

THE UNIVERSITY OF MANITOBA

DEPORTATION UNDER THE IMMIGRATION ACT AND
THE CANADIAN CRIMINAL CODE, 1919-1936

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Abstract

The 1919 sedition and deportation amendments in Canada were not merely the product of anti-radical hysteria induced by the Winnipeg General Strike, but were consistent with the ideological propensity of the Conservative-Unionist and Bennett governments to suppress alien and left-wing dissent. This tendency was reflected in earlier, anti-radical enactments by Borden's government under the War Measures Act, providing, among other things, for the summary internment and deportation of suspected alien radicals. For the most part the stringent measures passed in 1919 represented the conversion of wartime powers to peace-time legislation.

The conservative ideology that inspired these amendments was manifested in the vigorous application of deportation powers by immigration and other officials during the Red Scare of 1919-20 and the depression of the early thirties. It was further sustained by the stubborn refusal of the Conservative majority in the Senate to approve repeal legislation repeatedly passed by the House of Commons, even in the context of domestic stability in the 1920s.

Ultimately, conservative reaction was superseded by liberalism in the form of civil liberties legislation passed by Mackenzie King's government. The emergence of the repeal of Section 98 of the Criminal Code as a major issue in the 1935 Dominion election and Bennett's correspon-

ding defeat had demonstrated the Canadian public's desire that its governments address themselves, not to the suppression of radicalism, but to the solution of economic problems underpinning social unrest.

Introduction

In February, 1975 the Canadian government issued a "Green Paper" on immigration policy as the opening statement in a debate leading to the overhaul of the old Immigration Act passed in 1952. The discussion which ensued touched on many sensitive areas, including the questions of which nationalities or groups should be admitted to Canada, in what numbers, and the extent of discretionary powers that should be accorded immigration officials. The new Immigration Act, passed by Parliament in July, 1977, embodies many restrictive features anticipated in the Green Paper. It is impossible to predict the ultimate implications of this legislation at this point, but clearly the new provisions pertaining to questions of national security are a source of concern for civil libertarians.¹ Among the provisions granting greater latitude to immigration officials is a section which calls for the exclusion or deportation of persons:

who have engaged in or there are reasonable grounds to believe are likely to engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada, except persons

¹See the Brief presented by the Canadian Civil Liberties Association to the Parliamentary Committee on Labour, Manpower and Immigration, June 2, 1977. Canada. House of Commons. Minutes of Proceedings and Evidence of the Standing Committee on Labour, Manpower and Immigration, Issue No. 30, June 2, 1977.

who, having engaged in such acts, have satisfied the Minister, that their admission would not be detrimental to the national interest.²

Another section provides for the barring from entry of presumed security risks without a hearing. Moreover, if the alleged security risk is a permanent resident, but not a Canadian citizen, he may be arrested without a warrant and deported without having been informed of the specific nature of the charge.³

The new regulations are of interest to Canadian historians in that they are reminiscent of a series of amendments made to Canada's Immigration Act in 1919. These provided, among other things, for the summary deportation of persons merely suspected of revolutionary intent, the revocation of the rights of citizenship for many naturalized Canadians,⁴ and the broadening of already extensive powers of immigration officials in deportation cases. Coupled with their companion amendments, Sections 97A and 97B of the Criminal Code, they presented one of the most

²Bill C-24, "An Act Respecting Immigration to Canada," Section 19 (1) (e), *ibid.*

³Harry Sebastian, "Bud'n the Boys Get Tough on Immigration," The Last Post, Vol. 6, No. 6 (January, 1978), p. 35.

⁴In 1927, the Canadian Immigration Act defined Canadian citizens as:

- i) Persons born in Canada who have not become aliens;
- ii) British subjects with Canadian domicile. Prior to 1919, three years' residence, exclusive of time spent in jails or asylums, was required before domicile could be acquired. In that year, this period was extended to five years;
- iii) Persons naturalized under the laws of Canada who have not subsequently become aliens or lost Canadian domicile. British subjects were defined by the Canadian Nationality Act.

H.F. Angus, "Canadian Immigration: The Law and Its Administration," in Norman MacKenzie (ed.) The Legal Status of Aliens in Pacific Countries (London: Oxford University Press, 1937), pp. 60, 61.

serious challenges to civil liberties in Canadian history. This study is concerned with the origins and nature of the amendments, and their application, until the repeal of Section 98 of the Criminal Code in 1936.

To date, no comprehensive study of the 1919 deportation and sedition amendments has been undertaken, although some articles have dealt with aspects of the legislation or its application,⁵ and all books on the Winnipeg General Strike have given the amendments at least cursory attention. Usually these accounts have explained the deportation and sedition amendments in terms of the Red Scare and nativist sentiment that emerged in the context of labour radicalism at the end of the First World War. To the extent that these measures were specifically intended to curtail radicalism at that time, these interpretations have been correct. They do not, however, account for the presence of similar arbitrary measures passed earlier, nor do they explain the continuation of the most stringent clauses of 1919 well beyond the period of radical activity in which they were conceived.

Despite its harsh nature, the 1919 sedition and deportation legislation did not represent a complete departure from previous immigration policy. Restrictions to immigration had existed since Confederation, although these were applied relatively infrequently in the early decades

⁵The only substantial article written specifically on this legislation is Leslie Katz's "Some Legal Consequences of the Winnipeg General Strike," Manitoba Law Journal, Vol. 4, No. 1 (1970). Vol. 12, No. 136 (January, 1932), pp. 127-129. Frank Scott's "Communists, Senators and All That," Canadian Forum dealt with the refusal of the Canadian Senate to approve repeal legislation passed by the House of Commons. J. Petryshyn's article, "R.B. Bennett and the Communists," Journal of Canadian Studies (November, 1974) was a discussion of the crackdown of leftists in the early thirties, although Petryshyn relied rather excessively on Canadian Labour Defence League propaganda for his sources.

of the National Policy and Western Canadian settlement.

In 1906, a new Immigration Act was passed which became the cornerstone of modern immigration practice in Canada. By that legislation the immigration service was greatly expanded in scope of operations and authority. For the first time the principle of deporting persons who had become members of the "undesirable classes" after their entry was established. These initially included criminals, public charges, and the infirm, but a second overhaul of the Act in 1910 added a new clause, Section 41, which provided for the deportation of persons believed to engage in seditious activity. At the same time, the administration of the Act was tightened, and machinery intended to expedite deportations of undesirables was put into effect.⁶ Thus, well before the industrial strife of 1918-19, the Canadian Parliament had approved an immigration law that was highly restrictive and that embodied the principle of deporting radical aliens, although there is no evidence that the anti-radical clauses were ever applied by the Laurier government.

By 1919, however, the political situation had changed dramatically. The Dominion government was now dominated by Robert Borden's Conservatives, who had directed Canada's participation in the Great War. With the passage of the War Measures Act in 1914, the Conservatives assumed sweeping legislative prerogatives which they subsequently reinforced through a series of orders-in-council. Although these actions were intended to make Canada's contribution to the war effort more effective they also entailed

⁶Canada. The Immigration Program. Ottawa: Information Canada (1974), p. 8. The original Section 41 was introduced in the context of emergent I.W.W. radicalism in the western United States. At that time the Laurier government was concerned with a possible influx of undesirables into Canada. Canada. House of Commons Debates, January 19, 1910, p. 2134.

the curtailment of labour activity and contributed to an upsurge in domestic radicalism.

While an analysis of the ideological underpinnings of the government which enacted the 1919 sedition and deportation measures is beyond the scope of this study, some observations may be made as to the world view that was at play in the conception of this legislation. It is generally accepted that this government owed its first allegiance to corporate interests and the middle classes supporting the prevailing socio-economic system. This fact was demonstrated in the spate of anti-labour Orders-in-Council issued by the Borden government and its ultimate opposition to the nascent One Big Union in the context of the general strike.

In taking this position, the Borden government demonstrated that it too ran in the mainstream of the tory corporatism that had carried all previous Conservative governments. Robert Presthus has defined corporatism as "a conception of society in which government delegates many of its functions to private groups, which in turn provide guidance regarding the social and economic legislation required in the modern national state."⁷ This approach was most strongly evident in John A. Macdonald's government, whose political role as nation-builder was inextricably tied to the National Policy and support of commercial, transportation and financial interests. That a corporatist element persisted in the Union government was evidenced by the role of A.J. Andrews in the

⁷Robert Presthus, Elite Accommodations in Canadian Politics. (Toronto: MacMillan of Canada, 1973,) p. 25.

Winnipeg General Strike. A leader of the business-oriented Committee of One Thousand, he also served as one of the chief advisers to the Dominion authorities. The other identifying feature of Canadian conservatism was its espousal of a paternal control over the political and economic affairs of the nation. W.L. Morton has noted that where the American Declaration of Independence guarantees "life, liberty and the pursuit of happiness," the British North America Act guarantees "peace, order and good government."⁸

A similar kind of paternalism manifested itself in Winnipeg, where the business community kept a tight rein over the political and economic affairs of the city. Having shepherded the city's growth from the earliest period, this group considered its leadership to be indispensable to its future development.⁹ When that control was challenged by the general strike in 1919, their natural feelings of apprehension were heightened by the prospect of losing their dominant position in the social hierarchy.

Beyond the economic basis of the 1919 sedition legislation, the deportation amendments were inspired by a nativist reaction that transcended class lines. It was neither Canada's first episode with racial or ethnic prejudice as, evidenced by the treatment of the foreign navvies

⁸W.L. Morton, The Canadian Identity (Toronto, 1961), p. 111; Cited in Gad Horowitz, Canadian Labour in Politics. (Toronto: University of Toronto Press, 1968), p. 20.

⁹David J. Bercuson, "The Winnipeg General Strike," in Irving Abella, On Strike: Six Key Labour Struggles in Canada, 1919-1949 (Toronto: James Lewis and Samuels, 1974), p. 2.

in the early 1900s,¹⁰ nor the last, as was shown in the anti-oriental immigration legislation of the 1920s. In these instances, as was the case in the Winnipeg General Strike, some of the strongest demands for deportation of aliens came from working class Canadians. At the same time the reaction of the returned soldiers in Winnipeg was to a significant extent manipulated through attacks on the alien by the business interests that received broad publicity in the Winnipeg Citizen.

For the most part the conservatives who were most strongly opposed to the expression of radical views were also highly unsympathetic to the aspirations of the aliens. Their desire to bring about a complete assimilation of the immigrants was representative of a paternal attempt by the Anglo-Saxon elite to maintain its control over the country's affairs. In 1928, the Conservative leader, R.B. Bennett, stated:

We earnestly and sincerely believe that the civilization which we call the British civilization is the standard by which we must measure our own civilization; we desire to assimilate those whom we bring to this country to that civilization, that standard of living, that regard for morality and law and the institutions of the country and to the ordered and regulated development of this country.¹¹

It was precisely this devotion to "British civilization" that had such tragic consequences in 1919.

¹⁰ Donald Avery, "Canadian Immigration Policy and the "Foreign Navy," 1896-1914" Canadian Historical Association, Historical Papers (1972), pp. 135-156.

¹¹ Canada. House of Commons Debates, June 7, 1928, pp. 3925-7; quoted in Howard Palmer (ed.) Immigration and the Rise of Multiculturalism (Toronto: Copp Clark, 1975), p. 119.

Chapter I

Origins of the 1919 Sedition and Deportation Amendments

The years 1918 and 1919 saw the brief appearance of labour radicalism as a potent force in Canada, particularly in the Western provinces. It was the culmination of years of dissatisfaction with the apparent incapacity of the capitalist system to dispense social and economic justice, exacerbated by Canada's involvement in the Great War and its government's conscription policy.¹ The emergent radicalism was met by an ideological backlash of the dominant middle classes and their leaders. Feeling threatened by the militant expression of socialist and sometimes Marxian ideas, this group urged the Canadian authorities to suppress all forms of visible dissent. The situation was further complicated by an anti-alien component to the reaction. With the dual spectre of the Great War with Germany and the Bolshevik revolution in Russia in fresh memory, middle-class Canadians clamored for the speedy deportation of all aliens suspected of radical agitation. In this polarized climate, the response of the authorities was certain to have significant implications, not only for the labour movement, but for the future of civil liberties in this century.

The nativist reaction had its roots in Clifford Sifton's great immigration scheme. Thousands of Eastern European immigrants, particularly Ukrainians from the Austrian province of Galicia, settled in Canada

¹See A. Ross McCormack, Reformers, Rebels and Revolutionaries: The Western Canadian Radical Movement, 1889-1919 (Toronto: University of Toronto Press, 1977), pp. 118-136.

after 1896. By 1911, the foreign born population was 752,732 or over ten per cent of the population. Of these 129,103 had come from Austria-Hungary, 111,000 since 1901.² Western Canada received large numbers of immigrants, as the majority found land in the fringe areas of settlement. Others settled in larger cities, such as Winnipeg or Edmonton, where they joined the labor pools in light industry, local manufacturing and the railway shops. Elsewhere they found work in mining and lumbering, but what they had in common was that they were employed at the bottom of the economic ladder.

Apart from languages and customs that set them apart from the Anglo-Saxon majority, the Eastern Europeans also brought with them different political traditions. Coming from the absolutist Austro-Hungarian Empire, they had had little experience with representative institutions. A small but visible minority were radical socialists whose participation in left-wing newspapers and radical organizations established a ready source of conflict with the predominantly English-speaking middle classes.

While the seeds of confrontation already existed, the anti-alien reaction was spurred by the outbreak of World War One. As later occurred with the "Hate the Hun" campaign in the United States, Canadian nativist feeling was at first directed at immigrants of German or Austrian origin. Herein the impetus lay with the Dominion government, which took full advantage of powers conferred by the newly-passed War Measures Act. Under Order-in-Council P.C.2721 of October 28, 1914, the Borden government provided for the registration, and internment, in certain cases, of aliens of

²Census of Canada, 1911, pp.vii, viii, 44.

enemy nationality.³ The order-in-council, which covered reservists of the German or Hungarian armies, required that they report to the authorities once a month, and also restricted their movements out of the country. All those failing to comply with these regulations would be interned as prisoners of war.

As yet, internment of the Galician immigrant labourers was not contemplated by the authorities. In an interview with the Montreal Star, General W.D. Otter, newly-appointed Director of Internment Operations, stated:

The great danger in regard to the Germans and Austrians is not to be anticipated from the working classes so much as from those in business. Most of the Austrians are working men, and though they might cause trouble if not kept under observation, it is the German commercial agents, and men in similar positions, who are most likely to prove dangerous.⁴

Nonetheless, an event which was certain to create a residual connection in the public mind between the Germans and the Ukrainian community was Bishop Nicolas Budka's unfortunate pastoral letter of the previous August. As Uniate prelate in Western Canada, Budka urged his parishioners to support Emperor Franz Joseph and added:

All the Austrian subjects ought to be at home in a position to defend our native country, our dear brothers and sisters, our nation. Whoever will get a call to join the colours ought to immediately go to defend the endangered Fatherland.⁵

³ Canada Gazette Vol. 28, October 28, 1914; Joseph Boudreau, "The Enemy Alien Problem in Canada, 1914-1921."

⁴ Canadian Annual Review (1914), p. 278.

⁵ Ibid.

The letter was met with a groundswell of resistance from many Canadian Ukrainian groups and Budka later retracted his original statement, but the impression lingered that the Ukrainians were at heart supporters of the Austrian enemy. By the war's end, the scope of enemy alien regulations was expanded to encompass the registration of Slavic and Finnish aliens. What precipitated the change in policy? A new enemy had emerged to supplant the Hun: the Bolshevik.

The Red Scare of 1919 derived from both external and internal sources. The Russian Revolution of October 1917 installed in the largest country in the world a regime committed to the revolutionary overthrow of capitalism. Within months Europe was rocked by a succession of uprisings, most notably in Germany where the Kaiser's government was overthrown by a social democratic revolution in November 1918.⁶ Three months later the radical Spartacists, led by Rosa Luxemburg and Karl Liebknecht, attempted a Soviet-style revolution. While abortive, the Spartacist rising and its counterparts in other European countries gained wide popularity among certain sectors of the North American labour movement, while at the same time increasing the apprehensions of the capitalists and middle classes.

Far more significant in terms of impact on the Canadian scene were events in the United States. While no revolutions were hatched during the First World War, labour radicalism took the form of militant industrial

⁶David J. Bercuson, Confrontation at Winnipeg: Labour, Industrial Relations and the General Strike. (McGill-Queen's University Press, 1974), p. 92.

strikes in the north-western and western states. A major influence in many of the labour disturbances was the syndicalist Industrial Workers of the World. The I.W.W. also led political strikes, protesting the U.S. government's participation in the war and its policy of conscription. For middle class America, however, the I.W.W. protests against the war served only to solidify a perceived connection between left-wing agitation and support of the German enemy.⁷

Formed in 1905 in Chicago, the organization's anarcho-syndicalist tenets were set forth in the founding constitution, as illustrated by the following excerpts from the preamble to that document:

The working class and the employing class have nothing in common. There can be no peace as long as hunger and want are found among millions of working people and the few, who make up the employing class, have all the good things in life...

Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production and abolish the wage system...It is the historic mission of the working class to do away with Capitalism. The army of production must be organized, not only for the everyday struggle with the capitalists, but also to carry on production when Capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old.⁸

In essence, its philosophy was akin to that of the One Big Union, which loomed large in the Canadian government's perception of events in 1919. The I.W.W.'s membership was a motley assortment of "anarchists, general strike advocates, direct action Socialists and syndicalists,"⁹

⁷ Ibid., p. 93.

⁸ Canadian Annual Review (1918), p. 300.

⁹ Robert K. Murray, Red Scare (Minneapolis: University of Minnesota Press, 1955), p. 27.

representing most of the radicals who were opposed to the conservative craft-unionism of the American Federation of Labor. During the war the International Workers were confronted with stiff opposition by vigilante groups and the American government, and by 1919 they had for all purposes been driven underground.¹⁰

In January 1919, however, the involvement of some I.W.W. sympathizers in the Seattle general strike contributed to the fears of middle class Americans that militant radicalism was getting out of hand. The I.W.W. did not in fact play a major role in the strike, which had originated in a dispute between the shipyard workers and yard owners over pay scales of unskilled workers. The reaction of Seattle authorities, however, in particular Mayor Ole Hanson, who viewed the general strike as an attempted revolution,¹¹ contributed to a similar perception by the Canadian authorities of a sympathetic strike in Winnipeg only a few months later.

In Canada, the war years had seen a progressive radicalization of the labour movement in the western provinces, where Samuel Gompers' craft-union tradition had never really taken hold. For many, Marx's depiction of war as the ultimate extension of capitalism, in which the workers became the cannon-fodder for the munitions makers, seemed particularly accurate. The I.W.W. had established itself in British Columbia in 1906¹² and grew in strength during the war, aided and abetted by the

¹⁰ Ibid, p. 27.

¹¹ Jeremy Brecher, Strike! (San Francisco: Straight Arrow Books, 1972), p. 110.

¹² Murray, op. cit., p. 31.

federal government's unpopular conscription policy. The centre of radical activity was in the coal-mining districts of British Columbia and Alberta, where many strikes occurred in 1916 and 1917. In Vancouver, the Trades and Labour Council decided, in December, 1917, to submit to its membership a vote on the question of a general strike.¹³ The issue was the imprisonment of a union member for refusing to register under the Military Service Act. While the strike was never held, it had presented Canadians with the serious prospect of a general withdrawal of services and all that was entailed in such a challenge to constituted authority.

These developments did not go unheeded by the Conservative-Unionist Government, which was determined to prosecute its war effort with a minimum of interference from organized labour. In May, 1918, Prime Minister Borden commissioned lawyer C.H. Cahan to undertake an investigation into seditious groups across Canada.¹⁴ Reporting to the Minister of Justice in September, 1918, Cahan observed that Russians, Ukrainians and Finns had been prominent in I.W.W. agitation among miners and recommended that these nationalisms be brought under enemy alien regulations. In Cahan's view, the Ukrainians and Finns were agents of German propaganda among the alien workers. He recommended the "most stringent measures to curtail the importation of such doctrines at public or private meetings and the declaration of unlawful associations and censorship of newspapers

¹³ Martin Robin, Radical Politics and Canadian Labour (Kingston: Industrial Relations Centre, Queen's University, 1968), p. 164.

¹⁴ Letter of R.L. Borden to C.H. Cahan (Confidential), May 19, 1918. Robert L. Borden Papers (PAC), Manuscript Group 26H, Vol. 104, File OC519, Fo. 56642.

under the War Measures Act." To preserve order and ensure the enforcement of federal regulations during the war, he recommended the setting-up of a Public Safety branch of the Justice Department.¹⁵

These recommendations were acted on immediately. A Department of Public Safety was set up with Cahan as Director; and on September 25, the government passed Order-in-Council P.C.2381, which prohibited the publication of newspapers in fourteen designated languages.¹⁶ In his study of the enemy alien question, Joseph Boudreau came to the conclusion that the ban on foreign language newspapers was precipitated by the government's fear of violence on the part of returned soldiers.¹⁷ Citing a visit by Immigration Minister J.A. Calder to the publisher of Der Nordwesten in Winnipeg, Boudreau stated that this was prompted by a resolution of the local Great War Veterans' Association requesting the suppression of German-language newspapers.¹⁸ Otherwise, the GWVA claimed, they could not be held responsible for the actions of returned soldiers "who threaten to smash up these German publishing houses."¹⁹

¹⁵ Letter of C.H. Cahan to O.J. Doherty, September 14, 1918, Borden Papers, op. cit., fo. 56656. Cited in Robin, op. cit., pp. 165, 166.

¹⁶ Canada Gazette, Vol. 52, p. 1277; reprinted in Statutes of Canada, 9-10 George V, 1919, Vol. 1, pp. lxxi, lxxii.

¹⁷ Boudreau, op. cit., p. 170.

¹⁸ Letter to R.L. Borden, to J.A. Calder, September 18, 1918, Borden Papers, File OC 454, Vol. 48135. Cited in Boudreau, op. cit., p. 170.

¹⁹ Law to Borden, September 16, 1918, Borden Papers, OC 454, 48136. Cited in Boudreau, op. cit., p. 171.

Boudreau's explanation may have some validity, but it is difficult to understand why the government would prohibit the publication of all newspapers in fourteen languages merely on the basis of anticipated violence against one of them. A more likely explanation is that the apprehended violence might have hastened the government's action, but uppermost in its mind was the spectre of red revolution painted in vivid colours by C.H. Cahan.

If there were any doubt that the Union Government was taking Cahan seriously, all was erased on September 28 with the enactment of Order-in-Council P.C.2384. It was the most sweeping anti-revolutionary measure yet taken by the government and is worth examining in some detail. First, it specifically outlawed fourteen radical organizations,²⁰ including the I.W.W., as well as any other organization denoted as follows:

2.(b). Any association, organization, society or corporation, one of whose purposes is to bring about any governmental, political, social or economic change within Canada by the use of force, or physical threats of such injury to person or property, or which teaches, advocates, advises or defends the use of force, or physical injury to person or property, or of such injury to person to accomplish such change for any other purpose or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend while Canada is engaged in war.²¹

²⁰ These included: The Industrial Workers of the World; The Russian Social Democratic Group; The Russian Revolutionary Group; The Russian Social Revolutionists; The Russian Workers Union; The Ukrainian Revolutionary Group; The Ukrainian Social Democratic Party; The Social Democratic Party; The Social Labour Party; and The Group of Social Democrats of Bolsheviki.

²¹ The Canadian Official Record, October 1, 1918, p. 12; Statutes of Canada, 1919, 9-10 George V, Vol. 1, Vide Canada Gazette, Vol. 52 p. 1876.

Another sub-section empowered the government to declare any other organization illegal. Moreover, any person acting, speaking or publishing on behalf of an unlawful association, or carrying a badge, card "or other device whatsoever, indicating or intended to show or suggest that he is a member of or in any wise associated with" such an association, was now liable to a five-year jail term. Indeed, a person need only have attended meetings of one of the banned organizations in order to be considered a member.²² Other clauses provided for the prosecution of owners or superintendents of buildings who knowingly leased their premises to unlawful associations, and for search and seizure without warrant of documents held by any person suspected of belonging to an unlawful association. The order-in-council also banned the holding of any non-religious meetings in the enemy languages, including Russian, Finnish and Ukrainian.²³ To cap the government offensive against labour radicalism, Order-in-Council 2525 was passed on October 11, prohibiting strikes and lockouts in the railways and other industries deemed essential to the war effort. All labour disputes were now to be settled by binding arbitration.²⁴

The new orders-in-council were greeted in labour circles with understandable outrage. One of the major meetings of protest was organized by the Winnipeg Trades and Labour Council for December 22 at the Walker

²² Ibid.

²³ Ibid.

²⁴ Robin, op. cit., pp. 166, 167.

Theatre. At that meeting, speeches were made by William Ivens, editor of the Western Labor News, labour leader John Queen, and Socialist Party members George Armstrong, Sam Blumenberg and R.B. Russell. Approved resolutions included demands for the repeal of the repressive orders-in-council, the release of all political prisoners, and the withdrawal of all Canadian troops from Russia,²⁵ where they were supporting the White effort in the civil war. A significant outcome of the meeting was the strengthened resolve of the various socialist and labour parties to hold a Western Labor Conference. Unknown to the speakers, Royal North West Mounted Police agents were in the theatre, taking copious notes of their occasionally wild rhetoric. The Walker Theatre Meeting would later figure predominantly in the post-Winnipeg General Strike sedition trials and deportation hearings.

A potential lever against radicalism was the government's authority, conferred by various orders-in-council under the War Measures Act, to intern and deport. Still, it was not until the last few months of 1918 that internment was applied to any extent against aliens who were not German or Austrian. Certainly, the war's end had brought with it widespread agitation by veterans' groups for deportation. Their motivation was primarily economic, as indicated in the following resolution, passed by the Vancouver Soldiers' and Sailors' Mothers and Wives Association just after the Armistice, on November 26, 1918:

Be it resolved that we....go on record as being opposed to the interned enemy aliens being freed, to take positions and flood the labour market to the

²⁵ See D.C. Masters, The Winnipeg General Strike (Toronto: University of Toronto Press, 1950), pp. 3-5; Robin, op. cit., pp. 168, 169; Bercuson, op. cit., pp. 84-86.

detriment of our returned men. These interned aliens have had the best of food and care, whilst our boys in Germany have suffered untold want and misery. And whereas we are loyal Citizens of the Dominion of Canada, we would respectfully ask the Dominion Government to deport them as undesirable citizens.²⁶

Two months later, seething resentment gave rise to violence in Winnipeg. There the returned soldiers, frustrated at their inability to find work while some aliens seemingly held good jobs, attempted to break up a memorial service for Rosa Luxemburg and Karl Liebknecht on January 26, 1919. When no one showed up at the intended service, rioting broke out among the soldiers, who smashed windows in the north end of the city and wrecked Sam Blumenberg's cleaning establishment on Portage Avenue.²⁷ Meanwhile, the national Great War Veterans' Association was calling for the registration of all enemy aliens, a curtailment of immigration and the deportation of all undesirables.²⁸

Nor were these the most extreme of the sentiments expressed at the time. An editorial in the Winnipeg Telegram held that deportation of aliens should not be limited to those interned, but expanded to cover "every alien enemy whose sympathy with the Allied cause has not been

²⁶ Justice Department Records, Public Archives of Canada (hereafter cited as PAC). Record Group 13, Series A-2, Volume 237, File 1510.

²⁷ Morris Mott, "The Foreign Peril: Nativism in Winnipeg, 1916-1923," M.A. Thesis (Manitoba, 1970), pp. 23, 24; Masters, op. cit., pp. 29, 30.

²⁸ Canadian Annual Review (1919), pp. 619-620; Desmond Morton, "Sir William Otter and Internment Operations," Canadian Historical Review (March, 1974), p. 57.

capable of the clearest proof from the beginning of the war."²⁹ Others adopted the view that deportation was too good a fate for the aliens, since it would merely allow those who "had made good at Canada's expense" during the war to return to Europe to spend their wartime earnings.³⁰

A particularly extreme recommendation came in a memo prepared for the Acting Chief Commissioner of Police by Inspector J. Fraser on February 10, 1919.³¹ In it Fraser drew attention to the agitation throughout Canada by the Great War Veterans' Association for the deportation of all enemy aliens. He noted, however, of 85,000 alien enemies then registered in Canada, 75,000 were working class and employed in such vital industries as coal and copper mining, shipyard and factory work. Moreover, "a large percentage of these men are at present performing a class of work which few returned soldiers would care to undertake and wholesale deportation would result in a great shortage of the rough labour necessary to carry on certain industries."³² The solution to this dilemma, Fraser concluded, was to intern all 85,000 enemy aliens, pending a decision as to which nationalities would be allowed to remain in Canada. The GWVA agitation would then subside, and the "well-behaved portion of the Aliens" could be released, while those considered undesirable would

²⁹ Winnipeg Telegram, January 9, 1919. Cited in Mott, op. cit., p. 22.

³⁰ Letter to Winnipeg Tribune, March 12, 1919. Cited in Mott, op. cit., p. 22.

³¹ Memorandum of Inspector J. Fraser to Acting Chief Commissioner of Police, February 10, 1919. Justice Dept. Records (PAC), Record Group 12, Series A-2, Vol. 237, File 1402.

³² Ibid.

be deported.

Whether or not such drastic measures were seriously entertained by the government, it proceeded to act upon Cahan's advice and interned labour militants under enemy regulations. It is now known how many radicals were rounded up, but of a total of 2,222 interned prisoners on December 1, 1918, General Otter described 650 as being especially hostile.³³ Of these, 134 were alleged members of the I.W.W. The breakdown, by nationality was: 1700 Germans; 489 Austrians (including Croats, Ruthenians, Slovaks and Czechs); 11 Turks; 7 Bulgarians; and 15 "Miscellaneous." On January 23, 1919, on the basis of General Otter's recommendations, the federal government passed Order-in-Council 158, providing for deportations.³⁴ It read in part that:

The Minister considers it desirable that all enemy interned prisoners who may be regarded as dangerous, hostile or undesirable should be repatriated with the least possible delay.

On this basis, 1964 enemy aliens were deported in 1919 and 1920, beginning with one hundred prisoners who were shipped out on the Empress of Britain on March 4, 1919.³⁵ The majority of these were undoubtedly German and Austrian prisoners of war who were, as a matter of course, liable to deportation. It is conceivable, however, that some or all of the 134 alleged members of the I.W.W. were deported in connection with the anti-radical drive, as their designation implies that I.W.W. membership was the reason for internment.

On February 12, the cabinet issued a further order-in-council, P.C. 332, which allowed for the internment of aliens by county or district court judges. Complaints would be entertained from municipal authorities, or even by

³³Report of W.D. Otter to W.S. Edwards, Deputy Minister of Justice, December 19, 1918. Justice Department Records (P.A.C.), Record Group 12, Series A-2, Vol. 237, File 1510.

³⁴Letter of W.D. Otter to W.S. Edwards, June 21, 1919, *ibid.*

³⁵W.D. Otter, *Internment Operations, 1914-20* (Ottawa, 1921), p. 14.

individuals who were considered to reflect the community. The internee was not entitled to be represented by counsel and might even be interned without knowledge of the hearings.³⁶ This created the perilous situation of giving free rein to the GWVA in its drive to have all enemy aliens put away. The order-in-council played a major part in the authorities' efforts to rid the country of alleged radical aliens during the Winnipeg General Strike later that year.

Thus, by early 1919, the Union Government had secured extremely wide-ranging powers to take action against suspected subversives. The only limitation on the orders-in-council was that they were operative only so long as the War Measures Act was in effect. Now, a rapidly unfolding drama of insurgent radicalism and industrial unrest would persuade Borden's government to convert these extraordinary powers to peacetime legislation, and even to expand them.

A phenomenon that greatly coloured the Dominion authorities' perception of the sympathetic strike in Winnipeg was the spread of the idea of the One Big Union in 1919. Its proponents conceived of an industrial superunion, whose membership would encompass the entire working class. The concept, therefore, presented a direct challenge to the established craft-union organization of the labour movement. Like the Industrial Workers of the World, the advocates of the O.B.U. envisaged only two classes in their analysis of society: workers and non-workers. To the extent that this notion implied class struggle it can be said to have been Marxist in tone. Whether the O.B.U.'s adherents would have pressed their world view to the point of violent revolution is another

³⁶ Desmond Morton, "Sir William Otter and Internment Operations," loc. cit., p. 57.

question.³⁷

Certainly the Union government was convinced that the One Big Union was an attempt to set up a Soviet-style state in Canada. This was the view of its two leading figures in the Winnipeg confrontation, Gideon Robertson, Minister of Labour, and Arthur Meighen, Minister of the Interior. The former vice-president of the Telegrapher's Union, Robertson was a trade unionist, but of the Gompers, craft-union variety. His fear of the O.B.U. greatly distorted his perception of events in Winnipeg.³⁸ Meighen was one of the more conservative figures in the cabinet. The architect of such measures as the Military Service Bill and the War Times Elections Act, he was also adamant in his opposition to industrial unionism.

The first opportunity for the advocates of the One Big Union to advance their case was in two labour conferences held in Calgary in March, 1919. The previous September, an open split had developed between the eastern conservatives and the western radicals at the Trades and Labor Congress meeting in Quebec City.³⁹ The main issue for the western delegates was industrial versus craft unionism and the resolu-

³⁷D.C. Masters, the first major historian to write about the strike subscribed to the view that the O.B.U. was derived from the Owenite gradualist school of socialism, as opposed to Marxism-Leninism (Masters, op. cit., pp. 26, 27). Recently, however historians have stressed the revolutionary element in interpreting the intent of the O.B.U. leaders. See R. McCormack, op. cit. and David J. Bercuson, Fools and Wise Men: The Rise and Fall of the One Big Union (Toronto; McGraw - Hill Ryerson Ltd., 1978).

