State Repression and Political Deportation in Canada, 1919-1936.

by

Dennis Molinaro

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University of Toronto

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ABSTRACT

Section 98 of the Criminal Code of Canada was in force from 1919 to 1936. The dissertation traces the way in which Canada incorporated emergency law, created during the First World War under the War Measures Act, into the Criminal Code as Section 98 after the war to combat political radicalism from 1919 to 1936. In contrast to existing scholarship, this work not only explains how a liberal democracy like Canada can legally use emergency legislation outside of a state of emergency through a process of ‘normalization’ but it also examines the effects of such laws on their human targets through case studies of criminal trials and deportation hearings. Targets included political activists, immigrants and women. It makes contributions to Canada’s legal, immigration, labour and intelligence history. The study also examines the international influences on Canadian policy makers in creating such laws and the complex international identities of the transnational activists at whom these laws were often directed. The work examines how culture played a crucial role in underpinning the intelligence cycle that led to the prosecution of leading Communist Party of Canada (CPC) members. It also complicates our understanding of the CPC during Moscow’s ‘Third Period.’ It was a party that both marginalized and welcomed immigrant workers. The dissertation provides an in-depth examination of the trial of Rex v. Buck et al and the ways in which political ideology was interpreted by the court as a criminal act. It examines cases of deportation that resulted from the trial, such as the case of the ‘Halifax Ten,’ and traces what happened to the deportees after their deportation making use of Finnish, Polish, Croatian, and German primary sources. In addition, this work demonstrates how the communist led organization, the Canadian Labour Defense League (CLDL) initiated
Canada’s civil rights movement by joining with moderate leftists during the ‘Third Period,’ and before the Communist International’s shift to the ‘United Front’ policy, to repeal Section 98. It demonstrates how the normalization of emergency law continued after Section 98’s repeal when its core elements were retained and folded into Canada’s sedition laws where it remains today.
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter 1</td>
<td>15</td>
</tr>
<tr>
<td>Chapter 2</td>
<td>61</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>96</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>146</td>
</tr>
<tr>
<td>Chapter 5</td>
<td>178</td>
</tr>
<tr>
<td>Chapter 6</td>
<td>228</td>
</tr>
<tr>
<td>Conclusion</td>
<td>274</td>
</tr>
<tr>
<td>Appendix</td>
<td>287</td>
</tr>
<tr>
<td>Notes and Bibliography</td>
<td>288</td>
</tr>
</tbody>
</table>
LIST OF APPENDACIES

Section 98 of the Criminal Code of Canada
INTRODUCTION

Political violence and state repression have a long history in Canada. From the rebellions of the 1830s to the Riel resistance movements and the Winnipeg General Strike, Canada’s violent history of suppressing revolt and political activism runs deep. The interwar period was one of Canada’s most turbulent times; the nation’s temporary reprieve from international wars was plagued by another war, domestic in its locale, and focused on internal enemies. The violence and militancy of the labour revolt (1917-1925) culminated in the Winnipeg Strike of 1919. While the 1920s were relatively calm, there were still strikes and heated conflicts, notably in mining and steel-making communities in Nova Scotia. In Toronto, during the late 1920s, communists and their supporters fought for free speech, while police attempted to quell the unrest.

The arrival of the Great Depression, which ushered in a new wave of unrest and violence, came upon Canadians quickly and ferociously. Within two years of the stock market crash of 1929, unemployment in Canada had surged to nearly 30 per cent. As the relief lines continued into the mid-1930s, labour militancy increased and so did the state’s attempts to crush it. The Canadian state outlawed the Communist Party of Canada (CPC), deported immigrants in unprecedented numbers, and made mass arrests of workers engaged in protests and strikes throughout the country. Police violence was at its height—most famously in places such as Estevan and Noranda. Royal Canadian Mounted Police (RCMP) detachments were being called-in by civil authorities to quell violent marches of thousands of unemployed workers. Then there was the On-to-Ottawa Trek, where thousands of young, unemployed men marched toward the capital before they were met with police violence and gunfire, resulting in the Regina Riot.
Canada’s Conservative Prime Minister, Richard Bedford Bennett, ordered armoured cars and armed RCMP detachments to patrol Parliament. A present-day observer would scarcely recognize the Canada of the 1930s. Senator Gideon Robertson summed up the reasons for labour militancy when he told Bennett that workers ‘can hardly be expected to starve quietly.’

