

**Date Reviewed**

March 2023

**Course**

[Law Studies 12](#)

**Topic**

Discriminatory Laws and Reform Processes in Canada

**Big Idea**

Laws can maintain the status quo and can also be a force for change.

**Essential Question**

How has the legal system and its laws been used to maintain inequalities?

**Learning Standards****Content:**

*Students are expected to know the following*

- Structures and powers of the federal and provincial courts and administrative tribunals

**Curricular Competencies**

*Students are expected to be able to do the following*

- Analyze continuities and changes in legal systems or codes across jurisdictions
- Make reasoned ethical judgments about legal systems or codes

**Core Competencies****[Communication](#)**

I can identify and discuss examples of past discriminatory laws in Canada and how they reinforced inequalities for the targeted group.

**[Thinking](#)**

I can analyze the legacy of discriminatory laws, for the communities previously targeted, and for Canadian society.

**[Personal and Social](#)**

I can explain how changing social values and community awareness influence the reform process of laws.

## First People's Principles of Learning

Learning involves generational roles and responsibilities.

### Introduction

- [History of Racism in Canada](#) (7:46 mins total). Show the first minute of the video. Stop after introduction with the First Nations young man. Discuss with students: What did you assume he was referring to? What stereotypes led you to that conclusion? Review the definitions of stereotypes, racism, and discrimination.
- Before resuming the video, tell students that they will be shown a timeline of racism in Canada. Ask them to think about which of these examples are laws. Stop video at 5:19.
- Before resuming, ask students: What responsibilities do we have to prevent racism? Show the rest of the video. After, introduce FPPL: "Learning involves generational roles and responsibilities". Students can reflect on this idea through a journal entry.

### Pre-Assessment

- Have students score themselves on the **Discriminatory Laws and Policies Awareness Rubric** of historical discriminatory laws in Canada. Explain that this is a learning tool, not an evaluation.
- After completing the rubric, students can discuss their answers in groups and identify gaps in their knowledge.
- Introduce the essential question - How has the legal system and its laws been used to maintain inequalities?

### Interactive Learning Activities

#### Part 1: Case Study—Modelled Example

- Introduce discriminatory law **case studies**. The class will read the Canadian Encyclopedia article on the [Indian Act](#). With the teacher moderating, the class will fill out the first case study sheet together.
- Prior to filling out the legacy section, the teacher will discuss the First Peoples Principle of Learning that "Learning involves generational roles and responsibilities". What is the legacy of this ongoing law for First Nations people in Canada? What responsibilities do other Canadians have, particularly in the context of truth and reconciliation? To what extent are new Canadians responsible for learning this history?

#### Part 2: Case Study—Individual Research

- Assign students one law or policy to research. They will complete the case study questions for their topic. Students will use the Canadian Encyclopedia articles linked as their main source but may access additional sources for further information. Some examples are below:
  - The Persons Case / *British North America Act (1867)*  
<https://www.thecanadianencyclopedia.ca/en/article/persons-case>

- Discriminatory Law Case Study: *Chinese Exclusion Act (1923)*  
<https://www.thecanadianencyclopedia.ca/en/article/chinese-immigration-act>
- Racial Segregation through Separate Schools Clause  
<https://www.thecanadianencyclopedia.ca/en/article/racial-segregation-of-black-people-in-canada>

### Part 3: Expert Groups

- Hand out **Class Discussion Questions**. Have students meet in “expert” groups with others who completed the same case study topic.
- Students should be “experts” in their topic and will be expected to contribute information, ideas and share reflections.

### Part 4: Class Discussion

- Facilitate a whole-class discussion of the case studies using the **Class Discussion Questions**.
- As part of the discussion, prompt class to consider the following questions about the reform process:
  - How do social and political forces lead to change in the law? (Factors such as: popular support for change, response to historical events, changing social values or community awareness, expectations of the legal system)
  - What forces reinforce continuity and status quo? What forces affect change in the short and long term?

### Part 5: Law Reform Process

- Provide students with the **Know-Wonder-Learn chart** about the process of reforming laws.
- Have students write down facts that they know about the process reforming laws in Canada in the “know” column.
- Then, have students consider gaps in their knowledge and identify questions to write in the “wonder” column.
- Finally, provide students with access to the BC Law Institute’s [main page](#) and the [Law Reform Resources](#) section as their main source for the “Learn” section.

## Post-Assessment

### Written Reflection:

- Identify and describe a discriminatory law and the inequalities it reinforced.
  - What political, social, and economic effects did the law have on those it discriminated against?
- Explain the social and political forces leading to amendments or repeal of the law.
  - What were the main reasons for change?