³⁸See David J. Bercuson, "The Winnipeg Strike, Collective Bargaining and the One Big Union Issue," Canadian Historical Review (1970), p. 167, ff.

³⁹D.C. Masters, op. cit., pp. 30, 31.

tion of the Winnipeg Trades and Labor Council calling for a referendum on the question was decisively defeated.⁴⁰

Now, in March, the disgruntled western representatives sought to solidify their positions in order to try again to win over the eastern unions to the concept of industrial unionism. The first to meet was the B.C. Federation of Labor. This convention adopted several radical resolutions, including one calling for a six hour day and a five day week.⁴¹ Almost unanimously, it resolved to disengage from the international unions and to reorganize along industrial lines. The convention also protested the sending of troops to Russia and sent greetings to the Soviet regime.⁴²

Convened a few days later, the Western Labor Conference echoed the radicalism of its predecessor. Its main resolution which was passed unanimously, called for the severance of all ties with the international unions and the creation of a single industrial organization of all workers.⁴³ In another resolution the convention stated its preference for a system of "Industrial Soviet Control" as opposed to the existing form of government, and announced its sympathy with the aims and purposes of the Russian Bolshevik and German Spartacist Revolutions.⁴⁴ The same

⁴⁰ Ibid., p. 31.

⁴¹ Ibid., p. 35; Robin, op. cit., p. 170.

⁴² Robin, op. cit., p. 170.

⁴³ "First Day of Conference at Calgary Marked by Drastic Resolutions," The Manitoba Free Press, March 14, 1919, reprinted in J.E. Rea (ed.), The Winnipeg General Strike, p. 21.

⁴⁴ Ibid.

resolution proposed a general strike for June 1st unless all Allied troops were withdrawn from Russia. Finally, the convention endorsed the principle of "proletariat Dictatorship" and the transformation of capitalistic private property to communal wealth, and sent fraternal greetings to the Russian Soviets and the German Spartacists.⁴⁵

It was against this backdrop of heightened radicalism that Immigration Minister J.A. Calder on April 7 introduced Bill No. 52, to amend the Immigration Act.⁴⁶ The bill provided for a wide range of amendments to the old act, including three directly relating to deportation. First, the length of time during which immigrants could be deported was expanded from three to five years. Secondly, the prohibited classes were expanded to encompass all enemy aliens interned at or after the armistice. Thirdly, an amendment to Section 41 allowed for the deportation of all persons believing in or advocating the overthrow of constituted government, or the unlawful destruction of property.⁴⁷

⁴⁵ Ibid., p. 22.

⁴⁶ Canada. House of Commons Debate, April 7, 1919, p. 1207.

⁴⁷ The new Section 41 read:

"41. Whenever any person other than a Canadian citizen advocates in Canada the overthrow by force or violence of the government of Great Britain or Canada, or other British dominion, colony, possession or dependency, or the overthrow by force or violence of constituted law and authority, or the assassination of any official of the Government of Great Britain or Canada or other British dominion, colony, possession or dependency, or of any foreign government, or advocates or teaches the unlawful destruction of property, or shall by common repute belong to or be suspected of belonging to any secret society or organization which extorts money from, or in any way attempts to control any resident of Canada by force or threat of bodily harm, or by blackmail, or who is a member of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government; such person for the purposes of this Act shall be considered as belonging to the prohibited or undesirable classes, and shall be liable to deportation and it shall be the duty of any officer becoming cognizant thereof, and the duty of the clerk, secretary or other official of any municipality in Canada wherein such person may be, to forthwith send a written complaint thereof to the minister giving full particulars."

Canada. House of Commons Debates, May 9, 1919, p. 2283.

The amended Section 41 was sweeping in its implications. Much in the same fashion as Order-in-Council P.C.2384, it established the principle that political beliefs were subject to the same penalties as actions, if they were found objectionable by the authorities. Thus, a person need not actually plot the overthrow of the government; that he believed in it or advocated it was sufficient to warrant his deportation. The new section was very similar to the provisions of an act of Congress passed at the outset of the American "red scare" the previous October.⁴⁸ Furthermore, by expanding the prohibited classes to encompass interned aliens, the government effectively sanctioned the deportation of all suspected radicals rounded up under the War Measures Act.

On May 9, during the debate on second reading, Calder moved a further amendment to Section 41 by adding the following phrase:

Provided further that no person who belongs to the prohibited or undesirable classes within the meaning of section forty-one of this Act shall be capable of acquiring Canadian domicile.⁴⁹

⁴⁸ Report of F.C. Blair, Superintendent of Immigration, Ottawa, respecting his meeting with A. Caminetti, U.S. Commissioner-General of Immigration, November 24, 1918. Immigration Branch Records (PAC) Record group 76, Vol. 627, File 961162, Part 1. The U.S. Act of October, 1918 provided for the exclusion or deportation of all aliens who:

- i) were anarchists,
- ii) advocated or believed in the overthrow of the United States government,
- iii) disbelieved in organized government,
- iv) advocated the assassination of public officials and/or the unlawful destruction of property,
- v) were members of or affiliated with any organization entertaining belief in or advocating the overthrow of government.

⁴⁹ House of Commons Debates, May 9, 1919, p. 2286.

This amendment effectively excluded naturalized immigrants from immunity from deportation if they were deemed to come under Section 41's provisions.

As if this did not go far enough, a further extension of the prohibited classes was proposed in the Senate debate on second reading of Bill 52. Referring to the general strike then occurring in Winnipeg, Senator W.H. Bradbury made the following suggestion:

The leaders of some of the revolutionary movements which we read and hear about are, to my mind, a great menace to Canada at the present moment, and I submit that in this Bill the Government should take power to deport such men whether they have Canadian citizenship or not.⁵⁰

Nor would Bradbury make exceptions for British immigrants. He observed that "some of the greatest agitators in Canada today, are men of that class, who are leading the ignorant people astray."⁵¹ In this last statement, Bradbury revealed a belief common to Parliament Hill conservatives: that the Winnipeg General Strike was stirred up by a few British radicals intent on inciting the inarticulate alien population to revolution. Accordingly, he moved a further amendment to Section 41, which would allow for the deportation of any person "whose public conduct or writing is a menace or a danger to the maintenance of law and order."⁵² This was going too far, even for the Senate, and was defeated.

With respect to the main text of Section 41, Senator Raoul Dandurand raised some mild opposition to the phrasing of two key clauses:

Or advocates or teaches the unlawful destruction of property
or shall by word or act create or attempt to create riot
or public disorder in Canada, -

⁵⁰Senate Debates, May 27, 1919, p. 542.

⁵¹Ibid.

⁵²Ibid., p. 545.

and,

Or shall by common repute belong to or be suspected of belonging to any secret society or organization which extorts money from, or in any way attempts to control any resident of Canada by force or threat of bodily harm.

Dandurand observed that these clauses left great discretionary powers to Immigration Department Boards of Inquiry in determining whether to deport an alien. Nonetheless, the entire section was allowed to pass without a division.⁵³

At the initiative of Sir James Lougheed, Government Leader in the Senate, the Upper House agreed on May 27 to insert an amendment to Section 2 of the act to provide for loss of domicile "by any person belonging to the prohibited or undesirable classes within the meaning of section 41 of this Act."⁵⁴ In other words, under this addition, immunity from deportation could be retroactively revoked, if an immigrant had not already obtained a naturalization certificate. The new provision was sent to the House of Commons where it was approved without debate on June 5.⁵⁵

While the deportation amendments were directed at aliens, the government also pursued criminal legislation to deal with domiciled radicals. Soon after rescinding Order-in-Council P.C.2384 in April, 1919, it began the process of finding a replacement. On May 1, Solicitor General Hugh Guthrie moved that a special parliamentary committee be

⁵³ Ibid.

⁵⁴ Ibid., p. 548.

⁵⁵ House of Commons Debates, June 5, 1919, p. 3175.

formed "to consider and report upon the law relating to sedition and seditious propaganda and on any changes in the law which may be necessary to meet the existing conditions...."⁵⁶ He explained to the House that Canada's sedition law was not well defined and that the existing Criminal Code did not adequately cover all questions of security. Guthrie's motion received the required unanimous consent of the House and the matter was referred to the new committee that comprised seven government members and five Liberals.⁵⁷

Meanwhile, in Winnipeg, events were fast coming to a head. On May 1 and 2 respectively the building and metal trades workers went on strike. The issues in the disputes were higher wages and shorter work-days and, in the case of the metal workers, recognition of their Trade Council as bargaining agent. At the behest of the Building and Metal Trades Councils, the Winnipeg Trades and Labor Council called a vote on the question of a general sympathetic strike by member unions on May 11. It was endorsed by a large majority and on May 15 between 25,000 and 35,000 union and non-unionized workers left their jobs.⁵⁸ A Central Strike Committee was set up to organize efforts to achieve the workers' demands, which centred chiefly on the issue of collective bargaining. The committee also undertook to coordinate the delivery of essential services. On May 21 an inner committee of five was elected to give

⁵⁶Ibid., May 1, 1919, p. 1956.

⁵⁷Ibid. The membership of the committee was: (Conservative or Liberal-Unionists) Guthrie, Tweedie, McIntosh, Allan, Thomson, Boys and Douglas; and (Liberals) Jacobs, Murphy, Ross, Archambault and Copp.

⁵⁸H.A. Logan, The History of Trade-Union Organization in Canada, (1928), p. 392.

tighter direction to the strike effort. One of the members of this was R.B. Russell, who had played a prominent role in launching the One Big Union at the Western Labor Conference.⁵⁹

Immediately, an opposing force appeared in the formation of the Committee of One Thousand. An ad hoc alliance of conservative elements in the community, the Committee claimed its intention was to provide essential services, but its true purpose was to break the general strike. Through its newspaper, The Winnipeg Citizen, the Committee characterized the strike as a revolution⁶⁰ and made repeated demands for federal government intervention, in hopes of having the strike leaders arrested and deported.⁶¹ Indeed, across the country there was a renewed clamor for deportations,⁶² as the Bolshevik-alien scare was intensified by the strike.

The events of the strike itself have been chronicled by a number of historians and need not be recited here.⁶³ It is sufficient to

⁵⁹D.C. Masters, op. cit., p. 36.

⁶⁰"The Naked Fact of Revolution," Winnipeg Citizen, May 27, 1919, reprinted in J.E. Rea, op. cit., p. 55.

⁶¹McNaught, op. cit., p. 108.

⁶²See "Clean Out the Bolsheviks," Toronto Times, May 20, 1919; "Foreigners: The Root of Our Trouble," Québec Telegraph, May 21, 1919, reprinted in J.E. Rea, op. cit., pp. 36, 38, 39.

⁶³See David J. Bercuson and Kenneth McNaught, The Winnipeg Strike: 1919 (Don Mills; Ontario: Longman Canada, 1974), and D.C. Masters, The Winnipeg General Strike (Toronto: University of Toronto Press, 1973)

state that the opposing sides, bitterly opposed at the outset, hardened in their irreconcilable positions as the strike progressed. The Dominion government, when it did intervene, sided totally with the Citizens' Committee. In Parliament, Interior Minister Arthur Meighen stated the government's position:

If you are going to have a combination of all organizations of labour in the Dominion taking part and determining the event of every dispute as to labour conditions and wages, here, there, and at every other point, why then you have the perfection of Bolshevism.⁶⁴

In light of the events in Calgary, it is perhaps not surprising that the authorities should view any general strike action in Western Canada as a testing ground for the One Big Union concept. R.B. Russell provided the sole connecting link between the leadership of the O.B.U. and the Central Strike Committee. With a vote impending on the proposed O.B.U. general strike, however, the government was convinced that any relenting on their part would open the floodgates to revolution. To the authorities and to the middle classes they represented, a general strike necessarily constituted a challenge to the existing order.⁶⁵

On June 6, debate in the House of Commons was interrupted once again by the immigration question. Informing the previous speaker of "a very important matter to which the attention of the House should be directed at once with a view to its being assented to this afternoon," J.A. Calder introduced yet another amendment to Section 41 of

⁶⁴House of Commons Debates, June 2, 1919, p. 3041.

⁶⁵ See J.E. Rea, *op. cit.*, Introduction, p. 6.

the Act just approved. Calder explained:

The matter has been inquired into further and the law officers of the Crown have advised that the section as it stands does not really cover all that was intended.⁶⁶

The amendment he now proposed changed the first phrase of Section 41 to read "any person" to replace the former "any person other than a Canadian citizen," and added the following proviso:

....Provided that this section shall not apply to any person who is a British subject, either by reasons of birth in Canada, or by reason of naturalization in Canada.

Also, a new subsection was inserted:

(2) Proof that any person belonged to or was within the description of any of the prohibited or undesirable classes within the meaning of this section at any time since the fourth day of May, one thousand nine hundred and ten, shall, for all purposes of this Act be deemed to establish prima facie that he still belongs to such prohibited or undesirable class or classes.⁶⁷

The effect of the amendment was to allow for the deportation of British immigrants, even those who had become Canadian citizens, if they were considered to have come under Section 41's provisions at any time since May 4, 1910. It was hurriedly given three readings by both the House and Senate and given Royal Assent, all within an hour.⁶⁸

What prompted the June 6 amendment? Obviously it had been hastily drawn up or it would have been included in Bill 52, which had already been approved. Almost certainly the amendment was specifically designed to enable the authorities to break the Winnipeg General Strike, which

⁶⁶House of Commons Debates, June 6, 1919, p. 3211.

⁶⁷Statutes of Canada, 9-10 George V, Chapter 26, pp. 107, 108.

⁶⁸McNaught, A Prophet in Politics (Toronto: University of Toronto Press, 1959), p. 115.

was then entering its fourth week. Equipped with the machinery to deport British subjects, they could now move against the strike leaders with force. At the same time, notwithstanding the specific purpose of the amendment, it should be viewed in the context of a general hardening of immigration laws beginning with the deportation provisions enacted under the War Measures Act and continuing with the earlier amendments to Section 41.

Other anti-radical measures immediately followed. On June 10, Solicitor General Guthrie presented the report of the Committee on Sedition and Seditious Propaganda to Parliament and moved concurrence in its recommendations. Chief among these was a call for the outlawing of any organization having the purposes of using force to bring about political or industrial change. Guthrie argued that there existed in Canada:

many associations and societies developed and organized for the purpose of carrying on a dangerous propaganda and which, if permitted to pursue their purpose unhindered or unchecked, may ultimately prove a serious menace to our free, institutions and to the authority of government in this country...⁶⁹

The committee, accordingly, proposed stiff penalties for membership in such organizations and recommended that their property be made liable to seizure and confiscation.

The second part of the report was a review of existing provisions in the law of sedition, which, the committee concluded, needed to be broadened and toughened. It also recommended changes pertaining to the Sections 133 and 134 of the Criminal Code, and the addition of a new

⁶⁹House of Commons Debates (1919), Vol. IV, p. 3286

Section 97B. Section 133 had provided safeguards in the legal interpretation of sedition, to the effect that advocacy of legitimate social changes within the confines of the existing system should not constitute a seditious act.⁷⁰ The committee proposed to strike out this section because "in practice, it has operated as a cloak or shield which has prevented the imposition of penalties upon offenders....." It further recommended that the maximum prescribed penalty for sedition, as outlined in Section 134, be increased from two to twenty years.

Beyond the amendments to and deletions from existing clauses, the committee proposed a new section that would outlaw virtually all conceivable overt radical activity. Guthrie attributed the apparent increase in seditious activity in Canada to the rescinding of the respective Orders-in-Council under the War Measures Act and the general relaxation of censorship. He now proposed to resurrect two key clauses of the former Order-In-Council P.C.2384, respecting the circulation of

⁷⁰The wording of the section was:

133. No one shall be deemed to have a seditious intention only because he intends in good faith—

- (a) to show that His Majesty has been misled or mistaken in his measures; or,
- (b) to point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any province thereof, or in either House of Parliament of the United Kingdom or of Canada, or in any legislature or in the administration of justice, or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or,
- (c) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred or ill-will between different classes of His Majesty's subjects.

55-56 V., C.23,3.123.

Revised Statutes of Canada, 1906, 5-6 Edward VIII, Vol. III, Chapter 146, pp. 2453, 2454.

sedition material, in the new Section 97B.⁷¹

The only M.P. to speak against the report was the Honourable Charles Murphy, a Laurier Liberal who had served on the committee. Murphy's speech was noteworthy for his statement that there had been in the committee "a very sharp division of opinion as to the necessity of amending the Criminal Code...." He added that he and other members of the committee had disagreed with the timing of this legislation in view of the turbulent labour situation. Moreover, they considered the existing provisions of the Criminal Code adequate to deal with the situation.

Referring to Guthrie's argument that the amendments were necessitated by the rescinding of the Orders-in-Council dealing with sedition, Murphy stated that action should have been taken while they were still in effect. The members of the committee opposed to the recommendations did not submit a minority report because they wished to avoid the kind of discussion Guthrie had initiated in the house. Murphy did not take any further action, however, and the committee's report was concurred in, without recorded opposition.⁷²

⁷¹97B. Any person who prints, publishes, edits, issues, circulates, sells, offers for sale or distribution any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication or document of any kind, in which is taught, advocated, advised or defended or who shall in any manner teach, advocate, advise, or defend the use, without authority of law, of force, violence, terrorism, or physical injury to person or property, or threats of such injury, as a means of accomplishing any governmental, industrial or economic change, or otherwise, shall be guilty of an offence and liable to imprisonment for not less than one year and not more than twenty years.

House of Commons Debates, June 10, 1919, p. 3290.

⁷²Ibid., p. 3292.

The government now proceeded to apply its new powers. In the early morning of June 17, in conjunction with Royal North West Mounted Police raids on the Western Labor News and the Labor Temple, the six strike leaders and four minor figures of alien nationality were arrested under Section 41 of the newly-amended Immigration Act.⁷³ Senator Robertson, who had been given authority by the cabinet to sanction the arrests, at first favoured deporting the strike leaders.

Our plan will probably be to remove a considerable number directly to train destined Internment Camp KAPUSKASING unless you advise us that accommodation is not available. It being thought very desirable that they be removed promptly from here.

Necessary Board of Inquiry to deal with individual cases at leisure can then be arranged.⁷⁴

Robertson soon abandoned his original plan, probably on the advice of A.J. Andrews,⁷⁵ the newly appointed legal agent of the Justice Department, and prominent member of the Citizens' Committee. Instead, the authorities proceeded to charge the strike leaders with sedition under the Criminal Code.⁷⁶

⁷³ David Bercuson and Kenneth McNaught, The Winnipeg Strike: 1919, p. 80.

⁷⁴ Senator Robertson to R.L. Borden, June 17, 1919, no. 61913, Borden Papers (PAC); reprinted in A. Balawyder (ed.) The Winnipeg General Strike, p. 36.

⁷⁵ Bercuson and McNaught, op. cit., p. 79.

⁷⁶ Masters, op. cit., p. 114

Not so fortunate were the four aliens, who would soon face deportation hearings.⁷⁷ Even this formality of judicial procedure was denied twelve alien strikers who were arrested during the closing riots of the Strike on June 21st. They were brought before Police Magistrate Sir Hugh John Macdonald, who recommended them for internment⁷⁸ under the authority of the February order-in-council P.C. 332.

The federal government now applied the finishing touches to its anti-Bolshevik legislative program. On June 18, the day after the arrests, Prime Minister Borden, who had returned from the Peace Conference in late May, introduced in Parliament Bill No. 138, to amend and consolidate the Acts relating to British Nationality, Naturalization and Aliens.⁷⁹ While many of the Act's provisions were draughted in compliance with the British Imperial Act of 1918, it is apparent that it was also intended to serve as a concomitant to the new deportation provisions in the Immigration Act.⁸⁰ The bill's principal clause allowed for the revocation of naturalization certificates on various grounds, including when the holder of the certificate "has shown himself by act or speech to be disaffected or disloyal to His Majesty."⁸¹ This change would have the

⁷⁷R.C.M.P. Records (PAC), RG18, Vol. 3314, File No. HV-I. See Chapter II.

⁷⁸Letter of Cortlandt Starnes, Supt., R.N.W.M.P., Winnipeg, to R.M.W.M.P. Commissioner, Regina, December 16, 1919. Justice Department Records (PAC), RG13, Series A-2, Vol. 239, File 1960.

⁷⁹House of Commons Debates, June 18, 1919, p. 3585.

⁸⁰In 1918, Borden had balked at implementing the recommendations of the 1917 Imperial Conference vis a vis the establishment of a ten year waiting period for aliens prior to granting of naturalization certificates. Now in 1919, Borden defended this new provision on grounds of maintaining imperial uniformity. (see Boudreau, op. cit., p. 183 and Canada, House of Commons Debates, 1919, p. 4344.

⁸¹Ibid., p. 3585.

effect of making all except the Canadian-born liable to deportation if deemed disloyal by the Secretary of State or his surrogate.

In the ensuing debate, Solicitor-General Hugh Guthrie stated that under the June 6 immigration amendment, only the British-born were liable to have their rights of naturalization revoked, and "the intention is to obviate this inequality."⁸² Now apparently, all would be oppressed equally. Liberal Ernest Lapointe criticized the retroactive aspect of the bill and likened it to the breaking of a contract, in this case, between the government and the naturalized immigrant.⁸³ On June 26, he moved an amendment to strike from the bill the clause revoking naturalization, but it was lost by a 58-39 division.⁸⁴

On June 27, Arthur Meighen, the Acting Minister of Justice, introduced Bill 160 to amend the Criminal Code.⁸⁵ The Bill's first section, on unlawful associations, had been recommended to Parliament by the special Committee on Seditious Propaganda on June 10.⁸⁶ Divided into two sub-sections, 97A and 97B, the amendment was virtually a verbatim reenactment of the former Order-in-Council, P.C. 2384,⁸⁷ as illustrated by the first clause:

97A. Any association, organization, society or corporation, whose professed purpose or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force or violence, terrorism, or physical injury to person or property, or

⁸²House of Commons Debates, June 26, 1919, p. 4128.

⁸³Ibid., pp. 4117, 4118.

⁸⁴Ibid., p. 4126.

⁸⁵House of Commons Debates, June 27, 1919, p. 4134.

⁸⁶See above, pp. 28-30.

⁸⁷See Appendix I.

threats of such injury, in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend, shall be an unlawful association.⁸⁸

The chief difference from the order-in-council was that the penalty for belonging to an unlawful association had been expanded from five to twenty years.

The essence of the other clauses was:

Section 97A

Subsection 2. Any property belonging to or suspected of belonging to an unlawful association could be seized without warrant by the R.C.M.P.

Subsection 3. Any person acting as an officer of an unlawful association, and selling, speaking, writing or publishing anything on its behalf, or wearing any badge or insignia, indicating membership in it, or contributing to or soliciting dues for it, was liable to twenty years' imprisonment.

Subsection 4. In the event of prosecution, if it were proved that the person charged attended meetings, spoke in favour of, or distributed literature of an unlawful association, he would be presumed to be a member, in absence of proof to the contrary.

Subsection 5. Any owner or superintendent of a hall who knowingly permitted a meeting of an unlawful association to be held in his hall, was liable to a five year sentence or \$5,000 fine, or both.

Subsection 6. Warrants for the search and seizure of literature could be authorized by a superior or county court judge.

Subsection 7. Seized property could be forfeited to the Crown.

Section 97B

Subsection 1. Any person printing or selling books, newspapers, etc. in which was advocated the use of force or violence to achieve governmental, industrial or economic change, was liable to a twenty year sentence.

Subsection 2. Any person mailing such literature was liable

⁸⁸ Statutes of Canada, 1919. 9-10 George V, Vol. 1, Chapter 46, p. 307.

to a twenty year term.

Subsection 3. Any person importing or attempting to import such literature was liable to a twenty year term.

Subsection 4. Made it the duty of every employee of the Crown to seize suspected seditious literature and send it to the Commissioner of the R.C.M.P.⁸⁹

The only debate engendered by the bill was an objection to 97B, pertaining to the publishing, distributing and importation of seditious literature. W.F. Nickle (Kingston) pointed out that under this subsection, a man might unknowingly import seditious material, but still be faced with a possible twenty year jail sentence.⁹⁰ No such issues were raised with respect to 97A, and both sections were approved without a division. The Senate made only a few minor changes, including the removal of the minimum penalty of one year's imprisonment. This amendment was quickly accepted by the House.⁹¹ Thus passed through Parliament one of the gravest infringements on free speech, with no recorded opposition after the Committee stage. Why the Liberals acquiesced is uncertain. Possibly they regarded the Commons' acceptance of the Committee report as a fait accompli.

In successive stages, the Union Government had provided for the deportation of political opponents, revoked the rights of naturalization of foreign-born residents, and created powers to deal with sedition never before existing in peacetime in Canada. Most dangerous from a

⁸⁹ Statutes of Canada, 1919, 9-10 George V, Vol. 1, Chapter 46, pp. 307-309.

⁹⁰ House of Commons Debates, July 1, 1919, p. 4367.

⁹¹ Ibid., July 5, 1919, p. 4660.

civil rights point of view was the inclusion of ideas in the realm of punishable offences. Yet it would be a mistake to perceive this progression of regressive measures solely in light of the events in Winnipeg. Most of the powers established by the amendments to the Immigration Act and Criminal Code had already existed in various orders-in-council enacted under the War Measures Act. In reviewing the record of the Borden administration in anti-radical legislation, one is struck more by its continuity than its aberrations. Borden's ministers did not register a uniformly consistent approach to deportation policy at all times, but when they perceived the makings of a revolutionary conspiracy in the One Big Union, their ideological predisposition was readily translated into an aggressive anti-radical drive. The Winnipeg General Strike had been decisively defeated. Federal authorities were not, however, convinced that the danger had passed.

Chapter II

Application of the 1919 Deportation Amendments by Federal Officials, 1919-1920

It is often in executive behaviour rather than in the law itself that the real danger of civil liberty is found.

- Frank Scott¹

In passing the sedition and deportation amendments to the Criminal Code and the Immigration Act in 1919, the Dominion government had placed potent weapons at the disposal of its public servants. The Royal Northwest Mounted Police now had the weight of Sections 97A and 97B² of the Code to back up the government's campaign against radicalism. While no charges were laid at this time, Section 97B inspired the interception of a plethora of literature considered seditious by the guardians of public security. For its part, the Immigration Department had been given much greater latitude in instituting deportation proceedings against the foreign-born. How immigration and other officials employed the new powers in the period immediately following the Winnipeg General Strike would set the tone of their application for many years to come.

¹F.R. Scott, "Immigration Act - False Arrest - Illegal Treatment of Arrested Person." Canadian Bar Review (January, 1936), p. 63.

²These sections were consolidated as Section 98 of the Code in the Revised Statutes of 1927.



The key apparatus in the deportation process, the Immigration Board of Inquiry, was created by the Immigration Act of 1910.³ Under the provisions of the Act, this tribunal was to be comprised of three or more officers, including the immigration officer in charge at a port of entry. It was given authority to hear deportation cases, administer oaths and adduce evidence.⁴ The Board could make a decision on the basis of "any evidence, considered credible or trustworthy by such Board, in the circumstances of each case."⁵ Significantly, in matters pertaining to the Immigration Act the proceedings of Boards of Inquiry fell outside the jurisdiction of the courts altogether.⁶ For those persons examined for offences under Section 41, deportation orders could be appealed to the Minister, but this was the final resort.⁷ Moreover, the common law principle that a person was innocent until proven guilty was reversed by Section 16:

³"An Act Respecting Immigration," Statutes of Canada, 1910, 9-10 Edward VII, Chapter 27, Section 13, p. 7.

⁴Ibid., Section 15, p. 7.

⁵Ibid., Section 16, p. 7.

⁶Section 23 read: "No court, and no judge or officer thereof, shall have jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or of any Board of Inquiry, or officer in charge, had, made or given under the authority and in accordance with the provisions of this Act relating to the detention or deportation of any rejected immigrant, passenger or other person, upon any ground whatsoever, unless such person is a Canadian citizen or has Canadian domicile." Immigration Act, Statutes of Canada, 1910, 9-10 Edward VII, Chapter 27, Section 13, p. 7.

⁷Ibid., p. 8.

....in all cases where the question of the right to enter Canada under this Act is raised the burden of proof shall rest upon the immigrant, passenger or other person claiming such right.⁸

Procedures for conducting Boards of Inquiry were set out in Section 42. Essentially this section permitted the immigration officials to deal with aliens already residing in Canada on the same basis as aliens applying for admission from without.⁹

In 1919 two amendments pertaining to the operation of Boards of Inquiry were passed as part of Bill 52.¹⁰ The first of these removed the requirement that the immigration officer in charge at a port of entry be a member of a board.¹¹ The second empowered the Minister to authorize any immigration officer to discharge the duties of a Board of Inquiry "at any place in Canada other than a port of entry."¹² Since the 1910 Act had allowed the Minister to appoint non-departmental staff as officers, the new amendments gave him authority to appoint virtually anyone to act as a one-man tribunal, anywhere in the country.

⁸Ibid., p. 7.

⁹"42. Upon receiving a complaint from any officer, or from any clerk or secretary or other official of a municipality, whether directly or through the Superintendent of Immigration, against any person alleged to belong to any prohibited or undesirable class, the Minister may order such person to be taken into custody and detained at an immigrant station for examination and an investigation of the facts alleged in the said complaint to be made by a Board of Inquiry or by an officer acting as such. Such Board of Inquiry or officer shall have the same powers and privileges, and shall follow the same procedure, as if the person against whom complaint is made were being examined before landing as provided in Section 33 of this act; and similarly the person against whom complaint is made shall have the same rights and privilèges as he would if seeking to land in Canada." Ibid., p. 15.

¹⁰See above, Chapter I, p. 20.

¹¹Statutes of Canada, 1919 9-10 George V, Vol. I, Chapter 25, p.5.

¹²Ibid.

The first major tests of the amended Section 41 of the Immigration Act came in Winnipeg. There a Board of Inquiry was set up in late June and early July, 1919, to hear the deportation cases of the four aliens arrested on June 17, during the General Strike. They were to be charged under Section 41 for alleged seditious activities during and prior to the strike. The Board had three members—two local officials of the Immigration Department; Acting Division Commissioner Thomas Gelley and E.T. Boyce—and a chairman, Police Magistrate R.M. Noble.¹³

The original plan seems to have been that R.N.W.M. Police personnel serve on the inquiry boards.¹⁴ To this end, Cortlandt Starnes, the superintendent commanding the Manitoba District and other Mounted Police officers were appointed immigration officers under the newly amended Section 5 of the Immigration Act. However, on recommendation of W.D. Scott, Assistant Deputy Minister of Immigration, the idea of having them sit on the boards was abandoned in favour of having more experienced officials handle the cases.¹⁵ Scott was concerned that the

¹³Telegram from J.A. Calder to Thomas Gelley and E.T. Boyce, June 26, 1919; and from Calder to R.M. Noble, July 12, 1919, nominating the addressees as members of the Board of Inquiry. Cited in Meeting No. 1 of the deportation hearing of Sam Blumenberg, July 14, 1919. R.C.M.P. Records (PAC), RG18, Vol. 3314, File no. HV-1(4).

¹⁴Memorandum of W.D. Scott to W.W. Cory, June 16, 1919. Immigration Branch Records (PAC), RG76, Vol. 627, File 961162, "Agitators," Part 1.

¹⁵Ibid.

the police would not be familiar with the new amendments; moreover, "in almost every case, it is necessary to adduce some technical evidence with a view to deportation." Accordingly, two representatives of the Immigration Department were sent west on June 16 with copies of the new amendments and "full instructions for their interpretation."¹⁶ The newly appointed R.N.W.M.P. immigration officers were used in other capacities, including the arrests and laying of charges in various Western Canadian centres. In Winnipeg, Superintendent Starnes formally charged the four jailed suspects on June 26, nine days after they were arrested.¹⁷

Scott's instructions for the conduct of the Board of Inquiry hearings in Winnipeg very clearly outline the intentions of the Immigration Department.¹⁸ Anticipating many of the problems which would emerge in the Winnipeg hearings, the instructions read like a blueprint for expeditious deportation. The primary strategy called for an expansion of terms of reference of the hearings in order to permit deportation on grounds other than Section 41.

In addition to material testimony in support of the complaints, the Board of Inquiry or officer acting as such should also adduce evidence, if possible, showing the tech-

¹⁶ Ibid.

¹⁷ Meeting No. 1 of the deportation hearing of Sam Blumenberg, op. cit. Blumenberg was not one of the original four arrested on June 17. The order for his arrest and examination was issued on June 21. (Source: Telegram of J.A. Calder to Cortlandt Starnes, June 21, 1919. Immigration Branch Records (PAC), RG76, Vol. 627, File 961162, Part 1.

¹⁸ Letter of W.D. Scott to Thomas Gellely, June 17, 1919. Immigration Branch Records (PAC), RG76, Vol. 627, File 961162, "Agitators," Part 1.

nical grounds for action.¹⁹

Scott advised that, where applicable, entry by misrepresentation be considered by the Board. However, if the aliens were found to have been legally admitted, he recommended that action be taken under Section 41 "so there will be no valid ground for habeas corpus proceedings."²⁰ To establish technical grounds for deportation, he advised that evidence be adduced covering the following:

- "(1) Birthplace and proof of citizenship by birth or naturalization.
- (2) Occupation and reputation prior and subsequent to entry.
- (3) Object in coming to Canada.
- (4) Whether a member of or affiliated with any organizations as defined in Sub-Section (n) and (t) of Section 3, or by Section 41, either in the United States or Canada.
- (5) Whether belonging to any other of the prohibited classes as defined in Section 3, of the Act.
- (6) Name of port of entry, date, and time of entry.
- (7) Whether examined by a Canadian Immigration Officer and if so what representations were made.
- (8) Whether employed in Canada and if so by whom, where, in what capacity and between what periods. (Evidence on this point should be carefully developed to disclose whether the alien is a bona fide worker or an agitator)."²¹

It is evident that Scott intended that no stone be left unturned in the Board's attempt to secure deportation orders.

