

**The Campaign to Implement Fair Employment & Fair
Accommodations Practices in Ontario**

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Among the modern international community, Canada is hailed as a forerunner in equality and a guardian of civic rights. But history teaches us that this was not always the case. In order to not take this privileged status for granted, it is important to study the agents of change, who fought hard to achieve the level of equitable participation that Canadians enjoy today. For many years, since its inception, the gatekeepers of Canada closely controlled who enjoyed the benefits of this country. It is not by any stretch of the imagination erroneous to claim that the lives of many immigrant groups were anything more than that of second-class citizens. It was mainly throughout the twentieth century that drastic changes came to affect the country, when members of these disadvantaged groups coalesced together to challenge the Canadian government and hold it responsible to professed principles of equality and inclusion.

A monumental episode in history that encapsulated this struggle was the Canadian Jewish Congress' campaign to combat discrimination. A brief that the CJC had sent to Premier Leslie Frost on January 24, 1950, expressed their desire for:

More comprehensive legislation than what is in the current *Racial Discrimination Act* to deal with some worse forms of racial and religious discrimination experienced in this province... Specifically to combat racial discrimination in employment, housing, and public spaces, in form of a "Fair Employment Practices Act" and an amendment to the Ontario *Racial Discrimination Act*.¹

It is clear that the CJC intended to proceed through the legislative route and accomplish two goals: the first was to introduce a Fair Employment Practices Act (FEPA), which they mentioned by name; and the second was to amend the existing *Racial Discrimination Act* of 1944. The former was to resolve discriminatory practices in employment, and the latter was to resolve discrimination in housing and service in public spaces. The purpose of this

¹ "A Brief to Premier Frost," Joint Community Relations Committee Collection, Ontario Jewish Archives.

paper is to illustrate that this was not what happened. Discrimination in employment was addressed through a *Fair Employment Practices Act*, which was provincially passed in 1951 and adopted federally in 1953, but the *RDA* was never amended.² Instead, discrimination in housing and property ownership was addressed by case law, as set in the landmark case of *Noble and Wolf v. Alley et al.*, [1951]. While discrimination in service in public spaces was addressed through an entirely new *Fair Accommodations Practices Act (FAPA)*, passed provincially in 1954 and heavily influenced by the events that took place in Dresden, Ontario. I reason that the success of each of these accomplishments was inextricably linked, since they were developing simultaneously. I believe that the passing of the *FEPA* was influenced by *Noble* and the events in Dresden that illuminated the dire realities of discrimination, and that the *Accommodations* act was conceived by influence of the success of the *Employment* act.

The aforementioned brief addressed to Premier Frost included appendices that pointed to specific evidences for the need of legislation to tackle discriminatory practices in the respective ambits of Canadian society; these were interrelated goals. Throughout this paper, I will use the brief as a guide to accomplish the following. First, I will provide context on the ubiquity of employment discrimination that existed through the data collected by involved individuals and present some early proposals of resolution. Second, I will explore the case study of *Noble* by delving into the legal thought presented throughout the case in order to establish its implications on housing discrimination. Third, I will elaborate on how the reaction to public discrimination in Dresden precipitated the passing of the *FAPA*.

² "JPRC Report on 1952-1954 in Meeting Minutes," JCRC Collection, Ontario Jewish Archives.

It is necessary first to clarify, that it was not the CJC *per se* that embarked on this campaign. But rather, they created a subsidiary body, along with members from B'nai Brith, to form the Joint Public Relations Committee (later renamed JCRC) in 1938.³ The name of this body quite clearly indicates what their mandate was. However, for the purposes of this paper, the focus is on their campaign to combat discrimination, the origin of which can be traced back sometime in the mid 1940's.⁴

The first appendix of the JPRC's brief referred to discrimination in employment, which was undeniably rampant in Ontario. This fact is supported by the JPRC's deliberate inclusion of a Toronto Daily Star article from May 1946 that read: "It is disgraceful that a veteran or anyone should lose a job in Toronto because the customers didn't like being waited on by a Jew."⁵ It can also be noted that much of the public sentiment sympathized with the concerns of the disadvantaged minority groups. As such, it was vital for the JPRC to channel this towards the Government. In fact, it can be inferred that this was their priority and why they called for a FEPA by name; as Ross Lamberston suggested: "people didn't need so much tolerance, as they needed jobs."⁶ Moving forward, as evidence the JPRC enclosed appeals that they received from members of the Jewish community. On November 7, 1946, Max [REDACTED] wrote that a jewelry manufacturer in Toronto denied him employment.⁷ The reason he was given by the representative of the manufacturer was that

³ Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press, 2005), 247.