Within the many pages that historians have written about these events, there has always been mention of the ‘infamous,’ ‘notorious’ or ‘legal sledgehammer’ that was Section 98 of the Criminal Code of Canada. Labelled as Canada’s ‘most repressive law,’ it is significantly understudied and misunderstood, as authors have referred to it as being ‘invoked’ or ‘revived’ to outlaw the CPC in 1931. Historians have regarded it as an emergency power resurrected for repressive purposes, but it was only a section in Canada’s Criminal Code and not part of the WMA. This work aims to answer lingering questions about Section 98 such as: Why was Section 98 created in 1919? Was it another sedition law? Why was it scarcely used? What role did it play in the state repression of the interwar period? Why was it repealed, if indeed it really was repealed? How was the law interpreted by those that opposed it and what effect did it or its removal have on Canadians? How could such a law be possible in a liberal-democratic state?

Section 98 originated as an emergency law. It was a copy of Canadian wartime legislation that suppressed left-wing activism, namely Privy Council (P.C.) 2384, created in September 1918. It shared many similarities with Section 41 of the Immigration Act of 1910, which was based on U.S. immigration law. What makes Section 98 profoundly fascinating and significant is that it enabled the authorities to engage in what Whitaker, Kealey and Parnaby have called ‘political policing’ during a time of peace. I argue that the creation of Section 98 marked a watershed in Canadian history whereby the government began the process of normalizing emergency measures to combat unacceptable political views. The broader ramifications of this
policy enabled the state to regulate the political ideology of citizens and immigrants by way of the Criminal Code. It served as a means of nation-building by excluding the undesirable. Section 98 enabled authorities to target individuals or groups that expressed support for or advocated communism, an ideology deemed foreign and dangerous by the government. Adherence to or support for communism led to people not being qualified for citizenship. In this way, the normalization of emergency law played a key role in sanctioning a policy of ‘political policing,’ and enabled criminal law to play an important role in nation-building.4

But the normalization of exceptional laws is not straightforward. Communism had to be continually portrayed by authorities as a foreign importation rather than being caused by the internal contradictions of capitalism. Normalization of the emergency was a process. It had to be accepted, rationalized, and internalized. To contain the threat posed by the communist, who was a legal and political reality and yet an undesirable being in a liberal order, the state withdrew itself from law to craft broad emergency powers. By understanding communism as a foreign invading ideology, the use of emergency measures normally reserved for war seemed justifiable to many. Understanding Section 98’s origins and role in suppressing Canadians’ civil rights is important given the heightened security climate of the present and governments continued use of emergency measures to deal with security threats—real or exaggerated. Retracing the creation of Section 98, and understanding the effects of its deployment enables us to historicize the use of emergency laws outside a declared state of emergency. I should add that I am not claiming that past governments or authorities had some grand plan to normalize emergency measures, nor am I seeking to judge past historical actors as misguided or foolishly overreacting to threats; my concern is how a threat deemed to be an emergency by past historical actors and worthy of being
quelled by exceptional means continued to exist long past the end of the emergency, and how the powers used to quell it were legally invoked, maintained, and accepted.

It is worth noting that exceptional legal measures in Canada’s past are numerous. In 1794 the legislature of Lower Canada defined sedition as anything that disrupted the happiness of the Crown’s subjects. In 1797, *habeas corpus* was suspended for cases of treasonable actions. *The Better Preservation Act* enabled the government to detain members of the House of Assembly without the House’s approval. From 1818-1820, during Robert Gourlay’s fight for political reform, an Upper Canadian statute treated all public political meetings as seditious ones. Lower Canada’s court martial ordinance of 8 November 1833 provided for the death penalty and completely denied right to defence counsel.\(^5\) Section 98 stands out among these moments because it represents a dramatic escalation in the use of emergency powers and the first time the state sought to make such measures permanent and applicable to all. This escalation in the melding of the emergency and the norm is what enabled the government to legally police Canadians’ politics following the War. The effect of such policing was that it implicitly helped set the boundaries of what political behaviours and ideologies were acceptable and therefore, functioned as a method of nation-building. Those political groups and affiliates targeted by Section 98 were marked as illegitimate and excluded from the national community.\(^6\)

The international elements of these developments are numerous. Governments, including Canada, the United States, and Britain, sought to harmonize their responses to communist activists. Those most vulnerable to state measures were internationalists; as transnational–immigrant activists they identified with no single homeland, but with a broader communist movement. A study of Section 98 enables us to see how the emergency and the norm function as
one, and in doing so, allow us to see how the policing of ideology and the nation-building that results from it affected these activists.