Leading roles in the drama which was about to unfold were filled

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

by A.J. Andrews, who was engaged as counsel for the Immigration Department, and T.J. Murray, Marcus Hyman and E.J. McMurray, the co-counsel for the accused. Andrews also led for the prosecution in the seditious trials of the strike leaders, as the latter three were employed in their defense.

The four aliens brought before the Winnipeg Board of Inquiry were Oscar Schoppelrei, Michael Charitonoff, Solomon Almazoff and Samuel Blumenberg. The first three had been arrested in the June 17 raids, along with the strike leaders and a naturalized Russian, Mike Verenchuk.²² Verenchuk was a veteran of the war who apparently had had no connection with the strike. According to the Defence Committee's history of the strike, his name was not on the warrant and no warrant was issued until thirty-six hours after he had been jailed.²³ While no charges were laid, crown prosecutor A.J. Andrews recommended Verenchuk to military authorities for a sanity test. This was performed on July 4, he was declared sane and released.²⁴

What the remaining defendants had in common was that they either

²²"Saving the World from Democracy: The Winnipeg General Sympathetic Strike, May-June, 1919," prepared by the Winnipeg Defence Committee, n.d. Reprinted in Norman Penner (ed), Winnipeg 1919 (1975), p. 164.

²³Ibid., p. 159.

²⁴Ibid., p. 219.

came from Eastern Europe or had names that would suggest that origin.²⁵ Oscar Schoppelrei, in fact, was born in San Francisco. He was a musician who had emigrated in March, 1918,²⁶ to enlist in the Canadian Army, in which he had served in the last months of the war. The other three defendants were Jewish emigrees from Eastern Europe. Michael Charitonoff was the twenty-seven-year old former editor of Rabochy Narod (The Working People),²⁷ a left-wing Ukrainian newspaper that had been suppressed with the other foreign-language newspapers in September, 1918. A native of Nikolayev in the Russian Ukraine, he had emigrated to Canada in early 1914. Solomon Alamazoff, a thirty-year old student at the University of Manitoba was also from the

²⁵The tenor of Andrews' examination of Schoppelrei in the hearings that followed implies that the authorities believed him to be of European nationality:

1. Q. [Andrews] What is your age?
A. [Schoppelrei] Twenty-two.
2. Q. Race?
A. I was born in the United States.
3. Q. From what country did you come?
A. I came from the United States.
4. Q. Where were you born?
A. In the United States.

Source: Transcript of Meeting No. 1 of the Board of Inquiry deportation hearing of Oscar Schoppelrei, July 16, 1919 in Winnipeg. R.C.M.P. Records (P.A.C.) RG18, Vol. 3314, File no. H.V.-1 (4).

²⁶Transcript of Sitting No. 1 of the deportation hearing of Oscar Schoppelrei, July 16, 1919, p. 8. R.C.M.P. Records (P.A.C.) RG18, Vol. 3314, File H.V.-1 (4).

²⁷Transcript of Sitting No. 1 of the deportation hearing of Michael Charitonoff, July 16, 1919, p. 5. R.C.M.P. Records (P.A.C.), RG18, Vol. 3314, File H.V.-1 (4).

Russian Ukraine, coming to Canada in March, 1913. He had been active in the Social Democratic Party and the Dominion Labor Party.²⁸

Sam Blumenberg, thirty-three, was born in Romania, emigrated to the United States as a child and moved to Winnipeg in 1913.²⁹ The owner of a cleaning and drying business, he had been a member of the Socialist Party of Canada and one of the principal speakers at the Walker Theatre meeting.

The authorities almost certainly believed Charitonoff to be a participant in an international Bolshevik conspiracy to launch a revolution at Winnipeg. He apparently had received \$7,000 from C.A.K. Martens, head of the Russian Soviet Government Information Bureau in New York for the purpose of funding a new journal, The New Age. The journal was never published and the money was turned over to the general strike fund. It was this very indirect connection with Moscow that gave rise to the charge that the general strike was instigated by Soviet revolutionaries.³⁰ Just prior to the deportation hearings of Charitonoff and the other aliens, W.R. Little, Commissioner of Immigration, wrote to the Minister:

.....If the trouble in Winnipeg was engineered from New York either by Martens or Nuorteva, the evidence which

²⁸Transcript of Sitting No. 1 of the deportation hearings of Solomon Adamazoff, July 16, 1919, p. 18, R.C.M.P. (P.A.C.), RG18, Vol. 3314, File H.V.-1 (4).

²⁹Transcript of Sam Blumenberg's deportation hearing, op. cit., pp. 19-22.

³⁰William Rodney, Soldiers of the International (Toronto: University of Toronto Press, 1968), p. 25n.

is alleged to have been adduced in connection with the raids in New York will no doubt assist in the conviction of these aliens who are now being prosecuted in Winnipeg and elsewhere.³¹

Prior to the convening of the hearings, a delegation of Winnipeg labour leaders and officials of the Dominion Trades and Labour Congress met with Charles Doherty, the Minister of Justice, in an attempt to secure a jury trial for the four defendants.³² Doherty rejected their request, despite the fact that a similar appeal to Arthur Meighen by Fred Tipping on behalf of the British strike leaders had been successful a few weeks earlier.³³ This decision, coupled with the fact that the British defendants were granted bail, while the aliens were denied it, pointed to a serious discrepancy in the way these respective groups were treated.

From the outset, the Winnipeg Board of Inquiry stretched its mandate under the Immigration Act to the limit. Rather than state the specific charge under which the aliens were to be examined, the Board chose to conduct its examination in terms of the defendants' "right to remain in Canada." For its purposes, this covered all angles; if a case under Section 41 could not be proved, then the accused could be deported on any other grounds set forth in the Immigration Act. Thomas Gelley put the Board's position bluntly:

³¹Memorandum of W.R. Little to J.A. Calder, August 5, 1919, Immigration Branch Records (P.A.C.), RG76, Vol. 627, File 961162, fo. 43011.

³²Manitoba Free Press, July 15, 1919, p. 3.

³³D.C. Masters, The Winnipeg General Strike (Toronto, 1950) pp. 113, 114.

The practice of the Board is to ask questions, and the accused to answer why he should remain in Canada. If he was at the border he would have to answer questions before coming in. We want to know if he is legally in Canada.³⁴

This was consonant with Section 16, in which the burden of proof was placed squarely on the accused.

At the first meeting in the hearing of Oscar Schoppelrei, E.J. McMurray objected to this catch-all method, holding that his client should be required only to plead to the complaint which had been lodged.³⁵ Co-counsel Marcus Hyman requested that the charge and arrest warrant be read, but Andrews was not able to produce the original.³⁶ He promised to make it available before the end of the inquiry, but neither he nor the Board members would concede that the inquiry should be limited to an investigation under Section 41.

Following this broadening of the inquiry's scope, Andrews attempted to introduce evidence that Schoppelrei had obtained entrance into Canada through misrepresentation, i.e., by telling the immigration officer at Fort Francis he had been born in Quebec.³⁷ Schoppelrei responded that he did not remember, and, in any case, he was drunk at the time of entry.³⁸

³⁴Transcript of Sam Blumenberg's deportation hearing, op. cit., p. 16.

³⁵Transcript of the deportation hearing of Oscar Schoppelrei, op. cit., pp. 1, 2.

³⁶Ibid., pp. 2, 3. Andrews did bring forward a copy of the warrant, but it did not specify the complaint.

³⁷Ibid., p. 10.

³⁸Ibid., p. 10.

Hyman took formal objection to the consideration of Schoppelrei's entry into Canada by the inquiry. He noted that the accused had entered Canada as a recruit to the Canadian army and suggested that whatever statement he had made to border officials had been prompted by the recruiting officers. Moreover, under the War Time Elections Act, Schoppelrei had obtained the right to vote, and Hyman suggested that this entitled him to be treated like a Canadian citizen.³⁹ He also called upon the Crown to produce two witnesses from the Canadian Army who could testify as to the legitimacy of Schoppelrei's entry into Canada. Andrews failed to produce either.⁴⁰

Then Andrews took the extraordinary step of proposing that the Board hear the testimony of Sergeant Reames, head of the Intelligence Department of the Mounted Police, concerning confidential reports made by secret agents. The agents themselves could not be named, "for state reasons."⁴¹ Essentially, Andrews was attempting to have hearsay evidence admitted. His justification for this approach suggests that he was prepared to go to almost any lengths in bringing about the aliens' deportation:

The Act that we are proceeding under is one passed for the protection of the State and for the purpose of getting rid of undesirable[s] and, manifestly, the Department and the Board which is appointed by the Department may find itself in the position that they will have to

³⁹ Ibid., pp. 3-5.

⁴⁰ Ibid., pp. 6, 7.

⁴¹ Ibid., p. 26

act promptly upon evidence that might ordinarily not be received at trials, and it is for that purpose that the Dominion Legislature has passed section 16 and it should be left entirely to the determination of the Board of Inquiry in every case to receive and consider such evidence.⁴²

Andrews hoped to establish a precedent in the taking of evidence upon which other Boards of Inquiry set up in Western Canada could act.⁴³

He added that he was doing so "under instructions of the [Immigration] Department. That is the view taken by it." When Noble questioned him on this, Andrews admitted that he had not discussed the matter with the department's legal head, but with immigration officials involved in the other deportation cases.⁴⁴

Hyman made an incisive rebuttal to Andrews' proposal, pointing

⁴²Ibid., pp. 26, 27.

⁴³Ibid., p. 27.

⁴⁴It is interesting to speculate on which immigration officials encouraged Andrews in his bid to have hearsay evidence admitted. A safe guess would be that Thomas Gelley was among them. Gelley was the prototype of the anti-radical Immigration Department zealot. This is indicated throughout the correspondence between Gelley and Ottawa officials in the Immigration Branch Records, particularly in a letter he wrote to the Secretary of Immigration on November 2, 1922. Concerning the attempts of "I.W.W. bootleggers" to enter Canada, he stated "If possible, we should try to prevent the establishment of this organization in this country and by all means keep members of this organization out." (Immigration Branch Records, (P.A.C.) RG76, Vol. 578, File 817510 Gen.) Gelley had been a member of the Manitoba Legislative Assembly in the 1890s and a supporter of the Greenway Liberal government. In 1899 he was appointed to the Winnipeg immigration office through the influence of Clifford Sifton (Manitoba Free Press, August 23, 1919). As the ranking department official in Winnipeg at the time of the general strike, Gelley took the initiative in appointing officers for each border crossing to curtail an anticipated influx of agitators from the United States. (Letter of Thos. Gelley to the Deputy Minister of Immigration, June 20, 1919. Immigration Branch Records, RG76, Vol. 627, File 961162, Pt. 1).

out the essential impropriety of admitting secondary evidence when primary evidence was available. The chairman concurred, noting that such evidence would not be subject to cross-examination and "I do not think that any stretch of the scope in the way of taking evidence, in my opinion, would include that."⁴⁵ This was one of the few victories that the defence scored in the course of the hearings.

In the same inquiry, on July 16, Hyman raised another, more serious objection. Observing that, apart from the deportation proceedings, criminal charges of conspiracy, seditious conspiracy and seditious libel were still pending against Schoppelrei, Hyman argued that his client could not be expected to give testimony that could be later used against him.⁴⁶ Andrews countered that he did not intend to use evidence obtained at the hearing in any other action, but refused to withdraw the charges. Not surprisingly, Hyman regarded Andrews' assurance as "entirely useless," and advised Schoppelrei not to answer any questions, thus creating an impasse in the hearing. The stage was set for a Board decision on July 18 to deport Schoppelrei on grounds other than the original complaint, i.e., failure to answer questions and misrepresentation of material facts on entering Canada.⁴⁷

Schoppelrei immediately appealed to the Minister, who submitted the case to the Justice Department for an opinion. In reviewing the

⁴⁵Ibid., p. 29.

⁴⁶Ibid., p. 11.

⁴⁷Ibid., p. 47.

proceedings, the Acting Deputy Minister of Justice, W.S. Edwards, said he doubted that failure to answer questions would normally be sufficient grounds for deportation, but in conjunction with the evidence of misrepresentation, was sufficient to warrant the Board's action. He also ruled that the Board was within its jurisdiction in adducing evidence and ordering deportation on grounds other than the original complaint.⁴⁸ Schoppelrei was subsequently deported, on September 25, 1919, to the United States.⁴⁹

The issue of conflicting deportation and criminal charges also came up in the hearing of Sam Blumenberg's case on August 14. E.J. McMurray reiterated the defense position that it was "improper and unusual" to examine a prisoner on the same grounds on which he faced criminal charges. The response of board chairman R.M. Noble was revealing:

That might, in some cases, be a very good objection, but I don't think under the immigration Act that we have to take cognizance of any of those things.⁵⁰

Noble ruled that the examination of the accused should proceed. Thus, in the first test cases of the amended Section 41, a precedent was established that Board of Inquiry hearings were not bound by standard judicial procedures.

The Board's attitude on the question of bail was also to have long

⁴⁸Letter of W.S. Edwards to the Deputy Minister of the Interior, August 16, 1919. Justice Department Records (P.A.C.), RG13, Series A-3 Letter Book 177, pp. 73, 74.

⁴⁹Manitoba Free Press, September 26, 1919.

⁵⁰Transcript of Sam Blumenberg's deportation hearing, op. cit., p.3.

term implications. From the time of the arrests, the defence had made numerous unsuccessful representations to Acting Commissioner Gelley to have the prisoners released in accordance with Subsection 11 of Section 33 of the Act.⁵¹ At the beginning of Sam Blumenberg's inquiry, Marcus Hyman argued that the granting of bail was obligatory rather than optional. He also held that the "officer in charge," in this case, Gelley, was required only to set the amount of bond and that that actual decision was in the hands of the Board.⁵² Noble rejected that interpretation and deferred the issue to Gelley, who refused bail on grounds of the defence counsel's undertaking to advise the accused not to answer questions.⁵³

A second test of the bail provisions of the Act came on July 16. At the opening session of his case, Solomon Alamazoff personally appealed to the Board to grant him his liberty. He stated that the previous Saturday Gelley had informed Marcus Hyman that once Magistrate Noble's appointment was confirmed, the prisoners would be released, and bail arranged.⁵⁴ He added that the refusal of bail to Sam Blumenberg was

⁵¹"Immigration Act," 1910, op. cit., p. 12.
Section 33 Subsection 11 read: "Pending the final disposition of the case of any person detained or taken into custody for any cause under this Act, he may be released under a bond...with security approved by the officer in charge, or may be released upon deposit of money with the officer in charge in lieu of a bond, and to an amount approved by such officer."

⁵²Transcript of Sam Blumenberg's deportation hearing, op. cit., pp. 10, 11.

⁵³Ibid., p. 16.

⁵⁴Transcript of Solomon Alamazoff's deportation hearing, op. cit., pp. 1-3.

based on a failure to answer questions and should not apply in his own case. Gelley denied having made such a promise and claimed that he had merely informed Hyman that "very likely the matter could be arranged."⁵⁵ He remained intransigent.

At the July 18 session, E.J. McMurray spoke on the bail issue and charged that the decision to refuse it had come from Ottawa. Observing that deportation charges had been dropped respecting the British strike leaders, who were now at liberty, McMurray stated that "In this country there should be no question of race, before the law."⁵⁶ Gelley denied having received any instructions, and refused to reconsider. McMurray then launched a habeas corpus appeal to the provincial courts, which was subsequently quashed.⁵⁷

The two labor protest meetings, held in the Walker Theatre on December 22, 1918, and the Majestic Theatre on January 19, 1919, emerged

⁵⁵ Ibid., p. 4.

⁵⁶ Ibid., p. 30.

⁵⁷ The case came before Chief Justice Mathers of the Court of King's Bench. The Judge ruled that The Habeas Corpus Act, on which the appeal was based, applied only to criminal cases, and that deportation proceedings did not fall under that category. He cited several decisions in American courts which had held against intervention by a Court on the question of bail in immigration matters. Mathers stated that even if he had the authority, he would not have granted a writ of habeas corpus. "Bail has been refused by the officer in charge and no case has been made for overruling the discretion he has exercised. The applicant is alleged to have been guilty of a very serious offence against the peace, order and good government of Canada. The offence alleged against him is one that is carried on in secret and if at liberty there can be no assurance that he would not continue to abuse the privilege of residence here. The liberty of the individual must at all times be subordinated to the safety of the state." Western Weekly Reports, 1919, Volume 3, pp. 281-285.

as the lynchpin of the crown's action against Blumenberg. The Board heard the testimony of Sergeant-Major F.E. Langdale of the Military Intelligence staff, who read from notes transcribed from shorthand extracts he had taken of the resolutions and speeches of the Walker Theatre meeting.⁵⁸ He said that Blumenberg, in seconding R.B. Russell's resolution on withdrawal of allied troops from Russia, had worn a "flaming red tie" and visible red handkerchief, "so that there would be no mistake where I stand."⁵⁹ He attributed to Blumenberg such other choice phrases as "Bolshevism is the only thing that will emancipate the working class," and "We are sworn to keep the red flag flying for ever," and "...long live the Russian Soviet, long live Karl Liebneck [sic]. Long live the working class."⁶⁰

Langdale also had attended the Majestic Theatre meeting, although he had not taken any notes at it. It was at this meeting that the commemorative service for Rosa Luxemburg and Karl Liebknecht was announced for the following Sunday. To Andrews' question as to what Blumenberg had said, Langdale replied:

He referred to a revolution as being a turning over, in speaking of reconstruction he said things would be turned around. I cannot remember anything further very definitely.⁶¹

⁵⁸ Transcript of the deportation hearing of Sam Blumenberg, op. cit., p. 30.

⁵⁹ Ibid., p. 34.

⁶⁰ Ibid., pp. 34, 35.

⁶¹ Ibid., p. 37.

Andrews then asked the witness to speculate on "the effect of these meetings upon the minds of the returned soldiers." Langdale stated that remarks made at the Walker Theatre had created great indignation among the veterans.⁶² Andrews clearly was attempting to link up Blumenberg's speeches at these meetings with the January riots. As has been noted, those disturbances were initiated by the veterans, unprovoked by any action apart from the calling of the Luxemburg-Liebkecht memorial service. It was cruel irony that Blumenberg should now face deportation charges for inciting riots in which his own cleaning business was ransacked.

On August 9, the Board ordered Blumenberg deported on grounds of misrepresentation on entry into Canada.⁶³ Under examination, he had admitted to having told the immigration officials at Emerson he was an American citizen, while he was in fact still a Romanian national.⁶⁴ Blumenberg waived his right of appeal⁶⁵ and shortly afterwards left the country voluntarily in lieu of forcible deportation.⁶⁶

⁶²Ibid., p. 38.

⁶³Winnipeg Evening Tribune, August 13, 1919.

⁶⁴Transcript of Sam Blumenberg's deportation hearing, op. cit., pp. 19-22.

⁶⁵Winnipeg Evening Tribune, August 13, 1919.

⁶⁶Manitoba Free Press, September 22, 1919, p. 8. It has not been established where Blumenberg went after leaving Canada, but D.C. Masters wrote that he was later involved with "labour and socialist elements" in Minneapolis and Duluth, was a labour organizer in the Abitibi iron mining area, and ran for municipal office as a socialist. (Source: D.C. Masters, op. cit., p. 150.)

Perhaps the greatest travesty of justice in the hearings was the case which Andrews prepared against Charitonoff. His entire argument was based on Charitonoff's presence on the platform at the Walker Theatre meeting. In spite of the fact that the accused did not speak at the meeting, that he was there at all made him "a consenting party to everything that was said there,"⁶⁷ Andrews contended. The fact that he did not withdraw from the meeting and allowed himself to be used as an example of the harsh measures of the government,⁶⁸ constituted participation in "the rankest sedition, almost treason."⁶⁹

Pursuing an argument he had introduced in the Blumenberg inquiry, Andrews claimed that the Walker Theatre had led directly to the January riots and, ultimately, to the general strike itself. This rather flimsy causal analysis led to the charge that Charitonoff "did by word or act create or attempt to create public disorder, or riot."⁷⁰

⁶⁷ Transcript of the deportation hearings of Michael Charitonoff, op. cit., p. 19.

⁶⁸ In late 1918, Charitonoff was prosecuted under orders-in-council respecting censorship for having objectionable literature in his possession. Advised by his counsel to plead guilty on the expectation of a fine, he was sentenced to three years' imprisonment and fined \$1000 by Magistrate Hugh John Macdonald. (Deportation hearing of Michael Charitonoff, Sitting No. 1, July 16, 1919. R.C.M.P. Records, RG18, Vol. 3314, File no. H.V.-1(4)). On a plea of poor advice by his counsel, he managed to get the conviction quashed, at which time crown entered a nolle prosequi. About the same time, a photograph of Charitonoff appeared in the Winnipeg Tribune, with a caption depicting him as a typical Bolshevik. Two days later he appeared at the Walker Theatre meeting. (Memorandum prepared for the Deputy Minister of Justice, September 12, 1919. Justice Dept. Records (P.A.C.), RG13, Series A-2, Vol. 241, File No. 2241).

⁶⁹ Ibid., p. 19.

⁷⁰ Ibid., pp. 19, 20.

Since he spoke no words, it was presumably an "act" which precipitated the disorders; the "act" was to sit on the theatre stage.

To add an extra measure of assurance that the accused would be deported, Andrews alleged that Charitonoff had entered Canada illegally in 1914. He based this claim on two minor technicalities. The first was that Charitonoff had on his entry violated a money qualification incumbent on all immigrants.⁷¹ The second was that he had not arrived in Canada in a continuous journey from his country of nationality, but had first spent several months in the United States.⁷² Andrews obtained this information through his examination of the defendant. He then implied that Charitonoff had lied to the immigration officer at Emerson, because, if the true facts had been revealed, he would not have gained admission into the country. Yet the crown counsel did not produce the immigration officer to verify his inference. Incredibly, Andrews asked the Board to deport Charitonoff on an unsubstantiated presumption of misrepresentation. He argued that if the accused were admitted to Canada while failing to meet the provisions of the Act, he must have consciously misrepresented his position.⁷³ This was going far beyond the instructions issued by W.D. Scott.

Hyman expressed his own sense of humiliation at the proceeding, "which strikes me as being purely and simply a cynical mockery." Referring to Andrews' line of attack, he voiced his fear of the ultimate

⁷¹Ibid., p. 17.

⁷²Ibid., p. 17.

⁷³Ibid., pp. 17, 18.

consequences of the inquiry:

....if we are to meet such charges on such evidence, as I say, what confidence can any citizen in this country have that he will not be brought up under section 41 and upon some paltry, disgusting point of that kind be ordered to be deported, because he earned the displeasure of some official...⁷⁴

One can sense the acute frustration that Hyman felt in delivering his closing statement, which was at once eloquent and emotional.

I had a sleepless night last night. I lay thinking: Am I insane? Is this a nightmare? Is this a delusion I am laboring under that I have to meet trifling, ridiculous charges of this kind under the British Empire and the British Flag? Are we going to have it stand in that way that the first proceedings we have in this city under this amended Act can show the greatest horrors that can be be conceived under British Law will be perpetrated here?⁷⁵

Yet, the Board was adamant. On August 13 Gelley and Boyce moved that Charitonoff be deported under Section 41 and on the following retroactive grounds:

....that Michael Charitonoff, having been rejected on the 16th day of February, 1914, by Inspector Counell at Emerson under P.C.924, on account of not complying with money qualification, and P.C.23, as not coming direct from country of birth or naturalization on a through ticket.⁷⁶

In other words, the Board was issuing a border rejection five and one half years after the entry!

Charitonoff promptly appealed the decision. Deputy Minister of

⁷⁴Ibid., p. 25.

⁷⁵Ibid., p. 26.

⁷⁶Transcript of Sitting No. 3 of Michael Charitonoff's deportation hearing, August 13, 1919. Op. cit., pp. 30, 31.

Immigration W.W. Cory submitted the case to the Justice Department for review.⁷⁷ In a report drawn up for the Deputy Minister of Justice, a departmental official concluded:

Charitonoff is probably in fact well within the meaning of undesirable, but leaving out of consideration, as must be done, the suppression of his paper and his conviction for having Bolshevik literature in his possession, the case against him is merely that he voted for resolutions in themselves not seditious but which were supported by persons who made seditious utterances. In a court of law I should think Charitonoff would stand a very good chance of acquittal upon a charge of seditious conspiracy or of participating in an unlawful assembly.⁷⁸

Evidently the technical grounds also did not stand up to review, as Charitonoff's appeal was upheld, and he was freed.⁷⁹

Only in the Alamazoff case was there to be an exception to the pattern of deportation orders. The charge against Alamazoff was based on his actions as a former correspondent to the previously prohibited Jewish newspaper Forward and certain statements he allegedly made at various meetings during the strike. Harry Daskaluk, an R.W.N.M. Police agent and the crown's main witness, testified that at a labour meeting in early May, Alamazoff had made the following remark in a dialogue with Western Labor News editor William Ivens:

Why should we be afraid to commit bloodshed? Think of the pangs of the women and children. We cannot bring

⁷⁷ Letter to W.W. Cory to E.L. Newcombe, Deputy Minister of Justice, September 10, 1919, Justice Department Records (P.A.C.) RG13, Series A-2, Vol. 241, File no. 2241.

⁷⁸ Memorandum prepared for E.L. Newcombe, Deputy Minister of Justice, September 12, 1919, Justice Department Records (P.A.C.), RG13, Series A-2, Vol. 241, File no. 2241.

⁷⁹ "Saving the World from Democracy," op. cit., p. 220.

about revolution without bloodshed, and I am prepared to commit bloodshed.⁸⁰

Under cross-examination, Daskaluk proved to have a faulty knowledge of the English language. He was unable to define many of the words he had used in his supposedly verbatim account of Alamazoff's statements.⁸¹

On taking the stand Alamazoff denied ever having advocated violence and claimed what he did ask Ivens at a meeting on May 2 was

whether he would not agree with me that the pangs of the women and children that are in many places employed in the United States in textile work — whether those pangs in themselves are not sufficient warrant that the workers should not want any more blood.⁸²

In a highly-charged emotional appeal, he told the Board that because of the blockade of European Russia, his deportation would deliver him into the hands of Admiral Kolchak's White Army, meaning certain death.⁸³

⁸⁰ Transcript of the deportation hearing of Solomon Alamazoff, Sitting No. 7, August 15, 1919, p. 127, op. cit.

⁸¹ Daskaluk's testimony at the preliminary hearing to the sedition trials had been essential to the obtaining of the original indictments against the strike leaders. During the subsequent trials, defense lawyer, J.E. Bird asked Andrews to produce Daskaluk in court. Andrews declined on grounds that his evidence was not reliable or relevant to the case. According to a newsletter of the Defence Committee of the Winnipeg Trades and Labor Council, Daskaluk had been offered \$500 to give evidence and that Col. Cortlandt Starnes of the R.N.W.M.P. was involved in this action. The newsletter cites a letter filed in court by Bird to this effect. Source: Winnipeg Defence Committee News-letter December 17, 1919. J.S. Woodsworth Papers (P.A.C.) MG27, III, Vol. 14, File 61, "Winnipeg General Strike 1919."

⁸² Ibid., Sitting No. 6, August 14, 1919, p. 104.

⁸³ Ibid., Sitting No. 7, August 15, 1919, p. 139.

Summing up for the defense, Marcus Hyman scorned Daskaluk's inadequate English and drew attention to his occupation as a spy, which would predispose him to produce a report of the meeting "which he knows his superiors may be seeking."⁸⁴ Significantly, the most telling point Hyman scored with the Board was his suggestion that Daskaluk's status as an enemy alien reflected on his credibility.⁸⁵

In his statement of verdict at the close of the inquiry on August 16, Magistrate Noble declared that the two immigration bureaucrats, Gelley and Boyce, favoured deportation.⁸⁶ While Noble himself believed Alamazoff to be an "undesirable," he felt that personal opinions should not enter into the question, and explained his reasoning:

My legal conscience, as I might call it, — my legal and judicial conscience arises up and tells me that it would be unsafe on the evidence of one man, practically, and a man that is, no doubt, taking into consideration his unfamiliarity with the English language, the position that he occupied, and the fact that he himself is an alien, not of the very highest type.⁸⁷

On this basis, the Board ordered the case dismissed and Alamazoff was released.

At least one other case was heard by the Winnipeg Board of Inquiry in the aftermath of the Strike: that of Arthur Floyd Wood. Wood was an American citizen who had emigrated to Canada in 1911 and found em-

⁸⁴ Ibid., p. 129.

⁸⁵ Ibid., p. 124.

⁸⁶ Ibid., Sitting No. 8, August 16, 1919, p. 156.

⁸⁷ Ibid., p. 156.

ployment with the C.N.R. as a trainman. He was a member and officer of the local branch of the International Brotherhood of Railway Trainmen, which participated in the sympathetic strike in Winnipeg contrary to the policy of the union as a whole. At that time, Wood was elected chairman of the trainman's strike committee.⁸⁸ On June 23, Immigration Minister Calder issued an order for his examination under Section 41⁸⁹ and he was subsequently ordered deported by the Board.⁹⁰ He appealed to W.W. Cory, Acting Deputy Minister of Justice, for an opinion.

A report drawn up by one of Newcombe's aides concluded that there was no evidence to connect Wood with either of the riots of June 10 and 17. Nor did the author consider the trainmen's strike to be in any way connected with the public disorders. He accepted Wood's statement that he was not in sympathy with the One Big Union and that he had advised against participating in the parade on June 21, which resulted in the "Bloody Saturday" riot.⁹¹ On the basis of this report, the deportation order was overruled, and Wood was released.

Thus ended the first series of deportation hearings under the amended Immigration Act in post-strike Winnipeg. Of five aliens

⁸⁸Memorandum prepared for the Deputy Minister of Justice, August 25, 1919. Justice Department Records (P.A.C.), RG13, A-2, Vol. 240, File no. 1993.

⁸⁹Telegram of J.A. Calder to Thomas Gelley, June 23, 1919. Immigration Branch Records (P.A.C.), RG76, Vol. 627, File no. 961162, Part 1.

⁹⁰Letter of W.W. Cory to E.L. Newcombe, August 7, 1919. Justice Department Records (P.A.C.) RG13, A-2, Vol. 240; File no. 1993.

⁹¹Memorandum for the Deputy Minister of Justice, August 25, 1919, loc. cit.

examined, the Board had ordered four deported and dropped the charges against the other. Only two of the deportations were carried out,⁹² as Charitonoff and Wood were successful in their appeals. In many respects the hearings had assumed the character of "show trials," although the dismissal of the charges against Alamazoff indicates that the Board was not simply a rubber stamp. In the latter case the restraining influence was Magistrate Noble. Despite his obviously conservative tendencies, Noble's legal training had at least given him a sense of minimum standards of justice. These were sadly lacking in Thomas Gelley and his colleague from the Immigration Department. A.J. Andrews, for his part, was hardly a disinterested party. As one of the leading figures in the Committee of One Thousand, he was not only anxious to remove perceived radical influences from the community, but was also interested in making an example of the defendants. He had resorted to some rather questionable legal tactics.

What was significant was the extent to which the Board was prepared to follow the instructions of W.D. Scott, to wit, deportation should be ordered on any possible grounds, particularly on technicalities. Herein, the problem was that the Boards of Inquiry were considered administrative, rather than deliberative, bodies, and deportation was not regarded as a punishment. Hence, the rights normally appertaining to defendants in criminal actions were not considered to apply to deportation cases. Magistrate Noble stated this view succinctly

⁹²Bercuson and McNaught, in their book on the Winnipeg General Strike, erroneously stated that all four of the aliens arrested on June 17 were deported, (D.J. Bercuson and K. McNaught, op. cit., p. 80).

during the Blumenberg inquiry.

A person in this country, although perhaps a foreigner, being tried, has all the rights of a British subject, but the distinction is that this man [Blumenberg] is not being charged with an offence at all. The Criminal Code hasn't got very much to do with it, if anything.⁹³

Yet, while the Winnipeg Board of Inquiry hearings demonstrated the legal disadvantages of prospective deportees under the Immigration Act, the five defendants had at least been granted a hearing. Even this very basic procedure was denied the twelve aliens arrested and interned for alleged involvement in the "Bloody Saturday" riots of June 21, 1919.⁹⁴ From the time of the arrests, the Defence Committee of the Winnipeg Trades and Labor Council, through its counsel, the law firm of Murray and Noble,⁹⁵ made sundry representations on behalf of the interned aliens. Writing to the Minister of Justice on July 10, T.J. Murray put forth the Council's demand that all those arrested be granted the right to trial by jury.⁹⁶ Noting the discrepancy

⁹³ Transcript of the deportation hearing of Sam Blumenberg, July 14, 1919, op. cit., p. 7.

⁹⁴ The twelve aliens were: Harry Kizinski, Sam Baran, Peter Missler, John Melenski, Sam Okranicz, Steve Pricum, Tom Forman, Peter Kubczuk, Joe Sokerka, John Jaremkewicz, Alfred Adam and Iliá Sklaz. Source: Letter of W.M. Noble to the Minister of Justice, August 20, 1919. Justice Department Records (P.A.C.) RG13, A-2, Vol. 239, File no. 1960.

⁹⁵ W.M. Noble, not to be confused with Magistrate R.M. Noble.

⁹⁶ Letter of T.J. Murray to the Minister of Justice, July 10, 1919. Justice Department Records (P.A.C.), RG13, A-2, Vol. 239, File 1960.

in the way in which the British-born strike leaders and the aliens had been treated, Murray stated that distinctions made under war conditions should no longer be applied.

Murray's letter went unanswered, and a follow-up telegram on July 24 also drew no response.⁹⁷ After a second telegram was sent on August 5,⁹⁸ Assistant Deputy Minister W.S. Edwards replied the following day that the original letter had not been received, and requested a copy,⁹⁹ which Murray sent. In spite of the urgency of Murray's appeal, this copy also was not answered. At this point, six weeks had passed since the Defence Committee counsel's initial representations.

