CHINATOWN GEOGRAPHIES
AND THE POLITICS OF RACE, SPACE AND THE LAW

By

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Vancouver’s Chinatown has a dual personality: it is constructed by Chinese Canadians for themselves, and for and by a white settler society. Its material and symbolic constitution reveals an equal social order: the constitution of the space of Chinatown reproduces racial hierarchies through spatial and legal mechanisms. This thesis explores how place becomes race through law. Building from historic or cultural examinations of Chinatown, this thesis investigates the place-based mechanisms of law on the racialization of Chinatown in the 1960’s. During this dynamic period of Chinatown’s growth, the City of Vancouver initiated three construction projects: slum clearance, beautification and the freeway. Within these projects, there were intense struggles over the identity of Chinatown, and the Chinese. Chinatown’s resistance against and complicity with these place-based legal mechanisms has been geographically articulated in its landscape, accounting for its dual personality.
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This thesis is an expression of my love for dirt. It is a reflection of my passion for all the aspects of real estate – the commercial, personal and esoteric. This thesis gave me an opportunity to delve into questions about the intersection of race, space and the law as a Chinese Canadian woman.

I want to thank an inspiring group of mentors, while not directly involved in this thesis, have helped me greatly to become a lawyer and scholar. These folks are the Honourable Justice Patricia Rowbotham, Honourable Jim Prentice, Q.C., Jim Rooney, Q.C., Dr. Sheila Martin, Q.C., Jonette Watson-Hamilton, and Dr. Eli Silverman.

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This thesis is dedicated to my little "bean".

CHAPTER ONE - INTRODUCTION

My love affair with Vancouver’s Chinatown began in 1977 when my family drove 989 kilometers from the flatlands of Calgary through the peaks of the Rockies to Vancouver’s Chinatown, arriving at the doors of Kam Kook Yuen for late night wonton noodles and crispy barbeque pork. Vancouver’s Chinatown felt both comfortable and foreign to me, and until I delved into this research, I did not understand why or how. Chinatown has a dual personality: it is constructed by Chinese Canadians for themselves and for and by a white settler society. Its material and symbolic constitution reveals an unequal social order: the constitution of the space of Chinatown reproduces racial hierarchies through spatial and legal mechanisms. This thesis explores how place becomes race through law.¹

I chose to investigate Vancouver’s Chinatown because my connection to Vancouver’s Chinatown was not only personal but political. Vancouver’s Chinatown was, at first reflection, just an annual summer pilgrimage for the Chow family. However, the connection and source of identity it posed for me as a Chinese Canadian woman was more compelling and political. The history, contemporary representations and discourse of Vancouver’s Chinatown suggested more than just neighbourhood chronicles of Chinese settlers. Indeed, my research into Vancouver’s Chinatown evoked historical narratives revealing social and geographical contestations, articulated through legal mechanisms. These place-based legal mechanisms were in turn grounded in the equivocal nature and allocation of property in land. Hence, I wanted to explore how the representations of Chinatown and Chineseness are equally ambivalent and mutable.

¹ Sherene H. Razack, Race, Space, and the Law (Toronto: Between the Lines, 2002).
To start a discussion about places like Chinatown, I begin in Chapter 2 with an exploration of the concept of property in land. As geographer Nicholas Blomley writes, “property in land is a right to some use or benefit of land. Such a right is relational, being held against others.” Legal theorist Jeremy Waldron explains that property rights are relational because such rights vary depending on the identity of the owner (such as a natural person, the Crown, an individual, or an Indian band), the subject matter of the property (i.e., material versus intangible goods), and the nature of the benefit (i.e., right to exclude, prohibit activities, grow crops, travel over, or sell). Hence, property is not a thing at all, but an expectation of a right over a thing. Property rights create social behaviour. When certain social behaviours over property are recognized by the collective, a system of social ordering is created. This social ordering is sometimes even more powerful than codified property rights. Abstractly, property in land requires collective consent.

Taking this analysis further, property theorist Carol Rose suggests that property should be described as relationships rather than things. In this view, legal rules about property are a set of shared understood guidelines, language or symbols such as a fence, painted line, an original duplicate certificate of title or even a garden. Taken together, the guidelines, language and symbols of property in land are a set of social rules about the use and allocation of land and places. Whether the rules are customary or colonial in origin, people have individual responses and experiences in

and around places. On a whole, places then take on distinguishing characteristics, feelings, moods, and identities by the organic interaction of people with places. When places develop into distinguished areas, we need to employ the term “space” to adequately recognize the material and discursive enactments of property, as opposed to the more generic term “place” which delimits social connotations.

Spaces are thought to develop organically and evolve into the neighbours or enclaves in which the inhabitants seem to naturally belong. Chinatown is thought to have emerged simply because Chinese people in sufficient numbers converged in one locale, deciding to live and work together. However, if we take sociologist Sherene Razack’s suggestion and reject this view that spaces simply evolve, and consider spaces to exist separate from the subjects who imagine and use them, then two interesting theoretical possibilities result. The materiality of space is the result of social practice and, in turn, the symbolic meaning of space constitutes those social practices.

According to Henri Lefebvre, social space is perceived, conceived and lived space. When analyzed in this way, we understand how the symbolic and the material work through each other to constitute a space and its subjects. Spatial experiences, practices and representations cement patterns of social hierarchy, discursively and materially. In the instance of Chinatown, the pattern of a white settler society is performed in the social order: permitting and prohibiting selective representations of Chinese Canadian history. These representations are played out both geographically and legally.

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5 Supra note 1 at 8.
6 Ibid. at 9.
When I refer to the pattern of Canada’s white settler society, I examine the nation-building mythologies that are premised upon a peaceful, nostalgic arrival of white explorers to an “empty” land. This is a racial story, deeply spatialized in the ways in which historical records and popular media install white Euro-Canadians as the hearty enterprising homesteaders while indigenous Aboriginal societies are rendered transparent, merely part of the natural environment. These nation-building mythologies also omit the countless other non-European settlers such as Chinese Canadians whose lives and labour also developed this land. For example, the official photograph of the Last Spike contains only one Chinese Canadian worker. This selective representation of Canadian confederation history reveals a concerted effort to perform the myth of a white settler society. If the important contribution of Chinese Canadian railway workers to confederation was recognized, then the national mythology of needy migrants of colour finding refuge in white Canada’s bounty would be in jeopardy. Such disruption to the national mythology of the white settler society is to challenge its primary claim to the land, and the right to rule.

The primary claim to land and the right to rule are entitlements that flow from the dominance of the white settler society over peoples of colour. Racial dominance relies upon the concept of “races” as being intrinsically, biologically or morally distinct and determined based upon phenotypic differences. Nonetheless, the erroneous concept of distinct races endures and is sustained by structures of domination. Race and racial categories operate materially in places and places

7 Ibid. at 3 and 5.
8 On November 7, 1885, Sr. Donald Smith was given the honour of driving in the last spike for the last tie which would join the east and west lines of the railway in Craigellachie, British Columbia. http://www.collectionscanada.ca/trains/kids/h32-1050-e.html
become racialized. The resulting space continues in turn to recreate and maintain racialization. In this thesis, I examine the legal and geographical processes by which racialization installs and maintains a white settler society.

The role of law is squarely implicated in the production of racialized space. Property law and its branches of zoning and planning laws regulate the uses of land. Initially, the legal regulation of land uses was confined to the separation of agricultural from non-agricultural uses, which broadly included industrial, residential and commercial uses co-existing side-by-side. By the early twentieth century, city officials and architects were influenced by bold aesthetic movements such as the Garden City and City Beautiful movements that addressed increasing urbanization.9 Local municipalities began adopting land-use zoning laws that further defined non-agricultural land uses because it was believed the cities could be designed scientifically to be more efficient. The role of law in the production and regulation of space increased significantly with the rise of planning departments across North America and the adoption of seemingly innocuous land-use bylaws.

Through land-use regulation, City planners dictate “desirable” behaviour in specific places. Executed through laws, certain behaviour is encouraged (e.g., industry, recreation) and others discouraged or outlawed (e.g., pedestrian-only streets (no driving), daytime-use parks (no camping)). Law creates spaces where only certain activities are enjoyed, and in turn, excludes or even outlaws other activities rendering them undesirable. In other words, land-use regulation pervades all aspects of private, personal, commercial and social activity.

For example, the advent of data tracking systems at points of sale has enabled commercial retailers to track consumer patterns to places of residence by integrating sales data, postal codes and income information from Census studies. Businesses use this consumer pattern data to produce and reproduce attractive services and commodities in that area and to that demographic.\(^{10}\) Through bylaws, local municipalities will approve of those uses. In response, developers will build certain types of housing at particular price points for a selective demographic in a specific place, and then other businesses respond to deliver lifestyle goods and services, and people respond by living or frequenting that “place”. Land-use regulation thereby transforms geography (places) into cognitive environments (spaces).

Nicholas Blomley suggests that the relationship between law and geography is more than two unidirectional oppositional processes of cause and effect.\(^{11}\) Law and space are interwoven in legal/spatial representations. According to Boaventura de Sousa Santos, legal knowledge is spatially located.\(^{12}\) The locality of law is fertile ground for further investigation. Indeed, the critical edge of geographic inquiry challenges one to examine legal and spatial representations, unmask the construction

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\(^{10}\) New real estate development or redevelopment applications generally begin by the assembly of a lifestyle profile based upon Census data, and in the US, PRIZM data. Once an appropriate “mix” of business, services and residential group is identified as viable, landowners will then make application for land-use development approval. In other instances, proactive local governments may pass a long-term land-use plan for the area which provides for anticipated uses that the developer will work within for their development application (often called, Area Structure Plans or Community Development Plans). In both situations, communities, developments and approved land-uses are a result of concerted planning efforts.


of those representations, and analyze how those representations can be used for broader social change.\(^\text{13}\)

I then apply this challenge to the examination of Vancouver’s Chinatown and its (re)production of Canada’s white settler society. This approach draws upon the large body of law, space, and race literature on the distribution of power and its underlying socio-spatial ideologies.\(^\text{14}\) In her study of the Channel Tunnel, legal geographer Eve Darian Smith has investigated questions about law and space, and in particular, the geographies of nationalism and postcolonialism.\(^\text{15}\) Geographer Nicholas Blomley in his study of Vancouver’s downtown Eastside has demonstrated how urban property is a site for socio-spatial stratification and racial inequality. Critical geographers such as David Delaney have considered how place becomes race in cities by examining how the construction racial categories operates in urban settlement and territorial invasions.\(^\text{16}\) Through the lens of these authors, I focus on how space is racialized through legal mechanisms in place-based contestations. And through this analysis, I connect the struggles over the social identity of Chinese Canadians in Canada’s white settler society to the struggle for territorial control, as executed through legal mechanisms such as land-use planning. In other words, geographical contestations produce racialized landscapes, and in this way, space becomes race through law.

\(^{13}\) Nicholas K. Blomley and Joel C. Bakan “Spacing out: Towards a Critical Geography of Law” (1992) 30:3 Osgoode Hall Law Journal 661 at 689-90 [Blomley, “Spacing Out”].


The use of a legal approach to examine the racialization of space plays out in many locales. I draw on two geographically distinct case studies: Africville, Nova Scotia in the late 1960's and Stanley Park, Vancouver, B.C. from the early 1900's. Using a critical geographical approach, Jennifer J. Nelson argues that the forcible eviction of blacks from Africville by the City of Nova Scotia was an enactment of racial and spatial discrimination that was principally (re)produced by the racial categorization of blackness as inferior. On the west coast of Canada, Renisa Mawani recounts the violent dispossession of Aboriginal peoples in the construction of Stanley Park through place and race-based mechanisms that simultaneously erased and evoked Aboriginality in service of Canada’s white settler society.

From these two geographically and culturally distinct case studies, a common thread emerges. The struggle for control over territory by Canada’s white settler society was achieved by the racialization of space, legal dispossession and commemorative erasure. While there are notable differences in how these mechanisms operated in Africville and Stanley Park, I identify place-based mechanisms, colonial technologies, and legal enactments. These legal enactments service a white settler society, and I relate the earlier discussion of writers in legal geography and critical geography to these case studies. Here at the end of chapter three, I identify and explain the intersection of space, race and the law.

I then take this race-space legal analysis to Vancouver’s Chinatown to show how the social definitions of race are related to the struggles over territory in Chinatown. I chose to examine Vancouver’s Chinatown during the 1960’s because

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18 Mawani, supra note 14.
Chinese Canadians in Vancouver were gaining political and economic status, having just elected the first Chinese Canadian to Parliament and having demonstrated financial and community strength in raising war bonds. During this time, the community of Chinatown was evolving from its roots as an enclave of first generation railway and mining labourers to second generation, Canadian-born Chinese seeking identity, acceptance and advancement in Canadian society. Hence, the 1960’s was a dynamic time for the social identity of Chineseness to develop, and at the same time, for the construction of physical projects in Vancouver’s Chinatown.

It was during the 1960’s that the City of Vancouver proposed three significant construction projects for Chinatown: slum clearance, beautification and freeway. In 1960, the City of Vancouver sought to take advantage of federal funding for redevelopment of aging inner-city areas, and identified the residential area of Chinatown (Strathcona) as a slum. Also during the early 1960’s, the City proposed beautification projects for the commercial area of Chinatown without community consultation. City planners wanted to design and determine the character of Chinatown’s residential and commercial areas.

This fervent desire to regulate Chinatown and its spatial representation extended into a third project proposed by the City that threatened the existence of Chinatown itself – the freeway. The proposed freeway focused community and academic debate around the physical importance and social meaning of Chinatown. Proponents of the freeway appealed to inspired benefits of modernity that would eradicate the antiquity and relevance of Chinatown in the social construction of Vancouver. Opponents to the freeway wanted to preserve the physical and cultural
space of Chinatown because Chinatown was not only a viable thriving community, its material structures represented the contributions of its early residents to the settlement of Canada. The freeway debates are a clear example of how Chinatown was racialized in the struggle over its control.

Vancouver’s Chinatown has been studied by artists and scholars, including cultural geographer Kay Anderson in her book, *Vancouver’s Chinatown: Racial Discourse in Canada 1875-1980*. Anderson approaches Chinatown, in her own words, from a “western perspective” as a cultural geographer. She examines Vancouver’s Chinatown from its inception to the 1980’s, arguing that Chinatown is a creation of white Vancouver rather than the organic enclave it is believed to be. In this thesis, I adopt Anderson’s conclusion that Chinatown’s status as an ethnic neighbourhood is a result of a century of cultural domination. According to Anderson, members of the Canadian state were active in constituting and legitimizing the idea of a Chinese race, to gain legitimacy from white Euro-Canadian society. My thesis aims to evaluate Chinatown by interrogating the ways in which it is racialized, implicating the place-based mechanisms of law. I examine the social and racial implications of seemingly “raceless” laws or innocuous planning laws. My analysis departs from Anderson’s cultural and historical geography because, as a legal scholar, I emphasize the relationships between law and geography, and its social implications for racializing Chineseness. Building from Anderson’s work, my

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An empirical study of Chinatown focuses on three major construction projects during the 1960’s, drawing from primary research at the Vancouver Archives and secondary sources by Chinatown researchers.

These three construction projects—slum clearance, beautification and freeway proposal—have in common the use of place-based mechanisms to construct Chinatown as a racialized space. The role of law is clearly implicated in the process, and identified to have mutually constituted the space of Chinatown and reify a racial identity of the community. Chinatown residents were cast as anti-modern and anti-Canadian if they opposed the projects. “Raceless” land laws in the three Chinatown projects are unmasked as placed-based mechanisms that support the nation-building mythology of a white settler society. Chinatown’s resistance against and complicity with these place-based mechanisms has been geographically articulated in its current landscape.

Chinatown’s landscape has a dual personality as space constructed by Chinese Canadians for themselves and as a social construct of Chineseness for and by a white settler society. This duality or struggle is the basis of my equivocal relationship with Chinatown as both comfortable and foreign to me as a Chinese Canadian. Chinatown represents an unequal social order that (re)produces racial hierarchies through spatial and legal mechanisms. Chinatown’s physical landscape is also a

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23 Many authors such as Sherene Razack, supra note 1, have in various ways discussed mutually constitutive processes. Authors such as E.P. Thompson in his book *The Making of the English Working Class* (New York: Vintage Books, 1966) renounced traditional categories in labour discourse, arguing that the class experience should be expressed in cultural terms.

24 While a gender analysis has not been discussed in this thesis, there are significant implications in the ways in which race, space and legal mechanisms are conceived and implemented and how they affect the identity of women and Chinese Canadian women. See Joanne Lee, University of Victoria and Bruce Lee, UBC, Working paper: To “Build a Better City”: Women and Culturally Hybrid Grassroots Resistance to Slum Clearance in Vancouver - the Leadership Role of Ethnic Minority Women” http://www.cpsa-acsp.ca/papers-2004/Bruce-Lee.pdf.
geographic articulation of an organic identity formed by the resistance of Chinese Canadians against racialization.

By understanding how place becomes race through law, contestations over land reveal the potential for social change. Complicity and resistance to dominant representations in land contestations illustrate the mutable nature of the social constructs themselves. In this thesis, the investigation of Chinatown in the 1960's shows how the social construction of *Chineseness* is legally and geographically articulated and socially manipulated in service of and in resistance to a dominant ideology. Vancouver's Chinatown is a point of reference through which Canadian identity is invested with cultural meaning, being vulnerable and capable of (re)representation. I see the potential to reconfigure classificatory spatial practices, and it is within and from this resistance that the promise of social change emerges.
CHAPTER TWO – PROPERTY: PRIVATE, PUBLIC, COMMON AND IN-BETWEEN

I turn first to the concept of property in land. Understanding that property can be private, public, or common allows us to recognize the socio-spatial nexus of property in land. Property in land can be viewed in purely economic, historic or philosophic terms. For example, property in land can be described solely in economic terms by the amount of rent a piece of land generates and calculating its capitalization rate to measure its worth. However, a social description of property in land encompasses a broader conception of property in land that includes how individuals live in, perceive and represent places. This approach reveals how space can be material and symbolic, and highly contextualized by its inhabitants.

Places are not just backdrops to social processes. Places are bound up within them. By reviewing the effects of historical precedent of segregation on contemporary demographic patterns, we see how the materiality of place is racialized through social processes. Later in this chapter, I connect the conception of space to the pervasiveness of law, and relate law and geography to an analysis of race and space. In later chapters, I draw upon this analysis to other case studies of places. In order to do so, I first establish an understanding of the concept of property in land.

A. TYPES OF PROPERTY

Blomley describes property in land as follows:

a right to some use or benefit of land. Such a right is relational, being held against others. . . . Property’s bundle of rights includes the power to

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25 "Property in land" is used here to mean, the expectation of the some right of ownership or use, that being the concept of *property* in a physical place as "land". Compare the term to having property in ideas, or property in chattels.
exclude others, to use and to transfer. Such rights are enforceable, whether by custom or law.26

According to Jeremy Waldron, private property “is not a simple relationship at all. It involves a complex bundle of relations, which differ considerably in character and effect.”27 Different bundles of legal relations exist because various types of property and owners exist. Waldron explains that property in material goods is treated differently than property in intangible goods, and that such goods are treated differently depending on whether the owner is a natural person, a corporation or even the Crown.28 Waldron suggests that in principle private property is the idea that each resource belongs to some individual.29 Where an individual owns property privately, that individual has the final determination as to the use of the resource.

It is an individual’s inviolable right to hold and use private property freely – the freedom and liberty to conduct one’s affairs with or on one’s private property without interference from the community or state.30 For example, the Constitution of the United States enshrines the right to private ownership of land as a fundamental right, subject only to justifiable intrusions by the state (such as for policing of criminal activities on private property). Regulation of private property is tolerated if there is rational public purpose such as security that justifies the state’s intrusion.

26 Blomley, “Law, Property”, supra note 2 at 121.
27 Waldron, supra note 3 at 28.
28 Ibid. at 30.
29 Ibid. at 38.
30 Waldron relates the “inviolability” of individual rights to the nature of the right itself. The nature of the right to property may be a “special right”, i.e., derived from mixing labour with it – as posited by John Locke - or arising out of particular events and transactions – as posited by HLA Hart. Or property can be a “general right”, where the right-bearer is conceived to have an independent, inherent and ethical entitlement to property –Hegelian. Under the later conception, Waldron argues for a better allocative system of property use and ownership.
Expropriation and heritage designations are two examples where public or collective interests infringe upon the rights of unfettered private ownership. In these situations, the state regulates or acquires private property in the name of a public purpose or use.\textsuperscript{31} Land can be expropriated by the state from private owners for public projects such as highways or hospitals. Or, a private owner cannot demolish her/his house because the state has claimed some measure of public ownership in the heritage architectural qualities of a privately-owned home. Property can be privately owned but subject to public interests – in other words, in the example of heritage homes, “public property” co-exists with “private property”.

Public property is something that is intended to be shared with everyone or that everyone has access to, such as public schools, public transit and public hospitals. It must be noted that access is a relative term because “public” property is not equally shared or shared in a substantively equal way by all (i.e., the destitute without adequate funds for bus fare do not share the transit system, the poor may not drive cars on freeways or boulevards, or minimum-wage earners do not have as much leisure time to enjoy nature parks, etc.). Public property is intended to be shared and enjoyed by everyone, although it may not achieve this goal uniformly.

