

# PLAYING SECOND FIDDLE TO YO-YO MA<sup>1</sup>

"The Chinese [were] a semi-barbaric, inferior race.... and machines with whom Canadians couldn't compete..."

Prime Minister Sir John A. Macdonald, 1882

"The Chinese head tax payers were happy to be here and had already received redress through their ability to remain in Canada... The fact that the head tax payers and their descendents are still here is redress enough....Paying the head tax is made all worthwhile when one can see their granddaughter playing first string cello for the Toronto Symphony Orchestra."

The Honourable Justice James MacPherson, 2002

## The Setting

It was June 10, 2002, the first day of hearing in the case of *Mack*<sup>2</sup> before the Ontario Court of Appeal. It was late in the day, as Mary Eberts - lead counsel for Mr. Shang Jack Mack (a Chinese Head Tax payer), Ms. Quan Ying Lee (a widow of a head tax payer) and Yew Lee (a descendant) - made her way through a complicated set of legal arguments as to why the Canadian Government should redress the Chinese Head Tax and Exclusion Act by compensating the three plaintiffs for their years of economic loss and emotional suffering.

The court room was almost full. Mr. Yew Lee and his family - including his eldest sister who was separated from her father for almost twenty years due to the Chinese Exclusion Act - were among those in the audience. There were several other widows and descendents of head tax payers, and a dozen or so members of the Chinese Canadian community who came out to support the case. Some members of the African Canadian community were there as well because of their concerns about the implication that the

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<sup>1</sup> I want to thank Charles Smith for giving me the title of this paper.

<sup>2</sup> *Mack v. Attorney General of Canada* (2002), 69 O.R. (3d) 737, leave to appeal to Supreme Court of Canada dismissed (without reasons), April 24, 2003.

*Mack* case might have for their community's pursuit for reparations. There were also the other lawyers who represented the plaintiffs and the Government of Canada. Several reporters were present in the courtroom earlier in the day, but when the incident happened they had already left, having obtained enough "quotes" for their story. To them, the plaintiffs' substantive legal arguments were mere superfluous details that were deemed unnecessary for the purpose of public consumption.

The *incident* referred to here, is the now famous exchange between Justice James MacPherson and Ms. Eberts, which later formed the basis of a judicial complaint against the learned judge filed by the Chinese Canadian National Council.

But before getting into what Justice MacPherson actually said and why it was so objectionable to those in the courtroom that day, perhaps some background about the *Mack* case is in order.

## **The History**

Chinese immigration to Canada began around 1858 in response to the gold rush in British Columbia, starting with mostly immigrants from the west coast of the United States. When the Canadian Pacific Railway was constructed between 1881 and 1885, however, Chinese began to come directly from China.<sup>3</sup>

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<sup>3</sup>P. Li, *Chinese In Canada*, 2<sup>nd</sup> ed. (Toronto: Oxford University Press, 1998) at 11

The same social and economic forces that had led many European immigrants to North America earlier in the nineteenth century also drove many to emigrate from China to Canada during the latter half of the century. Unlike the European immigrants, however, the Chinese were never accepted into Canadian society but were simply recruited as cheap labour to answer the shortage of white workers here.<sup>4</sup>

Many early Chinese did not come to Canada as voluntary emigrants. Chinese workers were recruited in a scheme of coolie trade for Canadian employers to work as cheap labourers for performing menial work. At the time, large number of indentured Chinese were shipped from southeastern China to America, the West Indies, and certain South Pacific islands by European companies. As explained by a member of Parliament from British Columbia to the 1885 Royal Commission on Chinese Immigration:

They [the Chinese] give bonds, before leaving China, to Chinese companies to work for them for a term of five or ten years, and all that the Company have to do in order to carry out their part of the contract is to furnish them with the bare necessities of life and their clothing, and the Company have all their earnings. After they serve their time, of course, they go then and work for themselves. (Royal Commission, 1885; xxv)<sup>5</sup>

While there is no accurate figure on the number of Chinese recruited to Canada as indentured labourers, it was estimated that 15,710 Chinese entered Canada between 1881 and 1884. Of these 6,500 were employed directly by contractors building the western

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<sup>4</sup>P. Li, *Chinese In Canada*, *supra*, at 16