Writing on August 20, Murray again tried to impress the importance of the cases on the Justice Minister and enclosed transcripts of interviews which had been conducted with the internees by his partner, W.M. Noble.¹⁰⁰ Noble had been given permission by General Otter to see the prisoners on August 15. Their statements reveal that most of them were Ukrainians, who had emigrated to Canada as children or young men. One prisoner, Illa Skláz, claimed not to be an enemy alien at all, but a

⁹⁷Telegram of T.J. Murray to Minister of Justice, July 24, 1919; cited in Letter of W.M. Noble to Minister of Justice, August 7, 1919. Justice Dept. Records (P.A.C.) RG13, A-2, Vol. 239, File no. 1960.

⁹⁸Ibid.

⁹⁹Telegram of W.S. Edwards to Murray, August 6, 1919. Justice Department Records (P.A.C.), RG13, A-2, Vol. 239, File no. 1960.

¹⁰⁰Letter of T.J. Murray to the Minister of Justice, August 20, 1919. Justice Department Records (P.A.C.), RG13, A-2, Vol. 239, File no. 1960.

native of the Province of Wolinska in Russia.¹⁰¹ All denied any participation in the June 21 riots. The statement of Alfred Adam, Kapuskasing No. 3206, is representative:

I was born in Ukrania, Austria. I came to Canada in May 1914. I am 23 years of age. I left my Father and Mother in Austria. I came to my Grandfather John Kendall who lives at 260 Talbot Avenue, Winnipeg. I am unmarried. I registered under "The Military Service Act" in 1917 and was drafted into the first Depot Battalion in Saskatchewan and transferred to the Army Service Corps, Siberian Expeditionary Force in New Westminster, British Columbia. I remained in New Westminster about three months and got my discharge at Regina on February 18, 1919. I then went to a farm in Saskatchewan and came to Winnipeg in March of the same year. I am a member of the Carpenters' Union in Winnipeg and had been working for the Winnipeg Casket Company on Dufferin Avenue. I went on strike with the carpenters. During the strike I had been making gramophone cabinets and on Saturday, the day of the riot, had been up town to buy some lumber. I was on my way home on Main Street and the mounted police came up when the bullets started to fly. I thought the best plan was to get out of the way so I, with some other returned soldiers, Fred Harris and Alfred Cyr, went on top of the Burns Block to get out of the way. I knew nothing of the parade which was to have been held and not been at any meetings. I had been working at home all the time during the strike.¹⁰²

Murray stated that the twelve were no more guilty than thousands of other aliens who were on Main Street when the mayor read the Riot Act on June 21. He would not criticize the work of the regular Winnipeg police force, but noted that many of the special recruits were younger,

ranging from 16 to 20 years of age, who were perhaps a little over zealous and anxious to make a showing, and that was what led them to arrest men such as the above, merely because they were aliens and happened to be were [sic] they

¹⁰¹Ibid., p. 11.

¹⁰²Letter of Murray to the Minister of Justice, August 20, 1919, op. cit., p. 9.

were liable to arrest.¹⁰³

Murray's claim that the arresting officers were "specials" was substantiated by a report sent by Chief Constable Chris H. Newton of the Winnipeg Police to Cortlandt Starnes of the R.N.W.M. Police on December 10, 1919.¹⁰⁴ The report indicates that eleven of the twelve arrests were made by special constable.

Murray's appeals fell on deaf ears. On October 27, ten of the twelve internees were shipped out of the country on a steamer bound for Rotterdam.¹⁰⁵ The remaining two, Steve Pricum and Tom Forman, were released on account of familial obligations in Canada.¹⁰⁶

On learning of the deportations, Murray and Noble sent a telegram to the Minister of Justice on October 20, strongly protesting the government's action. In it they stressed the Minister's lack of response to their communications.

We have assumed that if you were in possession of information in conflict in any way with our statement of facts you would so advise and give us an opportunity of substantiating our statement. We have further assumed that in absence of any word from you contradicting our statements the latter should be accepted as correct. In any event we have counted upon some reply to our communications indicating what proceedings we were to meet. We are now astonished to hear that deportation has

¹⁰³ Ibid., p. 11.

¹⁰⁴ Report of C.H. Newton to Cortlandt Starnes, December 10, 1919. Justice Dept. Records (P.A.C.) RG13, A-2, Vol. 239, File no. 1960.

¹⁰⁵ Letter of Major General W.D. Otter, to E.L. Newcombe, November 15, 1919. Justice Department Records (P.A.C.), RG13, A-2, Vol. 239, File 1960.

¹⁰⁶ Letter of W.D. Otter to E.L. Newcombe, November 18, 1919. Justice Department Records (P.A.C.) RG13, A-2, Vol. 239, File no. 1960.

already taken place.¹⁰⁷

In his reply, E.L. Newcombe, Deputy Minister of Justice, stated that he had received reports on the interned aliens from General Otter and from the comptroller of the R.N.W.M. Police. He added that "it was found that their [the aliens] representations of good citizenship were not reliable."¹⁰⁸ Yet the two police reports on the twelve aliens in the Immigration Branch Records do not provide any information on the accused beyond their alleged involvement in the riot, with the exception of Max Fickenscher,¹⁰⁹ who was interned at the same time.

Whether the aliens were guilty of rioting or not, they had been denied any opportunity to defend themselves against the authorities' allegations. The government was determined to deport them from the outset. In a secret report to Mounted Police Commissioner Perry, Cortlandt Starnes stated:

¹⁰⁷Telegram of Murray and Noble to Minister of Justice, October 30, 1919. Justice Department Records (P.A.C.) RG13, A-2, Vol. 239. File no. 1960.

¹⁰⁸Letter of E.L. Newcombe to Murray and Noble, January 5, 1920. Justice Dept. Records (P.A.C.), RG13, A-2, Vol. 239, File #1960.

¹⁰⁹Report of Cortlandt Starnes, marked Secret and Confidential, to Commissioner Perry, December 16, 1919. Justice Department Records, (P.A.C.), RG13, A-2, Vol. 239, File #1960. Starnes wrote of Fickenscher: "This man, for about eight months prior to his arrest in June last, had done no work, but had been actively engaged as a propagandist for the Socialist Party of Canada, Local #3, under the direction of R.B. Russell, whose trial for seditious conspiracy is now proceeding in Winnipeg. When arrested, this man had obnoxious and prohibited literature in his possession and further, between May 1st and May 15th last, he had been endeavouring to intimidate workmen at a sheet metal works in Winnipeg, who had refused to go on a Strike on May 1st, with other sheet metal workers."

At the time, it was felt to be imperative that an example should be made of some of these aliens, with the result that the men mentioned in the attached file were duly interned by me under my powers as Registrar, under "the Alien Enemies Act." ¹¹⁰

As in the case of the five aliens examined in the August hearings in Winnipeg, the authorities' chief purpose in deporting the internees was to issue a strong warning to the immigrant working population not to engage in radical activity.

Beyond the provisions of the Immigration Act, federal officials regarded internment as an efficient prelude to the deportation of undesirables. By employing this method, they could avoid a Board hearing that might overrule a deportation order. That the Immigration Department promoted this practice is suggested in a copy of a letter by F.C. Blair, dated December 18, 1919.¹¹¹ It is not known to whom he was writing, but he was responding to the sending of a report on Nicklas Babyn, an alleged O.B.U. member and presumably also one of those apprehended at the time of the Winnipeg Strike. Blair noted that Babyn was registered as an Austrian, and if considered dangerous, should have been interned, "when his deportation could have been effected as a matter of course

¹¹⁰Ibid.

¹¹¹Letter of F.C. Blair, December 18, 1919. Immigration Branch Records (P.A.C.), RG76, Vol. 627, File no. 961162, Part 1.

and without any further examination or difficulty."¹¹²

Blair observed that there was no evidence, apart from membership in the O.B.U., to suggest that Babyn was a member of, or affiliated with, any organization holding or teaching disbelief in organized government. He doubted that an examination under Section 41 would turn up anything. Alternatively, Blair suggested, Babyn could be examined as to his length of residence in Canada and his method of entry.

I think, however, if it is desired to get rid of him, the best plan is to have him interned and then his deportation is very simple.

While federal authorities obviously were anxious to curb radical activity in the context of the Winnipeg General Strike, the events in Winnipeg formed only a part of the deportation thrust of 1919. Well before the June 17 arrests, the Immigration Department had engaged in ferreting out agitators. A department official wrote:

....as soon as the Act was amended copies of Section 41 were forwarded to our Agents in Toronto, Montreal and Quebec so that immediate action could be taken in accordance with the statute in that behalf.¹¹³

¹¹²Ibid. The interchangeable application of Section 41 and internment for the purpose of deportation is amply demonstrated by the case of Elsie Saboroski (alias (Elsie Bancourt). A German national, Saboroski was an alleged member of the Communist Party and "a revolutionist of a pronounced type." In 1919, she was examined by a Board of Inquiry in Toronto, but because of impossibility of readmission, was not immediately deported. She was later interned at the Vernon camp and deported as a prisoner of war on February 27, 1920. (Source: Memorandum of F.C. Blair to Ireland, April 27, 1920. Immigration Branch Records (P.A.C.) RG76, Vol. 627, File 961162 "Agitators," pt. 1)

¹¹³Memorandum of W.R. Little to J.A. Calder, August 5, 1919. Immigration Branch Records, (P.A.C.), RG76, Vol. 627, File no. 961162.

At least one case had come up prior to the approval of the new amendments, respecting the "Russian revolutionist,"¹¹⁴ Charles Cherni. Cherni (alias Leon Samson alias Jack Shapiro) had been arrested in Toronto and deported to the United States on May 25,¹¹⁵ presumably under authority of the old Section 41.

Paradoxically, immigration officials may actually have demonstrated a degree of leniency in this action, at least in comparison to their counterparts in the Department of Justice. With respect to Cherni's case, W.R. Little, Commissioner of Immigration, wrote:

The Department of Justice was anxious that this man should be deported to Siberia where he would no doubt have been executed under the regime of Admiral Kolchak.¹¹⁶

Little's statement is borne out by a letter from the Deputy Minister of Justice to the Minister of Immigration and Colonization, dated May 19, 1919. The writer stated that A.J. Cawdron, Acting Chief Commissioner of Police

is strongly of the opinion that Charnie[sic] should be deported not to the United States but to Russia so that the courts may, if possible, be rid of him, and I think this would be the most advisable course to follow if it can be carried out.¹¹⁷

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Memorandum of W.R. Little to J.A. Calder, August 5, 1919, loc. cit.

¹¹⁷ Letter of E.L. Newcombe, Deputy Minister of Justice to the Minister of Immigration, May 19, 1919. Justice Department Records (P.A.C.), RG13, Series A-2, Letter book 176, p. 112.

On the other hand, Cherni's deportation to the United States may simply have been the consequence of an inability to arrange for his repatriation to war-torn Russia..

Armed with the new amendments, the immigration authorities proceeded with Board of Inquiry examinations under Section 41 in Toronto, Vancouver and Lethbridge, and action was contemplated in Calgary, Edmonton, Saskatoon, Regina and Moose Jaw.¹¹⁸ The R.N.W.M. Police collaborated so closely with the Immigration Department in these cases that one could almost speak of them as one unit. On July 17, R.N.W.M. Police Commissioner A.B. Perry sent the following telegram to J.A. Calder:

Consider it important that we should be authorized to employ Counsel in important cases brought before Immigration Boards for deportation stop in case Romeo Albo arrested at Lethbridge by Supt. Pennefather on your order please authorize employment of Counsel and instruct who is to be employed.¹¹⁹

In his annual report of 1920, Commissioner Perry stated that twenty-eight aliens were brought before inquiry boards and eighteen ordered deported in 1919.¹²⁰ While Perry's figures are too low,¹²¹

¹¹⁸Memorandum of F.C. Blair to Gibson, July 17, 1919. RG76, Vol. 627, File no. 961162, "Agitators," part 1.

¹¹⁹Telegram of Commissioner A.B. Perry to J.A. Calder, July 17, 1919, cited in Memorandum of F.C. Blair, loc. cit.

¹²⁰Report of the Commissioner of the Royal North-West Mounted Police, 1920, in Canada, Sessional Papers, 1920, No. 28, pp. 12, 13.

¹²¹A survey of R.C.M.P. and Immigration Branch Records indicates that at least twenty-three aliens were ordered deported under Section 41 by Boards of Inquiry in 1919. It is possible that there were many more.

they at least provide an indication of the number of cases pursued through the provisions of the Immigration Act. His comment about the deportations is a clear statement of the underlying motivation of the authorities in these actions:

In my opinion this [the deportation orders] has had a salutary effect in restraining many foreigners from actively associating themselves with the extremists who naturally resent any law which curtails or adversely affects their efforts.¹²²

Most of those whose deportation was ordered in 1919 were Russian nationals. The treatment of fourteen of these was one of the most unfortunate examples of insensitive administration by immigration officials in the entire period. Examined by Boards of Inquiry in September, 1919, the fourteen were ordered deported as agitators along with a number of others declared undesirable on separate grounds.¹²³ Owing to the unstable political situation in Russia, i.e., the Civil War, the department was unable to deport the agitators immediately. Rather than release the prisoners pending their repatriation, Immigration Secretary F.C. Blair took steps to have the internment camps at Vernon and Kapuskasing declared "immigrant stations within the meaning of Subsection (s) of Section 2."¹²⁴ The Justice Department concurred

¹²² Report of the Commissioner of the Royal North-West Mounted Police, op. cit.

¹²³ Letters of F.C. Blair to W.S. Edwards, Assistant Deputy Minister of Justice, September 11 and 24, 1919. Justice Department Records (P.A.C.) RG13, Series A-2, Vol. 241, File no. 2374.

¹²⁴ Ibid.

in this action,¹²⁵ and the deportees were accordingly incarcerated at Vernon.

Eventually, they were transferred to the New Westminster Penitentiary, presumably when the internment camp at Vernon was closed. At that time, according to Blair:

....in order to clear up the question of legality of detention in a penitentiary, the Minister addressed a letter to the Warden and Officers of the Penitentiary "recognizing them as 'officers' within the meaning of Sec. 2(b) and the Penitentiary as an 'immigrant station,' within the meaning of Sec. 2(b)¹²⁶

At the time of writing, the Russian nationals had been imprisoned for fourteen months, awaiting deportation.

While the authorities had not employed the new provisions permitting examinations by one-man Boards in the Winnipeg hearings, they were applied elsewhere in at least four cases in 1919 and 1920. In early 1920, Sava Zura, a Russian immigrant, was jailed for two months for possession of prohibited literature. While in Stony Mountain Penitentiary, an examination order was issued, and Zura was examined by an "officer acting as a Board of Inquiry."¹²⁷ Romeo Albo, who was arrested at Lethbridge on July 28, 1919, was examined under Section 41, probably on the basis of several articles he had written

¹²⁵ Letter of E.L. Newcombe to F.C. Blair, September 23, 1919. Immigration Branch Records (P.A.C.), RG76, Vol. 627, File no. 961162 "Agitators," Pt. 1.

¹²⁶ Letter of F.C. Blair to Thomas Gelley, November 18, 1920. Immigration Branch Records (P.A.C.), RG76, Vol. 394, File #563236, Pt. 8.

¹²⁷ Memorandum of F.C. Blair to Mr. Ireland, April 27, 1920. Immigration Branch Records (P.A.C.), RG76, Vol. 627, File #961162, "Agitators," pt. 1.

for the B.C. Federationist.¹²⁸ He was ordered deported by the Immigration Inspector-in-charge at Coutts, Alberta, but died before the order could be carried out.¹²⁹ David Hirschfield, a Russian national, was examined by a single officer and ordered deported under Section 41. F.C. Blair reported that two months' imprisonment in Lethbridge gaol had "changed his [Hirschfield's] views considerably and brought him to his senses."¹³⁰ One assumes that it was due to this change of heart that Hirschfield was released on a thousand dollar bond while awaiting his repatriation. Anna Kannasto, alias Sanna Kallio, an organizer for the Finnish Socialist Democratic Party, was also examined at Lethbridge. She was ordered deported by J.W. Philip Jones, acting as a Board of Inquiry, on March 26, 1920, on grounds of misrepresentation and as an undesirable within the meaning of Section 41.¹³¹

It is not clear at which point the deportations were discontinued, but there is evidence that they were still being pursued vigorously in late 1920. This is indicated in a memorandum sent by F.C. Blair to the minister, J.A. Calder, on December 6, 1920.¹³² Blair was res-

¹²⁸Letter of W.S. Edwards, Acting Deputy Minister of Justice, to W.W. Cory, Deputy Minister of Immigration, August 15, 1919. Justice Department Records (P.A.C.), RG13, A-3 Letterbook 177, p. 68.

¹²⁹Memo of Blair to Ireland, loc. cit.

¹³⁰Ibid.

¹³¹Ibid.

¹³²Memorandum of F.C. Blair to J.A. Calder, December 6, 1920. Immigration Branch Records (P.A.C.), RG76, Vol. 394, File no. 563236.

ponding to a notation Calder had written in the margin of an order for examination sent to him for his signature a few days earlier. Calder inquired, "What has happened to cause so many of these orders in such a short space of time?"¹³³ Blair replied that under the authority of Sections 40-41 of the Act, before undesirables could be taken into custody, it was necessary that a complaint be made and an order issued by the Minister. He stated that sometimes orders were required on short notice,

and as it is usually followed by an appeal, I have been wondering whether you would not care to sign a number of the orders in blank, leaving us to apply them as the circumstances require. I am convinced that this would not open the door to any abuse nor would it take from the immigrant or person concerned any right that he has under the law; on the other hand, it would sometimes enable us to take prompt action where telegraphic reports are received from some of our agents as to the undesirability of some person they are holding.¹³⁴

Obviously, Calder was not impressed with Blair's suggestion, as he scribbled in the memo's margin: "Somewhat unusual Doubt advisability - JAC." Still, Blair's attempt was representative of the willingness of departmental officials to overlook established procedures in their pursuit of deportations.

It is evident that federal officials really believed that the security of the country in 1919 was dependent on their rigorous application of deportation powers. They perceived the social and economic unrest of that year to be the work of alien agitators, who, if left

¹³³ Ibid.

¹³⁴ Ibid.

to their evil designs, would wreak havoc with the body politic. Accordingly they went to great lengths, to the verge of despotic practices, to excise the cancer before it spread. A key dimension of the authorities' policy was revealed by Commissioner Perry in his reference to the "salutary effect" of the deportations in discouraging aliens from participating in radical activities. One does not have to subscribe to a conspiracy theory to assert that intimidation of the foreign-born was a conscious policy of the government. From its point of view, if the aliens were potential dupes of sinister agitators, then exemplary deportations would serve to lessen the danger.

The stress-laden socio-political climate of 1919 was only transitory. With the subsequent improvement in the economy and the defeat of the Meighen government in 1921, social unrest subsided and the political deportations ceased, at least temporarily. The 1919 amendments became dormant, but not extinct. It was the conjunction of the upheaval of the great depression and R.B. Bennett's "iron heel" that caused them once again to rupture the fragile veneer of civil liberties.

Chapter III

Parliamentary Attempts to Repeal the 1919 Amendments in the Decade of the 1920s

With the passing of the Red Scare, it became apparent to Canadians of various political persuasions that the repressive measures enacted in 1918 and 1919 were excessive for peacetime purposes. From the outset organized labour had pressed for the repeal of Sections 97A and 97B of the Canadian Criminal Code.¹ The Conservative-Unionist government resolutely opposed this change. The Liberal Party, however, was to dominate in federal politics over the next decade. Many of its members were becoming increasingly uncomfortable with the continued presence of the deportation and sedition clauses in the statute books. How far they would go towards removing them would be determined by the dynamics of power politics in the 1920s and the willingness of the Canadian Senate to cooperate with the House of Commons.

A key factor in the repeal question was that of leadership. Sir

¹The executive of the Canadian Trades and Labor Congress and other labour representatives met with Acting Prime Minister Sir George Foster, Senator Gideon Robertson and other ministers on January 8, 1920. Among the resolutions they presented to the government was one calling for the "repeal of recent amendments to the Criminal Code, imposing heavy fines for possession of certain literature." (Canadian Annual Review, Toronto, 1920, p. 471; Toronto Globe, January 9, 1920, p. 4.)

Wilfrid Laurier had died in February, 1919. During the critical months of May and June of that year, the National Liberal Party was without a leader. In August, while the Winnipeg deportation hearings were in progress, the Liberals met in Ottawa to select Laurier's replacement.² Their choice, by a narrow margin, was William Lyon Mackenzie King. The convention also approved a platform calling for a wide range of labour and social legislation.³

King was a former ranking civil servant and Minister of Labour in Laurier's last ministry.⁴ His chief claim to the leadership was his reputation as an expert in industrial relations, and his book, Industry and Humanity, which he published in 1918.⁵ But he probably owed his victory more to his loyalty to Laurier on the conscription issue (he had run and lost as a Laurier Liberal in the 1917 dominion election) which earned him the support of Ernest Lapointe and the younger group of Quebec Liberals.⁶ With Lapointe as his Quebec lieutenant, King's ascendancy established one of the most important political partnerships in Canadian History. The history of the 1919 sedition and deportation amendments would be intimately connected with the careers of

²Henry Ferns and Bernard Ostry, The Age of Mackenzie King (1976), p. 311.

³Donald Creighton, Canada's First Century (Toronto, 1970) p. 164; Toronto Globe, August 8, 1919.

⁴Ferns and Ostry, op. cit., p. 99.

⁵Ibid., p. 245.

⁶R.M. Dawson, William Lyon Mackenzie King: A Political Biography (1958), p. 307.

these two men over the next seventeen years.

It was by no means a radical alliance. Lapointe, while a strong proponent of collective bargaining during the Winnipeg Strike debates of 1919, nonetheless strongly favoured the deportation of agitators.⁷ King's reputation as a social reformer was tempered by an extreme reluctance to initiate any social legislation until forced by political exigencies.⁸ But the partnership at least held the possibility of reform, when it could be convinced that its political life was at stake.

In fact, the first of many attempts to repeal the most extreme features of the 1919 legislation was sponsored by the Conservative-Unionist government in 1920. In April, responding to the widespread protests of Labour groups, Labour Minister Gideon Robertson introduced Bill X2 in the Senate, to amend the Immigration Act.⁹ The bill called for the repeal of the 1919 amendment to Section 41 of the act, respecting the deportation of British subjects. Robertson termed that provision "a rather radical restriction in the Act." He stated that the emergency which had caused it had passed and the necessity for its retention no longer existed.¹⁰

Unexpectedly, the labour minister encountered stiff opposition

⁷See Lapointe's speech in House of Commons Debates, 1919, p. 3010, ff.

⁸David Jay Bercuson, Introduction to W.L.M. King, Industry and Humanity, p. xxi.

⁹Senates Debates, April 27, 1920, p. 278.

¹⁰Senate Debates, May 7, 1920, p. 385.

from within the ranks of the Senate Conservatives. Once again, Lieutenant-Col. W.H. Bradbury emerged as the chief spokesman of the right wing. Referring to the British-born strike leaders, who had been convicted on charges of sedition, Bradbury stated that

They should be deported, and the deportation of half-a-dozen such men would be the very best thing that could happen to-day as a warning to others.

He expressed his amazement with the proposed amendment and added

To my mind it is legislation that is well calculated to encourage agitators all over Canada. It is a confession of weakness on the part of the Government, and I think would do a very great deal of harm.¹¹

Robertson responded that in the year in which the amendment was in effect, "a substantial number of men in different parts of Canada" had been deported, and that the legislation had served to rid the country of any radical influences.¹²

Yet the old-line Conservatives were recalcitrant. Right after its introduction Senator George Lynch-Staunton moved a six month hoist to Robertson's bill.¹³ Speaking to the Lynch-Staunton amendment, Senator Robertson stated that at the time of the legislation to deport British subjects, there had been no effective provisions to deal with sedition. With the passage of Sections 97A and 97B of the Criminal Code, the "very drastic" deportation amendment was no longer necessary.¹⁴ Robertson thus defined the government's position on the repeal question;

¹¹Ibid., p. 387.

¹²Ibid., p. 388.

¹³Ibid., p. 386.

¹⁴Ibid., May 27, 1920, p. 417.

while favouring this limited revision to the deportation amendments, it was not prepared to remove the Criminal Code clauses. Noting the widespread criticism of the June 6, 1919 amendment, he added:

May I point out that the amendments to the Immigration Act, as they now stand, make it possible to deport from Canada a British subject who may have been resident in Canada all his life without giving him a trial by a jury of his peers. Such procedure, honourable gentlemen, is absolutely contrary to the spirit of the British constitution, and to that great bill of rights, the Magna Charta, upon which it is founded, and I am sure that there is no desire on the part of honourable gentlemen to put the Parliament of Canada in the position of resorting to or returning to a high handed method of dealing out justice such as existed prior to 1215.¹⁵

These were strange words, coming from one of principal figures in the government which had initially introduced the amendments. But there is little reason to doubt Robertson's sincerity. Like nearly everyone else, he had been swept away by the wave of anti-radical sentiment in 1919.

Lynch-Staunton's amendment was narrowly defeated on June 1st, as the speaker cast the deciding vote.¹⁶ Its supporters included nineteen Conservatives or Union Government appointees and two Laurier Liberals. Opposed were ten Liberals and eleven Conservatives,¹⁷ including Robertson. The motion on second reading was then passed by a single vote as Liberal Senator Harmer, who had been paired for the first vote with a Conservative, tipped the scales in the amendment's

¹⁵Ibid., p. 417.

¹⁶Ibid., p. 471.

¹⁷The information respecting party affiliation was obtained from the 1920 Canadian Parliamentary Companion.

favour.¹⁸

On June 9 Robertson moved that the immigration amendment be considered in Committee. Senator Bradbury rose to restate his position and took issue with Robertson's contention that, under the Act, persons could be deported without a trial. Pointing to the clauses pertaining to Boards of Inquiry, including the provision for an appeal to the Minister, Bradbury concluded that the government had made "ample provision" for trial of persons charged under the Immigration Act.¹⁹

Senator Lynch-Staunton then moved that the Committee rise, a technical ploy designed to sabotage the amendment.²⁰ Robertson charged the mover with "absolutely unjustifiable, and indeed ungentlemanly conduct"²¹ and pleaded with the House to deal with the question dispassionately. He reiterated his contention that the amendments to the Naturalization Act and Criminal Code of June 1919 provided sufficient safeguards against sedition. The immigration amendment, on the other hand, allowed the authorities to charge a person for an offence committed at any time since 1910, "to give him a Star Chamber trial, and to send him out of the country."²² Finally, Robertson emphasized

¹⁸Senate Debates, June 1, 1920, p. 471.

¹⁹Senate Debates, June 9, 1920, p. 503.

²⁰Ibid., p. 504.

²¹Ibid., p. 504.

²²Ibid., p. 509.

his view that British subjects, particularly those who had acquired citizenship, should not be subject to deportation without trial. In spite of these protestations, Lynch-Staunton's motion was approved by a 30 to 17 majority,²³ and the government bill died accordingly.

In the Commons, Ernest Lapointe enquired as to whether the government intended to re-introduce Robertson's bill in the lower chamber.²⁴ Prime Minister Borden replied that a bill, having failed in the Senate, could not be introduced in the Commons during the same session. This was Lapointe's first experience with the attempted repeal of the 1919 amendments. At this stage, the changes he envisaged were limited to the deportation amendment respecting British subjects. It would be the delicate political situation of the mid-decade that would convince Lapointe and his leader to expand the scope of their efforts.

The following year, Lapointe introduced a bill similar to Robertson's amendment of 1920.²⁵ He withdrew it on the undertaking of Immigration Minister Calder to incorporate the essence of his motion in a government bill, which was introduced on May 23, 1921. In addition to providing for the removal of the deportation amendment respecting British subjects, the government bill proposed certain changes concerning the operation of Immigration Department boards of inquiry. Most

²³Ibid., p. 510.

²⁴House of Commons Debates, June 11, 1920, p. 3426.

²⁵House of Commons Debates, April 1, 1921, p. 1497.

notably, Section 2 of the bill gave the Minister authority to appoint any number of officers to serve on boards of inquiry at any given port.²⁶ Hence, the government combined reform, in the provisions of the Bill respecting the prohibited classes, with regressive measures, further streamlining already excessive deportation powers. The amendments were given third reading on May 26,²⁷ and sent to the Senate.

In the upper house, on June 1, Senator James Loughheed explained the new provisions respecting boards of inquiry in terms of their role in facilitating prompt and expeditious deportation.²⁸ These sections were quickly approved. However, when Section 12, pertaining to the deportation of British subjects, came up for debate, it was again stopped by the Conservative Party's right wing, on the motion by Senator Lynch-Staunton.²⁹

The federal election of December, 1921, resulted in a Liberal government of 117 members, although no party had a guaranteed majority.³⁰ Arthur Meighen's Conservatives were reduced to 50 seats and the third largest group, trailing the insurgent Progressives, who won in 66 constituencies. Two labour candidates were elected, including J.S. Woodsworth, who won in Centre Winnipeg.³¹

²⁶Statutes of Canada, 1921, 11-12, George V., Chapter 32, "An Act To Amend the Immigration Act," p. 239.

²⁷House of Commons Debates, May 26, 1921, p. 3955

²⁸Senate Debates, June 1, 1921, p. 723.

²⁹Ibid., pp. 725, 726.

³⁰Col. E.J. Chambers (ed.) Canadian Parliamentary Guide, 1922, p. 292

³¹Ibid.

Woodsworth's election had significant implications for the repeal movement. A product of the social gospel movement, he had been peripherally involved with the Winnipeg General Strike, having taken over the editorship of the Western Labor News after the arrest of Bill Ivens.³² For his writings, Woodsworth was arrested after the strike by A.J. Andrews and charged with seditious libel,³³ although the charge was not pressed. . His election to Parliament represented the first stage in a developing movement to use constitutional means to achieve the objectives of the working class which had been so decisively suppressed in 1919. For Woodsworth, one of the most pressing matters, to which he now devoted his energies, was the repeal of Section 41 of the Immigration Act and Sections 97A and 97B of the Criminal Code.

Meanwhile, A.E. Smith, a former colleague of Woodsworth's in the Methodist Church and a fellow strikers' advocate in 1919, was taking a different road in his quest to correct the evils of industrial society. Smith joined the Communist Party of Canada in 1925.³⁴ By the 1930s his name also would become strongly identified with the attempts to secure the repeal of the 1919 sedition and deportation amendments. The vehicle of his efforts was the extra-parliamentary pressure group, the Canadian Labor Defence League. It remained to be seen which approach, Woodsworth's working within the system, or Smith's attacking

³²See Kenneth McNaught, A Prophet in Politics (1959), pp. 120, 121.

³³Ibid., p. 128.

³⁴A.E. Smith, All My Life, p. 77.

it from without, would achieve greater results in the long run.

Woodsworth lost little time in bringing forth parliamentary legislation to strike the 1919 amendments from the statute books. On March 24, 1922, he introduced a private members' bill to amend the Immigration Act, and another to amend the criminal Code.³⁵ Bill 16 contained a variety of proposals. First, it provided for the repeal of all amendments made to Section 41 of the Act of 1919. Secondly, it would repeal paragraphs (n), (o) and (p) of subsection 6 of Section 3 of the Act. These phrases had included in the undesirable classes persons disbelieving in or belonging to organizations teaching disbelief in organized government, and enemy aliens interned at or after the November 11, 1918 Armistice.³⁶ Woodsworth's bill also called for the repeal of Section 16, to wit,

Any person suspected of an offence under this section may forthwith be arrested and detained without a warrant by any officer for examination and deportation.³⁷

He drew attention to the sweeping powers that this provision gave the immigration authorities, such that a British subject, on mere suspicion of an offence, could be summarily arrested without a warrant and deported without trial.

On motion of Prime Minister Mackenzie King, the House agreed to refer Bills 16 and 17 to a special committee of Parliament.³⁸ On June

³⁵House of Commons Debates, March 24, 1922, p. 364.

³⁶Ibid., May 3, 1922, p. 1389.

³⁷Ibid., p. 1390.

³⁸Ibid., pp. 1394, 1395.

21 the committee's chairman, Liberal Joseph Archambault, presented its final report to the Commons and brought forward pared-down legislative proposals to replace the provisions in Woodsworth's bills. Respecting deportation, the committee recommended: (1) that Section 41 should not apply to Canadian citizens; (2) that the retroactive clause providing for the deportation of British subjects be revoked; (3) that the words "or is suspected of belonging to" (any secret society or association) be revoked, and; (4) that Woodsworth's bill be scrapped.³⁹ Archambault stated that, while proposing certain revisions, the committee concluded that the 1919 amendments should be retained in part "for the safeguard of our institutions."⁴⁰

Woodsworth responded that the committee had effectively sidetracked his bill. Referring to the amendment to Section 41 which had been incorporated in the main bill to amend the Immigration Act in 1919, he termed its provisions "absolutely vicious in character."⁴¹ This amendment had been ignored by the committee. With the support of William Irvine and the left-wing of the Progressives (the nascent "Ginger Group"), he moved:

That the third report of the special committee on Bill No. 16 be not concurred in, but that the same be sent back to the special committee to amend the bill by providing that no one shall be deported for any political

³⁹ Ibid., June 12, 1922, p. 3280.

⁴⁰ Ibid., p. 3281.

⁴¹ Ibid., p. 3282.

offence committed in Canada without being granted a trial by jury.⁴²

Speaking to Woodsworth's motion, Opposition Leader Arthur Meighen voiced his support for the committee's recommendations and objected to Woodsworth's attempt to change the entire basis of Canada's deportation law, i.e., by placing the burden of conviction on the authorities.⁴³ However, since the dangerous situation that initially fostered the amendments had now passed, Meighen favoured a return to preferred status for British immigrants. On this basis he and the other Conservatives joined with the Liberal government in defeating Woodsworth's motion. The Committee's report was then passed,⁴⁴ and was subsequently approved by the Senate.

