

**“Absolute Exclusion”:
Alan Webster Neill and Racially Restrictive Covenants**

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Introduction

Growing up in my hometown of Port Alberni, British Columbia, I have always known the name A.W. Neill. Many of my friends attended A.W. Neill Middle School (later changed to A.W. Neill Elementary), and when the city got a rare dump of snow, my mother and I walked to Neill Street, the steepest hill on our side of town, to go tobogganing. I did not learn the full extent of former Member of Parliament A.W. Neill's past until 2017, when I read that the School District 70 board of trustees were considering renaming the school due to Neill's racist politics. Online, the Port Alberni community was divided, and no one could agree on whether or not renaming the school was the best course of action. The debate became even more heated in 2019, when a group of high school students helped remove a discriminatory covenant from the land title of Neill's former property.

Racially restrictive covenants, clauses in a land title that prevent the sale, rental, or occupation of a property, were (and continue to be) more commonplace than many Canadians realize. Because many land titles were established prior to the internet and standardized digitalization, it is impossible to know the true number of deeds that still contain discriminatory clauses across Canada. Although they are no longer legally enforceable, the language is still present, and unless manually removed, the language will remain.

The covenant on Neill's former property is evidence of the kind of legal racism that many in British Columbia faced, and that Neill himself perpetuated during his political career. In this essay, I will examine A.W. Neill's political past, his contributions to anti-Asian policies in Canada, and the circumstances surrounding the covenant removal of his former property in Port Alberni, British Columbia. Although Neill and his racism have been addressed in relation to the

significance of naming honorifics and public history,¹ an examination of Neill and his anti-Asian racism in relation to covenants will provide a deeper understanding of covenants as a piece of public history that is seldom discussed. I will also consider the history of racially restrictive covenants, other recent cases of covenant discoveries, and how governments are considering the large-scale redaction of restrictive clauses in land titles.

Racially restrictive covenants have long played a hidden role in the historical segregation and systematic discrimination of minoritized groups. Although the direct effects of racially restrictive covenants may seem small, they are a significant, yet subtle contribution to the culture of white supremacy on which Canada was built.

A.W. Neill and Anti-Asian Racism in British Columbia in the Early 1900s

A.W. Neill was born in Scotland in 1868, and immigrated to Canada in 1881. He purchased 160 acres of land in the Alberni Valley and, after a brief stint in the military and trip home to Scotland to visit his ill father, he returned to Canada in 1897. The following year, Neill was elected as a member of the Legislative Assembly of British Columbia, which began his career in politics. Over the next two decades, he also served as a federal Indian Agent for the Alberni Valley, and as an Alderman and mayor of the municipality of Alberni, before he was elected as an independent member of Parliament for the Comox-Alberni riding in 1921.² In his

¹ Ian Baird, "The Commemorative Landscape as a Space of Anti-Racist Activism: Confronting the Legacies of Anti-Japanese Canadian Racism on Vancouver Island," *ACME: An International Journal for Critical Geographies* 21, no. 5 (2022): 590-591, <https://acme-journal.org/index.php/acme/article/view/1970>; Ian Baird, "The Politics of Honorific Naming: Alan Webster Neill and Anti-Asian Racism in Port Alberni, British Columbia, Canada," in *Landscapes of Injustice: A New Perspective on the Internment and Dispossession of Japanese Canadians*, ed. Jordan Stanger-Ross (Ottawa, Ontario: McGill-Queen's University Press, 2020), 423.

² Baird (2022), 590.

inaugural campaign, Neill advertised his platform, which included granting fishing licenses to only White British subjects and “absolute exclusion” of “Asiatic” immigrants.³

While he is remembered for his victory in passing the Old Age Pension Act in 1927, or for his 1931 Bill declaring Veteran’s Day (previously known as Armistice Day) as its own legal holiday,⁴ Neill’s 24-year career as a member of Parliament is marred by his staunch anti-Asian racism and support for Indigenous assimilation. On the topic “Oriental aliens” in 1922, Neill addressed the House of Commons:

From the Atlantic to the Pacific ocean I see the great Canada peopled with one great white race, the worthy descendants of the two races that now occupy Canada; I see one race, speaking perhaps two languages still, but one race in everything that counts, one race in their unity as a nation, one race in their allegiance to the flag they follow, one race in their adherence to the God they worship.⁵

Over the course of his tenure as a Member of Parliament, Neill worked to reduce the rights and opportunities for Asian Canadians. At the time, the west coast of Vancouver Island had a high Japanese population, due to its proximity to the ocean. In his reelection campaigns, he often bragged about his successful efforts to reduce the rights of Japanese living on the West Coast. Neill supported several bills that reduced the number of people of Japanese descent working in

³ In my research, I discovered that the Port Alberni Historical Society’s archives, located within the Alberni Valley Museum, have a folder (labelled L12.2.1) and several scrapbooks of documents pertaining to Neill. A member of the Society informed me that during Neill’s career, his secretary, Lane Bill, collected newspaper clippings, speech excerpts, and other documents. Most of the articles have been dated in pen; if undated, I have made an educated guess and made a note.

⁴ “History of Remembrance Day” *Government of Canada*, November 8, 2022, <https://www.canada.ca/en/department-national-defence/services/military-history/history-heritage/remembrance-ceremony/2.html>.