Public property is typically held, regulated and maintained by the state on behalf of its citizens. Non-citizens can be excluded (as opposed to universal property, \textsuperscript{31}Expropriation is distinguished from heritage designations or other forms of regulatory takings (i.e., statutes which prohibit certain land uses – See \textit{Beaches Act}, R.S.N.S. 1989 c.2 purporting to take away all uses except park uses on waterfront property without compensation, or \textit{Agricultural Land Reserve Act}, R.S.B.C. 1996, c.10, purporting to prohibit non-agricultural uses, without compensation). Expropriation involves the compulsory transfer of land to an expropriating authority with compensation to the landowner, whereas a regulatory taking is prohibition against certain uses of land, without title transfer or compensation.
such as the open ocean\textsuperscript{32}, tides, weather, etc. that are held by no one state or body, and are shared universally). Under the public trust doctrine, public property is held by the state on behalf of its citizens, for public purposes and uses. Waldron uses the term "collective property" to describe the organizing idea of what I have called public property. He defines the principle of collective property to be where:

material resources are answerable to the needs and purposes of society as a whole, whatever they are and however they are determined, rather than to the needs and purposes of particular individuals considered on their own.\textsuperscript{33}

Public or collective property should not be confused with common property.

Common property is property where members of the relevant community are allowed to participate and jointly use the property that is held for this community’s benefit to the exclusion of others. Waldron defines a system of common property as:

rules governing access to and control of material resources are organized on the basis that each resource is in principle available for the use of every member alike. In principle, the needs and wants of every person are considered, and when allocative decisions are made they are made on a basis that is in some sense fair to all.\textsuperscript{34}

In the case of finite resources or resources that cannot be used simultaneously by everyone who wants to use them, common property may be subject to use allocations such as different levels of membership, citizenship or class.

A fitness room in modern condominium developments, a Mennonite commune, an expensive gated community, or membership golf courses all provide

\textsuperscript{32} Open ocean referring to at least twelve miles from shore, short of which would be in some cases under the sovereign sphere of coastal states or nations.

\textsuperscript{33} Waldron, \textit{supra} note 3 at 40.

\textsuperscript{34} \textit{Ibid.}
examples of common property or a “commons”. As opposed to “public”, common property is more like a form of private property that is shared by a number of members who self-select. An advantage of common property regimes is that smaller communities are best able to manage and regulate property resource allocations than large state bureaucracies. Common property regimes (CPR’s) have gained popularity because of the close accessibility to the members directly affected by it.

Recently, advanced real estate development has created, as Elinor Ostrom distinguishes in her work, an attack on public property concurrent with the preservation of common property. It seems counterintuitive to have a concurrent attack on public property while preserving common property. However, the rise of gated community developments and decline of public projects illustrates this possibility. As a condition of local zoning, subdivision and development approval for gated communities, developers must construct extensive amenities such as recreational areas (parks, arenas, theatres), schools and sidewalk/roadways that service the gated community. The local authority is relieved of its obligation to provide public projects such as schools, fire stations, and libraries by transferring the responsibility and expenditure to private developers. However, these amenities are created for common use of its gated residents only and not for the broader public. Gated communities have the theatrics of public space but function more as private space. One significant consequence is that local authorities are not required to

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35 There can be different levels of membership that govern its use allocations. For example, private golf courses have different levels of membership: full-memberships, spousal, ladies, visitor or guest that allocate and restrict use. Full members can book tee times on any day at any time. Ladies and/or spouses may be restricted to mid-day or afternoon tee times, and guests may be restricted to twilight tee times only, unless invited by a full member.


37 Peggy Cullen {NTD: find citation}
construct public amenities for those who live outside the gates because the ratio of amenities to population within an area complies with local planning objectives regardless of the fact that those who live outside the gates are excluded from using the gated amenities. In this example, the creation of “common property” displaces “public property”.

Public property has been defended by many current scholars as important and necessary for a rich and meaningful society. Public spaces such as parks, markets and squares are places where the citizenry can come together to recognize each other as citizens. Open dialogue or even internal dialogues are stimulated by the often uncomfortable confrontation of diversity. “Unprogrammed spaces” allow natural or sometimes random public interactions. According to Mitchell, “underdetermined spaces” are public spaces that need to be regulated in order to exclude those who may exclude the meaningful participation of the public. For example, public squares may need police protection to exclude violent homophobic protesters during a Gay Pride Rally which would otherwise be compromised.

The paradox of public spaces that are simultaneously “open to all” and yet in “need of regulation” is resolved by understanding the distinctions underlying the

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38 A factor in locating new schools or public amenities is the ratio of “available” services to the geographic area. Thus, the services provided in a gated community reduce the need for services in that area to the detriment of those who live in the area but outside the gates. These services include parks, leisure centres, libraries, theatres, and other typically public amenities.


40 For example, seeing the homeless search for food in a garbage can or watching the drug-addicted shoot heroin in plain sight, will cause discomfort. However, such discomfort or shock coupled with rational discourse can lead to meaningful dialogue that would otherwise not have occurred on “cleared” streets in front of gourmet food shops frequented by “similar” people. See also, Don Mitchell, “The End of Public Space? People’s Park, Definitions of the Public, and Democracy” (1995) 85(1) Annals of the Association of American Geographers 108.
The purpose of public spaces. To that end, Mitchell suggests that there are three axes of public property: ownership, accessibility and inner subjectivity. Public property must be owned by the state for rights to be protected. There must also be accessibility including physical access, security and safety, and convenience (e.g., wheelchair access, policing of criminal behaviour and proximate location within a city). The final element, inner subjectivity, describes how individuals relate to the public property. Because individuals come from different backgrounds, it is important to recognize the diversity in what various communities consider a public property.

If we consider a subjective view of property over purely legal, political or economic notions, we must recognize property as a social institution. In this next section, property is defined in relation to a nexus of social relationships and performance.

B. SOCIAL ASPECT OF PROPERTY

The spatial practices of individuals and the state produce the concept and institution of property. Property is not just comprised of the myriad of technical conceptions of tenure or land use. Nicholas Blomley in his study of legal geography and property concurs:

If the core of property as a social institution lies in a complex system of recognized rights and duties with reference to the control of valuable objects, and if the roles of the participating individuals are linked by these means with basic economic processes, and if, besides, all these processes of social interaction are validated by traditional beliefs, attitudes, and values and sanctioned in custom and law, it is

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41 Mitchell, supra note 39.
apparent that we dealing with an institution extremely fundamental to the structure of human societies as going concerns.\(^{42}\)

The use and allocation of property creates social meanings that merge with physical land.

Property arrangements such as ownership and regulation have important implications for social ordering.\(^{43}\) As Blomley observes:

Property discourse offers a dense and pungent set of social symbols, stories and meanings. The formation of national identity is, in part, a mediation on the meanings and significance of land as property, evidenced in frontier stories in the United States or mythologies of the English garden.\(^{44}\)

In Canada, early histories of indigenous nations have been erased to facilitate the making and maintaining of a white settler society, premised upon European settlement rather than forcible displacement.\(^{45}\) In addition to the erasures of histories, Bradley Bryan’s examination of the ontology of property shows that the very conception of property from an Aboriginal perspective is fundamentally different at its core from English concepts.\(^{46}\) European settlers eschewed Aboriginal conceptions of property in favour of the nation-building mythology of a quaint and peaceful English settler society, modeled of course after the “motherland”.\(^{47}\)

Property theorists such as Carol Rose would describe the intersection of social relations and land as the site where “custom” claims are communicated in what she

\(^{42}\) Blomley, \textit{supra} note 2 at 122.

\(^{43}\) \textit{Ibid.}

\(^{44}\) \textit{Ibid.}


\(^{47}\) \textit{Supra} note 1 at 5.
terms enactments of persuasion. A focus on the acts of persuasion emphasizes property as relationships rather than as things. Even possession claims rely upon a weak form of consent theory, whereby the exertion of control is communicated, recognized, enforced or respected by neighbours or authorities. The shared language of symbols or agreed measures of demonstrating control can be as simple as an English gate or a commercially negotiable indenture. According to Rose, property is persuasion, that is, property is enacted through performances.

In addition to social behaviour, there is a material aspect to land – physical markers such as fences or survey monuments that are respected and enforced. Private property signs that deter trespassers and painted lines on roadways demarcate proper driving lanes. Legal systems reinforce the authority of physical markers. Legal documents evidence real property entitlements: deeds for homes where people live, leases for businesses where people work, and state-designated campsites where people play. These material and social enactments delineate property.

C. THE PRODUCTION OF SPACE

Blomley suggests that in the material and discursive enactments of property, space is powerfully present. Space is produced through performance and it disciplines the performance that is condoned or tolerated within it. According to Blomley:

Space itself is not only produced through performance, but is simultaneously a means of disciplining the performances that are possible within it. These social performances are citational, reiterating past performances and thus reproducing dominant norms and practices.

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48 Rose, supra note 4.
49 Ibid.
50 Blomley, “Law, Property”, supra note 2 at 122.
at the same time as they diverge from them. ...The enactment of property, in turn, helps constitute those spaces, investing them with particular valences and political possibilities. Again, this can be powerfully regulatory – expectations of appropriate social activities within certain spaces clearly serve to discipline social life.51

Blomley suggests that there is more than a causational relationship between the effect of laws "on" a space. Spaces are "socially policed". Permitted, condoned, tolerated and acceptable activity or behaviour is communicated or performed in spaces. The regulating effect of spaces is socially commanding. Expectations of appropriate activities are known in spaces even if explicit signs or codes of conduct are not posted. For example, it is not acceptable to sleep in public parks but one can "nap" if for recreation or leisure. Another example is that breast-feeding is more socially acceptable in spaces associated with the domestic sphere such as shopping malls, but not in masculine spaces such as commuter train stations.52 Spaces welcome those who are acceptable them, and in turn, a greater number frequent those spaces, further characterizing the spaces in certain racialized, classed and gendered ways.

It is important to note that this approach to space is not merely an exercise in unmasking or deciphering the subtext or hidden messages encoded in spaces (however enlightening this exercise may be). As Razack notes, "to treat space this way is to remain on a purely descriptive level that does not show the dialectical relationship between spaces and bodies. It does not show how the symbolic and the

51 Ibid. at 122-123.
material work through each other to constitute a space." Razack refers to Henri Lefebvre’s widely cited formulation of three elements that produce space:

**Perceived Space** – emerges out of spatial practices, organizes social life by the performance of the space through daily routines;

**Conceived Space** – entails representations of space, where originally conceptualized by planners, architects and so on; and

**Lived Space** – directly lived through its associated images and symbols, or by those who experience or describe the space.

This formulation of space allows a deeper analysis of spatial practices. To explain perceived space, Razack uses the example of the daily life of a tenant in government sponsored housing project. The tenant’s daily routine of walking to the bus stop formulates how the tenant comes to know him/herself within the space, and how the tenant is known within the space. For conceived space, Razack explains that how the housing project was initially conceptualized can dictate the tenant’s daily reality. Finally, lived space for the tenant is the racialized space in which communities of colour both experience their marginal condition and resist it.

We see how subjects come to know themselves in and through space. In legal geographer Eve Darian-Smith’s study of the Channel Tunnel, she observes the symbolism and impact of the Channel Tunnel over the past twenty years on English society and its national identity. She notes the anxiety of English residents to the construction of the Channel Tunnel:

When understood as a step in the unification of the New Europe, the Channel Tunnel is often interpreted by English observers less as a modernist triumph and more as an intrusive continental penetration of

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53 Razack, supra note 1 at 8.
54 Ibid. at 9 (paraphrased and emphasis added).
55 Ibid.
56 Supra note 15.
sovereign island soil. ... Thus, for many English people, the Channel Tunnel marks the beginning of a new postnational era identified with the ever-increasing power of the European Union (EU) and a continuation of the territorial losses associated with the end of the British empire.\(^5^7\)

According to Darian-Smith, the Channel Tunnel represents a postcolonial moment in which a former colonizer is being colonized on several fronts.\(^5^8\)

Darian-Smith explores the cultural meaning of the Channel Tunnel on English society. In her words:

> In focusing on the implications of perspective as a way to locate and analyze the impact of legal authority, I am not arguing that one point of view represents “truth” more than another. Rather, I stress that there exist multiple centers and horizons in which people are located and from which perspectives are produced, often simultaneously. ... It is when such perspective are “naturalized” in rhetoric, or taken for granted as actually existing, that they become powerful in the organizing of social worlds.\(^5^9\)

Darian-Smith’s methodology includes the exploration of historical narratives and legal myths to show the interconnectedness and subjectivity of strategies of power. While she does not specifically apply Lefebvre framework, her study stresses the production of space as viewed and constituted by people’s practices, representations and memories of place.

**D. SPATIALIZATION - PLACE BECOMES RACE**

Spatial practices, representations and experiences serve to “cement” age-old patterns of social hierarchy, and they do so discursively and materially. Spatialization reveals how spatial segregation is a means of perpetuating a social hierarchy, implicitly and informally. As David Goldberg observes in the American context, in

\(^5^7\) *Ibid.* at 2.  
\(^5^9\) *Ibid.* at 190.
the absence of state-enforced segregation in the United States, (or apartheid in South Africa), there are subtle mechanisms that enforce segregation with equal effectiveness.\textsuperscript{60} These subtle mechanisms include urban planning, project housing, and laws such a Residential Environment Bill that seeks to maintain "norms and standards".\textsuperscript{61} Sixty years after formal desegregation, racially separated communities are still maintained and created. Not only has space been racialized in this American context, the colonial dichotomy of East/West has racialized space by determining subjects as civilized (West) or savage (East). White subjects are produced as innocent, entitled, rational and legitimate, and the Other is produced as the opposite. Because segregation, internment camps and slavery have officially ended, there is an assumption that any remaining "natural" segregation or "concentration" of racial groups is vestigial or freely chosen.\textsuperscript{62} Legal geographer, Richard T. Ford, argues:

Even as racial segregation is described as a natural expression of racial and cultural solidarity, a chosen and desirable condition for which government is not responsible and one that government should not oppose, segregation continues to play the same role it always has in American race relations – to isolate, disempower, and oppress.\textsuperscript{63}

Making the same point, Mona Oikawa describes how the spatial separation through the means of the internment of Japanese-Canadian families in the 1940’s was not only a national project of dispossession but also empowering for white people with

\textsuperscript{60} David T. Goldberg, “Polluting the Body Politic: Race and Urban Location” in Blomley, \textit{Geographies Reader} at 75.
\textsuperscript{61} \textit{Ibid.} at 77.
\textsuperscript{62} \textit{Ibid.} at 78.
considerable material and symbolic advantages. It is the relationship of groups of individuals to each other that form economic or political spatial hierarchies.

It is important to note the polarity within America’s history of slavery, and the fundamental difference it represents in the histories of America and Canada. This difference is also manifest in the preeminence of private rights in the American constitution and the root of its national mythology in independence. However, the Canadian context can still benefit from interrogations and conclusions about how race is spatialized in the interests of white subjects. That is, the process by which legal and social practices reproduce racial hierarchies is a spatialized racism.

Before moving forward, I want to relate this discussion about space and race to the broader examination of Chinatown. Kay Anderson argues that various levels of the Canadian government upheld the long tradition of interpreting Chinatown in terms of an essential Chineseness, and inscribing the state’s beliefs in the physical landscape. Anderson distinguishes her work from prior social science of racialized minorities which focused on white prejudice and its economic consequences to explain conflict and ethnic enclaves. In Anderson’s words,

In contract to those perspectives, I have traced the construction of knowledge about the Chinese, demonstrating how it informed government practices and conditioned the territorial arrangements through which racial concepts were inscribed and reproduced.

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64 Mona Oikawa, “Cartographies of Violence: Women, Memory, and the Subject(s) of the “Internment”” in Razack supra note 1 at 71.
65 Supra note 19 at 226.
66 Ibid. at 245.
67 Ibid. at 246.
Place is considered as product and source of race. In the case of Chinatown, the ideological formation of *Chineseness* (as race) is compatible with its spatial articulation.

The concept of “race” is social construct. It endures because it is presumed and acted upon by many to exist. More accurately, racial categories endure to sustain structures of domination. In the words of Razack, race becomes collapsed with place – as a social construct, the space that is produced creates and maintains a white settler society. The creation and maintenance of a white settler society in Canada relies upon several myths. One myth is that Canada was peacefully settled because representations of Canada at the time of white contact depict an “empty land”, a terra nullus. A closely related myth is that non-white communities have no meaningful history in Canada. A popular myth is that ethnic enclaves continue to exist by individual choice (e.g., “Chinese like to stick together”) rather than by any other more prominent reason (such as unfair treaty dispositions, racism, etc.). The reoccurring commonality in these and other myths is a conception of a nation that belongs primarily to white society, and that all others are allowed to exist at the leisure of dominant white society. As a result, the disparate distributions of wealth, which are materially represented in say, residential patterns, are justified by this nation-building mythology.

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68 *Supra* note 1 at 245.
69 Mawani, *supra* note 14 at 105.
71 Ford, *supra* note 63 at 96.
In this context, a race/space analysis helps explain the distribution of power and subjects in specific places, and the socio-spatial ideology underlying that distribution. I will return to elaborate on race/space analysis after considering the role of law in the production of racialized spaces. Through a review of common zoning and urban planning laws, the apparent racelessness or innocence of planning policy can be unmasked as a vehicle for nation-building and a white settler society.

E. URBAN PLANNING PRIMER – BRANCHES OF LAW’S PERVERSIVENESS

Urban planning is concerned with the management of urban change: it is the distribution and operation of investment and consumption processes in cities by local governments for the “common good.”

The roots of urban planning can be traced back to small-scale environmental designs during the late nineteenth century. In designing buildings, architects considered how certain design features could influence or determine social behaviour. For example, early church architects designed the great heights of cathedrals to make the churchgoer peer upwards generally towards light (equating to higher knowledge, God or the heavens).

Architectural determinism expanded from the design of buildings to the urban planning of cities. Architects focused their efforts on designing what they called aesthetic movements to promote urban design and land use. Architects created various aesthetic movements in response to the perceived squalor of crowding and urbanization of increasing city populations. Popular design themes such as the

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72 Pacione, supra note 77 at 157.
Garden City and the City Beautiful Movement promoted order, dignity and harmony, evoking rural atmospheres and Beaux-Art aesthetics.\(^{75}\)

In Canada, garden designer Thomas Mawson completed a master plan for the City of Calgary in 1913, in addition to his plans for Regina, the University of Saskatchewan and Stanley Park in Vancouver.\(^{76}\) By 1913 over forty American cities had prepared master plans and in 1917 the American City Planning Institute was established.\(^{77}\) A few years earlier, Swiss-born architect Charles Jeanneret (Le Corbusier) prepared a city plan for a population of three million people based upon the concept of high-rise buildings, elevated roadways, land-use segregation and the use of mass production techniques.\(^{78}\) Apart from the distinction between agricultural and non-agricultural use, land was not traditionally segregated by the intensity of its use. Homes, factories and markets were usually located next to each other within short walking distances.\(^{79}\) On the other hand, Le Corbusier’s plan was premised upon the mass use of the automobile and railway lines between segregated land uses.

The tenets of Le Corbusier’s plan would have a profound and lasting affect on urban planning and the construction of cities in North America. In addition to the construction of freeways, the segregation of land uses as a predecessor to modern day zoning law is implemented universally in Canada. In 1925, the British Columbia

\(^{75}\) Ironically, critics of the movement asserted that the uniformity and high-mindedness of the style created dullness and sterility in urban environments, ironically contributing to an increase in the urban blight that the original advocates of the movement were seeking to ameliorate.

\(^{76}\) University of Calgary, “Thomas Mawson Fonds 1913-1914”, online: http://www.ucalgary.ca/lib-old/CAA/mawson.html.\(^{77}\) Pacione, supra note 77 at 163.

\(^{78}\) Ibid.

\(^{79}\) Mixed-use buildings would have residential apartments located above light industrial workshops, located next door to a butcher or bakery. In the last ten years, there has been a return to mixed-use (commercial/retail and live/work) zoning for many new comprehensive development projects in the lower mainland.
provincial government passed legislation authorizing municipalities to establish planning advisory boards, which quickly developed into planning commissions such as the Vancouver Town Planning Commission. By 1928, the renowned town-planner Harland Bartholomew, presented to City Council, *A Plan for the City of Vancouver*. Lance Berolitz describes the plan in the following terms:

> It was an awesome and comprehensive document covering almost every conceivable aspect of planning the growth of the city for the next fifty years. It laid out detailed recommendations for land-use zoning, an arterial street and public transit network, recreation facilities and a series of scenic “Pleasure Drives”. The plan addressed such diverse issues as the visual appearance of residential properties, the provision of schools and park space, local neighbourhood shops and services, the replatting of certain streets to take better account of the existing steep topography and a plan for a port.

Not all of Bartholomew’s plans were adopted or implemented, but many of his ideas have become basic parts of the spatial vocabulary of the city. Bartholomew’s codifying of land uses prevails and, in Berolitz’s words, has left an “indelible mark on the patterns and fabric of urban form in Vancouver.”