<sup>5</sup>P. Li, *Chinese In Canada*, *supra*, at 21

section of the Canadian Pacific Railway (CPR), many of whom led a life of destitution while working on the CPR.<sup>6</sup>

As Chinese were viewed as inferior to whites, they were considered useful to the development of western Canada but were not desirable citizens.<sup>7</sup> As evidenced in testimonies before the Royal Commission on Chinese Immigration, Chinese labour was indispensable to the economic development of British Columbia. One such testimony was given by Sir Matthew Begbie, Chief Justice of British Columbia:

I do not see how people would get on here at all without Chinamen. They do, and do well, what white women cannot do, and do what white men will not do. (Royal Commission, 1885:75)<sup>8</sup>

The Dominion had also foreseen that there was a great need for cheap Chinese labour for the construction of the CPR. In fact, John A. MacDonald was quoted as saying, "Either it [B.C.] must have Chinese labour or it could not have the railway."

As the economic situation in British Columbia began to deteriorate in 1860's, however, antagonism toward the Chinese began to grow. Various attempts were made by the British Columbian politicians to curb Chinese immigration in response to the rising public anti-Asian sentiment. Some of these measures were directed at Chinese

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<sup>6</sup> P. Li, *Chinese In Canada, supra*, at 21-22

<sup>7</sup> P. Li, *Chinese In Canada, supra*, at 27-28

<sup>8</sup> P. Li, *supra, Chinese In Canada*, at 29

immigrants alone, while others targeted all "oriental" immigrants.<sup>9</sup> These attempts to stop Chinese immigration in British Columbia failed on the ground that only the Dominion government had the right to pass laws dealing with immigration.

### **The Chinese Head Tax and Exclusion Act**

As soon as the CPR was completed, the federal government moved to restrict the immigration of Chinese to Canada.

The first anti-Chinese bill was passed in 1885. It took the form of a head tax of \$50 imposed, with few exceptions, upon every person of Chinese origin entering the country.<sup>10</sup> No other group was targeted in this way. The same act also restricted the number of Chinese to be carried by vessels to Canada to no more than one for every fifty tons of tonnage. Those who had paid the Head Tax would be given a certificate of entry or residence, which had to be returned in exchange for a certificate of leave when they left Canada, even temporarily, or faced the risk of being barred from re-entering.

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<sup>9</sup>The Anti-Chinese measures included, for example, two unsuccessful attempts to levy a special annual tax on the Chinese, on the grounds that they were displacing white miners in coal fields. On the other hand, there was the 1922 recommendation from the British Columbia Fisheries Commission to eliminate oriental fisherman from the fishing industry by reducing the number of licenses issued.

<sup>10</sup>Statutes of Canada 1885, c.71

The head tax was increased to \$100 in 1900<sup>11</sup> and to \$500 in 1903.<sup>12</sup> Meanwhile, Chinese were denied Canadian citizenship and hence excluded from provincial elections in a number of provinces. At the same time, however, Chinese continued to be subject to obligations imposed on Canadian citizens such as paying income tax.

Despite the Head Tax, Chinese immigrants continued to come to Canada. In 1923, to exclude all Chinese from entering this country, the Canadian Parliament passed the Chinese Immigration Act<sup>13</sup>. Under this racist law, the only Chinese who could enter Canada were diplomatic corps, children born in Canada to parents of Chinese race or descent, merchants and students<sup>14</sup>. Because of its exclusionary effect, this Act is often known as the Chinese Exclusion Act. Passed on July 1, 1923, the Dominion Day, this law was perceived by the Chinese Canadian community as the ultimate form of humiliation. As such, the Chinese community refused to celebrate the Dominion Day for years to come.

The Canadian government made a sizeable profit from the imposition of the Head Tax on its Chinese people. Between 1886 and 1943, the total revenue collected from the Chinese through head taxes and registrations to leave amounted to \$23 million.<sup>15</sup> Between 1905

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<sup>11</sup> Statutes of Canada 1900, c.32

<sup>12</sup> Statutes of Canada, 1903, c.8

<sup>13</sup> Statutes of Canada 1923, c.38

<sup>14</sup> Statutes of Canada 1923, c.38, s.5

<sup>15</sup> P. Li, *The Chinese In Canada*, supra, at 41

and 1914 alone, the Government collected \$13.8 million from the Chinese, which was equivalent to about 8% of all excise duties collected in Canada and about 14% of the national defense budget for this period.<sup>16</sup> British Columbia also benefited greatly from the head tax, as one-quarter of the revenue went to the province that collected it.