⁴ Ross Lamberston, "The Dresden Story: Racism, Human Rights, and the Jewish Labour Committee of Canada," in *Canadian Working-Class History: Selected Readings*, ed. Laurel S. MacDowell et al. (Toronto: Canadian Scholars' Press, 2006) 339.

⁵ "Clipping from the Toronto Daily Star," JCRC Collection, Ontario Jewish Archives.

⁶ Ibid.

⁷ "RE: Max [REDACTED]," JCRC Collection, Ontario Jewish Archives.

“we don’t hire you people,” clearly referring to Jews.⁸ A more explicit example came from Shirley ██████ on August 16, 1944, when her employer, upon discovery that Ms. ██████ was Jewish, told her that “due to your nationality, we feel it better that you don’t come back in the morning,”⁹ Similarly, on June 12, 1942, Ruth ██████ wrote that despite having been commended on a “satisfactory duty” at her job, she was told “you could not come back because of your religion.”¹⁰

In light of the evidence that employment discrimination was ubiquitous, there were some early attempts to resolve this issue. In 1939, Gurston Allen, for the CJC, conducted and published a survey entitled, “Jewish Occupational Difficulties,” in which he proposed to deal with this issue by creating an *ad hoc* committee of influential Jewish leaders to negotiate with industry leaders to permit Jewish employment in their companies.¹¹ There are no indications to suggest that this plan ever materialized. This may be attributed to the fact that such negotiations would require substantial leverage and nothing would guarantee success or consistency. A further problem lay in the fact that although the JPRC’s campaign was motivated by the need to ameliorate the working conditions of its Jewish constituency, it made a conscious effort to achieve this for all minority groups who were subject to discrimination. This observation is absolutely consistent throughout their campaign, as they used “rights based claims” to justify their actions.¹² Having an ethnically specific committee would be antithetical to their purpose. The JPRC was aware that it

⁸ Ibid.

⁹ “RE: Shirley ██████,” JCRC Collection, Ontario Jewish Archives.

¹⁰ “RE: Ruth ██████,” JCRC Collection, Ontario Jewish Archives.

¹¹ “Jewish Occupational Difficulties,” JCRC Collection, Ontario Jewish Archives.

¹² Girard, *Bora Laskin*, 252.

would have to foster a cooperative relationship with the Government and required legal expertise to aid in drafting legislation.¹³

In 1946, the JPRC created a legal sub-committee, which encompassed a number of prominent Toronto-based Jewish lawyers.¹⁴ The most notable was Bora Laskin. Aside from an extremely impressive legal career that culminated in an appointment as the Chief Justice of the Supreme Court of Canada, for the purposes of this paper, Laskin was a scholar and jurist (legal expert). Laskin operated mostly from behind the scenes in an “advisory and strategist capacity.”¹⁵ He likely contributed to the 1947 brief by Saul Hayes and Jacob Finkleman of the JPRC, entitled “Evidence of Unequal Opportunities in Employment and a Suggested Fair Employment Practices Legislation.”¹⁶ This submission was made to Premier George Drew and supplemented with discussions, pleading his Government that the *FEPA* step was “nothing new” and that it reaffirmed the “principles forwarded by the *Racial Discrimination Act*.”¹⁷ The *RDA* was passed a decade earlier in 1944, from compulsion by the CCF and LP Parties through a minority-Conservative House where Drew was still the Premier.¹⁸

Although the *RDA* was effective in accomplishing what it set out to do, it was inadequate because its mandate was too narrow and limited to only a very specific discriminatory practice. It outlawed “the posting of public signs that indicated racial or

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid., 248.

¹⁶ “Evidence of Unequal Opportunities in Employment and a Suggested Fair Employment Practices Legislation,” JCRC Collection, Ontario Jewish Archives.

¹⁷ “Meeting Minutes from May 27, September 17, 1947,” JCRC Collection, Ontario Jewish Archives.

¹⁸ Lamberston, “The Dresden Story,” 339.

religious discrimination.”¹⁹ The *RDA* is an example of short-sighted legislation that tackled only an immediate concern, ostensibly to relieve some public pressure, rather than anticipating and addressing the larger issue. Presumably, the JPRC understood this, and for this reason decided to target this law. Also, it is probably more feasible to amend a law rather than to introduce a wholly new one. This effort brought no redress.

