

# **Capitalism on Trial: Section 98, the Communist Party of Canada, and the Battle for Legality in the Interwar Period**

by

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## **Abstract**

In 1919, the Canadian state enacted a law that criminalized the advocacy of radical politics. Section 98, as it became, was broad in its terminology, and carried a maximum punishment of twenty years imprisonment. In 1931, the state utilized the law against eight leaders of the Communist Party of Canada in an attempt to declare the organization to be illegal in Canada. The party, however, did not crumble under pressure. At trial, the accused were able to use the courtroom as a forum to protest the legality of the law; after the leaders were convicted, the party campaigned tirelessly for the release of their comrades, and for the repeal of Section 98. The party was successfully able to use its repression to forward its political agenda. This thesis explores how the party navigated Canada's legal system in order to realize its political goals.

**Keywords:** Section 98; Communist Party of Canada; radicalism; free speech; legal history; political trials

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## List of Acronyms

CLDL	Canadian Labor Defense League
CPC	Communist Party of Canada
CPSU	Communist Party of the Soviet Union
FOC	Finnish Organization of Canada
ILD	International Labour Defence
MWUC	Mine Workers' Union of Canada
UFLTA	Ukrainian Farmer Labour Temple Association of Canada
UMWA	United Mine Workers of America
WET	Workers' Experimental Theatre
WUL	Workers' Unity League

## Introduction

At dusk on 20 October 1932, General Secretary of the Communist Party of Canada (CPC), Timothy Buck, sat alone in his cell at Kingston Penitentiary. Pandemonium, however, soon erupted. Troops, hired by the warden to break a prisoners' demonstration, had surrounded the prison, and began firing shots into a number of the cells. Buck recalled seeing these troops approach his cell:

I saw a detail of guards crossing the lawn with rifles at the slope, and a keeper in charge of them. They marched right up to the front of Cell Number Sixteen – that was mine – and there they left-wheeled, and stood facing me. From the slope, they cocked their rifles at the aim. I didn't think at all. But there had been shooting, and I didn't know what was happening, so I dropped to the floor. They fired, and the bullets entered my cell. One of the bullets hit one of the bars of my cell gate with a bang that seemed to shake the entire cell block.<sup>1</sup>

The troops fired both rifles and shotguns at Buck, but had narrowly missed with each shot. The Canadian state had attempted to murder the leader of the CPC.

Notably, Buck was in Kingston Penitentiary, not for his actions, but for his political beliefs. This requires some explanation. On 22 May 1919, the House of Commons received a report from a committee considering the potential revision of Canada's sedition laws. In the words of Judy Fudge and Eric Tucker, "the recommendations were truly draconian." In bill form, the report's recommendations were passed in the House of Commons on 27 June 1919. This officially brought Section 98 of the Criminal Code of Canada into law.<sup>2</sup> It read:

Any association ... whose professed purpose ... is to bring about governmental, industrial or economic change within Canada by use of

<sup>1</sup> Tim Buck, *Yours in the Struggle: Reminiscences of Tim Buck*, William Beeching and Phyllis Clarke eds., (Toronto: NC Press, 1977), 221-22.

<sup>2</sup> Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948* (Don Mills: Oxford University Press, 2001), 108-09.

force, violence, or by threats of such injury, or which teaches, advocates, or defends the use of force, violence, terrorism, or physical injury to person or property ... in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose ... or shall so teach, advocate, advise or defend, shall be an unlawful organization (Appendix A).

Section 98 could be utilized with impressive variety. If the state could prove that radical organizations advocated violence, then members, officers, and representatives would be subject to arrest, and could face up to twenty years in prison; no overt actions needed to be performed. The law also gave the state the ability to curtail the distribution of radical literature, as those who were found in possession of, or distributing literature deemed to be advocating violence were also guilty of a crime under the law. Section 98 even made it illegal for people to conduct business with any organizations deemed to be unlawful; it forbade property holders to rent or lease their space to unlawful associations, and carried a maximum penalty of a \$5,000 fine, or five years imprisonment, or both. In 1932, professor of law and noted civil libertarian F.R. Scott criticized the law, observing that “for permanent restriction of rights of association, freedom of discussion, printing and distribution of literature, and for severity of punishment, [Section 98] is unequalled in the history of Canada and probably of any British country for centuries past.”<sup>3</sup>

In August 1931, the Canadian state arrested seven of the CPC’s leaders: Tom Ewan, Tim Buck, Matthew Popovich, Tom Hill, Sam Carr, Malcolm Bruce, and John Boychuk. During the arrests, police also happened across two other communists, Tomo Cacic, Yugoslavian born member of CPC – though not a member of party’s leadership – and Mike Golinski, a member of the Young Communist League.<sup>4</sup> The nine were charged

<sup>3</sup> F.R. Scott, “The Trial of the Toronto Communists,” *Queen’s Quarterly* 39 (1932), 512-13.

<sup>4</sup> Numerous sources affirm that Cacic and Golinski were only arrested by chance. John Manley states that Tomo Cacic was “a minor party functionary who had been in the wrong place at the wrong time.” Further, Denis Molinaro observes that Cacic was arrested only because he was at the office of the Workers’ Unity League when the RCMP had raided it: “Cacic’s RCMP security file confirms that the service had no information on him before the trial.” See: John Manley, “Audacity, audacity, still more audacity’: Tim Buck, The Party, and the People, 1932-1939,” *Labour/Le Travail* 49 (2002), 1; Denis Molinaro, “A Species of Treason?: Deportation and Nation-Building in the Case of Tomo Cacic, 1931-1934,” *The Canadian Historical Review* 91:1 (2010), 70. See also: *Canada’s Party of Socialism: History of the Communist Party of Canada, 1921-1976* (Toronto: Progress Books, 1982), 76. For a note on Golinski, see Lita-Rose Betcherman, *The Little Band: The Clashes Between the Communists and the Political and Legal Establishment in Canada, 1928-1932* (Ottawa: Deneau, 1982), 174-75.

with being both members and officers of an unlawful organization, contrary to Section 98. The subsequent trial was well-publicized, and all save for Golinski were convicted; Cacic received two years' imprisonment, while the others received five.

The convictions of the party leaders, however, did not eradicate the party as one might have predicted. At trial, Buck defended himself, drawing much attention from Canada's newspapers and sparking the interest of many readers. Further, the Canadian Labor Defense League (CLDL) – a CPC organization devoted to monetarily and strategically helping Canada's workers navigate through the country's legal system – worked tirelessly towards attaining both the release of the CPC leaders, and the repeal of Section 98. Their campaign was intricate, utilizing a multitude of tactics, from form letters addressed to Canada's Prime Minister and the Minister of Justice, to a theatrical play that caricatured the state's repressive actions. After news broke that troops had fired shots at Buck, sympathies for the party grew, and membership numbers of both the CPC and the CLDL increased dramatically. In 1934, Buck was released from custody a hero, and by 1936, the law that had imprisoned him was repealed.<sup>5</sup> While the state had intended to thwart the efforts of the communists, the conviction of the eight CPC leaders actually produced the opposite effect; as Ivan Avakumovic notes, Buck found the CPC "in much better shape than at the time of his arrest."<sup>6</sup>

This is an important episode in the history of the CPC. The party's agency in these events, however, has been overlooked by historians. There are two reasons for this. First, historians of the CPC have focussed too much on whether the party was tightly controlled from abroad – by the dictates of the Communist International (Comintern) in Moscow – or whether it was able to exercise authority at a local level. While this debate has revealed much about the dogma of the CPC, and the global hierarchy of which it was a part, it has sacrificed important analysis on the history of the party's fight against Section 98. Second, those historians that have assessed Section 98 have too frequently stressed that the state was tyrannical, maliciously attacking the CPC; such an analysis deprives the CPC of its proper place within the historical narrative.

<sup>5</sup> Avakumovic, *The Communist Party In Canada*, 87-90.

<sup>6</sup> *Ibid*, 90. See also: Manley, "Audacity," 11-15.

For historians of communist parties (CP), the defining debate since the 1960s has centred on a single question: how much control did the Communist Party of the Soviet Union (CPSU) assume over the Comintern's member CPs? This has been of particular interest to historians of CPs in both the United States and Canada. Earlier historians – writing between the 1960s and the 1980s – generally visualized CPs in a structuralist manner, treating them as part of an international communist hierarchy, with the Comintern in Moscow dictating all of their policies. Such traditionalists have created numerous histories that document and attempt to pinpoint the reasons for the failure of CPs to trigger a proletarian revolution, or even to earn sympathy from the masses.<sup>7</sup> One such work is Harvey Klehr's *The Heyday of American Communism*. Klehr examines the Communist Party of the United States of America (CPUSA) in the 1930s and concludes that “the ultimate source of party policy was the Soviet Union.”<sup>8</sup> He notes, for instance, that in March 1929 at their sixth convention, CPUSA members voted overwhelmingly in favour of Jay Lovestone to take the reins of the party. Stalin, however, did not agree with Lovestone's thoughts on the state of capitalism in America. As soon as he intervened, Klehr remarks, Lovestone was expelled from the party, and the leadership was handed to William Foster.<sup>9</sup> William Rodney's *Soldiers of the International* offers a similar perspective on the CPC. Rodney, for example, remarks:

The party's attempts to implement Comintern policies put it increasingly out of touch with the realities of Canadian political, social, and economic life. After 1929, in conditions that ostensibly were ideally suited for a proletarian movement, the CPC made no lasting impact upon the Canadian people.

<sup>7</sup> See, for example: William Rodney, *Soldiers of the International: A History of the Communist Party of Canada, 1919-1929* (Toronto: University of Toronto Press, 1968); Ian Angus, *Canadian Bolsheviks: The Early Years of the Communist Party of Canada* (Montreal: Vanguard Press, 1981); Ian Avakumovic, *The Communist Party in Canada: A History* (Toronto: McClelland & Stewart, 1975); Norman Penner, *The Canadian Left: A Critical Analysis* (Scarborough: Prentice Hall, 1977); Harvey Klehr, *The Heyday of American Communism: The Depression Decade* (New York: Basic Books, 1984); Theodore Draper, *American Communism and Soviet Russia* (New York: Viking Press, 1960); Bryan D. Palmer, *Working Class Experience: The Rise and Reconstitution of Canadian Labour, 1800-1980* (Toronto: Butterworth & Co, 1983); Norman Penner, *Canadian Communism: The Stalin Years and Beyond* (Toronto: Methuen, 1988); Irving Abella, *Nationalism, Communism and Canadian Labour: The CIO, the Communist Party, and the Canadian Congress of Labour, 1935-1956* (Toronto: University of Toronto Press, 1973).

<sup>8</sup> Klehr, *Heyday of American Communism*, xi, 162.

<sup>9</sup> Over 90% of party members voted in favour of Lovestone. See: Klehr, *Heyday of American Communism*, 8-9.

Inevitably, the failure of the Canadian party to become a political force within the Dominion must be attributed to the Comintern, and ultimately, to the Communist Party of the Soviet Union.<sup>10</sup>

The most glaring example of Moscow failing the CPC, notes Rodney, was the CPSU leadership struggle that raged between 1923 and 1927. This process saw the CPC – as well as CPs worldwide – become a pawn in the CPSU’s infighting, and it especially isolated those members that supported Leon Trotsky, resulting in a dwindling membership, and the expulsion of two party leaders.<sup>11</sup> This is a view that Ian Angus later mirrored in his study, *Canadian Bolsheviks*.<sup>12</sup>

By the end of the Cold War, however, historians of the CPUSA began to stress that communism should be studied from the bottom up, looking at both national and local initiatives of national CPs. Although these “revisionists” identify the importance of the Stalinization of the Comintern in the 1920s, they emphasize that the CPSU typically intervened only to make monumental policy shifts.<sup>13</sup> These historians take issue with the traditionalists for their insistence that the CPUSA was controlled from abroad. In his work *Hammer and Hoe*, Robin Kelley argues that assuming that all CP decisions were made by the Comintern reduces the quality of our historical insights:

... because neither Joe Stalin, Earl Browder, nor William Z. Foster spoke directly to them or their daily problems, Alabama Communists developed strategies and tactics in response to local circumstances that, in most cases, had nothing to do with international crises. Besides, if Alabamians had waited patiently for orders from Moscow, they might still be waiting today.<sup>14</sup>

For Kelley, researching Communist movements at a grassroots level tells us far more about a CP than does studying its relationship with the Comintern; it speaks not only to

<sup>10</sup> Rodney, *Soldiers of the International*, 160.

<sup>11</sup> *Ibid*, vi.

<sup>12</sup> Angus, *Canadian Bolsheviks*, v. Angus remarks that between 1929 and 1931, the CPC became characterized by its “unquestioning submission to the dictates of the Kremlin.”

<sup>13</sup> Bryan D. Palmer, “Maurice Spector, James P. Cannon, and the Origins of Canadian Trotskyism,” *Labour/Le Travail* 56 (Fall, 2005), 91-92.

<sup>14</sup> Robin D.G. Kelley, *Hammer and Hoe: Alabama Communists During the Great Depression* (Chapel Hill and London: University of North Carolina Press, 1990), xiv.

the experience of rank and file party members, but also to a more direct mode of decision making. Randi Storch has similarly argued that “regardless of the historic period, the story of America’s Communists is best understood when it is framed in a local context.”<sup>15</sup>

Revisionists have also taken an interest in the Canadian CP. The debate, however, has not been identical. While historians of the CPUSA have typically organized their studies in a geographical context – demonstrating that the party often responded to local conditions without waiting for directions from Moscow – revisionists studying the Canadian CP have been more interested in the different levels of decision-making in the CPC outside of both the Comintern and the party’s leadership. John Manley’s article, “Canadian Communists, Revolutionary Unionism, and the ‘Third Period’” for example, asserts that despite the party leadership’s staunch support for Stalin and his directives in the late 1920s, many of the local organizers determined how they would conduct their jobs:

Even at the sectarian peak of the Third Period, communists usually placed flexibility above revolutionary purity. Local organizers began to study the working class with as much care as they studied Comintern directives. Responding to local rather than international pressure ... organizers learned how to temper shop gate agitation with patience and discretion. They tried to reach young workers by providing social and sports clubs as “transitional” trade union forms. They discovered that shop papers were most effective when they focused on workers’ immediate interests rather than “generalities with which [the workers] are not concerned.”<sup>16</sup>

Thus, Manley observes that organizers of the Workers’ Unity League (WUL) – the CPC’s national trade union federation, aimed at offering more militant unions to working-class

<sup>15</sup> Randi Storch, *Red Chicago: American Communism at its Grassroots, 1928-35* (Chicago: University of Illinois Press, 2007), 230. Storch skillfully brings the reader to the streets of Chicago, and demonstrates why the Chicago’s Communist Party appealed to many of the city’s workers. She analyzes recruiting techniques, social functions of the CP, the composition of Chicago’s communists, and the similarities and differences between Chicago’s party and the Soviet CP. While she admits that the Comintern was important to the CPUSA in Chicago, she holds that the party had a more immediate local value to Chicago residents.

<sup>16</sup> John Manley, “Canadian Communists, Revolutionary Unionism, and the ‘Third Period’: The Workers’ Unity League, 1929-1935,” *Journal of the Canadian Historical Association* 5:1 (1994), 175. Manley has published a number of other articles that support this argument: “‘Communists Love Canada!’: The Communist Party of Canada, the ‘People’, and the Popular Front, 1933-1939,” *Journal of Canadian Studies* 36:4 (2002), 59-86; “Communists and Autoworkers: The Struggle for Industrial Unionism in the Canadian Automobile Industry, 1925-36,” *Labour/Le Travail* 17 (1986): 105-33. See also, Manley, “Audacity,” 9-41.

Canadians – such as Fred Rose, Arthur Evans, and Michael Biniowsky, often worked to improve trade unionism in Canada, rather than to behave as “good Bolsheviks.”<sup>17</sup>

Moreover, Manley argues that even central CPC policies were not always determined by party leaders. In the early 1920s, for example, the CPC attempted to implement a policy of amalgamation – that is, the practice of amalgamating numerous unions of a particular industry into a single industrial union – among Canada’s craft unions. Tim Buck and Jack MacDonald put forth their best campaign, but the majority of unionists were not convinced of the policy’s practicality, especially in the context of large-scale layoffs and employers threatening wage cuts; in 1924, delegates at Canada’s shop crafts’ convention voted against amalgamation by a ratio of 3:1. Despite Tom Ewan recalling that labour bureaucracy was responsible for this failure, Manley maintains that the vote was democratic. Thus, while the CPC sometimes deviated from the Moscow line, much of this was prompted not by the leaders, but by the party cadres, and even by the rank-and-file.<sup>18</sup>

Bryan Palmer’s “The Origins of Canadian Trotskyism,” also analyzes alternative sources of authority in the CPC. Palmer skillfully lobbies for a historical understanding of the existence of – and contemporary debates surrounding – Trotskyism as a means of understanding how communism adapted differently in countries outside of the Soviet Union; examining “dissident streams within the Bolshevik tradition,” he remarks, helps us to recognize “a revolutionary left that both learned from the Soviet revolution and its leaders and remained alive to the need to cultivate creatively transformative social movements rooted in the realities of non-Russian conditions and societies.”<sup>19</sup> As Palmer notes, one of the CPC’s leading theoreticians, Maurice Spector, was at times willing to stand up to Comintern directives, especially those regarding the repudiation of Trotsky and “Left Oppositionist dissidents;” in fact, this was a characteristic that was largely unique

<sup>17</sup> Manley, “Workers’ Unity League,” 177.

<sup>18</sup> John Manley, “Does the Trade Union Movement Need Salvaging?: Communism, Labourism, and the Canadian Trade Unions, 1921-1928,” *Labour/Le Travail* 41 (1998), 154-58. See also: “Moscow Rules? ‘Red’ Unionism and ‘Class Against Class’ in Britain, Canada, and the United States, 1928-1935,” *Labour/Le Travail* 56 (2005), 9-49;

<sup>19</sup> Palmer, “The Origins of Canadian Trotskyism,” 94-95.

to the Canadian CP.<sup>20</sup> Although he was expelled from the CPC in 1928 by other high-ranking party members, and although his attempts to recruit and organize committed Canadian Trotskyists largely failed, Spector offered an alternative to “Comintern bureaucratism and Stalinization,” which is worthy of our historical attention.<sup>21</sup>

Most recently, Stephen Endicott’s *Raising the Workers’ Flag* has entered the debate. In the book’s preface, Endicott remarks that his work would not satisfy those historians who believed that the CPC was directly controlled by the CPSU in Moscow, nor would it appeal to historians who argue just the opposite. Instead, Endicott attempts to place the WUL “in the larger economic and political currents of society in Canada and abroad.” He asserts:

In the six years of the Workers’ Unity League’s association with the Red International of Labour Unions and the Third International, the relationship was collegial in nature, mutually supporting, and of great political and psychological value, especially to the league’s leading members and organizers.<sup>22</sup>

In an attempt to move beyond the Moscow debate, Endicott stresses the importance of studying the practical activities of radical organizations in Canada. He discusses, for instance, the WUL’s “Workers’ Economic Conference” of 1932. This conference saw workers in Ottawa demanding “non-contributory unemployment insurance, shorter working days, and discontinuance of police-terror,” as well as a delegation of workers storming the Prime Minister’s Office to engage in a heated debate with R.B. Bennett. While he does comment that the WUL first got approval for the conference from Moscow, he also points to its overall importance:

The immediate impetus for the “On-to-Ottawa” trek, precursor of a more famous one three years later, came from the idea that when faced with repression the best response was not to retreat into dimly lit cellars but to carry out some public activity, as spectacular as possible, so as to gain

<sup>20</sup> Ibid., 100-04, 126-31.

<sup>21</sup> Ibid., 95.

<sup>22</sup> Stephen Endicott, *Raising the Workers’ Flag: The Workers’ Unity League of Canada, 1930-1936* (Toronto: University of Toronto Press, 2012), xi, 325.

attention for the plight of the people and for the solutions offered by a united front led by the communists.<sup>23</sup>

Endicott's emphasis on the strategic importance of this WUL manoeuvre is impressive, and actually tells us something about the League; although many scholars have identified that the WUL's main policy was to "strike often", Endicott tells us the rationale for such a policy.

With the exception of Endicott, however, the main scholarly debate concerning the CPC in recent historiography has been over the location of absolute authority.<sup>24</sup> Though interesting and practical in many ways, historians have too often overlooked the CPC's actions in Canada, instead focusing largely on the party's doctrine. This is a strange phenomenon because, as Endicott observes, the CPC championed many issues that directly affected Canada's working class. They organized, for example, strikes, demonstrations, and rallies forwarding working-class causes. The CPC also educated workers on the exploitative ways of capitalism, and offered an alternative vision for a Canadian future. Furthermore, the CPC attempted – to the best of its ability – to offer legal and financial help to those workers that were targeted by anti-labour laws.

Of the histories that analyze the CPC, few focus on the party's fight to repeal Section 98. Those that do, tend to minimize the party's role in the trial, and largely ignore

<sup>23</sup> Endicott, *Raising the Workers' Flag*, 132.

<sup>24</sup> Biographies of former CPC members have also contributed to this historiographical debate. Bill White, for instance, contends that Moscow had its hands in Canadian affairs though it was oblivious to the country's unique circumstances. "The trouble was" he remarks, "the WUL wasn't really under Canadian control." All it would take was "some high Russian Party muckymuck who didn't know beans all about Canadian labour or care a whit for Canadian nationalism [to give] a wave of his wand," and the WUL was forced to act out of character." Howard White, *A Hard Man to Beat: The Story of Bill White, Labour Leader, Historian, Shipyard Worker, Raconteur* (Maidera Park, BC: Harbour Publishing, 2011), 182. Alternatively, Doug Smith's biography of C.L. Jackson notes that the hierarchy commonly ascribed to the Comintern – Stalin, Comintern leaders, CP leaders, union leaders – was far from absolute. Jackson, who in the 1930s helped to establish and organize United Electrical Radio and Machine Workers of America (UE) locals in Canada, detailed his encounters with one CPC member, William Kashtan: "He used to come around the [UE] office and try to give orders and I let him know straight off 'You don't give any orders here. I am running this show. If you have anything to suggest, we will take a look at it.' He did not come around much after that." Doug Smith, *Cold Warrior: C.S. Jackson and the United Electrical Workers* (St. John's: Committee on Canadian Labour History, 1997), 106.

its campaign to repeal the law. F.R. Scott's "The Trial of the Toronto Communists," though written contemporaneously in 1932, was the first scholarly assessment of the trial. Scott notes that the Crown's case against the eight CPC members was broken into two parts: proving that each of the accused was a member and leader of the CPC, and proving that the aims of the CPC were violent and revolutionary. For the most part, the accused admitted their membership to the CPC. Thus, the primary objective of the Crown was to prove that the CPC intended to incite a revolution in Canada. Scott, however, observes that the state had no evidence that the CPC had ever planned or conducted any violence, and consequently, it had to be proven that the party's goal was to do so in the future.<sup>25</sup>

Scott contends that the Crown's central argument was that the mounds of Communist literature confiscated by authorities forwarded a revolutionary rhetoric, advocating for the armed overthrow of the Canadian state. Official organs of the CPC did speak of the proletarian revolution and the CPC's responsibilities in its preparation and procedures, and the Crown stressed the violent nature of these excerpts. Scott, however, notes that the CPC did not view these excerpts as matter-of-factly as did the Crown prosecutors. He remarks:

The mere desire to change the present economic order radically, to alter the nature of our governmental structure, and to vary the whole existing system of courts, is not illegal .... in any case the violence which was referred to in the literature was not something that was "advocated" or "taught" in the sense of "aimed to bring about," but rather was a form of violence which according to the Communist interpretation of history was inevitable and for which the Communist Party merely prepared.... The Communist Party is thus on trial for something which it has not "advocated" or "taught", since it does not "advocate" the inevitable.<sup>26</sup>

The CPC, according to Scott, saw the clash between the proletariat and the bourgeoisie in Canada as a violent inevitability; the role of the CPC was not so much to advocate or teach violence, but rather to organize Canada's working class for the forthcoming struggle. If the CPC was unprepared when the revolution transpired, the very foundation of its programme would be undermined.

<sup>25</sup> Scott, "Trial of the Toronto Communists," 515-17.

<sup>26</sup> Scott, "Trial of the Toronto Communists," 520, 522, 525.

As a civil libertarian, Scott sympathized with the CPC and saw the trial as part of a Canadian class struggle between conservative capitalists and exploited workers. He saw the use of Section 98 as hypocritical of state officials who claimed that they so desperately protected British institutions; it was an example of reactionary, rather than rational and well-reasoned law making. While his critique of the state is sound, the CPC's strategical efforts are missing from the narrative; within his history, the state plays the role of a despotic oligarchy, while the CPC passively accept their cruel fate.<sup>27</sup>

It has been over 80 years since Scott's piece was published, and still, the interpretation of the trial has changed minimally. Perhaps the most comprehensive modern account is Richard Fidler's "Proscribing Unlawful Associations," a law school term paper from 1984. Fidler insists that a strong-armed Canadian state ensured the conviction of the CPC leaders before the trial began. When the prosecution submitted its proposed indictment to the Chief Justice Hugh Edward Rose, he remarks, Rose gave them trouble with the interpretation of the law. The indictment attempted to charge the accused with being members of an unlawful assembly. Rose, however, claimed that mere membership in an association did not constitute an offence as the first "and" in the section was conjunctive rather than disjunctive. This meant that a person committed an offense under Section 98 only if they were both an officer of the association *and* advocated force or violence. Crown Prosecutor, Joseph Sedgewick, after supplementary correspondence with Rose, promptly changed the indictment to charge the accused with being both officers and members of the CPC. Further, Fidler contends that the prosecution was able to have Rose removed from the case, and replaced with Justice William Wright, a 73 year old prominent Liberal, who had, in 1929, shown antagonism towards the CPC in a seditious libel case against Aarvo Vaara, the editor of the CPC's Finnish-Canadian newspaper, *Vapaus*. These actions, Fidler remarks, reveal "the substance – and the very real limits – of the independence of the judiciary."<sup>28</sup>

Similar to Fidler, Lita-Rose Betcherman has criticized the Canadian state for its blatant bias in the trial. The presiding judge, Justice Wright, for example, would not allow

<sup>27</sup> Ibid., 512.

<sup>28</sup> Richard Fidler, "Proscribing Unlawful Associations: The Swift Rise and Agonizing Demise of Section 98," Unpublished Manuscript, Osgoode Hall Law School, 1984, 33-36.

the CPC's counsel to offer an explanation of any of the party's Marxist literature, as interpreting these documents was the job of the jury. As Betcherman remarks, "the idea that the philosophy of Marx and Lenin could be understood without commentary from a few quotations displays, at best, the judge's naiveté."<sup>29</sup> More notably, however, she contends that Wright actually predetermined a guilty verdict from the jury. She explains:

Although he himself had stated frequently in the course of the trial that there was nothing illegal in the mere desire to change the governmental and economic system – the crime arose from the use of violent means – Wright failed to mention this in the summing up and, in fact, offered some highly coloured comment which would have led the jurors to believe that the Communists' desire to bring about a change from the present system in Canada was in itself criminal .... The judge unequivocally directed the jury to accept the Crown's argument.... The fact that the party had functioned legally and that there had been no evidence of violence in its ten years of existence was not referred to by the Bench.<sup>30</sup>

Certainly, this is an important point. Members of the CPC and their lawyers, however, were not passive beings. Regardless of the state's partiality, the trial gave the party a chance to exercise its agency and employ its tactics.<sup>31</sup> Both Betcherman and Fidler inform us as to the motive of the state, but leave us in the dark as to the logic surrounding the actions of the CPC.

The trial, though important in the history of the CPC's fight with Section 98, represents only one chapter. Equally important was the trial's aftermath, although it has not received an equal amount of attention. Jaroslav Petryshyn's "Class Conflict and Civil Liberties" is the best account of the CPC's post-trial strategies. Petryshyn focusses largely

<sup>29</sup> Betcherman, *The Little Band*, 192.

<sup>30</sup> *Ibid.*, 202-03.

<sup>31</sup> Betcherman does comment on Buck's closing remarks, however, she again notes the state's ironhandedness; Justice Wright, she remarks, repeatedly interrupted Buck reminding him to confine his speech to the evidence. Moreover, the jury, she claims, "sat glassy-eyed and uncomprehending, snapping to life only when the old judge banged the table and ordered the speaker to stop propagandizing." These points are, perhaps, valid, but Betcherman fails to analyze the motive behind Buck's speech. She simply remarks that "his purpose was not to defend the eight against the legal indictment but to state their case before 'the great court of working-class opinion'...." She fails, however, to further explore this idea. Betcherman, *The Little Band*, 196.

on the action of the CLDL, the CPC's instrument of choice in agitating for the repeal of Section 98. He remarks, for example, that "through campaigns, demonstrations, and the courts, the CLDL inextricably intertwined civil and humanitarian causes with communism, a process which generated a great deal of publicity and sympathy, two ingredients which the communist movement normally would not have received."<sup>32</sup> Still, when in 1934 those convicted under Section 98 were released from Kingston Penitentiary, and when Mackenzie King repealed Section 98 in June 1936, the CLDL, though triumphant in its victories, had lost the platform on which it had built its tremendous support. Between 1936 and 1939, notes Petryshyn, "the CLDL lapsed into dormancy."<sup>33</sup>

As good as Petryshyn's work is, there is still much to explore regarding the CLDL and its activities, and important questions remain unanswered. While the repeal of Section 98 was one of the organization's ultimate goals, how did it come to decide on its strategy in this battle? Or, put simply, what was the logic that informed the actions of the CLDL? Petryshyn addresses this at moments. He remarks, for instance, that the organization acted "as a vehicle of legitimate dissent against the apparent submergence of democratic values and personal liberties." There is much room, however, to expand on Petryshyn's research, and to explore the CLDL's work to repeal Section 98.

To this point, the historiographies of the CPC and Section 98 are unsatisfactory. If we are to move forward with the history of the party, historians need to move past interpretations that simply point towards or away from Moscow as the ultimate source of CPC policy. Whether or not the CPC's leaders slavishly accepted the Comintern's line, they were actively involved in Canada's labour movement, and they worked diligently to try and impact the country's political landscape. Moreover, although the state was overtly despotic in its suppression of the CPC, it does not follow that the party leaders were passive victims. Historians should, however begrudgingly, accept that these communists had a sophisticated understanding of not just Marxism, but of politics and the law in Canada.

<sup>32</sup> J. Petryshyn, "Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labor Defense League, 1925-1940," *Labour/Le Travail* 10 (1982), 63.

<sup>33</sup> *Ibid.*, 60-61.

In an attempt to address this historiographical gap, this thesis asks two important questions. The first chapter asks: in principle, how did CPC leaders envision their trial, and how did it function in practice? The second chapter asks: what strategies did the CPC use in their attempt to repeal Section 98? Ultimately, I argue that despite the Canadian state's attempt to vilify the CPC in front of the jury, the CPC leaders calculated their legal strategy in anticipation of this; in-court antics served to garner positive publicity for the CPC, and outside of the courtroom, the party pressured the government, in a multitude of ways, for the release of the CPC leaders and the repeal of Section 98. The party was successfully able to use its repression as a means to challenge the state's legitimacy, and to forward its own political agenda.

## Chapter 1.

# “That is irrelevant and does not hinge on the evidence filed:” Politics and the Law in the Trial of the Communist Leaders

Historians assessing Section 98 typically stress that the law’s passing was triggered by the Winnipeg General Strike in 1919. Fudge and Tucker, for example, assert that one of the reasons that the law was so repressive was that “the political and legal establishments at all levels saw the [Winnipeg General Strike] not simply as a large scale strike over collective bargaining but as a challenge to constituted authority.”<sup>34</sup> Reinhold Kramer and Tom Mitchell have similarly commented on the state’s mentality: “Marx’s call for a revolution was successful in Russia in 1917; why not Canada in 1919?”<sup>35</sup>

While it is futile to speculate about whether or not Canada’s state officials truly believed that events in Winnipeg were about to incite a revolution in Canada, it is obvious that such officials viewed the behaviour exhibited by the strikers as undesirable. Consequently, as legislation, Section 98 was passed by the Canadian state with purpose: to eradicate such unruly behaviour. On 10 June 1919, Unionist MP and Solicitor General, Hugh Guthrie, presented a report from the “Special Committee appointed to consider the law in regard to sedition and seditious conspiracy” to the House of Commons.<sup>36</sup> In his opening remarks, Guthrie noted:

<sup>34</sup> Fudge and Tucker, *Labour Before the Law*, 116. This interpretation can be found elsewhere, such as in: J.B. Mackenzie, “Section 98, Criminal Code and Freedom of Expression in Canada,” *Queen’s Law Journal* 4:11 (1972), 469-75. See, also: Betcherman, *The Little Band*; Fidler, “Proscribing Unlawful Associations,” 10-14. A different interpretation, however, can be found in Thomas Berger’s book, *Fragile Freedoms: Human Rights and Dissent in Canada* (Toronto: Clarke, Irwin, 1981), 130-33. According to Berger, Canadian politicians did not necessarily buy into the idea that a proletarian revolution was imminent, but rather, it was a convenient justification for their repressive actions towards the working class. Accordingly, they pushed the idea that the Winnipeg General Strike was a stepping-stone towards a full-scale proletarian revolution, despite evidence to the contrary.