⁵ Canada, *House of Commons Debates*, May 8, 1922 (Mr. A.W. Neill, Independent), https://parl.canadiana.ca/view/oop.debates_HOC1401_02; the two races to which Neill are referring are white Canadians and French Canadians.

fisheries, sawmills, canneries, and fish plants, in order to “protect” white jobs, particularly in the fishing industry.⁶ In the late 1930s and early 1940s, Neill was a vocal supporter of the confiscation of Japanese Canadian property and subsequent internment and exile from Canada.⁷ In a short biography written by MP Gordon Graydon, he summarizes Neill’s focus in politics:

The Japanese problem in British Columbia and the Department of Fisheries are Mr. Neill’s favourite subjects of discussion on the floor of the House. He is one of Canada’s best informed men on the oriental situation in the Coast province and is never lacking in courage when attacking the entry of Japanese into this country.⁸

Neill and his actions did not go completely uncriticized in his era. After a speech in 1943, wherein Neill discussed the “Oriental question” and outlined his support for the systematic exile of Japanese Canadians, Angus MacInnis, Member of Parliament, described his speech as “flesh-creeping.”⁹ However, Neill’s anti-Asian racism was not uncommon in the early 1900s.¹⁰

British Columbia, as a province of the nation-state of Canada, has been built upon the foundations of white supremacist and anti-Asian ideologies. Early Asian immigrants were tolerated by white settlers in the late 19th-century, particularly by employers who appreciated cheap and effective labourers.¹¹ However, resentment built as Asian workers began to be

⁶ Baird (2020), 423-425.

⁷ Ibid., 425-427.

⁸ This article clipping is titled “Apart from Politics: Glimpses of Ottawa from the Pen of Gordon Graydon, Member of the House of Commons for Peel.” It is a short biography on Neill, and describes him as a 70 year old, which leads me to believe that this article was written around 1938. I cannot, however, find what newspaper or newsletter the article would have been published in.

⁹ Canada, *House of Commons Debates*, June 30, 1943 (Mr. Angus MacInnis, C.C.F), <https://www.lipad.ca/full/1943/06/30/13/#1316896>.

¹⁰ P. V. MacDonald, "Race Relations and Canadian Law," *Faculty of Law Review* (University of Toronto) 18 (1960): 115-116.

¹¹ Patricia Roy, *White Man’s Province: BC Politicians and Chinese and Japanese Immigrants, 1858-1914* (Vancouver: UBC Press, 1989), 6-7.

considered as economic competition to white workers, and there was concern that “hordes” of Asian immigrants were detrimental to the development of “white British Columbia.”¹² Politicians began to restrict Asian immigration to British Columbia with policies like the Chinese Head Tax, and introduced barriers that made employment difficult for those already living in the province. Municipalities were given the responsibility of providing licenses for certain trades and professions, which allowed them to increase the costs or outright deny licenses to people of Chinese descent who worked as laundrymen, pawnbrokers, fishermen, or miners.¹³ Enforced segregation elsewhere, like in churches and public schools, limited contact between Chinese and white Canadians. School boards refused to admit Chinese children who were not born in Canada, and Chinese parents were not allowed to run as school board trustees. One MLA expressed his concern for the moral “evils” that would arise if Asian and white children were allowed to mix in public schools.¹⁴ Soon, Chinatowns were painted as hosts to opium-peddlers and gambling dens, tempting white men and gouging them for their money, which provided an excuse for regular raids and police supervision.¹⁵ There are many accounts of anti-Asian violence in the period, fuelled by common judgments of Chinese and Japanese immigrants residing in British Columbia. In several instances, small white communities drove Asian immigrants out of their towns,¹⁶ and the infamous 1907 Riot in Vancouver’s Chinatown caused extensive property damage and heightened already tense race relations in the city.¹⁷

¹² Ibid., 91.

¹³ Ibid., 33.

¹⁴ Ibid., 26.

¹⁵ Ibid., 16.

¹⁶ Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia* (Montreal: McGill-Queen's University Press, 2002), <https://ebookcentral-proquest-com.ezproxy.library.uvic.ca/lib/uvic/detail.action?docID=3330900>, 64.

¹⁷ Janet Mary Nicol, “The Vancouver Race Riot of 1907 and the Death of Ng Ah Sim,” *The Journal of the British Columbia Historical Federation* 40, no. 2 (2007): 1-5, <https://open.library.ubc.ca/media/download/pdf/bch/1.0190652/0>.

People of Japanese descent, who often worked in the fishing and canning industries, were already considered an economic competitor,¹⁸ but with Japan's military growth in the early 20th-century, Japanese living in Canada were considered dangerous. Stories of Japanese spies living and working on the West Coast circulated as early as 1905 and continued to grow for decades before Japan joined the Second World War.¹⁹

Meanwhile, British Columbia was encouraging the immigration of white settlers from the east of the country. Early immigration pamphlets advertised cheap land, good weather, and easy money, and promoted the image of a happy farmer with a wife and a family.²⁰ White British Columbians felt entitled to 'their' province, and white racial superiority was freely discussed. Many doubted that Asian immigrants would be able to assimilate to the dominant white society. The Victoria Trades and Labour Council wrote, "the western races of people . . . who hold a commanding and controlling position in the administration and industrial affairs of the broad Dominion, are entitled to and ought to remain secure in that position."²¹

However, white settlers held those positions of power because they prevented Asian immigrants from any legal path to equality. Provincial politicians, Neill included, leaned on anti-Asian stereotypes to justify further restrictions and laws that limited the rights and freedoms of Asians living in Canada. Racial beliefs and assumptions about Japanese and Chinese immigrants came from "self-perpetuating stereotypes," rather than from personal experience and interracial contact.²² Additionally, because non-whites had no vote in the province (and had not

¹⁸ Ward, 100.

¹⁹ Ibid., 105.

²⁰ Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871*, (Toronto: University of Toronto Press, 2001), <http://www.jstor.org/stable/10.3138/9781442688759>, 136.

²¹ Roy, 186.

