerous local fairs and exhibitions."

15. The population of the Oak River Dakota was estimated as follows: 281 (1895); 275 (1896); 283 (1897); 302 (1898); 313 (1899); 316 (1900). In 1901, the records no longer break down the population of the separate communities, reporting the combined number from the Birtle Agency (five Saulteaux and four Sioux communities) at 924. In 1902, the combined number was 902; the 1902 report also indicates a reduction in the number at Oak River Sioux of 60 individuals who had previously left and returned to the United States, but not been taken off the census return. By 1903, the combined number for the Birtle Agency dropped to 890. See Sessional Papers Dominion of Canada (Ottawa: Queen's Printer) (1895) at 141-3; (1896) at 142-4; (1897) at 122-4; (1898) at 115-8; (1899) at 126-8; (1900) at 131-5; (1901) at 123-7; (1902) at 121; (1903) at 142. On the presence of the whole community, see Statutory Declarations of Pazaiyapa and others, "In the Matter of Wanduta, an Indian," 9 February 1903, Public Archives of Canada, RG10, v.3825, file 60-511-1 [hereafter PAC file 60-511-1].

16. The details of the dance at the Annual Fair are drawn from PAC file 60-511-1. Why the Dakota did not charge admission directly themselves is not clear. At least some

First Nations' communities had considered their own admission fees in the past: see the Qu'Appelle Vidette 11 August 1887, which intimated that the Blood talked of charging admission at their Sun Dance on the "Blood Reserve" that year: "They say that, when the Whites have a show, they charge admission, and, as this is their great circus, they do not see why they should not do the same." On the intermingling of Dakota and whites at the sports events, Rapid City Historical Book Society Rapid City recounts at 134 the memories of Dave McNaught, who recalls that the Dakota participated in one of the competitions on "Citizens Day" to capture a greased pig: "[A] small pig was liberally coated with axle grease and turned loose to become the property of anyone who could catch and hold it. A great crowd of boys chased it but a greasy pig is a very hard thing to grip and hold. Most of us were very pleased to see a young Indian catch its hind leg and hold it."

17. Patricia Monture-Angus Thunder in my Soul: A Mohawk Woman Speaks (Halifax: Fernwood Publishing, 1995) at 211. Pat Deiter McArthur Dances of the Northern Plains (Saskatoon: Saskatchewan Indian Cultural Centre, 1987) notes at p.xii that "knowledge [about the various stages and steps that are followed in a ceremony] is reserved for men who have received this right either through a vision or from an elder wishing to pass his knowledge on." On the "beauty," "costumes" and "picturesqueness" of the Grass Dance, see Gontran LaViolette, O.M.I. The Sioux Indians in Canada (Saskatchewan Historical Society: Regina, 1944) at 126-7; James Howard The Canadian Sioux (Lincoln: University of Nebraska Press, 1984) at 146-69.

18. "An Act further to amend 'The Indian Act, 1880'" S.C. 1884, c.27, s.3

provides: "Every Indian or other person who engages in or assists in celebrating the Indian festival known as the 'Potlach' or in the Indian dance known as the 'Tamanawas' is guilty of a misdemeanour, and shall be liable to imprisonment for a term of not more than six nor less than two months in any gaol or other place of confinement; and any Indian or other person who encourages, either directly or indirectly, an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall assist in the celebration of the same is guilty of a like offence, and shall be liable to the same punishment." The term "Potlach" or "Potlatch" originates from the Chinook trade language and means "giving": Katherine Pettipas Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies (Winnipeg: University of Manitoba Press, 1994) at 253. The term "tamanawas" is derived from a Lower Chinook word meaning "being endowed with super-natural power": Douglas Cole and Ira Chaikin An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast (Vancouver: Douglas & McIntyre, 1990) at 12. On the west coast dances and their suppression, see Cole and Chaikin, An Iron Hand; Forrest LaViolette The Struggle for Survival: Indian Cultures and the Protestant Ethic in British Columbia (Toronto: University of Toronto Press, 1973); Robin Fisher Contact and Conflict: Indian-European Relations in British Columbia 1770-1890 (Vancouver: University of British Columbia Press, 1977); Peter MacNair "From Kwakiutl to Kwakwa ka'wakw" in R. Bruce Morrison and C. Roderick Wilson eds. Native Peoples: The Canadian Experience (Toronto: 1986); Tina Loo "Don Cranmer's Potlatch: Law as Coercion, Symbol and Rhetoric in British Columbia, 1884-1951" in Tina Loo and Lorna R. McLean Historical Perspectives on Law and Society in Canada (Toronto: Copp Clark Longman, 1994) at 219; Robin Brownlie

and Mary-Ellen Kelm "Desperately Seeking Absolution: Native Agency as Colonialist Alibi?" Canadian Historical Review 75:4 (December 1994) 543; Helen Codere Fighting with Property: A Study of Kwakiutl Potlatching and Warfare, 1792-1930 (New York: J.J. Augustus, 1950); Franz Boas The Social Organization and the Secret Societies of the Kwakiutl Indians, Report of the United States National Museum for 1895 (Washington: Government Printing Office, 1897); Philip Drucker and Robert F. Heizer To Make My Name Good: A Re-examination of the Southern Kwakiutl Potlatch (Berkeley: University of California Press, 1967); George Clutesi Potlatch (Sidney, B.C.: Gray's Publishing, 1969).

19. "An Act further to amend the Indian Act" S.C. 1895, c.35, s.6, 114.

20. The exchange of horses is described in a letter from David Laird, Indian Commissioner, Winnipeg to Secretary, Department of Indian Affairs, Ottawa, 28 February 1903. George Coldwell, the lawyer who would later act for the Dakota, conceded that blankets were also given away: Letter from George Coldwell KC to Clifford Sifton, Minister of the Interior, Ottawa, 20 February 1902. PAC file 60-511-1.

21. "An Act respecting Indians" R.S.C. 1886, c.43, s.112 provides: "Every one who incites any Indian to commit any indictable offence is guilty of felony and liable to imprisonment for any term not exceeding five years." First appearing in "An Act to make better provision of the Administration of Justice in the unorganized tracts of Country in Upper Canada" S.Prov.C. 1853, c.176, s.9, the provision read: "That any person inciting Indians or half-breeds frequenting or residing in such tracts of country as aforesaid, to the

disturbance of the public peace or to the commission of any other indictable offence, shall be guilty of a felony, and upon conviction thereof shall be sentenced to imprisonment for not more than five years nor less than two years in the Provincial Penitentiary...." Re-enacted as C.S.U.C. 1859, c.128, s.104, it was removed from "An Act respecting Indians" R.S.C. 1906, c.81, and transferred to the "Criminal Code": see "An Act respecting the Criminal Law" R.S.C. 1906, c.146, s.110; R.S.C. 1927, c.36, s.110. It was deleted from the "Criminal Code" in S.C. 1953-54, c.51. Alternate charges might have been laid under s.111 of "An Act respecting Indians" R.S.C. 1886, c.43, which provides:

Whoever induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds apparently acting in concert

(a) to make any request or demand of any agent or servant of the Government in a riotous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or

(b) to do an act calculated to cause a breach of the peace

is guilty of a misdemeanour and shall be liable to be imprisoned for any term not exceeding two years, with or without hard labor.

First enacted in "An Act further to amend 'The Indian Act, 1880'" S.C. 1884, c.27, s.1, a parallel provision was contained in "The Criminal Code, 1892" S.C. 1892, c.29,

s.98, which increased the severity to an indictable offence, with a maximum of two years' imprisonment. The original provision was removed from "An Act respecting Indians" R.S.C. 1906, c.81, although the alternate indictable offence remained in the "Criminal Code": see "An Act respecting the Criminal Law" R.S.C. 1906, c.146, s.109; R.S.C. 1927, c.36, s.109. It was deleted from the "Criminal Code" in S.C. 1953-54, c.51.

22. "An Act further to amend the Indian Act" S.C. 1895, c.35, s.114. The proviso was originally drafted to read: "Always provided that the foregoing shall not apply to any agricultural show or exhibition at which prizes are given to the best exhibits thereat." Prime Minister Mackenzie Bowell argued for the deletion of this clause, noting that if it remained, "it will permit all these iniquities we are trying to prevent being performed at an agricultural show. The reason for making an exception of agricultural fairs was that it was thought that if the clause was passed without a proviso, it might prevent the giving of prizes at these exhibitions where the Indians compete, as they do in the North-west, for prizes." The Prime Minister moved that the original wording be deleted, and the more restricted proviso was substituted. See Hansard Parliamentary Debates Senate of Canada, 31 May 1895 at 194.

23. Wilson D. Wallis The Canadian Dakota (New York: AMS Press, 1947) at 42 quotes George Catlin Letters and notes on the manners, customs and conditions of North American Indians 3rd ed. (London: 1842) v.1 at 245: "I saw so many of their different varieties of dances among the Sioux that I should almost be disposed to denominate them the **"dancing Indians."** Elias Dakota of the Canadian Northwest notes at 73 that 1879 marked the first year after settlement in which "anyone had anything to give away." On

the construction of the round house, see Carter "Agriculture and Agitation" at 4. On the meaning of spiritual dances to First Nations' people, see Stan Cuthand "The Native Peoples of the Prairie Provinces in the 1920's and 1930's" in Ian Getty and Donald Smith eds. One Century Later: Western Canadian Reserve Indians Since Treaty 7 (Vancouver: University of British Columbia Press, 1978) 31 at 39.

24. In his 1897 report, white Indian Agent John A. Markle described the Oak River community: "There is a church near the eastern boundary of the reserve, erected by the Episcopalians solely for the benefit of these Indians, and services are held therein every Sabbath, at which, off and on, almost all the Indians attend; but my conviction is that they, with very few exceptions, cling more closely to their ancient beliefs than they do to the Christian religion." Sessional Papers (1898) v.XXXII, no.11, paper 14 at 124. In his 1901 report, white Indian Agent G.H. Wheatley noted that there was a Church of England Sunday service and a Sunday school held at Oak River, but apart from "several Christian families" who attended regularly, "the large majority take no interest and do not attend." Sessional Papers (1902) v.XXXVI, no.11, paper 27 at 125. Elias Dakota of the Canadian Northwest notes at 114 that "most of the [Dakota] at Birdtail were confirmed churchgoers by [the turn of the century]...but at Oak River, the band was divided amongst the Christians and the pagans, as the non-Christians were called.... The clear favouritism that Indian-department officials showed the Christians, as well as the scorn heaped on the pagans, added to the political divisions in the communities, but for the first few years of the decade, there was largely a live and let live attitude on the part of the different groups."

25. See A. Blair Stonechild, who writes at p.x in Pettipas Severing the Ties that Bind: "An attack on First Nations spirituality is an attack on the core of First Nations identity, since spirituality pervades all aspects of the First Nations lifestyle." Jacqueline Gresko "White 'Rites' and Indian 'Rites': Indian Education and Native Responses in the West, 1870-1910" in A.W. Raporich ed. Western Canada Past and Present (Calgary: McClelland and Stewart West, 1974) 163 notes at 175 that annual Sun Dance gatherings constituted "the core of cultural resistance among the Cree, Assiniboine, Saulteaux, and Sioux. The sun dance presented a parallel educational system designed to oppose that of the government and missionaries." See also Jacqueline Judith (Gresko) Kennedy "Qu'Appelle Industrial School: White 'Rites' for the Indians of the old North-West" M.A. Thesis (Carleton University: 1970); Pettipas Severing the Ties that Bind at 3.

26. Dr. Edward Ahenakew, a Sandy Lake Cree as well and Anglican theologian, recounts in Voices at 86 the views of Old Keyam, a fictional, semi-autobiographical character, who steadfastly refused to attend local fairs, resenting the gaze of curious spectators and "sensitive to offence, however unintentional." For an example of a particularly insensitive account of a Sun Dance, written by William Trant, a white Justice of the Peace from the North West Territories, see "The Last of the Indian Sun Dance; Or Making Chief Pla-Pot's [sic] Braves" Regina Standard (Special Christmas Edition) December 1909, in which he describes the participants, "bedaubed with gaudy paints," as looking "very comic" and "bobbing up and down like the hammers of a piano, keeping time in a sort of rhythm to the 'squealing of the wry-necked fife' or whistle that each one held in his or her mouth like a cigar, while the 'band' of tom-toms sent forth its wearisome rat-a-tat which the Indians think music."

27. Sidney L. Harring Crow Dog's Case: American Indian Sovereignty, Tribal Law and United States Law in the Nineteenth Century (Cambridge: Cambridge University Press, 1994) describes at 179 the famous Dakota leader Sitting Bull's brief tour with Buffalo Bill's Wild West Show. Harring also notes at 274 that in the United States, after most Indian agents outlawed traditional ceremonies and enforced this ban with arrests, Aboriginal communities used every possible white-sanctioned occasion for traditional spiritual practices, including cattle fairs, church services, and Fourth of July celebrations.

28. Cuthand "Native Peoples" at 38. For accounts of Cree elders regarding the importance of dances to the survival of their religion and culture, see statements of Pierre Lewis (Onion Lake), Pat Paddy, George Albert (Sandy Lake), and Alec Simaganis in Kataayuk: Saskatchewan Indian Elders (Saskatchewan: Saskatchewan Indian Cultural College, 1976), n.p.; Norma Sluman and Jean Goodwill John Tootoosis: A Biography of a Cree Leader (Ottawa: Golden Dog Press, 1982) at 141-3. On the comments of anthropologists, see, for example, Wallis Canadian Dakota at 47, quoting Mary Eastman Dahcotah; or life and legends of the Sioux around Fort Snelling (New York: 1849) at p.xx.

29. Pettipas Severing the Ties that Bind at 54-59. Elias Dakota of the Canadian Northwest notes at 72-3 that a degree of labour specialization existed amongst the Oak River Dakota, with some individuals farming and others hunting, fishing and trapping: "Farming is notorious for its long periods with no income and its single short season of high cash flow, while hunting and fishing produce relatively low incomes spread

throughout the year. The mechanism that tended to level the economic differences in the reserve communities was the giveaway, during which a household would make itself destitute by giving virtually all of its possessions to others in the band. The guiding principle was that those who could gave, and those who couldn't received. No person was obliged to become a public beggar in order to partake of his relatives' good fortune." He also notes that the Give-Away Dances reflected the community responsibility to look after the needs of the elderly and poorer members. See also Elizabeth S. Grob-Smith "The Lakota Giveaway: A System of Social Reciprocity" Plains Anthropologist 24:84 (1979) 123-131.

30. Introducing the bill in his role as Superintendent of Indian Affairs, Prime Minister Macdonald added: "[T]he departmental officers and all clergymen unite in affirming that it is absolutely necessary to put this practice down. [...] At these gatherings they give away their guns and all their property in a species of rivalry, and go so far as to give away their wives...." See Hansard Debates House of Commons, 24 March 1884 at 1063; 7 April 1884 at 1399.

31. Debates Senate of Canada, 15 April 1884 at 625, 17 April 1884 at 654. A white Nova Scotia senator, Robert Barry Dickey, added: "it is to be regretted that we should go so far as to interfere with their games and amusements, their festivals and dances."

32. Senator Almon, born 27 January 1816 in Halifax, obtained his medical training at the University of Edinburgh and the University of Glasgow, and served as the

assistant surgeon in the 5th Regiment of the Halifax militia, physician to the Poor's Asylum, founder of a private hospital in Halifax, president of the Medical Society of Nova Scotia, president of the faculty of medicine at Dalhousie College, and a Conservative member of Parliament between 1872 and 1874. An avid collector of literary and historical books, Almon was known for his support of the rebel confederates during the American Civil War, prompting the Confederate president Jefferson Davis to thank him personally for his "efficient and disinterested support of the cause." Many First Nations allied with the confederacy during the civil war, in an effort to resist continuing expansion of settlers into their territory. When he spoke of Highland dancers, Senator Almon may well have been thinking back to the 16th century in Scotland, to a period when traditional May Day celebrations featuring Morris and sword dances were outlawed as "superstitious rites." See "Almon, William Johnston" Dictionary of Canadian Biography v.12 (Toronto: University of Toronto Press, 1994) at 16-17; George S. Emmerson Scottish Country Dancing: An Evolutionary Triumph (Oakville, Galt, 1997).

33. Third reading in both the House of Commons and the Senate was completed, and royal assent granted, between 17 and 19 April 1884. Speaking on behalf of the government in the Senate, Sir Alexander Campbell insisted that the statute "would only be enforced in a spirit of mercy." Debates Senate of Canada, 17 April 1884 at 654. On the inappropriateness of the minimum penalty, see Sessional Papers (1897) v.XXXII, no.12, paper 15, in which John Cotton, a white Superintendent of the Northwest Mounted Police, reports that he sentenced three Cree men (Thunderchild, Enu and Wa-pa-ha) to the minimum two months' penalty, and that this was "a very severe sentence and not

unlikely to be injurious to health." "I and the magistrate sitting with me regretted exceedingly that we were precluded from inflicting a much lighter sentence," continued Cotton, concluding: "I think experience has shown that the minimum sentence to be awarded in such cases should be lighter. I trust the Indian Act may be so amended during the coming session of Parliament."

34. These comments were made during an application for habeas corpus in the trial of Hamasak, a Kwakiutl chief of the Mamalillikulla, who was tried for conducting a potlatch in 1889. Granting the application upon other grounds, Begbie offered his opinion that: "If the Legislature had intended to prohibit any meeting announced by the name of a potlatch, they should have said so. But if it be desired to create an offence previously unknown to the law there ought to be some definition of it in the Statute. The dance Tamanawas for instance referred to in the same section is utterly unknown here, and it may well be that an Indian who had taken part in some quite innocent performance of dancing which the Legislature never intended to ban, might plead guilty to a charge of having danced. It is by no means clear that it was fully explained to the defendant what the Statute forbids. It would seem the Statute should set out what acts constitute the forbidden festival. Until the defendant knows what those forbidden acts are, how can he say whether he has committed them or not? I think these considerations show that there would be some difficulty in convicting at all under the Statute." Unreported Judgment of M.B. Begbie, R. v. Hemasak, n.d., included in Moffat to Vankoughnet, 30 August 1889, PAC RG10, v.3628, file 6244-1; Cole and Chaikin An Iron Hand at 35-6; LaViolette Struggle for Survival at 59-61; Loo "Dan Cranmer's Potlatch" at 229.

35. Pettipas Severing the Ties that Bind notes at 104 that prior to the 1895 amendment, there had been at least one attempt to use the original Potlatch law to prosecute individuals conducting a Sun Dance on the prairies. In 1893 several Aboriginal people from Hobbema, Saddle Lake and Stoney Plains were arrested by D.L. Clink, the white Hobbema Indian Agent, for conducting a ceremony on a "Half-breed settlement" on the Battle River. Clink also arranged to have the ceremonial lodge torn down. Officials from the Department of Indian Affairs advised Clink that they thought he was mistaken in treating the Sun Dance as identical to the Potlatch, and warned him to exercise "extreme caution" in making further arrests. Those arrested were released with a reprimand. Department of Indian Affairs to the Indian Commissioner, 12 July 1893; D.L. Clink to Indian Commissioner, 19 June 1893. PAC file 60-511-1 at 1.

36. I am indebted to Tracey Lindberg for pointing out how words such as "wounding" and "mutilation" reveal substantial cross-cultural misunderstandings. In Debates, Senate of Canada, 27 May 1895 at 139-41, the Prime Minister stated: "It has been found that section 114 of the Act as it stands is insufficient to prevent the holding of such Indian festivals such as the Potla[t]ch or Tamanawas. The late Chief Justice of British Columbia expressed the opinion that it would be difficult to convict under it. It has been held that the mere designation of the festival or dance, such as the Potla[t]ch or Tamanawas is not sufficient for conviction of an Indian or other person engaging or assisting in celebrating it, but that what is done thereat, which constitutes the offence, must likewise be described. As there is a similar dance to the Potla[t]ch celebrated by the Indian bands in the North-west Territories, known as Omas-ko-sim-moo-wok or "grass dance," commonly known as "Giving away dance," and there are, no doubt, Indian

celebrations of the same character elsewhere, all of which consist of the giving away, parting with, or exchanging of large quantities of personal effects, sometimes all that the participants own, and it is considered better to prohibit all giving-away festivals, as they are conducive of extravagance, and cause much loss of time and assemblance of large numbers of Indians, with all the usual attendant evils." The Prime Minister's comments appear to have been drawn directly from a brief drafted by the Indian Affairs Branch; see "Brief on the Bill to further Amend the Indian Act" (PAC, RG10, v.6,808, file 470-2-3, part 1 at 7). See also comments in Debates Senate of Canada, 31 May 1895 at 193-4.

37. Debates House of Commons, 5 July 1895 at 3935; Debates Senate of Canada, 31 May 1895 at 194-5. The bill received royal assent on 22 July 1895.

38. Cuthand "Native Peoples" at 38-9. For discussion of the federal policy of cultural suppression in the prairie region, see Brian Titley A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada (Vancouver: University of British Columbia Press, 1986); Gresko "White 'Rites' and Indian 'Rites';" (Gresko) Kennedy "Qu'Appelle Industrial School;" Regular "Red Backs and White Burdens;" Regular "On Public Display."

39. Carter "Agriculture and Agitation" at 6-8, citing PAC RG10, v.3895, file 97,456; Letter from Rev. J.A. Therien of Onion Lake, P.P. Moulin of Hobbema, P. Lebre of Riviere qui Barre, V. Gabillon of Sacred Heart, W. Comire of Good Fish Lake, F.V. Le Goff and H. Delmas of Duck Lake and ten others to D.C. Scott, 23 July 1923, PAC RG10, v.3827, file 60,511-4B; Pettipas Severing the Ties that Bind at 3-4. Elias Dakota

of the Canadian Northwest notes at 117 that Reverend John Thunder, the white Presbyterian minister at the nearby Dakota community of Oak Lake, objected to the dances, and in particular to the Give-Aways. Thunder corresponded with David Laird in 1907, requesting the criminal prosecution of traditional dancers.

40. Sarah Carter "Categories and Terrains of Exclusion: Constructing the 'Indian Woman' in the Early Settlement Era in Western Canada" Great Plains Quarterly v.13 (Summer 1993) 147 at 149-50, citing Canada Sessional Papers Annual Report of the Superintendent General of Indian Affairs for the year ending 30 June 1898, p.xix, for the year ending 31 December 1899, pp.xxiii, xxviii, 166. See also (Gresko) Kennedy "Qu'Appelle Industrial School" who notes at 194 that "the Indian Department disliked the dances which stirred up dust from the dirt or wooden floors of Indian homes and usually took place indoors in winter, so that the ventilation of the hovels became even worse by the dust stirred up." Sarah Carter Capturing Women: The Manipulation of Cultural Imagery in Canada's Prairie West (Montreal: McGill-Queen's University Press, 1997) describes at 158-93 the negative images perpetuated by whites of Aboriginal women as "slovenly and unclean in their personal habits as well as their housekeeping."

41. Frank Pedley to T. Cory, Indian Agent At Carlyle, Saskatchewan, 9 March 1902 (PAC RG10, v.3,826, file 60,511-3) at 1; Letter of W.H. Lomas, Indian Agent, Cowechan Indian Agency, Maple Bay, B.C., 5 February 1884, as read in the Senate by Sir Alexander Campbell, Debates Senate of Canada, 15 April 1884 at 622.

42. Sergeant Albert Mountain to Officer Commanding, Battleford, 23 March 1894

(PAC file 60-511-1) at 2; Pettipas Severing the Ties that Bind at 160-1, quoting William Graham to Secretary, 29 October 1928 (PAC RG10, v.3,827, file 60,511-4B) at 1.

43. See Brief, Bill No. 114, Amendments to the Indian Act, 1914 (PAC RG10, v.6,809, file 470-2-3, part 6) at 18-22; Sessional Papers, Annual Report of the Department of Indian Affairs for the Year Ending 31 December 1881 (Ottawa: Queen's Printer) at 82.

44. Debates House of Commons, 8 May 1914, at 3482. Frank Oliver, elected as an Independent Liberal for the District of Alberta in 1896, was appointed Sifton's successor as Minister of the Interior in 1905, and served in that post until the resignation of the government in 1911. See D.J. Hall Clifford Sifton: A Lonely Eminence, 1901-1929 (Vancouver: University of British Columbia Press, 1981 and 1985) v.1 at 136; v.2 at 61-2, 191; "Hon. Frank Oliver Passes Suddenly" Toronto Globe & Mail 1 April 1933.

45. Hamasak (sometimes referred to as Hemasak or Ha-mer-ceeluc) was arrested on 1 August 1889, by Indian Agent R.H. Pidcock of Alert Bay, who acted as justice of the peace in the hearing. Hamasak pleaded guilty and was sentenced to six months. After some confusion, Pidcock (or perhaps the Superintendent's office) committed Hamasak for trial again in Victoria. On 17 August, Hamasak's friends applied for a writ of **habeas corpus**, which was granted by Chief Justice Sir Matthew Begbie on the ground that, having already been convicted in Alert Bay, the accused could not be tried again. This was also the case in which Begbie voiced his criticism of the wording of the statute, as discussed supra. See Judgment of M.B. Begbie; Cole and Chaikin An Iron Hand at

35-6: Loo "Dan Cranmer's Potlatch" at 229.

46. Indian Agent Wright arrested Matoose and charged him with "inciting the Indians to commit a breach of the peace." Matoose was held in custody for five days, and released after the posting of a \$200 bond under a recognizance to "keep the peace" for three months. See A. Bowen Perry, Regina, to the Superintendent Commissioner, Depot Division, Annual Report 1895 (Canada Sessional Papers 1896, no.15) at 64.

47. Pettipas Severing the Ties that Bind at 115-16. The Department of Indian Affairs was concerned that the Indian Agent may have exceeded his jurisdiction in this case, when he undertook to conduct the trial as an **ex officio** justice of the peace. They were incorrect in this, since "An Act to amend 'The Indian Act, 1880'" S.C. 1881, c.17, s.12 authorizes an Indian Agent to serve as an "**ex officio** justice of the peace for the purposes of this Act." See also "An Act to further amend 'The Indian Act, 1880'" S.C. 1882, c.30, s.3; "The Indian Act" R.S.C. 1886, c.43, s.117; S.C. 1890, c.29, s.9; S.C. 1894, c.32, s.8; S.C. 1895, c.35, s.7; R.S.C. 1906, c.81, s.161; S.C. 1951, c.29, s.106. See Commissioner of Indian Affairs to Superintendent General of Indian Affairs, 21 September 1896 and Sergeant Des Barres, Report of the Proceedings of Court held at Indian Agent's Office, Crooked Lake, Assiniboia, 17 July 1896, PAC file 60-511-1 at 1.

48. Five Cree men were charged: Chief Thunderchild, Wa-pa-ha, Paddy, O-ka-nu and Enu. Charges were filed and prosecuted by Indian Agent P.J. Williams and the farm instructor of the Battleford Agency. Superintendent John Cotton and Inspector J.V. Begin of the North West Mounted Police acted as justices of the peace. All five accused

were convicted on 18 January 1897 after pleading guilty. Paddy and O-ka-nu were given suspended sentences because of their youth, but the other three were sentenced to the statutory minimum term of two months in jail. The terms were later commuted at the request of the convicting justices and the police commissioner. The Cree dancers were released from jail on 10 February 1897. For accounts of this case, see PAC file 60,511-1 at 1-2; Pettipas Severing the Ties that Bind at 117-18.

49. Chief Thunderchild "The Sun Dance," as transcribed and translated in Ahenakew Voices at 46-47 and 50. Chief Thunderchild (1849-1927) whose Cree name was Peyasiw-awasis, became one of the most knowledgeable and respected Aboriginal story-tellers on the prairies, revered for his life as a warrior and hunter. Dr. Edward Ahenakew recorded many of Chief Thunderchild's stories in written form in 1923.

50. The arresting officer was John Cotton, Superintendent commanding "C" Division in Battleford. Only Ky-ass-i-kan was sentenced, and his initial term of two months was later commuted due to his advancing age and infirmity. See PAC file 60,511-1 at 2 and RG18, v.1,382, file 76; Pettipas Severing the Ties that Bind at 118.

51. Constable T. Hosken to Officer Commanding, 14 December 1897, Report: Indians, Arrest and Trial of "Yellow Bird" for Encouraging to start a Give Away Dance (PAC RG18, v.1,382, file 76) at 2.

52. Pettipas Severing the Ties that Bind at 15 and 116, 118-19; Annual Report of Inspector J.O. Wilson, Commanding Regina District, North-West Mounted Police,

District Office Regina, December 1901 (Sessional Papers 1902, no.12) at 91. Five of the others were released on suspended sentence, while the sixth served six months' imprisonment "at hard labour" in the Regina prison guard room. The Cree offered some resistance when the two arresting officers attempted to stop the ceremony, and the authorities had to call to Regina for reinforcements. This was not Piapot's first arrest for conducting spiritual dances. In the late 1890s, he was incarcerated for performing the piercing ceremony for approximately twenty young men at a Thirst Dance, but the official charge was apparently "drunkenness": see Pettipas at 15 and 116; Abel Watetch Payepot and His People (Saskatoon: Modern Press, 1959) at 39. Watetch reports that the Department of Indian Affairs removed Piapot from his position as chief for these transgressions, and indicates that this, combined with the prosecutions, "broke the old man's spirit." In protest, members of Piapot's community refused to elect another chief until after his death. See also W.P. Stewart My Name is Piapot (Maple Creek: Butterfly Books, 1981).

53. Pettipas Severing the Ties that Bind at 122. Pettipas also recounts at 107-25 that in addition to criminal prosecution, informal methods were used to deter ceremonial dancing, such as persuasion and threats by Indian agents and local police, refusal to issue "passes" for travel off-reserve, withholding of Indian Agency food rations, the confiscation of sacred offerings and the dismantling of ceremonial lodges. My extensive archival searching has led me to conclude that most of the written legal records for the prosecutions no longer survive. Some have been destroyed by archivists who deemed the files "historically insignificant." Others were never fully documented by the prosecuting and judicial authorities in the first place. For further discussion of the paucity of reported

Aboriginal cases, see Sidney L. Haring "'The Liberal Treatment of Indians': Native People in Nineteenth Century Ontario Law" Saskatchewan Law Review v.56 (1992) 297-371. It will be important to determine whether there are any oral history memories of such cases within Aboriginal communities. Paul Williams "Oral Tradition on Trial" in Gin Das Winan: Documenting Aboriginal History in Ontario (Toronto: Champlain Society, 1996) 29 notes at 30-31: "Even when aboriginal people learned to write, they still often chose to keep important transactions in their minds. There are important reasons for this; reasons which in this post-Gutenberg world we underestimate. The mind is still the most sophisticated recording and preserving device that humans have found. Its storage capabilities have not been fully tested. It is portable, does not need much temperature and humidity control, and is capable of complex storage, retrieval and correlation tasks. Knowledge stored in the mind can be transmitted or transferred to other minds, and that knowledge invests those other minds with abilities to use and understand the information. Most important, a matter that is kept in the mind is also kept **in mind**. Matters kept on paper are more easily stored and forgotten."

54. Correspondence from Indian Agent G.H. Wheatley to the Indian Commissioner, referenced in Letter from David Laird to the Secretary, Department of Indian Affairs, 28 February 1903, PAC file 60-511-1.

55. Rapid City Historical Book Society Rapid City at 8, 34, 363. Copies of Turriff's letter-head are located in the PAC files noted below.

56. David Laird was born in New Glasgow, Prince Edward Island in 1833, the

fourth child of Alexander Laird and Janet Orr (Laird). He graduated from theological college in Truro, Nova Scotia, and became the publisher of a Charlottetown paper, eventually known as the Patriot. Married to Mary Louisa Owen of Charlottetown in 1864, he was elected as Liberal provincial M.L.A. in 1871 and as Liberal M.P. for Queen's County, P.E.I. in 1873. During the 1870s, he served as Minister of the Interior, Lieutenant-Governor of the Northwest Territories and Indian Commissioner, and then returned to Charlottetown in 1882, where he resumed editorship of the Patriot. He was appointed Indian Commissioner for Manitoba and the Northwest Territories in 1899, several years after the death of his wife, and he moved to Winnipeg to take up this post, where he lived with two of his six children. Although he returned to Ottawa in 1909, Laird continued to work for the Department of Indian Affairs well into his seventies. He died of pneumonia in 1914 at the age of 80. For biographical details, see John W. Chalmers Laird of the West (Calgary: Detselig, 1981), who notes at 200 that Laird was passionately interested in the Greek and Hebrew languages and spent much of his spare time reading and studying them.

57. Telegraph from David Laird to the Secretary of the Department of Indian Affairs, 10 January 1903, PAC file 60-511-1; Report of the Indian Commissioner, Manitoba and the Northwest Territories, Sessional Papers (1902) v.XXXVII, no.11, paper 27 at 188-9. Laird's concern over the need to "civilize" the First Nations apparently did not provoke him to extend much concern over incidents of abuse perpetrated against Aboriginal children at residential school. Suzanne Fournier and Ernie Crey Stolen From Our Embrace: The Abduction of First Nations Children and the Restoration of Aboriginal Communities (Vancouver: Douglas & McIntyre, 1997) note at 57 that as early as 1889,

"the people of St. Peter's Reserve in Manitoba complained officially to Indian Commissioner David Laird about the principal of Rupert's Land Industrial School near Selkirk, Manitoba. Young girls of eight or nine still bore bruises on their bodies several weeks after being strapped, they said. During an investigation, the Anglican principal admitted he fed the children rancid butter and crept into the dormitories at night to kiss little girls, but he was reprimanded, not removed."

58. Sessional Papers (1899) v.XXXIV, no.11, paper 14 at 607; Sessional Papers (1900) v.XXXV, no.11, report 27 at 268; Sessional Papers (1901) v.XXXVI, no.11, paper 27 at 127; Elias Dakota of the Canadian Northwest at 111-2; Pettipas Severing the Ties that Bind at 134.

59. Elias Dakota of the Canadian Northwest at 104, quoting John A. Markle (writing in 1895), who also added: "The Sioux are particularly fond of dancing and spend entirely too much of their time and earnings at 'pow-wowing'...." In his 1897 report, Markle adds: "Although [the Oak River Dakota] earn considerable money, they are very indiscreet in the spending of it. They cling tenaciously to their ancient custom of dancing and feasting, and in this way waste a great deal of their earnings." Sessional Papers (1898) v.XXXII, no.11, paper 14 at 124. Markle was transferred to Alberta to serve as Indian Agent in the Blackfoot Agency in 1900. Sessional Papers (1901) v.XXXVI, no.11, paper 27 at 240.

60. Regular "Red Backs and White Burdens" at 152; Regular "On Public Display" at 1-2. Wheatley's renewed energy may have been bolstered by a pay raise. His annual

salary at his new posting totalled \$1200, a full \$200 raise from his previous departmental stipend: Sessional Papers (1899) v.XXXIV, no.11, paper 14 at 607; Sessional Papers (1901) v.XXXVI, no.11, paper 27 at 237; Sessional Papers (1904) v.XXXVIII, no.11, paper 27 at 169.

61. Sessional Papers (1901) v.XXXVI, no.11, paper 27 at 126. See also Sessional Papers (1902) v.XXXVII, no.11, paper 27 at 122, where Wheatley adds: "The Indians are taking more interest in the education of their children, but there are still quite a number who are indifferent and will not send their children to school, preferring that they should be brought up in the same way as themselves." Wheatley's predecessors drew similar connections between the travel required to attend Aboriginal gatherings and the poor attendance at day school. Indian Agent John A. Markle noted in 1899 that "the attendance at the [day school on the Oak River Reserve] has not been as large nor as regular as it might have been. During the summer months, there are attractions without the reserves, but within the reach of these mirth-loving people, that allure the Indians from their homes and the children from the schools." Sessional Papers (1899) v.XXXIV, no.11, paper 14 at 128.

62. On 9 September 1902, Wheatley wrote: "Owing to the number of summer fairs held in the province during the summer months, the inducements held out to the Indians, by some of the towns, to come and hold 'pow-wows' or heathen dances for exhibition purposes to amuse the public, tend to draw the Indians in large numbers to the towns, where on account of the large number of people present, liquor is easily obtainable by them. It is a difficult matter to locate those who give them the liquor and to get

sufficient evidence to convict, when located, as the Indians can seldom identify them. Could these dances be prohibited altogether, it would lessen the danger to a great extent." Sessional Papers (1902) v.XXXVII, no.11, report 27 at 123. Next year, he filed similar comments: "The numerous fairs held in the towns during the summer and fall months are a temptation to the Indians, as they invariably attend all in the vicinity of their reserves, and those who are addicted to the liquor habit generally manage to get some." Sessional Papers (1903) v.XXXVIII, no.11, paper 27 at 145. For reference to fairs being "handy to bootleggers," see (Gresko) Kennedy "Qu'Appelle Industrial School" at 196.

63. The qualifications of most farming instructors have been roundly criticized by many observers. Robert Jefferson "Fifty Years on the Saskatchewan" Canadian Northwest Historical Society: Publications, v.1, 1926-31 (Battleford, Saskatchewan) notes at 38 that farm instructors were "imported experts from the East...all lumbermen from the Ottawa district [who] knew nothing of the West nor of climatic conditions here...but they at least knew all there was to know about driving men...." Few farm instructors could speak Aboriginal languages; see Sluman and Goodwill John Tootoosis at 26. On the issue of partisan appointments and the lack of qualifications of farming instructors, see James Douglas Leighton "The Development of Federal Indian Policy in Canada, 1840-1890" Ph.D. thesis (University of Western Ontario: 1975) at 363-72. Carter "Constructing the 'Indian Woman'" notes at 152-3 that concerns were raised in the late 19th century that a number of farm instructors were using their position to coerce sexual relationships from Aboriginal women. See also Carter "Agriculture and Agitation" at 4-5; Sarah Carter Lost Harvests: Prairie Indian Reserve Farmers and Government Policy (Montreal: McGill-Queen's University Press, 1990) at 84-94.

64. Farming Instructor R.W. Scott left the position in 1896, and the Sessional Papers for that year note: "The band is now under the direct supervision of Mr. Richard Joynt, who is a practical farmer of long experience in this province." By 1897, John Taylor had been appointed to the position, which he held until he resigned on 31 December 1899 to accept a commission in the 2nd Contingent of Canadian Volunteers to South Africa. He was replaced by Mr. Thomas Ryan, described in the Sessional Papers as "now the resident moral and industrial guide to the Oak River band." Ryan held the position until Yeomans was appointed in 1901. Sessional Papers (1896) at 144, 461; (1897) at 490; (1900) at 135; (1901) at 127. At least one of these individuals was fired by the Department. Elias Dakota of the Canadian Northwest notes at 99-104 that Farmer Scott left the reserve and was replaced by "a man whose corruption was so obvious that even the Indian department found him unsatisfactory, and terminated him on very much the same grounds as those presented by the Dakota concerning Scott." Elias does not specify which farming instructor met this ignominious end, but notes that the misconduct involved officious interference in the activities of Aboriginal farmers, exceeding authority, excessive rudeness and incompetence.

65. Sessional Papers (1901) at 127; (1902) at 161. In a later posting as the Indian Agent at the Peigan Agency in Alberta, Yeomans decried Aboriginal attendance at white fairs, insisting that it caused work interruption, intoxication and "immorality." Letter of E.H. Yeomans to D.C. Scott, 27 October 1910, PAC RG10, v.3825, file 60-511-2.

66. Details of the prosecution of Wanduta are drawn from PAC file 60-511-1 and Pettipas Severing the Ties that Bind at 119. On the Heyoka, sometimes translated as

"Sacred Clown," see Howard Canadian Sioux at 100-6, 172-3; Raymond J. DeMallie and Douglas R. Parks Sioux Indian Religion: Tradition and Innovation (Norman, Oklahoma: University of Oklahoma Press, 1987) at 37. Wilson Wallis, a white anthropologist who conducted field research among the Canadian Dakota several decades later, recognized Wanduta's expertise when he sought him out to solicit information about his religion and culture. Wallis noted that Wanduta was credited with diagnosing and healing an individual from the Dakota community near Portage la Prairie around 1917. The recovered individual reported that the cause of his illness had been hidden from all but Wanduta, advising: "Other medicine have difficulty in finding out things, but a clown medicineman can find out anything." Wallis continues: "It was the custom of a Clown named Wandu'ta to announce after the War dance held by the Dakota who assemble at Brandon, Manitoba, each year during the week of the exposition, the number of spirits that he had seen during the dance. This was a forecast of the number of Dakota to die during the coming year. In 1914 he declined to do this; he said he did not wish to make them feel badly. Some Dakota explained his refusal as owing to the fact that each man and woman would think he or she might be one of those who were destined to die, and a pall would rest over all of them." Wallis recounts several conversations with Wanduta, whom he describes as "an old Clown then living on the Griswold reservation," concerning Wanduta's abilities to diagnose accurately whether specific Dakota who were ill would recover and his abilities to utilize spiritual forces to forecast the coming of game. Wanduta gave Wallis an eye-witness account of the activities in 1866 of a number of Heyoka who sought to eliminate the evil spirit preventing a successful buffalo hunt. Although Wanduta's age is not specified in any of the records, based on these secondary

documents it would seem that the youngest that Wanduta could have been in the year of his prosecution is probably in his mid-forties. Wanduta advised Wallis that during the twenty years he had been in Canada, he had killed one hundred and one moose. See also Pettipas Severing the Ties that Bind at 119; Katherine Ann Pettipas "Severing the Ties that Bind: The Canadian Indian Act and the Repression of Indigenous Religious Systems in the Prairie Region, 1896-1951" Ph.D. Thesis (University of Manitoba: 1989) at 250; Wallis Canadian Dakota at 111; Wilson D. Wallis "Canadian Dakota Sun Dance" Anthropological Papers of the American Museum of History v.XVI, Part IV (New York: 1919) at 325.

67. Each of the three main divisions is characterized by differences in dialect and, to some extent, cultural orientation. The Dakota are Woodlands or Park Lands people with ties to other Woodlands tribes sharing some of their cosmology and world view. The Nakota occupied a vast territory east of the Missouri River and shared traits with other river people, such as agriculture and occasionally earth lodges. The Lakota, which today comprises the largest population of the three groups, have in common with the other high plains people a unique religious and philosophical system. The Santee, originally the most easterly of the Dakota, also included a fourth council fire, the Wapekute (Shooters Among the Leaves.) First located west of the Lake Superior, where they were semi-sedentary agriculturalists, the Santee were pushed west by the mid-18th century when they began to live on the margin of the plains culture. Wallis "Canadian Dakota Sun Dance" notes at 323 that the Dakota living near Portage la Prairie and Griswold, Manitoba, were "in the main refugees from the Wahpeton of Minnesota who were participants in the massacre of 1862. Thus, their fundamental cultural traits should

be those of the Eastern Dakota...." Today, the Dakota people live in various communities in South Dakota, North Dakota, Minnesota, Montana and Canada. The surviving sources on the history and culture of the Dakota Nation include Mark St. Pierre and Tilda Long Soldier Walking in the Sacred Manner: Healers, Dreamers, and Pipe Carriers - Medicine Women of the Plains Indians (New York: Simon & Schuster, 1995); Elias Dakota of the Canadian Northwest; Wallis Canadian Dakota at 111; Wallis "Canadian Dakota Sun Dance;" Wilson D. Wallis "Beliefs and Tales of the Canadian Dakota" Journal of American Folk-Lore v.36 (1923) at 36; Carter "Agriculture and Agitation" at 3; LaViolette Sioux in Canada; Ron W. Meyer History of the Santee Sioux: United States Indian Policy on Trial (Omaha: University of Nebraska Press, 1967). Mahpiyahdinape (Enoch) spent part of the winter of 1896 at Birdtail writing a history of his Dakota community, but according to Elias at 232, the manuscript seems to have been lost. Elias notes at p.xiii that the Dakota "are the most numerous of their nation in Canada," and that "collectively all three divisions" - the Dakota, Nakota and Lakota - are called Dakota. Tribal elders say that preserving the name "Dakota" as the name of the nation recognizes the common roots of all three divisions.

68. Elias Dakota of the Canadian Northwest at 3, 15-17, indicates that archaeological data provide evidence of this geographic expanse; see also Sessional Reports (Ottawa: Queen's Printer, 1900) at 132. On the Anglo-American expansion into Indian territory, see Anthony J. Hall "The Northwest Territories of North America: A Place or a Procedure for the Extinguishment and Privatization of Indian country?" unpublished manuscript 1998. Gary Clayton Anderson and Alan R. Woolworth Through Dakota Eyes: Narrative Accounts of the Minnesota Indian War of 1862 (St. Paul:

Minnesota Historical Society Press, 1988) estimate at 5 that by 1862, "racial" intermixing was sufficiently widespread that "roughly 15 percent of the Dakota reservation population" was comprised of Anglo-Dakota and Franco-Dakota people. There was also racial intermixing between Blacks and the Dakota. Joseph Godrey (Dakota name Otakle), one of the first Dakota to be tried by the military commission after the 1862 war, was the son of a French-Canadian voyageur and a Black woman; see Anderson and Woolworth at 85-6. See also LaViolette Sioux in Canada; Wallis Canadian Dakota at 9; Kenneth Carley The Sioux Uprising of 1862 (St. Paul, Minn.: Minnesota Historical Society, 1976).

69. I have placed the word "reserve" in quotation marks in recognition of concerns that the concept does not capture the Aboriginal understanding of the nature of their claim to traditional lands, and that it is misleading in its suggestion that lands traditionally held by the First Nations could be "reserved" for their use by the federal government. On the negotiations between the Dakota and the Canadian government, and the resulting arrangements made about the Oak River land, see Carter "Agriculture and Agitation" at 3-4; LaViolette Sioux in Canada at 46-68, 107-20; Elias Dakota of the Canadian Northwest at 18, 40. Elias also chronicles at 17-26 the double-dealing of Canadian and American authorities in their relations with the Dakota between 1862 and 1865; see also Howard Canadian Sioux at 24-35. Roy W. Meyer "The Canadian Sioux: Refugees from Minnesota" Minnesota History 41:1 (1968) 13 notes at 17 that the negotiations could not commence until after the Hudson's Bay Company territorial holdings were transferred to the Province of Manitoba, and Treaties 1 and 2 had been signed with the native Cree and Chippewa. Carter notes that the Dakota were only

allotted eighty acres per family of five, even though other "reserves" in western Canada were based on one hundred and sixty acres or six hundred and forty acres per family. The Minister of the Interior accounted for the difference in his annual report for 1875, noting that "the Dakota cannot reasonably claim to be placed on the same footing or treated with the same liberality as the Indian bands who had always been British subjects resident in British territory." Sessional Papers (1876) no.9, at p.xii: Annual Report of the Minister of the Department of the Interior. Howard Canadian Sioux notes at 23 that the first chief of the Oak River community was Wambdiska. The Annual Report of the Department of Indian Affairs, 1897, Sessional Papers v.XXXII, no. II, paper 14, lists the "reserve" as having "an area of about nine thousand seven hundred acres."

70. Carter "Agriculture and Agitation" at 4, citing Inspector Wadsworth's Report of the Birtle Agencies (1890), PAC RG10, v.3844, file 73,406-2.

71. The individual appointed was W.R. Scott: Carter "Agriculture and Agitation" at 4-5; Carter Lost Harvests at 226-9.

72. On the pass system, which was first implemented after the 1885 Rebellion, see Laurie Barron "The Indian Pass System in the Canadian West, 1882-1935" Prairie Forum 13:1 (1988) 25-42; John Jennings "The Northwest Mounted Police and Canadian Indian Policy, 1873-1896" Ph.D. Thesis (University of Toronto: 1979) at 289; John Jennings "The North West Mounted Police and Indian Policy After the 1885 Rebellion" in F. Laurie Barron and James B. Waldram 1885 and After: Native Society in Transition (Regina: Canadian Plains Research Center, 1986) 225 at 227; Sarah Carter "Controlling

Indian Movement: The Pass System" NeWest Review (May 1985) at 8-9; Carter Lost Harvests at 150-6. Although there were efforts to pass legislation which would authorize the enforcement of the pass system, none was ever enacted and its genesis is traced to administrative rules developed unilaterally by the Department of Indian Affairs. Lacking force of law, Indian agents attempted to enforce the pass system by withholding rations from those who violated it. The police occasionally assisted in enforcement by arresting those found off the reserve without passes and prosecuting them for trespass under the "Indian Act" or vagrancy under the "Criminal Code." The pass system violated treaty rights, since Indians were not compelled to live on reserves nor deprived of freedom to travel under the terms of the treaties. See also Carter "Constructing the 'Indian Woman'" for a discussion of the white hostility towards Aboriginal women, accelerating after the 1885 Rebellion, which stigmatized Aboriginal women as sexually promiscuous and fostered a pass system designed to keep "Aboriginal women of abandoned character" away from the towns and villages of the prairie west. On the permit system, see Carter Lost Harvests at 156-8.

73. Carter "Agriculture and Agitation" at 5-8; Carter Lost Harvests at 226-9.

Carter notes that three residents of Oak River, Harry Hotain, Mahpiyaska and Kinyanyahan, travelled to Ottawa to meet with Indian Commissioner Hayter Reed. The three Dakota were advised that they had violated Departmental regulations by leaving the reserve without a permit and sent home without relief. The Department also took steps to prosecute white grain buyers who were dealing with the Dakota; white grain buyers, William Chambers of Ogilvie Milling Co. and Alexander and William Forrest of Leitch Bros. at Oak Lake were convicted of buying grain from Indians without permits in 1893.

Additional petitions of protest, signed by forty-two Dakota, were forwarded in 1894.

Facing the indomitable bureaucracy at Indian Affairs, the Oak River Dakota were unable to work themselves free of the restrictive policies. The majority reconciled themselves to small-scale farming, forcibly prevented from accessing the grain-centred cash economy of the white settlers around them.

74. Sessional Paper (1902) v.XXXVII, no. 11, paper 27 at 121-4; Sessional Paper (1901) v.XXXVI, no. 11, paper 27 at 126. The local press seemed drawn to accounts that suggested the successful acculturation. "The Sioux Indians of Oak River Reserve" Brandon Western Sun 21 August 1902 recounts: "The following is a report of the crop average for the Oak River Indian Reserve for 1901 and 1902, from which it will be seen that the Red Man is making great advances. Many of the Indians have frame stables, and a full line of agricultural implements.... It may be added that a great deal of trouble is taken to teach the Indians. The Reverend Mr. Cox is their spiritual adviser, while Mr. E.H. Yeomans is the Farming Instructor." In an article titled "During his visit here last week...", Griswold Ledger 26 March 1903 reports that Indian Inspector Marlett "expressed astonishment and pleasure at the superior order and cleanliness of the Oak River Reserve homes," adding that the Inspector declared "this reserve to be the most satisfactory of the ten under his charge." "Indians and Live Stock" Marquette Reporter 20 August 1903 notes that the "Indians" were "quite successful" in raising first class live stock in western Canada.

75. Elias Dakota of the Canadian Northwest notes at 98 and 102 that it was Indian Agent John A. Markle who made the appointment of Tunkan Cekiyana (whose name is

also spelled as Tukancikeyana), an individual held in disdain by many in his community for his propensity to side with the Department of Indian Affairs. In meetings with governmental officials, some Dakota refused to call Tunkan Cekiyana by his Dakota name, and referred to him contemptuously as "Chief Pat." This appears to be the name by which he was known in the white community. Griswold United Church Women Bridging the Years, 1867-1967, Griswold Centennial Booklet (n.p.: Souris Plaindealer Limited, n.d.) notes at 32 that Chief Pat was the son of the [unnamed] man who had been chief when the Dakota came to Canada following the 1862 uprising, adding: "Chief Pat had worked at the Pratt's Landing in Portage cutting wood. The Indians often took the names of the people for whom they worked and he took the name of Pratt which at first was mistakenly called 'Pat.' Chief Pat was called to Regina where he was made chief by the Canadian Government and presented with a medal." Elias recounts at 62-3 and 69 that Canadian officials were meddling in the selection of Dakota chiefs in Manitoba as early as 1877: "[Lieutenant Governor Alexander] Morris also suggested that the government recognize only one of the four chiefs [in the Oak River and Birdtail communities], and he named Wambdiska as 'the most industrious among them, and a man of good disposition.' The Dakota, however, wished to have their own form of leadership.... In recommending Wambdiska to be the overall chief, Morris identified the one of the four men who had the least claim to chieftainship, as his band had been all but exterminated...in 1863." Chief Taninyahdinazin held the position after Wambdiska until his death in the winter of 1890, and after his death, the community failed to recognize a chief for many years. Elias suggests at 83-85 that despite the strenuous resistance of the Dakota, the Department managed to displace the traditional Aboriginal leadership almost

entirely. The factors which contributed to this were the disintegration of the old patterns of communal labour organization, the subdivision of the "reserve" and the diminishing authority of the elders.

76. George Manuel and Michael Posluns The Fourth World: an Indian Reality (Don Mills: Collier-Macmillan Canada, 1974) note at 43: "Our ideal of leadership is closely related to developing to a fine art the life-way of giving. Spiritual and material power have never been wholly separated in the Indian world as they seem to have been elsewhere. In many Indian societies, especially those with a less formal structure, a leader may better be described as a person who gives well and who gives often. Even within the most highly structured Indian societies, in which one could earn a title or office only through routes which combined family lines with outstanding ability, there were few nations that based status solely on family lines. There was something basically democratic in the recognition of status through giving. Anyone of sufficient ability and generosity could achieve a status that would almost rival that of an office holder." See also Wallis Canadian Dakota at 15; Catherine Price "Lakotas and Euroamericans: Contrasted Concepts of 'Chieftainship' and Decision-Making Authority" Ethnohistory 41:3 (Summer 1994) 447-64; Menno Boldt and Anthony Long "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians" in Menno Boldt and Anthony Long eds. The Quest for Justice (Toronto: University of Toronto Press, 1985) 335-9; Harring Crow Dog's Case at 179 and 273.

77. Vic Satzewich and Linda Mahood "Indian Affairs and Band Governance: Deposing Indian Chiefs in Western Canada, 1896-1911" Canadian Ethnic Studies 26:1

(1994) 40 note at 45 that during the treaty process in western Canada, "Indian bands were required to identify a chief to carry out negotiations. Following those negotiations, the Department continued to recognize those individuals as chiefs."

78. "An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42" S.C. 1869, c.6, s.10 provides:

The Governor may order that the Chiefs of any tribe, band or body of Indians shall be elected by the male members of each Indian Settlement of the full age of twenty-one years at such time and place, and in such manner, as the Superintendent General of Indian Affairs may direct, and they shall in such case be elected for a period of three years, unless deposed by the Governor for dishonesty, intemperance, or immorality, and they shall be in the proportion of one Chief and two Second Chiefs for every two hundred people; but any such band composed of thirty people may have one Chief; Provided always that all life Chiefs now living shall continue as such until death or resignation, or until their removal by the Governor for dishonesty, intemperance or immorality.

Satzewich and Mahood "Deposing Indian Chiefs" note at 44 that the Department began to impose elections upon Aboriginal communities in Ontario, Quebec, New Brunswick, Nova Scotia and P.E.I. between 1895 and 1899, but did not fully extend the electoral system to the west.

79. See "The Indian Act, 1876" S.C. 1876, c.18, s.61, s.62. "The Indian Act,

1880" S.C. 1880, c.28, s.72 provides that life chiefs could no longer exercise power unless "elected under such order." "An Act further to amend 'The Indian Act, 1880'" S.C. 1884, c.27, s.9 authorizes the Governor-in-Council to set aside election results where the Indian Agent holds that there has been "fraud" or "gross irregularity." See also "The Indian Act" R.S.C. 1886, c.43, s.75, 127. "An Act further to amend 'The Indian Act'" S.C. 1894, c.32, s.5 provides that deposed chiefs are ineligible for re-election for three years.

80. "An Act further to amend the Indian Act" S.C. 1895, c.35, s.3; see also "An Act further to amend the Indian Act" S.C. 1898, c.34, s.9 and "Indian Act" R.S.C. 1906, c.81, s.93-6.

81. Chiefs such as Piapot and Walter Ochapowance, convicted of dancing, were removed from office by departmental officials, while Chief Thunderchild was threatened with the loss of his status as chief if he continued to support ceremonial dancing; see Pettipas Severing the Ties that Bind at 116-7 and 158-9. Headmen John Asham Jr. and Ka Ka Kesick were deposed at the Qu'Appelle Agency as promoters of dances, and councillors at the Touchwood Agency, Portage La Prairie, File Hills and Assiniboine Agency were deposed for similar reasons; see Satzewich and Mahood "Deposing Indian Chiefs" at 51.

82. Concerned that the electoral system had begun to "politicize" eastern and central Aboriginal communities to campaign against governmental policies, the Department decided not to extend it to the west. Satzewich and Mahood "Deposing

Indian Chiefs" note at 45 that the practice was simply to appoint a chief or councillor for an indefinite term (subject to deposition according to law): "This method involved the Indian Agent making a recommendation to his superiors regarding what was seen as a suitable individual for the position." The initial recommendation would be approved by the Inspector of Indian Agencies, the Indian Commissioner and officials in Ottawa.

"Depending on the circumstances, band members may or may not have been consulted."

They note at 54 that the policy was to confine the appointments to "recognized leaders of the working, progressive class."

83. Pettipas Severing the Ties that Bind at 117.

84. Pettipas Severing the Ties that Bind at 133; J.D. McLean to Indian Commissioner, 5 January 1903, PAC file 60-511-1. The educational facilities available to the Oak River Dakota children also included one day school on the Keeseekoowenin territory (the Okanase day school) and a boarding school in the town of Birtle, which taught rudimentary domestic science, gardening and the care of stock animals. Other Dakota children attended the Regina, Elkhorn, Brandon and Qu'Appelle industrial schools and the Pine Creek and Cowessess boarding schools. Indian Agent Wheatley reported in 1903 that the Dakota "object to the distance the schools are from their reserves and the length of time the children have to stay," concluding petulantly that "the Indians as a whole are not interested in the education of their children." Sessional Papers (1904), v.XXXVIII, no.11, paper 27 at 144.

85. Fournier and Crey Stolen From Our Embrace; Roland Chrisjohn and Sherri

Young with Michael Maraun The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada (Penticton: Theytus, 1997); Agnes Grant No End of Grief: Indian Residential Schools in Canada (Winnipeg: Pemmican Publications, 1996); Jean Barman, Yvonne Hebert and Don McCaskill Indian Education in Canada: Volume 1, The Legacy (Vancouver: University of British Columbia Press, 1986) at 1-22, J.R. Miller Shingwauk's Vision: A History of Native Residential Schools (Toronto: University of Toronto Press, 1992); Jo-Ann Archibald "Resistance to an Unremitting Process: Racism, Curriculum and Education in Western Canada" in J.A. Mangan ed. The Imperial Curriculum: Racial Images and Education in the British Colonial Experience (London: Routledge, 1993) 93-107 and Jennifer Pettit "From Longhouse to Schoolhouse: The Mohawk Institute 1834-1940" M.A. Thesis (University of Western Ontario: 1993) provide an overview of the history of Aboriginal education and the problems presented by residential schools. Prior to 1850, some Aboriginal students chose to attend white schools, deliberately seeking the possible advantages such education could provide. The earliest legislation concerning schooling is found in "An Act to prevent the Sale of Spirituous Liquors to Indians, and to provide for their Instruction" S.N.S. 1829, c.29. Section 4 makes it lawful:

for any two of his Majesty's Justices of the Peace to provide for the instruction in reading and writing of any Indian or Indians, who may require it, and for that purpose, to direct an order to any Master or Teacher of any Public School in the Province, who may be in the receipt of any Salary or Allowance under any Act or Acts of this Province, for supporting and establishing Schools, thereby directing such Master or Teacher to receive into his School any Indian Male or Female, and without fee or reward to instruct and

teach such Indian or Indians, to read and write, and any Master or Teacher, who shall refuse or neglect to obey any such order, shall be deprived of any Provincial allowance or salary to which he may be entitled for that year.

See also "An Act to provide for the Instruction and Permanent Settlement of the Indians" S.N.S. 1842, c.16, s.7. These early Nova Scotia statutes suggest that public schools were denying education to Aboriginal pupils at this time; Marie Battiste "Micmac Literacy and Cognitive Assimilation" in Barman **et al.** Indian Education at 33. Nor did this change. Jean Barman "Separate and Unequal: Indian and White Girls at All Hallows School, 1884-1920" in Barman **et al.** Indian Education at 113 notes that at the turn of the century "that "only in a few instances" across Canada could "Indian children attend the white children's schools." See also Chief Joe Mathias and Gary R. Yabsley "Conspiracy of Legislation: The Suppression of Indian Rights in Canada" BC Studies v.89 (1991) 39. After 1879, the federal government began to develop a policy favouring separate Aboriginal schools, including large industrial, residential schools located away from Aboriginal territories, boarding schools nearer Aboriginal communities for younger students, and day schools in long-settled areas. Schools were to be operated wherever possible by missionaries, a cost-saving measure that attempted to utilize Christian zeal and denominational rivalry to offset public expenditure. The express goal was assimilation, to prepare Aboriginal students for "their expected future existence on the lower fringes of the dominant society." Barman "All Hallows School" notes at 110 that the assimilationist goal would be impeded by government parsimony and white racism, causing the federal government to shift course by 1910 "to fit the Indian for civilized life in his own environment" rather than "to transform an Indian into a white man." By 1884,

the bulk of the statutory enactments became coercive in nature, forcing schooling on reluctant Aboriginal peoples. The first legislation to apply pressure upon Aboriginal communities for the education of children, "An Act further to amend 'The Indian Act, 1880'" S.C. 1884, c.27, s.10 established that it was the responsibility of chiefs to frame rules and regulations concerning "the attendance at school of children between the ages of six and fifteen years." "The Indian Act" R.S.C. 1886, c.43, s.76 solidified the religious nature of Aboriginal schools by providing that the chief or chiefs of the band should ensure that the teacher of the school established on the reserve belonged to the same religious denomination as the majority of the band, so long as the Protestant or Catholic minority had a separate school, subject to the approval of the Governor in Council. In 1886, an Ordinance was promulgated in the North West Territories ordering that the "rights, powers and authority" of Indian parents whose children were in industrial schools ceased while the school was in session. Any child who left the school before the time authorized could be "compelled to return." Upon requisition from the principal of the school the Police were ordered to "apprehend such offender and return him to the Institution from which he escaped, to be dealt with according to law;" see Jennings "The North West Mounted Police and Indian Policy" at 227, citing PAC RG18, file 65, v.1037. "An Act further to amend 'The Indian Act'" S.C. 1894, c.32, s.11 extends the coercive legal provisions across the nation, authorizing the Governor in Council to establish industrial or boarding schools for "Indians" and to make regulations "either general or affecting the Indians of any province or any named band" to "secure the compulsory attendance of children at school." This act instituted a series of additional coercive measures:

s.137(2). Such regulations...may provide for the arrest and conveyance to school, and detention there, of truant children and of children who are prevented by their parents or guardians from attending: and such regulations may provide for the punishment, upon summary conviction, by fine or imprisonment, or both, of parents and guardians, or persons having the charge of children, who fail, refuse or neglect to cause such children to attend school.

s.138(2). The Governor in Council may make regulations, which shall have the force of law, for the committal by justices or Indian agents of children of Indian blood under the age of sixteen years, to such industrial school or boarding school, there to be kept, cared for and educated for a period not extending beyond the time at which such children shall reach the age of eighteen years.

s.138(3). Such regulations may provide, in such manner as to the Governor in Council seems best, for the application of the annuities and interest moneys of children committed to such industrial school or boarding school, to the maintenance of such schools respectively, or to the maintenance of the children themselves.

See also "Indian Act" R.S.C. 1906, c.81, s.9-11, 97-98(f); "An Act to amend the Indian Act" S.C. 1914, c.35, s.1. The latter act provides in s.2 that the "Governor in Council may take the land of an Indian held under location ticket or otherwise, for school purposes, upon payment to such Indian of the compensation agreed upon, or in case of disagreement such compensation as may be determined in such manner as the Superintendent General shall direct."

The legislation was overhauled in "An Act to amend the Indian Act" S.C. 1919-20, c.50, s.1:

s.9(1) The Governor in Council may establish, -

(a) day schools in any Indian reserve for the children of such reserve;

(b) industrial or boarding schools for the Indian children of any reserve or reserves or any district or territory designated by the Superintendent General.

(2) Any school or institution the managing authorities of which have entered into a written agreement with the Superintendent General to admit Indian children and provide them with board, lodging and instruction may be declared by the Governor in Council to be an industrial school or a boarding school for the purposes of this Act.

(3) The Superintendent General may provide for the transport of Indian children to and from the boarding or industrial schools to which they are assigned, including transportation to and from the schools for the annual vacations.

(4) The Superintendent General shall have power to make regulations prescribing a standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such schools.

(5) The chief and council of any band that has children in a school shall have the

right to inspect such school at such reasonable times as may be agreed upon by the Indian agent and the principal of the school.

(6) The Superintendent General may apply the whole or any part of the annuities and interest moneys of Indian children attending an industrial or boarding school to the maintenance of such school or to the maintenance of the children themselves.

s.10(1) Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year. Provided, however, that such school shall be the nearest available school of the kind required, and that no Protestant child shall be assigned to a Roman Catholic school or a school conducted under Roman Catholic auspices, and no Roman Catholic child shall be assigned to a Protestant school or a school conducted under Protestant auspices.

(2) The Superintendent General may appoint any officer or person to be a truant officer to enforce the attendance of Indian children at school, and for such purpose a truant officer shall be vested with the powers of a peace officer, and shall have authority to enter any place where he has reason to believe there are Indian children between the ages of seven and fifteen years, and when requested by the Indian agent, a school teacher or the chief of a band shall examine into any cause of truancy, shall warn the truants, their parents or guardians or the person with whom any Indian child resides, of the consequences of truancy, and notify the parent, guardian or such person in writing to cause the child to attend school.

(3) Any parent, guardian or person with whom an Indian child is residing who fails to cause such child, being between the ages aforesaid, to attend school as required by this section after having received three days' notice so to do by a truant officer shall, on the complaint of the truant officer, be liable on summary conviction before a justice of the peace or Indian agent to a fine of not more than two dollars and costs, or imprisonment for a period not exceeding ten days or both, and such child may be arrested without a warrant and conveyed to school by the truant officer: Provided that no parent or other person shall be liable to such penalties if such child, (a) is unable to attend school by reason of sickness or other unavoidable cause; (b) has passed the entrance examination for high schools; or, (c) has been excused in writing by the Indian agent or teacher for temporary absence to assist in husbandry or urgent and necessary household duties.

See also "Indian Act" R.S.C. 1927, c.98, s.9-11, 100. "An Act to amend the Indian Act" S.C. 1930, c.25, s.3 extends the school age upward to eighteen where "it would be detrimental to any particular Indian child to have it discharged from school on attaining the full age of sixteen years." See also "An Act to amend the Indian Act" S.C. 1932-33, c.42, s.1. "The Indian Act" S.C. 1951, c.29 authorizes financial agreements between federal and provincial governments so that Aboriginal children can attend public and private schools with non-Aboriginal pupils. Sections 113-22 make additional changes, authorizing compulsory schooling for children as young as six, deeming children who were habitually late for school to be absent, and increasing fines for parents and guardians of truant children to five dollars. The act also provides:

s.118(6). A truant officer may taken into custody a child whom he believes on reasonable grounds to be absent from school contrary to this Act and may convey the child to school, using as much force as the circumstances require.

s.119. Any Indian child who

(a) is expelled or suspended from school, or

(b) refuses or fails to attend school regularly, shall be deemed to be a juvenile delinquent within the meaning of The Juvenile Delinquents Act, 1929.

Miller Shingwauk's Vision at 357-8 and Pettit "From Longhouse to Schoolhouse" at 84 note that the Six Nations Council brought legal action in 1913 over the mistreatment of children at the Mohawk Institute near Brantford, Ontario. A civil jury awarded \$100 for keeping Hazel Miller on a water diet for three days, and \$300 for whipping her sister, Ruth Miller, "on bare back with raw hide," but dismissed additional complaints about hair-cutting, confinement in a sick room and bad food. Fournier and Crey Stolen From Our Embrace note at 50 that "residential schooling reached its peak in 1931 with over eighty schools across Canada. From the mid-1800s to the 1970s, up to a third of all aboriginal children were confined to the schools, many for the majority of their childhoods." They chronicle the systemic efforts of whites to obliterate Aboriginal culture through such schooling, and the extensiveness of emotional, physical and sexual abuse visited upon the children. See also Report of the Royal Commission on Aboriginal Peoples Looking Forward, Looking Back v.1 (Ottawa: Minister of Supply and Services

Canada, 1996) at 333-409; Celia Haig-Brown Resistance and Renewal: Surviving the Indian Residential School (Vancouver: Tillacum, 1988); Isabelle Knockwood with Gillian Thomas Out of the Depths, The Experience of Mi'kmaq Children at the Indian Residential School at Shubenacadie, Nova Scotia (Lockeport, N.S.: Roseway, 1992); Basil H. Johnston Indian School Days (Toronto: Key Porter, 1988); Linda Jaine ed. Residential Schools: The Stolen Years (Saskatoon: University of Saskatchewan, 1993); Geoffrey York The Dispossessed: Life and Death in Native Canada (Toronto: Lester & Open Dennys, 1989); Assembly of First Nations Breaking the Silence, An Interpretive Study of Residential School Impact and Healing as Illustrated by the Stories of First Nations Individuals (Ottawa: First Nations Health Commission, 1994).

86. John Tootoosis, born in 1899, explained that his father was "very troubled by the idea of sending his sons to residential school," but "wanted them to learn to read, write and count and be able to speak the language of the white man.... He did not have these skills himself, had often needed them and knew that Indian people would have a better chance in the future if they had them;" Sluman and Goodwill John Tootoosis at 95-97. See also John S. Milloy "The Early Indian Acts: Developmental Strategy and Constitutional Change" in Ian A.L. Getty and Antoine S. Lussier eds. As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies (Vancouver: University of British Columbia Press, 1983) at 60; Penny Petrone First People, First Voices (Toronto: University of Toronto Press, 1983).

87. (Gresko) Kennedy "Qu'Appelle Industrial School" notes at 200 that Principal T. Ferrier joined with several prairie religious leaders to write letters recommending that

the Department abolish such dances. The correspondence was forwarded by Commissioner Laird to Ottawa in December 1903. Fournier and Crey Stolen From Our Embrace note at 59 that some of the religious leaders at the residential schools "reserved their most harsh punishments" for Aboriginal children who insisted upon expressing their cultural and spiritual identity by "making Indian dances."

88. Pettipas Severing the Ties that Bind at 133; J.D. McLean to Indian Commissioner, 5 January 1903, PAC file 60-511-1. Wanduta's son was not the only industrial school student to participate in the campaign to preserve Aboriginal dance. Gresko "White 'Rites' and Indian 'Rites'" describes at 177-8 how Daniel Kennedy, an Assiniboine who had graduated from Qu'Appelle Industrial School and the Saint Boniface College, not only joined his elders in the dances but played an active role in the drafting of petitions to Ottawa. Levi Thompson, a lawyer from Wolseley, Saskatchewan who was retained by the Assiniboine to carry forward their petition to Ottawa in 1906, remarked: "the leaders of this movement seem to be among the best-educated and most intelligent of them." See letter to the Hon. F. Oliver, 19 March 1903, PAC file 60-511-2. Charles Nowell used the writing skills he acquired in an Alert Bay residential school to record information about lineage, clan positions and dancing lore, all vital to the preservation of the Kwagiulth potlatch; Miller Shingwauk's Vision at 358.

89. Letter from David Laird, Indian Commissioner, Winnipeg to J.D. McLean, Secretary of the Department of Indian Affairs, Ottawa, 9 January 1903, PAC file 60-511-1.

90. Anderson and Woolworth Dakota Eyes describe at 4 the earlier role of the War of 1862 in ripping apart the social and cultural fabric of Dakota society and fostering deep divisions between segments of the community. They note at 6 that "perhaps as many as one-fourth of the Dakota people" were attempting "to adjust to a Euro-American lifestyle" by 1862, moving from their villages onto farms, adopting whites' clothing and converting to Christianity. They quote at 21-27 comments from Jerome Big Eagle (Wamditanka), born in 1827 at Black Dog's village on the south bank of the Minnesota River, who stated in 1894: "...a little while before the outbreak there was trouble among the Indians themselves. Some of the Indians took a sensible course and began to live like white men. The government built them houses, furnished them tools, seeds, etc., and taught them to farm. [...] Others staid [**sic**] in their tepees. There was a white man's party and an Indian party. We had politics among us and there was much feeling. [...] The 'farmers' were favored by the government in every way. They had houses built for them, some of them even had brick houses, and they were not allowed to suffer. The other Indians did not like this. [...] They called them 'cut-hairs,' because they had given up the Indian fashion of wearing the hair, and 'breeches men,' because they wore pantaloons, and 'Dutchmen,' because so many of the settlers on the north side of the river and elsewhere in the country were Germans." Mary-Ellen Kelm also notes that Aboriginal people who supported the ban on traditional dance reflect significant disunity within First Nations' communities, blurring distinctions between resistant and compliant, between colonizer and colonized. See her book review of Pettipas Severing the Ties that Bind in Canadian Historical Review 78:1 (March 1997) at 171-3.

91. Letter from Chief Tunkan Cekiyana, Griswold to Department of Indian

Affairs, Ottawa, 10 January 1903, PAC file 60-511-1. John Noel, who acted as interpreter so that Chief Tunkan Cekiyana's letter could be written in English, was a Dakota who had refused to take sides in the factionalization which beset the Oak River community over the agricultural regulations of the Department of Indian Affairs in the mid 1890s: see Carter "Agriculture and Agitation" at 7.

92. Sluman and Goodwill John Tootosis, writing at 201 of the growing involvement of Cree women in Aboriginal political life in the past several decades, note: "It was something of a surprise at first, especially perhaps among the plains tribes to have women emerging as dynamic and effective leaders as traditionally they had been more or less 'silent partners' in the old way of life. (and we can hear a lot of Cree men laughing at **that** statement.)" See also Elias Dakota of the Canadian Northwest at 106. Carter "Constructing the 'Indian Woman'" notes that despite the hostility directed against Aboriginal women from the white community, Aboriginal oral and documentary sources record that the work of the women was vital in providing material and spiritual resources to Aboriginal communities during the upheaval in the late 19th century.

93. Letter from Chief Tunkan Cekiyana, Griswold to Department of Indian Affairs, Ottawa, 10 January 1903, PAC file 60-511-1.

94. Letter from Frank Pedley, Ottawa, to Chief Tunkan Cekiyana, Griswold, 27 January 1903; Letter from David Laird, Indian Commissioner to J.D. McLean, Secretary of Indian Affairs, 9 January 1903, PAC file 60-511-1. Pedley, a graduate of Osgoode Hall Law School in 1890, practised law in Toronto until 1897 when he was appointed

Superintendent of Immigration at the behest of Clifford Sifton. In 1902, he was transferred to the Indian Affairs posting, which he held until 1911. See Henry James Morgan ed. The Canadian Men and Women of the Time 2nd ed. (Toronto: William Briggs, 1912) at 892; Hector Charlesworth ed. A Cyclopaedia of Canadian Biography (Toronto: Hunter-Rose Co., 1919) at 213.

95. PAC file 60-511-1. I have been unable to locate any biographical information on Magistrate Lyons. Police magistrates were appointed by the Lieutenant-Governor in Council: R.S.M. 1902, c.104, s.2. Rarely legally trained, such appointees usually came from the ranks of retired officers of the North West Mounted Police or businessmen who had served as justices of the peace. The town of Griswold, in the western judicial district, was located 158 miles west of Winnipeg and 26 miles west of Brandon. By 1905, its population was 325. The hotel where the trial was held was destroyed by fire on 10 December 1903. See n.a. Bridging the Years: Griswold Centennial 1882-1982 (n.p., n.d., copy held in National Library of Canada) at 248; Griswold United Church Women Bridging the Years at 8, 26.

96. A search of the Griswold Ledger, the Marquette Reporter and the Brandon Western Sun located not one reference to the dance of the Dakota, the trial, the conviction or the subsequent efforts to procure the release of Wanduta. To the extent that there was any press coverage of similar prosecutions, the reports were fleeting. A short item in the Winnipeg Daily Tribune on 27 January 1904 recounted the arrest of a ninety-year old Cree man, Tapassing, for participating in a sun dance at Nut Lake, Saskatchewan, describing the event as an "orgy," a "form of Indian pastime known

chiefly for its violence." A letter from Edward Field of Fishing Lake followed a few weeks later, taking issue with the conviction of this man, due largely to his age, infirmity and role as a peace-maker within his community: see "Injustice to Poor Old Indian" Winnipeg Telegram 18 February 1904. For Department of Indian Affairs' files on the decision to discharge Tapassing early from prison, see PAC file 60-511-2.

97. For some discussion of the ethnicity of the population that immigrated to Manitoba during this period, see Friesen Canadian Prairies at 204 and 244-70. See also D.J. Hall "Clifford Sifton: Immigration and Settlement Policy 1896-1905" in Francis and Palmer eds. Prairie West 281-308; Howard Palmer "Strangers and Stereotypes: The Rise of Nativism 1880-1920" in Francis and Palmer eds. Prairie West 309-33.

98. Letter from Malcolm Turriff, Rapid City to S. Stewart, Esq., Department of Indian Affairs, Ottawa, 30 January 1903, PAC file 60-511-1.

99. Elias Dakota of the Canadian Northwest, quoting Markle at 104, citing Sessional Papers (1895) no.12, part I, at 59-60; and letter from J.A. Markle to Secretary, Department of Indian Affairs, 3 August 1909, RG10, v.3825, file 60,511-2. Elias describes at 81 the consternation of the Indian Commissioner when he read in a local newspaper in 1888 that a committee of "respectable citizens" had announced plans for a Dominion Day celebration featuring a "war dance" by the Dakota. The Department of Indian Affairs itself was not above pandering to similar white appetites, as indicated by the Canadian Exhibit at the Chicago World's Fair in 1893. The officials mounted a fairly predictable demonstration that included pupils from Industrial Schools who demonstrated

their class work, trades skills and brass bands, but they also sent "a few 'primitive' Indians...to satisfy public curiosity and scientific interest." See correspondence of J.T. Morgan, U.S. Commissioner of Indian Affairs to the Hon. Hayter Reed, Commissioner of Indian Affairs, North-West Territories, Canada, 12 September 1892, as quoted in (Gresko) Kennedy "Qu'Appelle Industrial School" at 119.

100. Thomas Mayne Daly, the Minister of the Interior who introduced the 1895 amendment to the House of Commons, emphasized the need to "enlarge the law so as to meet several cases that have arisen where it appears that the Indians themselves were not responsible for getting up these dances, but outsiders encouraged them to do it." Debates House of Commons, 5 July 1895 at 3935.

101. Report of the Indian Commissioner, Regina, A. Forget, to the Honourable Superintendent General, 22 September 1896 (Sessional Papers 1897, no.14) 287-302; comments of the Deputy Minister of Indian Affairs in the Annual Reports of 1926 and 1928, as quoted in Sluman and Goodwill John Tootoosis at 141. In 1908, Frank Pedley at the Department of Indian Affairs started to block government grants to agricultural societies that sponsored Aboriginal dances at their exhibitions. In the summer of 1911, the Department of Indian Affairs sent letters warning all local fair boards "to discontinue the practice of encouraging pagan Indians to congregate at the fair, and that in the future no concession of any kind was to be granted to them." Regular "Red Backs and White Burdens" at 43, citing Sessional Papers (1909) v.XLIII, no.27 at 195-6; Pettipas Severing the Ties that Bind at 147, citing Frank Pedley to J. Gordon, 28 April 1908, PAC file 60,511-2 at 1; Circular Letter from J.D. McLean to Directors, Agricultural Exhibitions,

16 January 1911, PAC file 60-511-2; Coates and McGuinness Brandon's Agricultural Exhibitions at 29 and 33. Pettipas notes at 148 that officials of the 1913 Winnipeg Stampede, along with several Aboriginal participants, consulted lawyers on the legality of such government interference, citing Glen Campbell to Secretary, 11 December 1913, PAC RG10, v.3,826, file 60,511-3 at 1.

102. Letter from David Laird, Indian Commissioner, Winnipeg to Secretary, Department of Indian Affairs, Ottawa, 28 February 1903, PAC file 60-511-1. Laird's position against clemency was similar to that taken by religious leaders who opposed Aboriginal dancing. Father Joseph Hugonnard, the white Oblate missionary who ran a Roman Catholic school near Fort Qu'Appelle, wrote to Laird in 1903 about the importance of severe penalties for all those prosecuted for dancing: "Indians unless punished in some visible way when justly arrested, consider their release a victory over the N.W.M.P. and Government authorities.... Clemency in their eyes was a sign of weakness." See letter dated 31 March 1903, PAC file 60-511-1. Father Hugonnard's sentiments were supported by other community leaders, such as Roman Catholic Archbishop Langevin of Saint Boniface, Methodists Dr. Sutherland and James Woodsworth, Brandon Industrial School Principal T. Ferrier and Presbyterian Thomas Hart; for references see Gresko "White 'Rites' and Indian 'Rites'" at 177.

103. Letter from David Laird, Indian Commissioner, Winnipeg to Secretary, Department of Indian Affairs, Ottawa, 28 February 1903, PAC file 60-511-1.

104. Sessional Reports (1901) v.XXXVI, no.11, paper 27 at 127 notes: "I might

mention...Harry Hotanina, Itoyetuanka, Caske Hanske and Kinyan-wakan, of the Oak River Sioux, who have fields averaging from fifty to ninety acres each, besides small fields of oats and garden stuff."

105. H. Cartwright, ed. The Canadian Law List (Toronto: Imrie and Graham, 1900) at 92. For details of some of the cases dealt with by Coldwell and Coleman, see Public Archives of Manitoba, Queen's Bench Civil Files 1883-1938, GR360, box B-7-2-9. For a copy of the firm letterhead, see PAC file 60-511-1. The first Manitoba lawyer to claim Aboriginal heritage (Ken Young, a Metis) appears to have been called to the bar in 1974. The next Aboriginal persons admitted were Marion Ironquill Meadmore (1978) and Ovide Mercredi (1979). I am indebted to Sheila Redel of the Law Society of Manitoba for attempting to compile this information.

106. "Coldwell, Hon. Geo. Robson, K.C." in Major Ernest J. Chambers ed. The Canadian Parliamentary Guide, 1915 (Ottawa: Gazette Printing, 1915) at 428; W. Leland Clark Brandon's Politics and Politicians (Altona, Manitoba: D.W. Friesen & Sons, 1981) at 52, 72-3, 85; C.W. Parker ed. Who's Who and Why: A Biographical Dictionary of Men and Women of Canada and Newfoundland, v.5, (Vancouver: International Press, 1914) at 220; Brandon Daily Sun 24 January 1924. For reference to Coldwell's position as a member of the governing council of the University of Manitoba, see Brandon Western Sun 15 January 1903. After his death, he would be acclaimed by the Brandon Daily Sun 24 January 1924, as "the most outstanding figure in the life of [the] city." For details of Thomas Mayne Daly's career, see "Daly, Thomas Mayne" Dictionary of Canadian Biography v.14 (Toronto: University of Toronto Press, 1998) 265-6.

107. In her account of Aboriginal resistance to the potlatch law, Tina Loo "Dan Cranmer's Potlatch" suggests at 251 that "Indians almost always retained counsel and had some very good ones represent them." She also notes that William Halliday, the white Indian Agent at Alert Bay, considered that "the Indians have had many lawyers advise them and much of the opposition to the enforcement of the potlatch law has been owing to the attitude of the lawyers." Halliday to Scott, 1 March 1922, PAC RG10, v.3630, file 6244-2. For examples of cases in which lawyers represented those accused of illegal dancing, see the trial of George Hunt, the son of a Tlingit woman and Hudson's Bay Company man in 1900; the trial of Etchease of Muscowpetung Reserve in 1903; the prosecutions arising out of the Sun Dance on Little Pine Reserve in 1915; the trial of Cessaholis of Kingcome Inlet in 1915; the charges laid against Hotain from Oak Lake in 1917; prosecutions regarding the Rain Dance at Sakimay Reserve on 1933; and consultations held between lawyers and the First Nations of Crooked Lakes (1898), the Assiniboine from Manitoba (1903), the First Nations of Muscowpetung, Piapot and Pasqua Reserves (1924), the First Nations of Swan Lake Reserve, Manitoba (1925), the First Nations of the Sakimay Reserve in Saskatchewan (1931), the First Nations of Ochapowace and Kahkewistakaw Reserves (1934). Pettipas Severing the Ties That Bind at 130, 133, 153, 156, 170-1, 176, 181, 190; Cole and Chaikin An Iron Hand at 73-5, 86-90, 99.

108. "An Act to amend the Indian Act" S.C. 1926-27, c.32, s.6 provides: "Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing

money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of the said tribe or band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months." See also "Indian Act" R.S.C. 1927, c.98, s.141.