Another early attempt spawned from inside the House. Joe Salsberg, a representative in the Provincial Legislative Assembly for the St. Andrew riding at the time, introduced his own “Bill Respecting Fair Employment Practices” on April 7, 1948, only to be rejected by a vote of the House.²⁰ The reason for this could have been overtly political. Salsberg’s communist politics were detested among his adversaries, and allowing his laws to pass could be used to gain momentum and rally support for the communist movement. In the eyes of his opponents, further strengthening the communist movement, which already enjoyed widespread support among Toronto’s working-class residents, was to be averted at all costs.

So far, this has been a narrative of consecutive unsuccessful attempts. A pivotal moment dawned when Leslie Frost replaced George Drew as Premier and leader of the Conservative Party in 1949. Frost, albeit a rural Conservative from Lindsay, with a caucus largely unchanged from Drew’s, was much more sympathetic to the cause.²¹ Ross Lamberston once again lends his analysis as to this drastic change in view, positing several explanations that are quite plausible when considered together. He begins with a candid explanation, which states that “Frost was genuinely upset because the bigotry [inherent in

¹⁹ Ibid.

²⁰ “A Bill by Mr. Salsberg Respecting Fair Employment Practices,” JCRC Collection, Ontario Jewish Archives.

²¹ Lamberston, “The Dresden Story,” 341.

discrimination] was incompatible with the principles of Christian faith.”²² However, for the cynical Historian, this alone is inadequate. So Lamberston further suggests an explanation of political expedience, which states that, “in a time where democracy was failing to deliver its promise of equality in civic rights, people were turning to communism.”²³ Frost must have been cognizant of this fact and needed to prove that his government was capable and willing to address the concerns of the people.²⁴ Additionally, Lamberston suggests an economic explanation, which states that, “Frost was aware that immigration from Great Britain and the United States was shrinking, while the main repository of immigrants was increasingly from Eastern Europe” and other origins that were subject to discrimination in Canada.²⁵ An effective post-war economic recovery depended on the cooperation of a maximum work force, which discriminatory practices would have inevitably hindered.²⁶ The challenge for Frost was to convince those around him who either “denied the existence of discrimination and denounced it in public” and those who perceived government intervention in the private associations of individuals as overreaching.²⁷ On April 5, 1951, Frost’s bill successfully passed through the House floor, to a large extent because some important revisions were made by Laskin that will be elaborated on later.²⁸

The second appendix in the JPRC’s brief points to discrimination in housing and property ownership, specifically referencing *Noble and Wolf v. Alley et al.*²⁹ In 1948, a Jewish man named Bernard Wolf wished to purchase a cottage home on the coast of Lake

²² Ibid., 342.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid., 341.

²⁸ “A Bill by Mr. Frost Respecting Fair Employment Practices,” JCRC Collection, Ontario Jewish Archives.

²⁹ “A Brief to Premier Frost,” JCRC Collection, Ontario Jewish Archives.

Huron, which was part of a community called Beach O’Pines.³⁰ The original owner of the property since 1933, a widow named Annie Maude Noble agreed to the conditions and wished to proceed with the sale.³¹ However, the residents of the community were displeased with the idea of having a Jewish neighbour and contended that the transaction was illegal because the deed of the land included a “restrictive covenant” clause.³² The restrictive covenant prohibited the selling of the property to someone of an “objectionable nationality,” which explicitly included Jews, Blacks, Asians, and even went so far as to restrict persons that originated from specific longitudinal and latitudinal coordinates.³³ Restrictive covenants were quite common but before the court proceedings and implications can be discussed, it is important to review some pertinent precedents. Laskin brought to the table of the JPRC a tactic that Philip Girard calls, the “incrementalist strategy.”³⁴ This is the idea that in order to understand what was legally feasible, the JPRC deliberately sponsored certain cases where they could test out arguments. It was hoped that these would result in a favourable decision that would serve as a precedent for future landmark cases in order to reform the law.³⁵

The application of this strategy by the JPRC can first be observed in *Drummond v. Wren*. In *Wren*, a Jewish purchaser, the Worker’s Education Association, wished to acquire a plot of land that was subject to a restrictive covenant.³⁶ Although there was no contending party, the purchaser wished to take the matter to court in order to officially

³⁰ Girard, *Bora Laskin*, 255.

³¹ *Ibid.*

³² *Ibid.*, 256.