The introduction of land uses and zoning powers in the early twentieth century was novel and popularized by the modernist movement. Land-use zoning laws were emblematic of the desire for an emerging newly industrialized yet aesthetically organized new city. Land-use zoning, however, would have its opponents. Critics of land-use segregation argued that zoning had an exclusionary effect: undesirable uses

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81 Ibid. at 61.
82 Ibid. at 62.
83 At the end of the 19th and beginning of the 20th century, modernism was a variety of political, cultural and artistic movements that was rooted in the changes in Western society. Premised on change, scientific methods and industrialized efficiency, modernism was a rebellion against late 19th century academic and historicist traditions, and embraced the new economic, social and political aspects of the emerging modern world.
are regulated by zoning ordinances that attempt to or result in "undesirable" people being excluded from desirable areas. Some examples of exclusionary land-use restrictions include minimum floor-space ratios, interior lot line set-backs, and frontage-to-depth ratios or exclusion of multiple-family residences on minimum lot sizes. Lower-income or manorial family (extended family) arrangements that allow for extended families to cohabit in one larger house, are excluded from areas with this type of exclusionary zoning.²⁴

Supporters of land-use zoning have argued that certain types of lands, such as agricultural lands which are vulnerable to market forces, needed to be protected from unscrupulous urban development. Moreover, zoning tools can maintain desirable neighbourhoods—residents can safeguard the unique character of the area without fear of commercial intrusion from intensive industrial uses or large-scale recreational uses that can displace a tight-knit community.²⁵ Conversely, incentive-based zoning can encourage development in areas of a city that developers are reluctant to enter into because of marginal economic gains, declining infrastructure or impoverishment.

Unique zoning ordinances such as comprehensive development or planned unit development, can create orderly neighbourhoods that contain privately-funded civic services. For example, Concord Pacific cooperated with the City of Vancouver

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²⁴ In some cultures, families include extended family members such as grandparents and children, who reside together. The nuclear family is not a residential pattern for all, and restrictive zoning prevents larger homes, extensions or coach houses from being built.

²⁵ Large lot zoning is the restriction of development to minimum lot sizes (e.g. No. 5 Road in Richmond was intended to be protected for "hobby farmers" for agricultural uses, known as "Blueberry Lane"). Downzoning is the rezoning of an area to a lower density use or lesser number or types of uses. Downzoning is enacted to protect an area from intense development, but can have the affect of reducing land values (although in some instances, it can increase land values, e.g. a posh residential neighbourhood is protected from mixed-uses). Racetracks, PNE and RV camping grounds are examples of large-scale uses that are not occupied year-round and have alienating effects of "dead space" on a community, while also causing congestion problems during their intensive-use season.
in the development of the left-over Expo lands located at False Creek north. The creation of David Lam Park, a K-6 school, daycare, tennis courts, playgrounds and the upgrades to the seawall bike pathway are examples where Concord Pacific was given the freedom to design the various tower developments to meet market demands while satisfying negotiated requirements for non-market housing, public art, public services and public access.

F. **Law and Geography**

The power to regulate places and to spatialize "desirable" uses, people and activities is executed through law. This power and influence pervades all aspects of private, personal, commercial and social activity. Zoning can determine where one lives, and where one lives is profoundly important (people constitute and are constituted by the spaces they inhabit).

A compelling example is the situation when you are asked to provide your postal code by the cashier at the point of sale of a product. The clerk advises that it will be used to determine new locations of stores or to target where advertising flyers should be mailed. However, the Claritas Corporation, using a program called PRIZM (Potential Rating Index for Zip Markets), has been using the zip and postal code data combined with Census data to create forty categories of lifestyle markets.

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86 Kings Landing and Cooper's Way are high-end developments, complete with marina moorage, that form part of the Concord Pacific development, which also includes lower-cost market housing towers.
87 The City of Vancouver required 3-D modeling of the siting of the towers to ensure that the seawall bike path would not perpetually be in the shade and that views of landscapes (the mountains) would be possible to retain a human-scale quality to common and public areas.
88 Pacione, supra note 77 at 353.
89 *Ibid.* Data from reward programs is also used with surprising precision to pinpoint target markets, which analyzed data is sold to companies or used to create advertising campaigns tailored to specific markets.
Claritas Corporation ranks various lifestyle markets or neighbourhood types according to their status, household income, home value, education and occupation. At the top of the status ladder is ZQ1. Named “blue blood estates”, this lifestyle market is typified to be super-rich, living in politically conservative suburbs, whose high-usage products include the New York Times, Mercedes, and skiing. ZQ2, the “money and brains” lifestyle market describes the ultra-sophisticated, politically moderate, living in elegant townhomes who are well-off academics or managers whose high-usage products include New Yorker, Gourmet magazine, and classical records. At the bottom is ZQ40, the “public assistance” lifestyle market is the poorest in the United States, consisting of mostly African-American single-parent families, whose high-usage products include malt liquor, burglar alarms, Essence or Jet magazines and Chevrolet cars.90

The analysis, categorization and identification of lifestyle markets/neighbourhood types using postal code data is disconcerting on many levels. From the misleading collection methods to the manipulative advertising used by profit-focused corporations, this data reveals more than just consumer patterns. This data shows that where one lives is profoundly important because it determines the type of job opportunities, social interactions, services and amenities that are promoted or available, and the ease and cost of access to those as well. And where one lives is determined to a large extent by the zoning laws that prescribe very specific types of housing to be constructed, sold or rented at particular price points. The demographic of people who occupy the specific types of housing attract similar-minded to live in the area. The area responds organically to the demands of the local population and

90 Ibid.
the responses are codified into legal structures. In this way, zoning laws transform mere physical structures (places) into cognitive environments (spaces). Social production is internalized within the legal structures of urban planning. We must look beyond social area analysis and the resulting residential patterns or what is termed “impact analysis”. There is a complex reciprocal process at work and the role of law is squarely implicated.

To draw from Blomley’s observations in writings on law and the geographic imagination, “causality in the impact literature runs from law to space. The action of law is assumed to engender certain spatial outcomes, such as changes in urban land use.” But to do so, in his view, is to treat law as “analytically divisible” from space thereby making law itself accepted as a given. If law is understood through impact only, then law is beyond social practice. Law becomes very powerful if law is considered timeless and its historical geography irrelevant. It becomes powerful because law is constructed as an absolute category – complete with the normative and constituting effects of that particular time and location. Conversely, Blomley makes the same point that space can be equally empowered with constant normative qualities if the law treats the social environment as an absolute category (unchanging and static).

The assumption that there is only one correct legal interpretation fails to address what Blomley calls the “monologic” of disputes over textual meaning. As a result, the legal enterprise is presented as rational and politically disinterested. Having only one interpretation of the law means that legal thinking is constrained to

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91 Blomley, Law, Space, supra note 11 at 33.
92 Ibid. at 35.
finding the lawmaker’s intention or trying to determine what the “reasonable man” would do. Critical legal theorists have challenged the monolithic treatment of law. From a geographer’s standpoint, Blomley adds one further argument for the imbrication of law and space.

A final problem comes to mind. In assessing the effects of law, both impact analyses and regional accounts frequently characterize law in narrowly instrumental terms. The rationale for Bodin’s geographic excursion, for example, was to find examples that could help him “arrange the laws” so as to govern. It is the “impact” perspective, especially, that tends to consider law as an efficacious tool for practical social intervention, conforming to what Moore (1973) termed a “social engineering” model of law.

Law is perceived as an aggregate of the local principles, customs and practices that are abstracted from the social context from which they are derived. As Blomley concludes, “[a]n exclusive attention to law as an external imperative is limiting, ignoring as it does the power of law not only to command but to redefine, to empower, to constitute, to divide, to foreclose, to obfuscate.” Treating law so instrumentally is too limiting, and using Blomley’s term, law’s “closure” from geography is a shortcoming that produces very limited understandings of each discipline. Even a bifurcated approach fails to accord proper recognition and fails to affirm the complex interplay of law and geography.

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93 For example, Catharine A. McKinnon’s appeal to the US Supreme Court in 1986 where the Court adopted her theory of sexual harassment that a hostile work environment is discrimination under the US Civil Rights Act was a challenge to the monolithic treatment of law. Her approach in this Meritor Savings Bank v. Vinson (1986) 47 US 57 is just one early example of a litany of challenges including cases with Canada’s Women’s Legal Education and Action Fund (known as LEAF) on equality, pornography, and hate speech.

94 Supra note 11 at 35.

95 Ibid. at 36.
The geography of law or legal geography interweaves law and space as intractably indivisible, rather than two opposite unidirectional processes of cause and effect. As Blomley notes,

This is still a new and rather hesitant literature that poses as many questions as it addresses. More specifically two issues that would seem central to a critical legal geography – that of legal/spatial representation, and the critical edge of geographic enquiry – need further enunciation.\(^{96}\)

To borrow from legal historian Wes Pue, the insistence that legal knowledge is spatially located is "insurrectionist" and "anti-geographical".\(^{97}\) This critical legal geographical approach was earlier employed by Boaventura de Sousa Santos in his attention to the geographical politics of legal interpretation.\(^{98}\) According to Bakan and Blomley, the task of a critical legal geography is actually threefold:

identification of the frozen politics of legal and spatial representations and an exploration of its implications; demonstration of the social construction (and thus the non-objectivity) of these representations; and finally, a tactical analysis of the material conditions under which challenging such dominant representations can be part of a wide struggle for progressive social change.\(^{99}\)

The study of critical legal geography has the potential to become an analysis for social change. In this instance, the source of that social change derives from unmasking the role of law, and applying a race/space analysis that is legally and geographically imaginative.

The analysis of the Chinatown case study in later chapters will refer back to this race/space legal analysis, with the intent of pressing forward meaningful social

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\(^{96}\) Ibid at 52.

\(^{97}\) Wes Pue, "Wrestling with law: (Geographical) specificity vs. (legal) abstraction" (1990) 11(6) Urban Geography at 566-585 [emphasis in original].

\(^{98}\) Santos, supra note 8 at 279.

\(^{99}\) Blomley, “Spacing Out” supra note 13 at 689-90.
change. Central to this analysis will be the examination of place-based mechanisms, which will be informed by an understanding of property in land. This task is achieved by distinguishing whether a particular place-based mechanism is directed at or has the effect of changing the subjective perception, representation or practice of property. In addition, I seek to highlight how place-based mechanisms operate upon enactments of property in land. By doing so, Chinatown’s dual personality is revealed because contestations and resistance are geographically articulated. In some instances, the familiarity of place is retained, while in other instances, Chinatown is externally constructed and becomes foreign.

At the beginning of this chapter, I began with the definition of property in land by focusing on its social underpinnings. Property can be public, private or common, enacted by and for its owners or inhabitants. When such subjective enactments of property are recognized, spaces are produced materially and symbolically. I then examined how the materiality of place is racialized by historical segregation and continues to be racialized by policies of exclusion. Unlike overt segregation, policies of exclusion operate covertly to categorize and racialize spaces. These covert policies take the form of deceivingly innocuous yet pervasive urban planning laws. In the final part of this chapter, I drew the relationship between law and geography. The next step is to investigate legal and geographical representations of places by examining the distribution of power and the underlying socio-spatial ideologies of race.
CHAPTER THREE—RACE/SPACE AND THE LAW: THE STRUGGLE FOR TERRITORY

A. RACE/SPACE FRAMEWORKS WITHIN A LEGAL GEOGRAPHICAL ANALYSIS

My objective in this thesis is to tell the story of Chinatown in the 1960’s as a racial and spatial story, implicating laws that appear “raceless”. In the first two chapters, I set out the frameworks of property in land, racialization, and, legal and cultural geography. In this chapter, I describe how two different authors work within race/space legal frameworks in two separate empirical case studies: Jennifer J. Nelson's account of Africville and Renisa Mawani’s investigation of Stanley Park. I chose these two case studies because they share useful commonalties. Both are land-based contestations that reveal the intersection of how race becomes place through law. Both are expressions of power where displacement, resistance, and struggles shape place and identity. The land-based contestations also share similar technologies, processes and intentions which are described in the later part of this chapter. However, there are also significant differences between them.

The juxtaposition of Nelson and Mawani’s work, and the contrast between the two subject case studies, is important. First, the two authors differ in their methodology: Nelson approaches Africville as critical geographer whereas Mawani draws from (post)colonial theory. Second, each author describes two distinct cultures and communities: Blacks versus Aboriginal peoples. The case studies also differ in how each of these communities respond to the different colonial technologies that dispossess the communities of land, and continue to displace them from it. The

100 Nelson, supra note 17 and Mawani, supra note 14.
differences limit our ability to draw universal conclusions (but not observations) about how race, space and the law intersect.

Among these differences, there are connections between these case studies. These case studies are chosen because they demonstrate how race/space legal geographies can help us understand the different ways in which space is constituted and racialized. In particular, there are insights about the place-based processes of dispossession and displacement that apply to Chinatown. These insights will be discussed in more detail in relation to Chinatown in chapter five. A key insight I draw from these empirical examples is how and why Chinatown has a dual personality. In Edward Said’s words, I find that the struggles of history and social meaning are connected with the overpowering materiality of the struggle for control over territory. I begin with Nelson’s study of Africville.

B. AFRICVILLE, NOVA SCOTIA

Africville is the story of blacks who established a settlement over 120 years ago in the Bedford Basin (now Halifax), Nova Scotia. Eventually succumbing to slum clearance initiatives, residents were forcibly evicted by the City of Halifax in the late 1960’s. Nelson argues that this eviction was an enactment of racial and spatial discrimination that implicates law in the (re)production of race and space. In this instance, the racialized production of space is made possible by explicit demarcations of marginalized spaces.

Nelson's account of Africville allows us to understand the place-based mechanisms employed to construct, regulate and remember cultural identity. Law constituted the space of Africville, and the space of Africville reinforced mechanisms of law. The Bedford Basin was agriculturally marginal land but Africville occupied waterfront lands that became culturally and industrially significant to the urban core of Halifax. Nelson describes Africville as the centre of industrial and disease- and waste-management sectors (undesirable but commercially necessary to the development of Halifax). Africville was constructed by the establishment of intensive and noxious industrial uses commingled amongst existing residential settlement. Nelson describes it this way:

In addition to the construction of railway lines, which required the destruction of several Africville buildings, an oil plant storage facility, a bone mill, and a slaughterhouse was built. Encircling these establishments were a leather tanning plant, a tar factory, another slaughterhouse, and a foundry. Shortly after the settlement of Africville, the city established Rockhead Prison on the overlooking hillside; about twenty years later, the city's infectious diseases hospital was placed on this hill, and the open city dump was located about one-and-a-half miles away.

Eventually succumbing to the expropriation powers of the city, the last residence of Africville was destroyed in 1970. This story of settlement, eviction and expropriation of Africville implicates law in the seemingly "raceless" narrative of eradicating "the slum by the dump".

103 Contiguous and proximate industrial lands are critical to the development and sustainability of an urban core. For example, in Vancouver, even as real estate prices would otherwise demand the conversion of light industrial lands into residential housing, it is considered an important planning tenet to protect light industrial services, which would otherwise relocate to more remote locations. The effect of displacing industrial or locating industrial services too far from the urban core is to relocate the urban core, where transportation costs become more economically viable.

104 Nelson, supra note 17 at 215.

105 Ibid. at 216.
The first stage that enabled the City of Halifax to uproot a 120-year old settlement was the physical and symbolic construction of Africville as a slum. The characterization and, in Nelson's words, "conflation of Africville with degeneracy, filth and the "slum" justified further denial of essential services" such as water, sanitary sewer and other essential services. Nelson draws upon the writings of David Goldberg about slums, and argues that labeling Africville a "slum" is a self-fulfilling prophesy - "the slum legitimates dominance by offering a concrete example of filthy, intolerable condition, a notion of helplessness and lack of self-determination that are seen as inherent to its inhabitants." Living within second-class marginal conditions produces certain subjects, subjects that internalize oppression. There is, however, ambivalence - not every Africville resident surrenders and abandons the dump. Many Africville residents negotiate this offensive of the dump situating in their community by attempting to, in their words, "make the dump work for us".

Nelson observes that the dump was incorporated into social practice as a means of survival by the residents who scavenged and recycled articles into reusable goods. The Halifax community treated the scavenging of the dump by the black residents as proof positive of white entitlement and dominance to rule. The subjection of "others" to marginal living conditions, brought about by withholding of municipal services, produced the racial justification presupposed by its very intention. The creation of the "slum" physically and socially was a mutually constitutive process. There was an unstable contestation of this spatial indictment - residents of Africville protested, adopted and abandoned the dump. Each of these responses

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106 Ibid.
107 Ibid. at 217.
108 Ibid. at 218.
reified the constitutive processes of racializing the space of Africville. “Blacks” in Africville were spatialized as filthy, helpless and lacking self-determination.

Stage two, “euthanasia”, as Nelson terms it, is an intractable logical consequence for urban slums. Nelson employs the word “euthanasia” to describe slum clearance because it highlights the dominant perception that Africville needed to be put out of its misery or be “exterminated” for its own good. Complementing the spatialization of Africville residents, slum clearance represented “good governance” by the white, civilized and knowledgeable (those who “know better” than to live next to a dump) over the filthy and “raced” other (those who “don’t know better” than to live/scavenge/reinvent a dump). Africville was euthanized by a series of legally sanctioned displacements: first by the creation of the dump within its geography to drive out residents, and then second by regulation that forced residents out.

In explaining that the legal displacements of Africville appeared race-neutral, Nelson implicates the role of law. In her examination of the events at Africville, Nelson “felt forced to realize that it may be precisely the legality of the process that is so strikingly violent.” Ironically, the legal process that created the slum justifies its own authority on the basis that it is able to eradicate it. Law’s self-reification is a tautology – a form of violence because its illogical basis defies objection. Law’s reification animates Nelson’s view that legal displacements lacked precision to eradicate or defend the spatialization of the slum. Drawing from Goldberg’s

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109 Ibid. at 222.
110 Ibid. at 223.
observations, Nelson suggests that imprecision of the legal process is a form of violence:

law's necessary commitment to general principles, to abstract universal rules, to develop objective laws through universalization, is at once exclusive of subjectivities, identities and particularities...So when law in its application and interpretation invokes history the reading is likely to be very partial, the more so the more politicized the process becomes. And race, I am insisting, necessarily politicizes the process it brackets and colors.\textsuperscript{111}

Legal solutions for slum clearance are problematized by the invocation of and belief in law's objectivity. The role of law, legal reasoning and legal mechanisms are believed to be universal and objective. Locating storytelling, history or subjectivity is rejected as antithetical to legal discourse.

Similarly, governmental discourses surrounding Africville upheld the impenetrable objectivity and apparent racelessness of legal mechanisms. In speaking about the $500 "moral claim" compensation paid to relocated Africville families, R.J. Britton, the Halifax director social planning said, "The City can use its statutory powers to remove the blight and at the same time, temper justice with compassion in matters of compensation to families affected."\textsuperscript{112} City officials reinvent the eviction of Africville residents who were relegated to live in a slum, which ironically was created by the City's own actions. This type of "feel good" reinvention of euthanizing Africville found in the governmental discourse leads to the final stage identified by Nelson in the Africville story.

Nelson terms stage three as "burial". In the 1988, a small monument was constructed at the entrance of Seaview Memorial Park, a green space constructed at

\textsuperscript{111} David Goldberg in \textit{Racist Culture} (Oxford:Blackwell, 1993) at p. 205 as quoted in Nelson, \textit{supra} note 17 at 223.
\textsuperscript{112} \textit{Ibid.} at 224.
the former site of Africville. Ironically, a swimming pool has also been built at the very place where the clean water was once denied.\textsuperscript{113} The park's name bears no reference to its past and Africville has been completely erased.

Nelson observes that this "manufacturing ignorance and erasure" is available for public consumption, and even delivered tourists or newcomers who do not know of the history of Seaview Memorial Park, formerly Africville. Since 1982, Africville families gather annually at Seaview Memorial Park to recover the history of the community and attempt to counter the erasure of Africville.\textsuperscript{114} In effect, they come to commemorate a "vanished place."\textsuperscript{115} The history, the stories, the struggles and the existence of Africville have been "buried" within a visible monument.

Erecting a monument that does not explain, acknowledge or respect the complex history of the very thing it is intended to memorialize risks imparting the opposite effect of disrespecting, denying and obscuring it. Recently, a few former residents of Africville have called for the City of Nova Scotia to rebuild all eighty of Africville's lost residences, including the cornerstone Seaview African United Baptist Church, which long stood as a symbolic centre of the community.\textsuperscript{116} However, reconstruction must also be undertaken carefully. David Lowenthal points to the perils of hegemonic historical knowledge:

African American physical realms are not ethnically distinctive in recognizably Old World ways; many Chinatowns are little more than Hollywood variants; most Native American villages forget or forgo ancestral forms...\textsuperscript{117}

\textsuperscript{113} Ibid. at 227.
\textsuperscript{114} Angel David Nieves, “Memories of Africville” in Katherine McKittrick and Clyde Woods, eds., Black Geographies and the Politics of Place (Toronto: Between the Lines, 2007) 82 at 91.
\textsuperscript{115} Ibid. at 86.
\textsuperscript{116} Ibid. at 91.
\textsuperscript{117} Ibid. at 93.
In heritage reconstructions, Lowenthal warns that grand generalizations of African American culture prevail because Old World norms do not recognize distinctions. Historical preservation of “places” or “buildings” alone is troubled by its failure to recognize cultural heritage as experienced by a diversity of people. I will later return to this observation in the preservation of heritage sites in Vancouver’s Chinatown.