George Manuel describes the genesis of the prohibition in Manuel and Posluns The Fourth World at 86-7 and 94-5: "Fund-raising was made a crime for Indians in Canada in 1927, right after Andy Paull, Peter Kelly, and their lawyer, A.E. O'Meara, succeeded in bringing the claim of the Allied Tribes of British Columbia before a Joint Committee of the Senate and House of Commons of Canada. [...] I do not know if this was the darkest hour in the history of the Parliament of Canada. If there were other moments when the forces of law and order were so warped and distorted I will let others speak of their own suffering." Previous to the enactment of this section, the federal government intervened at least once to insist that it select the lawyer to represent Aboriginal people on land claims, and that it pay such counsel directly. By 1924, Deputy Superintendent Duncan Scott proposed prohibiting Aboriginal peoples from paying lawyers to pursue claims without government approval: see Paul Tennant Aboriginal Peoples and Politics (Vancouver: University of British Columbia Press, 1990) at 93, 111-13. The prohibition on fund-raising was not removed until the enactment of "The Indian Act" S.C. 1951, c.29.

Andrew Paull had considered entering the profession of law himself. In 1907, at age fifteen, he began a four year stint working in the law offices of Hugh St.

Quentin Cayley. In 1922, a Vancouver lawyer D.W.F. McDonald, wrote to the British Columbia Law Society, requesting the admission of Andrew Paull as a student-at-law, noting: "Mr. Paul [**sic**] has had a thorough education at the Mission and High Schools...and is looked upon as one of authority by the Indians. He is desirous of taking up the study of law; he is about twenty-eight years of age, and speaks and writes English fluently. He has not had much instruction in Latin, though he speaks and writes French." The Law Society denied his application, indicating that "no concessions will be made as to the subject of Latin." The secretary of the Law Society also recited the Law Society's Rule 39, passed in response to the efforts of several Japanese and Chinese men to be admitted as students-at-law in 1918-19, stating: "No person shall be admitted or enrolled who is not the full age of 16, is a British subject, and who would, if of the age of twenty-one years, be entitled to be placed on the Voter's list under the Provincial Elections Act." First Nations' individuals were barred from voting in British Columbia until 1949; for more details, see discussion of Sero v. Gault in chapter 4. For details of the exclusion of First Nations' lawyers in British Columbia, see Joan Brockman "Exclusionary Tactics: The History of Women and Visible Minorities in the Legal Profession in British Columbia" in Hamar Foster and John McLaren eds. Essays in the History of Canadian Law: British Columbia and the Yukon, v.6 (Toronto: The Osgoode Society, 1995) 508 at 519-25 and 549; E. Palmer Patterson "Andrew Paull and Canadian Indian Resurgence" Ph.D. Thesis (University of Washington: 1962).

109. On the Dakota financial situation, see Elias Dakota of the Canadian Northwest at 114-5, who also notes that during this decade the Dakota commanded high wages as skilled and trained workers in a number of fields, often earning "more than the

going rate for the labour in their localities."

110. The "Criminal Code" sets out the general rules regarding appeals, to be followed "unless it is otherwise provided in any special Act": see S.R. Clarke The Magistrates' Manual 3rd ed. (Toronto: Carswell, 1893) at 227. The "Criminal Code, 1892" S.C. 1892, c.29, s.880(b) provides that "the appellant shall give to the respondent, or to the justice who tried the case for him, a notice in writing, in the form NNN in schedule one to this Act, of such appeal, within ten days after such conviction or order." Although such provisions can be superseded by specific legislation, there is nothing in the "Indian Act" concerning appeals for prosecutions of Aboriginal dance. In contrast, other provisions alter the rules of appeal for certain other offences. "The Indian Act, 1876" S.C. 1876, c.18, s.84 provides a period of thirty days to launch an appeal for crimes of intoxication concerning Indians. Section 85 also provides that "no prosecution, conviction or commitment under this Act shall be invalid on account of want of form, so long as the same is according to the true meaning of this Act." "The Indian Act, 1880" S.C. 1880, c.28, s.97 adds Indian prostitution to the offences that permit an appeal period of thirty days. "An Act to further amend 'The Indian Act, 1880'" S.C. 1882, c.30, s.4 provides that in any suit between two Indians concerning tort or contract, "no appeal shall lie from an order made by any District Magistrate, Police Magistrate, Stipendiary Magistrate or two Justices of the Peace, when the sum adjudged does not exceed ten dollars." "An Act further to amend 'The Indian Act, 1880'" S.C. 1884, c.27, s.15 abolishes the right to bring a writ of **certiorari** concerning intoxication and prostitution offences, and provides that no warrant of commitment could be held "void by reason of any defect therein, provided it is therein alleged that the person has been convicted, and

there is a good and valid conviction to sustain the same." Section 24 of that statute abolishes appeals of certain orders: "in any suit between Indians or in a case of assault in which the offender was an Indian or the offenders were Indians, no appeal shall lie from an order made by any District Magistrate, Police Magistrate, Stipendiary Magistrate or two Justices of the Peace, when the sum adjudged, or the fine inflicted, does not exceed ten dollars." See also "The Indian Act" R.S.C. 1886, c.43, s.79, 108; "Indian Act" R.S.C. 1906, c.81, s.103; R.S.C. 1927, c.98, s.106.

111. A writ of **habeas corpus** requires that the detained individual be brought before a court of law and released if there is no legal authority for the confinement. James Crankshaw A Practical Guide to Police Magistrates and Justices of the Peace (Montreal: Theoret, 1905) notes at 432-50 and 464 that "when there is any fault or illegality in the commitment under which a defendant is imprisoned, he may obtain his discharge by means of a writ of **habeas corpus ad subjiciendum**, which may be obtained from a Superior Court of Criminal Jurisdiction or from a Judge of such Court. Its object being to effect deliverance from illegal confinement, it commands the party detaining the prisoner to produce his body, together with a true statement of the cause of his detention...." The writ of **certiorari** allows a superior court (in Manitoba, the Court of King's Bench) to restrain an inferior tribunal that has acted in excess of its jurisdiction.

112. Statutory Declarations of Akisa, Pazaiyapa, Wasticaka, Kiyewakan and Hoksidaska, "In the Matter of Wanduta, an Indian" 9 February 1903. David Ross, the interpreter, is identified as a "Manitoba Farmer" of the "Indian Village near Portage La Prairie. PAC file 60-511-1.

113. Hall Clifford Sifton 2 vols.; Clark Brandon's Politics at 13, 16, 31-4.

114. Letter from George Coldwell KC, Brandon, to Clifford Sifton, Minister of the Interior, Ottawa, 20 February 1903, PAC file 60-511-1.

115. Rapid City Historical Book Society Rapid City at 14-33, 83, 116, 345-6.

116. Statutory Declarations of Edward Soldan, John Bowen Mowatt Dunoon, Edmund Cecil Gosset Jackson and Alexander McKellar, "In the Matter of Wanduta, an Indian" 27 February 1903, PAC file 60-511-1.

117. Gresko "White 'Rites' and Indian 'Rites'" notes at 180 that "public opinion was often on their [the Aboriginal] side and can be measured in the popularity of Indian festivals at town fairs, or the convivial wish that the chiefs and their braves be allowed their 'social dances' or 'canoe races.'"

118. For a discussion of state of undress, see (Gresko) Kennedy "Qu'Appelle Industrial School" at 219, where she recounts Indian Agent Markle's depiction of "war dances" in which "Indians...appear in public in nude attire [Markle had underlined 'half-naked' in the clipping] with little on them except paint and feathers...."

119. The National Council of Women of Canada passed a motion at its eighth annual meeting in 1901: "Resolved that the matter of the gross immoralities which are practised among the Indians of Treaty VII during their annual dances having been

brought to the attention of the Executive Committee of the National Council of Women of Canada by one of the Missionaries on these Reserves, they are glad to learn by the last annual report to the Government that the matter has been considered by the Department of Indian Affairs. The National Council of Women of Canada, while acknowledging what the Government has done to suppress the evils referred to, would urge the Government to take whatever steps be deemed advisable to further strengthen the hands of the Government Agents and others, so as to bring about an abandonment of all these dances, which interfere with the progress of these Indians towards morality and civilisation." During the debate on this resolution, attention was drawn to the "outrages practised upon quite young children during the course of these dances." Some urged that the Indian Agents be given the power to withhold special rations where "such gross immoralities are practised." At least one participant confessed to having "seen the Indians on one of the Reserves ten years ago dancing a sun-dance in war paint and fathers," but she noted she had not seen "any of the gross immoralities which they had been since told about." She was advised that "the objectionable features of the sun-dances" were "never allowed to be seen by white people; it is only after the missionaries have won the confidence of the girls that they learn of them." National Council of Women of Canada Yearbook (Ottawa: 1901) at 159-62. (Gresko) Kennedy "Qu'Appelle Industrial School" at 209-10 notes that correspondence between Frank Pedley and the Minister of the Interior Frank Oliver, 30 March 1906, refers to the "frequent complaints made by Catholic and Protestant Missionaries, the National Council of Women as well as from other organizations."

120. Barker Brandon notes at 165 that in 1915 the Brandon Imperial Order of

Daughters of the Empire (I.O.D.E.) had bestowed the Union Jack upon ninety-year old Antoine Hoka, something he had vowed to "possess for the rest of my life and wrap around my body at death."

121. A letter to the editor titled "Indian Circle Dances," written by J.H.S. of Plymouth England, published in the Indian Head Vidette on 20 May 1903, eulogizes religious liberty, but makes clear that this concept was not applicable to Aboriginal peoples: "Religious liberty needs to be jealously guarded, but liberty to practice idolatrous rites in a professed Christian country is dangerous to the community at large. It is the opinion of many that the infamous truckling to and protection and patronage of Hindoo idolatry led to the Indian mutiny with its nameless horrors. Idolators naturally seek every opportunity to destroy all Christian government and impurity may soon lead to open insurrection. The evil needs to be promptly dealt with." See also Allison M. Dussias "Ghost Dance and Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth-Century Native American Free Exercise Cases" Stanford Law Review v.49 (1997) 773 at 775 where she notes that even in the American setting, where the concept of freedom of religion had constitutional standing, "freedom of religion meant freedom to practice the Christian religion. The government was deemed to have the authority to suppress traditional religious practices and establish Christianity among the Indians, the Constitution notwithstanding." For a noteworthy exception to the generalization that whites did not imbue Aboriginal peoples with the right to religious freedom, see Regular "On Public Display" regarding the activities of Rev. John McDougall, the Methodist missionary to the Stoney at Morley, Alberta, who campaigned against the prohibition of Aboriginal dance on the basis of First Nations' "religious

liberty."

122. Brandon Western Sun "The Indian is Naturally Lazy" 5 June 1903. Citing as an illustration of this none other than a Dakota from the Oak River territory, the report describes him as one who "raised a nice little crop" the previous fall, "the proceeds of which bulged his pockets out." The article describes the Dakota "lean[ing] up against the side of one of the main street stores yesterday afternoon," having apparently decided not to farm at all this summer. Questioned about the wisdom of his decision not to begin seeding, the Dakota purportedly replied: "Me make lots money last year." The stereotypical depiction of First Nations' individuals is characteristic of white newspaper accounts about Aboriginal people during this era.

123. In her book review of Pettipas's Severing the Ties that Bind in the Canadian Journal of Law and Society 10:2 (Fall 1995) 277 at 279, Tina Loo notes: "In an example of one of capitalism's many ironies, practices that were outlawed because they prevented Indians from learning the proper habits of industry - from internalizing a capitalist work ethic - persisted in commodified form because of their newly-created economic value." See also Regular "Red Backs and White Burdens," who notes the tensions displayed in Alberta newspaper articles during the second decade of the 20th century regarding the appropriateness of "Indian displays" at fairs.

124. The Statutory Declarations of Edward Soldan, John Bowen Mowatt Dunoon, Edmund Cecil Gosset Jackson and Alexander McKellar, "In the Matter of Wanduta, an Indian" 27 February 1903, PAC file 60-511-1, all state: "[On July 17th] a holiday was

being observed in Rapid City and races and other amusements were being held there and as part of the entertainment, I and other citizens of Rapid City arranged with the Indians of the Oak River reserve to attend at Rapid City and give a dance for the amusement of the people visiting the town at that time."

125. Despite a thorough review, I could locate no reported cases on the prosecution of illegal dances against Aboriginal or non-Aboriginal persons in any of the published series of Canadian law reports. Prosecutions against Aboriginal individuals are mentioned in the archival records of the Department of Indian Affairs, but I have found no discussions of any charges laid against non-Aboriginal persons. To be absolutely certain that no prosecutions were ever launched against white individuals, it would be necessary to complete a full review of all the Canadian court records held in various provincial archives. My initial efforts to locate such records in the archives of the prairie provinces have produced so little documentation that it would seem that the prospect of completing such a task with any sense of fullness and accuracy may be of dubious practicality.

126. Regular "Red Backs and White Burdens" at 152-4.

127. Brandon Western Sun "Indian Chief Talks to the Governor-General" 16 October 1902.

128. After completion of a tour of western Canada in the fall of 1902, Governor-General Lord Minto did present certain Aboriginal grievances to Prime Minister Sir

Wilfrid Laurier. The repression of the Sun Dance was one of the concerns Minto mentioned, and he took issue with the "want of human sympathy" between white officials at Indian Affairs and Aboriginal peoples, and with the "somewhat narrow religious sentiments" expressed by the former. See PAC Laurier Papers, v.248, at 69214-20, Minto to Laurier, 16 January 1903. Sifton had long been irked by Minto's "gratuitous interference in the administration of Indian Affairs" and this submission appears to have caused a further deterioration in the relationship between the two men; see Hall Clifford Sifton v.2 at 90. However, it appears to have wrought no change in governmental policy.

129. Telegraphs between David Laird and J.D. McLean, 9-10 January 1903; David Laird to Agent James Wilson of the Blackfoot Agency, 11 July 1898. PAC file 60-511-1.

130. Legal Opinion "The King v. Wanduta" directed to the Deputy Superintendent General, Department of Indian Affairs, undated (early March 1903), PAC file 60-511-1.

131. As a general rule in indictable offences, justices of the peace (and police magistrates) had only the power to hear the preliminary inquiry, to ascertain if there was sufficient evidence to put the accused on trial, and then to commit the accused for trial before a higher court (such as the Manitoba Court of King's Bench or the Court of General or Quarter Sessions of the Peace, when presided over by a Superior Court judge or a County or District Court judge): Crankshaw Police Magistrates at 115-17.

132. Legal Opinion "The King v. Wanduta" directed to the Deputy Superintendent General, Department of Indian Affairs, undated (early March 1903), PAC file 60-511-1.

133. Letter from Frank Pedley, Deputy Superintendent General of Indian Affairs, to E.L. Newcombe KC, Deputy Minister of Justice, 10 March 1903 and letter from Frank Pedley to Mr. Collier, Ottawa, 12 March 1903; PAC file 60-511-1.

134. Letter from D.M.J. (full name not indicated), Secretary, Department of Justice to Frank Pedley, Deputy Superintendent of Indian Affairs, 15 May 1903; Draft letter, from J.D. McLean, Secretary of Indian Affairs to Messrs. Coldwell & Coleman, 15 May 1903. PAC file 60-511-1.

135. On 1 April 1903, David Laird cabled the Secretary of Indian Affairs to advise that the Indian agent on the Peigan reserve had sentenced an Indian to two months under section 114. "Has he exceeded his jurisdiction in awarding summarary [sic] punishment instead of committing accused for trial?" queried Laird. "Police have raised question," he noted. J.D. McLean replied the same day: "If prima facie case under Section 114 Indian Act Agent should have committed for trial. No jurisdiction to try summarily." PAC file 60-511-1.

136. Clark Brandon's Politics at 43, 58, 63; Hall Clifford Sifton v.2 at 110-26; "Re-organization: Large Reductions in Indian Department Staff, Between Thirty and Forty Thousand Dollars Saved in Salaries Alone--Economy is the Watchword" Regina

Leader 6 May 1897.

137. Archbishop Langevin wrote to Sifton on 26 December 1903 recommending that the government "amend the law" if necessary to eradicate the Aboriginal dances that furnished the First Nations with "the means of opposing all efforts made by the Government and the Missionaries to civilize the Indians...to earn a living by farming or by raising cattle." Langevin complained about whites who favoured Aboriginal dances, describing them as "greedy skimmers" who sought out dancers "for the sake of lucre" and as "gentlemen...in the romantic view of 'amateurs'." Clifford Sifton's reply to Archbishop of Saint Boniface, 31 December 1903, is also located in PAC file 60,511-1.

138. Letter from Coldwell & Coleman to Minister of the Interior and Department of Indian Affairs, Ottawa, 20 May 1903; PAC file 60-511-1.

139. Rapid City Historical Book Society Rapid City at 8, 24-5.

140. The Marquette Reporter "Indians and Live Stock" 20 August 1903, is characteristically demeaning: "On the Indian reserves throughout Manitoba and far out on the prairies of the Territories the blue-blooded natives of Western Canada are groaning in satisfaction, with a good portion of \$140,000 snug under their wampum belts. The Indians are being paid their annuities now and Indian Commissioner Laird, of Winnipeg, is beginning to receive reports that show the distribution of treaty fees for 1903 is well nigh completed. The month of July and the earlier portion of August is the Christmas season to the reserve Indian, and although the government has been discouraging the

custom in every possible manner, here and there a tribe breaks out into a good old fashioned dance and jollification, after the Dominion agents have passed through their villages and made reparations for the land titles which they have since ceded to the government."

141. Barker Brandon notes at 96, with the condescension that is generally typical of such accounts: [The] annual Summer Fair...featured for the first time an Indian pow-wow [during] which it was recorded that the "noble red men attired in all their gorgeousness, marched by the grandstand to the sound of tom-toms [although] one stately brave looked as if he had been corrupted by civilization: he wore a coonskin coat." Elias Dakota of the Canadian Northwest notes at 118 that under David Laird's instructions, the Department of Indian Affairs hired detectives to attend the Brandon Fair in 1907 to "see that the law is obeyed...."

142. Shave Tail, a Cree, was convicted of "enticing the Indians to dance" in 1903, but let off with a "severe reprimand." PAC file 60,511-1; Pettipas Severing the Ties that Bind at 121. Gresko "White 'Rites' and Indian 'Rites'" notes at 176 that Standing Buffalo, whom she describes as "Sioux," was also arrested and tried in 1903, citing Asst. Indian Commissioner, N.W.T. J.A. McKenna to the Secretary of the Department of Indian Affairs, 15 June 1903, RG10, file 60,511-1 and Codex of the Qu'Appelle Industrial School 31 August 1903. Two Peigan men, Commodore and Joe Smith, were convicted of participating in a Give-Away Dance in Alberta in 1903. The convicting white judge was Chief Justice Sifton, who released the prisoners on a suspended sentence, with the warning that he would be "very severe" with any who came before him charged with

dancing in the future. See P.C.H. Primrose, Superintendent Commanding "D" Division, MacLeod, Annual Report to Commissioner, North West Mounted Police, Regina, 1 December 1903, Sessional Papers no.28 at 76; Pettipas Severing the Ties that Bind at 121.

In 1904, a ninety-year old Cree elder from Fishing Lakes, named Taytapasahsung, was convicted for attending a spiritual ceremony at Nut Lake, Saskatchewan. The accused was sentenced to two months of hard labour. PAC file 60,511-2 at 1-2; "Injustice to Poor Old Indian" Toronto Telegram 18 February 1904; Pettipas Severing the Ties that Bind at 121-2. In 1914, the elderly Cree Fineday was arrested. Pettipas Severing the Ties that Bind at 152. That same year, Johnny Bagwany and Ned Harris, Nimpish of Alert Bay, were convicted of conducting a potlatch. The legal argument during the trial before white Justice F.B. Gregory in Vancouver County Court centred on the definition of "festival" and "ceremony," and whether the potlatch fell within the meaning of these terms. Cole and Chaikin An Iron Hand at 97-8. In 1915, Cree Chief Joseph Kenemotayo from Whitefish Lake, Charles Tott and Seeahpwassum Kenemotayo were convicted of conducting an "off-reserve" ceremony near present-day Wynyard, Saskatchewan. All three pleaded guilty. Tott was sentenced to thirty days in the jail in Prince Albert, with the other two being fined \$5, \$2.50 and costs. J.R. Hooper to Commissioner, Crime Report, 3 June 1915, PAC RG10, v.3,826, file 60,511-4, part 1 at 1. Six more Cree men were convicted when members of the Sweet Grass community participated in a Sun Dance at Little Pine near Battleford, Saskatchewan in 1915. Pettipas Severing the Ties that Bind at 153, citing J.A. Rowland to J.D. McLean, 20 July 1915, PAC RG10, v.3,826, file 60,511-4, part 1 at 1-2. Two Blackfoot men were

convicted in Alberta for giving away property during dances in 1915. Big Chief Face was convicted in the Supreme Court of Alberta for giving away two mares at a Blackfoot ceremony and a young man from the Blackfoot Agency was given a suspended sentence for giving away twenty-five cents during another dance. See Pettipas Severing the Ties that Bind at 155, citing J. Gooderham to Assistant Deputy and Secretary, 12 February 1915 and "The King versus Big Chief Face" submitted by M.S. McCarthy to the Department, December 1915, PAC RG10, v.3,826, file 60-511-3 and 60-511-4, part 1. Cessaholis of Kingcome Inlet was convicted of celebrating a Potlatch in 1915. The accused pleaded guilty, but argued against the propriety of the law, noting: "I did not give a potlatch, I gave a feast for poor Indians, just like white people in Vancouver give feasts for the poor people." He received a suspended sentence from white Vancouver County Court Judge W.W.H. McInnis. Cole and Chaikin An Iron Hand at 99. In 1920, eight Aboriginal men from Alert Bay were sentenced to serve two months in Oakalla Prison for celebrating Potlatches. Cole and Chaikin An Iron Hand at 116. In 1921, George Tanner of Swan Lake, Manitoba was imprisoned for two months for giving away a buggy and other goods. Pettipas Severing the Ties that Bind at 155, citing Sergeant R. Nicholson, Crime Report - Re: George Tanner...Swan Lake Reservation, Man., Illegal Dancing, Indian Act, 25 July 1926, PAC RG10, v.3,827, file 60,511-4B. Mayzenahweeshick and Blackbird, participants in a Sun Dance held at Buffalo Point, Manitoba, were convicted in 1921. The organizer was imprisoned for two months, while the others were apparently given suspended sentences. Pettipas Severing the Ties that Bind at 153 and 177 citing Corporal G. Gill to Officer Commanding, 18 August 1921, and Corporal G. Gill, Report Re: Mayzenahweeshick, Indian - Engaging in Illegal Indian Dance, 30 July 1921, PAC

RG10, v.3,826, file 60,511-4A at 1-2. Forty-three Nootka individuals were convicted of dancing off their reserve that same year. Cole and Chaikin An Iron Hand at 124.

In a spectacular burst of police and prosecutorial power in 1922, forty-nine Kwakiutl individuals from Alert Bay, British Columbia were convicted following Dan Cranmer's potlatch. Twenty-two were sentenced to two months imprisonment; four were given six months. The rest received suspended sentences after they signed affirmations to stop potlatching and agreed to surrender to the white Indian agent their ceremonial regalia, consisting primarily of "elaborately carved cedar masks." The 450 items confiscated were held in museums in Ottawa and Toronto until they were returned to native museums in Alert Bay and Cape Mudge in 1987, following litigation to retrieve them. Loo "Dan Cranmer's Potlatch" at 221, citing PAC RG10, v.3630, files 6244-4.

Cole and Chaikin An Iron Hand, chapter 9 and Loo "Dan Cranmer's Potlatch" at 233, attempt to quantify the prosecutions for potlatching. They indicate that between 1884 and 1895 there was only one conviction for potlatching. Between 1895 and 1918, seventeen more were indicted. From 1918 to 1922, another 135 were charged, and from 1922 to 1935, an additional ten were indicted. The accused individuals were frequently represented by white lawyers who claimed that the scope of the legislation was unduly wide and oppressive, but arguments on the injustice of the law were generally unsuccessful: Petition from the Indians of BC by their Solicitors, E.A. Dickie and E.K. DeBeck, to Scott, 27 February 1922, PAC RG10, v.3630, file 6244-4.

Chief Red Dog, Cotasse, Adelard Starblanket, Allen Starblanket and

Buffalo Bull were arrested for participating in a Sun Dance on the Okanese territory in Saskatchewan in 1932. The documentation indicates the arrest of these individuals, but does not show whether there were convictions or sentences. Pettipas Severing the Ties that Bind at 176, citing Report: Chief Red Dog (Indian), Sec. (115) Indian Act, File Hills Reserve, Saskatchewan, 9 July 1932, PAC RG10, v.3,827, file 60,511-4B at 1. In 1933, individuals from the Sakimay First Nation in Saskatchewan were arrested for conducting a Rain Dance. Pettipas indicates that the individuals charged retained a lawyer and were "subsequently released with a stern lecture." Pettipas Severing the Ties that Bind at 176, citing J. Ostrander to Secretary, 15 July 1933, PAC RG10, v.3,827, file 60,511-4B at 1. There were arrests and fines surrounding a Sun Dance at Goose Lake also in 1933. Pettipas Severing the Ties that Bind at 180 notes that David Mandelbaum's interpreter advised him he was one of those arrested and fined at this time. Alexander Wolfe Earth Elder Stories (Saskatoon: Fifth House, 1988) at 60-64; Mandelbaum "General Remarks about Sun Dance" Fieldnotes, 23 June 1934 at 27, Randall Brown "Notes, Articles and Clippings Re: Plains Indians and Sun Dance, 1819-1977" held in Glenbow-Alberta Institute Archives. In 1935, a Kwakiutl was convicted of dancing off the reserve. Cole and Chaikin An Iron Hand at 143. Chief Mark Shaboqua, Councillor Pitchenesse and George Gilbert of Wabigoon, Ontario were prosecuted in 1938 for attempting to conduct a spiritual ceremony. Chief Mark Shaboqua and Councillor Pitchenesse each received two month suspended sentences on the condition that they not participate in another ceremony. Pettipas Severing the Ties that Bind at 157, citing E. Moore, Report, Alleged Pagan Dances - Dinorwic Indian Reserve, Dinorwic, Ontario, 4 July 1938, PAC RG10, v.8,481, file 1/24-3, part 1 at 1.

In innumerable cases, although formal charges were not laid, the police and Indian Department officials intervened to withhold rations and refuse passes for individuals involved, dismantle dance lodges, confiscate sacred objects and terminate ceremonial dancing. In 1902, for example, white Inspector Alexander McGibbon levelled the dance house in the brush that was being prepared for a ceremonial dance at Oak Lake; Meyer "Canadian Sioux" at 25 citing Sessional Papers no.27 at 207; Pettipas Severing the Ties that Bind at 153-7, 173-7, 186, 215-6.

143. The enactment was also equally specific about the reach of the criminal law with respect to those who organized stampedes and exhibitions. Any one who "induced" or "employed" an "Indian" to take part in such a performance was deemed just as guilty as those who danced. See "An Act to amend the Indian Act" S.C. 1914, c.35, s.8: "Any Indian in the province of Manitoba, Saskatchewan, Alberta, British Columbia, or the Territories who participates in any Indian dance outside the bounds of his own reserve, or who participates in any show, exhibition, performance, stampede or pageant in aboriginal costume without the consent of the Superintendent General of Indian Affairs or his authorized Agent, and any person who induces or employs any Indian to take part in such dance, show, exhibition, performance, stampede or pageant, or induces any Indian to leave his reserve or employs any Indian for such a purpose, whether the dance, show, exhibition, stampede or pageant has taken place or not, shall on summary conviction be liable to a penalty not exceeding twenty-five dollars, or to imprisonment for one month, or to both penalty and imprisonment."

It is apparent from the legislative debates that the white M.P.'s and

senators had no inkling of the wide-ranging sweep of the criminal prohibition already in place. In both Parliamentary houses, objections were raised to the prospect of using criminal law to prohibit the traditional customs, festivals and ceremonies of Aboriginal people, where these were held within the sanctity of Aboriginal communities. Prime Minister Robert Laird Borden erroneously insisted that "there will be no difficulty at all about the Indians participating in these ceremonials upon their own reserves." William James Roche, the white Superintendent General of Indian Affairs, was asked whether the new section would prohibit the interchanges of visits among reserves for the purpose of attending festival and ceremonial dances, and replied: "No, it does not." Yet the new bill did nothing to repeal the earlier sections that had criminalized just such activities. The ignorance of the legislators about something so fundamentally important to the survival of Aboriginal culture is breath-taking. Debates House of Commons, 8 May 1914 at 3684; 11 May 1914 at 3553. Similar responses were also given in the Senate: Debates Senate of Canada, 27 May 1914 at 557-8. Nor was it only legislators who evidenced such ignorance. William Trant, white Justice of the Peace in Regina, wrote a column titled "The Last of the Indian Sun Dance; or Making Chief Pla-Pot's [sic] Braves," published in the Special Christmas edition of the Regina Standard December 1909, in which he noted that the Sun Dance was being "supplanted" by "the English picnic" and giving way to the "pleasures of civilization" despite the fact that "the Indians have not been forced to discontinue the practice; they have been enticed thereto." Even more remarkable in its inaccuracy, Trant's statement was published only a few years after he had presided over the trial of Etchease, a Saulteaux, for participating in a Circle Dance at the Moscowpetung Territory Reserve in Saskatchewan, on 14 March 1903. For details of the

Etchease prosecution, see infra.

A few politicians continued to voice concern about the discriminatory impact of the law. A white New Brunswick M.P., Frank Broadstreet Carvell, threw out the obvious question. "An eastern man naturally wonders," he asked, "why an Indian should not be allowed to join a show and make a few dollars as well as a white man can." Frank Oliver, who was at this point an opposition Liberal M.P. for Edmonton, offered a rather odd reply. "When an Indian consents to join in a public show for money," he speculated, "he degrades and demoralizes himself to an extent that would not be present in the case of a white man doing a similar thing." William Erskine Knowles, a white Liberal M.P. from Moose Jaw, offered his opinion that "Indian dances" were "far ahead of the turkey trot and the tango that we have in Ottawa," but this held little sway with the other politicians, who blithely voted their approval of the amendment. Debates House of Commons, 8 May 1914 at 3483-4.

144. Arthur Meighen, the white Minister of the Interior, announced that the reason justices of the peace or Indian agents standing in their stead would process all such cases in future was simply "to avoid the expense of proceeding by indictment." He said nothing about how such a change in procedure would relegate all these prosecutions to hearings before individuals who had little training in law, and substantially insulate their actions from legal challenges. During the same discussion, Meighen also indicated that he felt that "the Indians of this country have been liberally and generously dealt with" and that this was the "spirit" underlying the Act. Debates House of Commons, 23 April 1918 at 1049-56. "An Act to amend the Indian Act" S.C. 1918, c.26, s.7 states:

"Section one hundred and forty-nine of the said Act is amended by striking out the word 'indictable' in the tenth line thereof, and by inserting after the word 'liable' in the eleventh line the words 'on summary conviction.'"

145. Allan Webster Neill, the independent white M.P. from Comox-Alberni, raised the question of exactly what the term "in aboriginal costume" had meant in the first place. The Minister of the Interior, Thomas Gerow Murphy replied in an offhand manner: "I believe the hon. member would find the accepted definition in any standard dictionary." Debates House of Commons, 1 March 1933 at 2610. Debates Senate of Canada, 11 May 1933 at 497. "An Act to amend the Indian Act" S.C. 1932-33, c.42, s.10 provides: "Subsection three of section one hundred and forty of the said Act is amended by striking out the words 'in aboriginal costume' in the fifth line thereof."

146. The amendment was initiated by the white Indian Agent at Alert Bay, who complained that the Potlatch was continuing to be celebrated there. J.S. Woodsworth insisted that there ought to be more consultation between the government and Aboriginal peoples prior to any legislative revision. Alan Webster Neill, the M.P. from Comox-Alberni who had been a former Indian Agent himself, complained that the amendment would permit convictions despite the absence of any overt act:

It is provided here, in addition to the already stringent features, that any man who takes part in a festival any part of which consists in the giving away of articles shall go to gaol for six months, and now he is to go to gaol if he has been saving, storing or accumulating any goods or articles for the purpose of giving them away. Who shall read

into a man's mind to decide what his purpose is when he accumulates earthly goods? He may be accumulating them to leave them to his grandchildren; or as Joseph and the Israelites of old, who in the good years stored up provisions against the depression, this Indian may foresee a depression and decide to store up certain things against a rainy day. [...] Would the department care to apply such provisions to white people? [...] Why, with such a provision a vindictive man might send any Indian to gaol....

[Debates House of Commons, 20 March 1936 at 1288-9, 1297.]

Superintendent Crerar, who admitted that he knew little about the origin of the amendment and was merely following the dictates of officials from Indian Affairs, was ultimately convinced to withdraw the amendment; Debates House of Commons, 26 May 1936 at 2120-1. See also Cole and Chaikin An Iron Hand at 149; Pettipas Severing the Ties That Bind at 195.

147. The Muscowpetung First Nation of Saskatchewan offered a sustained legal challenge to s.114 of the "Indian Act," when they performed a series of Circle Dances in March of 1903. Prior to the dances, Etchease, a Saulteaux from Muscowpetung, consulted with white counsel, A.D. Dickson from Qu'Appelle Station and Fred Jones. At the dance, Etchease announced that he had taken the precaution of collecting sufficient funds to retain counsel to defend anyone who might be prosecuted as a result. Based upon the legal advice, Etchease gave away only bannock and tea at the ceremony, and did not actually invite anyone to partake of the supper. Arrested and prosecuted by Regina Crown Prosecutor Thomas C. Johnstone, Etchease was tried before two white officials,

Inspector Strickland and Justice of the Peace Guernsey. Defence counsel argued that the distribution of food and drink alone could not run afoul of the give-away provisions in the legislation, since this was nothing more than "acts of ordinary hospitality." The justices of the peace agreed, and discharged the accused man. After a concerted campaign from senior officials at Indian Affairs (including Assistant Indian Commissioner, Hayter Reed) and religious leaders (including Father Joseph Hugonnard, principal of Qu'Appelle Industrial School) who feared this was a test case designed to "defeat the law," the verdict was appealed. Committed for retrial by William Trant, the white J.P. for the Judicial District of West Assiniboia, Etchease was convicted by a jury presided over by a white judge, Hugh Richardson of the Supreme Court of the North West Territories, and sentenced to three months. In addressing the jury, Judge Richardson commented: "I do not see why tea and bannock or soup should be an exception to the goods or articles the giving away of which makes a dance illegal under section 114. The value of articles does not matter at all." Fred Jones gave notice of an application to reserve a special case for the opinion of the full court, but the application was refused, with the following rationale: "while the provision might be construed as harsh in some cases yet in this case [the judge] considered that the acts complained of exceeded the acts of ordinary hospitality and that on the evidence he could see nothing to be reserved; that there was such evidence of a concerted movement among the Indians in the holding of this special dance and such an abundance of provisions provided that there was no question in his mind that the matters complained of came within the provisions of the Indian Act." None of the court records for these proceedings survive; [correspondence with Elizabeth Kalmakoff, Staff Archivist, Historical Records,

Saskatchewan Archives Board, 18 August 1994.] Copies of depositions from Acting Indian Agent William Graham, Farming Instructor James Hawes, Alfred Cappel (Saulteaux), Alexander Gordon (Saulteaux), Fred Fiddler (Saulteaux), and the elder Fiddler (father of Fred Fiddler) that were filed before William Trant at the preliminary hearing are retained at PAC RG10, v.3825, file 60-511 at 1 and 3. The Toronto Globe 27 May 1903, described Etchease as "a sort of agitator among the Indians" and the Circle Dance as a "crafty effort to evade the law." See also Pettipas Severing the Ties That Bind at 119-20 and 133.

148. In 1917, a group of the Dakota performed a Give-Away Dance and other ceremonies prior to and at the Brandon Agricultural Fair, much to the consternation of the white Indian Agent, James Macdonald. The Dakota wisely exchanged such goods as horses and buggies with relatives and visitors from the United States, making it difficult for the authorities to trace the transactions. Pettipas Severing the Ties that Bind at 187; James Macdonald to Assistant Deputy and Secretary of Indian Affairs, 5 July 1917, PAC RG10, v.3,826, file 60-511-4B, part 1. One Dakota from Oak Lake, named Hotain, was arrested on this occasion, but he retained a lawyer to defend him at trial and received only a suspended sentence. Pettipas Severing the Ties that Bind at 156 describes Hotain's case as follows:

Hotain, a Dakota, who had celebrated a giveaway near Oak Lake, Manitoba, in 1917 [was arrested.] In exchange for the Indian agent's permission to hold a memorial feast for the dead, Hotain had been asked to sign a statement agreeing to refrain from holding future feasts of this nature. However, he later held a giveaway and distributed

shawls, guns, and cash to the participants. The collected money was to be used as a contribution towards the Patriotic Fund and to cover costs of sending a delegation of Dakota to the Department's office in Ottawa. Hotain was arrested and forced to hire a lawyer for his defence. He was given a suspended sentence on the condition that he not hold any more dances. [James MacDonald to Assistant Deputy and Secretary, 14 February 1918, PAC RG10, v.3,826, file 60-511-4A.]

See also petition of Harry Hotain and Marpiyaska to Secretary, 1917, PAC RG10, v.3,826, file 60,511-4, part 1 at 1.

Aboriginal communities often performed shortened versions of the dance in the privacy of their homes in order to avoid detection. Pettipas Severing the Ties that Bind at 138, 178-9, 184. Tennant Aboriginal Peoples notes at 78 that some Aboriginal communities managed to blend their traditional ceremonies with Protestantism, performing versions of potlatches in church halls with music from the church brass band. According to George Manuel of the Shushwap First Nation, "the variations that grew out of the possible loopholes were as numerous as the people who kept the traditions going." Manuel and Posluns The Fourth World at 78-9, adding: "The lawyers were useful, not only in court, but in finding ways for us to potlatch that were beyond the arm of the law. One way was to disassemble the potlatch, by holding the different parts - the feast, the dances, the giving - at different times and places. Another was simply to move the feast to a distant place known only to the invited guests, perhaps a distant island. I can remember people passing out oranges with dollar bills stuck to them. As long as the police could not find all the elements of the potlatch present in one place or time, there

was no offence." Instead of giving away property during the ceremony, the participants would sometimes indicate the transfer of ownership through the passing of marked sticks. Pettipas Severing the Ties that Bind notes at 186 that this occurred among the Plains Cree, who would make the actual exchange of property after the ceremony. Some made it a practice to wait six months from the end of the dance to give away any property, waiting just past the limitation period so that the authorities could no longer lay charges. Cole and Chaikin An Iron Hand at 142. LaViolette Struggle for Survival notes at 86 that British Columbia lawyers advised individuals from Alert Bay that this strategy, which they called "disjointing the potlatch," would successfully evade prosecution. Others thoughtfully performed the dances on pasture straddling the border between two reserves, thus skirting the prohibition on "off-reserve" ceremonies. In the 1920s, the Poundmaker and Little Pine Cree constructed their Sun Dance lodge on the border of the two abutting communities, taking "great and exaggerated precautions" not to put their feet over the dividing line. In 1934, the Crooked Lakes Agency dance was held on the border between Ochapowace and Kahkewistakaw. See Sluman and Goodwill John Tootoosis at 142, Pettipas Severing the Ties that Bind at 179, 181, and Mandelbaum "General Remarks about Sun Dance" at 28.

149. A host of petitions drafted by irate Aboriginal leaders descended upon government officials in Ottawa, protesting the legal attack on religious and spiritual practices. Chief Thunderchild, O-ka-nu, Charles Fineday, Joe Ma-ma-gway-see, Chief Red Dog, Blackbird, Chief Ermineskin, Chief Matoose, Chief Day Walker and others from across Manitoba, Saskatchewan and Alberta all demanded the right to freedom of religion. A group of Elders who witnessed the signing of the Qu'Appelle Treaty sent

representatives to Ottawa in 1911, to speak out on behalf of Aboriginal ceremony and dance. Although the delegation was not successful in securing the repeal of the legislation, Frank Oliver, the Superintendent of Indian Affairs, conceded that dances could be held provided there was no giving away of property or mutilation. Pettipas Severing the Ties that Bind at 128-39, 158-9, 169-80, 187-195; Gresko "White 'Rites' and Indian 'Rites'" at 177-8; Notes of Representations Made by Delegation of Indians from the West, Alex Gaddie, Interpreter, Department of Indian Affairs, 24 January 1911, PAC RG10, v.4,053, file 379,203-1; Alex Gaddie to David Laird, 1 May 1911, PAC RG10, v.3,826, file 60,511-3 at 1.

In 1919, with the growth of the Pan-Indian movement in Canada, the demands to end the prohibition of traditional dances became more organized. The movement, inspired by F.O. Loft, a Mohawk from the Six Nations Grand River, was assisted by connections many Aboriginal peoples made with each other through their service in the First World War. For an account of the creation of the League of Indians of Canada and its impact on western Canada, see Cuthand "Native Peoples" at 31-41. The League of Indians of Canada held a meeting at Thunderchild in 1921, where one of the most important issues discussed was the promotion of Aboriginal religious freedom. The League of Indians in Western Canada was formed in 1929, and in 1931 it sponsored a conference at Saddle Lake, Alberta, where a resolution demanding the elimination of the permit system and the removal of all farm instructors from Alberta and Saskatchewan was heartily endorsed. In 1934 and 1935, various bands held conventions in Alberta, where they insisted on the right to "worship in our own way," and demanded an end to the prohibitions on Aboriginal religious ceremonies such as the Sun Dance and the

Hungry Dance. In 1945, an association representing several thousand Saskatchewan Aboriginal people presented a brief to the federal government claiming their religious freedom and the right to perform traditional spiritual practices without prosecution. Cuthand "Native Peoples" at 31-41; Brief of the Protective Association for Indians and their Treaties to the Honourable The Minister of Indian Affairs for Canada, September 1945, PAC RG10, v.6,811, file 470-3-6, part 1. Pettipas Severing the Ties that Bind notes at 205 that this Association traced its origins to the Allied Bands and represented "five to six thousand Indians residing on eighteen reserves in four Saskatchewan agencies." The brief stated as follows:

"The Freedom of Conscience and Religious Worship": This freedom should assure the Indian of freedom to his religious beliefs, and the right to practice his religion according to ancient traditions, without prosecution for the performance of rituals, so long as they do not offend against the general criminal or civil law of the land. It assures freedom to the Indian from the arbitrary imposition of foreign religious beliefs upon him, through parochial schools, or through the undue influence elsewhere, of any particular church or religious creed.

This position was also endorsed by the Indian Association of Alberta and the Union of Saskatchewan Indians.

150. Described as one of the "first performers to bring literature to the frontier towns," Pauline Johnson passed through Rapid City in 1896 and 1899 and nearby Alexander, Manitoba in early November, 1902 drawing large and appreciative audiences

each time. Rapid City Historical Book Society Rapid City notes at 22 and 24 that "no space was left in the local hall when a famous Indian recited some of her work. E. Pauline Johnson inspired her audience with 'Lullaby of the Iroquois' and 'The Train Dogs.'" The Griswold Ledger 6 November 1902 reports that Pauline Johnson gave a reading in Alexander, Manitoba, to raise money for the school library fund. According to the press, "the representative of the dusky race was in good form, and her various selections were apparently heartily appreciated" by the "large audience in the hall." Born in 1861 at Grand River, Ontario, Pauline Johnson (Tekahionwake) was the daughter of George Henry Martin Johnson, a Mohawk chief, and Emily Susanna Howells, an English-born white woman. Billed as "the Mohawk Princess," Johnson was "one of the most popular stage performers in Canada at the turn of the century." See E. Pauline Johnson The Moccasin Maker (Tucson: University of Arizona Press, 1987; orig. pub. Ryerson Press, 1913) and the introduction by A. LaVonne Brown Ruoff, at 1-37; Sheila M.F. Johnston Buckskin and Broadcloth: A Celebration of E. Pauline Johnson - Tekahionwake, 1861-1913 (Toronto: Natural Heritage Books, 1997).

151. Johnson Moccasin Maker at 139-43. The essay was first published in the London Daily Express on 3 August 1906. Johnson equates the firekeeper of the Iroquois council to the bishop - "his garb of fringed buckskin and ermine was no more grotesque than the vestments worn by the white preachers in high places" - and describes the ceremony of the "White Dog Sacrifice," a major rite of the Midwinter Ceremony of the Six Nations.

152. Johnson Moccasin Maker at 8, 139-43, 245-6. Johnston Buckskin and

Broadcloth reports at 98, 154-6 that Pauline Johnson moved in highly influential circles, being a regular correspondent with Sir Clifford Sifton and sharing the theatrical stage with Indian Affairs official Duncan Campbell Scott. For another cross-cultural critique concerning dance, see Dr. Edward Ahenakew, a Sandy Lake Cree who was also an Anglican priest, speaking through the fictional persona of Old Keyam, in Voices at 94-5:

I am not criticizing the motives of those who made this law, nor those whose influence brought that about, but I do not think it altogether wise.

One of the reasons given for the law is the self-torture that was inflicted in the dance, and which was mis-named "the making of a brave." This was practised to some extent long ago, more in the Blackfoot confederacy than amongst the Cree, but its aim was to bring down the compassion of Ma-ni-to and to mortify the flesh to subdue it to his will. This desire is common to all the religions of all races. I have heard of such mortification of the flesh among Christians - of a man, for instance, who vowed to roll a pebble with his nose from France to Palestine, as an outward sign of penitence, seeking spiritual grace; of other holy men who dressed themselves in sackcloth and endured filth and vermin to prove the reality of their spiritual purity. [...]

To my mind, the strongest objection to the Sun Dance is the time wasted by the Indians who often go to other reserves to take part in these rites, when they might be far better employed doing their work at home. And yet every year other Indians go on long

pilgrimages to Roman Catholic shrines; they too leave their work, and no one can convince them that they do not receive benefits that more than balance whatever may be their material loss in being absent from their work and homes. Certainly, the worthy fathers of that Church would object strongly if their adherents were told that they might have to serve time in jail for going on a pilgrimage to Lac Ste. Anne or some other shrine. [...]

Freedom to worship as one's conscience dictates is a British principle. I do not believe that the law against the Sun Dance is so wise or so necessary as to warrant the contradiction of that principle.

153. "An Act respecting Indians" S.C. 1951, c.29. There was no discussion during the Parliamentary debates of the rationale for the removal of the provision, which constituted but one small piece in a major overhaul of the statute. The only reference to Aboriginal dancing came from Aristide Blais, a white senator from Alberta. Blais held the other Senators enthralled as he described how some fifty years earlier he had been invited into a tent to witness a secret "sun dance" where the participants danced "furiously...dripping with perspiration" until the "paint which covered them made a sort of multicoloured coat." He waxed eloquent about the "children of the forest who smelt of moccasin leather and of tobacco scented with red withe" and the spell-binding pageantry of the Aboriginal displays he remembered seeing every July at the Edmonton Exhibitions. Blais indicated rather vaguely that he understood that "due to certain abuses," the traditional dances "had been forbidden." Pettipas Severing the Ties That Bind suggests at 204-10 that the removal of the section prohibiting Aboriginal dance was

not brought about in response to Aboriginal complaints. Nor was the amendment motivated by "tolerance for indigenous religious practices." The focus of legislative discussion was directed instead at the abuses inherent in the religious control of Aboriginal education. Pettipas indicates that the legislators were upset when they learned that Aboriginal peoples were required to select a Christian denomination in order to obtain schooling for their children. It was the forced adoption of specific Christian sects that provoked discussion in Parliament, not the inherent right of Aboriginal peoples to carry on their own ceremonial practices. See Special Joint Committee of the Senate and the House of Commons Appointed to Continue and Complete the Examination and Consideration of the Indian Act, Minutes of Evidence and Proceedings (Ottawa: Edmond Cloutier, King's Printer, 1946); No.14 at 635; No.27 at 1474; No.28 at 1508-9; No.29 at 1540-1.

154. Wallis would ultimately publish a fifty-seven page anthropological paper describing the "Canadian Dakota Sun Dance" in 1919. See Wallis Canadian Dakota at 126; Wallis "Canadian Dakota Sun Dance" at 323-80; Wallis "Beliefs and Tales of the Canadian Dakota" at 36; Pettipas "Severing the Ties that Bind" Ph.D. Thesis at 250.

155. Wallis Canadian Dakota at 126; Wallis "Canadian Dakota Sun Dance" at 331-2. Wallis recounts the following conversation with the recovered individual at 331:

The following is an account of a performance of the sun dance by one who made it a few years ago. To start at the beginning: I was sick. All the medicinemen and physicians from town treated me, giving me different medicines, whatever they thought

was remedial. When I found that one was making no progress, I tried another. Nothing helped me in the least; nothing seemed to be in the least efficacious. I invited Wanduta, a clown medicineman living at Griswold, who was at that time in Portage la Prairie. He treated me. The old man said he thought he saw something, but he could not clearly understand its significance; he would treat me four times and try to discover the cause of my sickness. When treating me for the last time, he said he learned that I had been directed to perform the sun dance and had not done so and this was the cause of my illness. I must do it at once. I was to procure an oak tree, a black cloth with blue stripes along the same to represent the moon. Also, I was to have a white cloth with blue stripes for the sun. He said that when I had performed the dance I would recover. After making the sun dance, I was as well as before and have been well ever since.

156. Wallis Canadian Dakota at 332-35. Elias Dakota of the Canadian Northwest notes at 121-24 that in 1907 the Oak River Dakota advised the newly-appointed white sub-agent from Indian Affairs, J. Hollies, that they were prepared to collect admission fees at traditional dances and feasts and to turn these monies over to the Christian churches. Hollies objected vociferously to this plan, reminding the Dakota of the "Indian Act" prohibition on dancing. Hollies professed great astonishment when the Dakota asked him "who had made the law." His reply, "the government," was according to Hollies, "the best I could do for a short answer!" After his elevation to the status of Indian Agent in 1908, Hollies's efforts to suppress the dances, although vociferous, failed to result in any arrests or convictions. Another white anthropologist, James Howard, conducted research at each of the eight Canadian "Sioux reserves" in 1972. He was told that the Sun Dance had not been practiced in Canadian Dakota communities after 1910.

Howard Canadian Sioux at 142. One of Howard's most helpful "informants" concerning the Grass Dance was Jim Kiyewakan (identified as in his '80s) from Sioux Valley. Sioux Valley is listed as the modern name for the Oak River Dakota Territory. The informant's last name is the same as one of the five Dakota who retained George Coldwell in 1903. Other individuals from Sioux Valley who are identified by Howard as informants include: Wallace Noel (identified as in his '40s), Jim MacKay ('80s), Paul MacKay (age 72), Emma Pratt (age 88) and Eli Taylor ('60s). Howard notes at 168-9 that "the Sioux are acknowledged to be the liveliest Grass Dancers in Canada, and every reserve community, if it can possibly find the resources to do so, sponsors an inter-tribal powwow each summer, inviting dancers and singers from far and near to come and dance and feast with them. [...] [I]t is apparent that the Grass Dance, in its contemporary powwow setting, is a vigorous and vital art form, a characteristic cultural expression of native North America."

ENDNOTES TO CHAPTER FOUR

1. Details of the legal proceeding are drawn from Sero v. Gault (1921), 64 D.L.R. 327, 50 O.L.R. 27, 20 O.W.N. 16 (Ont. S.C.); "Indians Have Not Additional Rights" Belleville Daily Intelligencer 5 March 1921, p.1; "Indians Have Not Additional Rights" Kingston British Whig 5 March 1921, p.1. The actual court documents for this case no longer survive. The Ontario Attorney-General's file "was not among those selected for retention in 1965," and no further records remain within the Premier's correspondence or

the Department of Natural Resources: Notes from discussion with archivist John Choles, Archives of Ontario, 10 June 1994. On the operation of the seine net, see the description by Judge Riddell in Sero v. Gault at 328.

2. William Ashworth The Late, Great Lakes: An Environmental History (New York: Knopf, 1986); A.B. McCullough The Commercial Fishery of the Canadian Great Lakes (Ottawa: Canadian Parks Service, Environment Canada, 1989); Fifteenth Annual Report of the Game and Fisheries Department of Ontario, Ontario Sessional Papers 13-18, v.54, Part IV (1922) at 60; Neil S. Forkey "Maintaining a Great Lakes Fishery: The State, Science, and the Case of Ontario's Bay of Quinte, 1870-1920" Ontario History 87:1 (March 1995) 45-64. Forkey notes that the whitefish caught in the Great Lakes during this period represented a significant component of trade between Canada and the United States, as burgeoning industrial centres required an inexpensive, nutritious food supply to fit working-class budgets. In Belleville, the Bay of Quinte whitefish were packed on ice in refrigerated cars and shipped via rail to Toronto, Buffalo and New York City. Fishing traditionally held a prominent place in the subsistence diet of the northern Iroquois, as food (contributing an important seasonal source of protein) and for trade. The importance of fishing to the Mohawk is indicated in Constance Backhouse "Interview with David Maracle, Centre for Iroquoian Studies, University of Western Ontario" London, 22 June 1994; Constance Backhouse "Interview with William Isaac 'Ike' Hill (born 22 September 1901)" Tyendinaga Territory, 3 September 1994; William A. Starna "Aboriginal Title and Traditional Iroquois Land Use: An Anthropological Perspective" in Christopher Vecsey and William A. Starna Iroquois Land Claims (Syracuse, New York: Syracuse University Press, 1988) at 33.

3. "Deseronto News" Kingston British Whig Standard 22 March 1921, p.5.

4. "An Act to consolidate and amend the Acts respecting Fisheries and Fishing" S.C. 1914, c.8, s.45 provides that the federal cabinet could make regulations "to regulate and prevent fishing," "to forbid fishing except under authority of leases or licenses," and "prescribing the time when and the manner in which fish may be fished for and caught." Section 80 provides that "all...nets...used in violation of this Act or any regulation made thereunder...shall be confiscated to His Majesty and may be seized and confiscated, on view, by any fishery officer...." An order-in-council passed on 29 October 1915, entitled "Special Fishery Regulations: Province of Ontario," provides in s.4 that "no one shall fish by means other than by angling or trolling excepting under lease, license, or permit from a duly authorized officer of the Provincial Government." [S.C. 1916, at p.cxc-cxci.] The federal legislation was first enacted in 1868, as "An Act for the regulation of Fishing and protection of Fisheries" S.C. 1868, c.60, s.2, 16(4) and 19. See also "An Act respecting Fisheries and Fishing" R.S.C. 1886, c.95, s.4, 16, 18(3); "An Act further to amend the Fisheries Act" S.C. 1894, c.51, s.8; "An Act respecting Fisheries and Fishing" R.S.C. 1906, c.45, s.6, 8, 54, 92; "An Act to amend the Fisheries Act" S.C. 1910, c.20, s.12.

"An Act respecting the Game, Fur-bearing Animals and Fisheries of Ontario" R.S.O. 1914, c.262, s.24(1)(a) authorizes the provincial cabinet to make regulations "prohibiting fishing except under the authority of a license issued on the terms and conditions prescribed by the Regulations." Section 61(5) provides that game and fisheries overseers "shall forthwith seize all game and fish and all boats, guns, decoys, nets...used or had in possession contrary to the provisions of this Act or the Regulations...." Section 65(7) provides that "all...nets...used for...fishing...in respect of

which any such offence was committed shall upon seizure be forfeited, and...shall become the property of His Majesty and shall be forwarded to the Superintendent to be sold and the proceeds paid to the Treasurer of Ontario." For earlier versions of the provincial legislation, see "An Act to repeal the laws now in force relative to the preservation of Salmon" R.S.U.C. 1821, c.10 (Province of Canada); "An Act to repeal part of, and to amend and extend the provisions of...An Act to repeal laws now in force relative to the preservation of Salmon" R.S.U.C. 1823, c.20; "An Act to regulate the Inspection of Fish...." R.S.U.C. 1840, c.24; "An Act to repeal and reduce into one Act the several laws now in force for the Preservation of Salmon...." S.C. 1844-45, c.47 (Province of Canada); "The Fishery Act" S.C. 1857, c.21 (Province of Canada); "The Fishery Act" S.C. 1858, c.86 (Province of Canada); "An Act to amend chapter sixty-two of the Consolidated Statutes of Canada, and to provide for the better regulation of Fishing and protection of Fisheries" S.C. 1865, c.11 (Province of Canada); "An Act to regulate the Fisheries of this Province" S.O. 1885, c.9, s.14, 30(6), 31(2); "An Act to regulate the Fisheries of this Province" R.S.O. 1887, c.32, s.13, 29(6), 30(2); "An Act respecting the Fisheries of Ontario" S.O. 1897, c.9, s.20(1), 28, 50(6), 51(2); "An Act respecting the Fisheries of Ontario" R.S.O. 1897, c.288, s.30, 47, 52, 61(2); "An Act relating to the Provincial Fisheries" S.O. 1898, c.1, s.1; "An Act to improve the Law relating to the Fisheries of the Province" S.O. 1899, c.34, s.6; "An Act respecting the Fisheries of Ontario" S.O. 1900, c.50, s.10, 12, 13, 56, 65; "An Act respecting the Game, Fur-bearing Animals and Fisheries of Ontario" S.O. 1907, c.49, s.26(1), 51(1), 59(5), 62(8).

5. The federal statutes originally included several potential exceptions for Indians.

"An Act for the regulation of Fishing and protection of Fisheries" S.C. 1868, c.60, s.13(8)

provides: "It shall not be lawful to fish for, catch or kill salmon, trout (or 'lunge') of any kind, maskinonge, winnoniche, bass, bar-fish, pickerel, white-fish, herring, or shad, by means of spear, grapnel hooks, negog, or nishagans; provided, the Minister may appropriate and license or lease certain waters in which certain Indians shall be allowed to catch fish for their own use in and at whatever manner and time are specified in the license or lease, and may permit spearing in certain localities." "An Act respecting Fisheries and Fishing" R.S.C. 1886, c.95, s.9(3) provides: "In the Province of Manitoba and the North-West Territories, Indians may, at any time, catch or kill speckled trout for their own use only, and not for purposes of sale or traffic." "An Act respecting Fisheries and Fishing" R.S.C. 1906, c.45, s.29 expands the territorial application of these provisions to read: "In the provinces of Manitoba, Saskatchewan and Alberta and the Northwest or Yukon Territories, Indians may, at any time, catch or kill speckled trout for their own use only, but not for the purposes of sale or traffic." Section 31(c) states: "No one shall fish for, catch, kill, buy, sell or have in his possession, whitefish in the provinces of Manitoba, Saskatchewan and Alberta, and the Northwest Territories and the Yukon Territory, between the twentieth day of October and the first day of November in each year: Provided that Indians may there catch or kill the same for their own use only, but not for purposes of sale or traffic, and provided that whitefish shall not be taken or used, bought, sold, or possessed for making oil or feeding domestic animals." With the enactment of "An Act to consolidate and amend the Acts respecting Fisheries and Fishing" S.C. 1914, c.8, all express exceptions for Indians are deleted from the face of the federal statute.

Provincial legislation also contain some provisions directly related to Indians.

"An Act to repeal part of, and to amend and extend the provisions of an Act...to repeal the Laws now in force relative to the preservation of Salmon...." R.S.U.C. 1823, c.20 notes in s.4: "And whereas the intention of the said Act is in a great measure defeated by persons employing Indians to catch salmon after the expiration of the time limited by the said Act, Be it further enacted by the authority foresaid, That from and after the passing of this Act, it shall not be lawful for any person or persons to employ, buy from or receive, under any pretence whatever, from any Indian or Indians, any salmon, taken or caught within any of the said Districts, during the period in which persons are prohibited from taking or attempting to take or catch any salmon or salmon-fry within the said Districts...." "An Act to amend chapter sixty-two of the Consolidated Statutes of Canada, and to provide for the better regulation of Fishing and protection of Fisheries" S.C. 1865, c.11 (Province of Canada) provides in s.8: "The Commissioner of Crown Lands may appropriate and lease certain waters in which certain Indians shall be allowed to catch fish for their own use as food in and at whatever manner and time are specified in the lease, and may permit spearing in certain localities for bass, pike and pickerel between the fourteenth of December and the first of March." This exemption is modified slightly in "An Act to regulate the Fisheries of this Province" S.O. 1885, c.9, which provides in s.24: "The Commissioner may appropriate and license or lease certain waters in which certain Indians shall be allowed to catch fish for their own use in and at whatever manner and time, and subject to whatever terms and conditions are specified in the license or lease." The latter exemption is continued in "An Act to regulate the Fisheries of this Province" R.S.O. 1887, c.32, s.23 and "An Act respecting the Fisheries of Ontario" S.O. 1897, c.9, s.39. The latter statute also adds two additional provisions. Section 41(1)

provides: "The Lieutenant-Governor in Council may, by regulation, provide for the issue of licenses, free of charges, to frontier settlers in any of the said districts or in any new part of the Province, or to any Indians residing on any reserve, or to any band of Indians residing on a reserve, to take fish in such waters, other than speckled or brook trout, or black or other bass, by net or night or set line, with not more than five set lines, exclusively for use and consumption by their own families, and any settler or other person to whom such license issues who shall sell or barter fish caught under such licenses shall be subject to...penalty...." Section 41(2) states: "Provided, nevertheless, that nothing herein contained, shall prejudicially affect any rights specially reserved to, or conferred upon Indians by any treaty or regulation in that behalf made by the Government of Canada, nor shall anything herein apply to, or prejudicially affect, the rights of Indians, if any, in any portion of the Province as to which their claims have not been surrendered or extinguished." These provisions are continued in "An Act respecting the Fisheries of Ontario" R.S.O. 1897, c.288, s.26, 27.

The exemptions are removed in "An Act respecting the Fisheries of Ontario" S.O. 1900, c.50, although a new exemption is created exclusively for Indians living in the Nipigon (Nepigon) area; see s.51, which prohibits angling in the waters of Lake Nipigon in the District of Thunder Bay, and s.52: "The preceding section shall also apply to Indians who act as guides, boatmen, canoemen, camp assistants or helpers of any kind of any fishing party or person or persons who may hold a fishing license or permit during the time they are engaged with such party, person or persons, but shall not otherwise apply to Indians." The Nipigon exemption is substantially deleted in "An Act respecting the Game, Fur-bearing Animals and Fisheries of Ontario" S.O. 1907, c.49, s.29(2), and

"An Act respecting the Game, Fur-bearing Animals and Fisheries of Ontario" R.S.O. 1914, c.262, s.27(2), which provides: "This section and the conditions applicable to licenses authorizing such fishing shall apply to Indians as well as to all other guides, boatmen, canoemen, camp assistants or helpers of any kind of any fishing party or persons who may hold any such license." See also "An Act respecting the Game, Fur-bearing Animals and Fisheries of Ontario" S.O. 1927, c.86, which defines "person" in s.3(m) as "any individual (including Indians), firm or body corporate." Section 7(1)(j) authorizes the Lieutenant-Governor in Council to make regulations "exempting Indians in the northerly and north-westerly or other sparsely settled parts of Ontario, whether organized or unorganized, from any provisions of this Act...." See also "The Game and Fisheries Act" R.S.O. 1927, c.318, s.2(m), 6(1)(j); "The Game and Fisheries Act" R.S.O. 1937, c.353, s.2(q), 6(1)(i); "An Act to amend The Game and Fisheries Act" S.O. 1944, c.27; "The Game and Fisheries Act, 1946" S.O. 1946, c.33; "The Game and Fisheries Act" R.S.O. 1950, c.153. For a discussion of earlier provincial legislation, see Roland Wright "The Public Right of Fishing, Government Fishing Policy, and Indian Fishing Rights in Upper Canada" Ontario History 84:4 (December 1994) 337-62.

6. "Indians Have Not Additional Rights" Belleville Daily Intelligencer 5 March 1921, p.1; "Indians Have Not Additional Rights" Kingston British Whig 5 March 1921, p.1.

7. For information regarding the Iroquois generally, see Darlene M. Johnston "The Quest of the Six Nations Confederacy for Self-Determination" University of Toronto Faculty of Law Review v.44 (Spring 1986) 1-32; Enos T. Montour The

Feathered U.E.L. (Toronto: United Church of Canada Division of Communication, 1973); Asa R. Hill, Secretary, Six Nations Council "The Historical Position of the Six Nations" Ontario Historical Society v.19 (1922) at 103-109; Lewis H. Morgan League of the Ho-De-No-Sau-Nee or Iroquois (Rochester: Sage, 1851); John A. Noon The Laws and Government of the Grand River Iroquois Viking Publications, no.18 (New York: Johnson Reprint, 1964; orig. pub. 1949); Malcolm Montgomery "The Legal Status of the Six Nations Indians in Canada" Ontario History 55:2 (1963) 93; Malcolm Montgomery "The Six Nations Indians and the Macdonald Franchise" Ontario History 57:1 (1965) 13-25; C.M. Johnston Valley of the Six Nations (Toronto: University of Toronto Press, 1964); Mary A. Druke "Iroquois and Iroquoian in Canada" in R. Bruce Morrison and C. Roderick Wilson eds. Native Peoples: The Canadian Experience (Toronto: McClelland & Stewart, 1986) 302; Daniel K. Richter The Ordeal of the Longhouse: The Peoples of the Iroquois in the Era of European Colonization (Chapel Hill, North Carolina: University of North Carolina, 1992); Robert J. Surtees "The Iroquois in Canada" in Francis Jennings **et al.** eds The History and Culture of Iroquois Diplomacy (Syracuse, New York: Syracuse University Press, 1985) 75; Barbara Graymont The Iroquois in the American Revolution (Syracuse, New York: Syracuse University Press, 1972); William N. Fenton "Iroquoian Culture History: A General Evaluation" in W.N. Fenton and J. Gulick eds. Symposium on Cherokee and Iroquois Culture Smithsonian Institute, Bureau of American Ethnology Bulletin, no.180 (Washington, D.C.: U.S. Government Printing Office, 1961); Vecsey and Starna eds. Iroquois Land Claims; Sally M. Weaver Medicine and Politics Among the Grand River Iroquois: A Study of the Non-conservatives (Ottawa: National Museums of Canada, 1972); A.F.C. Wallace with the assistance of Sheila C. Steen The Death and

Rebirth of the Seneca (New York: Alfred A. Knopf, 1970); Charles M. Johnston "Joseph Brant, the Grand River Lands and the Northwest Crisis" Ontario History 55:4 (1963) 267-82; Annemarie A. Shimony Conservatism among the Grand River Iroquois (New Haven: Yale University Press, 1961); Sally M. Weaver and Virginia Cooper "An Early History of the Movement for an Elective Form of Government among the Six Nations of the Grand River, 1861-1903 (A Working Paper)" (1970) Public Archives of Canada [hereafter PAC] RG10 MG30 C169 v.1; Elliot Moses "The Six Nations Dehorners Association Finally Called the Six Nations Rights Association" (1973), PAC RG10 MG30 C169 v.1, file 1.1; Elliot Moses "Seventy-Five Years of Progress of the Six Nations of the Grand River" written as an address to the Waterloo Historical Society, PAC RG10 MG30 C169 v.1, file 1.2; M.P.P. Simon "The Haldimand Agreement: A Continuing Covenant" American Indian Culture and Research Journal v.7 (1983) 27-50; Donald J. Bourgeois "The Six Nations: A Neglected Aspect of Canadian Legal History" The Canadian Journal of Native Studies 6:2 (1986) 253; Isabel T. Kelsay Joseph Brant, 1743-1807: Man of Two Worlds (Syracuse, New York: Syracuse University Press, 1984); Ella Cork The Worst of the Bargain (San Jacinto, California: Foundation for Social Research, 1962); Michael K. Foster **et al.** eds. Extending the Rafters: Approaches in Iroquoian Studies (Albany, New York: State University of New York Press, 1984); Marcel Rioux "Relations between religion and government among the Longhouse Iroquois of the Grand River" in National Museum of Canada Bulletin 126 (Ottawa: National Museum of Canada, 1972); Dan Smith The Seventh Fire: The Struggle for Aboriginal Government (Toronto: Key-Porter, 1993); Elizabeth Tooker "On the New Religion of Handsome Lake" Anthropological Quarterly 41:4 (October 1986) 187-200;

Andrea Green "Land, Leadership, and Conflict: The Six Nations' Early Years on the Grand River" M.A. Thesis (University of Western Ontario: 1984); George F.G. Stanley "The Six Nations and the American Revolution" Ontario History 56:4 (1964) 217; William Leete Stone Life of Joseph Brant - Thayendanegea (New York: 1838), 2 vols.; J.W. Lydekker The Faithful Mohawks (Cambridge, Eng.: 1939) 139-89; E. Brian Titley A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada (Vancouver: University of British Columbia Press, 1986) chapter 7; James E. Benincasa "Cultural Divisions and the Politics of Control: The Canadian Removal of the Six Nations' Hereditary Council in 1924" M.A. Thesis (University of Western Ontario: 1994); William Guy Spittal Iroquois Women: An Anthology (Ohsweken, Ontario: Irocrafts Ltd., 1990); Cindy Baskin "Women in Iroquois Society" Canadian Woman Studies 4:2 (Winter 1982) 42-46; B.E. Hill "The Grand River Navigation Company and the Six Nations Indians" Ontario History 63:1 (1971) 31-40; D. Peter MacLeod The Canadian Iroquois and the Seven Years' War (Ottawa: Canadian War Museum and Dundurn Press, 1996).

For information regarding the Tyendinaga Territory, see Beth Brant I'll Sing 'til the Day I Die: Conversations with Tyendinaga Elders (Toronto: McGilligan, 1995); K. Shelley Price-Jones "Emerging From the Shadows: The Life of Captain John (Deserontyou) circa 1742-1811, Founder of the Bay of Quinte Mohawk Village" M.A. Thesis (Queen's University: 1993); C.H. Torok "The Tyendinaga Mohawks" Ontario History 57:2 (1965) 69; M. Eleanor Herrington "Captain John Deserontyou and the Mohawk Settlement at Deseronto" Queen's Quarterly v.29 (1921-22) 165-80; "Deserontyon (Odeserundiye), John (Captain John)" Dictionary of Canadian Biography

v.5 (Toronto: University of Toronto Press, 1983) 253-6; Brig.-General E.A. Cruikshank "The Coming of the Loyalist Mohawks to the Bay of Quinte" Ontario History v.26 (1930) 390-403; Gerald E. Boyce Historic Hastings (Belleville: Ontario Intelligencer Ltd., 1967); Charles Hamori-Torok "The Acculturation of the Mohawks of the Bay of Quinte" Ph.D. Thesis (University of Toronto: 1966); "Tyendinaga" Nick and Helma Mika Places in Ontario: Part III, N-Z (Belleville: Mika Publishing, 1983); Amy Huggard Ty-En-Din-Aga (n.d., n.p.) collection of Anglican Diocese of Ontario Archives, Kingston, Ontario (Box 4T-1, item 33); Pamphlet titled "Royally Deeded Land of the Mohawks" (1961), collection of Anglican Diocese of Ontario Archives (Box 4T-1, item 34); Susan Claus "History of the Mohawks of Tyendinaga Reserve" (1961), collection of Anglican Diocese of Ontario Archives, Kingston, Ontario (Box 4T-1, item 35).

8. The date of the founding of the confederacy is unsettled. Historians and anthropologists have made estimates that range from 1450 to 1660, with First Nations' tradition following the earlier date. The Iroquois Confederacy initially consisted of five nations - Mohawk, Oneida, Onondaga, Cayuga and Seneca. The sixth nation, the Tuscarora, joined the confederacy after being driven from North Carolina around 1713. The harmonious political union forged by the League of the Hodenosaunee would continue for four centuries, despite inevitable tensions and stresses, a feat no other league of nations has ever been able to duplicate. Johnston "Quest of the Six Nations" notes at 9 that the richness of this democratic tradition has prompted commentators to conclude that "politically, there was nothing in the Empires and kingdoms of Europe in the fifteenth and sixteenth centuries to parallel the democratic constitution of the Iroquois Confederacy, with its provisions for initiative, referendum and recall, and its suffrage for

women as well as for men." Morgan Ho-De-No-Sau-Nee at 51-2 and 141, wrote more than a century ago that the Ho-De-No-Sau-Nee was "perhaps the only league of nations ever instituted among men, which can point to three centuries of uninterrupted domestic unity and peace." Simon "Haldimand Agreement" at 28; Richter Ordeal of the Longhouse at 1, 30; Druke "Iroquois and Iroquoian" at 309; Matthew Dennis Cultivating a Landscape of Peace: Iroquois-European Encounters in Seventeenth-Century America (Ithaca: Cornell University Press, 1993).

9. Druke "Iroquois and Iroquoian" at 302. James V. Wright "The Cultural Continuity of the Northern Iroquoian-Speaking Peoples" in Foster **et al.** Extending the Rafters 283 suggests at 298 that Iroquoian-speaking peoples have lived in northeastern North America for more than six thousand years, based on the evidence of basic continuity over time in technology, religion (mortuary practices), settlement and subsistence patterns. George Beaver "Early Iroquoian History in Ontario" Ontario History 75:3 (September 1993) 223-9, notes: "Southern Ontario was peopled by Iroquoian-speaking nations referred to by historians as Hurons, Neutrals, and Petuns. [...] Judging by their location, it is probable that the Iroquoians we now call Hurons, Petuns and Neutrals separated from the more southerly Iroquoians and moved north perhaps with the melting of the glaciers of the last ice age. There is a hill in New York State which is associated with the 'Legend of the Pursuing Mammoth.' Both mammoths and mastodons roamed this area during the last ice age. These hairy beasts became extinct about eight thousand years ago but their enormous bones have been unearthed. Iroquoian history may go back even further. According to one historian, Iroquoian stories refer to an origin from west of the Mississippi, of a migration to the eastern seaboard and return to the

country of lakes and rivers where they finally settled. This agrees with the Six Nations oral history which says that long ago they came from beyond the Mississippi."

10. Druke "Iroquois and Iroquoian" refers at 304 to Jacques Cartier's meeting. Graymont The Iroquois notes at 6 that "the identity of these Laurentian Iroquois has always been debatable. They have been variously classed as Huron, Petun, Tuscarora, Mohawk, Seneca, Oneida, and Onondaga by puzzled scholars. On the French accounts from the mid-17th century, see Richter Ordeal of the Longhouse at 120-1. See also Morgan Ho-De-No-Sau-Nee, who notes at 12: "About the year 1670, after [the Iroquois] had finally completed the dispersion and subjugation of the Adirondacks and Hurons, they acquired possession of the whole country between lakes Huron, Erie and Ontario, and of the north bank of the St. Lawrence, to the mouth of the Ottawa river, near Montreal. On the north shore of Lake Ontario they founded several villages, in the nature of colonial towns, to maintain possession of the conquered territory." At 14, Morgan adds: "[by 1700, the Iroquois] had subdued and held in nominal subjection all the principal Indian nations occupying the territories which are now embraced in the states of New York, Delaware, Maryland, New Jersey, Pennsylvania, the northern and western parts of Virginia, Ohio, Kentucky, Northern Tennessee, Illinois, Indiana, Michigan, a portion of the New England states, and the principal part of Upper Canada." On the displacement into New York state, see "Druke "Iroquois and Iroquoian" at 304-9.

11. Druke "Iroquois and Iroquoian" at 309; Boyce Historic Hastings at 19-20, describing the Mohawk community as of the late 18th century. Graymont The Iroquois notes at 147 that many of the Fort Hunter Mohawks "lived in far better circumstances

than their white neighbors.... They had considerable livestock, great quantities of Indian corn, potatoes, turnips, and cabbage, sturdy houses and barns, wagons, sleighs, and farm implements. Many of the houses were also comfortably furnished and even had window glass - a rare item on the frontier."

12. Tehanetorens Wampum Belts (Ohsweken, Ontario: Irocrafts, 1993) at 10-11 has a detailed explanation of the history of wampum belts and their significance. The origin of the "Covenant Chain" dates back to the formal alliance struck between the British and the Iroquois at Fort Albany in 1664: Green "Land, Leadership and Conflict" at 12. Cork Worst of the Bargain describes the wampum at 52: "This is a band possibly thirty inches long and four inches wide of polished shell beads in natural colours strung and stitched together on deer sinew. There is a red man and a white man joined by two black chains running parallel to show their joint status as 'separate and equal.'" Cork also notes that the wampum, originally kept at Onondaga, was brought to Grand River, and produced by the Six Nations of Grand River in litigation in 1959 (see discussion of the Logan case in this chapter.) See also Johnston "Quest of the Six Nations"; Darlene Johnston "First Nations and Canadian Citizenship" in William Kaplan ed. Belonging: The Meaning and Future of Canadian Citizenship (Montreal: McGill-Queen's Press, 1993) 349-67; Robert S. Allen "The British Indian Department and the Frontier in North America, 1755-1830" Canadian Historic Sites (Ottawa: Indian and Northern Affairs, 1975) at 7-9; Milner S. Ball "Stories of Origin and Constitutional Possibilities" (1989) 87 Michigan Law Review 2280 at 2313; Indian Self-Government in Canada: Report of the Special Committee House of Commons, Canada, 32nd Parliament, 1st Sess., back cover (1983). Michael K. Foster "On Who Spoke First at Iroquois-White Councils: An

Exercise in the Method of Upstreaming" in Foster **et al.** Extending the Rafters 183, describes the elaborate procedures involved in these diplomatic councils, and notes at 205 that "the Two Paths Belt...traces the evolution of the alliance through the French, British and finally American 'periods' [with] each successive white government [agreeing] to the proposition that the laws and customs of the Indians and the white men should remain in separate canoes: the paths of these canoes should neither drastically converge nor diverge but remain parallel through time."

13. Johnson's correspondence is recorded in "Memorandum on the Relation of the Dominion Government of Canada With the Six Nations of the Grand River," Submitted to Secretary of State, Colonial Office by Chief Deskaheh, August 1921, citing N.Y. Docs. v.7, at 953-8. Similar statements of Johnson's are reported in F.P. Prucha American Indian Policy in the Formative Years (Cambridge: Harvard University Press, 1962) at 19, as republished in Peter Cumming and Neil H. Mickenberg Native Rights in Canada 2nd ed. (Toronto: The Indian-Eskimo Association of Canada, 1972) at 69-70. William B. Newell (Ta-io-wah-ron-ha-gai) Crime and Justice Among the Iroquois Nations (Montreal: Caughnawaga Historical Society, 1965) recounts at 25 another statement of Sir William Johnson's, originally published in E.B. O'Callaghan Documents Relative to the Colonial History of New York (Albany, New York: 1856-83) v.7 at 561: "I know, that many mistakes arise here from erroneous accounts formerly made of the Indians; they have been represented as calling themselves subjects, altho, the very word would have startled them, had it been ever pronounced by any Interpreter; they desire to be considered as Allies and Friends." For Claus's statement, see Cruikshank "Loyalist Mohawks" at 399. On the evidence of sovereignty in the relations between the Iroquois

and France in the 18th century, see John A. Dickinson "Native Sovereignty and French Justice in Early Canada" in Jim Phillips, Tina Loo and Susan Lewthwaite eds. Crime and Criminal Justice: Essays in the History of Canadian Law (Toronto: The Osgoode Society, 1994) 17-40.

14. Mohawk historian Amy Huggard Ty-En-Din-Aga (n.d., n.p.) Collection of Anglican Diocese of Ontario Archives, Kingston, Ontario (Box 4T-1, item 33) notes at 29: "...the Mohawks fought so fiercely and effectively under the leadership of William Johnson that the purpose of the French campaign was completely thwarted and in 1763 Canada was ceded to England. In gratitude, England knighted William Johnson and referred to Canada as 'England's gift from her loyal Mohawks.'" See also Morgan Ho-De-No-Sau-Nee at 10-11 and 22; G. Elmore Reaman The Trail of the Iroquois Indians (London: Frederick Muller, 1967) at 30-59.

15. In July 1775, Joseph Brant and John Deserontyon travelled to Montreal, where they held a conference with the British General, Sir Frederick Haldimand. Joseph Brant and the Mohawk Oteroughyanento sailed for England in November 1775 to consult with King George III, who honoured Brant with a British commission. This was not the first visit of Mohawk chiefs. In 1710, a group of Mohawk chiefs met with Queen Anne, who presented them with "a valuable [silver] sacramental service and a communion cloth," gifts that remained in Mohawk possession for centuries: see Stanley "Six Nations and the American Revolution" at 217, 225-7; Torok "Tyendinaga Mohawks" at 70-71; Boyce Historic Hastings at 19. While the life of war chief, Joseph Brant, is more fully documented by historians (see Stone Life of Joseph Brant; Kelsay Joseph Brant)

Deserontyon (1740s-1811), whose name has been spelled many different ways, and who is also described by Daniel Claus as "the clearest and best speaker of the 6 Nations according to the old way," has received consideration in the following works: Herrington "Captain John Deserontyou;" "Deserontyon (Odeserundiye), John (Captain John)" Dictionary of Canadian Biography v.5; Lydekker The Faithful Mohawks at 139-89; Graymont The Iroquois.

16. Torok "Tyendinaga Mohawks" at 71-3; Richter Ordeal of the Longhouse at 280; Boyce Historic Hastings at 20; Johnston Valley of the Six Nations; L.F. Gates Land Policies of Upper Canada (Toronto: University of Toronto Press, 1968) as cited in Cumming and Mickenberg Native Rights at 109; Cruikshank "Loyalist Mohawks;" Stanley "Six Nations and American Revolution" at 227-8.

17. Stanley "Six Nations and American Revolution" at 228-31; Johnston Valley of the Six Nations at 36-7, as cited in Cumming and Mickenberg Native Rights at 109; Bourgeois "Six Nations Legal History" at 257.

18. Cruikshank "Loyalist Mohawks" at 397. The Mohawk land grants concerned territory purchased in 1784 by the British from the Mississauga Ojibway, (known as the Anishnabeg by the people themselves) who had settled the area formerly held by their traditional adversaries, the Iroquois du Nord, by the turn of the 18th century. The agreement (for which no deed or indenture survives) was signed by Captain Crawford for the "land on and above the Bay of Quinte to run 'Northerly as far as it may please Government to assign.'" This transferred the Bay of Quinte region to the British, upon

payment of yearly presents of clothing, guns, powder and ammunition. At the time of the transfer, approximately two hundred Mississauga warriors from a dozen small bands were spread out along 500 kilometres of the north shore of Lake Ontario. Weakly organized, increasingly dependent on European trade goods, and misled about European notions of the absolute ownership of property, they agreed to surrender large portions of their lands. Deserontyon, who may have been concerned about the level of compensation for the Mississauga, tried to force the British to include them in the distribution of additional clothing and supplies upon the arrival of the Mohawk community in the spring of 1784. This incited great annoyance in the local white Indian agent, requiring Sir John Johnson's intervention to put a halt to the extended distribution. The Mississauga, initially apprehensive about the arrival of the Mohawks, apparently reversed their position and welcomed the Iroquois, in part because of growing anxiety over the influx of white settlers, even more dreaded intruders. The alliance between the Mississauga and the Iroquois was fragile and would later rupture, due in part to the efforts of the British to foment disagreements between the nations in order to avoid the prospect of a pan-Indian rebellion. See Donald B. Smith "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada" Ontario History 73:2 (1981) 67 at 69-80; Richter Ordeal of the Longhouse at 215; E. Reginald Good "Mississauga-Mennonite Relations in the Upper Grand River Valley" Ontario History 87:2 (1995) 155; Herrington "Captain John Deserontyou" at 171.

19. Scholars have speculated on the reason for the division of the group. Some suggest that the two communities had resided separately for some time, living in two villages in New York state (Canajoharie and Fort Hunter) and during the revolutionary

war in Niagara and Lachine. The strong personalities of the different chiefs are also cited as creating conflict. Some suggest that Deserontyon wished to reside far from the Americans, whom he described as "like a worm that cuts off the corn as soon as it appears," while Brant wished to reside closer to the Six Nations' communities that remained in the United States. Another theory is that the Fort Hunter Mohawks were "more acculturated" than the rest of the New York Mohawks, and wished to "sever themselves from the authority of the hereditary League sachems." Stanley "Six Nations and American Revolution" at 231; Boyce Historic Hastings at 20-1; Torok "Tyendinaga Mohawks" at 74-5; Surtees "Iroquois in Canada" at 75; Herrington "Captain John Deserontyou"; "Deserontyon (Odeserundiye), John (Captain John)" Dictionary of Canadian Biography v.5; Hamori-Torok "Mohawks of the Bay of Quinte" at 35. For reference to oral history accounts of Deganwidah, see Johnston "First Nations and Canadian Citizenship;" Johnston "Quest of the Six Nations;" Beaver "Early Iroquoian History in Ontario" 223-9. Beaver notes at 223: "According to the Six Nations oral tradition, when the Peacemaker formed the Five Nations Confederacy, he called it the Great Peace because it put an end to hostilities between the Five Nations. As a symbol of this Great Peace a tall tree was tipped over and weapons of war were thrown into the hole under it. The tree was then set back up as before to show that the weapons were gone. The Peacemaker called it the Tree of Peace and its roots were to spread symbolically to all four directions. Any nation wishing to seek shelter under it could follow its roots back to the tree. The Tuscarora nation, who were also Iroquoians, did this in the early 1700s and the Five Nations became the Six Nations."