Woodsworth's objections notwithstanding, the committee had removed some of the harshest clauses passed in 1919, including the amendment directed at the British leaders of the Winnipeg General Strike. Equally important was the amendment exempting naturalized Canadians from the provisions of Section 41, and the deletion of the clause providing for the deportation of a person merely suspected of belonging to a secret society. This latter clause was more appropriate to an oriental despotism than a western democracy. Parliament had made a beginning but many of the 1919 provisions remained.

Woodsworth's bill to repeal Sections 97A and 97B of the Criminal

⁴²Ibid., p. 3282.

⁴³Ibid., p. 3285.

⁴⁴Ibid., p. 3286.

Code was not debated in 1922. Nor was a similar measure he introduced in 1923.⁴⁵ On the latter occasion, he included in his bill an amendment to revive the former Section 133 of the Code.⁴⁶ Prior to 1919, this section had provided safeguards in the legal interpretation of sedition.

Also in 1923 the King government reintroduced as part of an omnibus bill legislation to repeal the amended Section 41 of the Immigration Act, thereby reverting to the 1910 wording of that clause.⁴⁷ Liberal E.J. McMurray (North Winnipeg) who had defended the four aliens in the 1919 deportation hearings in Winnipeg, objected even to the retention of parts of the original Section 41, specifically a phrase which included in the undesirable classes

Any person...who shall by word or act create or attempt to create riot or public disorder in Canada....⁴⁸

McMurray noted that the Immigration Act's definition of citizenship was limited to persons born in Canada, who had not become aliens, and British subjects who had obtained Canadian domicile.⁴⁹ Since domicile could be acquired only through five years' residence in Canada, all British immigrants of less than five years' standing were liable to be deported, if charged under the old Section 41. McMurray's objections

⁴⁶See above, Chapter I, p. 29n.

⁴⁷Ibid., May 3, 1923, p. 2428. House of Commons Debates, May 3, 1923, p. 2428.

⁴⁸Ibid., p. 2429. See above, Chapter I, p. 20n.

⁴⁹Ibid.

notwithstanding, the government's amendment was approved, with only minor revisions, by both Liberals and Conservatives.⁵⁰

The Senate greeted the amendment to Section 41 with its customary antipathy. This time Senator Robertson sided with the right, even though his colleague Arthur Meighen had just supported the measure in the Commons.⁵¹ He explained:

.....I have changed my mind in some respects, having in view the experience of the country within the last year and the Communist propoganda which has been carried on throughout the length and breadth of the world, apparently propagated and disseminated from Russia, and I think Canada would be well advised to maintain section 41 as it is.⁵²

In 1924, Immigration Minister J.A. Robb introduced similar legislation to repeal the amended Section 41 and replace it with a clause nearly identical to the one enacted in 1910.⁵³ The only difference was that the proposed clause substituted the word "alien" for "person" so that Section 41 would read

Whenever any alien advocates in Canada the overthrow by force or violence, [etc.]

In speaking to the bill Liberal member Andrew McMaster (Brome) observed that the provision placing persons "suspected of belonging to any secret society or organization" in the prohibited classes, was not con-

⁵⁰ Ibid., May 11, 1923, p. 2670.

⁵¹ Ibid., p. 2669.

⁵² Senate Debates, May 21, 1923, p. 612.

⁵³ House of Commons Debates, July 31, 1924, p. 4004.

sonant with Canada's legal tradition.⁵⁴ He found an unexpected ally in Arthur Meighen who stated

.....to declare finally and conclusively that once it is established that a man is suspected then he is undesirable per se seems to me to be fundamentally unjust.⁵⁵

Once again, the repeal amendment was passed by the Commons but rejected in the Senate, this time by a margin of 25 to 7.⁵⁶ The following year McMaster introduced a bill to reenact Section 133 of the Criminal Code,⁵⁷ similar to Woodsworth's 1923 bill, but it died on the order paper. Woodsworth's perennial motions to repeal Section 41 of the Immigration Act and Sections 97A and 97B of the Criminal Code were likewise not considered by the House of Commons in 1925.

The 1925 federal election saw an upswing in the fortunes of Meighen's Conservatives, who captured 116 seats, while reducing the ruling Liberals to 99.⁵⁸ Most of the remaining members were Progressives. In Winnipeg, Woodsworth was reelected for North Centre and was joined by the new Labour Member of Parliament for North Winnipeg, A.A. Heaps. So equally divided was the parliamentary support for the Liberals and the Conservatives that Woodsworth and Heaps found themselves holding the balance of power. The situation offered unique

⁵⁴ Ibid., pp. 4028-29.

⁵⁵ Ibid., p. 4029.

⁵⁶ Senate Debates, July 15, 1924, p. 750.

⁵⁷ House of Commons Debates, March 19, 1925, pp. 1286-87.

⁵⁸ Maj. A.L. Normandin (ed.) Canadian Parliamentary Guide, 1926, p. 306.

opportunities for the two labour M.P.s to press their legislative objectives.

Woodsworth's two biographers have presented strong circumstantial evidence to prove that Prime Minister King struck a deal with the two Winnipeg members to stay in power.⁵⁹ Their reasoning stems from correspondence exchanged between the three in January, 1926, and also from developments inside the House of Commons. On January 7, 1926, Woodsworth and Heaps wrote to King:

As representatives of Labour in the House of Commons, may we ask whether it is your intention to introduce at this session legislation with regard to (a) Provision for the unemployed; (b) Old Age Pensions.⁶⁰

They added that they were sending a similar letter to Opposition Leader Meighen.⁶¹ Basically, their strategy was to attempt to secure a commitment from the leaders of the major parties to support their legislative proposals. Unstated, but implied, was an undertaking on their part to back whichever party responded favourably.

Meighen wrote back to indicate his opposition to unemployment legislation, except in emergency situations.⁶² King did not reply immediately, but hosted Woodsworth and Heaps at dinner at Laurier

⁵⁹ See Kenneth McNaught, *op. cit.*, pp. 218, 219, and Grace McInnis, J.S. Woodsworth: A Man to Remember (1953), pp. 187-191.

⁶⁰ Letter of J.S. Woodsworth and A.A. Heaps to W.L.M. King, January 7, 1926; read into House of Commons Debates, January 29, 1926, p. 560.

⁶¹ *Ibid.*

⁶² Letter of A. Meighen to J.S. Woodsworth, read into House of Commons Debates, January 29, 1926, p. 561.

House later that month. Charles Bowman, the editor of the Ottawa Citizen, also was in attendance. He later gave an account of the meeting to Grace McInnis, Woodsworth's daughter, which she has published in her biography of her father.⁶³ Bowman related that on that occasion, he told King if he did not accede to the implied demands of the Labour members, they would vote him out of office. The Prime Minister then offered Woodsworth the Labour portfolio in his government, which he declined.⁶⁴ On the basis of Bowman's letter, Kenneth McNaught concluded that it was at this meeting that a deal had been made.⁶⁵ But the letter makes no mention of any specific undertaking by King to endorse the Labour members' legislative proposals.

Evidence that an arrangement had in fact been made, not at the Laurier House encounter, but at another meeting between Woodsworth, Heaps and King is suggested in King's diary entry for January 9, 1926: King wrote:

This morning I had an interview at my office at 11 with Woodsworth and Heaps, the Labour representatives. They were urging an old Age pension Act and Unemployment reliefThey spoke too of deportations, and sedition clauses⁶⁶ in the Immigration Act. I promised to help on these....

⁶³Letter of Charles Bowman to Grace McInnis, July 14, 1952; published in Grace McInnis, op. cit., p. 190.

⁶⁴Ibid.

⁶⁵McNaught, op. cit., p. 218.

⁶⁶Diary of William Lyon Mackenzie King, Saturday, January 9, 1926, W.L.M.King Papers (P.A.C.) Manuscript Group 26, J13, Vol. 21, pp. 4409-10.

Five days later the government faced its first major test in the House of Commons. With the support of the two Labour members, the King ministry was sustained by a slim majority of three.⁶⁷ Had they voted the other way, it would have been defeated.

King bowed to this pressure. On January 28 he sent a reply to Woodsworth and Heaps, in which he made a formal commitment to introduce old age pension legislation. Unemployment insurance could not be enacted without provincial cooperation, but King would deliver on the other issues.

With respect to amendments to (a) the Immigration Act, (b) the Naturalization Act, and (c) the Criminal Code, which were referred to at the time of our interview, I would say that having since taken up the proposed amendments with the Ministers concerned, I feel I am in a position to assure you that legislation on these matters will also be introduced in the course of the present session.⁶⁸

In responding later to opposition charges of a "bargain," King emphatically denied that a deal had been made. He stated that the government was merely reintroducing legislation that had previously been considered by the House.⁶⁹ What he failed to add was that this legislation had not previously received the support of his government. Woodsworth remained silent on the issue, presumably to avoid embarrassing the Prime Minister.

⁶⁷House of Commons Debates, January 14, 1926, pp. 190-191.

⁶⁸Letter of W.L. Mackenzie King to J.S. Woodsworth, January 28, 1926, Mackenzie King Papers Correspondence (Primary Series) (P.A.C.) MG26 J1, Vol. 140, pp. 19475-76; Also read into House of Commons Debates, January 29, 1926, p. 561.

⁶⁹House of Commons Debates, June 2, 1926, p. 3983.

In fairness to King, it must be noted that the Liberal Party was not in the majority in the House of Commons. When operating from such a precarious parliamentary position, he could hardly be blamed for avoiding the issue of repealing Section 98 and related legislation. Moreover, in the early twenties, there had not been sufficient lapse of time from the events of 1919 to enable many liberal-minded Canadians to gain the perspective to see the need for a complete repeal. There was nothing Machiavellian in the so-called deal of 1926; it simply obliged the Prime Minister to move more quickly than he would have ordinarily.

In keeping with the January deal, Charles Stewart, Acting Minister of Immigration and Colonization, introduced Bill No. 91, to amend the Immigration Act, on April 23.⁷⁰ The bill proposed to delete the amended Section 41, including the provisions of 1910, and insert the following substitution:

41. Whenever any person other than a Canadian citizen has been convicted of any criminal offence as defined in Part II of the Criminal Code, it shall be the duty of any officer becoming cognizant thereof and the clerk, secretary or other official of any municipality in Canada wherein any such person may be, to forthwith send a written complaint to the minister giving full particulars.⁷¹

Thus, the amendment was intended to curtail the discretionary authority of immigration officials in deportation cases, and to ensure a jury trial for all persons charged with seditious offences.

⁷⁰ Ibid., April 23, 1926, p. 2787.

⁷¹ Ibid., May 28, 1926, p. 3818.

On a technical point, Conservative R.B. Bennett observed that if the intent of the amendment were to provide for the deportation of only those political offenders who had been convicted of criminal offences, then Section 41 was redundant. Deportation of convicted criminals was already covered by Section 40.⁷² The government then altered its bill to call for the repeal of the entire Section 41.

Bennett's advice did not imply support for the repeal, however. The future Conservative leader cautioned that the government's amendment would lessen the number of offences on which to base deportation. He stated, characteristically:

This is not the day to relax the arm of the law, this is not the day to lessen the authority of our officials to bring to account men who are deliberately endeavoring to destroy our institutions.⁷³

These warnings notwithstanding, the Bill was approved on third reading on June 7.⁷⁴ Had this amendment subsequently been approved by the Senate, it would effectively have ended all possibility of deporting persons for alleged seditious offences, unless they had been so convicted under the Criminal Code.

On May 31, Ernest Lapointe, now Minister of Justice, fulfilled the second part of the bargain. He introduced a bill to amend the Criminal Code, which, among other things, provided for the repeal of Sections 97A and 97B. In moving second reading, Lapointe observed that

⁷²Ibid., June 7, 1920, p. 4120.

⁷³Ibid., p. 4114.

⁷⁴Ibid., p. 4121.

⁷⁵Ibid., May 31, 1926, p. 3855.

these sections were not necessary for the country's security, inasmuch as provisions sufficient for dealing with sedition already existed in Section 87, 130 and 132 of the Code.⁷⁶ He drew attention to the use of the word "force" in Section 97A, which came close to rendering strike action by labour unions illegal. Noting that both sections were copies of United States legislation, he expressed his preference for the British legal system.⁷⁷ This was a rather telling observation, as Sections 97A and 97B apparently were based on the American Espionage Act and other anti-radical legislation passed in individual states. On this issue, at least, the Conservatives, bastions of the British Connection, had become continentalists. Lapointe's bill also provided for the revival of the former Section 133, which had put limitations on the legal interpretation of sedition.

In speaking for the opposition, Conservative member Thomas Hay (Springfield) stated that Sections 97A and 97B should be retained as a safeguard to constituted authority, although he favoured revisions to certain parts he considered extreme.⁷⁸ H.H. Stevens revealed another dimension to the Conservatives' thinking vis-a-vis retention when he said

.....I am apprehensive that its very repeal will be used throughout Canada within the ambit of those who follow the Third Internationale, if I might use that name in a broad sense, as a victory and an encouragement to them to carry on their agitations.⁷⁹

⁷⁶ Ibid., June 4, 1926, p. 4071.

⁷⁷ Ibid., p. 4073.

⁷⁸ Ibid., p. 4084.

⁷⁹ Ibid., p. 4078.

Taken to its logical conclusion, Stevens' argument could be used to deny any reforms, if they were supported by the Communists, for fear of lending credibility to their movement. It anticipated the attitude the Bennett government would take to virtually every proposed labour reform in the early 1930s.

The government's bills were now brought before the scrutiny of the Senate. Speaking in support of the immigration amendment, Government Leader Raoul Dandurand argued that the existing provisions of the Immigration Act accorded excessive discriminatory powers to departmental officials.⁸⁰ He was supported by Liberal Senator Sir Allen Aylesworth, who referred to the original creation of the Board of Inquiry in the Act of 1910. Aylesworth stated that this legislation was introduced on the recommendation of immigration officials and was passed as an experiment, which could be later either retained or dropped.⁸¹ On the other side, Senator J.A. Calder, the former Immigration Minister, stated his belief that the government should retain the power of deportation without trial. He pointed to the experience of other countries, particularly the United States, which had deported hundreds of undesirables without trial.⁸²

On second reading, the bill was defeated by a vote of 35 to 17.⁸³

⁸⁰Senate Debates, June 15, 1926, p. 239.

⁸¹Ibid., p. 248.

⁸²Ibid., p. 247.

⁸³Ibid., p. 253.

It was nearly a straight party vote, with the exception of two Liberals, who voted with the Conservative majority. The Criminal Code amendments met a similar fate. The clause calling for the repeal of Sections 97A and 97B was defeated in a 36-24 division.⁸⁴ The Senate also rejected the re-enactment of Section 133. The following year similar amendments sponsored by the government were passed by the Commons, but thwarted again by the Senate.⁸⁵ It was now apparent that the Liberals were powerless to repeal the 1919 amendments as long as the Conservatives controlled the Upper House, or, at least, resisted such legislation.

In 1928, the King government tried once again to secure Parliament's approval of legislation repealing Section 98 and Section 41.⁸⁶ The bill to amend the Immigration Act, however, was referred to a Special Committee on motion of Alberta Senator W.A. Griesbach.⁸⁷ The Committee comprised six Conservatives or Unionists (Senators Griesbach, Barnard, Calder, Macdonnell, Schaffner and Taylor) and five Liberals (Senators Bureau, Dandurand, Graham, Riley and Ross). Its recommendations were to repeal the remainder of the amendments made to Section 41 in 1919, but to retain the provisions of 1910. These changes were concurred in by the Senate on May 30.⁸⁸

⁸⁴ Ibid., June 17, p. 278.

⁸⁵ Ibid., April 12, 1927, pp. 389-90.

⁸⁶ Ibid., May 8, 1928, p. 507.

⁸⁷ Ibid., May 9, 1928, p. 522.

⁸⁸ Ibid., May 30, 1928, p. 612.

It is not clear why the Senate finally approved these revisions to the Immigration Act in 1928, as it had rejected similar proposals the year before by a margin of 28 to 10. Senator Robertson and a minority of Senate Conservatives had from 1920 supported the repeal of the June 6, 1919 amendment respecting the deportation of British subjects. But there is no evidence to suggest that the right wing majority had experienced a similar conversion. The most logical explanation would seem to be that the King government had appointed enough senators by 1928 to join with the moderate Conservatives in defeating the opponents of repeal. However, this does not explain the repeal of the earlier 1919 amendment to Section 41 respecting the deportation of persons advocating the overthrow of constituted government. In 1924, Robertson had opposed dispensing with that provision even though his leader, Arthur Meighen, had favoured it. In any case, the Senate had retained the original Section 41, which was still a very potent bulwark against radical activities by aliens. Moreover, Section 98 was continued intact. Subsequent bills by the King government to repeal it in 1929 and 1930 ran into a brick wall when they reached the Senate.⁸⁹

In the latter year, the government did succeed in reviving the former Section 133 that, before 1919, had provided safeguards in the legal interpretation of sedition. (See above, chapter I, p. 29n). Among other things, this section stated that no one could be considered to have a seditious intention if he attempted to remove through peaceful

⁸⁹Ibid., June 13, 1929, p. 388 and May 29, 1930, p. 390.

means "matters which are producing or have a tendency to produce feelings of hatred or ill-will between different classes of His Majesty's subjects." At the same time the Senate rejected two attempts to repeal Section 98, the final one being an amendment on third reading to the Criminal Code amendment bill, moved by Senator James Murdock. In a recorded division Murdock's motion was defeated by a majority of four. With one exception, it was a straight party vote. Only Liberal-Unionist Senator Turriff, a Borden appointee, broke ranks to vote for the amendment.⁹⁰

In the end, the Liberals had come close, but lacked the numbers to outvote the Senate Conservatives. At the time the government's bills were debated in April and May of 1930, the composition of the Senate stood at 47 Conservatives or Unionists, and 41 Liberals. While King had appointed 29 senators, the Conservatives retained a small majority. With the appointment of seven more senators in June, 1930, King, in fact, gained a short-lived majority of one, but this occurred after the Senate had considered the repeal legislation.⁹¹ King's subsequent defeat in the 1930 general election sealed the fate of the repeal effort for the next few years.

Thus, by the end of the decade, only partial progress had been made in rescinding the 1919 deportation and sedition legislation. The major success was the repeal in 1928 of the two amendments to Section

⁹⁰Ibid.

⁹¹The information respecting Senate appointments was taken from the Canadian Parliamentary Guide (Ottawa, 1930), p. 67, 68.

41 of the Immigration Act which were passed in 1919. Both the Conservative-Unionist and Liberal governments had sponsored the repeal of the second of these, i.e., the June 6, 1919 amendment respecting the deportation of British subjects. The repeal of the earlier amendment to Section 41, however, was a personal success for J.S. Woodsworth. He had pressed for its abolition from the time of his entry into the Commons in 1922. It was his hard bargaining with Prime Minister Mackenzie King in early 1926 which had won a commitment from the Liberal government to sponsor the repeal of both this amendment and Section 98 of the Criminal Code.

Still, it would be a mistake and perhaps unfair to discount the role of Mackenzie King and Lapointe in this undertaking. They continued to push for the repeal of the 1919 legislation well after they had secured a majority in the House of Commons in the 1926 elections. There was no law in politics that bound them to persist in this course. Their failure to do away with Section 98, was, of course, due to the unrelenting obstinance of the Senate. Thus, Section 98 remained on the statute books as a reminder that freedom of speech and thought were yet in some jeopardy in Canada.

Already, there could be heard the first rumblings of the impending crackdown on communism. On January 30, 1929, Toronto Police Chief D.C. Draper signed the following notice, which was posted in public halls in that city:

You are hereby notified that if any Communist or Bolshevik public meeting held in a public hall, theatre, music hall, etc., proceedings or addresses or any of them are carried on in a foreign language, the licence for such public hall, etc., shall immediately after be

cancelled.⁹²

By April it had been replaced by another printed notice:

Attention of persons holding licenses to have public halls, etc., for hire is directed to the following sub-section 5 - Section 98 of the Criminal Code.⁹³

In February, 1929, Arvo Vaara, the editor of the Finnish communist newspaper Vapaus in Sudbury, was convicted on a charge of seditious libel, sentenced to six months in jail and fined \$1,000.⁹⁴ Later that year, Emily Weir became the first person to be charged under Section 98 of the Criminal Code, for distributing seditious literature in August in Toronto.⁹⁵ The charge was laid under subsection 8 of that Section, which provided that

.....any person who distributes a pamphlet or circular in which is taught or advocated the use, "without authority of law, of force, violence, terrorism or physical injury to person or property....as a means of accomplishing any governmental, industrial or economic change....shall be guilty of an offence, and liable to imprisonment for not more than twenty years."⁹⁶

Weir was acquitted, but the action by the Crown was an omen of things to come. It was not the last prosecution under Section 98.

⁹²Bulletin of the Women's International League for Peace and Freedom, Toronto, April 22, 1929. J.S. Woodsworth Papers (P.A.C.), MG27, III C7, Vol. 9, File 26, "Freedom of Speech" (1922-1937).

⁹³Ibid.

⁹⁴Transcript of the deportation hearing of Arvo Vaara, Halifax, May 7, 1932, p. 16. Immigration Branch Records (P.A.C.) RG76, Vol. 376, File 513116.

⁹⁵Rex V. Weir, York County Court, County Court Judges' Criminal Court, Ontario, Denton, Co. Ct., J. November 14, 1929. Canadian Criminal Cases, Vol. 52, pp. 111-118.

⁹⁶Ibid., p. 116.

Chapter IV

R.B. Bennett's "Iron Heel"

As Canada entered the inauspicious decade of the 1930s, it saw the convergence of all the elements which had combined, at the end of the First World War, to jeopardize civil liberties. The marked decline in real income and the stark increases in unemployment after 1929 paralleled the 1919 situation in potential for heightened social unrest and concomitant reaction. Mackenzie King's defeat in July 1930 removed from office a committed supporter of the repeal of Section 98 and installed in his place a strongly retentionist prime minister, R.B. Bennett. The Conservative victory also returned to prominence many of the individuals responsible for the original sedition and deportation legislation of 1919, including Senators Robertson and Meighen, who joined the cabinet. Most notably, former Solicitor General Hugh Guthrie, whose Committee on Sedition and Seditious Propaganda had authored the provisions of Section 98, now returned as Minister of Justice.

If the new government was predisposed to clamp down on radicalism, it had more than adequate executive power to do so. While limited progress had been made in the repeal of the 1919 amendments to Section 41 of the Immigration Act in 1928, the essential anti-radical clause of 1910 remained. And in a climate of reaction, no guarantees

of civil liberties are sufficient if the authorities are bent on subverting them. The problem which now confronted the proponents of repeal was not merely one of continuing to seek the abolition of Section 98 and related clauses, but also of restraining the Bennett government from reviving the anti-radical crusade its Unionist predecessor had begun in 1918.

Economic disasters tend to give credibility to those who challenge the existing order. In 1930, seeing an opportunity to fill the vacuum created by the apparent ineffectiveness of the existing trade union leadership, the Communist Party of Canada determined to attempt to radicalize the working class. Its medium was the newly formed Workers' Unity League, under the leadership of Tom McEwen. Almost immediately, the W.U.L. became a power in many labour unions across the country, but particularly in the mining, logging, textile manufacturing and shipping industries, and among longshoremen and fishermen in British Columbia.¹ While its own numbers probably never exceeded 40,000,² the W.U.L. made its presence felt in a significant way, in leading most of the strikes in the major industries, and in organizing the unemployed. After the federal government instituted its policy of relief camps in 1932, the W.U.L. agitations struck a responsive chord among the single men.

¹Stuart M. Jamieson, Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-66. Task force on Labour Relations, Study No. 22, Ottawa: Queen's Printer (1968), p. 216.

²Ivan Avakumovic, The Communist Party in Canada, Toronto: McClelland and Stewart (1975), p. 74.

The revitalized left was to be matched by an equally determined foe on the right, Prime Minister R.B. Bennett. A millionaire lawyer and businessman, Bennett was convinced that the communists were responsible for the unrest of the depression and was determined from the outset to stamp out their movement. In a speech before the Ontario Conservative Association in November 1932, the Prime Minister called on Canadians "to put the iron heel ruthlessly" to communist (and socialist) propaganda.³ It was for this speech that he became known in labour circles as "Iron Heel" Bennett. The stage was set for a confrontation between the radicals and the defenders of the status quo in the early 1930s.

It was in Toronto, however, where the tone of reaction first rooted itself. There the police force, under the supervision of Police Commission members Judges Coatsworth and Morson, and Chief Constable Brigadier D.C. Draper, embarked on a policy of forcible suppression of the Communists from the time of Draper's appointment in 1928. The Police Commission's efforts to prevent the owners of public halls from renting their premises to Communists or persons speaking foreign languages has already been noted.⁴ Invoking the provisions in the Criminal Code respecting unlawful assembly, the police broke up numerous rallies at Queen's Park.⁵

³The Toronto Globe, November 10, 1932. Cited in Avakumovic, op. cit, p.90.

⁴See above, Chapter III, p. 103, 104.

⁵See Tom McEwen, The Forge Glows Red: From Blacksmith to Revolutionary, Toronto: Progress Books (1974), pp. 176, 177.

Several years later, A.E. Smith submitted a list of many cases of police brutality towards communists from 1928 to 1936 to a provincial government royal commission set up to investigate the Toronto force.⁶ He cited the example of Harvey Murphy, who was arrested at a civic election meeting in 1929, beaten, charged with disorderly conduct and sentenced to ten days in jail.⁷ On appeal, Mr. Justice Raney quashed the conviction and admonished the police on their conduct. His comments were later read into Hansard by J.S. Woodsworth. Said the judge,

One cannot help from reading the evidence but be impressed with the view that this police court case was the outcome of an attempt to hold a meeting by people who call themselves communists. If there was any offence that was the offence...what disturbance was there except that created by the police?...I have been referred to no authority which makes refusing to move when instructed by a police officer an offence under the criminal code.⁸

The unfortunate record of harrassment, i.e., threats, beatings, disruption of meetings and arrests, prompted 68 professors from the University of Toronto to write a letter of protest to the Toronto Globe in January 1931. Signed by some of Canada's most respected academics,⁹ it read:

⁶Canadian Labor Defence League Statement Re Police Terror, Toronto, 1928-1936. January 24, 1936. Cooperative Commonwealth Federation Records (P.A.C.) MG28, IV, Vol. 393.

⁷Ibid., p. 2.

⁸Canada, House of Commons Debates, May 5, 1931, p. 1275.

⁹These included: Donald Creighton, G. de T. Glazebrook, G.A.M. Grube, Harold Innis, Chester Martin, and Frank Underhill.

The attitude which the Toronto Police Commission has assumed toward public discussion of political and social problems makes it clear that the right of free speech and free assembly is in danger of suppression in this city. This right has for generations been considered one of the proudest heritages of the British peoples, and to restrict or nullify it in an arbitrary manner, as has been the tendency in Toronto for the past two years, is short-sighted, inexpedient and intolerable.

It is the plain duty of the citizen to protest publicly against any such curtailment of his rights and in doing so, we wish to affirm our belief in the free public expression of opinions, however unpopular or erroneous.¹⁰

Conservative forces were quick to respond. On February 4, in a speech before a body of livestock breeders, Chief Justice William Mulock of the Ontario Court of Appeal delivered a scathing attack on the "treasonable, insidious virus of communism."¹¹ His depiction of the communist movement directly foreshadowed the action that the authorities would take against it only six months later:

Russian Communism, as practised in Russia; the use of any degree of force, including death, in order to rob a man of his worldly possessions, if practised in Canada, would be as illegal as highway robbery or murder. And when any one advocates the setting up in Canada of that type of communism, he is inciting to crime, is a criminal, and should be treated as such.¹²

In Parliament, J.S. Woodsworth was preparing for the first of many battles he would wage in the early 1930s to preserve civil liberties. In early 1931 he suggested to Professor Frank Scott of McGill University that he draft an amendment to Section 87 of the Criminal Code (respec-

¹⁰Toronto Globe, January 16, 1931.

¹¹Toronto Globe, February 5, 1931.

¹²Ibid.

ting unlawful assembly) to safeguard the right of assembly for the discussion of public affairs. Scott proposed the following addition:

Article 87 of the Criminal Code is amended by adding thereto the following paragraph:

4. Nothing in this section shall restrict or interfere with the right of all persons peacefully to assemble for the purpose of discussing or hearing any discussion upon any matter of public interest, and such persons when so assembled shall not become an unlawful assembly merely by reason of speeches made to them or discussion carried on by them unless the general nature and character of such speeches or discussion would be likely, in the opinion of firm and reasonable persons, to cause an immediate breach of peace.¹³

Woodsworth introduced this amendment in the Commons on March 30.¹⁴

After an extended debate, in which the Conservative majority expressed its view that strong measures were needed to combat insurgent radicalism, the bill was defeated on July 14.¹⁵

Throughout 1931, Winnipeg's Conservative Mayor, Colonel Ralph Webb, carried on a vigorous and extended letter campaign with the federal government, in which he advocated the employment of strong measures, including deportation, against the communists. Writing to Bennett on May 29, 1931, he enclosed a list of fifteen names of men who left Winnipeg for Moscow "to take the usual staff course for the furtherance of Communistic propaganda...." Webb wondered if it would not be possible to prohibit their re-entry and added,

¹³Letter of F.R.Scott to J.S. Woodsworth, March 31, 1931. Woodsworth Papers (P.A.C.), MG27, III C7, Vol. 8, File 26, Freedom of Speech (1922-1937).

¹⁴Canada, House of Commons Debates, March 30, 1931, p. 398.

¹⁵Ibid., July 14, 1931, p. 3753.

There is a tremendous feeling growing in the West that some steps should be taken now to deal with the ever-increasing menace in our midst, and if it is at all possible by the present Legislation, or a Special Legislation could be the first object lesson that Canada will not stand for Moscow interference with the citizens and the development of our country.¹⁶

A few months later, Webb sent a telegram to Labour Minister Gideon Robertson, containing the following suggestions for action.

.....Urge deportation of all undesirables and particularly communistic leaders not only those who are their public speakers but those behind the scenes who are the real dangerous group....present laws make it difficult to deal with bolshevistic leaders, agitators and their followers apparently our laws were never made for this type of criminal....¹⁷

Webb was supported in his campaign by conservative interests in the form of the Employers' Association of Manitoba, the Loyal Orange Association and the Red Chevron Club,¹⁸ an association of veterans. On April 14, the Employers' Association sent to the Minister of Justice a list of resolutions calling for stiff measures to clamp down on the left. This document was nearly identical to a letter that had been sent by the Loyal Orange Association to the government the previous month. One resolution called for the strengthening of immigration laws "to prevent the admission of Communists into Canada and to provide for the immediate deportation of all alien communists." Others called

¹⁶Letter of R.H. Webb to R.B. Bennett, May 29, 1931. Bennett Papers (P.A.C.) MG26, K Series F, Vol. 141, File C-650, fos. 94735, 94736 "Communists, 1931, Section 98."

¹⁷R.H. Webb to Gideon Robertson, July 9, 1931. U.N.B. Library. Bennett Papers, Vol. 778; reprinted in Michiel Horn (ed.) The Dirty Thirties, (Toronto: Copp Clark 1972), pp. 457, 458.

¹⁸Letter of the Red Chevron Club to R.B. Bennett, April 24, 1931. Bennett Papers (P.A.C.) MG26, K Series F, Vol. 141, File C-650, fos. 94557, 94558.

for the amendment of postal laws to prevent the mailing of communist literature, the cancellation of naturalization certificates of communists and the enactment of federal laws to prosecute the communists for "the spreading of false rumours for the purpose of causing discontent among workers." The final recommendation called on the government to declare the Communist Party illegal.¹⁹

The resolutions of the Employers' and Orange Associations were very similar to recommendations brought forth by a Committee of the United States Congress in January, 1931.²⁰ As in 1919, the middle classes on either side of the border were reacting to heightened industrial unrest by advocating a general crackdown on aliens and left-wingers. The main difference between the countries was that in Canada, peacetime legislation already existed to fulfill all of the objectives of the proponents of repression, in the form of Section 41 of the Immigration Act and Section 98 of the Criminal Code.

Mayor Webb's campaign coincided with a country-wide agitation for the deportation of communists. In January, 1931, Premier J.E. Brownlee of Alberta wrote to the Prime Minister, recommending action along these lines.²¹ Three months later, Bennett received a letter from Premier

¹⁹ Copy of Recommendations submitted to the Minister of Justice by the Employers' Association of Manitoba, April 41, 1931. Bennett Papers (P.A.C.) MG 26K Series, F. Vol. 141, File C-650, fo. 94524.

²⁰ The Toronto Globe, January 19, 1931.

²¹ Letter of R.B. Bennett to J.E. Brownlee, January 26, 1931, Bennett Papers (P.A.C.), MG 26K Series F, Vol. 141, File C-650, fo. 94457, "Communists 1931, Section 98."

J.T.M. Anderson of Saskatchewan,²² endorsing the following resolution, which was sent to Anderson by the City of Sudbury:

That the city Council of Sudbury go on record, asking the Dominion Government to deport all undesirables and Communists, and a copy of this resolution be forwarded to the Government at Ottawa, also to all Municipalities in the Dominion, asking them to endorse Sudbury's action.