During the exclusion era, Chinese immigrants continued to face other forms of discrimination in their social, economic, and political lives. Economically, they were often denied entry to various occupations and professions. Where they were allowed to work, they were paid less - sometimes only half the amount - than white labourers.<sup>17</sup>

The most devastating impact of the Head Tax and the Exclusion Act, however, was found in the development of Chinese Canadian family. Indeed, except in isolated cases, the Chinese Canadian family did not emerge until after the Second World War. As Professor Peter Li explained:

Most Chinese men in Canada before the war were denied a conjugal family life and were forced to live in a predominantly married-bachelor society. To a large extent, the pattern of broken families among Chinese males in Canada and the consequent disruption in social life can be attributed to the anti-Chinese policy and hostile social environment, which imposed various legal and social constraints on familial organization. The anti-Oriental policy of the Canadian Government over an extended period had long-term consequences for the Chinese community, many of which were evident even long after the restrictive measures were removed.<sup>18</sup>

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<sup>16</sup> P. Li, *The Chinese In Canada*, supra, at 41

<sup>17</sup> P. Li, *The Chinese In Canada*, supra, at 447-50

<sup>18</sup> P. Li, *Chinese In Canada*, supra at 61

The "bachelor society" in which these early Chinese pioneers lived could be highlighted by the following figures: In 1902, for instance, there were 92 wives among the 3,263 Chinese in Victoria. In that same year in Vancouver, there were 2,053 Chinese men and 27 Chinese women. The sex imbalance among the Chinese - as created by the legal barrier to family reunification - were many folds the national figure.<sup>19</sup>

During that long period of separation, the Chinese men tried to support their families by remitting money to China. For those who could afford, they would take trips back to China but they could not stay more than two years without losing the right to return under yet another legal restriction.<sup>20</sup>

Many Chinese men lost contact with their families during the Second World War. The civil war in China and the subsequent cold war between the communist China and the rest of the world meant that some Chinese Canadians never saw their families ever again. For many Chinese families, they did not reunite until years after the marriage. This was evident in the post-war census, when gender imbalance within the Chinese community remained extremely high. In 1951, for instance, there were 17,155 married Chinese men to 2,842 married Chinese women: a sex ratio of 604 to 100. Ten years later, the ratio was improved somewhat to 160 to 100, representing 18,103 married men to 11,275 married women.<sup>21</sup>

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<sup>19</sup>P. Li, *Chinese In Canada, supra*, at 63-64

<sup>20</sup>Statutes of Canada 1923, c.38, s.24

<sup>21</sup>P, Li, *Chinese In Canada, supra*, at 70

While their husbands were struggling abroad, many Chinese wives in China were left to raise their children by themselves. They experienced starvation and other extreme economic hardships when remittances were cut off during the war time.<sup>22</sup>

Because of years of racist, anti-Chinese immigration legislation<sup>23</sup>, today the Chinese Canadian community exhibits many characteristics of first-generation immigrants despite its history of close to 150 years in Canada. The absence of Chinese women meant the delay of a second generation for the Chinese Canadian community. As late as 1981, 75% of all Chinese, and 86% of all Chinese over the age of 15 in Canada, remained foreign-born. The disproportionate number of foreign born among the Chinese population also hindered the development of the political participation of this community in Canada.<sup>24</sup>

## **The Plaintiffs**

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<sup>22</sup>P. Li, *Chinese In Canada, supra*, at 69

<sup>23</sup> Restriction on Chinese immigrants did not end with the repeal of the Chinese Exclusion Act. Following the repeal of the 1923 Act, the Government introduced Order-in-Council, P.C. 2115 to restrict immigration of Chinese and other Asian immigrants to wives and unmarried children under the age of eighteen of Canadian citizens. This rule applied to the families of head tax payers as well. To bypass such restrictions which did not apply to European immigrants, many Chinese immigrants - mostly men - came to Canada by adopting fictitious identity as a child of a Canadian citizen. They were known as the "paper sons". In 1960, the Government of Canada introduced the "Chinese Adjustment Statement Programme" to allow the Chinese immigrants who had entered Canada illegally to obtain permanent resident status. When the programme was abandoned in 1973, over 12,000 Chinese had had their status adjusted.