<sup>35</sup> Reinhold Kramer and Tom Mitchell, *When the State Trembled: How A.J. Andrews and the Citizens’ Committee Broke the Winnipeg General Strike* (Toronto: University of Toronto Press, 2010), 7.

<sup>36</sup> *HOC Debates* (1919), 3285.

It is common knowledge, Mr. Speaker, that in Canada to-day there exist 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.<sup>37</sup>

While Guthrie did not explicitly name any organizations, the report's recommendations were clearly aimed at rooting out radicalism in Canada. The Committee proposed that the government re-enact parts of Order-in-Council PC 2384, and declare unlawful "any society or association ... one of whose purposes, or professed purposes, is to bring about any governmental, industrial or economic change within Canada by use of force, violence, physical injury to person or property or the like."<sup>38</sup> The Committee also recommended that the maximum penalty for sedition be increased from two years, to twenty years imprisonment, and that Section 133 – the good-faith clause of the sedition laws – be removed.<sup>39</sup> In principle, both the House of Commons and the Senate agreed with the recommendations, and on 7 July 1919, the bill that codified Section 98 as law received royal assent.<sup>40</sup>

Although Section 98 was overtly repressive, Canada's working class was not doomed to passively accept the legitimacy of Section 98. Writing in 1975, E.P. Thompson's remarked on the nature of law:

<sup>37</sup> In his speech, Guthrie assured the House that the recommendations were not inspired by the strike in Winnipeg. Regardless, James A. Lougheed of the Senate later remarked that there were numerous organizations in Canada, designed for the express purpose of "carrying on a propaganda that would lead not only to lawlessness but to the subversion of our present institutions of government." "Not only have these disclosures been made in the late sympathetic strike in Winnipeg," he continued, "but the Government has unquestionable evidence that there is a widespread movement throughout the whole of Canada." See: *HOC Debates* (1919), 3285-86; *Debates of the Senate of the Dominion of Canada: Official Report* (Ottawa: King's Printer, 1919), 913.

<sup>38</sup> *HOC Debates* (1919), 3288. PC 2384 had originally been issued on 28 September 1918, by authority of the War Measures Act, but had expired on 1 April 1919. Its purpose had been to provide a temporary check on "enemy aliens" and "foreign radicals," and included a ban on sixteen organizations. See: Angus, *Canadian Bolsheviks*, 28-9; Fidler, "Proscribing Unlawful Organizations," 5-6.

<sup>39</sup> The good-faith clause declared it non-seditious if a person attempted in good faith to point out where the government had been mistaken or misled. See: *HOC Debates* (1919), 3288-92.

<sup>40</sup> *HOC Debates* (1919), 4660-61, 4701.

... it [the law] is clearly an instrument of the *de facto* ruling class: it both defines and defends these rulers' claims upon resources and labour-power – it says what shall be property and what shall be crime – and it mediates class relations with a set of appropriate rules and sanctions, all of which, ultimately, confirm and consolidate existing class power.<sup>41</sup>

Still, historically, the ruled have not merely been suppressed by the law, but have fought for their rights through legal procedures. “When it ceased to be possible to continue to fight at law,” notes Thompson, “men still felt a sense of legal wrong.” The ruled began to question state power, and ultimately viewed this power as illegitimate.<sup>42</sup> Accordingly, Thompson notes that “if the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class’s hegemony.”<sup>43</sup> Thus, in instances where the state’s exploitative actions are plain, the boundaries of the law can be challenged by the oppressed.<sup>44</sup>

In a Canadian context, this phenomenon has been observed by historian Bryan Palmer. He discerns noticeable trends in how working-class protests have helped to shape Canada’s laws. In post-Confederation Canada – from its formative years until, perhaps, the 1880s – he describes the law as less about protecting rights, and more about “which side could mobilize force more successfully.”<sup>45</sup> In the field of labour law, this translated into a battle of whether or not workers were able to successfully organize. Naturally, employers and other elites worried about the expense that unions might cause them, and fought the legitimacy of working-class organization by condemning strikes as events of “civil disobedience.”<sup>46</sup> Further, the state at times passed legislation that hampered workers’ ability to organize. Continued pressure from labourers in the form of strikes, however, forced authorities to offer some concessions; the 1872 *Trades Union Act* was

<sup>41</sup> E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975), 259. Thompson does not dismiss the crude materialist interpretation entirely either, noting that the Black Act “was deeply imbricated within the very basis of productive relations, which would have been inoperable without this law.” (p. 261).

<sup>42</sup> *Ibid.*, 260-61.

<sup>43</sup> *Ibid.*, 262-63.

<sup>44</sup> *Ibid.*, 259.

<sup>45</sup> Palmer, “What’s Law Got to Do with It?,” 471.

<sup>46</sup> Palmer, “What’s Law Got to Do with It?,” 473.

the most significant. Of course, the Canadian state did not simply submit to the will of the working class. The 1872 *Trades Union Act* was not necessarily the victory that workers perceived: “It granted unions status only if they followed certain legal guidelines, which none did, and it was quickly followed by other pieces of legislation that hemmed in what workers could do in strike situations.”<sup>47</sup> Still, in Palmer’s mind, the law is not irrevocable, but is instead negotiated; the formulation of codified labour law in nineteenth-century Canada was a give and take between the country’s ruling and working classes.

In terms of Section 98, this theory might suggest that the CPC and the Canadian state came to some sort of resolution regarding the law’s removal from the Criminal Code. Thompson, however, has another helpful insight. Although members of communist parties are usually members of the working class, they also share another characteristic – they are revolutionaries. This changes the scope of their fight slightly, giving us one more variable of which to be aware. Revolutionaries believe that the law works only to mask their subjugation by operating in the name of civil liberties and individual rights. Thompson remarks: “The revolutionary can have no interest in law, except as a phenomenon of ruling-class power and hypocrisy; it should be his aim simply to overthrow it.”<sup>48</sup> CPC leaders were likely not interested in compromising with Canadian lawmakers, which suggests that the party was successfully able to pressure the state into repealing Section 98.

This synopsis of Marxist state theory helps to explain the events of the trial of the Toronto Communists. Put simply, on 2 November 1931, Communism went on trial in a courtroom at Toronto’s City Hall, as Tom Ewan, Tim Buck, Matthew Popovich, Tom Hill, Sam Carr, Malcolm Bruce, John Boychuk and Tomo Cacic were indicted for both seditious conspiracy and for contravening Section 98.<sup>49</sup> Quickly, the trial became a site of an intense, strategic battle between the Canadian state and the CPC. For its part, the state viewed the policies of the CPC as a threat to their rule, and believed that the country’s

<sup>47</sup> *Ibid.*, 474.

<sup>48</sup> Thompson, *Whigs and Hunters*, 259.

<sup>49</sup> Although both William Rodney and Ian Angus spell it “Popowich,” I have opted for the spelling “Popovich,” as this is how it appears in both the trial transcript, and in much of the party’s official literature. Similarly, although in 1971, Tom Ewan published a memoir under the name “Tom McEwan,” I have opted for Ewan based on the documents that I have perused.

courts would swiftly quash the party. Alternatively, the CPC believed that Section 98 was unjust and showcased the state's illegitimacy and willingness to eliminate those who challenged their power.

This chapter analyzes the legal strategies of the CPC and the Canadian state leading up to and throughout the course of the trial. In an attempt to secure a guilty verdict from the jury, Crown prosecutors chose to emphasize three things about the CPC: its connection to Moscow; its illicit, underground nature; and its work in organizing non-British Canadians. This suggests that the state perceived the CPC as a threat on multiple levels. First, the CPC endangered the state's position relative to the means of production; if party-organized strikes were successful, and working-class wages were increased, the CPC might have more means at their disposal to violently overthrow the state. Further, as a member of the Comintern, there was a relationship with the revolutionary CPSU, no matter how non-binding the party may have argued it was. Secondly, by organizing and providing a voice for foreign-born Canadians, the CPC threatened the state's legitimacy; the CPC worked towards working-class solidarity across ethnic lines, and if this was allowed to continue, the sheer number of Canadians pressing for demands from the state could have pushed the government out of office. Though the trial was political, it was not wholly prejudiced. The presiding judge, Justice William Henry Wright, was certainly heavy handed in his treatment of the Defence, with regard to both the admissibility of evidence, and his charge to the jury. Ultimately, however, regular procedures were followed, and the verdict was unanimously determined by the jurors.

Alternatively, the CPC was less concerned with the verdict of the trial than with using the courtroom as a place to promote its legitimacy, as indicated by their choice to have Tim Buck defend himself. The defence included many protracted explanations of the foundations of Marxist philosophy, and Buck's speech to the jury was condemnation of capitalism, rather than an explanation of legal details pointing to the innocence of the accused. Not believing in the capitalist system of justice, for the CPC, trials were a place to gain positive publicity and to boost membership, not a place for the state to determine one's guilt or innocence. This is a legal strategy that has not properly been ascribed to the CPC.

The conviction of the CPC leaders seemed to imply that the state's legal strategy was superior to that of the CPC; the party, however, had been expecting a guilty verdict. Consequently, their legal strategy was centred not on proving their innocence, but on condemning the actions of the state and pressuring the state after the trial had concluded. In this way, the CPC was more successful than it would appear at first glance.

## Pre-Trial Tactics

The CPC's inception can be traced to Guelph, Ontario, in May 1921. A secret delegation of self-identifying communists gathered in a barn owned by one Fred Farley, and discussed the specifics of establishing a Canadian CP; such a party would, according to Norman Penner, work to usher a socialist revolution in Canada, similar to the one that had occurred in Russia in 1917.<sup>50</sup> The meeting was particularly productive. Those in attendance – including Jack MacDonald, Maurice Spector, and Matthew Popovich – adopted a party programme, a constitution, and even drafted a letter to apply for membership within the Comintern.<sup>51</sup> One of the first strategies initiated by the new CPC was to establish the Workers' Party of Canada. This organization was to act as the “public face” of communism in Canada, carrying out all of the CPC's legal initiatives, while the official, revolutionary party would remain underground. This, the party leaders believed, would both help to reduce state scrutiny and subsequent party oppression, as well as maximize party membership by appealing to a variety of Canadians, rather than just radicals. As Maurice Spector reported to the Comintern in 1922, the party had been formed in secret due to “the memory of ruthless government Orders-in-Council, suppressing revolutionary movements during the war and demobilization period, [and] the brutal

<sup>50</sup> Norman Penner, *Canadian Communism: The Stalin Years and Beyond* (Toronto: Metheun, 1988), 47-51.

<sup>51</sup> There are numerous accounts of the meeting in the barn. See, for example, Bryan Palmer, *Working-Class Experience: Rethinking the History of Canadian Labour, 1800-1991* (Toronto: McClelland & Stewart, 1992), 226-29; Penner, *Canadian Communism*, 47. While Tim Buck has claimed that he was in Fred Farley's barn, Ian Angus has shown that both Jack MacDonald and Maurice Spector have no recollection of Buck's presence. See: Angus, *Canadian Bolsheviks*, 308, 311-12; Buck, *Yours In the Struggle*, 95-98.

measures that the State took against the Winnipeg General Strike;" the Workers' Party, he hoped, would help shield the CPC from such attacks.<sup>52</sup>

Throughout the 1920s, the nature of the CPC was always in flux. It was, to an extent, able to temper its policies to Canada's local conditions. Still, many of the party's actions, both revolutionary and reformist, were dictated by the Comintern. When members of the Workers' Party ran as members of the Canadian Labor Party (CLP) – a parliamentary national labour party composed of both communists and non-communists – in municipal as well as federal elections, this was because the strategy was Moscow approved; at its Third Congress in July 1921, the Comintern had adopted a united-front policy that promoted co-operation with all workers – both revolutionaries and non-revolutionaries – in the hopes of more effectively defending the interests of the working-class against the bourgeoisie.<sup>53</sup> In 1928, however, the Comintern discarded the united front policy. It announced that world capitalism had entered its Third Period, and that political reformism and left opportunism were barriers to the impending revolution; as a result, the CLP quickly folded.<sup>54</sup> By the late 1920s, the CPC was struggling simply to stay afloat, as the state launched a campaign against the party with the purpose of criminalizing its meetings, and shattering its membership. Under various pretexts, in 1929, the Toronto Police Commission broke up many CPC meetings, often violently, in Queen's Park in Toronto, and many of the party's members were put on trial for crimes such as vagrancy, and obstructing a police officer, putting a strain on the party's finances.<sup>55</sup> Thus, while the

<sup>52</sup> Palmer, *Working-Class Experience*, 227; Penner, *Canadian Communism*, 47. After 1924, the CPC dropped the dual-party tactic: the Workers' Party and the CPC became a single entity, retaining the latter's moniker.

<sup>53</sup> Palmer, *Working-Class Experience*, 227. The united front tactic, however, was more disingenuous than it would seem at first glance. Each manoeuvre under the united front was meant to solidify the CP's position as champion of the working class; the Executive Committee of the Communist International reminded member parties that when reformist organizations refused to join forces, the public needed to be shown that these parties were destroyers of class unity. See: Manley, "Communism, Labourism, and the Canadian Trade Unions," 148-49.

<sup>54</sup> Benjamin Isitt, "Exclusive Unity: The Canadian Labor Party in British Columbia, 1924-28," *BC Studies* 163 (2009), 33-64; Manley, "The Workers' Unity League," 169-70; Penner, *Canadian Communism*, 70-97.

<sup>55</sup> For a good analysis of this conflict between the Toronto Police Commission and the CPC, see: Michiel Horn, "Keeping Canada "Canadian": Anti-Communism and Canadianism in Toronto 1928-29," *Canada: An Historical Magazine* 3 (1975), 34-48.

party's actions were at times dogmatic with an eye for revolution, at other times they were reactive, and rooted in pragmatism.

The state, however, did not care if the CPC was plotting revolution or if it was legally working to undercut its power; in either case, the party was a menace, and needed to be subdued. Thus, on 11 August 1931, at about 7:00PM – or, “zero-hour” as it was known within the ranks of the Royal Canadian Mounted Police (RCMP) and Toronto Police Commission – policemen simultaneously arrived at the dwellings of Tim Buck, John Boychuk, and Tom A. Ewan. Things went smoothly with Boychuk, who quietly submitted to arrest, but neither Buck nor Ewan were at their homes. Buck was eventually located and arrested later that night, and a young Mike Gilmore was, by chance, found at Ewan's home and subsequently arrested after the police found communist literature in his possession. The next day, police arrested Matthew Popovich at his residence, and happened upon Tomo Cacic at the office of the Workers' Unity League (WUL); he was also arrested when they found a letter with Tim Buck's signature in his possession. Later that night, police detained both Malcolm Bruce and Sam Carr in Vancouver. Tom Hill and Tom Ewan, however, remained at large for multiple days, and Ontario's press turned the search into a spectacle. On 13 August, for instance, the *Toronto Star* reported that Ewan might surrender “in the next 24 hours,” but at present, he was busy “arranging his personal affairs,” assuring readers of Ewan's almost charming ability to evade police. Two days later, *The Globe*, remarked that on 14 August, Ewan had failed to turn himself in to the proper authorities, despite an earlier promise that he would. The paper continued, noting that the “police did not take kindly to the understanding that Ewan would give himself up” and in response, they conducted an exhaustive search of communist buildings in Hamilton and Toronto; while Hill turned himself in on 13 August, Ewan remained at large until 17

August.<sup>56</sup> In his memoirs, Ewan recalls turning himself in: “I walked boldly into jail and innocently inquired, ‘Were you looking for me?’”<sup>57</sup>

The arrest of its leaders was certainly the single largest attack on the CPC, but it was not the first time the Canadian state had attacked communism in Ontario. Between 1918 and 1919, radical pamphlets and other literature appeared in many Southern Ontario cities such as Toronto, Hamilton, St. Catharine’s, and Brantford. One such pamphlet, for example, read:

The tactics of the Bolsheviki are based upon the fact that we do not need the institutions of capitalism for our emancipation, but we must destroy them and substitute our institutions in their place, and the success of the social revolution can only be assured by the arming of the workers and the disarming of the capitalist class and its followers... Then will come a time for the putting into practice of our programme as follows: (1) Forcible seizure of governmental power; (2) Complete destruction of all capitalist political institutions....<sup>58</sup>

This pamphlet – just one of many – was signed “Published by the Central Executive Committee of the Communist Party of Canada.” Historians know little about this initial group of Canadians calling themselves the Communist Party of Canada, but as Ian Angus has noted, the federal government reacted to this threat from the left in the way they knew best: with haste and repressive measures. On 23 March 1919, three of the party’s top leaders – Arthur Ewart, Lita Zaborowski, and Lieb Samsonovitch – were arrested; Ewart and Samsonovitch were deported to the United States, and the fate of Zaborowski is unknown.<sup>59</sup> Angus argues that these arrests drove the early Communist Party of Canada

<sup>56</sup> Betcherman, *The Little Band*, 171-77; *The Globe*, 12 August 1931; “Two Communists, Bruce and Cohen, Arrested in City,” *Vancouver Daily Province*, 12 August 1931; “Ewan is Expected to Surrender Soon,” *Toronto Star*, 13 August 1931; “Police are Evaded by Ewan,” *The Globe*, 15 August 1931; “Police Bring Back Alleged Communist,” *Toronto Star*, 15 August 1931; “Ewan Gives up to Face Charge of Communism,” *Toronto Star*, 17 August 1931; “Seventh Red Held,” *The Globe*, 13 August 1931.

<sup>57</sup> Tom McEwan, *The Forge Glows Red: From Blacksmith to Revolutionary* (Toronto: Progress Books, 1974), 188.

<sup>58</sup> *Attorney General, R.G. 4 Series 1-1, Communist Party of Canada Papers*, Public Archives of Ontario, Reel 36, 28L0001, Part II., 1. Henceforth cited as “AG, RG 4, 1-1, CPC Papers, PAO.”

<sup>59</sup> Angus, *Canadian Bolsheviks*, 27-30, 36-41.

further into the underground, dividing its membership and preventing its growth.<sup>60</sup> At least for the time being, the state was able to control the problem of communism before it became, in their eyes, problematic.

The CPC of 1931 was a much more formidable force than the earlier party, and this was not lost on the state. The RCMP's General Report on the CPC, for example, stated that in 1919, the CPC's agitation occurred only in the form of printed leaflets. It continued: "This, almost certainly, was the extent of its existence at the time; the Communist International having devoted only that much of its attention to Canada when it began its North American drive."<sup>61</sup> The Communist International, however, was much more involved in the new CPC. The report identified that the party posed six apparent threats, of which three were directly related to the Comintern; specifically, the last threat noted that the role of the Comintern in determining CPC policy had "speedily developed into one of director and finally absolute dictator." It was obvious that the RCMP and the state more generally were distressed by Russia's influence on the Canadian party.<sup>62</sup>

The state, however, was worried about more than just the party's connection with the CPSU. As the RCMP General Report observed, the foreign membership of the party was also viewed as problematic. Of the estimated 5,000 members of the CPC, the RCMP believed that approximately 3,000 were Finns, and about 800 were Ukrainians. Only about 200, it was believed, were English Canadians, though the majority of the party's leadership was drawn from this demographic. Furthermore, the report suggested that the bulk of CPC "sympathizers"—those people "who like their doctrine, would vote with them if they had a chance, and would support them in one way and another in a time of disorder"—were foreigners. Although the CPC leadership had suggested that the number of party sympathizers was between 20,000 and 25,000, the RCMP believed this estimate to be quite high. The report noted that while the CPC had failed to control organized labour, "they influence it in certain directions, and to a certain extent."<sup>63</sup> The RCMP posited that if the foreign membership's "money were shut off, the English element would probably

<sup>60</sup> Angus, *Canadian Bolsheviks*, 41-42, 48.

<sup>61</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 36, 28L0001, 11.

<sup>62</sup> *Ibid.*, 13-14.

<sup>63</sup> *Ibid.*, 1-2.

collapse due to lack of funds.” The foreign element of the party was aware of this, and consequently, they had become “domineering.” According to the report, this was worrisome, as “the majority of Finns now in Canada almost certainly are revolutionary.” Although the Ukrainians, the report warned, were not as fully “revolutionized,” their membership was generally quite energetic, and had a number of schools that trained children to become agitators.<sup>64</sup>

While it was not overtly written in the report, the terms “communist,” and “foreigner” were assumed to be synonymous. This concept was endemic in Canada’s justice system, and often, the state went beyond the regular boundaries of the law to discipline and control the behaviour of foreigners. In May 1928, the Toronto Police Commission hired Brigadier-General, Denis Draper for the position of Police Chief. Draper – an ex-army officer, pro-imperialist, and steadfast Tory – was fervently anti-communist and anti-foreigner. Within a few months of his appointment and without any mandate to do so, Draper announced that the use of languages other than English at public meetings would be prohibited on the basis that English was the only language understood by Toronto’s police officers. He also threatened to revoke the licences of hall operators who rented to groups that made addresses in foreign languages, in an attempt to scare them out of renting to Draper’s target groups, including the CPC.<sup>65</sup> Further, in December 1928, the Sudbury police arrested Aaro Vaara – the editor of the official organ of the Finnish Organization of Canada (FOC), *Vapaus* – after the paper ran an article criticizing King George V. Vaara was charged with and ultimately convicted of seditious libel; he was sentenced to six months’ imprisonment and fined \$1,000. The conviction, however, was controversial. The presiding judge, Justice Wright, was overtly partisan in his charge to the jury, in essence, instructing the jury that Vaara was guilty beyond a reasonable doubt.<sup>66</sup> The state had demonstrated its expertise for bending the law in order to enforce its own skewed version of justice, and the CPC expected that it would continue to take this approach in the November 1931 trial of the CPC leaders.

<sup>64</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 36, 28L0001, 3.

<sup>65</sup> Betcherman, *The Little Band*, 2, 19.

<sup>66</sup> *Ibid.*, 29-41.

In the midst of this political climate, Tim Buck recognized that the party had much work ahead; the CPC had to formulate a defence that both protected the party from the state's heavy hand and aligned with their Communist doctrine. Despite his modest upbringing, Buck was certainly a good candidate for this task. Born in England in 1891, Buck began working at age twelve as an apprentice machinist at Adrian Motor Works. For seven years, Buck continued to work under their employ. His father Edward, who had long been a role model for Tim, maintained a conservative political outlook and exhibited a paranoia of socialism; as Oscar Ryan explains, "Edward Buck equated Sir Thomas More's 16<sup>th</sup> Century English classic, *Utopia*, with modern socialism," and believed that More was executed because he was a socialist.<sup>67</sup> Throughout his working years, however, Tim came into contact with many unionists and socialists who challenged his thinking. Though Edward believed socialism to be erroneous, Tim recalls that his father challenged him on many of the system's finer points: "he forced me to find answers to some of his rather irrational but plausible and orthodox ideas."<sup>68</sup> In 1910, at the age of 19, Tim left England, and moved overseas to Toronto. Quickly, he became involved in the North American trade union movement, and eventually after reading many works by Marx and Engels, he formulated his Communist ideals.<sup>69</sup> Buck's familiarity with Marxist and Communist works, and his ability to think critically would later aid him at trial.

In response to the arrests of the party's leaders, Buck quickly formulated a platform for the party. On 19 August 1931, he issued a bulletin to CPC members, outlining the gravity of the upcoming battle, and the immediate tasks of the party. Within, he remarked:

Gloomy prognostications are being made concerning the future of capitalism in Central Europe and in Canada, unemployment and want have now attained such proportions that the bourgeoisie is developing tendencies toward panic .... the master class already see in our Party a definite power and a challenge .... The whole attempt is to secure a verdict in the capitalist courts, that we have always been illegal.<sup>70</sup>

<sup>67</sup> Oscar Ryan, *Tim Buck: A Conscience for Canada* (Toronto: Progress Books, 1975), 18-19.

<sup>68</sup> *Ibid.*, 20.

<sup>69</sup> *Ibid.*, 5-48.

<sup>70</sup> Tim Buck, "To All District and Language Fraction Bureaux, Communist Party of Canada," 19 August 1931. *Robert S Kenny Collection*, MS 00179, Box 26, Folder 2. Henceforth cited as "RSK." Emphasis in original.

Viewing the arrests as a moment of overt injustice, Buck wished to challenge the legitimacy of the law. He noted: “The line of the Party is clear. Just as the bourgeoisie insist that we have always been and are now illegal, we insist that we have always functioned openly, and have been and are now legal.” Buck stressed that the CPC’s activities had been made public knowledge, that numerous members of the party had been candidates in municipal, provincial, and federal elections, and that the history of the party had been recorded in the official records of the Department of Labor.<sup>71</sup>

Buck was cognizant that convictions would be only the beginning of the party’s troubles: “If they are successful in this – the Province of hard boild [sic] capitalist reaction – then there will be immediate efforts to extend the effect of the decision to every Province.”<sup>72</sup> This prediction was surprisingly accurate. Even before the trial had begun, Canada’s state authorities tried to ensure convictions of CPC members both inside and outside of Ontario. On 13 August 1931, for example, the Attorney-General of Saskatchewan, M.A. MacPherson, wrote to the Attorney-General of Ontario, W.H. Price. The note read:

Dear Colonel Price,

I learned with great interest from the press yesterday that you had raided the headquarters of the Communists in Toronto. In so doing of course you have got at the heart of the movement for Canada. I have been watching the situation and following it very closely in this Province, keeping in close touch through the Mounted Police with what is going on, but I am anxious to ascertain what correspondence was carried on from Toronto with Saskatchewan, and with whom in Saskatchewan. This will be of great interest to us here. Would it be possible for you to give me or get me this information?

Yours Very Truly,

M.A. MacPherson.<sup>73</sup>

Four days later on 17 August, Price responded to MacPherson, stating that he had asked one of the Crown Prosecutors “to pick out anything that he thinks may affect

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 38, 30L0823.

Saskatchewan and send you on copies.” He continued by noting that he was “very glad to co-operate” with MacPherson.”<sup>74</sup>

Not only was the Canadian state prepared to suppress the threat of communism through the courts, but it was prepared, where possible, to forcibly remove foreign communists from the country. This was demonstrated on 16 September 1931, when Crown Attorney J.A. McGibbon wrote the Attorney-General’s Department in Ontario, requesting information about CPC members in Oshawa. His intentions were quite sinister:

I wonder if you would send me the names of the Communists in the City of Oshawa who went bail for the various Communists which you had arrested and against whom you have preferred charges under the Criminal Code. I would like to have their names for future reference so that I may deal with them when they come up for their Naturalization Certificates.<sup>75</sup>

For McGibbon, the show of solidarity for the CPC leaders was a red flag, and potentially grounds for deportation from Canada.

In an attempt to evade such attacks from the state, Buck delineated seven immediate party tasks. The goal was to ensure that the CPC continued to function normally, and that it would be viewed by the public as a champion of the working class. Of the seven tasks, three were particularly telling of the party’s strategy. First, Buck called for the work of the WUL to be intensified. He stated: “It must be pointed out that even if they secure a conviction against the nine comrades and ‘declare’ our Party illegal in Ontario, they will still be unable to touch the unions and the WUL.” Second, Buck reminded the party to avoid panic, and to remain an above-ground party: “We will not surrender our open leadership of the working class because of the threats of the bourgeoisie,” he pressed, “but on the contrary, we will confirm and consolidate this leadership by developing even wider struggles in defiance of their threats.” Finally, Buck demanded that “the fight for the legality of the party ... must be put in the foreground, in the concrete form of Protests and demands for the release of the nine comrades who are held.”<sup>76</sup> These

<sup>74</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 38, 30L0822.

<sup>75</sup> J.A. McGibbon to W.H. Sedgewick, 16 September 1931. RSK, Box 26, Folder 1.

<sup>76</sup> Tim Buck, “To All District and Language Fraction Bureaux, Communist Party of Canada,” 19 August 1931. RSK, Box 26, Folder 1.

three tasks suggest two things. First, Buck and the CPC were expecting that the party leaders would be convicted under Section 98; Buck even admitted that for the state, the law was “a good means of declaring ‘our Party’ an ‘unlawful association’.” Second, the Party was prepared to continue its legal struggle beyond the trial; although the courtroom was a vital site for contesting Section 98, the battle needed to be simultaneously fought outside the courtroom if the party was to gain sympathy from Canadians. Consequently, in the closing remarks of the 19 August bulletin, Buck noted: “We ... must utilize this situation to develop the greatest working-class struggles that history has yet witnessed in Canada, and thru leadership of these struggles, build and strengthen our Party as the mighty leader of the working class.”<sup>77</sup> In Buck’s opinion, regardless of the trial’s outcome, if the CPC was able to garner significant support from the ranks of Canada’s working class, the party could ultimately view the situation as a victory.

Although its outcome was not judged to be the central focus, the CPC recognized that the trial was still an important event. Consequently, Buck was acutely aware that selecting a lawyer was an important task. The Central Executive Committee understood the trial to be political, rather than criminal; because the accused had never incited, nor attempted to incite violence, they viewed the trial as an attack on their political beliefs. Consequently, the CPC wished, as Buck later recalled, “to make sure that our defence should not rest on legalistic principles, and particularly, the tricks of the law.... we wanted to state what the Party was, and what it wanted to do.”<sup>78</sup> In essence, the party wished to use the courtroom to defend the CPC’s existence as an organization operating in defence of the working class, as well as to condemn the state’s attack on the party. The CPC needed to find a lawyer that would fit this very specific role.

Prior to the trial, the CLDL had regularly used the prominent labour lawyer, Jacob Lawrence Cohen. Cohen, born in Manchester, England, moved to Toronto with his family in 1907. Driven by the prospect of success, in 1923 – just five years after he passed the bar – J.L. opened a law firm with another young lawyer named Henry Rosenberg.<sup>79</sup> Cohen

<sup>77</sup> Ibid.

<sup>78</sup> Buck, *Yours in the Struggle*, 166.

<sup>79</sup> David Michael Estok, “All the Wrong People: The Trial and Career of Labour Lawyer, J.L. Cohen,” Master of Journalism Thesis, (Carleton University, 1982),” 37, 39.

quickly established himself as a proficient labour lawyer and intellectual in the field. As David Estok remarks, “people on the left recognized that Cohen was a clever lawyer, a determined fighter, and not afraid of taking on the Establishment.” He was pro-labour insofar as he desired a more amicable relationship between owners and workers, and to this end, Cohen was prepared to fight for workers’ right to collective bargaining; he viewed the law as a tool through which to reform society and to protect civil liberties, and had some success in this regard.<sup>80</sup>

The CLDL first approached Cohen in 1927 after five CPC members were arrested for vagrancy during a protest against the execution of Italian-American anarchists Nicola Sacco and Bartolomeo Vanzetti. Cohen impressed the CLDL, as he continued to work for the CPC for the next few years, defending some of the most prominent members of the party, including Tim Buck, Becky Buhay-Ewan, Harvey Murphy, and Fred Rose. Cohen fought to defend his clients against a variety of charges, though he was most often chosen in cases where the accused were charged with vagrancy, unlawful assembly, or obstructing a police officer.<sup>81</sup>

Although Cohen was not always successful in protecting his communist clients against convictions, he earned much respect from the leadership of the CPC for his strong grasp of the issues facing trade unions, and for his fiery in-court demeanour.<sup>82</sup> He was witty and sarcastic in his remarks to both witnesses and judges, but also particularly passionate in cross-examining police officers who had used physical violence against communists at rallies and other public gatherings. In September 1929, for example, Myler Klig was tried for obstructing a police officer at a rally in Queen’s Park, Toronto. When

<sup>80</sup> Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen* (Toronto: Osgoode Society for Canadian Legal History, 2001), 3. Cohen experienced trying times in his childhood. When at the age of just thirteen his father Phillip passed away, Jacob was forced to mature from a child, to the primary breadwinner of the Cohen household. By age fourteen, J.L. had taken a job as a clerk at the law firm J.P. White. Earning \$6 per week, J.L. used his wage to help out his family, and to pay for night school in order to finish his secondary education. MacDowell explains that under the employ of J.P. White, “Cohen lived at an incredible pace. He was in the office all day long, attended classes or studied in the evenings and helped his family in the store on weekends.” See: MacDowell, *Renegade Lawyer*, 14-20.