²² Ward, 102.

since 1872), politicians continued to employ racist rhetoric as justification for anti-Asian policies against a population who could not vote in response and had no voice in politics.²³

As racist as his political career proves him to be, A.W. Neill's opinions were not radical in his time. Politicians like Neill, comfortable in their explicit prejudice and confident in limiting the rights of Asian immigrants and Indigenous peoples, were hugely influential in shaping British Columbia and Canada. The policies that they supported shaped the lives and experiences of Asian immigrants *and* white Canadians, who were comfortable with the privileges their whiteness provided them.

Despite his lengthy record as an outspoken racist, Port Alberni has remembered Neill fondly. In 1957, three years before his death at the age of 91, a Port Alberni school was named in his honour, which he took great pride in.²⁴ An article that appeared in *The Daily Colonist* in 1973 refers to Neill as “a servant of the people,” and lists a watered-down version of his accomplishments, void of any mention of his racist politics, and instead recounting amusing tales and anecdotes. The article includes a photo of Neill and the caption “A.W. Neill... thank him for pensions.”²⁵ More recently, despite increasing public awareness of Neill's past (see section below), one local wrote to the editor of the *Alberni Valley News* in defense of Neill, stating that he “lived in a different time,” and that his opinions are “no reason to vilify his name.”²⁶

²³ Henry Yu, “Cantonese Migrant Networks, White Supremacy, and the Political Utility of Apologies in Canada,” *Journal of Ethnic and Migration Studies* 48, no. 4 (2022): 969–88, doi:10.1080/1369183X.2021.1983957.

²⁴ Jan Peterson, “Valley in Review,” *Alberni Valley Times*, February 15, 1990; found in the archives of the Alberni Valley Historical Society.

²⁵ Doris Farmer Tonkin, “A Servant of the People,” *The Daily Colonist*, September 16, 1973.

²⁶ Black Press Media, “LETTER: AW Neill Shouldn't be Vilified in this Day and Age for Decisions Made in a Different Era,” *Alberni Valley News*, October 19, 2023, <https://www.albernivalleynews.com/opinion/letter-aw-neill-shouldnt-be-vilified-in-this-day-and-age-for-decisions-made-in-a-different-era-715310>.

Public Discussion to Rename Neill Street and A.W. Neill School

Neill's legacy was brought to the forefront of Port Alberni's attention in 2016, when a former Alberni resident notified city councillor Chris Alemany and school board trustee Rosemarie Buchanan about Neill's racist past. Both Alemany and Buchanan did their own research, and decided to use their roles as elected public servants to attempt to rename the street and the school that carried his name.²⁷

News of potential proposals to change the eponymous names quickly spread on *AV Chatter Box*, a local Facebook group. The private group has approximately 18 thousand members, a significant number when considering the Alberni Valley has a total population of around 27 thousand. Posts discussing Neill gained hundreds of comments, and community members had varied stances on the topic, often strongly worded. Many expressed that they had no knowledge of Neill's history and were shocked to learn about his role in Canadian politics. Others only knew the name because of the school or the street. Comments in favour of the name changes supported the step towards reconciliation and acknowledgement of the harm Neill caused during his decades-long career as a politician.²⁸

Oppositional voices, however, were loud, and there were several common arguments against changing the names. Many were concerned about potential costs to taxpayers, in regards to changing the signage on the school and official addresses for residents of Neill Street. Others pointed out that another school in the district, Maquinna Elementary, is named for a Moachat Chief who captured and enslaved a group of British sailors in 1803,²⁹ and that if A.W. Neill

²⁷ Baird (2022), 591.

²⁸ Judi T., "This is a good example of Unsettling the Settler. It's easier for Settlers to live in denial and reproduce Settler consciousness. This is interrupting structures that sustain Settler consciousness. Great use of space!" Facebook comment, June 2021,

<https://www.facebook.com/groups/446604268739377/permalink/4160061167393650/>.

²⁹ Robin Fisher, "Maquinna," *The Canadian Encyclopedia*, December 16, 2013, <https://www.thecanadianencyclopedia.ca/en/article/maquinna>; for further reading, *White Slaves of Maquinna: John*

School was to be changed, then Maquinna School should change as well. One commented on an early post about the potential school renaming:

Chief maquinna killed many white settlers and was famous for taking white settlers as slaves. If we're changing school names because of political correctness, why not start with this racist mass murderer and slaver [sic]³⁰

The same commenter continued in a separate comment:

Aw neil didn't kill anybody or take slaves. If you consider what was going on at the time as a factor, WE WERE AT WAR WITH THE JAPANESE, what seems like racist bigotry today seemed like protecting Canadians from the enemy back in the time [sic]³¹

Another post, with 433 comments, mostly against the name changes, expressed a reluctance for change in general:

Wow I don't understand what the point/reasoning is to the idiots idea of changing the name of Neill st I grew up on that Street it's a perfectly good name leave it the way it is and stop being a morron [sic]³²

Alemanly officially proposed a motion to change the street name in 2017, and by the time city council met to vote in early 2018, dozens of constituents had written letters and attended public council meetings.³³ One man came with a Powerpoint presentation on why the name

R. Jewitt's Narrative of Capture and Confinement at Nootka by John R. Jewitt is a fascinating book from the perspective of one of the British crewmen who survived and lived among the Moachat Nation.

³⁰ Jason D., Facebook comment, May 2016,

<https://www.facebook.com/groups/446604268739377/permalink/1059248637474934/>.

³¹ Ibid.

³² Dustin V. A., Facebook, December 29, 2016,

<https://www.facebook.com/groups/446604268739377/permalink/1257761384290324/>.