<sup>24</sup>P. Li, *Chinese In Canada, supra*, at 72-73

There were three Plaintiffs in the Mack case. The first to sign on was Mr. Shack Jang Mack. According to an interview that Mr. Mack did several years ago<sup>25</sup>, Mr. Mack went to Hong Kong from China in 1922 to embark on his trip to Canada. From Hong Kong, Mr. Mack sailed in the hold of a boat for three weeks until it docked in Vancouver on June 20, 1922. He then spent the next six weeks inside a dark cell in a four-storey, Canada Customs Detention Building. Later on in his life, Mr. Mack described the detention condition to his granddaughter in the following way: "It was a pig pen. They fed us water with a slice of bread sprinkled with a little sugar every day. We used to bang on the bars to ask for food. Some shared mattresses, while some had no mattresses at all." Mr. Mack was released only after paying the \$500 Head Tax.

Mr. Mack's father was among the first pioneers who ventured to Canada in 1865 to work on the Canadian Pacific Railway. He later worked in the laundry business in Vancouver. Before returning to China, he sent four of his six sons, including Mr. Shack Jang Mack, to Canada. Mr. Mack and his three brothers each paid the \$500 Head Tax.

Mr. Mack was betrothed to his wife, Ms. Gat Nuy Na, as a child. He returned to China to marry her in 1928. Unable to bring his wife to Canada, however, Mr. Mack would have to travel back to China to raise his family. Their firstborn son died at the age of one - before Mr. Mack even had a chance to hold him.

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<sup>25</sup>Toronto Sun, June 30, 1997

During the years he spent alone, Mr. Mack opened a string of cafes across Manitoba. Every time he left for China he would have to sell his cafe. When he returned to Canada, he would open another one. This happened five times over four decades - starting from the Pas, Sherrigordon, Cold Lake and Churchill - before settling in Tisdele, Saskatchewan.

During one trip back to China, Mr. Mack stayed with his wife and their children for seven years - from 1939 to 1945 - because China was locked in war with the Japanese.

In October, 1949, Mr. Mack's wife and children left China for Hong Kong, where they stayed for three months before coming to Canada.

In 1991, Mr. Mack registered his name with the Chinese Canadian National Council as one of the over two thousand head tax payers who wanted to seek redress for the \$500 that was unjustly taken from them by the Canadian Government. Mr. Mack passed away at the age of 94 right before the Supreme Court of Canada turned down his leave application to appeal the Ontario Court of Appeal's decision.

Mrs. Quen Ying Lee, born October 18, 1911 in Hoi Ping, China, is the widow of Mr. Guang Foo Lee, who came to Canada at the age of 21 on July 4, 1913. Mr. Lee returned to China sometime around 1929. During that two-year trip in China, Mr. Lee married Ms. Lee - who was 17 years his junior - and he left China while his wife was still pregnant with their first child, a daughter born January 29, 1932.

Mrs. Lee's connection to Canada began before she even met her husband. Her father came to Canada when she was only 5, and had worked as an interpreter. But he was not able to bring his family to Canada. He died alone and was buried somewhere in Ottawa.

When Mr. Guang Foo Lee first came to Canada, he initially worked in the laundry business. Subsequently, he worked in the restaurant business. Life was difficult then and often Mr. Lee did not have enough money to buy food or get shelter for himself. He had to resort to picking food out of garbage cans and then cooked the food on the road. Sometimes people who walked by would kick his food away.

After his marriage to Mrs. Lee, Mr. Lee only returned to China twice. The first time was in or around 1935. Mr. Lee stayed in China for about one year until his second child, a son, was born. Mr. Lee returned to Vancouver on June 1, 1936. The second time Mr. Lee went to China was after the war was over, in 1949 - 13 years after his last trip.

Mr. Lee borrowed money to pay the head tax by mortgaging seven pieces of property in China. He transferred the title of his land to the money lender, using the property as collateral. He did not repay the money until after he married Mrs. Lee. Altogether it took Mr. Lee 16 years - from 1914 to 1930 - repay the debt as incurred by the Head Tax payment.