In the field of heritage politics and preservation, David Neives argues for a critically engaged interdisciplinary methodology to grasp the meaning of “difference” in cultural landscapes. He cites Dana Inkster’s film, Welcome to Africville, which reimagines and critically repositions the history of this space through queer culture.\textsuperscript{118} According to Nieves, historical meaning is layered and embedded in cultural landscapes such that reconstruction should extend beyond physical reparation into respatializing the racial landscape in and across the African diaspora.\textsuperscript{119} Decisions about historical significance are a result of the kinds of individuals participating in the preservation process, owing to the subjectivity of the individual’s historical knowledge, interests, family background, professional training and personal interests.\textsuperscript{120} Preservation practitioners have a tremendous influence over what is ultimately saved or memorialized. As Nieves urges, the state (through heritage policy), activists and preservation practitioners must critically consider the aims, motives and effect of heritage preservation or monument construction.

Using Jane M. Jacob’s term, Nelson argues that “reconciliation” is the intent of the Africville monument. Reconciliation refers to the “attempts to bring the nation

\textsuperscript{118} Ibid. at 92.
\textsuperscript{119} Ibid. at 94.
\textsuperscript{120} Ibid. at 93.
into contact with the “truth” of colonization – and this includes the attendant emotional “truths” of guilt, anger, regret and hurt – in order that there might be a certain “healing”. As Jacobs explains, the narrative of reconciliation is designed for white healing and locality. Nelson quotes Lefebvre on monuments to suggest that “Monumental space offered each member of a society an image of that membership, an image of his or her social visage.”\(^{121}\) Monuments may serve to locate and reify the remembered space as colonized but as Nelson argues, that remembrance may retain a “mythic quality” that is unable to deliver meaningful observations or connections to former residents. In this way, the burial or silencing is a discourse about white entitlement to create, regulate and eradicate racialized space, in the past and present. The burial remains an act of displacement following dispossession.

The three stages, “inducing illness, euthanasia and burial” in Nelson’s recount of Africville’s history reveals the place-based mechanisms employed to construct blackness, as a “raced” people geographically located in the Bedford Basin. Africville is spatialized as dump, unwanted. The racelessness of legal regulations reified its racialization – and simultaneously, albeit to a lesser degree, Africville redefined these categories too from the resistance of some of its residents. By transforming “discarded” articles into usable/valuable goods, residents resisted the locating of the dump in Africville. The intentions of the greater white community by locating of the dump in Africville, in the words of Africville resident, “backfired”.\(^{122}\) The clearance of Africville included complicities and resistance in its contestation.

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\(^{121}\) Nelson, supra note 17 at 230.

Finally, the erection of an insignificant monument further affirms absence and denial of black geographies of Africville.

From the black geographies of Nova Scotia, we turn now to Aboriginal geographies on the west coast of British Columbia. The geography of Stanley Park represents an example of how socio-spatial practices racialized the space of Stanley Park and defined Aboriginality in service of Canada’s white settler society. These distant geographic land contestations share similar colonial technologies, practices and underlying racial categorization despite their differences: location, diaspora versus indigenous groups, settlement vs. conquest, and racial categorization of blackness versus Aboriginality. I described Mawani’s examination of Stanley Park through a (post)colonial lens. I draw commonalities from what happened in Africville to Stanley Park, and in a later chapter, to contestations in Chinatown. Let us now proceed to the study of Stanley Park.

C. STANLEY PARK, BRITISH COLUMBIA

Renisa Mawani argues that both the absence and presence of Aboriginality constitutes Vancouver’s civic identity in Stanley Park. Consistently listed in tourist guides as one of Vancouver’s top “must-see” attractions, Stanley Park represents an important role in the civic identity of Vancouver. Stanley Park is civic wonder of pristine park, natural and old growth forest, and recreational park spaces for children and adults. “The park is celebrated in tourist books, brochures and on visitor websites as a “virgin forest” that reflects a uniquely “natural west coast atmosphere”, including an array of plants, wildlife and ancient trees.”123 As Mawani observes,

123 Mawani, supra note 14 at 98.
"[i]mportantly, Stanley Park also occupies a significant geographic and symbolic space in Vancouver’s imaginary."\textsuperscript{124}

When examining that imaginary, Mawani reveals the violent history in the making of Stanley Park. Contrary to the “empty” serenity that tourist books celebrate, Aboriginal peoples (Coast Salish, Squamish, Musqueam and Tseil-Watuth (Burrard))\textsuperscript{125} already owned, resided and settled in the territory well before it became Stanley Park. Stanley Park was not simply the “virgin forest” of tourist imaginaries – there was a violent displacement of and corresponding resistance by Aboriginal peoples in this territory. Mawani argues that this resistance shaped its material and representational landscapes. The erasure and invocation of Aboriginality are achieved through a three-fold process. First, the colonial technique of mapping was used to legitimize “spatial vacancy”.\textsuperscript{126} Second, the rule of law displaced and evicted Aboriginal peoples. Third, Mawani discusses the irony of the simultaneous removal and “the commemoration of Aboriginality through commodified representations of totem poles”.\textsuperscript{127} A review of these techniques will show how the space of Stanley Park was constructed.

Explorers and traders mapped the territory of Stanley Park as “vacant” and “devoid of any human presence”\textsuperscript{128} despite the existing occupation of Aboriginal peoples in the park. Mawani writes,

\textquote{the Coast Salish have long occupied this territory – using the land for hunting, fishing and for ceremonial purposes. They have never relinquished their ownership, either through treaty of otherwise. The

\textsuperscript{124} Ibid.
\textsuperscript{125} Ibid. at 104.
\textsuperscript{126} Ibid. at 101.
\textsuperscript{127} Ibid. at 102.
\textsuperscript{128} Ibid. at 104.
long lineage of these communities is confirmed and corroborated by anthropological evidence found at an Indian village called X’way X’way, a site that was then renamed in 1912 as “Lumberman’s Arch”. ... Middens have also been located at other sites within the park, confirming that the Coast Salish have resided on and used this land for millennia. (Steele 1985: 12). These precontact histories have been obscured and undermined partly through maps drawn by George Vancouver and others that erased the Coast Salish and their histories of place.129

Mawani identifies mapping as the “technology” by which early white settlers promoted the idea of emptiness or vacancy. Later, the imposition of legal names upon these areas would formalize the erasure.

Early settlers of Vancouver deemed the forested lands of Stanley Park as belonging to no one. “In popular imagination, the park arose pristine out of the wilderness.”130 Colonial, dominion and civic authorities all tried to stake their claims on the “pristine” and “empty” lands. According to Barman, the imposition of Stanley Park on the peninsula followed soon after British Columbia joined the confederation in 1871. The new provincial government, along with the local civic authorities scrambled to determine whether the peninsula had been turned over to the province, reserved by the federal government for the defence of the country, or remained under British control. By 1887 and after more than a decade of wrangling, the federal government conclusively granted jurisdiction of the park to Vancouver civic officials, reserving the right to resume the property for military purposes when required at any time.131 Mawani observes that “Stanley Park was also constituted through a series of colonial logics and practices that rendered the land “empty” and its original

129 Ibid. at 105.
131 Ibid. at 90.
inhabitants in/visible." Empty land could justifiably be appropriated and deployed in service of the European settlers who appointed themselves to be the first inhabitants or first claimants. In the course of the intergovernmental claims to Stanley Park, the historic residences and occupation of the peninsula by various Aboriginal peoples was completely ignored by early settlers. The Courts would later uphold colonial appropriation over Native land title in the Stanley Park eviction cases.

Indeed, the City and Attorney General used maps and cartography of Captain George Vancouver to defeat Aboriginal claims to Stanley Park in a series of eviction cases in the 1920’s. The Courts relied upon the white settler technology of mapping and cartography, as evidence to prove that the subject lands were “unoccupied”. According to Mawani, “maps were both discursively and materially central to the conceptualisation, legitimatisation, and administration of European colonialism.”

In addition the imposition of new political, economic and cultural meanings, through claims to scientific authority, maps enabled the partial erasure of Aboriginal peoples from the history of the territory. History’s “time clock”, if you will, starts when the territory is mapped, not when it was inhabited (by Aboriginal peoples during millennia before such technology was employed by George Vancouver). Mawani writes,

In the case of Stanley Park, maps enabled colonial administrators to both make legal claims to the land and to assert a civic identity at a time where the European population in the region was still relatively small. The colonial identities that were produced through mapping, as I discuss below, were contingent upon the authority of maps (we are

132 Mawani, supra note 14 at 105.

133 Ibid. at 104.
legally entitled to this territory) but facilitated multiple, competing and fractious social and spatial identities.\textsuperscript{134}

Mapping was significant because it constructed cultural tropes of vacancy, legitimacy, and scientific knowledge. Moreover, mapping also constructed a specific type of colonial space - as Mawani describes, “one that was established for the use and enjoyment of Vancouver’s respectable residents, those from the upper-middle classes who were worthy of citizenship”.\textsuperscript{135} Such space asserted the stability of British identity as having a “home away from home” despite the few numbers of British settlers at the time. Renaming the territory as Stanley Park in 1888 after the then Governor-General Lord Stanley, civic officials further asserted colonial rule.\textsuperscript{136} Mapping is deeply implicated in colonialism as a primary site of identity and place-based social construction. Mapping also bestowed legal displacements with evidentiary legitimacy to evict Aboriginal peoples and deny their land claims.

In as much as mapping attempted to assert a colonial order, European settlers also employed legal mechanisms to assert categories on the inhabitants of Stanley Park. The ultimate purpose was to displace or refute the inhabitants’ legal claims to land. Because early Courts followed British common-law, the outcome of a land claim would depend largely on the characterization of a resident as “Indian” or “squatter”. If a resident were a “squatter”, a claim based on Native land title is extinguished – the category of squatter itself presupposes a rightful owner that is colonial. A “squatter” is an intruder whose rights arise principally and solely from

\textsuperscript{134} Ibid.
\textsuperscript{135} Ibid. at 114.
\textsuperscript{136} Ibid. at 109.
English common law. If the Aboriginal residents were focused on proving their “squatter’s” claim, they would have fundamentally accepted colonial land title as the true owner in their efforts to claim legal occupancy rights. Not only is the legal debate limited within the colonial framework, the debate has the effect of reifying the colonial legal framework itself.

Mawani recounts the legal action commenced by the City of Vancouver and the Attorney General of Canada who in 1923 jointly filed suit against eight defendants, all of whom were required to prove their uninterrupted residence in the park. Within the British Columbia court system, these defendants could only make legal arguments based on British common-law (which did not provide for Aboriginal title) to prove their land title and tenure. Even when the Court of Appeal ruled in these defendants’ favour, the success was limited because the judges “constituted the residents as “ancient pioneers”” rather than acknowledging or considering a claim based on Aboriginal title. The long history of Aboriginal occupation was not regarded as a source of legal entitlement to property. Instead, the lawsuit and British common-law served to displace these long-time residents and characterize them as interlopers in a “pristine” landscape.

Mawani raises argues that the dislocation of these residents was “articulated through discussions about the temporality of the residents’ homes”. Lawyers for the City and Attorney General denigrated the residents by describing their homes as “shacks” made of “clapboard”. The disparaging descriptions of the homes reflected

137 Ibid. at 116.
138 Ibid. at 117.
139 Ibid. at 119.
140 Ibid. at 120.
a colonial arrogance of European cultural superiority. The Supreme Court of British Columbia and ultimately, the Supreme Court of Canada upheld European culture as the superior and definitive standard for how property ought to be used.

Early settlers also initiated this colonial superiority through the discourse of civility and racial identity. Mawani argues that the construction of Aboriginal identities as “illegitimate” and “savage” enabled British colonial rule to “civilize” Aboriginal peoples. Some of the Brockton Point residents of the park consisted of Portuguese men married to Native women, and their mixed race children were not considered “Indian” by colonial rulers and were denied land claims based on Aboriginal rights. European colonizers considered mixed-race persons as “impure” and “illegitimate”. Being mixed race generated a greater uneasiness than being “pure” Indian.141 As a “pure” Indian, there were certain stereotypes, social status, privileges and rights granted by colonizers, and being labeled as “half breed” denied them privileges such as hunting or fishing. This discriminatory standard deterred couples from dating and mating interracially.142 And in the context of Stanley Park, racial identity figured significantly for the mixed-race Brockton Point residents, who were not considered truly Aboriginal and denied the right to claim rights to the land and water.

In the end, the legal mechanisms employed to evict the residents of Stanley Park succeeded, along with the entrenchment of racial categories underlying the colonial discourse that became located within and reified by law. The “squatters”

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141 Mawani notes that the “blood quantum” of the Brockton Point residents was considered. Ibid. at 122.
142 Mawani also notes that “...Native women who married non-Native men would lose their Indian status, a patriarchal provision that was not only inapplicable to men who married non-Native women, ...” Ibid. at 121.
trials resulted in success for the City of Vancouver and the Attorney General who won rulings that would allow authorities to evict the residents. Civic authorities allowed residents to stay until the last of the residents died in the 1950’s. The Chinese residents were not so fortunate – they were swiftly expelled from the park. Civic authorities deemed the “Chinese Ranches” to be “Chinese dens of no particular value”, and cleansed the park of Chinese presence despite the fact that the Chinese treated the lands as a sacred burial site of their countrymen.143

Both Barman and Mawani reject the City’s moderate approach for the Aboriginal residents as simply a “kindly” feeling or “colonial generosity” in favour of an explanation that recognizes how Native presence could not be totally eradicated and indeed, became an addition welcomed by European colonizers to the construction of Stanley Park as a produced space.144 The residences were described as “quaint little inhabitations” complementing the totem poles as constructed and controlled representations of Aboriginality. The fact that Chinese presence was completely eradicated but not Aboriginality reveals a purposeful invocation of Aboriginality. The residences were allowed to stay at the leisure of civic authorities as a powerful reminder of Euro-Canadian rule.

There is a simultaneous invocation and erasure of Aboriginality in the construction of Stanley Park. Colonial rulers wanted to recognize (and control) the Aboriginal presence in Stanley Park as part of the colonial appropriation of territory. The existence, and subsequent defeat of competing land claims effectively affirmed and legitimized Euro-Canadian colonial rule. The invocation of Aboriginality was

143 Barman, supra note 130 at 100.
144 Paraphrased from Mawani, supra note 14 at 124.
not about honouring Native people and history but rather, it was an affirmation of European settler authority and progress.\textsuperscript{145} Mawani concludes that:

The making of Stanley Park like the making of Vancouver (and Canada) has been structured on a desire and disavowal for Aboriginal peoples, an ambivalence that is evident in the simultaneous evocation and erasure of Aboriginality through mapping and law. Yet this ambivalence is also evident in the commodification and display of artistic and cultural representations of Northwest Coast communities.\textsuperscript{146}

The totem poles at Stanley Park represent this contemporaneous displacement and commemoration of otherness and oppression. Because the representation are controlled and implemented by colonizers, the message is not about honouring the represented subjects. Instead, the eviction and installment of Aboriginality, what Mawani terms the “fetishisation,” produces colonial dominance.\textsuperscript{147}

Civic authorities made Aboriginality visible by allowing the Brockton Point residents to remain in the park as tenants-at-will for $1 per year. Vancouver residents made Aboriginality visible when they donated “authentic” Aboriginal artifacts such as canoes and totem poles that were “removed” from other coastal communities, to be “installed” in the Park. Interestingly, the image of totem poles at Stanley Park is represented to tourists as one of the park’s main attractions. According to Mawani, the totem poles are “cultural and racial markers, they could also be read as an evocation of colonial categories and taxonomies that signify a pre-modern and primitive Aboriginality, one which enables the constitution of the Euro-Canadian self.”\textsuperscript{148} On the other hand, the totem poles also represent an absence of

\textsuperscript{145} Ibid. at 125.
\textsuperscript{146} Ibid.
\textsuperscript{147} Ibid.
\textsuperscript{148} Ibid. at 131.
Aboriginality because totem poles were not indigenous to the Coast Salish, but are erected on their traditional land by Euro-Canadian settlers. Mawani writes:

To elaborate, this commemoration of Aboriginality tells us nothing about the ways in which the Coast Salish peoples and mixed communities who long resided in what is now Stanley Park were forcibly removed and relocated, or of the multiple ways in which they resisted European encroachment on their territories.\textsuperscript{149}

Hence, the invocation of an erased Aboriginality serves to construct the space of Stanley Park as a site of conquest and rewriting of history in the service of the Euro-Canadian settler society.

Colonial mapping technologies constructed Stanley Park. Reification of colonial law to exclude Aboriginal land claims constructed Stanley Park. The simultaneous removal and commemoration of Aboriginality has also constructed Stanley Park. The discourse and resistance have constituted Stanley Park. Mawani’s (post)colonial analysis of the making of Stanley Park reveals how the produced landscape of Stanley Park furthered white Euro-Canadian dominance and justified white destiny to rule the territory. The materiality of the contestation of Stanley Park is connected to the social meanings of colonialism that have been and continue to be perpetuated. The on-going invocation of the absence of Aboriginality affirms the legitimacy of colonialism and geographical control over Stanley Park.

\section*{D. Common Threads in Africville and Stanley Park}

If we compare the examples of Stanley Park and Africville, we see striking differences. Africville was a small settlement of former American slaves who fled slavery via the Underground Railroad. They were joined by black United Empire

\begin{flushright}
\textsuperscript{149} Ibid. at 132.
\end{flushright}
Loyalists, refugees from Jamaica, and veterans who had earned their freedom during the Civil War. On the opposite coast, Stanley Park was inhabited by members of various Aboriginal peoples as well as descendants of early Chinese and Hawaiian immigrants.

However, if the objective, as Said suggests, is to critically analyze place-based contestations and connect them to the struggles of history and social meaning, then the comparisons are apt. The places of Stanley Park and Africville have certain material differences, but they share commonalities in their spatialization and their underlying objective to racialize and displace groups from land in the service of colonialism. Race, space and the law intersect in both the places of Africville and Stanley Park.

Racialization figures prominently in both examples. The stereotypes or binary categorizations of “savage/civil” or “filthy/dignified” appeal to different “racial” constructs that are fictive entities. However, the racial differences are narrated in discourses that uphold whiteness and civility against racist depictions of the Other as archetypically illegitimate or dim-witted. The racialization in both places serves to legitimate white rule. Stanley Park evokes the “peaceful conquest myth”, Africville, the “benevolent rescue” myth. Both places have been spatialized by racist practices which imagine and construct the superiority of EuroCanadian settlers.

To buttress that social justification for control over territory, white EuroCanadian settlers used legal mechanisms to legitimize their dominance. In

150 Nieves, supra note 114 at 88.
151 The objective being posed by Edward Said in the Afterword to the 1995 reprint of Orientalism, as discussed earlier, supra note 102.
Africville, the legal mechanism of expropriation treated residents with a recognized interest in land, whereas the squatter eviction trials of Stanley Park called into question the very nature of ownership and entitlement to land. Yet, there is an underlying commonality to the legal reasoning that is founded upon a positivist universality that denies storytelling, history or subjectivity.

In Africville, the "lawlessness" of uncontrolled land uses enabled a railroad, infectious disease hospital, fertilizer plant and municipal dump to be constructed within a residential area.\textsuperscript{152} The imposition of "law" on Africville enabled the displacement of its residents by expropriation. Similarly, the "lawlessness" of Aboriginals taking up 'residence" in Stanley Park without colonial consent was replaced by the imposition of law through prohibited land uses and claims to ownership through colonial terms. Law in both places dispossessed residents of their land and legal discourse about land claims was limited within a colonial framework, which effect was to reify the colonial legal framework itself. Authorities used these legal mechanisms to remove, evict/expropriate, or otherwise displace residents in these place-based contestations.

Following the removal of its residents, local authorities erected monuments in Africville and Stanley Park. The totem poles in Stanley Park and the Seaview Park Monument are emblematic of unilateral control by dominant EuroCanadian society to invoke or erase (re)imagined geographies. For Stanley Park, the installation of inauthentic artifacts reflects a type of Aborginality that is constructed by and for the EuroCanadian self. The monuments construct the modern space of Stanley Park as a site of conquest and revisioning of the history of the park as peacefully settled.

\textsuperscript{152} Nieves, \textit{supra} note 114 at 89-90.
Similarly, the Seaview Park monument of Africville provides reconciliation to EuroCanadian society by facilitating white healing and locality wherein urban renewal saved and created this place of recreation. In doing so, monuments locate and reify spaces, articulating them as a discourse about white entitlement to that space in the past and present.

By critically analyzing these two disparate place-based contestations, we are able to draw useful commonalities: the ways in which racialization operates despite different archetypical stereotypes, how law is deeply implicated in colonial mechanisms, and the contested ambivalence of the Canadian white settler mythology. While it would at first seem that these two places are far too different to draw conclusions, a racialized spatial analysis reveals how people of colour have been displaced and dispossessed from land by common means for a common purpose. From the struggles of history to specific place-based contestations, social meaning is (re)inscribed and perpetuated within local geographies that support imperialist objectives. It is possible to build from this analysis of how race, space and the law intersect in the examples of Africville and Stanley Park, by applying this analysis to the history of and contestations over Vancouver's Chinatown.
CHAPTER FOUR - CHINATOWN PROJECTS IN THE 1960’S

In this chapter, I review the history of three City-sponsored projects in Vancouver’s Chinatown during the 1960’s. This was a critical period for the century-old neighbourhood. Shortly after World War II, the status of Chinese Canadians and Chinatown shifted dramatically. Not only did China fight as Canada’s ally in the war, but many Chinese labourers in Canada enlisted in the Canadian army earning Chinese Canadians an entitlement to the benefits of citizenship. In 1947 the Canadian Government repealed the *Exclusion Act* which had been passed during the peak of anti-Chinese sentiment during the interwar period.