³³ Baird (2022) 591.

should not change.³⁴ The council ultimately voted against changing the name of Neill Street, and as of Spring 2024, no further official efforts have been made to change the name.³⁵

Following the city council vote, Buchanan, a trustee of 23 years, proposed renaming A.W. Neill Elementary School at a school board meeting. The reaction of the board was mixed, and some trustees opposed the idea, as they thought such an action would be “changing history.”³⁶ However, there was no policy in place to change the name of a school, and the board needed to develop a plan before the renaming issue could be seriously considered. Buchanan was insistent on the drafting said policy, and after it was finished, she officially introduced the topic of renaming A.W. Neill School in 2019.

Consultations with parents and students attending the school were mostly supportive and encouraging of changing the name. Several names were suggested, including Kitsuksis, for a creek near the school, or a Japanese word in honour of the Japanese Canadians who were affected by the policies Neill staunchly supported. In 2021, the school board announced the new name, *Ɂuumaʕas Tsuma-as Elementary School*, the Nuu-chah-nulth name for the Somass River on which Port Alberni is situated. The name was unveiled days before the inaugural Truth and Reconciliation Day.³⁷ *Ɂuumaʕas Tsuma-as Elementary School* sits less than five kilometres from the former site of the Alberni Indian Residential School, which was under Neill’s jurisdiction as an Indian Agent from 1903-1913.³⁸

³⁴ Chris Alemany (former city councillor) in discussion with the author, February 2024.

³⁵ Baird, 2022.

³⁶ Rosemarie Buchanan (retired school board trustee) in discussion with the author, February 2024.

³⁷ Buchanan, February 2024.

³⁸ Baird, 2022, 590.

Discovery of the Covenant on A.W. Neill's Former Property

In 2018, Valerie Harrison, a retired teacher, purchased a property in the Alberni Valley to retire closer to her daughter. After the purchase, Harrison was informed that there was a covenant on her new house. Since she once worked placing covenants on heritage homes and properties with historical significance, Harrison was excited to learn more, and imagined that the property might have a covenant protecting wildlife. However, she was appalled to discover that the deed included a racially restrictive covenant.³⁹

Neill sold two lots on Margaret Street in Port Alberni, one in 1909, and another in 1912. Both sales, to the same gentlemen, included an indenture between seller and buyer that barred “the premises hereby described to be used or occupied by Orientals (otherwise than as domestic servants) nor allow the premises to be used under a liquor license or for immoral purposes.”⁴⁰ Although the covenant is now illegal and unenforceable, the language remained within the document. Harrison, bothered that none of the property’s previous owners had made any efforts to have the covenant removed, decided to do something about it. Harrison’s daughter, a teacher, connected her with Anne Ostwald, the Social Justice 12 teacher at Alberni District Secondary School.⁴¹

For years, students in Ostwald’s Social Justice 12 class have chosen a final project that is meant to better the community, and often, locals will contact Ostwald with ideas. Whether they choose one of the suggested topics or they come up with an idea independently, the goal is for students to learn how to impact their community by taking action and collaborating with other people. Ostwald proposed removing the covenant on Harrison’s home as a possible project for

³⁹ Valerie Harrison (retired teacher) in discussion with the author, February 2024.

⁴⁰ A copy of the original indenture was given to the Alberni Valley Historical Society by Valerie Harrison in 2019.

⁴¹ Harrison, February 2024.

her students, and three of them, Katie Sara, Justin MacFadden, and Sarah Higginson, were interested.⁴²

The students had never heard of a covenant, and struggled to read the cursive handwriting in which the indenture was written.⁴³ They spent a month researching racially restrictive covenants and Neill's history. At the time, discussions around the possible renaming of A.W. Neill Elementary School were ongoing, and Neill was a popular topic of conversation in the community. Harrison had brought further public attention to Neill's racism and the covenant by writing a letter which was published in the *Alberni Valley News*, in hopes of raising awareness on the topic and to potentially inspire others to remove their covenants.⁴⁴ In October of 2018, the three students agreed to take on the project, and helped Harrison with the forms and documents necessary to send to the Land Title and Survey Authority of British Columbia.⁴⁵ When the Land Title office confirmed the removal of the covenant on Harrison's home, they sent a photocopy of the revised document. It was unchanged, other than the sentence disallowing Orientals to own the property, which was crossed out in pen but still completely legible.⁴⁶

The Historical Significance of Racially Restrictive Covenants

Racially restrictive covenants, such as the covenant Harrison discovered on her Port Alberni home, are more common in Canada than one might assume. In their most basic form, (non-racially) restrictive covenants on properties (sometimes called easements) can be placed to protect wildlife, historically significant buildings or land, or by a property developer to ensure

⁴² Anne Ostwald (Alberni District Secondary School teacher) in discussion with the author, February 2024.

⁴³ Harrison; Katie Sara (former Alberni District Secondary School Student) in discussion with the author, February, 2024; Sarah Higginson (former Alberni District Secondary School Student) in discussion with the author, February, 2024.

⁴⁴ Harrison, February 2024.

⁴⁵ Ibid.

⁴⁶ A copy of the revised and redacted indenture was given to the Alberni Valley Historical Society by Valerie Harrison in 2019.

buildings match the character of a neighbourhood.⁴⁷ For example, a developer might mandate that any house built in a new subdivision be for residential use only, and must be built in the same style as surrounding houses, so the neighbourhood is uniform. In 2023, restrictive covenants were a topic of interest in Calgary, when a document from the 1950s prevented a couple from building a secondary dwelling on their property.⁴⁸ *Racially* restrictive covenants, however, allowed municipalities and communities the ability to restrict, by law, who could buy, rent, or occupy a property. Racially restrictive covenants were often employed by developers to control the demographics of neighbourhoods and new developments. On a large scale, discriminatory clauses in land titles, driven by accepted social and legal norms, facilitated patterns of racial segregation, whose impacts persist in Canadian society to this day.⁴⁹