After the loan for the Head Tax was repaid, Mr. Lee had no money left and he therefore had no choice but to return to Canada to work. While in Canada, Mr. Lee sent money

home, but the amount of which was not sufficient to support the family. Mrs. Lee therefore had to work on the farm in addition to raising their children as a single parent. The money that her husband sent her helped Mrs. Lee buy small pieces of farm land. With the land, Mrs. Lee grew bamboo and other food. Mrs. Lee also supported her husband's mother, with whom she lived, as well as a cousin of her husband with the food she grew on the farm.

Then the war began. It was a time of crisis. Starvation and diseases stole the lives of thousands in China. For Mrs. Lee to survive, she had to endure grave hardship. She started selling goods. Often she had to walk for miles to sell goods in various villages and towns. Like Mrs. Lee, many women in the Guangdong region in China had husband who went abroad and who could not return home. Nor could their husband send money home to China to support the family. Many women in this situation survived by living with another man. Mrs. Lee chose to stay in her marriage with Mr. Lee. It was a difficult choice to make since all the communications with the outside world were cut off. For over 13 years, Mrs. Lee did not receive any news from her husband. Other farmers who wanted Mrs. Lee to go with them kept telling her that her husband would never come back, but Mrs. Lee persevered.

It was not until 1949, four years after the War was over and two years after the repeal of the Chinese Exclusion Act, that Mr. Lee finally went to China to see his family again. Learning what his family has gone through, Mr. Lee sadly told his wife she should have gone with someone else.

The family finally arrived in Canada at the end of 1950, after Christmas. By then, Mr. Lee had started his own restaurant in Sudbury. When she first came to Canada, Mrs. Lee helped cleaning dishes at the restaurant. Eventually she took over the management of the business, working 18 hours a day.

When Mr. Lee died in 1968, some of his children were barely adults. Once again, Mrs. Lee was left to raise the children all by herself.

One of the children left behind by Mr. Guang Foo Lee is Yew Lee, born as the third son who came to Canada at the tender age of one, and who as the middle child is caught between two generations of siblings with different culture and birth rights. Mr. Yew Lee's older siblings were born in China who grew up without a father because of the racist law in Canada, whereas his two younger siblings were born in Canada and raised as second generation Canadians with no ties to their parents' motherland. Mr. Lee and his mother both agreed to become Plaintiffs for the redress case to reclaim what they feel have been unjustly taken from them - a sense of family and their dignity.

### **Justice Demanded, Justice Denied**

It is with this background that the audience which made up of a number of head tax payers' families found themselves in a courtroom at Osgoode Hall on June 10, 2002. It is also why they were instantly shocked - perhaps even horrified - by Judge MacPherson's

comments that the Chinese were "happy" to pay the head tax, and that Chinese immigrants today are successful. In fact, the judge suggested, "paying the head tax is made all worthwhile when one can see their granddaughter playing first string cello for the Toronto Symphony Orchestra."

While Ms. Eberts, the plaintiffs' lead counsel, was trying her very best to point out to the learned judge that his comments were really nothing more than "happy immigrant" stereotypes, the other counsel, yours truly, a Chinese Canadian immigrant, was in so much anger that I had to control my urge to start screaming at the top of my lungs as if in doing so, I could make the judge understand how much his words were hurting me and the people in his courtroom.

How ironic that it is at the very moment when members of a minority group are appealing to the conscience of our court to hear their sufferings and heed their call for justice, that they have to witness in first hand the utmost failure of our legal system to even acknowledge their status as a minority group and hence the inequality that they have experienced and continue to experience in our society.

As if it is not enough to simply reject the Plaintiffs' claim for redress, they have to be told that they are - and have always been - in their rightful place in society. They have to be reminded that they must be grateful to their government, i.e., their master, for what they have - even though whatever they have accomplished is not a result of, but is in spite of, everything that their government has done to them.

Sometime when I look back, I feel almost relieved that Mr. Mack was not in the courtroom that day. Had he been there to listen to what Judge MacPherson had to say, I wonder if he would have regretted placing his trust in the *justice system* to help him get justice.

With the passing of Mr. Mack, the number of surviving head tax payers is dwindling even further. Sooner or later, there will be none left and the Government of Canada would have successfully dragged this issue out long enough without ever having to apologize for the wrongs they have committed against these unwanted pioneers of our nation. In dismissing the redress class action suit, our courts have in effective become an accomplice to the deliberate and continuing denial of justice on the part of the state.