<sup>81</sup> MacDowell, *Renegade Lawyer*, 32-37; Betcherman, *The Little Band*, 69-76; Estok, “All the Wrong People,” 43-46.

<sup>82</sup> Estok, “All the Wrong People,” 49.

cross-examining the arresting officer, one Constable Parker, Cohen was able to get a confession from Parker that he had isolated Klig and repeatedly hit him on the back of his head; Parker had actually burst Klig's eardrum in the attack. Cohen then asked Parker if he believed that such actions were within the regular "sphere of duties" of a police officer, to which Parker responded, "I certainly do."<sup>83</sup> After the confession, Cohen argued quite zealously that "the police were not there exercising any lawful or reasonable or necessary duty. They had arbitrarily presumed by their own opinions that the Communist meetings were not in the interests of themselves or the citizens and had arbitrarily determined beforehand to put an end to this meeting."<sup>84</sup> Despite Cohen's vigorous defence, Klig was eventually convicted and sentenced to sixty days of hard labour.

Later in 1929, Toronto police arrested Charlie Sims, a CPC district organizer, and five women for their role in publishing and distributing a controversial leaflet; it called for a "mighty, fighting demonstration against police terrorism," as well as "a revolutionary struggle against capitalism" and "the overthrow of capitalism and the establishment of a workers and farmers government in Canada."<sup>85</sup> Police decided to try the six under Section 98, the first time that the law was used in a court of law. The first trial, that of Emily Weir, was used as a test case.<sup>86</sup> Weir was charged under subsection eight of Section 98, for distributing literature that advocated "the use, without authority of law, of force, violence, terrorism or physical injury to person or property" (Appendix A).

When the trial began, Cohen admitted that Weir had circulated the leaflet, and centred the defense on attempting to prove that the pamphlet was not forbidden by the law by stressing that the definitions of "revolutionary struggle" and "fighting demonstration" were vague; the Crown attempted to prove just the opposite. After hearing the arguments from both sides, the presiding magistrate, Judge Denton, made the first ruling that had been rendered under Section 98. Without precedent to work with, Denton instead referred to *Rex v. Aldred*, a seditious libel case from England. He cited:

<sup>83</sup> Betcherman, *The Little Band*, 69-70; MacDowell, *Renegade Lawyer*, 36; Estok, "All the Wrong People," 47-48.

<sup>84</sup> Estok, "All the Wrong People," 47-48.

<sup>85</sup> MacDowell, *Renegade Lawyer*, 37-38; *Rex v. Weir* (1929) 52 C.C.C. 111.

<sup>86</sup> MacDowell, *Renegade Lawyer*, 38.

A man may lawfully express his opinion on any public matter, however distasteful, however repugnant to others, if, of course, he avoids defamatory matter.... He may assail politicians, he may attack governments, he may warn the executives of the day against taking a particular course, or he may remonstrate with the executive of the day for not taking a particular course; he may seek to show that rebellions, insurrections, outrages, assassinations and such-like, are the natural, the deplorable, the inevitable outcome of the policy which he is combatting. All that is allowed, because all that is innocuous.<sup>87</sup>

Denton observed that it was not enough for the leaflet to have objectionable language, or to portray opinions that did not align with the Crown, but that they had to actually advocate violence, as per the law. Further, he noted, under Section 98, it also had to be proven that the advocating for violence had to be “done as a means of accomplishing governmental, industrial, or economic change.” In Denton’s opinion, Cohen’s defence was sound, and he could find nothing within the leaflet that explicitly advocated for violence. Almost scolding the Crown, Denton concluded by remarking that “however one may dislike or even abhor the views advocated by the Communists, the advocacy of their cause is not unlawful unless it is done in a manner contrary to law ... I find the accused not guilty.”<sup>88</sup> As the first case law produced under Section 98, Denton’s decision complicated the state’s attempt to use Section 98 to suppress radicalism in Canada, especially in terms of the distribution of pro-communist literature. After Weir was acquitted, the charges of the remaining five were dropped by the Crown.<sup>89</sup>

After such a resounding success, Cohen seemed like the obvious choice to defend the CPC leaders in 1931. Cohen’s political views, however, did not align perfectly with the CPC, and this caused some friction. Cohen never joined the party, and many people that knew him well were not convinced that his views aligned with communism; they thought that Cohen believed in creating conditions whereby labouring people would have a larger share of society’s overall wealth, but they did not think that he cared for socialism. Regardless, Cohen and the CPC were able to work together amicably throughout the late 1920s.<sup>90</sup> After the party leaders were arrested, however, another difference between

<sup>87</sup> Rex v. Weir (1929) 52 C.C.C.111.

<sup>88</sup> Rex v. Weir (1929) 52 C.C.C.111.

<sup>89</sup> MacDowell, *Renegade Lawyer*, 38.

<sup>90</sup> See, for example, Estok, “All the Wrong People,” 50-51.

Cohen and the party emerged. As MacDowell explains, “as a civil libertarian, Cohen took the CPC cases partly to oppose arbitrary, and what he viewed as illegal, police actions and state repression;” Cohen’s stance as a lawyer was to both win cases for his clients, and to help improve the law for the betterment of all Canadian citizens through the machinery of the courts by creating legal precedent.<sup>91</sup> The CPC, however, viewed things differently. Instead of favourable case law precedent, the party executives wanted to see anti-labour laws removed from the statute books and to see the party’s membership increase. This called for a different strategy, one of using trials to gain positive publicity for the party, and to create heroes and martyrs of those who were convicted of crimes, while drawing attention to the injustices of capitalism. As a result, achieving acquittals for the party leaders was a secondary concern for the CPC executive.<sup>92</sup>

Cohen’s first post-arrest meeting with the CPC leaders went awry. By this time, the party had decided that they did not want to have just one lawyer representing the entire group, but instead, they wished to have a few of the men defend themselves. Cohen was decidedly against this idea, and this disparity in views caused Cohen to part ways with the party; according to Buck, Cohen “opposed anybody having anything to do with it [their defence], except himself .... [He] lost his temper and washed his hands of the whole thing.”<sup>93</sup> The CPC wanted publicity; Cohen wanted an acquittal. Eventually, Hugh MacDonald – who had previously worked in association with Cohen, but had since opened his own office – took over. Although he too was skeptical, he eventually agreed to let Tim Buck conduct his own defence, while providing counsel for the remaining eight men.<sup>94</sup>

The strategy of defending oneself in a political trial was not without precedent in Canada. A number of the Winnipeg General Strike leaders who were charged with seditious conspiracy and common nuisance – W.A. Pritchard, A.A. Heaps, William Ivens, and John Queen – had employed this strategy in 1919. The prosecution, led by A.J. Andrews, was based almost entirely on a mass of seized literature, mostly pertaining to socialism and trade unions, found at the homes of the leaders; a total of 1,010 exhibits

<sup>91</sup> MacDowell, *Renegade Lawyer*, 41.

<sup>92</sup> MacDowell, *Renegade Lawyer*, 41.

<sup>93</sup> Buck, *Yours in the Struggle*, 166.

<sup>94</sup> *Ibid.*, 166-67.

were submitted as evidence by the Crown. W.A. Pritchard chose to defend himself. The lawyer for the rest of the accused was W.H. Trueman, and together, they passionately and persuasively defended both socialism and the strike leaders. In his opening remarks, Trueman commented that the Crown's case could best be explained with the story of the Kilamazoo. The story, he remarked, began on a ferry in New York Harbour where a passenger was closely guarding a strange box, keeping the lid tight in order to restrain something that was inside. Passengers began to notice and crowd around the box. One asked the man what was inside, to which he replied that he couldn't say because it would cause too big a commotion. Persistence, however, prevailed, and eventually the box-owner told the crowd to come close so he could whisper the name of the creature: it was the terrible Kilamazoo, the only one that had ever been captured. All but one passenger fled in the scene in terror, and the remaining passenger seemed quite curious:

He said: "What do you feed the animal with?" "That," said the owner of the box, "is my greatest trouble. All its life in the wilds of Africa it has lived on snakes and gorillas. It will have no other food. Fortunately, I have a brother who drinks a great deal and every day or two he has the horrors, and sees things like baboons and boa constrictors. When he does, I capture them and give them to my Kilamazoo." "But," said the questioner, "those are imaginary creatures. You can't feed it with those." "Well," said the owner of the box, "since you are so darned curious, I don't mind telling you that what I have in the box is an imaginary Kilamazoo."<sup>95</sup>

He concluded his story, remarking: "Gentlemen, if you take the case out of the hands of the Crown counsel and lift up the lid and explore its contents, you will find that they have been trying to terrify us with an imaginary Kilamazoo." Trueman's speech was dazzling. He continued talking for almost nine hours despite having been interrupted by both the Court and the Crown over thirty times; eventually, he sat down and refused to continue after his attempt to read *Encyclopaedia Britannica's* entry on Socialism was blocked by the Court.<sup>96</sup>

<sup>95</sup> W.A. Pritchard's Address to the Jury in Crown vs. Armstrong, Heaps, Bray, Ivens, Johns, Pritchard and Queen (R.B. Russell was tried previously): indicted for seditious conspiracy and common nuisance; fall assizes, Winnipeg, Manitoba, Canada, 1919-1920, (Winnipeg: Wallingford Press, 1920), 217-18.

<sup>96</sup> Ibid., 218.

Believing that they were being tried for their political beliefs rather than their actions in the strike, the accused decided not to call witnesses but to instead simply show that the seized literature did not promote violence.<sup>97</sup> In his address to the jury, Pritchard explained his intended course of argument: “When you look through the address of the Crown, you will see that I do not have to offer a defence – I would not lower myself to give it such a name. But I have to explain to this court the history of the Trades Union Movement, and the history of the Socialist Movement.”<sup>98</sup> Accordingly, W.A. Pritchard spoke for two days. Much of this time was devoted to dispelling the Crown’s contention that the literature entered as evidence somehow led the accused to conspire to seize Winnipeg’s government, and implement a Soviet-style system of government. The address, however, achieved much more than this. Pritchard’s speech was a spectacle, and much like Trueman’s, it employed humorous metaphorical anecdotes, and fascinating comparisons. Pritchard, for example, frequently likened his trial to that of Galileo’s, and observed that those who had prosecuted the scientist were in the wrong: “the power of the Church and State was placed upon the neck of Galileo until he himself rebelled. Today the name of Galileo is given forth in our schools as a master of mathematics and physics, while the names of his prosecutors and his traducers are known only to a few who delve into history.”<sup>99</sup> Although the accused were later convicted, Pritchard’s address to the jury was far from being strictly legal in nature, and established a precedent for future trials.

Shortly thereafter, another man in Manitoba employed a similar strategy. In the events of the Winnipeg General Strike, Frederick J. Dixon was also arrested, and charged with seditious libel for four articles that he had contributed to the *Western Labor News*; J.S. Woodsworth, the editor of the paper, was also arrested, but Dixon’s trial was used as a test case. Like Pritchard, Dixon decided to defend himself. His address to the jury was masterful. Within, he both appealed to the common sense of the jury, and assured them that their verdict would be far reaching:

<sup>97</sup> *Pritchard’s Address to the Jury*, 3; William A. Prichard, “The State Trials, Winnipeg, Manitoba, 1920: Text of a proposed address to the student body of the Winnipeg University by the only living defendant of that famous trial,” (Winnipeg, 1971), 4.

<sup>98</sup> *Pritchard’s Address to the Jury*, 10.

<sup>99</sup> *Ibid.*, 5.

A great deal of evidence has been put in and no connection shown.... I want to submit the whole thing has been built up to put something in your minds I have nothing to do with. Everything is built up in the hope that there might be implied that there is seditious intention. I submit if the articles were expressive of seditious intention, then no one would need to spend two weeks to try and build up a case.... I ask you to remember I am in your charge. You are the last hope of the subject so far as liberty is concerned, and you are sworn to make a true deliverance.... I want to submit it is a very important verdict, not only so far as I am concerned, but so far as the public is concerned, so far as whether we have a right to express our honest opinions, or whether we have not; that concerns you and your children as much as it concerns me.<sup>100</sup>

Dixon's stress on protecting liberty proved to be effective, as the jury acquitted him on all charges.

Thus, while at first the Party's choice in counsel may seem trivial, it is representative of a more general strategy of the CPC. Instead of conforming to the typical procedures of the "capitalist courts," the party instead opted to challenge these norms; while Cohen might have been able to produce a win within the existing system, by choosing MacDonald, the CPC preserved its ability to demonstrate the legitimacy of the party, and to openly challenge the legitimacy of Section 98, the state, and capitalism.

## **Trial Strategies**

Writing in 1961, Otto Kirchheimer posited that a political trial "is characterized by the submission to court scrutiny of group and individual action. Typically, those instrumental in the prosecution seek to strengthen their own position and weaken those of their political foes."<sup>101</sup> This is an accurate, yet somewhat simplistic definition, for political trials are also sites of battle between parties of opposing politics. In 1971, Theodore Becker more clearly described why such a battle takes place: "If members of a ruling elite believe a particular individual or group to be imminently hostile to the prevailing pattern of

<sup>100</sup> *Dixon's address to the jury: an argument for liberty of opinion* (Winnipeg: Defence Committee, Israelite Press, 1920), 95-96.

<sup>101</sup> Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton: Princeton University Press, 1961), 419.

value distribution, and if they activate the criminal process against him (or them) for that reason, what results is a political trial.”<sup>102</sup> More than this, however, Becker notes that courts can be used as a “sanctuary” for such people or groups who challenge the authority of the state. “Thus,” he remarks, “a realistic conception of the political trial should emphasize the fact that such a trial involves the calculated use of the court-forum by *any* party to a political struggle in order to damage or destroy the other party’s potential or actual power position.”<sup>103</sup> This change to Kirchheimer’s definition reveals that political trials are not always instances of the state attempting to suppress or eliminate an individual or group; they can, in fact, also be trials where a group or individual attempts to discredit the state or bolster their own legitimacy.

Ron Christenson furthered this definition by declaring that there are four different types of political trials: trials relating to public responsibility; trials of dissenters; trials of nationalists; and trials of regimes. Each type of trial can operate in one of two ways: within the rule of law, or in a partisan manner. Depending on how they function, political trials present different questions and dilemmas to society; in essence, however, the difference between “proper” political trials and partisan trials, is that the latter sacrifice the process of law for political expediency. Still, the line between partisan and non-partisan is not entirely clear, as trials are partially based on testimony – or, in Christenson’s word, “stories” – and there are ways for both parties to overstep normal processes of law.<sup>104</sup>

Christenson is correct. Criminal trials are very often long and complicated affairs. Before they even begin, there are questions regarding jurisdiction, proper charges, bail, juries, and – if there is a preliminary inquiry – even whether the evidence collected sufficiently warrants a trial at all. At many intervals, both the Crown and the accused are granted opportunities to offer arguments and to execute strategies, and the actions of the judge have the potential to impact the outcome of the trial. While there are numerous such points before the trial has begun – for instance, the decision to enter or not to enter a plea bargain – for the purposes of examining the trial of the CPC leaders, we are concerned

<sup>102</sup> Theodore L. Becker ed., *Political Trials* (Bobbs-Merrill Company: Indianapolis, 1971), xi-xii.

<sup>103</sup> Becker, *Political Trials*, xii. Italics in original.

<sup>104</sup> Ron Christenson, *Political Trials: Gordian Knots in the Law*, 2<sup>nd</sup> ed., (Transaction Publishers: New Brunswick, NJ, 1999), 8-11.

with only those strategic opportunities that presented themselves after a plea of “not guilty” was entered, and the trial was set into motion. These strategic opportunities are: the election and selection of the jury; the opening address; the Crown’s case; the Defence; the closing addresses; and the charge to the jury.

Crown prosecutors partly presented an academic case to the jury; it involved interpreting party documents as proof that the party was plotting a violent revolution in Canada. The Crown, however, was aware that there was limited evidence in this regard. Thus, in an attempt to stir the imagination and emotions of the jury, the Crown submitted evidence of the CPC’s secret, underground activities. Further, they stressed that one of the party’s overarching goals was to organize Canada’s non-British immigrant class.<sup>105</sup> While these lines of evidence hardly spoke to the charges, they were free to be interpreted by the jury. In contrast, the CPC leaders did use the courtroom as a sanctuary of sorts. Although they were given ample opportunity to defend themselves against the charges laid, their attempts to do so were sacrificed insofar as they were more concerned with defending the party’s politics. Buck, Ewan, and others offered protracted defences of the teachings of the CPC, and of the writings of Marxist theorists.

## **Election of Jury and the Crown’s Opening Address**

Although Canada had long had laws pertaining to criminal acts, the country’s Criminal Code was not formally enacted until 1892; then Minister of Justice Sir John Sparrow David Thompson was highly influential in its inception. The original 1892 Criminal Code was extremely important in terms of defining criminal laws. It demarcated the distinction, for example, between small, summary “offences,” – previously known as misdemeanour crimes – and more serious, higher-level “indictable offences” – previously

<sup>105</sup> In the 1930s, the term “foreigner” carried a number of connotations. First, the term raised images of violent radicals, as the term was frequently used a pejorative to describe Russian Bolsheviks; after both the Russian Revolution and the Winnipeg General Strike, this imagery became particularly powerful. Secondly, there term implied that the person in question was generally poor, or of the working-class. For clarification on how the term impacted talks about Canada’s immigration policy, see: Valerie Knowles, *Strangers at Our Gates: Canadian Immigration and Immigration Policy, 1540-2006* (Toronto: Dundurn, 2007); Donald Avery, “Canadian Immigration Policy and the ‘Foreign’ Navy, 1896-1914,” *Historical Papers*, (1972).

known as felony crimes. The code, however, did not just systematize and re-categorize the country's criminal laws, but it also made changes to the procedure of trials.<sup>106</sup> In 1912, Hamilton-born legal professional, William Renwick Riddell, wrote a short article regarding Canada's criminal procedure, especially with regards to indictable offences. He remarked:

The Judge reads the depositions and tells the prisoner what he is charged with, and that he has the option of being tried forthwith before him without a jury, or being tried by a jury.... If a Jury be chosen, at the Sessions of the High Court (Assizes), a bill of indictment is laid before a Grand Jury ... by a Barrister appointed by the Provincial Government for that purpose.... Upon a true bill being found, the accused is arraigned; if he pleads "Not Guilty," the trial proceeds. He has twenty peremptory challenges in capital cases: 12 if for an offence punishable with more than five years' imprisonment, and four in all other cases – the Crown has four, but may cause any number to stand aside until all the jurors have been called.<sup>107</sup>

In theory, the process of jury selection is meant to be left to chance; the jury panels are chosen at random, and are meant to represent an assortment of citizens. Both the accused and the Crown, however, are able to exercise some discretion in the selection process. As Riddell notes, the defence was allowed twelve peremptory challenges – that is, challenges that do not require any given reason – while the Crown was allowed four. Either side was also allowed to "challenge for cause" if they believed that a potential juror was not impartial, did not represent one of the accused's peers, or if they were otherwise unqualified to serve as a juror. Furthermore, the Crown was able to ask jurors to "stand aside" until all jurors had been called, temporarily eliminating them from the jury panel; the use of stand asides was at this point, unlimited, as were challenges for cause.<sup>108</sup> Although they had no control over what persons entered the jury panel, both the accused and the

<sup>106</sup> Desmond H. Brown, *The Genesis of the Canadian Criminal Code of 1892* (Toronto: University of Toronto Press, 1989), 123-25.

<sup>107</sup> William Renwick Riddell, "Criminal Procedure in Canada," *Journal of the American Institute of Criminal Law and Criminology*, 3:1 (May, 1912), 30-31.

<sup>108</sup> In the nineteenth century, there were four grounds for challenging for cause: "*Propter honori respectum*: When a noble person was sworn on a jury for the trial of a commoner. *Propter defectum*: When the potential juror was an alien, an infant, was of old age, or lacked some other relevant qualification. *Propter affectum*: Instances of presumed or actual partiality. *Propter delictum*: When a juror was 'infamous.' For example, if a juror had been convicted of any crime that was infamous." See: R. Blake Brown, "Challenges for Cause, Stand-Asides, and Peremptory Challenges in the Nineteenth Century," *Osgoode Hall Law Journal* 38:3 (Fall 2000), 457.

Crown were able to prevent a large number of jurors who they considered to be unfavourable from participating in their trial.

With this in mind, the trial of the CPC leaders began at precisely 10:00AM on Monday, 2 November 1931 in a courtroom at Toronto's City Hall. Each of the accused was charged with three different offences: first, that each was a member of an unlawful organization, to wit, the Communist Party of Canada; second, that each was an officer of the Communist Party of Canada; and third, that each was party to a seditious conspiracy. The defendants elected a jury trial, and after approximately two hours of preliminary matters, each of the accused men entered a plea of "Not Guilty." The next day, the jury selection process commenced. There is, unfortunately, no record of this event. Still, a few sources that indicate the mindset of the accused do exist. The memoirs of both Tim Buck and A.E. Smith – the General Secretary of the CLDL – recount how the CPC leaders failed strategically in the selection process. Buck recalled that being tried by a judge and jury was MacDonald's idea: "we mistakenly elected a jury trial. Hugh MacDonald persuaded us that a jury trial is the most democratic, that we must beware the danger of simply being tried on the basis of the letter of the law."<sup>109</sup> Buck, however, further remarked that the party had little experience in the way of jury trials, as this was the first time that any of them had been indicted of a criminal offence. As a result, they had agreed to let MacDonald take control of the selection process; according to Buck, he "challenged every professional man, and finished with a jury made up almost entirely of farmers and retired people." While in theory, this jury might have been more sympathetic to the views of the CPC, both Buck and Smith remembered gaining no such advantage; Buck noted that "[w]hat was to happen was completely over their heads," and Smith remarked that "[t]here were times when some of the faces registered a total blank."<sup>110</sup>

Lita-Rose Betcherman has argued that despite the displeasures of Buck and Smith, the jury was certainly composed of the CPC leaders' peers. This observation is not incorrect, as the jury was composed of two farmers, an engraver, a draftsman, a carpenter, a watchmaker, multiple electricians, and a number of retired professionals.<sup>111</sup> Still, it is

<sup>109</sup> Buck, *Yours in the Struggle*, 171.

<sup>110</sup> Ibid., 171; A.E. Smith, *All My Life: An Autobiography* (Toronto: Progress Books, 1977), 133.

<sup>111</sup> Betcherman, *The Little Band*, 186.

worth observing both Buck's and Smith's frustration with the jury. Both believed that the jurors were indifferent, or perhaps not educated enough to understand the contents of the trial; Buck wholly regretted electing a jury trial in the first place, and Smith suspected that there had been state interference in the selection of the jury panel.<sup>112</sup> While in terms of their position on the socio-economic ladder, the composition of the jury seemed to be beneficial to the CPC leaders, political support for the party was far from certain. Given both this and the academic nature of the trial, it is possible that electing a jury was a misguided tactic. Moreover, had the CPC leaders elected a trial by judge and been convicted, their message that the state was consciously repressing the party would have appeared more valid. Buck's frustration with having elected a trial by judge and jury is understandable; he came to believe that they started the trial at a disadvantage. Regardless, the law provided for no mulligans on the election of a jury, and they were stuck with the twelve selected jurors for the trial's duration.

With the jury selected, the trial commenced. Outlining the crown's argument, senior Crown Attorney Norman Somerville's address to the jury was the first event. Somerville remarked that the evidence was to be submitted in two branches: the first would attempt to prove that each of the accused was a member and officer of the CPC; the second would attempt to prove that one of the central objectives of the CPC was "a deliberate, continuous, subtle plan or conspiracy ... to overturn by force, by violence, by bloodshed all the existing institutions of Church and State in Canada."<sup>113</sup> Most of the accused would openly admit their membership in the CPC, so the bulk of evidence that the Crown submitted dealt with the latter branch. The Crown would largely focus on the CPC's membership in the Comintern. Somerville explained: "[t]he evidence produced will show that every member who joins the party takes a definite pledge to subordinate himself to the decisions and directions of the Communist International at Moscow.... The [Executive Committee of the Communist International] has the right to annul or amend all decisions of the party congress of Central Committees of all parties, and also to make decisions which are obligatory for them." These facts, he continued, could be gleaned from the CPC's Constitution, the Comintern's Constitution, as well as the 21 Conditions for

<sup>112</sup> Buck, *Yours in the Struggle*, 171; Smith, *All My Life*, 133.

<sup>113</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 36, 28L0052, 1-3, 14.

Admission to the Communist International.<sup>114</sup> Despite the connection with the Comintern, Somerville also noted that the CPC actively utilized two tactics for advocating violent governmental change. Strikes, noted Somerville, were meant to “stir up discontent and strife ... to foment and develop grievances, real or imaginary.” Further, he remarked, the party organized demonstrations, which were meant to create a sense of struggle between demonstrators and the police, “leading to the development of revolutionary sentiment among the demonstrators.”<sup>115</sup>

Much of the evidence submitted was party literature that was seized in the raids of 11 August, as well as minutes from meetings of the Central Executive Committee of the CPC, the party’s highest level of decision making. According to Somerville, however, much of the Executive Committee’s work was carried out through sub-committees, departments, language groups, or other party organizations, such as the Agitation and Propaganda Department, the Farmers’ Unity League (FUL), or the FOC; it would be necessary to explain the party’s work in each of these groups, as “everyone [*sic*] of them is provided with one or more newspapers in their respective languages, for the purpose of carrying out the program and objects of the organization.”<sup>116</sup> Somerville concluded, noting that according to some of the party’s prescribed literature, the conditions in Canada were nearly ideal for a proletarian revolution. All countries, he explained, “are not equally advanced along the pathway of Revolution ... in capitalistic countries, of which Canada is reckoned as one, one of the most fruitful conditions for the development of Revolutionary sentiment is during a period of economic crises. The Evidence will disclose that the party believes that Canada is at present in that advanced condition of economic crisis.”<sup>117</sup>

Somerville’s address to the jury proposed a number of things. First, it stressed that there was a “master and servant” relationship between the CPC and the Comintern.<sup>118</sup> This suggested to jurors that documents and literature supplied to the party from Moscow were *ipso facto* officially adopted into the CPC’s party line, and the parameters of what the

<sup>114</sup> Ibid., 6-7.

<sup>115</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 36, 28L0052, 12-13.

<sup>116</sup> Ibid., 9-12.

<sup>117</sup> Ibid., 14.

<sup>118</sup> Endicott, *Raising the Workers’ Flag*, 324.

CPC were advocating or teaching were thusly broadened. This was a shrewd legal strategy, but it also carried an emotional appeal; given that the CPSU had engineered a proletarian revolution in 1917, connecting the CPC with Russia certainly made the party appear more sinister to those who feared revolution. Second, by labelling the party's work as tactics for sparking a revolution in Canada, it suggested that the party carried on its everyday work with malice; even if the CPC organized strikes that were purely for the betterment of workplace conditions, for instance, this could be viewed as a stepping stone towards a revolution. Third, in stressing the CPC's work with organizations such as the FUL and the FOC, Somerville foreshadowed his intention to problematize the party's work with Canada's poor, and its non-native, non-English speakers. Information regarding the language groups and other unity organizations could have been limited to the fact that they carried out the party line, and had their own press. By introducing more detailed evidence regarding these groups, however, the Crown was able to call into question the party work that was only tangentially related to the charges. Depending on one's political outlook, this could be seen as bad either because the party was working with non-British, undesirable Canadians, or because the party was spreading their violent doctrine to new, impressionable Canadians. Finally, by asserting that the CPC believed that Canada was nearing revolution, it stressed to jurors the immediate importance of rendering a guilty verdict; if the accused were acquitted and a revolution occurred in Canada, the blood of those killed would be on the hands of the jurors. Somerville assured the jury that a conviction would not be the start of a slippery slope: "the Code," he noted, "is very careful

to preserve the right to free speech and unhampered discussion.”<sup>119</sup> It was a crafty address that advised jurors of the logical reasons for returning a guilty verdict.<sup>120</sup>

## The Crown’s Case

Somerville and his junior associate, Joseph Sedgewick, then began the case for the Crown. Their first task was to prove that each of the accused were both members and officers of the CPC. In so doing, Somerville and Sedgewick examined numerous officers of the Toronto Police Commission and the RCMP.<sup>121</sup> Each officer testified to how they knew the accused, and to what they knew regarding their position in the party. One such

<sup>119</sup> *AG, RG 4, 1-1, CPC Papers, PAO, Reel 36, 28L0052, 2.*

<sup>120</sup> On the first day of the trial before the accused had entered a plea of not guilty, Hugh MacDonald presented a motion to Justice Wright to rescind the indictment on the basis that it did not explain why the CPC was an unlawful organization. While Wright dismissed the motion, he also directed the Crown to generate a Bill of Particulars for the charges under Section 98. Somerville’s address to the jury closely resembled the resulting document. There were seven particulars for the charges under Section 98: (1) That one of the CPC’s professed purposes was to bring about government, industrial and economic change in Canada by use of force, violence and/or physical injury to persons; (2) That one of the CPC’s professed purposes was to overthrow the existing form of government in Canada and to replace it with a Soviet style government; (3) That one of the CPC’s professed purposes was to bring about an armed revolution in Canada for the purposes of the forcible overthrow of the existing governmental and industrial institutions in Canada; (4) That one of the CPC’s professed purposes was the forcible overthrow of the existing economic order in Canada; (5) that from 1921 to 1931, the CPC taught, advocated, advised, and defended the use of force in Canada for the purposes of inciting these changes in Canada; (6) That the CPC was a section of the Comintern, and as such, it was subject to the Comintern’s statutes, theses, decisions, directives, and orders. Further, one of the Comintern’s professed purposes was the forcible overthrow of all existing governmental systems, and to replace them with Soviet style governments; (7) In organizing Canada’s foreign-born, non-English speakers, farmers, workers, unemployed, women, children, and other groups, the CPC had taught, advocated, advised, and defended the use of force, violence, terrorism, or physical injury to bring about governmental, industrial, or economic changes in Canada. See: *AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0208, 28L0209.*

<sup>121</sup> In order of appearance, these officers were: Frank Zaneth, Daniel Mann, William Simpson, William “Bill” Nursey, John Nimme, Alexander R. Elliott, Ervin Hartile, Charles Smith, George Fish, John Leopold and Joseph Ewing. Frank Zaneth had experience in testifying against Canada’s labour leaders. As a member of the Royal Northwest Mounted Police, Zaneth had infiltrated Western Canadian labour circles under the alias of Harry Blask. “Blask” pretended to be an organizer for the IWW, and soon gained the trust of the labour movement. In 1919, during the trial of R.B. Russell, Zaneth testified against the strike leader, despite having never worked closely with him. Rather than presenting evidence that directly pointed to Russell, Zaneth presented a broad story of the OBU conspiring to collect weapons for their own purposes. See: Daniel Francis, *Seeing Reds: The Red Scare of 1918-1919, Canada’s First War on Terror* (Vancouver: Arsenal Pulp Press, 2010) 109-117, 221-22.

witness was John Leopold. While undercover with the RCMP, Leopold joined the CPC in 1921 under the name of Jack Esselwein, though he was later expelled from the party. Leopold testified as to each of the accused's position within the party, to their attendance at party conventions, and to their election to the Central Executive Committee and other party bureaus. For the most part, the examinations went smoothly, and without protest. At times, however, Hugh MacDonald challenged the police testimony, either by questioning how they had obtained the information, or by attempting to undermine the credibility of the witness. For example, Detective George Fish of the RCMP was describing his encounter with Mike Golinski, and noted that Golinski had stated that he was a member of the CPC. MacDonald, however, challenged the admissibility of this statement, arguing that Golinski had made it under duress, as he had been unjustly detained; of course, Golinski was actually a member of the Young Communist League, not the CPC, and so this challenge was logical. Still, the police testified that the accused were all leaders of the CPC, and for the most part, MacDonald was quiet, as he understood that this was not the crux of the Crown's case.<sup>122</sup>

While MacDonald did not cross-examine those who testified that the accused were officers of the CPC, A.E. Smith was called by the Crown to testify. Smith was steadfast, and yielded little information about the party or its leaders. When asked, for example, "Would it be correct to describe Cacic as a Communist Leader?" Smith answered "It might possibly." Smith was also asked about Ewan's role in the party, and responded that he was Secretary of the WUL. When he was further asked if the WUL was "subordinate to or under the instructions of the Communist Party," he responded, "I understand it is an autonomous organization."<sup>123</sup> Still, the evidence presented by the Crown was more than enough to establish that each of the accused, excepting Golinski, was an officer of the CPC.

