

Equality Deferred

Sex Discrimination and
British Columbia's
Human Rights State, 1953-84

DOMINIQUE CLÉMENT

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Introduction

Like most flight attendants in 1975, Jacqueline Culley was in her twenties, white, attractive, earning about ten dollars an hour, and working twenty or so hours a week. On 15 June, Canadian Pacific Airlines forced her to go on leave without pay. The reason: she was thirteen weeks pregnant. That same day, Culley walked into the offices of the Human Rights Branch in Vancouver. She found the one-page form for human rights violations, sat down, and began writing: “I allege that I was discriminated against by Mr. E. Stones and Mr. G. Manning of Canadian Pacific Airlines because of my sex.” Her complaint file includes a copy of a company memorandum informing female flight attendants that they were required to notify the airline immediately if they were pregnant. Ajit Mehat, a human rights officer, met with Manning, the vice-president of customer service, a few weeks later in the airline’s downtown Vancouver office. Mehat asked if there was any possibility that the policy could be changed. Canadian Pacific Airlines, Manning insisted, was not willing to make any adjustments.¹

Culley faced sex discrimination every day at work, even though women dominated the profession. At Air Canada, for instance, 80 percent of flight attendants were women. And yet, the industry divided flight attendants into two categories: pursers and stewardesses. No matter how long she worked for the airline, Culley would never become a purser, who was always a man and in charge during flights. Male pursers had attempted to organize separately in the 1940s, and although the National War Labour Board forced male and female flight attendants into the same union, it

also authorized separate wage and seniority scales. Between 1965 and 1973, female flight attendants were required to sign an agreement allowing Air Canada to arbitrarily dismiss them after ten years of employment.² They had to quit if they married or became pregnant, and they were automatically fired once they turned thirty-two. This was a common practice in Canada's airline industry. Pacific Western Airlines even refused to hire divorced women. Culley, who was married, would never have been hired except that, following a protracted political campaign by the Canadian Airline Flight Attendants Association, Air Canada had lifted its ban on married women (and had integrated salaries and seniority lists) by 1972. Other airlines soon did the same.³ But as Culley discovered, airlines were determined to retain their ban on pregnant flight attendants.

Gail Anderson, also a pregnant flight attendant facing an obligatory leave of absence, tried to sue British Columbia-based Pacific Western Airlines (PWA) in 1975 for violating the Canada Labour Code.⁴ For Anderson and Culley, being forced out of work was a financial burden: they had to leave after thirteen weeks, but despite modifications to the federal unemployment insurance program in 1971, pregnant women could submit claims only after twenty-eight weeks. PWA executives insisted that their policy was for passenger safety, although, as Joan Sangster argues, it is far more likely that pregnant women undermined the companies' attempts to promote a highly sexualized image of flight attendants:

[Pacific Western Airlines] attendants, perhaps more than others, were convinced their employer intended to use their bodies as a marketing lure for leering customers, since they had already fought a grievance over "sexualization" issues. In 1971, two BC-based PWA attendants refused to wear the Stampeder cowboy costume which the airline had already introduced on its Vancouver to Calgary run. With a very short, fringed skirt and prominent red bloomers underneath, they argued it simply invited male groping. When an attendant was "grabbed and pawed" on a flight to the BC Interior, she refused to don the "red panties," resulting in charges of insubordination, her suspension, and a threat of dismissal. A grievance ensued which the union won on the basis that this was not the "standard uniform" noted in the attendants' job description.⁵

PWA fought a lengthy legal battle with the Canadian Airline Flight Attendants Association over pregnancy in the 1970s. No federal law banned women from working or flying while pregnant, and the company's own

policy did not bar female pilots from flying. Its position was that pregnant women were not laid off, but instead given a leave of absence. PWA was aware that the Canada Labour Code prohibited businesses from refusing to employ women *solely* on the basis of pregnancy, so it resorted to arguing that pregnant women were physically incapable of working.⁶ To make its case, it played on the public's fears regarding airline safety and brought to the witness stand a steady stream of medical and aviation experts who testified that pregnant women would be unable to help passengers in distress or during emergencies. The presiding judge was confronted with images of eight-months pregnant flight attendants attempting to reach across a narrow aisle as the plane plummeted to earth or shook violently in the air. Sangster writes,

As if this scare testimony was not enough, PWA produced a number of doctors, including their own company expert on health and aviation, all of whom confirmed that pregnant flight attendants were safety risks because of their girth, the possibility of miscarriage, the extra dangers of jet lag effect and fatigue, their inability to get immunizations for foreign travel, vein problems, swollen legs, and their emotional state of mind.⁷

Culley's human rights complaint was a non-starter. PWA convinced the British Columbia Supreme Court that the case fell under federal jurisdiction, and as a result, it could not be brought before a provincial human rights board of inquiry (there was no federal human rights law in 1975).⁸ Anderson's lawsuit failed in court. PWA relented in 1981, albeit only partially, and allowed pregnant women to continue working longer while providing supplementary benefits. Not until 1985, following amendments to the Canada Labour Code and the federal Human Rights Act, as well as a critical Supreme Court of Canada decision, were prohibitions on employing pregnant women considered sex discrimination.⁹ This book is an attempt to understand the nature and pervasiveness of sex discrimination, and to what degree human rights law succeeded (or failed) in addressing gender inequality in the past.