### **Model Minority - The Yo Yo Ma Syndrome**

Justice MacPherson is by on means alone in believing that Chinese Canadians face no inequality and as such, we have no basis to claim our victimhood. The notion of model minority that is so often applied to Asian Canadians in general and Chinese Canadians in particular is effectively being used by the judge as the reason for disputing any Government's obligation to redress past wrongs. Because Chinese Canadian immigrants

are doing well today, so the argument goes, therefore any wrongs that have been committed against them in the past can and should be forgiven.

If Chinese Canadians were indeed doing well, perhaps it would have been easier to swallow this line of reasoning. But the reality is much different from the myth. At one million strong, the Chinese Canadian community is now the largest allophone community in Canada. For close to a decade, China has been the top source country of Canada's immigration. But just like all immigrants of colour, many Chinese immigrants are struggling in low-waged, non-unionized jobs. Those who came with professional background and post-secondary education are unable to practise the professions that they are trained in because of systemic discrimination in the Canadian job market. While we make up about 20% of the population in places like Toronto and Vancouver, Chinese Canadians continue to be under-represented in many professions including law. Today, there are only a handful of Members of Parliament who are of Chinese descent. There are about a dozen city councilors and provincial legislators across the country - and even fewer judges - who are Chinese Canadians.

Yet, in that Osgoode Hall courtroom that fateful afternoon, the success of Chinese Canadians is being "celebrated" and was suddenly made the focus of the case. It is an artificial triumph which is constructed based on the success of a select few - without regard to the reality of the community as a whole. The image of a head tax descendant playing first string cello in the Toronto Symphony Orchestra is made real in the mind of the judge by the fact that one of the world's most renowned cellist is of Chinese descent.

I have never met Mr. Yo Yo Ma, but our "paths" have crossed more than once. Sometime after the *Mack* case, I had yet another encounter with a member of the judiciary who compared my Chinese name, Yao-Yao, with the famous cellist. How nice it is, the judge says, to meet someone who has a name so similar to his favourite musician. It is even nicer, the judge continues, to know that the two of us share such similar background. I try without success, to let the judge know that Mr. Ma and I have very little in common: me, an immigrant from Hong Kong who migrated to Canada as an adult, and him, an American Chinese born in Paris and moved to the United States at the age of 4. Not do I have a chance to explain to the judge that the meaning of the word "Yo" and that of "Yao" is as different as, say, between "yogurt" and "youth".

Perhaps Judge MacPherson and this other judge should be forgiven for their ignorance when the real culprit lies in our political institution which continues to create and perpetuate the myth of the "successful Chinese" as it fits nicely into their agenda of inaction and complacency when it comes to addressing racism.

Just as the Government of the past has profited from racism when they unjustly collected \$23 million from the Chinese immigrants, the Government of today continues to reap the benefits in the form of cheap labour on the backs of the immigrants by keeping them "in their place", and by denying them equal economic opportunity and equal participation in our political process.

The problem of our legal system, is its failure to differentiate between myth and reality and to hold the Government to its account. In so doing, it fails to address the systemic discrimination faced by racialized communities in all aspects of their disadvantage. Viewed in that context, the comments made by Justice MacPherson are merely a reflection of the collective denial that our society continues to engage in.

As long as this myth persists, there will be no redress for the head tax payers and their families who have given their lives to build this country and who have received nothing but disdain in return.

### **The role of Racialized Lawyers in the Legal Profession**

Because there are so few of us in the legal profession itself, the Chinese Canadians who are members of this profession are in many ways still playing the role of token minority. We are the ones who are being pointed at as a sign of progress both by the profession itself and by society at large. Like Mr. Yo Yo Ma, we have all been reconstructed and recounted in different ways and to different degrees, as the "success stories" to prove that the great multiculturalism policy of this country is working well.

It is so much easier for racialized lawyers to play our role as tokens, without asking any question or challenging the power structure. Indeed, it would be the safest and wisest thing to do if one wishes to move up the professional ladder.

Playing that role, however, requires one to abandon his/her values and principles, deny his/her own identity, and betray his/her community. It is not a role that everyone can adopt. Fortunately - or unfortunately depending on one's point of view - I do not have it in me to play that role well.

As a lawyer, I firmly believe not only do I have the right - but indeed the obligation - to challenge racism and other forms of injustice whenever and wherever they arise. The fact that some of the perpetrators of injustice might happen to be members of the judiciary or other members of the legal profession is purely incidental. Indeed, if I do not exercise my skills and privilege as a lawyer to voice objection to oppression when I see it, then what good is my legal training?