The most common argument in the early 20th-century was that racially restrictive covenants created residential segregation, which allowed white communities to control and maintain their property values.⁵⁰ In British Columbia, covenants most often targeted people of Asian-descent. On Canada's east coast, however, clauses most often targeted Jewish people from purchasing or occupying properties within certain neighbourhoods. Anti-semitic sentiments were common in the 1920s, and increased during the Great Depression as Jews and other "foreigners" were blamed for economic hardships. Jewish communities were also impacted as Hitler's rise to

⁴⁷ American Friends of Canadian Conservation, "Easements," *ConserveCanada*, accessed March 17, 2024, <https://www.conservecanada.org/cross-border-conservation/easements/>

⁴⁸ Robson Fletcher, "What the heck are 'restrictive covenants' and how do they affect Calgary's housing situation?" *CBC News*, September 27, 2023, <https://www.cbc.ca/news/canada/calgary/calgary-restrictive-covenant-housing-affordability-1.6974306>.

⁴⁹ Richard R. W. Brooks, and Carol M. Rose, *Saving the Neighborhood : Racially Restrictive Covenants, Law, and Social Norms*, (Cambridge: Harvard University Press, 2013), 2, <https://ebookcentral-proquest-com.ezproxy.library.uvic.ca/lib/uvic/detail.action?docID=3301255>.

⁵⁰ Carol M. Rose, "Racially Restrictive Covenants—Were They Dignity Takings?" *Law & Social Inquiry* 41, no. 4 (2016): 945, <http://www.jstor.org/stable/26630894>.

power in Germany resulted in international anti-semitic rhetoric that “legitimiz[ed] discriminatory and exclusionary practices against Jews in Canada.”⁵¹

Covenants, as a broad restriction, did not act as a roadblock for minorities to purchase property, but rather prevented any possible interest in the first place.⁵² If a Japanese man moved to the Alberni Valley in the early 1900s and wished to purchase a home, he might quickly learn that restrictive covenants prevent him from doing so. Instead, he might settle for a different housing arrangement, and the Japanese population in the area would quickly learn not to bother even attempting to purchase property. Because of these covenants, Asian Canadians and other affected racialized groups were denied the opportunity to settle down, while also facing laws and policies that made other aspects of life difficult for immigrants, like Neill’s own policies that reduced industry jobs for non-white workers along the Coast of the British Columbia.⁵³ Racially restrictive covenants, among other policies, prevented minorities – in Neill’s case, Asian immigrants and Asian Canadians– from opportunities that were otherwise afforded to white Canadians. In turn, the white population became accustomed to a lack of diversity within their communities, which fueled casual and overt racism.

Law professor Carol M. Rose suggests that racially restrictive covenants are “dignity takings,” and refers to their effects as “shadowy.”⁵⁴ When racially restrictive covenants succeeded, they were less a conscious effort to directly humiliate, but rather an attempt to control and monitor property values. The damage was not conscious or intentional, but rather a “stony

⁵¹ James W. St. G. Walker. *"Race," Rights and the Law in the Supreme Court of Canada: Historical Case Studies*, (Waterloo, Ontario: Wilfrid Laurier University Press and Osgoode Society for Canadian Legal History, 1997), <https://canadacommons-ca.ezproxy.library.uvic.ca/artifacts/1893017/race-rights-and-the-law-in-the-supreme-court-of-canada/2643009/view/?page=252>.

⁵² Rose, 949.

⁵³ Baird (2022), 590-591.

⁵⁴ Rose, 944.

indifference” to the harm that they caused by singling out a particular racialized group and classifying them as ‘other’.⁵⁵ In this way, Neill’s covenant differs from his role in government: indirect harm versus direct harm.

However, as demonstrated in Harrison’s deed, the language and the ideologies of the past have lived on in these documents. In conversation with Harrison, she expressed concern for her Chinese sister-in-law: “It just occurred to me that if she were buying the house, even though it’s now illegal, the fact that nobody cared enough to say, ‘this is disgusting...’ this [covenant] needs to be gone.”⁵⁶

The first case to successfully challenge the legality of racially restrictive covenants was seen in October 1945 by Justice Keiller Mackay of the Ontario High Court.⁵⁷ The Workers’ Educational Association (WEA), a non-profit adult education organization,⁵⁸ bought a lot in East York, Ontario. They planned to build a house that would be raffled off as a fundraiser, but soon discovered that the deed for the lot included a restrictive covenant that stated the land was “not to be sold to Jews or persons of objectionable nationality.”⁵⁹ As the covenant would complicate their raffle, Drummond Wren, the general secretary for the WEA, applied to have the covenant declared invalid on behalf of the association. Wren and his council, including solicitor John Cartwright, challenged the covenant as void on four separate fronts; for being against public policy, as a restraint on alienation, for uncertain language, and for breach of the *Racial Discrimination Act*.⁶⁰

⁵⁵ Ibid., 953.

⁵⁶ Harrison, February 2024.

⁵⁷ Walker, 202.

⁵⁸ The Worker’s Educational Association of Canada. “About Us.” WEA. Accessed February 29, 2024. <http://weacanada.ca/>.

⁵⁹ Re Drummond Wren [1945] O.R. 778 (Ont. H.C.).

⁶⁰ Walker, 203.

Mackay J. agreed with three of their four grounds, and his decision was notable for several reasons. First, he was particularly fond of the applicant's argument pertaining to public policy, which was based on a legal principle which stated that any contract deemed adverse to the public or public good should be void, on the basis that it is contrary to public policy.⁶¹ While a judge's position should not create new public policies, Mackay J. claimed to be applying public policy in an innovative way.