The Crown's second task was to show that one of the professed purposes of the CPC was to provoke a violent revolution in Canada. Testimony regarding this began with Charles Smith and John Leopold. Smith was attempting to identify a letter he had received from Popovich in 1921 stating that a Communist Party had been formed at a provisional

<sup>122</sup> *AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 83-87.*

<sup>123</sup> *Ibid.*, 108-110.

conference in Toronto, when Somerville asked him if it was the original letter. When Smith responded that the original letter had been destroyed, and that the version he was identifying was a copy, MacDonald objected that the evidence was not proper. Somerville, however, attempted to help resolve the issue, by asking Smith to reveal why the documents had been destroyed. Smith responded: "There was a time when the Party was working underground in a more or less illegal manner, that is to say the Party itself recognized that they could not function above ground, and consequently, were very careful with their communications."<sup>124</sup> In his testimony, Leopold expanded on Smith's remarks. He too explained that early in the party's life, the leaders actively carried out their work with the understanding that they were an illegal organization. When Somerville asked why the party viewed themselves as illegal, Leopold responded in a seemingly rehearsed manner, "Because it advocated the overthrow of the existing order by means of force." Leopold even clarified what he meant when he referred to existing order: "I mean the economic institutions, the state, and the social order in general."<sup>125</sup> It would appear, as Richard Fidler has remarked, that "Comrade Esselwein had ... read Section 98."<sup>126</sup>

Leopold – mockingly referred to as the "stool-pigeon" by members of the CPC – was the Crown's most valuable witness.<sup>127</sup> Throughout his examination, he continually affirmed the CPC's connection to the Comintern. Financially, for example, he testified: "some of the expenditure in connection with the formation of the Communist Party were defrayed by the Communist International.... I know that at least \$5,000 was spent in Canada to get the movement organized." He also remarked that the "application for affiliation was endorsed by the Communist International in late 1921."<sup>128</sup> Further, he swore that Buck, Hill and Popovich had all visited Moscow, Buck and Hill in 1924, and Popovich in 1927.<sup>129</sup>

<sup>124</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 120-22.

<sup>125</sup> Ibid., 125, 133.

<sup>126</sup> Fidler, "Proscribing Unlawful Associations," 38.

<sup>127</sup> Canadian Labor Defense League, *Story of the Trial of the Eight Communist Leaders: November 2<sup>nd</sup> to November 13<sup>th</sup>, 1931* (Toronto: National Executive Committee of the Canadian Labor Defense League, 1931), 11-12.

<sup>128</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 130-32.

<sup>129</sup> Ibid., 97, 104, 106.

Leopold's testimony, however, achieved more than connecting the CPC with the Comintern. Throughout his examination, Leopold attempted to make the CPC seem as fantastical, and illicit as possible. He explained that in the early 1920s, the CPC had two active parties: the Communist Party, or "Z" party, which operated underground, and the Workers' Party, or "A" party, which operated openly, and above-ground, working almost as a cloak for the Z party. The Z party carried out all of the tasks that the leadership thought might attract the attention of state authorities – for instance, organizing demonstrations, and compiling and printing radical pamphlets – and as such, they were careful to conceal their work. This testimony is essentially accurate. Leopold further explained, however, that the leading members of the Z party assumed different names which were largely kept secret. Somerville asked Leopold: "When you were dealing officially with Tim Buck, under what name would you address him?" and Leopold responded, "As Page." When asked the same question about Malcolm Bruce, Leopold revealed that Bruce's code name was "Mason."<sup>130</sup> Evidence of secrecy did not stop with code names. During examination, Somerville asked Leopold exactly how he knew of the work that was being done in the Z party, to which he responded that some communications were encoded:

Mr. Sommerville [*sic*]: Can you illustrate [the code]? A. Yes, for instance, the word "contrary" would be written, the letter "C" would appear in code, we will say 5-7, meaning the fifth letter on the seventh line on that page. "O" would be, we will say, 7-12, indicating the seventh letter on the twelfth line; "T", for instance, would read 12-2, indicating that the twelfth letter in the second line is the letter. "R" would probably read 6-4 indicating the sixth letter in the fourth line...<sup>131</sup>

Leopold's evidence suggested that the CPC leaders were cognizant that their actions might attract the attention of the state, and were, perhaps, illegal under Canadian law. Moreover, although it did not speak to the CPC's advocacy or promotion of violence, it attempted to utilize the imagination of the jury by forwarding imagery of the CPC covertly and chaotically plotting assassinations, revolutions, and whatever else they could envisage.

<sup>130</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 37, 28L0129, 138-39.

<sup>131</sup> *Ibid.*, 163. With the transcript of the trial, Somerville's name is spelled "Sommerville." Based on a number of other sources, it appears that "Somerville" is the correct spelling. See, for example: *Coleman v. Q.R.S. Canadian Corporation Ltd.*, [1931] SCR 708, 1931 CanLII 9 (SCC); *Prince George Citizen*, 13 March 1941.

With a connection to the Comintern established, and evidence given regarding the subversive nature of the CPC, the Crown began reading excerpts from official party documents and publications as evidence against them. It was not difficult for Somerville to point out that the CPC often used violent, revolutionary rhetoric. The first issue of *The Communist* – the official publication of the Z party – stated, for example:

The result of the Constituent Convention is the organization of the vanguard of the Canadian working class into the Communist Party of Canada, Section of the Communist International, with a program of mass-action as the vital form of proletarian activity, armed insurrection, civil war as the decisive, final form of mass-action for the destruction of the Capitalist state, proletarian dictatorship in the form of Soviet power as the level of the Communist reconstruction of society . . . . Ours is an age of revolution versus imperialism.<sup>132</sup>

Shortly thereafter, the paper noted: “[t]he revolutionary epoch upon which we have entered forces upon the proletariat the application of militant methods, namely mass action which leads to direct collision with the bourgeois state.”<sup>133</sup> Several similar examples were offered by Somerville.

If this was not enough evidence to support the Crown’s claim, Somerville then proceeded to read excerpts from the Comintern’s publication entitled *Conditions of Admission to the Communist International*. In essence, Somerville’s argument was that because the CPC had joined the Comintern, it automatically submitted to these conditions; the document laid this out very nicely for Somerville. Before listing twenty-one non-negotiable provisions for any party joining the Comintern, the author – Vladimir Lenin – explained the document’s necessity. When the First Congress of the Communist International – or, the Third International – met in 1919, the document explained, the executive did not see the need to provide any stipulations for membership. As a result, many groups that had been a part of the Second International (1889–1916), though not truly communist in nature, had applied for membership. The executive of the Comintern viewed this as problematic: “groups of the ‘centre’ are trying to lean on the ever strengthening Communist International, hoping at the same time however, to preserve a

<sup>132</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 166-67.

<sup>133</sup> Ibid., 167.

certain 'autonomy' which would enable them to carry on their former opportunist or 'centrist' policy."<sup>134</sup> The Comintern, argued Lenin, faced the possibility of being weakened by the number of uncommitted groups that it had in its membership. In order to remedy the situation, all members of the Comintern had to submit to a list of stringent conditions which both ensured the party's tireless commitment to the communist cause, and its submission to the executive of the Comintern.<sup>135</sup>

The list of conditions that the document produced was damaging to the image of the CPC. The third item, for example, declared that parties of the Comintern should not expect to be protected by the laws of their country, and that it would be necessary for them to carry out illegal work in the case of their repression: "the Communists can have no confidence in bourgeois laws.... In every country where, in consequence of martial law or of other exceptional laws, the Communists are unable to carry on their work lawfully, a combination of lawful and unlawful work is absolutely necessary." Item four noted that propaganda and agitation was to be consistently carried out in the armies; "refusal to carry on or participate in such work," the item stressed, "should be considered equal to treason to the revolutionary cause, and incompatible with affiliation with the Third International."<sup>136</sup> Finally, Somerville read points sixteen and twenty-one, which stressed that the resolutions of the Comintern were binding for all members, and that the twenty-one conditions had to be followed at all time by members, lest they would be liable to expulsion. These clauses might not have pointed to the CPC's advocacy of violence; they did, however, point to the fact the party *might* perpetrate violence at some point in the future.

Sedgewick cited another document written by Lenin entitled, "*Left-Wing Communism: An Infantile Disorder*." This document, polemical in nature, advised that true communists did not wait for parliament to crumble, but instead were active in securing its downfall:

Communism repudiates parliamentarianism as the form of the future; it renounces the same as a form of the class dictatorship of the proletariat; it

<sup>134</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 171.

<sup>135</sup> Ibid., 171.

<sup>136</sup> Ibid., 175.

repudiates the possibility of winning over the parliaments; its aim is to destroy parliamentarianism. Therefore it is only possible to speak of utilising the bourgeois State organizations with the object of destroying them. The question can be discussed only and exclusively on this plane.<sup>137</sup>

Although communists fundamentally rejected the legitimacy of democratic government, the document further listed reasons that they might partake in parliamentarianism. Lenin claimed that in the impending revolutions of countries, it was the job of “the guiding party ... [to] secure every and all lawful positions, making them its auxiliaries in the revolutionary work.” In this sense, it was permissible to secure seats via parliamentary elections, and to spread propaganda; this had a “special importance for the winning over of those elements of the workers, who ... have stood far away from the revolutionary movement and political life.” Still, the document remarked that the role of the communist, if elected, was exclusively to promote the party’s cause: “Each Communist member must remember that he is not a ‘legislator’ who is bound to seek agreements with other legislators, but an agitator of the Party.”<sup>138</sup>

The Crown’s case then turned to examining witnesses about the CPC’s involvement with foreign-born Canadians, and non-English speaking Canadians. This portion of its argument, however, was much more subtle; there was nothing illegal *per se* in organizing Canada’s workers, irrespective of their ethnicity. In a time, however, of economic stress, international wars, and xenophobia, any connection that the Crown could make between the CPC and non-Anglo-Saxon Canadians could potentially strengthen its case.

One of the Crown’s first pieces of evidence that detailed the CPC’s work with foreign-born Canadians was a report from the Central Executive Committee of the National Ukrainian Agitprop Committee of the CPC. After detailing an unsuccessful attempt by the executive of the CPC to liquidate the Ukrainian Farmer Labour Temple Association of Canada (UFLTA), the document broadly described the CPC’s work with Ukrainians in Canada:

<sup>137</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 178.

<sup>138</sup> Ibid., 178-80.

It is estimated that there are around four hundred thousand (400,000) Ukrainians in Canada and they constitute numerically the third [largest] nationality here. They are 99% labourers and farmers (the latter forming the preponderant majority). After the world war, Ukrainian immigrants came to Canada by thousands. In the past they came here the poorest strata of proletarianised and poor Ukrainian peasantry, in the majority illiterate or half-literate, unaccustomed to organisation and not class conscious.... From such workers and farmers had our Ukrainian comrades to build up the organization. They had to start from the teaching of ordinary alphabet before they could teach political alphabet, and proceed to build up the workers [sic] cultural life. But the resulting successes today are great, indeed, if taken into consideration these difficult conditions under which they had to work and struggle.<sup>139</sup>

Without explanation of the relevance of the document, the court adjourned for the day. The following morning, Somerville entered new evidence pertaining to the CPC's work with Canadian farmers. First, a paragraph was read from "the draft agrarian programme of the Communist Party of Canada." It stated that "in a period of revolutionary crisis," it would be necessary to win over the population of farmers in Canada; at such a time, the slogan "Abolition of all debts," would achieve this. Next, a letter from the Krestintern – an international peasants' organization, founded by the Comintern – found at Tim Buck's dwelling specified in greater detail the types of organized struggle that Canadian farmers should execute in order to support the revolution:

[The CPC] must also be supported by the mass activity of the farmers. It is necessary to utilise all forms of struggle of the farmers meetings, gatherings, demonstrations of protest, etc. The organisation of a struggle against the collection of taxes, debts, fines, and under conditions of a revolutionary upsurge, to the point of a boycott of mass refusals to pay taxes and assessments.<sup>140</sup>

The letter then assured Buck that Moscow was prepared to offer "all possible help" to the CPC, and encouraged him to establish close ties with the Krestintern, and to correspond with them regularly.<sup>141</sup>

<sup>139</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 330.

<sup>140</sup> Ibid., 335-36.

<sup>141</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 336-37.

These excerpts were allowed into evidence largely without hesitation. When Somerville once again introduced evidence regarding the CPC's work with Ukrainian-Canadians, however, MacDonald finally objected. The exhibit in question, minutes from a meeting of the CPC's Secretariat, was introduced in an attempt to show how the CPC controlled the print shop of the UFLTA. MacDonald, remarked, "How would that be evidence at this trial? The Ukrainian Farmer Labour Temple Association is not on trial."<sup>142</sup> Agreeing, Justice Wright reminded Somerville that the prosecution was based on the fact that the CPC was an illegal organization based on its objects and teachings, not that it was somehow maliciously organizing a contingent of foreign-born Canadians. Somerville remained resolute, and responded to Wright, "Your Lordship will remember that in the direction from Moscow there was definite instruction." His intention was to corroborate the argument that the CPC was wittingly submissive to the Comintern, and while this was perhaps true, Wright ruled that "getting control of an Association does not indicate illegality."<sup>143</sup> Somewhat hesitantly, Somerville dropped his exploration of the document; further evidence of this sort, however, was later discussed by the Crown. These documents, and the relevant discussion, were free to be considered by the jury. While we can only speculate as to whether it informed their verdict, the presentation of evidence linking the CPC with both working-class and foreign organizations appears intentional, and it potentially damaged the character of the CPC.

The final point put forth by the Crown was that directives from Moscow had led to violence at a CPC organized demonstration. In making this argument, Somerville introduced a document from February 1930 entitled "How the Communist International Formulates at Present the Problem of Organization." Within, the author – one B. Vassiliev, a Comintern official based in Moscow – detailed a number of precautions that party members of the Comintern were to take in preparation for the revolution. One such precaution was the training of self-defence organizations to aid in protection from police intervention at revolutionary demonstrations. The pamphlet remarked:

The practice of the proletarian self-defence detachments during recent demonstrations shows that the comrades from the sections of self-defence do not have the slightest conception of any kind of self-defence. When the

<sup>142</sup> Ibid., 346.

<sup>143</sup> Ibid., 348.

police attacked them they ... waved their arms about aimlessly whilst the policemen were quite confident.... It is not enough to pick up a stone and throw it, but it is important that that stone should hit its target, and not merely hit its target but that some effect should be seen from the blow. But as long as our comrades don't go through any training in throwing stones they naturally throw stones for the moral effect.<sup>144</sup>

After reading this excerpt, Somerville called William Nursey – Detective-Sergeant for the Toronto Police Commission – to give evidence about a CPC demonstration in Toronto on 1 May 1931. After explaining the event's precise location, Somerville asked Nursey what took place at the demonstration. Nursey responded: "Throwing of stones."<sup>145</sup> Quickly, however, MacDonald objected, proclaiming that unless Nursey was prepared to testify that it was CPC members that were throwing stones, this evidence could not be used against the accused. Justice Wright asked Nursey if he knew that the accused were present at the demonstration, and Nursey admitted that he did not know if they were in attendance.<sup>146</sup> Consequently, the line of questioning was quickly dropped, and the Crown closed its case shortly thereafter.

## The Defence

The accused's defence was obstructed almost from the moment the trial commenced. Just before the court adjourned on Monday, 2 November, MacDonald submitted to Justice Wright that it would be logical for the accused to obtain bail for the course of the trial. Somerville, however, objected to this proposition; apparently,

<sup>144</sup> AG, RG 4, 1-1, *CPC Papers, PAO*, Reel 37, 28L0129, 354-55. This pamphlet also mentioned that "all legal Parties are now under the greater responsibility in respect to the creation and strengthening of an illegal apparatus. All of them must immediately undertake measures to have within the legally existing Party committees an illegal directing core." The Crown, however, failed to mention this. For more context on the pamphlet, see: Harvey Klehr, John Earl Haynes, and Fridrikh Igorevich Firsov, *The Secret World of American Communism* (New Haven: Yale University Press, 1995), 71.

<sup>145</sup> AG, RG 4, 1-1, *CPC Papers, PAO*, Reel 37, 28L0129, 362.

<sup>146</sup> *Ibid.*, 362-63. Richard Fidler believes the combination of the Vassiliev pamphlet and Nursey's testimony regarding the May Day demonstration to have been amongst the most influential in the trial's outcome. It is quite clear, however, that while the Crown attempted to stress the significance of this evidence, both MacDonald's objection and Nursey's inability to place the CPC leaders at the demonstration, rendered it unusable. See: Fidler, "Proscribing Unlawful Associations," 37-8.

pamphlets promoting a demonstration in support of the accused were being distributed outside the courthouse by friends of the CPC. This information shocked and enraged Justice Wright, who promptly denied the accused bail in order to ensure their absence from the demonstration. While Wright agreed to grant the accused bail on Wednesday, 4 November, the mass of literature entered by the Crown as evidence required time for MacDonald to read, and furthermore, to comprehend. With Buck and the other CPC leaders denied bail, however, this proved to be problematic for MacDonald, as conferring with his clients – who were well versed in the language of Marxism – was difficult.<sup>147</sup>

On late Friday morning, five days after the trial began, the Court was ready for MacDonald to commence his defence. Just before, however, MacDonald made a submission to Justice Wright: “I would ask your Lordship not to force me to open the defence until Monday morning, or at least until after lunch this afternoon.... Your Lordship will appreciate the difficulty of my position in view of the mass of material that has been filed.” While the Crown had largely been expedient in terms of providing copies of the materials entered as evidence, there were exceptions. MacDonald had not been forwarded, for example, a copy of the “Vassiliev pamphlet,” or a copy of Nikolai Bukharin’s book, *The ABC of Communism*. Responding to MacDonald, Wright remarked: “you will have an opportunity, before you close your defence, to consider them. I want to get along with this trial.”<sup>148</sup> MacDonald then stated to Wright that due to his own unpreparedness, he did not believe it would be in the interest of a fair trial to have his witnesses turned over for cross-examination: “I am not suggesting that I want to coach them in their doctrines, my Lord; it is the other way about.” Wright appeared to have had a change of heart, noting that he did not want MacDonald or the accused to be “unduly handicapped.” Amazingly, when the Crown indicated that they would be amenable to allowing MacDonald some time to prepare for his defence, Wright again changed his mind: “in view of the fact that two months have elapsed since the preliminary hearing, I think Mr. MacDonald has had ample time in which to arrange his defence.... Proceed, Mr. MacDonald.”<sup>149</sup>

<sup>147</sup> Betcherman, *The Little Band*, 183-93.

<sup>148</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 37, 28L0129, 377-80.

<sup>149</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 37, 28L0129, 381-82.

Wright continued to rule against MacDonald. Outlining to Wright his proposed line of defence, MacDonald stated that he and the accused were preparing to take the materials entered into evidence by the Crown, “explain it, and indicate that it does not mean what it appears to mean.” In essence, he proposed to argue that while much of the literature appeared to advocate violent behaviour, communists believed that it was capitalism that caused the violent behaviour, and the CPC was only organizing the working class for the inevitable revolution. MacDonald also indicated that at times, it would be necessary to go beyond the Crown’s material, and produce his own; the trial, in his eyes, put the accused in a position whereby they were forced to defend the philosophic system of Marx, Engels, and Lenin. Wright, however, pronounced that this line of defence would be problematic: “I doubt if that will be permissible. Here are certain written statements contained in documents. How can any witness come and say that it does not mean this or that? That is for the jury.... You will be confined to the system as disclosed in the evidence.”<sup>150</sup> Still, Wright offered MacDonald some solace. Wright observed that it might be proper for witnesses to offer oral evidence in order to clarify any “equivocal or ambiguous” terms or expressions. He ordered MacDonald, however, to confine such testimony to specific terms and expressions, and that anything meant to explain the meaning of entire documents would be inadmissible.<sup>151</sup>

Regardless, without preparation and with little consultation with Buck, Ewan, or any of the other CPC leaders, MacDonald began his defence later Friday morning.<sup>152</sup> MacDonald attempted to accomplish three things: first, he attempted to show that the CPC engaged in numerous lawful activities, such as running candidates in elections at various levels of government; second, he attempted to distance the CPC from the Comintern, and to show that the party’s executive sometimes made decisions that did not align with directives from Moscow; and third, he attempted to show that any violence that had occurred at CPC demonstrations was, in fact, caused by the police, not CPC members.

<sup>150</sup> Ibid., 377.

<sup>151</sup> Ibid., 378.

<sup>152</sup> Buck later recalled, “I realized what a fatal error we had made in taking a man like Hugh MacDonald who, for all his warm feelings towards us personally, had no more idea of what this trial was about than I had about why Justice Wright objected so strenuously to being called ‘Your Honour’.” See: Buck, *Yours in the Struggle*, 174.

In their own oral evidence, however, the CPC leaders often attempted to simply explain the party's platform in order to both gain attention from the country's newspapers, as well as to convince the jury that their cause was reasonable. Tim Buck was the first to be examined. MacDonald began by asking Buck about the formation of the CPC in 1921 and its decision to function as an underground party. Buck explained that in the wake of the events of the US Palmer Raids and the Winnipeg General Strike, those present at the conference had serious concerns as to how the party would be treated by the state: "when there was a general tendency towards war, hysteria, and the War Measures Act was still in operation, and the ban had not been lifted on the Socialist-Democratic Party, it was decided that it would be foolhardy to immediately declare ourselves as having organized a Communist Party." As a solution, conference attendees decided that it would be in the best interest of the working class to first function as "a so-called illegal party; in other words, as an underground party."<sup>153</sup> In essence, the party decided to function underground, not so much because they believed their actions were illegal, but that their political views would unduly attract the attention of legal officials. Perhaps somewhat disingenuously, Buck assured the jury that in 1924, when the Canadian government had widened democratic rights, the underground party was dissolved and the CPC functioned "legally, open and above-board."<sup>154</sup>

Next, MacDonald asked Buck about the party's parliamentary work. Buck responded by noting that the CPC had frequently contested elections in Canada:

In 1923 the members of our party were elected to the British Columbian, Albertan and Nova Scotian legislatures. In 1923 several members of our Party contested the general provincial (Ontario) elections, and two of them in Toronto secured the highest votes of any Labour candidates or any working class candidates; one in Northwestern Ontario secured almost half of all the votes cast.... From 1923 until 1927 we contested every municipal election campaign in Toronto, in addition to numerous municipal campaigns in other parts of the country, and succeeded in electing some of our members.... We have consistently and systematically nominated candidates in every election campaign.<sup>155</sup>

<sup>153</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 37, 28L0129, 385.

<sup>154</sup> *Ibid.*, 387.

<sup>155</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 37, 28L0129, 388-89.

The argument here was that if the CPC participated in parliamentary democracy, it could have no reasonable motive for overthrowing the system. It appears, however, that Buck's memory failed him; none of the three provinces that Buck mentioned – British Columbia, Alberta, Nova Scotia – held a general election in 1923, nor did the CPC elect members in any by-elections that year.<sup>156</sup> Especially at the municipal level, however, the CPC had run candidates in elections, despite the Crown's claim that the party wished to overthrow parliament. While it was a good counter-argument, quite patently, the CPC was never a political party designed for the purposes of securing parliament and initiating reforms. Returning to Lenin's *Left-Wing Communism*, by electing members to the House of Commons or provincial legislatures, the CPC was given an effective avenue for spreading propaganda; Canadian newspapers frequently printed excerpts of governmental debates. In this regard, electing one person to government could accomplish this goal. Still, the notion that the party participated in parliamentary democracy was a clever argument that could potentially appeal to jurors.

Buck endeavoured to continue his explanation of CPC political campaigns, but he was interrupted by Justice Wright, who reminded Buck to stick to the facts of the case. MacDonald, however, was satisfied with Buck's explanation. He then stated to Buck: "will you now tell the Court and jury generally about the activities of the Communist Party since its formation." Buck, again, offered a brief history of the CPC, this time describing the party's work in organizing the working class, stressing especially their work with industrial unions.<sup>157</sup> After Buck's explanation of the CPC's organizational efforts, MacDonald asked Buck if there had ever been any violence as a result of the CPC's activities. Buck responded: "[n]ever as a result of our activities; as a by-product of strikes there has been, but not as a result of the activities of the Communist Party." MacDonald, prodded further, asking if the party had attempted to carry on its activities "without force, violence or sabotage or terrorism, or anything of that kind." Buck's response was that the party had

<sup>156</sup> It is possible that in terms of British Columbia, Buck was referring to W.A. Pritchard, who was elected to the province's legislature in 1924 as a member of the Socialist Party of Canada, but it doesn't appear that Pritchard was ever a member of the CPC. See: *Electoral History of British Columbia, 1871-1986* (Victoria: Elections British Columbia, 1988), 151-58; Elections Nova Scotia, *Nova Scotia Provincial Elections 1867-2011*, accessed on 2 August 2015, <http://electionsnovascotia.ca/sites/default/files/Elections%20from%201867-2011.pdf>.

<sup>157</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 37, 28L0129, 392-97.

certainly never advocated or even insinuated anything of the like; he maintained this multiple times throughout his examination. Finally, MacDonald asked Buck about the CPC's relationship with the Comintern and its relationship with Marxist theory. Referring to the Programme of the Communist International, MacDonald asked "is there anything laid down in the programme which may not be departed from by the Communist Party of Canada?" Buck responded by noting that while the CPC accepted the programme "as a whole," there was nothing inside that could not be deviated from; the conditions in each county varied, and accordingly, each country's CP would act differently.<sup>158</sup>

Next MacDonald, in an attempt to have Buck explain the CPC's view on the "inevitable proletarian revolution," asked Buck quite directly: "does the Communist Party teach the overthrow or the bringing about of governmental change in Canada by force or violence...?" Buck, however, was kept on a short leash by Wright. When he responded, "We teach the inevitable collapse of capitalism," Buck was cut short by Wright, who demanded that Buck answer the question only with a "yes" or a "no."<sup>159</sup> Buck advised the judge that if he were to simply answer "no," this might be misinterpreted by the jury; it would be necessary to explain precisely why, based on the party's teachings, it was an incorrect statement, lest the jury might misconstrue his answer. Wright, however, insisted that he was only to answer "yes" or "no," as this was the only thing he was "called upon to answer."<sup>160</sup> At this point, MacDonald intervened, explaining why he believed such an explanation to be necessary:

The witness says that the answer No is correct as far as it goes, but it does not tell the whole story.... I see no reason at the moment why it should not be admissible in evidence.... Now, the witness has spoken of historic processes and historic development and so forth.... Assuming that it is legitimate to teach the doctrine and that some time in the far future, generations ahead, for example, the result of teaching Marxism will be that when the present system breaks down, as Marx predicts it will and as they believe it is going to without any action of theirs, there is this revolutionary situation and then the proletariat step in and set up.<sup>161</sup>

<sup>158</sup> Ibid., 441.

<sup>159</sup> Ibid., 447-48.

<sup>160</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 447-48.

<sup>161</sup> Ibid., 449-52.

Here, MacDonald stressed that as he understood it, Marxism taught that capitalism would, at an undetermined point in time, collapse on itself, and it was the job of the CPC to organize Canada's working class for this inevitability; they were not being proactive in trying to create a revolution in Canada, but they were attempting to maximize the benefit for the working class once it occurred. Further than this, MacDonald contended, Somerville had already read numerous documents to the jury, and in doing so, had implied that they taught the members to take up arms and immediately destroy and take over the state. This, he argued, hindered his ability to properly conduct the defence. Wright, however, was unmoved. He responded, noting that the charge called for the Crown to prove that the CPC directly taught or advocated the use of force and violence; if the CPC taught that a revolution was going to occur without their help, this was an indirect, rather than a direct teaching. Accordingly, he assured MacDonald that he would be confined to the evidence put forth by the Crown, and that he would not be permitted to go beyond these materials.<sup>162</sup> MacDonald's line of examination had been thwarted, and although he reserved the right to recall him for further questioning, he turned Buck over to the Crown for cross-examination.

The Crown's cross-examination of Buck followed a similar line as its case. Somerville continued reading excerpts of party materials, and with the CPC's secretary on the stand, he was able to interrogate him about their meaning. Somerville, for example, returned to Nikolai Bukharin's book, *ABC of Communism*. Within, he observed, Bukharin offered a definition of the word "revolution" based upon the writings of Friedrich Engels:

He wrote: "The revolution is the most authoritative thing in the world; for revolution means an historic event, when one part of the population imposes its will upon the other of the population by means of bayonets, guns and rifles." Such was the conception of revolutionary Marxism.<sup>163</sup>

After reading the extract, Somerville then asked Buck if he was familiar with Bukharin's definition. Buck responded: "Of course. He does not propose that it is a complete definition of revolutionary Marxism." He reminded the Crown that Bukharin was delivering a speech

<sup>162</sup> Ibid., 453-54.

<sup>163</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 475.

and that it was, therefore, not an academic interpretation. Somerville, however, pressed further. He read another passage from Bukharin's book:

Do you remember how Bukharin criticized Kautsky's stance on this: -

"And now we hear what the miserable Herr Kautsky has to tell us: 'Bayonets, guns and other means of violence are purely bourgeois means. They have not been invented by the proletariat, but by the bourgeoisie. The barricade is a pure bourgeois institution.' (Laughter) In this way one could argue almost anything. Kautsky might, for instance, say: 'Before the bourgeois revolution, the bourgeoisie fought with ideas; consequently this is a purely bourgeois method. It would follow then that we must discard all ideas.' Perhaps Kautsky has discarded all ideas now. (Laughter) It would be really ridiculous to adopt such a method of reasoning."<sup>164</sup>

Somerville asked Buck if he remembered this definition of revolutionary Marxism, to which Buck replied, "It is correct."<sup>165</sup> In instances such as this, Somerville's cross-examination was successful, as Buck admitted his familiarity with the notion of violent behaviour and a violent revolution; the character of Buck's testimony regarding the inevitable collapse of capitalism was, thus, called into question.

Somerville's curiosity regarding the CPC's work with language groups once again surfaced. In an attempt to show that the CPC had gained authority over the FOC and UFLTA, Somerville questioned Buck about the CPC's involvement with both organizations. With regard to the FOC, Somerville pressed Buck on the issue of the organization's official organ, *Vapaus*: "Q: And is it not a fact that the Communist Party of Canada actually selected the editor for *Vapaus*, the paper? A: Yes. Q: And is it not a fact that the Communist Party of Canada laid down the line of editorial policy for *Vapaus*, the paper? A: Yes."<sup>166</sup> Somerville made similar assertions regarding the UFLTA, suggesting that Buck had, at times, directed the organization without first consulting the party fraction.<sup>167</sup> At this point, however, MacDonald objected to the line of cross-examination, calling its relevance into question: "What difference does it make, as far as the Finnish

<sup>164</sup> Ibid., 475A.

<sup>165</sup> Ibid.

<sup>166</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0129, 476-77.

<sup>167</sup> The party fraction consisted of those who were members of both the CPC and the UFLTA, who together acted as a liaison between the two organizations.

and Ukrainian organizations are concerned? What bearing can that have upon this trial?"<sup>168</sup> Wright generally agreed with MacDonald; he did indicate, however, that if Somerville's intent was to impeach the credit of the witness, that this would be permissible. Somerville responded that he intended to show that the CPC carried out its programme through these language organizations, which corresponded with the programme of the Comintern. When Wright replied that this was not relevant, Somerville dropped the line of questioning.<sup>169</sup>

MacDonald quickly re-examined Buck in order to respond to Somerville's use of Bukharin, and his proposed definition of revolutionary Marxism. He asked Buck: "What would be the conditions under which it [the state] could be superseded, according to the principles of your Party, and which they would seek to put into effect?"<sup>170</sup> Buck replied that in past moments of political crises, it became impossible for the state to govern as it had in the past, presenting an opportunity for the working class: "when economy and social conditions were lapsing into anarchy, the workers could establish their own government, and the task of that government would be to abolish the Capitalistic State apparatus." Wright again intervened, asking Buck if this meant that the CPC were "waiting for the present system to decay generally."<sup>171</sup> Buck confirmed this, adding only that the party was, in the meantime, working to better the conditions for the working class in the existing system, and to accelerate the collapse of capitalism.<sup>172</sup> Buck was then withdrawn, and MacDonald proceeded to examine his other witnesses.

MacDonald did not examine every member of the accused, but instead stuck to those who were most proficient in their knowledge of Marxist and Socialist theory – Thomas Ewan, Amos T. Hill, and Malcolm Bruce. MacDonald's examination of these witnesses followed a very similar course as that of Buck's. When interviewing Ewan, for example, MacDonald attempted to dispel Leopold's testimony that the party consciously carried out illegal work in the form of advocating violence. He asked Ewan if he could

<sup>168</sup> Ibid., 479.

<sup>169</sup> Ibid., 480.

<sup>170</sup> Ibid., 487.