As a result, Chinatown began a new period of growth because Chinese residents were able to bring their wives and children from China to take up residence in or near Chinatown in the neighbourhood of Strathcona. Non-Chinese citizens began to regard Chinatown differently. It became perceived less as sinister and dangerous than foreign and exotic. Vancouverites enjoyed a “foreign” experience – sampling foods, buying curios and savoring the district’s distinctiveness. Chinatown merchants responded to the enthusiasm of “local” tourists by glamourizing Chinatown’s new image with glittering neon signs and cabaret supper clubs.

The changing character of Chinatown and the increasing prominence of its residents focused the debate on the construction of *Chineseness*. This debate was articulated and fought on the battleground of three land-based contestations. In this

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153 Chinese pioneers from the Southern delta region of China settled in the area years prior to the official incorporation of Vancouver in 1886.
154 Vancouver Chinatown Revitalization Committee, “Vancouver’s Chinatown” (August 2004), online: <www.vancouverchinatown.ca>.
next chapter, I will examine the slum clearance initiatives in Strathcona, the Chinatown beautification proposal and the freeway debates.

A. STRATHCONA SLUM CLEARANCE PROJECT: REDEVELOPMENT AREA A

In 1948, Dr. Leonard Marsh wrote “Rebuilding a Neighbourhood” identifying Chinatown as a slum in a state of chronic deterioration. This report became the basis for the City of Vancouver to investigate Chinatown further. To that end, Gerald Sutton Brown as the chief of the City of Vancouver Planning Committee created the Vancouver Technical Committee (VTC) in February 1956. Armed with Dr. Marsh’s report, the VTC studied Chinatown and the predominantly Chinese-occupied residential area east of Main and Gore (the neighbourhood known as Strathcona) for potential redevelopment. It would recommend redevelopment and would seek to qualify for and take advantage of cost-sharing grants from the Canada Mortgages and Homes Corporation (CMHC). Before delving into the details of the VTC’s proposals, a review of the legislative background of CMHC grants is important to understand the nation-building forces that prompted redevelopment in Vancouver’s Chinatown.

Legislative background

In 1938, Parliament passed the National Housing Act in an effort to catalyze the depressed post-war construction industry. The onset of the Second World War eclipsed the need for such measures and the National Housing Act initiatives were shelved for the next decade. In 1941, the federal government created the Wartime


156 Urban renewal became a national priority, established in Canada’s federal agenda.
Housing Limited – a national housing corporation dedicated to providing urgently needed housing to accommodate workers in the urban wartime industries. Together with the Veterans Land Act (1942), the federal agencies that these acts created later evolved into the contemporary Canadian Mortgages and Homes Corporation (“CMHC”).

Two years later in 1944, the second National Housing Act (“NHA”) expanded the federal government’s role in housing and proclaimed a new commitment to the housing policies of the nation in the post-war era. Encouraged by the recommendations in the Curtis Report, the federal government proceeded to legislate a comprehensive housing policy aimed at helping low-income families. Geographer John Miron observed that demographic changes after the war produced a dire need for housing for low-income families. In addition to the NHA, Parliament enacted statutes such as the Veteran Lands Act to boost the economy and promote employment; the federal government wanted to avert a repeat of the post-war depression of the 1930’s. Economic incentives were directly linked to the development of new housing across the nation.

By 1945, CMHC was responsible for administering the housing initiatives created under the NHA, including the implementation of slum clearance enactments. CMHC had comprehensive influence over housing at various income levels and

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158 Named after Professor Clifford Curtis of Queen’s University, the Chairman of the Curtis Committee. The report recognized and recommended the intervention of the federal government to redistribute land resources through a series of housing policy initiatives to facilitate post-war adjustment of veterans and wartime urban labour forces.
160 Canadian Welfare Council, Sourcebook on Housing in Canada (Ottawa: December 1967).
geographic sectors. The 1944 NHA amendments provided assistance to municipalities to undertake redevelopment projects, which involved the acquisition, clearance and redevelopment of entire areas that were considered blighted. Initially, the federal government paid half of the costs to acquire the land. By 1964, the federal government increased funding for redevelopment from fifty to seventy-five percent of total project acquisition costs.

Of the twenty-one projects to qualify for federal aid under the NHA, British Columbia had two, the details of which are described below:

Table 1: Urban Redevelopment Projects
Approved under the NHA, 1948-1965

| Original Removed for Copyright Reasons |

Urban development projects accounted for over $36 million dollars under the NHA, and dwelling unit construction amounted to over $250 million dollars. Housing and slum clearance funding were a significant aspect of federal spending and municipal revenues. Slum clearance projects were not minor excisions in urban cityscapes; slum clearance was big business – this was major surgery.

Between 1940-1950, the City of Vancouver sought to access federal housing funds and embarked upon a program of slum clearance. Civic officials identified Chinatown as a slum. Newspapers popularized messages such as “Blight must be

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cured” and “workers must be employed”. During this time, a shortage in land inventory in the lower mainland caused inner city areas such as Chinatown to gain in value. At the same time, the turn-of-the-century structures in Chinatown were aging. Most of the housing stock had not been renovated or improved since it was first constructed.

This apparent disinterest in renovating or reinvesting in housing structures was not accidental. Contrary to the suggestion in the 1961 Province editorial, Chinatown residents did not reinvest in Chinatown because they lacked the desire or moral directive. As Kay Anderson points out, it was government legislation that caused the deteriorating condition of Chinatown’s buildings (i.e., the slum). The slum clearance measures were aimed at solving a problem that other legislation created.

The municipal zoning bylaw of 1931 classified the area to the east of Vancouver’s Chinatown (that is, the residential side of Strathcona) as “light industrial”, permitting only the construction of factories and warehouses up the six stories high. This industrial-use zoning prevented property owners who were mostly Chinese from mortgaging their property or obtaining bank loans for repairs and renewal of their residences. With no buyers or access to financing, the housing in the seventy-year old Strathcona district fell into increasing disrepair.

At the same time, the federal government promoted redevelopment by offering financial assistance to rejuvenate aging slum areas. Coupled with rising real estate prices of inner-city property, the City of Vancouver was poised to redevelop

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162 Anderson, supra note 19 at 195.
163 Ibid. at 188.
164 During 1950-1959, the proportion of the total Strathcona population that was said to be Chinese increased from one-third to 48 percent, and as high as 70% near Gore. (See Anderson, Ibid. at 189.)
165 Ibid. at 188.
Strathcona as recommended in the VTC’s Redevelopment Proposal. The rhetoric and characterization of Strathcona as slum destabilized an increasingly important community. With the election of community members to Parliament and the economic success of Chinatown-based businesses throughout the greater Vancouver area, including notable examples such as the Keefer Laundry who at one time handled all of the linens for the hotels in Vancouver, Chinatown began to shed its past image of being merely a labour encampment. Residents started to enjoy its economic power and were not altogether convinced of its characterization as a slum, despite its aging structures. According to geographer George Cho, “one cannot equate Vancouver’s Chinatown with a ghetto or a slum in the strict sense of the word.”\(^{166}\) The common settlement history and cultural heritage of the Chinatown population set Chinatown apart from typical slums, but, this was not enough to deter the zeal behind urban renewal.

**VTC’s Redevelopment Study**

In 1957, the VTC authored the *Vancouver Redevelopment Study*, which identified Chinatown and Strathcona as “derelict” and sorely compromised as an “underproducing” area for tax revenue given the state of disrepair and consequently, low value, of its residential homes.\(^{167}\) With the approval of City Council, civic departments quickly implemented the report’s recommendations to acquire and clear slum housing and to reconstruct high density housing in its place. VTC’s report stated

\(^{166}\) George Cho, *Residential Patterns of Chinese in Vancouver*, (Masters of Arts in Geography, 1969) [UBC Papers].

\(^{167}\) City of Vancouver, Vancouver Technical Committee, *Vancouver Redevelopment Study 1957* Vancouver Redevelopment Study –Draft, Redevelopment Project No. 1 A-3 Call for Development Proposals [“*Vancouver Redevelopment Study*”].
that "[c]rowding structures onto these small lots, in individual ownership, was one of the factors responsible for the generally blighted condition of the area."\textsuperscript{168} Between 1957 and 1964 the City purchased and redeveloped wide areas of Strathcona. Beloved manorial homes were demolished and much-resented multilevel housing projects were constructed in their place. By living in large manorial homes, extended family and relatives shared resources and split living costs. While multilevel housing projects created as many housing units as were destroyed, such projects did not replicate the social or economic advantages of living in manorial homes. Authors of the VTC were not concerned with social criteria – they wanted to access federal funding and eliminate what they believed as was a scourge.

The VTC made recommendations for redevelopment in Strathcona by geographic areas entitled "Redevelopment Area", followed numerically as A-1, A-2, A-3 and so on. Area A-1 was the area bounded by Hastings and Union Streets, Gore and Raymur Avenue. In it, the City would construct low-rent, high-density public housing in the Raymur Park complex. Area A-2 was bounded by Keefer and Georgia, and Hawks and Heatley Avenues. Once cleared, this area would become Maclean Park. Located directly across from Maclean Park, Area A-3 was bounded by Keefer and Georgia Streets, and Jackson and Dunlevy. It was identified for public housing to accommodate the displaced residents of Area A-1 during its redevelopment.

Contrary to its official bland nomenclature, Strathcona residents were indeed very interested in these proposed redevelopment areas. They opposed what appeared to be innocuous gentrification because their homes were slated for demotion and lives

\textsuperscript{168} \textit{Ibid.} at 3.
destined for relocation and upheaval. Property owners worried about the meager compensation they might get through the expropriation process.\textsuperscript{169} For residents and the City, expropriation was a relatively new tool in the City’s arsenal to acquire land. Landowners did not have the benefit of statutory protections and legal safeguards that have since developed with the enactment of formal expropriation statutes in the 1970’s.\textsuperscript{170}

In research interviews with Strathcona residents, professor Joanne Lee found that they were not advised of their right to protest the acquisition or to appeal for additional compensation.\textsuperscript{171} Her interview subjects explained that residents were told that they had no rights and many accepted letters from City hall as a death sentence, without appeal or recourse. Lee found that residents did not have the willingness to challenge government officials for fear of being labeled as “trouble makers”, nor did they have the financial resources to do so, as there are no known or reported legal cases.

Redevelopment in Strathcona was a central element of the City’s 20-year program of urban renewal embracing some 1,000 acres for “Comprehensive Redevelopment” and some 1,400 acres for “Limited Redevelopment”. Existing community buildings such as schools, churches, halls and other similar use buildings

\textsuperscript{169} See Shirley Wong’s letter to City Council, dated November 28, 1967, as reproduced in City of Vancouver, Urban Renewal Scheme 3, B-Areal – Strathcona – Appendices, Vancouver, City of Vancouver Archives. Ms. Wong urges City Council to provide replacement housing at cost to families whose homes have been expropriated and details a precise formula for compensation. Ms. Wong’s suggestions address shortcomings in expropriation statutes across Canada. See Lee, supra note 23.


\textsuperscript{171} Personal interviews with Professor Joanne Lee and her research associate (Spring 2003) on expropriation cases in Chinatown.
would be retained as far as possible. However, virtually all of the residential buildings were to be demolished. In March 1960, City Council authorized the City’s engineers to acquire and clear Area A-1 and so began the first stage of redevelopment that was outlined in the VTC’s Vancouver Redevelopment Study.

Strathcona residents, the majority of whom were not fluent in English, did not want to leave the area. Of greater interest, they were concerned about receiving enough compensation from the City to stay within the increasingly expensive area. In October 1960, concerned property owners and residents formed a delegation of fifty, lead by notable leaders such as Foon Sien and Wilson Leung, to oppose the relocation and redevelopment. Under the ad-hoc organization named the Chinatown Property Owners Association (CTPOA), the delegates presented their case before City Council, and later submitted a brief to the Royal Commission on Expropriation Laws and Procedures.\(^\text{172}\)

In its brief to City Council, CTPOA advocated for the retention of private housing and the necessity of retaining a viable residential community contiguous to the more commercially-intensive area west of Gore. CTPOA argued that link between commercial and residential uses in Chinatown was critical to its success, following the proven example of San Francisco’s Chinatown as a residential community and a “showplace”. Hence, private residential housing needed to be preserved in order to keep the attractive neon lights of the commercial west-side of

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\(^{172}\) *Clyne Report, supra* note 157. On January 27, 1961, the Government of British Columbia established a Royal Commission to review the law of expropriation. The Honourable J.V. Clyne was appointed the sole Commissioner. Public hearings were held, the Commission sitting for eighteen days in Vancouver. The transcript of evidence and argument ran to 2,566 pages. Twenty-three organizations or persons appeared before the Commission, and a number of written submissions were made. The Commission was assisted by N.T. Nemetz, Q.C., now a judge of the Court of Appeal of British Columbia, and Mr. R.C. Bray, both of whom were appointed Counsel to the Commission, and Mr. J.N. Lyon, now an Associate Professor of Law at McGill University, who was appointed Registrar.
Chinatown. Strathcona’s 14,000 Chinese residents comprised almost all of Vancouver’s Chinese population. If this Chinese population and density were dispersed, the 176 businesses, 68 familial associations, 4 Chinese language schools, and so on would be irrevocably disrupted. CTPOA appealed to non-Chinese interests by highlighting the “International Flavour” of Chinatown enjoyed by Occidental tourists who frequented Chinatown as an exotic destination trip.

Despite its passionate appeal, CTPOA’s case before City Council and to the Royal Commission had little desired effect. Instead, civic officials and media reports villianized the Chinese community as a self-serving opponent to progress that would benefit the greater community. As Kay Anderson points out in her recount of CTPOA’s protests, the newspapers began characterizing opposition to slum clearance disapprovingly in a Province editorial in August 1961:

Slum clearance is going ahead…and the Chinese community should be cooperating in the process. They should be arranging to house elderly survivors of a past era in the fine new housing that is to be provided. Chinatown can be preserved. But only if the Chinese themselves help to make it a better, more modern and finer Chinatown. Slum clearance is Chinatown’s opportunity.\(^\text{173}\)

Those who protested their forced relocation from their homes for meager compensation were now portrayed as myopic and unable to help themselves.

The first stage of redevelopment, as recommended in the *Vancouver Redevelopment Study*, pressed ahead and protests were ignored. The momentum and perceived righteousness of slum clearance fueled City Council’s enthusiasm to launch the second stage almost concurrently with stage one. The second stage called for further demolition, and was even more objectionable to Chinatown residents. The

\(^{173}\text{Vancouver Province, 7 August 1961, see Anderson, supra note 19 at 195.}\)
Vancouver Redevelopment Study called for high-rise housing in Area A-3 located directly adjacent to Chinatown's commercial core.\textsuperscript{174} By constructing high-rise housing on Gore Avenue, there would be a permanent physical limit to the growth of Chinatown - commercial businesses would never be able to expand across Gore Avenue.

By Spring 1963, City Council had heard considerable objection to the redevelopment. Prominent leaders in the Chinese community spoke out against the project, asking for a boycott against the redevelopment. But many still felt unheard.\textsuperscript{175} In response to criticism that likened Chinatown's slum clearance to the forceable relocation of Little Tokyo during WWII, Mayor William Rathie offered Chinese architects the opportunity to design a private development for Area A-3.

Following the guidelines in the Vancouver Redevelopment Study, City planners thought that redevelopment of Strathcona should be undertaken by a combination of public and private enterprise, even though it was uncertain how much control the City could exert over the overall character of the redevelopment. Area A-3 became the subject of community interest as semi or quasi public entities were invited to participate in its redevelopment.

\textit{Area A-3}

\textsuperscript{174} City of Vancouver Archives, \textit{supra} note 156, Correspondence shows that City Council or civic administrators established an ah-hoc committee to administrate the acquisition and clearance initiatives.

\textsuperscript{175} \textit{Ibid.}
In light of CTPOA’s unsuccessful appeals to City Council and the Expropriation Royal Commission on Expropriation Procedures, the Chinese Benevolent Association (CBA) began coordinating efforts to respond to Mayor Rathie’s invitation to participate in the redevelopment of Area A-3. With its established history as a non-partisan association dedicated to social philanthropy and its renowned credibility within and outside the community, the CBA was a logical conduit for concerns over the third stage of redevelopment. In a letter dated April 10, 1963, the CBA recounted its meeting on March 29, 1963 with Mayor W.G. Rathie and City Planner Gerald Sutton Brown to review the CBA’s plans for redevelopment in Area A-3. The CBA’s letter described a meeting that “inspired [the CBA] to tackle this difficult development in Chinatown with more enthusiasm on account of your guidance” and that with the “expressed encouragement” (of the Mayor) “the project could be underway within six months.” With the full support of the Chinese community, the CBA confidently advocated its position that redevelopment should not disperse the Chinese community. Referring to the examples of similar developments in San Francisco, Chicago, and Honolulu, the CBA warned against the “distress cause[d] in some other cities by forcibly dispersing the Chinese Community on redevelopment and [the CBA] does not wish this to occur in Vancouver.”

In addition to pressing a social objective, the CBA appealed to a business case. The CBA had guaranteed financing in place, without calling upon funds from CMHC as would be needed by other developers. The CBA also knew that the

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177 Ibid.
Chinese community wanted “to live in their family homes [and] not in rented apartments or high rise buildings.”

The CBA presented its concept on April 10, 1963 to the Redevelopment Co-coordinating Committee, a committee that was struck in the previous year by the Mayor to examine Chinatown’s proposals further. This is the same committee that prominent Chinatown resident Foon Sien resigned from three months earlier, in January 1963 to protest the committee’s willful disregard of the grievances of residents when it nonetheless recommended that City Council approve clearance projects.

CBA’s proposal was reasoned and emphatic: Chinatown residents did want to be dispersed from Strathcona because the City proposed housing projects did not suit the Chinese community’s social needs. Moreover, the City gave an undertaking that when the second Stage of the Redevelopment program was reached, the Chinese community would be given an opportunity to examine the proposals and to submit their views before Council made its decision. The Province quoted Foon Sien to say that the Chinese community was far more concerned about Stage 2 of the redevelopment than Stage 1 because the former involved the wholesale displacement of Chinese residents.

According to the CBA, the City’s scheme of redevelopment for Area A-3 would not suit the Chinese people who formed the largest part of the community, and many were leaving the neighbourhood already. The CBA wrote:

178 Ibid.
179 Newspaper clippings, *Vancouver Province* (15 September 1960) Vancouver, City of Vancouver Archives (Foon Sien boxes).
This dispersal of Chinese residents represents a threat to Chinatown in that these residents contribute to a large degree in the support of Chinese stores, markets, restaurants and other businesses. These businesses apart from their direct benefit to the community, have a second worthwhile function in that they serve to make Chinatown the colourful and interesting attraction it is. It seems safe to say that our Chinatown is one of the major tourist attractions in our city.\textsuperscript{180}

Not only did the CBA emphasize the desire of the Chinese community to be involved in the redevelopment of Area A-3, it also reminded City Council of its promise to Chinatown residents that they would be invited to contribute to its redevelopment and welcome to bring their ideas forward when ready.

Indeed, the CBA was ready. It enjoyed intimate knowledge of the Chinese community’s needs, it had guaranteed private financing in place (as opposed to other private developers who needed to qualify for CMHC or NHA funds), and it had an organized plan for redevelopment. The first step of the CBA proposal was to acquire the whole of Block 86 (Area A-3). On this site, it would “build family-type homes of one and two storeys in height, with each house being situated on its own parcel of land. The houses would comprise one family, duplex and quadruplex types of buildings.”\textsuperscript{181}

The CBA explained the reason for this type of single-family development, which contrasted with the multilevel housing projects that the Redevelopment Coordinating Committee favoured, as follows:

Characteristically, Chinese people prefer to own their own homes rather than to rent them. A permanent home is the foundation of a Chinese family unit. In the Chinese culture the family home is a meeting and gathering place, for all members of a family unit, whether

\textsuperscript{180} Letter dated April 25, 1963 from Chinese Benevolent Association to the Mayor and City Council, Vancouver, City of Vancouver Archives (Foon Sien boxes).

\textsuperscript{181} ibid. at 3.
they are children or young adults having children of their own. In part it is the maintenance of these family groups that makes possible the low level of delinquency among Chinese and their fairly high educational accomplishments. Their pride of family is reflected in their pride in home ownership.

It is characteristic of the Chinese people that they want to live in their own house on their own parcel of land. High rise apartment buildings, even if co-operatively owned, do not appeal to our people. We do not like to rent our homes. We want to own them and the land on which they stand.\textsuperscript{182}

The CBA’s proposal satisfied the aim of clearance and redevelopment, and was “not just an idle dream.”\textsuperscript{183}

The CBA created the Vancouver Chinatown Development Association, a non-profit organization, to carry out the redevelopment of Area A-3. All that was needed was for the City to allow the CBA to acquire the land, and to relax the high-density standards required in the City’s redevelopment scheme. The high-density standard could be relaxed one of two ways: by reducing the set-back requirements or increasing the permitted floor-space ratio. In other words, a larger footprint could be built if the perimeter setback allowance was reduced, if the site coverage ratio or floor space ratio were to be maintained. Or conversely, the setback could remain the same if the floor space ratio were increased.