Additionally, Mackay J. cited the Atlantic Charter and the *UN Charter*, two recently agreed-upon international agreements, the latter of which had been signed by Canada's executive branch only four months prior to *Re Drummond Wren*. Both charters included anti-discriminatory policies and promoted equal human rights and freedoms, and Mackay J. argued that Canada's signing of the charter was a pledge to uphold its contents. At the time, there was no precedent in using the charters in a legal case, and although it was recognized that treaties were not considered domestic law until implemented by legislation, it was clear that Mackay J. thought that Canada had a *moral* responsibility to uphold the contents of the charters that it had signed.⁶²

According to Malcolm Moos, a contemporary legal author, Mackay J. had been awaiting a chance to overturn racially restrictive clauses in land titles.⁶³ His use of novel precedents such as citing the benefit of public policy and leaning on recently signed but legally ambiguous international charters, may be indications of how eager he was to void racially restrictive (and in this case, anti-semitic) covenants, particularly in the aftermath of the Second World War.

The *Re Drummond Wren* decision was widely praised for Mackay J.'s imaginative application of public policy and international charter agreements. The *Globe and Mail* said the

⁶¹ *Ibid.*, 202-203.

⁶² *Re Noble and Wolf* [1948] O.R. 579 (Ont. H.C.); C.B. Bourne, "Case and Comment: International Law, Unimplemented Treaties, Their Effective on Municipal Law, Public Policy," *The Canadian Bar Review* 29, (1951): 969-970, <https://cbr.cba.org/index.php/cbr/article/view/1829/1829>.

⁶³ Malcolm Moos, "The Case of 'In re Wren,'" *The American Scholar* 18, no. 3 (1949), 312. <https://www.jstor.org/stable/41205205>.

decision “moved forward substantially the achievement of the social equality of mankind.”⁶⁴ It was especially celebrated by Jewish Canadians and racialized minorities, who considered the ruling a massive win in opposing discriminatory policy. In the years following the decision, it was cited in several landmark American cases, including a case in the Michigan Supreme Court which voided a restrictive covenant on a land title barring ownership by Black Americans, and again in the Supreme Court case *Shelley vs. Kraemer*, in which a covenant was found to be an unconstitutional overreach of government power.⁶⁵

In 1948, three years after *Re Drummond Wren*, Bernard Wolf, a Jewish man from Ontario, made an offer to buy a property on Lake Huron, at the Beach O’Pines subdivision. However, the subdivision had a clause that barred him from owning property in the community:

The lands and premises herein described shall never be sold, assigned, transferred, leased, rented or in any manner whatsoever alienated to, and shall never be occupied or used in any manner whatsoever by any person of the Jewish, Hebrew, Semitic, Negro or coloured race or blood, it being the intention and purpose of the Grantor, to restrict the ownership, use, occupation and enjoyment of the said recreational development, including the lands and premises herein described, to persons of the white or Caucasian race not excluded by this clause.⁶⁶

Concerned that the covenant may interfere with the sale, Wolf’s solicitor wrote to the seller, Annie Noble, and asked the covenant to be removed. In response, Noble and her solicitor stated that they believed the *Re Drummond Wren* decision applied to the sale, and that there would be no issue selling the home to Wolf because the covenant was void under the precedent case law.

⁶⁴ Ibid., 314.

⁶⁵ Walker, 205.

⁶⁶ Ibid., 191.

However, Wolf and his lawyer requested that the covenant be declared invalid by a court before the sale, just to be safe.⁶⁷

When other property owners at Beach O’Pines learned that Noble planned to sell her cottage to a Jewish man, they retained a lawyer to officially prevent the sale to Wolf, and testified in court that they wished the covenant stay in place as they greatly enjoyed the quality of life it provided. The case soon garnered national attention, and Noble and Wolf, eager to complete the sale, hired John Cartwright, who represented the WEA and Drummond Wren in 1945. Cartwright submitted the same three claims that Mackay J. had agreed with in *Re Drummond Wren*.⁶⁸

The judge, Justice Walter Frank Schroeder, decided against the strong precedent that *Re Drummond Wren* had set. In his decision, it was clear that Schroeder J. thought Mackay J. had overstepped his bounds as a judge in ruling based on public policy and non-ratified charters. The *Re Noble and Wolf* ruling, based in part on erroneous ‘race science’ defining Wolf’s Jewish blood quantum and the fact that the Noble cottage was a secondary home, not a primary residence,⁶⁹ upheld the legality of the covenant on the Beach O’Pines properties. It took two appeals, over three years, before the real estate sale between Wolf and Noble would finally be confirmed and the covenant be deemed void.⁷⁰

In Ontario, the 1950 *Conveyancing and Law of Property Act* banned racially restrictive covenants in the province, based on the result of *Noble and Wolf v. Alley*, the Supreme Court decision on the Noble/Wolf property sale. It was not until 1978 that the illegality of restrictive covenants was codified on a federal scale, with an amendment to the *Land Titles Act*. The bill

⁶⁷ Ibid., 207.

⁶⁸ Ibid., 205.

⁶⁹ *Re Noble and Wolf*; Walker, 206.

⁷⁰ Walker, 30.

declares all past and future discriminatory covenants void, and allows for the removal/cancellation of past covenants:

222 (1) A covenant that, directly or indirectly, restricts the sale, ownership, occupation or use of land on account of the sex, race, creed, colour, nationality, ancestry or place of origin of a person, however created, whether before or after the coming into force of this section, is void and of no effect.

(2) The registrar, on application, may cancel a covenant referred to in *subsection (1)* that was registered before October 31, 1979.