<sup>171</sup> AG, RG 4, 1-1, *CPC Papers*, PAO, Reel 37, 28L0129, 487.

<sup>172</sup> Ibid., 488.

explain, from his personal experience, what kind of work the CPC considered to be “illegal.” Ewan replied that an example of such work was the “establishment of addresses for the receiving of mail ... to protect our organization from interference.”<sup>173</sup> Next, MacDonald attempted to counter the stone-throwing evidence, put forth in both the Vassiliev pamphlet, and in Nursey’s testimony. First getting Ewan to confirm that the pamphlet was not an official CPC document, MacDonald then asked him: “Are you aware of any instances where those recommendations ... as to throwing stones and attacking the police, and so on, have been put into practice by the Communist Party in this country?” Ewan responded that the CPC had never advocated or practiced such recommendations.<sup>174</sup> Finally, Ewan attempted to imply that any violence at CPC demonstrations had, in fact, been caused by the police. He remarked: “I know of a great many instances ... where the police have attacked demonstrations.... There has been force used, but it has not been under the direction of the Communist Party of Canada.”<sup>175</sup> There was further testimony, similar to Buck’s, that although the CPC was a member of the Comintern, it retained sovereignty in terms of decision making; the cross-examination attempted to contradict this point.<sup>176</sup>

The cross-examinations of Ewan and Hill again pushed the issue of the CPC’s work with foreigners. While Somerville continued his attempt to show that the FOC was controlled directly by the CPC, he also accused the CPC of financially assisting the Jewish workers’ newspaper, *Der Kampf*. Somerville suggested that the CPC had, on occasion, donated ten dollars to the newspaper. Ewan explained: “It [*Der Kampf*] has possibly received assistance in the form of giving a lead to its campaigns, the Communist Party will put out advertising material to support a campaign for finances, but I would not say it was directly supported.” Still, Somerville interrogated further:

Q. Have you never supported other than the way I have suggested, this ten dollar donation? A. I presume it has got some support.

<sup>173</sup> Ibid., 502-03.

<sup>174</sup> Ibid., 510.

<sup>175</sup> Ibid., 511.

<sup>176</sup> See for example, AG, RG 4, 1-1, *CPC Papers, PAO*, Reel 37, 28L0129, 521-23, 552-59.

Q. As a matter of fact, is it not the Jewish paper for the Communist Party of Canada? A. Oh no.

Q. Is it not that one that appeals to the Jewish element? A. It puts forward [a] Communist line for the work among Jewish workers.<sup>177</sup>

While Somerville was able to adduce some evidence that the CPC had donated small sums of money to *Der Kampf*, this line of inquiry ceased shortly thereafter. After all witnesses had been questioned and the Defence had been wrapped up, the Crown dropped the charges against Michael Golinsky.<sup>178</sup> As Somerville explained, they lacked sufficient evidence to prove that he was a member of the CPC, and could only prove that he was a member of the Young Communist League.

### **Closing Arguments, Charge to the Jury, and Sentencing**

With the Crown's case and the accused's defence completed, it was the CPC's prime opportunity to utilize the court, as Wright allowed Buck to address the jury. As Buck later recalled, Wright had caught him off-guard by extending the court's sitting beyond what he had previously declared. Receiving only a five minute recess to prepare, Buck's address was conducted almost exclusively "in defence of Communist principles."<sup>179</sup> The beginning of his address was shaky, as he was continually interrupted by Wright:

Tim Buck: – I feel that in opening my remarks to your lordship and the Jury it is necessary to emphasize the fact that the Communist Party of Canada has been in existence for more than ten years, and that the Communist Party of Canada has been continually in the public eye. It is essential that we should have an understanding of this fact because it goes to the root of the question at issue here today, and I crave the privilege of putting forth some incidents in the history of the Communist Party of Canada and of the labour movement in Canada during these ten years, to show that the Communist Party has been a very well known party of the working class movement in this country, has reported to governmental departments at Ottawa, and has been reported upon by governmental departments.

<sup>177</sup> Ibid., 562-63.

<sup>178</sup> Ibid., 766-67.

<sup>179</sup> Buck, *Yours in the Struggle*, 180-81; "Canada May Set Precedent in Communism, Buck Says," *Toronto Star*, 11 November 1931.

Justice Wright: – Mr. Buck, you must not start that way. I told you that you must not travel outside the evidence, and there is no evidence of that fact here, so do not start that.

Tim Buck: – I see, your lordship.

Justice Wright: – You must not make statements of facts that are outside the evidence.

Tim Buck: – Your lordship, is it permissible to quote from Hansard?

Justice Wright: – No, no, Hansard is not in evidence here.

Tim Buck: – That being so, your lordship, and gentlemen of the Jury, I must quote a few examples in which the Communist Party has been connected with the activities of the working class during the past ten years; in some of which incidents people have been killed, but in none of which the Communist Party has been even suggested as ever advocating the teaching of or being in any way responsible for the violence that took place. In 1923 the steel workers of Sydney, Nova Scotia, were on strike.

Justice Wright: – Mr. Buck, I want to give you every latitude here; but you must not go outside of the evidence that has been adduced in this case. There is nothing here about steel workers or about Hansard at all. You have plenty of material here to comment on the evidence. It will never do to travel away beyond the evidence.<sup>180</sup>

Although Buck was unable to add new information about the party's history, Buck was able to comment on communist principles, and the way in which the CPC understood the unfolding of history. He began by explaining their understanding of why a revolution occurs:

Revolution comes because history proceeds forward from one epoch to another and because within the womb of every system and every form of society there is contained the germ of the next form, and this germ develops within the existing form of society up to the point where it becomes incompatible with existing property relationships and has to break the shell that limits its development. That is what causes the revolutionary crisis which is spoken of in the program of the Communist International. That is what causes the break-down of government. That is what causes chaos. And unless the progressive class, the class which is striving to assert itself

<sup>180</sup> Canadian Labor Defense League, *An Indictment of Capitalism: The Speech of Tim Buck, Address to the Jury on November 12<sup>th</sup>, 1931 at the trial of the eight leaders of the Communist Party of Canada during November 2<sup>nd</sup> to November 13<sup>th</sup>, 1931* (Toronto: Canadian Labor Defense League, 1931), 41-42.

... is able to establish its own form of government, then society tends to relapse into anarchy.<sup>181</sup>

For this reason, in order for society to progress once capitalism collapsed, the working class would have to be prepared to seize, and capitalize on this historical moment.

This preparation was especially important to the CPC because, as Buck explained, based on the writings of Karl Marx, the party believed that the culmination of capitalism was imminent:

And although the present form of joint stock ownership, limited liability companies, and corporation control through banks had not been developed when Marx wrote his book, actually Marx was able to forecast that it would develop, and he foretold with absolute accuracy in his book what would be the development of capitalist industry; the contradictions through which it would develop and the final contradiction to which it would lead.

When we speak of the historical end of capitalism, we speak of the final stage of capitalism. In other words, we mean that on a world scale, capitalism has reached the highest development that can be achieved within the existing property relations.<sup>182</sup>

The CPC was, thus, actively engaged in preparation for the arrival of this historical moment.

Buck did not shy away from promoting the CPC's utopian vision for society. This society, he argued, would benefit all Canadians, and it was only the capitalist class that stood in the way of realization of this society. He proclaimed:

Against [capitalism] we visualize a society where classes as such will disappear. Instead of one class having to live by selling its labor power to another class, while that employing class lives securely by investment of its wealth, we visualise a society where all will share equally to the best of their ability and to the limit of their capacity in the production of the necessities of life, and all will share to the limit of their needs in the use of the necessities of life. We visualise this society. We are convinced that such a society will emerge. We do not believe that mankind is limited by some supernatural power to remain at the level at which we live today.... We do not believe that it is logical for intelligent men and women to think that a condition where millions and millions of people are starving should

<sup>181</sup> Ibid., 43-44.

<sup>182</sup> *An Indictment of Capitalism*, 47-48.

be allowed to prevail while the warehouses are full of food, where thousands of farmers are starving because they cannot sell the wheat which they have grown. We do not believe that it is logical for any intelligent man to believe that these things cannot be changed.... The capitalist government and the state apparatus exist to maintain the rule of the capitalist class. There can be no building of Socialism until the working class has taken over state power, has abolished the capitalist state, which cannot serve the purposes of the working class, and has established a workers' state.<sup>183</sup>

Buck argued that Communism was not the violent, alien ideology that the Crown suggested. Rather, the CPC aimed to establish socialism in Canada, and the only class of Canadians that this would hurt was the wealthy, exploitative, capitalist class.

The CPC's preparation for the impending, inevitable revolution, Buck contended was not violent. In fact, the CPC's work aimed to advance the socio-economic conditions for the working class; successful strikes and demonstrations could both improve workers' wages and working conditions, but also show them the importance of working-class solidarity. He commented:

It is a fact that the Workers' Unity League and the Communist Party of Canada are organizing the railway workers of Canada today to resist a ten percent wage cut. In so doing, we are not merely organizing them to save their wages from being cut by ten per cent. **We want to do that**, but in addition, we are trying also to teach them the value of organization and the necessity for a working-class policy, the necessity for the organization of the working class on the basis of a program that grows out of working class needs, and leads to working class victory.<sup>184</sup>

There was no violence in organizing the working class, and in Buck's opinion, this was the main program of the CPC; it was not revolution that the CPC was truly fighting for – they believed this was coming regardless of their actions – but the working class's right to organize, and to hold strikes and demonstrations without state intervention.

Buck further argued that any violence that would take place in the revolution would be caused by the bourgeoisie. Quoting the program of the Communist International, Buck

<sup>183</sup> Ibid., 60-61.

<sup>184</sup> *An Indictment of Capitalism*, 47. Emphasis in original.

explained that when challenged, the bourgeoisie would resort “to every means of violence to safeguard and strengthen its predatory property and its political domination.”<sup>185</sup> Attempting to provide an example, Buck mentioned the 1931 strike at Estevan, Saskatchewan – in which three miners, Julian Gryshko, Nick Nargan, and Peter Markunas, were shot and killed, and another eight were injured – and the violence sparked by the RCMP.<sup>186</sup> Wright, however, again intervened, telling Buck that the Estevan strike was not part of the Crown’s case, and that he was required to confine his speech to the evidence. Still, Buck gave what he believed to be the CPC’s policy in regards to the Estevan strike, and the party’s belief in terms of revolutionary violence:

The policy of the Communist Party in this strike – as in all strikes – is based clearly and definitely upon the struggle of the working class for working class interests. And in this struggle provided the capitalist class were willing to allow the working class to strike against wage cuts, to permit the working class to organize their forces, to struggle for improvements in conditions, then quite probably there would be no violence. But when violence comes from the efforts of various forces, armed guards and the company’s police, etc., etc., - we do not accept responsibility for it. It is violence nevertheless. Violence is there, and we know by what has happened all through history and what is happening in other countries that it is coming, and that it will increase... the significant thing and one of the outstanding things about the Communist Party is its participation in strikes and struggles of the workers; and quite probably the inference is there that by leading strikes, formulating the demands of workers, organizing demonstrations and formulating programs, the Party does advocate violence. In none of its Programs was it brought out. But the important point is that there is definitely linked in the case of the Crown the inference that the struggle of the working class is a violent struggle....<sup>187</sup>

Thus, Buck assured the jury that while there may have been violence at CPC organized strikes, if the state had viewed the cause of the working class with any modicum of respect, such violence could have been avoided. According to this, any inference by the Crown that the party advocated violence was false, and misunderstood the party’s most basic principles.

<sup>185</sup> Ibid., 66.

<sup>186</sup> For a detailed analysis of the events at Estevan, see Stephen Endicott, *Bienfait: The Saskatchewan Miners’ Struggle of ’31* (Toronto: University of Toronto Press, 2002).

<sup>187</sup> *An Indictment of Capitalism*, 67, 69.

Buck – with constant interruptions from Justice Wright, reminding him to “stick to the evidence” – spoke for three hours. The speech was reminiscent of those given at the Winnipeg General Strike trials by W.H. Trueman, W.A. Pritchard, and Frederick J. Dixon; while it tended to some of the legalistic points brought up throughout the course of the trial, it also cautioned the jury of the importance of the impending verdict. For example, Buck stated that the charges under Section 98 created criminals out of politically active Canadian citizens, and this was a dangerous prospect:

If we are found guilty of being members of an unlawful association on the basis of Section 98 of the Criminal Code, then automatically this declares that the Communist Party is an unlawful association. And it is a matter of unquestionable significance that this has never yet happened in any English-speaking country. It has never yet happened in any country where parliamentary democracy has not been abrogated.... And the Communist Party is not on trial because it is doing something that it has not done continuously, and that has not been considered as a general part of the political life of the country, but because of the increasing fear of the bourgeoisie, and the sharpness of the situation.<sup>188</sup>

Buck recognized the political nature of the trial, and reminded the jury not to be reactionary, but to use reason, and to protect individual liberty. By noting that CPs had not been made illegal in any English-speaking country, Buck also played on any pride that the jury may have had in Canada’s British heritage.

If Buck was cognizant of the political nature of the trial, so too was Somerville. In his own closing remarks, he fiercely condemned Buck’s speech. He retorted, for example, that Buck’s statement that the CPC’s main program was that of helping to improve the socio-economic conditions of the working class was insincere. Quoting from the 1928 Programme of the Communist International, he remarked:

“The task of the Party is to utilise these minor every day needs as a starting point from which to lead the working class to the revolutionary struggle for power.”

Gentlemen, do you get the significance of that sentence? That the daily needs of the workers are only minor considerations to the Communist, that the daily needs of the workers are not to be relieved, they are not to be

<sup>188</sup> *An Indictment of Capitalism*, 77.

made use of for the purposes of getting reforms, but that they are to be used as the starting point for something. For what? To get redress? No. But to lead the working class to the revolutionary struggle for power...<sup>189</sup>

Further, Somerville also made remarks appealing to the British and Canadian pride of the jury, and ensured them that individual liberty would remain protected if they returned a conviction:

Gentlemen in the name of Canada I call upon you to say that the Crown has proven every charge in the entire indictment. It is for you to say, as the final judges whether these agitators will be permitted to continue their nefarious work and to undermine the democratic institutions of this land. Ours is a land of free institutions, to every man in the land who will use these institutions and not abuse them. Freedom of action does not produce crime. Freedom of speech is the proudest heritage of a British subject as long as freedom of speech is used and not abused.... One of the fundamental rights of every state is to preserve itself against attack[s] of every kind.... Gentlemen, think of the result of your decision. To convict is to condemn these practices ... to declare that revolution shall not prevail in Canada.... On the other hand gentlemen, to acquit these men upon these charges is to put the seal of your approval upon the principles and the practices of the CPC, to accept and to endorse the dictatorship of Moscow...<sup>190</sup>

In the final lines of his closing address, Somerville likened the accused to enemies of Canada. Recalling that Remembrance Day had just passed, he implored the jury to recall “the sacrifices that have been made to save our state from the hand of the enemy,” and to convict the accused in order to protect the state from the evils of these men.<sup>191</sup> While Buck had warned the jury of the dangers of convicting the accused, Somerville’s retort warned of just the opposite.

With both the Defence and the Crown having made their closing remarks, Wright delivered his charge to the jury. Typically, the charge to the jury is meant to accomplish numerous things: the judge is meant to explain to the jury the relevant legal issues; to give an explanation of the arguments provided by both sides and the relevant evidence pertaining to these arguments; to reaffirm to the jury that they are the ultimate masters of

<sup>189</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0158.

<sup>190</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0173, 28L0174.

<sup>191</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0175.

what facts are accepted; and, to explain to the jury the available verdicts. In proper form, Wright's charge began by explaining the relevant legal issues. The charges under Section 98, according to Wright, presented the jury with two legal questions which they needed to answer: was the CPC an unlawful association according to Section 98; and, were the accused members and officers of the CPC.

In accordance with the first question, there were two further points to consider. Firstly, was it an objective of the CPC to bring about governmental, economic, or industrial change in Canada? Wright certainly believed so. He rhetorically asked the jury:

Is it not fair to say that upon the evidence given by those of the accused who gave evidence in the box, they admitted that their desire was to bring about a change from the present system in Canada to a system similar to what exists to-day in Russia...? Need I trouble you, or have you any doubt that such is at least one of the purposes, if not the main and the central purpose of this organization?<sup>192</sup>

The second point to consider was whether or not the CPC advocated or defended the use of force in the bringing about of such changes. Wright reminded the jury that in regards to this, there was both textual material and oral evidence to consider. With regards to the oral evidence, however, Wright's advice was that the jury should not trust the testimony of the accused. He remarked:

If a man is charged with a serious crime, is he not interested in putting the most favourable view of the facts before the Jury? Is he not under a temptation to perhaps distort the facts so as to establish his own innocence? It is all a question for you, gentlemen; you are not obliged to accept the evidence of any witness...

Alternatively, Wright offered a glowing review of the testimony of Sergeant Leopold. After explaining that Leopold had joined the CPC for the explicit purposes of "learning the workings of that organization so that he might report to the authorities what was going on," he reminded the jury that Leopold had testified that one of the key goals of the party was the overthrow of the capitalist government by means of force and violence. "That," he stated, "is his sworn evidence as to the avowed objects of the organization at the time of

<sup>192</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0176, 10-11.

its organization as stated by the organizer. It may be that when organized the Party would disown any such principle, but is there any such evidence here that they did recede from the objects...?"<sup>193</sup>

Concluding his discussion of the charges under Section 98, Wright warned the jury that it was not their place to acquit the accused if they did not believe the in the law's legitimacy:

Something has been said here about this being an unusual law, a harsh law, and that a jury should struggle against convicting a man for violation of an unreasonable law. Is it an unreasonable law, a harsh law to prohibit force and violence...? And, Gentlemen of the Jury, whether it is harsh or not, it is the law, and you and I are not concerned with whether it is harsh or not.... It is the collective wisdom of our representatives in the Parliament of Canada ... it would be a dangerous, a vicious principle for any person concerned with the administration of justice to say, "we will not enforce this law, we will not convict these prisoners or that prisoner because we don't think it is a good law and a beneficent law" – that would be a violation of the oath of every juryman...<sup>194</sup>

Where regularly, charges to the jury are not meant to suggest that either a conviction or an acquittal is proper, certainly Wright's charge at least stressed the evidence that pointed to the guilt of the accused; Fidler has even argued that Wright's charge "contained a clear direction to convict."<sup>195</sup>

The jury deliberated for only two hours; they returned a verdict of "guilty" on all three counts. When court resumed the next day, Wright offered the accused a chance to speak before he revealed their sentences. Both MacDonald and Buck took the opportunity to express themselves. MacDonald spoke of the political nature of the trial:

I submit to your Lordship that there is nothing against these men except the views which they hold.... These men are in the dock this morning ... not as criminals in the ordinary sense, but as political criminals, because their views on political questions bring them into conflict with the State. It has been well said by a great criminologist that the political criminal is the precursor of all the progressive movements in the history of humanity.... I

<sup>193</sup> Ibid., 12.

<sup>194</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0176, 16.

<sup>195</sup> Fidler, "Proscribing Unlawful Associations," 38.

can do no more on their behalf nor do I desire to prolong what is the plain situation. I appeal, as I said before, to the just judgement and consideration of the Court.<sup>196</sup>

MacDonald suggested that there might be backlash from Canada's populace if the sentences were especially harsh. Buck mirrored MacDonald's statement, and reminded Wright that his actions were a result only of his ideology; he had worked actively and energetically in accordance with his beliefs, just as statesmen did. He concluded by remarking: "I will try to take whatever sentence you give me in the same spirit I have tried to do the work I have done."<sup>197</sup> At this point, the sentence was likely trivial to the CPC leaders.

Wright's sentencing confirmed that he agreed wholesale with the arguments of the Crown. Wright explained that the propaganda spread by the CPC had caused much discontent. More importantly, though, the propaganda had been extended to a particularly susceptible group of Canadians – the foreign-born:

Some of you have made special appeals to those who were not born in Canada and who were not versed perhaps in the spirit of Canadianism. It is an exceedingly dangerous procedure to spread your propaganda among those who have recently arrived in this country. People who come to this country must learn, and ought to submit to the laws and institutions that exist here. To think that some of you of foreign birth have been here a short time, a few years, and then to agitate to overthrow the constitutional government of this country is something repugnant to one who believes in peace as we have it in this country.<sup>198</sup>

Wright likened the offences under Section 98 to treason, and noted that in sentencing the CPC leaders, he hoped that it would have a deterrent effect on other organizations. Tomo Cacic, who appeared to have had a lesser role in the CPC, was sentenced to two years imprisonment under Section 98, and one year imprisonment under seditious conspiracy; Cacic was also recommended for deportation, as he was born in Yugoslavia. Wright sentenced Buck, Ewan, Boychuk, Hill, Bruce, Carr, and Popovich to five years imprisonment on the two counts under Section 98, and to two years imprisonment for the

<sup>196</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0176, 23.

<sup>197</sup> Ibid.

<sup>198</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 37, 28L0176, 23-24.

count of seditious conspiracy; the sentences were to run concurrently. MacDonald immediately informed the court that the defence would appeal the verdict. Somerville successfully filed a motion for the seizure of all materials belonging to the CPC, as they were now officially an illegal organization. "The material," he explained, "is to be made available to the Attorneys General of the various Provinces and for further prosecutions if decided upon."<sup>199</sup> If all went well, members of the CPC would be rounded up countrywide.

The CPC leaders appealed the judgement to Ontario's Court of Appeal in 1932. While the sentences under seditious conspiracy were reversed, the convictions under Section 98 were confirmed. Ontario's Attorney-General, William H. Price, decided to publish the Court of Appeal's decision. In a preface entitled, "Communism in Canada," Price assured Canadians that their free speech was not being compromised, stating: "it is Communism, not the law of Canada as it stands, that is the enemy of free speech." More telling, however, he remarked that the decision affirmed Canada's proud Anglo-Saxon tradition, and that Canada would sacrifice this tradition if the CPC were allowed to remain in existence:

Parliamentary institutions, and the roots of democratic government, are Britain's gift to the world. Through our long history, change has come by reason, by argument, by the slow but safe method of trial and error; retaining what is useful and good, discarding what is outworn. Thus, we have adapted our institutions to changing times. Bolshevism, scorning democracy, desires to sweep away the existing fabric of civilization, substituting therefor a state moulded on the principles of Marx and Lenin.... This country has for its foundation a Christian civilization. We have a constitution which spells liberty and peace. Communism brings not peace but a sword, and for that reason it is unwelcome in our midst.<sup>200</sup>

This publication revealed that Price was pleased with the result of the trial, but it also acted as a warning to both radical organizations, and non-British language groups such as the ULFTA.

With the CPC's leaders convicted and imprisoned, the state must have celebrated its victory, as this was a successful step in the elimination of the CPC countrywide. The

<sup>199</sup> Ibid., 24-25.

<sup>200</sup> Ontario, Court of Appeal, *The King vs. Buck and Others: the Judgment of the Court of Appeal of Ontario concerning the Communist Party in Canada* (Toronto: King's Printer, 1932), 2.

party's ability to organize and raise funds was hampered, the voice of the CPC was muzzled, and any threats that the party posed were temporarily halted. Moreover, without the leadership of men such as A.T. Hill, a key figure in organizing the FOC, and Matthew Popovich, a co-leader of the UFTLA, the organization of radicals across ethnic lines would be difficult. What the state did not account for, however, was the fact that the CPC had expected, and prepared for a guilty verdict. Buck, Ewan, and the other CPC leaders had done their part by openly defending the CPC's cause in the courtroom. The moment that the CPC leaders were convicted, the party's membership began preparing its course of action for the repeal of Section 98, and for the release of their imprisoned leaders. In fact, the conviction of the party leaders would be a *cause célèbre*, uniting many Canadians in support of the CPC's cause. In reality, the CPC's battle for legality and for the repeal of Section 98 was just beginning.

## **Chapter 2.**

### **“The verdict of guilty was to be expected in the courts of capitalism:” The CLDL & the Repeal of Section 98**

Immediately after Buck, Ewan, Popovich, Hill, Carr, Bruce, Boychuk, and Cacic were convicted under Section 98, the Canadian Labor Defense League – the legal wing of the CPC – championed the cause of these party members. The League’s campaign adopted a number of methods: it organized demonstrations, published and distributed pamphlets, sent out form letters to sympathetic organizations, and perhaps most interestingly, some of its members wrote and performed a theatrical play. The efforts of the League drew much attention from Canadian state officials. When it appeared that its cause was gaining momentum, the state suppressed the CLDL’s voice, resulting in outrage from many Canadians and an even more spirited drive for the release of the CPC leaders. By 1934, each of the convicted leaders – save for Tomo Cacic, who had already been deported – had been released from Kingston Penitentiary; by 1936, Section 98 was repealed.

Jaroslav Petryshyn has written the most comprehensive analysis of the CLDL. He notes that although the CLDL began as an organization devoted to providing legal services and material relief to workers victimized by state oppression, the 1931 trial of the CPC marked a turn in the overall purpose of the League: “[a]fter the convictions, the CLDL shifted its emphasis somewhat from simply defending people to changing the law.”<sup>201</sup> The League grew extremely interested in removing Section 98 of the Criminal Code, as well as other anti-labour laws from Canada’s statute books. To this effect, it held a number of “Repeal Conferences,” increased the number of publications that it produced as well as the quantity it distributed, and boosted the numbers and intensity of demonstrations and meetings that it held; in the two years after the trial of the CPC leaders, the CLDL disseminated approximately five million pieces of literature.<sup>202</sup> As Petryshyn has

<sup>201</sup> Jaroslav Petryshyn, “Class Conflict and Civil Liberties,” 49.

<sup>202</sup> Petryshyn, “Class Conflict,” 49, 52.

remarked, the CLDL was able “to act as a vehicle of legitimate dissent against the apparent submergence of democratic values and personal liberties.”<sup>203</sup>

Other academics have also considered parts of the CLDL’s campaign. Scholars of English, for instance, have assessed some of the CLDL’s literature in relation to radical culture of the 1930s; they have identified such literature as an important tool in the context of antagonism between the working class and the state in the Great Depression. Most of these works focus on *Eight Men Speak*, and identify the play as a cultural expression of Canadian radicals in the 1930s. Candida Rifkind’s, *Comrades and Critics*, for example, comments on the play’s role as a working-class weapon meant to comically mock the state’s repression of the CPC: “Given the state’s direct intervention into this performance ... resistance is at work in both the drama on stage and the larger performance in which it is nested. The play stands for, but is also part of, the processes of the law.” Rifkind recognizes that the play was a legal tool of the CLDL. Her primary interest, however, is the cultural and stylistic importance to Canada’s literary tradition, and to ideas of femininity. Rifkind’s work is part of a broader camp of English scholarship that is interested in radical cultural expression in the 1930s, and whether it can be labelled as a tradition.<sup>204</sup> While such works are fruitful, there is room to draw further historical analyses of *Eight Men Speak* and the CLDL’s campaign more broadly. CLDL literature was not simply a cultural expression of the organization. Rather, each pamphlet was a calculated political manoeuvre.

This chapter considers the political motivation behind much of the CLDL’s campaign and argues that it used the repression of the CPC as a way to forward its legal agenda. On the whole, the CLDL’s post-trial campaign saw a three-pronged approach: the production of anti-capitalist literature that revealed some of the contradictions of capitalist justice; directly pressuring the government with letters, petitions, and demonstrations; and,

<sup>203</sup> Ibid., 63.

<sup>204</sup> Candida Rifkind, *Comrades and Critics: Women, Literature, and the Left in 1930s Canada* (Toronto: University of Toronto Press, 2008), 138-49. See also: Alan Filewod, “Performance and Memory in the Party: Dismembering the Workers’ Theatre Movement,” *Essays on Canadian Writing*, 80 (2003), 59-77; Alan Filewod, “The Comintern and the Canon: Workers’ Theatre, *Eight Men Speak*, and the Genealogy of a Mise-en-Scene,” *Australasian Drama Studies* 29 (1996), 17-31; Bart Vartour, “Writing Left: The Emergence of Modernism in English Canadian Literature” (PhD Thesis, Dalhousie University, 2011).

comedic responses to oppressive state behaviour. As the state's attempts to subdue the CLDL's voice became more clumsy and overt, the perceived legitimacy of such actions – and, therefore, the state – swiftly declined.

## Capitalist Courts on Trial

In 1925, a dispute in Drumheller, Alberta erupted when the Executive of District Eighteen of the United Mine Workers of America (UMWA) agreed to the terms of a new contract that saw wages reduced by fifteen percent, without putting the contract to the union's rank and file. The CPC – who had long been at odds with the UMWA, arguing that the international union did not represent Canadian interests – advocated for members to withdraw from the union. Shortly thereafter, the CPC organized a rival union, the Mine Workers' Union of Canada (MWUC). When the mine operators refused to negotiate with the MWUC, its membership picketed Drumheller mines in an attempt to prevent members of the UMWA from working. The result was a violent conflict in which at least one miner was shot by Alberta's provincial police force and numerous members of the MWUC were arrested.<sup>205</sup>

As a result of these arrests, the funds of the MWUC drained quickly, making the operation of a protracted strike problematic. The General Secretary of the CPC, Tim Buck, organized a small meeting in an effort to establish a “non-partisan” committee for the purposes of raising funds for the legal costs – such as lawyers' fees and court fines – of the Drumheller strikers. Though aimed at immediate tasks, the committee resolved that the organization should be permanent, and operate in the defense of workers who had been persecuted by capitalist forces – both the state, and employers – attempting to quash the class struggle; the Canadian Labor Defense League (CLDL) was the resulting organization. Although it was generally unsuccessful in defending the Drumheller strikers, the CLDL continued to fight for the rights of mistreated workers for years to come.<sup>206</sup>

<sup>205</sup> Allen Seager, “A History of the Mine Workers' Union of Canada, 1925-1936,” (MA Thesis, McGill University, 1977), 16-53; Jaroslav Petryshyn, “A.E. Smith and the Canadian Labour Defense League,” Ph.D. Thesis, University of Western Ontario, London (1977), 99-101.

<sup>206</sup> Petryshyn, “Smith and the CLDL,” 102.

The League's first General Secretary was Florence Custance, a founding member of the CPC. Custance, however, became seriously ill in early 1929, and the position was given to A.E. Smith. When Custance passed away later that year, Smith took tight control of the League along with Becky Buhay-Ewan, a long-time Marxist who had taken an active role within the CPC in worker education and managing the party's major organ, *The Worker*.<sup>207</sup> Unlike Buhay-Ewan, Smith had only been acquainted with Marxism for a few years when the CLDL was born. A long-time Methodist clergyman, Smith had been attracted to socialism in the early years of the twentieth-century. After his attempts to effect major reform within the Methodist church were thwarted, Smith drifted away from religion, and towards the CPC, joining in 1925.<sup>208</sup> Although the CLDL maintained that it was "non-partisan," its leadership – all high-ranking CPC members – ensured that it functioned as a legal apparatus for the CPC; this was obvious, even the casual observer.<sup>209</sup>

The CLDL's first National Convention in 1927 laid out the organization's aims. Officially, there were eight goals:

- (1) To provide legal defense for all workers prosecuted for expressions of opinion or for working class activity.
- (2) To provide material and moral support for all working class prisoners.
- (3) To provide material support for the families and dependents of such prisoners.

<sup>207</sup> Buhay was born in London, England, immigrating to Montreal in 1913 with her family. Already versed in Marxist and Socialist theory, Buhay quickly associated with many of North America's socialist organizations, including the Socialist Party of Canada, and the One Big Union. She came to the CPC in 1922 – then the Workers' Party of Canada – and quickly rose through the party's ranks. Her connection to the campaign for the repeal of Section 98 was also very personal, as her husband, Tom Ewan, was one of the eight convicted in the 1931 trial. For a more detailed biographical sketch of Buhay's life, see: Anne F. Toews, "For Liberty, Bread, and Love: Annie Buller, Becky Buhay, and the Forging of Communist Militant Femininity in Canada, 1918-1939," M.A. Thesis, Simon Fraser University (2009).

<sup>208</sup> Smith recalls reading Marx's *Communist Manifesto* in 1917, and shortly thereafter preaching that "Jesus was a Communist," and attempting to make radical changes to the platform of the Methodist church in Brandon (e.g. changing one of the church's goals from "the amelioration of poverty among the people" to "the abolition of poverty among the people"). By 1919, the church had resolved that Smith was no longer to preach on their behalf. See Smith, *All My Life*, 42-61.

<sup>209</sup> For a detailed biography of Smith, see Petryshyn, "Smith and the CLDL," 1-87. For a sketch of the life of Custance, see Rodney, *Soldiers of the International*, 164-65.