HUMAN RIGHTS AND THE LAW

Jacqueline Culley's initial reaction to her employer's discriminatory policy was probably not to think of it as a violation of human rights. For most

people, a rights-claim begins with the belief that they have been treated unfairly. Culley probably talked to friends, family, and her union representative about options for redress, and someone suggested that she make a complaint to the Human Rights Branch. In essence, she sought redress for being treated unfairly, and she used the language of rights to frame her grievance. By this time, rights-talk had become the dominant language that people used to articulate claims against the state and society.

Human rights are the rights one has simply by virtue of being human. They are the “highest moral rights, they regulate the fundamental structures and practices of political life, and in ordinary circumstances they take priority over other moral, legal, and political claims.”¹⁰ If it is to exist, a right must be recognized by other people and must be secured through human action. It is an entitlement premised on a widely held set of beliefs about the nature of the entitlement; even if it is not recognized in law, a right emerges from a moral or ideological belief.¹¹ With every human right comes a correlative duty from others to respect and help realize that right. Furthermore, human rights are grounded on the presumption of the equal worth and dignity of all human beings. The right to life (or physical security) and the freedom to determine our own destiny are elemental human rights principles. These principles are not absolute, but they are universal and inalienable, and they exist prior to law.¹²

This book begins with British Columbia’s first equal pay legislation in 1953 and ends in 1984, with the collapse of the country’s most progressive human rights legal regime. Its focus on women and sex discrimination is easily explained. Whereas in the United States, racial minorities employed civil rights legislation more than others, human rights legislation in Canada was for a long time overwhelmingly associated with discrimination against women. It is difficult to exaggerate the significance of gender in the history of Canadian human rights law. Gender (sex) discrimination dominated debates regarding human rights by the 1970s, and women’s issues were inextricably linked to public discourse about such rights. The women’s movement rallied around human rights law and was often integral to its creation, promotion, and enforcement. And although a dozen different grounds for discrimination existed in most jurisdictions, more than half of the complaints received every year dealt with only one: gender.

This book is as much a history of women’s lived experiences as it is about law. It is filled with bitter recollections from women whose experiences of discriminatory treatment are transposed with memories of successful challenges to seek redress. These life stories range from absurd,

almost unbelievable, acts of discrimination to profound philosophical disagreements about equality: Janice Foster, a five-foot-tall 105-pound woman who was denied a chance to work in a sawmill because of her size; Jean Tharpe, a trained laboratory technologist who had to drive along a dangerous northern logging road to work every day because Lornex Mining Company refused to provide the same free accommodations it offered men; Dutchie Mathison and her daughter, who were not allowed to play golf with her husband before 11:00 a.m. because they were women, although the ten-year-old son of another player was welcome to play; Andrea Fields, a waitress who had to endure constant sexual overtures and groping from her boss, Wilhelm Ueffing; or Kathleen Strenja, a mother of three whose husband was unemployed and who was prevented from driving a taxi because United Cabs-Comox feared she might be raped. In this way, a study of human rights law is a unique window into understanding gender inequality.

This book, however, largely explores individual acts of discrimination. It goes without saying that inequality is far more pervasive, and the law addressed only one aspect of gender inequality. It is curious that, except for a few complaints from Aboriginal women, most formal inquiries into sex discrimination in British Columbia during the period of this study involved white women. An important recent development in the scholarship on human rights law has been the problem of naming, or intersectionality: recognizing that discrimination is not always based on a single factor, such as sex, but is instead a product of intersecting qualities, such as disability or race and sex.¹³ Unfortunately, because only a few cases from minority women and women with disabilities existed in British Columbia by 1984, this issue is difficult to address. Finally, although human rights law certainly touched on the lives of a wide range of women, there were limits to its reach. Becki Ross's study of burlesque in Vancouver documents the lives of women who faced sexual harassment and unequal pay every day.¹⁴ But their voices are silent in this book. They, and undoubtedly many other women, experienced discrimination but did not engage with human rights law.