³³ *Ibid.*

³⁴ *Ibid.*, 248.

³⁵ *Ibid.*

³⁶ *Ibid.*, 249.

nullify the clause.³⁷ The JPRC secured John Cartwright as counsel, Laskin provided the brief, and Justice MacKay presided.³⁸ In 1945, MacKay ruled to void the clause mostly on an argument forwarded by Laskin, which posited that the covenant was “contrary to public interest.”³⁹ This point is worthy of further expansion. This reasoning is aligned with the legal theory of “Natural Law,” which sees law as aspiring to some abstract greater good.⁴⁰ The fact that the court admitted this non-legally technical argument illustrates that MacKay’s conception of a greater good concurred with Laskin’s: that the exclusion that the covenant promoted, hindered a pluralistic Canada.⁴¹

When the initial hearing for *Noble* in 1948 was in course, the JPRC retained the same counsel and approach, and felt confident that Justice Schroeder would follow the precedent set in *Wren*. The JPRC’s interest in getting involved was simply the next logical step after *Wren*, which they hoped would culminate in a binding precedent from the Supreme Court; establishing case law was the alternative to introducing legislation.⁴² Contrary to the JPRC’s expectations, Schroeder rendered the argument of public interest to be impermissible.⁴³ Schroeder subscribed to an almost diametrically opposing legal theory known as “Positivism,” that rejects such subjective conceptions of a greater good in favour of written and technical law.⁴⁴ Subsequently, the case was appealed, where in 1949 Justice Henderson upheld Schroeder’s decision and reaffirmed that “freedom of contract (as a logical

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid., 248.

⁴³ Ibid., 256.

⁴⁴ Ibid.

extension of the freedom of association) was paramount.”⁴⁵ He further reasoned that court intervention would not be conducive to a “healthy uncoerced plurality.”⁴⁶

The case was further appealed, this time making its way to the Supreme Court (SCC) for a final chance. At this point, some slight changes were adopted due to Cartwright’s appointment to the SCC, and he could no longer serve as either counsel or presiding justice due to the obvious conflict of interest.⁴⁷ The JPRC procured the service of J.J. Robinette as counsel who had a difference of opinion with Laskin on how to proceed for the final hearing. Laskin was convinced that his public policy argument, among the other forwarded earlier, still had merit. While Robinette showed a strong conviction that a more technically intensive argument would be more efficacious.⁴⁸ In hindsight, Robinette was right because in 1950 the Supreme Court overturned the earlier decision and struck down the restrictive covenant based on an intricate legal technicality that the purchaser’s nationality has nothing to do with how the land will be used.⁴⁹ Soon after, Frost followed the decision of the court and enacted statutes that prohibited the creation of new restrictive covenants and retroactively rendered existing ones null and void.⁵⁰

The third appendix points to discrimination in public spaces, expressly referencing the events that transpired in the town of Dresden, Ontario.⁵¹ A Maclean’s article from November 1949 suitably captured the situation in Dresden with the title, “Jim Crow Lives

⁴⁵ Ibid., 257.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., 258.

⁵⁰ Lamberston, “The Dresden Story,” 342.

⁵¹ “A Brief to Premier Frost,” JCRC Collection, Ontario Jewish Archives.

in Dresden.”⁵² “Jim Crow” was a personification of the body of segregation laws that were widespread throughout the Southern American States. This article publicly admonished the pervasiveness of racial discrimination that was present there. Dresden’s 1700 person population was roughly 20% Black as it served as a terminal for the underground railway.⁵³ Discrimination in Dresden was endemic and Black patrons were regularly denied service in barber shops, restaurants, and hotels, among other services available to the public. One such place was Kay’s Café, a coffee shop owned by Morley McKay (not to be confused with Justice MacKay), who notoriously and incessantly refused to serve Black patrons.⁵⁴ A local Black resident named Hugh Burnett repeatedly tried to appeal to different governmental bodies and initiate a lawsuit against McKay, only to be offered no remedy.⁵⁵ Legal workers informed him that legally his position was not favourable because of the precedent set in *Christie v. York*. In *Christie*, the Supreme Court, in 1939, “upheld the right of a tavern owner to refuse service to a Black patron” on a basis similar to the one seen in *Noble* of freedom of commerce.⁵⁶ Laskin appeared as a commentator on this case remarking, “state leadership should forbid discrimination by those who hold public licenses.”⁵⁷

In 1948, a glimmer of hope reared itself when the United Nations established a Charter of International Human Rights.⁵⁸ Laskin suggested that a private committee should

⁵² “Clipping from Maclean’s Magazine: Jim Crow Lives in Dresden, JCRC Collection, Ontario Jewish Archives.