20. Subsequent negotiations between Deserontyon and John Graves Simcoe, the

Lieutenant Governor of Upper Canada, resulted in an allotment of an additional 85,000 acres in 1793. By the turn of the century, white settlers began to encroach upon Mohawk lands, and despite some resistance, a series of land surrenders ensued, the major ones occurring in 1820 and 1835. This ultimately reduced the size of the "reserve" to 17,448 acres: Torok "Tyendinaga Mohawks" at 76-7; Cruikshank "Loyalist Mohawks" at 401; Surtees "Iroquois in Canada" at 75. Many Mohawks were reluctant to cede any of their land, and a group of forty tried unsuccessfully to prevent the government survey party from running the southern boundary line prior to the 1820 surrender: Mika "Tyendinaga" at 561. Boyce Historic Hastings notes at 264-7 that the dissatisfied Mohawks "had intended only to lease or rent the central section, not to sell it." For an itemization of the surrenders, see Canada, Department of Indian Affairs Indian Treaties and Surrenders v.1: Queen's Printer, 1891) at p.lvii. Susanna Moodie Life in the Clearings versus the Bush (London: Richard Bentley, 1853) describes the Tyendinaga settlement at 142.

21. Letter from Joseph Brant to unidentified correspondent, 1807, quoted in Annette Rosenstiel Red and White: Indian Views of the White Man 1492-1982 (New York: Universe Books, 1983) at 113. On the desire to retain cultural independence, see Benincasa "Cultural Divisions and the Politics of Control;" Green "Land, Leadership and Conflict;" Price-Jones "Emerging from the Shadows" at 87. On acculturation, see Hamori-Torok "Mohawks of the Bay of Quinte;" Reaman Trail of the Iroquois Indians at 108-9. However, Torok "Tyendinaga Mohawks" undoubtedly overstates the case, when he writes in 1965, describing the current situation at 69: "This is a very highly acculturated Mohawk group; i.e. their way of life approximates very closely that of the surrounding white people. Mohawk is no longer a primary language; English is spoken

in all the homes. Three quarters of the resident Band membership gainfully employed find their employment outside the boundaries of their reserve so that they commute daily to their place of employment. There is no organized Longhouse activity at Tyendinaga; resident Band members join, or belong to, Christian denominations and sects. Clan affiliation is no longer remembered, Indian names are not given, and knowledge of, and interest in, the organization and affairs of the League of the Iroquois is minimal."

William Isaac "Ike" Hill, a Mohawk born on the Tyendinaga Reserve on 22 September 1901, who served as an elected chief in the late 1950s, qualifies this assessment. Fluent in Mohawk, he recalls the pressures within the schools to obliterate the native language: "If anybody talked Mohawk in school, we would get blood running down our fingernails. My dad used to get so mad, but he wanted me to get an education." Although he recalls little Longhouse activity on the reserve, Hill retains knowledge of the three Mohawk clans - wolf, bear and turtle - and bestowed Mohawk names on all his children:

Backhouse "Interview with Ike Hill." See also Beth Brant (Degonwadonti) Mohawk Trail (Toronto: Women's Press, 1985), who describes some of the resistance to acculturation in the following passage at 91: "In our house, we spoke the language of censure. Sentences stopped in the middle. The joke without a punch line. The mixture of a supposed-to-be-forgotten Mohawk, strangled with uneasy English."

22. For information on the status of women in Iroquois society, see Patricia Monture-Angus Thunder in my Soul: A Mohawk Woman Speaks (Halifax: Fernwood Publishing, 1995) at 175, 178, 186, 235-8, 241-7, 263; Lucien Carr "On the Social and Political Position of Woman Among the Huron-Iroquois Tribes" in Spittal Iroquois Women at 9; Ann Eastlack Shafer "The Status of Iroquois Women" in Spittal Iroquois

Women at 71; Martha Champion Randle "Iroquois Women, Then and Now" in Spittal Iroquois Women at 136; Judith K. Brown "Economic Organization and the Position of Women Among the Iroquois" in Spittal Iroquois Women at 182; Sally Roesch Wagner "The Iroquois Confederacy: A Native American Model for Non-Sexist Men" in Spittal Iroquois Women at 217; Sally Roesch Wagner "The Root of Oppression is the Loss of Memory: The Iroquois and the Early Feminist Vision" in Spittal Iroquois Women at 223; Richter Ordeal of the Longhouse at 20, 23, 43; Richard Drinnon Facing West: The Metaphysics of Indian-Hating and Empire-Building (Minneapolis: University of Minnesota Press, 1980) at 177-8; Starna "Aboriginal Title and Traditional Iroquois Land Use" at 41; Baskin "Women in Iroquois Society"; Elizabeth Tooker "Women in Iroquois Society" in Foster **et al.** Extending the Rafters 109-23; Newell Crime and Justice Among the Iroquois Nations at 71-5; Gretchen Green "Molly Brant, Catherine Brant, and their Daughters: A Study in Colonial Acculturation" Ontario History 81:3 (September 1989) 235-50; Joy Bilharz "First

Among Equals? The Changing Status of Seneca Women" in Laura F. Klein and Lillian A. Ackerman Women and Power in Native North America (Norman: University of Oklahoma Press, 1995) at 101-12; Rayna Green Women in American Indian Society (New York: Chelsea House, 1992).

23. Comments of Pauline Johnson, published in "The Lodge of the Law-Makers" London Daily Express Summer 1906, n.p., as reprinted in E. Pauline Johnson The Moccasin Maker (Tucson: University of Arizona Press, 1987; orig. pub. 1913 by Ryerson Press) at 232. For a more detailed discussion of Johnson, see her comments on

Aboriginal dance in chapter 3.

24. Baskin "Women in Iroquois Society"; Martha Champion Randle "Iroquois Women, Then and Now" in Spittal Iroquois Women at 136; Tooker "Handsome Lake" at 194-5. Martha Harroun Foster "Lost Women of the Matriarchy: Iroquois Women in the Historical Literature" American Indian Culture and Research Journal 19:3 (1995) 121-40 documents how contemporary anthropologists and historians of the Iroquois contributed to the erasure of gender equality. For comparison, see the analysis of the detrimental impact that European colonization had upon issues of gender equality within the Huron and Montagnais nations in Karen Anderson Chain Her By One Foot: The Subjugation of Women in Seventeenth-Century New France (London: Routledge, 1991).

25. Information about Eliza (Brant) Sero has been constructed from the surviving records of the Diocese of Ontario Archives, Anglican Church of Canada, Kingston, Ontario, Tyendinaga Parish Registers, 4-T-9, 4-T-10. Her birth records are not available, as fire destroyed all the Anglican baptism records for the period 1852-76. Genealogy records compiled by G. Ronald Green of Belleville, Ontario, have enabled me to confirm information about Eliza's parents and siblings. Eliza's father was Jacob Oak Brant (Jacobus "Cobus" Brant). Eliza's mother, Margaret Brant, may have been Margaret Powles prior to her marriage, since Ron Green has records of a marriage on 20 October 1840 between Margaret Powles and Cobus Brant. Eliza's siblings include Catherine Brant, Betsy Oak (Lizzie), Alva, Hugh, Elizabeth, and possibly one additional brother. Information about Eliza Sero's clan is derived from descendants of her sister, Catherine. Catherine Brant had a daughter, Josephine Brant, whose daughter was Helena (nee Sero)

Pfefferle. Helena Pfefferle is a member of the Turtle Clan, and since Clans descend matrilineally, Eliza (Brant) Sero would have come from the Turtle Clan as well. Ron Green was unable to locate information about Eliza's Mohawk name, since none of the Mohawk names were registered in written records during this period. The Anglican Diocese of Ontario retains the marriage certificate, 5 October 1882, which lists two witnesses: Lydia Maracle and I.G. Culbertson. Israel Sero's name is listed as Israel Sero/Moses and Israel Scero on some later documents. His occupation is listed as "labourer" on the baptism certificates for the children. See also notes from Backhouse "Interview with David Maracle;" Backhouse "Interview with Ike Hill;" Constance Backhouse "Interview with Audrey (nee Green) Chisholm, great granddaughter of Eliza Sero" Belleville, 21 September 1994.

26. Baptism certificates survive for Clara Bella, Theresa, Earl Reuben, Annie Elfreda (also spelled Alfreda) and James. The birth years of Maud and Nelson Lorne have been constructed from their subsequent marriage certificates. Census records (1901) held by the Tyendinaga Library (copy on file with the author) list an additional daughter, Rosa (Rose), three years younger than Theresa. Backhouse "Interview with Audrey Chisholm;" Backhouse "Interview with Ike Hill."

27. Tyendinaga Library census records list the date of Israel Sero's death. Karen Lewis, Tyendinaga Librarian, advises that the census records kept there note that Reuben died in France in 1917: telephone conversation, 25 August 1994. The Anglican Diocese of Ontario burial register lists Israel Scero's date of burial as 23 November 1914. A plaque in the Anglican Christ Church, Royal Chapel of the Mohawks, Tyendinaga

Reserve, dedicated to the war dead of 1914-1919, lists Reuben Sero amongst the deceased soldiers. Some Six Nations' proponents of sovereignty took a different position on military service than Eliza Sero's son. As allies of the British Crown, they believed the King should make a formal request for Iroquois troops. The Six Nations Grand River hereditary Council refused to support the Iroquois members of the Canadian Expeditionary Force, declaring that "the Six Nations were a sovereign nation and had not declared war on Germany...therefore their boys were wearing foreign [Canadian uniforms]:" Moses "Six Nations Dehorners Association;" Reaman Trail of the Iroquois Indians at 82-3. See also Frances Henry **et al.** The Colour of Democracy: Racism in Canadian Society (Toronto: Harcourt Brace, 1994) which notes at 68: "For the first two years of World War I, racial minorities and Aboriginal people were rejected for military service. Although the militia headquarters did not actually establish a colour-bar, local commanders were encouraged to turn away volunteers on the grounds of the inferiority of their race. Only as the war progressed and shortages began to impede Canada's war effort were racial-minority recruits admitted."

The Anglican Diocese of Ontario retains three marriage certificates for Eliza Sero's daughters. Theresa Sero, age 20, resident of Tyendinaga, was married on 15 August 1905 to Peter Green, the son of William Green and Elizabeth Brant. Peter is described as a twenty-eight-year-old labourer, born at Tyendinaga but currently residing in Deseronto. Maud Scero, age 19, a resident of the Mohawk Reserve, was married on 8 August 1911 to William Hill, the son of Solomon Hill and Catherine Brant. William is listed as a twenty-six-year-old resident of Tyendinaga and a labourer. Tyendinaga Library census records suggest that Rose was also married by this time. Her married

name was Rose Pinn. Nelson Lorne Sero, age 18, born in Deseronto but living at Tyendinaga and listed as a labourer, was married on 7 September 1928 to Clealah Brant. Clealah Brant was twenty years old, and had been born and raised at Tyendinaga, the daughter of David S. and Eliza Brant. The witnesses to the latter marriage were James Sero of Tyendinaga and Hilda Sero of Deseronto. Ike Hill describes the net as a "costly" one, since it was made with expensive twine, corks, netting, rope, and jacks: Backhouse "Interview with Ike Hill."

28. On the effect of World War I and the activities of Chief Thunderwater and Frederick Ogilvie Loft, see Titley A Narrow Vision at 94-109; Olive Patricia Dickason Canada's First Nations (Toronto: McClelland & Stewart, 1992) at 326-8.

29. Titley A Narrow Vision at 94-109; Dickason Canada's First Nations at 326-8. See also the account of the political organizing efforts of Deskaheh (Levi General) from Six Nations Grand River in Barbara Graymont ed. Fighting Tuscarora: The Autobiography of Chief Clinton Rickard (Syracuse: Syracuse University Press, 1973) at 58-66.

30. Edward Guss Porter KC was born on 28 May 1859 at Consecon, Prince Edward County, Ontario. He was educated at Albert University, and married in 1883 to Annie Morrow. A Presbyterian by religion, Porter was first returned to the House of Commons in 1901, and reelected in 1904, 1908, 1911, 1917 and 1921. See Col. Ernest J. Chambers ed. The Canadian Parliamentary Guide 1924 (Ottawa: 1925) at 187. On 3 April 1918, as a consequence of a petition signed by 176 First Nations' individuals from

all the major reserves in southern Ontario and Quebec (including Tyendinaga), E. Gus Porter introduced a private member's bill into the House of Commons to incorporate a Council for the Indian Tribes of Canada. Arthur Meighen and Prime Minister Borden placed concerted pressure upon Porter to withdraw the bill after first reading. He did so. See Titley A Narrow Vision at 93-101.

31. Black's Law Dictionary 6th ed. (St. Paul, Minn.: West Publishing, 1990) at 1508 defines "trover" as follows: "In common law practice, the action of trover (or trover and conversion) is a species of action on the case, and originally lay for the recovery of damages against a person who had **found** another's goods and wrongfully converted them to his own use. Subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. In form a fiction; in substance, a remedy to recover the value of personal chattels **wrongfully** converted by another to his own use. Common-law form of action to recover value of goods or chattels by reason of an alleged unlawful interference with possessory right of another, by assertion or exercise of possession or dominion over chattels, which is adverse and hostile to rightful possessor."

32. Samuel Robinson Clarke A Treatise on Criminal Law as Applicable to the Dominion of Canada (Toronto: Carswell, 1872) recommended at 457 binding "Indian witnesses" according to whatever ceremonies were traditionally used in native cultures "however strange and fantastic the ceremony might be." For good measure, he also recommended swearing them in "on the New Testament" if they believed "in a supreme

being who created all things and in a future state of reward and punishment according to their conduct in this life." For examples of statutes that expressly permit Aboriginal witnesses to testify, see "An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia" S.C. 1874, c.21, s.1, which prohibits the sale of liquor to "Indians," requires before conviction "the evidence of one credible witness other than the informer or prosecutor," and notes "in all cases arising under this section, Indians shall be competent witnesses." See also: "The Indian Act, 1876" S.C. 1876, c.18, s.79; "The Indian Act, 1880" S.C. 1880, c.28, s.90; "The Indian Act" R.S.C. 1886, c.43, s.97.

33. "An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia" S.C. 1874, c.21, provides: s.3. Upon any inquest, or upon any enquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever, or by whomsoever committed, it shall be lawful for any Court, Judge, Stipendiary Magistrate, Coroner or Justice of the Peace to receive the evidence of any Indian or aboriginal native or native of mixed blood, who is destitute of the knowledge of God, and of any fixed and clear belief in religion or in a future state of rewards and punishments, without administering the usual form of oath to any such Indian, aboriginal native or native of mixed blood as aforesaid, upon his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, or in such form as may be approved by such Court, Judge, Stipendiary Magistrate, Coroner or Justice of the Peace, as most binding in his conscience.

s.4. Provided that in the case of any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever, the substance of the evidence or information of any such Indian, aboriginal native or native of mixed blood as aforesaid, shall be reduced to writing, and verified by the signature or mark of the person acting as interpreter (if any), and of the judge, Stipendiary Magistrate, Coroner or Justice of the Peace or person before whom such information shall have been given.

s.5. The court, judge, Stipendiary Magistrate, or Justice of the Peace shall, before taking any such evidence, information or examination, caution every such Indian, aboriginal native or native of mixed blood as aforesaid, that he will be liable to incur punishment if he do not so as aforesaid tell the truth.

s.6. The written declaration or examination made, taken and verified in manner aforesaid, of any such Indian, aboriginal native or native of mixed blood as aforesaid, may be lawfully read and received as evidence upon the trial of any criminal suit or proceedings when, under the like circumstances, the written affidavit, examination, deposition or confession of any person, might be lawfully read and received as evidence.

s.7. Every solemn affirmation or declaration in whatever form made or taken by any person as aforesaid shall be of the same force and effect, as if such person had taken an oath in the usual form, and shall, in like manner, incur the penalty of perjury in case of falsehood. See also "The Indian Act, 1876" S.C. 1876, c.18, s.74-8; "The Indian Act" R.S.C. 1886, c.43, s.120-4; "Indian Act" R.S.C. 1906, c.81, s.151-5; "Indian Act" R.S.C.

1927, c.98, s.143-6. Similar provisions are contained in "An Ordinance to provide for the taking of Oaths and admission of Evidence in certain cases" Colony of British Columbia, 1867, No. 74; "An Act respecting the Law of Evidence" C.S.B.C. 1888, c.41, s.11-14; "An Act respecting Witnesses and Evidence" S.B.C. 1894, c.13, s.24-7; "An Act respecting Witnesses and Evidence" R.S.B.C. 1897, c.71, s.26-9; "An Act respecting Evidence and Witnesses" R.S.B.C. 1911, c.78, s.12-15; "An Act respecting Witnesses and Evidence" R.S.B.C. 1924, c.82, s.12-15; "An Act respecting Witnesses and Evidence" R.S.B.C. 1936, c.90, s.12-15; "An Act respecting Witnesses and Evidence" R.S.B.C. 1948, c.113, s.12-15. See also Rex v. Richardson George, Eneas George and Alex George (No. 3) (1936), 51 B.C.R. 81; 66 C.C.C. 365; [1936] 3 W.W.R. 177 (B.C.C.A.); Rex. v. Louie Hong (1920), 53 D.L.R. 62; [1920] 3 W.W.R. 21 (Alta. S.C.); Rex v. James (1945), 51 B.C.R. 161 (B.C.C.A.).

34. Bayly appeared for the Crown in The King v. Beboning (1908), 13 C.C.C. 405, 12 O.W.R. 484, 17 O.L.R. 23 (Ont. C.A.), in which he convinced the court to hold that the theft provisions of the Criminal Code could be enforced against "Indians" on a "reserve." For more details on Edward Bayly, who appeared on behalf of the Crown in the prosecution of the Ku Klux Klan in 1930, see discussion of R. v. Phillips in chapter 6.

35. Sero v. Gault at 328-30.

36. Born on 29 March 1863, Chisholm joined the 7th Fusiliers as a lieutenant while still a law student, and served in the Northwest Rebellion in 1885. A Conservative party member, Chisholm was given the party nomination in 1885, just after Prime

Minister Sir John A. Macdonald (briefly) extended the franchise to Indians. Chisholm's political campaigning among his First Nations' constituents did not lead to electoral success, and he was defeated in the election. It did, however, lead to a heightened appreciation of Aboriginal concerns. Chisholm was described in his newspaper obituary as an individual who "took a special interest in [Indian] welfare," and "one of the best informed persons in the Dominion on Indian rights and treaties." Chisholm was called to the bar in 1888, made a KC in 1921, and practised law continuously in London as a sole practitioner until his death at the age of 79 on 11 January 1943. He was predeceased by his wife, Alice Southworth and survived by two sons, Gilbert and W.G.H. Chisholm, and two daughters, Doris and Constance. For information on Chisholm, see his obituary, "A.G. Chisholm Dies at Age 79" London Free Press 12 January 1943, p.1, 5; Francis G. Carter The Middlesex Bench and Bar (Middlesex Law Association: London, 1969) at 13, 47-8, 81; Middlesex County, London City, Woodland Cemetery, Book 4 (Section K), Vernon's City of London Directory (1924-40); Dickason Canada's First Nations at 239, 482. Chisholm's cases include the partially successful claim he made on behalf of the Mississauga of the Credit against the federal government for payment of treaty funds in Henry v. The King (1905), 9 Ex. C.R. 417 (Exchequer Ct. of Can.). He was also partially successful in a claim to enforce an agreement for reduced train fares for Six Nations' passengers in exchange for granting a right-of-way to the Grand Trunk Railway Co. in Jones v. Grand Trunk R.W. Co. (1904), 3 O.W.R. 705 (Ont. Div. Ct.) and Jones v. Grand Trunk R.W. Co. (1905), 5 O.W.R. 611, 9 O.L.R. 723 (Ont. C.A.). Chisholm acted in the land dispute between two Chippewa of the Thames in Fisher v. Albert (1921), 64 D.L.R. 153, 50 O.L.R. 68, 20 O.W.N. 49 (Ont. S.C.). See also Jack Campisi "Ethnic Identity

and Boundary Maintenance in Three Oneida Communities" Ph.D. Thesis (State University of New York: 1974) at 303-7, which refers to Chisholm's representation of the traditional Longhouse group of Onyota'a:ka (Oneida) on the Thames and their efforts to resume control of the community in 1920. Chisholm provided legal services to the Chief Deskeheh (Levi General and the Six Nations Grand River on the topic of sovereignty between 1919-21, as discussed in Titley A Narrow Vision at 114-17. He compiled "historical evidence in support of the claim," made representations before the committee of the House of Commons to oppose the proposed legislation on compulsory enfranchisement, submitted a petition to the Governor General, and lobbied for a reference to the Supreme Court of Canada on the question of Six Nations' sovereignty. After his intervention in the Sero case, Chisholm continued his legal representation of First Nations' claimants. Rex v. The New England Company (1922), 63 D.L.R. 537, 21 Ex. C.R. 245 (Exchequer Ct. of Can.) reflects Chisholm's sophisticated Aboriginal historical research, as noted by Charles M. Johnston "To the Mohawk Station: The Making of a New England Company Missionary - the Rev. Robert Lugger" in Foster **et al.** Extending the Rafters 65-80. See in addition the claim by Chisholm's daughter Constance, made after his death, to recover \$5,034.70 owing for legal services rendered to the Six Nations Grand River between 1915 and 1942, discussed in Chisholm v. The King, [1943] 3 D.L.R. 797, Ex.C.R. 370 (Exchequer Ct. of Can.).

37. I have been unable to locate any copies of Chisholm's petition, which one scholar suggests may have been as long as 180 pages: Sidney L. Harring "'The Liberal Treatment of Indians': Native People in Nineteenth Century Ontario Law" Saskatchewan Law Review v.56 (1992) 297. If the original petition was filed with the court records, it

would have been destroyed when the Archives of Ontario culled the case file in 1965. No copies have been located in the Premier's Correspondence or the Department of Natural Resources files held by the Archives of Ontario. A search of the Public Archives of Canada, "Correspondence, Accounts, Reports etc. Regarding the Political Status of the Six Nations" RG10, v.2285, 57,169-1A and 1B has likewise not elicited the missing petition. The Six Nations Grand River Band Office at Ohsweken has not been able to locate the petition among their records. Consequently, I have attempted to reconstruct the arguments that would have been included in the petition from the following sources. A.G. Chisholm, Solicitor for Six Nations "The Case of the Six Nations" London Free Press 20 March 1920, p.4; letter by A.G. Chisholm "Explanation of Unrest of Six Nations" Brantford Expositor 29 March 1921, p.11; "Memorandum as to National Status of the Indians in Canada, with particular reference to the case of The Six Nations" a 29-page document signed by Chisholm in London, Ontario, 8 October 1920, PAC RG10, v.2285, 57,169-1A, Pt.2; "Memorandum on the Relation of the Dominion Government of Canada with the Six Nations of the Grand River," a 15-page document submitted at London by Chief Deskaheh to the Colonial Office, August 1921, PAC RG10, v.2285, 57,169-1A, Pt.2; Correspondence from Deskaheh, Speaker of the Ho-De-No-Sau-Nees Confederation of the Grand River to His Majesty King George the Fifth, 22 October 1924, PAC RG10, v.2285, 56,169-1A, Pt.2. Similar arguments were made by the Six Nations' Confederacy at the time to oppose the supplanting of traditional forms of government by an elected council under the Indian Act. See, for example, the news coverage of the resolution passed by the Six Nations' Council at Ohsweken in June, 1921, as reported in "Six Nations Indians Have Been Allies of Britain for 250 Years" Brantford

Expositor 9 June 1921, p.7. Hill "The Historical Position of the Six Nations" notes at 103-109: "The relation of sovereign and subject did not exist. The Six Nations owed the King no allegiance, and in this regard he owed them no protection, but the protection that existed rested upon treaties and not allegiance. The relations...were determined by treaties, which in the true legal sense of the term could only be entered into by independent sovereignties. The Crown never attempted to interfere with the national affairs of the Six Nations. They were treated as free and independent nations, governed by their own tribal laws and usages, under their own chiefs, and competent to act in a national and representative character, and exercise self-government; and while residing within their own territories owing no allegiance to the municipal laws of the whites."

38. The lengthy text of the Six Nations' position, written by Chief J.S. Johnson, was published as "Six Nations Indians Protest Against Compulsory Enfranchisement" Brantford Expositor 16 March 1921, p.3. The article claims that the Six Nations' status rests, in part, upon their position as "aborigines of this country." It refers specifically to rape and theft as two categories of criminal law ceded to the Canadian government, but later notes that "three crimes" had been conceded. Presumably the offence of murder was the third. Cork Worst of the Bargain notes at 109-10 that Governor General Sir Guy Carleton issued an administrative directive in 1775 regarding the resolution of disputes between whites and whites, or between whites and "Indians" on their "reserves." The directive apparently adverted to a concession from First Nation local councils that they "should not try to punish the crimes of murder or theft as these crimes would be under the jurisdiction of the Province." Haring "The Liberal Treatment of Indians" notes at 352-3 that the Grand River Iroquois continued to operate a highly organized legal system, with

dozens of recorded cases dealing with constitutional law, land law, Indian citizenship and inheritance. Harring adds at 370-1: "Native legal, social and political histories exist in twentieth century Ontario, just as they existed in the nineteenth. The legal history of the Grand River Iroquois spans both centuries...."

39. For reference to the multiple petitions, see Johnston "Quest of the Six Nations;" Montgomery "Legal Status of the Six Nations" at 96-7; Titley A Narrow Vision chapter 7; "Six Nations Seek Ruling from Courts as to Rights Under Treaty with British Crown" Brantford Expositor 14 March 1921, p.2; "Explanation of Unrest of Six Nations" Brantford Expositor 29 March 1921, p.11; "Six Nations Will Appeal for Rights to Governor-General; Protest Compulsory Measure" Brantford Expositor 7 May 1921, p.1.

40. Montgomery "Legal Status of the Six Nations" at 96-7; Letter to Major Gordon J. Smith, Indian Superintendent at Brantford from Deputy Superintendent General of Indian Affairs, 14 April 1921 and Letter from Superintendent General of Indian Affairs to His Excellency the Governor General in Council, 15 November 1920, PAC RG10, v.2285, 57,169-1A-part 2. This disdainful repudiation of wampum as a recognized medium of international communication is a complete departure from earlier government positions. Writing in 1836, Sir Francis Bond Head, the white Lieutenant Governor of Upper Canada, underscored the significance of wampum: "An Indian's word, when it is formally pledged, is one of the strongest moral securities on earth; like the Rainbow, it beams unbroken when all beneath is threatened with annihilation. The most solemn form in which an Indian pledges his word is by the Delivery of a Wampum Belt of Shells; and when the purport of this Symbol is once declared it is remembered and

handed down from Father to Son with an Accuracy and Retention of Meaning which is quite extraordinary." See Correspondence respecting Indians between the Provincial Secretary of State and Governors of British North America 1837 (Queen's Printer) at 128, as quoted in Johnston "Quest of the Six Nations" at 9.

41. On the matter of Deserontyon's requests, see "Deserontyon (Odeserundiye), John (Captain John)" Dictionary of Canadian Biography at 255. For the full text of the land grant, see Canada, Department of Indian Affairs Indian Treaties and Surrenders at 7-8:

GEORGE THE THIRD by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith and so forth.

Know ye that Whereas the Attachment and Fidelity of the Chief Warriors and People of the Six Nations to us and Our Government, have been made manifest on divers occasions by their spirited and zealous exertions and by the bravery of their conduct; And We being desirous of shewing Our approbation of the same, and in recompense of the losses they may have sustained of providing a convenient Tract of Land under Our protection for a safe and comfortable retreat for them and their posterity Have, of Our special Grace, certain knowledge and mere motion, Given and by these presents Do give and grant unto the Chiefs, Warriors, Women and People of the said Six nations and their Heirs for ever all that District or Territory of Land being parcel of a certain District lately purchased by Us of the Mississauga Nation lying and being and limited and bounded as follows (that is to say) the Tract will then be bounded in front by the Bay of Quinte

between the mouths of the River Shannon and Bowen's Creek about Twelve Miles Westerly by a Line running, North Sixteen Degrees West from the West side of the Mouth of the River Shannon, and Easterly by a Line running North Sixteen Degrees West from the Mouth of Bowen's Creek, and Northerly by a Line running East Sixteen Degrees North and West Sixteen Degrees, South at the distance of about Thirteen Miles back from the Bay of Quinte, measured on the Western Boundary aforesaid, to the North East Angle of the Township of Thurlow.

To Have and to Hold the said District or Territory of Land of us Our Heirs and Successors to them the Chiefs, Warriors, Women and People of the said Six Nations and to and for the sole use and behoof of them and their Heirs for ever freely and clearly of and from all and all manner of Rents, Fines or Services whatsoever to be rendered by them the said Chiefs, Warriors, Women and people of the said Six Nations to us or our successors for the same and of and from all conditions, stipulations and agreements whatever except as hereinafter by us expressed and declared.

Giving and granting and by these presents confirming to the said Chiefs, Warriors, Women and People of the said Six Nations, and their Heirs, the full and entire possession, Use, benefit and advantage of the said District or Territory of Land to be held and enjoyed by them in the most free and ample manner and according to the several Customs and usages by them the said Chiefs, Warriors, Women and People of the said Six Nations. Provided always, and be it understood to be the true intent and meaning of these Presents; that for the purpose of assuring the said Lands as aforesaid to the said Chiefs, Warriors, Women and People of the Six Nations and their Heirs and of securing

to them the free and undisturbed possession and enjoyment of the same.

It is Our Royal Will and Pleasure that no Transfer, Alienation, Conveyance, Sale, Gift, Exchange, Lease, Property, or Possession shall at any time be had, made, or given of the said District or Territory or any part or parcel thereof by any of the said Chiefs, Warriors, Women and people of the said Six Nations to any other Nation or Body of People, Person or persons whatsoever other than among themselves the said Chiefs, Warriors, Women, and People of the said Six Nations but that any such Transfer, Alienation, Conveyance, Sale, Gift, Exchange, Lease, or Possession shall be null and void and of no effect whatever. And that no Person or Persons shall possess or occupy the said District or Territory, or any part or parcel thereof by or under pretence of any such alienation or Conveyance as aforesaid, or by or under any pretence whatever under pain of our severe displeasure. And that in case any Person or Persons other than the said Chiefs, Warriors, Women and People of the said Six Nations shall under pretence of any such Title as aforesaid, presume to possess or occupy the said District or Territory or any part or parcel thereof that it shall and may be lawful for Us, our Heirs and Successors at any time hereafter to enter upon the Lands so occupied and possessed by any other Person or Persons other than the said Chiefs, Warriors, Women and People of the said Six Nations and them the said Intruders thereof and therefrom wholly to dispossess and evict and to resume the same to Ourselves, Our Heirs and Successors. Provided always nevertheless that if at any time the said Chiefs, Warriors, Women and People of the said Six Nations should be inclined to dispose of and Surrender their Use and Interest in the said District or Territory, the same shall be purchased only for Us in our name at some Public Meeting or Assembly of the Chiefs, Warriors and People of the said Six Nations to

be held for that purpose by the Governor, Lieutenant Governor or Person Administering Our Government in Our Province of Upper Canada.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our said Province to be hereunto affixed; Witness His Excellency John Graves Simcoe, Esquire, Lieutenant Governor and Colonel Commanding Our Forces in Our said Province, Given at Our Government House at Navy Hall this First Day of April in the Year of Our Lord One Thousand Seven Hundred and Ninety Three in the Thirty Third Year of Our Reign.

WM. JARVIS, Secy. J.G.S.

(A true copy taken from the original 29th December 1809).

JOHN SMALL.

C.Reg.

The original land grant was reduced in size by a series of land transfers to non-Mohawks, in 1820, 1835, 1836, 1843, 1846, 1847, 1850, 1856, 1883, 1885, 1889, as itemized at p.lvii. See also "Letters Patent (dated 1st April 1793) to the Chiefs, Warriors, Women and People of the Six Nations of Indians for Land on the Bay of Quinte" by authority of John Graves Simcoe, Text recorded on 30 October 1847, from a certified copy supplied by Major T.E. Campbell, Superintendent General of Indian Affairs" PAC RG68, Liber AG, reel C-4158 at 323-24.

42. "Indians Have Not Additional Rights" Belleville Daily Intelligencer 5 March 1921, p.1; "Indians Have Not Additional Rights" Kingston British Whig 5 March 1921, p.1. Similar sentiments were voiced by a white Alberta M.P., Frank Oliver, himself a former Minister of the Interior, in the House of Commons seven years earlier, when he argued that the Six Nations were "in a different legal position from any Indian bands who are native to the country. These Indian bands on the Grand river...were given lands under a special treaty, not as subjects of Great Britain, but as allies of Great Britain...." Hansard Parliamentary Debates House of Commons, 11 May 1914 at 3537.

43. Historians have begun to compile details regarding the legal clash between European and First Nations' communities. See, for example, Dickinson "Native Sovereignty and French Justice in Early Canada" 17; Hamar Foster "'The Queen's Law is Better Than Yours': International Homicide in Early British Columbia" in Phillips, Loo and Lewthwaite eds. Criminal Justice 41; Hamar Foster "Sins against the Great Spirit: The Law, the Hudson's Bay Company, and the Mackenzie's River Murders, 1835-1839" Criminal Justice History: An International Annual v.10 (1989) 23; Cornelia Schuh "Justice on the Northern Frontier: Early Murder Trials of Native Accused" Criminal Law Quarterly v.22 (1978-80) 74; Chief Thomas Fidler and James R. Stevens Killing the Shaman (Moonbeam: Penumbra Press, 1985); Graham Price "The King v. Alikomiak" in Dale Gibson and Wesley Pue eds. Glimpses of Canadian Legal History (Winnipeg: Legal Research Institute, 1991) 213; W.C.E. Rasing "Too Many People": Order and Nonconformity in Iglulingmiut Social Process (Nijmegen: Katholieke Universiteit, Faculteit der Rechtsgeleerdheid, 1994) at 141-2; Graham Price "Remote Justice: The Stipendiary Magistrate's Court of the Northwest Territories, 1905-55" LL.M. Thesis

(University of Manitoba: 1986); Brendan O'Brien Speedy Justice: The Tragic Last Voyage of His Majesty's Vessel **Speedy** (Toronto: The Osgoode Society, 1992) at 39-53; Russell Smandych and Rick Linden "Co-existing Forms of Native and Private Justice: An Historical Study of the Canadian West" in Kayleen M. Hazlehurst ed. Legal Pluralism and the Colonial Legacy: Indigenous Experiences of Justice in Canada, Australia, and New Zealand (Aldershot, UK: Avebury Press, 1995).

44. The King v. Phelps, [1823] U.C.K.B. 47 at 52-4. The decision merely notes at 54: "Judgment in favour of the Crown." In argument, Esther Phelps' white counsel referred to the Mohawk as "the faithful and attached allies" of the King, and put forth the claim of sovereignty in clear, if patronizing, terms: "The foundation of the title from General Haldimand is evidently a treaty, and as such must be recognized by the court.... The Indians must be considered a distinct, though feudatory people; they were transported here by compact; they are not subject to mere positive laws, to statute labour, or militia duty; though perhaps to punishment for crimes against the natural law, or law of nations. It may be considered as a ridiculous anomaly, but it appears...that these sort of societies, resident within and circumscribed by another territory, though in some measure independent of it, frequently exist, and that the degree of independence may be infinitely varied; and however barbarous these Indians may be considered, the treaty under which they migrated to and reside in this country is binding." The white solicitor-general, Henry John Boulton, insisted that "the Indians are bound by the common law," and argued: "The supposition that the Indians are not subject to the laws of the country is absurd; they are as much so as the French loyalists who settled here after the French revolution, who came to this province from a country perfectly independent, and of

which the independence was never doubted." See also William Renwick Riddell "Esther Phelps" The University Magazine v.12 (Montreal: October 1913) at 466-7.

45. Doe D. Sheldon v. Ramsay et al. (1852), 9 U.C.Q.B. 105 at 123 and 133. On the matter of Haldimand's original land grant, Chief Justice Robinson took issue with the form of the instrument under which the grant was purportedly made, and with the nature of the organization receiving the grant (at 122-3): "In the first place, the Six Nations of Indians took no legal estate under the instrument given by General Sir Frederick Haldimand. He did not own the land in question, and could convey no legal interest by any instrument under **his seal et arms**. Being Governor of Canada, he could have made a grant of Crown lands by letters patent under the great seal of the province, which would have been a matter of record; but he could no more grant this large tract on the Grand River, by an instrument under his seal at arms, than he could have alienated the whole of Upper Canada by such an instrument. But secondly, if such an instrument had been made under the great seal, in the ordinary and proper manner, it could pass no legal interest for want of a grantee or grantees, properly described and capable of holding. It grants nothing to any person or persons by name, and in their natural capacity. General Haldimand could not have incorporated the Six Nations of Indians, if he had attempted to do it expressly, by an instrument under **his seal et arms**, and still less could he do it in such a manner incidentally and indirectly by implication. A grant 'to the Mohawks Indians, and such others of the Six Nations as might wish to settle on the Grand River, of a tract of land, to be enjoyed by them and their posterity forever,' could not have the effect upon any principle of the law of England of vesting a legal estate in anybody. It could amount to nothing more than what it was well understood and intended to be, a

declaration by the government that it would abstain from granting those lands to others, and would reserve them to be occupied by the Indians of the Six Nations. It gave no estate in fee, or for life, or for a term of years, which the Indians could individually or collectively transmit." On the question of the applicability of British law, Judge Robert Easton Burns, who wrote a concurring opinion in this case, concluded at 133-4: "It can never be pretended that these Indians while situated within the limits of this province, as a British province at least, were recognized as a separate and independent nation, governed by laws of their own, distinct from the general law of the land, having a right to deal with the soil as they pleased; but they were considered as a distinct race of people, consisting of tribes associated altogether distinct from the general mass of inhabitants, it is true, but yet as British subjects, and under the control of and subject to the general law of England. As regards these lands on the Grand River, the Indians had no national existence, nor any recognized patriarchal or other form of government or management, so far as we see in any way.... Although they are distinct tribes as respects their race, yet that gave them no corporate powers or existence...." For a more detailed analysis of Robinson's judicial position, see Sidney Harring "'The Common Law is not Part Savage and Part Civilized': Chief Justice John Beverley Robinson, Canadian Legal Culture, and the Denial of Native Rights in Mid-nineteenth Century Upper Canada," unpublished manuscript, 1995. Harring notes at 44 that "many of the members of the family compact, including Robinson, were involved in land speculations of dubious legality, and much of this land was clouded by 'Indian title.'" Harring concludes at 61 that "at the core of Robinson's jurisprudence was the denial of aboriginal sovereignty and land rights, aboriginal rights that impeded the orderly European settlement of Upper Canada." For an

example of similar judicial reasoning in a case subsequent to Sero, see Rex v. Syliboy [1929] 1 D.L.R. 307, (1928), 50 C.C.C. 389 (N.S. Co. Ct.), in which the grand chief of the Mi'kmaq nation would be convicted of a hunting violation despite his citation of a 1752 Treaty signed by the Nova Scotia Governor and the Mi'kmaq, providing that the Aboriginal inhabitants would "not be hindered from but have free liberty to hunt and fish as usual." In deciding that the "so-called treaty" was really "not a treaty," the court would state at 395-6: "Treaties are unconstrained Acts of independent powers. But the Indians were never regarded as an independent power. A civilized nation first discovering a country of uncivilized people or savages held such country as its own until such time as by treaty it was transferred to some other civilized nation. The savages' rights of sovereignty even of ownership were never recognized. Nova Scotia had passed to Great Britain not by gift or purchase from or even by conquest of the Indians but by treaty with France, which had acquired it by priority of discovery and ancient possession; and the Indians passed with it. [...] In my judgment the Treaty of 1752 is not a treaty at all and is not to be treated as such; it is at best a mere agreement made by the Governor and council with a handful of Indians.... Having called the agreement a treaty, and having perhaps lulled the Indians into believing it to be a treaty with all the sacredness of a treaty attached to it, it may be the Crown should not now be heard to say it is not a treaty. With that I have nothing to do. That is a matter for representations to the proper authorities...."

Rex v. Wesley [1932] 4 D.L.R. 774, 2 W.W.R. 337, (1932), 58 C.C.C. 269, 26 Alta. L.R. 433 (Alta. C.A.) would uphold Aboriginal hunting rights pursuant to the British Proclamation of 1763 and an 1877 treaty with the Assiniboine, Blackfeet and Stony nations, but citing A.-G. Can. v. A.-G. Ont., [1897] A.C. 199, would conclude that "in

Canada the Indian treaties appear to have been judicially interpreted as being mere promises and agreements." See also Rex v. Commanda, [1939] 3 D.L.R. 635, O.W.N. 466, (1939), 72 C.C.C. 246 (Ont. S.C.). The Robinson Treaty of 1850, negotiated by William Robinson (brother of Chief Justice John Beverley Robinson) with the Ojibway of the north shore of Lake Superior would receive more judicial deference in Rex v. Padjena and Quesawa (1930), 4 Canadian Native Law Cases 411 (Ont. Div. Ct.). Upholding the provisions of the Treaty which stipulated the right of the Ojibway to hunt, the court would note: "The said Robinson Treaty is binding on both the Dominion of Canada and on the Province of Ontario. The said Treaty was made with the Province of Canada, which then included, Ontario and Quebec, and the Province of Ontario cannot abrogate the said Treaty. Treaties made by the United States with the Indian tribes are laws of the United States, and constitute a part of the supreme law of the land, and acts of a state legislature in conflict therewith are therefore void. Treaties with the Indian tribes are to be construed liberally in favour of the Indians."

46. Dickason Canada's First Nations at 176; Olive Patricia Dickason The Myth of the Savage and the Beginnings of French Colonialism in the Americas (Edmonton: University of Alberta Press, 1984). Newell Crime and Justice Among the Iroquois Nations provides detailed, contradictory evidence about the complex social, political and legal regime developed by Iroquois nations. For some sense of the countervailing perspectives developed by the First Nations about the white European colonizers, see Rosenstiel Red and White: Indian Views of the White Man.

47. Hilary Bates Neary "William Renwick Riddell: A Bio-Bibliographical Study"

M.A. Thesis (University of Western Ontario: 1977) at 1-9, 20, 34-8; "Riddell, Hon. Wm. Renwick"; Henry James Morgan ed. The Canadian Men and Women of the Time 2nd ed. (Toronto: William Briggs, 1912) at 941; "Riddell, Hon. William Renwick" B.M. Greene ed. Who's Who and Why: 1921 (Toronto: International Press, 1921) at 94; W. Stewart Wallace ed. The Macmillan Dictionary of Canadian Biography 3rd. ed. (Toronto: Macmillan, 1963) at 628; and obituaries: "39 years in Supreme Court - Mr. Justice Riddell dies" Toronto Daily Star 19 February 1945; "Justice W.R. Riddell dies soon after wife" Toronto Globe and Mail 19 February 1945.

48. Neary "Riddell" at 5-6, 8-9, 20. For a full listing of the bibliography, see Neary at 54-161. The reference to "slang" is found in Morgan "Riddell" at 941. The reference to the hearing aid is from Lita-Rose Betcherman The Little Band: The Clashes Between the Communists and the Canadian Establishment 1928-1932 (Ottawa: Deneau, 1983) at 39, citing her interview with Harvey McCulloch QC, 18 November 1978.

49. On Riddell's involvement with The Dawn of Tomorrow, see Neary "Riddell" at 27; see also William Renwick Riddell "The Slave in Canada" Journal of Negro History 5:3 (1920) 261. On Riddell's insensitivity to racism, see Carolyn Strange Toronto's Girl Problems: The Perils and Pleasures of the City, 1880-1930 (Toronto: University of Toronto Press, 1995) at 250, citing Robin W. Winks The Blacks in Canada: A History 2nd ed. (Montreal: McGill-Queen's University Press, 1997) at 298. Karen Dubinsky has documented Riddell's role in the trial of a Black man, Frank Roughmond, in Stratford in 1908 in her Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929 (Chicago: University of Chicago Press, 1993) at 98-104. Frank Roughmond, an itinerant

Black fortune-teller, was convicted of murdering a white woman after sexually assaulting her, in a trial presided over by Judge Riddell. Dubinsky notes that the evidence was mixed, that the accused man received a very lacklustre defence, and that the sensational press treatment was appallingly biased. Riddell appears to have been unconcerned about any of this. When he delivered the verdict and pronounced the death sentence upon the accused, Riddell was sanctimonious in his admiration for the majesty of the British system of law. Riddell advised Roughmond that "you differ from most of us in colour but no man can say you did not have a fair trial." Riddell announced that he was "glad that my Canadian people have refrained from violence and have let justice take its course. That is a great object lesson to others, and to people of your race." Dubinsky concludes: "Supporters of...Frank Roughmond (if indeed Roughmond had any) could be forgiven if they failed to see a substantial difference between lynching by an angry mob and the proceedings of the Anglo-Saxon legal system."

50. Canadian Social Hygiene Council Social Health 1:11 (Midsummer Number, 1925) lists William Renwick Riddell as President and Dr. Gordon Bates, a well-known eugenicist, as General Secretary. An article published in that volume is titled "To Advocate the Knowledge and Practice of Social Hygiene as the One Way to Racial Improvement" with a sub-heading: "The Race is to the Strong." I am indebted to John McLaren for providing me with this information. On the Canadian Social Hygiene Council and the eugenics reform movement in Canada, see Angus McLaren Our Own Master Race: Eugenics in Canada, 1885-1945 (Toronto: McClelland and Stewart, 1990).

51. William Renwick Riddell "Administration of Criminal Law in the Far North

of Canada" Journal of Criminal Law, Criminology and Police Science 20:2 (August 1929) 294-302 at 294. The article promotes the importance of extending English criminal law to northern areas, and begins with the following passage: "When in 1869, the Dominion of Canada acquired at the cost of L300,000 Sterling, the enormous territory known as Rupert's Land from the Hudson's Bay Company, she was not blind to the very great responsibilities she was assuming. While there was a magnificent stretch of land in the southern part, fitted for the highest kind of agriculture, and certain to attract the highest form of immigrant of the White Race, there was also known to be toward the North, an expanse of territory, apparently fit for nothing but the trapper and such forms of humanity and grades of civilization as were represented by the Esquimaux and the wandering Indian tribes. These had little conception of government by law, and seldom considered themselves to be bound by anything but their own desires. Amongst them, too, were degenerate members of the higher race, generally playing on their savage appetites and making profit of their vices."

52. The following articles touch on First Nations' matters: "Esther Phelps" University Magazine v.12 (Montreal: October 1913) 466-71; "The Sad Tale of an Indian Wife" The Canadian Law Times (Toronto, 1920) v.40 at 983; republished in Journal of Criminal Law and Criminology v.13 (May 1922) 82-89; "Was Molly Brant Married?" Ontario Historical Society Papers and Records v.19 (1922) 147-57, where Riddell wagers not; "Former Indian Treatment for Venereal Disease" Urologic and Cutaneous Review v.32 (November 1928) 720-28; "Administration of criminal law in the far north of Canada" Journal of Criminal Law, Criminology and Police Science 20:2 (August 1929) 294-302, which discusses cases of Inuit charged with murder between 1915 and 1926;

"Indian war council held at Detroit in 1700" Transactions of the Royal Society of Canada 3rd ser. v.25 (1931) Section II, 165-68; "Indian episodes in early Michigan" Michigan History Magazine v.18 (1934) 195-207; "Medicine of the Indians of Acadia two and a quarter centuries ago" Medical Record: A National Review of Medicine and Surgery v.140 (July 1934) 95-96, in which he writes of the efficacy of some First Nations' medicines and medical treatments; "Some Indian medicine 240 years ago and now" Medical Record: A National Review of Medicine and Surgery v.144 (October 1936) 329-30, in which he disparages the medical knowledge of the First Nations; "The Status of the Indian" Bench and Bar v.5 (October 1935) 4.

53. "Esther Phelps" The University Magazine at 466-7, 470-1.

54. "Sad Tale of an Indian Wife" Canadian Law Times at 991. The article is republished in Journal of Criminal Law and Criminology (1922) at 82-89.

55. For an account of episode concerning Clara Brett Martin, see Constance Backhouse Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada (Toronto: Women's Press and the Osgoode Society, 1991) at 308. Riddell later wrote in "Women as Practitioners of Law" in Journal of Comparative Legislation 18 (1918) 201 at 206: "I do not think that the most fervent advocate of women's rights could claim that the admission of women to the practice of law has had any appreciable effect on the Bar, the practice of law, the Bench or the people. ...[T]he admission of women is regarded with complete indifference by all but those immediately concerned." See also "An Old-Time Misogynist" Toronto Canadian Magazine 58:5 (March 1922) at 379-80.

56. Jones v. Grand Trunk R.W. Co. (1904), 3 O.W.R. 705 (Ont. Div. Ct.); Jones v. Grand Trunk R.W. Co. (1905), 5 O.W.R. 611 (Ont. C.A.). The action was brought by Charlotte Jones, a white resident of Hagersville, who as the wife of Dr. Peter E. Jones, a Mississauga, was defined as an "Indian" under Canadian legislation. Damages of \$10 were awarded at trial because the railway company had not provided sufficient notice of their intention to place individuals purchasing "Indians' tickets" in second-class accommodation. Damages were upheld on appeal because the smoking car to which Jones was assigned was held not to be "sufficient accommodation" for second-class passengers.

57. The Mississauga claim in Henry v. The King (1905), 9 Ex.C.R. 417 (Exchequer Ct. of Can.) was only partially successful, since the court also ruled that it had no authority to review the manner in which the federal government and the Superintendent General of Indian Affairs managed First Nations' lands and finances, the supervisory authority belonging solely to Parliament. Riddell's decision against Chisholm is reported in Chisholm v. Herkimer (1909), 18 O.L.R. 600 (Ont. Weekly Ct.).

58. Sero v. Gault at 33. Riddell's judgment expressly notes his archival research into the issues in dispute. On Riddell's "cavalier attitude towards the use of such facilities," and the efforts of various librarians and archivists to retrieve documents he borrowed years earlier, see Neary "Riddell" at 33.

59. Sero v. Gault at 330-1. Although Riddell gives no source for Judge Powell's statement, it is presumably based upon a memorandum signed by Powell, later Chief

Justice of Upper Canada, recording a conversation with Joseph Brant, which notes: "My personal opinion was ever in favour of the entire Independence of the Indians in their villages." The reference is quoted in Montgomery "Legal Status of the Six Nations" at 93, citing PAC Q283, p.94, 3 January 1737; the current PAC reference is RG10, v.2285, 57,169-1A-part 2. Although Riddell did not specify the precise nature of the retraction he attributes to Powell, he seems to justify his argument by reference to a murder trial in 1822: "Shawanakiskie, of the Ottawa Tribe, was convicted at Sandwich of the murder of an Indian woman in the streets of Amherstburg, and sentenced to death. Mr. Justice Campbell respited the sentence, as it was contended that Indians in matters between themselves were not subject to white man's law, but were by treaty entitled to be governed by their own customs - Canadian Archives, Sundries, U.C., September, 1822. It was said that Chief Justice Powell had in the previous year charged the grand jury at Sandwich that the Indians amongst themselves were governed wholly by their own customs. Powell, when applied to by the Lieutenant-Governor, denied this, and sent a copy of his charge, which was quite to the contrary - id., October, 1822."

For more details on this case, see Dennis Carter-Edwards "Shawanakiskie" Dictionary of Canadian Biography (Toronto: University of Toronto Press, 1987) v.6, 705-6.

60. Sero v. Gault at 331. Riddell cited neither case, but refers to documents in the Canadian Archives relating to the former, a murder trial of Shawanakiskie, in Sandwich in 1822, which was upheld in 1826 by the Lieutenant-Governor, to whom the Crown Law Officers had written to report that there was "no basis for the Indian's claim to be treated

according to his customary law." Curiously, Riddell did not cite another 1820 murder conviction of Negaunausing, a ten-year-old First Nations' boy who shot a European boy of about the same age. Riddell must have been aware of this District of Newcastle case, since he documented the conviction and subsequent pardon in his article "A Criminal Circuit in Upper Canada: A Century Ago" Canadian Law Times v.40 (Toronto: 1920) 711 at 716-17.

61. Rex v. Hill (1907), 15 O.L.R. 406, 11 O.W.R. 20 (Ont. C.A.) at 410. A white informant, Charles Rose, accused George Hill, an unenfranchised treaty Indian residing upon the "reserve," of "attending upon and prescribing for" two white women off the "reserve." At 414, the court notes: "He is no more free to infringe an Act of the Legislature than to disregard a municipal by-law, the general protection of both of which he enjoys when he does not limit the operations of his life to his reserve, but though unenfranchised, seeks a wider sphere." The precise issue of sovereignty is never broached in the case, which was argued instead on the constitutional division of powers. The defendant's argument, that "Indians" are "wards of the Dominion, and subject in all relations of life only to federal legislation," failed. For a later case which followed Hill, see Cite de Montreal v. Bluefeather (1933), 39 R. de Jur. 100 (Que. District Ct.), where John Bluefeather was convicted of selling his own medicines as a street vendor in the City of Montreal without a permit. See also Re Kane, [1940] 1 D.L.R. 390 (N.S. Co. Ct.); Attorney-General for Quebec v. Williams, [1944] 4 D.L.R. 488, (1944), 82 C.C.C. 166 (Que. Sess. of the Peace).

62. Rex v. Martin (1917), 29 C.C.C. 189, 41 O.L.R. 79, 13 O.W.N. 187 (Ont.

C.A.). Judge Riddell actually sat on this case, and concluded at 192: "We are bound by Rex v. Hill...to hold that an unenfranchised Indian is subject to provincial legislation in precisely the same way as a non-Indian, at least where, as here, he is out of his reservation."

63. See, for example, Sanderson v. Heap (1909), 11 W.L.R. 238, 19 Man. R. 122 (K.B.) and the broadly worded application of Hill found in Dion v. La Compagnie de la Baie D'Hudson (1917), 51 Que. C.S. 413.

64. The King v. Beboning (1908), 13 C.C.C. 405, 12 O.W.R. 484, 17 O.L.R. 23 (Ont. C.A.), in which the Aboriginal accused was charged with stealing hay on the West Bay Indian "Reserve" in the district of Manitoulin. The argument of the accused was that the matter was more properly dealt with under the federal "Indian Act" R.S.C. 1906, c.81.

65. Rex v. Jim (1915), 26 C.C.C. 236, 22 B.C.R. 106 (B.C.S.C.) notes at 237-3: "By the British North America Act, 1867, that is to say, by subsection (294) of section 91, Indians and lands reserved for the Indians are reserved for the exclusive jurisdiction of the Dominion Parliament. The Dominion Parliament has enacted a lengthy Act known as the Indian Act.... [I]n fact, by section 51 it is expressly enacted 'that all Indian lands...shall be managed, leased and sold as the Governor-in-Council directs.' [...] I would say that the word 'management' would, at all events, include the question of regulation and prohibition in connection with fishing and hunting upon the reserves." For examples of cases which subsequently followed Jim, see Rex v. Rodgers [1923] 3 D.L.R. 414, 2 W.W.R. 353, (1923), 40 C.C.C. 51, 33 Man. R. 139 (Man. C.A.); Rex v.

Martin (1917), 39 D.L.R. 635, 29 C.C.C. 189 (Ont. C.A.). There are several cases subsequent to Jim in which white defendants attempted to secure immunity while on a "reserve:" all failed; see Rex v. McLeod (1930), 54 C.C.C. 107, [1930] 2 W.W.R. 37 (B.C.Co. Ct.); Rex v. Morley [1932] 4 D.L.R. 483, 2 W.W.R. 193, (1931), 58 C.C.C. 166, 46 B.C.R. 28 (B.C.C.A.); Rex v. Gullberg, [1933] 3 W.W.R. 639, (1933), 62 C.C.C. 281 (Alta. Dist. Ct.). See also Rex v. Grosblouis (1943), 81 C.C.C. 167; [1944] R.L. 12 (Que. Sess. of the Peace), in which provincial sales tax is held applicable to goods sold by an Indian merchant on the "reserve" to a white customer.

66. Dion v. La Compagnie de la Baie D'Hudson (1917), 51 Que. C.S. 413 at 416: "Le fait qu'il y a dans notre province des reserves pour les Indiens n'a pas pour effet de rendre inconstitutionnelle la loi de chasse; ils y sont soumis comme tous les autres:

Indians in Canada are British subjects and entitled to all the rights and privileges of such, except so far as those rights are restricted by statute, and notwithstanding sub-sect.24 of sect.91 of the B.N.A. Act, 1867, they are sub-sect [sic] to all provincial laws which the province has power to enact.

The footnote attached to the latter statement refers to Rex v. Hill, and to Sanderson v. Hedy [sic], by which the court must have meant the Manitoba case of Sanderson v. Heap (1909), 11 W.L.R. 238, 19 Man. R. 122 (K.B.). The latter case deals with the rights of First Nations' individuals to sell land allotted to them by the federal government, and states at 125: "Unlike the Indians of the United States, who are aliens, the Indians of Canada are British subjects and entitled to all the rights and privileges of

subjects, except in so far as these rights are restricted by statute."

67. Several land dispute cases which touch on Aboriginal title, while not explicitly focusing upon sovereignty, illustrate these points. For example, the case of *St. Catharines Milling Company* involves a dispute between the Ontario and federal governments over the right of a lumbering company to cut timber on the lands south of Wabigoon Lake. The Ontario government was seeking to enjoin the cutting of the timber. The lumber company claimed it obtained its timber rights from the federal government, which acquired title to the land from the Aboriginal inhabitants. The Ontario government argued that there was "no Indian title at law or in equity." Once again, the Aboriginal peoples were not present at the hearing, or canvassed for their positions on the legal issues before the court. This did not stop the court from issuing what would come to be considered the definitive ruling on Aboriginal title. In *Regina v. St. Catharines Milling Co.* (1885), 10 O.R. 196 (Ont. Chancery Ct.) at 204-230, the court is patronizing in its dismissal of Aboriginal claims: "The legal and constitutional effect of the conquest of Quebec and the cession of Canada was to vest the soil and ownership of the public land in the Crown, and to subject the same to the Royal prerogative. The French and Indian populations that remained in the country became, by the terms of capitulation, the subjects of the King. [...] Indian peoples were found scattered wide-cast over the continent, having, as a characteristic, no fixed abodes, but moving as the exigencies of living demanded. As heathens and barbarians it was not thought that they had any proprietary title to the soil, nor any such claim thereto as to interfere with the plantations, and the general prosecution of colonization. They were treated "justly and graciously,"...but no legal ownership of the land was ever attributed to them. [...]"

[Quoting and adopting a United States Supreme Court ruling, Johnson v. McIntosh]: 'All our institutions recognize the absolute title of the Crown, subject only to the Indian right of occupancy, and recognize the absolute title of the Crown to extinguish that right.' This right of occupancy attached to the Indians in their tribal character. They were incapacitated from transferring it to any stranger, though it was susceptible of being extinguished. The exclusive power to procure its extinguishment was vested in the Crown, a power which as a rule was exercised only on just and equitable terms. [...]

While in their nomadic state they may or may not choose to treat with the Crown for the extinction of their primitive right of occupancy. If they refuse the government is not hampered, but has perfect liberty to proceed with the settlement and development of the country, and so, sooner or later to displace them. [...] Before the appropriation of reserves the Indians have no claim except upon the bounty and benevolence of the Crown." This ruling is upheld in St. Catherine's Milling and Lumber Company v. The Queen (1888), 14 A.C. 46 (P.C.), where the Privy Council rules at 54 that: "the tenure of the Indians was a personal and usufructuary right, dependent on the good will of the Sovereign.... [T]here has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a **plenum dominium** whenever that title was surrendered or otherwise extinguished." For a detailed discussion of this case, see S. Barry Cottam "Indian Title as 'Celestial Institution': David Mills and the St.Catherine's Milling Case" in Kerry Abel and Jean Friesen Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991) 247-65; Anthony J. Hall "The St. Catherine's Milling and Lumber Company versus the Queen: Indian Land Rights as a Factor in Federal-Provincial Relations in Nineteenth-Century Canada" in Abel and

Friesen Aboriginal Resource Use 267-86. In Corinthe et al. v. Seminary of St. Sulpice, [1912] A.C. 872 (P.C.), the Algonquins and Iroquois claimed absolute ownership of the Seigniorship of the Lake of Two Mountains at Montreal (Oka - Kanesatake) on the basis that they were the descendants of the first Aboriginal occupants who held an unextinguished Aboriginal title, and secondly, that they had acquired a title by prescriptions, i.e. by thirty years' possession. The Privy Council denied the Aboriginal claim, holding that the King of France granted full proprietary title to the Seminary of St. Sulpice in the 18th century in return for their agreement to found a mission on the property. See also Rex v. Bonhomme (1917), 38 D.L.R. 647 (Exchequer Ct.), as upheld in Rex v. Bonhomme (1918), 59 S.C.R. 679.

68. William Blackstone Commentaries on the Laws of England, v.1, orig. pub. 1765-69 (republished Chicago: University of Chicago Press, 1979) at 354, 357. On Riddell's expertise in international law, see Neary "Riddell" at 8 and 16.

69. Riddell also cites Halsbury's Laws of England v.1 at 302-3: "Persons born within the allegiance of the Crown include every one who is born within the dominions of the Crown whatever may be the nationality of either or both of his parents...." This passage provides no further assistance than the quotation from Blackstone, since it fails to settle the question of whether Eliza Sero had been born "within the dominions of the Crown." "An Act to amend and consolidate the Acts relating to British Nationality, Naturalization and Aliens" S.C. 1919, c.38 provides as follows: s.1(1) The following persons shall be deemed to be natural-born British subjects, namely: -

(a) Any person born within His Majesty's dominions and allegiance; and,

(b) Any person born out of His Majesty's dominions, whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization had been granted, or had become a British subject by reason of any annexation of territory, or was at the time of that person's birth in the service of the Crown; and,

(c) Any person born on board a British ship, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects.

The Canadian statute is premised upon two imperial statutes: "An Act to consolidate and amend the Enactments relating to British Nationality and the Status of Aliens" (1914) 4 & 5 Geo. V., c.17, s.1 (Eng.) and "An Act to amend the British Nationality and Status of Aliens Act, 1914" (1918) 8 & 9 Geo. V, c.38, s.2 (Eng.).

70. The right to exercise the suffrage is distinct from the concept of "enfranchisement," a process that allowed First Nations' people to apply to the federal government for title to land in "fee simple" and the erasure of their "Indian" status in law: see "An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42" S.C. 1869, c.6, s.13; "The Indian Act, 1876" S.C. 1876, c.18, s.3(5), 86-88, 93; "An Act further to amend

"The Indian Act, 1880" S.C. 1884, c.27, s.16; "The Indian Act" R.S.C. 1886, c.43, s.2(j), 82-93; "Indian Act" R.S.C. 1906, c.81, s.2(h), 107-23; "An Act to amend the Indian Act" S.C. 1918, c.26, s.6; "An Act to amend the Indian Act" S.C. 1920, c.50, s.3; "An Act to amend the Indian Act" S.C. 1922, c.26, s.1; "An Act to amend the Indian Act" S.C. 1924, c.47, s.7; "Indian Act" R.S.C. 1927, c.98, s.110-14; "An Act to amend the Indian Act" S.C. 1933, c.42, s.7; "The Indian Act" S.C. 1951, c.29, s.12(1)(a)(iii), 108-12. The Six Nations Confederacy opposed "enfranchisement" for multiple reasons, not least of which was their claim to be "allies" not "subjects" of the British monarch. For an analysis of the coercive and colonialist underpinnings of enfranchisement, see Johnston "First Nations and Canadian Citizenship." The legal treatment of the right of "Indians" to exercise their federal suffrage commences with "An Act respecting the Electoral Franchise" S.C. 1885, c.40, s.2-4, which extends the right of suffrage to a "person" (defined as "a male person, including an Indian") who is twenty-one years or older, "a British subject by birth or naturalization" and the owner of real property worth \$300 in a city or \$200 in a town, or a tenant paying at least \$20 annual rent, or a resident deriving income of at least \$300 annually, or the son of such owner of real property. Report of the Royal Commission on Aboriginal Peoples, v.1 "Looking Forward, Looking Back" (Ottawa: Ministry of Supply and Services, 1996) notes at 299 that the right to vote was never extended to Aboriginal people west of Ontario, despite these provisions. "An Act to repeal the Electoral Franchise Act, and to further amend the Dominion Elections Act" S.C. 1898, c.14, s.5 repeals this definition of "person" and stipulates: "For the purposes of any Dominion election held within the limits of a province, except as hereinafter otherwise provided, (a) The qualifications necessary to entitle any person to vote thereat shall be those

established by the laws of that province as necessary to entitle such person to vote in the same part of the province at a provincial election." See also "An Act respecting the election of members of the House of Commons and the Electoral Franchise" R.S.C. 1906, c.6, s.6. Limited exceptions are made for "Indians" who served in World War I, in "An Act respecting the Election of Members of the House of Commons and the Electoral Franchise" S.C. 1920, c.46, s.29(1): "Save as in this Act otherwise provided, every person, male or female, shall be qualified to vote at the election of a member, who, not being an Indian ordinarily resident on an Indian reservation, -

(a) is a British subject by birth or naturalization; and

(b) is of the full age of twenty-one years; and

(c) has ordinarily resided in Canada for at least twelve months and in the electoral district wherein such person seeks to vote for at least two months immediately preceding the issue of the writ of election.

(d) provided, however, that any Indian who has served in the Naval, Military or Air forces of Canada in the late war shall be qualified to vote, unless such Indian is otherwise disqualified under paragraphs (a), (b) and (c) of this section.

s.30(1). The respective persons hereunder mentioned shall for the time specified as to each person be disqualified and incompetent to vote at an election: --

(g) Persons who, by the laws of any province in Canada, are disqualified from voting for a member of the Legislative Assembly of such province in respect of race, shall not be qualified to vote in such province under the provisions of this Act: Provided however that the provisions of this paragraph shall not disqualify or render incompetent to vote any person who has served in the naval, military or air forces of Canada in the late war and who produces a discharge from such naval, military or air force to the registrar upon the making of the voters' lists and to the deputy returning officer at the time polling.

See also "An Act respecting the Election of Members of the House of Commons and the Electoral Franchise" R.S.C. 1927, c.53, s.29, 30(d). "An Act respecting the Franchise of Electors at Elections of Members of the House of Commons" S.C. 1934, c.51, s.4 alters this wording somewhat to read: "Provided that the following persons are disqualified from voting at an election and incapable of being registered as electors and shall not be so registered, that is to say--

(vi) every Esquimau person, whether born in Canada or elsewhere;

(vii) every Indian person ordinarily resident on an Indian reservation who did not serve in the military, naval or air forces of Canada in the war of 1914-1918;

(xi) subject to subsection two of this section, every person who is disqualified by reason of race from voting at an election of a member of the Legislative Assembly of the province in which he or she resides and who did not serve in the

military, naval or air forces of Canada in the war of 1914-1918;

(2) Notwithstanding anything in this section contained an Indian shall not be incapable of being registered as an elector or be disqualified from voting at an election, except pursuant to the seventh paragraph of subsection one of this section."

"An Act respecting the Franchise of Electors and the Election of Members of the House of Commons" S.C. 1938, c.46, s.14(2)(f) stipulates that "Indian" is defined as "any person of whole or part Indian blood who is entitled to receive any annuity or other benefit under any treaty with the Crown." "An Act to amend The Dominion Elections Act, 1938" S.C. 1948, c.46, s.6 extends the franchise to "Indians" who served in World War II and the wives of "Indians" who served in either World War I or II. "An Act to amend The Dominion Elections Act, 1938" S.C. 1950, c.35, s.1 enfranchises "Indians" who "executed a waiver, in a form prescribed by the Minister of Citizenship and Immigration, of exemptions under the 'Indian Act' from taxation on and in respect of personal property." See also "An Act to amend The Dominion Elections Act, 1938 and to change its title to The Canada Elections Act" S.C. 1951, c.3, s.6; "An Act respecting the Franchise of Electors and the Election of Members of the House of Commons" R.S.C. 1952, c.23, s.14. The disqualification is lifted in the "Canada Elections Act" S.C. 1960, c.39, s.14. See also Richard H. Bartlett "Citizens Minus: Indians and the Right to Vote" Saskatchewan Law Review v.44 (1980/81) 163-94.

71. In Ontario, "An Act respecting Elections of Members of the Legislative Assembly" S.O. 1908, c.3, s.11 provides that "any male person, of the full age of twenty-

one years and a British subject by birth or naturalization resident in Ontario...shall be qualified to be a candidate." Section 22 provides: "An unenfranchised Indian of whole or part Indian blood residing or having his domicile among Indians or on an Indian Reserve, shall not be entitled to have his name entered on the voters' list or to vote." See also "An Act respecting Elections of Members of the Legislative Assembly" R.S.O. 1914, c.8, s.11 and 22. "Indian" soldiers are enfranchised by "An Act to provide for the preparation of Lists of Voters at Elections to the Assembly" S.O. 1917, c.5, s.6 and "An Act to amend The Ontario Election Act" S.O. 1917, c.6. See also "An Act respecting Elections to the Assembly" S.O. 1918, c.3, s.3; "An Act respecting Elections and the Preparation of Provincial Voters' Lists" S.O. 1920, c.2, s.6 and 10; "An Act respecting Voters' Lists" S.O. 1922, c.4. "An Act to revise and amend the Election Laws" S.O. 1926, c.4, s.19 stipulates that an "Indian, enfranchised or unenfranchised, or of whole, or part Indian blood" who served in the naval or military forces in World War I can vote. See also "The Election Act" R.S.O. 1927, c.8, s.2 and 18; "The Election Act" R.S.O. 1937, c.8, s.18. "The Statute Law Amendment Act, 1939 (No. 2)" S.O. 1939, 2nd Session, c.11, s.3 adds service in World War II. See also "An Act to amend The Election Act" S.O. 1942, c.13, s.3; "The Election Act" R.S.O. 1950, c.112, s.18 and 22; S.O. 1951, c.21, s.18, 22. "An Act to amend The Election Act, 1951" S.O. 1954, c.25, s.4-5 eliminates the Aboriginal disqualification.

72. In its first session in 1872, the British Columbia legislature amended the "Qualification and Registration of Voters Act" S.B.C. 1872, c.39, s.13 to exclude "Indians" from the provincial vote. See also "An Act relating to an Act to make better provision for the Qualification and Registration of Voters" S.B.C. 1875, c.2, s.1-2; "An

Act to amend the 'Provincial Elections Act'" S.B.C. 1901, c.22, s.2; "An Act to prohibit Aliens from Voting at Municipal Elections" S.B.C. 1902, c.53, s.1-2; "Provincial Elections Act" S.B.C. 1903-4, c.17, s.6. "Provincial Elections Act" S.B.C. 1920, c.27, s.5(1)(a) continues the exclusion, defining "Indian" in s.2(1) as "any person of pure Indian blood, and any person of Indian extraction having his home upon or within the confines of an Indian reserve." See also R.S.B.C. 1924, c.76, s.2(1) and 5; R.S.B.C. 1936, c.84, s.2(1) and 5. "Provincial Elections Act" S.B.C. 1939, c.16, s.2(1) alters the definition of "Indian" to "any person of pure North American Indian blood, and any person of North American Indian extraction having his home upon or within the confines of an Indian reserve," and retains the prohibition on voting in s.5. See also "Provincial Elections Act Amendment Act" S.B.C. 1947, c.28, s.14 which gives the franchise to "Indians" who served in "the Naval, Military or Air Force in any war," who have "been enfranchised under the provisions of the 'Indian Act,'" and who are "not resident upon or within the confines of an Indian reserve." See also R.S.B.C. 1948, c.106, s.2(1) and 4. The voting prohibition is deleted in "An Act to amend the 'Provincial Elections Act'" S.B.C. 1949, c.19, s.2 and 3. There are also legislative exclusions from exercising the municipal franchise: see "Municipality Amendment Act" S.B.C. 1876, c.1, s.9; "Vancouver City Incorporation Act" S.B.C. 1886, c.32, s.8; "New Westminster Incorporation Amendment Act" S.B.C. 1895, c.65, s.3; "Municipal Elections Act" S.B.C. 1896, c.38, s.7; "Vancouver Incorporation Act" S.B.C. 1900, c.54, s.7; "Municipal Elections Act" S.B.C. 1908, c.14, s.13(1); "Municipal Elections Act" R.S.B.C. 1911, c.71, s.4; R.S.B.C. 1924, c.75, s.4; R.S.B.C. 1936, c.83, s.4; R.S.B.C. 1948, c.105, s.4. First Nations' people are also denied the right to vote in elections for school trustees:

"Public Schools Amendment Act" S.B.C. 1884, c.27, s.10; "Public Schools Act" S.B.C. 1885, c.25, s.19; "Public Schools Act" R.S.B.C. 1897, c.170, s.19; "Public Schools Act" S.B.C. 1905, c.44, s.25; "Public Schools Act" R.S.B.C. 1911, c.206, s.31; S.B.C. 1922, c.64, s.42 and 93, defining "Indian" as "any person who is either a full-blooded Indian, or any person with Indian blood in him who is living the Indian life on an Indian reserve;" R.S.B.C. 1924, c.226, s.42 and 93; R.S.B.C. 1936, c.253, s.93; R.S.B.C. 1948, c.297, s.2 and 92. First Nations' people are also barred from voting in elections of trustees for an improvement district under the Water Act: "Water Act" S.B.C. 1914, c.81, s.187(1); S.B.C. 1920, c.102, s.27; R.S.B.C. 1924, c.271, s.199. Similar restrictions apply to signing petitions regarding liquor licences: "An Act to amend the 'Municipal Clauses Act'" S.B.C. 1908, c.36, s.26-27; "An Act Respecting Liquor Licences and the Traffic in Intoxicating Liquors" S.B.C. 1910, c.30, s.25-26; R.S.B.C. 1911, c.142, s.24-25; R.S.B.C. 1911, c.170, s.349 and 354.

Since the right to hold public or professional office is limited to those on the provincial voting list, these groups are consequently barred from jury service: "Jurors' Act" S.B.C. 1883, c.15, s.5. They are also denied the right to run for election to the provincial legislature: "Qualification and Registration of Voters Act" S.B.C. 1876, c.5, s.3; "Constitution Act" C.S.B.C. 1888, c.22, s.30; or for municipal government: "Municipal Clauses Act" S.B.C. 1896, c.37, s.14-18; "Municipal Clauses Act" S.B.C. 1906, c.32, s.14-18; "Municipal Act" S.B.C. 1914, c.52, s.16-19; "Municipal Election Act" S.B.C. 1896, c.38, s.36; or for school trustee: "Public Schools Act" S.B.C. 1885, c.25, s.19 and 30; "Public Schools Act" S.B.C. 1891, c.40, s.19 and 40; "Public Schools Act" R.S.B.C. 1897, c.170, s.19, 24 and 28; "Public Schools Act" S.B.C. 1905, c.44, s.25

and 32; "Public Schools Act" R.S.B.C. 1911, c.206, s.31 and 38; "Public Schools Act" S.B.C. 1922, c.64, s.37.

The case of In Re the Provincial Elections Act and in Re Tomey Homma, A Japanese (1900), 7 B.C.R. 368 (Co. Ct.) holds these electoral exclusions to be ultra vires. This is upheld in (1901), 8 B.C.L.R. 76 (B.C.S.C.), but reversed on appeal to the Privy Council: Cunningham v. Tomey Homma, [1903] A.C. 151.

First Nations' men and women received the right to vote in 1949: "Provincial Elections Act Amendment Act" S.B.C. 1949, c.19, s.3. The federal government removed its provincial piggy-backing race provisions in 1948, providing that provincial disqualification is no longer a reason for disqualification from the federal franchise: "Dominion Election Act" S.C. 1948, c.46, s.6.

In Manitoba, "An Act Respecting the Election of Members of the Legislative Assembly" R.S.M. 1892, c.49, s.14 bars "Indians or persons of Indian blood receiving an annuity or treaty money from the Crown or who have at any time within three years prior to the said date received such annuity or treaty money." See also "An Act respecting Elections of Members of the Legislative Assembly" S.M. 1901, c.11, s.17; "An Act respecting Elections of Members of the Legislative Assembly" R.S.M. 1902, c.52, s.19; "An Act respecting Elections of Members of the Legislative Assembly" R.S.M. 1913, c.59, s.19. "An Act respecting the Election of Members to the Legislative Assembly" S.M. 1931, c.10, s.16(5) enfranchises "Indians" who had fought in World War I. See also "An Act respecting the Election of Members to the Legislative Assembly" R.S.M. 1940,

c.57, s.15 and 16(5). The Aboriginal disqualification is removed in "An Act to amend The Manitoba Election Act" S.M. 1952, c.18, s.5-6.

In Saskatchewan, see "An Act respecting Elections of Members of the Legislative Assembly" S.S. 1908, c.2, s.11; R.S.S. 1909, c.3, s.11; R.S.S. 1920, c.3, s.12; R.S.S. 1930, c.4, s.12; R.S.S. 1940, c.4, s.12. "An Act to amend The Liquor License Act" S.S. 1909, c.38 prohibits Indians from voting on local by-law options. "Indians" who served in the war are allowed to vote in 1946: "An Act to amend the Saskatchewan Election Act" S.S. 1946, c.3, s.1. See also S.S. 1948, c.4; S.S. 1951, c.3, s.29; R.S.S. 1953, c.4, s.29. The Aboriginal prohibition is removed in "An Act to amend The Saskatchewan Election Act" S.S. 1960, c.45, s.1.

In Prince Edward Island, "The Election Act, 1913" S.P.E.I. 1913, c.2, s.31 stipulates that a voter must be a "male person being a British subject of the age of twenty-one years or upwards who owns real property within the Electoral District in which he claims to have a vote, of the value of Three hundred and Twenty-five dollars, and who has owned and been in possession of the same for a period of at least six months previous to the teste of the writ of such election." "An Act to Amend the Election Act, 1913" S.P.E.I. 1919, c.1, s.8 amends this by granting the vote to: "Every male person who, being a British subject whether or not a minor or an Indian, has been, while within or without Canada, appointed, enlisted, enrolled or called out for and placed on active service as one of the Canadian Expeditionary Force, the Royal Canadian Navy, the Canadian Militia on Active Service, or the Royal Naval Canadian Volunteer Reserve, or has been, while within Canada, appointed, enlisted or enrolled, as one of the British

Royal Flying Corps, Royal Naval Air Service, Army Medical Service or Auxiliary Motor Boat Patrol Service, whether as officer, soldier, sailor, dentist, aviator, mechanic or otherwise, and who has been on active service without Canada in any of the forces or services, Military or Naval, of His Majesty or if his allies, at any time during the period of the Great War which commenced in 1914, and who remains one of any of such forces or services or has been honorably discharged therefrom, or, in the case of an officer, who has been permitted to resign, or without fault on his part, has had his services dispensed with shall be entitled to vote." "The Election Act, 1922" S.P.E.I. 1922, c.5, s.32 provides the first explicit prohibition of Aboriginal voting, stating: "Every person, male or female, except an Indian ordinarily resident in an Indian reservation, shall be entitled to vote at an election to be held for the election of an Assemblyman to represent in the Legislative Assembly of this Province any Electoral District." "An Act to Provide for a Plebiscite on Questions Relating to the Control and Suppression of Traffic in Alcoholic Liquors" S.P.E.I. 1929, c.15, s.6 prohibits votes by an "Indian normally resident upon an Indian Reservation" except those who served in World War I. "An Act to Amend 'The Election Act, 1922'" S.P.E.I. 1946, c.10, s.2 extends voting rights to "Indians" who served in World War II. See also "The Election Act" R.S.P.E.I. 1951, c.48, s.8-9. "The Election Act" S.P.E.I. 1963, c.11 repeals the Aboriginal prohibition.

New Brunswick prohibits "Indians" from voting in "An Act to consolidate and amend the Law relating to Elections to the General Assembly" S.N.B. 1889, c.3, s.24. See also "Of the Legislature" C.S.N.B. 1903, c.3; "An Act respecting Elections to the Legislative Assembly" S.N.B. 1916, c.15, s.6; "Respecting Elections to the Legislative Assembly" R.S.N.B. 1927, c.4, s.6; "An Act respecting Elections to the Legislative

Assembly" S.N.B. 1938, c.15, s.6. "An Act respecting Elections to the Legislative Assembly" S.N.B. 1944, c.8, s.34(2) states: "The following persons are disqualified from voting and incapable of being registered as electors and shall not vote nor be registered, that is to say [...] (d) every Indian person ordinarily resident on an Indian reservation: Provided that this clause shall not apply to an Indian who has served or is serving in His Majesty's armed forces." See also R.S.N.B. 1952, c.70, s.34. "An Act to Amend The Elections Act" S.N.B. 1963, c.7 repealed the Aboriginal prohibition.

In Alberta, "An Act respecting Elections of Members of the Legislative Assembly" S.A. 1909, c.3, s.2(12) defines "Indian" as "all persons of Indian blood who belong or are reputed to belong to any band or irregular band of Indians" and prohibits them from voting in s.10(4). See also "An Act Respecting Elections of Members of the Legislative Assembly" C.S.A. 1915, c.3, s.10; "An Act respecting Elections of Members of the Legislative Assembly" R.S.A. 1922, c.4, s.10; "An Act respecting the Election of Members of the Legislative Assembly" S.A. 1924, c.34, s.15; "An Act respecting the Election of Members of the Legislative Assembly" R.S.A. 1942, c.5, s.16. "An Act respecting the Election of Members of the Legislative Assembly" S.A. 1956, c.15, s.16 disqualifies "a person, wholly or partly of Indian blood and ordinarily resident on an Indian reservation, who is entitled to receive any annuity or other benefit under any treaty with the Crown in the right of Canada, unless he was a member of Her Majesty's Forces during World War I or World War II, or was a member of the Canadian Forces who served on active service subsequent to the ninth day of September, 1950." The Aboriginal disqualification is removed in "An Act to amend The Election Act" S.A. 1965, c.23, s.2. "An Act to amend The Government Liquor Control Act of Alberta" S.A.

1927, c.35, s.59 prohibits "Indians" from voting in local plebiscites on prohibition; see also R.S.A. 1942, c.24, s.60; S.A. 1953, c.67, s.118; R.S.A. 1955, c.179, s.118.

"An Ordinance respecting Elections" Ord. N.W.T. 1905, p. 259, s.39 provides:
"The persons qualified to vote at an election for the Legislative Assembly shall be the male British subjects by birth or naturalisation (other than unenfranchised Indians) who have attained the full age of twenty-one years...." See also "An Ordinance to amend Chapter 2 of The Consolidated Ordinances 1898, intituled 'An Ordinance respecting the Legislative Assembly of the Territories'" Ord. N.W.T. 1905, p.618.

"An Act to amend the Quebec Election Act" S.Q. 1915, c.17, s.5 prohibits:
"Indians and individuals of Indian blood domiciled on land reserved for Indians or for any band of Indians, or held in trust for them, whether or not such reserve is within the boundaries of a municipality." See also "An Act Respecting the Election of Members of the Legislative Assembly" R.S.Q. 1925, c.4, s.14; "An Act respecting the election of members of the Legislative Assembly" S.Q. 1936 (2nd Sess.) c.8, s.13; "An Act Respecting the Election of Members of the Legislative Assembly" R.S.Q. 1941, c.5, s.13; "An Act respecting elections for the Legislative Assembly" S.Q. 1942, c.13, s.35; "Quebec Election Act" S.Q. 1945, c.15, s.48; "Election Act" S.Q. 1963, c.13, s.48; R.S.Q. 1964, c.7, s.48. The Aboriginal disqualification is removed in "An Act to amend the Election Act" S.Q. 1969, c.13, s.1.

There were no express prohibitions on Aboriginal voting in the province of Nova Scotia or in Newfoundland: see Report of the Royal Commission at 300.

73. Sero v. Gault at 332-3. On Iroquoian Huron and Six Nations' agricultural expertise, see Olive Patricia Dickason "For Every Plant There is a Use" in Abel and Friesen Aboriginal Resource Use 11-34, and Dickason Canada's First Nations at 38-9 and 69: "[T]he New World domesticated plants that made such a contribution to world agriculture were all...developed by Amerindian farmers. The two best-known of these are corn (maize) and potatoes, although such items as tomatoes, peanuts, pineapples, and cacao...are not far behind. More than 100 species of plants routinely farmed today were originally grown by Amerindians." Reaman Trail of the Iroquois Indians notes at 19-20 the "great contribution towards food discoveries" from Iroquois horticulture, including the production of "15 to 17 distinct varieties of maize," "60 varieties of beans and about 8 native squashes." On First Nations' traditional agricultural expertise in the west of Canada, see Sarah Carter Lost Harvests: Prairie Indian Reserve Farmers and Government Policy (Montreal: McGill-Queen's University Press, 1990) at 37-41, 49.

74. Sero v. Gault at 333. W.M. Beauchamp "The Journal of American Folk-Lore" (1900) republished in Spittal Iroquois Women at 42, refers to the ceremonial importance of a seine fishing net to the Huron in 1636, recounting an incident involving the placing of a seine between two girls, aged six and seven, who were virgins, to make it lucky in taking fish. The oldest known fishing net in the world was discovered by archaeologists on the Peruvian coast, dating back 8800 years. See Dietrich Sahrhage and Johannes Lundbeck A History of Fishing (New York: Springer-Verlag, 1992) at 17-26. On Lord Dorchester's provision of seine nets, see "Argument" His Worship Magistrate T.Y. Wills, Rex vs. Hill, document in possession of William Isaac "Ike" Hill, copy on file with the author.