Human rights laws are among the most significant legal innovations in twentieth-century Canada. A book on the subject is, therefore, a study of social policy. Some of the questions explored in these pages include, What was the success rate of people who submitted complaints? Was the process fair and equitable? What remedies were provided? What role did social movements play in enforcing the legislation? How did victims'

conception of their rights conflict with the response by the state and people accused of discrimination? Moreover, this book is about how we conceive of discrimination. Should intent be a factor in prosecuting someone for discrimination? Are neutral practices that indirectly harm groups of people, such as height and weight requirements for police officers, biased? Should state policy go beyond addressing individual discriminatory acts and confront systemic discrimination? How much accommodation is reasonably expected for employers and service providers? For example, is it unfair for a school board to refuse to employ someone with a criminal record?

This is also a study of how law is enforced. Joseph Katz, a member of the British Columbia Human Rights Commission, declared in 1979 that women were not needed on the commission because its members could consult their wives. Women's rights organizations quickly condemned his comment. In fact, advocacy groups were often critical of human rights law, yet women's organizations vigorously defended the system. Human rights law depended on the participation of social movement actors, particularly in promoting awareness of it, filing complaints, and lobbying for legislative reform. The idea of human rights has historically been highly statist, but grassroots activism has been at the heart of the most profound human rights advances. Social movements are defined by the beliefs they propagate, but they are composed of people who articulate, sometimes imperfectly, those beliefs. Ideas of rights evolve within a particular social context. The study of human rights must begin locally.

THE HUMAN RIGHTS STATE

By the 1960s, a profound shift was under way in Canada: a genuine rights revolution that would affect virtually every aspect of social, cultural, political, and economic life. It transformed the state, which increasingly regulated private activities. It also transformed social movements, which were playing a greater role in enforcing state policy. Human rights law was one product of the rights revolution.

Laws that bind the state to advance human rights principles, as well as the associated enforcement apparatus, constitute the "human rights state." The human rights state is premised on the belief that governments should create mechanisms to help alleviate social inequality. It is analogous in this way to the welfare state. And as in the case of the welfare state, a broad consensus has evolved regarding its necessity, although specific policies

may be contested. Human rights statutes were introduced in every Canadian jurisdiction between 1962 and 1979 to prohibit discrimination in housing, employment, and accommodation. The human rights state is composed of a system of similar provincial and federal statutes and commissions. To a lesser degree, Canada's Charter of Rights and Freedoms (1982) and legislation dealing with multiculturalism, official languages, and privacy are also pillars of the human rights state. All share the same principle: they oblige the state to defend and promote human rights. But it is human rights legislation, enforced by commissions, that is the most visible manifestation of the human rights state.

In essence, the human rights state is public policy. Canada's version began in the 1930s, with a few minor amendments to existing legislation that prohibited differential treatment on the basis of race or religion. Later, in the 1950s, several provinces passed anti-discrimination statutes. These laws were based on a formal equality model: everyone should be treated in the same manner irrespective of their membership in an identifiable group. Anti-discrimination legislation, according to historian James W. St. G. Walker, was premised on the assumption that discriminatory acts sprang from the aberrant behaviour or psychological problems of pathological individuals. The behaviour of these individuals influenced popular notions of what was right and moral. The solution, therefore, was to stop the disease at its source by mobilizing the state to punish discriminatory acts. But as we will see, such laws were largely ineffective. They were poorly designed and rarely enforced.

In 1962, human rights legislation began to replace anti-discrimination laws, a process that dramatically expanded the scope of the human rights state. Over time, the latter came to symbolize a profound change in the role of the state and the law. The first anti-discrimination statutes referred only to race, religion, and ethnicity; by 1984, human rights laws also prohibited discrimination on the basis of sex, sexual orientation, pardoned criminal conviction, social condition, disability, political affiliation, and age. In this way, the human rights state reflected changing values and beliefs about human dignity and equality. As Brian Howe explains in his study of Canadian human rights commissions, these institutions epitomize a fundamental alteration in how the law was enforced and experienced:

Rights to equal concern and respect are held to be basic. They stand above the ebb and flow of ordinary politics and cannot depend for their enforcement on benevolence or the good will of majorities or politicians who represent majorities. Rights require special recognition and they require

effective protection. Such protection cannot be achieved adequately through the ordinary political process, but through the courts or special administrative and quasi-judicial bodies (e.g., human rights commissions and tribunals). At the same time, rights are not simply claims on the state without corresponding responsibilities; they involve responsibilities among rights-bearers to tolerate and respect the rights of others.¹⁵

Human rights laws were further designed to “correct systemic conditions that produce discriminatory results even in the apparent absence of overt prejudicial acts.”¹⁶ They were premised on the belief that prejudice could be unspoken and systemic. In this way, they signalled a shift from formal to substantive equality: “A substantive equality approach asks whether the same treatment in practice produces equal or unequal results ... Substantive equality requires taking into account the underlying differences between individuals in society and accommodating those differences in order to ensure equality of impact and outcome.”¹⁷ The move toward substantive equality was apparent in several innovations in human rights law: these included exemptions for ventures (such as equal opportunity programs) designed to assist certain classes of people; the focus on education; scrutinizing seemingly neutral policies for indirect harm; and rejecting honest belief or lack of intent as a defence for discrimination. The principle of equality before the law had evolved to include both the law’s form and its impact in practice.