Following Sudbury's lead, the councils of at least 70 other cities, towns and municipalities sent similar resolutions to Bennett.²³

In response to the developing outcry against communism, the authorities determined to proceed with an all-out assault on the Communist Party. While the Ontario provincial government delivered the decisive blow through its criminal prosecutions of the Party's leaders, it is clear that federal officials collaborated very closely in this action. The most striking piece of evidence is a letter, dated March 18, 1931, from Federal Justice Minister Hugh Guthrie to the Ontario Attorney General, Colonel W.H. Price. Guthrie's stated purpose was to draw Price's attention to the situation respecting communist activities throughout Canada and particularly in Ontario. He referred to a recent conference he had held with representatives of the chief police officers in Canada, namely Brigadier Draper of Toronto and Commissioner Cortlandt Starnes of the R.C.M.P. Guthrie stated that they had discussed communist propaganda in Canada and he had decided, after this meeting, to make

²²Letter of J.T.M. Anderson to R.B. Bennett, April 28, 1931. Bennett Papers (P.A.C.), MG26 K Series F, Vol. 141, File C-650, fos. 94563, 94564 "Communists 1931, Section 98."

²³Bennett Papers (P.A.C.), MG26 K Series F, Vol. 141, File C-650 "Communists 1931, Section 98," fos. 94566-94731.

available to the province "confidential and secret documents" which had been drawn up from R.C.M.P. intelligence reports. He added that the originals could be obtained from the R.C.M.P. in Ottawa on request. The Justice Minister also offered Price the services of the various R.C.M.P. officers who had been involved in the matter.

My object in sending these papers forward to you is not in any sense to create undue apprehension or alarm, but I feel that the general situation is such that you should be placed in possession of all the information which we have upon the subject. After consideration of the whole matter should you conclude that some definite action should be taken to prosecute these persons or associations who are engaged in this work, and who have brought themselves within the provisions of our law, I can assure you the fullest cooperation on the part of this Department and also of the R.C.M.P.²⁴

Just two weeks later, Guthrie again wrote to Price, sending him a copy of a cable signed by the "Political Bureau Communist Party." It had been intercepted by Scotland Yard and was believed by the R.C.M.P. to have been sent by Tim Buck, "whose name figures prominently in the material which I sent you a week ago."²⁵

On August 11, 1931, the Ontario Provincial Police and the R.C.M.P. conducted simultaneous raids on the headquarters of the Communist Party in Toronto, the offices of The Worker, its official organ, the Workers' Unity League, and the homes of leading members of the Party. Many documents were seized, including the Party's records, and eight leaders were arrested, in Toronto and elsewhere. These included: Tim

²⁴Letter of H. Guthrie to W.H. Price, March 18, 1931. Attorney General's Department, Province of Ontario (Archives of Ontario) Record Group 4, Series D-1-1, File no. 3188/1931, Box 30L, fos. 0637, 0638.

²⁵Letter of H. Guthrie to W.H. Price, April 1, 1931, *ibid.*

Buck, the Secretary of the Party; John Boychuk, Ukrainian representative on the Central Executive Committee; Malcolm Bruce, the former editor of The Worker; Tom Cacic, organizer of the Czechoslovakian Communists in Canada; Sam Carr, Buck's chief assistant; Amos Hill, a former officer of the Finnish Organization of Canada and the Young Workers' Party; Tom McEwen, National Secretary of the Workers' Unity League and Matthew Popovich, a former editor of Rabochy Narod and a leading Ukrainian Communist.²⁶ The raids and arrests were conducted under the authority of Section 98 of the Criminal Code. Buck, McEwen and Boychuk were arrested in Toronto, Hill was taken into custody at Cochrane, Ontario, while Carr and Bruce were taken in Vancouver. Subsequently, they were transported to Toronto to be charged. Mike Golinsky, who was arrested at the same time, was later found not to be a member of the Communist Party but rather of the Young Communist League, and was released.²⁷

In commenting on the arrests, Attorney-General Price confirmed that they stemmed from the intelligence gathering of the R.C.M.P. and from discussions he had held with Justice Minister Guthrie three months earlier.²⁸ Surprisingly, Guthrie denied any federal participation in the raids, and was reported as saying that the province's actions were

²⁶The information on the eight was taken from William Rodney's biographical sketches of Canadian communist leaders in Soldiers of the International, pp. 162-168; and The Canadian Annual Review (1932), p. 425.

²⁷F.R. Scott, "The Trial of the Toronto Communists," Queen's Quarterly, Vol. 33 (August, 1932), p. 514.

²⁸The Toronto Globe, August 12, 1931.

not representative of the federal government's policy of maintaining peace, order and good government.²⁹ In light of his earlier confidential letters to Price, Guthrie's statement of non-involvement was hardly credible.

The eight remaining prisoners were charged under Section 98 on two counts; first, that from 1921 to 1931 they "did become and continue to be members of an unlawful association, to wit, the Communist Party of Canada, section of the Communist International;" and secondly, "that they did act or profess to act as officials of an unlawful association, to wit, the Communist Party of Canada."³⁰ The accused were also charged with seditious conspiracy.³¹

The jury trial was presided over by Mr. Justice Wright. Counsel for the accused were Hugh J. MacDonald and O. Brown, although Tim Buck conducted his own defence. Norman Somerville, K.C. and Joseph Sedgewick represented the Crown. The trial has been well summarized in the account of the appeal case in the Dominion Law Reports and in Frank

²⁹ Ibid.

³⁰ Rex V. Buck, et al. Ontario Court of Appeal, Mulock C.J.O. Dominion Law Reports (1932), Vol. 3, pp. 98, 99.

³¹ Ibid., p. 99. The formal indictment on this charge stated that, by their membership in the Communist Party the accused "did conspire together to further the objects and aims of the said Communist Party of Canada, Section of the Communist International and that the objects and aims of the said Communist Party of Canada, Section of the Communist International, are of a seditious nature intended to incite His Majesty's subjects to attempt otherwise than by lawful means the alteration of the Government of the Dominion of Canada and to incite persons to commit crimes and disturbances of the peace and raise discontent or disaffection among His Majesty's subjects and to promote feelings of ill will and hostility between classes of such subjects."

Scott's contemporary article, "The Trial of the Toronto Communists," so a very brief narration of its highlights will suffice.

The Crown's case centred on its attempt to establish that the objects of the Communist Party entailed the forcible and violent overthrow of constituted authority. Yet no evidence was presented to show that the Communist Party had committed any violent acts. Instead, the Crown used the party's affiliation with the Communist International to demonstrate its commitment to violent revolution. In speaking to his defence, Tim Buck stated that the program of the Communist International was a general guide to action, but could be deviated from in relation to the specific situation in each country. Notwithstanding this, information respecting the operations of the International was admitted by the court and Russian documents constituted the greater part of the Crown's evidence respecting revolution.³²

Much of the external material was entered as Exhibit 27, consisting of Theses and Statutes of the Communist International at the meeting of the Second World Congress in Moscow in 1920. Its text included such passages as

.....The Communist International makes its aims to put up an armed struggle for the overthrow of the international bourgeoisie and to create an international Soviet republic as a stage to the complete abolition of the state....

.....Only a violent defeat of the bourgeoisie, the confiscation of its property, the annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, bureaucratic, administrative, municipal, etc. even the individual exile or internment of the most stubborn, and dangerous exploiters, the establishment of a strict

³²F.R. Scott, op. cit., p. 517.

control over them for the repression of all inevitable attempts at resistance and restoration of capitalist slavery, only such measures will be able to guarantee the complete submission of the whole class of exploiters...³³

The defence countered that the Canadian Communist Party was not in fact advocating the use of force or violence, but was preparing the public for the violence which it believed was inevitable when the bourgeois state ceased to function, a natural outcome of the historical process.

The Crown produced a "star" witness in the person of R.C.M. Police Sergeant Leopold, who, under the alias of Jack Esselwein, had joined the Communist Party in 1921 to spy on its members. Leopold's testimony was used to establish the seditious nature of the Canadian Communist Party and to draw a connection between that body and the Soviet-dominated Communist International. He gave evidence that the Canadian Party had been set up in 1921 through the influence of the Pan-American Bureau, the harbinger of Moscow's designs in North America.³⁴

The jury found the defendants guilty on all three counts, and they were each sentenced to five years in prison, with the exception of Tom Cacic, who was given a two year sentence. They immediately appealed the decision.

Soon after the Toronto trials, Major-General J.H. MacBrien, the newly appointed Commissioner of the R.C.M.P., wrote to the Deputy Minister of Justice concerning the implications of the verdict with

³³Rex V. Buck, et al, op. cit., pp. 102-103.

³⁴F.R. Scott, op. cit., p. 517.

respect to the status of the Communist Party. It is not known what MacBrien said in his letter, but given the nature of the reply, it is apparent that he was advocating an activist role for federal authorities in following up on the Section 98 convictions, i.e., a general crackdown on communism. In response, the Deputy Minister, W.S. Edwards, stated that the finding of a primary court was not binding on courts of equal and superior jurisdiction, and he would not speculate on the ultimate consequences of the verdict.

.....As you know, the question what if any further action should now be taken as a result of the verdict is one primarily for the consideration of the provincial authorities, and I do not think it is the duty of this Government or of your Force to accept any responsibility in this connection beyond continuing to extend to the provincial authorities any assistance which they may desire, and which may properly be given.³⁵

MacBrien, however, was soon to get his wish. On February 19, 1932, the communists' case came before the Ontario Court of Appeal, headed by none other than the venerable Chief Justice Mulock. The

³⁵ Letter of W.S. Edwards to J.H. McBrien, November 16, 1931. Justice Department Records (P.A.C.), Letterbook 228, pp. 994-995. Interestingly there is only one other recorded conviction under Section 98 in the standard law reports. Unemployed leader Arthur Evans was charged under sub-section 8 in 1933 with having advocated the use of force as a means of effecting industrial change. Speaking at a series of meetings related to the Princeton strike, Evans told his audience that "change could not be done by the ballot box; but only by force and a united front on the part of the workers." He was sentenced to two years in jail; the Appeal Court upheld this verdict (Canadian Criminal Cases, 1934, Vol. 62, pp. 29-38). Evans and other leaders of the single unemployed in the On-to-Ottawa-Trek were also charged under Section 98 in the aftermath of the Dominion Day riots in Regina in 1935. The charges were later dropped, however. (Ronald Liversedge, Recollections of the On-to-Ottawa-Trek, Toronto, McClelland and Stewart, 1973, p.330)

Appeal Court, while dropping the charge of seditious conspiracy, upheld the conviction on the two counts under Section 98. The effect of this decision was to render the Communist Party illegal, thus fulfilling the original objective of the authorities in their decision to prosecute.³⁶

In the House of Commons, on February 22, 1932, J.S. Woodsworth moved for leave to introduce a private members' bill to repeal Section 98 of the Criminal Code.³⁷ Without giving the mover an opportunity to explain his bill, the Speaker asked the House if leave would be granted, and Prime Minister Bennett responded, "No." The motion was then defeated in a voice vote. Subsequently a heated debate arose over the government's attempt to obstruct even the initial consideration of the bill. U.F.A. leader Robert Gardiner interjected:

I protest against this procedure. Until we know what we are voting about how can we act? How can we vote on whether or not a member shall have the privilege of introducing a bill unless we know the contents of that bill? It would be absolutely ridiculous to proceed along these lines.

The Prime Minister retorted that Woodsworth "did not see fit to make any explanation," and was therefore not entitled to introduce his bill. To this, Woodsworth charged Bennett with deliberately misrepresenting the

³⁶ See Memorandum from Joseph Sedgewick to Colonel W.H. Price, October 17, 1931, Papers of the Attorney-General respecting the Communist Party of Canada (Ontario Archives) Record Group 4, Series D-1-1, File no. 3188/1931, Box 30L (1). In speculating that the prosecution of the communist leaders would be upheld, Sedgewick stated that "...it would establish the unlawfulness of the association, and future proceedings could be taken against those who are mere members of the association, as was always intended."

³⁷ Canada, House of Commons Debates, February 22, 1932, p. 380.

situation. After continued wrangling over Bennett's obstinate opposition, one opposition member went so far as to call the Prime Minister "Mussolini," to which Ernest Lapointe added, "Mussolini is but a child."³⁸

Finally, the Speaker conceded that he had been remiss in proceeding too quickly, and called on Woodsworth to explain his bill. After Woodsworth outlined its main features, Bennett rose again on a question of order and privilege to draw attention to the Judgement of the Ontario Court of Appeal respecting the Communist leaders. Lapointe interjected that this should be discussed on second reading. Bennett replied, bluntly, "There will be no second reading." The bill was then defeated in a 72-49 division.³⁹

It was a sorry episode in Canadian Parliamentary history. After having taken action to render the expression of communistic ideas illegal, the Bennett government was now demonstrating its refusal to hear any debate on the subject. Bennett had even tried to deny Woodsworth the minimum courtesy of hearing his explanation of his bill. At a time when various European countries were experiencing a steady shift away from democratic institutions, the Conservative government's actions were not encouraging to those who valued the free and open exchange of opinion.

Also on February 22, a delegation of fourteen, led by A.E. Smith of the Canadian Labor Defense League, met with Immigration Minister W.A. Gordon in an effort to convince the government to repeal

³⁸Ibid., p. 381.

³⁹Ibid., pp. 383, 384.

Section 98.⁴⁰ They also called for the reinstatement of the Communist Party as a legal entity. Not surprisingly, this group made little headway with the Minister.

Two weeks later Woodsworth attempted to introduce another bill, to repeal what he regarded as the most objectionable features of Section 98. It called for the following changes:

- (1) the insertion of the word "physical" before the word "force" in sub-section 1.
- (2) the repeal of sub-section 2, respecting the seizure of property belonging to or suspected of belonging to an unlawful association.
- (3) the deletion of the words "or is about to be" in sub-section 6:

.....If any judge of any superior or county court, police and stipendiary magistrate, or any justice of the peace, is satisfied by information on oath that there is reasonable ground for suspecting that any contravention of this section has been or is about to be committed...
- (4) the adding of a proviso to sub-section 6 to the effect that no literature of a suspected unlawful association would be forfeited unless the charges were proven.
- (5) the repeal of sub-section 10, respecting the importation of seditious printed material, and its attendant twenty year jail term.⁴¹

Again, the bill was defeated on first reading by a vote of 70 to 52. Significantly there were five defections from the govern-

⁴⁰The Ottawa Citizen, February 23, 1932; cited in The Canadian Annual Review (1932), p. 427.

⁴¹Canada, House of Commons Debates, March 7, 1932, pp. 843, 844.

ment's ranks in this division.⁴²

The upholding of the conviction of Buck and company in Toronto opened the door for further action against suspected communist leaders, including the publishers of ethnic newspapers. On May Day, 1932, and shortly afterwards, the authorities rounded up several influential communists with the intent of effecting swift deportation. These included three Winnipeg residents, Orton Wade, Conrad Cessinger and Dan Chomicki (alias Dan Holmes). The warrant for the search of Holmes' residence was issued under Section 98 (6) of the Criminal Code, stating that there were reasonable grounds for suspecting that Holmes

in the years A.D. 1921 to A.D. 1931, both inclusive, at or near the city of Winnipeg, in the province of Manitoba, unlawfully did become and continue to be a member of an unlawful association to wit, the Communist Party of Canada, section of the Communist International, contrary to the provisions of section 98 of the Criminal Code of Canada, and that there are reasonable grounds for suspecting and believing that books, periodicals, pamphlets, pictures, papers, circulars, cards, letters, writings, prints, handbills, posters, publications, documents and other data⁴³

respecting the Communist Party were housed in Holmes' residence.

The others arrested at the same time as the three from Winnipeg were Stefan Worozcyt, Gottfried Zurcher, Hans Kist, Martin Parker (Pohjansolo), John Farkas, John Stahlberg, Arvo Vaara and Ivan

⁴²The Conservatives who bolted on the question were: Finlay MacDonald (Cape Breton South); Dr. Lewis W. Johnson (Cape Breton, North Victoria); General Arthur E. Ross (Kingston); James H. Stitt (Selkirk); and J. Earl Lawson (West York). Source: The Toronto Globe, March 8, 1932.

⁴³Warrant to Search under Section 98 (6) of the Criminal Code Immigration Branch Records (P.A.C.), RG76, Vol. 376, File #513111.

Sembaj.⁴⁴ They were apprehended in such diverse places as Vancouver, Edmonton, Sudbury, Oshawa and Montreal. Without warning and without an opportunity to make arrangements for their own defence, all were speedily transported to Halifax to face deportation hearings.

This arbitrary action aroused a storm of protests from labour groups and similar organizations under the auspices of the Canadian Labor Defense League. The press also gave the arrests wide coverage, particularly in Winnipeg. In Parliament, J.S. Woodsworth raised the issue of the arrests of Wade, Chomicki and Cessinger on May 6.⁴⁵ He asked Immigration Minister W.A. Gordon on whose authority and on what charge the men were arrested and where they were to be tried. Gordon evaded this question and a supplementary by saying simply that they were to be investigated under the provisions of the Immigration Act. Liberal J.L. Brown then joined the fray and queried

May I ask a question of the minister and expect to get an answer? Where are those men to be tried? Are they to be tried at Halifax and where they have been taken, or are they to be returned to Winnipeg where they will be given a chance of a fair trial?

Prime Minister Bennett interjected, "That does not require an answer." But the opposition was determined, and, when pressed by Liberal Leader Mackenzie King, Gordon stated:

.....With regard to some of the cases, it often happens that we are positive that a man is illegally in this

⁴⁴Letter of Assistant Commissioner of Immigration to H.M. Grant, Halifax Inspector-in-Charge, October 11, 1932. Immigration Branch Records, RG76, Vol. 376, File 513111.

⁴⁵Canada, House of Commons Debates, May 6, 1932, p. 2658.

country and the nearest, most convenient, port where he can be returned to the country of his origin is frequently chosen.⁴⁶

The irony in this statement became evident later with the revelations surrounding the case of Orton Wade, who was neither illegally in the country nor removed to the nearest port. Wade was a labour leader who was arrested on May 1, 1932, after making a speech to an out-door rally at Market Square in Winnipeg. He was visited the next day at the Immigration Barracks by S. Greenberg, the legal representative of the Canadian Labor Defense League, who, in questioning Wade, discovered that he was a Canadian citizen. He asked R.C.M.P. Inspector Mellor to show him the order for arrest, which he agreed to do the next day at a designated time. However, instead of meeting with Greenberg, the inspector reneged and placed Wade, Dan Chomicki and Conrad Cessinger, all handcuffed, on a train bound for Halifax. At the subsequent Board of Inquiry hearing, Wade established his Canadian citizenship and was released on May 14.⁴⁷

Wade later brought an action against W.J. Egan, the Deputy Minister of Immigration and Colonization, and other immigration and R.C.M.P. officers for false arrest and imprisonment. The initial action was dismissed by the Court of King's Bench,⁴⁸ but was appealed to the Manitoba

⁴⁶Ibid., p. 2659.

⁴⁷F.R. Scott, "Immigration Act-False Arrest-Illegal Treatment of Arrested Person," The Canadian Bar Review, Vol. 14 (January, 1936), p.62.

⁴⁸Wade v. Egan et al. Manitoba King's Bench, Montague, J. Dominion Law Reports (1935), Vol. 1, pp. 542-545.

Court of Appeal. It emerged that the order for Wade's arrest had been signed by Egan on December 5, 1931, five months before he was taken into custody. Counsel for the plaintiff questioned Egan as to whether, in signing the order, he had weighed the facts surrounding the case. The Deputy Minister replied that he had not, and added, "If we started to institute enquiries of the many hundreds of people we handle we probably would be making enquiries until doomsday."⁴⁹ Respecting this last statement, Mr. Justice Robson commented, tersely: "Such an attitude towards personal liberty needs no comment."

In the cross-examination of Wade, it was revealed that, on two or three occasions, he had told the police officers that he was born in the United States. For this reason, Mr. Justice Dennistoun stated that the plaintiff had no valid grounds for objecting to his arrest and examination by a deportation board. But he was quick to add that Wade had adequate justification for complaint as to his treatment after the arrest.

His treatment was, I think, due to excessive zeal on the part of the authorities which amounted to a denial of justice. They were actuated by motives which are not permitted by the law.⁵⁰

As Justice Trueman noted, if Wade were to be deported to the United States, it was highly irregular to send him 2000 miles from Winnipeg, which was only 70 miles from the international boundary, to Halifax,

⁴⁹Wade v. Egan et al., Manitoba Court of Appeal, Prendergast, C.J.M. Canadian Criminal Cases, Vol. LXIV, p. 36.

⁵⁰Ibid., p. 22.

over three hundred miles further from the nearest U.S. point. He stated that Egan had presented no good reason why Wade was not examined by the Board in Winnipeg, and added,

For parallel high-handed proceedings one must go back to 1667, when among other heads of treason charged in Parliament against Clarendon he was accused with sending divers of His Majesty's subjects to be imprisoned against law in remote islands, garrisons and other places, thereby to prevent them from having the benefit of the law (referring to the writ of habeas corpus), and to produce precedents for the imprisoning any others of His Majesty's subjects in like manner.⁵¹

Rather than admit the impropriety of the department's treatment of Wade, Egan attempted to justify it on grounds that it was not an isolated case. He said that there were "a great number" of cases where the inquiry was not in the same area as the arrest. Justice Robson took exception to Egan's casual approach and observed that the authority, under Section 42, to issue orders implied considerable responsibility, which the Deputy Minister had not fulfilled.

Underlying much of the criticism of the Immigration Department's actions was the fact that it would have proved much more difficult for Wade to establish his rights in Halifax than in Winnipeg. His surreptitious removal enabled the Department to thwart an anticipated writ of habeas corpus on his behalf. His Canadian citizenship alone had averted his deportation. Wade's action was thrown out by the court in a three to two decision, but the fact that there were two dissenting judges was an indication of the legitimacy of his grievance. Another Judge, Trueman, had been highly critical of the immigration authorities

⁵¹ Ibid., p. 29.

and held against the plaintiff only on a very technical point. The case underlined the Immigration Department's lack of respect for human rights.

In Halifax, the remaining prisoners were all examined by the Board of Inquiry under Section 41 of the Immigration Act. Only two transcripts of the hearings have been retained in the Immigration Branch Records — those of the printers Dan Chomicki and Arvo Vaara. They are undoubtedly representative of the hearings as a whole. The Minister's order for Chomicki's arrest called for his examination as to his right to remain in Canada,

complaint having been received to the effect that you are a person other than a Canadian citizen, who advocates in Canada the overthrow by force or violence of constituted law and authority and by word or act creates or attempts to create riot or public disorder in Canada.⁵²

Chomicki's hearing was convened on May 6, but was adjourned twice, to May 7 and then to May 9, apparently to enable him to secure counsel. On the latter date, Chomicki stated to the Board that he had wired both Winnipeg and Toronto and that A.E. Smith was in Ottawa to make representations on behalf of all the Halifax prisoners, presumably in connection with a habeas corpus appeal that was being heard by the Supreme Court. For the purposes of the hearing itself, however, he was unable to secure counsel. The Board then decided to proceed with Chomicki's examination. The chairman announced that, in the event of a deportation order, a copy of the evidence would be made available to A.E. Smith,

⁵² Transcript of the deportation hearing of Dan Chomicki, May 6, 1932, p. 1. Immigration Branch Records (P.A.C.), RG76, Vol. 376, File 513111.

for purposes of an appeal to the Minister.⁵³

In view of the fact that only three days had passed since the initial meeting of the Board, it is debatable whether Chomicki had been given an adequate opportunity to arrange for his own defense. Quite possibly the C.L.D.L. was strained for resources and was unable to pay the expense of a lawyer. One might question why the Board was so anxious to proceed. Chomicki had been espousing communist doctrines for over a decade.

In the ensuing examination, it emerged that Chomicki was a Pole who had emigrated with his family in 1913 at the age of fourteen. He testified that he had worked the preceding eleven years for the Workers' and Farmers' Publishing Association, publisher of the Ukrainian Labour News. At this point, the crown produced as a witness Sergeant Leopold, the same R.C.M.P. undercover agent whose testimony had proved crucial to the conviction of the Toronto communists. Leopold testified that the object of the Communist Party was "the overthrow of the present system of government and the economic system in general by the application of force and violence."⁵⁴ He also confirmed that Chomicki had been a member of the Party. The case against the defendant rested solely on Leopold's evidence and the recent conviction of Buck et al, which has served to outlaw the Communist Party. On this basis, the Board ordered Chomicki deported.⁵⁵

⁵³Ibid.

⁵⁴Ibid., May 9, 1932, p. 5.

⁵⁵Ibid., p. 13.

Arvo Vaara was born in Finland and entered Canada in 1909, at the age of eighteen. He began to work on the Vapaus, the Finnish Communist daily in Sudbury, in 1924. As was noted earlier, he was convicted on a charge of seditious libel in 1929. Sergeant Leopold gave evidence that Vaara had been a member of both the Communist Party of Canada and the communistic Finnish Organization in Canada. He also attested to the revolutionary aims of those bodies. In his defence, Vaara denied that the Communist Party was advocating the overthrow of the government by force and violence. He cited statements by Lenin to the effect that there were certain prerequisites to any successful revolution, i.e., when the bourgeoisie comes to the point that it can no longer govern and the mass of the people are "thoroughly dissatisfied with such government."⁵⁶

Vaara was ordered deported by the Board on May 13.⁵⁷ A similar decision was reached in each of the other cases. The habeas corpus appeal was quashed by the Supreme Court,⁵⁸ and the prisoners spent many months incarcerated in the Halifax immigration sheds, awaiting the completion of arrangements for their repatriation.⁵⁹

⁵⁶ Transcript of the deportation hearings of Arvo Vaara, May 13, 1932, p. 19, Immigration Branch Records (P.A.C.) RG76, Vol. 376, File 513116.

⁵⁷ Ibid., p. 20.

⁵⁸ See Arvo Vaara and Others v. The King, Canadian Law Reports, Supreme Court of Canada (1932), pp. 36-43.

⁵⁹ Stahlberg was eventually deported on December 15, 1932, Vaara and Pohjansalo on December 17, Cessinger, Tarkas and Kist on December 18, Zuercher on January 1, 1933, Chomicki and Worozcyt on January 23 and Sembaj on July 16 of the same year. Source: Lists of Communist Deportations for the years of 1932 and 1933, Immigration Branch Records (P.A.C.) RG26, Vol. 16.

From April, 1931, to December 1934, at least eighty-two persons were officially deported from Canada as Communists.⁶⁰ The breakdown, by years, was as follows: 1931, twenty-four; 1932, forty-one; 1933, thirteen and; 1934, four. Most of the deportees were convicted on criminal charges, such as unlawful assembly or distributing communist literature as a prelude to their examination by Boards of Inquiry.⁶¹ The usual offence was participation in labour rallies, May Day parades or strikes. For example, two of the persons convicted of riot and unlawful assembly in the aftermath of the Estevan Strike, Jan Gryciuk and Ludevit Revay,⁶² were deported in the fall of 1932.

Most of the communist deportees were of Central or Eastern European origin. The breakdown, by nationality was: Bulgarian (1); Czecho-Slovakian (2); Danish (1); English (including Scottish and Welsh) (12); Estonian (1); Finnish (25); German (2); Hungarian (2); Irish (2); Jugo-Slavian [sic] (7); Lithuanian (1); Polish (15); Romanian (3); Swedish (1); Swiss (2); American (2) and Russian (3) To some extent this distribution can be seen to reflect the ethnic composition in the

⁶⁰All the information respecting communist deportations was obtained from the official lists of communist deportations, 1931 to 1934, in the Immigration Branch Records, RG26, Vol. 16.

⁶¹While the lists give an abbreviated description of the criminal charges, they do not specify which sections of the Criminal Code were invoked in these actions. It seems probable, however, that those convicted of distributing communist literature were charged under Section 98, as it would have proved more difficult to convict under the other sections pertaining to sedition. These cases were not recorded in the respective dominion and provincial law reports either because there was not an appeal or the appeal was not granted.

⁶²S.D. Hanson, "Estevan, 1931," in Irving Abella, On Strike, p. 57.

pre-1931 Communist Party of Canada. For example, the heavy preponderance of Finnish deportees corresponds with the fact that in the 1920s, Finns provided over half the Party's membership in Canada.⁶³ Many of the deportees of officially Polish nationality had Ukrainian names, and thus represented the second largest ethnic group in the communist ranks.

It is considered probable, however, that the authorities zeroed in on alien radicals with the intent of intimidating others of the same nationalities. A.E. Smith charged that while many of the participants in the Rouyn-Noranda strike of June, 1934, were French-Canadians, only foreign nationals were arrested and charged with criminal offences.⁶⁴ Moreover, the broad range of localities at which the deportees were apprehended⁶⁵ suggests that the authorities took action against a few selected activists in each place as an immediate warning to others. In this respect, the policy of 1919-1920 respecting "salutary" deportations had been revived.

Nor was this the whole story. The early 1930s saw a dramatic increase in deportations in every category. Most of these were based

⁶³ Ivan Avakuovic, The Communist Party in Canada: A History, Toronto, McClelland and Stewart, 1975, p. 35.

⁶⁴ Letter of A.E. Smith to M.J. Coldwell, M.P., May 14, 1936. Cooperative Commonwealth Federation Records (P.A.C.), MG28, IV, Vol.393.

⁶⁵ The following is the breakdown by province and city or town: British Columbia (5); Oakalla (1), Vancouver (3), Victoria (1), Alberta (12); Calgary (2), Drumheller (2), Edmonton (3), Fort Saskatchewan (2), Lethbridge (3), Saskatchewan (7); Estevan (2), Moose Jaw (1), Regina (2), Saskatoon (2), Manitoba (8); Dauphin (4), The Pas (1), Winnipeg (3); Ontario (31); Fort William (4), Kirkland Lake (5), Oshawa (1); Port Arthur (1), Sudbury (9), Timmins (4), Toronto (7), Quebec (18); Montreal (6), Rouyn (12).

officially on public charge grounds. The peak years for all causes were 1931 and 1932, when 6,097 and 6,976, respectively, were deported. Overall, 22,812 persons were deported from 1930 to 1934.⁶⁶

The deportations elicited a strong reaction as many newspapers expressed their opposition to the practice of deporting persons who were, through no fault of their own, forced to apply for financial relief. While the Immigration Department consistently denied that anyone was being deported on public charge grounds, alone, it is evident that this was widely practised. This is indicated in a letter, dated June 17, 1932, from the Acting Minister of Immigration and Colonization to Prime Minister Bennett. The Acting Minister, while noting that many of the deportees had either asked to be repatriated or had refused to accept farm or other work, added:

In other cases the persons concerned are anxious to remain in Canada and willing to accept any kind of employment. It is this latter class that I am particularly concerned about, but I feel that I can only continue with the policy which has been followed in the immediate past, and effect deportation. The municipalities strenuously object to continue carrying people whom they can get rid of through deportation proceedings, and there is at the present time really no prospect of these people becoming immediately self-supporting.⁶⁷

⁶⁶Statement of deportations from Canada, 1930-33 and statement of deportations from Canada, 1934, read into Hansard by Hon. W.A. Gordon, Minister of Immigration and Colonization, on February 15, 1934 and January 28, 1935, respectively. Canada, House of Commons Debates (1934), p. 589 and (1935), pp. 214-215.

⁶⁷Letter from A.L. Jolliffe to R.B. Bennett, June 17, 1932. Immigration Branch Records (P.A.C.), RG76, Vol. 396, File 563236, pt. 15. A copy of the letter was sent to the Minister's Office. It effectively makes a sham of the public statements of Immigration Minister W.A. Gordon on the question. On April 21, 1932, Gordon stated in the House of Commons, "I know of no case where deportation has taken place of a desirable citizen simply because he has become a public charge through inability to find employment. I do not know of any such case." Canada, House of Commons Debates (1932), p. 2259.

The letter reveals an important dimension to the deportation question, i.e., the role of the municipalities in instituting proceedings. Under the Immigration Act, whenever a foreign national became a public charge, the clerk of a municipality was required to submit a complaint to the Minister, giving full particulars.⁶⁸ At the resultant Board of Inquiry hearing, if it were proved that the individual had accepted public assistance, regardless of the amount, he was liable to deportation. In this regard, the municipalities, hard pressed to make ends meet, were particularly anxious to take advantage of any opportunity to remove persons who were a drain on their resources.⁶⁹ Complaints were submitted by the thousands and the number of deportations skyrocketed.

Beyond the relief issue, it is apparent that at least one municipal jurisdiction used the device of reporting deportable cases to the Immigration Department in an effort to get rid of Communist aliens. This was the City of Winnipeg, under the sway of its formidable mayor,

⁶⁸An Act Respecting Immigration," Revised Statutes of Canada, Section 40 (1927) Chapter 93, p. 203.

⁶⁹In June, 1930, Winnipeg's City Council passed a resolution directing its Unemployment Committee "to employ such investigative staff in connection with unemployment as in their judgement may be necessary with a view to making certain that no relief be granted to any persons except bonafide residents of the city." Minutes of Winnipeg City Council, 1930, Vol. 44, p. 704. Cited in Louise Carpenter, "Deportation of Immigrants During the Depression," Term Paper, University of Manitoba, 1973, p. 9.

Colonel Webb. The evidence is contained in correspondence, during the fall of 1931, between Thomas Gelley, Division Commissioner of Immigration in Winnipeg, and A.L. Jolliffe, Commissioner in Ottawa.

On September 5, 1931, Gelley wrote to Jolliffe concerning complaints submitted by the City of Winnipeg respecting Polish immigrants who were alleged Communists.⁷⁰ He stated that the Poles had been examined by Boards of Inquiry, and that they had secured the necessary information on which to base deportation. The problem was that the deportees refused to have their photographs taken or sign applications for passports, prerequisites to their repatriation. Gelley noted that several of the alleged Communists were being so advised by their legal counsel, and "it appears evident that they are going to continue to make it as hard as possible for us to obtain the required documents and information." For this reason, he expressed his desire to hire a lawyer to act on the department's behalf.

While Gelley's letter did not specify the nature of the charges against the deportees, Jolliffe's reply, on October 2, did. He stated:

In regard to the query raised in the last paragraph of your letter, I am under the impression that practically all the cases with which we have to deal are based on public charge grounds and under Section 40 of the regulations.