As the CBA suggested, if the area were zoned as a Comprehensive Development District, no amendment to the Zoning and Development bylaw would be needed. The relaxation could be easily enacted by the Technical Planning Board or City Council itself. They could amend the Subdivision Control bylaw to allow for small lot sizes and the landscaping objective would be met by CBA’s suggestion to

\textsuperscript{182} Ibid.
\textsuperscript{183} Ibid.
close or restrict vehicular traffic along Block 86, and planting Chinese maples and Japanese cherry trees.

At this time, the City was already in the process of acquiring and clearing Block 86. The CBA wanted the first right to acquire the entire Block 86, and if the property had to be offered by tender, then the CBA sought the privilege of meeting the price of the highest bidder for the purchase. The CBA was not the only interested party – in a letter dated April 25, 1963 from the City Planning Department to the Board of Administration of City Hall, the writer alludes to an inquiry having been received by the Planning Department from an architect expressing interest in this land on behalf of another potential developer.\textsuperscript{184}

Apart from this unnamed developer, there was competing interest from private members of the Chinese community. Remembered for her flamboyant hats and later incarceration for real estate fraud, the infamous Faye Leung and Dan Leung designed a separate redevelopment plan with a theme of Chinatown as the "Oriental City", complete with moon gate windows, pagoda roofs and landscapes of bamboo, Chinese maples, Japanese cherries and tea gardens.\textsuperscript{185} The Leungs fashioned a concept of Chinatown that supported mainstream perceptions of Chinatown already – a commercialized tourist district appealing to traditional stereotypes of a nostalgic and mythical vision of China from days gone by. An inaccurate account of historical Chinese architecture underscored the Leung proposal – architectural periods and styles were disrespectfully jumbled together.

\textsuperscript{184} Letter dated April 25, 1963 from City Planning Department (Redevelopment Division) to Board of Administration (City Hall), Vancouver, City of Vancouver Archives.  
\textsuperscript{185} Report to City Council, April 1963 from Dan Leung and Faye Leung, Vancouver, City of Vancouver Archives.
In May of 1964, the CBA and the Leungs dedicated resources and energy to putting forward proposals that would be accepted by City Hall. In a letter dated May 12, 1964, the Planning Department recommended that the City send to all interested parties the “Call for Development Proposals dated May 8, 1964” which outlined the requirements of suitable tenders. The Call for Development Proposals outlined CMHC’s design plan of a “super block” concept, with a population density of 100 persons per acre involving multiple forms of development. More particular requirements such as maximum 35% site coverage and maximum 25% service area coverage, lead to rigid design options that virtually required multi-family housing units to be constructed to meet the criteria. Indeed, only four lots would be created in each block necessitating higher occupancy factors again achievable only in multifamily housing units (not the small lots favoured by the CBA). Both the CBA and the Leungs submitted proposals that accommodated the tender call, with requests for dispensations on some of the stringent requirements.

Not surprisingly, the City rejected the Leung and CBA plans because their proposals did not contain multifamily housing units. The federal mandate to acquire, clear and rebuild “slum areas” with multilevel housing was clear. The diversions of the CBA and Leung proposals did not accord with the overall objective of modern housing plans in the name of progress. The conflict between “Chinese created plans” and “national slum clearance objectives” were not reconciled by Vancouver City Council. Instead, City Council focused on Strathcona redevelopment separately from redevelopment of the commercial area of Chinatown itself. This way, federal slum

186 Letter dated May 12, 1964 from City Planning Department to Standing Committee on Civic Development and “Redevelopment Proposal No. 1 Area A-3 – Call for Proposals” dated May 8, 1964, Vancouver, City of Vancouver Archives.
clearance proceeded in Strathcona (Area A-3) according to its original objectives, and civic redevelopment could occur in Chinatown to reflect the City’s objectives.

**B. DESIGN PROPOSAL FOR IMPROVEMENT – FEBRUARY 1964**

The City’s objectives for Chinatown were clearly stated in the City of Vancouver’s “Design Proposal for Improvement” (the “Design Proposal”):

Chinatown is clearly the most distinctive of these areas of special interest. The objective of this report is to show how this area can be improved, its character strengthened, and its tourist potential enhanced.\(^{187}\)

The *Design Proposal* was the City’s propaganda to initiate its program of improvement for Chinatown. It called for property owners and merchants to fund the $500,000 price tag.

The *Design Proposal* described Chinatown as having two distinct parts, one located east of Main (catering directly to the Chinese community) and the other west of Main (the tourist’s Chinatown). The *Design Proposal* only addressed the area west of Main, as depicted in Figure 1.

\(^{187}\) Design Proposal, City of Vancouver, City Planning Department, February 1964, Vancouver, City of Vancouver Archives (emphasis added).
The Design Proposal qualified its limited objective of improving the tourist's Chinatown:

This report does not pretend to be a fully detailed analysis of building conditions, economic stability of businesses or housing. Rather the study is concerned with space: the streets and open spaces around existing buildings.\(^{189}\)

The City intended to improve Chinatown through the construction of streetscapes rather than examining the factors that instill or support economic stability of a tourist’s Chinatown.

Indeed, the tourist value of Chinatown was a tangible business case for redevelopment that both Chinatown business owners and City planners wanted to

\(^{189}\) *Ibid.* at 5 (emphasis added).
capitalize upon. In 1964, Chinatown was a glorious commercial district of supper clubs and shops.\textsuperscript{190}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure2.png}
\caption{Vancouver’s Chinatown, 1964\textsuperscript{191}}
\end{figure}

The economic vitality of the tourist’s Chinatown was well-recognized and the City based its redevelopment proposals in the Design Proposal upon it.

There were four stages in the Design Proposal. Stage One was the re-routing of heavy traffic from Pender Street to the Pender-Keefer Diversion, which would be widened to permit two-way traffic. Heavy trucks would then be prohibited from using Pender Street between Main and Carrall Streets (Figure 3).

\textsuperscript{190} Michael Kluckner, \textit{Address} (Lecture presented to University of British Columbia PLAN 548H, March 16, 2004) (unpublished).

\textsuperscript{191} \textit{Supra} note 187 at 1.
Figure 3 - Stage One – Rerouting of Heavy Traffic\textsuperscript{192}

Foreshadowing the freeway plan already being designed by the City, the \textit{Design Proposal} noted that:

\begin{quote}
Studies being made for the replacement of Georgia Viaduct and a possible connection between Columbia Street and Quebec Street on the south side of False Creek may suggest other solutions to Chinatown’s traffic problems.\textsuperscript{193}
\end{quote}

The freeway proposal will be discussed later. It is important to note that the \textit{Design Proposal} which purportedly aimed to address tourist issues has as its primary step, a crucial street plan that coincides with the greater freeway proposal to come.

Stage Two of the \textit{Design Proposal} sought to eliminate the entire north block of Keefer Street between Main and Columbia for the provision of off-site parking (Figure 4).

\textsuperscript{192} \textit{Ibid.} at 9.  
\textsuperscript{193} \textit{Ibid.}
The structures pegged for demolition comprised buildings that were identified in the Design Proposal to be in "poor" condition constructed before 1930. These buildings, mostly light industrial, supported products and services supplied in Chinatown. The provision for off-street parking seemed anomalous given the Design Proposal's statistic that parking spaces were observed to be generally available in Chinatown during the mid-day. The clearance of this north block of Keefer followed from the Stage One expansion of the diversion, which also accommodated future freeway expansion plans. The demolition of this block was to occur over time, and at first opportunity – meaning, real estate prices in that area would be depressed by the existence of this Design Proposal because the City did not intend to expropriate the lands for this part.

On the other hand, the City already owned most of the triangle of land created by the Pender-Keefer Diversion. Stage Three involved the redevelopment of this "Triangle" by assembling (acquiring the four privately-owned parcels) and

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194 Ibid.
195 Ibid. at 6.
196 Of 400 parking spaces, 51 spaces were available. Ibid. at 7.
redeveloping them into an “oriental bazaar” that would operate in the summer months (Figure 5).

Figure 5 - Stage Three - Redevelopment of Area Between Pender, Columbia and Pender/Keefer Diversion

Instead of including prior proposals put forward by Chinatown residents for a temple and park, the Design Proposal suggested a 60-foot tall neon dragon near Carrall Street on the centre line of Pender Street. Appropriately echoing the “tourist Chinatown” concept the City hoped to achieve, the Design Proposal stated that “such a feature could become the symbol of Chinatown.”

Redeveloping Chinatown from its existing community into an enhanced tourist’s Chinatown was certainly on the minds of City planners in the Design Proposal when they designed Stage Four, the creation of a Pedestrian Mall. For Stage Four, there were two proposed sketches. Sketch One shows the creation of a limited traffic plan where only emergency vehicles, tour buses and taxis would be permitted access. There would be devoted bus loading areas and taxi stands (Figure 6).

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Figure 6 - Stage Four – Sketch Plan 1 – Limited Traffic Proposal

Sketch Plan 1 preserved the existing Marco Polo restaurant, created an Oriental Bazaar and erected the Pagoda in the southeast corner of the Triangle. The difference in Sketch Plan 2, reproduced below, is that no vehicular traffic would be permitted on Pender. It would be a pedestrian mall, modeled after popular urban design in the late 1960’s implemented in other North American cities.

199 Ibid. at 11.
According to the Design Proposal, Stage Four was not essential to the total program. Yet interestingly, Stage Four sets out additional construction that would accommodate a six-lane widening necessary for future freeway plans. Note that Keefer street is shown as dotted, and that the Pender-Keefer Diversion takes on design features such a wide-centre line separation that are more in keeping with an multi-lane arterial road than a feeder. Paved parking areas and cleared market areas are more easily converted into drive lanes than if structures were built. One can simply overlay the freeway proposal with the Design Proposal without conflict.

200 Ibid. at 12.
On the other hand, there was considerable opposition to Stage Four by the residents and business owners of Chinatown. Opposition came from different perspectives. Business owners objected to the creation of a summertime Oriental Bazaar that was located too far from their existing “sidewalk display” businesses. Merchants would have to move their wares daily from their stores and increase their staff to cover two locations. Business owners were also not convinced that reducing vehicular traffic on Pender would increase business volume. Because Chinatown was considered “exotic”, Occidentals felt more comfortable driving through Chinatown rather than exploring it on foot. The Design Proposal did not identify or address the needs or reflect the desires of the existing businesses because they were proposed without any public consultation.

Residents disagreed with the recommendations in the Design Proposal because it was designed to make Chinatown an object for “foreign” travel, not a community for existing Chinese residents. Chinatown was going to become the next “Stanley Park Zoo” complete with a limited-traffic mall for tour buses to gawk at the Chinese.201 Also, the creation of a widened diversion street would sever the neighbour from the south. Opponents were concerned that children and slow-moving seniors would be endangered by the six-lane road and faster posted speed limit. Only members of the Vancouver Chinese Centennial Committee were encouraged by the positioning of the Pagoda in the Triangle. The Committee had been proposing a Pagoda project to the City complete with guaranteed funding of $175,000 for sometime without success.202

201 Anderson, supra note 19.
202 Chinese Canadian Centennial Project, 1962, Vancouver, City of Vancouver Archives.
The Design Proposal failed to meet the expectations of Chinatown residents and business owners because it was conceived without any consultation. To further fuel opposition for this City-initiated proposal that many did not see any benefit of, the Design Proposal warned that property owners should be prepared to pay their share of the expense.203

The Design Proposal purported to present ideas and not dictum. It stated that “[t]his report has not stated what should be done, but what could be done.”204 This apparent flexibility to solicit ideas from Chinatown contrasts with the detail of Design Proposal itself. Moreover, the City engaged a model builder at significant cost to create a scale model illustrating the Design Proposal (Figure 8) to help property owners envision the project. Such an effort coupled with the failure to conduct any public consultation contradicts to the City’s purported desire to respond and solicit public opinion.

204 Ibid (emphasis added).
Despite the City's efforts to garner support for the recommendations in the Design Proposal, business and property owners never gained ownership of these imposed ideas, and the Design Proposal project was never built. Public opinion was not swayed by references to San Francisco and other North American Chinatowns where urban forms were designed to typify an archaic notion of Chinese culture (such as dragons and lanterns on light posts painted red or inaccurate phonetic translations of street names). Property owners were not dissuaded from maintaining the physical structures in their historic state that reflected the "career of those who lived there,

\footnote{Ibid. at 15.}
rather than the authority of those with the power to define, and literally construct Vancouver's Chinatown. Similar to the Strathcona slum clearance, the need for redevelopment was imposed upon Chinatown. The Design Proposal project failed because of the exorbitant financial contributions required from protesting property owners. The Design Proposal quickly lost attention and momentum when City planners unveiled a project of far greater controversy.

C. Freeway Proposal 1967

In 1967, City Planners proposed an elevated eight-lane freeway cutting through the heart of Chinatown. The freeway through Chinatown was part of a larger proposal for a comprehensive regional freeway network that could connect through a harbour-front development project and more importantly, to a third crossing to the north shore. Before the freeway proposal revealed an alignment through Chinatown, there was mounting momentum for a comprehensive regional freeway network. In late 1964, under the bureaucratic leadership of Gerald Sutton Brown, the City hired the engineering consulting firm of Phillips, Barratt and Partners to study a new alignment for the Georgia and Dunsmuir Viaducts and associated street planning. The Philips, Barratt consultants considered various freeway components when designing the Georgia and Dunsmuir Viaducts, which presumed that the freeway itself was going to be built.

During the years prior to the 1967 official announcement of the freeway proposal, federal funding, north shore developers and fervent city planners initiated a series of reports and studies that recommended the freeway proposal through

\footnote{Anderson, supra note 14 at 200.}
Chinatown, and through other parts of Vancouver as well. In 1966, the City hired the San Francisco firm of Parson, Brinkerhoff, Quade & Douglas (PDQ & D) to develop a transportation plan for Vancouver.\textsuperscript{207} The local architectural firm of Erickson-Massey was also asked to evaluate the transportation plan from a local perspective.

At a stakeholders meeting held on October 12, 1966, civic officials and external consultants discussed a preliminary functional plan that would form the basis of the soon-to-be released Vancouver Transportation Study. The Minutes from this meeting reveal that experts considered aligning the freeway eastward to avoid Chinatown but determined that it would be too costly to move it out into the harbour.\textsuperscript{208} Mr. Hickley from the City planning department believed that the north south freeway “should improve the situation in Chinatown provided it is properly handled”. Director of Planning Mr. Graham agreed that the street systems would be made more compatible with a freeway by “possibly incorporating the freeway into the Chinatown motif.”\textsuperscript{209} City Engineer R.M. Martin could only speculate that the elevated freeway might provide “desirable” cover since no public consultation in Chinatown was conducted.\textsuperscript{210} External consultants and City officials satisfied themselves that their best intentions for the freeway would benefit Chinatown.

Over eight months and at a cost of $212,000, the members of the Vancouver Technical Committee considered various freeway design options: single deck aerial roadway facilities, terraced freeways (stacked), tunneling and partial aerial

\textsuperscript{207} Minutes from October 12, 1966 Meeting of the Vancouver Transportation Study (Authors: G. Massey (Erickson-Massey) and H.D. Quinby (PBQ & D)), Vancouver, City of Vancouver Archives.

\textsuperscript{208} Ibid.

\textsuperscript{209} Minutes from October 12, 1966 Meeting of the Vancouver Transportation Study (Author, W.E. Graham, Director of Planning) Vancouver, City of Vancouver Archives.

\textsuperscript{210} Ibid.
expressways. Finally on June 1, 1967, the City Engineering Department presented the results of these studies in the Vancouver Transportation Study (VTS) to City Council. The VTS recommended a waterfront freeway connected to the Georgia Viaduct via a Carrall Street connector cutting through Chinatown, and thence to a north-south freeway and an east-west freeway extending to the city boundaries. The proposal involved an eight-lane, two hundred foot-wide, thirty foot-high wall cutting into the western edge of Chinatown. In conjunction with the freeway proposal, City planners separately proposed an eight-block commercial development named Project 200 that was to stretch along the Coal Harbour waterfront from downtown to Stanley Park. City planners were expecting accolades when they proposed both the Chinatown freeway proposal and Project 200 because their advisers were made up mostly of commercial and north shore developers.

211 Ibid.
212 Ibid., at 156.
The freeway announcement on June 1, 1967 drew the attention of Chinatown immediately. The more famous freeway opposition would come later in October. Within a month, the Chinese Benevolent Association (CBA) together with the Chinese Merchant’s Association prepared a Brief opposing the freeway proposal through Chinatown. The CBA framed the freeway problem as follows:

It is our understanding that plans are now underway to construct a new Georgia Viaduct Bridge and that City Council must therefore advise the city engineers of the various alternative routes a cut-off might take to join the Georgia Viaduct portion of the freeway system with the freeway leading to Project 200. While our position is not the intention to advise, recommend or suggest one or several alternatives to the City

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214 *Vancouver Sun*, 4 November 1967, Vancouver, City of Vancouver Archives.
215 Chinese Benevolent Association Brief to the Mayor and City of Vancouver Council dated July 4, 1967, Vancouver, Vancouver City Archives, with letter dated July 4, 1967 from the Chinese Merchant’s Association, Victor Louie to the Mayor of Vancouver, Vancouver, Vancouver City Archives.
Council, it is here to make its position clear to City Council that the Chinese Community does not want any part of the proposed Freeway system to cut through any part of the Chinatown business district. In particular, the Chinese Community oppose the recommendation that a Freeway cut through the unit block of East Pender Street. The Chinese community is opposed to this recommendation for the simple reason that Chinatown as we know it will be completely destroyed.\footnote{Ibid. at 2-3.}

The CBA Brief presented a business case about tourism and commercial revenues to preserve Chinatown but it also appealed passionately to save the “basic and traditional culture of the Chinese people” that would be destroyed with the loss of the family societies and community schools.\footnote{Ibid. at 4.}

According to the CBA, the freeway proposal threatened the vitality of Chinatown. An eight-lane freeway through Pender or Carrall\footnote{Street name appears as “Caral” and “Carall”.} streets would render the existing Chinatown a concrete shadow. The freeway proposal also displaced existing enhancement projects proposed by business and property owners. For example, the one hundred and fifty thousand dollar Pagoda project on the intersection of Carrall and Pender streets was shelved. A proposal by the Chinatown Merchants Association to extend business hours in Chinatown to correspond with other tourist and souvenir shops that cater to tourist traffic was also put off until the greater issue of the freeway could be decided. Ancillary projects important to the Chinatown community were now eclipsed by the challenge to the existence of Chinatown itself.

In addition to Chinatown’s opposition to the freeway, City Council considered fourteen briefs on the proposed freeway. Neighbourhoods along Main and Venables streets were also affected by the freeway proposal and residents organized to oppose its construction. Notably, opposition to the freeway focused on the unnecessarily
narrow limitations of the City’s transportation study. The San Francisco consulting firm of PBQ&D recommended a freeway alignment under the constraints of the City’s own terms of reference that limited the scope to only two alignments. Such limitations on the scope of the study called the motives of the City’s engineering and planning departments into question.

The Vancouver Sun reported that City Council was divided on the freeway issue and decided to table a decision on the VTS that was strongly recommended by City staff. City Council favoured expanding the scope of the transportation study to examine more alignments because the consensus among Council members was that no freeway link should be built through Chinatown. The National Harbour Board supported Chinatown’s opposition by being amenable to a freeway connection east of Carrall even if it would mean encroachment onto the harbour area. Because the assumptions in the PBQ&D study did not allow other options to be considered, City Council now instructed a wider study. Despite objections from Commissioner Gerald Sutton Brown and civic bureaucrats, who wanted to press forward with the freeway proposal, they would have to wait few more months before their freeway project could be considered by City Council again.

By September 8, 1967, PBQ&D produced a six-page recommendation letter to the City Engineering Department. In addition to summarizing the City’s expanded terms of reference initiated on July 11, 1967, PBQ&D recommended Sketch Plan H that showed the connection to the major highway west of Gore Avenue. There would be an interchange of four stacked ramps together with new one-way distribution

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219 Vancouver Sun, 6 July 1967, Vancouver, City of Vancouver Archives.
220 Ibid.
access streets for Prior and Union streets. PBQ&D purported that they carefully considered a number of factors when designing Sketch Plan H: “land use, community impact, economic, topographic, highway geometrics and other engineering and planning considerations.” After reviewing all of these factors, PBD&Q recommended a preferred alignment that specified the “tie-in” or “connection” for the freeway at a location west of Gore Street through the heart of Chinatown. But, there was one lesser known factor that greatly influenced PBD&Q’s recommendation that outweighed land use and engineering factors: it was money.

It was common knowledge that the residents of Chinatown preferred the freeway connection to be located east instead of west of Gore Street where it would slice through the heart of Chinatown. A freeway connection east of Gore Street would reduce overall disruption to the area and keep the commercial centre of Chinatown intact. An east connection would make logical sense overall except that the City would lose federal funding from the Strathcona slum clearance project if a freeway was built east of Gore street. As engineer RM Martin wrote,

Location of this connection east of Gore Avenue would involved extensive encroachment on the Strathcona Redevelopment Project which is well advanced in its stages of development, and for which substantial contracts exist between the City of Vancouver and both the Central Mortgage and Housing Corporation of the Federal Government and the Province of British Columbia. Construction of portions of this project, including the block bounded by Georgia and Union Street and by Dunlevy and Jackson Avenues, is already completed. The Vancouver City Planning Department has stated that location of any portion of a major highway or its ramps within the Strathcona Redevelopment Project and its required clearances would involve the loss to the City of further financial support to the Project by the senior levels of government.