For women, human rights were one way of articulating their grievances by appealing to a universal discourse of accepted norms. Canadian human rights law first banned discrimination on the basis of sex in 1969. At a time when British Columbia’s leading newspaper could claim that “matrimony is the only career for women,” and as *Chatelaine* editor Doris Anderson suggested, “some men simply assumed sexual harassment was a perk of being boss,” the human rights state was truly revolutionary.¹⁸ However, it was not transformative. Its history suggests that there are limits to how far the law can facilitate radical social change. To be sure, the human rights state marked a profound departure from a time when discrimination against women was pervasive and entrenched in law. In this way, human rights law was revolutionary. Nonetheless, it was not transformative, because, although it acknowledged systemic discrimination, in practice it poorly addressed the root causes of gender inequality.

It is easy to assume that human rights are the natural and inevitable way of framing a vision for social change. And yet, not too long ago, appeals

to socialism or Christian values were more common.¹⁹ Some labour historians, for instance, lament that the labour movement has abandoned the principles of industrial democracy in favour of advocating for human rights.²⁰ Industrial democracy “was a direct challenge to the unaccountable power of employers to determine working conditions: democracy meant having a ‘say’ over those conditions.”²¹ Rights discourse, according to Nelson Lichtenstein, is an individualist rather than a collective advancement of mutual interests. Human rights “are universal and individual, which means that employers and individual members of management enjoy them just as much as workers ... A discourse of rights has subverted the very idea and the institutional expression of union solidarity.”²² Human-rights-based activism “has had virtually no impact on the structure of industry or employment, in either the United States or abroad. A rights-based approach to the democratization of the workplace fails to confront capital with demands that cannot be defined as a judicially protected mandate.”²³

Feminists have raised similar concerns in response to the way that “gender neutrality serves to obfuscate the gendered relations of social power.”²⁴ Appealing to human rights requires women to frame their grievances in a gender-neutral language. Such an appeal has consequences. In her analysis of sexual assault laws, Judy Fudge argues that “instead of directly addressing the question of how to best promote women’s sexual autonomy under social relations which result in women’s sexual subordination, feminists who invoke the *Charter* must couch their arguments in terms of the rhetoric of equality rights ... Feminist discourse about power is translated into a discourse of rights.”²⁵ As a result, the social construction of sexuality and the power relations that produce sexual inequality are neglected or ignored.²⁶ Moreover, rights discourse “can be exploited by groups with opposition political agendas.”²⁷ In 1972, for instance, the New Democratic Party was elected in British Columbia, and its Women’s Rights Committee insisted on the creation of a Ministry of Women’s Rights. Premier David Barrett, however, rejected the idea and famously stated, “I believe in human rights, not women’s rights.”²⁸ So human rights can be used as a gender-neutral discourse to the detriment of advancing women’s equality.

Framing grievances in the language of human rights raises the possibility of ignoring women’s lived experiences and history of oppression. Human rights legislation, as we will see, was a useful tool for confronting overt forms of discriminatory behaviour. However, it was less effective at

addressing systemic discrimination. Appeals to a neutral discourse of rights can obscure entrenched patterns of gender-based bias. They decontextualize the social position of women who are victims of rights violations, thus benefitting those men who do not need to overcome systemic barriers. In other words, laws that are not premised on gender differences might indirectly reproduce gender inequalities. Lori Chamberson, Judy Fudge, Hester Lessard, and Wanda Wieggers have demonstrated how men have used the equality section in the Charter of Rights and Freedoms to challenge laws regulating child support, social assistance for single mothers, affirmative action programs, sexual assault, and women's right to name or place their children with adoptive parents.²⁹ There is a disturbing trend toward formal rather than substantive equality in recent Charter litigation that has acted to the detriment of gender equality. The father's rights movement has scored several victories, most notably the 2003 *Trociuk* decision wherein the Supreme Court of Canada ruled that a law giving mothers the final authority on naming their children violated the rights of the biological father.³⁰ If human rights are shared by everyone by virtue of their humanity, women's rights are specific to women's distinct history and lived experience. The need for a vision of human rights that goes beyond universal qualities to rights that are specific to certain forms of oppression has inspired the rallying cry in recent years that "women's rights are human rights."³¹ Women's rights might take the form of a right to name children or a prohibition against using a woman's sexual history in assault trials. Gender-based violence is another example of a rights violation that affects women in a unique way.³² In other words, women have their own human rights needs.³³

