

Canadian approach

Contributed by Lachlan
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THE CHINESE CANADIANS' FIGHT FOR REDRESS FOR THEIR HEAD TAX AND EXCLUSION ACT.

I recently travelled to Toronto as a guest of the Chinese Canadian National Council to attend their consultative conference (2-5 May 2002) on seeking Redress on the Canadian Head Tax and Exclusion Act and to present a paper on the New Zealand Experience in getting redress for our Poll Tax, which of course, is very much a work in progress.

It is interesting that the both Canada and New Zealand followed the Australian Government's example in imposing a tax whose sole purpose was to exclude Chinese immigrants from their shores. It is also interesting that the Chinese in both New Zealand and Canada are fighting for some form of redress at the same time. We can expect some form of action from the Chinese in Australia also.

Canada and Australia are both bigger countries and for historical reasons they have an extra layer of Provincial or State Governments between the people and the national or Federal government.

In the case of Canada, the various Provinces are governed by different parties and there is, I imagine, much horse-trading to get even important things done in the Federal Parliament.

For example, Canada has recently been trying to repatriate their Constitution from Great Britain but francophone Quebec has not totally agreed to the new Constitution in its present form, so they are just battling on.

Therefore it is very difficult to get a hearing for minority issues at Federal level.

As part of their new Constitution the Canadians have a Charter of Rights and Freedoms which has been used by various minority groups to seek redress for past wrongs. Among these are the Indians, now known as the First Nation, who among other indignities, had their children taken away from their parents and forced to be educated in European ways in residential schools. This is similar to the situation in Australia where Aborigine children were forcibly taken away from their parents and their culture for "education".

Under the Charter of Rights and Freedoms, the Canadian Government has established a Court Challenges Program whereby the Canadian Government funds community groups to employ Human Rights lawyers to sue itself, the Canadian Government, for redress of past wrongs.

I want you to hear that again: (Repeat last paragraph.)

In the case of the Chinese Canadian National Council, it has initiated a case on behalf of the estate, widow and descendant of a Head Tax payer as representative persons in a class action on behalf of other Chinese Canadian who also paid the Head Tax. This means that the case uses the particular facts of the estate, widow and descendant as an example to sue for compensation. If the case is successful, other estates, widows and descendants would also be eligible for similar compensations.

The Canadian claim is for individual monetary compensation, not a political settlement and community compensation.

The Chinese Canadians draw considerable encouragement from the Japanese Canadians who were interned during WWII. The latter group won a settlement of \$C420,000,000 or about \$C35,000 for each survivor. Art Miki who led the fight attended the conference.

The Chinese Canadian case has been dismissed on a technicality and is now being appealed to the Ontario Court of Appeal.

In preparing their case and their appeal the CCNC has drawn not only on the skills of experienced counsel, legal academics and human rights activists in the African-American and First Nation communities but also Chinese Canadian human rights lawyers in their own community (of which there seem to be a considerable number). They have done ground-breaking work trying to apply legal principles based in international law in new ways to try to establish their case under the Canadian Constitution and the Canadian Charter of Rights and Freedoms. Their work requires considerable legal rigour and intellectual effort which would frankly put our own efforts in NZ to shame.

The real question however is: Will it produce a good result for them? On that the jury is still out. I can see that they have a very long fight in front of them.

They have decided on taking a legal, court-based, approach because:

The structure of Government in Canada means that there is not one Government to approach and convince but eleven (10 Provincial Governments plus the Federal Government of Canada.)

The Canadian Government funds such an approach through the Court Challenges Program which allows many different groups to make their claims in a public and legal forum.

We in NZ are in a much different situation and their approach is probably not suited to our circumstance:
Firstly, in a small country we as a people are much closer to our Government and our parliamentarians and a political settlement is more feasible.

Secondly, in our minds is the large place that the Treaty of Waitangi settlement has in the political landscape.

However I would like you to think about this: Does one group's large and ongoing demands for justice and redress mean that real justice and redress are consequently not available to other groups in NZ?

What can we learn from the Canadian experience?

It is not a bad thing to challenge the Government on human rights issues and seek redress for past wrongs. It is being done in Canada and commonly elsewhere in the world. In fact the Canadian Government encourages and funds such challenges, and may fund an appeal to the United Nations Commission on Human Rights.

Fighting for one rights is a difficult process which can take a lot of time and cannot be expected to completed within a few weeks or months. For most disadvantaged and oppressed people who have been kept under the thumb of colonial authorities in the past, the fight can take decades but the compensation can be substantial.

If our settlement is only nominal and achieved within 6 months with little effort in our part, have we only got a MacApology, a MacRedress, or a MacSettlement - an apology, redress and settlement of little substance packaged in a nice coloured box, to be washed down with a sugary drink, but not truly satisfying our ancestors' hunger for justice?

STEVEN YOUNG
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