(3) If the registrar has notice that a registered restrictive covenant is void under this section, the registrar may, on the registrar's own initiative, cancel the covenant.⁷¹

Where do we go from here? Racially Restrictive Covenants and British Columbia's Future

The topic of racially restrictive covenants is not as eye-catching as other recent anti-racist movements. Other public representations of Canada's history, like statues of former Prime Minister John A. MacDonald, have gained significant media attention as we reevaluate the glorification of the subjects' actions, beliefs, and legacies. However, statues are physical, publicly visible dedications to figures, and land titles are comparatively obscure. While the living documents are important to the functioning of our society, they are not often thought of. Now that racially restrictive covenants are illegal in Canada, and have been for some 50 years, what is the point in talking about them? Since they are unenforceable, aren't they... meaningless? Why go out of our way to have one removed on our property?

Land titles and their covenants are living documents, and the Land Title office deals with millions of transactions a year.⁷² With an estimated 11,000 restrictive covenants in West

⁷¹ Land Title Act [RSBC 1996] c. 250, https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96250_15.

⁷² "Discriminatory Covenants," BC Land Title and Survey, accessed March 27, 2024, <https://ltsa.ca/property-owners/about-land-records/discriminating-covenants/>.

Vancouver alone, more and more discriminatory land titles are discovered every year. The most obvious answer is that for many, keeping racially restrictive covenants on the books is a reminder of the conscious segregation and discriminatory policies that were designed to limit the rights of minorities in Canada. Finding a discriminatory clause on a newly purchased home could be a stark reminder that one was not welcome in a neighbourhood or community, and even invoke doubts that one will be welcomed in their community today. One Minneapolis woman said,

Historically, it starts to put into context, well, why is it that all of the folks that look like us or most of the people that look like us, most of the other Black people, they live in specific neighborhoods? For me, it kind of frames my upbringing and my childhood in a different way.⁷³

In removing a discriminatory clause on a land title, the owner, or the government, who takes action is declaring that they want no association with the laws and policies that allowed for those racist covenants to exist. Recognizing the harm done by the clauses and denouncing them, even on a small-scale, one deed at a time, becomes a historic moment in and of itself.

The nature of deeds and property documents makes racially restrictive covenants difficult to remove on a large scale. Currently, there are two general approaches to addressing racially restrictive covenants that are being employed across Canada and in the United States. The first is to contextualize the racism within the covenant by adding a note and flagging the illegality, making it clear that the clauses are no longer enforceable, thanks to the *Lands Titles Act* in Canada and the *Fair Housing Act* in the United States.⁷⁴ The other is to edit the covenant by

⁷³ Scott Tong and Serena McMahon, “The Legacy of Racist Housing Covenants and What’s Being Done to Eradicate Them in Home Deeds,” *WBUR*, September 14, 2021, <https://www.wbur.org/hereandnow/2021/09/14/racist-housing-covenants>.

⁷⁴ Cheryl W. Thompson et al., “Racial covenants, a relic of the past, are still on the books across the country,” *NPR*, November 21, 2021, <https://www.npr.org/2021/11/17/1049052531/racial-covenants-housing-discrimination>.

completely removing the offending language. In this approach, the amended deed would look as if the covenant were never there.⁷⁵ The BC Land Title and Survey (LTSA) website cites an ongoing project to identify discriminating language in their digitized documents, however, many of their documents are physical. Currently, the LTSA largely depends on the goodwill of property owners and municipal governments to notify the office of discriminatory covenants that remain on land titles. Additionally, because of the land registration and transfer system that British Columbia uses, the Torrens system, the province is required to keep all records dating to a title's origin, which means they cannot actually alter any documents. They can, however, strike through discriminatory covenants.⁷⁶ This means that the amended Neill indenture on Harrison's home, and every officially struck clause in British Columbia, has been *symbolically* removed from the record of the most current land title transaction of a given property, and a comment has been added that Section 222 of the *Land Titles Act* have rendered the language unenforceable.⁷⁷

Many U.S. states and counties are taking it upon themselves to pass legislation and bylaws to remove covenants within their jurisdiction. However, most laws require that property owners take action and initiate covenant removal themselves, which has proved underwhelming in some areas. In 2019, Minnesota passed legislation that would add language clarifying racially restrictive covenants are unenforceable; however, Hennepin County, which encompasses the city of Minneapolis, requires that homeowners hire a lawyer to file to initiate the process, effectively discouraging covenant removal.⁷⁸

A similar bill was passed in Nevada. In 2019, new legislation allowed owners to have racially restrictive covenants struck from their property records, but as of 2022, only a few dozen

⁷⁵ Tong and McMahon, "The Legacy of Racist Housing Covenants."

⁷⁶ "Discriminatory Covenants," *BC Land Title and Survey*.

⁷⁷ A copy of the amended indenture was donated to the Alberni Valley Historical Society's archives by Valerie Harrison.

⁷⁸ Tong and McMahon, "The Legacy of Racist Housing Covenants."

individuals took advantage of the opportunity. An additional bill was subsequently proposed to encourage counties to create their own programs to redact discrimination in land titles, in hopes of having more covenants removed from property documents. Homeowners would be notified of the covenant on their home and would have the opportunity to object to the removal, however no action has been taken to implement such programs as of 2023.⁷⁹

These examples demonstrate that, given the option to remove covenants from one's property, few seize the opportunity. Whether it's because people are unaware of the covenants, unaware of the option to amend their land titles, or simply do not care to have them removed, depending on citizens' goodwill to strike racist clauses from their properties has proved to be ineffective as a strategy to remove covenants on a large scale. Increased government intervention may be the best option moving forward. However, adopting legislation is one thing; finding the resources to locate and remove racist language from deeds is a whole other challenge.