A central theme in this book, therefore, is the limits of human rights law as a vehicle for pursuing gender equality. The law was not an effective tool for overcoming generations of inequality or addressing unspoken assumptions about gender. Equal pay provisions, for example, prohibited differential pay for women who worked in the same jobs in the same places as men. It did not apply to the sexual division of labour that was the root cause of unequal pay for many female employees. Women's workplace inequality was also a product of disadvantages arising from childcare obligations, yet human rights legislation never imposed positive obligations on the state, such as providing affordable childcare or parental leave for fathers. Over time, human rights legislation came to recognize equal pay for work of equal value, as well as systemic discrimination, but it remains haunted by its formal equality origins. As Wieggers suggests, human rights law

has to date been relatively ineffective in dealing with systemic inequalities in the workplace, in transforming the standards of evaluation or “merit,” and in addressing subtle issues of climate ... The removal of formal barriers to equality (and the apparent success of a few visible women) has apparently convinced many women students, and certainly many more young men, that women presently enjoy equal opportunity.³⁴

The failure of the human rights state in addressing systemic discrimination is an important theme of this study.

HUMAN RIGHTS HISTORY

The emergence of the Canadian human rights state coincided with similar developments around the world. Anti-colonial movements swept across the globe in the two decades following the 1948 United Nations Universal Declaration of Human Rights (UDHR), many of which drew on the language of the UDHR.³⁵ Twelve new African nations incorporated part of the UDHR in their constitutions. Several new regional treaties committed sovereign states to human rights principles, including the American Declaration of the Rights of Man (1948), the European Convention on Human Rights (1950), and the American Convention on Human Rights (1969). The first international human rights treaties were also established during this period, including the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Covenant on Civil and Political Rights (1967), and the International Covenant on Economic, Social and Political Rights (1967). Inspired by international developments, and responding to pressure at home, several Western governments produced laws to protect human rights. The United States, for example, introduced civil rights legislation in 1957 (Voting Rights Act), and anti-discrimination legislation also appeared in Australia and the United Kingdom. Meanwhile, the international human rights system was supported through a growing network of social movement organizations. Amnesty International (1961) and Human Rights Watch (1978) were among the most prominent of these but were certainly not unique. Regional associations such as the Asian Coalition of Human Rights Organizations and the Inter-African Network for Human Rights reported on human rights abuses. In Canada, at least forty human rights and civil liberties groups were founded during the 1960s and 1970s.³⁶ As a result of these

and similar developments, human rights “reached consensual (prescriptive) status on the international level.”³⁷

Nevertheless, historians have been slow to write about the history of human rights. In a contribution to the *American Historical Review*, Kenneth Cmiel lamented their lack of engagement with the subject, as did Samuel Moyn, who insists in his recent book that “historians in the United States started writing the history of human rights a decade ago.”³⁸ Since 2000, historians in Canada have begun to address this lacuna with studies on racial and ethnic minorities, organized labour, law, social activism, and other topics, written from a human rights perspective. The present volume is the first historical study of human rights law in Canada.

Studies of Canadian human rights law are rare.³⁹ Anyone who is interested in the subject must consult a limited scholarship that focuses mainly on Ontario.⁴⁰ And yet, the law is an essential element of Canada’s human rights history. In several recent studies, Janet Ajzenstat, Michel Ducharme, and Christopher MacLennan have examined both the impact of rights-talk on political discourse and the post-1960s proliferation of legislation to protect rights.⁴¹ MacLennan also posits that the declining influence of parliamentary supremacy on Canadian politics and law set the stage for a constitutional bill of rights in 1982. Stephanie Bangarth, Ruth Frager and Carmela Patrias, Ross Lambertson, Shirley Tillotson, and James W. St. G. Walker have documented how twentieth-century rights discourse spawned new social movements or transformed old ones.⁴² Frager, Lambertson, MacLennan, Patrias, Miriam Smith, Tillotson, and Walker have further argued that grassroots mobilization has been central to legal reform.⁴³ By contrast, R. Brian Howe and David Johnson’s book credits the state with innovations in human rights law. The present volume complements the existing literature by addressing similar themes: the relationship between human rights agencies and social movements; the impact of human rights laws; and the challenges facing the human rights state.

This book also contributes to the literature on Canadian human rights history by insisting that the human rights state must be considered in a local context. Abigail Bakan, Sonia Cardenas, Andrée Côté and Lucie Lemonde, Shelagh Day, James Kelly, Lucie Lamarche, Rosanna Langer, and Hester Lessard have produced tentative studies on human rights law. Still, they provide only a thin discussion of the role of social movement actors, few account for the political and ideological divisions that have shaped human rights policies, and none offer a detailed study of human rights law in practice. This book, in contrast, reveals the ways that local events, actors, and issues have influenced the adoption and enforcement

of human rights law. Even in the international literature, far too many scholars focus on treaties and international institutions to the detriment of local studies. In her book on national human rights institutions, American human rights scholar Julie Mertus makes a strong case for the need to focus on how human rights principles are implemented locally: "Among human rights advocates, the dominant wisdom is that the promotion and protection of human rights rely less on international efforts and more on domestic action." For this reason, "establishing national-level human rights mechanisms has emerged as a core part of the international human rights agenda."⁴⁴ A study of a provincial human rights regime helps us to understand the strengths and weaknesses of human rights law, and how ideas of rights have evolved in a specific context.