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222 Ibid. [emphasis added].
From RM Martin’s own admission, the City preferred that ramps be located west of Gore or else it would lose financial support for the Project. Even though PBD&Q purported to have considered all objective criteria such as land use and engineering in determining a preferred location, locations east of Gore were never properly considered because of the City’s desire to safeguard federal funding.

On Tuesday, October 17, 1967, City Council officially decided to build an elevated freeway with tie-in connections located east of Carrall Street and west of Gore Street, wholly adopting all of PBQ & D’s recommendations. The new freeway proposal would have its critics but City Council and administrators underestimated the public outrage that would follow and how quickly Vancouverites galvanized support to oppose the freeway. The next day the Vancouver Sun reported:

Angry protests swept through Chinatown Tuesday following city council’s decision to build an elevated freeway across the district’s heart. Chinese businessmen and property owners heatedly charged that council reneged on its promise to consult them before deciding on the route. They claimed the eight-lane traffic artery above Carrall means a death sentence for Chinatown as a tourist attraction and viable business community.223

Opposition echoed through Chinatown, as did allegations of bad faith and sentiments of bitterness by those who participated in the CBA’s Brief submitted to City Council two months earlier. Dean Leung, co-chair of the CBA, was reported to say, “They didn’t even consult us. We didn’t even now that the question was to be considered by council on Tuesday.”224 The Vancouver Sun also reported that Henry Fan,

223 Vancouver Sun, 18 October 1967, Vancouver, City of Vancouver Archives.
224 Ibid.
spokesperson for the Chinatown Property Owners’ Association said that: “The reaction among the Chinese merchants and businessmen is very bad.”

Opposition to the freeway came also from sources outside of Chinatown as well as Taras Grescoe described:

The day after city council approved plans for an eight-lane freeway across Chinatown, fifty University of B.C. architecture and community planning students decided that they had to do something. They marched along Pender Street carrying banners saying “Undemocratic and Irresponsible” and “Is Sutton Brown God?”

Property owners such as Lawrence Killam of the Birmingham architectural firm also joined the voices of opposition when he was quoted saying, “It will be a tragic blunder if the city demolishes half of Chinatown for a freeway.” Indeed, the location of the connection between Carrall and Gore streets would involve the acquisition and demolition of a strip of buildings 120 feet wide, mostly along the historic buildings on Pender Street. The general manager of the Greater Vancouver Visitors and Convention Bureau, Harold Merilees, thought that the City’s decision was disappointing: “What’s a few million dollars more in costs compared with destroying Chinatown – one of our leading tourist attractions?”

By Saturday after the announcement on Tuesday, black banners were draped over buildings in Chinatown with white lettering opposing the freeway. The large banners that hung over the entrances of the CBA office and the Marco Polo restaurant confronted residents and visitors to Chinatown’s notable hotspots with the message

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225 Ibid.
226 Ibid. See also, Vancouver Sun 4 November 1967, Vancouver, City of Vancouver Archives at 12.
227 Ibid.
228 Vancouver Sun, supra note 223.
229 Vancouver Sun, 23 October 1967, Vancouver, City of Vancouver Archives.
that Chinatown was under attack. About 100 people attended a Saturday meeting called by the CBA, and an ad-hoc committee of seventeen members was struck to spearhead the anti-freeway campaign. The committee immediately convened to draft a brief to the local, provincial and federal governments to force the City to change its freeway plans. In contrast to assurances from the Mayor that businesses could be built under the pillars of the freeway, Chinatown business and property owners were more concerned about preserving the historical character of Carrall Street. The Monday edition of the Vancouver Sun reported that Dean Leung said: “We also want Chinatown preserved now and 100 years from now.” Leung was referring to many family associations in the unit block of Pender street, including the Chinese Times newspaper which were going to be destroyed by the freeway. The block between Carrall and Pender streets is the most historic area of Chinatown that dates back to the first settlement in Chinatown and Vancouver itself. Leung said that the Chinese community did not trust promises; the City had reneged on its promise to consult with the public, and the City failed to find new homes in the Chinatown district for the hundreds of Chinese who remained scattered about the city.

Opposition to the freeway mounted quickly. Within a week, Mayor Tom Campbell responded by hosting a luncheon meeting with Chinatown leaders on Monday, October 23, 1967. As reported in the Vancouver Sun the next day, Mayor Tom Campbell retreated from Council’s decision on the Carrall freeway link by promising to include Chinese representatives on a committee of citizens he planned to appoint to work with architects on finalizing the design. He apologized to the Chinese leaders for not having invited them to the Council meeting the previous
Tuesday, and “promised to check whether the controversial Carrall Street elevated freeway could be built on the west instead of the east side of the street.”

Promises from City Hall did not carry much weight any more in Chinatown. From the ignored Pagoda Project to the failed promises of appropriate housing in Strathcona, residents of Chinatown feared that the freeway proposal would follow the City’s spirited zeal to rebuild Vancouver and destroy Chinatown. Together with Chinatown organizers, supporters outside Chinatown joined the anti-freeway campaign. There was a diverse range of supporters to save Chinatown: history and architecture academics from UBC, the Civic Unity Association, Community Arts Council, Vancouver Visitors’ and Convention Bureau, Vancouver Board of Trade and even private citizens joined the freeway debate. Numerous letters of support were sent to the Mayor, including one such letter dated November 3, 1967 from a Mrs. W.S. Kate Watson, who wrote:

Dear Mr. Campbell, - yesterday I was at a Citizen’s seminar sponsored by the School Board and the Vancouver Citizenship Council. And one of the people taking part was Mr. Foon Sien of the Chinese Benevolent Association. He was feeling very upset about the proposed plans for planning a freeway through Chinatown. Now I do not profess to know the ins and outs of this plan but I do think that the Chinese are very good citizens, and Chinatown a real [ ] attraction, second only to the one in San Francisco, and I do think it should not be destroyed in any way or the lives of these good people be disrupted. I want to put in a good word for them. Sincerely, Mrs. W.S. Kate Watson.

The diverse anti-freeway campaign became focused on three key issues: i) opposition to a freeway in Vancouver and preference for rapid transit system, ii) destruction of

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230 *Vancouver Sun*, 24 October 1967, Vancouver, City of Vancouver Archives.
231 Correspondence file, Mayor’s Office, Vancouver, City of Vancouver Archives (Foon Sien boxes).
232 Letter dated November 3, 1967 from Mrs. W.S. Kate Watson to Mayor Campbell, City of Vancouver Archives. Mayor Campbell received at least ten letters of support for the opposition of the freeway from various authors, Vancouver, City of Vancouver Archives (file 45-B-6file16).
Chinatown community and business, and iii) preservation of historic buildings in Chinatown.

A newspaper photograph of the protesters picketing the October Council decision for the freeway reveals Caucasian faces amid Chinese ones.

Figure 10
Photograph of Protesters

The November 4, 1967 edition of the Vancouver Sun reported:

The reaction at city hall at first was: "How do we win?" If the city does something, the elected and hired officials get it in the neck for doing it wrong. If they don't they get it for stalling and indecision.  

The freeway proposal had deeply divided views for and against. Newspapers tracked the positions, votes and absences of Council members at meetings that considered freeway proposals – and Council members soon became identified as either "pro" or "anti" freeway.

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233 *Vancouver Sun*, 4 November 1967, Vancouver, City of Vancouver Archives at 12.
In next civic election of 1968, the “Rathie” Council (i.e. pro-freeway) was replaced predominantly by “anti-freeway” Council members. While the majority of the general public opposed the freeway and voted accordingly, private developers and city planners were deeply invested in the issue and continued to press the freeway proposal forward. \(235\) Advocates for the freeway had the benefit of years of planning studies that supported a comprehensive regional freeway system and which included the construction of a third crossing to the north shore (the real prize for north shore property owners and developers who were “pro-freeway”). Anti-freeway advocates scrambled to find qualified transportation engineers and architects to critically evaluate the freeway design; it was difficult to address seemingly persuasive reasons tendered by pro-freeway developers and north shore property owners.

In the very polarized freeway debate, a voice of opposition came from a surprising source – a person who was associated with the freeway proposal itself. Arthur Erickson, an aspiring architect, was hired by the City as an external consultant to provide some perspectives on the impact of the freeway. Erickson credits his firm, Erickson & Massey, for having stopped the freeway because his report said that the Carrall street connection to the freeway would be a “big mistake” and that “Chinatown would be completely underneath the piers of the freeway.” \(236\)

Four months later, City Council’s views on the freeway proposal changed. The City moved from being pro-development to later adopting as their basic principle the desire to integrate a completed expressway and transit system into the

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“community fabric.” At the General Council meeting on January 9, 1968, City Council narrowly passed a resolution to rescind Council’s prior decision to endorse the Carrall Street section of the proposed freeway. As described in the Vancouver Sun, this “about face” followed public outcry that was credited to leaders of the Chinatown community and UBC academics such as Walter Hardwick and Dr. Peter Oberlander. “Leading critics were heartened by council capitulation but refrained from claiming a final victory” – they were well aware that Council could simply vote again to reverse its decision. Jack Lee from the CBA and Harry Fan from the Chinatown Property Owners were grateful for City Council’s decision but their gratitude was tempered by the looming possibility that Council could always go back on their decision. Lee demanded, “We would like a firm commitment that the freeway link will not go through Chinatown.”

The freeway fight was won, at least momentarily. Organizers while grateful, were also mindful that they may be called upon to fight again in a few months. The Vancouver Sun reported that Chinatown organizers celebrated cautiously, mindful of the impermanence of the victory. Their caution was warranted. During the time that the freeway proposal was reviewed and debated, City Council approved construction of portions of the Georgia viaduct on the premise that a freeway would be built. Council authorized Philips Barratt and Partners to consult on the new viaduct and to start designing the structure. At a further cost of $4,300 and four and a

237 Minutes of General Council Meeting, January 9, 1968, Vancouver, City of Vancouver Archives.
238 Ibid. at 18.
239 Vancouver Sun, 10 January 1968, Vancouver, City of Vancouver Archives at 2.
240 Ibid. at 1.
241 Ibid. at 2.
242 Vancouver Sun, 10 January 1968, Vancouver, City of Vancouver Archives at 18.
half months, more sketches depicting the viaduct and connectors to the freeway were drafted. The Georgia Viaduct was constructed and opened two years later.

Indeed by 1970, Harry Con on behalf of the Strathcona Property Owners and Taxpayers Association (SPOTA) found himself addressing the Mayor again to advocate against a freeway and the heavy use of Prior Street resulting from the opening of the Georgia Viaduct:

In February 1970, the people of Strathcona area appeared before City Council three times to protest the construction of any freeway through the area. We convinced the Council to rescind its decision on the Union-Prior couplet. Also, we strongly recommended the Council should determine a better solution for dispersing traffic leaving the Viaduct before the actual construction of the Viaduct.

Needless to say, the opening of the New Georgia Viaduct and the subsequent heavy use of Prior Street, finds us very disappointed with City Hall. This loading of Prior Street has created and will continue to create problems for the citizens of the area. The heavy traffic has alienated those South of Prior Street from those North of Prior Street by effectively discouraging any easy contact with each other. Obviously this discouragement of personal communication severely damages the atmosphere and hope for a viable neighbourhood. Access to False Creek Park has become increasingly difficult. The Park is our only regional park and is used by people of all ages.

In the past, we protested against having a freeway thru the Downtown and thru our Chinatown. Now we are faced with a freeway proposal in the East, this will affect the Strathcona Area where the rehabilitation program, supported by the three levels of government, will proceed soon. In our neighbouring communities, to the East of us, we are very concerned over the hundreds of homes to be displaced by this proposed freeway. The experience that was faced by many of our residents from the forced expropriation by the Urban Renewal Scheme was not a happy one. The lack of fair play, knowledge, citizens participation and the great social hardship for many will be long remembered.

Again, we stress that we do not want any freeway cutting through our area. We ask the City Traffic Department work on an over-all transportation system which is geared to the safety of people not just automobile[s]. It is hoped that the Council Members will
concern themselves more with their people and housing rather than with freeways. Unlike its external allies who joined them in the prominent freeway fight, SPOTA continued to work actively behind the scenes to influence the continuing road construction and redevelopment of its neighbourhood. SPOTA organized to send volunteer representatives to many of the special sub-groups with long names, such as the “Special Committee of the Liaison Group Re Freeway Connection Georgia Viaduct to Highway 401”, that were established by City Council to review piece-by-piece the construction of the Viaduct and the freeway. While these sub-groups appeared to have been charged with the responsibility of freeway review, they had very little power or influence. Without budgetary resources or political authority, these groups were nothing more than bureaucratic attempts to placate and occupy the anti-freeway opposition.

D. SPOTA’S RESISTANCE

SPOTA’s tireless and unsung efforts encompassed recruiting volunteers to become knowledgeable of freeway and neighbourhood development, attending countless special committee meetings, and raising awareness within the Chinatown community on the broad range of City-initiated construction projects. These projects ranged from technical traffic and road planning (e.g. the Viaduct) to thinly-veiled

243 Letter from Harry Con from SPOTA to the Mayor and Council Members, dated July 23, 1970. Vancouver, City of Vancouver Archives.
244 Minutes from April 19, 1971 Meeting of the Special Committee of the Liaison Group re Freeway Connection – Georgia Viaduct to Highway 401, Vancouver, City of Vancouver Archives.
beautification projects\textsuperscript{245}, all of which had the potential to significantly impact the character and vitality of Chinatown. For example, the Beautification Programmes proposed by the City Planning Department to City Council in February 23, 1967 and July 31, 1968 aimed to develop civic "hardware" toward the physical rehabilitation of Chinatown.\textsuperscript{246} City Planners proposed streets, sidewalks, street furniture and public decorations even after the previous "Pender Pedestrian Project" was abandoned.

There remained a fervent desire to reconstruct Chinatown by decorating it in a manner that reflected the City planners' conception of Chinatown. Was Chinatown not authentically Chinese enough? City planners felt it necessary for gold dragons and red-painted light posts to be erected to adorn the neighbourhood. City Planners wanted to demarcate an already distinct character of Chinatown by using distinguishing features that were stereotypically Chinese to the occidental viewer. Ironically, the stereotypical elements of Chinese architecture (dragons, red paint and crevices) conflicted with the diverse architecture of the traditional buildings. The historic buildings in Chinatown with their bay-windows, balconies and ornate lattices reflected the architecture of past colonizers of parts of China. Settlers in Vancouver's Chinatown constructed Victorian- and Portuguese-style buildings because they were reminiscent of the architecture constructed in the colonized provinces of China from which many of the labourers had immigrated.\textsuperscript{247} The gold dragons and red lamp posts were confusingly juxtaposed against Italian lattices and Victorian bay windows,

\textsuperscript{245} Vancouver, City Planning Department "Beautification" – Goals and Procedures (October 21, 1968) Vancouver, City of Vancouver Archives.
\textsuperscript{246} Ibid. at 3.
\textsuperscript{247} http://vancouver.ca/commsvcs/planning/chinatown/history/index.htm
which more accurately reflected the colonial history of the people who settled in Chinatown.

Guided by stereotypes, the City Planners proposals failed to properly understand and enhance Chinatown as a unique historical area that illustrated the history and character of its settlers. The stereotypes used in the City-initiated beautification proposals defined Chineseness as a singular dimension as observed at the time of first colonial contact, in contrast to the lengthy and complex geographical, social and political history of a diversity of Chinese people. In addition to physical road construction that threatened Chinatown in the name of progress, there were attempts to reconstruct Chinatown socially and symbolically as artificially Chinese in the name of beautification.

On June 25, 1969, the Vancouver Sun reported that architect Bud Wood of Birmingham Wood had accused City officials of delaying release of the beautification report to influence Council’s decision in selecting a route for approaches to a new third crossing to the north shore. While Mayor Tom Campbell denied the accusation, the interconnectedness of the Carrall Street bypass and distributor route and the Chinatown-Gastown beautification program was clear. Barrett and Wright presented before the Standing Committee of Planning, Development and Transportation on July 3, 1969 a report that condemned the City’s revitalization plans:

The problem stated by the report is one of revitalization and beautifying the pockets of decay in the downtown area. The word “decay” would more accurately read “neglect” and that does not apply necessarily to the physical structures but more specifically to the social

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groupings and individuals that occupy the area. Whenever we talk of altering the physical make-up of anything, be it a house, a district, a city, no matter how large or small, it is the people that will be affected and the way they will react that must be considered before all else.

Once again the people of these areas have been neglected. The report's recommendations can hardly be considered grounded in the needs or even basic requirements of those now living in the area. Our opinion is that the framework of the report now before Council is essentially in error and that it contains no solution to any problems the area is now faced with. Any attempts that have been made at problem solving have been poorly and superficially presented. In short, the issues have not been dealt with.\footnote{Presentation before the Standing Committee of Planning, Development and Transportation on July 3, 1969, Barrett and Wright, Vancouver, City of Vancouver Archives (emphasis added).}

With two of the city's major architectural firms speaking out, the City's revitalization plans were completely unnecessary and accordingly abandoned.\footnote{Vancouver Province, "Dress up old city - planners"- 11 July 1969, Vancouver, City of Vancouver Archives.}

On the other hand, the City's report advocated major beautification plans, including the perspective that:

> The city is at the stage where it can still choose to recognize the value and beauty of its cultural inheritance. ... It has a very special and attractive human heritage, and through it has impetuously squandered some of it, and through ignorance and willful blindness has often pitifully neglected to take proper stock and care of its possessions, a substantial sum of them remain intact and only need to be revealed and cultivated to help Vancouver refine and strengthen that character and personality which will make it great among great cities of the world.\footnote{Vancouver, City of Vancouver Planning Department, "Restoration Report: A case for Renewed Life in the Old City: (December 19, 1969, released June 1970) Vancouver, City of Vancouver Archives.}
would be expected to pay increased property taxes between $6.00 to $7.00 per lineal frontage foot per year for fifteen years.  

In the midst of the debate over what to do with the “dangling” Georgia viaduct and the Chinatown beautification schemes that were ardently proposed and equally objected to, the community of Strathcona was also quietly fighting the last stage of the slum clearance. Headed by prominent community leaders such as Mary Lee Chan, the last stage of slum clearance was not going to happen unopposed. At the outset of stages one and two of redevelopment, City officials promised the Strathcona community that residents would consulted for stage three of the slum clearance. By the time stage three was about to commence, City officials blatantly refused to honour their commitments and proceeded without consultation. Mary Chan and other Chinatown advocates decided to appeal to a higher authority — the federal government.

Paul Hellyer, the federal transportation minister visited Strathcona in the later stages of the slum clearance project. During his visit, Mary Chan led a group of advocates to convince the Minister to consider the affected residents of the urban renewal project that was being funded largely by federal dollars. Civic officials touted slum clearance as being wholly successful, but failed to mention the negative impacts of clearing old-timers from these key residential areas and proposed destruction of historic areas of Chinatown for the freeway. Impressed with Mary Chan’s group and suspicious that civic officials had misled him, Minister Paul

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252 Vancouver, City of Vancouver Planning Department, :Alternative Beautification Projects for Chinatown” (January 13, 1970), Vancouver, City of Vancouver Archives.

Hellyer instituted a moratorium on further urban renewal until all stakeholders, including the residents themselves, were consulted. No further projects were completed in Chinatown under the slum clearance scheme.

The federal government gained a certain fondness and respect for Chinatown and its residents, culminating in the federal heritage designation of Chinatown's historic blocks. Civic authorities who planned to dissect Chinatown with a freeway through Chinatown's heritage buildings were trumped by federal and provincial authorities who stepped in to protect Chinatown's architecture. These contestations over the (re)development of Chinatown revealed a strong community that could be galvanized to protest attacks on Chinatown's physical structures that represented greater social and political implications. In other words, the projects and protests over Chinatown were not only contestations about freeways or pedestrian areas. In the fervent protest over urban renewal and freeways, there was an underlying debate about the notion of property in land, and about the ways in which these contestations about land served a more discursive purpose, that of constituting a nation. In the next chapter, we unmask the complex layers of the intersection of race/space and legal geographies.
CHAPTER FIVE - VANCOUVER'S CHINATOWN: RACE/SPACE LEGAL GEOGRAPHIES

The sixties marked a critical transition in Chinatown. Through struggles over space, this locale was transformed from a foreign and exotic neighbourhood during the post-war years, to the emergence of a prominent community in an increasingly multicultural nation. Chinatown, as many now recognized, could neither be assimilated or eradicated. In each of these projects, place-based mechanisms were employed to construct, regulate and produce a Chinese racial identity. The result was that Chinatown was produced and reproduced as a racialized space. Following the race/space legal geographical analysis described in an earlier chapter, I now turn to how the geographical interrogations of racialization in Africville and Stanley Park apply to Vancouver's Chinatown.

Strathcona Slum Clearance

Not only was the Slum Clearance project precipitated by federal funding, it gained momentum with popular support from Vancouver City officials who wanted to implement a modernist agenda by appealing to racial categories. Modernism became defined in racial terms (white is modern, advanced and therefore superior, the Other is backward, and therefore inferior). In Nelson's recount of Africville, opposition to slum clearance by Africville residents had a negative moral connotation as "anti-modern" or "primitive". In Chinatown, opposition to slum clearance also connoted the same negative moral judgment. Blight became conflated with the characterization of Chinese people and culture as "anti-modern", "primitive" and

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“inhuman” for living in “squalor conditions”. If they opposed slum clearance, then by definition they were morally inferior and unable to help themselves.