- Did popular support from dominant groups influence change or impede it?
- Analyze the legacy of this law and the reform process.
  - What is the impact on the community previously targeted?
  - What is the impact on Canadian society as a whole?

### Extension Activities

#### Change the Law Assignment

- Have students identify a current law they believe should be changed. Collect evidence and make a presentation to the class convincing them it should be changed
- Have class do a “Parliament vote” in favour of changing a law

#### Investigate the *Canadian Human Rights Act*

- What are some examples of protections we have?
- How would one respond to discriminatory practices through this law?
- Compare human rights laws in other countries. What is similar or different to the protections in Canada?

### Additional References

British Columbia Law Institute. [n.d.] <https://www.bcli.org/>

British Columbia Law Institute. [n.d.] 2020. "Law Reform Resources." *British Columbia Law Institute*. <https://www.bcli.org/law-reform-resources/>

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British Columbia. Ministry of International Trade. 2020. "History of Wrongs towards B.C.'s Chinese Canadians." September 1. <https://www2.gov.bc.ca/gov/content/governments/multiculturalism-anti-racism/chinese-legacy-bc/history>.

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Décoste, Rachel. "The Most Discriminatory Laws in Canadian History." *HuffPost Canada*, HuffPost Canada, 16 Nov. 2013, [https://www.huffingtonpost.ca/rachel-decoste/most-discriminatory-canadian-laws\\_b\\_3932297.html?guccounter=1](https://www.huffingtonpost.ca/rachel-decoste/most-discriminatory-canadian-laws_b_3932297.html?guccounter=1)

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Roy, Jennifer. "Legalized Racism." *Canadian Race Relations Foundation*, <https://www.crrf-fcrr.ca/images/stories/pdf/ePubFaShLegRac.pdf>

Tarnopolsky, Walter Surma. "Discrimination in Canada: Our History and Our Legacy, 1989." <https://ciaj-icaj.ca/wp-content/uploads/documents/import/1989/TARNOPOL.pdf?id=1591&1598877802>

## Answer Key--Discriminatory Law Case Study: *Chinese Exclusion Act (1923)*

<https://www.thecanadianencyclopedia.ca/en/article/chinese-immigration-act>

**Law:** *Chinese Exclusion Act (1923)*

### **Background Information:**

The law was preceded by the 1885 *Chinese Immigration Act* which instituted the head tax (initially 50\$ but rising to 500\$) on all Chinese immigrants.

The new *Chinese Immigration Act*, also called the *Chinese Exclusion Act (1923)*, banned Chinese immigration almost completely. Despite restrictions on immigration by visible minorities, only Chinese people were singled out through a specific law in this manner.

**How did this Law maintain inequalities? Consider political, social, and economic factors.**

### Political:

-every person of Chinese descent required to register for an identity card

-those of Chinese descent were also already not allowed to vote

-fewer than 50 immigrants allowed in during this period of 1923-1947

### Social:

-Chinese people they were the only group to be singled out in this manner by a law although other immigration laws prevented other immigrants from other countries from entering Canada

-family ties and community growth were affected as immigration halted - the vast majority of Chinese in Canada were men (80%). Many had families back in China; their families no longer were able to immigrate after them.

### Economic:

-individuals could be fined up to 500\$ or even imprisoned if they did not register for an identity card

-Chinese immigrants had previously been involved in the Fraser River and Cariboo Gold rushes and as labourers constructing the CPR, often dealing with discrimination in unfair work situations and dishonest business practices

-other legislation prevented Chinese from owning property and limited employment and housing options

-Chinese workers often faced protests from White workers and unions, as well as earning lower wages

### **How was this law reformed or amended?**

The end of WWII resulted in lessening hostility towards the Chinese community, who participated in military service and fundraising. Canada's recent signing of the Universal Declaration of Human Rights also signified changing values and awareness.

Removing anti-Chinese legislation was supported by politicians, war veterans, church leaders and even labour unions. In 1947, the *Chinese Exclusion Act* was repealed (removed).

### **Legacy of Law and/or policy:**

Chinese immigrants still faced unfair restrictions until 1967, when an equitable system through the points-based immigration system was reduced.

Campaigns were instituted to ask the government to apologize for its treatment of Chinese-Canadians. IN 2006, Stephen Harper apologized for the head tax and discriminatory immigration legislation.

## Answer Key--Discriminatory Law Case Study: *Indian Act (1876)*

<https://www.thecanadianencyclopedia.ca/en/article/indian-act>

**Law:** *Indian Act (1876)*

### Background Information:

This law is over 140 years old and still exists; significant amendments have been made during this time, but the restrictions described below were imposed at some point during the Act. The *Indian Act* applies to First Nations of Canada, but not the Inuit or Métis peoples.