The regional bias in the literature is especially disturbing. The current framework for human rights law in Canada was pioneered in Ontario, and most studies reflect this origin. A study of British Columbia provides an opportunity to expand the scope of the literature and address many issues that have yet to be fully explored. Unlike Ontario, for instance, British Columbia was the site of intense ideological conflicts surrounding the human rights state. The province also introduced several legal innovations. For this reason, it is crucial for scholars to consider the human rights state in British Columbia as distinct from that in Ontario.

Geography, economics, culture, history, and politics can shape law in practice. The history of BC politics, for example, exemplifies the need for local studies of human rights law. Between 1956 and 1991, BC politics was sharply divided between the Social Credit Party (Socreds) and the New Democratic Party (NDP). The Socreds ruled almost continually from 1956 to 1991, with the NDP briefly forming government from 1972 to 1975. W.A.C. Bennett, a former Conservative MLA and Kelowna hardware merchant, led the pro-business Socreds, who relied on votes from rural British Columbia. Still, although dedicated to free enterprise, the Socreds were committed to government intervention in the economy. Bennett believed that private business should guide the economy but that government should intervene in large projects when the private sector failed, or had no interest, in developing them.⁴⁵ His administration built thousands of kilometres of highways and rail, created several Crown corporations including BC Ferries and BC Power, dramatically expanded post-secondary education, and developed hydroelectric power on the Columbia River.

Bennett was premier until 1972, when the NDP, led by David Barrett, defeated the Socreds. The two men could not have been more different. A former social worker and MLA since 1960, Barrett described himself as

a poor Jewish boy from Vancouver's East Side. The NDP had built a solid electoral base in urban British Columbia, especially among the professional middle class in the service sector. The party pursued a vision that was "more moderate, concerned to strengthen social policies, lessen foreign ownership, and exercise state control over public utilities and the exploitation of natural resources."⁴⁶ Barrett moved quickly after the election to introduce hundreds of new programs and policies. One statute passed during the NDP interregnum was the Human Rights Code, which was the most progressive human rights law in Canada. In contrast, the Socreds were loath to impose excessive state regulations on private business: the Human Rights Act they had introduced in 1969 was among the weakest in the country. Barrett's ill-fated decision to call a snap election in 1975 allowed the Socreds, led by Bill Bennett (son of the former premier), to return to power. Once again the province was in the hands of a pro-business government, except this time the Socreds had a stronger electoral base in Vancouver. They remained in office until 1991, when they were defeated by the NDP; soon afterward, they were eclipsed by a resurgent Liberal Party.⁴⁷

The two-party system produced profound philosophical disagreements regarding the human rights state. The limitations of the Social Credit government's weak Human Rights Act led the New Democratic Party to introduce a far more expansive Human Rights Code in 1973. A decade later, another Socred government introduced a variation of its original Human Rights Act. Not to be outdone, when the NDP returned to power in 1991, it replaced the Socred legislation with a variation of its original Human Rights Code. Lasting less than a decade, this law was replaced in 2002 by the Liberal Party's Human Rights Act, which had a great deal in common with the Socreds' 1969 and 1984 statutes. In no other province – and indeed few other countries in the world – were ideological divisions surrounding human rights law so apparent. Provincial government support for the human rights state in British Columbia was lukewarm at best, except when the NDP was in power.⁴⁸

Another theme throughout this book, therefore, is how governments can inhibit the application of their own laws. Only a case study approach, with a focus on the law in practice at the local level, can reveal how human rights law was open to abuse from a government that rejected the underlying principles of the human rights state. In sum, the existence of a law is no assurance that it will be enforced. On the one hand, the human rights state was innovative public policy that people used to resist discrimination. On the other hand, the system was plagued by delays, costs,

and innumerable other obstacles to enforcing the law. The intervention of social movements helped overcome some of these impediments, but the system was far from perfect. This tension is evident throughout the book, which attempts to strike an important balance in the analysis: that the limitations of the human rights state should not vitiate its significance as progressive social policy.