- (4) To initiate and centralize special campaigns for the defence and release of working class victims of the courts in their struggle for the betterment of their conditions.
- (5) To work for the repeal of all anti-working class laws.
- (6) To defend foreign-born workers against persecution and unwarranted deportation.
- (7) To collect material and give publicity to facts regarding the persecution of workers and to expose secret anti-labour activities, labour spy systems, etc.
- (8) To organize campaigns of protest against the white terror in other capitalist countries and to give moral and financial support wherever possible to the victims of such terror.<sup>210</sup>

Largely, these aims showed that the CLDL was prepared to protect workers against convictions under anti-labour laws. The League, however, was cognizant that the cards were stacked against it, and accordingly, it expected negligible success in keeping all of its clients out of prison. For this reason, the CLDL also aimed to financially and morally help those workers who had been unjustly convicted and imprisoned; if the circumstances were right, a campaign for the release of a prisoner might be warranted.<sup>211</sup>

The League's aims were also reflective of its position as an auxiliary organization of the CPC. Under communist leadership, the CLDL adopted some goals that could be deemed revolutionary; it declared, for instance, that it was working towards "the repeal of all anti-working class laws." Still, the League did not exclusively work towards inciting a revolution in Canada. Indeed, much of the League's platform centred not on decrying capitalist justice, but merely on helping workers who were in a legal predicament. Still, the League was devoted to keeping the Communist brand alive, by organizing defence campaigns, and publicizing the injustices that capitalist justice perpetrated against Canada's working class. Like the CPC then, the CLDL at times acted with revolution in mind, and at times their actions were responses to specific state challenges. Section 98 was, perhaps, the largest state challenge tackled head-on by the CLDL; the 1931 trial represented an opportunity to expose the law's overtly anti-working class nature.

<sup>210</sup> Petryshyn, "Smith and the CLDL," 107-08.

<sup>211</sup> *Ibid.*, 107.

When the CPC leaders were arrested, the CLDL immediately leapt into action.<sup>212</sup> Smith, however, did not appear optimistic that the jury would acquit the CPC leaders. On 13 October 1931, Smith wrote:

The atmosphere that is being prepared is bourne [*sic*] out by the speech of the Attorney General Price, who plainly stated that the purpose of the arrests and raids was to outlaw the Communist Party.... The capitalist press is carrying on almost daily propaganda and agitation demanding the outlawry of the Communist Party, arrests and deportations ... it is obvious that these newspapers, these officials of law and high offices have already pre-judged the case, making a "fair" trial practically impossible.<sup>213</sup>

Believing that a fixed guilty verdict was impending, Smith decided to fight this injustice by producing a powerful counter-narrative; the CLDL would "elect their own jury of workers from coast to coast" who were to be present in the courtroom, "and make their own verdict as to the merits of the case and the individuals who [we]re on trial." The jury was selected by Canada's "working class itself," – those members affiliated with the CLDL anyway – and consisted of twelve jurymen: six from Ontario, and one each from Vancouver, Alberta,

<sup>212</sup> The CLDL was largely responsible for gathering the necessary funds to finance the defense for the CPC leaders. This was not an easy task: on top of legal fees, bail for each man was set at \$15,000. Most financial support for the CLDL was found in the League's "immigrant branches." In a memo dated 16 October 1931, the National Executive Committee of the CLDL appealed to affiliated unions and organizations to donate more generously. Although "Ukrainian mass organizations ... ha[d] organized their own house to house collection which netted the sum of over seven hundred dollars for the defense of the Communist Party," the remainder of CLDL affiliated organizations had raised up to 7 October only three dollars. Despite meagre offerings from Canada's non-immigrant, working-class communities, the CLDL was able to secure sufficient funds to both post bail, and to reimburse the defense counsel. It is not altogether surprising that most of the funds donated came from non-British immigrants. In 1931, the CLDL had 124 branches, of which only 32 were English branches. The others were: 37 Ukrainian; 26 Finnish; 27 of other European nationality; 1 Chinese; and 1 Japanese. The League thus consisted of a high number of immigrant workers. Moreover, the support from immigrant workers was earned by the CLDL; in January 1931, for example, the League established a "Defence of the Foreign-Born Conference," which convened in Montreal. The Conference was charged with the task of "building a wide mass movement of protest and defence of the Foreign Born workers," which would ideally "force the Canadian bourgeoisie to halt in their mass deportations." On 1 March 1931, those present resolved that the conference become a permanent body which should commence "a relentless struggle against deportation and anti-working class legislation" by way of "meetings, demonstrations, press, literature," and any other means deemed appropriate. See: Petryshyn, "Class Conflict," 45-47; *AG, RG 4, 1-1, CPC Papers, PAO*, Reel 8, 11C2843; *AG, RG 4, 1-1, CPC Papers, PAO*, Reel 8, 11C2875; CLDL National Executive Committee Memo, 16 October 1931, *RSK, Box 39, Folder 18*.

<sup>213</sup> CLDL to all Workers' Rights and Anti-Deportation Conferences; to all United Front Defense Conferences, 13 October, 1931. *RSK, Box 39, Folder 18*.

Saskatoon, Winnipeg, Montreal and Nova Scotia.<sup>214</sup> The responsibility of the Workers' Jury was not taken lightly. If the members of the workers' jury could show that the state was deliberately attempting to suppress the CPC, they could garner some support for their cause. Finding evidence such as this was scarcely difficult; they were quick to observe, for example, that "[p]articular care was taken to exclude, during the final stages of the trial, those known to be friendly to the views of the accused. Not for twenty-five years have the city police been used so openly in a county trial."<sup>215</sup>

At the end of the trial – after the jury returned a verdict of guilty, and the workers' jury a verdict of not guilty – the CLDL published a pamphlet entitled *Not Guilty! The Verdict of a Worker's Jury*. The pamphlet included a detailed description of the events of the trial, a preface written by prominent CPC member, Oscar Ryan, and a previously published article by F.R. Scott entitled "Communists, Senators and All That," that was critical of the repressiveness of Section 98. Further, the pamphlet contained five linocut illustrations from Avrom Yanofsky, who frequently illustrated the Progressive Arts Club journal, *Masses*.<sup>216</sup>

Instead of providing readers with a straightforward record of events as they unfolded, *Not Guilty!* challenged the trial's setting and purpose:

Despite all attempts to prevent them from explaining their case, they [the accused] made a scathing indictment of capitalist society and showed that it was capitalism that was on trial in this court. Capitalism, they stated, could promise nothing else but crises and misery. It was this crisis of capitalism that would make working class rule inevitable.... For three hours he [Buck] spoke, analytical, exposing the system of capitalism, still accusing his accusers! Buck showed clearly that it was the representatives of "law and order" who used force and violence against the workers.<sup>217</sup>

<sup>214</sup> The pamphlet does not specify specific cities for Alberta or Nova Scotia. See: CLDL to all Workers' Rights and Anti-Deportation Conferences; to all United Front Defense Conferences, 13 October, 1931. RSK, Box 39, Folder 18.

<sup>215</sup> Multiple people note that Toronto police had tried to keep working-class people out of the courtroom. See, for example, Betcherman, *The Little Band*, 183; Ryan, *Conscience for Canada* 152. The Workers' Jury also makes reference to this fact See: Canadian Labor Defense League, *Not Guilty! The Verdict of the Workers' Jury, On the Trial and Conviction of the Eight Communist Leaders* (Toronto: Canadian Labor Defense League, National Executive Committee, 1931), 10.

<sup>216</sup> Vartour, "Writing Left," 131.

<sup>217</sup> *Ibid.*, 11.

The Workers' Jury endorsed the idea that instead of the CPC leaders, it was capitalism that was on trial. Thus, when the Workers' Jury confirmed a verdict of "not guilty," they were not only acquitting the CPC leaders, but convicting capitalism of lining the pockets of the bourgeoisie at the expense of the working class. The pamphlet was also an effort to mobilize workers to press the government on the causes for which they were campaigning:

The Workers' Jury appeals to the working masses of Canada, to all liberal-minded people to voice their indignation and protest against the convictions, to demand the release of these eight workers and the Repeal of Section 98 ... and to unite for the struggle for the complete restoration of free speech, press, assembly and organization.<sup>218</sup>

In the introduction, Oscar Ryan stressed that the verdict was important to Canadian workers of all ethnicities, remarking that "[t]he Eight are fairly representative, nationally, of the working class population of Canada." Moreover, the CPC leaders were varied in their trades; machinists, needle workers, carpenters, labour journalists, and tailors were all on trial. Action could, therefore, help all sections of the working class.<sup>219</sup> This excerpt skillfully implied to any working-class reader that Section 98 could next be used to imprison them.

*Not Guilty!* was the first pamphlet in a larger series of publications attempting to protest the convictions of the CPC leaders, and to expose the trial's injustices. The CLDL also printed *An Indictment of Capitalism: The Speech of Tim Buck*, a complete transcript of Buck's closing address to the jury, which included an extended introduction from the imprisoned leader. In a 1935 pamphlet, the CLDL claimed that the "issue sold like wild fire and today not a copy is left for sale."<sup>220</sup> For further exposure, the League published a pamphlet called *The Story of the Trial of the Eight Communist Leaders: November 2<sup>nd</sup> to November 13<sup>th</sup>, 1931*. This pamphlet, written by a "J.S." and again illustrated by Yanofsky was similar, though more detailed than *Not Guilty!*. It continued in the spirit of putting capitalism on trial. After listing the charges on which the CPC leaders were being tried, for example, the author wrote:

<sup>218</sup> Ibid., 17-18.

<sup>219</sup> *Not Guilty!*, 5-6.

<sup>220</sup> Frank Lucas, *In Defense* (Vancouver, B.C.: Canadian Labor Defense League, District Executive Committee, 1935), 9.

These are the charges they lay against Tim Buck and his comrades. This is what I, the Canadian worker, am condemned for. But I accuse those who condemn me.... I accuse them of brutally clubbing men and women in workers' meetings. I accuse them of beating unemployed, starving workers over the head with truncheons.... I accuse them of the massacre of Estevan.... I accuse them of sending fifty thousand Canadian soldiers to be butchered, gassed, crippled and destroyed between 1914 and 1918. This is where force and violence is to be found.<sup>221</sup>

The counter-narrative being produced by CLDL writers was one that did not accept the authority of Canada's courts, and instead, critiqued the state's treatment of Canada's workers. According to these pamphlets, communists, workers, and liberal-minded Canadians should all have been enraged by the outcome of the trial, and worried about the verdict's implications.

The next pertinent publication surfaced in 1933. In April of that year, Joe Derry – a member of the Young Communist League (YCL) from York Township – spoke at a United Workers' Association meeting, where he decried war as a tool of the imperialist bourgeoisie and called on Canada's young workers to defend the Soviet Union in the event that it was attacked. Derry was arrested and charged under Section 98, and his trial date was set for December that year.<sup>222</sup> Likely under the direction of the CLDL, the YCL printed a pamphlet, *Section 98: Twenty Years for Fighting Hunger*, that dealt with the arrest of Derry. Instead of simply describing the events of Derry's arrest, however, the YCL pamphlet attempted to “reveal the essential facts characterizing this case ... in a novel way...” – by satirizing the affair.<sup>223</sup> It reads as a transcript of Derry's trial, with statements from witnesses such as Derry, the CLDL, and “The Iron Heel,” R.B. Bennett. The pamphlet glorifies the work of Derry in organizing Canada's young workers, and standing up for the rights of those in Ontario's work camps. Alternatively, Bennett's character is made to look like a dunce. In his testimony, for example, Bennett is asked to respond to the statement

<sup>221</sup> Canadian Labor Defense League, *The Story of the Trial of the Eight Communist Leaders: November 2<sup>nd</sup> to November 13<sup>th</sup>* (Toronto: National Executive Committee, Canadian Labour Defense League, 1931), 5.

<sup>222</sup> “A Record of Section 98: Thirty Arrests under this Section since 1931.” RSK, Box 43, Folder 11; “Smith pinch-hits as main speaker barred at border,” *Globe and Mail*, 19 February 1934.

<sup>223</sup> “Preface,” *Section 98: Twenty Years for Fighting Hunger*, (Toronto: Young Communist League of Canada, n.d.).

that the Canadian government is “composed of and controlled by bankers and rich capitalists.” He responds:

It is not true! ... If we, the rich people, are wealthy, it is because we earned it by the sweat of our brow. Even Jesus Christ said that the poor will always be with us. They are poor because they are lazy and spendthrifts .... Section 98 is a divinely inspired law and must be used to preserve our sacred institutions. My advice is – keep away from Communism or those organizations which I consider red. It is not good for your health. We have the RCMP and jails, and we know how to use them.<sup>224</sup>

The conclusion of the publication was conceptually similar to *Not Guilty!* and *The Story of the Trial of the Eight Communist Leaders*, in that it reversed the roles of the state and the working class. It remarks: “[i]t is not the YCL that is on trial – BUT THE CAPITALIST CLASS AND THE SYSTEM IT REPRESENTS.”<sup>225</sup>

Derry was only one of a number of communists to be arrested under Section 98 after the 1931 trial. In fact, in the years after the trial, the state’s use of Section 98 and other anti-labour laws had become so slapdash, that the CLDL had become flooded with clients to defend. A 1934 CLDL report notes this tendency:

In January, 1932, Joe Melnyk and Jim Duska, charged under Section 98. Charges dropped. They were arrested for selling stamps of the Eight.

On May 13<sup>th</sup>, 1932, Steve Koslov was arrested in Montreal under Section 98 for having a May Day button in his pocket. The CLDL won his release from the charges....

On June 1<sup>st</sup>, Dave Chalmers, touring Southern Ontario in his defense campaign against a Montreal “sedition” case, was arrested in Port Colborne and charged under Section 98. The CLDL secured his release.

On November 16<sup>th</sup>, G.W. Kellog was arrested in Edmonton, charged under Section 98 for distributing an unemployment leaflet. The CLDL freed him....

<sup>224</sup> “The Iron Heel Speaks,” *Section 98: Twenty Years for Fighting Hunger*.

<sup>225</sup> “An Appeal,” *Section 98: Twenty Years for Fighting Hunger* – capitals in original. The fate of Joe Derry is unclear. In April 1934, however, the *Globe and Mail* ran a story about a government cheque valued at one-cent that was distributed at a relief camp in Northern Ontario. The article lists Joe Derry as presenting demands of the unemployed workers to the camp’s Relief Officer. See: “One-Cent Government Cheque Shown Unemployed,” *Globe and Mail*, 19 April 1934.

Vancouver, December 27<sup>th</sup>, 1933 – Pete Driscoll, Princeton unemployed organizer, originally charged under Section 98, was convicted on a lesser charge and sentenced to forty-one days at hard labor. He conducted his own defense in court.<sup>226</sup>

In addition to arresting workers, police officers also used search warrants issued under Section 98 to raid meetings, homes, and premises of workers' organizations and to seize "literature, records and other documents" they deemed to be of interest.<sup>227</sup>

Dave Chalmers, as the report notes, was arrested and charged under Section 98 in Port Colborne, Ontario, in June 1932. According to his file, Chalmers – a well-known radical from Montreal – attended a meeting where he spoke "in favour of the release of the Communists imprisoned in Kingston, and against the pending deportations." When he began to use terms such as "turning Imperialist war into Civil war," the Chief of Police, who was present, feared that there might be trouble brewing, and arrested Chalmers, charging him under Section 98. Upon reflecting on the file, however, Crown Attorney, Joseph Sedgewick, determined that there was never enough evidence to take the charge to trial, as there was nothing to prove his connection to the CPC, and there was nothing proving that he advocated force or violence. "In fact," he notes, "the evidence was that during the speech he [Chalmers] decried the use of force or violence, stating that the Communist Party never had countenanced such tactics." Sedgewick notes that upon conferring with the police, the case's Crown Attorney ("Mr. Cowper" – T.D. Cowper, K.C.), and Chalmers' lawyer ("Mr. Brown" – presumably Onie Brown), he decided to dismiss the case, based partially on the fact that Mr. Brown had promised to take Chalmers out of Port Colborne.<sup>228</sup> The state, as these events suggest, was able to use Section 98 as a means to break up meetings that adopted a pro-Communist line, largely without repercussions, while people like Chalmers were booked and escorted elsewhere.

Because the state had increased its use of Section 98 – and other anti-labour laws as well – the need to educate workers about what to do if arrested and charged with a

<sup>226</sup> "A Record of Section 98: Thirty Arrests under this Section since 1931." RSK, Box 43, Folder 11; "Smith pinch-hits as main speaker barred at border," *Globe and Mail*, 19 February 1934.

<sup>227</sup> "A Record of Section 98: Thirty Arrests under this Section since 1931." RSK, Box 43, Folder 11.

<sup>228</sup> Public Archives of Ontario, *Attorney General, R.G. 4-32*, File 1552/1932.

crime became apparent. The CLDL's response was to print an educational pamphlet entitled *Workers' Self-Defense in the Courts*.<sup>229</sup> The pamphlet had two purposes. First, it attempted to guide workers through the processes of a trial in the Canadian court system from the moment of arrest, to appealing verdicts or sentences. Second, it taught workers how to navigate these processes without the aid of a lawyer. The idea for an educational pamphlet of this nature was not original. In the acknowledgements section, the CLDL thanked the International Labor Defense of the United States of America (ILD) for use of their comparable pamphlet, *Under Arrest! Workers' Self-Defense in the Courts*. Not was the ILD the first organization to publish a workers' self-defence document. In the opening pages of *Under Arrest!*, the ILD remarked that the idea for these was the brainchild of Elena Stasova, President of Comintern's International Red Aid – an organization of which the CLDL and the ILD were both members.<sup>230</sup>

Within *Under Arrest!*, the ILD noted the reason for the pamphlet's publication: "an ever-increasing burden is being thrown upon the forces of the International Labor Defense by the great increase in arrests. It cannot always provide the assistance of lawyers, unless the seriousness and political importance of the case requires it. Therefore we print this pamphlet."<sup>231</sup> Like the ILD, the CLDL was experiencing financial hardship. As Petryshyn has observed, by 1930, the CLDL was tackling more legal cases than its finances could handle, and it had accrued a deficit of approximately \$2,500. To make matters worse, in April 1931, J.L Cohen pressed the CLDL to pay over \$1,300 in outstanding legal fees. Still, the CLDL believed that self-defence in the courts served a greater purpose. In *Workers' Self-Defense*, the League remarked:

Workers are encouraged by the Canadian Labor Defense League ... to conduct, wherever possible, their own defense before the capitalist courts. The reason for this is not alone in the desire to avoid spending workers' money in paying lawyers' fees, but particularly because workers' self-defense plays an important role in exposing the nature of capitalist justice

<sup>229</sup> Canadian Labor Defense League, *Workers' Self-Defense in the Courts* (Toronto: Canadian Labour Defense League, National Executive Committee, 1933).

<sup>230</sup> International Labor Defense, *Under Arrest! Workers' Self-Defense in the Courts* (New York: International Labor Defense, n.d.), 4.

<sup>231</sup> *Ibid.*, 6.

and in bringing out the class implications of the trial before the working class at large.<sup>232</sup>

The CLDL, thus, believed that when workers defended themselves in court, it helped to reveal the ways that Canada's judicial system unduly impaired the freedoms and socio-economic position of workers.

*Workers' Self-Defense* instructed the workers not to submit to the court's conventions. The pamphlet recommended that when answering the questions from the crown, the worker should not feel pressured into limiting their answer to simply one word:

Answer questions in your own way. Do not allow the court to bulldoze you into answering "Yes" or "No". If you feel that a question cannot be answered "Yes" or "No", say "I can't answer that question that way and I refuse to do so, because an answer that way may be construed as untruthful and would prejudice me in my right to present a full defense to the charge."<sup>233</sup>

Workers were also given the task of highlighting the class nature of their arrest. "You are charged," the pamphlet reads, "with breaking a city by-law by distributing leaflets.... You must point out that business firms, Liberal and Conservative parties, religious societies, etc., distribute leaflets without being arrested."<sup>234</sup> Strategies such as these were meant to question the legitimacy of Canada's judicial system, and to appeal to any potential onlookers.

The pamphlet did recommend some strategies for dealing with the courtroom's conventions. For example, the pamphlet argued that workers were always better off electing a trial by judge and jury, as "[u]sually a jury trial allows you a trifle more freedom from bureaucratic and bullying treatment by the judge."<sup>235</sup> More than this, the pamphlet

<sup>232</sup> *Workers' Self-Defense in the Courts*, 3.

<sup>233</sup> *Workers' Self-Defense in the Courts*, 9.

<sup>234</sup> *Ibid.*, 9.

<sup>235</sup> This is interesting given Buck's and Smith's frustration with the jury in the trial of the CPC leaders. Still, that trial was unique in a few important ways. First, it was a highly-publicized state trial, unlike the majority of trials of Canadian workers. Most importantly, however, the CPC leaders were less worried about the verdict than an individual worker might be; the 1931 trial was part of a larger strategy of the CPC in fighting Section 98. For the majority of workers, however, the ability to work and earn a living was likely their highest priority.

observed that when the defence's witnesses were being cross-examined, the worker on trial should protect them from being bullied by the crown prosecutors. Workers were encouraged to make frequent objections to the prosecutor's questions; the same instructions were given regarding the presentation of the crown's evidence, and workers were told to object to any evidence that pointed to their involvement in other crimes, or evidence that did not specifically pertain to the charge.<sup>236</sup> On the whole, *Workers' Self-Defense in the Courts* exposed some of the ways in which the court system was overtly unfair to the working class, all the while teaching people how to navigate their way through these challenges.

The CLDL envisioned these pamphlets as an important part of their campaign for the repeal of Section 98; this campaign, however, was also imagined as international in scope. On 13 October 1931, the CLDL released a memo through International Red Aid in Berlin, Germany. The memo invited all sections of International Red Aid to help the CLDL in their struggle: "... it is the duty of all the International Red Aid sections to use their press in order to give their solidarity to these campaigns and to publish material about the events of white terror in Canada."<sup>237</sup> The memo further advised of the international implications of the convictions under Section 98, and the outlawing of the CPC. Capitalists in Canada, it explained, were running a constant slander against the CPC, connecting it financially with the Soviet Union: "All these slanders are just to prepare 'public opinion' against the agitators, against the Soviet Union, against the foreign born workers."<sup>238</sup> The CLDL was adamant that documents promoting the injustice of Section 98 be published as expansively as possible.

## Protests

Publications, however, formed only one prong of the CLDL's attack on the Canadian state. While texts were good for informing Canadians of the problems of capitalism and familiarizing them with the CLDL's platform, they did not pressure the state

<sup>236</sup> *Workers' Self-Defense in the Courts*, 14.

<sup>237</sup> Memo from International Red Aid, Berlin, Germany, to all sections (authored by Canadian Labor Defense League), 13 October 1931. RSK, Box 39, Folder 18.

<sup>238</sup> Ibid.

in a direct manner. For this reason, the CLDL organized protests, petitions, and demonstrations to elicit a state response to their demands. Two such responses could be considered a success. First, if the state actually granted the concessions that the CLDL was demanding, this was quite clearly a victory; of course, there was little expectation that this would happen quickly. Second, if the state responded by further repressing the CLDL and the CPC, this would bolster the legitimacy of the League's claims. This type of reaction happened with much more frequency.

The League did not have to act alone in this regard, as the arrest and conviction of the CPC leaders sparked the interest of many party sympathizers. On 18 August 1931, for example, Ralph Spooner, Director of the Canadian Civil Liberties Union, wrote to the Toronto City Hall requesting information about the upcoming trial. "Please let us know," Spooner wrote, "if there are any unpaid fine [*sic*] in connection with this sentence [*sic*] as a requirement for release." One day later, Spooner pushed further, presumably after reading reports from the media. He wrote to the Attorney-General, W.H. Price:

You state that these prisoners are being held under Section 98 of the Ontario Criminal Code, involving acts of force, violence, terrorism, and injury to property; but in reading the reports of these arrests ... we have failed to see any acts of terrorism, or force, or violence, except that practiced and followed by police officers themselves in assaulting, attacking and injuring without justifiable or legal cause those workers who have sought to enjoy the inalienable human rights of freedom of speech, press, and peaceful assemblage.<sup>239</sup>

At the end of his letter, Spooner warned Price that the Canadian Civil Liberties Union would "give the matter proper publicity." This warning provoked a response from the state. As Erika Dyck notes, in early 1932, the police in Toronto detained Spooner after he had created an organization called the Workers Educational Association of Canada. In one of the association's circulars, Spooner asserts that he was physically assaulted by guards and imprisoned in the Mental Hospital of Ontario. Spooner was later moved to Edmonton and deported to the United States as "an alleged dangerous maniac not desired in Canada."<sup>240</sup>

<sup>239</sup> Canadian Civil Liberties Union, Spooner to Price, 19 August 1931. RSK, Box 26, Folder 1.

<sup>240</sup> As quoted in: Erika Dyck, *Facing Eugenics: Reproduction, Sterilization, and the Politics of Choice* (Toronto: University of Toronto Press, 2013), 50.

Other individuals also wrote to Price. One John J. Kennedy, of Toronto observed the hypocrisy of jailing communists who protested capitalist exploitation, when it was the state's disregard for the working class that generated the need for such protests in the first place. "I wished to God," he stated, "I could get this fact driven into your heads, that you yourselves are intirely responceible [*sic*] for the cause of having to pronounce this Judgement upon them [the CPC leaders] and others.... [y]ou fill the pens with the poor to overflowing [with] victims more sinned against than sinning [who] should be occupied in legitimate labor..."<sup>241</sup> Kennedy followed this with a religious condemnation of the convictions. The letter was fiery, and showed an understanding of the political realities of the time; Kennedy was cognizant of what the CPC called "capitalist justice," and he petitioned the state to stop repressing Canada's working class.

While it was helpful for individuals to raise issues with the state, the CLDL worked hard to systematically flood the government with such protests. On 6-7 February 1932, the CLDL hosted the "Eastern Canada Conference for the Repeal of Section 98 of the Criminal Code" in Hamilton, Ontario. Delegates from 23 towns representing 166 organizations were present. Smith offered an opening report in which he explained the nature of the trial and the purpose of the conference:

The whole trial was conducted in an atmosphere of lynching.... The verdict of guilty was to be expected in the courts of capitalism.... The Communist Party was on trial not so much because of any advocacy of "force and violence" at any present or future date, but because it has urged and led the masses to fight for bread, to demand the satisfaction of their pressing needs; because the Communist Party was an effecting, and perhaps the most effective, anti-Bennett organization and influence in Canada.... However, a mass movement has begun. But only begun. This conference has the task of discussing past and future work, and of formulating resolutions that will guide the future activities of the Eastern conferences. It has the task, moreover, of sending a deputation to Premier Bennett to demand the repeal of Section 98, the dropping of all charges, the release of the eight, and the right of the Communist Party to exist as a legal organization.... The CLDL calls upon the conference to assume a sharp offensive in all directions against political reaction as in Section 98.<sup>242</sup>

<sup>241</sup> John J. Kennedy to Attorney General, 16 November 1931). *RSK*, Box 39, Folder 18.

<sup>242</sup> Eastern Canada Conference for the Repeal of Section 98 of the Criminal Code, Hamilton, 6-7 February 1932: Resolutions, Ottawa Deputation Reports, Proceedings, etc. Report of A.E. Smith. *RSK*, Box 26, Folder 1.

The CLDL did indeed adopt a “sharp offensive.” While publications were a large part of the offensive, the League also engaged in more direct protests. The Repeal Conference, for example, endeavored to collect a petition with 200,000 signatures for the release of the CPC leaders and the repeal of Section 98.<sup>243</sup>

The CLDL, however, did not act alone in its campaign. Almost immediately after the arrests of the CPC leaders, the state – and more specifically, W.H. Price, the Attorney General of Ontario – received pressure from a breadth of individuals and labour organizations. On 17 August 1931, for example, workers from Saskatoon mailed a resolution to Price that “emphatically protest[ed] against the recent arrests of working-class leaders in Toronto and Vancouver and against the attempts to declare illegal the Communist Party of Canada and thereby start a campaign to suppress working-class organization and expression as a whole.”<sup>244</sup> On 22 August 1931, the Lethbridge Miners Union mailed a similar resolution to Price, adding only that they protested the seizure of CPC books and literature related to the trial; workers from Kirkland Lake, Sudbury, Cobalt, Ottawa, Winnipeg, the Russian Workers’ Club of Hamilton, the Workers Benevolent Association, the ULFTA, and the FOC, amongst other groups, all sent resolutions to Price.<sup>245</sup> Of course, some of these – including the ULFTA and the FOC – were CPC strongholds. The support for CPC leaders, however, was geographically expansive. The CLDL also created a blank, fillable resolution regarding Section 98, which was to be filled out by organizations countrywide, and sent to Bennett’s administration (Appendix B).<sup>246</sup>

More than petitions, the CLDL organized large protests around the country. In December 1932, in Windsor, Ontario’s Lanspeary Park, for example, the CLDL arranged a demonstration speaking out against Section 98 and Bennett’s administration. The pamphlet promoting the event observed Bennett’s attitude towards workers: “In the first eleven months of 1932 class terror against Canadian Workers totalled at least 754 arrests,

<sup>243</sup> Eastern Canada Conference for the Repeal of Section 98 of the Criminal Code, Hamilton, 6-7 February 1932: Resolutions, Ottawa Deputation Reports, Proceedings, etc. Report of A.E. Smith. RSK, Box 39, Folder 18.

<sup>244</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 38, 29L0588.

<sup>245</sup> AG, RG 4, 1-1, CPC Papers, PAO, Reel 38, 29L0566-29L0630.

<sup>246</sup> “Resolution Re: Section 98 of the C.C.C.,” RSK, Box 39, Folder 18.

184 convictions ... 44 political deportations, and one murdered [*sic*] – this is Bennett’s Iron Heel answer to the starving masses: Arrests, Jailings, Deportations and Murder.” The pamphlet further invited Windsorites to show up and demonstrate for the demand of the release of all workers “jailed for their labor activity.”<sup>247</sup>

In a similar fashion, the Manitoba District Central Council of the CLDL attempted to organize two large demonstrations in Winnipeg. The pamphlet invited Manitobans to gather for demonstrations at both Winnipeg’s Dominion Theatre, and Winnipeg’s Market Square in order to protest the anti-democratic way in which Section 98 had remained on the books. “What deeply concerns the whole working class of Canada,” a pamphlet remarked, “is the fact that ... courageous workers were convicted under Section 98 of the Criminal Code – the section that on five occasions has been repealed by the House of Commons by the combined vote of the Conservative and Liberal Parties....”<sup>248</sup> This observation was correct. In 1926, the Liberal Party of Canada – with a majority of seats – presented a bill for the repeal of Section 98. With some help from Labour Party MP J.S. Woodsworth, the House of Commons voted in favour of repeal. The bill, however, was defeated in the Senate. This process was repeated in 1927, 1928, 1929, and 1930, with bills of a similar nature.<sup>249</sup>

Beckie Buhay-Ewan, Organizing Secretary of the CLDL, took a more creative approach to organizing a protest. Buhay-Ewan organized a debate with Conservative MP of Essex East, Ontario, and Minister without Portfolio, Raymond Morand. The CLDL organized the event before sending the invitation to Morand. When he declined by letter to attend, Buhay-Ewan changed the event to a “talk,” and wrote a fiery response which was featured on the event’s poster. She wrote:

<sup>247</sup> Canadian Labor Defense League, “Demonstrate! Protest on Dec. 16<sup>th</sup>, Lanspeary Park, Friday, 2:30PM,” *RSK*, Box 39, Folder 18.

<sup>248</sup> Manitoba District Central Council, Canadian Labor Defense League, “Two ‘Huge Mass Demonstrations’, Sunday, December 11<sup>th</sup> @ 2:30PM,” *RSK*, Box 39, Folder 10.

<sup>249</sup> Similar bills were introduced, though defeated in the House of Commons, in 1922, 1923, and 1925. See: Fidler, “Proscribing Unlawful Associations,” 18-20; *HOC Debates* (1933), 2103.

Dear Mr. Morand,

Your letter is typical of the attitude of your party, the government, and the capitalist class generally.... You know full well that the working and middle classes are against Section 98 and that you cannot defend your position – that is why you refuse to come and debate.... The workers know, Mr. Morand, that Section 98 is capitalist class legislation designed to suppress the workers' movement, to render impossible the struggle against hunger, wage-cuts, and war.... The workers know your government supports the manufacturers who exploit and starve workers, whilst troops are sent in to shoot down strikers.... We will continue to rally thousands upon thousands against Section 98 – to leave no stone unturned until the men your government imprisoned in Kingston are freed and Section 98 is repealed.

You still have an opportunity to present the case of your government at the meeting which will be held at the EMPIRE THEATRE, FRIDAY, OCTOBER 13<sup>th</sup>, 8PM.