The original aim of the *Indian Act* was to control most aspects of Aboriginal life to achieve assimilation - so First Nations people lose their identity and be absorbed in the dominant European culture.

### How did this Law maintain inequalities? Consider political, social, and economic factors.

*\*This a brief list of some of the most notable discriminations.*

#### Political:

- allowed government to control most aspects of Aboriginal life
- introduced residential schools; amendments in 1894 and 1920 required children to attend
- Indian Status could be taken away if a First Nations person graduated university, became a Christian minister, etc.; women could lose status by marrying a non-status man (**Status** is the legal recognition of First Nations heritage and comes with certain rights).
- First Nations people were not allowed to form political organizations
- restricted traditional self-governance by instituting a band council governance system (more similarities to European-style government)
- First Nations people were denied the right to vote in federal and provincial elections

#### Social:

- First Nations people were restricted from leaving the reserve without permission from Indian agent
- prohibitions against speaking Indigenous languages
- prohibitions against Indigenous religious practices
- potlatch and other cultural ceremonies were illegal during some of this law's history



-a women's status rights were dependent on her husband (non-status married status = status, status with another band - another band, can lose status if widowed, etc.) , while men could keep their status

#### Economic:

- created tax exemptions in reserves
- the sale of alcohol to First Nations people was prohibited
- the sale of ammunition to First Nations people was prohibited

#### **How was this law reformed or amended?**

The most significant amendments took place in 1951 and 1985. Changing social views and awareness after World War II led to the removal of the worst political, cultural and religious restrictions. This also marked the first time that First Nations peoples were consulted in the process.

In 1969, Pierre Trudeau's introduction of the White Paper, which would have removed the Act among other sweeping changes was met with resistance, as it would have also taken away special status and rights for Indigenous Peoples. This was ultimately withdrawn.

In 1985, the government passed Bill C-31, which addressed some of the more egregious problems with Indian status in the act.

#### **Legacy of Law:**

There is divided sentiment regarding the *Indian Act*. It is responsible for some of the most discriminatory and harmful acts in the relationship between Canada and the First Nations. Despite its amendments, some consider it to still be overly paternalistic. However, because the *Indian Act* outlines the obligations of the Canadian governments to First Nations people and also defines status, many do not believe it should be fully eliminated.

**Answer Key--Discriminatory Law Case Study:**  
**The Persons Case / British North America Act (1867)**  
<https://www.thecanadianencyclopedia.ca/en/article/persons-case>

**Law:** *British North America Act (1867)*

**Background Information:**

In the *British North America Act (1867)*, Section 24 stated that only qualified “persons” could be appointed to the Senate. “Persons” were legally understood to be men in 1867 and the Canadian government interpreted this section referring to only men, and not women. When activists in the 1920s suggested Emily Murphy for a Senate position, the government responded that “the British North America Act made no provision for women”.

In 1927, Emily Murphy and four other female activists (the “Famous Five”) petitioned the government to reexamine Section 24, and to determine if “person” included women.

**How did this Law maintain inequalities? Consider political, social, and economic factors.**

Political:

- an outdated definition of “persons” was used by the government to block Emily Murphy from a possible Senate position despite widespread support
- women were prohibited from serving in an important government role
- most Canadian women only recently were eligible to vote in federal elections (1918)
- some Canadian women (notably Aboriginal women) could not vote at this time and barred from participating in government in any way
- women were still barred from political office in New Brunswick; women in Quebec could not vote in provincial elections

Social: -the implication that women were not “persons”

**How was this law reformed or amended?**

Initially, Supreme Court judges responded to the Famous Five petition by ruling that women were not persons. The women appealed to the highest court of appeal at the time, the Judicial Committee of the Privy Council, in London. In 1929, the council eventually decided that the word “persons” included women. Although women were not “persons” in 1867, the social changes marked by women’s suffrage in the early 20th century

reflected changing values and awareness. The interpretation of women as “persons” was consistent with that change.

**Legacy of Law:**

This case and reinterpretation of the *British North America Act* established the right of women to be appointed to the Senate.

## **Answer Key--Discriminatory Law Case Study: Racial Segregation through Separate Schools Clause** <https://www.thecanadianencyclopedia.ca/en/article/racial-segregation-of-black-people-in-canada>

**Law:** *Common Schools Act* - Separate Schools Clause (1850)

### **Background Information:**

Slavery was abolished in Canada in 1834 but racial segregation continued for some time.