BRITISH COLUMBIA AND SEX DISCRIMINATION

An in-depth study of human rights law at the local level is clearly needed. British Columbia has a history of being at the forefront of human rights innovation. It was one of the first jurisdictions to enact human rights legislation and the first to prohibit sex discrimination. It also set precedents in areas such as gay rights and sexual harassment. The province has historically possessed a diverse workforce in manufacturing and primary resources, and it has extraordinarily high rates of unionization. Between 1961 and 1968, the provincial labour force grew faster than in any other province. In 1981, two-thirds of all BC jobs were in service industries (up from one-quarter in 1911). Women worked many of these jobs, particularly the low-paid ones. Employment in healthcare, education, and government services expanded from 7.6 percent of the provincial labour force in 1941 to 18.5 percent in 1971; women held half of these jobs and accounted for 46 percent of unionized workers in these sectors.⁴⁹ By the early 1980s, a majority of adult women were working outside the home, and almost half the provincial labour force was female. The province was also a leading immigrant destination and the site of decades of conflict regarding Asian immigration. Vancouver was unlike other major Canadian cities such as Halifax, Montreal, and Toronto in that it had a small black population, but a large number of Indo-Canadians and Chinese Canadians. Ninety percent of Chinese immigrants to Canada lived in British Columbia. The province's demographics, labour force, and political culture informed many of the debates on human rights and undoubtedly contributed to the creation of remarkably progressive – and remarkably regressive – human rights laws.

Sex discrimination played a prominent role in the human rights state. In every Canadian jurisdiction, sex discrimination in the workplace represented the largest number of complaints received by human rights commissions for much of their history (except in Nova Scotia and Ontario, where slightly more complaints involved racial discrimination). It is perhaps

not surprising that British Columbia was the first jurisdiction to prohibit discrimination on the basis of sex: the province has often led the country on women's issues. Historians Angus McLaren and Arlene Tigar McLaren point out that British Columbia "can claim to be the province in which the birth control movement in Canada was, thanks to Margaret Sanger's initial prodding, first launched."⁵⁰ Furthermore, in 1918, British Columbia was among the first provinces to elect women to public office after they had secured the right to vote (it was also the first province, in 1873, to enfranchise women for municipal elections). And it was in British Columbia in 1921 where a woman was appointed to cabinet for the first time in Canada's history, and in 1949, the legislature appointed the first female Speaker of the House. The BC legislation for mothers' pensions, introduced in 1920, was "the most progressive Mothers' Pension policy of its era in North America."⁵¹ It was also the first province, in 1924, to legislate maternity leave for women. By the 1960s, women in British Columbia continued to lead the country on many fronts. According to Jean Barman, BC

women were in the forefront in moving back out of the home, if not into the work-force at least to pursue further education. Not only did their fertility rate remain the lowest in Canada, but average age of marriage, while falling, was still the highest in English Canada. The province, alongside Ontario, possessed the lowest average number of children per family in 1966 at 1.7 compared with a high of 2.6 in Newfoundland.⁵²

Social movements play a crucial role in the history of the human rights state and have been especially prominent in British Columbia. As McLaren and McLaren note, the province "served, in the early decades of the twentieth century, as a spawning ground for a host of radical movements." It "found itself with an aggressive and sophisticated trade union movement ... Vancouver, moreover, was home to an active women's movement and to a wide range of other reformist groups – theosophical lodges, the Women's Labour League, the Women's International League for Peace and Freedom, the Anti-Vaccination and Medical Freedom League – all seeking to ensure a better future."⁵³ In the 1960s, a period long associated with social activism in Canada and abroad, British Columbia was again a locus of engagement. It was host to the country's first gay rights organizations; the first gay pride parade; Greenpeace; widespread anti-war protests during the 1950s and 1960s; no less than twelve civil liberties groups and eleven Aboriginal advocacy groups (in both cases, more than in any other province except Ontario); and dramatic student protests.⁵⁴ Union density

in British Columbia outgrew that of every other North American jurisdiction except Quebec: by 1972, more than 54 percent of workers were unionized.⁵⁵ The result was increased labour militancy. One of every three unionized workers walked the picket line in 1972.

In a province with a tradition of social movement activism, it is not surprising that the women's movement flourished. Women's groups – especially the Council of Women – played a prominent role in the campaign for mothers' pensions in 1920 and in their administration.⁵⁶ Women in Vancouver launched the Canadian birth control movement and, in 1939, the country's first branch of the Elizabeth Fry Society.⁵⁷ The Vancouver Council of Women was the second-largest of all the provincial councils by the 1950s. The BC branch of the Voice of Women contributed 40 percent of the national organization's budget in the 1960s, equal to its Ontario counterpart (the rest of Canada provided only 20 percent). By the mid-1970s, there were more than seventy-six local advocacy groups throughout the province. This was a remarkable increase from the 1960s, when the Voice of Women and the Council of Women were among its only women's rights groups. There were also at least forty-six women's centres, fifteen transition houses, twelve rape crisis centres, thirty-six service-oriented organizations (health centres, self-defence programs), and twenty artistic initiatives (women's music festivals, bookstores). None of these had existed before the 1970s. And this is a conservative estimate, which does not capture spontaneous grassroots protest activities, events such as Take Back the Night, or women's involvement in school boards and municipal councils. By the 1970s, the province hosted the country's first rape crisis centre, the first feminist newspaper (*Kinesis*), the first transition house, the first black woman elected to a provincial legislature (Rosemary Brown), the only female member of Parliament from 1968 to 1972 (Grace McInnis), and one of the first women's liberation groups in the country (Vancouver Women's Caucus); as mentioned, it was also the first province to legislate against sex discrimination. It was also the first to fund rape relief centres, transition houses, and women's health collectives. The Vancouver Women's Caucus led the most visible protest against the abortion laws in Canadian history: a caravan carried a coffin from Vancouver to Ottawa to symbolize the deaths of women from backstreet abortions. In 1991, BC premier Rita Johnston, the first woman to lead a Canadian government, established the country's first stand-alone Ministry of Women's Equality.