75. Sero v. Gault at 330-3, citing "an official letter" from Robinson to Robert Wilmot Horton, Under Secretary of State for War and Colonies, 14 March 1824, located in the Canadian Archives, Q.337, pt.II, p.367-8. Like many judges who refused to support legal claims of racialized peoples during this period, Riddell added a caveat to his conclusion: "Of course, I deal only with the law as I find it, and express no opinion as to the generosity, wisdom, or advisability of the legislation." See Robert A. Williams, Jr. "The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence" Wisconsin Law Review (1986) 219-299, for a critique of the alienating norms imposed upon First Nations' communities by Euro-centric visions of justice.

76. PAC RG10, v.2285, file 57-169-1A, Pt.2. I am indebted to Sheila Staats for bringing this correspondence to my attention.

77. Paul Tennant Aboriginal Peoples and Politics (Vancouver: University of British Columbia Press, 1990) notes at 93, 111-13 that Duncan Campbell Scott proposed in 1924 to prohibit the right of Aboriginal people to pay their lawyers to pursue claims without government approval. "An Act to amend the Indian Act" S.C. 1926-27, c.32, s.6 provides: "Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of the said tribe or band,

shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months." See also "Indian Act" R.S.C. 1927, c.98, s.141. The prohibition on fund-raising is not removed until the enactment of "The Indian Act" S.C. 1951, c.29.

78. Irving Powless, Jr. "The Sovereignty and Land Rights of the Houdenosaunee" in Vecsey and Starna Iroquois Land Claims at 155-161. For information about Six Nations' sovereignty claims south of the border in 1919, see Onondaga Historical Association Official Record of Indian Conference (Syracuse, New York: 1919). See also Patricia E. Doyle-Bedwell "The Evolution of the Legal Test of Extinguishment: From Sparrow to Gitskan" Canadian Journal of Women and the Law v.6 (1993) 193-204, in which a Mi'kmaq woman expresses her concern over the racist ethnocentricity of the dominant legal culture in its analysis of First Nations' land claims.

79. Monture-Angus states in Thunder in my Soul at 211: "Traditional Mohawk people assert that we have never lost or surrendered our sovereignty. Sovereignty has a meaning that is not synonymous with western definition. To be sovereign is one's birthright. It is simply to live in a way which respects our tradition and culture. Sovereignty must be lived, and that is all." Quoting Oren Lyons, a member of the Hodenosaunee Confederacy, Monture-Angus continues at 229: "Sovereignty -- it's a political word. It's not a legal word. Sovereignty is the act. Sovereignty is the do. You act. You don't ask. There are no limitations on sovereignty. You are not semi-sovereign. You are not a little sovereign. You either are or you aren't." [cited in Richard

Hill "Oral History of the Haudenosaunee: Views of the Two Row Wampum" in Jose Bartreiro ed. Indian Roots of American Democracy (New York: Akweikon Press, 1992) at 175.] See also Sidney L. Harring Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century (New York: Cambridge University Press, 1994) at 292, where he notes: "The vitality of the nineteenth-century Indian law lies in the reality that the tribes never let their sovereignty be determined by any case or trusted that question to any judge. The way that the federal courts analyzed the doctrine of federal Indian law was of great concern to the tribes, but they never let those outcomes define tribal sovereignty. The tribes have resisted in every conceivable way. They lost often and lost badly. But these cases do not have to be cited as precedents in U.S. law to have legal meaning to the Indian people. These cases are remembered: the people who remember them know that they stand for tribal sovereignty."

80. Anglican Diocese of Ontario burial records show the date of burial for Eliza Sero, age 68, of Tyendinaga, as 19 January 1937.

81. Another Tyendinaga Mohawk fisherman, William Isaac "Ike" Hill, was charged in the fall of 1950 for possessing a seine net on the Tyendinaga Territory without a license, contrary to the provincial "Game and Fisheries Act." Although convicted in the first instance, Ike Hill was able to secure an acquittal on the ground that there was no supporting federal legislation prohibiting the possession of that type of net. Ike Hill's defense was argued, in part, on the claim of Mohawk sovereignty, and his lawyer reminded the court of the Simcoe Deed of 1793, noting that Lord Dorchester made

provision to outfit the Six Nations' allies with seine nets in 1789, several years after they settled into their new Upper Canadian homes. The following passages from the "Argument" His Worship Magistrate T.Y. Wills, Rex vs. Hill, document in possession of William Isaac "Ike" Hill, copy on file with the author, make the sovereignty arguments:

Quoting from Niagara Historical Society No. 40, 1884 - 90 by Brigadier General E.A. Cruikshank, Letter from Lord Dorchester to Sir John Johnson, Quebec, 28th June 1789. "It is not in our power to supply the Indians at the Grand River and at Buffalo Creek with provisions as we are in great want ourselves but I approve of a seine being given to each of those settlements if you think it reasonable." [...] It is quite clear that the Mohawk Indians were given a territory that the south side has never been determined. They were allowed to fish with seines as a net was given to each of the Six Nations. To the present day the Dominion Government has never made it clear to the Indians how they are to fish. The Ontario Government has been infringing little by little on the rights of the Indians that were given for services rendered with the understanding that they and their descendants would have a sanctuary. I submit, further, that it is unfair to have this matter decided in the courts as it leaves such a responsibility on the shoulders of the Magistrate because if the right of an Indian, a member of the Band, on his own reserve cannot have a net of any kind without it being seized they have no rights of any kind and it is a mockery to have a reserve. [...] To take away the few privileges that the Indians have, after it was so clearly given to them, for all time is breaking the word of the King to them and if the people who gave the land to the Indians as a sanctuary were here today and could give their decision I feel sure there would be no doubt as to the result."

Although the outcome in Hill's case was a positive one, the court decided the case on the constitutional division of powers. The judge ignored the sovereignty arguments, cited the Sero case, and even went so far as to eulogize William Renwick Riddell as "a very eminent Judge." See R. v. Hill (1951), 14 C.R. 266 (Ont. Co. Ct.).

The Six Nations of Grand River remained adamant about their sovereignty, and continued to raise the issue in various domestic and international forums. In the summer of 1921, a delegate of the Six Nations took the status question directly to the King of England, and the case was raised before the League of Nations in Geneva in 1923 and 1924, in London, England in 1930, and in San Francisco before the United Nations in 1945. In the summer of 1928, a Six Nations' declaration of independence, which renounced allegiance to Canada and to the British Crown, received international press coverage: Correspondence to His Majesty King George the Fifth from Deskaheh, Speaker of the Ho-De-No-Sau-Nees Confederation of the Grand River, 22 October 1924, and "The Redman's Appeal for Justice" to the Hon. Sir James Eric Drummond, Secretary-General of the League of Nations, Geneva, from Deskaheh, Sole Deputy and Speaker of the Six Nations Council, PAC RG10, v.2285, 57,169-1A and 1B; Titley A Narrow Vision chapter 7; Simon "Haldimand Agreement" at 47-8; Benincasa "Cultural Divisions and the Politics of Control;" Edmund Wilson Apologies to the Iroquois (Syracuse, New York: Syracuse University Press, 1992) at 252-8; Graymont ed. Fighting Tuscarora at 58-68; "The Indians Appeal to King George" and "Indian Not Ready for the Franchise" Kingston British Whig Standard 23 March 1921, p.1.

In 1959, a Grand River Mohawk woman took the claim back into the Ontario

Courts. In Logan v. Styres (1959), 20 D.L.R. (2d) 416, [1959] O.W.N. 361, 5 Canadian Native Law Cases 261 (Ont. High Ct.), Verna Logan asserted that the Six Nations had come to Canada "to settle on these lands in the spirit and in the understanding that we were doing so as a sovereign people," and that the Six Nations "never were and are not today subjects of the Crown." Verna Logan, a Mohawk of the Wolf Clan, the daughter of Jack Kick and Sarah Doxtador and the wife of Chief Joseph Logan, Jr., was an educator in the methods of producing traditional Mohawk pottery: see Reaman Trail of the Iroquois Indians at 115. Verna Logan was attempting to prevent a surrender of part of the Six Nations' territory that had been authorized by a federal government order-in-council and approved by the elected band councillors. She argued that the Parliament of Canada had no "legislative authority" over the Six Nations, and that the traditional hereditary chiefs, who opposed the land surrender, were the legitimate governing structure for the Six Nations. For some discussion of the federal government's attempts to impose elected government upon the Six Nations, and the opposing efforts to maintain a hereditary system, in which the chiefs were nominated by the Clan mothers, see Titley A Narrow Vision chapter 7. For a discussion of the 1959 dispute, see Annemarie Shimony "Conflict and Continuity: An Analysis of an Iroquois Uprising" in Foster **et al.** Extending the Rafters 153-64, Cork Worst of the Bargain; Wilson Apologies to the Iroquois at 260-69 and clippings file on the 1959 case, located in the Woodland Cultural Centre Library, Brantford, Ontario. Cork notes at 52-3 that the wampum confirming the Covenant Chain was produced at the trial, where Herbert Martin testified that it was the original wampum, brought from Onondaga and hidden in a Quebec forest for nearly a century, until it was placed in the possession of the Keeper of the Wampum at Grand

River. Its authenticity and meaning were challenged by defense counsel, under the legal rules of hearsay. The Ontario High Court, in keeping with Canadian judicial tradition, overruled Verna Logan's claim, holding the Haldimand deed to be "not in any sense a treaty," and concluding that when they settled on the Grand River Territory, the Six Nations "accept[ed] the protection of the Crown" and had transferred their status from "faithful allies" to "loyal subjects." A similar argument was made in an earlier case, Point v. Dibblee Construction Co. Ltd., [1934] 2 D.L.R. 785, O.R. 142, O.W.N. 88 (Ont. High Ct.). There the elected council of the St. Regis Akwesasne reserve voted to permit the construction of a roadway across Cornwall Island. The plaintiff, representing the "life chiefs," sought to block the construction. The court rejected the plaintiff's claim, noting at 146 and 150 that the life chiefs could not exercise any powers under the "Indian Act," and could not claim to represent "all the Indians of the St. Regis Indian Reserve."

ENDNOTES TO CHAPTER FIVE

1. Earlier versions of this chapter are found in Constance Backhouse "White Female Help and Chinese-Canadian Employers: Race, Class, Gender and Law in the Case of Yee Clun, 1924" Canadian Ethnic Studies 26:3 (1994) 34-52; republished in revised format in Wendy Mitchinson **et al.** eds. Canadian Women: A Reader (Toronto: Harcourt Brace, 1996) 280-99.

2. John H. Archer Saskatchewan: A History (Saskatoon: Western Producer Prairie

Books, 1980) at 75-6, 113-4, 124-5, 138-9, 162-3, 204-6; Paul Voisey "The Urbanization of the Canadian Prairies, 1871-1916" in R. Douglas Francis and Howard Palmer The Prairie West: Historical Readings (Edmonton: Pica Pica Press, 1985) 383 at 390; Alan F.J. Artibise "Boosterism and the Development of Prairie Cities, 1871-1913" in Francis and Palmer Prairie West 408 at 427; Gerald Friesen The Canadian Prairies: A History (Toronto: University of Toronto Press, 1987) at 23, 143-61, 282; W.A. Riddell Regina from Pile O'Bones to Queen City of the Plains (Burlington, Ontario: Windsor Publications, 1981) at 9-20; J. William Brennan and Ian E. Wilson Regina Before Yesterday: A Visual History 1882-1945 (Regina: Centax, 1978); J.F.C. Wright Saskatchewan: The History of a Province (Toronto: McClelland and Stewart, 1955); Robert Moon This is Saskatchewan (Toronto: Ryerson, 1953).

3. Sixth Census of Canada, 1921 v.1 - "Population" (Ottawa: King's Printer, 1924) at 542-3 identifies Regina's largest ethnic populations as 25,515 British, 2,902 German, 860 Hebrew, 774 Roumanian, 762 Austrian, 700 French, 536 Russian, several other identified groups and 250 Chinese.

4. The first anti-Chinese immigration laws were passed in British Columbia, but disallowed by the federal government. See "An Act to prevent the Immigration of Chinese" S.B.C. 1884, c.3, which prohibits the entry of Chinese individuals into the province, with a penalty of \$50 or six months' imprisonment. "An Act to prevent the Immigration of Chinese" S.B.C. 1885, c.13 contains similar provisions. For details regarding the subsequent disallowance, see G.V. La Forest Disallowance and Reservation of Provincial Legislation (Ottawa: Department of Justice, 1955) at 89-90. Additional

anti-Chinese legislation, "An Act to Regulate the Chinese Population of British Columbia" S.B.C. 1884, c.4, imposes an annual ten dollar tax on all Chinese residents, prohibits the exhumation of Chinese bodies, prohibits the issuance of licenses to the Chinese for various occupations, bans the use of opium for non-medical purposes, and specifies the minimum size and ventilation of rooms inhabited by Chinese people. This was held ultra vires. See also "Crown Land Act" S.B.C. 1884, c.2, and S.B.C. 1908, c.30, s.127 preventing the Chinese from acquiring Crown lands. Earlier taxation statutes were directed explicitly against the Chinese: S.B.C. 1878, c.35 (disallowed). See also Tai Sing v. Maguire (1878), 1 B.C.R. 101; R. v. Wing Chong (1885), 1 B.C.R. 150; R. v. Gold Commissioner of Victoria District (1886), 1 B.C.R. 260. British Columbia enacted eight additional statutes between 1900 and 1908 to eliminate Asian immigration: "An Act to Regulate Immigration into British Columbia" S.B.C. 1900, c.11; "An Act to amend the 'British Columbia Immigration Act, 1900'" S.B.C. 1901, c.28; "An Act to Regulate Immigration into British Columbia" S.B.C. 1902, c.34; "An Act to Regulate Immigration into British Columbia" S.B.C. 1903, c.12; "An Act to Regulate Immigration into British Columbia" S.B.C. 1903-4, c.26; "An Act to regulate Immigration into British Columbia" S.B.C. 1905, c.28; "An Act to Regulate Immigration into British Columbia" S.B.C. 1907, c.21A; "An Act to Regulate Immigration into British Columbia" S.B.C. 1908, c.23. See also In Re Nakane and Okazake (1908), 8 W.L.R. 19; 13 B.C.R. 370 (B.C.S.C.) and Rex v. Narain (1908), 7 W.L.R. 781; 8 W.L.R. 790 (B.C.S.C.); In re Narain Singh et al. (1908), 13 B.C.R. 477 (B.C.S.C.). Each of these acts was eventually disallowed by a federal government increasingly anxious not to jeopardize its diplomatic relations with the commercially powerful, military nation of Japan, whose citizens were equally

disadvantaged by the new laws. The time lag between enactment and disallowance, however, meant that in actual practice the anti-Asian legislation was in force in British Columbia more often than not during the years from 1900 to 1908. The federal government enacted its own legislation imposing a head tax of \$50 on Chinese immigrants in 1885: "Chinese Immigration Act" S.C. 1885, c.71, s.4. This was raised to \$100 in 1900: "An Act respecting and restricting Chinese Immigration" S.C. 1900, c.32. In 1903, it was increased to \$500: "An Act respecting and restricting Chinese immigration" S.C. 1903, v.I, c.8. Similar legislation applied in Newfoundland, which was at this time a separate and independent colony: "An Act respecting the Immigration of Chinese Persons" S.Nfld. 1906, c.2; "An Act to amend 6 Edward VII, Cap. 2, entitled 'An Act respecting the Immigration of Chinese Persons'" S.Nfld. 1907, c.14; "Of the Immigration of Chinese Persons" C.S.Nfld. 1916, c.79; "An Act Respecting Immigration" S.Nfld. 1926, c.29. See Constance Backhouse "Gretta Wong Grant: Canada's First Chinese-Canadian Female Lawyer" Windsor Yearbook of Access to Justice v.15 (1996) 3-46; W. Peter Ward White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia 2nd ed. (Montreal: McGill-Queen's University Press, 1990); Patricia Roy A White Man's Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858-1914 (Vancouver: University of British Columbia Press, 1989); Stanislaw Andracki Immigration of Orientals into Canada, with Special Reference to Chinese (New York: Arno Press, 1978); Peter S. Li "Immigration Laws and Family Patterns: Some Demographic Changes Among Chinese Families in Canada 1885-1971" Canadian Ethnic Studies 12:1 (1980) 58-73; Peter S. Li "Chinese Immigrants on the Canadian Prairie 1910-1947" Canadian Review of Sociology

and Anthropology v.19 (1982) 527; F.J. McEvoy "A Symbol of Racial Discrimination: The Chinese Immigration Act and Canada's Relations with China, 1942-1947" Canadian Ethnic Studies 14:3 (1982) 24-42; Henry F. Angus "Canadian Immigration: The Law and Its Administration" in Norman MacKenzie, ed. The Legal Status of Aliens in Pacific Countries (London: Oxford University Press, 1937) 58-75; Victor Lee "The Laws of Gold Mountain: A Sampling of Early Canadian Laws and Cases that Affected People of Asian Ancestry" Manitoba Law Journal v.21 (1992) 301-24; Bruce Ryder "Racism and the Constitution: The Constitutional Fate of British Columbia Anti-Asian Immigration Legislation, 1884-1909" Osgoode Hall Law Journal v.29 (1991) 619; Bruce Ryder "Racism and the Constitution: the Constitutional Fate of British Columbia Anti-Asian Legislation, 1872-1922" unpublished manuscript, copy on file at Osgoode Hall Law School Law Library; Shin Imai "Canadian Immigration Law and Policy: 1867-1935," LL.M. Thesis (York University: 1983); Freda Hawkins Canada and Immigration: Public Policy and Public Concern 2nd ed. (Montreal: McGill-Queen's University Press, 1988); B. Singh Bolaria and Peter S. Li Racial Oppression in Canada 2nd ed. (Toronto: Garamond, 1988) at 105-6.

5. David Chuenyan Lai Chinatowns: Towns Within Cities in Canada (Vancouver: University of British Columbia Press, 1988) describes the prairie Chinatowns at 87-95. Regarding Regina, Lai notes: "Regina did not have a Chinatown, partly because of the small Chinese population and partly because of the mutual agreement made by early Chinese settlers that they would avoid competition by not setting up businesses close to each other. In 1907, for example, there were four Chinese laundries, two Chinese restaurants, and one Chinese grocery store in Regina, scattered throughout the city's

downtown area. The Chinese population in Regina was only eighty-nine in 1911. By 1914, the number of Chinese laundries had increased to twenty-nine, but the number of Chinese grocery stores had only increased to two, and there were still only two Chinese restaurants. These were not confined to one particular street or locality. After the 1920s the Chinese hand laundry business declined steadily, and by 1940, only eight laundries remained in the city. In 1941, Regina had a Chinese population of only 250." On the social construction of "Chinatowns," the impact of residential and business segregation on the "racialization" of the Chinese community, and the strategies of accommodation and resistance employed by the Chinese, see Kay J. Anderson Vancouver's Chinatown: Racial Discourse in Canada, 1875-1980 (Montreal: McGill-Queen's University Press, 1991); Anthony B. Chan Gold Mountain (Vancouver: New Star Books, 1983); Roy White Man's Province; Ward White Canada Forever; Robert Edward Wynne Reaction to the Chinese in the Pacific Northwest and British Columbia, 1850-1910 (New York: Arno Press, 1978).

6. "Bylaws Like Piecrust Made to be Broken" Regina Leader 12 October 1911, p.12; "Regina May Have Segregated Chinese Colony" Regina Daily Province 14 November 1912, p.3; "Chinese Object to Segregation" 15 November 1912, p.11. Mack Sing, depicted as the "wealthiest and by far the most influential Chinaman in the city," objected to the proposal on behalf of the Chinese community of Regina. "Our population here are law abiding and pay their bills," he explained, noting that the proposed measure would be very injurious to the business of Chinese laundry men. There is no further press coverage on the outcome or implementation of this particular scheme. But see also the statement of Regina's white police magistrate, William Trant, and Rev. M.

MacKinnon, the white pastor of Knox Church, who defended Chinese laundrymen against a campaign to impose burdensome taxes on their businesses: Regina Evening Leader 24 May 1914, p.1.

7. "Chinks Lose Car of Goods" Regina Morning Leader 7 April 1911, p.12; "Chink Follows Pick-Pocket and Gets Back \$1,400 Wallet" Regina Evening Province 17 September 1916, p.3; "Chinese a Stagnant Race: The Real Yellow Peril" Moose Jaw Evening Times 21 February 1912, p.10. For other examples, see "War on Opium - Chink Receives Term in Prison" Moose Jaw Evening Times 1 October 1910, p.8; "Montreal Police Raid Chinatown - Twenty Chink Gamblers Arrested" Regina Daily Province 24 September 1912, p.7; "Distributes Opium Through West Canada - Chink Arrested at Moose Jaw" Regina Daily Province 17 October 1912, p.10; "Chinamen in Rush Lake Wreck - Three Coaches Derailed and Fifteen of the Chinks Injured" Regina Daily Province 20 November 1912, p.4. Childish designations are common in the press as well. See, for example, the description in "Aids Police But Likes Game" Regina Leader 25 April 1912, p.7 of "twenty-two Chinamen" convicted of gambling in Moose Jaw: "With smiles that were childlike and bland, the followers of Confucius each paid a \$25 fine." "Celestials Who Are Now Citizens of Earthly Moose Jaw" Moose Jaw Evening Times 6 September 1913, p.7 adds: "A Chinaman can look you straight in the eye, and in the most childish and innocent manner possible, tell you the most beautiful fabrication to which you have ever listened. To him it is merely a story. He is essentially not a practical liar. He lies as a child lies, not with the purpose of gaining anything for himself by his stories, but merely to entertain, or for something to say."

8. The Victoria Colonist 2 May 1900, distinguishes between the "yellow" and "brown hordes" respectively of China and Japan. The Vancouver Province describes the Japanese on 9 September 1907 as "little brown men," in coverage of the Vancouver race riot: see Ted Ferguson A White Man's Country: An Exercise in Canadian Prejudice (Toronto: Doubleday Canada, 1975) at 5. See also Kenneth B. Leyton-Brown "Discriminatory Legislation in Early Saskatchewan and the Development of Small Business" in Terry Wu and Jim Mason eds. Proceedings of the Eighth Annual Conference of the International Council for Small Business - Canada (ICSB) (Regina: International Council for Small Business, 1990) 253-72 who suggests that the "brown" description, used in Saskatchewan in the early 20th century, was viewed as less derogatory than the "yellow" colour used to refer to Chinese-Canadians. He speculates that this reflected a Canadian appreciation of Japanese military might, and resulted from the perception that due to their fewer numbers, Japanese-Canadians posed less of a threat to the white community. For later references to the Japanese as "yellow," see E.O.S. Scholefield and F.W. Howay British Columbia From the Earliest Times to the Present (Vancouver: S.J. Clark, 1914) at 576, and F.W. Howay [a judge of the County Court of Westminster, B.C.] British Columbia: The Making of a Province (Toronto: Ryerson, 1928) who refers at 265 to the Japanese as "wily little yellow men."

9. S.S. 1912, c.17, s.1. The word "Chinaman" seems awkwardly placed alongside the adjectives "Japanese" and "Oriental." The decision to use the word "Chinaman" instead of "Chinese" may be an indication of particular disdain. Madge Pon notes that the term "Chinaman" has been used "as a euphemism describing ineptitude and incompetence, as evident in the phrase 'a Chinaman's chance.'" See Madge Pon "Like a Chinese Puzzle: the

Construction of Chinese Masculinity in Jack Canuck" in Joy Parr and Mark Rosenfeld Gender and History in Canada (Toronto: Copp Clark, 1996) 88 at 100.

10. See, for example, reference to "Indians" in "An Act respecting Elections of Members of the Legislative Assembly" R.S.O. 1914, c.8, s.11 and 22; reference to "colored people" in "An Act respecting Separate Schools" R.S.O. 1914, c.270; reference to "Chinese," "Japanese" and "Hindu" in "Provincial Elections Act Amendment Act" S.B.C. 1907, c.16, s.3.

11. Although this appears to be the first legislative articulation of the concept of the "white" race, a subsequent Alberta statute purporting to define "Metis" utilizes the same word. "An Act Respecting the Metis Population of the Province" S.A. 1938 (2nd Sess.), c.6, s.2(a) defines "Metis" as "a person of mixed white and Indian blood but does not include either an Indian or a non-treaty Indian as defined in The Indian Act." See also "An Act to Amend and Consolidate The Metis Population Betterment Act" S.A. 1940, c.6, s.2(a). The only other statutes that purport to make reference to the dominant "white" race do so in different terms. "An Act for the better protection of the Lands and Property of the Indians in Lower Canada" S.Prov.C. 1850, c.42, s.1 refers to "persons of European descent." For reference to the "Caucasian race," see "An Act Respecting Liquor Licences and the Traffic in Intoxicating Liquors" S.B.C. 1910, c.30, s.25-6; and R.S.B.C. 1911, c.142, s.24-5, enacted in the context of taking a count of the population to determine whether liquor licences should be issued. See also "An Act to amend the 'Provincial Elections Act'" S.B.C. 1907, c.16, s.2 and "An Act respecting Elections of Members of the Legislative Assembly" S.B.C. 1920, c.27, s.2(1), defining "Hindu" as

"any native of India not born of Anglo-Saxon parents and shall include such person whether a British subject or not."

12. "Legislators are Working Overtime Now" Regina Morning Leader 2 March 1912, p.9. Turgeon was a native of New Brunswick, who moved to Prince Albert, Saskatchewan in 1903, where he served as the city's first solicitor and Crown prosecutor for five years. He was elected as a Liberal M.L.A. for Duck Lake, and appointed by Premier Walter Scott to serve as Attorney General in 1907, a post he would hold until elevated to the Saskatchewan Court of Appeal in 1921. See "Turgeon Linked 30 Years with Prairie Growth" Regina Leader-Post 1 November 1938, p.1; "Royal commissioner, judge, legislator dies" 13 January 1969; John Hawkes The Story of Saskatchewan and Its People v.3 (Chicago and Regina: S.J. Clarke, 1924) at 1397-8. For a fuller account of the genesis of the legislation and the Quong Wing and Quong Sing trials that preceded Yee Clun's litigation, see Constance Backhouse "The White Women's Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada" Law and History Review 14:2 (Fall 1996) 315-68 and James W.St.G. Walker "Race," Rights and the Law in the Supreme Court of Canada (Waterloo: The Osgoode Society and Wilfrid Laurier University Press, 1997) chapter 2. On the prohibition of inter-racial marriage, see Milton R. Konvitz The Alien and the Asiatic in American Law (Ithaca, New York: Cornell University Press, 1946) who notes at 231-2 that even as late as 1946, many American states had anti-"miscegenation" statutes prohibiting intermarriage between whites and Asians. He lists Georgia, Idaho, Missouri, Mississippi, Nebraska, South Dakota, Wyoming, Arizona, Nevada, Oregon and Utah. South Carolina and California permitted intermarriage between white men and Chinese women, but not between white women and Chinese

men. See Peggy Pascoe "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America" Journal of American History v.83 (June 1996) 44-69; Peggy Pascoe "Race, Gender, and Intercultural Relations: The Case of Interracial Marriage" Frontiers 12:1 (Summer 1991) 5-18; Robert J. Sickels Race, Marriage, and the Law (Albuquerque: University of New Mexico Press, 1972); Byron Curti Martyn "Racism in the United States: A History of the Anti-Miscegenation Legislation and Litigation" PhD. Thesis (University of Southern California: 1979); Megumi Dick Osumi "Asians and California's Anti-Miscegenation Laws" in Nobuya Tsuchida ed. Asian and Pacific American Experiences: Women's Perspectives (Minneapolis: University of Minnesota, Asian/Pacific American Learning Resource Center, 1982) 2-8; David H. Fowler Northern Attitudes towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic and the States of the Old Northwest, 1780-1930 (New York: Garland, 1987). I have been unable to find any state or federal legislation in the United States that replicates the Saskatchewan white women's labour law. Eliot Grinnell Mears Resident Orientals on the American Pacific Coast: Their Legal and Economic Status (New York: Institute of Pacific Relations, 1927) notes at 306-7 that in 1919 the Oregon legislature considered prohibiting the employment of white females in restaurants or grills "owned or operated by Orientals." The bill that was introduced by W.G. Lynn was defeated due to the combined forces of Chinese hotel and restaurant proprietors and the press. Concerns about constitutionality were apparently a factor. I am indebted to Lisa Mar and Imogene Lim for advising me that there may also have been some municipal regulations of this nature passed in the United States.

13. "Legislators are Working Overtime Now" Regina Morning Leader 2 March

1912, p.9. Turgeon suggested that the new measure was preemptive, rather than designed to address an actual problem, hinting that extra-provincial events (no details of which were ever provided) had motivated the legislature. In contrast, Lai notes in Chinatowns at 93, that the act was precipitated by the arrest in 1912 of a Moose Jaw Chinese restaurant owner, after his employee, a white waitress, lodged an assault complaint against him. Although he states that the case was widely publicized in local newspapers, Lai gives no reference to the case or the press coverage. My search of the Saskatchewan newspapers has not elicited any record of such an arrest in 1912. However, in September 1911, Charlie Chow was charged with committing an indecent assault on a young [white] girl, who was tarrying in a Moose Jaw Chinese restaurant [possibly the C.E.R. restaurant] unsupervised, long after she was due home from Sunday School. No conviction appears to have been registered, after evidence was adduced that there was a large crowd in the restaurant at the time in question, and that the girl's aunt may have induced a false complaint by pressuring the youngster: see "Child Was Reluctant" Moose Jaw Evening Times 1 September 1911; "Assault Case Dismissed" Moose Jaw Evening Times 30 September 1911, p.10. "Assault Case Against Chinaman Was Dismissed" Moose Jaw Evening Times 5 March 1912, p.7 makes reference to a fist-fight in the Royal Restaurant between a white man, Alfred Essrey and Charlie Quong. Although the fight appears to have been provoked by Essrey taking pork chops from the kitchen, reference is made to Essrey's having "reprimanded a Chinaman for assaulting his sweetheart [Miss Jean McLeod], who was a waitress in the Royal restaurant." All charges were dismissed. Marjorie Norris A Leaven of Ladies: A History of the Calgary Local Council of Women (Calgary: Detselig, 1995) describes at 165-7 the 1913 criminal trial in Calgary of Tai

Loy, a Chinese storekeeper charged with sexually assaulting a Polish schoolgirl. The accused man was acquitted after a jury trial before the criminal assize of the Supreme Court.

14. For an account of the formal demand made by Saskatchewan T.L.C. delegates James Somerville and W. McAllister of Moose Jaw, George Peake, T. Withy and G.H. Merlin of Regina, and John McGrath of Saskatoon, see "Labor Men Interview Government" Regina Morning Leader 7 February 1912, p.5; "What Trades and Labor Men Wanted" Moose Jaw Evening Times 8 February 1912; Regina Daily Province 7 Feb. 1912; Regina Morning Leader 7 February 1912, p.5. The announcement that the provincial government would accede to this request is reported in "Reply Made to Labor Council" Regina Daily Province 18 March 1912; "The Scott Government and Labor Legislation" Regina Leader 10 April 1912, p.23. See also "Trades Council Deserves to Have Representation on Public Bodies" Moose Jaw Evening Times 6 March 1912, where a T.L.C. delegate recommends expanding the legislation to make the employment of white girls in any capacity by Asiatics a criminal offence. Officials of the Typographical Union, the first permanent union organized in Regina and a constituent member of the Saskatchewan T.L.C., also wrote directly to Attorney-General Turgeon about a prohibition on Asian hiring of white women: Turgeon Papers, Saskatchewan Archives Board (hereafter S.A.B.) General Correspondence 1911-12 "M" box 9, 14. The Typographical Union, one of the leading Saskatchewan unions at the time, may have been concerned about the prospect of competition from Chinese and Japanese print shops, something that had been a source of concern in Vancouver as early as 1908: see Gillian Creese "Exclusion or Solidarity? Vancouver Workers Confront the 'Oriental Problem'" BC Studies v.80 (Winter 1988-89) 24 at 31; Archer Saskatchewan at

160. For other references to the lobby role of organized labour, see "White Girls Cannot Work for Chinese" Swift Current Sun 15 July 1913, p.3; Moose Jaw Evening Times 24 February 1914 and Regina Morning Leader 24 February 1914; Second Annual Report of the Bureau of Labour Saskatchewan Department of Agriculture, 8 March 1912 at 34-37.

15. For examples of anti-Asian sentiments on the part of organized labour, see "To Form Labour Council" Regina Morning Leader 30 July 1906; untitled anti-Japanese column in Regina Saskatchewan Labor's Realm 9 August 1907, p.6; "The Immigration Question" Regina Saskatchewan Labor's Realm 13 September 1907, p.2; "Rev. Dr. Sparling and Immigration" Regina Saskatchewan Labor's Realm 27 September 1907, p.1; "Orientals in Vancouver" Regina Saskatchewan Labor's Realm 20 December 1907, p.2; "Canadian Labor Party and the Asiatic Immigration Question" Regina Saskatchewan Labor's Realm 31 January 1908, p.1. On organized labour, see Glen Makahonuk "Craft Unionism and the 1912 Strike Wave" Saskatchewan History 44:2 (Spring 1992) 59; Donald Avery Dangerous Foreigners: European Immigrant Workers and Labour Radicalism in Canada, 1896-1932 (Toronto: McClelland & Stewart, 1979); David R. Roediger The Wages of Whiteness: Race and the Making of the American Working Class (London: Verso, 1991); David Roediger Towards the Abolition of Whiteness: Essays on Race, Politics and Working Class History (London: Verso, 1994); Alexander Saxton The Rise and Fall of the White Republic: Class Politics and Mass Culture in Nineteenth-Century America (London: Verso, 1990).

16. Ward White Canada Forever; Roy White Man's Province; Creese "Exclusion or Solidarity?"; Gillian Creese "Organizing Against Racism in the Workplace: Chinese Workers in Vancouver Before the Second World War" Canadian Ethnic Studies 19:3 (1987)

35-46; Gillian Creese "Immigration Policies and the Creation of an Ethnically Segmented Working Class in British Columbia, 1880-1923" Alternate Routes v.17 (1984) 1-34; Ralph R. Ireland "Some Effects of Oriental Immigration on Canadian Trade Union Ideology" American Journal of Economics and Sociology v.19 (1960) 217-20.

17. "Trades and Labor Congress at Calgary" Regina Leader 14 September 1911, p.12; "Much Against the Chinese" Moose Jaw Evening Times 13 September 1911, p.1; Vancouver World 7 July 1911, and Roy White Man's Province at 243. Walker "Race, Rights and the Law" cites the resolution at 85: "Whereas it has come to light from time to time, especially in our coast cities, that Orientals employing white girls have used their positions as employers to seduce and destroy all sense of morality by the use of drugs and other means, bringing them down to the lowest depths of humanity; therefore, be it resolved, that this Congress impress on the Federal Government the necessity of passing legislation making it a criminal offence for Orientals to employ white girls in any capacity." Walker notes at 86 that the T.L.C. kept a watching brief on this matter for several more years, following with interest the ensuing legislative enactments. For reference to the T.L.C.'s national significance, see Ireland "Some Effects of Oriental Immigration on Canadian Trade Union Ideology" at 218. Ireland notes at 219-20 that the first all-Japanese local was admitted to the T.L.C. on a segregated basis in 1927, and that no effort was made to unionize the Chinese until the 1940s.

18. The Retail Merchants' Association was one of the constituent groups forming the Social and Moral Reform Council, a principal lobbyist for the bill, whose role will be discussed in more detail below. Ward White Canada Forever notes at 124 that by 1920 the

British Columbia board of the Retail Merchants' Association of Canada endorsed Oriental exclusion. The Vancouver Board of Trade and the Victoria Chamber of Commerce called not just for exclusion, but for school segregation and a curb on Asian property ownership as well. Wynne Reaction to the Chinese reports at 470 that similar campaigns occurred across Canada.

19. "Chinese Think Laundry Tax Is Too High" Moose Jaw Evening Times 21 February 1914, p.14 and Regina Evening Leader 24 May 1914, p.1, indicate that the white managers of steam laundries felt they were unable to compete with the long hours worked by Chinese laundrymen. On restaurant prices, see, for example, "Celestials Who Are Now Citizens of Earthly Moose Jaw" Moose Jaw Evening Times 6 September 1913, p.7: "[T]he only enemies who oppose [the Chinese] with any degree of reason are firms which are in daily opposition to him in his particular line of business. It is a remarkable fact that in any city where there are a number of Chinese restaurants, the price of 'raw material' be what it may, meals are procurable at a very reasonable figure. The Chinaman is essentially an economist, and seems able to supply food for less money than can any other countryman. The European argues - and the very contention has been raised in Moose Jaw - that this is because he is satisfied with less gain, and should therefore be barred from competition."

20. See "Bylaws Like Piecrust Made to be Broken" Regina Leader 12 October 1911, p.12, where the City Solicitor proposes to apply a special licence arrangement to a Chinese laundry on Cornwall Street, due to the complaints of a group of [white] citizens; and "Regina May Have Segregated Chinese Colony" Regina Daily Province 14 November 1912, p.3; "Chinese Object to Segregation" Regina Daily Province 15 November 1912, p.11. In

1919, Victoria businessmen vowed vigilance in defence of the city's early closing by-law in order to protect themselves against Asian competition. Revisions in 1922 to the factory and shop legislation in British Columbia were meant to "enforce early closing by-laws and 'white' working conditions upon Orientals." A group of British Columbia businessmen successfully lobbied in 1928 for a trade licensing statute to "limit the number of shops controlled and owned by Orientals" and "halt the spread of Oriental commerce;" see Ward White Canada Forever at 124, 130, 134-8. Hamilton by-laws prohibited the Chinese from operating laundries, stores or factories in the central business district, and required them to take out licence renewals annually. Renewals could be denied if residents objected, and in 1913, fifteen Chinese laundry proprietors were refused the right to relocate after Hamilton residents objected. For various city by-laws passed to prevent the economic growth of the Chinese, see Chan Gold Mountain; Gao Wenxiong "Hamilton: The Chinatown that died" The Asianadian: An Asian Canadian Magazine v.1 (Summer 1978) 15-17; Lai Chinatowns at 90 and 99; Howard Palmer Patterns of Prejudice: A History of Nativism in Alberta (Toronto: McClelland and Stewart, 1982) at 32; Peter S. Li "The Economic Cost of Racism to Chinese-Canadians" Canadian Ethnic Studies 19:3 (1987) 102 at 103-4. See also In re Song Lee and the Town of Edmonton (1903), 5 T.L.R. 466 (Alta. S.C.), quashing a by-law that imposed a licence fee of \$25. per annum on laundries; Re Pang Sing and City of Chatham (1909), 1 O.W.N. 238, on appeal (1910), 1 O.W.N. 1003, 16 O.W.R. 338 (Divisional Court) discussing a Chatham by-law impeding the operation of Chinese laundries; In re By-Law No. 304 of Town of Minnedosa; Wong Sing v. Minnedosa, [1918] 3 W.W.R. 181 (Man. K.B.), upholding a licensing by-law that forced the Chinese plaintiff to close one of his two restaurants; Rex v. Wah Kee, [1920] 3 W.W.R. 656; (1920), 35 C.C.C.

101 (Alta. S.C.) quashing a conviction of a Chinese laundry under an Edmonton early closing by-law; Rex v. Lee (1921), 66 D.L.R. 492; 36 C.C.C. 189; 31 Man. R. 375; [1922] 1 W.W.R. 126 (Man. C.A.) dismissing charges against a Chinese shop owner under early closing laws; Re Lem Yuk and City of Kingston (1926), 31 O.W.N. 14; confirmed on appeal (1926), 31 O.W.N. 159 (Ont. Divisional Ct.), upholding the refusal of Barrie City Council to issue a laundry licence to a Chinese proprietor; McCorquodale v. Wong, [1937] 1 D.L.R. 347; (1936), 67 C.C.C. 288 (Man. K.B.), upholding the conviction of a Chinese businessman who permitted dancing in his restaurant for failing to obtain a "dance hall licence," reversed on appeal [1937] 1 W.W.R. 552; (1937), 68 C.C.C. 236; 45 Man. R. 137 (Man. C.A.). See also Lee Yee v. Durand, [1939] 2 D.L.R. 167 (N.S.S.C.) at 169 in which the court suggests that it might be fraudulent, as a matter of law, for a landlady to represent to a tenant that the Halifax City Health Board would treat Chinese and English applicants for laundry licences on an equal footing. Clayton James Mosher Discrimination and Denial: Systemic Racism in Ontario's Legal and Criminal Justice Systems, 1892-1961 (Toronto: University of Toronto Press, 1998) notes at 74 that facially-neutral by-laws were often disproportionately enforced against Asian businesses, providing as an example data showing that 40% of the charges laid for snow-removal violations in 1903 in Toronto were directed against the Chinese.

21. For 19th-century examples, see the discussion of the restrictions on women's and Asian men's employment in the mines, as well as other female labour restrictions, in Constance Backhouse Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada (Toronto: The Osgoode Society and Women's Press, 1991) chapter 9. For discussion of the modern context, see Peter S. Li "Race and Gender as Bases of Class

Fractions and Their Effects on Earnings" The Canadian Review of Sociology and Anthropology 29:4 (November 1992) 488.

22. See the testimony of Rev. Canon Beanlands, Church of England, a white resident of Victoria, as given to the Report of the Royal Commission to Investigate Chinese and Japanese Immigration 1902, at 27: "I have never seen a Chinese man employ a white man...."

23. The legislation impeding Asian immigration has been described earlier in this chapter. On Black immigration, see R. Bruce Shepard Deemed Unsuitable (Toronto: Umbrella, 1997); Harold Martin Troper "The Creek-Negroes of Oklahoma and Canadian Immigration, 1909-11" Canadian Historical Review 53:3 (September 1972) 272-88. Troper notes at 282 that the Black population in Canada fell from 17,437 in 1901 to 16,877 in 1911. See also Agnes Calliste "Race, Gender and Canadian Immigration Policy: Blacks from the Caribbean, 1900-1932" Journal of Canadian Studies 28:4 (Winter 1993-94) 131. The population of First Nations (Cree, Blackfoot, Assiniboine, Salteaux) and Metis does not appear to have provided a significant source of waged labour for the service industries in prairie towns and cities either. Largely confined to "reserves" until World War II, many were unable to obtain passes to travel to the urban centres to seek employment. On the pass system, see Sarah Carter "Categories and Terrains of Exclusion: Constructing the 'Indian Woman' in the Early Settlement Era in Western Canada" Great Plains Quarterly v.13 (Summer 1993) 147 at 155-6; Sarah Carter Lost Harvests: Prairie Indian Reserve Farmers and Government Policy (Montreal: McGill-Queen's University Press, 1990) at 150-6. The racist attitudes of whites may also have affected the Chinese, causing some to overlook this

group of potential employees. Prevailing racism labelled First Nations' employees as undependable, "on account of their restless, nomadic propensities, which prevented them from settling down to any permanent, industrious avocations:" Report of the Royal Commission on Chinese Immigration 1885, at 142, Judge Henry P. Pellew Crease, Supreme Court of British Columbia. Writing about the situation of First Nations' women in British Columbia, Marjorie Mitchell and Anna Franklin note that they tended to labour at traditional subsistence pursuits, and at racially-restricted jobs in canneries, fishing, knitting and agriculture: Marjorie Mitchell and Anna Franklin "When You Don't Know the Language, Listen to the Silence: An Historical Overview of Native Indian Women in B.C." in Barbara K. Latham and Roberta J. Pazdro, eds. Not Just Pin Money (Victoria: Camosun College, 1984) 17 at 26-7.

24. Josie Bannerman, Kathy Chopik and Ann Zurbrigg "Cheap at Half the Price: The History of the Fight for Equal Pay in B.C." in Latham and Pazdro Not Just Pin Money 297-313. The Report of the Royal Commission to Investigate Chinese and Japanese Immigration into British Columbia 1902, notes at 295 that Chinese men received "rather better wages on average" than white women for domestic service jobs in British Columbia. Earlier sources suggest that the pay scales of Chinese men may have been equivalent to those of white women: the Report of the Royal Commission on Chinese Immigration 1885, notes at 11 that the average wages paid to male Chinese domestic servants on the west coast of the United States were "about the same" as those paid to "white girls and to white women."

25. The quote is from Mah Po, owner of the King George Restaurant in Regina,

"Japanese Consul General in Regina" Regina Morning Leader 14 May 1912, p.2. Anne Elizabeth Wilson "A Pound of Prevention - or an Ounce of Cure" Chatelaine magazine, December 1928, p.12 concedes in her article on the employment of women by Chinese entrepreneurs that white women were the group at risk "inasmuch as Orientals have not Oriental women in this country."

26. White restaurant and steam laundry proprietors in British Columbia often advertised that they employed only white help. The reference to stomachs of refined persons is taken from a Victoria restaurant that changed its name and replaced its Chinese cooks with Germans to cater to racist clientele. White men who established laundries "advertised the whiteness of their employees as much as the whiteness of their linen;" see Roy White Man's Province at 32 and 243.

27. "Shocking Fate of White Girls" Regina Morning Leader 5 September 1912, p.9. I am indebted to Kenneth Leyton-Brown for informing me of the existence of this letter.

28. See, for example, "Chinese a Stagnant Race: The Real Yellow Peril" Moose Jaw Evening Times 21 February 1912, p.10. "Chinamen Arrive" Moose Jaw Evening Times 8 September 1909, p.1 notes: "Chinamen pay heavily for living in this country, and they deserve to. They take a lot of money from it and leave nothing in return, unless it is bitter memories amongst former customers of laundry spoiled or digestions ruined." See also Ward White Canada Forever at 7-14; Howay British Columbia at 263; Palmer Patterns of Prejudice at 43. Mariana Valverde The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925 (Toronto: McClelland and Stewart, 1991) notes at 17 that social

purity activists appealed to Canadian nationalism through symbols of "snowy peaks" and "pure white snow." For an illustration of the forcefulness of "cleanliness" imagery in the racial context, see Wynne Reaction to the Chinese at 182, citing a late 19th-century American clergyman who argued that unsanitary Chinese laundries would besmirch the purity of white women: "the dainty garments of white women puddled around in suds that reeked with dirt...."

29. Newspapers from Regina, Swift Current and Moose Jaw would all attribute passage of the anti-Asian act to "agitation" commenced by "a large section of the community interested in Social and Moral Reform:" see "White Girls Cannot Work for Chinese" Swift Current Sun 15 July 1913, p.3; "Saskatchewan Law Prohibiting Employment of White Girls by Chinese Upheld by Ottawa Court" Regina Morning Leader 24 February 1914; "Prohibition of Employment of white Girls by Chinese is Upheld by Ottawa Court" Moose Jaw Evening Times 24 February 1914. On the founding of the Saskatchewan Social and Moral Reform Council and its membership, see Regina Morning Leader 14 December 1907 and Erhard Pinno, "Temperance and Prohibition in Saskatchewan" M.A. Thesis (University of Saskatchewan: 1971) at 11-12. Pinno lists the following member organizations: Church of England in Canada (Dioceses of Saskatchewan and Qu'Appelle), Methodist Church of Canada (Saskatchewan Conference), Presbyterian Church of Canada (Synod of Saskatchewan), Saskatchewan Branch of the Baptist Convention, the Roman Catholic Church, Evangelical Association, Union Church Conference, Mennonite Church, the Saskatchewan Sunday School Federation, Royal Templars of Temperance, Trades and Labour Council of Saskatchewan, the Woman's Christian Temperance Union, Great War Veterans' Association, Army and Navy Veterans'

Association, North-West Commercial Travellers, Retail Merchants' Association, Dental Association, Medical Association, Educational Association, Citizens Educational Board, Local Council of Women, the Y.M.C.A. and Y.W.C.A. Members of the Legal Committee included: Reverend George Exton Lloyd (Principal of Emmanuel Theological College in Saskatoon), James Balfour (Barrister & Solicitor, Alderman and Mayor of Regina), Mr. H.E. Sampson (Crown Prosecutor for the Regina Judicial District) and Mr. C.B. Keenleyside.

30. "Ladies Made Speeches" Regina Morning Leader 20 February 1912, p.4; Hansard Parliamentary Debates House of Commons, 12 May 1882 at 1471, 30 April 1883 at 905. In 1922, Canada's white prime minister, William Lyon Mackenzie King, would state that it was "impossible ever to hope to assimilate a white population with the races of the Orient." Phrasing it as a matter of national interest, King proclaimed: "If I am correct...and I believe I am...in the assertion that it is a great economic law that the lower civilization will, if permitted to compete with the higher, tend to drive the higher out of existence, or drag it down to the lower level, then we see the magnitude of the question viewed as a great national problem." See Debates House of Commons, 8 May 1922 at 1555-6.

31. W. Peter Ward "The Oriental Immigrant and Canada's Protestant Clergy 1858-1925" BC Studies v.22 (Summer 1974) 40 at 46 and 50; Stuart Creighton Miller The Unwelcome Immigrant: The American Image of the Chinese, 1785-1882 (Berkeley: University of California Press, 1969) at 68, 88, 185-6; "Mission Workers Hear About China" Regina Morning Leader 31 May 1912, p.13. For a discussion of whether Chinese

plural marriage should be recognized in the distribution of property under a will in Canadian law, see Re Lee Cheong, Deceased (1922), 31 B.C.R. 437; [1923] 1 W.W.R. 867; [1923] 2 D.L.R. 52 (B.C.S.C.); reversed on appeal (1923), 33 B.C.R. 109 (B.C.C.A.). For an example of a white Canadian minister who did not make use of such stereotypes, but spoke out against the "White Women's Labour Law" as racist and pernicious, see the reference to Rev. W.D. Noyes, pastor of the Eastern Canada Chinese Mission in Toronto, in Wilson "A Pound of Prevention" Chatelaine 12-13, where he is quoted as arguing: "A Chinese cafe man told me that Chinese are more than careful to prevent scandal in their places of business because they know well that every move of theirs is watched by their opponents." See also Ruth Compton Brouwer "A Disgrace to 'Christian Canada:' Protestant Foreign Missionary Concerns about the Treatment of South Asians in Canada, 1907-1940" in Franca Iacovetta **et al.** A Nation of Immigrants: Women, Workers, and Communities in Canadian History, 1840s-1960s (Toronto: University of Toronto Press, 1998) 361, where she asserts that missionaries, as a group, appear to have been more sensitive than other Canadians to the rights and needs of Asian immigrants.

32. "No One to Buy Sixty Girls Who Must Starve in China" Regina Leader 18 April 1911, p.9 recounts that "sixty girls were offered for sale at one small town without a purchaser, because the food the slaves [would eat] was more valuable than their lives." "Chinese Women Are Waking Up" Regina Daily Province 10 May 1912, p.9 reports on the fledgling women's rights movement in China, but also reminds readers of the pervasive practice of female infanticide and the harsh working conditions for "women coolies," adding that "the position of Chinese women was the same 3,000 years ago that it is today," and that "the legal position of the Chinese woman is deplorable... [a] position [that] naturally cripples

her powers and has a disastrous effect upon her character." Although reports of Chinese female slavery were exaggerated, for some women who were sent from China into indentured servitude as prostitutes on the west coast of the United States and Canada, conditions of work may have resembled slavery. See Sue Gronewold Beautiful Merchandise: Prostitution in China 1860-1936 (New York: Haworth, 1982); Stephen Scott Osterhout Orientalism in Canada: The Story of the Work of the United Church of Canada with Asiatics in Canada (Toronto: Ryerson Press, 1929); Peggy Pascoe Relations of Rescue: The Search for Female Moral Authority in the American West, 1874-1939 (New York: Oxford University Press, 1990); Miller The Unwelcome Immigrant at 68.

33. Vron Ware Beyond the Pale: White Women, Racism and History (London: Verso, 1992) at 237 and 250. She quotes at 149-50 from turn of the century British writer, Ellice Hopkins, who combined feminist sentiments with imperialist doctrine, claiming that the way that women were treated was an index of a nation's racial purity and strength: "All history teaches us that the welfare and very life of a nation is determined by moral causes; and that it is the pure races - the races that respect their women and guard them jealously from defilement - that are the tough, prolific, ascendant races, the noblest in type, the most enduring in progress, and the most fruitful in propagating themselves." See also Miller The Unwelcome Immigrant at 68; T.J. Boisseau "'They Called Me **Bebe Bwana**': A Critical Cultural Study of an Imperial Feminist" Signs: Journal of Women in Culture and Society 21:1 (1995) at 116.

34. Veronica Jane Strong-Boag The Parliament of Women: The National Council of Women of Canada, 1893-1929 (Ottawa: National Museum of Man, 1976) at 186 and 248,

citing the National Council of Women of Canada Yearbook (1912) at 81-2. Norris Leaven of Ladies notes at 81 that the Calgary Council of Women debated calling for a "prohibition of white help in restaurants run by black or yellow people" during their April 1914 meeting. For more recent manifestations of the organized women's movement's problematic positions regarding anti-Asian governmental policies and racism generally, see Maryka Omatsu Bittersweet Passage: Redress and the Japanese Canadian Experience (Toronto: Between the Lines, 1992) at 13, 155-6; Vijay Agnew Resisting Discrimination: Women from Asia, Africa, and the Caribbean and the Women's Movement in Canada (Toronto: University of Toronto Press, 1996).

35. Ware Beyond the Pale at 37-8. The ideological focus on motherhood of the "first wave" of the women's movement, often categorized as "maternal feminism," facilitated claims that combined reproduction and racism: see Valverde The Age of Light, Soap and Water at 60-1.

36. Mariana Valverde "'When the Mother of the Race is Free:' Race, Reproduction, and Sexuality in First-Wave Feminism" in Franca Iacovetta and Mariana Valverde Gender Conflicts: New Essays in Women's History (Toronto: University of Toronto Press, 1992) 3 at 14; Sander L. Gilman "Black Bodies, White Bodies: Toward an Iconography of Female Sexuality in late 19th Century Art, Medicine, and Literature" in H.L. Gates, Jr., ed. Race, Writing and Difference (Chicago: University of Chicago Press, 1986) 223-61; Joanna de Groot "'Sex' and 'Race': The Construction of Language and Image in the Nineteenth-Century" in S. Mendes and J. Rendall, eds. Sexuality and Subordination (London: Routledge 1989) 89-128; Ware Beyond the Pale at 171-2.

37. Pon "Construction of Chinese Masculinity" at 88-90, 94; Cheng-Tsu Wu "Chink!" (New York: World Publishing, 1972); Maxine Hong Kingston China Men (New York: Alfred A. Knopf, 1977); Frank Chin et al. eds. Aiiieeee! (New York: Penguin, 1991); William Wei The Asian American Movement (Philadelphia: Temple University Press, 1993). See reference to the Chinese as "small-boned and unmuscular," more "docile and tractable" than white men, "timid," and eager to obtain work that other men labelled "unmanly": Report of the Royal Commission on Chinese Immigration 1885, at xviii, xxxii, XXX, LXXVII. See also Ward White Canada Forever who claims at 175 that "judging by their attitudes toward the Chinese, North American whites were not much concerned about Asian sexuality, whereas attitudes toward blacks were highly charged with sexual imagery." Valverde The Age of Light, Soap and Water makes no such comparative claim, but does note at 110-11 that in discussions of the opium trade, suggestions were made that Chinese sexual vice was not characterized by impulsive aggression but rather by a loss of manhood and consequent need for drugs to induce sexual desire.

38. "The Yellow Peril in Toronto" Jack Canuck 28 October 1911, p.11. See also 1:4 (16 September 1911). On the stigmatization of the "partition metaphor" see Pon "Construction of Chinese Masculinity."

39. Shearer was the head of the Council's subcommittee, the National Committee for the Suppression of the White Slave Traffic: see Valverde The Age of Light, Soap and Water at 54-7, 86; "Dr. Shearer Gives Regina Bouquet" Regina Daily Province 16 March 1911, p.5; "Rev. Dr. Moore on Social Evil" Regina Daily Province 21 June 1912, p.1, reporting on the "white slavery" investigatory tour of Victoria, Edmonton, Moose Jaw and Winnipeg

undertaken by Dr. Moore, secretary of the Methodist temperance and moral reform board; "Gambling and White Slavery Canada's Menace" Regina Daily Province 6 November 1912, p.10. In 1910, the white police staff inspector in charge of Toronto's morality division complained about Chinese men: "The lure of the Chinaman is...developing among [young] girls, to their utter demoralization in many instances:" Valverde at 111, citing Staff Inspector Kennedy, Annual Report of the Chief Constable 1910, at 31. No statistical data exist to suggest that the Chinese were disproportionately involved in operating brothels in Canada, or that they represented any numerical threat as "white slavers." Not surprisingly, however, in view of the rhetoric and stereotyping, there were some prostitution-related criminal charges laid against Chinese men. For some examples, see Rex v. Young Kee (No. 1), [1917] 2 W.W.R. 442 (Alta. S.C.); (1917), 28 C.C.C. 161 (Alta. S.C.); Rex v. Young Kee (No. 2) (1917), 37 D.L.R. 121; 28 C.C.C. 236; [1917] 2 W.W.R. 654 (Alta. S.C.); The King v. Charles Soo (1921), 54 N.S.R. 439 (N.S.S.C.); Rex v. Cumyow, [1926] 1 D.L.R. 623; (1925), 36 B.C.R. 435 (B.C.C.A.); Rex v. Tong Wah (1931), 56 C.C.C. 194; 44 B.C.R. 260 (B.C.C.A.); Rex v. Mah Chee, [1939] 1 D.L.R. 111; [1938] 3 W.W.R. 85; (1938), 71 C.C.C. 63; 53 B.C.R. 498 (B.C.C.A.), addendum [1939] 3 D.L.R. 710; 1 W.W.R. 307 (B.C.C.A.); Rex v. Hong, [1944] 1 D.L.R. 80; [1943] 3 W.W.R. 223 (B.C.C.A.).

40. "White Girls in Chinese Cafes" Regina Leader 25 September 1912, p.12; "White Women and Chinese Employers" Regina Daily Province 24 September 1912, p.7.

41. I am indebted to Erica Tao for her suggestion about the importance of including material on the genesis of the opium trade in China. On the efforts of the British to trade opium (grown in India) with China, and the Chinese opposition to such

tactics which ultimately culminated in the Opium Wars, see Paul Yee Struggle and Hope: The Story of Chinese Canadians (Toronto: Umbrella, 1996) at 9; Kathleen L. Lodwick Crusaders against Opium: Protestant Missionaries in China 1874-1917 (Lexington: University of Kentucky Press, 1996); Arthur Waley The Opium War Through Chinese Eyes (London: Unwin, 1958).

42. Regina Morning Leader "Spreading the Drug Habit" 7 April 1922, p.4; "Chinatown at Vancouver to Get Cleanup" 3 October 1924, p.1; "Seek to Have Drug Peddler Deported Soon" 6 November 1924, p.9; Anderson Vancouver's Chinatown at 101; Valverde "When the Mother of the Race is Free" at 14; Ward White Canada Forever at 9 citing the Victoria Times 25 June 1908. Charles T. Bloomfield, the white superintendent of police in Victoria, testified that he had "seen white women smoking in the Chinese [opium] dens...white girls of respectable parents;" Report of the Royal Commission on Chinese Immigration 1885, at 48. See also similar testimony from Mr. Tuckfield, representing the Knights of Labor at 66-7 and Joseph Metcalf, Jr. of Nanaimo at 82. Although he cites no specific evidence, a white British Columbia politician and moral reformer, H.H. Stevens, alleged in the early 20th century that Chinese men were "enticing white girls" into opium dens: Roy White Man's Province at 15-17, also citing the Nanaimo Free Press 15 November 1884. For a comparative discussion in the American context, see Miller The Unwelcome Immigrant at 184-5, 198. For the British discourse on drugs, see Marek Kohn Dope Girls: The Birth of the British Drug Underground (London: Lawrence & Wishart, 1992). While legal records are not a reliable indicia of whether these concerns were based upon anything other than racist conjecture, several reported decisions suggest there was little factual foundation for the linkage between narcotics and sexual exploitation. Rex v. Mah Hung

(1912), 2 D.L.R. 568; 20 C.C.C. 40; 17 B.C.R. 56 (B.C.C.A.) is one instance of a conviction against a Chinese man for procuring a white woman, Katie Stephens, to become an inmate of a brothel. The evidence shows that Katie Stephens, a prostitute "well known to the police as such since 1907," accepted both white men and Chinese men as customers. Mah Hung was charged when he travelled with Stephens from Vancouver to Prince Rupert. The indictment also alleges that Mah Hung unlawfully administered cocaine and other drugs to Stephens "with intent thereby to stupefy her so as thereby to enable a man to have unlawful carnal connection with her." On this last count, he was acquitted at trial. For a similar case, see The King v. Lew (1912), 19 W.L.R.853; 19 C.C.C. 281; 17 B.C.R. 77 (B.C.C.A.). See also Rex v. Lou Hay Hung, [1946] 3 D.L.R. 111; O.W.N. 164; O.R. 187; (1946), 85 C.C.C. 308; 1 C.R. 274 (Ont. C.A.), in which the narcotics conviction of a Chinese man, employed in a Queen Street East laundry in Toronto, is overturned on appeal, while the related drug conviction of his white female employer is upheld. The verdicts in these cases are particularly noteworthy given the prevailing biases against Chinese men, which must have affected the assessment of their testimony in court. Judge Bryant of the Saskatchewan District Court explains his decision to reject the testimony of a Chinese cook who denied making sexual overtures to waitresses in Chow v. Paragon Cafe Ltd., [1942] 1 W.W.R. 519 at 525: "having regard to the fact that the plaintiff was a stranger in a strange land, far from the women of his race, and being daily in contact in the kitchen with a number of white girls some of whom were not unattractive, it is not unreasonable to assume that, to say the least, his mind was not always on his cooking." An extensive search for reported cases in which Asian-Canadians were prosecuted for sex offences culled only the following: Rex v. Iman Din (1910), 18 C.C.C. 82, 16 W.L.R. 130, 15 B.C.R. 476 (B.C.C.A.); The King v. Sam Sing

(1910), 17 C.C.C. 361, 22 O.L.R. 613 (Ont. C.A.); Rex v. Sam Jon (1914), 24 C.C.C. 334 (B.C.C.A.); Rex v. Louie Chong (1914), 23 C.C.C. 250, 32 O.L.R. 66, 7 O.W.N. 84 (Ont. C.A.); Rex v. Delip Singh (1918), 26 B.C.R. 390 (B.C.C.A.); Rex v. Chin Chong (1921), 29 B.C.R. 527 (B.C.C.A.); Rex v. Gee Poy (1922), 38 C.C.C. 280; 19 Alta. L.R. 1; [1923] 1 D.L.R. 279 (Alta. C.A.); The King v. Tom Ging (1924), 57 N.S.R. 196 (N.S.S.C.); Rex v. Yee Jam Hong, [1928] 3 W.W.R. 490; (1928), 23 Sask. L.R. 173 (Sask. C.A.); Rex v. Ah Sing, [1937] 3 W.W.R. 185; (1937), 52 B.C.R. 146 (B.C.S.C.); Rex v. Jing Foo, [1939] 4 D.L.R. 812; (1939), 73 C.C.C. 103; 54 B.C.R. 202 (B.C. Co. Ct.); Rex v. Bakshish Singh, [1943] 3 D.L.R. 735; 2 W.W.R. 478; (1943), 59 B.C.R. 238 (B.C.C.A.). There are reports of the conviction in Lethbridge of Lem Chung for committing an indecent assault on an eight-year old girl, "True Bills on Five Counts" Regina Daily Province 12 April 1912, p.5; "Chinaman Sent Down" Regina Daily Province 13 April 1912, p.1. See also the report of the acquittal of Fooke Lee, charged with sexual procurement of two white female employees in his laundry in Toronto in 1913: Carolyn Strange Toronto's Girl Problems: The Perils and Pleasures of the City, 1880-1930 (Toronto: University of Toronto Press, 1995) at 155-6. Mosher Discrimination and Denial concludes at 197 that "the experience of Asians and Blacks in Ontario's criminal justice system was...characterized by systemic racism," and that "the enforcement of laws against public-order crimes focused disproportionately on Asians and Blacks involved in gambling, prostitution, and other immoral activities...."

43. Emily Murphy The Black Candle (orig. pub. Toronto: Thomas Allen, 1922; repub. Toronto: Coles, 1973) at 17, 28, 233-4, 303-4, 306. But see also 234-9, where she discusses situations in which white women are the aggressors. Emily Murphy's fears were exaggerated further by one Methodist moral reform organization, which insisted that even

"occasionally visiting Chinese restaurants" could lead to the demise of unsuspecting white women. Valverde The Age of Light, Soap and Water at 97-9 citing a 1911 Methodist Annual Report, lists the dangerous places catalogued in early 20th-century white slavery narratives as invariably including "chop suey palaces." She also notes at 122 that Ethel West, who headed up Presbyterian services for immigrant women in Toronto after 1911, sought to keep under surveillance and rescue Scottish women who "went to work where Chinamen were employed."

44. Murphy The Black Candle, picture opposite p.30, and 188, 210. See also the picture opposite p.46, which shows a dark-skinned man and white woman with heads touching, and contains the notation: "Once a woman has started on the trail of the poppy, the sledding is very easy and downgrade all the way." See also 45, 107, 122, 128, 166, 186-9, 196-8, 210, 302-3, and Palmer Patterns of Prejudice at 84-5. Deeply ambivalent about the extent of Chinese designs toward racial superiority (see 107-8, 112) Murphy writes at 188: "It is hardly credible that the average Chinese pedlar has any definite idea in his mind of bringing about the downfall of the white race, his swaying motive being probably that of greed, but in the hands of his superiors, he may become a powerful instrument to this very end. In discussing this subject, Major Crehan of British Columbia has pointed out that whatever their motive, the traffic always comes with the Oriental, and that one would, therefore be justified in assuming that it was their desire to injure the bright-browed races of the world." Responding to Murphy's provocative prose, the National Council of Women of Canada expressed its consternation over increasing numbers of female and male drug addicts. Its solution: "further restrictions on oriental immigration were proposed as one means of cutting off the opium supply:" see Strong-Boag The Parliament of Women at 382.

45. Helen Gregory MacGill was one of Canada's first female juvenile court judges, appointed in British Columbia. MacGill travelled to Japan to report on political and social conditions during her earlier career as a journalist. She and her husband, Jim MacGill, also maintained a social relationship with a Vancouver Chinese merchant named Yip Quong, a classical scholar and graduate of Oxford, who was married to a white woman: Elsie Gregory MacGill My Mother, The Judge (Toronto: Ryerson, 1955) at 70, 100. MacGill was quite knowledgeable about the history of legislative discrimination against the Chinese, as she had written a detailed essay titled "Anti-Chinese Immigration Legislation of British Columbia, 1876-1903" (Vancouver, 1925) in which she took a critical perspective on the "race prejudice" directed against the Chinese. I am grateful to Robert Menzies, School of Criminology, Simon Fraser University, for bringing this paper to my attention. A photocopy is held in the Simon Fraser University Library under the misspelled name of "McGill, Helen Gregory." In a later article, H.G. MacGill "The Oriental Delinquent in the Vancouver Juvenile Court" Sociology and Social Research 22:5 (May-June 1938) at 428, she documents the rarity of juvenile delinquency amongst Asian families in Canada, and describes the unusual occasions in which Asian adolescents are brought before the court: "The Oriental family sits in Court, restrained, deeply anxious, alert, and eager to help. A child gone wrong is a sore anxiety, but never 'cast off.' Every relative to the remotest degree feels responsibility for the welfare of the younger members. The lives of these people centre around their children."

46. Wilson "A Pound of Prevention" Chatelaine 12 at 13. On the history of the sexual coercion and sexual harassment of women workers in Canada, see, for example, Constance Backhouse and Leah Cohen The Secret Oppression: Sexual Harassment of

Working Women (Toronto: Macmillan of Canada, 1978), chapter 3.

47. Report of the "Committee on Trades and Professions for Women" National Council of Women of Canada The Yearbook of the National Council of Women of Canada, 1927 (Ottawa: 1927) at 88; "Trades and Professions" The Yearbook of the National Council of Women of Canada, 1928 (Ottawa: 1928) at 97; Wilson "A Pound of Prevention" Chatelaine at 12.

48. Wilson "A Pound of Prevention" Chatelaine at 12. The article notes that a recent report of the National Council of Women found female employees suffering from "wrongful treatment from the white patrons of restaurants kept by Orientals."

49. In 1911, women made up only 3.5% of the Chinese population across Canada. It would take until the 1960s until the sex ratio began to reach a balance: see Roy White Man's Province at xi; Li "Immigration Laws and Family Patterns;" Dora Nipp "Canada-Bound: An Exploratory Study of Pioneer Chinese Women in Western Canada" M.A. Thesis (University of Toronto: 1983); Dora Nipp "'But Women Did Come': Working Chinese Women in the Interwar Years" in Jean Brunet, ed. Looking Into My Sister's Eyes (Toronto: Multicultural History Society of Ontario, 1986) 179; Tamara Adilman "A Preliminary Sketch of Chinese Women and Work in British Columbia 1858-1950" in Latham and Pazdro, eds. Not Just Pin Money 53-78 at 55-61; Agnew Resisting Discrimination at 32. James Young of Nanaimo testified before the Royal Commission on Chinese and Japanese Immigration as follows: "Wherever I have known any considerable number of men deprived of female society for any length of time, the

inevitable result has been that they become coarser. The intellect is depraved, the whole moral tone is lowered, and men rush into a greater depth of wickedness and vice than would otherwise have been possible." See Report of the Royal Commission on Chinese Immigration 1885, at 89. See also Rex v. Hung Gee (No. 1) (1913), 13 D.L.R. 44; 21 C.C.C. 404; 24 W.L.R. 605; 6 Alta. L.R. 167; [1913] 4 W.W.R. 1128 (Alta. S.C.), which gives legal expression to commonly-held racist thinking, while overturning the conviction of a Chinese Calgarian for keeping a common gaming house: "The learned police magistrate concludes [with] some remarks that suggest an abnormal amount of immorality among the Chinese in this country, and attributes this to the fact that 'these people are here without their women.' No doubt, he is voicing a common view both as to the fact and its cause."

50. Chan Gold Mountain notes at 80 that white prostitutes in Victoria outnumbered Chinese prostitutes by 150 to 4 in 1902, but it was the Chinese women who were attacked for immorality; Paul Yee Saltwater City: An Illustrated History of the Chinese in Vancouver (Vancouver: Douglas & McIntyre, 1988); Nipp "Canada-Bound;" Ward White Canada Forever at 8-9; Adilman "Chinese Women and Work" at 61; Agnew Resisting Discrimination at 32-3; Report of the Royal Commission on Chinese Immigration 1885, at lxxviii-lxxi, xxvi and 133, where J. Pawson of Nanaimo states: "Nearly the whole of their females that leave China are professed prostitutes, from children ten or twelve years of age to old hags." In 1898, the National Council of Women wrote to Prime Minister Wilfrid Laurier, demanding an investigation into the "female slavery" of Chinese-Canadian prostitutes. The request was initially put forward by the Local Councils of Women in Vancouver and Victoria, who hoped that such a study would correct the impression of

eastern visitors who praised "the sobriety, the industry, and the peaceableness of the Celestials:" Roy White Man's Province at 17-18, citing National Council of Women to Wilfrid Laurier, 20 August 1898, Laurier Papers, #25897-8. In an era when women were touted as the moral guardians of the community, the racist categorization of Chinese women as sexually promiscuous gave increased fuel to the fears that Chinese men were predisposed to improper sexual behaviour. For the comments of the Canadian legislators, see Debates House of Commons, 12 May 1882 at 1471, 30 April 1883 at 905; 8 May 1922 at 1555-6.

51. Tien-Feng Cheng Oriental Immigration to Canada (Shanghai: Commercial Press, 1931); Ward White Canada Forever at 13, 180; Roy White Man's Province at x; testimony of Sir Matthew Begbie, Chief Justice of British Columbia Report of the Royal Commission on Chinese Immigration 1885, at 80, claiming that "whites who have evil [sexual] communications with Chinese must themselves be lamentably depraved beforehand...." Arguments for racially segregated schools in British Columbia were predicated on intermarriage fears: "If little Jim Ling is her chum at school, why may not he seek to be her suitor when she is a woman?": David Chuenyan Lai "The Issue of Discrimination in Education in Victoria, 1901-23" Canadian Ethnic Studies 19:3 (1987) 47-67 and Roy White Man's Province at 26-7. For some discussion of the negative response from the Chinese community to racial intermarriage with whites, see Women's Book Committee, Chinese Canadian National Council Jin Guo: Voices of Chinese Canadian Women (Toronto: Women's Press, 1992) at 41, 51, 68, 83, 179-90.

52. The comment on "coffins" is found in Roy White Man's Province at 18, citing the Nanaimo Free Press 5 April 1904. A British Columbia journal sums it up: "It is when

we contemplate these unnatural unions that we find the kernel of the Asiatic problem - the mixing of the races. Race mixture is the essential danger of the Asiatic occupation of this country for race mixture means race deterioration." On the American marriages, see "Twelve White Women Brides of Orientals" Regina Leader 11 November 1911, p.4, which recounts one of the wedding nuptials as follows: "When they entered the office of the justice of the peace [the couple] sat down side by side and neither looked at the other for five minutes, while the justice was filling out papers. He studied the design of the linoleum, while she looked far away out the window. ... When the two stood up and clasped hands, [the male bridegroom] was silent and looked straight ahead into vacancy. He did not answer the questions asked. [The bride] merely laughed her assent." The report emphasizes that the women concerned were widows, one significantly older than the man she was marrying, and that none would agree to having their pictures taken. One bride, it notes, "seemed to be the financial agent of her husband and carried the family purse in a large wallet." The "Don't Wed" headline appeared on Regina Morning Leader 8 January 1912, p.2, quoting a recently-divorced white American woman: "I know...enough to give advice to other American girls, and it is never to marry people of Oriental origin or with Oriental strains in the blood. They can never understand each other and the woman will be the one who suffers."

53. "Shocking Fate of White Girls" Regina Morning Leader 5 September 1912, p.9. Mosher Discrimination and Denial describes at 79-80 the criminal conviction of missionary Robert Brown, after he conducted a marriage ceremony between a Chinese man and a white woman, on charges that he had no qualifications to perform the service because the "First Christian Chinese Church, Toronto" was not a properly qualified religious denomination. See also the air of astonishment which attends the report that an Ottawa cleric spoke

positively about racial intermarriage: "Advocates That Whites Should Marry Orientals"
Moose Jaw Evening Times 11 March 1914, p.12.

54. "Girl Wanted to Wed a Chinaman - But Lethbridge Police Locked Up the Would-Be Couple" Regina Leader 19 September 1911, p.14. The two travelled to Lethbridge to wed, and booked a room in a local lodging house. The article states that Mah Wing, proprietor of a Chinese restaurant at Diamond City, was arrested at the Vendomme Block on 17 September. Janet Given, a twenty-three year old "white girl of Scotch descent" who had been employed by Mah Wing as a waitress for several months, was taken from the same room to the police station. The white Acting Chief of Police, Silliker, determined that the couple had travelled to Lethbridge to be married, but upon their arrival, Mah Wing changed his mind and took his fiancée to a lodging house instead. Janet Given was reportedly reluctant to speak to the police, and told them that "she did not consider it anyone's business if she wanted to be the sweetheart of a Chinaman. Since I have been in Wing's employ, he has treated me better than I have been used to. He has promised to marry me and that is the reason that we made the trip to Lethbridge." The news report hastened to point out that Miss Given was "of rather prepossessing appearance" and "during her rambling conversation made the statement that she came to this country for the purpose of marrying as soon as possible." There is no legal report of further proceedings, but presumably the police arrested Mah Wing on the theory that he could be charged with some sort of procuring offence, after he booked a hotel room with a woman who was not yet his wife. The inter-racial nature of the relationship clearly motivated the arrest, revealing how authorities could manufacture indirect legal impediments to inter-racial marriage when direct legal bars were not available. In 1930, the Halifax police arrested a Chinese man and

his white bride after the bride's mother alleged her daughter's name was forged on the marriage certificate. Lee Chong and his "girl bride," Dorothy Isabel Dauphinee, were arrested a few days after their wedding at their home on 89 Maitland Street. Police believed the young woman was not yet eighteen years old, and both were later charged with forgery; Halifax Herald 8 and 28 November 1930. I am indebted to Michael Boudreau for bringing the Halifax news item to my attention.

55. Gunter Baureiss "The Chinese Community in Calgary" Alberta Historical Review 22:2 (Spring 1974) 1 at 8; Gunter Baureiss "Discrimination and Response: The Chinese in Canada" in Rita M. Bienvenue and Jay E. Goldstein, eds. Ethnicity and Ethnic Relations in Canada 2nd ed. (Toronto: Butterworths, 1985) 241 at 251. Walker "Race, Rights and the Law" notes at 82-3 that Saturday Night magazine published an editorial praising American legal prohibitions on racial intermarriage and calling for the federal government to replicate such laws in Canada (citing 15 August 1925).

56. "An Act to Prevent the Employment of Female Labour in Certain Capacities" S.S. 1912, c.17. First reading was held 26 February 1912, second reading on 1 March 1912, and debate and third reading on 4 March 1912. Royal assent was received on 15 March 1912, with the act scheduled to come into force 1 May 1912; Journals of the Legislative Assembly 1912, at 68. For newspaper coverage, see "White Women Must Not Work With Chinese" Regina Morning Leader 27 February 1912; Saskatoon Phoenix 27 February 1912; "Busy Days These for Legislatures" Regina Daily Standard 2 March 1912; "Bills Are Made Law by Lt. Governor" Regina Leader 16 March 1912.

57. Leyton-Brown "Discriminatory Legislation." The Moose Jaw Evening Times 1 May 1912, p.1 announced that the Chinese held a mass meeting to discuss the act, and intended to keep on their white female employees until legal advice could be obtained. Frank Yee, the Grand Master of the Chinese Masonic Order in western Canada enlisted the support of Dr. Sun Yat-sen, the successful leader of the 1911 Chinese Revolution, who wrote to Yee from China. Portions of Dr. Sun Yat-sen's letter were published in the Regina Leader on 13 May 1912, promising that the Chinese consul from Ottawa would visit Regina soon to investigate the situation. The letter threatened that if the act were enforced, Chinese cities would boycott Canadian goods and Pacific shipping would be decimated by the withdrawal of Chinese labour: "Dr. Sun Urges Fight Against White Help Law" Regina Leader 13 May 1912, p.1; Regina Morning Leader 8 January 1912, p.9; Regina Daily Province 13 May 1912, p.1. Sun Yat-sen was quite familiar with the Chinese situation in Canada, since he had made several successful fund-raising visits to western Canada in previous years and Chinese-Canadians played a large role in financing revolutionary activities in China: Anthony B. Chan "The Myth of the Chinese Sojourner in Canada" in K. Victor Ujimoto and Gordon Hirabayashi, eds. Visible Minorities and Multiculturalism: Asians in Canada (Toronto: Butterworths, 1980) at 33-42. No such visit materialized; "Dr. Wong Not Going to Moose Jaw, as Reported" Saskatoon Star-Phoenix 14 May 1912, p.10; "Chinese Will Fight the Act" Regina Daily Province 16 May 1912, p.7. The threat also appears to have been ineffective: "The Oriental Problem" Saskatoon Daily Star 15 May 1912, p.2. Ten years earlier the Canadian Royal Commission on Chinese and Japanese Immigration concluded that "the evidence adduced and the experience of the United States in this regard indicate that further restriction or exclusion will not affect the trade of Canada

with China:" Report of the Royal Commission on Chinese and Japanese Immigration 1902, at 270. The press reported that the Japanese residents of Moose Jaw were also ready to fight the legislation, which they saw as a "curtailment of their liberties" under "international law;" "Moose Jaw Japs to Fight Labor Laws" Regina Morning Leader 10 May 1912, p.1; "Japs at Moose Jaw to Test Labor Law" Saskatoon Star-Phoenix 10 May 1912, p.7; "Moose Jaw Japs Fight Labor Law" Regina Daily Province 10 May 1912, p.1. Mr. N. Nakane, Japanese proprietor of the Carlton Cafe in Moose Jaw, wrote to Attorney General Turgeon on 5 March 1912, to complain about the Saskatchewan enactment as an "insult to the honour of Japan." Turgeon replied on 28 March 1912: "It is certainly regrettable that any law of the Province should be found objectionable by any portion of the respectable citizens of the Province. However, general conditions some time require things to be done which cannot be agreeable to everybody. In the present case this law was put through, in so far at least as some of the people affected by it were concerned, not so much to remedy an existing state of affairs, but to prevent the growing up of conditions which have arisen elsewhere." Turgeon Papers, S.A.B., General Correspondence 1911-12 "N" box 9, 325-28. Nakane sought an amendment to remove the Japanese from the legislation on the ground that there were "fewer than twenty Japanese in the whole of Saskatchewan," too few to pose any serious threat, and that they were not generally in a position to employ white women. He described himself as a naturalized British subject who had lived in Moose Jaw for seven years, and employed only men in his restaurant; "Employment by Orientals" Moose Jaw Evening Times 29 April 1912, p.1. There are few indications that non-Asian individuals complained about the act at the time of its passage. Dr. Stephens of Yellow Grass, Saskatchewan was one exception, although he did not couch his criticism of the bill in general terms. Stephens

wrote to Attorney-General Turgeon on 28 February 1912, seeking an amendment to the proposed bill that would provide an individual exemption for one local Chinese restaurant proprietor. Turgeon refused, noting that "after all the Act only comes into effect on May 1st next and in the meantime the proprietor will doubtless be able to make arrangements to secure male help," Turgeon Papers, S.A.B., General Correspondence 1911-1912 "S" box 11, 65-66.

58. On Dr. Yada's efforts, see "Japanese Consul General in Regina" Regina Morning Leader 14 May 1912, p.2; New York Herald 23 April 1913, p.6. The amendment was passed as "An Act to amend An Act to Prevent the Employment of Female Labour in Certain Capacities" S.S. 1912-13, c.18, and given royal assent 11 January 1913. For the rationale behind the amendment, see Ryder "Racism and the Constitution, 1884-1909" at 635-7, where he discusses the impact of British-Japanese Treaties on Canadian domestic law and the Anglo-Canadian desire for a military and commercial alliance with Japan. Saskatchewan, Provincial Secretary, Correspondence of the Lieutenant-Governor on "Act to Prevent the Employment of Female Labour in Certain Capacities" and the decision to make it applicable to the hiring of women by Orientals, S.A.B. R192.4, File #249, contains correspondence between the Saskatchewan Lieutenant-Governor, the federal Secretary of State, and Mr. Fu Ping Tien, Acting Chinese Consul-General, noting that the Japanese were exempt because they were few in number and rarely engaged in the occupations covered by the act. Justice Walter Surma Tarnopolsky and William F. Pentney Discrimination and the Law (Don Mills, Ontario: Richard De Boo, 1985) cite at 1-10-11 correspondence between the Japanese Consul-General in Vancouver and the office of Premier Walter Scott in Scott Papers, S.A.B. 45-991 and 45-992. F.H. Gisborne and A.A. Fraser Correspondence,

Reports of the Minister of Justice and Orders in Council: Upon the Subject of Provincial Legislation, 1896-1920 v.2 (Ottawa: F.A. Acland, 1922) note at 519 the pressure exerted by the Government of India as well: "Exception had been taken to the Saskatchewan Act by the Secretary of State for Foreign Affairs and the Secretary of State for India. It was pointed out by Sir Edward Grey that the Japanese Government had the strongest objection to Acts differentially affecting Japanese subjects, and by the Marquess of Crewe that the Government of India and popular opinion in India resented strongly any action inflicting disabilities on British Indian subjects, who were clearly covered by the term 'Oriental' as used in the Act."

59. "An Act to prevent the employment of Female Labor in certain capacities" S.M. 1913, c.19. The Manitoba statute stipulates that it is only to come into force "upon proclamation of the Lieutenant-Governor-in-Council." All indications are that it was never actually proclaimed. R.S.M. 1913, Schedules B and C, list the statute as unproclaimed, and there is no reference to it in the listing of proclaimed statutes in the yearly volumes of legislation between 1913 and 1940. Lai Chinatowns claims at 94 that the failure to proclaim resulted from the opposition mounted by the Chinese communities, who united to fight these statutes throughout the late 1910s. The 1913 act is not contained in the Revised Statutes of Manitoba 1913, the Consolidated Statutes of Manitoba 1924, or the Revised Statutes of Manitoba 1940. It is expressly repealed in "An Act to repeal certain Enactments which have become Obsolete" S.M. 1940, c.35. See also "Canadian Laws Governing the Employment of Women" an undated memorandum prepared by the federal Department of Labour, appended to correspondence dated 28 September 1928, Public Archives of Canada [hereafter PAC]

RG25, v.1524, file 867, "Employment of Women by Chinese in Canada, correspondence and memoranda" which states that "at the last session of the Legislature of [Manitoba], [in 1923] a clause was added to the Winnipeg City Charter enabling that city to pass by-laws prohibiting the employment, except by special license of any female person in any hotel, restaurant, refreshment or entertainment room or laundry, owned, managed or conducted by a Chinese person." Gunter Baureiss and Leo Driedger "Winnipeg Chinatown: Demographic, Ecological and Organizational Change, 1900-1980" Urban History Review 10:3 (1982) 11 note at 12-15 that Winnipeg's Chinatown came into being around 1909, and reached its height in the early 1920s.