Jolliffe added that he was of the opinion that, in cases of this nature, the Department would not require the services of a lawyer,

On the other hand, should any complaints be received indicating action under Section 41 of the regulations, on receipt of same and should the circumstances indicate,

⁷⁰Letter of Thomas Gelley to A.L. Jolliffe, September 5, 1931. Immigration Branch Records (P.A.C.), RG76, Vol. 396, File 563236, pt. 15.

you will be appropriately instructed in regard to the source from which any legal advice is to be secured.⁷¹

On October 26, the Winnipeg Tribune reported that the Polish consul in Winnipeg had complained to Mayor Webb of the involuntary deportation of twenty Polish nationals in the previous ten days.⁷² The editorial indicated that the basis for deportation was their receipt of unemployment relief. This evidence, coupled with the fact that not one of the twenty is mentioned in the Immigration Department's list of communist deportees for 1931, suggests that, at least in this case, a local government succeeded in having communists deported on public charge grounds. The extent of this practice is difficult to determine. What can be said with certainty is that the official lists of communist deportees do not accurately reflect the total numbers of persons deported for their political views.

The Gelley-Jolliffe correspondence raises another important question, the detaining of deportees in jail or immigration halls pending their cooperation in preparing the documents required for their repatriation. Gelley was strongly of the opinion that the Department had the authority to detain the immigrants indefinitely. Referring to another set of deportation cases, he wrote:

There is no doubt, and I am satisfied, as to our authority to hold persons under the Immigration Act until their cases are definitely settled by the Minister.

⁷¹Letter of A.L. Jolliffe to Thomas Gelley, October 2, 1931. Immigration Branch Records (P.A.C.), RG76, Vol. 396, File 563236, pt. 15.

⁷²"Deportation Abuses," The Winnipeg Tribune, October 26, 1931.

The deportation cases of 1919, being the aftermath of the Winnipeg strike, are established precedents as to this authority.⁷³

It should be remembered that Gelley was the same official who had consistently denied bail to the four aliens in the Winnipeg Strike deportation cases of 1919. Now, in 1931, he was using his own previous actions as precedents upon which to justify indefinite detention. The Immigration Department concurred in this action, and it became its standard policy in cases of this nature.

While the culpability of the municipalities in instituting public charge proceedings against communists is apparent, it is a moot question to what extent immigration officials were party to this practice. Since communist activities were not formally considered in these cases, there is no way of knowing how often they were a factor in the decision to submit a complaint. The Immigration Department claimed that no one possessed of a satisfactory character would be deported on public charge grounds alone. Of course, this left open the question as to what constituted a "satisfactory character." It would seem reasonable to infer that communists would not have qualified according to the Immigration Department's definition.

Whether or not they consciously participated in a public charge smokescreen, there can be little doubt that immigration officials assumed an activist role in pursuing deportations in certain cases. Moreover, they resorted to highly irregular and even illegal practices

⁷³Letter of Thomas Gelley to A.L. Jolliffe, October 30, 1931. Immigration Branch Records (P.A.C.), RG76, Vol. 396, File 563236, pt. 15.

in the process. In 1933, A.L. Jolliffe wrote to a Winnipeg immigration official concerning the increasing scrutiny in the courts of proceedings taken under the Immigration Act. He stated:

It has been the practice in the past, as a measure of expediency, to accept wired requests for Minister's Orders in cases where the element of time may be involved. There is absolutely no authority under the Immigration Act for procedures of this kind and if reviewed in the Courts, I have no doubt but that proceedings taken on the basis of a wired complaint would result in the case being thrown out.....⁷⁴

Beyond the question of actually initiating deportation actions, immigration officials wielded great discretionary authority as to whether or not to follow through once a person's deportation had been ordered. According to Assistant Deputy Minister F.C. Blair, no more than 30 to 40 per cent of the persons reported by the municipalities and provinces were ultimately deported. He declared:

.....When the immigration officials make up their minds that these would make good citizens, they do everything in their power to keep them in Canada.⁷⁵

Again, communist ideas would probably not have been considered consonant with good citizenship, at least in the eyes of such anti-communist zealots as Blair.

In at least one instance, a person's communist leanings provided the stated reason for proceeding with a public charge deportation order. This was the case of Wasyl Rudnik, a Polish immigrant who was

⁷⁴Letter of A.L. Jolliffe to C.E.S. Smith, April 1, 1933, Immigration Branch Records (P.A.C.), RG76, Vol. 396, File 563236, pt. 15.

⁷⁵Winnipeg Free Press, November 27, 1930; Cited in Louise Carpenter, "Deportation of Immigrants During the Depression," Unpublished Term Paper, University of Manitoba (1973), p. 21.

ordered deported on February 28, 1932 at The Pas, Manitoba, on grounds of his being a public charge. According to W.J. Egan, Deputy Minister of Immigration, Mounted Police reports at the time suggested that Rudnik was a communist "and was possibly actively associated with the movement in the district at the time when this faction were causing considerable trouble."⁷⁶ For this reason, the appeal was dismissed and deportation would have been proceeded with except that Rudnik disappeared. Representations were then made on his behalf to have deportation proceedings dropped. A department official instructed that deportation be stayed on condition that Rudnik pay back the money he received as a public charge, although he was overruled by Egan.

Egan noted that the case was similar to many others of persons who were ordered deported on public charge grounds alone and then granted a deferral of deportation. The individuals subsequently found employment and applied for naturalization. Since Rudnik was now self-supporting Egan stated that he had no objection to his being naturalized.

I am of the opinion that if the history of the individual case shows no unfavourable features, apart from public charge grounds, and there is definite evidence that this was attributable to present conditions, the Department should not allow the order for deportation to constitute any obstacle in the way of naturalization. It is understood, however, that where the applicant for naturalization cannot show reasonable prospects for the future and is not possessed of a satisfactory character, the State Department should be asked to withhold action.⁷⁷

⁷⁶Memorandum from W.J. Egan to W.A. Gordon, October 3, 1933. Immigration Branch Records (P.A.C.), RG76, Vol. 396, File 563236, pt. 16.

⁷⁷Ibid.

The implications of Egan's memo are apparent. First, it confirms that in at least one case, an appeal from a deportation order on public charge grounds was rejected because the person involved was an alleged Communist. Secondly, it reveals the department's policy of issuing deportation orders, and then suspending proceedings without lifting the order. It also opens the question of whether the authorities had ulterior motives in this practice. Certainly, the communists believed that public charge deportations were held over the heads of immigrant labourers, to curtail their participation in unions or strikes. A handbill issued by the C.L.D.L. in 1933 asserted:

Deportation is the means by which the Bennett government hopes to crush those tens of thousands of European and British foreign-born workers and farmers who resist wage-cuts and unemployment misery....

Deportation is the fate of those who dare protest, who dare organize resistance, who dare strive for united efforts of foreign and native-born workers, who dare give leadership to the workers' movement.....⁷⁸

Whether or not sinister motives were present, the public charge deportations undoubtedly inflicted grave social damage in the immigrant communities. It is impossible to determine how many unemployed workers and their families went without basic necessities because they were afraid to apply for relief. By the same token, it is impossible to calculate how many were resigned to timid submission in the face of miserable wages and working conditions for fear of retaliation by

⁷⁸"UNITY of ALL Workers-Native and Foreign-Born-Against DEPORTATION!" Statement of the National Executive Committee, Canadian Labour Defense League. (handbill, 1933). A.E. Smith Papers, Robert Kenny Collection, Toronto. See also Oscar Ryan, "Deported!" Canadian Labor Defense League pamphlet, 1932. J.S. Woodsworth Memorial Collection, Rare Book Room, Robarts Library, University of Toronto.

by immigration officials. Under these circumstances, who would dare to participate in a strike or labour rally? In his personal account of the depression James Gray wrote of this phenomenon:

The threat of deportation, which suddenly became terribly real for every alien on relief in Western Canada, cast a pall over the Woodyard. The foreign-born, who had once chattered amiably while waiting in lines, sought more and more to melt into the background, say nothing, hear nothing, and escape to the protective coloration of their own communities.⁷⁹

The Canadian Labor Defense League claimed that at least one worker, Dan Malone, was threatened by public charge deportation for radical activities. As Oscar Ryan relates it, Malone was framed by the R.C.M.P. in an attempt to saddle him with the responsibility for a plot to assassinate J.H. Thomas, a British labour leader. The C.L.D.L. immediately organized an official protest, denounced the police station as a "frame-up," and forced the dropping of the assassination conspiracy charge. According to Ryan, federal authorities then attempted to deport Malone for having received relief from the City of Toronto. This was averted only through the efforts of the C.L.D.L. on his behalf.⁸⁰

It is difficult to verify these allegations. Individual case files of public charge deportations have not been retained in the Immigration Branch records. Because of the partisan character of the

⁷⁹James H. Gray, The Winter Years: The Depression on the Prairies, Toronto: MacMillan (1966), p. 131.

⁸⁰Oscar Ryan, op. cit., p. 12. Also, "Against the Deportation of Dan Malone," (leaflet). Toronto: C.L.D.L. (1932), A.E. Smith Papers, Robert Kenny Collection, Toronto.

C.L.D.L., which had a vested interest in whipping up mass indignation by "exposing" the transgressions of the authorities, it would be dangerous to rely totally on its propaganda as a source. However, given the fact that the public charge deportation provisions were apparently used against communists in Winnipeg, the allegations regarding Dan Malone carry an air of credibility.

A further dimension to the deportation question was the deportees' fate once they were repatriated. The C.L.D.L. asserted that many of those deported as radicals to Central and Eastern Europe would face execution at the hands of the "fascist" governments of Germany, Finland, Yugoslavia and Hungary. The depiction of the latter three countries as fascist was a gross overstatement, although they could hardly be termed democracies, in the western sense. Germany, of course, was under Nazi domination after 1933, and it would seem quite conceivable that Hans Kist, who was deported on December 18, 1932, would have been dealt with harshly on his return, if not by the German authorities, then by the brown shirts. According to A.E. Smith, Kist was eventually placed in a concentration camp, tortured by having heavy weights dropped on his legs, and subsequently died.⁸¹ There is, unfortunately, no way of confirming this charge.

The jailing and deportation of communists provided A.E. Smith of the C.L.D.L. with his finest hour. With unflagging energy, Smith

⁸¹A.E. Smith, All My Life, p. 148.

wrote dozens of brochures and letters of protest,⁸² circulated petitions, organized repeal conferences and made personal representations to federal authorities for the release of the communist leaders from Kingston Penitentiary. Couched in extravagant, and often, vituperative language, Smith's writings were undoubtedly considered offensive by the government. Many of his assertions of "class terror" were unsubstantiated. Still, it is difficult to deny his importance in rousing the labour movement to awareness of the many injustices which were then occurring, and in mobilizing a broad base of opposition to the prosecutions and deportations of leftists.

The revelations that, during a prison riot at Kingston, shots had been fired into Tim Buck's cell, fanned the flames of the C.L.D.L. agitations. In demanding the immediate release of the eight communist leaders, Smith obtained over 459,000 signatures during a Canada-wide amnesty drive.⁸³ Another of the C.L.D.L. projects was the issuing of a play "Eight Men Speak," by Oscar Ryan and others. A rather didactic work, the play would have won few awards for dramatic artistry, but it made its point respecting the suppression of radicals in the early 1930s, albeit in a melodramatic way. It was premiered on December 4, 1933, but subsequent performances were banned in Toronto by the Police Commission.⁸⁴

⁸²Bennett Papers (P.A.C.), MG26 K Series F, Volumes 141-146.

⁸³I. Avakumovic, op. cit., p. 90.

⁸⁴Oscar Ryan et al, "Eight Men Speak: A Political Play in Six Acts," (n.d.), Forward, p. 2. Woodsworth Memorial Collection, Rare Book Room, John Robarts Library, University of Toronto.

In November, 1933, a delegation from the C.L.D.L. led by Smith met with the Prime Minister and three of his cabinet colleagues. Smith later gave an account of Bennett's vociferous reply to their demands:

"....There will be no investigation into the shooting. There will be no repeal of Section 98. It is needed on the statute books. And finally (pounding the desk with clenched fist and with face suffused with rage) there will be no release for these men. They will serve every last five minutes of their sentences. That's all there is to be said. Now get out!"⁸⁵

Smith's reward for his agitations was to be charged under the Criminal Code with seditious libel. Not surprisingly, this action was viewed by many in the labour movement as a deliberate attempt to muzzle one of its strongest defenders. At least, this was the reaction of the C.L.D.L. in its pamphlet, "The 'Sedition' of A.E. Smith":

Why was Smith indicted? Essentially he is charged with sedition because he fights Section 98. That's the crux of the matter: if you want to abolish a rabid anti-labor law, if you defend those jailed under it, if you protect their interests, if you say that a Section 98 prisoner was violently attacked, that an attempt was made on his life, if you try to tear the veil from the black crime, then, according to the Bennett government, you are seditious!....⁸⁶

In any case, his defence was in good hands. He was represented by E. J. McMurray, K.C., the former Solicitor General and co-counsel for the four aliens in the 1919 deportation hearings in Winnipeg. Smith was acquitted in March, 1934.⁸⁷

⁸⁵A.E. Smith, op. cit., p. 165.

⁸⁶Oscar Ryan, "The 'Sedition' of A.E. Smith," C.L.D.L. pamphlet (n.d.), A.E. Smith Papers, Robert Kenny Collection.

⁸⁷Avakumovic, op. cit., p. 91.

The tactics of the C.L.D.L. did not endear it to the traditional trade union leadership. The moderate left-leaning All-Canadian Congress of Labour dismissed it in terms as graphic as were employed by the Conservatives:

To this ruffianly crew, most of whose members were brought up in an East European atmosphere of assassination, the initials C.L.D.L., W.U.L., U.L.F.T.A., etc., are but symbols to distinguish the groupings of their dupes. The alphabetical combinations, which can be interchanged as readily as they can be multiplied, fit together in a Russian anagram for the Communist Party of Canada.⁸⁸

Yet while the A.C.C.L. and its chief rival in the mainstream labour movement, the Trades and Labour Congress, were stern opponents of radical agitation, they continued at their annual meetings to pass resolutions urging the repeal of Section 98.⁸⁹

Notwithstanding Smith's vigorous extra-parliamentary crusade and the resolutions of his moderate rivals in the labour movement, it was in Parliament that laws were changed. The Liberals under Mackenzie King had registered a consistent opposition to Section 98 in the debates of the early thirties. In February, 1933, the Liberal leader outlined a wide-ranging program of social policy that included a call for the repeal of this section.⁹⁰ When J.S. Woodsworth introduced his

⁸⁸"The March of Labour," The Canadian Unionist (Organ of All-Canadian Congress of Labour), Vol. 8, No. 5, October, 1934, p. 113.

⁸⁹See "Organized Labor's Programme Presented to Dominion Government," Canadian Congress Journal, Vol. XI, No. 2 (February, 1932), p. 11.

⁹⁰Blair Neatby, William Lyon Mackenzie King, Vol. III 1932-1939, (Toronto: University of Toronto Press, 1976), p. 36.

perennial repeal bill during that month, the Liberals continued their support. In contrast with the events of the previous year, the bill reached second reading and was the subject of a protracted and passionate debate, although few new arguments were advanced. Section 98's Conservative adherents continued to defend it as a bulwark against communism, while the Liberals and Labour representatives saw it as an inherent threat to the free expression of ideas.

There was an interesting revelation in Justice Minister Guthrie's statement that the original parliamentary committee of 1919, from which Section 98 was spawned, had recommended this legislation by a mere majority of one.⁹¹ He also made reference to the voluminous mass of petitions for the repeal of Section 98 he had received from the Canadian Labor Defense League, which he described as "the communist society of Canada operating under a different name." He added:

I can assure the house that in long petitions there does not appear a single Anglo-Saxon or French-Canadian name — nothing but names of foreigners, unpronounceable names for the most part.

While it could hardly be argued that the C.L.D.L. was not closely allied with the communist movement, the Justice Minister failed to address himself to the substance of the C.L.D.L. petitions, to wit, the arrests, and deportations of dozens of persons without consideration of normal standards of justice. Moreover, Guthrie's statement that only foreign names appeared on these petitions was not true, as witnessed by the many Anglo-Saxon names that appeared in the lists found in the Bennett Papers. It was a familiar strategy of branding all

⁹¹Canada. House of Commons Debates, February 14, 1933, p. 2101.

radicals as alien enemies in order to justify the government's anti-communist policy.

Guthrie claimed that, apart from prohibiting the advocacy of force or violence, Section 98's provisions were quite ordinary in their implications. He stated:

The allegation that a man under certain circumstances may be presumed to be guilty by reason of the fact that he attends unlawful meetings or has in his possession unlawful literature is not a novel provision in our criminal law. Such provisions exist in respect to many sections of our criminal code....

The Justice Minister did not, however, specify the sections with similar provisions. He warned, "if ever there was a time in the history of this country when section 98 was justifiable as a part of the criminal law of this country, this is certainly the time," and moved in amendment that the bill be given a six months' hoist.⁹²

Then Liberal Ernest Lapointe rose, and pointed out that in 1930, there was no opposition in the Commons to the repeal of Section 98. He reiterated earlier arguments that adequate provisions for dealing with sedition already existed in the criminal code, and asserted his conviction that the invocation of Section 98 by the government was a mistake.

I am free to confess my belief that always when truth and error are given a fair field, truth ultimately prevails. That is one of the chief reasons for my opposition to this legislation.

Later Agnes MacPhail (southeast Grey) stated that the retention of repressive measures like Section 98 only aided the communists,⁹³

⁹²Ibid., p. 2102, February 14, 1933.

⁹³Ibid., p. 2195, February 14, 1933.

an assertion of many other Liberal and Labour members.

The next day, William Irvine (Wetaskiwin) addressed himself to the amendment. He had some rather astute observations as to the thinking of the advocates of retention.

It appears to me that perhaps one reason why a certain section opposes the repeal of Section 98 is in order that it might be used for political purposes. By inspiring fear they hope to accomplish what they cannot accomplish by applying reason..... Then, another group who want to retain section 98 are those who are afraid. They may have personal cause for fear about which I do not know or their fears may be purely pathological. But that some of them have such fears there can be little or no doubt; and fears have always in the past expressed themselves in obscurantism and persecution..... There is a third type that seem to desire to retain this legislation, namely those who honestly believe that ideas can be and should be put down by force.⁹⁴

Guthrie's amendment came to a vote on February 23 and was sustained in an 89 to 45 division.⁹⁵ This was the last debate on Section 98 in the Bennett years.

In 1932 the Cooperative Commonwealth Federation was created under J.S. Woodsworth's leadership. A coalition of Labour representatives, the left-wing of the former Progressive Party and urban intellectuals, the C.C.F. adopted a wide ranging social program for Canada. Among the policies of the fledgling party was a commitment to the repeal of Section 98 of the Criminal Code. Despite overtures from A.E. Smith and the C.L.D.L. to forge a united front in the repeal effort, Woodsworth was adamantly opposed to any common action with the commun-

⁹⁴ Ibid., February 17, 1933, pp. 2329, 2330.

⁹⁵ Ibid., February 23, 1933, pp. 2414, 2415.

ists. The C.C.F. convention adopted a resolution to send a formal reply to Smith, in which it outlined what it saw as the basic incompatibility of the two groups.

We reiterate that the rights of freedom of speech and assembly be guaranteed to all workers, regardless of political affiliation; that section 98 of the criminal code, which has been used as a weapon of political oppression by a panic-stricken capitalist government must be wiped off the statute books and political prisoners who were imprisoned under it, be released.

But mere repeal of section 98 and release of political prisoners is not enough. An effective guarantee of freedom of speech and assembly involves also amendment of the Immigration Act to prevent the deportation, by an executive department without appeal to the courts of the land, of immigrants who find themselves the victims of economic depression or whose political views are distasteful to the government.

We believe that these ends cannot be achieved except by securing control of the government. We believe in constitutional methods to attain this result. On that point there is a fundamental cleavage between us and the leaders of your organization, who maintain civil strife is inevitable. This policy, in our opinion, would result in the intensification of political oppression. We, therefore, are unable to see that any useful purpose could be served by such joint mass meetings, delegations and demonstrations as you suggest.

We propose to pursue our campaign for repeal of section 98, release of political prisoners, and the prevention of arbitrary deportations, by methods approved and adopted by our organization.⁹⁶

Smith's answer to the C.C.F. telegram was to issue a handbill, "A Call to the Rank and File of the C.C.F.,"⁹⁷ in which he exhorted that party's members to abandon it and join the C.L.D.L. How successful he was in this endeavour is open to question, but the

⁹⁶ Copy of wire sent from the C.C.F. Convention at Regina in July 1933, to the C.L.D.L., C.C.F. Records (P.A.C.) MG27, III C7, Vol. 6

⁹⁷ "A Call to the Rank and File of the C.C.F." (C.L.D.L. pamphlet) September 1933. C.C.F. records (P.A.C.), MG28, IV, Vol. 393.

rather strained exchange underlined the basic incompatibility in approach to social change between the moderate and radical left.

Throughout the period, a leading figure in the repeal movement was F.R. Scott, a McGill University law professor. One of the founding members of the League for Social Reconstruction, itself one of the parent organizations of the C.C.F., Scott wrote many cogent articles in the early 1930s in which he tried to alert Canadians to the dangers inherent in Section 98 and in the Immigration Act. In documenting the very real dangers presented to individual freedoms during the depression, he stated:

The achievement of a full degree of personal liberty must await the conquest of the economic system by the democratic principle. But much could be done immediately to widen the area of freedom of speech in Canada, and liberal minds of all parties should unite in this endeavour. In particular, the repeal of Section 98, the confining of immigration boards to their proper functions, a restriction of police control over owners of halls, a reasonable granting of permission for parades, and the setting aside in every city and town of specified localities for outdoor meetings under police supervision, are essential steps towards regaining our traditional freedom.⁹⁸

Scott's recipe for a relaxed social climate was eminently sensible but it needed political clout to bring it into effect. The only party favouring repeal and with a chance to achieve power was Mackenzie's King's Liberals. Having expressed his opposition to Section 98 in the various debates in the early thirties, King renewed his attack as Canada neared a general election. In a radio broad-

⁹⁸F.R. Scott, "Freedom of Speech in Canada," Papers and Proceedings of the Canadian Political Science Association, Vol. V, Ottawa (May, 1933), pp. 188, 189.

cast on August 2, 1935, he reiterated his party's position:

The Liberal Party believes that under the excuse of the present crisis, the rights of the individual have been violated. Liberalism stands, as always, for the British principle of FREE SPEECH and FREE ASSOCIATION and to this end will repeal Section 98 of the Criminal Code, and end the present practice of arbitrary deportations.

The Liberal Party will give no quarter to Communism in Canada. Those who advocate the overthrow, by force, of our existing institutions, are enemies of society, and should be so regarded. This is no reason, however, why every avenue of redress should not be open to those who have legitimate grievances. Arbitrary and autocratic methods are no substitution for British justice.⁹⁹

It was evident that the best chance for repeal lay with the Liberals.

⁹⁹ Mackenzie King Papers, MG26, J4, Vol. 156, fo. C112114.

Chapter V The Repeal of Section 98

The overwhelming defeat of the Bennett government by Mackenzie King's Liberals in October, 1935, augured well for a renewed parliamentary effort to repeal Section 98. King had promised this in his electoral platform, the "fourteen points." Yet a potential stumbling block remained in the Senate, which had consistently frustrated the Liberals' repeal efforts in the 1920s. Bennett's appointment of 29 senators¹ during his term had reasserted the Conservatives' hegemony in the upper house. The problem facing the government was one of drafting legislation which might hope to receive the support of a majority of Senators.

Justice Minister Ernest Lapointe and his administrative colleagues now addressed themselves to this task. Prior to parliamentary consideration of the new legislation, Lapointe departed for a vacation in Paris. While there, he noted a striking difference in the respective attitudes of Canadians and French people towards communists. He wrote to King:

.....I have declined meeting people, etc., except that I shall have an interview with a distinguished jurist, about unlawful associations, having in mind sect. '98. Here the communists are gentlemen, and their candidates hold meetings

¹Canadian Parliamentary Guide, 1936.

and are treated as other candidates at the present elections. People here cannot understand that any citizen would be prosecuted for a crime just because he holds certain views, however nefarious they might be, if he never translates them into action.²

Lapointe favoured curtailing the heavy-handed provisions of Section 98, but was also obliged to consider the reality of the continued existence of radicalism in Canada. When introduced, the government's bill to amend the criminal code provided for the rescinding of Section 98,³ but it also incorporated a new addition to Section 133, respecting seditious intention. The proposed amendment provided:

Without limiting the generality of the meaning of the expression "seditious intention" everyone shall be presumed to have a seditious intention who publishes, or circulates any writing, printing or document in which it is advocated, or who teaches or advocates, the use, without the authority of law, of force, as a means of accomplishing any governmental change.⁴

The maximum penalty for such offences was twenty years' imprisonment. The new subsection apparently was a reenactment of the provisions of Section 98(1), the net effect being that reference to economic or industrial change had been dropped.

Writing to the Prime Minister on the proposed addition, Deputy Justice Minister W.S. Edwards observed that it might be argued that this change was unnecessary, inasmuch as such offences were already

²Letter of Ernest Lapointe to W.L.M. King, April 14, 1936. W.L.M. King Papers (P.A.C.) Primary Correspondence Series, MG26, J1, Vol. 219, File 188840.

³Canada. House of Commons Debates, June 18, 1936, p. 3897.

⁴Ibid., p. 3905.

provided for in the common law of sedition. He rejected this interpretation, however, and recommended that the change be proceeded with "to make this law perfectly clear on this point."⁵

Edwards' views were echoed by Justice Minister Lapointe in his explanation of the new section 133(4) before the House. Lapointe stated that he personally did not consider the clause to be necessary. However, certain judges had held that, in order to convict, it was necessary to prove the alleged seditious words actually led to a disturbance. The intent, therefore, "was to make it absolutely clear that nobody should be allowed to teach the use of force to bring about change of government in Canada."⁶

Addressing himself to the main part of the bill, the Justice Minister observed that all the political parties except the Conservatives had campaigned with planks advocating the repeal of Section 98. He stated that this was an indication of the broad base of public support for such action. He then proceeded to recount the origins of Section 98 in the "unlawful association" provisions of order-in-council P.C. 2384 of September, 1918. (See above, Chapter I, p. 34). He noted that, while other countries had dispensed with similar measures after the Great War, Canada continued such powers in the Criminal Code amendments of the following year.

Lapointe took issue with those who claimed that the report of

⁵Memorandum of W.S. Edwards to W.L.M. King, June 11, 1936. W.L.M. King Papers (P.A.C.) MG26 J4, Vol. 156, fos. C112105, C112106.

⁶House of Commons Debates, June 19, p. 3901.

the 1919 Committee on Sedition and Seditious Propaganda, on which Section 98 was based, was passed unanimously. He quoted from the dissenting remarks of the Hon. Charles Murphy, who at the time had drawn attention to a "very sharp division of opinion" in the committee. In spite of Murphy's and others' objections, Section 98 had been passed.

Countering previous claims by Conservatives that the proponents of repeal represented disorderly elements, Lapointe drew attention to the position of the craft-unionist Trades and Labour Congress of Canada, which had passed resolutions favouring repeal at each of its annual meetings. He said that a mainstay in this effort was Tom Moore, former president of the Congress, and a person enjoying "the confidence of everybody in Canada."⁷ Lapointe declared his faith in the capacity of Canadian labourers to choose against communism and in favour of free institutions, and added that Section 98 had never prevented anyone from becoming a communist.

Respecting the specific implications of Section 98, the Justice Minister drew on the wisdom of Macaulay:

To punish a man because he has committed a crime, or because he is believed, though unjustly, to have committed a crime, is not persecution. To punish a man because we infer from the nature of some doctrine which he holds, or from the conduct of other persons, who hold the same doctrines with him, that he will commit a crime, is persecution, and is, in every case, foolish and wicked.⁸

In this vein, Lapointe drew attention to the presumption of guilt in-

⁷Ibid., p. 3898.

⁸Baron Macaulay, Essays on Hallam, quoted by Ernest Lapointe in Ibid., p. 3900.

herent in the provisions of Section 98, to wit, in the attending of a meeting of an unlawful association or in importing books containing alleged seditious material. He averred that this ran counter to the whole British legal tradition and closed with the following plea:

.....British justice, which holds every man innocent until he is proved guilty, is the surest safeguard against excesses, whether coming from communists or fascists, or from an arbitrary dictatorship, whether from the left or from the right. We submit this legislation, Mr. Speaker, not because we sympathize with the revolutionaries, but because we love and desire to protect the law abiding and truth seeking citizens of this country.

Lapointe essentially was not introducing any new arguments to the debate. He evidently was relying on the compromise of inserting Section 133(4) to win over the Senate Conservatives.

The Justice Minister was followed by J.S. Woodsworth, who congratulated the government on its proposed repeal of Section 98. He stated:

I think perhaps I most admire the Liberals when they are pleading for political liberty; on those occasions they show themselves to the very best advantage.⁹

Woodsworth drew attention to *Rex. v. Buck et al*, the outstanding test case under the section. While careful to draw a distinction between his own position and that of the Communists, the C.C.F. leader said he did not believe in putting his political opponents in jail. He

⁹Ibid.

noted that the Toronto communists were not accused of any overt act of violence, but merely of belonging to a particular organization.

Woodsworth related another incident to demonstrate further the implications of Section 98. In early 1934, the Montreal police raided a small book shop under the proprietorship of an art student, named Feigelman. Books, magazines and newspapers were seized under authority of Section 98 of the Criminal Code. Feigelman was charged under the same section, and, while he pleaded not guilty, he was expelled from the art school he was attending. At the trial, Mr. Justice Loranger advised the jury that, in accordance with the Judgement of the Ontario Court of Appeal in the case of *Rex v Buck et al*, possession of communistic literature contravened the provisions of Section 98. Accordingly, the defendant was found guilty and sentenced to a month in jail.¹⁰ Hence, mere possession of literature, deemed to be subversive, had resulted in a conviction under that section.

But while Woodsworth commended the Liberals on their repeal of Section 98, he took issue with the proposed Section 133(4), observing, "what the Minister gives with one hand he partly takes away with the other." He noted that Lapointe had previously sponsored an unqualified repeal of Section 98. At that time, the Justice Minister had justified such action on grounds that provisions sufficient to deal with sedition already existed in the Criminal Code. Woodsworth stated that the proposed amendment would outlaw much of the literature in Canadian libraries. He said that the provisions prohibiting the circulation of

¹⁰ Ibid.

documents advocating the use of force to effect governmental change would effectively render illegal such works as Macaulay's History of England, which was an attempt to justify the 1688 revolution. He therefore called on Lapointe to reconsider the addition of the new clause.

Then, C.H. Cahan (St. Lawrence - St. George) rose for the Conservatives. As the original drafter of Order-in-Council P.C. 2384 in September, 1918, he related the events leading up to its enactment. At that time, Cahan stated, hundreds of thousands of dollars were being channelled through Finland and from Germany via the United States for the advocacy in Canada of "sedition of the worst kind."¹¹ He said that he had discovered thirty or forty printing presses turning out seditious documents for distribution among the non-Anglo-Saxon population of Western Canada. For this reason, the order-in-council had been passed.

Cahan allowed that legitimate objections could be made to certain procedures set out in Section 98, such as the provision for seizure of property on order of the R.C.M.P. But he asserted that the continuation of democratic institutions was dependent on "the prohibition of evil attempts to overturn any government in this country." Respecting the proposed Section 133(4), Cahan alleged that this addition was a "camouflage" for the complete repeal of Section 98. He contended that the provisions in the latter were needed not only to prohibit the advocacy of force, but the use of force as well.

Opposition leader R.B. Bennett also spoke on the question, adopting

¹¹Ibid., p. 3909.

his stock position that "the maintenance of national liberty is dependent upon the restraint of individual liberty."¹² Sufficient restraints, he argued, did not exist apart from Section 98 of the Criminal Code. In a clause-by-clause analysis of the section's provisions, Bennett stated he was amenable to certain changes. He was personally opposed to sub-section 2, respecting the seizure and confiscation of property by the R.C.M.P., which he described as an "extraordinary section." But he believed that the remainder of Section 98 was necessary to serve as a deterrent to the growth of unlawful associations as defined in the section.

The general tenor of Bennett's remarks was moderate, in striking contrast with the imperious attitude he had assumed as Prime Minister when similar legislation was presented in 1932. Bennett said that if he were drafting Section 98, he would not have set such a high maximum penalty of twenty years. But he noted that its application was left up to the discretion of the individual judge, and felt that no judge would impose an excessive sentence. Despite his opposition to the bill, Bennett said he rejected the argument, "that prevails in some quarters," that the Senate could again block its passage. He said that history had demonstrated that after the commons had acted on a measure five or six times, or a government elected with a large majority had passed certain legislation, no upper chamber had ever acted contrary to the expressed wishes of the elected house.

¹²Ibid., p. 3917.

.....There has always been in second chambers that recognition, which is sometimes designated by harsh critics, by another name, that recognition of the will of the people having asserted itself in a particular way, and the willingness to follow the pathway blazed by the commons.

The former prime minister, therefore, wished only to ensure that there was a division on second reading, in order to record his opposition in principle. The section rescinding Section 98 was approved the same day, on division.¹³

The House then considered the proposed addition to Section 133, respecting seditious intention. On Lapointe's suggestion, it agreed to add the words "within Canada" to limit its application to only those persons advocating the use of force to bring about governmental change within this country. This change had earlier been recommended by J.S. Woodsworth, and was approved.¹⁴

When it came to consider the entire Section 133(4), however, A.A. Heaps raised two points of interpretation. He asked Lapointe to tell the House what was intended by the words "everyone shall be presumed to have a seditious intention." He said that lawyers reading it were of the opinion that it could be interpreted widely. Heaps also asked Lapointe to clarify the reference to advocacy of force in the section.¹⁵

In reply, the Justice Minister stated that the new subsection made it incumbent on the prosecution to prove that an overt act of

¹³Ibid., p. 3929.