As a racialized lawyer faced with an incident of discrimination involving a member of the judiciary, I saw it as my duty to challenge and therefore educate that member. The incident on June 10, 2002 was no different from any other incident of racial prejudice. What was different, however, was that my decision to challenge the judge was supported both by the lead counsel in the case and by our clients. Without their support, it would have been difficult, if not impossible, for me to speak publicly about this case.

As racialized lawyers, we encounter racism throughout our professional life both inside and outside of the courtroom. This is so for a number of reasons. First, we ourselves might be the target of racial prejudice in the eyes of fellow members of the bar and/or the decision makers before whom we appear. Secondly, we are more likely to represent

clients who are people of colour and are therefore likely to subject to racial discrimination themselves. Finally, we operate in a legal system which has yet to face up to its own problems including the under-representation of minorities, and the inability to address systemic discrimination facing minority groups.

The professional dilemma that we face as racialized lawyers, in my view, lies not so much in choosing between protecting our own backside and challenging the decision maker - be it a judge or a tribunal member - when an incident of racism arises. Rather, the real issue is that, in raising the challenge, whether we will still be serving the best interests of our clients. Sometimes, the decision is easy to make if your client, as in the case of *Mack*, share your belief in using the justice system as a way of advancing equality.<sup>26</sup> But for many of our clients, particularly those who are members of the disadvantaged groups, they may not see it as their right nor within their power to challenge the very institution that is an agent for their oppression. In these circumstances, your professional role as counsel may in fact stifle your ability to further

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<sup>26</sup> The Chinese Canadian National Council is an advocacy organization which was founded in 1979 after a airing of an episode called "Campus Giveaway" by CTV's W5 program in which Chinese Canadian students were depicted as "foreigners" who took away the seats of "real" Canadians in professional faculties such as medicine and pharmacy at Canadian universities. CCNC's mandate is to promote equality for all Canadians, with a particular focus on strengthening political participation of Chinese Canadians. *Mack* is not the only case in which the conduct of a judge is called into question because of certain comments made about the Chinese Canadian community. In 1997, the Chinese Canadian National Council filed a complaint against then Chief Justice Lamer for the comments he made during the hearing of *R. v. R.D.S.* [1997] 3 S.C.R. 484, yet another case dealing with the issue of racism. Chief Justice Lamer questioned counsel of R.D.S. on the issue of taking judicial notice of racism. The Chief Justice was quoted as asking if judges have to take judicial notice of racism, whether that means they have to take judicial notice of the fact that Chinese have a propensity to gamble, and that gypsies are pickpockets. The day CCNC's complaint was made public, Justice Lamer "apologized" to CCNC with a letter in which he "corrected" himself by saying that it was in the 60's when he practised law in Montreal that he noticed that Chinese had the propensity to gamble. What the Chief Justice did not realize, is that the stereotype of Chinese as gamblers is linked to the history of exclusion of Chinese immigrants. As the Chinese men were denied the opportunity to have a normal family lives, many of them sought comfort by gathering with other married bachelors in the community, and one of the most common activities at such gatherings was gambling.

the broader goal of justice. You are faced with a choice of challenging the judge and risk losing your client's case, or keeping your mouth shut and hence allowing such inequity to go unaddressed.

It is a burden that is born by racialized lawyers more often than by lawyers from the dominant culture. But it should not be a burden that racialized lawyers should bear alone.

The legal profession as a whole has a duty to support its members, including those from the racialized communities, in ensuring that our justice system is fair, equitable, and above all, just. Members of the profession and members of our judiciary must realize that no one - and no institution - is immune from racism and other forms of discrimination that have long defined our society. Our role as lawyers is to use our collective skills and wisdom to chip away such inequities with law as our tool, and the justice system as our chosen forum.

For substantive equality to happen, we need more than token minorities playing ceremonial role. Only when we are all truly equal, distinguished Chinese Canadians and other persons of colour will no longer be seen merely as model minority, but will be celebrated simply for who they are, and what they have accomplished. And for the rest of us, we will not have to play second fiddle to Yo Yo Ma - and other distinguished minority figures like him - but instead be judged solely by the quality of our work and commitment to our profession.