61. "An Act to amend The Factory, Shop and Office Building Act" S.O. 1914, c.40, s.2(1), states: "No Chinese person shall employ in any capacity or have under his direction or control any female white person in any factory, restaurant or laundry." Section 2(2) provides that "subsection 1 shall not come into force until a day to be named by proclamation of the Lieutenant-Governor in Council." Apparently the intention was to wait until the question of constitutionality was resolved in the pending Quong Wing case. [See discussion of Quong Wing below.] The Toronto Globe notes on 8 April 1914, p.1: "Hon. James Duff's bill to amend factory, shop and office building act passed through Committee and it was agreed to proclaim the clause regarding employment of women by orientals should Privy Council decision in Saskatchewan case be favourable." Despite the fact that the courts upheld the Saskatchewan act as constitutional, actual proclamation in Ontario did not occur until 2 November 1920, with the provision to come into effect 1 December 1920. A copy of the unpublished order-in-council is held by the Ontario Cabinet Office; see also the Consolidated Indexes to Orders in Council formerly titled the

Journals of Executive Council Ontario Consolidated Index No. 6, 1 Nov. 1919 to 15 July 1923, at 193, which lists the section as proclaimed: "Proclamations: Bringing into force section 31. Factory & Shops Act (re employment of white women by Chinese)." A lobby from organized labour seems to have been central to the proclamation. The Ontario Cabinet Order-in-Council notes that the proclamation is "upon the recommendation of the Honourable the Minister of Labour." "Law Prohibits Working of White Girls with Chinese" Labour 8 September 1928, notes: "Labour has long sought this regulation and it expects the Ontario government to enforce the law." When the act was reprinted in the Revised Statutes of Ontario 1927, as "The Factory, Shop and Office Building Act" R.S.O. 1927, c.275, s.30, the proclamation subsection was no longer included. This seems to have caused some surprise, since few authorities appear to have been aware of the proclamation: see PAC RG25, v.1524, file 867, "Employment of Women by Chinese in Canada, correspondence and memoranda" where provincial and federal officials, newspapers and agents of the Chinese consulate state that no proclamation was ever given; see also Journals of the Legislative Assembly of the Province of Ontario v.57 (1923) at 28 where the Minister of Labour incorrectly advises that the statute has never been proclaimed; Legal Status of Women in Canada (Ottawa: Canada Department of Labour, 1924) Walker "Race," Rights and the Law at 55; Wilson "A Pound of Prevention" Chatelaine at 12. Based on the belief that the subsection making proclamation a prerequisite had been inadvertently left out, campaigns were initiated for its reinsertion. In 1929, due to strenuous representations from the Chinese Consulate General in Ottawa, the Ontario legislature passed an amendment, S.O. 1929, c.72, s.5, reinserting the proclamation requirement and making it retroactive to 31 December 1927,

the day in which the Revised Statutes of 1927 came into force. "End This Stupid Statute" Toronto Globe 2 October 1928; "White Girls Cannot Work for Orientals" Toronto Star 22 August 1928. The provisions continue in this form under S.O. 1932, c.35, s.29 and R.S.O. 1937, c.194, s.28, unproclaimed: H.L. Cartwright The Ontario Statute Citator, 1927-37 (Toronto: Canadian Law List, 1938) at 117; R.M. Willes Chitty The Ontario Statute Citator, 1950 (Toronto: Cartwright, 1950) at 152; "Table of Public Statutes: Table B, Acts or Parts Thereof Unproclaimed" S.O. 1946, at 928. They are repealed in S.O. 1947, c.102, s.1. I am indebted to Marianne Welch of the University of Western Ontario Law Library for her assistance in tracking down these legislative details. It is not yet clear to what extent this provision was enforced while in effect. The 1923 Journals of the Legislative Assembly v.57 at 28 report that 126 white women were employed in 121 Chinese restaurants in Toronto. Correspondence from the Ontario Deputy Attorney General suggests that the provincial government made no efforts at enforcement, but that the Mayor and Board of Control of Toronto may have done so indirectly, by refusing to issue licences to Chinese businessmen who employed white women: "Employment of Women by Chinese in Canada" PAC file. Newspaper reports indicate that some city councils refused to issue licences to Chinese cafes employing white women: "Refuse Woman License to Run Chinese Cafe" Sudbury Star 6 October 1926, p.16.

61. In 1919, a concerned official of the Retail Merchants' Association complained that hard times had led "our own Canadian people" to shop at Asian stores, lured by low prices, attractive displays and convenient hours. That year the provincial president of the Retail Merchants' Association proposed that merchants "from the Atlantic to the Pacific...present a united front to make this a white man's country." White merchants

toyed with the idea of segregated business districts and the wholesale denial of business licences to the Chinese, but organized labour in British Columbia sought a "white women's labour bill" instead. The Vancouver Trades and Labour Council lobbied to "disallow the employment of white women alongside Asian men," and the Hotel and Restaurant Employees' Union tried repeatedly to persuade city hall to disallow the employment of white women in Chinese restaurants: Patricia E. Roy "Protecting Their Pocketbooks and Preserving Their Race: White Merchants and Oriental Competition" in A.R. McCormack and Ian MacPherson eds. Cities in the West (Ottawa: National Museum of Man, 1975) 116 at 118-119; Province of British Columbia Report on Oriental Activities Within the Province (Victoria: Charles F. Banfield, King's Printer, 1927). Patterned after the Saskatchewan act subsequent to its deletion of the clause relating to "Japanese or other Oriental persons," the statute prohibits the employment of "any white woman or girl" in restaurants, laundries, places of business or amusement owned, kept, or managed by "any Chinese person;" "Municipal Act Amendment Act" S.B.C. 1919, c.63, s.13.

62. Despite the legislative inaction, hostility towards the Alberta Chinese erupted into riots and physical violence directed against several laundries in 1892 in Calgary, and against a Chinese restaurant in 1907 in Lethbridge. In 1911, some of the white proprietors of laundries in Lethbridge complained that Chinese laundries were operating too close to the town centre, and the City Council enacted by-law no.83 to restrict them to less commercially attractive areas. Earlier attempts in 1904 to prohibit more Chinese laundries in Calgary resulted in discriminatory by-laws, but due to the resistance of the Chinese community, these were never enforced. In 1913, it was proposed that all the

Chinese in Calgary should be photographed and fingerprinted for identification purposes, and that there should be widespread boycotts and refusals to sell them land or buildings.

White Albertans debated in the early 20th century whether the Chinese should be subjected to special business licences restricting their ability to compete, and whether there should be boycotts and special taxes for Chinese laundries. Palmer Patterns of Prejudice at 20, 32-4; J. Brian Dawson "The Chinese Experience in Frontier Calgary 1885-1910" in A.W. Rasporich and Henry Klassen, eds. Frontier Calgary: 1875-1914 (Calgary: University of Calgary Press, 1975) at 124; Baureiss "The Chinese Community in Calgary." Other racially discriminatory regulation in Alberta may have come under "An Act to License, Regulate, and Control Restaurants and Other Places where Refreshments are Sold" S.A. 1922, c.7, which requires that all restaurants be licensed by the Attorney-General. Licenses are banned for one year if the applicant is convicted of gaming, gambling or narcotics offenses. See also "An Act to amend The Restaurant Act" S.A. 1930, c.10, and "An Act to Provide for the Registration and Licensing of Trades, Businesses and Occupations" S.A. 1936, c.67.

In Quebec, "An Act to amend the Quebec License Law relating to public laundries" S.Q. 1915, c.22 increases licence and inspection fees for public laundries. While laundries operated by charitable organizations, corporate enterprises and those run by "a laundress...alone or with members of her family" are exempt, others (including those of Chinese men) are subject to fees as high as fifty dollars: Joseph F. Krauter and Morris Davis Minority Canadians: Ethnic Groups (Toronto: Methuen, 1978). There was an unsuccessful attempt to challenge a Quebec city by-law that required Chinese laundries to obtain a licence of \$75, while other laundries paid only \$50: Sun Ling v.

Recorder's Court (1921), 37 C.C.C. 117 (Quebec Superior Ct.) See also Tum Sing v. La Cour de Recorder de la Cite de Quebec et al. (1921), 23 R.P. Que. 104 (C.S.). For further discussion of discrimination against the Chinese in Quebec, see Denise Helly Les Chinois de Montreal 1877-1951 (Quebec: Institut quebecois de recherche sur la culture, 1987).

63. White alderman W.J. O'Toole spoke enthusiastically to a Progressive Club luncheon in 1929 about a proposed bill to prohibit the employment of white women in Chinese restaurants, insisting that the "guardians of the race" had to be kept out of the "clutches of the Chinese;" Halifax Chronicle 10 April 1929. I am indebted to Michael Boudreau for bringing this to my attention. Although it is stated in Edgar Wickberg **et al.** From China to Canada: A History of the Chinese Communities in Canada (Toronto: McClelland and Stewart, 1982) at 152 that Nova Scotia had such a law in the late 1920s and early 1930s, there is no record of a provincial enactment. Lai Chinatown notes at 101 that there were no Chinatowns in the Atlantic provinces during these years, and that the Chinese communities in the east were very small. However, there was severe racial discrimination against the Chinese in the Atlantic provinces in the first half of the 20th century. Michael S. Boudreau "Crime and Society in a City of Order: Halifax 1918-1935" Ph.D. Thesis (Queen's University: 1996) notes at 450 that the Halifax Herald 6 July 1918 published an article captioned "Chinese Restaurant Cubby Holes of Unsavoury Reputation" quoting Dr. W.H. Hattie, the Provincial Health Officer, who was mounting a campaign to wipe out immorality. Boudreau recounts at 427-30 that six Chinese restaurants sustained serious damage following a rampage by a group of returned soldiers and civilians in 1919. There were unprovoked attacks by customers on Chinese proprietors in 1919-20. A gang of hoodlums went on a spree of vandalism to wreck

Chinese laundries in 1921. In 1928, several whites attacked two Chinese men simply for speaking Chinese on the street. Boudreau describes at 462-7 an interview with two white Halifax policewomen, published in The Evening Echo 14 December 1923, in which they castigate Chinese restaurants as the site of "booths where women associated with men and indulged in liquor," the headquarters for street-walkers, and the genesis of "more than fifty per cent of the crime." The report of the Moncton, New Brunswick chapter of the National Council of Women of Canada Yearbook of the National Council of Women of Canada 1931 stresses at 112 the importance of "safeguarding" young immigrant women "from seeking employment in Chinese restaurants." See also Women's Book Committee Jin Guo at 69.

64. A full account of these cases is found in Backhouse "The White Women's Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada;" Walker "Race," Rights and the Law chapter 2.

65. See discussion in the introductory chapter of this volume, and regarding Re Eskimos in chapter 2; Peter Fryer Black People in the British Empire: An Introduction (London: Pluto Press, 1988) at 61-2; M.F. Ashley Montagu Man's Most Dangerous Myth: The Fallacy of Race (New York: Columbia University Press, 1942); Bolaria and Li Racial Oppression in Canada at 13-25; F. James Davis Who is Black? One Nation's Definition (University Park, Pennsylvania: Pennsylvania State University Press, 1991); Audrey Kobayashi and Peter Jackson "Japanese Canadians and the Racialization of

Labour in the British Columbia Sawmill Industry" B.C. Studies v.108 (Autumn 1994) 33-58; Audrey Kobayashi "Viewpoint: A Geographical Perspective on Racism and the Law" Canadian Law and Society Bulletin v.11 (Spring 1991) 4-6; Audrey Kobayashi "Racism and law in Canada: a geographical perspective" Urban Geography 11:5 at 447-73; A. Sivanandan "Challenging racism: strategies for the 80s" Race and Class v.25 (1983) I-II; Peter Jackson "The idea of 'race' and the geography of racism" in Peter Jackson ed. Race and Racism (London: Unwin Hyman, 1987) at 3-21; Ronald T. Takaki Iron Cages: Race and Culture in Nineteenth-Century America (New York: Knopf, 1979); Gloria A. Marshall "Racial Classifications: Popular and Scientific" in Sandra Harding ed. The "Racial" Economy of Science: Toward a Democratic Future (Bloomington: University of Indiana Press, 1993) at 116.

66. Robert Miles Racism (London: Tavistock, 1989); Anderson Vancouver's Chinatown at 3-18.

67. Backhouse "The White Women's Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada;" Walker "Race," Rights and the Law chapter 2. The importance of the case to the Chinese-Canadian community is evidenced by the decision of a number of Chinese merchants to band together to assist in the financing of the appeals: see "White Girls Cannot Work for Chinamen" Swift Current Sun 24 February 1914, p.9, which states: "The Chinese banded together to fight the Act....;" "Chinese Resent Stigma Which the Decision Carries" Saskatoon Phoenix 25 February 1914; and Quong Wing S.A.B., "Bonds and Affidavits of Quong Wing, Chan Don and Yip Foo" 12 August 1913, Supreme Court of Canada. The decision of the Supreme Court of

Saskatchewan, where the majority of the white judges holds that the statute is within the legislative competence of the province, is found in Quong Wing and Quong Sing S.A.B., "Judgments of Lamont J., Brown J., and Haultain, C.J., Supreme Court of Saskatchewan En Banc" 9 July 1913; reported as Rex v. Quong Wing, [1913] 4 W.W.R. 1135, (1913), 12 D.L.R. 656, 24 W.L.R. 913, 21 C.C.C. 326, 6 Sask. R. 242. Judge John Henderson Lamont announces that "all argument...as to the wisdom or unwisdom, the justice or injustice, of provincial legislation, or the fact that it discriminates against one person or set of persons and in favour of another person or set of persons is excluded from our consideration. The only matter for inquiry is as to the legislative competence of the Provincial Legislature to pass the Act impeached." The majority upholds the statute as falling within the class of subjects designated as provincial matters under "property and civil rights in the province" and "local works and undertakings," and not impinging upon the federal powers pertaining to "naturalization and aliens." Chief Justice Sir Frederick William Gordon Haultain dissents, finding the statute ultra vires and noting: "The regulations which are here impeached are not really aimed at the regulation of restaurants, laundries, and other places of business and amusement, or of the employment of female labour, but are devised to deprive the Chinese, whether naturalized or not, of the ordinary rights of the inhabitants of Saskatchewan. The right to employ, the right to be employed, the right to own property and to own, manage or conduct any business without being subjected to unequal and discriminatory restrictions, are just as truly ordinary rights of the inhabitants of Saskatchewan as the right to work."

The decision of the Supreme Court of Canada to uphold the statute as valid, notes that although it affected the civil rights of the Chinese, the act was primarily

directed to the "protection of white women and girls," something well within provincial jurisdiction. Justice John Idington is the only judge who declares the statute odious on racial grounds: "In truth, its evident purpose is to curtail or restrict the rights of Chinamen. [...] This legislation is but a piece of the product of the mode of thought that begot and maintained slavery; not so long ago fiercely claimed to be a laudable system of governing those incapable of governing themselves." The Supreme Court of Canada decision is found in Quong Wing v. The King (1914), 49 S.C.R. 440, [1914] 6 W.W.R. 270, (1914), 18 D.L.R. 121, 23 C.C.C. 113; leave to appeal to the Privy Council refused 19 May 1914.

68. The case is not reported in the law reports, and the only records come from the Saskatoon Daily Star: "What is White Woman? Definition Puzzled Magistrate and Lawyers in Case of Orientals in Court" 14 August 1912, p.3; "Counsel for Defence in Orientals Case Questions Authority of Provincial Legislature to Pass Act" 15 August 1912, p.3.

69. Angus McLaren Our Own Master Race: Eugenics in Canada, 1885-1945 (Toronto: McClelland & Stewart, 1990) at 25; James W.St.G. Walker "'Race' Policy in Canada: A Retrospective" in O.P. Dwivedi **et al.** Canada 2000: Race Relations and Public Policy (Guelph: University of Guelph, 1989) at 14; Ruth A. Frager "Class, Ethnicity, and Gender in the Eaton Strikes of 1912 and 1934" in Iacovetta and Valverde Gender Conflicts 189 at 209.

70.8 For the "nigger" reference, see Fryer Black People at 53, citing H.J.S. Cotton

New India or India in Transition (Kegan Paul, Trench, 1885) at 41-7. The white British imperialist, Cecil Rhodes, identified peoples from Africa and Asia as sharing the same skin pigmentation, referring to "the dark-skinned myriads of Africa and Asia;" Fryer at 68, citing W.T. Stead, ed. The last will and testament of Cecil John Rhodes..., Review of Reviews Office (1902) at 140. For an "Oriental" reference, see Vancouver Sun 18 and 19 June 1907, as quoted in Ferguson A White Man's Country at 46: "Right-thinking people know that the natives of Hindustan...should not be allowed in this country, except for circus purposes... We do not think as Orientals do. That is why the East Indians and other Asiatic races and the white race will always miscomprehend each other." Howay British Columbia also refers at 266 to Hindu immigrants from India as "Oriental."

71. The "Italian" reference is from Richard Marpole, Vancouver, white general superintendent of the Pacific Division of the Canadian Pacific Railway Report of the Royal Commission on Chinese and Japanese Immigration 1902, at 194. The white Saskatchewan historian, John Hawkes, the provincial legislative librarian and self-acclaimed "pro-foreigner" makes the statement regarding Slovaks and other specified groups in Hawkes Saskatchewan and Its People at 681; see also 690.

72. Hawkes Saskatchewan and Its People at 1397-8. See also Liz Curtis Nothing But the Same Old Story: The Roots of Anti-Irish Racism (London: Information on Ireland, 1984) at 55, where she notes that the Celts have been labelled racially distinct from Anglo-Saxons, and the British working classes have been considered a "race apart" from the British upper classes. On the racial construction of the Irish in the American context, see Noel Ignatiev How the Irish Became White (New York: Routledge, 1995);

Roediger The Wages of Whiteness at 133-4; and Marshall "Racial Classifications: Popular and Scientific" at 122-4.

73. Saskatoon Daily Star "Letters to the Editor: The White Help Question" 19 August 1912, p.3.

74. Saskatoon Daily Star "Judge Finds Law Valid in Oriental Help Case and Gives Decision Against Chinamen and Jap Which Counsel Announces He Will Appeal" 21 August 1912, p.3.

75. "An Act to prevent the Employment of Female Labour in Certain Capacities" S.S. 1918-19, c.85; "Municipalities Will Decide on Employment" Regina Leader 18 January 1919; "Employment Agencies to Vanish Now" 22 January 1919.

76. "An Act for the Protection of Women and Girls in certain Cases" S.B.C. 1923, c.76, repealing the "Municipal Act Amendment Act, 1919" s.13. See also "An Act for the Protection of Women and Girls in certain Cases" R.S.B.C. 1924, c.275; "An Act for the Protection of Women and Girls in certain Cases" R.S.B.C. 1936, c.309, and "An Act for the Protection of Women and Girls in certain Cases" R.S.B.C. 1948, c.366. The inclusion of "Indian women and girls" may have been a belated response to concerns occasionally voiced about "half-breed and Indian women being enticed into opium dens and supplied with opium and liquor, and being ravished by any number of the inmates;" see testimony of William Moresby, the white gaoler at New Westminster, British Columbia Report of the Royal Commission on Chinese Immigration 1885, at 108. Other

accounts appear at 62 and 67. See also Roy White Man's Province at 274, citing the Columbian 13 September 1882; Vancouver World 31 January 1908; and District Ledger 14 November 1908, quoting the World. The inclusion of Aboriginal women most certainly was not an attempt to equate white women with First Nations' women in law, since the province retained numerous discriminatory provisions affecting First Nations' women, ranging from the franchise to liquor licensing: see discussion of Sero v. Gault in chapter 4 and Re Eskimos in chapter 2. Despite the deletion of any mention of Chinese employers from the amended statute, they were clearly to continue to be the focus of the British Columbia act, as a member of the retail group of the Victoria Chamber of Commerce made explicit. The prosperity of Chinese merchants, he claimed, was "a blot on the racial conscience" of white Victorians: Roy "Protecting Their Pocketbooks" at 118, citing Victoria and Vancouver papers, 1922-23. Anderson Vancouver's Chinatown notes at 159-64 that the statute was enforced only sporadically. In the mid-1930s, Vancouver authorities gave notice to several Chinese restaurants to dismiss their white staff or face the cancellation of their municipal licences. Chinese businessmen retained legal counsel to protest such measures, and thirty displaced waitresses took their complaints about their terminations to City Hall. Such resistance proved largely ineffective. The "Trade Licences Act" S.B.C. 1928, c.49 is another example of anti-Chinese legislation, intended by the racist white lobbyist, T.R.E. MacInnes, to "establish what the Afrikanders call 'class areas' and...a racial as well as occupational zoning system." The act permits municipalities to ask the cabinet to appoint a board that can refuse to renew or issue any business license it judges to be against the public interest. Due to concerns about the act's constitutionality, no board was ever established, and the

act was quietly repealed in 1936: Roy "Protecting Their Pocketbooks" at 121-3.

77. For some examples of alternate spellings, see "Allow White Female Help in Chinese Restaurants" Regina Morning Leader 8 August 1924, p.1; "Council Turns Down Request of Yee Klung" Regina Morning Leader 8 October 1924, p.3; "Court to Decide Chinese Rights" Regina Morning Leader 22 October 1924, p.9. Canadian reporters had for some years taken to ridiculing Chinese names in their articles. See, for example, "22 Chinamen Arrested in a Gambling Den" Regina Evening Province 25 September 1916, p.7: "The names given by the men to the station sergeant were a source of much merriment to the bystanders. Ham Ung, for instance, was immediately nicknamed 'Ham And;' Oh Mah was accused of wanting his mama, and I Go, Mee Soon, Wee Love were good for a laugh apiece."

78. Li "Chinese Immigrants on the Canadian Prairie 1910-1947" at 531-2; Roy White Man's Province at x-xi. The Regina population statistics are drawn from the Sixth Census of Canada, 1921 v.1 at 542-3. Regina's total population in 1921 is listed as 34,432, with 17,801 males and 16,631 females. The Saskatchewan data show an overall provincial population of 757,510, of which 2,593 are Chinese males and 74 are Chinese females. For a more detailed discussion of the experience of the first Chinese women in Canada, see Women's Book Committee Jin Guo; Nipp "Canada Bound." The Henderson Directories for Regina show Yee Clun as residing initially in an apartment on Rose Street, just down from his restaurant. By 1923, Yee Clun took up residence at 1821 Osler, near the headquarters of the Chinese Nationalist Party; he remained at that address until 1930, the last year he is listed in the Directory. I am indebted to Elizabeth

Kalmakoff of the Saskatchewan Archives Board for the Henderson Directory information.

79. Yee Clun was the "prime mover" in securing "larger and more modern quarters" for the Chinese National Party, a brick building at 1809 Osler Street, to furnish community meeting rooms and residential accommodation for "bachelor" Chinese residents: "Allow White Female Help in Chinese Restaurants" Regina Morning Leader 8 August 1924, p.1; "Council Turns Down Request of Yee Klung" 8 October 1924, p.3; "Chinese National Party Reorganizes" 29 December 29, 1922, p.9; "Chinese Society to Move Quarters" 16 December 1922, p.17. The Henderson Directory for Regina first lists Yee Clun as the proprietor of the Exchange Grill in 1917. By 1920, Jow Tai has joined Yee Clun as the proprietor, and the two are listed jointly or alternately as proprietors until 1930, when Yee Clun disappears and Jow Tai carries on the business by himself. I am indebted to Elizabeth Kalmakoff of the Saskatchewan Archives Board for the Henderson Directory information. On the importance of the housing facilities that Chinese restaurants offered to Chinese immigrants on the prairies, see Li "Chinese Immigrants on the Canadian Prairie" at 534-5.

80. "Allow White Female Help in Chinese Restaurants" Regina Morning Leader 8 August 1924, p.1. The "Chinese Immigration Act" S.C. 1923, c.38, restricts the admission of Chinese individuals to diplomatic officials and their retinues, Canadian-born children of Chinese origin who have been absent for education or other purposes, students attending a degree-granting institution and merchants. The act was so effective an exclusionary device that only forty-four Chinese individuals entered Canada over the

next two dozen years, causing Chinese populations to age, and Chinatowns across the country to wither and decline. See Andracki Immigration of Orientals into Canada; Angus "Canadian Immigration;" Li "Immigration Laws and Family Patterns;" Jean Barman The West Beyond the West: A History of British Columbia (Toronto: University of Toronto Press, 1991) at 233; McEvoy "A Symbol of Racial Discrimination" at 24-42; Ward White Canada Forever at 165; Adilman "Chinese Women and Work" at 71, and Wickberg **et al.** From China to Canada at 212; Walker "Race, Rights and the Law" at 266-70.

81. In one of a series of civil suits launched in 1908, Mack Sing, the proprietor of a store on Osler Street since 1905, was successful in claiming false arrest and imprisonment: Mack Sing v. Smith (1908), 9 W.L.R. 28; 1 Sask. R. 454 (Sask. S.C.). The white Judge Prendergast released the white mayor, J.W. Smith, from liability due to his peripheral involvement in the raid. R.J. Harwood (Regina's white chief of police), A.J. Hogarth and Charles E. Gleadow (Regina's white constables) and C.H. Hogg (a white corporal in the Royal North-West Mounted Police) were held liable for \$25. in damages. The low penalty was partly due to the lack of "malice" on the part of the defendants. It also reflects the court's anti-Chinese bias: "As to the quantum of damages, I think they should be assessed low. [...] Their habits, their customs, their mode of living, make it safe to say that in the circumstances they have not been injured in their reputation, neither with their own compatriots nor with the general community of this city...." Although some of the Chinese individuals arrested were clearly intent upon challenging the abuse of police authority, others were apparently anxious to cooperate and not obstruct the police during their raid. The judge notes that some police officers

testified that the Chinese men arrested were "willing (one of the witnesses for the defence said, 'even anxious') to assist the police by shewing them where the Chinese residences were and accompanying them to the city hall, to facilitate the carrying out of the method of search they had adopted." The court concludes, however, that "what was called their acquiescence and readiness was undoubtedly the effect of a sense of their helplessness. They knew it was useless to offer opposition, they did not wish to take the responsibility of resisting peace officers, and consequently they submitted."

82. "Regina May Have Segregated Chinese Colony" Regina Daily Province 14 November 1912, p.3, quoting Police Chief Zeats.

83. "Allow White Female Help in Chinese Restaurants" Regina Morning Leader 8 August 1924, p.1.

84. "Protest White Girl Help in Chinese Restaurants" Regina Morning Leader 12 August 1924, p.1; "Women Object To Yee Clun's Application" 13 August 1924, p.1. On the W.C.T.U. generally, see Nancy M. Sheehan "The WCTU on the Prairies 1886-1930" Prairie Forum 6:1 (1981) 17-33; Marcia A. McGovern "The Women's Christian Temperance Union Movement in Saskatchewan 1886-1920: A Regional Perspective on the International White Ribbon Movement" M.A. Thesis (University of Regina: 1977).

85. Regina Morning Leader "Protest White Girl Help in Chinese Restaurants" 12 August 1924, p.1; "City Women Oppose White Female Help for Chinese" 24 September 1924, p.9; "Is Not Alarmed at Inter-Marriages" 29 October 1924, p.2. See also Janet

Harvey "The Regina Council of Women, 1895-1929" M.A. Thesis (University of Regina: 1991) at 127; Saskatchewan Local Council of Women Minute Books S.A.B. S-B82 I.3, 21 March 1921 at 3-4; 14 April 1921 at 1; 28 April 28 1921 at 1-2; Minute Books S.A.B. S-B82 I.4, 3 April 1926 at 24; 18 December 1927 at 81; 25 April 1930 at 191; 27 May 1930 at 193; Georgina M. Taylor "Grace Fletcher, Women's Rights, Temperance, and 'British Fair Play' in Saskatoon, 1885-1907" Saskatchewan History 46:1 (Spring 1994) 3-21.

86. Harvey "Regina Council of Women;" N.E.W. Griffiths The Splendid Vision: Centennial History of the National Council of Women of Canada 1893-1993 (Ottawa: Carleton University Press, 1993) at 48, 70, 96, 184; Saskatchewan Labour Women's Division Saskatchewan Women, 1905-1980 (n.d., n.p.).

87. Canadian Publicity Co. Pioneers and Prominent People of Saskatchewan (Toronto: Ryerson Press, 1924) at 80; Provincial Council of Women of Saskatchewan History of the Provincial Council of Women of Saskatchewan, 1919-1954 (Regina: Commercial Printers, 1955); Harvey "Regina Council of Women" at 56-7; Elizabeth Kalmakoff "Naturally Divided: Women in Saskatchewan Politics, 1916-1919" Saskatchewan History 46:2 (Fall 1994) 3-18. Nadine Small "The Lady Imperialists and the Great War: The Imperial Order Daughters of the Empire in Saskatchewan 1914-1918" in David De Brou and Aileen Moffatt "Other" Voices: Historical Essays on Saskatchewan Women (Regina: Canadian Plains Research Center, University of Regina, 1995) 76 alludes at 78 to the racial exclusiveness of at least one of Stapleford's women's clubs: "Until at least the end of the Great War, the membership lists of the IODE in

Saskatchewan did not contain names of women of Asian, south European or east-central European descent. [...] IODE members called all non-British immigrants 'foreigners' whether or not they were naturalized citizens. Foreign-born female immigrants who were not completely Canadianized did not qualify to become members of the Order because the Order did not consider them to be loyal British subjects. [...] IODE members even questioned the loyalty of British women who married foreigners."

88. "May Not Treat Chinese Apart from Others" Regina Morning Leader 20 August 1924, p.1.

89. "City Women Oppose White Female Help for Chinese" Regina Morning Leader 24 September 1924, p.9; "Resolution Refused to Women's Labour Leagues" Labour Gazette October 1924, p.852. On the Women's Labour League, see Christine Collette "For Labour and For Women: The Women's Labour League, 1906-18" Labour/Le Travail v.26 (1990) 230; Patricia Roome "Amelia Turner and Calgary Labour Women, 1919-1935" in Linda Kealey and Joan Sangster, eds. Beyond the Vote: Canadian Women and Politics (Toronto: University of Toronto Press, 1989) 89-117; Varpu Lindstrom-Best "Finnish Socialist Women in Canada, 1890-1930" in Kealey and Sangster, eds. Beyond the Vote 196 at 207; Alison Prentice **et al.** Canadian Women: A History (Toronto: Harcourt, Brace, Jovanovich, 1988) 219, 278; "Women's Labor League Active" Calgary Searchlight 23 January 1920, p.4; "Work of the Women's Labor League in Calgary" 4 September 1920, p.3.

90. "Women Object To Yee Clun's Application" Regina Morning Leader 13

August 1924, p.1; "May Not Treat Chinese Apart from Others" 20 August 1924, p.1.

Although the paper reports the name Mrs. W.J. Vennele, this is probably a misprint, as no such name is listed in the Regina Henderson's Directory for 1924. The proper spelling must have been Vennels, for William J. Vennels, a news superintendent at the Leader Publishing Company, was active in the Regina Trades and Labour Council in 1924.

91. Harvey "Regina Council of Women" at 140; "May Not Treat Chinese Apart from Others" Regina Morning Leader 20 August 1924, p.1.

92. "Spreading the Drug Habit" Regina Morning Leader 7 April 1922, p.4; "Chinatown at Vancouver to Get Cleanup" 3 October 1924, p.1; "Seek to Have Drug Peddler Deported Soon" 6 November 1924, p.9; Anderson Vancouver's Chinatown at 101. I have been unable to determine anything further about Mrs. Reninger and Mrs. Armour. The Henderson Directory for Regina lists several entries under these names during the relevant period. Mrs. Margaret W. Armour, the widow of Robert Armour (previously a wholesale and retail butcher and the secretary-treasurer of Hugh Armour & Co. Ltd.) resides at 1876 Rose Street from 1920-26, and may be the individual concerned. The "Armour Block" at South Railway and Board Street is across the back alley from the Exchange Grill. I am indebted to Elizabeth Kalmakoff of the Saskatchewan Archives Board for the Henderson Directory information. For late 19th-century American references to fears that Chinese men might debauch their white, female Sunday School teachers, see Miller The Unwelcome Immigrant at 185. "Bend Energies to End White Slavery" Regina Morning Leader 28 May 1912, p.7 outlines addresses made by Canadian delegates to the London meeting of the National Council of Women of Canada. When

the matrons of Victoria, British Columbia, learned that some Chinese merchants had employed white, female high school students to teach English to their children in their homes, the Local Council of Women petitioned Victoria city council in 1909 to pass by-laws to prohibit "this dangerous element of Chinatown's educational methods:" see Lai Chinatowns at 54, citing the Victoria Colonist 30 July 1909. English-language tutoring was often necessary for Chinese children to obtain admission to Victoria public schools.

93. "May Not Treat Chinese Apart From Others: Blair Throws Bomb to Alderman in City Council" Regina Morning Leader 20 August 1924, p.1.

94. On Blair's life and career, see "G.F. Blair Taken by Death While Sitting at Desk" 2 March 1926, p.2. On Rev. MacKinnon's earlier position, see Regina Evening Leader 24 May 1914, p.1.

95. "May Not Treat Chinese Apart from Others" Regina Morning Leader 20 August 1924, p.1; "G.F. Blair Taken by Death While Sitting at Desk" 2 March 1926, p.2. On the location of the Chinese Y.M.C.A. in the club-room of the Chinese National Party, see "Chinese National Party Reorganizes" 29 December 1922, p.9.

96. "Lawyer marks 80th birthday" Regina Leader-Post 4 June 1959; "Prominent city lawyer passes" 14 March 1964; Osgoode Society Oral History Transcript of Interview with Stuart Thom (Douglas J. Thom's son) 6 November 1981 at 5-35; "Thom, Douglas J. K.C." Who's Who in Canada, 1938-39 (Toronto: International Press, 1939) at 1312; James M. Pitsula Let the Family Flourish: A History of the Family Service Bureau

of Regina, 1913-1982 (Regina, 1982) at 35-6. Douglas Thom was born in 1879 in Norwood, Ontario, the son of Rev. James and Mattie M. (Simmons) Thom. He obtained a B.A. from the University of Toronto, Victoria College. His law firm had a substantial commercial practice that included real estate and mortgages, collections, civil litigation, wills and machine company business. Thom published "a definitive work on land titles in Western Canada" titled Thom's Canadian Torrens System. Thom was trustee of the Regina Collegiate Institute Board, active as a Mason, and belonged to the Assiniboia Club. He was president of the Canadian Club, president of the Board of Trade, vice-consul in Saskatchewan for the Netherlands, president of the Regina Orchestral Society, president of the Community Chest and vice-president of the Canadian Bar Association. Mabel Thom, the daughter of Rev. E.A. Chown, was born near Petrolia, Ontario. She met her husband at university, and later moved out west to join him. There were four children born of the marriage. Mrs. Thom's son described her "two major interests" as the Council of Women and the University Women's Club, noting that she once travelled to an international conference in Sweden to represent the National Council of Women of Canada. "She was quite active. She also enjoyed it," he adds, noting at 43-6: "She enjoyed jousting with her friends and politicking for office and this kind of thing. She was no little mouse. She wasn't a little domestic housewife, she was a much more outgoing woman than that...." Mary Kinnear In Subordination: Professional Women, 1870-1970 (Montreal: McGill-Queen's University Press, 1995) notes at 157 that Mabel Thom served as the President of the Canadian Federation of University Women in the 1930s, where she argued against restrictions on the professional lives of women with families.

97. "Chinese Immigration Act" S.C. 1885, c.71, s.4 establishes the head tax. "An Act respecting and restricting Chinese Immigration" S.C. 1900, c.32 increases the tax to \$100, and "An Act respecting and restricting Chinese immigration" S.C. 1903, v.I, c.8 raises the amount to \$500.

98. "An Act respecting Chinese Immigration" S.C. 1923, c.38. In addition, Order in Council P.C. 1923-1272, Canada Gazette 1923, LVII at 277, 10 July 1923, requires all Chinese people living in Canada to be registered. These provisions are repealed in "An Act to amend the Immigration Act and to repeal the Chinese Immigration Act" S.C. 1947, c.19. Discriminatory immigration rules continued to impede Chinese entry even after 1947. Until 1956, Chinese individuals had to be Canadian citizens to bring in dependent wives and children, whereas other Canadians only had to qualify as residents.

99. Most provinces excluded First Nations' voters as well; for details, see discussion of the Sero v. Gault case in chapter 4. I am indebted to Bruce Ryder who has collected the details regarding the British Columbia statutes and discusses their historical significance in greater depth in "Racism and the Constitution" unpublished manuscript, chapter 5. In its first session in 1872, the British Columbia legislature amended the "Qualification and Registration of Voters Act" S.B.C. 1872, c.39, s.13 to exclude "Chinese" and "Indians" from the provincial vote. See also "An Act relating to an Act to make better provision for the Qualification and Registration of Voters" S.B.C. 1875, c.2, s.1 and 2; "An Act to Regulate Immigration into British Columbia" S.B.C. 1900, c.11, s.5; S.B.C. 1902, c.34, s.6; S.B.C. 1903, c.12, s.6; S.B.C. 1907, c.21A, s.6; S.B.C. 1908, c.23, s.6. "Japanese" and "Hindu" individuals are added to the excluded classes by "Provincial Voters' Act Amendment Act"

S.B.C. 1895, c.20, s.2; "Provincial Elections Act" S.B.C. 1903-4, c.17, s.6; "Provincial Elections Act Amendment Act" S.B.C. 1907, c.16, s.3; "Provincial Elections Act" S.B.C. 1920, c.27, s.5(1)(a); R.S.B.C. 1924, c.76; S.B.C. 1931, c.20; R.S.B.C. 1936, c.84; "Provincial Elections Act" S.B.C. 1939, c.16, s.5. The "Provincial Elections Act Amendment Act" S.B.C. 1947, c.28 gives the franchise to all except the Japanese and "Indians," but takes it from the Doukhobors, the Hutterites and the Mennonites, unless they have been in the Armed Forces. The same statute also bars from suffrage "every person who does not have an adequate knowledge of either the English or French language." This may have affected many Chinese persons. See also R.S.B.C. 1948, c.106. "Provincial Elections Act Amendment Act, 1949" S.B.C. 1949, c.19 finally repeals the law prohibiting the Japanese and First Nations from voting. The Chinese, Japanese, "other Asiatics" and First Nations are also excluded from the municipal franchise: see "Municipality Amendment Act" S.B.C. 1876, c.1, s.9; "Vancouver City Incorporation Act" S.B.C. 1886, c.32, s.8; "New Westminster Incorporation Amendment Act" S.B.C. 1895, c.65, s.3; "Municipal Elections Act" S.B.C. 1896, c.38, s.7; "Vancouver Incorporation Act" S.B.C. 1900, c.54, s.7; "Municipal Elections Act" S.B.C. 1908, c.14, s.13(1); "Municipal Elections Act" R.S.B.C. 1911, c.71, s.4; R.S.B.C. 1924, c.75; R.S.B.C. 1936, c.83; R.S.B.C. 1948, c.105. Asians and First Nations' people are denied the right to vote in elections for school trustees: "Public Schools Amendment Act" S.B.C. 1884, c.27, s.10; "Public Schools Act" S.B.C. 1885, c.25, s.19; "Public Schools Act" R.S.B.C. 1897, c.170, s.19; "Public Schools Act" S.B.C. 1905, c.44, s.25; "Public Schools Act" R.S.B.C. 1911, c.206, s.31; S.B.C. 1922, c.64; R.S.B.C. 1924, c.226; R.S.B.C. 1936, c.253, s.93(4). See also "An Act to amend the 'Public Schools Act'" S.B.C. 1948, c.80, s.31, and R.S.B.C. 1948, c.297, s.92(4), which remove

"Hindus" from the list, but continue to disqualify "Chinese, Japanese and Indians." Chinese, Japanese, "other Asiatics" and First Nations' people are also barred from voting in elections of trustees for an improvement district under the Water Act: "Water Act" S.B.C. 1914, c.81, s.187(1); S.B.C. 1920, c.102, s.27; R.S.B.C. 1924, c.271, s.199. Similar restrictions apply to signing petitions regarding liquor licences: "An Act to amend the 'Municipal Clauses Act'" S.B.C. 1908, c.36, s.26-27; "An Act Respecting Liquor Licences and the Traffic in Intoxicating Liquors" S.B.C. 1910, c.30; R.S.B.C. 1911, c.142; R.S.B.C. 1911, c.170. Since the right to hold public or professional office is limited to those on the provincial voting list, these groups are consequently barred from jury service: "Jurors' Act" S.B.C. 1883, c.15, s.5. They are also denied the right to run for election to the provincial legislature: "Qualification and Registration of Voters Act" S.B.C. 1876, c.5, s.3; "Constitution Act" C.S.B.C. 1888, c.22, s.30; or for municipal government: "Municipal Clauses Act" S.B.C. 1896, c.37, s.14-18; "Municipal Clauses Act" S.B.C. 1906, c.32, s.14-18; "Municipal Act" S.B.C. 1914, c.52, s.16-19; "Municipal Election Act" S.B.C. 1896, c.38, s.36; or for school trustee: "Public Schools Act" S.B.C. 1885, c. 25, s.19 and 30; "Public Schools Act" S.B.C. 1891, c.40, s.19 and 40; "Public Schools Act" R.S.B.C. 1897, c.170, s.19, 24 and 28; "Public Schools Act" S.B.C. 1905, c.44, s.25 and 32; "Public Schools Act" R.S.B.C. 1911, c.206, s.31 and 38; "Public Schools Act" S.B.C. 1922, c.64, s.37. Chinese and South Asian men and women received the right to vote in 1947: "Provincial Elections Act Amendment Act" S.B.C. 1947, c.28, s.14. Japanese and First Nations' men and women did so in 1949: "Provincial Elections Act Amendment Act" S.B.C. 1949, c.19, s.3.

100. In Saskatchewan, "An Act respecting Elections of Members of the Legislative Assembly" S.S. 1908, c.2, s.11 excludes "persons of the Chinese race." See also R.S.S.

1909, c.3, s.11; R.S.S. 1920, c.3, s.12; R.S.S. 1930, c.4, s.12; R.S.S. 1940, c.4, s.12. "An Act to amend The Liquor License Act" S.S. 1909, c.38 prohibits the Chinese from voting on local by-law options. The electoral disqualification of the Chinese is removed by S.S. 1944, c.2, s.2. See also "An Act to amend the Saskatchewan Election Act" S.S. 1946, c.3, s.1; "An Act to protect Certain Civil Rights" S.S. 1947, c.35, s.7 and "An Act to amend the Saskatchewan Election Act" S.S. 1948, c.4, s.13.

Manitoba resorts to a language test to retard access to the franchise. "An Act respecting Elections of Members of the Legislative Assembly" S.M. 1901, c.11, s.17(e) disqualifies "any person not a British subject by birth who has not resided in some portion of the Dominion of Canada for at least seven years...unless such person is able to read any selected portion or portions of 'The Manitoba Act' in one of the following languages, that is to say, English, French, German, Icelandic or any Scandinavian language...." Since those who could meet the language test could vote after one year of residence (s.16), this meant a potential delay of six years. See also R.S.M. 1902, c.52, s.19(e). This test is deleted by "An Act to amend 'The Manitoba Election Act'" S.M. 1904, c.13, s.2. For comparable details regarding restrictions on the First Nations' franchise, see discussion of the Sero v. Gault case in chapter 4.

101. "An Act respecting the Electoral Franchise" S.C. 1885, c.40, s.2. The "Franchise Act 1898" S.C. 1898, c.14, s.5(a) states: "The qualifications necessary to entitle any person to vote thereat shall be those established by the laws of that province as necessary to entitle such person to vote in the same part of the province at a provincial election." See also "Dominion Elections Act" S.C. 1900, c.12; "Dominion Elections Act"

R.S.C. 1906, c.6, s.6 and 10; "Dominion Elections Act" S.C. 1920, c.46, s.30(g); "Dominion Elections Act" R.S.C. 1927, c.53, s.30(g); "Dominion Elections Act" S.C. 1938, c.46, s.14(2)(i). The federal government removed its provincial piggy-backing race provisions in 1948, providing that provincial disqualification would no longer constitute a reason for disqualification from the federal franchise: "Dominion Election Act" S.C. 1948, c.46, s.6.

102. Some provisions bar the Chinese (and Japanese) specifically, while others use more indirect language requirements. See various enactments relating to coal mines, metalliferous mines, quarries, metallurgical works and placer mines: S.B.C. 1877, c.15, s.46, Rule 33; S.B.C. 1888, c.84, s.7; C.S.B.C. 1888, c. 84, s.79, Rule 34; S.B.C. 1890, c.33, s.4; S.B.C. 1894, c.5, s.2; S.B.C. 1895, c.38; S.B.C. 1897, c.27, s.12 and 14; R.S.B.C. 1897, c.138, s.82, Rule 34; R.S.B.C. 1897, c.134, s.12; S.B.C. 1899, c.46, s.1-2 (disallowed); S.B.C. 1899, c.50 (disallowed); S.B.C. 1901, c.36, s.2; S.B.C. 1902, c.48, s.2, Rule 34 (disallowed); S.B.C. 1903, c.17, s.2, Rule 34 (disallowed); S.B.C. 1903-4, c.39, s.2; S.B.C. 1905, c.36, s.2, Rule 34 (disallowed); S.B.C. 1911, c.33, s.87, Rule 42; R.S.B.C. 1911, c.160, s.91, Rule 42; R.S.B.C. 1911, c.164, s.15, Rules 13 and 15; R.S.B.C. 1924, c.171, s.101, Rule 42; R.S.B.C. 1936, c.188, s. 2 and 6, Rule 42; S.B.C. 1948, c.55, s.15(5). See also In re The Coal Mines Regulation Amendment Act, 1890 (1896), 5 B.C.R. 306 (S.C.); R. v. Little (1897), 6 B.C.R. 78; R. v. Little (1898), 6 B.C.R. 321; Union Colliery Co. v. Bryden, [1899] A.C. 583; A.-G. v. Wellington Colliery Co. (1903), 10 B.C.R. 397 (C.A.); In re the Coal Mines Regulation Act and Amendment Act, 1903 (1904), 10 B.C.R. 408 (C.A.); Re the Coal Mines Regulation Act (1904), 10 B.C.R. 408; R. v. Priest (1904), 8 C.C.C. 265; 10 B.C.R. 436 (S.C.). See Alan Grove and Ross Lambertson "Pawns of the Powerful: The Politics of Litigation in the Union Colliery Case" BC Studies v.103 (Autumn 1994) 3-32. I

am indebted to Bruce Ryder for sharing his detailed legislative research on the province of British Columbia with me. For more detailed analysis of the British Columbia legislation and its reception in the courts, see Ryder "Racism and the Constitution."

103. British Columbia passed some of the earliest "contract compliance" legislation in the country, in this case designed not to reduce racial discrimination against minority populations but to enhance it. Various statutes prohibit the employment of Asian workers by companies or persons that receive "any property, rights or privileges" from the legislature. Others bar provincial assistance to businesses hiring workers unable to read in a language of Europe. See S.B.C. 1878, c.35; S.B.C. 1897, c.1 (assent reserved); S.B.C. 1898, c.28 (disallowed); S.B.C. 1900, c.14 (disallowed); S.B.C. 1902, c.38 (disallowed); S.B.C. 1903, c.14 (disallowed); S.B.C. 1905, c.30 (disallowed). Orders in council stipulate that in all contracts, leases and concessions entered into by the government, provision must be made barring the employment of Chinese or Japanese workers: see Resolution, 15 April 1902, reproduced in the schedule to "Oriental Orders in Council Validation Act" S.B.C. 1921, First Session, c.49 (disallowed). These affect timber licences, mining leases, railway contracts on public lands, public works contracts affecting roads, telegraphs, telephone lines, harbours, canals and dams, and all instruments issued under the Land Act, Coal Mines Act, Water Clauses Consolidation Act, and the Placer Mining Act. See also In re the Japanese Treaty Act, 1913, [1920] 3 W.W.R. 937, (1920), 56 D.L.R. 69, 29 B.C.R. 136 (C.A.); In re Oriental Orders in Council Validation Act (1922), 63 S.C.R. 293; 65 D.L.R. 577 (S.C.C.); appealed [1923] 4 D.L.R. 698; 3 W.W.R. 945 (P.C.); Attorney-General for British Columbia v. Brooks-Bidlake and Whittall Ltd. (1922), 63 S.C.R. 466; 66 D.L.R. 475; [1922] 3 W.W.R. 9 (S.C.C.); appealed [1923] 1 W.W.R. 1150; 2 D.L.R. 189 (P.C.); A.-G.

B.C. v. A.-G. Can. (Japanese Treaty Case), [1924] A.C. 203. For more details see Ryder "Racism and the Constitution."

104. For a thorough analysis see Ryder "Racism and the Constitution" unpublished manuscript, who notes at 125 that between 1885 and 1907, the British Columbia Legislature inserted a clause prohibiting the hiring of Asian labour in fifty-seven acts incorporating private companies, of which only a few were disallowed. See S.B.C. 1885, c.30, s.32; S.B.C. 1885, c.31, s.38; S.B.C. 1886, c.16, s.4; S.B.C. 1886, c.22, s.8; S.B.C. 1886, c.25, s.27-30; S.B.C. 1886, c.26, s.8, 11-14; S.B.C. 1886, c.27, s.16-19; S.B.C. 1886, c.29, s.19-22; S.B.C. 1886, c.30, s.10-13; S.B.C. 1886, c.31, s.16-19; S.B.C. 1886, c.33, s.35-8; S.B.C. 1886, c.34, s.3-6; S.B.C. 1886, c.35, s.36-9; S.B.C. 1890, c.50, s.27-30; S.B.C. 1891, c.48, s.58-61; S.B.C. 1891, c.69, s.20-3; S.B.C. 1894, c.3, s.2; S.B.C. 1894, c.19, s.2, S.B.C. 1895, c.59, s.3-6; S.B.C. 1896, c.56, s.4; S.B.C. 1896, c.51, s.6; S.B.C. 1896, c.6, s.3; S.B.C. 1897, c.1 (assent reserved); S.B.C. 1898, c.10, s.30; S.B.C. 1898, c.30, s.7; S.B.C. 1898, c.46, s.21; S.B.C. 1898, c.47, s.29; S.B.C. 1898, c.48, s.17; S.B.C. 1898, c.50, s.39; S.B.C. 1898, c.51, s.10; S.B.C. 1898, c.52, s.35; S.B.C. 1898, c.53, s.20; S.B.C. 1898, c.54, s.25; S.B.C. 1898, c.55, s.49; S.B.C. 1898, c.56, s.27; S.B.C. 1898, c.57, s.11; S.B.C. 1898, c.58, s.39; S.B.C. 1898, c.59, s.43; S.B.C. 1898, c.60, s.34; S.B.C. 1898, c.61, s.44; S.B.C. 1898, c.62, s.23; S.B.C. 1898, c.63, s.12; S.B.C. 1898, c.64, s.24; S.B.C. 1898, c.44, s.7 (disallowed); S.B.C. 1898, c. 28 (disallowed); S.B.C. 1899, c.44, s.6 (disallowed); S.B.C. 1899, c.78, s.35; S.B.C. 1899, c.79, s.15; S.B.C. 1899, c.80, s.38; S.B.C. 1899, c.81, s. 39; S.B.C. 1899, c.83, s.18; S.B.C. 1899, c.84, s.7; S.B.C. 1899, c.85, s.5; S.B.C. 1899, c.86, s.5; S.B.C. 1899, c.87, s.31; S.B.C. 1899, c.88, s.22; S.B.C. 1899, c.89, s.37; S.B.C. 1900, c.14 (disallowed); S.B.C. 1901, c.65, s.2; S.B.C. 1901, c.69, s.27; S.B.C. 1901, s.70, s.2;

S.B.C. 1901, c.71, s.21; S.B.C. 1901, c.72, s.21; S.B.C. 1901, c.73, s.23; S.B.C. 1901, c.77, s.24; S.B.C. 1901, c.78, s.22; S.B.C. 1901, c.79, s.20; S.B.C. 1901, c.81, s.23; S.B.C. 1901, c.83, s.32; S.B.C. 1901, c.84, s.22; S.B.C. 1901, c.85, s.25, S.B.C. 1901, c.86, s.26; S.B.C. 1901, c.87, s.24; S.B.C. 1902, c.57. The "Companies Act" S.B.C. 1897, c.2, s.145 prohibits any Chinese company from doing business in British Columbia.

105. Some require higher licensing fees from Chinese applicants than from others. Some expressly deny licences to the Chinese, while still others do so indirectly through a discriminatory application of facially neutral policies. Others operate by restricting licences to persons on the voters' list, from which Asians are excluded. See, for example, S.B.C. 1881, c.16, s.104, s.110(10); S.B.C. 1884, c.4, s.14 and 16; S.B.C. 1885, c.21, s.11; S.B.C. 1894, c.29, s.5; S.B.C. 1899, c.39, s.22-3, 36 (disallowed); S.B.C. 1902, c.40, s.2; S.B.C. 1909, c.28, s.7; S.B.C. 1910, c.30, s.26; R.S.B.C. 1911, c.129, s.108(2); R.S.B.C. 1911, c.142, s.25; S.B.C. 1912, c.17, s.31(b); S.B.C. 1915, c.50 (assent reserved); S.B.C. 1919, c.27, s.2; S.B.C. 1922, c.25, s.3; S.B.C. 1923, c.17, s.22(1)(b); R.S.B.C. 1924, c.84, s.3(2), s.4(2); S.B.C. 1928, c.49. See also Tai Sing v. Macguire (1878), 1 B.C.R. 101; Wing Fong's Case (1885), 1 B.C.R. 150; R. v. Gold Commissioner of Victoria District (1886), 1 B.C.R. 260; R. v. Mee Wah (1886), 3 B.C.R. 403 (Co.Ct.); In re Glover and Sam Kee (1914), 20 B.C.R. 219; R. v. Corporation of Victoria (1888), 1 B.C.R. 331; In re Kanamura (1904), 10 B.C.R. 354 (S.C.); In re the Municipal Clauses Act and in re Wah Yung & Co. (1904), 11 B.C.R. 154 (S.C.); Sing Kee v. Johnston (1902), 5 C.C.C. 454 (B.C.Co. Ct.); Loo Gee Wing v. A.F. Amor (1909), 10 W.L.R. 383 (B.C. Co. Ct.); Rex v. Sang Chong (1909), 11 W.L.R. 231; 14 B.C.R. 275 (B.C.S.C.); Glover v. Sam Kee, [1914] 5 W.W.R. 1276; (1914), 20 B.C.R. 219; 27 W.L.R. 886 (B.C.S.C.); Rex v. Low Chung (1919), 27 B.C.R. 469

(B.C.S.C.). In the township of Richmond, a Chinese farmer was convicted of violating the Lord's Day by working on a Sunday: Rex v. Sam Bow, [1919] 3 W.W.R. 315; (1919), 31 C.C.C. 269; 27 B.C.R. 234 (B.C.S.C.); appealed Rex v. Lam Joy; Rex v. Sam Bow, [1920] 2 W.W.R. 1006; (1920), 28 B.C.R. 253 (B.C.C.A.). See also attempts to convict Chinese laundrymen under factory legislation: Rex v. Chow Chin, [1920] 2 W.W.R. 997 (B.C.S.C.); Rex v. Chong Kee et al. (1920), 37 C.C.C. 22; 29 B.C.R. 165 (B.C.C.A.); Wong Sam et al. v. Hamilton (1929), 52 C.C.C. 357; 42 B.C.R. 133 (B.C.Co. Ct.). In this context, it is perhaps not surprising that Chinese businessmen were some of the first to challenge provincial marketing board schemes: see Rex v. Chung Chuck, [1928] 4 D.L.R. 659; 3 W.W.R. 129; (1928), 50 C.C.C. 235; 40 B.C.R. 352 (B.C.S.C.); (1929), 42 B.C.R. 116 (B.C.S.C.); Rex v. Wong Kit, [1928] 3 W.W.R. 401; (1928), 4 B.C.R. 424 (B.C.S.C.); reversed on appeal sub nom. Chung Chuck v. The King; Wong Kit v. The King, [1929] 1 D.L.R. 756; 1 W.W.R. 394; (1929), 51 C.C.C. 260; 40 B.C.R. 512; (1930), 54 C.C.C. 174; 43 B.C.R. 125 (B.C.C.A.); [1930] 2 D.L.R. 97; 1 W.W.R. 129; (1929), 53 C.C.C. 14 (P.C.); Rex v. Wong York, [1929] 3 W.W.R. 199; (1929), 52 C.C.C. 196; 42 B.C.R. 64 (B.C.S.C.); reversed [1930] 2 D.L.R. 552; 1 W.W.R. 388; (1930), 53 C.C.C. 68; 42 B.C.R. 246 (B.C.C.A.); Mainland Potato Committee of Direction v. Tom Yee (1931), 43 B.C.R. 453 (B.C.C.A.); Chung Chuck and Mah Lai v. Gilmore et al., [1937] 1 D.L.R. 119; [1936] 3 W.W.R. 575; (1936), 67 C.C.C. 264; 51 B.C.R. 189 (B.C.C.A.); Rex v. Chin Hong, [1936] 3 D.L.R. 307; 1 W.W.R. 711; (1936), 65 C.C.C. 334; 50 B.C.R. 423 (B.C.S.C.); Lowe Chong et al. v. Gilmore et al., [1937] 1 W.W.R. 410; 3 W.W.R. 406; (1936), 51

B.C.R. 157 (B.C.S.C.); (1937), 51 B.C.R. 559 (B.C.C.A.); Rex v. Lee Sha Fong, [1939] 3 W.W.R. 459; (1939), 54 B.C.R. 380 (B.C.S.C.); reversed on appeal [1940] 3

D.L.R. 317; 2 W.W.R. 160; (1940), 73 C.C.C. 375; 55 B.C.R. 129 (B.C.C.A.). See also discussion of the attempts by the federal Department of Fisheries to restrict the number of commercial fishing licenses issued to the Japanese in Ward White Canada Forever at 122; and discussion of the decision of the Vancouver board of licence commissioners to exclude Chinese workers from all liquor-licensed premises in 1916 as well as the requirement in 1935 for Chinese cooks in Western restaurants to undergo a physical examination for infectious diseases: Anderson Vancouver's Chinatown at 116 and 164.

106. Enrolment as a student-at-law and articulated law clerk, and registration as a certified pharmacist's apprentice were both limited to those entitled to be placed on the voters' list under the Provincial Elections Act: Rule 39 of the Law Society of British Columbia, passed pursuant to the "Legal Professions Act" S.B.C. 1895, c.29, s.37; s.15 of the Pharmacy By-Laws, passed pursuant to the "Pharmacy Act" S.B.C. 1891, c.33. The law society rule resulted from a petition in 1918 by Vancouver law students seeking to prohibit "Asiatics" from becoming lawyers: see Lee "Laws of Gold Mountain" at 312, citing A. Watts Lex Liberorum rex: History of the Law Society of British Columbia 1869-1973 (Vancouver: Law Society of British Columbia, 1973) at 36; Ryder "Racism and the Constitution;" H.F. Angus "The Legal Status in British Columbia of Residents of Oriental Race and Their Descendants" in Norman MacKenzie ed. The Legal Status of Aliens in Pacific Countries (London: Oxford University Press, 1937) 77 at 83; Joan Brockman "Exclusionary Tactics: The History of Women and Visible Minorities in the Legal Profession in British Columbia" in Hamar Foster and John McLaren eds. Essays in the History of Canadian Law: British Columbia and the Yukon, v.6 (Toronto: The Osgoode Society, 1995) 508 at 519-25.

107. In some cases the rates afforded to the Chinese were less, and in other cases Chinese workers were ruled completely ineligible. See Palmer Patterns of Prejudice at 145-8; Creese "Exclusion or Solidarity?" at 44. But see also early legislative attempts to eliminate race discrimination in unemployment relief: S.B.C. 1932, c.58; S.B.C. 1933, c.71; S.B.C. 1945, c.62, s.8.

108. "The Narcotics Traffic" Regina Morning Leader 30 December 1922, p.16; "Council Turns Down Request of Yee Klung" 8 October 1924, p.3.

109. For details, see Backhouse "Gretta Wong Grant."

110. "MacKinnon, Andrew G." Who's Who in Canada 1936-37 (Toronto: International Press, 1937) at 208. For reference to MacKinnon's public denunciation of the Klan, see Martin Robin Shades of Right: Nativist and Fascist Politics in Canada, 1920-1940 (Toronto: University of Toronto Press, 1992) at 67-72; William Calderwood "Pulpit, Press and Political Reactions to the Ku Klux Klan in Saskatchewan" in Susan M. Trofimenkoff ed. The Twenties in Western Canada (Ottawa: National Museums of Canada, 1972) 191. The Klan's efforts to take root in Saskatchewan, its most successful base outside of the United States, peaked in several waves, in 1927 and 1929. Although Catholics were the main targets, the Klan also denounced intermarriage between the Chinese, Blacks and whites, and supported the strict enforcement of the white women's labour law. Robin notes at 33 that Klansmen elected to the Moose Jaw city council insisted upon banning "the employment of white girls in Chinese restaurants." Although Klan support was of great assistance to the conservative party during the 1926 federal

election in Saskatchewan, MacKinnon, a Klan adversary who ran for the conservatives, was not elected. Both Robin (at 72) and Calderwood (at 211) suggest that the political manoeuvring of the Klan directly affected MacKinnon's political fortunes. Shortly thereafter, MacKinnon received an appointment to the District Court of Shaunavon, Saskatchewan. See also William Calderwood "The Rise and Fall of the Ku Klux Klan in Saskatchewan" M.A. Thesis (University of Saskatchewan: 1968); William Calderwood "Religious Reactions to the Ku Klux Klan in Saskatchewan" Saskatchewan History 26:3 (1973) 103; William Calderwood "The Decline of the Progressive Party in Saskatchewan, 1925-1930" Saskatchewan History 21:3 (Autumn 1968) 81; David M. Chalmers Hooded Americanism: The History of the Ku Klux Klan (New York: Franklin Watts, 1965); Wyn Craig Wade The Fiery Cross: The Ku Klux Klan in America (London: Simon and Schuster, 1987); Nancy MacLean Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan (New York: Oxford University Press, 1994); Kathleen M. Blee Women of the Klan: Racism and Gender in the 1920s (Berkeley: University of California Press, 1991). For more discussion of the Ku Klux Klan, see discussion of R. v. Phillips in chapter 6.

111. "Council Turns Down Request of Yee Klung" Regina Morning Leader 8 October 1924, p.3.

112. The application for judicial review appears to have requested declaratory relief and a "mandamus" requiring the defendant to grant Yee Clun's licence. "Council Turns Down Request of Yee Klung" Regina Morning Leader 8 October 1924, p.3; "Court to Decide Chinese Rights" 22 October 1924, p.9; Yee Clun v. City of Regina (1925), 20

Sask. L.R. 232 (Sask. K.B.).

113. Judge Mackenzie (whose name also appears as MacKenzie) was the son of Philip and Elizabeth MacKenzie. He was educated at the London Collegiate Institute and the University of Toronto, where he received his B.A. in 1893 and an LL.B. in 1895. He "read law" with Mowat, Donney and Langton in Toronto. In London, he practised with Magee, McKillop and Murphy from 1896-1901. In Regina, he practised with McCraney, Mackenzie and Hutchinson. He received the designation KC in 1913, and would be elevated to the Saskatchewan Court of Appeal in 1927. In 1922, he became a Governor of the University of Saskatchewan and later served as Chair of the Board of Governors. See Who's Who in Canada, 1938-39 (Toronto: International Press, 1939) at 1476; Who's Who in Canada 1945-46 at 919; W.H. McConnell Prairie Justice (Calgary: Burroughs, 1980) at 217. I am indebted to Elizabeth Kalmakoff of the Saskatchewan Archives Board for information concerning Judge Mackenzie.

114. Yee Clun v. City of Regina, [1925] 4 D.L.R. 1015; 3 W.W.R. 714; (1925), 20 Sask. L.R. 232 (Sask. K.B.) at 234-7.

115. The rule excluding Parliamentary history was first articulated in the English case of Millar v. Taylor (1769), 4 Burr. 2303, 98 E.R. 201. The comment on the inadmissibility of the drafter's evidence is from Lord Halsbury in Hildler v. Dexter, [1902] A.C. 474 at 477. The Supreme Court of Canada followed the exclusionary rule reluctantly in Gosselin v. The King (1903), 33 S.C.R. 255 at 264; see also William Feilden Craies A Treatise on Statute Law 3rd ed. (Toronto: Carswell, 1923) at 120.

Pierre-Andre Cote The Interpretation of Legislation in Canada 2nd ed. (Cowansville, Que.: Yvon Blais, 1991) notes at 357-67 that the rule may have been based originally upon the official ban on publication of House of Commons debates. The ban was established in an effort to guarantee freedom of expression for members of Parliament, and obtained in England from 1628 to 1908. Despite the lifting of this ban, the exclusionary rule continued to govern. Various rationales have been offered for its tenacious hold in the courts, which has only recently weakened: 1) the theory that Parliament is a legal entity, distinct from its individual members, and that the law is an expression of "abstract will" with only a tenuous link to the intention of the minister who proposed it, and the members who voted for it; 2) the additional time and expense required of counsel in preparing cases if they have to review all the Hansard debates. Cote notes that countries such as the United States and France do not utilize this exclusionary rule, and that Canadian courts have increasingly abandoned the doctrine as well. It no longer governs cases where the constitutionality of a statute is at issue and outside the constitutional context, the principle "is riddled with derogations and exceptions to such a point that we may ask whether it is on its last legs, if not completely finished." Judge Mackenzie's reference to earlier versions of the "White Women's Labour Law" did not offend the exclusionary rule, since it has always been considered quite permissible for courts to examine the evolution of a particular statute, tracing its original format and the various changes in text, in a search for statutory meaning; see E.A. Driedger The Construction of Statutes (Toronto: Butterworths, 1974) at 133.

116. Yee Clun v. City of Regina, [1925] 4 D.L.R. 1015; 3 W.W.R. 714; (1925), 20 Sask. L.R. 232 (Sask. K.B.) at 234-7.

117. Rex v. Quong Wing, [1913] 4 W.W.R. 1135, (1913), 12 D.L.R. 656, 24 W.L.R. 913, 21 C.C.C. 326, 6 Sask. R. 242 (Sask. S.C.); Quong Wing v. The King (1914), 49 S.C.R. 440, [1914] 6 W.W.R. 270, (1914), 18 D.L.R. 121, 23 C.C.C. 113; leave to appeal to the Privy Council refused 19 May 1914.

118. On the issue of suffrage, In Re the Provincial Elections Act and in Re Tomey Homma, A Japanese (1900), 7 B.C.R. 368 (Co. Ct.) initially held the electoral exclusions in the Provincial Elections Act R.S.B.C. 1897, c.67,s.8 to be ultra vires, a ruling that was upheld in In Re the Provincial Elections Act and In Re Tomey Homma, A Japanese (1901), 8 B.C.R. 76 (B.C.S.C.). The Privy Council reversed this on appeal, declaring the discriminatory franchise provisions to be constitutional: Cunningham v. Tomey Homma, [1903] A.C. 151. See also Ryder "Racism and the Constitution" unpublished manuscript at 141-66.

119. In Tai Sing v. Maguire (1878), 1 B.C.R. Pt.I 101 (B.C.S.C.), Judge John Hamilton Gray struck down "An Act to provide for the better collection of Provincial Taxes from the Chinese" S.B.C. 1878, c.35, which established quarterly license fees of \$10 for every Chinese person over the age of twelve. Gray held the act was outside the scope of provincial jurisdiction, since it dealt with aliens, trade and commerce, and the federal government's treaty making powers. In R. v. Wing Chong (1885), 1 B.C.R. Pt.II 150 (B.C.S.C.) Judge Henry Pellew Crease considered the constitutionality of "An Act to Regulate the Chinese Population of British Columbia" S.B.C. 1884, c.4, which imposed an annual tax on all Chinese residents. He held the statute to be ultra vires based on a similar analysis of the division of powers between federal and provincial levels of

government. In R. v. Gold Commissioner of Victoria District (1886), 1 B.C.R. Pt.II 260 (Div. Ct.) Judge John Foster McCreight declared s.14 of the same statute unconstitutional for charging Chinese miners triple the fees of others in application for miners' certificates. In R. v. Mee Wah (1886), 3 B.C.R. 403 (Co. Ct.), Chief Justice Matthew Baillie Begbie declared "An Act to amend the 'Municipality Act, 1881'" S.B.C. 1885, c.21, s.11 unconstitutional as falling outside the competence of the provincial legislature, and because it was designed to discriminate against a particular class of persons, the Chinese. In R. v. Corporation of Victoria (1888), 1 B.C.R. Pt.II 331 (B.C.S.C.), Chief Justice Begbie ordered the City of Victoria to grant licences to Chinese individuals who wished to operate pawnbroking businesses, holding that neither the provincial legislature nor municipalities had the right to discriminate against particular classes in granting or withholding licences. For a fuller account, see John P.S. McLaren "The Early British Columbia Supreme Court and the 'Chinese Question': Echoes of the Rule of Law" in Dale Gibson and W. Wesley Pue, eds. Glimpses of Canadian Legal History (Winnipeg: Legal Research Institute, University of Manitoba, 1991) 111-53; and Ryder "Racism and the Constitution" unpublished manuscript at 167-83. Two later cases also invalidated anti-Asian immigration statutes of the British Columbia legislature, not as ultra vires, but as inconsistent with paramount federal treaties and legislation: see Re Nakane and Okazake (1908), 13 B.C.R. 370 (B.C.S.C.) and Re Narain Singh et al. (1908), 13 B.C.R. 477 (B.C.S.C.).

120. In Union Colliery Co. of B.C. v. Bryden, [1899] A.C. 580, the Privy Council struck down "An Act to amend the 'Coal Mines Regulation Act'" S.B.C. 1890, c.33, s.4, which provides that "no Chinaman shall be employed in or allowed to be, for the purpose

of employment in any kind to which the Act applies, below ground." The decision was not based on any objection to racial discrimination, but upon an analysis of division of powers. The Privy Council determined that jurisdiction to pass such a statute lay exclusively with the federal government. For a detailed analysis of the case, see Alan Grove and Ross Lambertson "Pawns of the Powerful: The Politics of Litigation in the Union Colliery Case" B.C. Studies v.103 (Fall 1994) 3-31. Other decisions of the Privy Council, such as Cunningham v. Tomey Homma, [1903] A.C. 151, took an opposite perspective. The Privy Council also denied leave to appeal the ruling of the Supreme Court of Canada in Quong Wing v. The King (1914), 49 S.C.R. 440, [1914] 6 W.W.R. 270, (1914), 18 D.L.R. 121, 23 C.C.C. 113, on 19 May 1914. For cases that followed Union Colliery, see In re the Coal Mines Regulation Act and Amendment Act, 1903 (1904), 10 B.C.R. 408 (B.C.S.C.) (Judge Martin dissenting); In re the Japanese Treaty Act, 1913 (1920), 29 B.C.R. 136 (B.C.C.A.); In re Employment of Aliens (1922), 63 S.C.R. 293, affirmed in A.-G. B.C. v. A.-G. Can. (Japanese Treaty Case), [1924] A.C. 203. See also Ryder "Racism and the Constitution" unpublished manuscript at 78-122.

121. McLaren "The Early British Columbia Supreme Court and the 'Chinese Question.'"

122. Ryder "Racism and the Constitution, 1884-1909"; Ryder "Racism and the Constitution" unpublished manuscript; Grove and Lambertson "Pawns of the Powerful."

123. "An Act respecting the Employment of Female Labour" S.S. 1925-26, c.53. Moon This is Saskatchewan notes at 46 that Moose Jaw city council refused licences to

all Chinese restaurateurs wishing to hire white women. Moon credits the impetus for this to the Ku Klux Klan, which was active in Saskatchewan from the mid-1920s.

124. Rex ex rel Eley v. Yee Clun and Yee Low, [1929] 1 D.L.R. 194; 3 W.W.R. 558; (1928), 50 C.C.C. 440; 23 Sask. L.R. 170, as heard by white Saskatchewan Court of King's Bench Judge Bigelow. Yee Clun is listed as carrying on business with Yee Low, under the firm name of "Sam Mon Coffee and Tea Co." The conviction was quashed on the ground that the prosecution had failed to put into evidence the regulations under which the accused was charged. The Henderson Directory for Regina shows Yee Clun continued to serve as the proprietor of the Exchange Grill (Cafe) in 1929 and 1930, but he is not listed thereafter. I am indebted to Elizabeth Kalmakoff for the Henderson Directory information.

125. "Regina Mourns Loss of Late G.F. Blair, K.C." Regina Morning Leader 6 March 1926.

126. The original Manitoba statute, never proclaimed, is expressly repealed in "An Act to repeal certain Enactments which have become Obsolete" S.M. 1940, c.35. The Ontario statute is repealed in "The Statute Law Amendment Act, 1947 (No.2)" S.O. 1947, c.102, s.1. The British Columbia statute, now carefully disguised as racially neutral, remains in force until 1968: see "An Act for the Protection of Women and Girls in certain Cases" R.S.B.C. 1948, c.366; R.S.B.C. 1960, c.410; repealed by "An Act to Amend and Repeal Certain Provisions of the Statute Law" S.B.C. 1968, c.53, s.29. Edgar Wickberg notes that the Chinese Benevolent Association lobbied strenuously against the

enforcement of this legislation in British Columbia, frequently with great success: Edgar Wickberg "Chinese and Canadian Influences on Chinese Politics in Vancouver 1900-47" BC Studies v.45 (Spring 1980) 37 at 53-4, citing the Vancouver Chinese Times 27 November, 21 December 1923; 17 November 1925; 25 February, 1 September, 2 October 1928; January-February 1937; and Lee Tung-hai (David T.H. Lee) Jianada Huaqiao Shi (History of the Chinese in Canada) (Taibei, 1967) at 359.

127. It continued as R.S.S. 1953, c.269, repealed by the "Labour Standards Act, 1969" S.S. 1969, c.24, s.73. The enactment of "An Act to protect Certain Civil Rights" S.S. 1947, c.35, as amended by "An Act to amend The Saskatchewan Bill of Rights Act, 1947" S.S. 1949, c.29, may have offered an impediment to the continuation of a racially-based application of the labour statute. The Saskatchewan Bill of Rights, as it became known, provides in s.8 that "every person...shall enjoy the right to obtain and retain employment without discrimination with respect to the compensation, terms, conditions or privileges of employment because of the race, creed, religion, colour or ethnic or national origin of such person...." Section 9 provides that "every person...shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person...." There are similar protections regarding the right to acquire and own property, access to public places, and the right to membership in a professional society, trade union or other occupational organization: s.10-12. During the debates on the bill, the Attorney General of Saskatchewan's CCF government, J.W. Corman, stated: "Under this Act a municipal council...could not refuse a licence to carry on business just because the applicant happened to be French, Norwegian, or of any other descent, or

because he was a protestant or catholic, as the case may be." Hansard Legislative Debates Saskatchewan Legislature, 19 March 1947 at 991. Corman cited discrimination against the Chinese as well: "Our treatment of the Chinese in Canada also smacks of intolerance. They were denied a vote in Saskatchewan until 1944 and are now discriminated against by our federal immigration laws in spite of the fact that they fought side by side with us in the war:" Regina Leader Post 20 March 1947, p.14. Prior to the repeal of the "White Women's Labour Law," the Local Council of Women continued to monitor the situation. In 1930, three Chinese men named Walter Mark, Harry Mark and G.H. Mark, proprietors of the Central Cafe at 110 20th Street W., Saskatoon, were brought to court to face criminal charges based on allegations of indecent assault and common assault from three white women. Witnesses Ethel Rome, Pauline Glovasky and Nellie Worobec, former employees at the restaurant, were alleged to have quit their jobs because of "unwelcome and improper attentions." The Saskatoon Star-Phoenix notes that "fashionably dressed ladies, representing the Local Council of Women and an officer of the Minimum Wage Board were among the spectators." G.H. Mark was convicted of common assault and fined \$10 and costs, but the disposition of the remaining charges is not recorded. The Local Council of Women's April meeting considered the matter and voted to have the convenor of laws examine the possibility of license suspension as a penalty. See "Chinese Charged by White Girls" Saskatoon Star-Phoenix 23 April 1930, p.3; "Chinese Are Before Court" 30 April 1930, p.12; "Chinese Failed to Post Copy of Act" 1 May 1930, p.3; "Chinese for Trial on Assault Charges" 2 May 1930, p.14; "Three Waitresses Worked Too Long" 8 May 1930, p.3; Saskatoon Local Council of Women, Minute Book 1926-31 S.A.B. S-B82 I.4. at 191, 193.

ENDNOTES TO CHAPTER SIX

1. The cross burning took place at Main (Colborne) and Third Streets: see "Ku Klux Klan Cohorts Parade Into Oakville and Burn Fiery Cross" Toronto Globe 1 March 1930, p.1; "To Investigate K.K.K. Burnings" London Free Press 1 March 1930, p.1; "Klan Took Oakville Girl From Negro Home" Toronto Star 1 March 1930, p.1.

2. "Klan Separates Oakville Negro and White Girl" Hamilton Spectator 1 March 1930, p.7. On the Oakville police, see Frances Robin Ahern Oakville: A Small Town 1900-1930 (Erin, Ont.: Boston Mills Press, 1981) at 130.

3. "Klan Separates Oakville Negro and White Girl" Hamilton Spectator 1 March 1930, p.7; "Ku Klux Klan Cohorts Parade Into Oakville and Burn Fiery Cross" Toronto Globe 1 March 1930, p.1; "To Investigate K.K.K. Burnings" London Free Press 1 March 1930, p.1; "Klan Took Oakville Girl from Negro Home" Toronto Star 1 March 1930, p.1; "Klansmen of Hamilton Defend Their Conduct in 'Raid' at Oakville" Toronto Globe 3 March 1930, p.1,3; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930; "Hamilton Klan Member Fined" Toronto Globe 11 March 1930, p.9; "Ku Klux Klan Here on Business" Oakville Star and Independent 7 March 1930, p.8. The Star uses the name "Ira Johnston" throughout much of its reporting, and "Alice" rather than "Isabel" Jones. Isabel Jones's age is given as twenty and twenty-one, and Captain Broome is identified as Captain Broom and Captain Brown in different reports. Mrs.

Jones, a domestic "in service," was unable to accommodate her daughter, which is why she called upon the assistance of the Salvation Army, the institution to which she was affiliated by religion. Reporters advise that Ira Johnson and Isabel Jones met through their mothers, who both belonged to the Salvation Army and were friends. Isabel allegedly "suffered a nervous breakdown" and her mother brought her to live with Ira Johnson's mother. Some press accounts suggest that Mrs. Jones initially gave her consent to the marriage, but later retracted this. There is some speculation that the retraction was due to Ira Johnson's lack of steady employment. The community disapproval of the interracial marriage and the pressure of the Klan may also have been a factor: see "Klan Took Oakville Girl from Negro Home" Toronto Star 1 March 1930, p.1-3. Captain Broome appears to have been ideologically opposed to racial intermarriage, having made earlier efforts to forestall the union. Asked by a reporter whether Mrs. Jones asked for his help "in breaking off the match," Broome replied: "Yes, she did. I went to the house and spoke to the girl. I told her that she must think of the children and their position in life as the result of the marriage between races of different colors." Broome would later tell the press that he hoped the Oakville raid "might bring about a law to prevent intermarriage between races." "Believe Klan..." Toronto Star 8 March 1930, p.1-2. The Salvation Army was a Protestant evangelical religion, that drew from a predominantly working class base. Domestic servants were particularly drawn to the religion because it offered them social equality and positions of leadership. Unlike more mainstream churches, the Salvation Army encompassed adherents of several races, including Blacks. It also offered its female members a more active role than many other religious organizations of the time. Lynne Marks Revivals and Roller Rinks: Religion, Leisure and Identity in

Late-Nineteenth-Century Small-Town Ontario (Toronto: University of Toronto Press, 1996); Lynne Marks "The Knights of Labor and the Salvation Army: Religion and Working-Class Culture in Ontario, 1882-1890" Labour/Le Travail v.28 (1991) 89-128; Lynne Marks "The 'Hallelujah Lasses': Women and the Salvation Army in English Canada, 1882-1892" in Franca Iacovetta and Mariana Valverde eds. Gender Conflicts: Essays in Women's History (Toronto: University of Toronto Press, 1992) 67-117; Lynne Sorrel Marks "Ladies, Loafers, Knights and 'Lasses': The Social Dimensions of Religion and Leisure in Late Nineteenth-Century Small-Town Ontario" Ph.D. Thesis (York University: 1992). Seventh Census of Canada, 1931 v.2 (Ottawa: J.O. Patenaude, 1933) indicates at 614-5 that the Salvation Army had only 26 members in Oakville.

4. "Klansmen of Hamilton Defend Their Conduct in 'Raid' at Oakville" Toronto Globe 3 March 1930, p.1,3; "Klan Took Oakville Girl from Negro Home" Toronto Star 1 March 1930, p.2; "The KKK Visits Oakville" Oakville Journal, clipping held by the Oakville Historical Society, identifies Ira Johnson's uncle as Mr. Salt. The Toronto Star "K.K.K. Oakville Raid has Sequel at Altar" 24 March 1930, p.1 identifies his aunt as Mrs. Violet Salt. Later clippings use the spelling "Sault" and also the name "Stuart." The Hamilton Spectator apparently mistakenly identifies the elderly couple as Ira Johnson's parents: "Klan Separates Oakville Negro and White Girl" Hamilton Spectator 1 March 1930, p.7. The Dawn of Tomorrow 24 March 1930, a Black newspaper published by J.F. Jenkins in London, Ontario, indicates in an editorial titled "Oakville and the K.K.K." that Johnson "was ordered to leave town forthwith, which orders he obeyed...." If Johnson did leave Oakville, he returned within a short period of time, as later events clarify.

5. While these events were taking place, Ollie Johnson, one of Oakville's most prominent Black residents, had been searching frantically for Police Chief Kerr. By day, Ollie Johnson operated a dry-cleaning and pressing shop. In his off-hours, his versatile athletic ability as a runner and baseball player had made him a popular figure in Oakville. Ollie Johnson's prowess as the short-stop for the Oakville baseball team was legendary, and his reputation within the white community may have made him a good emissary for seeking help. On Johnson's occupation and stature, see Ahern Oakville at 126, 172.

6. "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "Klan Separates Oakville Negro and White Girl" 1 March 1930, p.7; "Ku Klux Report Held from Council at Crown's Request" Toronto Globe 4 March 1930, p.1.

7. "Ku Klux Klan Cohorts Parade Into Oakville and Burn Fiery Cross" Toronto Globe 1 March 1930, p.1; "Klan Separates Oakville Negro and White Girl" Hamilton Spectator 1 March 1930, p.1; "To Investigate K.K.K. Burnings" London Free Press 1 March 1930, p.1.

8. "Ku Klux Klan Here on Business" Oakville Star and Independent 7 March 1930, p.8; "Klan Took Oakville Girl from Negro Home" Toronto Star 1 March 1930, p.2-3; "Klan Separates Oakville Negro and White Girl" Hamilton Spectator 1 March 1930, p.1; "To Investigate K.K.K. Burnings" London Free Press 1 March 1930, p.1; "If the Ku Klux Klan" Milton Canadian Champion 6 March 1930, p.3, "If the Ku Klux Klan" Milton Canadian Champion 13 March 1930, p.3, citing the Brampton Banner; "The KKK Visits Oakville" clipping of the Oakville Journal held by the Oakville Historical Society,

quoting unidentified clipping from the Toronto Star; "Klan Took Oakville Girl From Negro Home" Toronto Star 1 March 1930, p.1; "Ku Klux Klan Cohorts Parade Into Oakville and Burn Fiery Cross" Toronto Globe 1 March 1930, p.1.

9. By the turn of the century, many residents of Oakville used the town as a commuting base, travelling daily by train to work in Toronto and Hamilton. When the highway from Toronto was paved out to Oakville in 1915, the commuting trend accelerated. Oakville's small base of light industry included a basket factory, tire factory, sheet music publisher, yacht-maker, auto sales and service, fruit farming. See Hazel C. Mathews Oakville and the Sixteen: The History of an Ontario Port (Toronto: University of Toronto Press, 1953) at 4-5; 376-7, 446; Ahern Oakville at 21, 33-40, 52-3. On the impact of the Depression in south-western Ontario, see Marjorie Freeman Campbell A Mountain and a City: The Story of Hamilton (Toronto: McClelland and Stewart, 1966) at 223.

10. "Klan Took Oakville Girl From Negro Home" Toronto Star 1 March 1930, p.1-2. Oakville's population stood at 3,298 in 1921, and 3,857 by 1931: Seventh Census of Canada, 1931 at 68. The racial breakdowns (at 406-7) show 3,582 British, 46 German, 32 Dutch, 28 French, 23 Scandinavian, 20 Chinese and Japanese, 15 Hebrew, 8 Indian and Eskimo, 7 Austrian, 5 Italian, 4 Finnish, 3 Russian, 2 Czech and Slovak, 1 Belgian and 79 "others." The religious breakdowns recorded in the 1931 census (at 614-5) show 1,680 Anglicans, 969 United Church, 687 Presbyterians, 336 Roman Catholics, 58 Baptists, 26 Christian Scientists, 21 Lutherans, 15 Jews, 4 Adventists, 2 Pentecostal and 32 "other."