In 2020, Michelle Tung was building a home in the British Properties subdivision in West Vancouver, British Columbia, when she was informed by the municipality that her lot included a covenant that no person of "African or Asiatic" descent could occupy the property. She was in disbelief that such language was still included in the land title. Although a motion to strike racist covenants from land title documents passed in 2020, a spokesperson for West Vancouver claims that the municipality does not have the resources to review and redact racially restrictive covenants.⁸⁰ A report estimated that it would cost approximately \$1 million to search for and remove racist language from more than 17 thousand lots, and ultimately suggested that the West Vancouver council turn to the Provincial Government in hopes that some form of

⁷⁹ Michael Lyle, "Lawmakers propose solution to address racist covenants in legal property documents," *Nevada Current*, May 13, 2023, <https://www.rgj.com/story/news/politics/2023/05/13/racist-covenants-remain-in-legal-property-documents-nevada-lawmakers-look-for-solution/70214117007/>.

⁸⁰ Lori Culbert, "'I was very angry': Racist clause remains on land title for British Properties home," *Vancouver Sun*, May 27, 2022, <https://vancouver.sun.com/news/local-news/west-vancouver-land-title-documents-racist-clause>.

intergovernmental agreement might provide funding.⁸¹ At the provincial level, West-Van MLA Karin Kirkpatrick has twice introduced a bill to remove discriminatory clauses, once in 2020 and again in 2022, but nothing has become of it.⁸² It seems municipal and provincial governments are both denying full responsibility for the implementation of such a program.

Recently, California has taken a more forward approach. The state passed a law requiring each county establish a program to identify and redact unlawful provisions in public documents relating to properties (e.g. deeds including discriminatory restrictive covenants). In response, L.A. County hired a private company, Extract Systems, in late 2023. The project, which is anticipated to last seven years and cost approximately \$8 million, will comb through an estimated 130 million documents, dating from 1850.⁸³

Covenants are a difficult issue for politicians at local and provincial/state levels. While proposing and passing legislation to remove racially restrictive covenants might be popular with their voters, the logistics of locating, editing, or removing clauses are expensive and time consuming, as evidenced by L.A. County's project. Additionally, there is no guarantee that the public will be supportive of projects that some deem to be "erasing history." At the height of discussion surrounding A.W. Neill, the school renaming, and the covenant removal, many Port Alberni residents expressed their concerns online. One wrote:

⁸¹ Cheryl Chan, "More than \$1 million to remove racist language in West Van covenants: Report," *Vancouver Sun*, May 27, 2022,

<https://vancouver.sun.com/news/local-news/west-vancouver-covenants-cost-remove-racist-language-1-million>.

⁸² BC United Caucus, "MLA Kirkpatrick reintroduces bill to remove discriminatory covenants on land titles," February 8, 2023,

<https://www.bcliberalcaucus.bc.ca/2023/02/mla-kirkpatrick-reintroduces-bill-to-remove-discriminatory-covenants-on-land-titles/>.

⁸³ Jaelyn Cosgrove, "Racist history lives on in millions of housing records. L.A. County is about to fix that," *Los Angeles Times*, February 6, 2024,

<https://www.latimes.com/california/story/2024-02-06/l-a-county-will-remove-racist-restrictive-covenant-language-from-millions-of-documents>.

By canceling names people will forget what happened and why. Canceling history will mean that future generations will have no idea about anything bad that happened. Cancel culture will be the reason bad things will be able to be repeated.⁸⁴

In discussion with Valerie Harrison, the owner of Neill’s former home, she shared that she received hate mail since news of the covenant removal was shared in the local newspaper, and as recently as December 2023. Police were involved when the letters became threatening, accusing her of being disrespectful of history. Since then, the letters have become anonymous, but she joked that she could still tell who they were from: “It’s the same handwriting, and you know, I was a teacher. ‘That’s so-and-so’s work’”⁸⁵

Perhaps a larger challenge than funding the removal of covenants, is to convince the public that such a project is necessary. In our current political climate, anti-racist initiatives are quick to be labelled as “woke” or “PC,” and people feel comfortable sharing their dislike of any project that may be deemed as “rewriting” established history. However, removing racist clauses is not erasing history, it is amending it. After centuries of discrimination, Canadians have the obligation to acknowledge and correct previous interpretations of history. In doing so, we have the opportunity to work towards a more equitable culture and to foster an environment that is tolerant and understanding of Canada’s path to the country it is today.

Conclusion

After the removal of the covenant and the successful renaming of *cuumaſas* Tsuma-as Elementary School, Valerie Harrison hosted a garden party. In attendance was Anne Ostwald,

⁸⁴ Christine K.D., Facebook comment, June 2021, <https://www.facebook.com/groups/446604268739377/permalink/4125099194223181/>.

⁸⁵ Harrison, February 2024.

Katie Sara, Justin MacFadden, Sara Higginson, and Chris Alemany, among others. Harrison joked that they should have sold alcohol, in defiance of Neill’s still-standing clause that the property should never be used as a liquor house.⁸⁶

Today, Port Alberni, after years of debate and deliberation surrounding A.W. Neill and his legacy, has come to terms with the name change and the removal of the covenant. However, online reactions prove that many Canadians are unaware or indifferent when discussing matters of race and historical injustices, and instead prefer to maintain the status quo. Despite this, the removal of the covenant on Neill’s former property on Margaret Street was a small, but necessary denunciation of the Alberni Valley’s racist past.

During his decades as a politician in British Columbia and in Canada, A.W. Neill contributed to the systemic racism that fostered a culture of white supremacy in Canada. Although seemingly innocuous today, racially restrictive covenants like Neill’s were one way of many that people of Asian descent and other minorities were legally persecuted. Although they are no longer enforceable, in large part due to *Re Drummond Wren* and *Noble v Wolf*, covenants remain on the books in many jurisdictions across Canada, and no large-scale efforts have been made to remove them. As an act of good faith, and in order to acknowledge the racism on which Canada is built, Canadians must amend even “small-scale” injustices like racially restrictive covenants in order to move forwards as a country.

⁸⁶ Harrison, February 2024.

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