Yours Truly,

Beckie Buhay-Ewan <sup>250</sup>

With this one event, Buhay-Ewan was simultaneously able to discredit the Conservative Party, and to organize an audience of people sympathetic to the CPC in order to call people to action against Section 98.

Perhaps the most direct form of protesting, however, took the form of delegations sent to talk with government officials. In November 1933, for example, Smith and seven other CLDL members marched towards Parliament to present demands to Bennett. Bennett received the delegation, which demanded the release of the CPC leaders and the repeal of Section 98. Bennett, however, maintained his party's position; he stated "with emphasis that 'it would not be repealed.'" He further remarked that "the eight Communists were treated no differently from other prisoners." When the delegation asserted that Buck had sustained a hernia and was not being given adequate medical attention, the Minister of Justice, Hugh Guthrie, retorted: "Tim Buck's health is excellent." Eventually, out of frustration, Bennett expelled six of the eight communists from his office.<sup>251</sup>

<sup>250</sup> Canadian Labor Defense League, "Workers of the Border Cities! Beckie Buhay-Ewan Talk at Empire Theatre (Pitt Street), in lieu of Dr. Morand, M.P.," n.d. RSK, Box 39, Folder 18.

<sup>251</sup> "Bennett Impatient over Reds' Claims; 'Show Smith Out'," *The Globe*, 18 November 1933.

Pressuring a different level of government, in July 1934, the CLDL organized a “Hunger March.” Approximately 2,500 marchers paraded through Toronto towards Queen’s Park, and throughout the parade, “‘The International’ was freely sung and the children participants shouted ‘We want Tim Buck.’” On 1 August, a delegation of 200 people marched to Ontario’s Provincial Legislature to meet with the province’s Premier, Mitchell Hepburn. The delegation presented demands “which were numerous and similar to those enunciated by the Communist Party and the Workers’ Unity League” since the leaders of the CPC had been incarcerated; Hepburn – who had only been in office for about one month – apparently exclaimed “God bless your work!” as the delegation was leaving.<sup>252</sup> Protests such as these might not have immediately changed the law, but were important in maintaining public opinion, and preserving the momentum of the CLDL’s campaign.

## The Irrational State

Even by 1932, Bennett and the Canadian state began to feel the pressure being exerted by both the CLDL and by individual Canadian citizens. The situation, however, would continue to intensify. On 17 October 1932, while the CPC leaders were serving their sentences in Kingston Penitentiary, several prisoners organized a protest in an attempt to present their grievances to the prison’s warden, and to force a public investigation into the prison’s poor conditions. The plan was to walk out of their shops at 3:00 p.m. and to peacefully petition the warden to present their demands to the federal government in Ottawa. The warden, however, was made privy to this information ahead of time, and at zero hour on the 17<sup>th</sup>, some 450 prisoners found themselves locked in their shops. Although the prisoners managed to escape from their shops and gather in the mailroom, some rioting occurred when soldiers – who had been called in by the warden – advanced towards the protestors; soldiers fired shots into the mailroom, and some prisoners responded by breaking machines, and pushing guards and officers towards the front of the room to “receive ... shots if any were fired into the room.”<sup>253</sup> Eventually an agreement

<sup>252</sup> Gregory S. Kealey and Reg Whitaker eds., *RCMP Security Bulletins: The Depression Years, Part One*, (St. John’s: Canadian Committee on Labour History, 1993), 187-89.

<sup>253</sup> Canada, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King’s Printer, 1938), 74-5.

was reached between the protestors and the warden whereby the “warden was to make representations to Ottawa as to the grievances of the men, no one was to be punished for the riot until after a fair trial, and the men were to be allowed to go back to work the next day.”<sup>254</sup>

Although on the next day the prison staff respected the agreement, on the 19<sup>th</sup> the protestors grew restless as their grievances had not been investigated, nor been presented to Ottawa. At 11:30 a.m., prisoners were returned to their cells in expectation of a forthcoming lunch. No such lunch was to come. In fact, prisoners were confined to their cells until the evening of the 20<sup>th</sup>. Some organized a small demonstration in their cells, claiming that the prison’s Superintendent had breached the agreement by not allowing them out for their daily exercise. Upon seeing the demonstration, the superintendent instructed the militia to come and aid the prison staff with the conflict. Numerous troops arrived within ten or twelve minutes, and throughout the course of the night, “considerable shooting took place.”<sup>255</sup>

It later became known that “at least three rifle bullets and ten pellets of buck shot” were fired into Buck’s prison cell; these shots had been fired “by someone who knew that Buck was in the cell at the time.”<sup>256</sup> Recounting the event at a speech years later, Buck remarked:

The whole rear wall of my cell was splashed and spattered with bullets.... In the words of an old imperialist veteran in the same block, it was no accident but damned good shooting when you realized that they put six rifle bullets within a space of 11 by 16 inches fired at an angle and from three floors below.<sup>257</sup>

<sup>254</sup> Ibid., 75.

<sup>255</sup> Ibid., 79.

<sup>256</sup> A Royal Commission concluded that the shots fired into Buck’s cell were a deliberate attempt to injure Buck. This was not the only instance of guards firing their weapons at prisoners. Between 7:00PM and 8:00PM on the same night, a prisoner by the name of Price “was shot in the right shoulder by a rifle bullet.” Price, the Commission concluded, “remained in his cell for twenty-two hours after being hit, and during that time he received no medical attention or food.” See: Ibid., 80, 97.

<sup>257</sup> Kealey and Whitaker eds., *RCMP Security Bulletins: The Depression Years, Part One*, 443-44.

After the chaos had dissipated, two inspectors conducted an investigation into both the prisoners' protest of 17 October, and the shootings of 20 October. The investigation condemned Buck for instigating the tumult on the 17<sup>th</sup>, and further concluded that shots were fired into his cell only as a means to "scare the convicts," and that in the context of the riot, this was "the only reasonable means possible to suppress what was taking place."<sup>258</sup>

While the news of shots being fired at Buck remained unbeknownst to the public, Canada's mainstream press asserted that the inmates – especially Buck – were to blame for the riot. On 24 October 1932, for example, *The Globe* decried the riot as a "carefully planned coup" with Buck at the helm; those inmates that revolted, the editors warned, were men that "would not act as they did were they not incited by convicts of the 'Red' type."<sup>259</sup> For some time, this remained the popular conception of the events.

In response to the shootings, the CLDL and members of the CPC began planning ways to use the events to pressure the government. Predictably, they interpreted the riot not as a "red coup," but as an indication of the failure of the government to properly tend to inmates' basic needs. Many of their demands were scarcely unreasonable: shorter hours of work, more time for recreation, access to cigarette papers and tobacco, better heating in the cells, as well as more and better food.<sup>260</sup> On 1 November 1932, a meeting of about 700 people gathered at the Ukrainian Labour Temple on Bathurst Street in Toronto to listen to a delegation of the CLDL that had visited both Kingston and Ottawa, including A.E. Smith and Alice Buck, wife of Tim. Those present passed a resolution demanding an open inquiry into the conditions of Kingston Penitentiary. As *The Globe* reported, there were "occasional scattered boos and jeers at the mention of the police, but there was nothing resembling a disturbance." Still, at the conclusion of the meeting, those in attendance reportedly "sang the International [*sic*] and gave three cheers for the eight Communists in the penitentiary."<sup>261</sup> This gathering evidently caught the attention of the

<sup>258</sup> *Royal Commission to Investigate the Penal System of Canada*, 91.

<sup>259</sup> "New Tactics Adopted in Kingston Report," *The Globe*, 24 October 1932.

<sup>260</sup> Smith, *All My Life*, 142.

<sup>261</sup> "Open Inquiry Asked Into Kingston Riots," *The Globe*, 2 November 1932.

Toronto Police Commission. Just two days after, the Commission revoked the ULFTA's hall licence for the Ukrainian Labour Temple. No official reason was given to the press, and no critique was provided.<sup>262</sup>

Still, the CLDL pressed onwards to expose the poor conditions at Kingston Penitentiary. The League constructed, for example, a form letter with a list of demands that could be sent to both the Minister of Justice in Ottawa, and the Penitentiary's Warden. The letter listed four demands:

- (1) - Rescinding the frame-up indictment against Tim Buck; no secret trials or punishments in the prison.
- (2) – Removal of the eight from solitary confinement; transfer to other quarters – not a penal institution – where their health and safety will be protected from brutal treatment and frame-ups.
- (3) – Improved treatment and establishment of minimum rights for political prisoners, such as uncensored correspondence, right to receive books and publications... right to contact with the labor movement, etc.
- (4) – A public enquiry into conditions in Kingston Penitentiary.<sup>263</sup>

The letter left blank lines where organizations could write their name, the number of members, and where the secretary could sign his/her name. Pressing further, in a CLDL memo, the National Executive Committee remarked that Sam Carr was in poor health, and receiving inadequate medical attention at the Penitentiary; according to Carr, the prison doctor "informed him that a change of environment was essential if he was to be cured." Carr was complaining of "very severe pains in his stomache [*sic*]" and reported that he had "lost over 36 pounds during the year of his incarceration." The memo prodded CLDL members to protest with all of their potential might, and to pressure the government for the immediate release of the CPC leaders.<sup>264</sup>

<sup>262</sup> "Ukrainian Hall Ordered Closed by Police Board," *The Globe*, 4 November 1932.

<sup>263</sup> "Protest Resolution: Against Cruel Treatment of Eight Workers' Leaders in Kingston Penitentiary To: The Minister of Justice, Ottawa; The Warden, Kingston Penitentiary, Kingston, Ontario," n.d. RSK, Box 39, Folder 18.

<sup>264</sup> Canadian Labor Defense League, National Executive Committee, "The Working Masses Must not Permit the Destruction of Their Working Leaders," n.d. RSK, Box 39, Folder 18.

The riots at Kingston Penitentiary and the conditions within sparked a slew of reports by Canada's press. By early 1933, numerous newspapers were genuinely shocked by how little information had been made available to the press.<sup>265</sup> The *Peterborough Examiner*, for example, asserted that "the prison authorities and the Government will be guilty of bad judgement if they persist in the attitude that no information in regard to prisons must be given out." Similarly, the *Ottawa Journal* remarked: "The Department of Justice, we think, will have to work out some better plan than the one now in effect if it wishes to save exaggeration and sensationalism in reports from the penitentiaries." *The Globe* concluded that "while there is no desire to pet the criminal, there is nevertheless an insistent demand that regulations shall not be put into effect which will keep from the public a knowledge of the conditions which are being imposed by the jailers upon the prisoners entrusted to their keeping."<sup>266</sup> At this point, newspapers were not necessarily of the opinion that prisons were guilty of treating inmates poorly, but they were frustrated with the veil that was placed between them and the information that could either confirm or deny these allegations.

By the end of June, however, matters changed, as Buck, amongst others, was placed on trial for his role in the prison riots. Similar to the 1931 trial, Buck decided to defend himself, though he obtained W.F. Nickle – former Attorney-General for Ontario – and his son W.M. Nickle as counsel.<sup>267</sup> Buck first questioned a number of prison employees and inmates about his role in the demonstration, with varying degrees of success. On 3 July, however, Buck questioned a prison guard by the name of James Henderson. Buck probed: were you "one of the men who tried to murder me in my cell on Oct. 20?"<sup>268</sup> This question sent the courtroom into a stir. When Buck later recalled the event, he noted that W.F. Nickle had advised against employing such a manoeuvre – "it's not only anti-government, but ... a little bit like sticking your neck out to make a propaganda point, rather than sticking to the facts and proving your innocence." Buck,

<sup>265</sup> "The Whole Story Needed," *The Globe*, 8 February 1933.

<sup>266</sup> Excerpts from each paper were printed in *The Globe's* editorial. See: "Where Prison Policy Errs," *The Globe*, 9 June 1933.

<sup>267</sup> "Tim Buck on Trial in Riot Aftermath; Queries Witnesses," *The Globe*, 24 June 1933; Buck, *Yours in the Struggle*, 229-41.

<sup>268</sup> "Slaying Attempt is Hinted by Buck Querying Guard," *The Globe*, 4 July 1933.

however, assured Nickle that he was less concerned with attaining an innocent verdict than with exerting pressure on the state to initiate a public enquiry into the riot and surrounding circumstances.<sup>269</sup> The presiding judge – Judge Deroche – eventually found Buck guilty for his role in the riot; he was sentenced to serve an additional nine months in Kingston Penitentiary.<sup>270</sup>

If Buck's intention was to acquire media attention and force a Royal Commission, his interrogation of the prison guard had the desired effect. On 3 August, *The Globe* printed an editorial entitled "Tim Buck's Evidence." It declared:

The Globe has no admiration for Tim Buck; and certainly none for the extreme views that have brought him to his present situation; but if, as he says, penitentiary guards fired at him while locked in his cell, The Globe condemns such an attack as a dastardly attempt at murder. There is no other word for it. Is this evidence true? That is what the people of Canada demand to know. Absolute silence on the part of the authorities points to the stunning possibility that it is. Tim Buck has provided another unanswerable argument for the appointment of a capable Commission to investigate the administration of penitentiaries in the Dominion; and especially the Portsmouth institution.<sup>271</sup>

Throughout 1933, *The Globe* and its readers would continue to call for a Commission of Inquiry.<sup>272</sup> In a letter to the editor, one reader called for reform in the Kingston Penitentiary, remarking that it was "high time indeed to have a thorough overhauling of the system now in force."<sup>273</sup>

The CLDL and the Workers' Experimental Theatre (WET) – a CPC organized theatrical organization with numerous local drama clubs around the country – attempted to capitalize on the attention that news of Buck's shooting was garnering. From its inception in 1932, the WET in Toronto was busy, as Alan Filewod remarks, "staging a

<sup>269</sup> Buck, *Yours in the Struggle*, 238.

<sup>270</sup> *Royal Commission to Investigate the Penal System of Canada*, 82; Buck, *Yours in the Struggle*, 239-41.

<sup>271</sup> "Tim Buck's Evidence," *The Globe*, 3 August 1933.

<sup>272</sup> See, for example, "The Penitentiary Problem," *The Globe*, 11 August 1933.

<sup>273</sup> "Let in the Light!," *The Globe*, 28 August 1933. This was just one letter a series of letters to the editor regarding Kingston Penitentiary.

series of agitprops and mass chants at factories, picket lines, party rallies, and May Day celebrations.”<sup>274</sup> As Toby Gordon Ryan recalls in her memoirs, the WET was meant to “contribute, in a theatrical way, to the protest movements then developing for civil rights, for jobs, for unemployment insurance, for union organization.”<sup>275</sup> The glaringly unjust events at Kingston Penitentiary presented the CLDL with an opportunity to land supporters by theatrically challenging the state’s legitimacy; by showcasing the state in all of its despotic glory, the CLDL could attract support for the release of the CPC leaders and the repeal of Section 98 from people not typically sympathetic with the left. The WET was chosen as the weapon of choice, and *Eight Men Speak* was the resulting production. The play was written by four members of the WET in Toronto: Oscar Ryan, Ed Cecil-Smith, Mildred Goldberg, and Frank Love, who is credited as “H. Francis.” Oscar Ryan – who simultaneously served as publicity director for the CLDL – recalled that, “we in the CLDL felt that something had to be done to rouse public sentiment against Section 98 more effectively than through leaflets, mass meetings, petitions, and other traditional ways. We thought, *Why not have a play?*”<sup>276</sup>

In its first two acts, *Eight Men Speak* presents much of the CPC’s history. Act 2, scene 3 caricatures the party’s problem with being perceived as a violent, foreign party – a perception that did not work in their favour. The scene depicted a young male and a young female conversing on a streetcar. The last two lines of dialogue read:

GIRL (*suddenly sobered*): That’s what my boss said. He says the whole thing was directed from Moscow.

YOUNG MAN: If they don’t like this country why don’t they go back where they came from?

Act two, scene 4 demonstrates the very same problem; it featured a “very flashily dressed woman and a man” sitting at a table in a cabaret; the stage directions further note that the couple are “middle aged, and evidently of the bourgeoisie:”

<sup>274</sup> Alan Filewod, “Performance and Memory in the Party: Dismembering the Workers’ Theatre Movement,” *Essays on Canadian Writing* 80 (2003), 64.

<sup>275</sup> Toby Gordon Ryan, *Stage Left: Canadian Theatre in the Thirties, A Memoir* (Toronto: CTR Publications, 1981), 30.

<sup>276</sup> Emphasis in original: Gordon Ryan, *Stage Left*, 44.

*(The orchestra strikes up a fox-trot. The man smiles at his companion and both rise from their chairs to dance, very stiffly and awkwardly.)*

MAN *(to his partner)*: Sure, it's that guy Buck. *(confidentially)* A friend of mine who has a friend in the police court says Buck was smashing things with a hammer.

WOMAN *(throws up her hands and flops into her chair)*: Those Russians!

While the play mocked people who held such views, it also ascribed some of the blame to the mainstream press. It referred to Toronto's *The Mail & Empire*, for example, as the "Toronto Wail and Vampire," in act 2, scene 5.<sup>277</sup>

Act 2, scene 7 satirizes both the trial of the CPC leaders in 1931, and Buck's trial for his role in the Kingston Penitentiary riots of October 1932. In the first trial, for example, the jury sat in the jury box, which had a lid over top. When the "Mountie" lifts the lid, the stage directions note the following:

*Immediately the Mountie lifts the lid of the Jury Box, up pop six Jurors. These six Jurors are all clad in black and are visible only from the waist up. Each Juror wears an identical mask – that of a stodgy, vacant looking face. Each wears white gloves. When the lid is lifted, the six heads all pop up with hands lifted, these they let fall limply over the edge of the box and sit staring vacantly ahead of them. Behind them, pinned to the lid of the box, are six more masks, all stodgy and dumb. The movements of the Jurors are mechanical and exaggerated. They move only when the Judge moves and then they ape his gestures.*<sup>278</sup>

These directions, when performed, were meant to demonstrate two things. First, the "stodgy, vacant looking" masks were a statement that the jury at the trial of the CPC leaders were thoughtless dupes who were unable to process the importance of the proceedings. Second, the fact that the jurors' only movements were imitations of the Judge's mannerisms was a statement that in his charge to the jury, Judge Wright had unjustly asserted that the CPC leaders were guilty, and that the jury had blindly followed this unreasonable prejudice.

<sup>277</sup> Ryan et al., *Eight Men Speak*, 21-22.

<sup>278</sup> Ryan et al., *Eight Men Speak*, 24.

In the same scene, Judge Wright was further mocked for constantly interrupting Buck during his address to the jury. After the “Mountie” – who is undoubtedly a portrayal of John Leopold – gives verbose testimony slandering the CPC, the character depicting Buck remarks, “I demand the right to speak - -.” The Judge, however, interrupts Buck, sternly stating, “That is irrelevant and does not hinge on the evidence filed.”<sup>279</sup>

The depiction of Buck’s 1933 trial – for his involvement in the riots at Kingston penitentiary – is less critical. The character of Judge Deroche, however, is portrayed as having little spine. After listening to Buck’s closing argument, the Judge remarks:

There is no evidence that you were the instigator of the assemblage which terminated in a riot. I am also satisfied you had an honest desire that no one should be injured. But since (*here he stumbles and gropes awkwardly for words*) well, you know, that is, you were there in the crowd, and since you became a leader by (*very vaguely*) er speaking to the convicts, I must find you guilty you know.<sup>280</sup>

This dialogue is strikingly close to the original. When sentencing Buck, Judge Deroche stated:

There is no evidence that you were an instigator of the assembly which developed into a riot.... I believe you, Buck, and the other witnesses, that the intention was a peaceful assembly, unlawful perhaps, at least breaking prison rules to do it, and the men knew they were breaking prison rules; nevertheless, I am satisfied that in the minds of the leaders anyway there was no desire that there should be a riot.... But, as I said before, being a part of the unlawful assembly which developed into a riot, you are responsible for the consequences of the riot, and I must sentence you to some term of imprisonment.<sup>281</sup>

Although the difference is subtle, it is significant. *Eight Men Speak* is critical of Deroche for his strict adherence to Canada’s written law. Deroche, according to the play, should have exercised leniency with the CPC leaders; he recognized that Buck had no intention of initiating a riot, and thus, given that there was no *mens rea* – that is, “guilty mind” – there was no unbending need to produce a conviction.

<sup>279</sup> Ibid., 25.

<sup>280</sup> Ibid., 26.

<sup>281</sup> *Royal Commission to Investigate the Penal System of Canada*, 82-83.

The next scene (act 3, scene 1) depicts the fictitious trial of “Guard X,” who fired shots at Buck; the charge is attempted murder. The courtroom – titled “The Workers’ Court” – is noticeably different from that of the other two trials. There are three judges, who sit on a raised dais that is “draped with red,” all of whom wear “a red kerchief” around their necks. The two lawyers are named “CLDL Organizer,” who acts as the prosecutor, and “Mr. Capitalism,” who acts as the defense lawyer for the prison guard. In the stage directions, the CLDL Organizer, is described as “dressed quietly, in a neat suit; her attitude is one of entire confidence in her case.” Alternatively, Mr. Capitalism is characterized as “a well fed, paunchy individual, quite bald and red faced,” symbolically depicting the exploitative nature of the capitalist mode of production.<sup>282</sup> The trial is depicted over acts 3, 5, and 6. Throughout, the evidence presented mocks the state. At one point, however, it makes a political statement about Canada’s penal system, specific to Kingston Penitentiary. A witness named John Brown, testifies as to the violent nature of Guard X. He recalls his experience of receiving ten lashes from the guard, and being beaten unconscious; act 3, scene 2 dramatically depicts this event.<sup>283</sup> Ultimately, the trial culminates with the delivery of the verdict. Notably, as Bart Vartour remarks, the Workers’ Court lacks a jury. Instead, it “uses the play’s audience to fill the role of the jury.”<sup>284</sup>

Interwoven into the narratives of the two trials are scenes serving as critiques of repressive, violent state actions. Act 3, scene 3, for example, depicts the three miners who were killed by RCMP officers at the 1931 strike in Estevan, Saskatchewan. The miners offer the audience their explanation of why they were killed, coupled with a warning:

1<sup>st</sup> MINER: Killed by gunfire.

2<sup>nd</sup> MINER: By the mounted police.

3<sup>rd</sup> MINER: By the capitalist state.

1<sup>st</sup> MINER: Because we demanded a decent living.

ALL THREE: Because we organized!

<sup>282</sup> Ryan et al., *Eight Men Speak*, 27.

<sup>283</sup> Ibid., 32.

<sup>284</sup> Vartour, “Writing Left,” 137.

ALL THREE (*stepping forward one pace and pointing out into the audience*): You may be next!<sup>285</sup>

The play also provided scenes critiquing the deaths of Peter Grabowski – “an unemployed transient, shot in the back at Hornepayne, [Ontario], because the tabernacle of property had been desecrated” – and Nick Zynchuk – “killed by a police bullet ... at an eviction in Montreal.”<sup>286</sup> These scenes largely acted as dramatized versions of CLDL pamphlets.

*Eight Men Speak* premiered at Toronto’s Standard Theatre on 4 December 1933. Attending the performance was a stenographer, hired by the Toronto Police Commission. The commission immediately took to ensuring that the play would not be performed again at the theatre. After consultation with Toronto, Ontario’s “Inspector of Theatres” issued a warning to the hall’s owner, I.J. Weinrot, stating that if his theatre, or any other in Ontario, allowed another performance of *Eight Men Speak*, the hall’s licence would be immediately revoked.<sup>287</sup> More than this, however, Detective-Sergeant Nursey compiled a report about the play’s performance, a report which the Toronto Police Commission forwarded to the Cabinet in Ottawa. Evidently, Bennett received and read the brief. His secretary replied to the Toronto Police Commission, and remarked that Bennett was of the opinion that “appropriate action should be taken through the Attorney-General of the Province to protect society against these attacks.”<sup>288</sup> Although the Progressive Arts Club made constructed plans for a second performance in January 1934, they were quickly halted by the Toronto Police Commission. Similarly, in Manitoba, a performance of *Eight Men Speak* was booked for May 1934, at Winnipeg’s Walker Theatre. The city’s municipal commissioner and chief of police, however, prohibited the play’s performance. Further, in June 1934, Bennett’s administration demanded that the acting Postmaster General, P.T. Coolican, blacklist *Eight Men Speak*, revoking its right to be transported by post in Canada.<sup>289</sup>

<sup>285</sup> Ryan et al., *Eight Men Speak*, 33.

<sup>286</sup> Ibid., 33-34; Vartour, 138-39.

<sup>287</sup> Vartour, “Writing Left,” 139.

<sup>288</sup> Ryan et al., *Eight Men Speak*, xvi.

<sup>289</sup> Ibid., 80-90.

It was the University of Toronto's student newspaper, *The Varsity*, that was the most critical of the ban on *Eight Men Speak*. Editors abhorred the state's attack on free-speech, and they even seemed to think favourably of the CPC:

It is more than passing strange ... that now the leaders in a democratic society should employ manifestly un-democratic procedure [*sic*] to safeguard its existence. Does not such procedure either justify the contention of the Communists that democracy is a lie to delude the masses, or amounts to an abject confession that its days of usefulness are over and the ominous handwriting has long since been inscribed upon the wall?.... Let the Communists speak out of their experiences and let us hear their interpretations of the times in which we are passing. They are bound to be fraught with meaning.<sup>290</sup>

The *Toronto Daily Star* reported somewhat indifferently, but suggested that the state should not have acted on the play: "It does not seem desirable that court trials should be parodied on the stage, but to prevent the undesirable by resorting to unlawful methods on the part of the authorities is more undesirable still because worse results can flow from it."<sup>291</sup> *The Globe* did not report on the play's banning.

The state did not stop with their heavy-handed oppression of pro-communist ideas. On 17 January 1934, the CLDL held a meeting at Toronto's Hygeia Hall for the purposes of protesting the banning of *Eight Men Speak*. Members of the Toronto Police Commission's Red Squad were in attendance and taking notes. At some point, while giving a speech, A.E. Smith referenced the prison guard shooting at Tim Buck, and he "charged [Bennett's] government with responsibility for this attempted assassination of the leader of the Communist party." The members of the Toronto Police Commission that were present – Smith recalls that it was Detectives Nursey and Mann – compiled a report of this speech, and based on this report, the state elected to charge Smith with sedition.<sup>292</sup>

Immediately, the CLDL began criticizing the government for the charges being laid against Smith. The League organized an "A.E. Smith United Defense Conference." The

<sup>290</sup> Ibid., 69.

<sup>291</sup> Ryan et al., *Eight Men Speak*, 74-75.

<sup>292</sup> Smith, *All My Life*, 166; "A.E. Smith Indicted on Sedition Charge; True Bill Returned," *The Globe*, 31 January 1934.

conference issued leaflets, one of which connected Smith's trial with Buck's attempted murder, and called for an investigation into the shooting. It declared:

Tim Buck in Kingston has made the definite charge that he was shot at. Thousands demanded that this charge be investigated. Thousands demanded a betterment of the conditions of these men. Thousands demanded their release and the Repeal of Section 98.... But the government had [*sic*] refused to budge an inch, the government has met protest with vilification and added terror. What other deduction could the masses of people in this country make of a government that refuses the investigation of an attempted murder that the government itself is implicated? Otherwise, why no investigation? Why this hysteria? Why the attempt to gag all criticism through the indictment on sedition charges of the man who more than any one [*sic*] else has forced this issue into the open?<sup>293</sup>

The pamphlet warned the government that the Defense Conference had decided to launch "a mighty campaign against this sedition frame-up," and placed further demands on Bennett's administration: a special hearing on the shooting of Tim Buck "where Tim Buck and A.E. Smith and others will be called as witnesses"; the repeal of Section 98; the removal of the ban on *Eight Men Speak*; and that a malnourished and "dangerously ill" Sam Carr be released from Kingston Penitentiary.<sup>294</sup> When the federal government did not respond to the request for a hearing into the attempted murder of Buck, the CLDL advertised their own "open hearing" into the events; it was scheduled for 15 April 1934 at Toronto's Massey Hall.<sup>295</sup>

That same year, Oscar Ryan, co-writer of *Eight Men Speak*, prepared a pamphlet for the CLDL entitled *The "Sedition" of A.E. Smith*. The work begins by comparing the lives of Smith and R.B. Bennett in parallel columns. Smith's biography, notes Vartour, is written "in earnest prose that nonetheless turns into a hagiographic documentation."<sup>296</sup> While Smith's difficult childhood and his transition from the Methodist church to the CLDL are

<sup>293</sup> "A Call! To the Working and Liberal Minded People of Toronto," A.E. Smith United Defense Conference, n.d., RSK, Box 39, Folder 10.

<sup>294</sup> "A Call! To the Working and Liberal Minded People of Toronto," A.E. Smith United Defense Conference, n.d., RSK, Box 39, Folder 10. See: "I Was Shot At!," A.E. Smith United Defense Conference, n.d., RSK, Box 39, Folder 10.

<sup>295</sup> "I Was Shot At!," A.E. Smith United Defense Conference, n.d., RSK, Box 39, Folder 10.

<sup>296</sup> Vartour, "Writing Left," 152.

documented, the final few lines are particularly immodest: "Sprung from the working class, he resisted the efforts of an alien class to make him theirs. Of the working class, he is with, and leading, the working class. ... His enemies hate, and fear him."<sup>297</sup> Comparatively, Bennett's biography is a parody that documents the birth and life of a devil-child:

On July 3<sup>rd</sup>, 1870, the ocean seethed. At Hopewell, N.B., the earth groaned. Above, the heavens parted in fire. A babe was born into the comfortable household of Mr. and Mrs. Bennett. All who saw the creature marvelled, not so much at its beet-red face and bellowing voice, but because of a strange phenomenon: For in one pudgy fist, the child grasped a bag of gold, and on one pink foot there grew a cast-iron heel.<sup>298</sup>

The contemporary depiction of Bennett is just as damning. In concluding the section, the pamphlet remarks: "He doesn't eat two-bit meals and says that poverty is a wonderful thing for developing character and the various virtues. He is the millionaire premier of a millionaire cabinet and says that the iron heel of ruthlessness should be brought down on communism. His bellow and his roar do not frighten the people any longer."<sup>299</sup>

*The "Sedition" of A.E. Smith*, however, did not simply decry state actions; the pamphlet simultaneously served as an explanation of the need for the existence of the CLDL. The pamphlet detailed the League's brief history, from its formation at Drumheller in 1925, to its role in protesting the conditions in Kingston Penitentiary in 1932-33. Smith is quite overtly placed as the champion of the proletariat, fighting for the rights of exploited workers. In a section describing the fight over free speech rights in Toronto between 1928-30, Ryan wrote:

Draper's police and red-squad men wield batons over defenseless men, women and children. Police motorcycles and rearing horses crash through the parks and down the streets.... The Canadian Labor Defense League mobilize a strong free speech movement. In the forefront of that movement is A.E. Smith, speaking at meetings, defending workers, helping them

<sup>297</sup> Oscar Ryan, *The "Sedition" of A.E. Smith* (Toronto: District Central Council, Canadian Labor Defense League, 1934), 4.

<sup>298</sup> *Ibid.*, 3.

<sup>299</sup> Ryan, *The "Sedition" of A.E. Smith*, 4.

prepare their court cases.... His activity angered the authorities. They were like wolves snapping at him, howling for his imprisonment.<sup>300</sup>

By the end of the pamphlet, victory is predicted for the working class, as Ryan declares that the suppression of the CPC, or “the iron heel of ruthlessness”, was Bennett’s “Achilles’ heel.” He proclaims that “The workers of Canada, the farmers of Canada, and the friends of the working class, are determined to pierce that Iron Heel....”<sup>301</sup>

Petryshyn describes Smith’s trial – which began in late February 1934 – as “a comedy of errors.”<sup>302</sup> It immediately became clear that public sentiment was in favour of Smith as he had built himself a reputation as a respectable, altruistic individual, even if he was misguided at times. Toronto’s dailies editorialized largely in his favor. Indeed, the *Toronto Telegram*, the *Mail & Empire*, and the *Toronto Daily Star* all openly raised questions as to the state’s motives; the *Toronto Telegram*, asked why Smith’s lawyer, Onie Brown, was granted only two weeks to organize his case when he had requested two full months, and the *Toronto Daily Star* asked why Smith was being tried with sedition, and not the less serious crime of slander. The *Globe*, however, remained silent until after a verdict had been rendered.<sup>303</sup> Smith’s counsel – which included Onie Brown, who also served on counsel in the 1931 trial – was successfully able to convince the presiding judge, Justice Kingstone, that Tim Buck should be allowed to testify, as he could speak to the failure in the administration of justice that Smith referred to in his speech. When Buck testified, he promptly shouted “I was shot at –,” at which point, the Crown objected, and Buck was led out of the courtroom and escorted back to Kingston Penitentiary.<sup>304</sup> On 8 March 1934, after Justice Kingstone’s charge reminded them to be cognizant of Smith’s intent when delivering his speech, jurors acquitted Smith on the charge of sedition.<sup>305</sup>

Smith’s trial, in combination with the attempted murder of Buck, seems to have garnered the public’s sympathy, and even their outrage. *The Globe* reported that since his

<sup>300</sup> Ibid., 5.