11. Dorothy W. Williams Blacks in Montreal 1628-1986: An Urban Demography (Cowansville, Que.: Yvon Blais, 1989) notes at 7 that Matthew da Costa, a Black man, accompanied Samuel de Champlain on his third voyage to Canada in 1606. With the migration of between thirty and thirty-five thousand (white and Black) loyalists to Nova Scotia after the American Revolution during the 1780s, the number of Blacks in the region increased tenfold; the majority (about three thousand) were free Blacks: Donald Clairmont and Fred Wien "Blacks and Whites: the Nova Scotia Race Relations Experience" in Douglas F. Campbell Banked Fires: The Ethnics of Nova Scotia (Port Credit, Ont.: Scribblers' Press, 1978) at 147-8; Robin W. Winks The Blacks in Canada: A History 2nd ed. (Montreal: McGill-Queen's University Press, 1997) at 141; James W.St.G. Walker The Black Identity in Nova Scotia: Community and Institutions in Historical Perspective (Halifax: Black Cultural Centre for Nova Scotia, 1985); James W.St.G. Walker The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone 1783-1870 (Toronto: University of Toronto Press, 1992.) A group of exiled Jamaican Maroons migrated to Nova Scotia in 1796, but left for Sierra Leone four years later: Robin W. Winks "Negro School Segregation in Ontario and Nova Scotia" Canadian Historical Review 50:2 (1969) 164-191; Walker Black Loyalists; James W.St.G. Walker Racial Discrimination in Canada: The Black Experience (Ottawa: Canadian Historical Association, 1985); John N. Grant "Black Immigrants into Nova Scotia 1776-1815" Journal of Negro History 58:3 (July 1973) 253-70; Elizabeth Beaton "An African-American Community in Cape Breton 1901-1904" Acadiensis 24:2 (Spring 1995) 65-97; Gary Collison "'Loyal and Dutiful Subjects of Her Gracious Majesty, Queen Victoria': Fugitive Slaves in Montreal 1850-1866" Quebec Studies v.19 (1995) 59-70; Michael Power and Nancy Butler Slavery and Freedom in Niagara

(Niagara-on-the-Lake, Ont.: Niagara Historical Society, 1993); Winks "Negroes in the Maritimes;" Jim Hornby Black Islanders: Prince Edward Island's Historical Black Community (Charlottetown: Institute of Island Studies, 1991); Peggy Bristow et al. We're Rooted Here and They Can't Pull Us Up: Essays in African Canadian Women's History (Toronto: University of Toronto Press, 1994); Fred Landon "The Negro Migration to Canada After the Passing of the Fugitive Slave Act" Journal of Negro History v.5 (1920) 22-36; Linda Brown-Kubisch "The Black Experience in the Queen's Bush Settlement" Ontario History 88:2 (June 1996) 103-18; Agnes Calliste "Race, Gender and Canadian Immigration Policy: Blacks from the Caribbean, 1900-1932" Journal of Canadian Studies 28:4 (Winter 1993-94) 131-48; R. Bruce Shepard Deemed Unsuitable: Blacks from Oklahoma Move to the Canadian Prairies in Search of Equality in the Early 20th Century Only to Find Racism in their New Home (Toronto: Umbrella Press, 1997). On the history of slavery in Canada, see the discussion of Viola Desmond's case, chapter 7.

12. In Nova Scotia, efforts were made to bar the entry of liberated slaves from the Caribbean in 1834, with the passage of "An Act to prevent the Clandestine Landing of Liberated Slaves, and other Persons therein mentioned, from Vessels arriving in this Province" S.N.S. 1834, c.68. The preamble states: "Whereas, from the recent Emancipation of the Slaves in the West-Indies, Bermuda and the Bahama Islands, it is apprehended that many of the sick, infirm, idle and dissolute of them, may be transported to this Province...and that thereby burthensome expense may be occasioned by the Inhabitants of this Province, and Contagious Diseases be introduced among them." The statute fines the master of the ship fifteen pounds per slave or liberated slave, and provides for the stationing of a constable in the harbour to forestall any vessel from discharging slaves or liberated

slaves. The act is stipulated to be in force for one year and "from thence to the end of the next Session of the General Assembly." Winks Blacks in Canada states at 129 that Nova Scotia attempted to renew this act in 1836, but the Imperial Government disallowed it. See also W.P. Oliver "Cultural Progress of the Negro in Nova Scotia" Dalhousie Review 29:3 (1949) 297, as reprinted in George Elliott Clarke ed. Fire on the Water: An Anthology of Black Nova Scotian Writing v.1 (Lawrencetown Beach, N.S.: Pottersfield Press, 1991) at 129-35. No legislative records have yet been located on this matter. On white resistance to Black immigration in mid-19th century Ontario, see Peggy Bristow "'Whatever you raise in the ground you can sell it in Chatham': Black Women in Buxton and Chatham, 1850-65" in Bristow We're Rooted Here 69. In 1911, various groups from Alberta petitioned the federal government to exclude Black immigrants. The Edmonton Board of Trade, the Orange Lodge, and the Edmonton chapter of the Imperial Order Daughters of the Empire were all involved. Dr. Ella Synge, spokeswoman for the latter group, drew upon pernicious racist myths to explain white women's fear of sexual assault by Black men. She claimed that "surely the result of Lord Gladstone's foolishness in South Africa is apparent enough already, in the enormous increase in outrages on white women that has [sic] occurred." She warned that "the finger of fate is pointing to lynch law which will be the ultimate result, as sure as we allow such people to settle among us:" Edmonton Capital 27 March 1911; Harold Martin Troper "The Creek-Negroes of Oklahoma and Canadian Immigration, 1909-11" Canadian Historical Review 53:3 (September 1972) 272-88; Colin A. Thomson Blacks in Deep Snow: Black Pioneers of Canada (Don Mills, Ont.: J.M. Dent, 1979); Harold Troper Only Farmers Need Apply (Griffen House: Toronto, 1972), at 121-41; R. Bruce Shepard "Plain Racism: The Reaction Against Oklahoma Black Immigration to the Canadian

Prairies" in Ormond McKague, ed. Racism in Canada (Saskatoon: Fifth House Publishers, 1992) 15-31; Shepard Deemed Unsuitable. On the pervasiveness of racist claims regarding Black male sexuality, see Angela Y. Davis "Rape, Racism and the Myth of the Black Rapist" Women, Race and Class (New York: Random House, 1981); Jacqueline Jones Labor of Love, Labor of Sorrow: Black Women, Work and the Family, From Slavery to the Present (New York: Vintage Books, 1986); Alfreda M. Duster, ed. Crusade for Justice: The Autobiography of Ida B. Wells (Chicago: University of Chicago Press, 1970.)

13. See for example, the comments of white Chatham physician, Dr. T. Mack, quoted in Samuel Gridley Howe The Refugees from Slavery in Canada West: A Report to the Freedman's Inquiry Commission (Boston: 1864) at 19: "The disease [Blacks] suffer most from is pulmonary - more than general tubercular; and where there is not real tubercular affection of the lungs there are bronchitis and pulmonary affections. I have the idea...that this climate will completely efface them." L. Pereira, Department of the Interior, Ottawa, wrote to Rev. W.A. Lamb-Campbell, Galveston, Texas, 20 September 1906, as quoted in Troper Only Farmers Need Apply at 127: "[It has been] observed that after some years of experience in Canada [Negroes] do not readily take to our climate on account of the rather severe winter."

14. S.C. 1910, c.27, s.38 provides: "The Governor in Council may, by proclamation or order whenever he deems it necessary or expedient - (c) prohibit for a stated period, or permanently, the landing in Canada, or the landing at any specified port of entry in Canada, of immigrants belonging to any race deemed unsuited to the climate or requirements of Canada, or of immigrants of any specified class, occupation or character." Section 37 also

provides: "Regulations made by the Governor in Council under this Act may provide as a condition to permission to land in Canada that immigrants and tourists shall possess in their own right money to a prescribed minimum amount, which amount may vary according to the race, occupation or destination of such immigrant or tourist...." The legislation is expanded by "An Act to amend The Immigration Act" S.C. 1919, c.25, s.13, which repeals s.38(c), enacting in its stead the following:

"(c) prohibit or limit in number for a stated period or permanently the landing in Canada, or the landing at any specified port or ports of entry in Canada, of immigrants belonging to any nationality or race or of immigrants of any specified class or occupation, by reason of any economic, industrial or other condition temporarily existing in Canada or because such immigrants are deemed unsuitable having regard to the climatic, industrial, social, educational, labour or other conditions or requirements of Canada or because such immigrants are deemed unsuitable owing to their peculiar customs, habits, modes of life and methods of holding property, and because of their probable inability to become readily assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their entry." This section is amended by "An Act to amend The Immigration Act" S.C. 1921, c.32 to exclude from its scope Canadian citizens, diplomatic officials and the military. See also "An Act respecting Immigration" R.S.C. 1927, c.93, s.37-8.

15. Prime Minister Laurier was also apparently concerned about a backlash among the Black liberal voters in Nova Scotia and south-west Ontario. Under the informal exclusionary program, the Department of the Interior made it very clear, both to

immigration agents and to prospective Black settlers, that the standard medical and character examinations made at the border would result in the rejection of Black immigrants: Troper Only Farmers Need Apply at 140-1; Shepard Deemed Unsuitable.

16. "An Act Respecting Immigration" S.Nfld. 1926, c.29, s.11 provides: "Regulations made by the Governor-in-Council under this Act may provide as a condition to permission to land in this Colony that Immigrants shall possess in their own right money to a prescribed minimum amount which amount may vary according to the race, occupation or destination of such immigrant...." Section 12 provides: "The Governor-in-Council may, by Proclamation or order whenever he deems it necessary, or expedient, [...] (b) prohibit for a stated period, or permanently the landing in this Colony, or the landing at any specified port of entry in this Colony, of immigrants belonging to any race deemed unsuited to the climate or requirements of this Colony, or of immigrants of any specified class, occupation or character."

17. The 1861 census shows 37 Blacks living in Oakville: Michael Wayne "The Black Population of Canada West on the Eve of the American Civil War: A Reassessment Based on the Manuscript Census of 1861" in Franca Iacovetta **et al.** eds. A Nation of Immigrants: Women, Workers, and Communities in Canadian History, 1840s-1960s (Toronto: University of Toronto Press, 1998) 58 at 72. One of the first Black Oakville residents, James Wesley Hill, was a former slave who took up farming on the 9th Line, became an agent for the Underground Railroad, and travelled back and forth from Canada to the southern states, assisting hundreds of fellow Blacks to escape. Robert Wilson, a white Oakville resident and captain of a small grain vessel, made it a practice

to secret escaping slaves in the hold of his ship. To mark their gratitude, for years Blacks from all over south-western Ontario would gather annually at Captain Wilson's home on Dundas Street North, to celebrate Emancipation Day. Joe Wordsworth, who ran a barbershop and clothes-cleaning business, appears to have been the first Black to set up in business in Oakville. Mathews notes that Wordsworth was "much plagued by sailors, who threw all his barber's tools" into the Sixteen Mile Creek. Other first families include those of James Wesley Hill, the Johnsons, the Wallaces, the Strothers, William Holland, Benedict Duncan, Lloyd Brown, Samuel Adams and Christopher Columbus Lee. The British Methodist Episcopal Church of Oakville, established in 1875, was reorganized in 1891 as the Turner African Methodist Episcopal Church. Mathews Oakville at 247-8, 419-20; Ahern Oakville at 117-8; Winks Blacks in Canada at 245. On the Underground Railroad, which is estimated to have brought 30,000 Black fugitives to Canada between 1800 and 1860, see Daniel G. Hill The Freedom-Seekers: Blacks in Early Canada (Agincourt, Ont.: Book Society of Canada, 1981) at 25-43. On the role of Black women in south-western Ontario, see Dionne Brand No Burden to Carry: Narratives of Black Working Women in Ontario 1920s to 1950s (Toronto: Women's Press, 1991); Dionne Brand "'We weren't allowed to go into factory work until Hitler started the war': The 1920s to the 1940s" in Bristow **et al.** We're Rooted Here 171-91; Shirley Yee "Gender Ideology and Black Women as Community-Builders in Ontario, 1850-70" Canadian Historical Review 75:1 (March 1994) at 53-73.

18. "Klan Took Oakville girl from Negro Home" Toronto Star 1 March 1930, p.2; "To Investigate K.K.K. Burnings" London Free Press 1 March 1930, p.1. The press describes Ethelbert Lionel Cross as a "negro barrister of British birth." "Klansmen's

Names Demanded of Price by Negro Barrister" Toronto Globe 17 March 1930, p.13-14.

He was initially called to the bar in Nova Scotia on 12 December 1923, and then moved to Toronto where he articulated with E.F. Singer. Admitted to the Ontario bar on 20 March 1924, Cross appears to have been the only Black called to the Bar between 1900 and 1923. Three Blacks preceded him. The first Black lawyer in Ontario, Robert Sutherland, a Jamaican of African origin, was admitted to the bar in 1855. Sutherland appears to have been of mixed race, with a Scottish father from Jamaica, but he was identified as "coloured" when he attended Queen's University in Kingston from 1849 to 1852, graduating with an honours in classics and mathematics. He studied law at Osgoode Hall in 1852, and set up a practice in Walkerton, southwest of Owen Sound after his call.

Delos Rogest Davis, who is often wrongly credited as the first Black lawyer in Canada, was called to the bar in Ontario as a solicitor in 1885 and as a barrister in 1886. Born in Colchester Township near Amherstburg, Ontario, in 1846, Davis taught school for four years before receiving an appointment as commissioner of affidavits in 1871. Two years later he became a public notary. After studying law for eleven years, Davis was unable to find a white lawyer willing to hire a Black legal apprentice. He applied to the Ontario Legislature in 1884 for admission as a solicitor under special statute. In 1886, again by special statute and over the protests of the Law Society of Upper Canada, Davis became a barrister. Davis became the first Black King's Counsel in 1910. Davis's son, Frederick Homer Alphonso Davis, graduated from Osgoode Hall in 1900, and the two men established their firm of Davis and Davis in Amherstburg. According to Lance C. Talbot, E. Lionel Cross was the next Black admitted, after a hiatus of twenty-three years. Talbot credits B.J. Spencer Pitt as following Cross, noting that "during the 1940s and 1950s, the

number of Black lawyers in Ontario, practising mostly in Toronto, numbered no more than five." The first Black woman called to the bar in Ontario, Myrtle Blackwood Smith, a Montrealer with a B.A. from Sir George Williams University, was not admitted until 1960. See Lance C. Talbot "History of Blacks in the Law Society of Upper Canada" Law Society of Upper Canada Gazette 24:1 (March 1990) 65-70; Ian Malcolm "Robert Sutherland: The First Black Lawyer in Canada?" Law Society of Upper Canada Gazette 26:2 (June 1992) 183-6; Winks Blacks in Canada at 328; "An Act to authorize the Supreme Court of Judicature for Ontario to admit Delos Rogest Davis to practice as a solicitor" S.O. 1884, c.94; "An Act to authorize the Law Society of Upper Canada to admit Delos Rogest Davis as a Barrister-at-Law" S.O. 1886, c.94; Hill Freedom-Seekers at 215; Barry Cahill "The 'Colored Barrister': The Short Life and Tragic Death of James Robinson Johnston, 1876-1915" Dalhousie Law Journal v.15 (1992) 326 at 345; Constance Backhouse Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada (Toronto: The Osgoode Society and Women's Press, 1991) at 326 and 439. I am indebted to Susan Lewthwaite of the Law Society of Upper Canada Archives for information on Cross.

Comparative American sources suggest that prior to World War II, most Black lawyers served a restricted community of Black clients, along with a sprinkling of whites who were outside the mainstream of white society. Most Black lawyers specialized in criminal law, because commercial and other civil practice was foreclosed to them by racism. Even Black business people tended to retain white attorneys for corporate/commercial matters, often because they were persuaded or intimidated into believing that Black lawyers were not as well qualified as white lawyers. J. Clay Smith,

Jr. Emancipation: The Making of the Black Lawyer 1844-1944 (Philadelphia: University of Pennsylvania Press, 1993) at 11-14, 162. On the public advocacy roles of Black lawyers and preachers in the context of the United States, Smith Jr. notes at 4: "Black lawyers were one of the last group of professionals to emerge as a class in the black community. [...] Their presence and their small numbers were not viewed as a significant threat in the legal community because they were only marginally accepted by white lawyers and white clients. Black people often used black lawyers in almost hopeless criminal matters but turned to white lawyers in the more lucrative civil cases. The black lawyers' status remained viable, but they faced direct competition from the black preacher in terms of prestige and effectiveness: the black lawyer worked in a public forum which he did not control, and over which he had little influence, but the black preacher came closer than any other black professional to serving as an advocate in the public arena. Black preachers had a built-in constituency; black lawyers had to build theirs."

19. The First Baptist Church was founded by a group of twelve slaves who came to Canada via the Underground Railway in the early 1800s. Elder Washington Christian of Virginia, who was ordained in the Abyssinia Baptist Church of New York in 1822, was established as the church's first pastor, and served until his death in 1850. The first building devoted exclusively to the church was erected at Victoria and Queen in 1841. A new building was constructed at University and Edward Street in 1905. See Hill Freedom-Seekers at 138-9; Rella Braithwaite and Tessa Benn-Ireland Some Black Women: Profiles of Black Women in Canada (Toronto: Sister Vision, 1993) at 62.

20. Bertrand Joseph Spencer Pitt was born on 8 September 1892, the sixth of

twelve children born to a "prosperous Grenada planter and trader" named Louis Pitt, and Elizabeth Thomas. Pitt chose to study at Dalhousie under the misapprehension that its degree would entitle him to practise law anywhere in the British empire. When he learned that the Dalhousie degree permitted practice only in Nova Scotia, Pitt requalified at the Middle Temple in London, studying international law and constitutional history:

"Was Bill Newell Guilty?" Montreal Standard 28 February 1942. Talbot "History of Blacks in the Law Society" notes at 68 that it was difficult for Blacks to find articling positions, and that they were generally restricted to Black and Jewish lawyers. Pitt appears to have been the fifth Black man to practise law in Ontario. The Standard describes Pitt as a "brilliant Negro lawyer" with "an unusually varied practise that has included everything from criminal cases to cases of involved business litigation." Talbot also notes at 67 that "the bulk of his clients were Canadians of Polish descent." His wife was Mary Lee Pitt. Talbot indicates at 68 that Pitt "acted as a mentor to many young Blacks and provided free legal services to many members of the Black community."

Blacks who articulated with Pitt include James Watson, Q.C., who became the Solicitor for the City of Windsor, Myrtle Smith (nee Blackwood) who appears to have been Ontario's first Black woman lawyer, and George Carter, who became Ontario's second Black judge on the Ontario Provincial Court. (Maurice Alexander Charles, appointed in 1969 to the Provincial Court Criminal Division was first.) Pitt also provided "personal and professional encouragement" to Julius Alexander Isaac, who was later named Chief Justice of the Federal Court of Canada. Pitt's failing health forced him to retire in 1957. He died in Corona, New York in 1961. See Lance Carey Talbot "The Formation of the Black Law Students' Association (Canada)" Law Society of Upper Canada Gazette 26:2

(June 1992) 187 at 192; Cecil Foster A Place Called Heaven: The Meaning of Being Black in Canada (Toronto: Harper Collins, 1996) at 78. I am also indebted to Susan Lewthwaite of the Law Society of Upper Canada Archives for locating information about B.J. Spencer Pitt.

21. "Negroes of Toronto Ask Prosecution" London Free Press 5 March 1930, p.3; "Hears Delegation Against the Klan" London Advertiser 6 March 1930, p.4; "Klansmen of Hamilton Defend Their Conduct in 'Raid' at Oakville" Toronto Globe 3 March 1930, p.1,3; "Province Probes Klan Activities" London Advertiser 1 March 1930, p.1. "Klan Took Oakville Girl from Negro Home" Toronto Star 1 March 1930, p.2 notes that Dr. D.A. Wyke, "negro graduate of the University of Toronto" also spoke at the meeting. "All Negro Population to Protest Klan Act" Toronto Star 3 March 1930, indicates that other speakers included: Rev. Dr. T.H. Henderson of the Grant A.M.E. Church, Rev. T.H. Jackson of the St. James' B.M.E church and Rev. Dr. W. Constantine Perry.

22. "Has No Negro Blood, Klan Victim Declares" Toronto Star 5 March 1930, p.1; "Johnson Claims Indian Descent; No Negro Blood in Him, Klan Victim States" Hamilton Spectator 6 March 1930, p.22.

23. "Has No Negro Blood, Klan Victim Declares" Toronto Star 5 March 1930, p.1; "Johnson Claims Indian Descent; No Negro Blood in Him, Klan Victim States" Hamilton Spectator 6 March 1930, p.22. Trying to wade through the complexity of the evidence, the Spectator recounts that Ira Johnson's paternal grandmother was "a Cherokee Indian half-breed," and that his paternal grandfather was "of the same race, having

married an Irish woman." Whether the "Irish" factor was the other half of the "half-breed" designation, or whether the Irish wife preceded or succeeded Johnson's paternal grandmother is not specified.

24. "Klan Took Oakville Girl from Negro Home" Toronto Daily Star 1 March 1930, p.1-3; "Johnson Claims Indian Descent; No Negro Blood in Him, Klan Victim States" Hamilton Spectator 6 March 1930, p.22; "Klansmen's Names Demanded of Price by Negro Barrister" Toronto Globe 17 March 1930, p.13. On the combined history of the Cherokee Nation and Blacks in the United States, see Shepard Deemed Unsuitable at 19-21; Katja May African Americans and Native Americans in the Creek and Cherokee Nations, 1830s to 1920s (New York: Garland, 1996). On the complexity of designations regarding Black and Aboriginal communities, see also Jack D. Forbes "The Manipulation of Race, Caste and Identity: Classifying AfroAmericans, Native Americans and Red-Black People" The Journal of Ethnic Studies 17:4 (Winter 1990) 1-51.

25. Individuals named "Johnson" who associated with members of the Black community in Oakville may have been linked with Ollie Johnson, Oakville's famous Black athlete. Several of the first Black families to settle in Hamilton were also named "Johnson;" see Hill Freedom-Seekers at 58-9, citing Henry Johnson, Lewis Miles Johnson and Edward Johnson.

26. "Has No Negro Blood, Klan Victim Declares" Toronto Star 5 March 1930, p.1; "Klan Took Oakville Girl from Negro Home" Toronto Daily Star 1 March 1930, p.1-3; "Johnson Claims Indian Descent; No Negro Blood in Him, Klan Victim States"

Hamilton Spectator 6 March 1930, p.22; "Klansmen's Names Demanded of Price by Negro Barrister" Toronto Globe 17 March 1930, p.13. The Star does not mention that the Six Nations sold Black slaves to settlers in the Niagara region, or that Joseph Brant, the Mohawk Chief who originally established the Six Nations' Territory at Brantford, kept thirty to forty Black slaves; see Hill Freedom-Seekers at 52; Ken Alexander and Avis Glaze Towards Freedom: The African-Canadian Experience (Toronto: Umbrella Press, 1996) at 47. Ahern Oakville describes at 40 the company that employed Ira Johnson as a mechanic. A. & G. Hillmer's Livery Service became completely motorized in 1914-15, and expanded into automobile sales and service for the McLaughlin motor car and later the Model T. Ford. Their sales room and parts department occupied their building on Colborne Street (no. 145 Lakeshore), and they operated a garage in their newly constructed building on Church Street (no.147). Johnson must have been laid off from Hillmer Bros. shortly before the KKK raid; the press reported that Johnson had recently left Hillmer Brothers, and was working "with building contractors in this vicinity."

27. "Believe Klan..." Toronto Star 8 March 1930, p.1.

28. "No Country for a Ku Klux" Toronto Globe 3 March 1930, p.4; see also "The Oakville Case" Toronto Star 12 March 1930, p.1-2.

29. "Clansmen of Hamilton" Toronto Globe 3 March 1930, p.3.

30. "Klansmen of Hamilton Defend Their Conduct in 'Raid' at Oakville" Toronto Globe 3 March 1930, p.1,3. The name of Ira Johnson's parents is given in "Klan Took

Oakville Girl from Negro Home" Toronto Star 1 March 1930, p.2.

31. "No Country for a Ku Klux" Toronto Globe 3 March 1930, p.4; "Senators, Members are in Ku Klux Klan, Claims Klan Letter" Toronto Globe 6 March 1930, p.1-2; "Three Must Appear in Oakville Court Because of 'Raid'" Toronto Globe 8 March 1930, p.1-2. Tom M. Henson "Ku Klux Klan in Western Canada" Alberta History 25:4 (Autumn 1977) 1 at 6 notes that some of the members of Parliament accused of Klan membership in the late 1920s were: F.W. Turnbull (Regina), Samuel Gobeil (Compton), W.D. Cowan (Long Lake), John Evans (Rosetown), M.C.H. Cahan (St. Lawrence-St. George), and A.U.G. Bury (East Edmonton).

32. Wyn Craig Wade The Fiery Cross: The Ku Klux Klan in America (London: Simon and Schuster, 1987) at 33-5; Lenwood G. Davis and Janet L. Sims-Wood The Ku Klux Klan: A Bibliography (Westport, Conn.: Greenwood Press, 1984) at p.xiii; Patsy Sims The Klan (New York: Stein and Day, 1982) at 3-4; Kathleen M. Blee Women of the Klan: Racism and Gender in the 1920s (Berkeley: University of California Press, 1991) at 13.

33. Wade The Fiery Cross at 35-62.

34. Wade The Fiery Cross at 62; Blee Women of the Klan at 13-14.

35. The "Ku-Klux Act" permitted any United States citizen to sue in a federal court persons who had "deprived him of rights, privileges and immunities" guaranteed by

the United States Constitution. It created a new crime of "conspiracy to deprive one of his civil rights." The offence of "going in disguise" required proof of intent to deprive someone "of the right to vote or testify in court," or to deny anyone twenty other rights secured by the United States Constitution. It authorized the President to call out the military to put down civil disturbances that deprived citizens of their constitutional rights. It compelled jurors to take an oath that they were not in any way beholden to the Klan. See Wade The Fiery Cross at 88.

36. Susanna Moodie Roughing it in the Bush (Ottawa: 1988, orig. pub. London, 1852) at 224-5. For details on Moodie's life, see Alison Prentice et al. Canadian Women: A History (Toronto: Harcourt, Brace, Jovanovich, 1988) at 69-70. Wayne "The Black Population of Canada West" notes at 69 that racial intermarriage was not entirely uncommon: "It is noteworthy that 385 black men listed in the census had white wives, mainly immigrant women from Europe or the British Isles. This represented approximately one out of every seven black married men...."

37. This passage is intended as a description of the Klan's original phase between 1865 and the early 1870s. The column "Month to Month," written by Sir John Willison, originally appeared in The Canadian Magazine (February 1923) 312-16 and is reprinted in "The Ku Klux Klan" The Canadian Annual Review (1923) at 82. The columnist takes issue with the activities of the Klan in its later phase, suggesting that the organization "fell away from the ideals of its founders."

38. Winks Blacks in Canada notes at 320 that the original Klan "may have had a

few followers in the united counties of Leeds and Grenville in Ontario, but if so, they were not active." Gerald Stevens The United Counties of Leeds and Grenville (Brockville: n.p., 1961) states at 22: "The area has had its nineteenth century witches and rustlers, religious sects, and the K.K.K.; and the steady progress ensured by descendants of Loyalist blood."

39. Orlo Miller This Was London: The First Two Centuries (Westport, Ontario: Butternut Press, 1988) at 130-3. The decision of the United States government to back down is attributed to a treaty recently signed between the United States and Great Britain, and the fact that it was an American presidential election year. Due to Dr. Bratton's release, the outstanding charges of murder in South Carolina were never proceeded with, and he was awarded damages for wrongful arrest and imprisonment. After Dr. Bratton's "triumphant return to Canada" he practised medicine in London for some time, returning eventually to South Carolina, where he died in 1897. Miller notes that London's deputy clerk of the peace, Isaac Bell Cornwall, was convicted in London, Ontario on 17 July 1872 of kidnapping Dr. Bratton, based on his role in assisting the American detectives.

George Brown's Toronto Globe called for the immediate return of Dr. Bratton: "It is the duty of the government to act promptly and decidedly in this matter, and demand that the stranger taken with violence from under the protection of the British flag, be returned unharmed, and rendered secure from further molestation. If he has been guilty of an extraditable offence there is a proper and lawful way of obtaining his arrest and removal.... Official outrages of the above nature must not be tolerated if we desire to maintain the national honour unsullied." Prime Minister Sir John A. Macdonald

interpreted the seizure of Dr. Bratton as the first truly important challenge to the sovereignty of the new Dominion, but because Canada did not yet have jurisdiction over its foreign affairs, it was the Colonial Office in London that conveyed its displeasure to United States President Ulysses Grant; Miller This Was London at 130-3.

40. 'Father and Mother Arrived in London as Runaway Slave; Distinguished Actor Who Was Born in City, and Spent Boyhood Here, Is Officially Honored with Freedom of City At Rotary Club Luncheon,' London Advertiser, 30 October 1937. The dates may be confused, since Richard Harrison was apparently born in London on 29 September 1864. If the house-burning occurred when he was seventeen, the year would have been 1881. See also 'A Famous Native of London,' 'Richard B. Harrison In His Home Town,' 'R.B. Harrison Returns Home,' London Scrapbooks Microfilm Red Series, vol. 26, R971.326L on Reel #4 and 'Notes Gathered by Dr. Seaborn Re: Characters and Locations of Early London' in Edwin Seaborn Collection, Reminiscences, at 468-75, London Room, London Public Library. I am indebted to Christopher Doty for advising me of this incident; see Christopher Doty 'From London to Broadway Stardom' London Free Press, 7 February 1999, p. B2.

41. Wade notes that cross-burning, which did not occur during the first phase of the KKK's activities but became a universal KKK calling-card in its second phase, was entirely attributable to the "exotic imagination of Thomas Dixon, whose fictional Klansmen had felt so much tangible pride in their Scottish ancestry, they revived the use of burning crosses as signal fires from one clan to another." The Birth of a Nation has been described as "the first motion-picture blockbuster - one that would gross well over

\$60 million, establish movies as a major American industry, and enshrine Hollywood, the dull, parched countryside where the film had been shot, as The Motion Picture Capital of the World": Wade The Fiery Cross at 119-46; David M. Chalmers Hooded Americanism: The History of the Ku Klux Klan (New York: Franklin Watts, 1965) at 26; Nancy MacLean Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan (New York: Oxford University Press, 1994) at 12.

42. Wade The Fiery Cross at 140-69, 252; MacLean Behind the Mask of Chivalry at 13-19; Chalmers Hooded Americanism at 297.

43. On the composition of the Klan membership, see Stanley Frost The Challenge of the Klan (New York: Negro Universities Press, 1924) at 2, 6; MacLean Behind the Mask of Chivalry at p.xii, 10; Chalmers Hooded Americanism at 294-7. On the WKKK, see Blee Women of the Klan at 3, 17-18, 27-8, 35, 40-3, 147-49. Blee indicates at 41, 59-65 and 120 that some Klanswomen joined the Klan through their husbands' Klan membership, and were content with the role of helpmate to the men's group. Others sought "a more independent route" and argued for "women's rights" on a platform that challenged "white men's political and economic domination." Some KKK locals also advertised their services to women who sought assistance against violent husbands, philanderers and those who deserted their families; see Blee at 82. In 1924, the Junior Klan for boys under eighteen years, and a separate junior order for girls (the Tri-K Klub) were established; see MacLean at 10 and Blee at 158.

44. Chalmers Hooded Americanism at 279. Willison's column, "Month to

Month," originally appeared in the Canadian Magazine (February 1923) 312-16, and is reprinted in "The Ku Klux Klan" The Canadian Annual Review (1923) at 82.

45. On Klan splinter groups, see Wade The Fiery Cross at 191; Sims The Klan at 7. On the three Canadian groups and their goals, see P.M. Richards "How the Ku Klux Klan Came to Canada" Saturday Night 26 June 1926 at 1-2; Julian Sher White Hoods: Canada's Ku Klux Klan (Vancouver, New Star, 1983) at 19-61; Martin Robin Shades of Right: Nativist and Fascist Politics in Canada, 1920-40 (Toronto: University of Toronto Press, 1992) at 2-59. On the qualifications for membership, see Knights of the Ku Klux Klan of Kanada Provisional Constitution and Laws of the Invisible Empire (n.p. 1925); Kloran: Knights of the Ku Klux Klan of Kanada (Toronto: n.p., 1925). On the membership profile, see Robin at 45-6; William Calderwood "The Rise and Fall of the Ku Klux Klan in Saskatchewan" M.A. Thesis (University of Saskatchewan: 1968) at 144-5; Regina Morning Leader 11 May 1928.

46. Blee Women of the Klan at 86; MacLean Behind the Mask of Chivalry at 143-4; Knights of the KKK of Kanada Provisional Constitution at 19; Kloran: Knights of the Ku Klux Klan of Kanada. There is no ban on mixed race marriages at common law, so legislation was needed to accomplish this. Peggy Pascoe "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America" Journal of American History v.83 (June 1996) 44 notes at 49 that forty-one American colonies and states enacted such laws. Sixteen statutes were still on the book in 1967, when the U.S. Supreme Court ruling in Loving v. Virginia, 388 U.S. 1 (1967) held such laws unconstitutional for violation of the equal protection laws, because they were intended to

maintain white supremacy. See Harvey M. Applebaum "Miscegenation Statutes: A Constitutional and Social Problem" Georgia Law Journal v.53 (1964) 49-91; Derrick A. Bell Jr. Race, Racism and American Law 2nd ed. (Boston: Little, Brown, 1980) at 53-76; Robert J. Sickels Race, Marriage and the Law (Albuquerque: University of New Mexico Press, 1972); Jack Greenberg Race Relations and American Law (New York: Columbia University Press, 1959) at 343-54; Milton R. Konvitz The Alien and the Asiatic in American Law (Ithaca, New York: Cornell University Press, 1946) at 231-2; Peggy Pascoe "Race, Gender, and Intercultural Relations: The Case of Interracial Marriage" Frontiers 12:1 (Summer 1991) 5-18; Byron Curti Martyn "Racism in the United States: A History of the Anti-Miscegenation Legislation and Litigation" PhD. Thesis (University of Southern California: 1979); Megumi Dick Osumi "Asians and California's Anti-Miscegenation Laws" in Nobuya Tsuchida ed. Asian and Pacific American Experiences: Women's Perspectives (Minneapolis: University of Minnesota, Asian/Pacific American Learning Resource Center, 1982) at 2-8; David H. Fowler Northern Attitudes towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic and the States of the Old Northwest, 1780-1930 (New York: Garland, 1987).

47. Montreal Daily Star 1 October 1921, cited in Robin Shades of Right at 11; Henson "Ku Klux Klan" at 2.

48. Henson "Ku Klux Klan" at 1-2, citing Edmonton Journal 20 October 1929 and The British Columbia Federationist 24 November 1922 at 2.

49. Robin Shades of Right at 11; Arthur T. Doyle Front Benches and Back

Rooms: A Story of Corruption, Muckraking, Raw Partisanship and Intrigue in New Brunswick (Toronto: Green Tree Publishing, 1976) at 217-8, 252, 257-8.

50. Robin Shades of Right at 11. "Ku Klux Klan Diminishes in U.S." Saturday Night 16 October 1926, p.1-2 reports that Lord "abandoned his responsible duties in New Brunswick without troubling to inform his constituents of his intention...in order to accept the post of 'Imperial Klaliff' of the Ku Klux Klan of Kanada." See also P.M. Richards "Claims of the Ku Klux Klan" Saturday Night 17 July 1926 at 1.

51. Michael Boudreau "Crime and Society in a City of Order: Halifax, 1918-1935" Ph.D. Thesis (Queen's University: 1996) notes at 415-16 that these incidents occurred on two successive nights in October 1932. "Police officials reported that they knew the identity of the Klan leaders and would monitor their activities." No further action ensued.

52. Allan Bartley "A Public Nuisance: The Ku Klux Klan in Ontario 1923-27" Journal of Canadian Studies 30:3 (Fall 1995) 156 at 159.

53. Bartley "Public Nuisance" at 161, citing anonymous, confidential sources.

54. Bartley "Public Nuisance" at 162; "Ku Klux Rears Head in City of Hamilton with 32 Initiations" Toronto Globe 19 November 1924, p.1-2; "Ku Klux Organizer Found Guilty of Carrying Revolver" Toronto Globe 20 November 1924; "Detective Warned in Note Signed K.K.K." Toronto Globe 22 November 1924; Canadian Security Intelligence

Service Right Wing Extremist Groups in Canada and the United States 14 November 1988 (Solicitor General's file number VF2115, Solicitor General of Canada, Library and Reference Centre, Ottawa) at 19.

55. "Three Must Appear in Oakville Court Because of 'Raid'" Toronto Globe 8 March 1930, p.1-2.

56. Richards "How the Ku Klux Klan Came to Canada" at 1; Canadian Security Intelligence Service Right Wing Extremist Groups at 19-20.

57. Bartley "Public Nuisance" at 164; "Klansmen Balked by Minister" London Evening Advertiser 29 June 1925; "Klan Fiery Cross Burned at Dresden" London Free Press 1 August 1925; "Fiery Cross of K.K.K. Burned at Wallaceburg" London Free Press 20 August 1925; "Klan Meeting Breaks Up" London Free Press 2 September 1925.

58. The sermon was given at the Hyatt Avenue United Church by B.C. Eckhardt, a lay preacher from Nilestown. Rev. R.J. McCormick refused to allow the Klansmen admittance wearing gowns, and they had to sit with their gowns and hoods folded under their arms. Eckhardt later announced that his sermon had been "a Klan address." See "Klansmen Balked by Minister" London Evening Advertiser 29 June 1925.

59. "Klan Spokesman Outlines Aims" London Free Press 3 August 1925, p.1-2. "The Ku Klux Klan" The Canadian Annual Review (1923) reports at 82-3 that the London Mayor professed hostility to the Klan: "London needs no Ku Klux Klan or other

order that seeks to gain unjust ends by a cowardly parade of masks and mystery.... As Mayor of London, I will use all the power of my office to rid the city of the verminous missionaries of an order that seeks to terrify citizens who may differ from these so-called Knights of the Ku Klux Klan in race, colour, religion, or ability to succeed."

60. "Klan Meeting Breaks Up When Hawkins Declines to Answer Questions"

London Free Press 2 September 1925.

61. "Ku Klux Klan Holds First Open Air Ceremony in Canada" London Free

Press 15 October 1925, p.2.

62. "First Canadian Ku Klux Burial" London Free Press 21 January 1926, p.1.

63. Robin Shades of Right at 13.

64. Robin Shades of Right at 19-21; Henson "Ku Klux Klan" at 4.

65. Saskatchewan was organized by three white American Klansmen: Hugh F.

"Pat" Emmons, Lewis A. Scott and Harold Scott. Howard Palmer Patterns of Prejudice:

A History of Nativism in Alberta (Toronto: McClelland and Stewart, 1982) estimates at

101 that the Saskatchewan Klan membership reached 20,000 in the summer of 1928, a

number "four times that of Klan membership in bordering northern states with

comparable populations." Robert Moon This is Saskatchewan (Toronto: Ryerson, 1953)

estimates at 45-47 that at its peak, there were 40,000 KKK members in Saskatchewan.

See also Robin Shades of Right at 28-35, 41-46; William Calderwood "Religious Reactions to the Ku Klux Klan in Saskatchewan" Saskatchewan History 26:3 (1973) 103; William Calderwood "The Decline of the Progressive Party in Saskatchewan, 1925-1930" Saskatchewan History 21:3 (Autumn 1968) 81; James W.St.G. Walker "Race," Rights and the Law in the Supreme Court of Canada (Toronto: The Osgoode Society, 1997); James Gray Roar of the Twenties (Toronto: Macmillan, 1975) at 267-73; Patrick Kyba "Ballots and Burning Crosses - The Election of 1929" in Norman Ward and Duff Spafford eds. Politics in Saskatchewan (Toronto: Longmans, 1968) 105-23; Henson "Ku Klux Klan" at 1-8. On Canadian attitudes toward and experience with inter-racial marriages between whites and the Chinese, see discussion of Yee Clun's case in chapter 5 and discussion of Viola Desmond's case in chapter 7.

66. Henson "Ku Klux Klan" at 4-5; Raymond J.A. Huel "J.J. Maloney: How the West was Saved from Rome, Quebec and the Liberals" in John E. Foster ed. The Developing West (Edmonton: University of Alberta Press, 1983) 221-41. Palmer Patterns of Prejudice at 101-110, 198-99 identifies the driving force of Alberta's KKK as Hamilton-born J.J. Maloney, and notes that there were Klan activities in Arrowwood, Bashaw, Blackie, Bow Island, Cadomin, Calgary, Camrose, Carmangay, Carstairs, Chauvin, Clandonald, Claresholm, Coleman, Didsbury, Edmonton, Edson, Erskine, Forestburg, Fort Saskatchewan, Gibbons, Innisfail, Irma, Jarrow, Killam, Lacombe, Lomond, Marwayne, Medicine Hat, Milo, Nanton, Newbrook, Olds, Pincher Creek, Ponoka, Red Deer, Retlaw, Sterco, Stettler, Stoney Plain, Taber, Tofield, Turner Valley, Vermilion, Vulcan, Wainwright and Wetaskiwin. Palmer estimates this totals about one-eighth of the approximately four hundred cities, towns and villages in the province that

might have been large enough to sustain fraternal orders.

67. Robin Shades of Right notes at 11 that "allegations that Klansmen had set the blazes" were not silenced by official denials from Atlanta authorities. Henson "Ku Klux Klan" notes at 2 that the blazes were "preceded by messages of warning signed by the K.K.K."

68. Robin Shades of Right at 16; Henson "Ku Klux Klan" at 2.

69. Robin Shades of Right at 23-5; Henson "Ku Klux Klan" at 2.

70. The Thorold incident occurred in December 1922. "The Ku Klux Klan" The Canadian Annual Review (1923) at 82-3; Bartley "Public Nuisance" at 160.

71. "The Ku Klux Klan" Canadian Annual Review at 82-3; Bartley "Public Nuisance" at 160.

72. Canadian Security Intelligence Service Right Wing Extremist Groups at 20; Robin Shades of Right at 14-15.

73. Robin Shades of Right at 14-15; "Clan Bigotry Crops Up in Belleville" Saturday Night 30 October 1926, p.2; Richards "Claims of the Ku Klux Klan" at 1.

74. Bartley "Public Nuisance" at 161, citing anonymous, confidential sources.

75. Karen Dubinsky Improper Advances: Rape and Heterosexual Conflict in Ontario 1880-1929 (Chicago: University of Chicago Press, 1993) at 124, citing District Court Judges' Criminal Court, Algoma District, 1927. The reference to the cross burning appears in court records describing the "depraved family" who were charged with running a brothel and using their daughters as prostitutes. On the Klan's efforts to police sexual "misbehaviour" among whites, see Blee Women of the Klan at 82.

76. Henson "Ku Klux Klan" at 6. The efforts of the KKK to seek the removal of Mr. Bilodeau, a Francophone Catholic postmaster in Lafleche, are also described in Hansard's Parliamentary Debates House of Commons, v.3 (9 June 1928) at 4077-8.

77. Palmer Patterns of Prejudice at 102.

78. Palmer Patterns of Prejudice at 106, citing a telephone interview with Archie Keyes, the columnist concerned, in Calgary, May 1978.

79. Robin Shades of Right at 23-7, citing Allan Seager "A History of the Mine Workers' Union of Canada, 1925-1936" M.A. Thesis (McGill University: 1977) at 151-4. Fred Doberstein, the Lacombe blacksmith who was apparently "prone to amorous escapades" was also threatened with death. On the Klan's efforts to police philandering husbands, see Blee Women of the Klan at 82.

80. "Klan Spokesman Outlines Aims" London Free Press 3 August 1925 notes that "the meeting passed off without disturbance and the two police constables held

nothing more than a watching brief...." "Fiery Cross of K.K.K. Burned at Wallaceburg" London Free Press 20 August 1925, notes that "Fire Chief Best was called to the scene, and after an investigation, concluded there was no danger of fire." The scene was a burning cross, about 12 feet by 6 feet, which "burned brightly" between midnight and three o'clock.

81. See, for example, the disclaimer of responsibility issued by Klan officials from their Atlanta headquarters when the Quebec Cathedral and Sulpician rest-house were burned in 1922. Other examples include the Atlanta-based denial from the Imperial Wizard that the KKK was responsible for the burning of the St. Boniface College, and the denials from the American and Canadian Klan that it was responsible for the explosion in St. Mary's Roman Catholic church in Barrie: Robin Shades of Right at 11, 16, 165-6. The same tendency to claim KKK linkages as "purported" or "alleged," despite the existence of letters signed "KKK" and fiery crosses burning at the site, shows up in the accounts of some historians of the Klan. See, for example, Bartley "Public Nuisance" at 160; Winks Blacks in Canada at 322; Henson "Ku Klux Klan" at 6.

82. Chalmers Hooded Americanism at 280; Robin Shades of Right at 15; Bartley "Public Nuisance" at 165-6; "Ku Klux Klan Accused of Dynamite Outrage in the Town of Barrie" Toronto Globe 22 June 1926, p.1-2; "Two More Klansmen Arrested at Barrie Following Outrage" Toronto Globe 23 June 1926, p.1; Archives of Ontario [hereafter AO] RG4-32, Department of Attorney-General for Ontario, File 1526/1926, Rex vs. Skelly, Lee and Butler.

83. When contacted for comment about the trial, white American Klan leaders also attempted to absolve themselves of any connection with the Canadian organization. For his part, Skelly claimed that the day after the bombing, he had been taken to meet with a lawyer acting for the Klan, who "induced him to sign a statement absolving the Ku Klux Klan from all responsibility for the act. [...] [H]e stated that he was afraid that they would do away with him if he did not sign it." See "Two More Klansmen Arrested At Barrie Following Outrage" Toronto Globe 23 June 1926, p.3; Bartley "Public Nuisance" at 165-6, citing Barrie Examiner 17 June 1926; 24 June 1926, 21 October 1926 and AO RG4-32, Department of Attorney-General for Ontario, File 1526/1926, Rex vs. Skelly, Lee and Butler; Winks Blacks in Canada at 322.

84. "Three Must Appear in Oakville Court Because of 'Raid'" Toronto Globe 8 March 1930, p. 1-2; "Summonses Served on Alleged Klan Raiders" London Free Press 8 March 1930, p.5; "Klansmen Fined \$50 and Costs, Two Others Found Not guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3. The press describes Dr. Phillips variously as "William H.," "William A.," "William E.," "William J.," and "H.A." "William H." is the information contained in the Archives of Ontario, Transcript of Jail Register Entry, Milton Jail, RG20, Series F-23, v.7, #162, from which the other biographical details were obtained. I have preferred "William A." because this is the listing that appears continuously in the Vernon City of Hamilton Directories from 1929 to 1932. Harold Orme is listed as an assistant to chiropractor Dr. S.J. Albin until 1932, when he is listed as a "labourer." Orme was married to a woman named Viola, and they roomed at 64 Bay St. South. Some of the press accounts designate Harold Orme as "Dr. Orme." Ernest Taylor was married to a woman named Eva, and owned a home at 154

Gibson Avenue. Phillips is referred to throughout the written records on this case as "Dr. Phillips," a designation that may have been based on his chiropractic occupation. When the case was before the Ontario Court of Appeal, Judge Mulock questioned the designation "Dr." as applied to a chiropractor, asking: "Who calls him a doctor, then?" Phillips's defence counsel, Reid Bowlby agreed that "there was no justification for the title." "'Had No Lawful Excuse' Judge Says of K.K.Klan" Toronto Star 1 April 1930, p.1-

2. The specialty of chiropractic began to emerge at the beginning of the 20th century in Canada. Phillips probably received his professional training in the United States, since facilities were available in Canada only sporadically until after World War II. On the history of chiropractic, see Donald L. Mills "A Brief History of Chiropractic, Naturopathy and Osteopathy in Canada: Appendix I" Royal Commission on Health Services: A Study of Chiropractors, Osteopaths, and Naturopaths in Canada (Ottawa: Queen's Printer, 1966) at 205-239; J. Stuart Moore Chiropractic in America: The History of a Medical Alternative (Baltimore: The Johns Hopkins University Press, 1993); Walter I. Wardwell Chiropractic: History and Evolution of New Profession (St. Louis: Mosby Year Book, 1992). Chiropractic is defined as "the philosophy, science and art of locating, correcting and adjusting the interference with nerve transmission and expression in the spinal column and other articulations without the use of drugs or surgery." It originated in Davenport, Iowa in 1895, with Daniel David Palmer (born in Port Perry, Ontario). By 1942, there were over 500 chiropractic schools in the United States. Degrees conferred by chiropractic colleges were either D.C. (Doctor of Chiropractic) or Ph.C. (Philosopher of Chiropractic) and the title "doctor" was assumed by individuals who obtained such degrees in the United States. During the first quarter of the 20th

century, chiropractic schools operated for a limited number of years in Ontario before closing until the establishment of the Canadian Memorial Chiropractic College in Toronto in 1945. "An Act to provide for the Registration of Drugless Practitioners" S.O. 1925, c.49 first set out a regulatory regime for chiropractors, allowing a government-appointed board to establish qualifications for admission and supervise registration and discipline.

85. "Criminal Code" R.S.C. 1927, c.36, s.464(c).

86. The original English statute, "An Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar Offences" 24 & 25 Vict. (1861), c.96 (Eng.), s.58 states: Whosoever shall be found by Night armed with any dangerous or offensive Weapon or Instrument whatsoever, with Intent to break or enter into any Dwelling House or other Building whatsoever, and to commit any Felony therein, or shall be found by Night having in his Possession without lawful Excuse (the Proof of which Excuse shall lie on such Person) any Picklock Key, Crow, Jack, Bit or other Implement of Housebreaking, or shall be found by Night having his Face blackened or otherwise disguised with Intent to commit any Felony therein, or shall be found by Night in any Dwelling House or other Building whatsoever with Intent to commit any Felony therein, shall be guilty of a Misdemeanor, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for the Term of Three Years, or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour. This wording was virtually duplicated when the crime made its first legislative appearance in Canada: S.C. 1869, c.21, s.59; continuing in R.S.C. 1886, c.164, s.43.

When the first Criminal Code was enacted as "The Criminal Code of Canada, 1892" S.C. 1892, c.29, the offence was moved to s.417 and the wording changed a bit. Gone was the reference to an "intent to commit any felony," since the concept of "felony" had been abandoned with codification. Parliament had the option of substituting the phrase "indictable offence" for the word "felony" and keeping the original meaning of the offence intact. Instead, it chose to reword the last portion of the larceny offence substantially. It divided into two the former crime of having one's face blackened or disguised. Subsection (c) made it a crime to have one's "face masked or blackened, or be...otherwise disguised, by night, without lawful excuse (the proof whereof shall lie on him)." Subsection (d) made it a crime to have one's "face masked or blackened, or be...otherwise disguised, by day with intent to commit any indictable offence." Those who attempted to disguise themselves by day could not be convicted unless the Crown could prove they intended to commit an indictable offence. Those who wore facial disguises by night faced the same sort of reverse onus that had burdened those caught with burglary instruments at night under the previous law. They were put to the test of proving that they had a "lawful excuse" for their actions. The new title of the altered offence, "disguised by night," does not appear separately until R.S.C. 1906, c.146, s.464; R.S.C. 1927, c.36, s.464(c). See also A.W. Rogers ed. Tremear's Annotated Criminal Code 4th ed. (Toronto: Burroughs, 1929) at 603. On the American "Ku Klux Act" see Wade The Fiery Cross at 88.

87. "Klansmen's Names Demanded of Price by Negro Barrister" Toronto Globe 17 March 1930, p.13-14; "K.K.K. Drops All Interest in Oakville Couple's Affairs" Toronto Star 24 March 1930, p.1-2; "Earls Court Labor Protests Activities of Ku Klux

Klan" Toronto Globe 21 March 1930, p.14. It is unlikely that a charge of abduction would have been available on these facts. Most of the abduction offences in the "Criminal Code" dealt with "heiresses" or "unmarried girls under the age of sixteen years." Section 313, which was not so restricted, was also inapplicable. It states: "Every one is guilty of an indictable offence and liable to ten years' imprisonment who, against her will, takes away or detains any woman of any age and whether married or not, with intent to marry or carnally know such woman or to cause her to be married or carnally known by any other person." See "An Act respecting the Criminal Law" R.S.C. 1927, c.36, s.313, 314, 315, 316. Neither "trespass" nor "violence" are nominate criminal offences. Lay reporters may have been responsible for some of the confusion here.

88. While some of these offences carried lighter sentences than "disguised by night," at least one, "kidnapping," bore significantly heavier penalties. "An Act respecting the Criminal Law" R.S.C. 1927, c.36 stipulates that "kidnapping" carried a maximum penalty of twenty-five years. It is defined in s.297(1)(b) as: "Every one is guilty...who, without lawful authority...forcibly seizes or confines or imprisons any other person within Canada." Section 297(2) adds: "the non-resistance of a person so unlawfully kidnapped or confined shall not be a defence unless it appears that it was not caused by threats, duress or force, or exhibition of force." Section 501 defines "intimidation" as follows: "Every one is guilty of an offence...and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labor, who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do or to do anything from which he has a lawful right to abstain....(b) who intimidates such other

person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property." "Assault" is defined in s.290 as: "the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening, by any act or gesture, to apply force to the person of another, if the person making the threat has, or causes the other to believe, upon reasonable grounds, that he has present ability to effect his purpose...." The penalty is set out in s.291 as a maximum of one year's imprisonment. "Disorderly conduct" is defined within the vagrancy offence in s.238(f): "Every one is a loose, idle or disorderly person or vagrant who, causes a disturbance in or near any street, road, highway or public place, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers." The maximum penalty is six months. A "common nuisance" is defined in s.221 as: "an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects." Where such common nuisance endangers the "lives, safety or health of the public" or occasions "injury to the person of any individual," the penalty is one year. "Unlawful assembly" is defined in s.87: "An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously." The penalty is one year. "Riot" is described in s.88 as "an unlawful

assembly which has begun to disturb the peace tumultuously." The penalty is two years. "Loitering by night" under s.36 authorizes a police officer to arrest "without warrant any person whom he finds lying or loitering in any highway, yard or other place by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant." Sections 646-52 list offences for which individuals can be arrested without warrant. The vagrancy offence in s.238(e) also makes it an offence to loiter "on any street, road, highway or public place" and obstruct "passengers by standing across the footpath, or by using insulting language, or in any other way." Section 238(g) makes it a crime to commit "wanton disturbances" by "discharging firearms, or by riotous or disorderly conduct in any street or highway," in such a manner as to wantonly disturb "the peace and quiet of the inmates of any dwelling-house near such street or highway." The maximum penalty for these vagrancy subsections is six months. Toronto lawyer Harry Joseph Waldman pointed out some of these sections, including the "disguised by night" offence, as possible charges during an interview with the Toronto Star: "Argues Chief Was Remiss in Not Arresting Klansmen" 6 March 1930, p.1-2. Little is known about Waldman himself. His father was Louis Waldman, a manufacturer. He articulated with S.M. Mehr in Toronto, was called to the bar in 1926, practising at several Toronto addresses until the late 1950s. I am indebted to Ann-Marie Langlois and Susan Lewthwaite of the Law Society of Upper Canada Archives for this information.

89. "Acted on Mother's Request Klan Statement Now Claims" undated clipping held by the Oakville Historical Society. "An Act respecting the Criminal Law" R.S.C. 1927, c.36, s.501(c) and (f) provides: "Every one is guilty of an offence...who,

wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain...(c) persistently follows such other person about from place to place; or...(f) besets or watches the house or other place where such other person resides or works, or carries on business or happens to be." The penalty is a maximum three months' imprisonment.

90. "Tear Off the Mask from Kowardly Klans" Guelph Evening Mercury and Advertiser 5 October 1926.

91. "Tear Off the Mask from Kowardly Klans" Guelph Evening Mercury and Advertiser 5 October 1926. Templeton also sent a telegram to the Ontario Attorney General, enclosing copies of his articles from the Mercury and demanding to know what legal action could be taken against the Klan. Deputy Attorney General Edward J. Bayly wrote back a lengthy response:

Dear Sir: - [...]

Apart from Municipal By-laws, lighting a flaming cross (or any other symbol) is no more criminal by itself than lighting a bonfire of leaves. It might become criminal if it violated Sections 238(f) or (g) and 239 of the Criminal Code [vagrancy - "disorderly conduct" and "wanton disturbances."] The assembling of persons to the number of three or more with intent to carry out any common purpose, if they so conduct themselves as to cause persons in the neighborhood to fear upon reasonable grounds that the assembly will

disturb the peace tumultuously or occasion persons so to disturb the peace tumultuously, is contrary to the Criminal Code Sections 87 to 89 ["unlawful assembly" and "riot."] Section 464(c) forbids under penalty of five years imprisonment, having one's face masked or blackened by night without lawful excuse the proof of which lies in him, and 464(d) forbids having one's face masked or blackened in the day time with intent to commit any indictable offence. The word "night" or "night time" means between nine o'clock in the evening or six o'clock in the forenoon of the following day. See the Criminal Code Section 2(23).

If the acts referred to in your telegram and in the news item are occurring, you should consult the Crown Attorney who is this Department's local representative in your County and if necessary the Chief of Police at Guelph or the District Inspector of Provincial Police stationed at Kitchener.

I shall be glad to give you such other information as lies in my power.

Yours faithfully

E. Bayly, Deputy Attorney General

[AO RG4-32, Department of Attorney-General for Ontario, File 2254/1926, Documents No.4 and 6.]

92. "An Act respecting the Criminal Law" R.S.C. 1906, c.146, s.748(2) provides:

"Upon complaint by or on behalf of any person that on account of threats made by some other person or any other account, he, the complainant is afraid that such other person will do him, his wife or child some personal injury, or will burn or set fire to his property, the justice before whom such complaint is made, may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizance, or to give security, to keep the peace, and to be of good behaviour, for a term not exceeding twelve months." This provision remained in force at the time of the Oakville raid: "An Act respecting the Criminal Law" R.S.C. 1927, c.36, s.748. Other pro-active criminal charges include "loitering by night" under s.36 of the Code.

93. "An Act respecting the Criminal Law" R.S.C. 1906, c.146, s.317-18 and 333-4. The offence remained in force at the time of the Oakville raid as R.S.C. 1927, c.36, s.317-18 and 333-4.

94. "An Act respecting the Criminal Law" R.S.C. 1906, c.146, s.324 and 331. The defences remained in force at the time of the Oakville raid as R.S.C. 1927, c.36, s.324 and 331. Other legislative defences include "publishing upon invitation" from the person defamed (s.319), "publishing proceedings of courts of justice" (s.320), "publishing Parliamentary papers" (s.321), "fair reports of proceedings of Parliament and courts (s.322), "fair reports of public meetings" (s.323), "fair comments on public persons" or on "literary or art productions" (s.325), "publication in good faith seeking redress" (s.326), "answer to inquiries" (s.327). Section 328 also provides: "No one commits an offence by publishing to another person defamatory matter for the purpose of giving information to that person with respect to some subject as to which he has, or is, on reasonable grounds,

believed to have, such an interest in knowing the truth as to make the conduct of the person giving the information reasonable under the circumstances, if such defamatory matter is relevant to such subject, and is either true, or is made without ill-will to the person defamed, and in the belief, on reasonable grounds, that it is true."

95. For the Saturday Night reference, see "Girls Be Careful Whom You Marry" 15 August 1925, as cited in James W.St.G. Walker "Race," Rights and the Law in the Supreme Court of Canada at 82-3. There are many examples of prominent Canadian figures who endorsed the Klan's hostility towards racial intermarriage. See, for example, the comments of white Toronto lawyer, A.R. Hassard, who while castigating the Klan's tactics in the Oakville raid, enthusiastically endorsed their goal: "From what I have read my sympathies are strongly with the girl and her mother, but unfortunately the law is the other way. If this practice of intermarrying whites and negroes be extensively carried on, some society ought to secure the enactment of a uniform law throughout Canada on the subject. If the Klansmen are really in earnest, they would be the proper people to do that. There is no law against whites and blacks intermarrying, but I think there should be. I think that neither the marriage license issuer nor a minister who has any respect for himself would, except under the gravest conditions, assist in the marriage of a white and a black. The same should be said of the marriage of a white girl and a Chinese. I remember many years ago a large negro out near Dufferin St. was married to a white woman and the children, five or six of them, were of all colors, ranging from black, gray to white. I think that those children would be subject to a good deal of torment in the public schools. A negro child of black parents is generally not subjected to indignity in school." "Has No Negro Blood, Klan Victim Declares" Toronto Star 5 March 1930, p.2.

Ruth I. McKenzie "Race Prejudice and the Negro" Dalhousie Review v.20 (1940) notes at 201 that "intermarriage [of Blacks] with whites is not approved."

96. "An Act to amend 'The Libel Act'" S.M. 1934, c.23, s.1 provides: "'The Libel Act' being chapter 113 of the Revised Statutes of Manitoba, 1913, is amended by adding thereto the following section:

13A.(1) The publication of a libel against a race or creed likely to expose persons belonging to the race or professing the creed to hatred, contempt or ridicule, and tending to raise unrest or disorder among the people, shall entitle a person belonging to the race or professing the creed to sue for an injunction to prevent the continuation and circulation of the libel; and the Court of King's Bench is empowered to entertain the action.

(2) The action may be taken against the person responsible for the authorship, publication, or circulation of the libel.

(3) The word "publication" used in this section shall be interpreted to mean any words legibly marked upon any substance or object signifying the matter otherwise than by words, exhibited in public or caused to be seen or shewn or circulated or delivered with a view to its being seen by any person.

97. The Nationalist Party of Canada was established in the fall of 1933 by William Whittaker, a white British immigrant who worked as a police officer in St. Catharines, Ontario before moving to Winnipeg. The party was dedicated to "combatting

Jewish influence" and fighting the Communist party "tooth and nail." Its newspaper, The Canadian Nationalist, was filled with hate literature inciting boycotts and violence against Jews and making allegations of "ritual-murder." The impetus for the legislation came from provincial politician, Marcus Hyman, a Jewish immigrant from Britain who was a lawyer and law lecturer at the Manitoba Law School. The original bill, introduced in March 1934, was restricted to "repeated publications" and provided injunctive remedies as well as the right to sue for damages: "The repeated publication of a libel against any race or creed to hatred, contempt or ridicule shall...entitle any person belonging to such race or professing such creed to sue for damages and for an injunction to prevent the continuation and circulation of such libel or any libel of a similar character." The bill also authorized lawsuits against "any person, firm, or corporation directly or indirectly responsible for the authorship, publication and circulation of such libel." The Hyman bill was co-authored by Ernest Brotman, and received the support of Manitoba Attorney General W.T. Major, the governing party, the opposition parties and the local newspapers. Shortly after its enactment, Jewish lawyer William Verner Tobias brought libel charges against Whittaker, citing him as one of the publishers of The Canadian Nationalist. Judge Percival Montague of the Court of King's Bench granted an injunction. Robin Shades of Right notes at 204 that the initial injunction was not effective in eliminating the publication or distribution of the paper. No further proceedings were initiated. For details, see Robin at 199-204, citing the Canadian Jewish Chronicle 13 April 1934; Louis Rosenberg Canada's Jews: A Social and Economic Study of Jews in Canada in the 1930s (Montreal: McGill-Queen's Press, 1993; orig. pub. 1939) at 303; Winnipeg Free Press 21 March 1934, p.18; 5 April 1934, p.17; Winnipeg Evening

Tribune 4 April 1934, p.1; 5 April 1934, p.17. Walker "Race, Rights and the Law" notes at 193-5 that efforts to enact similar legislation in Quebec and Ontario came to naught.

98. "An Act to prevent the Publication of Discriminatory Matter Referring to Race or Creed" S.O. 1944, c.51 provides:

s.1. No person shall -

(a) publish or display or cause to be published or displayed; or

(b) permit to be published or displayed on lands or premises or in a newspaper, through a radio broadcasting station or by means of any other medium which he owns or controls, any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race or creed of such person or class of persons.

s.2. This Act shall not be deemed to interfere with the free expression of opinions upon any subject by speech or in writing and shall not confer any protection to or benefit upon enemy aliens.

s.3. Every one who violates the provisions of section 1 shall be liable to a penalty of not more than \$100 for a first offence nor more than \$200 for a second or subsequent offence and such penalties shall be paid to the Treasurer of Ontario.

s.4.(1) The penalties imposed by this Act may be recovered upon the application of any person with the consent of the Attorney General, to a judge of the Supreme Court by originating notice and upon every such application the rules of practice of the Supreme Court shall apply.

(2) The judge, upon finding that any person has violated the provisions of section 1 may, in addition to ordering payment of the penalties, make an order enjoining him from continuing such violation.

(3) Any order made under this section may be enforced in the same manner as any other order or judgment of the Supreme Court. See also "The Racial Discrimination Act" R.S.O. 1950, c.328. On the lobby campaign that generated the legislation, see Alexander and Glaze Towards Freedom at 191-2; Walker "Race," Rights and the Law at 195-7; John C. Bagnall "The Ontario Conservatives and the Development of Anti-Discrimination Policy, 1944-1962" Ph.D. Thesis (Queen's University: 1984) at 18-65. The legislation was opposed by the Grand Orange Lodge, which sent telegrams to all the provincial legislators claiming that the statute might prevent publication of the Orange Sentinel and the Catholic Register, and furnished "an insult to the intelligence of Ontario citizens." The Toronto Globe also opposed the statute, claiming that it infringed civil liberties: see Toronto Globe 4 March 1944, p.5; 10 March 1944, p.6; 13 March 1944, p.6, as well as Toronto Daily Star 11 March 1944, p.4. Premier George A. Drew, who was the author of the amendment that added the provision stating that the act would not interfere with freedom of speech, defended the measure: "It is intended to stop the use of offensive signs, notices and symbols which by announcing the denial of equal rights to

any particular group in our community, offend equally those of that group itself, and all who accept the principles of democracy which the legislature is pledged to serve."

Alexander MacLeod, who also spoke in favour of the bill, indicated that it "declare[d] to the world that we stand in differentiation from the German nation, which has become depraved as a results of permitting this sort of thing to develop." See Hansard Manitoba Legislative Debates, 10 March 1944, p.758, 768.

99. Walter Surma Tarnopolsky and William F. Pentney Discrimination and the Law 1st ed. (Don Mills, Ont.: Richard De Boo, 1985) c.2. This book will not attempt to chronicle the various municipal by-laws that contributed to racist practices, nor those that attempted, beginning in the 1940s, to reduce racist behaviour. The discussion which follows is limited to provincial and federal enactments. "An Act to amend The Insurance Act" S.O. 1932, c.24, s.4 provides: "'The Insurance Act' is amended by adding thereto the following section: 92a. Any licensed insurer which discriminates unfairly between risks within Ontario because of the race or religion of the insured shall be guilty of an offence." Walker "Race," Rights and the Law notes at 193 that it was a Jewish M.L.A., E. Frederick Singer of St. Andrew's riding in Toronto, who spear-headed this legislative initiative, based on research showing that insurance companies were using discriminatory insurance premiums to force Jews out of business.

100. "An Act respecting Unemployment Relief" S.B.C. 1931, c.65, validates a federal-provincial agreement allowing the province to receive money for relief work projects. Clause 8 of the agreement provides that "in no case shall discrimination be made in the employment of any persons by reason of their political affiliation." "An Act

respecting Unemployment Relief" S.B.C. 1932, c.58, validates clause 15 of the federal-provincial agreement that "in no case shall discrimination be made or permitted in the employment of any persons by reason of their political affiliation, race or religious views." "An Act respecting Unemployment Relief" S.B.C. 1933, c.71 ratifies a prior agreement with the federal government to pay part of the cost of placing families on land for farming. Clause 4 provides that "the selection of families shall be made without discrimination by reason of political affiliation, race, or religious views." "An Act to provide Social Assistance" S.B.C. 1945, c.62, s.8, provides that "in the administration of social assistance there shall be no discrimination based on race, colour, creed or political affiliations."

101. "The Labour Relations Act" S.O. 1950, c.34, s.34(b) provides: An agreement between an employer or an employers' organization and a trade union shall be deemed not to be a collective agreement for the purposes of this Act...if it discriminates against any person because of his race or creed.

102. "An Act to amend The Conveyancing and Law of Property Act" S.O. 1950, c.11, which received royal assent on 24 March 1950, provides in s.1: "The Conveyancing and Law of Property Act is amended by adding thereto the following section:
RESTRICTIVE COVENANTS 20a. Every covenant made after this section comes into force which but for this section would be annexed to and run with land which restricts the sale, ownership, occupation or use of land because of the race, creed, colour, nationality, ancestry or place of origin of any person shall be void and of no effect." For further details, see Walker "Race," Rights and the Law at 182-245. "An Act to amend The Law of Property Act" S.M. 1950, c.33, received royal assent 22 April 1950. Section 1 amends

"The Law of Property Act" R.S.M. 1940, c.114, by adding s.6A: "Every covenant made after this section comes into force that, but for this section, would be annexed to and run with land and that restricts the sale, ownership, occupation, or use, of land because of the race, colour, nationality, ancestry, place of origin, or creed of any person shall be void."

103. The "Saskatchewan Bill of Rights Act, 1947" S.S. 1947, c.35, in force as of 1 May 1947:

s.14(1) No person shall publish, display or cause or permit to be published or displayed on any lands or premises or in any newspaper, through any radio broadcasting station, or by means of any other medium which he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict, because of the race, creed, religion, colour or ethnic or national origin of any person or class of persons, the enjoyment by any such person or class of persons of any right to which he or it is entitled under the law.

(2) Nothing in subsection (1) shall be construed as restricting the right to freedom of speech under the law, upon any subject.

See further discussion of this statute in chapter 7.

104. S.C. 1919, c.46 provides:

s.98(1). Any association, organization, society or corporation, whose professed

purpose or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury, in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend, shall be an unlawful association.

s.98(3). Any person who acts or professes to act as an officer of any such unlawful association, and who shall sell, speak, write or publish anything as the representative or professed representative of any such unlawful association, or become and continue to be a member thereof, or wear, carry or cause to be displayed upon or about his person or elsewhere, any badge, insignia, emblem, banner, motto, pennant, card, button or other device whatsoever, indicating or intended to show or suggest that he is a member of or in anywise associated with any such unlawful association, or who shall contribute anything as dues or otherwise, to it or to any one for it, or who shall solicit subscriptions or contributions for it, shall be guilty of an offence and liable to imprisonment for not more than twenty years. See also s.98(2) and (4)-(11). In 1930, legislative amendment reduced the maximum penalty to two years and a new defence provided immunity if the accused could prove that the criticism of the state was constructive and that there was no advocacy of change by illegal means. Section 98 was repealed in 1936. For reference to the section as "infamous" see Lita-Rose Betcherman The Little Band: The Clashes Between the Communists and the Canadian Establishment 1928-32 (Ottawa: Deneau, 1983).

105. Betcherman Little Band notes at 148-52, 154 that Winnipeg Mayor Colonel Ralph Webb advocated proclaiming outright illegality for the Communist Party in 1931. The Manitoba Orange Lodge issued a "comprehensive legislative blueprint for the Dominion government" that same year, based on recommendations of the America Fish Commission. The blueprint contained proposals to strengthen immigration laws to prevent admission and facilitate deportation of Communists, deny naturalization to Communists, amend postal legislation to cut off the mails to Communist literature, and declare the Communist Party of Canada to be illegal. These proposals were endorsed by the Manitoba Employer's Association. A campaign to "deport and ban" Communists evoked letters from "coast to coast" directed to the Prime Minister.

106. The individuals concerned about discrimination and inequities in Canadian society were, perhaps, reluctant to adopt the sorts of measures that had been used to attack left-wing organizations such as the Communist Party. A white C.C.F. member of Parliament, J.S. Woodsworth, spoke out against the KKK in the House of Commons in 1926, but explicitly refrained from endorsing such tactics: "I had placed in my hands a short while ago one of the [KKK] circulars sent to a friend of mine summoning a meeting of this organization. [...] I shall not go into the literature which I hold in my hand, nor am I going to urge the Department of Justice to summarily deport these people. I would remind them that the machinery is there and has been used in the case of much more worthy people. I am not strong, however, on repressive measures; I hope we shall soon have fewer of these measures than are now in force in this country. I do think, though, that we should do everything in our power to lessen the influence of such an organization as this, because if we allow such bodies as the Ku Klux Klan, the latest American

importation, to engender a spirit of intolerance in this country, we are bound to have a serious time ahead of us." See Debates House of Commons v.1 (29 January 1926) at 573.

107. Tim Buck and his comrades were convicted in September 1931 in a jury trial before Judge William Henry Wright of the Ontario Supreme Court; see Rex v. Buck et al.; Record of Proceedings: The King v. Buck et al. (Toronto: Herbert H. Ball, King's Printer, 1931). The convictions were upheld before the Ontario Court of Appeal: Rex v. Buck et al. (1932) 57 C.C.C. 290. Charlie Sims and five young women were charged under s.98 in September 1929, for publishing a leaflet advocating a change in government by "force, violence or terrorism." Judge J.H. Denton of the York County Court acquitted the accused, concluding that the Communist literature in question did not advocate violence or terrorism. Aaro Vaara, the Finnish-born Sudbury publisher of the Communist publication Vapaus, was convicted in 1929 by the Ontario Supreme Court of seditious libel under s.134 of the "Criminal Code." Seditious libel, which was not defined in the "Criminal Code" at the time, was proven upon evidence that the accused uttered "strong words against the government." Six Toronto Communists were convicted by Police Magistrate J.E. Jones in 1929 of "disorderly conduct" under the vagrancy provisions for "causing a disturbance in or near any street, road, highway or public place, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers." Concerns over the use of the vagrancy charge to attack Communist public advocacy surfaced in November 1929, in Rex v. Buhay (1929), 64 O.L.R. 531, when Judge Garrow insisted that "the mere fact of holding a meeting in a street does not necessarily imply impeding or incommoding of passengers." Garrow ruled that "proof of actual impeding is essential to justify a conviction." Ontario Court of

Appeal Judge Middleton overruled this in December 1929, ruling in Rex v. Knowles (1929), 65 O.L.R. 6 that an inference of impediment could be drawn by the court: "ample is shown to justify an inference that many peaceable passengers upon the streets of the city must have been inconvenienced by this disgraceful performance in which the accused took a leading part." Six more Toronto Communists were charged and convicted in Toronto Police Court that same year variously of "disorderly conduct," "obstructing the police" and "unlawful assembly." Communist organizer Becky Buhay was convicted in 1929 of vagrancy before Toronto Magistrate Jones, and eight others were convicted later that fall. Four women and two men were also convicted in October of 1929 for "wilfully obstructing a peace officer;" the court offered to commute their sentences if they would refrain from attending Communist meetings, but the convicted individuals refused to concede to this condition and chose to go to jail. Participants in a May Day parade in Fort William in 1930 were charged with unlawful assembly; eight of eighteen were convicted. A Sudbury demonstration of the unemployed resulted in charges of "unlawful assembly" in 1930. Hannes Sula was arrested in Sudbury City Council chambers in 1931, while speaking as part of a delegation for the unemployed; he was charged with vagrancy, but after he spent three days in jail the charges were dropped. For details, see Betcherman Little Band at 5, 29-41, 44, 64-6, 70-85, 94, 120-5, 153, 156, 165, 171-215.

108. "An Act respecting the Criminal Law" R.S.C. 1927, c.36, s.91 provides: "It is the duty of every sheriff...mayor...and justice...who has notice that there are within his jurisdiction persons to the number of twelve or more unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the

place where such unlawful, riotous and tumultuous assembly is, and among the rioters, or as near to them as he can safely come, with a loud voice to command or cause to be commanded silence, and after that openly and with loud voice to make or cause to be made a proclamation in these words...: "Our Sovereign Lord the King charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life." Section 92 makes it an offence to prevent such proclamation, or fail to disperse within "thirty minutes." Section 93 provides indemnity to officers who kill or injure those who resist the dispersal. In the summer of 1929, Toronto Police Chief Denis Draper and Mayor Samuel McBride threatened to "read the riot act" if the Communists held a demonstration; Betcherman Little Band at 66.

109. At least some periodicals expressed concern about this apparent double standard. "The Ku Klux Klan" The Canadian Forum v.9 (April 1930) at 233 described the Oakville KKK raid, and added: "Within a week of this affair a meeting of Communists, held in daylight before the city hall of Toronto, was broken up by the police, some of those who tried to speak on political questions being freely knocked about while others were run into the police cells. If Ontario were true to its vaunted British traditions, Communists would be allowed to speak and meetings of masked Klansmen would be dispersed with night-sticks. If some of these 'prominent business men' parading in their Knight-shirts were cracked over the head, trampled in the mud, and then heaved into a lousy gaol, they would be content perhaps to mind their own business for the future."

110. The Ontario Supreme Court records for this case were "destroyed due to extensive culling" (correspondence from Joseph Solovitch, Archives of Ontario, 30 March 1995) as were the files from the Attorney General and the Provincial Police: Milton: W.I. Dick re Ku Klux Klan demonstration #1946 (destroyed); Phillips, W.A. General #2489 (destroyed); Sentences, Dr. W.A. Phillips, Being Masked at Night (Ku Klux Klan) #638 (destroyed); correspondence from Joseph Solovitch, Archives of Ontario, 14 March 1995. I have relied upon the reported decision, Rex v. Phillips (1930), 55 C.C.C. 49 (Ont. C.A.); the Benchbooks of Sir William Mulock, Book #14, 14 January 1929 - 3 June 1930, Court of Appeal of Ontario Archives, Box 412, Shelf 23, Bay 4, Aisle Book 14, p. 309, and the newspaper coverage of the case. The designation of the Oakville trial as "the first" is somewhat problematic, given the three Barrie Klansmen who were convicted in 1926.

111. "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "Klansman Fined \$50 and Costs, Two Others Found Not guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Three Klansmen on Trial Today" London Advertiser 10 March 1930, p.1; "One Klansman Fined and Two Are Freed" Toronto Star 10 March 1930; "Klansmen on Trial Here" Oakville Star and Independent 14 March 1930, p.1. Mathews Oakville mentions at 248 that the Wallaces were one of the first Black families to settle in Oakville.

112. "Klansmen of Hamilton Defend Their Conduct in 'Raid' at Oakville" Toronto Globe 3 March 1930, p.1,3. Ahern Oakville notes at 131 that McIlveen's store was the last shop on Main Street, no.126.

113. "W.I. Dick, Crown Attorney for 45 Years" Toronto Globe 24 April 1962, p.4.

114. "Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Klansman Fined \$50 and Costs, Plans to Appeal" London Advertiser 11 March 1930, p.3; "Tear off the Mask from Kowardly Klans" Guelph Evening Mercury and Advertiser 5 October 1926; "That Freedom" 8 October 1926. The Guelph paper also suggests that a number of city councillors were active Klan members.

115. "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15.

116. Charles William Reid Bowlby was born in 1892 in Tapleystown, Ontario to Charles Bowlby and Anna Cross. He served in World War I in the 26th Battalion from 1915-1917. After receiving war injuries, he returned to Ontario and articulated with the Hamilton firm of Nesbit, Gauld, Langs. He was called to the Ontario bar in 1919. He practised with Washington, Martin, Bowlby & Griffin at 7 Hughson South, and resided at 525 Dundurn South. His wife was Mary Elsie Dixon and he was a member of the United Church. I am indebted to Susan Lewthwaite of the Law Society of Upper Canada Archives for this information.

117. "Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at

Oakville" Hamilton Spectator 11 March 1930, p.15; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930.

118. "Klansmen of Hamilton Defend Their Conduct in 'Raid' at Oakville" Toronto Globe 3 March 1930, p.1,3; Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930.

119. Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930.

120. Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930.

121. The Toronto Star would raise some question about this verdict in an editorial "The Oakville Case" 12 March 1930, p.1-2. Recognizing that the two men discharged by McIlveen had not had their faces coloured and had not worn masks, the Star queried whether this was sufficient to warrant an acquittal. Weren't Taylor and Orme still "disguised," given their garb of the "white gowns and hoods of this secret society?" The

offence required proof that the individual charged have "his face masked or blackened, or be...otherwise disguised, by night." The use of the disjunctive "or" suggests that even with faces uncovered, there might have been some argument that Taylor and Orme were "disguised." The Star urged the Crown to "carry these two cases to a higher court." No appeal was ever mounted.

122. Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930.

123. Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930.

124. Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15; "One Klansman Fined and Two are Freed" Toronto Star 10 March 1930.

125. Klansman Fined \$50 and Costs, Two Others Found Not Guilty; Did Not Wear Masks in Raid" Toronto Globe 11 March 1930, p.1,3; "Local Klansman is Fined at Oakville" Hamilton Spectator 11 March 1930, p.15. "Hamilton Klan Member Fined"

London Free Press 11 March 1930, p.9 notes that the costs were \$33, and that in lieu of payment, the convicted man would have had to serve thirty days.

126. "K.K.K. Prosecutions Ended With One Conviction Won" Toronto Star 11 March 1930, p.2.

127. "K.K.K. Prosecutions Ended With One Conviction Won" Toronto Star 11 March 1930, p.2.

128. "Oakville and the K.K.K." Dawn of Tomorrow 24 March 1930, p.2. The Dawn of Tomorrow was edited and published by James Jenkins in London, Ontario from 1923 to 1931, the time of his death. His widow Christine Jenkins continued the operation. For details, see Braithwaite and Benn-Ireland Some Black Women at 65. "The Oakville Case" Toronto Star 12 March 1930, p.1-2 also raises queries about the acquittals of Taylor and Orme.

129. The KKK wrote to Cross and to Rev. Maurice Eisendrath (for further information, see further discussion in this chapter) several letters it released to the press, demanding "retraction" of statements "against the Klan" and threatening "immediate action" for slander. The letter to Cross also states: "It is apparent that you sadly misunderstood the notice prompting the Klan's action at Oakville, or that you were determined to discredit the fact that we acted in a lawful manner, or that you were making much of an opportunity to gain for yourself free public advertisement. [While it may be your legal privilege to marry] a Chinese, a Jewess, a white woman or any other

nationality, as [you] are quoted as saying, the Klan believes it would be a sad state of affairs if mixed marriages and racial impurity were to gain favor." "Klan May March Again in Answer to Appeals" Toronto Star 26 March 1930, p.1-3; "Ku Klux Klan Will Appeal Court Decision" London Advertiser 15 March 1930, p.1.

130. "House Raided by K.K.K. is Burned" London Free Press 18 March 1930, p.1.

131. Cross's letter to the Attorney General reads: "I take it this is a veiled threat and disguised intimidation aimed at me by the spokesman of this outlaw body. May I suggest to you that an organization which vauntingly proclaims 'we will do what the law cannot do,' and in spite of the conviction of one of its members recently, with brazen defiance still maintains that it will continue to invade the rights and liberties of the citizen who falls foul of its tenets, is eminently a fit subject for your attention and should be shorn of some of its arrogance." "K.K.K. Drops All Interest in Oakville Couple's Affairs" Toronto Star 24 March 1930, p.1-2; "Complaint is Made of Ku Klux Claims" Toronto Globe 24 March 1930, p.1; "Four Face Charges" Toronto Star 7 March 1930, p.1; "Believe Klan..." Toronto Star 8 March 1930, p.1; "Indian Marries Oakville Girl" London Free Press 24 March 1930, p.15. On the KKK's tactics of intimidation against Black lawyers in the southern United States prior to World War II, see Smith Emancipation who notes at 300-1: "The sacrifices made by black lawyers challenging the system...were enormous. Some were run out of town, disbarred on dubious charges, or physically attacked. Black lawyers supporting the NAACP became marked men." Smith also notes at 247, 301 and 353 that Florida's first Black lawyer to hold a judicial post, James Dean,

was removed from office in 1889 for issuing a marriage licence to a Black Cuban woman and a fair-skinned Black man who looked white. Black lawyer Thomas Gillis Nutter faced mob violence at the courthouse door in West Virginia at the turn of the century, after he defended a Black man charged with raping a white woman. Black lawyers defending Black men charged with rape in Tennessee were, on occasion, forced to flee the state after their clients were lynched.

132. "Klansmen's Names Demanded of Price by Negro Barrister" Toronto Globe 17 March 1930, p.13-14. Closer to home, it appears that racial mixture between Blacks and whites was also endemic. Power and Butler Slavery and Freedom in Niagara note at 71 that by 1871, most of the Blacks in the Niagara area were "of mixed race. The pure-blooded African was fading away in Niagara - in fact and in memory." Power and Butler also note at 61 that there were many mixed marriages of Blacks and whites in 19th-century Niagara.