In 1850, the *Common Schools Act* was amended to include the Separate Schools Clause- this allowed for separate schools for Catholics, Protestants and Blacks.

### **How did this Law maintain inequalities? Consider political, social, and economic factors.**

#### Political:

- White school trustees in Ontario created separate schools for Black children in parts of SW Ontario, without consulting Black communities.
- Schools were racially segregated by law in Ontario and Nova Scotia.
- When Black parents sued school trustees when Black children were not admitted to White schools. Yet courts upheld the racial segregation of schools.
- Racial segregation in education continued in Nova Scotia until 1950 and the last school closed in 1983 - far later than what many Canadians would assume.

#### Social:

- In other provinces, it was common for white families to deny Black children admittance to local schools.
- School trustees often used the Separate Schools Clause to request separate schools for Black children despite what Black parents and communities wanted.
- Racial segregation could take place through separate school buildings called “negro schools”, White and Black students attending at different times, or students attending at the same time but being physically segregated in different spaces. These different scenarios reflect negative stereotypes about mixing races.
- In some cases if there was no separate school available, Black children were denied their education.

### **How was this law reformed or amended?**

Activism by Black parents led to the slow dissolution of racially segregated schools in Ontario, the last closing in 1965. In 1965, Leonard Braithwaite, a Black MPP, advocated for the Separate Schools clause to be removed from provincial education policy.

**Legacy of Law and/or policy:**

Racial segregation in Canada was present in many forms. Although each province was different, Black people were regularly segregated or denied fair access to education, employment, housing, and health care, among other services. Black communities in Canada are still fighting for recognition of their history in Canada, particularly in the school curriculum.

## Discriminatory Law Case Study

**Law:**

**Background Information:**

**How did this Law maintain inequalities? Consider political, social, and economic factors.**

**How was this law reformed or amended?**

**Legacy of Law and/or policy:**

## Class Discussion Questions:

**Essential Question:** How has the legal system and its laws been used to maintain inequalities?

What are some examples of a discriminatory law?

What was the purpose of this law? What stereotypes and discriminatory attitudes does it reflect?

What inequalities did this law reinforce?

How did this law prevent a targeted group from accessing opportunities?

In what ways did this law impact people socially? Economically? Politically?

What legacies of this law may persist into the present day for the targeted communities?

What circumstances led to support for reforming the law?

What factors influence change in laws? (popular support, changing awareness etc.) Are you aware of any examples in your case?

How do social and political forces lead to change in the law? (Factors such as: popular support for change, response to historical events, changing social values or community awareness, expectations of the legal system)

What forces reinforce continuity and status quo? What forces affect change in the short and long term?



## Discriminatory Laws and Policies Awareness Rubric

Instructions: Evaluate your knowledge about the following laws and historical issues in Canada.

1 - Unknown      2 - Recognized      3 - Familiar with basics      4 - Expert

|  |   |   |   |   |
|--|---|---|---|---|
| <i>Canada Human Rights Act (1977)</i>  | 1 | 2 | 3 | 4 |
| <i>Chinese Exclusion Act (1923)</i>  | 1 | 2 | 3 | 4 |
| <i>Chinese Immigration Act (1885)</i>  | 1 | 2 | 3 | 4 |
| <i>Indian Act (1876)</i>   | 1 | 2 | 3 | 4 |
| <i>Common Schools Act: Separate Schools Clause(1850)</i>                                     | 1 | 2 | 3 | 4 |
| Regulation 17 (1912)   | 1 | 2 | 3 | 4 |
| Regulations against visible minorities enlisting in armed forces during WWII                 | 1 | 2 | 3 | 4 |
| Restriction of Voting Rights for Visible Minorities under the <i>Electoral Franchise Act</i> | 1 | 2 | 3 | 4 |
| The White Paper (1969)   | 1 | 2 | 3 | 4 |
| The Person's Case (1929)   | 1 | 2 | 3 | 4 |
| World War II Japanese Internment Camps   | 1 | 2 | 3 | 4 |
| WWI Internment Camps   | 1 | 2 | 3 | 4 |

## The Reform Process in Canada: Know Wonder Learn

Instructions: Write down facts that you “know” about the process reforming laws in Canada in the appropriate column. Then, consider gaps in your knowledge and identify questions to write in the “wonder” column.

Finally, access the BC Law Institute’s [main page](https://www.bcli.org/) and the [Law Reform Resources](https://www.bcli.org/law-reform-resources) section. Use the links as your main sources to research and answer your questions in the “Learn” section.

<https://www.bcli.org/>

<https://www.bcli.org/law-reform-resources>

| Know | Wonder | Learn |
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