This powerful message was communicated in the slum clearance discourse. For example, the denigrating tenor of newspaper editorials suggested that the Chinese needed to help themselves to make it a better, more modern and finer Chinatown, presupposing that Chinatown was not good enough as it was. Editorials implied that Chinatown residents were either unwilling or unable to help themselves, and that only the slum clearance project would be capable of eradicating “blight” – a conspicuous condition to which Chinatown residents seemed oblivious. Moreover, there was an underlying theme that Chinatown was slum not because of some unconscionable breach of objective living standards (e.g. overcrowding densities, lack of water and unhygienic sewer, etc.) - standards which could be applied externally. Chinatown was considered a slum because the Chinese chose to live in high-density familial units that were different than the traditional single-family Euro-Canadian pattern. It was the culture of “Chineseness” itself that made it a slum, and the resident’s unwillingness to change that made them inferior.

Residential patterns of the elderly living in small quarters with or near kinship ties were considered an inferior way of social organization. The Chinese Benevolent Association (CBA)’s written proposal to the City of Vancouver in 1963 emphatically argued that large single-house development (capable of accommodating large families) was preferable to the mass multifamily-tower housing (of small single units) that the Redevelopment Committee favoured. CBA’s impassioned plea alluded

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255 Supra note 173.
256 Supra note 19.
257 Chinese Benevolent Association, supra note 215.
to high educational accomplishments which the CBA argued was the result of strong family units. But such residential patterns were the very target of slum clearance.

City authorities opposed the residential density variances proposed by the CBA. These seemingly inconsequential planning policy measures would preferentially impose Euro-Canadian family patterns onto the Chinese community. The City proposal to develop rental housing appeared to provide low-income housing but this type of single-rental housing would in fact cost more to the individual than the cost of a one-room unit in a large manor home shared with family or kinship members. Quite apart from the stated objectives of the City, the slum clearance initiatives were directed to clearing a culturally-specific residential pattern, not the eradication of intolerably low living conditions. The residents who choose to live in a slum did so because of some unassimilable or immutable inferiority – such is the racialization of Chinatown.

Akin to how the “dump” in Africville was created, Chinatown’s slum was created socially and physically through place-based legal mechanisms. Water and sanitary sewer services were denied in Africville because it was not zoned as residential district, causing low hygiene and thereby creating deteriorating conditions. Chinatown was downzoned in 1931 to “light industrial”. This degrading of land-use zoning from “residential” to “light industrial” prevented property owners from mortgaging their properties or obtaining bank loans to repair their homes and rooming houses. Downzoning led to the general disrepair of properties and reduced the overall number of transfers of property ownership, when home repairs would typically be done to improve value for resale or upon purchase by the new owner. The financial
means and economic impetus for reinvestment and maintenance of properties were
effectively removed when Chinatown was downzoned. The built-form was regulated
in a manner that created deteriorating conditions. These deteriorating conditions in
Chinatown were aligned with the Chinese being anti-modern, ignorant and morally
inferior.

In addition to zoning regulation, civic authorities implemented other place-
based legal mechanisms in Chinatown that had social and physical consequences.
City officials sent expropriation letters to Strathcona residents threatening forcible
eviction with little or sometimes no mention of compensation.\textsuperscript{258} If the City offered
compensation, it was only for market value of the physical property, and no
compensation was offered or awarded for any rents or contributions received from
family members for sharing accommodation. Because Strathcona was not zoned for
rooming houses or shared accommodation, any rents or income derived from non-
conforming uses were rendered legally non-compensable.\textsuperscript{259} Without the additional
income or cost-splitting, residents were unable to repurchase homes of similar size
and character in the neighbourhood. As a result, expropriated residents were
dispersed from the community to the detriment of the previously vibrant churches,
schools and businesses situated in Strathcona.

In the area previously known as A-2 in the Strathcona Redevelopment Project,
Maclean Park now stands as a quiet testament to the once flourishing neighbourhood
before bull-dozers eliminated the lively city blocks of kinship family homes. Only
the relic of a too-steep fire-escape from an odd third-storey window betrays the quiet

\textsuperscript{258} Poizner, \textit{supra} note 253; see also Lee, \textit{supra} note 24.
\textsuperscript{259} If rents could not be considered in the compensation, the fair market value of the home would not
reflect the property’s actual value from its ability to generate rooming income.
domesticity of a scientifically planned and redeveloped neighbourhood. There are no plaques or historic markers. Even the park, named after Malcolm Maclean the first mayor of Vancouver, does not reflect the life and career of the Chinese CPR families who eked out a living and settled in Strathcona. This is reminiscent of the "burial" and erasure identified by Nelson in naming of Seaview Memorial Park where Africville once stood.

The slum clearance project constructed Chinatown as a racialized space through place-based legal mechanisms. The Strathcona area of Chinatown was labeled as "blighted". This was a characterization that was laden with negative moral judgments of Chinese racial identity in contrast to the superiority of modernism of Euro-Canadian settlers. City authorities enacted legal mechanisms of downzoning and expropriation to forcibly remove residents and to change the character and residential patterns of the neighbourhood. Because the loss of residential density in Strathcona had a negative economic impact on the growth of commercial businesses west of Gore, the whole of Chinatown was affected by the slum clearance in Strathcona.

It is important to note that the geographical exclusion of Strathcona from the official boundaries of Chinatown was one of the place-based mechanisms employed by the City to delimit the growth and identity of this historic neighbourhood. By drawing "official" boundaries with a thick red line, City officials mapped Chinatown imposing an external view of the definition of the neighbourhood. Using Henri Lefebvre's formulation of social space, the exclusionary mapping as a "representation" of place, attempted to change the way residents "perceived" and
“experienced” Chinatown. Until this redevelopment project, Chinatown residents did not think of Strathcona as being separate from Chinatown. The use of mapping as a delimiting tool affirmed civic authority, harkening back to Mawani’s argument of how colonial authority was similarly imposed upon Stanley Park by its exclusionary mapping.

Throughout the discourse of Chinatown’s slum clearance and urban renewal project, the privileging of the dominant white settler society over the cultural history of the Chinese Canadian settlers played out over and over again. Civic authorities used place-based mechanisms and impositions of authority to achieve social objectives. These social objectives included limiting the social characterization of Chinatown as a strictly commercial district, and the characterization of Chinatown residents as anti-modern or in effect, anti-Canadian. These place-based mechanisms were prejudicial downzoning, unfair expropriation and exclusionary mapping, all of which were directed at the built-form but served a common purpose. This purpose was to eradicate, redefine and construct “Chineseness” according to a white Euro-Canadian cultural norm. These same mechanisms are even more manifest in the 1964 Beautification Proposal for Chinatown.

**1964 Beautification Proposal**

When the City of Vancouver revealed its 1964 proposal to improve Chinatown, the map showed a red-outlined area of study. This seemingly innocent red line asserted civic authority and entitlement to manipulate and dictate social and spatial identities. The red-outlined area defined Chinatown as a purely tourist area,

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260 Supra note 1 at 9.
and not a community or business enclave. This red line defined Chinatown’s existence for consumption by outsiders. Chinatown was not allowed to exist for its residents and existing users – it had to be improved for external tourist consumption.

In addition, this red line had the effect of limiting the expansion and growth of Chinatown, physically and socially. Main Street divided the tourist’s Chinatown from the resident’s Chinatown to the east, and Gore Avenue (as defined in the slum clearance project) divided the commercial and residential parts of Chinatown. These distinct divisions were arbitrary because there were cross and mixed uses throughout the area, (although there were general concentrations of similar uses in some blocks). These concentrations were entrenched by mapping divisions that served to control and limit Chinatown’s growth. Indeed, as Mawani notes, mapping reflects colonial ambivalence over their own authority too, needing to represent and impose their particular viewpoint through maps.\(^\text{261}\) The exclusionary mapping Chinatown attempted to produce Chinatown as a commodity dependent upon dominant consumption of the Orient instead of Chinatown as a powerful organized community, as it increasing became.\(^\text{262}\)

Key features of the proposal demonstrated the desire to produce a tourist’s Chinatown. For example, the proposal to close Pender Street allowing only tour buses and taxi cabs did not meet the needs of Chinatown businesses that credited free-flowing vehicular traffic in front of their stores with business. There was also a highly inconvenient proposal to develop an “Oriental Bazaar” in the triangular parcel of land created by the Keefer-Pender diversion. Under the Oriental Bazaar proposal,

\(^{261}\) Mawani, supra note 14 at 104.

\(^{262}\) Chinatown activists raised war bonds and elected the first Chinese Canadian Member of Parliament, Douglas Jung.
shopkeepers who enjoyed storefront sidewalk displays were expected to transport their wares, and to hire more staff to sell tourist goods in one area. Invariably, these kiosks or stores tend to sell similar souvenirs targeted for sale to tourists, which are of little use for local residents who need everyday goods such as hardware or services like key-cutting,alternations or shoe cobbling.\textsuperscript{263} The appropriation of tourist by civic officials is a political symbol.\textsuperscript{264}

The beautification proposals also included hardware streetscape installations such as lampposts decorated with dragons and painted red topped with street name signs translated into Chinese. These hardware proposals were designed to visually define and reinforce the area as Chinese for the tourist. City planners wanted to improve Chinatown by “repackaging” it using decorative items stereotypical of traditional architecture of China but irrelevant to the inhabitants of Vancouver’s Chinatown. Red lampposts and dragons traditionally reserved for the imperial regime of China were imposed upon Chinatown. The residents of Chinatown did not adorn their buildings in this fashion. The organic style of the residents produced culturally-mixed buildings owing to the actual colonial history of the residents. The early railway and mining workers from China had seen Italianate lattices, Portuguese balconies, Victorian bay windows, and other distinctive architectural elements. It would have been unlikely that the early settlers of Vancouver’s Chinatown ever saw

\textsuperscript{263} This is an example repeated in many tourist destinations, such as the Mercato Market in Florence, Italy that has rows upon rows of kiosks selling near-identical leather belts, purses and pashmina scarves, the crowded kiosks of the International Marketplace in Honolulu, Hawaii selling similar gold jewelry in plumeria or pineapple shapes, or kiosks on Lady Street in Hong Kong, PRC selling near-identical souvenir t-shirts commonly with the saying, “My [blank] went to Hong Kong and all I got was this lousy t-shirt”. Tourist-focused kiosks do not sell reasonably-priced goods and services needed by locals for everyday living, such as hardware or services like key-cutting, alternations or shoe cobbling.

\textsuperscript{264} Anderson, supra note 19 at 209.
true imperial architecture, as railway and mining workers came mainly from the poor South Pearl River delta area and would not have traveled to the Forbidden City to see grandiose gold dragons or ornate carvings. Similar to the erection of the totem poles in Stanley Park, the 1964 Beautification Proposal sought to insert inauthentic cultural symbols. By repackaging Chinatown in this manner, civic authorities were effectively disregarding the history of Chinatown as a settlement post of early railway and mining workers, and creating it as an artificial foreign import belonging neither to its landscape or history.

Stereotypical streetscape décor coupled with exclusionary mapping attempted to modify authentic Chinese Canadian architecture in Vancouver’s Chinatown. The 1964 Beautification Proposal attempted to repackage Chinatown into a false or inauthentic tourist quarter, fully divorcing the community from its self-existence to reconstitute it as being created for consumption by the white Euro-Canadian society. Before the legal mechanisms of expropriation and tax assessments could be implemented, the 1964 Beautification Proposal was abandoned in light of the Freeway Proposal in 1967.

Of the three projects proposed in Chinatown during the 1960’s, the freeway proposal was the ultimate threat to Chinatown’s continued existence. The freeway proposal threatened to destroy entire city blocks of historic buildings erected during the earliest settlement of Chinese Canadian labourers in North America. This was a symbolic annihilation of Chinatown as expendable as much as it was a physical destruction of Chinatown itself. The vigourous protest by Chinatown residents and members of the greater community suggested that the freeway proposal was more
than a contestation about land in Chinatown. A freeway through Chinatown represented a clash over larger social issues.

Modernity and assimilation were pitted against cultural preservation. In Chinatown, this contestation was enacted in a land dispute about who was entitled to allocate and use land. A subtext in the discourse surrounding the freeway debates centered on the concept that Chinese residents wanted to remain separated from greater Vancouver, both physically and culturally. Therefore, if you did not support the freeway, you were considered anti-Canadian, had foreign interests at heart or were simply unassimilable as a “people” or a “race”. The discourse suggested that support for the physical connection to the City via the freeway represented willingness by the Chinese community to integrate, assimilate or connect to the larger society.265 This willingness would be evidenced by sacrificing Chinatown for the construction of the freeway. In effect, modernity required the collateral destruction of an “unimportant” history – the life and career of early Chinese Canadian settlers. Hence, the space of Chinatown was racialized in the freeway debates that pitted modernity (as represented by pro-freeway Euro-Canadian society) against the racial category of “Chineseness” constructed as Byzantine and unassimilable.

Consider also the role of legal mechanisms in the freeway debates. Shortly before the freeway proposal, legal mechanisms such as the zoning freeze in Chinatown created deteriorating buildings, which seemed less worthy of saving. The legal mechanism of expropriation was also available to civic officials who were experienced in delivering expropriation notices in Strathcona. Other legal

mechanisms were further manipulated in the political maneuvers within City Hall. From artificially narrow terms of reference in City-initiated review reports to special sub-committee meetings that were not announced, civic officials hoped to manipulate the political process to exclude Chinatown advocates from meaningful participation in the City development process. The City Engineering department carefully orchestrated a series of road-planning decisions designed to lead inevitably to the construction of the freeway west of Gore Avenue through Chinatown as the natural and only option to tie-in the dangling Georgia Viaduct. Place-based legal mechanisms created a physical environment (such as deteriorating buildings and separated tourist-residential areas) where the freeway proposal would be supported.

But for the overwhelming outpouring of opposition from within the Chinese community (such as SPOTA, CBA, Mary Chan and Bessie Lee) and from greater Vancouver residents (such as UBC academics, architects and residents like Kate Watson), the freeway proposal would have proceeded. The history of Chinese Canadian settlement would have been buried under piers and towers of a freeway system. Civic officials proposed "incorporating the freeway into the Chinatown motif,"266 as the only recognition an eight-lane freeway would give to history of Chinese Canadian soldiers, settlers and residents in Chinatown. Chinatown’s history was going to be buried, and the tombstone was already written as a “Chinese motif” on an eight-lane freeway.

Chinatown residents cautiously celebrated the successful fight against the freeway, saving historic Chinatown. The tireless lobbying efforts at the federal government led to Chinatown’s heritage designation that precluded demolition for the

266 Vancouver, supra note 209.
freeway. However, this "solution" against the freeway served also to reify government authority as the final arbiter of Chinatown. While Chinatown was no longer threatened by physical destruction, it then donned a new heritage label that also precluded its "reinvention". Any and all renovation or reconstruction would now have to comply with a whole new set of planning and design bylaws.\textsuperscript{267} New place-based mechanisms under different auspices were instituted to regulate Chinatown from the 1970's onward.

\footnote{The impact of the heritage designation on the impeded natural development of Chinatown is an area for further study.}
Slum clearance, beautification and the freeway proposal revealed place-based mechanisms that were employed to construct, regulate and produce racial identities, and itself to constitute racialized space. Similar to the examples of Africville and Stanley Park, we see that these projects in the 1960's were directed specifically to constituting racial categories within land contestations of Chinatown. In service of white Euro-Canadian nation building mythology, civic officials wanted to constitute the Chinese community as “anti-modern” in addition to evicting residents from valuable land while destroying an “expendable” history. These attempts were not entirely unsuccessful. Two of the three Chinatown projects were ultimately defeated. However, within each of the projects there was a common thread where space was racialized in order to control, regulate or expropriate land. These land-use contestations related directly to the struggle over who could control the definition and identity of a community.

At the end of the sixties, Chinatown escaped redecoration and destruction by averting the beautification and freeway proposals, unlike Africville and Stanley Park. Such success cannot be heralded as an absolute victory. Much of Strathcona had been completely cleared and its residents dispersed from the area. And while Chinatown was able to save its historic built-forms, the control over its identity still rested with governmental authorities, albeit now at the federal level in Ottawa. Federal authorities exercised more prudence than local authorities who wanted to simply pave over Chinatown. However, federal authorities and Chinatown residents have naively understood the full impact of heritage designation on Chinatown.
By passing a complete moratorium on the area, the federal government had effectively legalized the installation of a time-frozen Chinatown. Inscribed by thick lines delineating Chinatown’s historic area, Chinatown became firmly and geographically contained. Without adjacent lands zoned or available for expansion, Chinatown over the last thirty years has dwindled and declined into an old Hollywood variant dominated by curio stores and deteriorated restaurants. Success on one level was followed by threats and failure on another.

That struggle continues in the 2000’s as City of Vancouver planners seek to revitalize Chinatown as part of the City of Vancouver’s Downtown Eastside Revitalization Program. In 2002, City Council adopted The Chinatown Vision Report which set out three broad objectives for Chinatown: a place that tells history with its physical environment, a place that serves the needs of its residents, youth and visitors, and a hub for commercial, social and cultural activities. Even in the present, the struggle over Chinatown’s identity continues, and the debates heat up as developers such as Bob Rennie represent forces of homogeneity converging on inner city real estate. This type of current redevelopment and revitalization, in the wake of the influx of wealthy Hong Kong immigrants in the late 1990’s, calls for further study.

Returning to what I have identified as a critical turning point for Chinatown, the three Chinatown proposals in sixties were land-based contestations representing

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268 Community Services, Report (Report from Community Project Manager to Vancouver City Council) Jessica Chen-Adams (Vancouver: Downtown Eastside Revitalization Program, July 9, 2002) RTS 2783. The Vancouver Chinatown Revitalization Committee (VCRC) was formed by city planners, Chinatown community associations and merchant groups. The goal for the VCRC was to bring community members to address key issues in the area such as safety and economic growth through extensive community consultation.

269 Bill Richardson “Best of Vancouver: Strathcona – Gentrified Strathcona grows old peacefully” Georgia Straight (22 September 2005).
struggle over the identity and meaning of Chineseness. Conjuring Kay Anderson’s controversial thesis, the struggle over Chinatown in the 1960’s was a question of whether Chinatown was defined as a colonial construct representing those with the power and authority to regulate Chinatown or more organically, as representations of the life and career of those regulated by such authority. That life and career opposed the white Euro-Canadian nation building myth of peaceful settlement by white colonial power. In this myth, there cannot be any recognition of a historic “Chineseness” in Canada, or any credit ascribed to Chinese Canadian settlers for their efforts in building the nation.

As Anderson observes, multiple strategies in government practices have informed the construction of knowledge about the Chinese. Building from Anderson’s conclusion, I have shown how the territorial arrangements in Chinatown have been achieved through multiple legal mechanisms. Beyond chronicles of Chinese narratives, I argue that these legal mechanisms had a specific purpose and effect of racializing space. Civic authorities developed planning and land-use laws with a social purpose. They successfully cleared Strathcona by characterizing it as a slum, and using powers of expropriation. Civic authorities attempted to appropriate Chinatown as a tourist Chinatown, politically symbolizing the Chinese as foreign and exotic. This symbolism reifies the Euro-Canadian white as the centre and point of reference for defining Chineseness. As in the empirical examples of Africville and Stanley Park, the struggles over the three projects in Chinatown implicate legal mechanisms as being constitutive of racial categories.

270 Anderson, supra note 19 at 246.
I have shown how place-based contestations in Chinatown are in fact intense social struggles over identity enacted through geographical and legal mechanisms that are mutually constituted and informed. Race becomes collapsed with place – and the space that is produced creates and maintains structures of dominance by white Euro-Canadian settler society. This race/space legal analysis reveals the distribution of power and subjects in Chinatown, and socio-spatial ideology underlying that distribution. Law’s role in the production of racialized spaces is evident in Africville and Stanley Park, and in the Chinatown example. The apparent racelessness of slum clearance, beautification or a freeway is unmasked as land-based appropriation of Chinese identity in support of a white Euro-Canadian society.

In this thesis, I sought to reveal how the legal mechanisms were used to produce Vancouver’s Chinatown racially and spatially, in order to highlight the ambivalent nature of Chinatown and my resulting equivocation with its familiarity and foreignness. Escape from the place-based mechanisms of redecoration and demolition in the 1960’s did not emancipate Chinatown from the stronghold of government control over the identity of Chinatown through laws. This observation supports the principle tenet of my thesis. Legal mechanisms are implicated as the means by which Chineseness continues to be dictated by those who control mechanisms. At the same time, those who resist contribute to the legal and racial formulations of Chineseness as well. In addition to revealing the legal mechanisms responsible for the racialization of Chinatown in the 1960’s, I also emphasize the role of resistance against socio-spatial mechanisms in land contestations. The identity of Chinatown was negotiated by the complicity of and resistance to dominant
representations of both Chinese and non-Chinese residents. Vancouver’s Chinatown
is a point of reference through which Chinese and Canadian identity is invested with
cultural meaning, being vulnerable to and capable of (re)representation. Because
classificatory spatial practices can be reconfigured and (re)negotiated in and through
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