133. "Klansmen's Names Demanded of Price by Negro Barrister" Toronto Globe 17 March 1930, p.13-14; "K.K.K. Drops All Interest in Oakville Couple's Affairs" Toronto Star 24 March 1930, p.1-2; "Earls court Labor Protests Activities of Ku Klux Klan" Toronto Globe 21 March 1930, p.14. On the exploitative and forced sexual relations between white men and Black women, see Davis Women, Race and Class.

134. "Klan Took Oakville Girl from Negro Home" Toronto Star 1 March 1930, p.2.

135. "Has No Negro Blood, Klan Victim Declares" Toronto Star 5 March 1930, p.2; "Declares Negro Blood Improves White Race" Toronto Star 1 April 1930, p.2. Pitt stated: "Of course I do not know what the results of intermarriage would be from a biological standpoint...but I am inclined to think that it would be a forced condition. The theory seems to me to be mere speculation. I would rather not discuss the matter further, as I do not think it would do my own race any good to begin a controversy on the color question. Whenever in the past there has been a discussion of the 'evils' of mixed marriages, the censure has always been passed against the colored party and not the white." Pitt's comments are in response to a speech given by Dr. Edwin Grant Conklin, a professor of biology from Princeton University, to the Canadian Club on 31 March 1930. There Conklin stated that the only solution to the color problem in the United States was "the losing of the distinctiveness of the negro by blending with other racial elements in the process of time." Recognizing the inevitability of racial mixing, Conklin stated: "It has never happened that two races, no matter how distinct, have inhabited the same territory for a thousand years without losing their distinctiveness and blending their traits." Conklin was not, however, a racial egalitarian. He was a charter member of the racist Galton Society in New York and he advocated reducing the birth rate "among inferior races" and increasing it "among superior peoples." "Savant Would Blend Negroes with Whites" Toronto Daily Star 1 April 1930, p.9; Hamilton Cravens The Triumph of Evolution (Philadelphia: University of Pennsylvania Press, 1978) at 115-17.

136. On the history of Black nationalism, see Tony Martin Race First: The Ideological and Organizational Struggles of Marcus Garvey and the Negro Improvement Association (Westport, Conn.: Greenwood, 1976) and Theodore G. Vincent Black Power

and the Garvey Movement (Berkeley: Ramparts, 1971) on Garvey's activities of the 1930s. On the influence of Marcus Garvey in Canadian Black communities, see Alexander and Glaze Towards Freedom at 130-3. See also Gary Peller "Race Consciousness" Duke Law Journal (1990) 758-847, who notes that the Black nationalist tradition was manifest in Booker T. Washington's self-help and separatist ideas of Black advancement, and in W.E.B. Du Bois's critique of the NAACP's policy of integration in the 1930s. For more detailed analysis of racial discrimination in employment, housing and access to public facilities, see discussion of Viola Desmond's case in chapter 7.

137. "Declares Negro Blood Improves White Race" Toronto Star 1 April 1930, p.2. These remarks were made in the context of responding to Professor Conklin's lecture, prompting Cross to note: "Dr. Conklin in his observations on race blending is in line with science on this question." Cross continued his advocacy of Black genetic input by adding: "His virility combined with the mental sharpness of the white man would give a better race."

138. "Klansmen's Names Demanded of Price by Negro Barrister" Toronto Globe 17 March 1930, p.13-14; "K.K.K. Drops All Interest in Oakville Couple's Affairs" Toronto Star 24 March 1930, p.1-2; "Earls Court Labor Protests Activities of Ku Klux Klan" Toronto Globe 21 March 1930, p.14. Another group that supported Cross's position was the International League for Peace and Freedom, represented by Mrs. Alice Lowe: see "Has No Negro Blood, Klan Victim Declares" Toronto Star 5 March 1930, p.1-3. For more details concerning racial segregation in Canada, see the discussion of Viola Desmond's case in chapter 7.

139. "Rabbi Calls K.K.K. Lawless Body" Hamilton Spectator 24 March 1930, p.19; "K.K.K. Drops All Interest in Oakville Couple's Affairs" Toronto Star 24 March 1930, p.1-2. Rabbi Eisendrath also states: "The Roman Catholic church is not the religious menace in this country. Surely that menace is to be found in the bigotry and fanaticism embodied in so august an organization as the Ku Klux Klan. Between the domination of the Pope sitting in his Vatican and the grand kleagle of the Klan I would choose the pope, each and every time." On the friendships and political connections forged between Jewish and Black communities, see Alexander and Glaze Towards Freedom at 191-2. Eisendrath was born in Chicago, Illinois in 1902 to N.J. Eisendrath and Clara Osterreicher. In 1937, Rabbi Eisendrath would find "black crepe nailed to his door," a message of intimidation from the Canadian Nazi movement. For details about Eisendrath, whose wife was also a peace activist, see Gerald Tulchinsky "The Jewish Experience in Ontario to 1960" in Roger Hall et al. Patterns of the Past: Interpreting Ontario's History (Toronto: Dundurn Press, 1988) 301 at 316; Stephen Speisman "Antisemitism in Ontario: The Twentieth Century" in Alan Davies ed. Antisemitism in Canada: History and Interpretation (Waterloo: Wilfrid Laurier University Press, 1992) 113 at 125; Maurice N. Eisendrath The Never Failing Stream (Toronto: Macmillan, 1939); "Eisendrath, Rabbi Maurice Nathan, B.H.L., B.A." Who's Who in Canada, 1936-37 (Toronto: International Press, 1937) at 1323.

140. "Earlscourt Labor Protests Activities of Ku Klux Klan" Toronto Globe 21 March 1930, p.14.

141. "No Country for a Ku Klux" Toronto Globe 3 March 1930, p.4. "The

Oakville Case" Toronto Star 12 March 1930, p.1-2, notes: "The kind of men who allow their inclinations and preferences to guide them, instead of their reason, may condone what was done at Oakville. But even though they condone that which was done, they should be able to perceive that the instrument used in the doing of it is one that cannot be tolerated in Ontario or in Canada or in any British country. [...] The night-riding, the uniform, the invasion of a private dwelling, the removal of an individual from one place to another - all this was lawlessness, in contempt of the Crown and all our lawful institutions. [...] It is all well enough for such an organization to profess good intentions, but no secret court of self-elected persons can be permitted to carry on in this province in defiance of our lawful institutions." Some newspapers were less affable. William Templeton's Guelph Mercury was one of the most oppositional: see earlier discussion in this chapter. "A Menace to Law and Order" Regina Morning Leader 29 November 1922, p.4, also states: "The moment...any...organizing official of the Ku Klux Klan steps across the border, he should be booted back over it. Canada has enough problems on her hands at the present time without being stirred up by the lawlessness for which the 'invisible empire' stands. [...] It seeks to establish 'the solidarity of the Protestant Gentile white race not only in the United States but throughout the world.' This brands it as anti-Catholic and anti-Semitic and sets it against every race but the Caucasian - a strange program to be promulgated at this late date in human history, when co-operation among all races and religions is beginning to show itself far more profitable to the world than division, dissension and conflict. [...] [T]he authorities in Canada should be prompt to act against the menace the moment it rears its mischievous head in this country. We have here, as the United States has, Catholics and Protestants, Gentiles and Jews, whites and blacks

and browns and reds and yellows, all living in increasing harmony one with the other. Setting one against another would be fatal to that ideal of Canadian unity toward which all sections of the country are now working...." A few periodicals were equally antagonistic. "The Ku Klux Klan" The Canadian Annual Review (1923) at 82-3 cites the threats of violence associated with Klan activities and claims that Canada "would not prove a suitable field for the Klan's operations." "The Ku Klux Klan" The Canadian Forum v.9 (April 1930) at 233 states: "The Klan spirit is rooted in intolerance and can bear only evil fruit. [...] There is no place for it in Canada."

142. A.D. Monk "Knights of the Knightshirt" The Canadian Magazine v.66 (October 1926) 31 also adds: "[O]ne wonders that a plan so utterly un-Canadian and un-British should find root in our soil."

143. For two noteworthy exceptions, see the discussion regarding William Templeton, the white editor of the Guelph Mercury discussed above, and "A Menace to Law and Order" Regina Morning Leader 29 November 1922, p.4.

144. On the \$4 commission rate, see Wade The Fiery Cross at 154. The charter of the Canadian Klan provided that the three original organizers should be the "Imperial officers," with the right to "share equally in the income" and "determine the salaries" paid. Richards "Claims of the Ku Klux Klan;" "Ku Klux Klan Diminishes in U.S." Saturday Night 16 October 1926, p.1-2; Monk "Knights of the Knightshirt" at 31. The reference to the Welland Tribune-Telegraph is from the Canadian Magazine article; no date or page reference is given. Similar preoccupation with the finances of the Klan

appears in the debates of the House of Commons: see, for example, Debates House of Commons, v.1 (24 March 1931) at 252-3.

145. Monk "Knights of the Knightshirt" at 31. Richards "How the Ku Klux Klan Came to Canada" at 1-2 uses the phrase "queer happenings" to describe cross-burnings, the dynamiting of Roman Catholic buildings, the shooting of bullets and campaigns to prevent the employment of individuals based on their "racial" heritage. This characterization considerably downplays the violent, hate-mongering of the Klan. Even the Regina Morning Leader "A Menace to Law and Order" 29 November 1922, p.4, in an editorial that is adverse to the Klan on explicitly anti-racist and egalitarian principles, makes light of Klan connections to violent deeds: "The suspicion that the Ku Klux Klan is responsible for the fire that destroyed St. Boniface College last Saturday is probably unfounded and silly enough...." See also "The Ku Klux Klan" The Canadian Forum v.9 (April 1930) at 233, which refers to the "offensive buffoonery of the Ku Klux Klan in Canada." The Edmonton Journal 25 September 1933 quotes the particularly bizarre comments of an Alberta judge, who describes some activities of the Klan as reminding him of "boys who go into the woods to play Indians." These statements were made in the context of a trial that found Klan organizer J.J. Maloney guilty of theft and conspiracy in connection with the removal of legal documents from the office of an Edmonton lawyer.

146. "Klan Spokesman Outlines Aims" London Free Press 3 August 1925, p.1-2; "At Altar of the Klan" London Advertiser 25 October 1925; Richards "Claims of the Ku Klux Klan." Debates House of Commons, v.2 (29 April 1930) at 1557. Henson "Ku Klux Klan" reports at 6 that Evans was one of the M.P.'s accused of being a Klan member

in the 1920s. See also Robin Shades of Right at 14, who notes that the Ontario Klansmen "remained, for the most part, mundane fraternalists eager to disassociate themselves from the reputation of violence and lawlessness, tar and feathers, that plagued their American relatives."

147. For some examples, see Wade The Fiery Cross at 63-84.

148. "Klansman Argues Sentence Appeal" London Advertiser 16 April 1930, p.17; "Klansman and U.S. Gangsters Feel Teeth of Canadian Law" Toronto Globe 17 April 1930, p.13-14; "Klansman Appealed Only to be Jailed" Toronto Star 17 March 1930; "Klansman Loses Appeal Against Oakville Fine and Must Go to Jail" London Advertiser 17 April 1930, p.3; "'Had No Lawful Excuse' Judge Says of K.K.Klan" Toronto Star 1 April 1930, p.1-2. No court transcripts or files survive, but Chief Justice Sir William Mulock's Benchbook #14, Court of Appeal of Ontario Archives at 309 contain the judge's notes of counsel's argument. Judge David Inglis Grant was born in 1872 in Ingersoll, Ontario, the son of Rev. Robert Neil Grant of Orillia and Mary McMullen Grant of Woodstock. He was called to the bar "with honours and the silver medal" in 1895, obtained his KC in 1921, and practised law in Orillia until 1911 and Toronto until his appointment to the High Court in 1925. The "scholarly" judge was elevated to the Court of Appeal in 1927: see "Grant, Hon. David Inglis" Who's Who in Canada, 1930-31 (Toronto: International Press, 1932) at 838.

149. "Grant, Hon. David Inglis" Who's Who in Canada, 1930-31 at 838. Grant is also listed as a member of the Ancient Free and Accepted Masons.

150. "Klansman Argues Sentence Appeal" London Advertiser 16 April 1930, p.17; "Klansman and U.S. Gangsters Feel Teeth of Canadian Law" Toronto Globe 17 April 1930, p.13-14; "Klansman Appealed Only to be Jailed" Toronto Star 17 March 1930; "Klansman Loses Appeal Against Oakville Fine and Must Go to Jail" London Advertiser 17 April 1930, p.3; "'Had No Lawful Excuse' Judge Says of K.K.Klan" Toronto Star 1 April 1930, p.1-2; Chief Justice Sir William Mulock's Benchbook #14, Court of Appeal of Ontario Archives at 309. Inexplicably, the benchbook indicates that Bowlby argued that "the men were not masked." While this was a finding made at trial with respect to Taylor and Orme, Bowlby had expressly conceded that Dr. Phillips was masked in the earlier proceeding. It is difficult to understand what Bowlby intended by this argument. If he meant to suggest Dr. Phillips was not masked, he had little basis for doing so. If he meant to suggest that others in Dr. Phillips's party were not masked, this would conceivably place his client at a disadvantageous contrast with the other marchers. Chief Justice Mulock's benchbook notes that Bowlby also made an alternative argument, that if his client were masked, that he had "lawful excuse." The judge's notes indicate that both counsel also made arguments of statutory interpretation, with Bowlby arguing that s.455(c) should be read as part of the larger offence of housebreaking, while Bayly argued on behalf of the Crown that "words of limitation are not to be read into a statute if it can be avoided." Bayly also queried what "lawful excuse" there could be "for burglary or housebreaking?" Judge William Edward Middleton was born in Toronto, the son of William and Mary A. (Norerre) Middleton, called to the bar in 1885, and appointed to the court in 1910. Elevated to the Court of Appeal in 1928, Judge Middleton was reputed to be "brilliant," a "recognized authority in procedural matters," and someone who "looked

at law through a microscope" operating "within a narrow frame of reference." On Middleton, see "Middleton, Hon. Mr. Justice William Edward" Who's Who in Canada, 1930-31 at 548; Betcherman Little Band at 82, citing her interview with W.B. Common QC, 9 June 1980.

151. Bartley "Public Nuisance" at 162, 167-70. Bartley adds, however, that Bayly "was reluctant to challenge the Klan except on the most narrow legal grounds. To do otherwise would contribute to the Klan's publicity efforts and erode the credibility of the legal system."

152. On the Sero v. Gault case, see chapter 4. Edward J. Bayly was born in London, Ontario in 1865, the son of a merchant/manufacturer, William Bayly, and his wife, Susan Wilson Bayly. A graduate of Trinity College School and Toronto University, Bayly was called to the bar in 1890, and served as an examiner of the Law Society of Upper Canada from 1896 to 1899. He won the Canada Cup sailing for Aemilius Jarvis's Royal Canadian Yacht Club crew in Toledo in 1896, was the "star" of the University of Toronto football team, Osgoode Hall's "star" left halfback, and the President of the Canadian Rugby Union and the Ontario Rugby Football Union. Bayly carried on a private law practice with James Haverson KC, Edmond Bristol KC, Seymour Corley KC and Mr. Justice Eric Armour until his appointment as a full-time solicitor for the Attorney-General's department in Toronto in 1907. His friendship with Attorney General Price stretched back to Price's stint as a law student in Bayly's law office. Described as a "noted conversationalist," who could "discourse at great length on an amazing range of subjects with authority," Bayly was acknowledged as "perhaps the best known member

of the civil service." He also served as the president of the Ontario Civil Service Association. His junior colleagues at the Attorney General's office recall him "in full sail" seated behind his "treasured walnut desk," waxing eloquent about his past exploits in football, boating, and driving his big Pierce Arrow. Bayly is described as a "heavy set figure, often clad in a frock coat" in his obituary. Betcherman provides details of Bayly's physical description, adding that in his later years, the "noiseless, effortless glide" of the ex-athlete was "becoming somewhat jerky." "He was in the habit of writing memos to himself," she adds, "which he stuck into his hat-band, and as he shuffled to Queen's Park, whenever he doffed his hat to an acquaintance, bits of paper would flutter in his wake." Henry James Morgan ed. The Canadian Men and Women of the Time 2nd ed. (Toronto: William Briggs, 1912) at 70; "Edward Bayly, K.C., Stricken Suddenly in Sixty-Ninth Year" Toronto Globe 30 January 1934, p.4-5; "Edward Bayly, K.C. Suddenly Stricken" Toronto Star 30 January 1934, p.3; Betcherman Little Band at 51, 163, 221, citing author's interviews with Harvey McCulloch QC, 18 November 1978 and W.B. Common QC, 9 June 1980.

153. "Klansman Argues Sentence Appeal" London Advertiser 16 April 1930, p.17; "Klansman and U.S. Gangsters Feel Teeth of Canadian Law" Toronto Globe 17 April 1930, p.13.

154. Bayly's obituary would describe him as "particularly proud of his Welsh ancestry." "Edward Bayly, K.C., Stricken Suddenly in Sixty-Ninth Year" Toronto Globe 30 January 1934, p.4-5. On the Klan's claim that it was no different from other fraternal lodges on the matter of racial exclusivity, see Blee Women of the Klan at 18.

155. Rex v. Phillips (1930), 55 C.C.C. 49 (Ont. C.A.) at 50-1. Judge Fisher of the Ontario Supreme Court delivered a similar judicial opinion in 1926, at the conviction of William McCathern, a Black Chatham man, for the rape of Alice McColl, his white female employer. During the trial, Fisher praised the "law abiding citizens of Chatham" for their restraint in allowing the legal process to complete its course. "Thank God," he noted, "in this country there is no law for, nor practice of permitting the disposal of any crime, no matter how serious by mob violence, lynching, or burning at the stake." See Barrington Walker "Gender, Sexual Transgressions, and Representations of Black Masculinity in Judicial Discourse: The John Paris and William McCathern Trials in 1920s Canada" unpublished manuscript.

156. Rex v. Phillips at 51. For press commentary, see "Klansman and U.S. Gangsters Feel Teeth of Canadian Law" Toronto Globe 17 April 1930, p.13-14; "Impose Jail Sentence on Klan Masker" Saskatoon Star-Phoenix 17 April 1930, p.1.

157. "Mulock, The Rt. Hon. Sir William, P.C., K.C.M.G." Who's Who in Canada, 1936-37 at 483-4. Mulock was the son of Mary Cawthra and Dr. Thomas Homan Mulock. Mulock's wealth came from his mother's side, for Mary Cawthra was descended from Toronto's first millionaire family. The early death of his doctor father, Thomas Homan Mulock, precipitated some financial constraint in his student years, but in later life Mulock made a fortune speculating in real estate and the stock market. Called to the bar in 1868, he received his KC in 1890. His brilliant negotiation and organizational skills are credited with the consolidation of nine separate colleges and professional schools into the University of Toronto, and the development of a telecommunications

cable linking Canada, Britain, Australia and New Zealand. His religious affiliation was Anglican. Sources note that no amount of aging seemed to curtail Mulock's relish for rye whisky and his trademark Havana cigars. On Mulock's physical appearance, finances and reputation, see Betcherman Little Band at 207-8, citing Herbert Bruce Varied Operations (Toronto, 1958) at 274-80; R.T.L. [Charles Vinning] Bigwigs, Canadian and Otherwise (Toronto, 1935) at 120; Ross Harkness J.E. Atkinson of The Star (Toronto, 1963) at 84-5; Toronto Star 6 September 1929. Betcherman also describes at 207-8 Mulock's antipathy to the Communist Party and its leaders, whom he convicted of violating s.98 of the "Criminal Code" in 1932: "Of men in public life, none...was as outspokenly anti-Communist as Sir William Mulock, Chief Justice of Ontario. Communism sought to eradicate everything he had achieved in a long life that far exceeded the allotted biblical span." In what surely constitutes a noteworthy footnote to his historical legacy, Mulock also hired Clara Brett Martin, Canada's first white female lawyer, to work as an articling student for his law firm in the 1890s, despite the considerable controversy evoked by her presence in the legal profession. His sponsorship of Clara Brett Martin is usually attributed to his daughter's friendship with the budding young female lawyer, and not to any principled endorsement of women's rights generally. On the link with Clara Brett Martin, see Backhouse Petticoats and Prejudice at 309. On Clara Brett Martin's career generally, see Backhouse supra at 293-326; Constance Backhouse "To Open the Way for Others of My Sex: Clara Brett Martin's Career as Canada's First Woman Lawyer" Canadian Journal of Women and the Law 1:1 (1985) at 1-41; Constance Backhouse "Clara Brett Martin: Canadian Heroine or Not?" and "Response" Canadian Journal of Women and the Law 5:2 (1992) at 263-79 and 351-4.

158. Rex v. Phillips at 50: "These facts show illegal interference with her liberty. The motive of the accused and his companions is immaterial. Their action was unlawful and it is the duty of this Court to pronounce the appropriate punishment." The reporter for the Canadian Criminal Cases added an introductory paragraph to help readers make sense of the decision: "The case arises out of the methods adopted by members of a secret organization who without physical force induced a white girl to leave the house of the aunt of a man with whom she was friendly who was not of white origin." The reporter's note is the only reference to race, designating the "whiteness" of Isabel Jones. The debate over Ira Johnson's purported First Nations' and Black origins is delicately sidestepped by classifying him as "not of white origin." The KKK is still not mentioned, and remains a mysterious "secret organization." The failure to advert to the KKK may be partly attributed to discussion during the appeal, in which Judge Hodgins asked whether the men from Hamilton "formed an organization of any kind." Since it is unlikely that the judges could have missed the extensive press commentary on the case, and the widespread acknowledgment of KKK involvement, this must have been an effort to get counsel to implicate the KKK formally for the record. Defence counsel Bowlby replied that the men "had been referred to as the Ku Klux Klan, but that there was no ground for that assertion in the evidence." "'Had No Lawful Excuse' Judge Says of K.K. Klan" Toronto Star 1 April 1930, p.1-2. Bowlby's reply was clearly erroneous, since Harold Orme had admitted his Klan membership on the stand at trial. Dr. Phillips testified that the gown and hood he was wearing belonged to the "order" to which he belonged. Since he and Orme wore the same garb, it was stretching matters to suggest that there was no evidence from the trial concerning Klan involvement. On the proclivity of Canadian

courts to avoid racial designation in racialized litigation, see also discussion of Viola Desmond's case in chapter 7.

159. "Appeal is Talked by Klan" London Advertiser 17 April 1930, p.1. Criminal appeals to the Supreme Court of Canada are authorized under the "Criminal Code" R.S.C. 1927, c.36, s.1023, which provides that "any person convicted of any indictable offence whose conviction has been affirmed on an appeal...may appeal to the Supreme Court of Canada against the affirmation of such conviction on any question of law on which there has been dissent in the Court of Appeal." See also R. v. Steinberg, 56 C.C.C. 9; R. v. Reinblatt, [1933] S.C.R. 694.

160. "Appeal is Talked by Klan" London Advertiser 17 April 1930, p.1. Bowlby's apparent growing sense of unease over his client's activities was also apparent when he appeared before the Ontario Court of Appeal on behalf of Dr. Phillips. Reid Bowlby pressed his client's case forcefully, but admitted in open court that "he held no brief for the Klan." See "Klansman Appealed Only to be Jailed" Toronto Star 17 March 1930.

161. "Appeal is Talked by Klan" London Advertiser 17 April 1930, p.1-2; "No Further Appeal in Phillips Case" London Advertiser 18 April 1930, p.1.

162. "Hamilton Klansman Begins Term in Jail" Toronto Globe 24 April 1930, p.2.

163. "Still on Strike" Milton Canadian Champion 8 May 1930, p.3; "Klansman

Tries Hunger Strike" Acton Free Press 8 May 1930, p.8; Transcript of Jail Register Entry, Milton Jail, AO RG20, Series F-23, v.7, entry #162.

164. Robin Shades of Right notes at 15 that the "Klan's desultory attempts at intimidation and skirmishes with the law, duly reported by a press seeking sensational linkages with their American cousins, seriously hampered the Ontario organizational campaign." Winks Blacks in Canada notes at 324-5 that "the glare of publicity, the prompt provincial action, and a continuing rumor that the Klan was an American conspiracy to set Canadians against each other, put an end to Klan activities in Ontario."

165. Sher White Hoods notes at 60 that internally, the Klan "was weakened by constant bickering among its leaders and scandals which saw some of them brought to trial for fraud, theft and other charges." He also notes that the failure of the Canadian Klan to develop a truly national structure consigned the smaller, provincial associations to a fractured and less effective movement. Sher also cites "external opposition" from labour, French Catholics and some individual newspaper editors as a factor in the downturn of KKK power.

166. Sher White Hoods notes at 60 that the Klan in Canada faded in the late 1920s and virtually disappeared for almost half a century. See also Winks Blacks in Canada 324-5.

167. "This and That" Acton Free Press 15 May 1930, p.6.

168. Vernon City of Hamilton Directories (Hamilton: Vernon Directories, 1930, 1931, and 1932) show William A. Phillips as continuing to operate his chiropractic office from 127 1/2 King E., and residing with his wife, Laura, on Burlington West.

169. The date of disbarment is 21 January 1937. The grounds for disbarment are listed in Law Society of Upper Canada "Convocation Proceedings" v.8, and the press release in the Law Society of Upper Canada Archives Member File of Ethelbert Lionel Cross #675-3300, specifying "misappropriation of funds." It is also indicated that Cross did not appear and went unrepresented at his disciplinary hearing. Talbot "History of Blacks in the Law Society" states at 66: "[Cross's] career was short-lived when, in 1937, after encountering professional difficulties, he left the practice of law. The reasons [for] this are unclear but there can be little doubt that the Great Depression may have had a great influence." Disbarment appears to have plagued Black lawyers disproportionately to their numbers, and further research would be necessary to assess the ways in which race discrimination affected such outcomes. Talbot notes at 68 that, of the five Black lawyers practising in Ontario in the 1940s and 1950s, "two were disbarred, one in 1948 and the other in 1953." On the disciplinary vigilance that the Law Society showed towards Black lawyers, who were accused of "touting" and "conduct unbecoming," see Oral History Transcript of Mr. Charles Roach, The Osgoode Society, Interviewed by Christine J.N. Kates, November-December 1989.

170. Talbot "History of Blacks in the Law Society" recounts the police assault in February 1942 at 67-8, indicating that it "illustrates some of the hazards faced by a Black lawyer." Talbot also indicates that Pitt's most famous case was his defence of Bill

Newell, who was convicted of murdering his wife, Anne Newell in October 1940, on Centre Island. The internationally-based Universal Negro Improvement Association was founded in 1914 by Marcus Mosiah Garvey, a Jamaican-born Black who sought to "organize the 400 million Negroes of the world into a vast organization to plant the banner of freedom on the great continent of Africa." Garvey advocated Black pride, Black nationalism, economic self-help, and economic, political and cultural independence from whites. The first Canadian unit opened in Montreal in 1919. The Montreal, Halifax and Toronto chapters were the most active. Pitt is credited with holding the Toronto chapter together into the 1940s. During the 1940s, when Black patrons and musicians were barred from many night clubs, they congregated in the Toronto UNIA building on College Street for evening jazz sessions, which became a venue for remarkable musical talent. The UNIA also functioned as a centre for Black culture and political strategizing. See Winks Blacks in Canada at 414-6; Alexander and Glaze Towards Freedom at 128-33. Alexander and Glaze note at 133 that "Garvey's statements about racial purity and attacks on light-skinned blacks alienated many, for inter-racial marriages between blacks and whites, and blacks and Indians were quite common at the time." Given Pitt's public position against inter-racial marriages, he may have had less difficulty with this than other UNIA adherents.

171. Campbell Hamilton at 155 records Reid Bowlby's elevation to the bench. Bowlby died on 8 April 1952 in Hamilton. I am indebted to Susan Lewthwaite of the Law Society of Upper Canada Archives for the information on Bowlby.

172. "Edward Bayly, K.C. Suddenly Stricken" Toronto Star 30 January 1934, p.3.

173. "Mulock, The Rt. Hon., Sir William, P.C., K.C.M.G." Who's Who in Canada, 1936-37 at 483.

174. Dan La Forme, described as a "Chippewa Indian of Oakville," who had been a personal friend of Ira Johnson's for over twenty years, made arrangements for the marriage venue and acted as a witness to the ceremony. Despite having secured a letter of consent from Isabel Jones's mother, Ira Johnson had some difficulty locating a pastor who would perform the service, and at least one refused to conduct the ceremony. Captain Broome continued to maintain his public opposition to inter-racial marriages, but indicated that he had no objection to Ira Johnson personally, and wished him luck. Contacted by the Star for his opinion, Harold Orme, acting as spokesman for the Hamilton Ku Klux Klan, conceded defeat. Pronouncing the matter now closed, Orme stated: "We will not put asunder what God hath joined together." Ira Johnson requested some measure of privacy from continuing press scrutiny: "We are only human," he told the Star, "and I wish the people would leave us alone." "Indian Marries Oakville Girl" London Free Press 24 March 1930, p.15; "K.K.K. Drops All Interest in Oakville Couple's Affairs" Toronto Star 24 March 1930, p.1-2; "K.K.K. Oakville Raid Has Sequel at Altar" Toronto Star 24 March 1930, p.1-2.

ENDNOTES TO CHAPTER SEVEN

1. Details surrounding the arrest are taken from "Affidavit of Viola Irene Desmond"

29 January 1947 His Majesty the King v. Viola Irene Desmond Public Archives of Nova Scotia (hereafter PANS) RG39 "C" Halifax, v.937, Supreme Court of Nova Scotia #13347; "Negress Alleges She Was Ejected From Theatre" Halifax Chronicle 30 November 1946, p.2; "Ban All Jim Crow Rules is Comment on N.S. Charge" Toronto Star 30 November 1946, p.3. Material from this chapter was presented as the Seventh Annual Gibson-Armstrong Lecture in Law and History at Osgoode Hall Law School in February, 1994, and an earlier version is published as "Racial Segregation in Canadian Legal History: Viola Desmond's Challenge, Nova Scotia 1946" Dalhousie Law Journal 17:2 (Fall 1994) 299-362.

2. The original proprietor of the Roseland Theatre appears to have been Norman W. Mason, a "showman, businessman and actor" who was one of New Glasgow's preeminent entertainment czars for almost a quarter of a century. Elected three times as Mayor of New Glasgow, he later sold the theatre to Henry (Harry) MacNeil. James M. Cameron About New Glasgow (New Glasgow, N.S.: Hector Publishing, 1962) at 170-9; "Reconstruction Started at Odeon Theatre" New Glasgow Evening News 5 June 1968; "First Theatre in 1902" 31 July 1968, p.11; "Theatre Had Big Role in the Early Life of New Glasgow City Area" 31 July 1968. The 1915 epic film "Birth of a Nation" was based on the racist novel The Clansmen by Thomas Dixon, and as a "blockbuster success did much to nationalize the image of rapacious black male hypersexuality;" see Patricia Morton Disfigured Images: The Historical Assault on Afro-American Women (New York: Greenwood, 1991) at 20 and discussion of the KKK prosecution in chapter 6 of this book. On the cultural meaning of Black-face minstrelsy, described as the "first self-consciously **white** entertainers," and the projection of white fears and fascination upon African-American music and dance, see David R. Roediger The Wages of Whiteness (London: Verso, 1991) at 116-119.

3. There were Canadian historical precedents for Viola Desmond's direct action approach. In 1791, a Black man was refused admission to a public dance in Sydney, Cape Breton, and he physically attempted to force his way into the dance. His efforts resulted in his death, for he was murdered by a white man in the course of an ensuing fight. The killer was acquitted at trial on the ground of self-defence: Robin W. Winks The Blacks in Canada: A History (New Haven: Yale University Press, 1971) at 51; Colin A. Thomson Blacks in Deep Snow: Black Pioneers in Canada (Don Mills, Ont.: J.M. Dent, 1979) at 19. Winks notes at 283-4 that in November of 1860, the white managers of the Colonial Theatre in Victoria issued instructions that Blacks were no longer to be admitted to the dress circle or to orchestra seats, because white members of the audience had complained about racial intermingling. A group of Blacks attempted to take seats in the parquette and a riot erupted. Criminal charges of creating a riot were laid against four Black men: Adolph Richards, Thomas Anderson (also referred to as Stephen or James Anderson), George Washington and James Stephens. Richards, Anderson and Washington were committed for trial at the Court of Assizes where they were acquitted by an all-white jury that found insufficient evidence to prove premeditation. See Archives of British Columbia [hereafter ABC] GR419, B.C. Attorney General Documents, Box 1, file 17/1860; GR848, Charge books; "Riot at the Theatre" Victoria Colonist 6 November 1860, p.2; "The Colored Invasion" 7 November 1860, p.2; "The Theatre Rioters" 8 November 1860, p.3; "The Prospects To-Night" 10 November 1860, p.2; "Court of Assizes...the Theatre Rioters" 13 November 1860, p.3; "Letter to the Editor" 15 December 1860, p.2. See also "Rotten Egged" Victoria Colonist 31 July 1860, p.3. Another disturbance occurred in Victoria on 25 September 1861. White members of the audience tossed onions and threw flour on four Blacks - Mifflin Wistar

Gibbs, Maria Gibbs, Nathan Pointer and his young daughter - who were sitting in the parquette of the Victoria Theatre where they had designated seats. The two Black men were charged with assault. Three whites, William L. Ryckman, James Alexander McCrea and Edward Fouchey Boyce, were charged with assault and conspiracy to create a riot. Gibbs pleaded guilty to assaulting Ryckman and was fined five pounds sterling. The others were acquitted in a trial before white Magistrate Augustus Pemberton: ABC GR419, B.C. Attorney General Documents, Box 1, file 16/1861; C/AA/30.3D/5 Vancouver Island, Supreme Court of Civil Justice 1861-62; "Row at the Theatre" Victoria Colonist 26 September 1861, p.3; "The Theatre Rumpus" 27 September 1861, p.3; "Concert Difficulty" 27 September 1861, p.2; "A Card" 27 September 1861, p.2; "Reply to Emil Sutro" 28 September 1861, p.2; "The Theatre Row - A Remedy" 28 September 1861, p.3; "Letter from an Assaultee" 28 September 1861, p.3; "Mifflin Gibbs Letter" 28 September 1861, p.2; "The Negro Question" 30 September 1861, p.2; "The Assault with Flour on Two Colored Men" 1 October 1861, p.3; "The Theatre Rumpus" 11 October 1861, p.3; "The Theatre Rumpus" 15 October 1861, p.3; James M. Pilton "Negro Settlement in British Columbia" M.A. Thesis (University of Victoria: 1951.) Mifflin Gibbs was a Philadelphia-born businessman who was elected to Victoria City Council in 1866. Sources indicate that he may have practised law for a short time in Victoria in 1858, and that he studied law under a barrister in Victoria in 1866, while "amassing a fortune in the Harbor Bay Company territory." In 1868 he was elected to represent Salt Spring Island at the Yale convention to determine the conditions for British Columbia's entry into Canada. In 1870, Gibbs returned to the United States, to complete his legal training at Oberlin College. He settled in Little Rock, Arkansas, where he studied in the law offices of Benjamin and Barnes, a white firm. He passed the bar in

1870, and developed a successful legal career as the County Attorney of Pulaski County. In 1873, he was elected to the office of the city judge, the first Black elected to a municipal judicial position in the United States. In 1876, with the demise of the Reconstruction era, President Rutherford B. Hayes appointed Gibbs registrar of the United States Land Office in Little Rock. In 1897, President William McKinley appointed Gibbs to the United States consulate to Tamatave, Madagascar: see Joan Brockman "Exclusionary Tactics: The History of Women and Visible Minorities in the Legal Profession in British Columbia" in Hamar Foster and John McLaren eds. Essays in the History of Canadian Law: British Columbia and the Yukon (Toronto: The Osgoode Society, 1995) 508 at 547; J. Clay Smith, Jr. Emancipation: The Making of the Black Lawyer 1844-1944 (Philadelphia: University of Pennsylvania Press, 1993) at 321-2, 351; Diba B. Majzub "'A God Sent Land for the Colored People'? The Legal Treatment of Blacks in Victoria 1858-1865" unpublished manuscript, 1997; Pilton "Negro Settlement in British Columbia." Following the second theatre riot, Victoria theatres posted notices on their play-bills that Blacks would only be permitted to sit in the gallery. Hundreds of Blacks petitioned white Governor James Douglas to intervene, but theatre segregation continued. Alexander McCarthy purchased a ticket for the parquette in the Victoria Theatre on 10 December 1863, and was then asked to move because he was Black. He refused, and was arrested and charged with creating a disturbance and resisting arrest. Magistrate Pemberton dismissed the charges of creating disturbance, but convicted him of resisting arrest and required him to post sureties and keep the peace for three months: ABC GR848, Charge books, v.4, p.120; "Creating a Disturbance in the Theatre" Victoria Colonist 12 December 1863, p.3. See also "Drew Color Line in Vancouver Cafe" Vancouver Daily Province 4 January 1912, p.28, where an Oklahoma-

born white proprietor of a cafe, O.E. Simpson, was fined for assaulting J.K. Burney, a Black man, when Burney insisted upon service.

4. Cameron About New Glasgow at 170-9; James M. Cameron More About New Glasgow (Kentville, N.S.: Kentville Publishing, 1974) at 152-61.

5. "Negress Alleges She Was Ejected From Theatre" Halifax Chronicle 30 November 1946, p.2; "Affidavit of Viola Irene Desmond" PANS. For the reference to the gloves and posture, see the notes of the researcher who assisted with the compilation of material for this chapter, Tanya Hudson "Interview with Dr. Pearleen Oliver" Halifax, 28 August 1995.

6. For biographical details on MacKay, see obituary "Former magistrate dies at 84" Halifax Chronicle-Herald 29 September 1961, p.2.

7. See R.S.N.S. 1923, c.162, s.8(8), 9, 10, 14. The initial enactment is Theatres and Cinematographs Act S.N.S. 1915, c.9, as amended.

8. Section 8(1) reads: "Every person attending any place of amusement and every person participating or indulging in any amusement or recreation whatsoever shall upon each such attendance or participation or indulgence where a fee is charged for the same, pay to His Majesty for the use of Nova Scotia a tax to be collected as in this Chapter provided and according to the following schedule: - Upon each attendance, participation or indulgence a tax of one cent for each ten cents or fraction thereof charged as such fee." In

earlier years, the ticket price differential was larger. An advertisement for the Roseland Theatre in the Eastern Chronicle 20 October 1923, p.1 indicates that the balcony seats were thirty-five cents, and the downstairs fifty cents.

9. "Record" Rod G. MacKay, Stipendiary Magistrate for the Town of New Glasgow, County of Pictou, 9 November 1946 R.- (Inf. Henry MacNeil) v. Viola Desmond PANS; "Affidavit of Viola Desmond" PANS.

10. "Record" Rod G. MacKay, PANS. The ultimate disposition of the costs is unclear. One handwritten document signed by Magistrate MacKay indicates that the accused was to pay Harry MacNeil "the Informant herein, the sum of six dollars for his costs in this behalf." Another handwritten document signed by the magistrate indicates that the costs were broken down: \$2.50 to be paid to himself as magistrate, and \$3.50 to Police Chief Elmo C. Langille.

11. "Affidavit of Viola Desmond" PANS; R.S.N.S. 1923, c.162, s.8(3), 8(10). Saturday Night raises this point in its coverage of the trial, 7 December 1946, p.5: "[T]he action of the magistrate in fining the lady in question for defrauding the province, when she had most expressly tendered to the box office the proper price, including tax, of the seat in which she later insisted on sitting, is a travesty of justice."

12. "Negress Alleges She Was Ejected From Theatre" Halifax Chronicle 30 November 1946, p.2. Neither "negro" nor "negress" are capitalized in the text of the article. W.E.B. DuBois notes that "Negro" was always capitalized until, in defense of slavery, the

use of the lower case "n" became the custom, and that the capitalization of other ethnic and national origin designations made the failure to capitalize "Negro" an insult: see W.E.B. DuBois The Seventh Son v.2 (1971) at 12-13, as quoted in Kimberle Williams Crenshaw "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law" Harvard Law Review v.101 (1988) 1331 at 1332. "Coloured" seems to have been the term of choice at the time, as indicated by the name given to the N.S.A.A.C.P. in Nova Scotia, and the N.A.A.C.P. (founded in 1909) in the United States. See also Mary Church Terrell "Letter to the Editor of the Washington Post" 14 May 1949, as reprinted in Gerda Lerner Black Women in White America (New York: Vintage Books, 1973) at 547-50:

[S]top using the word "Negro." The word is a misnomer from every point of view. It does not represent a country or anything else except one single, solitary color. And no one color can describe the various and varied complexions in our group. In complexion we range from deep black to the fairest white with all the colors of the rainbow thrown in for good measure. [...] We are the only human beings in the world with fifty seven variety of complexions who are classed together as a single racial unit. Therefore, we are really, truly colored people, and that is the only name in the English language which accurately describes us. [...]

There are at least two strong reasons why I object to designating our group as Negroes. If a man is a Negro, it follows as the night the day that a woman is a Negress. "Negress" is an ugly, repulsive word - virtually a term of degradation and reproach which colored women of this country cannot live down in a thousand years.... In the second place, I object to...Negro because our meanest detractors and most cruel persecutors insist that we

shall be called by that name, so that they can humiliate us by referring contemptuously to us as "niggers", or "Negras" as Bilbo used to do.

Bilbo is a reference to Democratic U.S. Senator, Theodore Bilbo of Mississippi, who denounced the novel Black Boy: A Record of Childhood and Youth (Harper and Brothers, 1945) written by Black novelist-activist Richard Wright, as "obscene." See Richard Wright Native Son (New York: Harper, 1993, orig. pub. 1940) at 559.

13. "Ban All Jim Crow Rules is Comment on N.S. Charge" Toronto Star 30 November 1946, p.3. MacNeil continued: "We have a large colored patronage at our theatre and we don't permit color discrimination to be a determining factor. It would be poor policy for us to set up a color bar. [...] There was no discrimination."

14. This raises the important question of how many other trials lie buried, lost to historical scrutiny, because the real issues relating to racial divisions were (consciously?) unspoken or camouflaged with unrelated legal matters. On the tendency to delete references to race in evidence filed on racial discrimination matters, see Winks Blacks in Canada at 424, discussing the 1920 hearing under the Industrial Disputes Investigation Act into the racially-motivated discharges of thirty-six Black porters from the C.P.R. On a comparative note, see the discussion of the appeal of the conviction of Rosa Parks in the Montgomery bus boycott in Alabama in 1955, which never mentioned the Alabama bus segregation statute or racial segregation. "One reads the opinion in vain trying to understand the issue that her appeal raised," notes Robert Jerome Glennon in "The Role of Law in the Civil Rights Movement: The Montgomery Bus Boycott, 1955-1957" Law and History Review v.9

(1991) 59 at 88.

15. Viola Desmond's older sister recalls her sister's actions as unpremeditated: "I think it was a spontaneous action. She was aware of prejudice, but she had not been exposed to that kind of prejudice. In Halifax, you could sit where you liked in the theatre. So I think it came as a shock to her. She was well-known in Halifax, she felt herself to be an entrepreneur, she paid taxes, and she was part of the city. She knew people at different levels, so it was more of a shock for her. She acted spontaneously and I truly believe she never thought she would be physically mishandled. I think she was more shocked than surprised." See Constance Backhouse "Interview with Mrs. S.A. (Emily) Clyke, Viola Desmond's older sister" Montreal, 28 April 1995. For reference to Viola Desmond as "well known throughout the province," see The Clarion 1:1 (December 1946) PANS Reel 4340.

16. Constance Backhouse "Interview with Wanda Robson, Viola's younger sister" North Sydney, 22 March 1995; Backhouse "Interview with Mrs. S.A. (Emily) Clyke." Judith Fingard "Race and Respectability in Victorian Halifax" Journal of Imperial and Commonwealth History 20:2 (May 1992) 169, notes at 180-2, 185, that the Davises were well-established members of the Black elite in Halifax. For reference to the racial segregation of barbershops in Nova Scotia, see Elaine McCluskey "Long-established Minority Still Excluded from Power" Halifax Chronicle-Herald 16 March 1989, p.41, where Daurene Lewis, the Black mayor of Annapolis Royal, notes that her father "never had his hair cut in a barber shop. The barber was a friend of his and he cut his hair - but not during business hours." See also Wilkie Taylor "Journey home" in Afro-Nova Scotian Portraits (Halifax: Chronicle-Herald and Mail-Star, 19 February 1993) at p.P16, discussing the

experience of Sandra Andersen, a Black who was refused service on racial grounds by a white hairdresser in New Glasgow in the 1980s. Winks Blacks in Canada notes at 325 that segregation for hair care was enforced in some areas of the country, but not in others: "In Saint John, Edmonton, and Victoria, Negroes could find no white barber to cut their hair; in Vancouver, Winnipeg, and Montreal, they could." See also "Exclusion of Negroes" Victoria Colonist 7 January 1899, p.7. Daniel G. Hill The Freedom-Seekers: Blacks in Early Canada (Agincourt: Book Society of Canada, 1981) lists at 162-77 many successful barbershops operated by Blacks in Upper Canada in the 19th century. Dorothy W. Williams Blacks in Montreal 1628-1986: An Urban Demography (Cowansville, Que.: Yvon Blais, 1989) at 19 and 33 lists barber shops as some of the few enterprises owned and operated by Blacks in Montreal from the 19th century through the first quarter of the 20th century.

17. James Albert Davis managed the sizeable family real estate holdings of his own family and that of his wife until the Depression knocked the bottom out of the market. At that point, James Davis became the service manager of the Argyle Street Garage. He continued to cut hair for family and friends in his home throughout his life; Backhouse "Interview with Wanda Robson;" Backhouse "Interview with Mrs. S.A. (Emily) Clyke." Viola Desmond's grandfather secured a position as a letter carrier when he retired from barbering. Viola's uncle (and godfather) John Davis, also obtained employment in the Post Office Division in Halifax. On the rarity of Blacks achieving the status of civil service or post office employees, see correspondence from Beresford Augustus Husbands, President of the Colored Men's Conservative Social and Athletic Club, to the Mayor of Halifax 17 May 1937, protesting that "there is no representative of the colored race in any of the local civic departments:" PANS RG35-102 (3B) v.7, #42; W.P. Oliver "Cultural Progress of the Negro

in Nova Scotia" Dalhousie Review 29:3 (1949) at 297-8, reprinted in George Elliott Clarke ed. Fire on the Water: An Anthology of Black Nova Scotian Writing v.2 (Lawrencetown Beach, N.S.: Pottersfield Press, 1992) at 133.

18. Henry Johnson was born in Richmond, Virginia. Full information concerning his parents is not available, although Wanda Robson is able to provide the following details: "His father was a white plantation owner...I can't tell you about his mother - I don't know. This is where the mixed race comes in. Henry Walter Johnson was maybe seven-eighths white - who is white, who is Black, I don't know. Henry was a Baptist minister in New Haven, Connecticut, and he also was at Cornwallis Street Baptist Church in Halifax for one year. While in New Haven, he worked as a businessman. He was a real estate entrepreneur who also sold antiques. He married Gwendolin's mother, Susan Smith, who was a white woman born in Connecticut. Henry bought property when living in Halifax. Gwendolin inherited those properties." See Backhouse "Interview with Wanda Robson." For biographical details on Viola Desmond's parents, who married on 9 March 1908, see PANS Micro.: Churches: Halifax: Trinity Anglican: Baptisms #735, 736, 844; RG32 Marriages: Halifax County: 1908: #92 at p.249; Notes of the researcher who assisted with the compilation of material for this chapter, Allen B. Robertson "Interview with Pearleen Oliver" Halifax, July 1993.

19. On the extensiveness of racial intermixing in the United States (some voluntary and some coercive) see F. James Davis Who is Black? One Nation's Definition (University Park, Penn.: Pennsylvania State University Press, 1991) who notes at 29: "[T]here are millions of white Americans who have at least small amounts of black genetic heritage.

From 75 to well over 90 percent of all American blacks apparently have some white ancestry, and up to 25 percent have Indian background." Davis notes at 5 that in the United States, a person "with **any** known African black ancestry" was defined as Black. This racial definition was forged in the southern experience of slavery, to become a classification "accepted by whites and blacks alike." Davis notes at 16 that this rule, variously known as the "one-drop rule," the "one black ancestor rule," and the "traceable amount rule," has not been universally adopted by all countries. For example, the rule is more stringent than the Third Reich's designation of Jews, who were defined as persons who had at least one Jewish grandparent: see Naomi Zack Race and Mixed Race (Philadelphia: Temple University Press, 1993) at 19. Canadians also appear to have accepted that any known Black ancestry resulted in a racial classification as "Black." For one example, see Gordon v. Adamson (1920), 18 O.W.N. 191 at 192 (Ont. High Ct.) in which Judge Middleton describes the child of a "white" mother and a "negro" father as "coloured." Judith Fingard notes in "Race and Respectability in Victorian Halifax" at 170 that "regardless of skin colour," members of "the Afro-Nova Scotia community were universally identified as 'coloured.'" W. Burton Hurd "Racial Origins and Nativity of the Canadian People" Census of Canada 1931 v.13 (Ottawa: Supply and Services, 1942) notes at p.vii that the instructions given to Canadian enumerators for the 1931 census were as follows: "The children begotten of marriages between white and black or yellow races will be recorded as Negro, Chinese, Japanese, Indians, etc., as the case may be." James W.St.G. Walker "Race," Rights and the Law in the Supreme Court of Canada (Waterloo: The Osgoode Society and Wilfrid Laurier University Press, 1997) notes at 18 that these instructions contradicted the provisions of the Indian Act at the time: see discussion of Re Eskimos in chapter 2.

20. At the turn of the century, inter-racial marriages appear to have been on the decline: Fingard "Race and Respectability in Victorian Halifax" at 179. Ruth I. McKenzie "Race Prejudice and the Negro" Dalhousie Review v.20 (1940) notes at 201 that "intermarriage [of Blacks] with whites is not approved." Wanda Robson discusses Viola Desmond's racial identification in the following terms: "Would Viola have defined herself as 'mixed race?' Of course. Would you be wrong in describing her as Black? Not as far as I am concerned. I am of the generation that was raised to be proud of being Black. Viola is clearly Black. I know what I am, she is my sister." See Backhouse "Interview with Wanda Robson." On the experience of claiming mixed race heritage in Canada, see Carol Camper ed. Miscegenation Blues: Voices of Mixed Race Women (Toronto: Sister Vision, 1994). James and Gwendolin Davis produced twelve children. See PANS Micro.: Churches: Halifax: Trinity Anglican: Baptisms #735, 736, 844; Robertson "Interview with Pearleen Oliver." Viola's obituary in the Halifax Chronicle-Herald 10 February 1965, p.26, lists nine surviving siblings. There were five sisters and one brother in Montreal: Gordon Davis, Emily (Mrs. S.A. Clyke,) Eugenie (Mrs. F.L. Parris,) Helen (Mrs. B.W. Fline,) Constance (Mrs. W. Scott,) Olive (Mrs. A. Scott.) There were two brothers and one sister in Halifax: John Davis, Alan Davis, Wanda (Mrs. W. Neal.) See also the obituary in Halifax Mail Star 10 February 1965, p.8.

21. During the depression, Viola worked after school as a mother's helper in order to make ends meet; Notes of the researcher who assisted with the compilation of material for this chapter, Allen B. Robertson "Interview with Jack Desmond," Halifax 16 June 1993 and 23 June 1993; Backhouse "Interview with Wanda Robson;" Backhouse "Interview with Mrs. S.A. (Emily) Clyke." For details on the large number of Black women who chose

teaching as a profession in Nova Scotia, see Sylvia Hamilton "Our Mothers Grand and Great: Black Women of Nova Scotia" Canadian Woman Studies 4:2 (Winter 1982) 33-7. On the expansion of occupational opportunities in hairdressing, see Lois W. Banner American Beauty (New York: Alfred A. Knopf, 1983) who notes at 210-3 that the profession of hair-dressing dates from the 1870s, but that the 1920s was the "major era of the expansion of beauty parlors."

22. Viola's sister, Wanda Robson, recalls that Viola Desmond lived at the "Y" and worked part-time as a cigarette girl at "Small's Paradise" nightclub in Harlem to make ends meet. Viola Desmond took great pains to conceal her Harlem employment from her mother, because she knew her parents would not have approved. While in New York, she also worked as an agent for musicians, and patented some lyrics for her clients. See notes of David Woods, who assisted with the compilation of material for this chapter "Interview with Wanda Robson" North Sydney, October 1995; Backhouse "Interview with Mrs. S.A. (Emily) Clyke;" Robertson "Interview with Jack Desmond;" Brigdlal Pachai Beneath the Clouds of the Promised Land: The Survival of Nova Scotia's Blacks (Halifax: Lancelot Press for Black Educators Association of Nova Scotia, 1991) at 152-3, 297; Backhouse "Interview with Wanda Robson." Paula Giddings When and Where I Enter: The Impact of Black Women on Race and Sex in America (New York: William Morrow, 1984) describes at 185-9 the specific services sought by Black women from hairdressers, and the spectacular career of Madame C.J. Walker, whose hair care products marketed to Black women made her the first female millionaire in the United States. See also A'Lelia Perry Bundles "Walker, Madam C.J. (Sarah Breedlove) (1867-1919)" in Darlene Clark Hine Black Women in America: An Historical Encyclopedia v.2 (Brooklyn: Carlson Publishing, 1993) 1209-14.

Jacqueline Jones Labor of Love, Labor of Sorrow: Black Women, Work and the Family, From Slavery to the Present (New York: Vintage Books, 1986) refers to beauty parlours at 214-15 as a "unique type of black enterprise:" "Owned and staffed almost exclusively by women, they created jobs, offered highly valued services, and functioned as social centers in many neighborhoods. [...] Hair pressers and stylists prided themselves on their skills, 'fashioning beautifully arranged coiffures of smooth and pleasing waves.'" Where Black women went into business as entrepreneurs rather than waged labourers, Jones notes at 181 that "the majority...were seamstresses and hairdressers who conducted modest businesses in their own homes." Kathy Peiss "Beauty Culture" in Hine Black Women in America v.1, 100, notes at 103 that aspects of beauty culture, especially hair-straightening and skin bleaching, were highly controversial in the Black community, and thought to be reflective of racist European aesthetic standards. However, she notes that Black beauty culturists emphasized economic opportunities and cultural empowerment for Black women, and that the integration of the industry with aspects of Black community life and politics set it apart from the white beauty industry.

23. Jack's father, Norman Mansfield Desmond, was a hack driver for John Church's Livery Stable and a founding deacon of the New Glasgow Black Baptist Church. Jack Desmond's mother, Annie Williams, worked as a domestic servant. Both Jack's parents were born into farming families in Tracadie in Antigonish County: Robertson "Interview with Jack Desmond;" Pachai Beneath the Clouds at 152-4, 297; New Glasgow Clarion 1:1 (December 1946); Halifax-Dartmouth City Directories (Halifax: Might Directories Atlantic, 1938-1946.) On the migration of about three thousand free Black Loyalists to Nova Scotia after the American Revolution during the 1780s, see Donald Clairmont and Fred Wien

"Blacks and Whites: the Nova Scotia Race Relations Experience" in Douglas F. Campbell Banked Fires: The Ethnics of Nova Scotia (Port Credit, Ont.: Scribblers' Press, 1978) at 147-8; Winks Blacks in Canada at 141; James W.St.G. Walker The Black Identity in Nova Scotia: Community and Institutions in Historical Perspective (Halifax: Black Cultural Centre for Nova Scotia, 1985); James W.St.G. Walker The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone 1783-1870 (Toronto: University of Toronto Press, 1992;) Robin W. Winks "Negroes in the Maritimes: An Introductory Survey" Dalhousie Review 48:4 (1969) 453. A group of exiled Jamaican Maroons migrated to Nova Scotia in 1796, but left for Sierra Leone four years later: Robin W. Winks "Negro School Segregation in Ontario and Nova Scotia" Canadian Historical Review 50:2 (1969) 164-191; Walker Black Loyalists; James W.St.G. Walker Racial Discrimination in Canada: The Black Experience (Ottawa: Canadian Historical Association, 1985); John N. Grant "Black Immigrants into Nova Scotia 1776-1815" Journal of Negro History 58:3 (July 1973) 253-70.

24. Jack Desmond's sister, Amelia, married a Black barber, Sydney Jones, who initially offered Jack the opportunity to take up barbering. Wanda Robson recalls that Jack Desmond's customers were approximately 80% Black, and 20% other races. She also notes that he was "easy-going" and not nearly as hard-working as Viola. Jack Desmond worked from his shop on Gottingen Street continuously until his retirement. When he closed his barber shop, he sold the site to Frank Sobey, who ultimately sold the store to Foodland groceries. Jack Desmond continued to work for both of the new owners, and to cut hair in people's homes for many years after: "Jack's got all the Answers: King of Gottingen" Halifax Mail-Star Saturday insert in The Leader 31 May 1986, p.13; Backhouse "Interview with Wanda Robson;" Pachai Beneath the Clouds at 152-4; Robertson "Interview with Jack

Desmond." By the late 19th century, many Haligonian Blacks had settled in the north end of the city, as racial intolerance increasingly forced them out of the south and central wards of the city. Black settlement began on Gottingen Street and was concentrated in the area bounded by Gerrish Street on the north, Cornwallis on the south, Maitland on the east and Gottingen on the west. Later westward expansion took in Creighton and Maynard Streets. Although commonly referred to as "the Negro section" of mid-city Halifax, the area was not entirely racially segregated; in 1962, Blacks represented only between a fourth and a fifth of the population. The economic status of the Black residents in the mid-city, while considerably lower than that of white Haligonians, was higher than that of Black residents from the segregated Black community of Africville, located on the Bedford Basin: Institute of Public Affairs The Condition of the Negro of Halifax City, Nova Scotia (Halifax, 1962) PANS, LE D15 IP No.27 C.4, at 7, 10-13; Fingard "Race and Respectability in Victorian Halifax" at 171; Barry Cahill "The 'Colored Barrister': The Short Life and Tragic Death of James Robinson Johnston, 1876-1915" Dalhousie Law Journal v.15 (1992) 326 at 341. For references to the importance of Gottingen Street to the Black community of Halifax, see David Woods Native Song (Porters Lake, Nova Scotia: Pottersfield Press, 1990) at 44, 66, 68, 73-4, 105; Clarke Fire on the Water v.2 at 114, 117.

25. The precise opening date for Vi's Studio of Beauty Culture is unclear, with various sources suggesting 1937, 1940 and 1941. See Backhouse "Interview with Wanda Robson;" Backhouse "Interview with Mrs. S.A. (Emily) Clyde;" Tanya Hudson "Interview with Clara Adams" Halifax, 24 July 1995; Tanya Hudson "Interview with Barbara Bowen" Halifax, 26 July 1995; Woods "Interview with Pearleen Oliver;" Backhouse "Interview with Mrs. S.A. (Emily) Clyde."

26. Robertson "Interview with Pearleen Oliver;" Constance Backhouse "Interview with Gwen Jenkins" London, March 1995; Hudson "Interview with Clara Adams;" "Takes Action" New Glasgow Clarion 1:1 (December 1946); advertisements for her business in New Glasgow Clarion 2:4 (28 February 1947) and 11:5 (15 March 1947); "Beauty School Graduation" Truro Clarion 2:9 (2 July 1947); Pachai Beneath the Clouds at 153; Robertson "Interview with Jack Desmond;" Halifax-Dartmouth City Directories 1938-46; McCluskey "Segregation."

27. Backhouse "Interview with Wanda Robson;" Robertson "Interview with Pearleen Oliver." Jones Labor of Love, Labor of Sorrow notes at 142-43 that middle-class Black wives and daughters "often engaged in wage earning, both because the financial security of most black families remained precarious and because they sought to put to good use their talents and formal schooling." Giddings When and Where I Enter notes at 232 that "by 1940, one Black woman in three over the age of fourteen was in the [U.S.] work force, compared to one in five for Whites." On the tensions between gender ideology and the realities of Black employment experience, see James Oliver Horton "Freedom's Yoke: Gender Conventions Among Antebellum Free Blacks" Feminist Studies 12:1 (Spring 1986) 51-76; Sharon Harley "For the Good of Family and Race: Gender, Work, and Domestic Roles in the Black Community, 1880-1930" Signs 15:2 (1990) 336-49.

28. Graduates of the school included: Nora Dill, Rose Gannon, Rachel Kane, Verna Skinner and Joyce Lucas, Helen Davis, Bernadine Bishop, Bernadine Hampden, Evelyn Paris, Vivian Jackson, Ruth Jackson, Maddie Grosse, Gene States, Patricia Knight, Mildred Jackson and Barbara Bowen. Students were required to pay tuition of \$40 a month, and to

sign on for a minimum of six months' training. They were taught shampoo, press and curl, manicures and hygiene: Backhouse "Interview with Mrs. S.A. (Emily) Clyke;" Hudson "Interview with Barbara Bowen;" Hudson "Interview with Clara Adams;" David Woods "Interview with Rose Gannon-Dixon" Halifax, August 1995.

29. For details regarding Viola Desmond's reputation in Nova Scotia, see "Takes Action" New Glasgow Clarion 1:1 (December 1946.) Oliver "Cultural Progress of the Negro" notes at 298 that business ventures among Black Nova Scotians were "limited to barber shops, beauty parlours, taxi-business, trucking, shoe-making, a newspaper and one co-operative store." See also Pachai Beneath the Clouds at 152-4. Other Blacks who contested racial segregation in Canadian courts include Norris Augustus Dobson, a Black chemist from Montreal, who was involved in the case of Loew's Montreal Theatres Ltd. v. Reynolds (1919), 30 Que. K.B. 459 (Quebec King's Bench.) W.V. Franklin, a Black watchmaker from Kitchener described by the court as "a thoroughly respectable man, of good address," was the plaintiff in Franklin v. Evans (1924), 55 O.L.R. 349, 26 O.W.N. 65 (Ont. High Court.) The plaintiff in Rogers v. Clarence Hotel et al., [1940] 2 W.W.R. 545, (1940), 55 B.C.R. 214 (B.C.C.A.) was a Black man who ran a shoe-repair business in partnership with a white man in Vancouver, described by the court of being "of respectable appearance." Fred Christie, a resident of Verdun, Quebec, who had "a good position as a private chauffeur in Montreal," and was described as "a coloured gentleman" by the court, was the plaintiff in Christie and Another v. York Corporation (1937), 75 Que. C.S. 136 (Que. Superior Court.) The issue of class designation is complex, especially when overlaid by race. Within the Black community, Viola Desmond would probably have been viewed as upper-class. From the vantage point of whites, a married woman who worked outside the

home as a beautician would probably have been classified as working-class. Class definitions, when examined through distinct racial perspectives, can become as slippery as race definitions themselves. On the complex racial dynamics associated with the promulgation of and resistance to white middle-class culture within the African-American community, see Evelyn Brooks Higginbotham Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880-1920 (Cambridge: Harvard University Press, 1993).

30. See, for example "Takes Action" New Glasgow Clarion 1:1 (December 1946); Pachai Beneath the Clouds at 152-5; McCluskey "Segregation;" Robertson "Interview with Pearleen Oliver;" Hudson "Interview with Barbara Bowen;" Hudson "Interview with Clara Adams;" Backhouse "Interview with Wanda Robson." Although there were a number of cases brought by Black men earlier, and a few brought by Black couples (see further discussion in this chapter) Viola Desmond appears to have been the first Black woman in Canada to take legal action against racially segregated seating practices independently in her own right. This claim is based upon an appraisal of reported cases only. There may have been others whose cases were unreported, or whose cases do not reveal on the face of the documents that race was the issue. Black women brought similar legal challenges in the United States. Sarah Remond successfully sued the white owners of a Boston theatre for ejecting her in 1853. Elizabeth Jennings successfully sued the white owners of a railroad in New York for ejecting her from a horse car in the 1850s. In 1865, Sojourner Truth pressed charges against the white conductor of a street car who assaulted her for attempting to ride. In 1866, Ellen Garrison Jackson litigated in Baltimore to stop racial segregation in the railway waiting room, and Mary Ellen Pleasant sued the San Francisco Trolley Company

after she was prevented from riding on one of its cars. In 1873, Catherine Brown sued after she was denied accommodation in the "ladies' car" while travelling between Alexandria, Virginia and Washington, D.C. In 1885, Ida Bell Wells sued a railroad in Memphis, Tennessee, after the white conductor forcibly ejected her from a first-class car. Charlotte Hawkins Brown brought suit in the 1920s whenever she was subjected to racial segregation on the train. See Evelyn Brooks Higginbotham "African-American Women's History and the Metalanguage of Race" Signs 17:2 (Winter 1992) 251 at 262; Lerner Black Women in White America at 375-6; Dorothy Sterling ed. We Are Your Sisters: Black Women in the Nineteenth Century (New York: W.W. Norton, 1984) at 176, 223, 254, 274-5, 480; Giddings When and Where I Enter at 262.

31. Higginbotham "African-American Women's History" at 254, 257, 261, noting: "Sojourner Truth's famous and haunting question, 'Ar'n't I a Woman?' laid bare the racialized configuration of gender under a system of class rule that compelled and expropriated women's physical labor and denied them legal right to their own bodies and sexuality, much less to the bodies to which they gave birth. While law and public opinion idealized motherhood and enforced the protection of white women's bodies, the opposite held true for black women's." Dionne Brand "Black Women and Work: The Impact of Racially Constructed Gender Roles on the Sexual Division of Labour" Fireweed v.26 (Winter/Spring 1987) 87 notes at 90: "The construction of Black femininity has its foundation in Black women's relation to capitalist production and to reproduction. A particular category of femininity which is both neuter and over-sexed, both strong and incompetent, prepares Black women for work as domestic workers/mammies/baby sitters/care givers/service givers/prostitutes, as well as for work as labourers." Nitya Duclos

"Disappearing Women: Racial Minority Women in Human Rights Cases" Canadian Journal of Women and the Law v.6 (1993) 25 notes at 33-4 that our view of sexuality is both gender- and race-specific, with some feminist anthropologists arguing that there are many genders, not just two, (or that gender is culture-specific.) Suzanne Morton "Separate Spheres in a Separate World: African-Nova Scotian Women in late-19th-Century Halifax County" Acadiensis 22:2 (Spring 1993) 61 notes at 74-5: "Black women were expected to be engaged in hard physical labour such as scrubbing, thereby confirming their unladylike reputation; yet, at the same time, those who restricted their labour to the private domestic sphere and expected their husbands to act as breadwinners could be perceived as lazy." See also Angela Davis Women, Race and Class (New York: Random House, 1981); bell hooks Ain't I A Woman: Black Women and Feminism (Boston: South End Press, 1981); Alice Walker In Search of Our Mothers' Gardens (New York: Harcourt, Brace, Jovanovich, 1983); Barbara Y. Welke "Gendered Journeys: A History of Injury, Public Transport and American Law, 1865-1920" Ph.D. Dissertation (University of Chicago: 1995); Barbara Y. Welke "When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race and the Road to Plessy, 1855-1914" Law and History Review 13:2 (Fall 1995) 261; Shirley J. Yee "Gender Ideology and Black Women as Community Builders in Ontario, 1850-70" Canadian Historical Review 75:1 (March 1994) 53-73; Beverly Guy-Sheftall Daughters of Sorrow: Attitudes Toward Black Women, 1880-1920 (Brooklyn, N.Y.: Carlson Publishing, 1990); Morton Disfigured Images.

32. McCluskey "Segregation;" Pachai Beneath the Clouds at 154.

33. "Negress Alleges She Was Ejected From Theatre" Halifax Chronicle 30

November 1946, p.2.

34. Hudson "Interview with Pearleen Oliver;" Ken Alexander and Avis Glaze Towards Freedom: The African-Canadian Experience (Toronto: Umbrella Press, 1996) at 155. Prior to her marriage to Jack Desmond, Viola belonged to the racially-mixed congregation of the Trinity Anglican Church. She switched affiliations to her husband's church upon marriage.

35. For biographical details on Pearleen (Borden) Oliver, whose own attempts to enter the nursing profession were barred because of race, see Doris McCubbin "The Women of Halifax" Chatelaine June 1954, p.16; Colin Thomson Born with a Call: A Biography of Dr. William Pearly Oliver, C.M. (Cherrybrook, N.S.: Black Cultural Centre, 1986); George Elliott Clarke ed. Fire on the Water v.1 (Lawrencetown Beach, N.S.: Pottersfield Press, 1991) at 171; reference by Frances Early in her review of "Rethinking Canada: The Promise of Women's History" Resources for Feminist Research 21 (Spring 1992) at 25 to oral interviews of Pearleen Oliver, held by Saint Mary's University Library, Halifax; Alexander and Glaze Towards Freedom at 155. For reference to Pearleen Oliver's public speaking campaign in the 1940s to publicize cases of Black women refused admission to nursing schools, see Agnes Calliste "Women of 'Exceptional Merit': Immigration of Caribbean Nurses to Canada" Canadian Journal of Women and the Law v.6 (1993) 85 at 92. For reference to Pearleen Oliver's interest in discrimination against Black women, see Clarke at 146, where he notes that Pearleen Oliver's One of His Heralds (Halifax: Pearleen Oliver, n.d.) discusses the situation of Agnes Gertrude Waring (1884-1951), whose attempt to receive ordination to preach at the Second Baptist Church in New Glasgow was refused by

the Maritime Baptist Convention because she was female. For reference to the "Little Black Sambo" campaign, see correspondence from Beresford Augustus Husbands to the Mayor of Halifax, following Pearleen Oliver's address on 26 January 1944, in PANS. Helen Campbell Bennerman's Story of Little Black Sambo, first published in 1899, became a Canadian classic, according to Robin Winks, "still selling well in its sixteenth printing in 1969:" Winks Blacks in Canada at 295.

36. Born in 1912, Rev. Oliver grew up in a predominantly white community in Wolfville, Nova Scotia, and graduated from Acadia University with a B.A. in 1934, and a Masters of Divinity in 1936. For biographical details on Rev. W.P. Oliver (who would later become the Chair of the Black United Front) see Thomson Born with a Call; "Halifax Cleric Elected" Halifax Chronicle-Herald 3 September 1960, p.13; Clarke Fire on the Water v.1 at 171; Marjorie Major "The Negroes in Nova Scotia" PANS Mg1, v.1767, #42K; Oliver "Cultural Progress of the Negro" at 134; W.P. Oliver "Urban and Rural Life Committee of The African United Baptist Association of Nova Scotia" PANS Mg1, v.1767, #42L; Winks Blacks in Canada at 350-2; Winks "Negroes in the Maritimes" at 469; Nancy Lubka "Ferment in Nova Scotia" Queen's Quarterly 76:2 (1969) 213-28.

37. Viola Desmond sought medical treatment from a physician from the West-Indies, who resided in the same building as her parents and maintained an office on the corner of Gottingen and Gerrish streets. Being Black, this physician had no access to city hospitals and had to perform all procedures in his office: Robertson "Interview with Pearleen Oliver." Wanda Robson believes the doctor's name may have been Dr. F.B. Holder, a British Guiana-born Black physician practising in Halifax at this time; Backhouse

"Interview with Wanda Robson."

38. Pearleen Oliver sought support from a number of other Black organizations: the Halifax Coloured Citizens Improvement League, the President of the Ladies' Auxiliary of the Cornwallis Street Baptist Church and the President of the Missionaries' Society. She was disappointed how few people came to the meeting she called, and discouraged by the reluctance many expressed to "make trouble:" Hudson "Interview with Pearleen Oliver;" Robertson "Interview with Pearleen Oliver." The mission of the NSAACP is set out in "The N.S.A.A.C.P." New Glasgow, Nova Scotia The Clarion 1:1 (December 1946) p.1:

- a) To improve and further the interest of the Colored people of the Province.
- b) To provide an organization to encourage and promote a spirit of fraternity among its members.
- c) To co-operate with Governmental and private agencies for the promotion of the interest and the welfare of the Province or any community therein, wherein Colored People are resident, and particularly in reference to said Colored people.
- d) To improve the educational opportunities of Colored youth and to raise the standard [of living] of the Colored people of the Province or any community therein.

The nine Black charter members, all residents of the same Gottingen area neighbourhood as the Desmonds, were: the Rev. William P. Oliver, Pearleen Oliver, Arnold

P. Smith, Richard S. Symonds, William Carter, Bernice A. Williams, Carl W. Oliver, Walter Johnson and Ernest Grosse. Thomson Born With a Call mentions at 77 two predecessor organizations: the Halifax-based Colored Education Centre, founded in 1938 by Dr. F.B. Holder, and the Halifax Colored Citizens Improvement League, founded in 1932 by Beresford Augustus Husbands, a Barbadian-born seaman who became a porter and then a self-employed entrepreneur for a West Indian products import company. For details regarding the NSAACP, see Pachai Beneath the Clouds at 241-3; "An Act to Incorporate The 'Nova Scotia Association for the Advancement of Colored People'" S.N.S. 1945, c.97.

39. "Negress Alleges She Was Ejected From Theatre" Halifax Chronicle 30 November 1946, p.2. This position was supported by Mrs. M.H. Spaulding, chair of the emergency committee for civil rights of the Civil Liberties League, whose views are quoted in "Ban All Jim Crow Rules is Comment on N.S. Charge" Toronto Star 30 November 1946, p.3: "Jim Crow practices, such as segregating Negroes or any other group in certain sections of theatres, or in keeping them out of hotels, have no place in Canada and should be forbidden by law. There is no place for second-class citizenship in this country,' said Mrs. Spaulding. She added there had been instances of the same sort of racial discrimination in other parts of Canada. The practice is that when Negroes try to buy a ticket at a theatre they are told the only seats available are in the balcony, she asserted. 'When Paul Robeson was in Toronto in 'Othello' at the Royal Alexandra he said he would not appear if there was any discrimination against colored people, and they were seated in all parts of the house.'"

40. New Glasgow, N.S. The Clarion 1:1 (December 1946.) The Clarion was founded in 1946 by Carrie Best and her son, J. Calbert Best "to be the voice of colored Nova

Scotians in promoting interracial understanding and goodwill." See Winks Blacks in Canada at 408-10; Pachai Beneath the Clouds at 241; Dr. Carrie M. Best That Lonesome Road (New Glasgow, N.S.: Clarion Publishing, 1977); Clarke Fire on the Water v.1. The Clarion, which ceased publication in 1956, was the second Black newspaper to be published in Nova Scotia. Wilfred A. DeCosta, Miriam A. DeCosta and C. Courtenay Ligoure published the first, The Atlantic Advocate, between April 1915 and 1917 from an office at 58 Gottingen Street: "Devoted to the Interests of Colored People" The Atlantic Advocate, Nova Scotia's First Black Magazine, PANS brochure, April 1992, copy on file with the author. Wilfred A. DeCosta was one of the founding trustees of the Nova Scotia Home for Colored Children; "An Act to Incorporate The Nova Scotia Home for Colored Children" S.N.S. 1915, c.107. For a listing of other Black newspapers published in Canada, see Winks Blacks in Canada at 394-410.

41. "Editorial, Taking Inventory" New Glasgow The Clarion 2:4 (28 February 1947) p.2.

42. "Takes Action" and "Viola Desmond's Appeal" New Glasgow, Nova Scotia The Clarion 1:1 (December 1946) p.1; "Editorial: A New Year's Message" The Clarion 2:1 (January 1947.) The latter article notes that "one of New Glasgow's leading business men" (race unspecified) donated ten dollars to the case, leading the editor to applaud him for his "courage and generosity." Pearleen Oliver recalls that money came in from all over the province, in amounts both large and small, with more white donors than Black: Robertson "Interview with Pearleen Oliver." The origins of the American phrase "Jim Crow" appear to go back to the 1730s, when Blacks were first derogatorily referred to as "crows." "Jim

Crow" was initially used to describe some Black dances, and in 1828, Thomas D. Rice, soon to be known as "the father of American minstrelsy," popularized the term in a profoundly racist manner. A white man who performed in "Black face," Rice wrote a song titled "Jim Crow" in which he imitated and ridiculed "the erratic twitching, loose-jointed jig performed by a crippled and deformed black stableman named Jim Crow." His performance caused a theatrical sensation amongst white audiences in Louisville, inspiring far-ranging, lucrative tours throughout the United States and England, and spawning a host of Black-face imitators. "Jim Crow" came to encompass a stereotypical characterization of Black males as "childlike, irresponsible, inefficient, lazy, ridiculous in speech, pleasure-seeking and happy." By 1835, "Jim Crow" and "Jim Crowism" had come to mean segregation of Blacks from whites, used in such phrases as "Jim Crow car" (1841, first used as a nickname for a "Black only" car on the Boston Railroad) "Jim Crow law" (1890s) and "Jim Crow school (1903).

C. Vann Woodward The Strange Career of Jim Crow, 3rd rev. ed. (New York: Oxford University Press, 1974) notes at 7 that "Jim Crow" was used as a designation for "racial ostracism that extended to churches and schools, to housing and jobs, to eating and drinking. Whether by law or by custom, that ostracism extended to virtually all forms of public transportation, to sports and recreations, to hospitals, orphanages, prisons, and asylums, and ultimately to funeral homes, morgues, and cemeteries." Walker "Race," Rights and the Law suggests at 379-80 that the popularity of the phrase "Jim Crow" may not have been without a touch of irony: "Benjamin Quarles The Negro in the Making of America (New York: Collier, 1987, 3rd ed.) at 73 identifies the Jim Crow dance as a 'favourite' among the slaves when celebrating Christmas or July 4th. Since slave dances at such celebrations were often surreptitious mockeries of their masters' dancing styles...and since 'old Mr. Crow' was a term

sometimes used by slaves to mean slave owner...it is possible that Rice's Jim Crow dance was a satire upon a satire." See Stuart Berg Flexner I Hear America Talking (London: Van Nostrand Reinhold, 1976) at 39; "Rice, Thomas D." The National Cyclopedia of American Biography v. XI (New York: James T. White, 1909) at 207-8; Davis Who is Black? at 51; William Torbert Leonard Masquerade in Black (Metuchen, N.J.: Scarecrow Press, 1986) at 221-5; Lynne F. Emery "Dance" in R.M. Miller and J.D. Smith eds. Dictionary of American Slavery (Westport, Conn.: Greenwood Press, 1988) at 173-4; Lerone Bennet Jr. Before the Mayflower (Baltimore: Penguin, 1966) at 221.

43. PANS SMI Division, CBC Radio, Collection Ar2265-2268 and 2279, Carrie Best Interview. Dr. Carrie M. Best, whose birth name is Carrie Prevoe, was born in New Glasgow in 1903, and completed high school in New Glasgow. She married Albert Theophilus Best, a Barbadian-born Black porter for the Canadian National Railway, and had one son, J. Calbert Best. Carrie Best was an editor and publisher of several Black newspapers, founding the Clarion in 1946, and publishing the nationally circulated The Negro Citizen in 1949. In 1956, she began to write columns in the Pictou Advocate on matters of human rights, and produced and narrated radio shows for five stations for twelve years. In 1970, she was awarded the Lloyd McInnes Memorial Award for her contribution to social betterment. She received the Order of Canada in 1974 and an honorary degree from St. Francis Xavier University in 1975. Her son, Calbert Best, became national president of the Civil Service Association of Canada in Ottawa in 1960, and an Assistant Deputy Minister for Manpower and Immigration in 1970. See Best That Lonesome Road; Clarke Fire on the Water v.1 at 171; Winks Blacks in Canada at 405, 408; "Albert Best dies Sunday" New Glasgow Evening News 5 August 1971; "The Gracious Activist" The

Novascotian 10 April 1982, cover story and p.3-4; "Nova Scotians Best, Buckler honored" Halifax Chronicle-Herald 21 December 1974; "St. FX Confers Honorary Degrees on Two N.S. Women, N.B. Lawyer" New Glasgow Evening News 12 May 1975; "Three Honorary Doctorates To Be Awarded at Convocation" 24 April 1975, p.9; "Two to receive decorations in Order of Canada tonight" 16 April 1980; "J.C. Best Accepts New Post" Halifax Chronicle-Herald 19 January 1966; "Cal Best Re-elected Civil Servants' Chief" Halifax Chronicle-Herald 1 October 1960.

44. On 18 February 1942, Carrie Best issued a writ of summons against Norman W. Mason and the Roseland Theatre Co. Ltd., for ejecting her and her son, Calbert, from the theatre on 29 December 1941. The event was a deliberate, planned attack on the policy of racial segregation that the theatre began to impose in the 1940s, apparently at the request of some white patrons. Carrie Best wrote to Mason, the white owner of the theatre, challenging him on the policy and advising that she and her son intended to sit on the main floor on 29 December 1941. When she tried to do so that afternoon, she was asked to leave by the white assistant manager, Erskine Cumming, white police officer George S. Wright and white Police Chief Elmo Langille. When she refused to leave, officer Wright placed his hands under Mrs. Best's arms and raised her from her seat. She apparently announced: "That's all I wanted you to do, put your hands on me. I will fix you for this." Then she and her son left the theatre. Carrie Best retained James Hinnigar Power, a white New Glasgow lawyer, and commenced litigation claiming assault and battery and breach of contract. She sought \$4.00 in repairs to her coat, \$5000. in general damages for the assault and battery, and \$500. general damages for the wrongful revocation of the licence given to her to witness the performance. Trial was held on 12 May 1942, in the Pictou Court House before Robert

Henry Graham of the Supreme Court of Nova Scotia, the same judge who would later hear Viola Desmond's case. The white judge charged the all-white jury to answer the following questions, to which they responded: 1. Did the Defendant Company's ticket seller sell any tickets to the Plaintiff? No. 2. Did the Defendant ticket seller sell her a downstairs ticket? No. 3. Did the Plaintiff know the Defendant Company would not sell her a downstairs ticket? Yes. 4. Had the Plaintiff any reasonable grounds for thinking the ticket seller sold her a downstairs ticket? No. 5. Did the Plaintiff do as she did because she knew Defendant Company's ticket seller would not sell her a downstairs ticket? Yes. 6. Was any more force used to remove the plaintiff than was necessary? No. 7. What damage, if any, did the Plaintiff sustain? None. Upon the return of these findings, Judge Graham dismissed Carrie Best's action, and charged her with the Defendant's bill of costs, which amounted to \$156.07. See Best v. Mason and Roseland Theatre PANS RG39 "C" (PI) 1986-550/099, file A4013 (1942); "Case Dismissed Against Mason and Roseland Theatre" New Glasgow Evening News 15 May 1942; "Case Dismissed" New Glasgow Eastern Chronicle 19 May 1942; "Two Sentences are Imposed in Supreme Court" Pictou Advocate 21 May 1942; "Jury Dismisses Suit for Damages" Halifax Herald 15 May 1942; "Colored Woman's Action Dismissed" Halifax Chronicle 15 May 1942. For a fuller account, see Constance Backhouse "'I Was Unable to Identify with Topsy': Carrie M. Best's Struggle Against Racial Segregation in Nova Scotia, 1942" Atlantis 22:2 (Spring 1998) 16-26. I am indebted to Barry Cahill, who advised me of the existence of this archival file.

45. Best That Lonesome Road at 43-4. The Norfolk House, where Carrie's brother worked, had a history of refusing to support the practices of racial discrimination so common in the area. The Halifax Eastern Chronicle 28 May 1885, noted that Mr. H.

Murray, a white man, refused to close his Norfolk hotel to the Fisk Jubilee Singers, a Black choir group. Members of the choir had earlier been refused admission to hotels in Pictou and Halifax.

46. Truro, which would earn itself the designation of "the Alabama of Canada" and "Little Mississippi," also maintained a "Whites Only" waiting room in the railroad station: Lubka "Ferment in Nova Scotia" at 215; Winks Blacks in Canada at 319-25, 420; Winks "Negroes in the Maritimes" at 466-7; Thomson Born With a Call at 467. On the activities of the KKK, see discussion of R. v. Phillips in chapter 6.

47. Although similar legislation was not passed in provinces other than Ontario and Nova Scotia, New Brunswick's legislature enacted two statutes giving explicit recognition to the existence of Black schools. "An Act to appropriate a part of the Public Revenue for the services therein mentioned" S.N.B. 1842, c.37, s.1 states: "Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, that there be allowed and paid out of the Treasury of this Province the following sums, to wit: To His Excellency the Lieutenant Governor or Administrator of the Government for the time being, the sum of forty pounds towards the support of a Free School for the education of the Colored Children at Loch Lomond, in the County of Saint John, at present taught by Robert Lindsay, the same not to be drawn until His Excellency or the Administrator of the Government for the time being, shall be satisfied of the efficiency of the said School." "An Act to appropriate a part of the Public Revenue for the services therein mentioned" S.N.B. 1843, c.41, s.1 stipulates similar payment "To His Excellency the Lieutenant Governor or Administrator of the Government for the time being, the sum of forty pounds in aid of individual subscription to establish an

African School at Saint John." Several provinces relied upon local social pressure to deprive Blacks of schooling or to force them into opening their own schools. See Winks Blacks in Canada at 365, regarding New Brunswick and Prince Edward Island. V. Carter and W.L. Akili The Window of Our Memories (St. Albert, Alberta: Black Cultural Research Society of Alberta, 1981) v.1 at 55, R. Bruce Shepard "The Little 'White' Schoolhouse: Racism in a Saskatchewan Rural School" Saskatchewan History v.39 (1986) at 81-93 and R. Bruce Shepard Deemed Unsuitable: Blacks from Oklahoma Move to the Canadian Prairies in Search of Equality in the Early 20th Century Only to Find Racism in their New Home (Toronto: Umbrella Press, 1997) at 106-11 note that Black children were often rejected from public schools on the prairies because of their race. For a comparison with the segregated schooling offered First Nations' children, see discussion of R. v. Wanduta in chapter 3.