<sup>301</sup> Ibid., 19.

<sup>302</sup> Petryshyn, “Class Conflict,” 58.

<sup>303</sup> Petryshyn, “Class Conflict,” 54-58; “Tim Buck Also Had a Trial,” *The Globe*, 10 March 1934.

<sup>304</sup> Ibid., 58.

<sup>305</sup> “A.E. Smith is Found Not Guilty of Sedition,” *The Globe*, 9 March 1934.

trial, Smith had “received messages and letters from many persons hitherto opposed to him, political opponents, capitalists, and workers expressing their satisfaction with the result of the trial.” Furthermore, *The Globe* noted, while many of these people had been indifferent or apathetic to Smith’s cause, a number of them “were now awakened to the situation and had become strong supporters of the Canadian Labor Defense League.”<sup>306</sup> Such favourable responses represent a victory for the CLDL. Perhaps its campaigns were earning it popularity, or perhaps state repression of its voice was causing public outrage; regardless, the CLDL’s programme was gaining momentum.

Certainly, some Canadians had become acutely aware of the state’s attempt to suppress anti-state and anti-capitalist voices. On 14 March 1934, Toronto’s *The Mail & Empire* printed a letter to the editor, written by a person with the pseudonym “Mere Woman.” This writer had clearly been shaped by the events since the 1931 trial. Based on her interest in Smith’s trial, she remarked, she had attended a meeting at Massey Hall. “That meeting,” she noted, “was a revelation both in regard to the extent and intensity of the popular indignation regarding this prosecution, as evidenced by the feeling of the vast audience, but also as to the personality of Mr. Smith himself.”<sup>307</sup> Indeed, the writer was very impressed with Smith:

I found this gentleman, not the vulgar uncouth person some would imagine, ranting against organized society and constituted authority, but a scholarly, thoughtful, cultured speaker sincerely concerned for the welfare of humanity. His address was a model of restrained rhetoric and logical reasoning. His words were well chosen, and his manner dignified.<sup>308</sup>

Although she had been expecting a rude, misguided rabble-rouser, the writer was impressed with Smith’s temperament, and was surprised with the crowd’s support.

This letter, however, did not merely compliment Smith. The writer further voiced her displeasure at the lack of available information concerning the attempted murder of Buck. “Still unanswered,” she pressed, “is the major question propounded by Rev. A.E. Smith, which goes to the very foundations of the integrity of our governmental institutions

<sup>306</sup> “Victory Predicted for Labor Effort,” *The Globe*, 19 March 1934.

<sup>307</sup> “‘Mere Woman’ to Editor of the Mail & Empire,” 14 March 1934, RSK, Box 33, Folder 4.

<sup>308</sup> Ibid.

and the honor of our public men: was Tim Buck shot at? If so, then by whose authority and why?" Still further, she demanded that Canada's press take up the issue, and fight for an investigation into the matter, regardless of their politics. She was critical of *The Globe* in this regard, noting that it appeared "only to be eager to defend our Courts which were not attacked."<sup>309</sup> This critique was in reference to the editorial entitled "Tim Buck also had a Trial," printed by *The Globe* on 10 March 1934. Noting that both Buck and Smith had been put on trial in front of a jury of their peers, and that in each case, they delivered their verdict, the editorial asserted:

The fact established is that the Labor Defense League and all other organizations or individuals who appeal to the courts of Canada will receive even-handed justice.... Mr. Smith's acquittal is not a victory for any element in the community, or in Canada; but it is evidence that in this country the law is administered in the fairest way possible.

This interpretation did not satisfy the writer of the letter to the editor. It ignored, she observed, that the Toronto Police Commission later "admitted that the charge was laid by mistake." "Commissioners frankly admit," she continued, "that had they known that the case depended on the accuracy of long-hand notes of a speech taken by a policeman and not upon a report made by a competent court stenographer, they would not have favoured the laying of the information."<sup>310</sup> The writer closed her letter, once again demanding that Canada's press use its influence to pressure Bennett's government to conduct an investigation into the attempted murder of Buck.

## **The End of Bennett and Section 98**

Pressure on Bennett's administration to repeal Section 98 and to release the CPC leaders from Kingston Penitentiary came from a multitude of sources. The CLDL and many of Canada's labour organizations had campaigned vigorously since the law was passed in 1919, with the intensity growing after the conviction of the CPC leaders, the trial of Buck for his role in the riots at Kingston Penitentiary, and A.E. Smith's sedition trial. The latter event, as well as the attempted murder of Buck provoked Canada's press to critique

<sup>309</sup> Ibid.

<sup>310</sup> "'Mere Woman' to Editor of the Mail & Empire," 14 March 1934, RSK, Box 33, Folder 4.

Bennett for the unjust repression of non-conformist thought, and to demand an investigation into Canada's penal system; such demands were occasionally written with a pro-Buck and even pro-CPC spin. In August 1933, for example, *The Globe* ran a series of articles written by one Dr. O.C.J. Withrow, who had visited Kingston Penitentiary. Withrow, who at the time was writing a book on penology, wrote in "vivid realism," about his experiences within.<sup>311</sup> The series began on 7 August, and by 28 August, the paper's editor was forced to make a note to readers stating: "*The Globe* has received such a deluge of letters, based on Dr. Withrow's articles, approving of its appeal for a public and thorough investigation of penitentiary conditions, that it cannot find space for all of them."<sup>312</sup> While these letters may not have directly pressed for the release of the CPC leaders, one can surmise that many would have commented on the shots fired at Buck. At the very least, Buck's statements in court helped draw attention to one of the party's causes.<sup>313</sup>

Bennett, however, also faced pressure from within the House of Commons. As early as 1926, Members of Parliament debated bills that proposed the repeal of Section 98. At the forefront of this drive were J.S. Woodsworth – leader of the Labour Party, and from 1932 onwards, leader of the CCF – and Ernest Lapointe, lawyer, Liberal MP for the Kamoursaka district in Quebec, and at three different times, Minister of Justice in Mackenzie King's cabinet. In 1926, Lapointe proposed a bill that aimed to repeal both Section 98 and Section 133 of the Criminal Code. Members of Parliament voted in favour of the bill; the Conservatives, however, still held a majority in the Senate, where the bill was promptly defeated. Similar bills were put forward in 1927, 1928, 1929, and 1930, and each time the bill was passed in the House of Commons, but defeated in the Senate; in 1929, the Senate defeated the bill by only three votes.<sup>314</sup>

<sup>311</sup> "Letting in the Light," *The Globe*, 4 August 1933.

<sup>312</sup> "Let in the Light!" *The Globe*, 28 August 1933.

<sup>313</sup> Withrow's articles received attention outside of Toronto. The *Pembroke Standard-Observer*, for example, printed an editorial commenting: "The letters of Dr. Withrow now appearing in the Toronto Globe upon conditions in the Portsmouth Penitentiary cannot be very pleasant reading for Hon. Hugh Guthrie, Minister of Justice, or for the Warden of that institution.... We need a Royal Commission to investigate these institutions and to make recommendations just as much as we need one about banking." Reprinted as: "Need to Investiage," *The Globe*, 31 August 1933.

<sup>314</sup> Fidler, "Proscribing Unlawful Associations," 18-23; *HOC Debates* (1933), 2096.

By 1933, the debate in the House of Commons had lost no steam. Woodsworth again put forth a bill attempting to repeal Section 98 and Section 133. He explained the necessity for the bill:

In the earlier days, when we sought to get rid of this piece of legislation, we were told that it was a dead letter, that it never had been used and probably never would be used. As a matter of fact, however, there are now some eight communists in Kingston penitentiary who were convicted under this legislation. I should like to point out that these men did not commit any overt act whatever. They were not convicted of urging the use of force, nor were they convicted of using force. They were convicted of belonging to an association which was said to be affiliated with a body in Russia which did believe in the use of force; on that type of evidence they were convicted.... They were convicted for holding a certain belief, and I say that is something quite new in British law.<sup>315</sup>

Woodsworth noted that in addition to numerous labour organizations, the United Church also protested against Section 98. He cited a resolution from a conference in Montreal, which noted that Canada's "Christian church would be untrue to herself, a traitor to humanity, and an ally of reaction, if she were indifferent to the present tragic situation of the labouring masses and their efforts after self-betterment." The resolution further called for the repeal of Section 98, and for the end of deportations of foreign born Canadians "whose real offense is their social views."<sup>316</sup> In his speech, Woodsworth appealed to both the faith and the Britishness of Canada's MPs.

Minister of Justice, Hugh Guthrie, was quick to defend Section 98 and the convictions of the CPC leaders. These men, he asserted, had been put on trial in front of a jury of their peers who, with their verdict, found them guilty. The convictions were appealed to Ontario's Court of Appeal where they were ultimately confirmed, thus proving the guilt of these men. Furthermore, prosecutions under the legislation had been "extremely rare," and the law was in no capacity aimed directly at labour, or radical organizations.<sup>317</sup>

<sup>315</sup> *HOC Debates* (1933), 2097.

<sup>316</sup> *Ibid.*, 2097.

<sup>317</sup> *Ibid.*, 2101.

Guthrie countered Woodsworth's argument regarding the vast support for the repeal of the legislation. He instead noted that most of the support had either come directly from, or had been prompted by the CLDL. In reference to his receiving petitions regarding Section 98, Guthrie proclaimed: "I am not overstating the case when I say that I have hundreds and hundreds of them. I have now ceased to acknowledge receipt of them. I merely hand them over to the mounted police." He assured the House of Commons, however, "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." Of course, the CLDL was known to have a large foreign membership. Guthrie further reminded the House of Commons that much of the literature circulated by the CLDL was "most scandalous, most seditious, and in many cases, blasphemous and obscene."<sup>318</sup> Accordingly, in his view, these petitions did not need to be taken seriously. Lapointe quickly retorted that the President of the Trades and Labor Congress, Tom Moore – who vehemently opposed Section 98 – was not a communist and, being born in Britain, he was certainly not a foreigner. Peter McGibbon – physician and Conservative MP for the Muskoka-Ontario district – replied, noting that Lapointe had voted against the repeal of Section 98 the first time such a bill was placed before the House of Commons. Skilfully, Lapointe retorted that as Minister of Justice, he had on five occasions introduced a bill which was, in substance, the same as the one introduced by Woodsworth in 1922.<sup>319</sup>

The bill found further support from members of the CCF, such as Agnes MacPhail and A.A. Heaps. In an attempt to discredit the stance of these MPs, J.R. MacNicol – teacher and Conservative MP for the Toronto-Northwest district – attempted to vaguely connect the CCF with communism. Citing the *Mail & Empire*, MacNicol referenced a speech given by Woodsworth that commented on the Senate's defeat of the bill to repeal Section 98 in 1926:

The hon. Member is quoted as having made this statement...:

"It is absurd for the Senate, a body without responsibility, to veto measures passed by the elected representatives of the people,' he declared.

<sup>318</sup> *HOC Debates* (1933), 2102.

<sup>319</sup> *Ibid.*, 2102-03.

Assailing the capitalist system, he urged his hearers to be ready with practical solutions for some system to replace it as it crumbled.”

Well, the capitalist system is not going to crumble; it is going to remain right in existence.<sup>320</sup>

MacNicol further scolded the CCF, noting that Agnes MacPhail – MP for the Grey Southeast district in Ontario<sup>321</sup> – had, in a speech, stated that “Canada has the least liberty of speech and action of any country.” This comment, he argued, implied that even Russia had greater freedom of speech and action; he believed that “Canada’s institutions and ... right of free speech [were] second to none.”<sup>322</sup>

Not one to back away from a debate, MacPhail dismissed the claims that the CCF and the CPC were in any way related:

We are not communists, and I may say that the heckling that we receive comes from the communists who hate [Woodsworth], myself and others associated with us more than they do anybody else, because we, by striving to bring about reforms constitutionally, stand between the communists and the violence they desire.<sup>323</sup>

MacPhail was correct to note the tensions between the CCF and the CPC. That year, in fact, the CLDL issued a pamphlet aimed at the membership of the CCF. The CLDL had, according to the pamphlet’s author, sent a telegram to leadership of the CCF, proposing that the two organizations form a “united front,” in an attempt to force the repeal of Section 98, and to achieve the release of those imprisoned under the law. “We suggested,” the pamphlet notes, “that demonstrations, mass meetings, and delegations might be organized jointly to promote this objective.”<sup>324</sup> Although the CCF agreed in principle with the goals of the CPC, they replied in the negative:

<sup>320</sup> Ibid., 2191.

<sup>321</sup> MacPhail’s political affiliation at this time is tricky to label. In 1932 – in the midst of Canada’s 17<sup>th</sup> session of Parliament – she helped to found the CCF. In 1934, during the same session, the United Farmers of Ontario withdrew from the CCF, as did MacPhail. She rejoined the CCF in 1940.

<sup>322</sup> *HOC Debates* (1933), 2191.

<sup>323</sup> Ibid., 2195.

<sup>324</sup> “A Call to the Rank and File of the CCF! For United Front Action Against Section 98 and for Release of Class War Prisoners,” (Toronto: National Office, Canadian Labor Defense League, 1933).

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 that 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 own campaign for the repeal of Section 98, release of political prisoners, and the prevention of arbitrary deportations, by methods approved and adopted by our organizations.<sup>325</sup>

This response, however, irritated the CLDL. “[T]hese words,” the pamphlet asserted, “contain a subtle accusation against the CLDL, in that they imply our tacit advocacy of ‘force and violence’. This is the kind of thing employed by the capitalist class against us.”<sup>326</sup> Indeed, this was the very foundation of the Crown’s case against the CPC leaders.

The CLDL additionally commented on the lack of immediacy involved with the CCF’s plan: “before the CCF will advise any action on behalf of [the] imprisoned workers, they (the CCF) must have become the government of the country! In the meantime, labor champions languish in jail, victims of an inhuman prison regime.” Moreover, the methods suggested to the CCF were scarcely violent: “are not meetings, deputations and demonstrations constitutional?” The CLDL petitioned the rank and file members of the CCF to pressure the organization’s leaders to properly support and unite with the CPC on the issue of Section 98; the negative response to the united front action was an affront to labor solidarity and needed to be remedied.<sup>327</sup>

If the CCF and CPC were not ideologically compatible, they nonetheless both worked for the repeal of Section 98 in complementary, if opposite ways. By 1934, the public’s distaste for the law was patently clear to Bennett’s administration. With an election quickly approaching, Bennett began to grant some concessions to the CLDL and CPC. On 29 June, Guthrie announced that Sam Carr and Matthew Popovich would be released

<sup>325</sup> Ibid.

<sup>326</sup> “A Call to the Rank and File of the CCF!”

<sup>327</sup> Ibid.

from Kingston Penitentiary. Guthrie observed that these men had both served half of their sentences and were thus, eligible for parole; on account of their “good behaviour,” the state recommended that both men be released.<sup>328</sup> Given the protests at Kingston Penitentiary, and the CPC’s unwillingness to submit to capitalist justice, it is difficult to imagine exactly to what good behaviour Guthrie was referring. Both men, according to A.E. Smith, however, had been quite ill for some time. Given the pressure mounting for a Royal Commission into the conditions at Kingston Penitentiary, confining these prisoners of poor health was more damaging to the government’s reputation than was releasing them.<sup>329</sup>

The release of the CPC leaders did not stop with Carr and Popovich. In the same year, Tom Hill, Malcolm Bruce, and John Boychuk were paroled. While in December 1933, the press reported that Cacic had been released, in reality, he was put before a Board of Inquiry – consisting of only one person, “Officer Reynold of Kingston Penitentiary” – which concluded that he was a member of the undesirable class. This made Cacic liable to deportation, and he was scheduled to be sent to his country of birth, Yugoslavia, where he would face further imprisonment or even death on the basis of his political beliefs. Although the CLDL worked legally to try and prevent his deportation, or to change the location to the Soviet Union, Cacic was escorted from Canada in January 1934. Only through the CLDL’s connection with International Red Aid was the League able to help Cacic. His ship made a scheduled stop in Liverpool, England, where British members of International Red Aid issued Cacic a manufactured Soviet passport. He was later able to escape custody and catch a train to Moscow.<sup>330</sup>

<sup>328</sup> “Two Prisoners Freed from Portsmouth Prison,” *The Globe*, 30 June 1934.

<sup>329</sup> The CLDL had planned a large gathering at Queen’s Park to celebrate the release of these men. On the way to the rally, Carr and Popovich were met at Union Station in Toronto by a large crowd that “cheered them lustily.” If *The Globe* is to be believed, “comrades’ embraced him [Carr] warmly, and kissed his cheeks.... Fists were upraised in salute [and] bursts of song broke out.” According to Smith, however, Popovich was unable to attend the rally at Queen’s Park due to illness See: “Marching Radicals Clash with Firemen and Police Step In,” *The Globe*, 4 July 1934.

<sup>330</sup> Molinaro, “A Species of Treason?,” 79-84; “Imprisoned Red May Be Deported On His Release,” *The Globe*, 18 December 1933; “Ewan Released From Portsmouth; Arrives in City,” *The Globe*, 1 October 1934.

In late September 1934, Tom Ewan was released from Kingston Penitentiary, and finally, in November, so was Tim Buck, thus ending the imprisonment of the CPC leaders.<sup>331</sup> On 2 December 1934, a rally was held at Maple Leaf Gardens to celebrate Buck's release; the RCMP reported that 17,000 people were in attendance, and that on the main stage, there was a "monstrous picture of Lenin and Stalin almost 40 feet long and 30 feet high." The rest of the stage was decorated in red and many of those in attendance had worn a multitude of red items of clothing. When, at the meeting's opening, "God Save the King" was played, it was greeted with boos and hisses. Buck was carried to the stage on the shoulders of two members of the Sports Association, and the crowd applauded thunderously upon seeing him.<sup>332</sup>

On 14 October 1935, a federal election was held to elect Canada's 18<sup>th</sup> Parliament. Just prior, an article in *The Round Table: The Commonwealth Journal of International Affairs*, summed up the Canada's electoral environment: "[t]he problem presented by the million and a quarter people who are still upon some form or another of public relief threatens to be a source of worry to all Canadian Governments for some time to come, and will constitute one of the main issues at the coming election."<sup>333</sup> The events of the On-to-Ottawa Trek and the Regina Riot in June had forced "awkward debate" in the House of Commons over the issue of unemployment relief, and Bennett's Conservatives did not appear to have the support of labour. The journal predicted a "decisive victory for the Liberals" under Mackenzie King, noting that the party was "in better shape than any of their rivals," and that they enjoyed the support of many of the country's news outlets. The results of the election fulfilled this prediction. While in 1930 the Conservative Party enjoyed a majority government, securing 134 of the 245 seats in the House of Commons, the Liberals elected candidates in 173 ridings in the 1935 election, obtaining a majority government of their own.<sup>334</sup>

<sup>331</sup> "Ewan Released From Portsmouth; Arrives in City," *The Globe*, 1 October 1934; "Toronto Reds Acclaim Buck on Arrival Here," *The Globe*, 26 November 1934.

<sup>332</sup> Kealey and Whitaker eds., *RCMP Security Bulletins: The Depression Years, Part One*, 439-444.

<sup>333</sup> "Canada: The Parties and the Election," *The Round Table: The Commonwealth Journal of International Affairs*, 25:100 (July, 1935), 813.

<sup>334</sup> "History of Federal Ridings since 1867," Elections Canada, accessed on 22 April 2015, <http://www.parl.gc.ca/About/Parliament/FederalRidingsHistory/HFER.asp>.

In June 1936, Lapointe, as Minister of Justice, championed a bill to repeal Section 98. In favour of the bill, once again, were members of the CCF such as Heaps and Woodsworth. This time, however, MacNicol too was in favour of the bill. In his speech, he noted that on a trip to the United States, he had attempted to bring back to Canada some “expositions on communism.” He continued:

I felt a bit nervous and I went to see the deputy minister of justice, who, after looking wise for a moment or two, and turning over the pages, assured me that I was within the law in bringing them into the country. The sections in that regard were unnecessarily severe and I felt that the onus of proof being on any one [*sic*] attending a meeting to show that he was not committing an unlawful act was perhaps a little strong, and also the subsection pertaining to owners of halls and people attending meetings.<sup>335</sup>

Bennett, who was re-elected in the riding of Calgary West, predictably spoke against the bill. This time, however, it mattered little; the bill was able to pass easily through both the House of Commons and the Senate.

The road that led to the repeal of Section 98 was long, and one that required much strategizing. The CPC and the CLDL were, however, ultimately successful in their goal. Protests and publications together gave a face to the communists’ cause, and caught the attention of Bennett and his administration, who consequently acted to suppress the voice of the CPC and CLDL. Although many Canadians might not have cared one way or the other about Section 98, knee-jerk reactions from the Canadian state garnered the sympathies of a number of Canadians for the CPC. While it is tough to gauge the opinions of Canada’s populace, as Ivan Avakumovic notes, in 1934 the CLDL was able to present to the federal government a petition with 459,000 signatures demanding, amongst other things, Buck’s release and the repeal of Section 98.<sup>336</sup> These signatures comprised approximately 4.4% of Canada’s total population.<sup>337</sup> Undoubtedly, this support came from Canadians of many ranks. Still, together, the CPC and the CLDL were able to alter the opinions of the Canadian public and the country’s press. Even editors of *The Globe* – who

<sup>335</sup> *HOC Debates* (1936), 3911.

<sup>336</sup> Avakumovic, *The Communist Party In Canada*, 87-90.

<sup>337</sup> Canada, Dominion Bureau of Statistics, General Statistics Branch, *The Canada Year Book, 1936: The Official Statistical Annual of the Resources, History, Institutions and Social and Economic Conditions of the Dominion* (Ottawa: King’s Printer, 1936), 101.

disliked Tim Buck, and favoured the convictions of the CPC leaders – were supportive of the CLLD's demands for an investigation into the conditions in Kingston Penitentiary, and into the administration of Canada's penal system.

In June 1936, the House of Commons debated whether or not to add a subsection to Canada's seditious laws that looked strangely similar to Section 98. J.R. MacNicol – though supportive of the measure – warned that protests would occur forthwith if the amendment passed:

I would point out that all of those organizations ... having denounced the later government for maintaining section 98, will now howl their heads off against subsection 4 of section 133.... We shall likely see them continue to do what they did before. Take, for instance, ULFTA, Ukrainian Labour-Farmers' Temple Association. I have no doubt they will protest against subsection 4 of section 133, and the NUWA, National, Unemployed Workers' Association, who have protested before, will likely protest again. The Workers' Ex-Service Men's League protested before and will undoubtedly protest again, and so will the UF, the United Front, the Canadian Labour Defence League, and the YCL, the Young Communists' League.<sup>338</sup>

Although MacNicol advised that the House of Commons should “not pay attention” to these organizations, and instead vote in favour of the amendment, the fact that he addressed these protests suggests that they were taken seriously by some MPs. Such protests allowed for working class Canadians to ensure that their voices were heard, and by voicing their displeasure they were, in fact, able to affect governmental policy.

<sup>338</sup> *HOC Debates* (1936), 3911.

## Conclusion

As a piece of Canadian legislation, Section 98 was overtly political and fiercely contested. For the state, the law was about curtailing the ability of radicals to organize. The CPC, an openly revolutionary political party, was the first organization to be targeted. The convictions of the Toronto Communists could have, as the state intended, crushed the CPC beyond the point of repair; Justice Wright declared the party to be illegal in Canada, meaning that members could have been convicted *en masse* simply for having a membership card, or for having attended a party meeting. Moreover, without a strong voice speaking out against Section 98, the state could well have continued to use the law to attack other labour and immigrant organizations, such as the ULFTA and the FOC. Indeed, there is much evidence that these organizations were on the state's radar. The ULFTA's newspaper, *Working People*, was banned in 1918, and Winnipeg's Ukrainian Labour Temple was raided by the Royal Northwest Mounted Police (RNWMP) during the Winnipeg General Strike; even the association's replacement paper, *Ukrainian Labour News*, was placed on the RNWMP's list of subversive publications.<sup>339</sup> The state, however, chose a difficult group to suppress. The CPC leaders, well-studied in the readings of Marx and Engels, were quite familiar with the concept of capitalist justice. They recognized their suppression for what it was, and they did not crumble in the face of adversity.

It would be easy to label the CPC's strategic manoeuvres from 1931 to 1936 as inconsequential in the repeal of Section 98. After all, the reformist CCF worked for years for the repeal of Section 98, as did Liberal MP Ernest Lapointe. Such an interpretation, however, unfairly renders the CPC inert. In reality, the party accomplished much with its strategy. The CPC was able to make the trial of its leaders a spectacle for Canada's public. Although the convictions were generally applauded by mainstream press, papers did comment on Buck's self-conducted defence and his three-hour address to the jury, prompting a discussion about the integrity of Section 98 and the imprisonment of the party's leaders.<sup>340</sup> Further, The CLDL's work in drawing attention to Section 98's prejudice

<sup>339</sup> *RCMP Bulletins: The Early Years, 1919-1929*, edited by Gregory S. Kealey and Reg Whitaker (St. John's: Canadian Committee on Labour History, 1994), 652.

<sup>340</sup> *The Globe* even printed an excerpt of Buck's speech. See: "Three-Hour Speech Made by Buck in Own Defence," *The Globe*, 11 November 1931.

against the working class – by means of publications and demonstrations – was certainly effective; even if the public were ambivalent towards the League’s cause, the state worried about how freely the CLDL was able to operate and it reacted accordingly. Perhaps most importantly, however, the CPC was able to use its repression to forward its political agenda. When the state attempted to murder Buck, the party used the events to pressure the government for both the release of the CPC leaders and for a Royal Commission into Canada’s penal system. When *Eight Men Speak* was banned, the party was able to turn the event into powerful anti-Bennett propaganda. By the time A.E. Smith was charged with sedition, sympathies for the CPC and the CLDL were at an all-time high, and an absence of legitimacy in the state’s actions was palpable; the 459,000 signature petition indicates the level of support for the party. When the Liberals won a majority government in the 1935 general election, and when Section 98 was repealed in 1936, the CPC could safely proclaim that they contributed to the realization of these events.

This all suggests that both Thompson and Palmer are correct to assert that the law is far from binding. Laws may be determined by those who wield state power, but the ruled are not powerless; if enough people voice their displeasure in unison, and if they do so for long enough, they can force the state into action. In the case of Section 98, however, this process was quite protracted. Indeed, the CPC were agitating for approximately 5 years before they saw the law repealed.

Modern Canadians should take note of the CPC’s struggle with the state. Although the time and the politics are different, the Canadian government, under the leadership of Stephen Harper, has passed a law that is reminiscent of Section 98. On 18 June 2015, Bill C-51 – or, *The Anti-Terrorism Act* – received royal assent. The act amends Section 83.221 of the Criminal Code:

Every person who, by communicating statements, knowingly advocates or promotes the commission of terrorism offences in general ... while knowing that any of those offences will be committed or being reckless as to whether any of those offences may be committed, as a result of such

communication, is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years.<sup>341</sup>

As the British Columbia Civil Liberties Association warns, this law could be used to suppress free speech; what constitutes a “terrorism offence in general” is vague, the offender does not have to intend for a terrorist act to later be committed, and remarkably, no terrorist attack actually needs to occur for a charge to be laid.<sup>342</sup> Further, the law criminalizes any action or expressions that interfere with Canada’s “critical infrastructure,” or its “economic and financial stability.” As Minister of Justice, Peter MacKay confirmed that pipeline projects could fall under this category. This could effectively subdue political advocacy in a variety of arenas.<sup>343</sup>

By ratifying this law, the Canadian government has created a legal apparatus similar to the one existing in Canada’s interwar years. Holding certain political views not espoused by the state can now result in a criminal conviction and imprisonment for up to five years. Bill C-51 allows the state to curtail the speech of any individual who holds beliefs that are deemed to be a “national security threat.” It is unclear, as of yet, exactly what the state believes to be a threat to Canada’s security, though it is likely that any and all responses to such threats will be veiled in rhetoric of terrorism. The stage is, perhaps, set for another battle over Canadian civil liberties. Citizens have protested Canada’s *Anti-Terrorism Act*, and the Canadian Bar Association has even supported such protests.<sup>344</sup> As of yet, there has been no highly publicized state trial like that of the CPC leaders under the new legislation. Let us hope that any repression that occurs under the legislation is

<sup>341</sup> Clayton Ruby and Nader R. Hasan, “Bill C-51: A Legal Primer,” Canadian Centre for Policy Alternatives, accessed on 29 June 2015, <https://www.policyalternatives.ca/publications/monitor/bill-c-51-legal-primer>.

<sup>342</sup> Alyssa Stryker and Carmen Cheung, “8 things you need to know about Bill C-51,” British Columbia Civil Liberties Association, accessed on 29 June 2015, <https://bcccla.org/2015/03/8-things-you-need-to-know-about-bill-c-51/>.

<sup>343</sup> Yan Roberts, “Bill C-51 Will Make It Easier To Throw Canadians In Jail Without A Charge,” *Huffington Post*, accessed on 30 June 2015, [http://www.huffingtonpost.ca/yan-roberts/bill-c-51\\_b\\_6723612.html](http://www.huffingtonpost.ca/yan-roberts/bill-c-51_b_6723612.html).

<sup>344</sup> Before the *Anti-Terrorism Act* was passed, the Canadian Bar Association also issued a report that highlighted its concerns with the proposed legislation. See: “Bill C-51, Anti-Terrorism Act, 2015,” Canadian Bar Association, accessed on 29 June 2015, <http://www.cba.org/cba/submissions/pdf/15-15-eng.pdf>

employed by Canadian citizens as a means to question the legitimacy of the state; it could have surprising results.

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## Appendix A.

### Criminal Code of Canada – Section 98 (1919-36)<sup>345</sup>

- (1) 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, terrorism, or physical injury, or which teaches, advocates, advises or defends the use of force, violence, or physical 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 or any such unlawful association, and who shall sell, speak, write or publish anything as the representative or professed representative of any such 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 intending 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 anyone 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 an 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 evidence 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

<sup>345</sup> As cited in Fidler, "Proscribing Unlawful Associations."

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 of 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 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 at the time of such search, and the same, when 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 an 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.
- (8) Any person who prints, publishes, edits, issues, circulates, sells, or offers for sale or for 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 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.
- (9) 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, shall be guilty of an offence and shall be liable to imprisonment for not more than twenty years.
- (10) 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.
- (11) 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.

## Appendix B.

### **CLDL Form Letter – “Resolution RE: Section 98 of the Criminal Code of Canada.”<sup>346</sup>**

Whereas, Section 98 of the Criminal Code of Canada was first formulated as an Order-in-Council during the Winnipeg General Strike of 1919, and for the purpose of rendering such strikes unlawful; later on, three years after the end of the Great War, it was incorporated into the War Measures Act, and in 1927 it was made a part of the Criminal Code, and,

Whereas, the constitutionality of this Section is in grave doubt, and,

Whereas, measures providing for the repeal of this Section 98 have been repeatedly enacted by the House of Commons of Canada, which were vetoed by the Senate of Canada, and,

Whereas, the repeal of this Section 98 has been called for by many organizations and public bodies in Canada such as the Trades and Labor Council of Canada, the Trades and Labor Congress of Toronto, and of Hamilton, the United Farmers of Alberta in their Annual Convention, the Students Body of University of Toronto assembled in Hart House, etc., and,

Whereas, in the midst of the present period of severe economic and political crisis this Section has been enforced for the first time against leaders of the working class of Canada resulting in their conviction, and,

Whereas, a very wide interpretation can be placed upon this Section by which it can be made applicable to Trade Unions or any progressive organization which challenges the efficacy of modern society, and,

<sup>346</sup> “Resolution Re: Section 98 of the C.C.C.,” RSK, Box 39, Folder 18.

Whereas, we believe it is the duty of every person, and of every Organization, holding in high regard the principles of democratic and constitutional criticism to protest against such laws as that of Section 98,

Therefore, be it resolved: that this Organization, viz ..... consisting of ..... members, and situated at ..... (City or Town) petitions the Government of Canada, in all its offices and functions, to enact legislation by which Section 98 will be removed from the Criminal Code and the Statutes of Canada, and by which all persons held in custody under these provisions of this Section will be given their freedom.