Several observers have noted the unique radicalism of the BC women's movement at this time. There is no question that, much as the Voice of

Women and the Vancouver Council of Women were highly active, the Vancouver Status of Women was among the leading women's rights groups in Canada. Whereas lesbians struggled to gain recognition among mainstream feminist organizations in the 1970s, the British Columbia Federation of Women at least had a lesbian rights committee from its inception in 1974.⁵⁸ Jill Vickers suggests that "experience with right-wing governments in British Columbia ... has made Vancouver feminist groups much more anti-system than many of their eastern counterparts."⁵⁹ Rosemary Brown, who was herself a key figure in the BC women's movement during the 1970s, also recalled that "feminists in the rest of Canada looked on in disbelief at the audacity of the actions and pronouncements of the Vancouver Status of Women. It contributed to the Canadian myth of British Columbians as unusual, and although they admired our organization no province moved to duplicate it; all were convinced that such an organization could not survive outside BC."⁶⁰ No other jurisdiction perfectly combines a widespread and influential women's movement with a progressive (and regressive) human rights regime.

Although the following study focuses on sex discrimination and human rights law in British Columbia, it places the provincial human rights state in national and historical context. Chapter 1, for instance, provides a historical survey of federal and provincial legislation as it affected women in British Columbia. It is impossible to appreciate the impact of the human rights state without a clear understanding of how gender inequality was entrenched in law. Chapters 2 and 3 document the origins of the human rights state in Canada. Social movements, especially those of organized labour and Jewish activists, were at the vanguard of campaigns to ban discrimination on the basis of race, religion, and ethnicity. However, neither these campaigns nor the legislation they spawned included sex discrimination. The only recognition for women came in the form of weak equal pay laws.

Chapters 4 to 9 are divided by key periods of human rights legal innovation in British Columbia. The province's first anti-discrimination law was the 1953 Equal Pay Act, which was soon followed with legislation banning discrimination in employment and accommodation. Certainly, this was an important stage in the evolution of the human rights state, but as Chapter 4 (1953-69) reveals, these laws were largely ineffective. Chapter 5 (1969-73) examines the next stage in the genesis of the province's human rights state. The *Socred Human Rights Act* of 1969 was a notable milestone: British Columbia became the first province to add sex to its list of prohibited grounds of discrimination. But the poor design and weak

enforcement of the legislation quickly became apparent. The NDP government's 1973 Human Rights Code, however, transformed the human rights state in British Columbia. Chapter 6 explains why it was remarkable for its time and explores the first five years after its enactment, when Kathleen Ruff was director of the Human Rights Branch. Ruff created a separate agency to deal with complaints – the Human Rights Branch – hired the province's first human rights investigators, developed procedures for filing and scrutinizing complaints, and fostered productive relationships with social movements. This was a period of genuine innovation as the fledgling branch struggled to confront many issues such as sexual harassment. Chapter 7 examines the period of Ruff's successors (1979-83), who presided over a dramatic expansion of the human rights state. It discusses the branch's increasing reliance on social movements, the effort to define a role for the Human Rights Commission, and the attempt to extend the human rights state into rural British Columbia. Chapter 8 reveals how the province set key precedents in human rights law while simultaneously acknowledging its limitations, especially with respect to equal pay. Finally, Chapter 9 chronicles the human rights state under attack, describing developments throughout Canada and demonstrating that the Social Credit government – re-elected in 1975 – disdained the law and did everything in its power to restrict its enforcement. Chapter 9 also examines the Socreds' 1984 Human Rights Act to compare competing visions for the human rights state. The dispute over the human rights state in British Columbia became a national issue, as the entire country debated the legitimacy of the province's reforms. In this way, the history of the human rights state in British Columbia constitutes an ideal case study for Canada, if for no other reason than because it was the epicentre of a conflict on the nature and legitimacy of the human rights state.