48. "An Act for the better establishment and maintenance of Public Schools in Upper Canada, and for repealing the present School Act" S.C. 1849, c.83, s.69-71. "An Act for the better establishment and maintenance of Common Schools in Upper Canada" S.C. 1850, c.48, s.19 provides: "And be it enacted, That it shall be the duty of the Municipal Council of any Township, and of the Board of School Trustees of any City, Town or incorporated Village, on the application in writing of twelve or more resident heads of families, to authorize the establishment of one or more separate schools for Protestants, Roman Catholics, or coloured people, and, in such case, it shall prescribe the limits of the divisions or sections for such schools...." "An Act respecting Separate Schools" Consolidated S.C. 1859, c.65, s.1 provides that twelve or more heads of families, Protestant or "colored people," could open their own institutions and receive apportionments from the common school fund. Racist whites interpreted this as a mechanism to bar Blacks from

local common schools and force them to establish their own schools. "An Act respecting Separate Schools" S.O. 1886, c.46, provides as follows:

s.3(1)....upon the application in writing of five or more heads of families resident in any township, city, town or incorporated village, being coloured people, the council of such township or the board of school trustees of any such city, town or incorporated village, shall authorize the establishment therein of one or more Separate Schools for coloured people, and in every such case, such council or board, as the case may be, shall prescribe the limits of the section or sections of such schools.

s.3(2). No person shall be a supporter of any Separate School for coloured people unless he resides within three miles in a direct line of the site of the school house for such Separate School.

s.6. None but coloured people shall vote at the election of trustees of any Separate School established for coloured people....

s.9. In all cities, towns, incorporated villages and township public school sections in which separate schools exist, each... coloured person...sending children to any such school, or supporting the same by subscribing thereto annually an amount equal to the sum at which such person, if such separate school did not exist, must have been rated in order to obtain the annual legislative public school grant, shall be exempt from the payment of all rates imposed for the support of public schools of such city, town, incorporated village and school section respectively, and of all rates imposed for the purpose of obtaining such

public school grant.

s.10. The exemption from the payment of school rates, as herein provided, shall not extend beyond the period during which such persons send children to or subscribe as aforesaid for the support of such separate school; nor shall such exemption extend to school rates or taxes imposed or to be imposed to pay for school-houses, the erection of which was undertaken or entered into before the establishment of such separate school.

s.11. Such separate schools shall not share in any school money raised by local municipal assessment for public school purposes.

s.12. Each such separate school shall share in such legislative public school grants according to the yearly average number of pupils attending such separate school, as compared with the average number of pupils attending the public schools in each such city, town, incorporated village or township; the mean attendance of pupils for winter and summer being taken.

s.16. The trustees of each such separate school shall, on or before the thirtieth day of June, and the thirty-first day of December of each year, transmit to the county inspector a correct return of the names of all...coloured persons...who have sent children to, or subscribed as aforesaid for the support of, such separate school during the then last preceding six months, and the names of the children sent, and the amounts subscribed by them respectively, together with the average attendance of pupils in such separate school during such period.

s.18. The trustees of each such separate school shall be a body corporate...and shall have such power to impose, levy and collect school rates or subscriptions, upon and from persons sending children to, or subscribing towards the support of the separate school as are provided in section 54 of this Act.

49. Winks Blacks in Canada at 365-76; Winks "Negro School Segregation" at 174, 176; Jason H. Silverman and Donna J. Gillie "The Pursuit of Knowledge under Difficulties: Education and the Fugitive Slave in Canada" Ontario History v.74 (1982) 95; Claudette Knight "Black Parents Speak: Education in Mid-Nineteenth-Century Canada West" Ontario History v.89 (1997) 269. For some discussion of the resistance offered by Blacks to these practices, see Peggy Bristow "'Whatever you raise in the ground you can sell it in Chatham': Black Women in Buxton and Chatham, 1850-65" in Peggy Bristow et al. 'We're Rooted Here and They Can't Pull Us Up': Essays in African-Canadian Women's History (Toronto: University of Toronto Press, 1994) 69 at 114-16; Afua P. Cooper "Black Women and Work in Nineteenth-Century Canada West: Black Woman Teacher Mary Bibb" in Bristow We're Rooted Here 148-68.

50. Washington v. The Trustees of Charlotteville (1854), 11 U.C.Q.B. 569 (Ont. Q.B.) held that school authorities could not exclude Black children unless alternate facilities for "colored pupils" had been established, but In re Dennis Hill v. Schools Trustees of Camden and Zone (1854), 11 U.C.Q.B. 573 (Ont. Q.B.) ruled that Black children could be forced to attend separate schools located miles away from their homes and outside of their school sections. "An Act to Amend the Act respecting Common Schools in Upper Canada" S.O. 1868-69, c.44, s.9 provides "that no person shall be deemed a supporter of any separate

school for coloured people, unless he resides within three miles in a direct line of the site of the school house for such separate school; and any coloured child residing farther than three miles in a direct line from the said school house, shall be allowed to attend the common school of the section within the limits of which the said child shall reside." These provisions are continued by "An Act respecting Separate Schools" R.S.O. 1877, c.206, s.2-5; "The Separate Schools Act" R.S.O. 1897, c.294. After the amendment, several cases acknowledged that race should not be the sole ground for exclusion from common schools, but then accepted the testimony of school authorities regarding overcrowding and "insufficient accommodation," using this to defeat the claims of Black parents to register their children in non-segregated schools: see In re Hutchison and School Trustees of St. Catharines (1871), 31 U.C.Q.B. 274 (Ont. Q.B.); Dunn v. Board of Education of Windsor (1884), 6 O.R. 125 (Ontario Chancery Division.) For two examples of cases where the efforts of education officials to bar Black children from common public schools were challenged successfully, see Simmons and the Corporation of Chatham (1861), 21 U.C.Q.B. 75 (Ont. Q.B.) quashing for uncertainty a by-law which purported to enlarge substantially the geographic catchment area of a separate school, and Stewart and Schools Trustees of Sandwich (1864), 23 U.C.Q.B. 634 (Ont. Q.B.) which accepted evidence that the separate school operated only intermittently as a reason to overrule the common school's refusal to register a Black female student. See also Winks Blacks in Canada; Winks "Negro School Segregation" at 175-82; Knight "Black Parents Speak."

51. Winks Blacks in Canada; Winks "Negro School Segregation" at 182, 190.

52. The specific provisions relating to "coloured people" are continued in "An Act

respecting Separate Schools" R.S.O. 1887, c.227; "An Act respecting Separate Schools" R.S.O. 1897, c.294; "An Act respecting Separate Schools" S.O. 1913, c.71; "An Act respecting Separate Schools" R.S.O. 1914, c.270; "The Separate Schools Act" R.S.O. 1927, c.328; "The Separate Schools Act" R.S.O. 1937, c.362; "The Separate Schools Act" R.S.O. 1950, c.356; "The Separate Schools Act" R.S.O. 1960, c.368. The repeal is found in "An Act to amend The Separate Schools Act" S.O. 1964, c.108, s.1.

53. Winks "Negro School Segregation" at 177.

54. "An Act for the better Encouragement of Education" S.N.S. 1865, c.29, s.6(15) authorizes school boards "to receive the recommendation of any inspector for separate apartments or buildings in any section, for the different sexes or different colors, and make such decisions thereon as they deem proper." Section 37 adds: "If in any section the Council of Public Instruction shall permit separate departments under the same or separate roofs, for pupils of different sexes or different colors, the Trustees of the section shall, in this as in other cases, regulate attendance on the separate departments, according to the attainments of the pupils." See also "Of Education, of Public Instruction" R.S.N.S. 1873, c.32, s.3(10), which restates this law; and Winks Blacks in Canada at 376-80; Winks "Negro School Segregation" at 183; Brad Barton and Anne Moynihan "The Black Community's Struggle for Quality Education in Nova Scotia" in Vincent D'Oyley ed. Innovations in Black Education in Canada (Toronto: Umbrella, 1994) at 49-51.

55. "Of Education, of Public Instruction" R.S.N.S. 1884, c.29, s.3(10) authorizes the Council of Public Instruction "to receive the recommendation of any inspector for separate

apartments or buildings in any section for the different sexes or different colors, and make such decisions thereon as they shall deem proper; but colored pupils shall not be excluded from instruction in the public school in the section or ward where they reside." See Fingard "Race and Respectability in Victorian Halifax;" Winks Blacks in Canada at 376-80; Winks "Negro School Segregation" at 184; Thomson Born With A Call at 9.

56. These provisions are continued with minor wording alterations by "The Education Act" R.S.N.S. 1900, c.52, s.5(14); "The Education Act" S.N.S. 1911, c.2, s.5(14); "The Education Act" S.N.S. 1918, c.9, s.5(p) and "The Education Act" R.S.N.S. 1923, c.60, s.5(q). The latter statute substitutes the word "race" for "color" as follows: "to receive the recommendation of any inspector for separate apartments or buildings in any section for the different sexes or different races of pupils, and to make such decisions thereon as it deems proper, subject to the provision that colored pupils shall not be excluded from instruction in the public school in the section in which they reside." The provisions are repealed in "The Education Act" S.N.S. 1950, c.22, s.4. At no point in any of these enactments are the terms "race," "color" or "colored pupils" defined. See also Winks Blacks in Canada at 376-80; Winks "Negro School Segregation" at 186-7.

57. In Lower Sackville, Mrs. Pleasah Lavinia Caldwell, a Black Nova Scotian responded by opening a "kitchen school" in her home, which educated Blacks in the area until her death in 1950: Helen Champion "School in a Kitchen" unlabelled clipping dated 9 November 1949, PANS, Mg1, v.1767 #42a. In 1964, four such districts continued: Beechville, Hammond Plains, Lucasville and Cherry Brook, all in Halifax County: Winks Blacks in Canada at 376-80. For details of the lack of funding and difficulties recruiting

teachers, obtaining equipment, premises and transportation in Nova Scotia, see Winks "Negro School Segregation" at 186-91.

58. Winks Blacks in Canada comments at 325 on the "formlessness of the racial barrier," noting at 326: "In the United States the Negro was somewhat more sure - sure of where he could and could not go, of when to be meek and when to be strong. In Canada he was uncertain."

59. Oliver "Cultural Progress of the Negro" notes at 129-35 that most Black males could not find work except in the heaviest and most poorly paid jobs: agriculture, mining, lumbering, steel, railway and shipping industries. In most cases, they were also barred from membership in unions. Business ventures were limited to barber shops, beauty parlours, taxi business, trucking, shoe-making, a newspaper and one co-operative store. See also Walker Racial Discrimination at 15, where he notes that during the inter-war years, Black men were concentrated in the following specialized areas: waiters, janitors, barbers and labourers. The elite among the men worked as railway waiters and porters: see Stanley G. Grizzle My Name's Not George: The Story of the Brotherhood of Sleeping Car Porters in Canada (Toronto: Umbrella, 1998); Judith Fingard "From Sea to Rail: Black Transportation Workers and Their Families in Halifax, c.1870-1916" Acadiensis 24:2 (Spring 1995) 49-64; Agnes Calliste "The Struggle for Employment Equity by Blacks on American and Canadian Railways" Journal of Black Studies 25:3 (January 1995) 297-317; Agnes Calliste "Blacks on Canadian Railways" Canadian Ethnic Studies 20:2 (1988) 36-52; Agnes Calliste "Sleeping Car Porters in Canada: An Ethnically Submerged Split Labour Market" Canadian Ethnic Studies 19:1 (1987) 1-20. Prior to World War II, Black females were limited to teaching

school or domestic work. On the pervasive restriction to domestic work, Morton "Separate Spheres in a Separate World" notes at 67: "African-Nova Scotian women had virtually no legal wage-earning opportunities outside domestic service, taking in laundry, or sewing. Regardless of the status in the community, property holdings or occupation of the husband, married women and widows charred, and young women were servants." Williams Blacks in Montreal notes at 45 that the Superintendent of Nurses of the Montreal General Hospital admitted in the 1930s that Black nurses could not find employment in Montreal, "since there were not enough Black patients to care for in the hospitals (and White patients would not allow Black nurses to touch them)." See also "Girl Barred by Color from Nurses Training Course" New Glasgow, N.S. The Clarion 2:15 (6 October 1947) p.1, recounting race barriers against Black women throughout Ontario. The nursing field opened to women in Nova Scotia in 1949, when two Blacks graduated as registered nurses. See also Dionne Brand No Burden to Carry: Narratives of Black Working Women in Ontario 1920s to 1950s (Toronto: Women's Press, 1991) at 155, 184, 207. Williams notes at 45 that Blacks were barred from doing medical internships in Montreal between 1930 and 1947. The Faculty of Medicine at McGill University arranged instead for Blacks to serve their internships with Howard University in Washington, D.C. Donald H. Clairmont and Dennis W. Magill "Nova Scotia Blacks: Marginality in a Depressed Region" in W.E. Mann ed. Canada: A Sociological Profile (Toronto: Copp Clark, 1971) 177 at 179, 183, quote P.E. MacKerrow A Brief History of the Colored Baptists of Nova Scotia (Halifax: 1895): "the United States with her faults, which are many, has done much for the elevation of the coloured race. Sad and sorry are we to say that is more than we can boast of here in Nova Scotia. Our young men as soon as they receive a common school education must flee away to the United States and

seek employment. Very few ever receive a trade from the large employers, even in the factories, on account of race prejudices...." Rev. Adam S. Green, M.S. The Future of the Canadian Negro (1904), PANS V/F v.144 #11, at 17, notes: "How many negroes do you find as clerks, book-keepers, or stenographers within the provinces? I know of but **one**.... Our people are excluded from such lucrative positions, not so much from disqualification, as from race-prejudice."

60. Residential segregation began almost immediately upon the arrival of the first large group of Black Loyalists. The initial land grants issued to the immigrants were carefully segregated by race, with the Black settlers given smaller parcels of land with poorer soil at less favourable locations than whites received. See Winks Blacks in Canada at 36; Walker Black Loyalists at 18-64. Winks notes at 325 that this pattern continued well into the 20th century, with some towns barring all Blacks from residence: "In Pictou County [Nova Scotia], by convention, Negroes were not permitted to live in Stellarton, Westville, Trenton, or Pictou itself...." Hill Freedom-Seekers notes at 105 that Blacks were refused the right to buy town lots in Windsor in 1855. In Montreal, Westmount was similarly restricted. Housing was so difficult for Blacks to obtain in Montreal that a Black real estate company, the Eureka Association, was founded in the 1920s to pool money to purchase tenement housing for rental to Blacks. "Blacks in the forties usually had to put double the downpayment on a house that they wanted to purchase. This kept homeownership out of the reach of all but the upper middle class Blacks;" Williams Blacks in Montreal at 36-8, 58. Blacks who attempted to challenge residential segregation could find their property and persons endangered. Winks recounts an incident at 419-20, where a Black purchased a house in a white area of Trenton, Nova Scotia in 1937: "A mob of a hundred whites stoned

the owner and broke into his home. After being dispersed by the Royal Canadian Mounted Police, the mob returned the following night - now four hundred strong - and destroyed the house and its contents. The RCMP would not act unless requested to do so by the mayor, who refused, and the mob moved on to attack two other Negro homes. The only arrest was of a New Glasgow black, who was convicted of assault on a woman during the riot; and the original Negro purchaser abandoned efforts to occupy his property." A letter from Mrs. Mildred Haley to the Halifax Mail-Star 2 December 1959, p.4 notes that she had rented an apartment in Dartmouth, but when she prepared to move in, and appeared at the apartment with a "colored" friend, the landlord advised her that Blacks were not to be brought into the building. "I explained that I myself am colored," explained Haley, who shortly thereafter "received word from the landlord that I could not have the apartment." Adding that "I am told that my case is a single case among many," she concluded: "I need shelter and place for my children to live and this need is not any less because of the color of my skin." The Halifax Mail-Star 15 March 1960, p.3 reports on a meeting of the NSAACP, chaired by Pearleen Oliver, to discuss the widespread racial discrimination in housing in Halifax. Blacks who tried to rent reported that "various excuses were given, ranging from the frank view that owners don't want to rent to colored people, to the fact that the owners themselves don't mind but they have to think of their neighbors." Those who attempted to purchase homes also faced difficulties. "A house that was advertised for \$18,000 would only be sold to us for \$26,000," reported one Black participant. See additional accounts in the Halifax Chronicle-Herald 9 May 1962, p.34; Winks "Negroes in the Maritimes" at 467; Brand No Burden to Carry at 155; Grizzle My Name's Not George at 32. On similar discrimination against the Chinese in British Columbia, see Kay J. Anderson Vancouver's Chinatown:

Racial Discourse in Canada, 1875-1980 (Montreal: McGill-Queen's University Press, 1991)
at 122-7.

61. Although there was no legislation explicitly barring Blacks from jury service, some legal officials took steps to eliminate their names in the empanelling of jury lists. Winks Blacks in Canada at 251, 284-6 notes that a challenge to Black jurors and jury foremen in Toronto in 1851 was unsuccessful, but that Blacks were excluded from jury service in Victoria between 1864 and 1872. Walker Black Identity in Nova Scotia notes at 8 that Blacks "could not serve on juries or claim a jury trial." See also Pilton "Negro Settlement in British Columbia;" "Colored Men as Jurors" Victoria Colonist 7 May 1872, p.3; "Colored Jurors" 21 March 1872, p.3; 27 November 1872, p.3; "Have them Right" New Westminster Times 18 February 1860.

62. During World War I, enlisting Blacks were relegated to a corps of foresters who were assigned to manual-labour tasks in France. At Gagetown, New Brunswick, the local commanding officer insisted upon the segregation of Blacks from whites because "no Canadian fighting man could be asked to sit next to a coloured man;" Winks "Negroes in the Maritimes" at 466-7; Walker "Race," Rights and the Law at 132-5, 168-70. The Rev. W.P. Oliver, the only Black chaplain in the Canadian army, was appointed to minister to "Coloured Personnel."

63. Winks Blacks in Canada notes at 248 that Blacks could not purchase cabin-class tickets on the Chatham steamer in the 1850s. Hill Freedom-Seekers notes at 105 that Blacks were discriminated against on steamboats and stage coaches in the mid-19th century: "Peter

Gallego, while travelling by boat between Toronto and Kingston, was told to keep out of the captain's dining room. When he defiantly entered, the captain attacked him. Gallego knocked the man down and proceeded, undisturbed, to eat his meal. When the ship reached Kingston, the captain charged Gallego with assault. Gallego, in turn, charged the captain with denying him his natural rights. The case went to court, where both men were fined, Gallego 5 pounds and the captain 20 pounds."

64. Winks "Negroes in the Maritimes" at 466; Winks Blacks in Canada at 286, 325; Hill Freedom-Seekers at 104.

65. The Nova Scotia Home for Colored Children opened in Halifax in 1921 and continued in operation until 1965, because orphaned and abandoned Black children were refused admission to Catholic and Protestant orphanages and industrial homes; see Charles R. Saunders Share & Care: The Story of the Nova Scotia Home for Colored Children (Halifax: Nimbus, 1994.) Suzanne Morton notes in "Old Women and Their Place in Nova Scotia, 1881-1931" Atlantis 20:1 (1995) 21 at 26, that in Annapolis County, African-Nova Scotian paupers were housed together in a separate building to the rear of the county institution. The deplorable condition of this building caused the provincial inspector to urge an end to racial segregation, but he admitted that: "The colour line is pretty distinctly drawn and I imagine this last suggestion will not be popular." The care of elderly African-Nova Scotians was a serious concern for the Black community, and after the establishment of the Colored Children's Home in 1921, the British Methodist Episcopal conference discussed the possibility of establishing an "Old Folks Home."

66. Winks Blacks in Canada notes at 420 that during the 1940s "an Edmonton hospital admitted to drawing the color line." Pearleen Oliver has noted that in the mid-1940s, Black physicians practising in Halifax were denied access to the city hospitals: Robertson "Interview with Pearleen Oliver."

67. Winks Blacks in Canada notes at 325 that in Halifax, Fredericton and Colchester, Blacks could not be buried in Anglican churchyards. See also Halifax Evening News "Baby Refused Burial in St. Croix Cemetery" 11 October 1968, clipping held by PANS Mg1, v.2009 #2, which describes a 1907 by-law concerning the St. Croix Cemetery, near Windsor, N.S., still in force, which provides: "Not any negro or colored person nor any indian shall be buried in St. Croix Cemetery."

68. Winks Blacks in Canada notes at 248, 283-4, 286, 325 that hotels in Hamilton, Windsor, Chatham and London refused admission to Blacks in the mid 19th century. In the 1860s in Victoria, the chief theatre refused Blacks access to the dress circle or to orchestra seats, the Bank Exchange Saloon refused service to Blacks, and they were also excluded from Queen Victoria's birthday ball and from the farewell banquet for Governor James Douglas. The colour line remained visible in British Columbia in restaurants and places of entertainment prior to World War I. Blacks were not admitted to the boy scout troops or the YMCA in Windsor and Black musicians had to establish their own orchestra in Owen Sound. Winks notes at 325-6, 388, 420, 457: "In 1924 the Edmonton City Commissioner barred Negroes from all public parks and swimming pools - and was overruled by the city council; in Colchester, Ontario, in 1930, police patrolled the parks and beaches to keep blacks from using them. In Saint John all restaurants and theatres closed their doors to

Negroes in 1915; two years later the chief theatres of Hamilton also did so. [...] In 1929, when the World Baptist Conference was held in Toronto, Negro delegates were denied hotel rooms. [...] Only one hotel in Montreal could be depended upon not to turn Negroes away in 1941. [...] Many dance pavilions, skating rinks and restaurants made it clear they did not welcome blacks; and several pubs in Saskatchewan and British Columbia insisted that Negroes sit in corners reserved for them." Even into the 1960s, Black residents were virtually barred from community restaurants, and Windsor barkeepers designated separate "jungle rooms" for Blacks until 1951. See also "Hotels Refuse to Take Negroes" Vancouver Province 13 August 1945, p.2, recounting how Black members of the cast of "Carmen Jones" were denied hotel accommodation in Vancouver; and "Color Bar Said Drawn in Local Pub" Vancouver Sun 30 July 1948, p.1. Howard Lawrence, New Glasgow, N.S. The Clarion 2:2 (December 1946) urged the Black community to establish a community centre because "every place is closed to us." Anna-Maria Galante "Ex-mayor Lewis broke new ground" Afro-Nova Scotian Portraits (Halifax: Chronicle-Herald and Mail-Star, 19 February 1993) at p.P7, quotes Daurene Lewis stating that the dances in Annapolis Royal were always segregated (circa 1940s-50s) and attempts were made to segregate the movie house as well. McKenzie "Race Prejudice and the Negro" notes at 201 that "[Negroes] are not always served in the best restaurants, nor admitted to high-class hotels. They are restricted, in cities, to the poorer residential districts, and are not accepted socially." See also Daniel G. Hill "Black History in Early Ontario" Canadian Human Rights Yearbook (Ottawa: Human Rights Research and Education Centre, University of Ottawa, 1984-85) 265; Grizzle My Name's Not George at 54-5; Winks "Negroes in the Maritimes" at 467; Winks "Negro School Segregation" at 189; Allen P. Stouffer The Light of Nature and the Law of God:

Anti-Slavery in Ontario, 1833-1877 (Montreal: McGill-Queen's Press, 1992) at 200-1; Brand No Burden to Carry at 134, 149-50, 153, 210-11, 278. For reference to comparable treatment of First Nations' peoples, see George Manuel and Michael Poslums The Fourth World: An Indian Reality (Don Mills: Ontario: Collier-Macmillan Canada, 1974) at 101.

69. The "Saskatchewan Bill of Rights Act, 1947" S.S. 1947, c.35, s.11 reads: "Every person and every class of persons shall enjoy the right to obtain the accommodation or facilities of any standard or other hotel, victualling house, theatre or other place to which the public is customarily admitted, regardless of the race, creed, religion, colour or ethnic or national origin of such person or class of persons." The statute came into force on 1 May 1947, as stipulated in s.19. Despite its broad scope, however, the act did not prohibit discrimination on the basis of sex. Other provisions state:

s.8(1) Every person and every class of persons shall enjoy the right to obtain and retain employment without discrimination with respect to the compensation, terms, conditions or privileges of employment because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

(2) Nothing in subsection (1) shall deprive a religious institution or any school or board of trustees thereof of the right to employ persons of any particular creed or religion where religious instruction forms or can form the whole or part of the instruction or training provided by such institution, or by such school or board of trustees pursuant to the provisions of "The School Act," and nothing in subsection (1) shall apply with respect to domestic service or employment involving a personal relationship.

s.9. Every person and every class of persons shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

s.10. Every person and every class of persons shall enjoy the right to acquire by purchase, to own in fee simple or otherwise, to lease, rent and to occupy any lands, messuages, tenements or hereditaments, corporeal or incorporeal, of every nature and description, and every estate or interest therein, whether legal or equitable, without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

s.12. Every person and every class of persons shall enjoy the right to membership in and all of the benefits appertaining to membership in every professional society, trade union or other occupational organization without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

s.13(1) Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

(2) Nothing in subsection (1) shall prevent a school, college, university or other institution or place of learning which enrolls persons of a particular creed or religion

exclusively, or which is conducted by a religious order or society, from continuing its policy with respect to such enrolment.

s.14(1) No person shall publish, display or cause or permit to be published or displayed on any lands or premises or in any newspaper, through any radio broadcasting station, or by means of any other medium which he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict, because of the race, creed, religion, colour or ethnic or national origin of any person or class of persons, the enjoyment by any such person or class of persons of any right to which he or it is entitled under the law.

(2) Nothing in subsection (1) shall be construed as restricting the right to freedom of speech under the law, upon any subject.

s.15(1) Every person who deprives, abridges, or otherwise restricts or attempts to deprive, abridge or otherwise restrict any person or class of persons in the enjoyment of any right under this Act or who contravenes any provision thereof shall be guilty of an offence and liable on summary conviction to a fine of not less than \$25 nor more than \$50 for the first offence, and not less than \$50 nor more than \$200 for a subsequent offence, and in default of payment to imprisonment for not more than three months.

(2) The penalties provided by this section may be enforced upon the information of any person alleging on behalf of himself or any class of persons that any right

which he or any class of persons or any member of such class of persons is entitled to enjoy under this Act has been denied, abridged or restricted because of the race, creed, religion, colour, ethnic or national origin of himself, or of any such class of persons or of any member of any such class of persons.

s.16. Every person who deprives, abridges or otherwise restricts or attempts to deprive, abridge or otherwise restrict any person or class of persons in the enjoyment of any right under this Act may be restrained by an injunction issued in an action in the Court of King's Bench brought by any person against the person responsible for such deprivation, abridgment or other restriction, or any attempt thereat.

See also "An Act to amend The Saskatchewan Bill of Rights Act, 1947" S.S. 1949, c.29, which strikes out the portion of s.15(2) that follows the word "restricted." The first similar legislation in Ontario is contained in "An Act to promote Fair Employment Practices in Ontario" S.O. 1951, c.24 and "An Act to promote Fair Accommodation Practices in Ontario" S.O. 1954, c.28. On the lobby campaign involving the Association for Civil Liberties, churches, the Canadian Jewish Congress, Ontario Federation of Labour, the Joint Labour Committee on Human Rights, the Negro Citizenship Association and the Brotherhood of Sleeping Car Porters, see Grizzle My Name's Not George at 91-5.

70. James Robinson Johnston, the first Black lawyer and the first Black to graduate from Dalhousie University Law School, was called to the Nova Scotia bar in 1900, and died in 1915. The second, Joseph Eaglan Griffith, a Black immigrant from the British West Indies, was called to the bar in 1917 and practised in Halifax until his death in 1944.

Frederick Allan Hamilton of Scarborough, Tobago, graduated with a B.A. (in 1921) and LL.B. (1923) from Dalhousie University, and was admitted to bar of Nova Scotia in 1923. After articling with Griffith, Hamilton opened his law office on Cunard Street in Halifax, near the heart of the Black community. Finding the legal business of the Black community insufficient, Hamilton closed his office within months. He relocated his practice to industrial Cape Breton, where there was a substantial West Indian immigrant community, setting up first in Glace Bay, then in Sydney. He was appointed King's Counsel in 1950, the second African-Canadian lawyer to receive the designation. Six additional West Indian Blacks graduated from Dalhousie Law School between 1900 and 1931. Five of them were admitted to the Nova Scotia bar, but none remained in the province. Most of these men articulated with Griffith. There would not be a second indigenous Afro-Nova Scotian graduate of Dalhousie Law School admitted to the bar until George W.R. Davis, in 1952. Recently retired from the firm of Moore, MacDonald and Davis, 2194 Gottingen Street, Halifax, Mr. Davis is also the first native Afro-Nova Scotian lawyer to be appointed a Queen's Counsel. Blacks were admitted to law practice in other provinces somewhat earlier than in Nova Scotia. For details concerning Ontario, see chapter 6. Joshua Howard, an African-American, commenced practice in Victoria, British Columbia in 1858. Abraham Beverly Walker, an African-Canadian, was admitted to the bar of New Brunswick in 1882. See Cahill "Colored Barrister" at 345, 373-4; Clarke Fire on the Water v.1 at 170-1; Saunders Share & Care: The Nova Scotia Home for Colored Children at 18-19; New Glasgow, N.S. The Clarion 2:1 (January 1947.)

71. Cahill "Colored Barrister" notes at 373 that Goffe was admitted to Gray's Inn in 1905, and called to the bar by Gray's Inn in 1908. He practised at the English bar for six

years, and "was employed in various government departments" during and after World War I. He died in 1962 in his ninetieth year.

72. For biographical details on F.W. Bissett, the son of Frederick W. Bissett and Ethel Gray (Smith) Bissett, see "Bissett, Frederick William, B.A., LL.B." Maritime Reference Book: Biographical and Pictorial Record of Prominent Men and Women of the Maritime Provinces (Halifax: Royal Print, 1931) at 34; "Bench vacancy filled" Halifax Chronicle-Herald 11 March 1961; "Mr. Justice F.W.Bissett" Halifax Mail-Star 11 November 1978, p.67; "Mr. Justice Bissett, 76, Dies in Halifax" Halifax Mail-Star 10 November 1978, p.1-2; "Tributes Paid to Mr. Justice F.W. Bissett" Halifax Mail-Star 11 November 1978, p.1-2. Apart from Rev. Oliver's recommendation, it remains unclear why Viola Desmond selected F.W. Bissett. She seems to have been familiar with at least some other white members of the legal profession prior to this. Earlier in November, 1946, she retained Samuel B. Goodman, a white lawyer from Halifax, to issue a writ against Philip Kane, the white car dealer who sold her the 1940 Dodge, for overcharging her in violation of the Wartime Prices and Trade Board Order. See Viola Desmond v. Philip Kane PANS RG39 "C" Halifax v.936, #S.C. 13304.

73. Johnson v. Sparrow (1899), 15 Que. S.C. 104 (Quebec Superior Court) at 108. Drawing upon the English common law rule that obliged hotel-keepers "to receive every traveller until his hotel is full unless he can assign good cause for refusal," Judge Archibald stressed "the similarity between a theatre and a hotel in almost every point which can affect their relations to the public." Any differences were "of degree and not of kind," noted the judge:

[T]he municipal authority acting in the public interest in both cases, grants license to do business, and exercises surveillance afterwards. This constitutes a privilege granted to the licensees by the public, and naturally the public ought to receive a corresponding benefit. [...] Public notices and advertisements which all theatres issue...are treated as offers to the public and to every member of it, and these offers are accepted by the tender of the price of any seat which the spectator may desire, if it is still vacant. ...[T]he payment of the entree forms a contract of lease of the particular seat indicated on the ticket. These considerations give the plaintiff a right to judgment in his favour.

When the case went on appeal to the Quebec Court of Queen's Bench, Judge Bosse refused to equate a hotel and a theatre under the common law rule, but upheld the \$50 damage award based on the breach of contract. The court did not overturn Judge Archibald's explicit racial analysis, but stated that it was unnecessary to decide the question of whether Blacks were entitled to the same rights of admission as whites in this case; Johnson v. Sparrow (1899), 8 Que. Q.B. 379. Walker "Race," Rights and the Law suggests at 146 that "in dismissing Justice Archibald's reasoning the appeal decision undermined any general application of the non-discriminatory principle." With respect, this is arguably an over-reading of the appeal decision. Judge Bosse adverts to the legislation in the United States endorsing racial segregation, explicitly questions whether these enactments might be unconstitutional as violating the principle of equality, notes that similar legislation has not been enacted in Canada, and then concludes that the present dispute, which can be resolved on a purely contractual basis, does not require any further rulings on racial discrimination. This does not appear to be an overt rejection of Judge Archibald's analysis on racial equality, but a reluctance to rule on the matter in the present case. For further discussion of the

common law duty to serve, see Henry L. Molot "The Duty of Business to Serve the Public: Analogy to the Innkeeper's Obligation" Canadian Bar Review v.46 (1968) 612-42; Beatrice Vizkelety "Discrimination, the Right to Seek Redress and the Common Law: A Century-Old Debate" v.15 (1992) Dalhousie Law Journal 304-35; Michael Taggart "The Province of Administrative Law Determined?" in Michael Taggart ed. The Province of Administrative Law (Oxford: Hart Publishing, 1997) at 6-14. For examples of statutory provisions replicating the common law, see "An Act respecting Liquor Licences" S.B.C. 1900, c.18, s.64, which provides: "Every hotel-keeper having a licence to sell liquor, refusing, at a reasonable rate, either personally or through any one acting on his behalf, except for some valid reason, to supply lodging, meals or accommodation to travellers, shall, for each offence, be liable to a penalty of twenty dollars, and in default of payment, one month's imprisonment." See also "An Act Respecting Liquor Licences and the Traffic in Intoxicating Liquors" S.B.C. 1910, c.30, s.64; R.S.B.C. 1911, c.142, s.63. Winks mentions another case at 431, that he does not cite, that followed the Johnson v. Sparrow case: "A similar decision was reached in Toronto soon after: a light-skinned Negro woman purchased a ticket for her son at a skating rink; the boy - who was much darker - was refused admittance when he appeared, and his mother sought damages in the divisional court. The company agreed to pay twenty-five cents, the price of the ticket, and the judge dismissed the action with the opinion that no other damages beyond the ticket could be shown." Walker "Race," Rights and the Law at 387 cites as the source for this Ida Greaves The Negro in Canada (Orillia, Ont.: Packet-Times Press, 1930) at 62, referencing a personal letter from the deputy attorney general of Ontario. Several earlier cases premised on an innkeeper's duty to serve the public were brought by Jacob Francis, an English-born Black saloon-

keeper in Victoria. In the spring of 1860, Francis was refused service of two bottles of champagne in a billiard saloon at Yates and Government Streets. On 20 April 1860, a civil jury heard his claim for forty shillings in damages in Francis v. Miletich ABC C/AA/30.3D/2 Vancouver Island, Supreme Court of Civil Justice, Rule and order book, 1859-1861, at 63, 69; C/AA/30.3P/5 Vancouver Island, Supreme Court of Civil Justice, at 118-9, 123; GR848, Vancouver Island, Charge Books; "Refusing A Drink to A Coloured Man" Victoria Gazette 21 April 1860, p.3. The jury held that Miletich was an innkeeper, that Francis was refused liquor but not received as a guest, and that Francis sustained no injury and was not entitled to damages. In 1862, Jacob Francis was refused service at the Bank Exchange Saloon in Victoria, and again sought legal relief. According to newspaper accounts, a white Victoria police magistrate, Augustus F. Pemberton, ruled that saloons that refused service to Black men would either not get a licence or would be fined and their licence not renewed when it expired. According to the charge book, the case was dismissed by Magistrate Pemberton on 4 July 1862. See Jacob Francis v. Joseph Lovett ABC GR848, Charge books, v.3; "Wouldn't Let Him Drink" Victoria Colonist 26 June 1862, p.3; "Shall a Black Man Drink at a White Man's Bar?" 28 June 1862, p.3; "The Vexed Question Settled" 5 July 1862, p.3; "Shall a Colored Man Drink at a White Man's Bar?" Victoria British Colonist 5 July 1862, p.3. For more details on Francis, who was earlier denied the right to take up an elected seat in the colonial Legislative Assembly because of his race, see Pilton "Negro Settlement in British Columbia;" S. Stott "Blacks in B.C." ABC NW/016.325711/B631. For a similar case in 1913, see Moses Rowden v. J.B. Stevens, Prop., Stratford Hotel ABC GR1651, British Columbia County Court (Vancouver) Plaintiff and procedure books, 1886-1946 [B7314-B7376]; GR1651, British Columbia County Court

(Vancouver), Indexes to plaint and procedure books, 1886-1946 [B7897-B7901]; GR1418, British Columbia County Court (Vancouver), Judgments 1893-1940 [B2611-B2643]; "Negro Sues Because Color Line is Drawn" Vancouver Province 4 October 1913, p.15; "Hotel Bar Refused to Serve Negro" 10 July 1913, p.17; "Enters Suit for Damages for Being Refused Drink" Vancouver Sun 1 October 1913, p.1. Rowden sought relief before the city's license commissioners, who refused to intervene. He then claimed \$500 damages on the basis that Stevens failed to meet his common law obligation as an innkeeper to serve travellers. The outcome of the case is unclear from the surviving documentation.

74. Barnswell v. National Amusement Company, Limited (1914), 21 B.C.R. 435, [1915] 31 W.L.R. 542 (B.C.C.A.). The plaintiff, described by the court as "a full-blooded negro," sought damages of \$250 for breach of contract and \$750 for assault. The white judges of the court of appeal dismissed the assault claim, but upheld the breach of contract because Barnswell was sold a ten cent ticket at the wicket of the theatre. Only later was he refused admission inside the lobby by the white door-keeper, whose decision was supported by the white manager. According to Paulus Aemilius Irving, "the plaintiff had entered the building as a spectator who had duly paid his money to see the entertainment. He was, therefore, entitled to remain." Albert Edward McPhillips dissented from the majority decision, claiming that it was "in the public interest and in the interest of society that there should be law which will admit of the management of places of public entertainment having complete control over those who are permitted to attend all such entertainments." See also "Suit Against Theatre" Victoria Times 30 May 1914, p.18; "Damages Are Awarded" 10 December 1914, p.16; "Legal Intelligence" Victoria Daily Colonist 10 December 1914, p.3.

75. "Colored Patrons Must Pay Double" Regina Leader 9 October 1911, p.7, announces: "One of the city's restaurants has decided to draw the colored line and in future all colored patrons will pay just double what their white brothers are charged. This, of course, is not a money-making venture, but is a polite hint to these people that their patronage is not wanted. It is understood that the change is made at the urgent request of some of the most influential patrons, and not on the initiative of the management. It is an innovation in the running of hotels, cafes and restaurants of the city and the experiment will be watched with interest." The exact basis for the ruling, which is not reported in the published legal reports, is somewhat difficult to reconstruct from the press account in "May Charge Double Price" Regina Leader 16 October 1911, p.7. The newspaper specifies that the case was "a charge of obtaining money under false pretences" laid against W.B. Waddell by William Hawes. There was some factual dispute over whether Hawes had been notified of the double charge prior to ordering, with Hawes claiming he had not, and Waddell claiming he had. White magistrates Lawson and Long concluded that Hawes had, and held that therefore there was no case of false pretences. The press seems to have been less convinced, claiming that the case stood for the proposition that "a restaurant keeper has the right to exclude colored patrons by charging double prices without, however, taking proper steps to make the charge known to those whom he proposes to exclude." The press report also hints that the claim may have been rooted in breach of contract, recounting that the plaintiff tried to show that Hawes "had no knowledge of [the double price] arrangement when he gave his order, and that the bill of fare from which he ordered constituted a contract...." The contract issues appear to have been ignored by the court. Counsel for Hawes, Mr. Barr, sought leave to appeal, but this was denied. For another example of a case

where Blacks were charged extra, see R. v. J.D. Carroll ABC GR419, B.C. Attorney General Documents, Box 1, file 21/1860, and "Police Court" Victoria Colonist 14 January 1860, p.3, where William Bastion, a Black man, charged J.D. Carroll, a white innkeeper, with extortion after he charged him \$1.50 for three drinks he had already consumed on 10 January 1860. Charles Jackson and Arthur Wiggins, white men who were with Bastion at the time, testified that they had never been charged more than 12 1/2 cents per drink. Carroll was committed for trial by Magistrate Augustus Pemberton in Victoria Police Court on 12-13 January 1860, but the outcome of the case is not clear from the surviving records. The Victoria Colonist 19 January 1860, suggests that the case was dismissed because Carroll was a spirit dealer and not an innkeeper; see Majzub "A God Sent Land for the Colored People?" at 23.

76. Loew's Montreal Theatres Ltd. v. Reynolds (1919), 30 Que. K.B. 459 (Quebec King's Bench) per John-Edward Martin, J. at 466; Winks "Negroes in the Maritimes" at 467. The ruling is a reversal of the decision at trial, which was heard in the Superior Court by white judge, Thomas Fortin. Press coverage of the trial decision, "Court Says Color Line is Illegal; All Equal in Law" Montreal Gazette 5 March 1919, p.4, suggests that a number of Black men and women, members of the Coloured Political and Protective Association of Montreal, deliberately attempted to challenge the policy of the theatre barring Blacks from the orchestra seats. Norris Augustus Dobson, a Black chemist, and his wife claimed \$1000 damages when white theatre employees forcibly ejected them from the theatre because of their race. The Dobsons' claim was rejected at trial, with the judge concluding that Mr. Dobson had created a loud disturbance in the theatre when some members of his party were refused seating in the orchestra section. The ejection was premised upon the plaintiff's

disruptive behaviour, and not his race, concluded the trial court. Sol Reynolds, a Black plaintiff who claimed \$300 damages because he was refused admission to the orchestra chairs, was more successful. The trial court awarded him nominal damages of \$10, stating: "In this country the colored people and the white people are governed by the same laws, and enjoy the same rights without any distinction whatever, and the fact that Sol Reynolds was a colored man offers no justification for Loew's Montreal Theatre Limited refusing him admission to the orchestra chairs in its theatre after issuing to him a ticket for such seat and after acceptance of the same by its collector." The ruling was initially hailed by the Gazette as establishing "jurisprudence governing the question of the rights of discrimination against colored people in this province." See also coverage in the newspaper published by the N.A.A.C.P., The Crisis 18:1 (May 1919) p.36. However, the trial decision was overruled on appeal by the King's Bench. The appeal court at 463 and 466 distinguished the Loew's Montreal Theatre case from Sparrow v. Johnson upon the basis that it was a test case, in which the plaintiffs deliberately set out to challenge a racially-based seating policy. Thomson Blacks in Deep Snow mentions at 82 that an earlier situation in Edmonton reached a more informal, but similar resolution. His source is the Edmonton Capital 9 April 1912, which contains the following entry: "Irate Negroes were turned down services in two hotels. They ask, 'Have Edmonton bartenders the right to draw the colour line?' The attorney-general's department said while it gives the hotel keeper the right to sell liquor, 'it cannot compel him to sell to anyone if he does not wish to do so.'" See also "Edmonton Color Line" Regina Daily Province 10 April 1912, at p.5, which reports the complaint of the "dark-skinned citizens," who were "almost dandified in their get-up and in their bearing." Condescending commentary, frequently intended to create and inflame racist stereotypes,

appears regularly in Canadian press reports of Blacks at this time: see R. Bruce Shepard "Plain Racism: The Reaction Against Oklahoma Black Immigration to the Canadian Plains" in Ormond McKague Racism in Canada (Saskatoon: Fifth House, 1991) 15-31.

77. Franklin v. Evans (1924), 55 O.L.R. 349, 26 O.W.N. 65 (Ont. High Court.) See also "Dismisses Suit of Colored Man" London Evening Free Press 15 March 1924, which gives the name as W.K. Franklin. Strangely, neither Johnson v. Sparrow nor Barnswell were cited in the legal decision, and Judge Haughton Lennox concludes that there were no authorities or decided cases in support of the plaintiff's contention. Most of the decision centres on common law rules requiring hotel-keepers to "supply...accommodation of a certain character, within certain limits, and subject to recognized qualifications, to all who apply." Contrasting restaurants with inn-keepers, Lennox held that the common law obligations did not apply to the defendant. The white judge did, however, seem to have been ambivalent about the result he reached in this case. Disparaging the conduct of the white restaurant owner and his wife, whose attitude toward the plaintiff Lennox described as "unnecessarily harsh, humiliating and offensive," Lennox contrasted their situation with that of the plaintiff: "The plaintiff is undoubtedly a thoroughly respectable man, of good address, and, I have no doubt, a good citizen, and I could not but be touched by the pathetic eloquence of his appeal for recognition as a human being, of common origin with ourselves." Lennox then expressly ducked the issue: "The theoretical consideration of this matter is a difficult and decidedly two-sided problem, extremely controversial, and entirely outside my sphere in the administration of law - law as it is." Lennox dismissed the action without costs. Curiously, the account in the local Black newspaper, The Dawn of Tomorrow, suggests that the plaintiff won: "W.V. Franklin Given Damages" London Dawn

of Tomorrow 2 February 1924, p.1; "Mr. W.V. Franklin's Victory" London Dawn of Tomorrow 16 February 1924, p.2. This coverage appears erroneous in asserting that "the jury took only 20 minutes to decide that Mr. Franklin should be awarded damages," since the law report notes that there was no jury, and that the claim was dismissed. However, the Black press, unlike the white press, did recount the plaintiff's testimony in valuable detail: "When Mr. Franklin was called to the witness box for the defence counsel [and asked], "Have you any ground for damages?" Mr. Franklin's eloquent and polished reply was: "Not in dollars and cents, but in humiliation and inhuman treatment at the hands of this fellow man, yes. Because I am a dark man, a condition over which I have no control, I did not receive the treatment I was entitled to as a human being. God chose to bring me into the world a colored man, and on this account, defendant placed me on a lower level than he is." Reference is also made in the Black press, on 16 February 1924, to the views of the Black community on the necessity of bringing the case: "In a recent article in our paper we stated that the colored people of London stood solidly behind Mr. Franklin. On the whole we did stand behind him but a few there were who doubted the wisdom of his procedure, believing, as they expressed it, that his case would cause ill feeling between the races. [...N]othing in respect is ever gained by cringing or by showing that we believe ourselves to be less than men. Nothing will ever be gained by submitting to treatment which is less than that due to any British subject." The financial cost of bringing such an action was acknowledged by the Dawn of Tomorrow, which made an express appeal to readers to contribute money to assist Mr. Franklin in defraying the costs of the case, since "the monetary damages awarded him by the courts is far below the actual cost to him."

(B.C.C.A.).

79. Christie and Another v. York Corporation (1937), 75 Que. C.S. 136 (Que. Superior Court); rev'd York Corporation v. Christie (1938), 65 Que. B.R. 104 (Que. K.B.); leave to appeal granted Fred. Christie v. The York Corporation, [1939] 80 S.C.R. 50 (S.C.C.); upheld Fred Christie v. The York Corporation, [1940] S.C.R. 139 (S.C.C.). For a more detailed account of this case, see Walker "Race," Rights and the Law at 122-81. In the decision of the Quebec Superior Court, although the claim was grounded in contract and delict (or tort), the trial judge relied upon the statutory provisions in the Quebec "Licence Act" R.S.Q. 1925, c.25, s.33, which require that "no licensee for a restaurant may refuse, without reasonable cause, to give food to travelers." When the appeal was heard before the Quebec Court of King's Bench, Judge William Langley Bond dismissed the contract argument, noting at 107: "There was an implied if not an express invitation on the part of the appellant, - but I have been unable to find any legal ground or justification for the contention that the appellant was not at liberty to attach conditions to its offer or to restrict it. [...] There was consequently no contract ever completed - no bargain struck, notwithstanding the respondent's insistence." Discounting the argument based in delict, or tort, the white judge continued at 112: "In order to invoke article 1053 C.C., the respondent must show some breach of a duty or fault on the part of the appellant; and I am unable to find any such wrong committed. If, as I have pointed out, there was not duty cast by law upon the appellant to serve the respondent, then its refusal to do so is an innocent act, and not a violation of any right on the part of the respondent." The statutory provisions upon which the trial judge based his decision were inapplicable, according to the majority of the Court of King's Bench, because a tavern did not constitute a restaurant within the meaning of the enactment.

White Judge Gregor Barclay was the most explicit about his views toward the policy, noting at 124-5: "The fact that a tavern-keeper decides in his own business interests that it would harm his establishment if he catered to people of colour cannot be said to be an action which is against public morals or good order. The argument that, if all tavern-keepers were to take the same stand, a situation would arise which would be likely to lead to disorder, is not sound. The fact that a particular individual has certain preferences is not a matter of public concern." The quotation from the decision of the Supreme Court of Canada from Judge Thibault is found at Fred Christie v. The York Corporation, [1940] S.C.R. 139 at 141-2, 144.

80. Loew's Montreal Theatres Ltd. v. Reynolds (1919), 30 Que. K.B. 459 (Quebec King's Bench) at 462-3.

81. Rogers v. Clarence Hotel et al. [1940] 2 W.W.R. 545, (1940), 55 B.C.R. 214 (B.C.C.A.). Rogers, who was born in 1870 in Louisville, Kentucky of "an Indian father and a mulatto mother," became a naturalized British subject in 1924. O'Halloran's judgment was similar in sentiment to the original trial ruling of the Supreme Court of British Columbia, issued by white judge David Alexander McDonald, that was reversed by the British Columbia Court of Appeal. McDonald distinguished the instant case from Christie on the grounds that in British Columbia, licensed beer parlors had a monopoly on the sale of beer by the glass. McDonald ordered Rose Low to pay \$25. in damages, noting: "It is a matter of very great importance. It is particularly important in a city like Vancouver, the terminus of two continental railways and the home of many colored men. Those of us who, in the course of our duties, have to travel on the trains, have brought to us from day to day the

honesty, intelligence and kindness of these men and I must consider their rights and the rights of their colored brethren with the very greatest care." See ABC GR1570, British Columbia Supreme Court (Vancouver), Judgments, 1893-1947 [B6321] v.39, p.257; GR1727, British Columbia Bench books, v.368, p.319-25; "Court Rules Beer Parlor Must Serve Colored Patron" Vancouver Province 23 February 1940, p.11; "Owner's Right: May Refuse to Serve Beer" 22 February 1940, p.2; "Negro Suing Proprietor of Beer Parlor" Vancouver Sun 22 February 1940, p.1; "Negro Wins Right to Use Beer Parlor" 23 February 1940, p.17.

82. York Corporation v. Christie (1938), 65 Que. B.R. 104 (Que. K.B.) at 125-39.

83. Fred Christie v. The York Corporation, [1940] S.C.R. 139 (S.C.C.) at 147, 152.

84. Fred Christie v. The York Corporation, [1940] S.C.R. 139 (S.C.C.) at 152. On the significance of the many dissenting judges, see Frank R. Scott Essays on the Constitution (Toronto: University of Toronto Press, 1977) at 333.

85. Bora Laskin "Tavern Refusing to Serve Negro - Discrimination" Canadian Bar Review v.18 (1940) 314 at 316. See also Frank R. Scott The Canadian Constitution and Human Rights (Canadian Broadcasting Company, 1959) at 37.

86. None of the later cases mentioned Barnswell v. National Amusement Co. The reluctance of Canadian judges to discuss matters of race explicitly may have had something to do with this. County Court Judge Lampman's trial decision in Barnswell was the only

portion of the judgment that mentioned the plaintiff's race. In the report of the decision in the Western Law Reporter, Lampman's trial decision is not included, even in summary form. Since the appeal rulings make no express mention of race, a legal researcher would have been hard pressed to conclude that the case was an anti-discrimination precedent. The report in the British Columbia Reports, however, does make the issue of race explicit. Johnson v. Sparrow was mentioned briefly, in Loew's Montreal Theatres Ltd. v. Reynolds, which distinguished it on two rather peculiar grounds: that the plaintiff in Johnson had already purchased a ticket prior to the refusal of entry while the plaintiff in Reynolds had not, and that the plaintiff in Johnson had been unaware of the colour bar, whereas the plaintiff in Reynolds was deliberately challenging the policy. Although the Quebec Court of King's Bench in Christie v. York Corporation also cited Johnson v. Sparrow, the Supreme Court ruling made no mention of the decision, nor did the other cases discussed above. The curious erasure of the earlier anti-discrimination rulings is underscored by the comments of Judge Lennox in Franklin v Evans, who noted that counsel for the Black plaintiff, Mr. Buchner, "could find no decided case in support of his contention." A scholarly article written years later, Ian A. Hunter "Civil Actions for Discrimination" Canadian Bar Review v.55 (1977) 106, also fails to mention the Johnson v. Sparrow case or the Barnswell v. National Amusement Co. case, although the author discusses the others in detail. See also D.A. Schmeiser Civil Liberties in Canada (London: Oxford University Press, 1964) at 262-74, who erroneously refers to Loew's Montreal Theatres as "the earliest reported Canadian case in this area," ignores Johnson v. Sparrow and Barnswell v. National Amusement Co., and then concludes: "The foregoing cases clearly indicate that the common law is particularly barren of remedies guaranteeing equality of treatment in public places or

enterprises...."

87. Johnson v. Sparrow (1899), 15 Que. S.C. 104 (Superior Court) at 107.

88. The first Black slave, baptized under the name Olivier Le Jeune, from Madagascar, was a gift to David Kirke, who would become the first white governor of Newfoundland. On 1 May 1689, the white French King Louis XIV gave permission to import African slaves to New France. After this date, slave-owning became quite common among the white French merchants and clergy. Many First Nations' individuals were also held as slaves. See Kenneth Donovan "Slaves and Their Owners in Ile Royale, 1713-1760" Acadiensis 25:1 (Autumn 1995) 3-32; Hill "Black History in Early Ontario;" Williams Blacks in Montreal at 7-8; Winks Blacks in Canada at 3-23; Marcel Trudel L'esclavage au Canada francais (Quebec: Presses universitaires Laval, 1960).

89. The 1763 Treaty of Paris, in which France ceded its mainland North American empire to Great Britain, contains a clause affirming that all slaves would remain the possessions of their masters and that they might continue to be sold. See Winks Blacks in Canada at 24, citing Adam Shortt and Arthur G. Doughty, eds. Documents relating to the Constitutional History of Canada, 1759-1791 2nd ed. (Ottawa, 1918) at 1, 22.

90. "An act for encouraging new settlers in his Majesty's colonies and plantations in America" 30 Geo. III (1790), c.27 (England). The act authorizes duty-free importation up to the value of "fifty pounds for every person" in the family. Section 2 expressly endorses the "sales" of negroes of bankrupt or deceased owners.

91. "An Act for the regulating Innholders, Tavern-Keepers, and Retailers of Spirituous Liquors" S.N.S. 1762, c.1, s.2-3. The statute is designed to ensure no debts could be recovered for alcoholic beverages sold to soldiers, sailors, servants, day labourers or "negro slaves" for any sum above five shillings. If anyone, including a "negro slave" left a pawn or pledge worth more than five shillings with a liquor vendor, that person or his owner could initiate proceedings to reclaim it, and the vendor would be liable for a fine. See also Gary C. Hartlen "Bound for Nova Scotia: Slaves in the Planter Migration, 1759-1800" in Margaret Conrad ed. Making Adjustments: Change and Continuity in Planter Nova Scotia 1759-1800 (Fredericton: Acadiensis Press, 1991) 123-8.

92. "An Act, declaring that Baptism of Slaves shall not exempt them from Bondage" S.P.E.I. 1781, c.15, provides as follows: Whereas some Doubts have arisen whether Slaves by becoming Christians, or being admitted to Baptism, should, by Virtue thereof, be made free:

I. Be it therefore enacted by the Governor, Council, and Assembly That all Slaves, whether Negroes or Mulattos, residing at present on this Island, or that may hereafter be imported or brought therein, shall be deemed Slaves notwithstanding his, her, or their Conversion to Christianity; nor shall the Act of Baptism performed on any such Negro or Mulatto alter his, her, or their Condition.

II. And be it further enacted, That all Negro and Mulatto Servants, who are now on this Island, or may hereafter be imported or brought therein (being Slaves) shall continue such, unless freed by his, her, or their respective Owners.

III. And be it further enacted by the Authority aforesaid, That all Children born of Women Slaves, shall belong to, and be the property of, the Masters or Mistresses of such Slaves. The statute was repealed in 1825, in an effort to abolish slavery in law: "An Act to repeal an Act made and passed in the Twenty-first Year of His late Majesty's Reign, intituled 'An Act declaring that Baptism of Slaves shall not exempt them from Bondage'" S.P.E.I. 1825, c.7, and Winks Blacks in Canada at 44-5.

93. "An act to prevent the further introduction of slaves, and to limit the term of contracts for servitude within this province" S.C. 1793, c.7 (Upper Canada), s.1-5. See also Michael Power and Nancy Butler Slavery and Freedom in Niagara (Niagara-on-the-Lake, Ont.: Niagara Historical Society, 1993). "An Act respecting Master and Servant" C.S.U.C. 1859, c.75 continues the prohibition on slavery:

s.1. The Governor shall not license for the importation of any Negro or other person to be subjected to the condition of a Slave, or to a bounden involuntary service for life, into any part of Upper Canada; nor shall any Negro, or other person, who comes or is brought into Upper Canada, be subject to the conditions of a Slave, or to such service as aforesaid, within the same.

s.2. No voluntary contract of service or indentures entered into by any parties within Upper Canada, shall be binding on them, or either of them, for a longer time than a term of nine years, from the day of the date of such contract.

These provisions are continued in R.S.O. 1877, c.133, s.1-2; R.S.O. 1887, c.139, s.1-

2; R.S.O. 1897, c.157, s.1-2.

94. The record of the courts is mixed. The Lower Canadian judges were the least likely to support slavery in their rulings. the white Chief Justice James Monk, of the Court of King's Bench in Lower Canada, released two Black slaves, "Charlotte and Jude" in 1798, noting in **obiter** that slavery did not exist in the province; the case is unreported, but discussed in Winks Blacks in Canada at 100. In 1800, Monk refused to uphold a slave-owner's request for the return of a fugitive slave, arguing that there was no legislation in effect in Lower Canada to authorize slavery; Dominus Rex v. Robin alias Robert, Court of King's Bench in Lower Canada, February term, 1800, unreported but discussed in Winks at 101-2. The Nova Scotia judges were unwilling to go as far as their Lower Canadian counterparts in declaring all slaves free, although they did issue several judgments generally opposed to slavery. In Colonel James DeLancey v. William Worden in 1803, the white Nova Scotia Chief Justice, Sampson Salter Blowers, refused to order a fugitive slave, "Negro Jack," returned to his owner; the case is unreported, but discussed in Winks at 105-6. See Barry Cahill "Slavery and the Judges of Loyalist Nova Scotia" University of New Brunswick Law Journal v.43 (1994) 73-135. The Supreme Court of New Brunswick issued two opinions in 1800 and 1805 in which the judges divided over the legality of slavery, thus allowing a continuation of the practice; R. v. Jones, 1800, Provincial Archives of New Brunswick [hereafter PANB] R.S. 42; R. v. Agnew, 1805, PANB R.G. 5, R.S. 30B #2. These cases are discussed in D.G. Bell "Slavery and the Judges of Loyalist New Brunswick" University of New Brunswick Law Journal v.31 (1982) 9-42.

95. "An Act for the Abolition of Slavery throughout the British Colonies; for

promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves" 3 & 4 Wm. IV (1833), c.73 (England) emancipates all slaves as of 1 August 1834. See also Fred Landon "The Anti-Slavery Society of Canada" Ontario History v.48 (1956) 123-32.

96. The last Canadian born into slavery died in Cornwall, Ontario in 1871. For discussion of the tenacity of slavery in Canada, see Walker "Race, Rights and the Law" at 137-9; Winks "Negroes in the Maritimes;" Winks Blacks in Canada; Robin W. Winks "The Canadian Negro: A Historical Assessment" Journal of Negro History 53:4 (October 1968) 283; Hill Freedom Seekers; Hill "Black History in Early Ontario;" Bell "Slavery and the Judges of New Brunswick;" Williams Blacks in Montreal at 11; Stouffer Light of Nature and Law of God; Power and Butler Slavery and Freedom in Niagara; Bristow We're Rooted Here.

97. For discussion of the 1842 decision of the white Governor General, Sir Charles Bagot, to permit extradition to Arkansas of a fugitive slave, Nelson Hackett, see Roman J. Zorn "Criminal Extradition Menaces the Canadian Haven for Fugitive Slaves, 1841-1861" Canadian Historical Review v.38 (1957) 284-87. Hackett allegedly stole a horse, saddle, gold watch and beaver coat while escaping, and the Canadian authorities concluded that the stolen watch and coat were unnecessary for the escape. Although he was ostensibly sent back to be tried for larceny, when he arrived in Arkansas Hackett was returned to slavery. The extradition of another African-American fugitive, John Anderson, was ultimately refused on a technicality, but the majority of the white judges in the Court of Queen's Bench and Court of Common Pleas of Upper Canada who considered the matter in 1860-61

displayed little concern over the prospect of returning the former slave to captivity: see Paul Finkelman "The Anderson Case and Rights in Canada and England" in Louis A. Knafla and Susan W.S. Binnie eds. Law, Society and the State: Essays in Modern Legal History (Toronto: University of Toronto Press, 1995) 37; Patrick Brode The Odyssey of John Anderson (Toronto: The Osgoode Society, 1989); Jason Silverman "'We Shall be Heard!': The Development of the Fugitive Slave Press in Canada" Canadian Historical Review v.65 (1984) 54; Jason Silverman "The American Fugitive Slave in Canada: Myths and Realities" Southern Studies v.19 (1980) 218; Jason Silverman Unwelcome Guests: Canada West's Response to American Fugitive Slaves, 1800-1865 (Millwood, N.Y.: Associated Faculty Press, 1985).

98. Re Drummond Wren, [1945] O.R. 778 (Ont. Supreme Court) at 780-3, and quoting 7 Halsbury, 2nd ed. 1932, at 153-4. See also Essex Real Estate v. Holmes (1930), 37 O.W.N. 392 (Ont. High Court), in which the court took a narrow interpretation of the following restrictive covenant: "that the lands shall not be sold to or occupied by persons not of the Caucasian race nor to Europeans except such as are of English-speaking countries and the French and the people of French descent," holding that a Syrian was not excluded by such a clause. See also Re Bryers & Morris (1931), 40 O.W.N. 572 (Ont. High Court). One year after the Desmond litigation, another set of white, Gentile judges would disagree with Judge Mackay's ruling. In Re Noble and Wolf, [1948] 4 D.L.R. 123, O.W.N. 546 (Ont. High Court), affirmed [1949] O.R. 503, O.W.N. 484, 4 D.L.R. 375 (Ont. C.A.), they explicitly upheld a restrictive covenant prohibiting the sale or lease of a summer resort property to "any person of the Jewish, Hebrew, Semitic, Negro or coloured race or blood." Fearful of "inventing new heads of public policy" that would impede "freedom of

association," the judges espoused racial exclusivity as an obvious social right. Ontario Court of Appeal Chief Justice Robert Spelman Robertson wrote: "It is common knowledge that, in the life usually led at such places, there is much intermingling, in an informal and social way, of the residents and their guests, especially at the beach. That the summer colony should be congenial is of the essence of a pleasant holiday in such circumstances. The purpose of [the restrictive covenant] here in question is obviously to assure, in some degree, that the residents are of a class who will get along well together. To magnify this innocent and modest effort to establish and maintain a place suitable for a pleasant summer residence into an enterprise that offends against some public policy, requires a stronger imagination than I possess. [...] There is nothing criminal or immoral involved; the public interest is in no way concerned. These people have simply agreed among themselves upon a matter of their own personal concern that affects property of their own in which no one else has an interest." This ruling was later overturned, Annie Maud Noble and Bernard Wolf v. W.A. Alley et al., [1951] 92 S.C.R. 64, 1 D.L.R. 321 (S.C.C.). The Supreme Court justices made no explicit comment on the public policy reasoning of the earlier decisions. Instead they held the covenant void for uncertainty: "it is impossible to set such limits to the lines of race or blood as would enable a court to say in all cases whether a proposed purchaser is or is not within the ban." See also Re McDougall and Waddell, [1945] O.W.N. 272 (Ont. High Court) where the court considered a restrictive covenant that prohibited the sale or occupation of lands "by any person or persons other than Gentiles (non-semetic [sic]) of European or British or Irish or Scottish racial origin." The court held that such provisions did not violate the newly-enacted Ontario "Racial Discrimination Act," and that there were no legal restrictions to affect their implementation. For the first legislation to ban racially

restrictive covenants on land, see "An Act to amend The Conveyancing and Law of Property Act" S.O. 1950, c.11; "An Act to amend The Law of Property Act" S.M. 1950, c.33. These statutes are discussed in more detail in chapter 6.

99. The debate on the motion, which failed to lead to the incorporation of a Bill of Rights in the "British North America Act" is recorded in Hansard Parliamentary Debates 10 October 1945, at 900.

100. See Viola Irene Desmond v. Henry L. McNeil and Roseland Theatre Co. Ltd. PANS RG39 "C" Halifax v.936-37, Supreme Court of Nova Scotia, #13299, filed 14 November 1946. On 12 December 1946, Bissett filed a notice of discontinuance against the Roseland Theatre Company Ltd., along with a writ alleging the same claim against the parent corporation: Viola Irene Desmond v. Odeon Theatres of Canada Ltd. and Garson Theatres Ltd. PANS RG39 "C" Halifax v.936-37, Supreme Court of Nova Scotia, #13334. "Assault" is defined as "an act of the defendant which causes to the plaintiff reasonable apprehension of the infliction of a battery on him by the defendant." "Battery" is defined as "the intentional application of force to another person." Bissett must have meant his claim for "assault" to cover "battery" as well. "False imprisonment" is defined as "the infliction of bodily restraint which is not expressly or impliedly authorized by the law." In an action for "malicious prosecution," the plaintiff was "required to prove: 1) that the defendant prosecuted him; and 2) that the prosecution ended in the plaintiff's favour; and 3) that the prosecution lacked reasonable and probable cause; and 4) that the defendant acted maliciously." See P.H. Winfield A Text-Book of the Law of Tort (Toronto: Carswell, 1946) at 207, 212, 597; W.T.S. Stallybrass Salmond's Law of Torts (Toronto: Carswell, 1945) at

328-9, 618-19. A.T. Hunter Canadian Edition of the Law of Torts by J.F. Clerk and W.H.B. Lindsell (Toronto: Carswell, 1908) describes the tort of "abusing the process of the law" at 662-3 as follows: "A legal process, not itself devoid of foundation, may be maliciously employed for some collateral object of extortion or oppression; and in such case the injured party may have his right of action, although the proceedings of which he complains may not have been determined in his favour." The action, adds Hunter, "was not for the malicious arrest, but for abusing the process of the law to effect an object not within its proper scope." This tort was formally designated "malicious abuse of legal process" in the United States, where it appears to have been more thoroughly discussed and defined. C.G. Addison defines "malicious abuse of legal process" as follows: "Whoever makes use of the process of the court for some private purpose of his own, not warranted by the exigency of the writ or the order of the court, is amenable to an action for damages for an abuse of the process of the court. [...] And when the complaint is, that the process of the law has been abused and prostituted to an illegal purpose, it is perfectly immaterial whether or not it issued for a just cause of action or whether the suit was legally terminated or not." See C.G. Addison A Treatise on the Law of Torts, as edited by H.G. Wood, v.II (Jersey City, N.J.: Frederick D. Linn, 1881) at 82. Prosser notes: "A tort action for abuse of process may be maintained for the use of legal process, whether criminal or civil, against another to accomplish a purpose for which it is not designed. The action differs from malicious prosecution in that it is not necessary for the plaintiff to show lack of probable cause, or termination of the proceeding in his favor. Abuse of process differs from malicious prosecution in that the gist of the tort is not commencing an action or causing process to issue without justification, but misusing or misapplying process justified in itself for an end other than that which it was designed to

accomplish." See William L. Prosser Handbook of the Law of Torts (St. Paul, Minn.: West Publishing, 1941) at 892-3. Melville Madison Bigelow The Law of Torts 7th ed. (Boston: Little, Brown, 1901) states at 113 that in "malicious abuse of process, process which in itself may have been lawful has been perverted to a purpose not contemplated by it. In other words the exigency of the writ has not been followed. Malice again, as a distinct entity, plays no part in the case; all that is required for a cause of action is proof that the writ has been applied to a purpose not named or implied by it, to the damage of the plaintiff. Perversion or 'abuse' of the process gives the name 'malicious' to the case; the malice is fictitious, or may be." Fowler Vincent Harper A Treatise on the Law of Torts (Indianapolis: Bobbs-Merrill, 1938) notes at 272, 274: "The process of the law must be used improperly and this means something more than a proper use from a bad motive. The 'malice' in the sense of unjustifiable or improper motive is essential to a recovery for malicious abuse of process, it is not alone sufficient. If the process is employed from a bad or ulterior motive, the gist of the wrong is to be found in the uses which the party procuring the process to issue attempts to put it. If he is content to use the particular machinery of the law for the immediate purpose for which it was intended, he is not ordinarily liable, notwithstanding a vicious or vindictive motive. But the moment he attempts to obtain some collateral objective, outside the scope of the operation of the process employed, a tort has been consummated. The most common instance of the operation of this principle is an attempt to extort money from the person subjected to the process. There are some situations in which a tort will be committed by the unjustifiable use of a power of legal and economic pressure to accomplish a collateral objective necessitating harm to others. This type of wrong is on the frontier of the law of tort and there is an insufficient number of cases to make prediction

reliable." Bissett could have argued that MacNeil invoked summary criminal prosecution under "The Theatres Act," a process not unlawful in itself, for the collateral and improper motive of enforcing racial segregation. The conviction would have become irrelevant, with the sole focus being whether racial segregation constituted an "unjustifiable" ulterior motive for the theatre manager's acts, which necessitated harm to others.

101. Stallybrass Salmond's Law of Torts notes at 335 that "it is lawful for any occupier of land, or for any other person with the authority of the occupier, to use a reasonable degree of force in order to prevent a trespasser from entering or to eject him after entry." "A trespass to the person may be justified on the ground...that [the defendant] was stopping a breach of the peace...or apprehending an offender against the criminal law.... [W]hat is **prima facie** a wrongful act is committed under the authority of the law....": Hunter Canadian Edition of the Law of Torts at 199.

102. "Recognizance for Certiorari" 24 December 1946; "Notice of Motion" 27 December 1946; and "Affidavit of Viola Irene Desmond" PANS. The notice was served upon Rod G. MacKay and Harry MacNeil on 30 December 1946. Litigants were required to put up financial sureties before filing actions for judicial review.

103. The editors of the Criminal Reports advised that **certiorari** applications were available where there was (a) a total want of jurisdiction in the tribunal (e.g.: where the subject-matter is not within its jurisdiction); (b) a defect in the jurisdiction of the tribunal (e.g.: where an essential step preliminary to its exercise is omitted); (c) an excess of jurisdiction (e.g.: where a penalty is imposed beyond that authorized by law); (d) an

irregularity of substance appearing on the face of the proceedings; and (e) exceptional circumstances (e.g.: fraud or perjury in procuring the conviction of the accused). See "Practice Note" at (1947), 4 C.R. 200. For some judicial discussion of the principles of judicial review as they apply to writs of **certiorari**, see Re Dwyer et al. (1938), 13 M.P.R. 89 (N.S.S.C.); The Queen v. Walsch (1897), 29 N.S.R. 521 (N.S.S.C.); R. v. Hoare (1915), 49 N.S.R. 119 (N.S.S.C.); The King v. Nat Bell Liquors, Limited, [1922] A.C. 128 (H.L.).

104. There is no published report of the case brought before Judge Archibald, and the press coverage contains no further details: see "Supreme Court Ruling Sought" Halifax Herald 10 January 1947, p.18. The "Notice of Motion" lists three grounds, although the vagueness of the claims permits little analysis: 1. That there is no evidence to support the aforesaid conviction. 2. That there is evidence to show that the aforesaid Viola Irene Desmond did not commit the offence hereinbefore recited. 3. That the information or evidence did not disclose any offence to have been committed within the jurisdiction of the convicting Magistrate. The report of the appeal of Judge Archibald's ruling, The King v. Desmond (1947), 20 M.P.R. 297 at 298 and 300 (N.S.S.C.) suggests that Bissett also tried at first instance to make a technical argument that the prosecution failed to allege the location where the offence took place. Apparently he abandoned this claim when the original information, stipulating that the acts occurred "in the Town of New Glasgow," was located.

105. "Decision of Archibald, J." 20 January 1947, PANS; The King v. Desmond (1947), 20 M.P.R. 297 (N.S.S.C.) at 298-9. Judge Archibald was born in Manganese Mines, Colchester County, to John H. Archibald and Mary Alice (Clifford) Archibald. He was educated at public schools in Truro and received his LL.B. from Dalhousie in 1915. A

Liberal in politics and United Church by religion, Judge Archibald lectured in Criminal and Statute Law at Dalhousie in the mid 1920s. He was appointed to the Supreme Court in 1937, and in 1948 he was appointed to the Exchequer Court of Canada, a post he held until his death in 1953. See "Archibald, The Hon. Maynard Brown" Who's Who in Canada, 1945-46 (Toronto: International Press, 1946) at 1042; Who's Who in Canada, 1951-52 at 612; Maritime Reference Book at 23-24; Annals- North British Society: 1950-1968 (Kentville, N.S.: Kentville Publishing, 1969) at 58-9; and obituary, "Prominent Jurist Held Many Important Posts" Halifax Chronicle-Herald 10 July 1953, p.1, 6.

106. "Decision of Archibald, J." PANS, at p.2; The King v. Desmond at 299.

107. For earlier Nova Scotia decisions, see, for example, The Queen v. Walsh (1897), 29 N.S.R. 521 (N.S.S.C.) at 527. See also "The Nova Scotia Summary Convictions Act" S.N.S. 1940, c.3, s.58.

108. S.N.S. 1940, c.3, s.59, 60, 62, 66, as amended S.N.S. 1945, c.65.

109. "Notice of Appeal" 20 January 1947, and "Entry of Appeal" 21 February 1947, PANS. See also "Reserve Appeal Decision in Desmond Case" Halifax Herald 14 March 1947, p.18. For details of the appellant's and respondent's arguments, see The King v. Desmond (1947), 20 M.P.R. 297 (N.S.S.C.) at 299-301.

110. Some cite the couple's disagreement over the case as the main source of the marital breakdown: Hudson "Interview with Pearleen Oliver." Others suggest that there

were long-standing, additional strains within the marriage caused by Jack Desmond's drinking and his distrust of Viola's ambitious business prospects: Woods "Interview with Gannon-Dixon;" Backhouse "Interview with Wanda Robson."

111. "Clarion Went A-Visiting!" New Glasgow, N.S. The Clarion 2:5 (15 March 1947) p.2.

112. The King v. Desmond (1947), 20 M.P.R. 297 (N.S.S.C.) at 307. Other reports of the case appear as (1947), 89 C.C.C. 278, 4 C.R. 200, [1947] 4 D.L.R. 81. For biographical details on Doull, who was born in New Glasgow on 1 November 1878, see Halifax Chronicle-Herald 1 October 1960, p.32; Who's Who in Canada, 1945-46 at 474.

113. Doull's comment is found at 309. Doull served as Mayor of New Glasgow in 1925. Judge Robert Henry Graham noted at 304 that Bissett had argued a denial of natural justice, relying on R. v. Wandsworth, [1942] 1 All E.R. 56, in which the court overturned the conviction of a defendant who had been denied the opportunity to defend himself. Judge Graham, however, made no reference to Viola Desmond's detailed affidavit alleging similar treatment and refused to find a denial of natural justice in the present case.

114. The son of a New Glasgow lawyer and politician Hon. Col. Edward Mortimer Macdonald P.C., Macdonald, Jr. was born in Pictou, called to the bar of Quebec in 1924, and the Nova Scotia bar in 1929. He practised with the law firm of Macdonald & MacQuarrie, with offices in Pictou and New Glasgow. He was a Liberal and a Presbyterian. See Maritime Reference Book at 11; "Macdonald, E.M.: Death: Town solicitor for New

Glasgow dies" PANS MG1, v.2022 #20; Charles G.D. Roberts and Arthur J. Tunnell The Canadian Who's Who v.II (1936-37) (Toronto: Murray Printing, 1936) at 660.

115. J.B. Milner "Case and Comment" Canadian Bar Review v.25 (1947) 915 at 919-22. Milner cites a series of cases on this point: The King v. Michigan Central Railroad Company (1907), 17 C.C.C. 483 (Ontario High Court); Rex v. Thornton (1926), 46 C.C.C. 249 (B.C.C.A.); Rex v. Leroux (1928), 50 C.C.C. 52 (Ont. C.A.); Rex v. Bell (1929), 51 C.C.C. 388 (B.C.C.A.). Interestingly, Milner did not believe that the trial decision to convict Viola Desmond was incorrect, describing it at 919 as "technically perfect." R.St.J. Macdonald, the editor of Dalhousie Law School 1965-1990: An Oral History (Dalhousie University: University of Toronto Press, 1996), describes Professor Milner as "an outstanding professor, both at Dalhousie and the University of Toronto," the author of a "case book on Contracts" that is still in use under the editorship of Professor S.M. Waddams; personal correspondence with the author, 31 March 1995.

116. For Judge Graham's ruling, see The King v. Desmond (1947), 20 M.P.R.297 (N.S.S.C.) at 305, quoting in part Viscount Caldicott in Rex v. Nat Bell Liquors Limited, [1922] 2 A.C. 128 (H.L.) at 151. For biographical details on Judge Graham, who was born in New Glasgow on 30 November 1871, the son of John George Graham and Jane (Marshall) Graham, see obituary, "Mr. Justice Graham Dies at Age 85" Halifax Mail-Star 28 May 1956, p.1,6; Who's Who in Canada, 1945-46 at 466; The Canadian Who's Who v.4 (Toronto: Trans-Canada Press, 1948) at 380; Catalogue of Portraits of the Judges of the Supreme Court of Nova Scotia and other Portraits (Halifax: Law Courts, n.d.) PANS F93C28 at 110. Graham received a B.A. and LL.B. from Dalhousie, was called to the Nova

Scotia bar in 1894, and named a KC in 1913. He served as Town Councillor in New Glasgow in 1898, Mayor from 1899-1900, and represented Pictou County as a Liberal in the House of Assembly between 1916 and 1925. He served as Stipendiary Magistrate from 1906-10, and was appointed Puisne Judge of the Supreme Court in 1925.

117. The King v. Desmond (1947), 20 M.P.R. 297 (N.S.S.C.) at 305-7. Unlike Doull and Graham, Judge Carroll was not born in New Glasgow, but in Margaret Forks, Nova Scotia on 11 June 1877. Educated at St. Francis Xavier College in Antigonish and at Dalhousie University, he was called to the bar of Nova Scotia in 1905, serving several terms as a Liberal M.P. For biographical details, see obituary, Halifax Chronicle-Herald 26 August 1964, p.16; Who's Who in Canada, 1945-46 at 666. The decision on file at the archives, "Decision of Hall, J." PANS, shows that the original typed version reads: "Had the matter reached the Court by some method other than **certiorari**, there might have been opportunity to right the wrong done this unfortunate woman, **convicted on insufficient evidence.**" (Emphasis added.) The latter phrase was crossed out by pen, initialled by Judge Hall, and did not appear in the reported version of the decision. Judge Hall was born in Melvern Square, Annapolis County in 1876 to Rev. William E. and Margaret (Barss) Hall. He was educated at Acadia and Dalhousie University and admitted to the bar in 1900. He practised law in Liverpool, N.S. from 1902-18, and then became Halifax Crown Prosecutor. Active in the Conservative Party, he was elected to the provincial legislature and served as Attorney General in 1926. He was also an active worker for welfare organizations in Halifax. Judge Hall was appointed to the Nova Scotia Supreme Court in 1931. For biographical details, see Prominent People of the Maritime Provinces (St. John: McMillan, 1922) at 77-8; obituary, "Veteran Jurist Dies at 81" Halifax Mail-Star 27 May 1958, p.3;

PANS Biographical Card File, MG9, v.41, p.262; Who's Who in Canada, 1945-46 at 1494-95.

118. Backhouse "Interview with Wanda Robson." Similar reactions were expressed by Ida B. Wells, the famous African-American campaigner against lynching, after she lost a lawsuit in Memphis, Tennessee in the late 19th century, when she was denied accommodation in the "ladies' only" [white] railway carriage. Ida B. Wells' diary entry reads: "I felt so disappointed because I had hoped such great things for my people generally. I have firmly believed that the law was on our side and would, when we appealed to it, give us justice. I feel shorn of that belief and utterly discouraged, and just now, if it were possible, would gather my race in my arms and fly away with them;" Duster Crusade for Justice at p.xvii.

119. Milner "Case and Comment" at 915-16, 922.

120. "The Desmond Case" Truro, N.S. The Clarion 2:15 (April 1947) p.2, and "Dismisses Desmond Application" p.4.

121. "The Desmond Case" Truro, N.S. The Clarion 2:15 (April 1947) p.2. The Clarion would later reprint a 15 July 1947 (p.1) editorial from Maclean's Magazine, in which the Desmond case is described and critiqued: "In a free country one man is as good as another - any well-behaved person may enter any public place. In Nova Scotia a Negro woman tried to sit in the downstairs section of a theatre instead of the Jim Crow gallery. Not only was she ejected by force, but thereafter she, not the theatre owner, was charged and

convicted of a misdemeanour. Most Canadians have been doing a fair amount of grumbling lately about the state of our fundamental freedoms. Maybe it's time we did more than grumble." See "Is This A Free Country?" Truro, N.S. The Clarion 2:12 (15 August 1947) p.2.

122. On the allegations that Viola Desmond might have been trying to "pass," see Backhouse "Interview with Wanda Robson." For Johnston's comments, see "N.S. Negroes Libelled by Attack" Truro, N.S. The Clarion 2:8 (13 October 1948) p.1.

123. "Toronto Leads the Way" Truro, N.S. The Clarion 2:12 (15 August 1947) p.2. The same paper reports that the City of Toronto Board of Police Commissioners passed a regulation (inserted in a city by-law governing the licensing of public places) providing a penalty of licence cancellation for any hall, rink, theatre or other place of amusement in the city which refused to admit anyone because of race, color or creed. See "Toronto Law Against Discrimination" and "Toronto Leads the Way" Truro, N.S. The Clarion 2:12 (15 August 1947) p.1-2.

124. "No Discrimination" Truro, N.S. The Clarion 2:12 (15 August 1947) p.2. Saturday Night also draws a comparison with the United States, on 7 December 1946, p.5: "Racial segregation is so deeply entrenched in what the American people are accustomed to call their way of life that the problems which it raises in a democracy (it raises none in a totalitarian state) will not be solved in the United States without a good deal of conflict. Canada is in a position to avoid most of that conflict if she avoids getting tied into the American way of life in that respect, and now is the time to take action to avoid it."

125. "American Artists Score Racial Discrimination" Halifax Chronicle 15 September 1947, PANS Mg15, v.16, #18; "More Discrimination" Truro, N.S. The Clarion 2:16 (1 November 1947) p.2. Selma Burke's female companion was A.F. Wilson, a noted American author of several books on race discrimination. The Clarion reports in 2:11 (1 August 1947) p.1-2, that a New Glasgow restaurant refused service to a young West Indian student working with the provincial highways department. The same article notes that a Black couple, Mr. and Mrs. A.T. Best, was also refused seating in a small fruit store and fountain in New Glasgow.

126. Esmerelda Thornhill "So Often Against Us: So Seldom For Us, Being Black and Living with the Canadian Justice System" Plenary Presentation to the IXth Biennial Conference of the Congress of Black Women of Canada, Halifax, 1989 at 3 (copy on file with the author.)

127. "New Glasgow" Truro, N.S. The Clarion 3:6 (8 September 1948) p.3. For further discussion of the KKK, see chapter 6.

128. Backhouse "Interview with Wanda Robson."

129. Backhouse "Interview with Wanda Robson;" Backhouse "Interview with Mrs. S.A. (Emily) Clyke;" Obituaries in the Halifax Chronicle-Herald 10 Feb. 1965, p.26, and Halifax Mail Star 10 February 1965, p.8.

130. Robertson "Interview with Pearleen Oliver." Paula Denise McClain Alienation

and Resistance: The Political Behavior of Afro-Canadians (Palo Alto: R. & E. Research Associates, 1979) notes at 59 that the NSAACP was responsible for integrating barbershops in Halifax and Dartmouth, sponsoring the first Blacks for employment in Halifax and Dartmouth stores, integrating the nurses' training and placement programs, persuading insurance companies to sell Blacks policies other than industrial insurance, and initiating a controversy that resulted in the Dartmouth school board hiring Blacks.

131. Thomson Born With A Call at 84.