¹⁴Ibid., p. 3931.

¹⁵Ibid.

publishing or circulating seditious documents or of inciting the use of force through words had occurred. That having been proved, seditious intention was presumed. Lapointe said he felt this placed "a different complexion" on Heaps' objection. As for Heaps' question respecting the legal interpretation of "force," Lapointe said that term applied only to physical force. Section 133(4) was then agreed to on division, and the entire bill was given third reading the same day.¹⁶

The Criminal Code amendment bill was now sent to the Senate. In explaining the bill on June 20, Senator Raoul Dandurand read a prepared statement nearly identical to the speech Lapointe had delivered in the lower chamber, replete with quotations from Macaulay and others.¹⁷

Responding for the Opposition, Arthur Meighen expressed his own "sense of insult and resentment" that Lapointe should have addressed such a memorandum to the upper house. He rejected its stated contention that, under Section 98, a man was liable to arrest simply because he was a communist or harboured other political beliefs. The former Conservative leader noted that while the bill provided for the repeal of that section, it also tacked on a new subsection which suggested that the government's motives in its apparently contradictory approach were less than honest:

To certain persons, some of them well-intentioned, but

¹⁶Ibid., p. 3932.

¹⁷Senate Debates, June 20, 1936, pp. 616-618.

principally to the Communists, whose votes it was necessary to secure by a promise of the repeal of Section 98, the Government by this Bill gives the repeal with one hand, and from them takes it back with the other.¹⁸

Meighen objected to the substitution because, in his view, it made the law more general and less clear, with the net result that it was thrown back on the common law. He did not, however, believe that it made the law appreciably weaker. In his view, Section 98 had served mainly to codify the law of sedition, of which he quoted a definition:

Sedition, whether by words spoken or written, or by conduct, is a misdemeanor indictable at common law, punishable by fine and imprisonment. It embraces all those practices, whether by word, deed, or writing, which fall short of high treason, but directly tend to have for their object to excite discontent or dissatisfaction; to excite illwill between different classes of the King's subjects; to create public disturbance, or to lead to civil war; to bring into hatred or contempt the sovereign or the government, the laws or constitution of the realm, and generally all endeavors to promote public disorder.¹⁹

He drew a distinction between the holding of certain opinions and the expression of opinions "to the detriment of the state."

A body is formed, and it professes a certain purpose which it is determined to effect, and the core and centre of that purpose is to overthrow the State by force. Does any honourable member suggest that it is merely the holding of an opinion to be a member of that organization, which has a definite active purpose, professed and acceded to by all its members.²⁰

¹⁸ Ibid., p. 619.

¹⁹ Archbold, Criminal Pleading, Evidence and Practice (25th edition), p. 1070, quoted by Arthur Meighen, in Ibid., p. 620.

²⁰ Ibid., p. 619.

Meighen said that he did not dispute that the Liberals, who had campaigned on the issue, had a mandate to repeal Section 98. But he suggested that the government's avowed commitment to this was "nothing but a roaring farce, nothing but a resounding fake." He demonstrated this with his comments on the proposed addition to Section 133, respecting seditious intention. To Meighen, the new subsection 4 incorporated a presumption of guilt at least as broad as that provided for under Section 98. He did not accept Lapointe's contention that the new provisions prohibiting the advocacy of force to effect governmental change were any less sweeping in implication than the clauses in Section 98 pertaining to industrial or economic changes. Meighen regarded the two as synonymous. Moreover, he contended, the penalty for such a "seditious intention" was set at twenty years, the same as the maximum under Section 98. Hence, the "repeal" was illusory. He stated:

I do not think there is, or ever was, a good citizen in any part of Canada who, after studying section 98 in its essence, would have any objection to it. The denunciation of it and the promise to repeal were only means to an end — an electoral end — and now we are given this repeal and this restoration, which are perhaps as fine a piece of political comedy as this country has seen.

Meighen was supported by Senator J.T. Haig in his argument that the effect of the repeal was undone by the addition of Section 133(4). Haig challenged Senator Dandurand to indicate what the authorities could have done under Section 98 that they could not do under the proposed Section 133. He was followed by Senator W.A. Gordon, the former Immigration Minister, who revealed why he intended to vote for the government's bill:

.....I believe the Minister of Justice inserted clause 4 because he knew that without it no honest senator would vote for the repeal of section 98. That consideration justifies the vote I shall give. If it had not been for this clause 4, which amends section 133 of the Code, I should have voted against the repeal of section 98, even if I were the only senator to do so.²¹

Evidently Gordon was not the only senator so influenced. Senator Coté suggested that the new clause would actually make it easier for the authorities to secure criminal prosecutions for sedition. He observed that Section 98 made it incumbent on the courts to prove that the actions of the accused constituted an intention to bring about governmental changes by force. But under the new subsection, the accused was assumed to be guilty if he published or circulated any writing advocating the use of force to this end. Coté stated:

.....I am perfectly satisfied with this amendment. It goes farther than section 98 and justifies me in voting for the repeal of that section.

The Senate then passed the bill on third reading, and Section 98 of the Criminal Code passed into history.²²

In the country, reaction to the repeal was mixed. For the most part, Canada's major newspapers greeted the legislation with either hostility or mild approval. The conservative Toronto Globe, for example, argued that the Communists' position as the chief advocates of repeal sustained its belief that Section 98 had provided a needed curb to the activities of that movement. Its editors took small comfort in the passage of the new Section 133(3).

²¹Ibid., p. 622.

²²Ibid.

The amendment to Section 133 may protect governments against the use and advocacy of force. Where is protection found for industry, which in recent years has become more and more subject to rackets suggestive of Red Methods?²³

Notwithstanding the arguments of the Toronto Globe, however, there seemed to be evidence of an emerging consensus among moderate newspapers that the repeal was long overdue. The Winnipeg Tribune predicted that there would be "no weeping and wailing on the part of any considerable section of the Canadian people." Its position stemmed not so much from a civil liberties standpoint, however, as a belief that Section 98 was redundant and simply provided agitators with a political issue.

Section 98 never did have the importance in any respect that has been attributed to it. Neither from the standpoint of keeping under control advocacy of political revolution in Canada, nor as an invasion of the rights of the citizens, nor was it nearly so important as it has been represented. There are other sections of the criminal code which go quite as far as Section 98 in so-called invasion of the rights of the citizen.²⁴

In view of the widely divergent opinions expressed in Parliament and in the press vis a vis the implications of the new Section 133(4), it is important to ascertain the net legal consequence of the repeal of Section 98. Some Senate Conservatives had gone so far as to suggest that the new amendment reenacted all the powers of the former section, and even made convictions easier to obtain. Was Section 133(4) really just a rehash of Section 98?

At the time of the repeal, the Deputy Minister of Justice, W.S.

²³Toronto Globe, June 20, 1936, p. 4.

²⁴Winnipeg Evening Tribune, June 22, 1936, p. 9.

Edwards, prepared for the Prime Minister a clause-by-clause analysis of Section 98 in comparison with its replacement.²⁵ These were his principal findings:

(1) Section 98(1), respecting unlawful associations, had no similar counterpart in Section 133(4), although such an organization "might be evidence of a seditious conspiracy with respect to any governmental change advocated by use of unlawful force under section 134...."

(2) Subsections (2) and (6) of Section 98, providing for the seizure without warrant and confiscation of documents of individuals or unlawful associations by the R.C.M.P., had no corresponding provision in Section 133(4). Under the new provisions, seizures could be made only under the authority of a search warrant.

(3) There was no provision in Section 133(4) similar to Section 98(4), which had made it prima facie evidence of membership in an unlawful association if a person were proved to have attended meetings of such an association or spoken publicly in its favour or distributed literature for it.

(4) Section 133(4) corresponded primarily to Section 98(8), respecting the printing and circulating of documents in which the use of force to effect governmental, industrial or economic change is advocated. The main difference was that the maximum penalty for similar offences was reduced to two years' imprisonment by the government's bill. Moreover, "this amendment does not apply to the defence of the use of force or the threats of injury as a means of accomplishing any governmental, industrial or economic change, nor does the proposed amendment apply in any way to industrial or economic change."

While others such as J.S. Woodsworth might disagree with Edwards' opinion as to how Section 133(4) was likely to be interpreted, it is fairly clear that, even with the enactment of that clause, the repeal of Section 98 was a meaningful legislative reform. The Deputy Minister's statements respecting the scope of the amendment can be assumed to be

²⁵Memorandum of W.S. Edwards to W.L.M. King, June 12, 1936. W.L.M. King Papers (P.A.C.) MG26, Vol. 156, fos. C112119-C112121.

representative of government policy. As has been indicated earlier, dangers to civil liberties often inhere not so much in the law itself, as in the way the law is pursued by the authorities. In this respect, Woodsworth's stated concern that the reference to the advocacy of force to effect governmental change in Section 133(4) could be expanded to encompass economic and industrial changes, appears not to have been substantial.

Notwithstanding statements of Meighen and others to the effect that the net result was negligible, it may be seen that most of the objectionable features of Section 98 were removed by the government's bill. Such extraordinary clauses as those empowering the police to seize and confiscate property without a warrant were happily taken off the statute books. Also eliminated was the provision in Section 98 making it the duty of all federal employees to seize alleged seditious documents and send them to the R.C.M.P. This unfortunate section had created the potential for a "police bureaucracy" and was vaguely totalitarian in its implications.

As for the new Section 133(4), it is not clear why this clause was enacted, but a logical explanation would seem to be that Lapointe and King intended it to be a salve to appease the Conservatives in the Senate. This was implied by Lapointe's own statement to the effect that the new section was not necessary. Possibly, too, they were somewhat alarmed at the resurgence of communist activity in the 1930s. While sincerely favouring the repeal of Section 98, they were not prepared to go all the way towards relaxing restrictions at a time when economic woes were still present and industrial discord had not yet

subsided. In this respect, the situation in 1936 was markedly different from that in the late 1920s, when the King government had been prepared to endorse a complete repeal. King's and Lapointe's sponsorship of the repeal of Section 98 may therefore be regarded as an important contribution towards the reassertion of unhindered rights of free speech and association in Canada.

Conclusion

The repeal of Section 98 closed the book on one of the most controversial pieces of legislation in Canadian history. Few parliamentary measures have engendered such protracted and passionate discussion; none has symbolized more completely a period of ideological conflict in this country. In a sense, the repeal marked the end of an era as Section 98 was the last of the 1919 sedition and deportation amendments to remain in effect. It could not really be called an era of reaction, as the King interlude of government in the twenties saw an absence of deportations and prosecutions of leftists. Yet, the continued refusal of the Senate Conservatives to pass Lapointe's repeal bills on five successive occasions cast a shadow over the hopes of civil libertarians that Canada could take the step of a mature democracy in reaffirming the right of all citizens to express their political views, however unpopular to the majority. The Senate Conservatives' obstruction of the will of the popularly elected House of Commons paved the way for the reapplication of the measures enacted in 1919 in the early thirties. Only the overwhelming nature of Bennett's defeat in 1935 and, perhaps, King's creation of the new Section 133 (4), that mitigated the overall effect of the repeal, had finally persuaded the Senate majority to relent.

The experience of the "iron heel" in the early thirties, marked

by harrassment, prosecutions and summary deportations of leftists, demonstrated the inherent danger in maintaining such legislation as Section 98 on the statute books. While charges were apparently laid under this section in relatively few cases, the conviction of Tim Buck and the other Communist leaders set the stage for a whole series of actions against this movement. In the same way, only a minority of the deportations of communists were undertaken under authority of Section 41 of the Immigration Act. Most of the others had been convicted under the Criminal Code for relatively minor offences such as unlawful assembly, as a prelude to their deportation. Less well documented, but of possibly equal significance was the use of public charge restrictions in the Immigration Act as a lever against radicalism. At the same time the well-publicized deportation cases of Arvo Vaara, Dan Chomicki and others under Section 41, like the Buck prosecution under Section 98, established a precedent upon which the authorities could act against militants with vigour.

The respective performances of the major parties in the sundry debates on Section 98 and corresponding deportation legislation demonstrated a basic philosophic difference between the Unionist and Bennett Conservatives and the Laurier/King Liberals. Deriving their mandate from the privileged and most conservative sectors of society, the Conservatives showed a readiness to blame all social discord on the agitation of radicals and aliens and took extreme measures to hold it in check. The Laurier and Mackenzie King Liberals, on the other hand, represented a diverse constituency that included moderate elements of the working class. While King's record in social legis-

lation was far exceeded by his rhetoric, his performance in civil liberties issues yielded concrete results. Before his assumption of the Liberal leadership in August, 1919, his party had opposed the recommendations of the Committee on Sedition and Seditious Propaganda, which were legislated in essence as Section 98 of the Criminal Code. Later, King's government rescinded both the amendments made to Section 41 of the Immigration Act in 1919. These included the deportation clause respecting British subjects and the earlier clause pertaining to the deportation of persons believing in or advocating the overthrow of constituted authority. The Liberals had made many similar attempts to abolish Section 98 only to be frustrated by the Senate. The eventual repeal in 1936 was only the final battle in a process the Liberals had begun ten years earlier.

J.S. Woodsworth's biographers have made much of what they perceived to be his and A.A. Heaps' role in extorting a promise from King in 1926 to support the repeal of Section 98. This interpretation probably exaggerates Woodsworth's influence. Undoubtedly he served as a catalyst in 1926, but his favoured position of holding the balance of power lasted only a few months. Subsequent repeal efforts by Lapointe reflected the return to majority government in the 1926 dominion election, and the Liberals' natural propensity to support civil liberties' legislation. Their support had been tempered before 1925 by their lack of a legislative majority and the proximity in time to the Winnipeg General Strike.

It is much more difficult to assess the contribution of A.E. Smith. Operating outside the traditional political context, he was

evidently effective in keeping the issue of repeal before the public. Militant fringe groups tend to be self-defeating in usually over-reacting to perceived social injustice. But in the context of the depression, with many of his fellow communists in jail, and dozens more facing summary deportation, Smith's passionate statements seemed uniquely in tune with the situation. His activities obviously touched some sensitive nerves, as the Conservatives had him tried for sedition in 1934, but they succeeded only in making a martyr of him. His subsequent acquittal may have marked a turning point in the authorities' anti-communist campaign, as the numbers of deportations and prosecutions dropped dramatically thereafter. Whatever its ultimate consequences, Smith's crusade in the early thirties was a testament to his great personal courage.

If the Liberal Party was chiefly responsible for the eventual removal of Section 98, it might also be stated that its performance vis a vis deportation legislation was somewhat less inspiring. The Liberals had, after all, authored the original wording of Section 41 of the Immigration Act, a rather stringent clause, in 1910. In 1919 they had raised little, if any, opposition to the passage of the two amendments to Section 41, although they may have been taken off guard by Calder's surprise legislation of June 6 of that year. Finally, despite their removal of both amendments in 1928, the Liberals did not rescind the original Section 41 until their general overhaul of the Immigration Act in 1952. That Act, passed at the height of the Cold War, created new prohibited classes far more encompassing than had existed before, and gave

greater discretionary authority to immigration officials,¹ a disturbing development.

What was demonstrated by the administration of deportation regulations in the 1919 to 1936 period was the extent to which immigration officials were influenced by the tone of the administrations they served. Despite the well-documented, anti-radical zealotry of officers such as Thomas Gelley and F.C. Blair in the crisis periods of the Red Scare and the depression, there is no evidence to suggest that they followed a similar course during King's terms of office in the 1920s. It is true that King did not have to contend with a polarized socio-political situation on a par with 1919 and the early thirties. Equally apparent, however, was his government's unwillingness to provoke a confrontation with the labour movement, even with its more radical elements. In this respect, the administration of the law was at least as important as the law itself, in terms of overall impact.

The basic problem with deportation law and immigration regulations generally, and it is endemic not only to the period in question, has been a failure of Canadian governments to accord immigrants the same principles of justice enjoyed by other citizens. This is, of course, not a uniquely Canadian phenomenon, as is noted by a current legal authority:

Traditional international law places no restrictions upon the right of any state to exclude or expel aliens and to provide whatever machinery it deems necessary for exercising this prerogative. Immigration has accordingly been

¹ "An Act Respecting Immigration," Statutes of Canada, 1952.

viewed as a privilege to be bestowed or withheld as the host state chooses, and in most countries, procedural safeguards for the immigrant have been slow to emerge.²

In support of this statement the author cites the 1932 judgement rendered by the Supreme Court in the deportation cases of Arvo Vaara et al, who were surreptitiously whisked away to Halifax to face Boards of Inquiry.³ This episode demonstrated just how far immigration administration was removed from standard principles of common law. One recalls the statement of Board of Inquiry Chairman R.M. Noble during the post-Winnipeg General Strike hearings to the effect that the proceedings were not bound by ordinary judicial procedures.

By the same token, the anti-sedition measures enacted in 1919 represented a radical departure from many long-established principles of justice. Yet the polarized context in which they were formulated should not be understated. The most recent literature on the Winnipeg General Strike has stressed the revolutionary nature of the Socialist Party of Canada's program in explaining the reaction of members of the Borden government in 1919.⁴ Certainly the radical resolutions of the SPC-dominated Western Labour Conference of March, 1919, were hardly calculated to reassure Dominion authorities already apprehensive of the potential for revolution in Western Canada. Ross McCormack has noted:

²John Hucker, "Immigration, Natural Justice and the Bill of Rights," Osgood Hall Law Journal, Vol. 13, No. 3 (1975) pp. 655-656.

³See above, Chapter IV, p. 135n.

⁴See A. Ross McCormack, Reformers, Rebels and Revolutionaries (Toronto: University of Toronto Press, 1977), pp. 53-76 and David Jay Bercuson, Fools and Wise Men: The Rise and Fall of the One Big Union (McGraw-Hill Ryerson Ltd., 1978), pp. 47-48.

To perceive a conspiracy in the campaign to "pack" the Calgary Conference hardly requires paranoia. Revolutionaries persistently proclaimed their intention to destroy industrial capitalism and by preparing to stop them, the federal government was only taking them at their word.⁵

It can hardly be denied that the authorities exploited anti-alien sentiment as part of their anti-revolutionary strategy. This was demonstrated in the arrest and attempted deportation in 1919 of the five Winnipeg aliens, none of whom had been directly involved with the general strike. At that time, the nativist reaction was perhaps most notable among certain sectors of the working class, particularly unemployed returned soldiers. They vented their anger, not against the powerful economic interests deserving of their wrath, but towards aliens whose greatest transgressions were to hold jobs, however low-paying. This regrettable division in working class ranks was fully exploited by the Committee of One Thousand, which, through its vicious attacks on the alien in The Citizen, succeeded in whipping up xenophobic prejudice.

Yet, the sheer vehemence of the authorities' reaction could not be explained solely in terms of economic interest. Their ideology, and that of the Canadian middle classes in general, embraced not merely an economic system but an entire set of social and cultural values that they saw as "given" in this society. Undoubtedly, they stood to gain by the suppression of the Winnipeg General Strike. In the process of defeating insurgent radicalism, they succeeded in reasserting the employers' dominance in labour relations.⁶ But, from a Conservative's point of view, the preservation of the existing social order

⁵McCormack, op. cit., pp. 163-164.

⁶See Bercuson, Confrontation at Winnipeg, pp. 184-185.

was essential to the prosperity of the nation. If social equilibrium could be maintained, then all classes would prosper from their astute management of the economy.

To a considerable degree, the extent of the conservative reaction could be explained in terms of the unique development of the labour movement in Western Canada. The late industrialization of that area, coupled with the lack of an indigenous labour tradition, had impeded the early development of a working class consciousness. When ideologies appeared they were imported, and radical, the chief rivals being European Marxism and British Trade Unionism. In the first instance, the revolutionary nature of Marxism-Leninism naturally was regarded as subversive, but even British labourism was received suspiciously as an alien force, as evidenced by the June 6, 1919 deportation amendment directed at the British strike leaders. Having limited terms of reference with which to assess the situation, the dominant conservative forces over-reacted. The result was perhaps not surprising, given the hysteria that was current in 1919.

It would be a mistake to equate the Unionist government's actions with the cynical manipulation that characterized Attorney General Palmer's role in the American Red Scare. The major historians of that event concluded that Palmer intended the red raids and deportations to provide a springboard for his presidential aspirations.⁷ There is no evidence, however, to suggest that Arthur Meighen, the heir apparent

⁷See Robert Murray, Red Scare (Minneapolis: University of Minnesota Press 1955) and Stanley Coben, "A Study in Nativism: The American Red Scare of 1919-1920," Political Science Quarterly, Vol. 79, No. 1 (March, 1964), pp. 52-75.

to the Canadian prime ministership, in any way attempted to use his role in the Winnipeg General Strike to similar ends. Meighen sincerely believed that a revolutionary situation existed in Winnipeg in 1919. Over thirty-five years after that event, he wrote to Eugene Forsey:

I wish you had been with us when Senator Robertson and I were out on our mission to Winnipeg in 1919. I do not believe you could have escaped the conviction which that visit brought upon both of us. Winnipeg was like a city besieged.⁸

Section 98 and related amendments to the Immigration Act were created by rational men pushed to ideological limits. Few would argue that the current socio-economic situation portends a return to the heavy-handed deportations and prosecutions of 1918-20 and the early thirties. Yet the Canadian experience with Section 98 had demonstrated the inherent danger in the continuation of such statutory powers, even if they find no immediate application. For over a decade after the Winnipeg General Strike, no prosecutions were pursued under Section 98, but in the early thirties the Bennett government revived this section and related deportation measures in a concerted drive against radicals and aliens. In light of recent immigration legislation, there is a demonstrable need for continued vigilance by civil libertarians in deportation cases.

⁸ Letter of Arthur Meighen to Eugene Forsey, August 10, 1955. Eugene Forsey Papers (PAC), Manuscript Group 30, D84, Volume 4.

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Appendix A: Unlawful Associations

P.C. 2384—September 25, 1918—His Excellency the Governor General in Council, on recommendation of the Minister of Justice, and under the powers conferred by the WAR MEASURES ACT, 1914, or otherwise existing in that behalf, is pleased to sanction and doth hereby sanction the following regulations:—

1. In and for the purposes of these regulations, or of any attending or further regulations relating to the matters herein provided for, unless there be something repugnant in the subject matter or context
 - (a) "Minister" means the Minister of Justice, and includes the Deputy Minister of Justice.
 - (b) Where it is provided that any offence shall be punishable by fine and imprisonment it shall be competent to the court adjudging the punishment to impose either fine and imprisonment or both fine and imprisonment within the limits specified according to the discretion of the convicting magistrate.
 - (c) The provisions of The Interpretation Act, Revised Statutes of Canada, 1906, Chapter 1, shall apply.

2. The following associations, organizations, societies or groups are hereby declared to be and shall while Canada is engaged in war be deemed to be unlawful associations, viz:—
 - (a) The Industrial Workers of the World;
The Russian Social Democratic Party;
The Russian Revolutionary Group;
The Russian Social Revolutionists;
The Russian Workers Union;
The Ukrainian Revolutionary Group;
The Ukrainian Social Democratic Party;
The Social Democratic Party;
The Social Labour Party;
Group of Social Democrats of Bolsheviki;
Group of Social Democrats of Anarchists;
The Workers International Industrial Union;
Chinese Nationalist League;
Chinese Labour Association;
 - (b) Any association, organization, society or corporation, one of whose purposes or professed purposes is to bring about any governmental, political, social, industrial, or economic

change within Canada by the use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, or physical injury to person or property or threats of such injury in order to accomplish such change or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend while Canada is engaged in war;

- (c) Any association which the Governor in Council by notice published in the Canada Gazette declares to be an unlawful association or within the description of the last preceding paragraph.
3. Any person who, while in Canada is engaged in war, shall act, or profess to act as an officer of any such unlawful association, or who shall sell, speak, write or publish anything, as the representative or professed representative of any such unlawful association or become or continue to be a member thereof, or wear, carry or cause to be displayed upon or about his person or elsewhere, any badge, insignia, emblem, banner, motto, pennant, card, or other device whatsoever, indicating or intended to show or suggest that he is a member of or in anywise associated with any such unlawful association, or who shall contribute anything as dues, or otherwise to it or to any one for it, or who shall solicit subscriptions or contributions therefor, shall be guilty of an offence against these regulations, punishable by imprisonment for not less than one year and not more than five years.
 4. In any prosecution under this Act, if it be proved that the person charged has at any time since the beginning of the present war been a member of an unlawful association, it shall be presumed in the absence of proof to the contrary that he was and continued to be a member thereof at all times material to the case; and if it be proved that the person charged since the beginning of the war repeatedly:
 - (a) attended meetings of an unlawful association; or
 - (b) spoke publicly in advocacy of an unlawful association; or
 - (c) distributed literature of an unlawful association it shall be presumed in the absence of proof to the contrary that he is a member of such unlawful association.
 5. Where in any prosecution any question of unlawful intent or purpose is in issue the fact that the accused is a member of an unlawful association which practises, advocates, or incites with that intent or purpose shall be relevant to the issue.
 6. Any owner, lessee, agent, or superintendent of any building, room, premises or place, who while Canada is engaged in war, knowingly permits therein any meeting of an unlawful association, or of any

during the present war at which the proceedings or any part thereof are conducted in the language or any of the languages of any country or portion of any country with which Canada is at war, or in the language or any of the languages of Russia, Ukraine or Finland, and any person wilfully attending or taking part in any meeting prohibited as aforesaid by this section shall be guilty of an offence against these regulations punishable by a fine of not more than \$5,000 and imprisonment for not more than five years, and if found committing such offence may be apprehended without warrant by any peace officer, police officer or constable and taken before any magistrate having jurisdiction to be dealt with according to law.

10. Any person who during the present war wilfully attends or takes part in any meeting or assemblage of persons
 - (a) At which the doctrines or propaganda of an unlawful association are advocated or defended; or
 - (b) At which false reports or statements are made which may interfere, or tend to interfere with the operation or success of the military or naval forces of Canada or the Empire or its Allies, or which may cause, or incite or tend to cause or incite sedition, disloyalty, insubordination, mutiny or refusal of duty in the military or naval forces of Canada, or obstruct or interfere with the recruiting or enlistment services of Canada or whereby injury or mischief is likely to be occasioned to any public interest; or
 - (c) At which any seditious, disloyal, profane, scurrilous or abusive language is uttered as to the established form of government of Canada or as to the military or naval forces or flags of Canada or of the Empire of its Allies or the uniform of the military or naval forces of Canada or of the Empire or its Allies; or
 - (d) At which any language is uttered tending to bring the established form of government of Canada or her military or naval forces or the flags of Canada or of the Empire or its Allies into contempt, scorn, contumely or disrepute; or
 - (e) At which any language is uttered which may tend to incite, provoke or encourage resistance to Canada or the Empire or its Allies, or to promote the cause of its or their enemies, or which may tend to urge, incite or encourage any curtailment of production in Canada of any things or products necessary or essential to the prosecution of the war; or
 - (f) At which any language is uttered which may tend to cause disaffection to His Majesty or to prejudice the relations of His Majesty with any foreign state, or to assist or encourage His Majesty's enemies or otherwise prevent, embarrass or hinder the successful prosecution of any war in which Canada is engaged; or
 - (g) Who by any act supports or favours the cause of any country with

which Canada is at war or opposes the cause for which Canada is at war; shall be guilty of an offence against these regulations punishable by imprisonment for not more than five years and not less than one year.

11. (1) If any judge of any superior or country court, police or stipendiary magistrate is satisfied by information on oath that there is reasonable ground for suspecting that any contravention of these regulations has been, or is about to be committed, he may issue a warrant under his hand authorizing any peace officer, police officer or constable, with such assistance as he may require, to enter at any time any premises or place mentioned in the warrant, if necessary, by force, and to search such premises or place and every person found therein, and to seize and carry away any books, periodicals, pamphlets, pictures, papers, circulars, cards, letters, writings, prints, handbills, posters, publications or documents which are found on or in such premises or place, or in the possession of any person therein in contravention of these regulations and the same when so seized and carried away may be forfeited to His Majesty.
12. The punishments and penalties provided by these regulations may be enforced or recovered by indictment, or upon summary conviction in the manner prescribed by Part XV of the Criminal Code, before any judge or a superior or county court, or any police or stipendiary magistrate, or before two justices of the peace, or any magistrate having the authority of two justices of the peace.
13. Where by these regulations it is provided that any property may be forfeited to His Majesty, the forfeiture may be adjudged or declared by any judge of a superior or county court, or by any police or stipendiary magistrate, or by any magistrate having the authority of two justices of the peace, in a summary manner; and by the procedure provided by Part XV of the Criminal Code in so far as applicable or subject to such adaptations as may be necessary to meet the circumstances of the case.
14. Nothing in these regulations contained shall be deemed to affect the liability of any person offending against these regulations for or to any penalty, punishable, or liability which he would have incurred or been subject to for or in respect of any offence committed, or anything done, published or said, if these regulations had not been passed; and the fines, penalties or punishments herein provided shall be deemed to be cumulative or additional to, and not in any way to displace or relieve from, any fine, penalty, punishment, or liability heretofore provided by law for the same or the like offence.

Appendix B: An Act to amend the Criminal Code [Section 98]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The following sections are inserted immediately after section ninety-seven of the Criminal Code, chapter one hundred and forty-six of the Revised Statutes of Canada:—

"97A (1) Any association, organization, society of corporation, whose professed purpose or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury, in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend, shall be an unlawful association.

(2) Any property, real or personal, belonging or suspected to belong to an unlawful association, or held or suspected to be held by any person for or on behalf thereof may, without warrant, be seized or taken possession of by any person thereunto authorized by the Chief Commissioner of Dominion Police or by the Commissioner of the Royal Northwest Mounted Police, and may thereupon be forfeited to His Majesty.

(3) Any person who acts or professes to act as an officer of any such unlawful association, and who shall sell, speak, write or publish anything as the representative or professed representative of any such unlawful association, or become and continue to be a member thereof, or wear, carry or cause to be displayed upon or about his person or elsewhere, any badge, insignia, emblem, banner, motto, pennant, card, button or other device whatsoever, indicating or intended to show or suggest that he is a member of or in anywise associated with any such unlawful association, or who shall contribute anything as dues or otherwise, to it or to any one for it, or who shall solicit subscriptions or contributions for it, shall be guilty of an offence and liable to imprisonment for not more than twenty years.

(4) In any prosecution under this section, if it be proved that the person charged has,—

- (a) attended meetings of an unlawful association; or

- (b) spoken publicly in advocacy of an unlawful association; or
- (c) distributed literature of an unlawful association by circulation through the Post Office mails of Canada, or otherwise;

it shall be presumed, in the absence of proof to the contrary, that he is a member of such unlawful association.

(5) Any owner, lessee, agent or superintendent of any building, room, premises or place, who knowingly permits therein any meeting of an unlawful association or any subsidiary association or branch or committee thereof, or any assemblage of persons who teach, advocate, advise or defend the use, without authority of the law, of force, violence or physical injury to person or property, or threats of such injury, shall be guilty of an offence under this section and shall be liable to a fine of not more than five thousand dollars or to imprisonment for not more than five years, or to both fine and imprisonment.

(6) If any judge of any superior or county court, police or stipendiary magistrate, or any justice of the peace, is satisfied by information on oath that there is reasonable ground for suspecting that any contravention of this section has been or is about to be committed, he may issue a search warrant under his hand, authorizing any peace officer, police officer, or constable, with such assistance as he may require, to enter at any time any premises or place mentioned in the warrant, and to search premises or place, and every person found therein, and to seize and carry away any books, periodicals, pamphlets, pictures, papers, circulars, cards, letters, writings, prints, handbills, posters, publications or documents which are found on or in such premises or place, or in the possession of any person therein at the time of such search, and the same, when so seized may be carried away and may be forfeited to His Majesty.

(7) Where, by this section, it is provided that any property may be forfeited to His Majesty, the forfeiture may be adjudged or declared by any judge of any superior or county court, or by any police or stipendiary magistrate, or by any justice of the peace, in a summary manner, and by the procedure provided by Part XV of this Act, in so far as applicable, or subject to such adaptations as may be necessary to meet the circumstances of the case.

97B (1) Any person who prints, publishes, edits, issues, circulates, sells, or offers for sale or distribution any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication or document of any kind, in which is taught, advocated, advised, or defended, or who shall in any manner teach, advocate, or advise or defend the use, without authority of the law, of force, violence, terrorism, or physical injury to person or property, or threats of such injury, as a means of accomplishing any governmental, industrial or economic change, or otherwise, shall be guilty of an offence and liable to imprisonment for not more than twenty years.

(2) Any person who circulates or attempts to circulate or distribute any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication, or document of any kind, as described in this section by mailing the same or causing the same to be mailed or posted in any Post Office, letter box, or other mail receptacle in Canada, shall be guilty of an offence, and shall be liable to imprisonment for not more than twenty years.

(3) Any person who imports into Canada from any other country, or attempts to import by or through any means whatsoever, any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication or document of any kind as described in this section, shall be guilty of an offence and shall be liable to imprisonment for not more than twenty years.

(4) It shall be the duty of every person in the employment of His Majesty in respect of His Government of Canada, either in the Post Office Department, or in any other Department to seize and take possession of any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication or document, as mentioned in the last preceding section, upon discovery of the same in the Post Office mails of Canada or in or upon any station, wharf, yard, car, truck, motor or other vehicle, steamboat or other vessel upon which the same may be found and when so seized and taken, without delay to transmit the same, together with the envelopes, coverings and wrappings attached thereto, to the Chief Commissioner of Dominion Police, or to the Commissioner of the Royal Northwest Mounted Police.

Statutes of Canada, 1919, Chapter 46, pp. 1-3.