⁵³ Lamberston, “The Dresden Story,” 340.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Girard, *Bora Laskin*, 247.

⁵⁷ Ibid., 248.

⁵⁸ Ibid., 254.

be installed to check that existing legislation is in compliance with the UN standards.⁵⁹ However, there is no indication this idea was ever adopted, possibly because of the reluctance of Drew's government, which saw government intervention in private business as an encroachment of individual liberty. There was however, one important implication from Laskin's suggestion that was adopted to the *FEPA*, which was still in revision at the time, which contributed to its success in being passed. Salsberg's and earlier drafts of the *FEPA* turned prosecution of infringement of this law to the courts to be processed in criminal trial.⁶⁰ The main departure in Laskin's amendment, was to move away from criminal prosecutions and instead to a separately appointed, "civic apparatus".⁶¹ Girard observes that this exhibited Laskin's distrust and disbelief in the consistency of the courts, which is plausible based on the court cases mentioned in this paper so far. Additionally, it may have been too challenging to accept the labeling of persons, who discriminate, as criminals.

Back to Dresden, Hugh Burnett, along with some other local residents, formed a group called the National Unity Association (NUA) to combat the injustices that they were suffering.⁶² The NUA lobbied on a municipal level to intervene and strip business licenses from those who discriminated.⁶³ The City decided to hold a referendum on this matter, which resulted in a roughly 5:1 ratio of votes against this action.⁶⁴ Gravely disappointed, the NUA sought to forge alliances with similar civic rights groups who had more experience and influence in activism. Eventually, they worked with the JPRC and the ideologically

⁵⁹ Ibid.

⁶⁰ Ibid., 260.

⁶¹ Lamberston, "The Dresden Story," 342.

⁶² Ibid., 340.

⁶³ Ibid., 341.

⁶⁴ Ibid.

different Jewish Labour Committee led by Kalman Kaplansky.⁶⁵ In order to exert pressure on Dresden, they toured other cities pleading with them to adopt municipal by-laws such as the one that was suggested in Dresden. This was met with success, where for example, Alderman Allen of Toronto introduced the municipal by-law, which stipulated that licensed businesses must abide in a non-discriminatory manner that the City of Toronto adopted on June 26, 1950.⁶⁶ Premier Frost also expressed support and, no doubt, with Dresden in his periphery added to the pressure of getting the *FEPA* passed. It is unclear exactly when the idea for a fair accommodations bill was conceived, however it does begin to appear in meeting minutes from 1952, designed in a similar fashion to the *FEPA*.⁶⁷ Compounded by the success of the *FEPA*, as evidenced by its federal adoption in 1953 and increasing pressure from Dresden, the *Fair Accommodations Practices Act* was passed on April, 6, 1954; this was less than a week after it was proposed.⁶⁸

The historical episode of the JPRC's successful campaign to combat discrimination in employment, housing, and public serves as milestone in modern anti-discrimination legislation. It is a story of cooperation between disadvantaged minority groups who put their differences aside for a common cause of alleviating some of the injustices that they, and others, had suffered. When reviewing the process of the CJC's campaign to legislatively prohibit discriminatory practices in employment, property ownership, and public space, it becomes evident that things did not always go as they planned. Their initial desire to implement a Fair Employment Practices act and amend the existing *Racial Discrimination Act* was only partially met. Nonetheless, a set of fortuitous circumstances presented

⁶⁵ Ibid., 331, 334.

⁶⁶ "Meeting Minutes for May 31, June 28, 1950," JCRC Collection, Ontario Jewish Archives.

⁶⁷ "Meeting Minutes from June 11, 1952," JCRC Collection, Ontario Jewish Archives.

⁶⁸ "JPRC Report on 1952-1954 in Meeting Minutes," JCRC Collection, Ontario Jewish Archives.

themselves that shaped the results of this campaign. However, the ultimate goal of outlawing specified forms of discrimination was met. *Noble* and Dresden brought to the forefront of Frost's and others' minds the realities of discrimination, which in turn helped exert pressure to get the *FEPA* passed. Once passed, an innovative and efficacious idea was conceived and manifested as the *FAPA*, replacing the existing *RDA*. Although the fight for further equality is still in progress, this episode exemplifies that although progress is slow, it can be achieved.