Previous works have briefly discussed Section 98 when relevant to a particular issue such as labour unrest during the interwar period. In this context, some have argued that Section 98 was created to repress labour militancy but that its significance ended with its repeal. While its connections to P.C. 2384 have been documented, it has never been understood to be anything other than a short-lived Criminal Code section. Viewing Section 98 as a reactionary law, drafted by the government to contend with a temporary emergency, is inadequate; such an interpretation downplays the significance of Section 98 as a bridge between the emergency and non-emergency state, as well as underestimating its long-lasting effects and role in nation-building. Section 98’s role in suppressing communism was more profound than the government’s desire to contain it and more lasting than a reactionary law. As Carolyn Strange and Tina Loo argue, the effort to halt communism in this period ‘was an integral part of nation-building;’ desired political values were encouraged by outlawing undesirable ones like communism. A politics that ‘was capitalist and not socialist,’ ‘Anglo-Saxon and not ethnic’ was the ultimate goal.

Where does a study of Section 98 fit into the broader literature of state repression in Canada? By tracing the creation, use and repeal of Section 98, this study makes a number of important contributions to legal, labour, immigration, intelligence, and human rights history, as well as contributing to a broader literature on state repression in Canada. The historical literature on this topic has undergone many changes over the years and has expanded in a multitude of directions.

Studies have often dealt with state repression as it pertained to a particular issue such as Japanese-Canadians’ forced relocation during the Second World War. Although social historians
traditionally tended to focus on history ‘from below,’ much of the literature on state repression in Canada has centered on state policies and the reasons for their creation. For instance, early studies of Japanese forced relocation revealed how racism was endemic in the Canadian government and was the main motivating factor for the repressive policies that the Japanese faced.⁹

Other works examined different groups such as immigrant workers which Avery argues were often viewed as ‘dangerous foreigners’ because of their resistance to deplorable working conditions.¹⁰ Class and gender were principal concerns of the state. Working-class activism and demands for better conditions led to explosive confrontations with the government. During both world wars, the government interned a number of different groups as preventative security measures. Women faced repression in direct and subtle ways. Like their male counterparts, they could face repressive state measures if they expressed support for radical leftist politics, and were subjected to moral regulation, if their activities were perceived as attempts to challenge gender norms.¹¹

Historians studied the many ways the state engaged in repressive policies. Immigration laws could not only reveal the racial biases of the state, but its ideological biases.¹² Studies of repression in the Cold War demonstrate how the loyalty of citizens was important to security. The RCMP’s dedication to stamping out communism was extended to surveillance of university campuses, the Women’s movement, and the civil rights movement—even the sexuality of citizens was under scrutiny.¹³ The relentless fear of communism led some scholars to conclude that the Canadian state was an ‘insecurity state.’¹⁴

Cultural studies scholars explored how culture was an integral part of repressive state actions from regulating gender and sexuality, to politics, to what information government
censors decide to hide from the public. The influence of cultural studies enabled scholars to examine how repression can be subtle rather than overt, such as through the state’s Canadianizing policies that were directed at postwar immigrants and how these immigrants resisted the aims of Canada’s ‘Gatekeepers.’

Studies on the history of human rights and civil liberties detailed how individuals countered the state’s encroachment on people’s rights. Civil liberties groups organized opposition to laws or events such as: the Padlock Law, the War Measures Act (WMA) during the Second World War, the Gastown Riot, and the October Crisis.

More recently, Reg Whitaker, Gregory Kealey, and Andrew Parnaby have produced a new work on the history of ‘political policing’ in Canada that argues that Canada has continually sought to police the politics of Canadians through the work of its security services such as the RCMP and later the Canadian Security Intelligence Service (CSIS). Much of the focus of these agencies has been on curbing and halting the spread of communism, which became the RCMP’s nemesis for much of the twentieth century. The authors explain the significance of the security services’ relentless penetration into society by using Michel Foucault’s work on modern society’s push to create a panoptical society, with the security services being the all-seeing eye of the government.

The historical literature has dealt with state repression as it pertained to individual groups or events of interest to scholars. We have a rich collection of the various repressive actions undertaken by the Canadian state and a growing body of work that details resistance to those activities. Yet, we still know very little and do not have an adequate understanding of how repression was actually possible, how it worked, and its broader connection to sovereignty and nationalism. We still lack a means of connecting seemingly isolated repressive events and
explaining the state’s extraordinary power to crush dissent, often by powers reserved for wartime emergency, as anything other than a paradox. Indeed, the ability of a liberal democracy to invoke a state of emergency and legally violate accepted legal norms is frequently condemned, but remains largely unexamined in the historical literature.

The work of philosopher Giorgio Agamben has opened up new avenues to approach studies of state repression. He argues that the intimate connection between life and politics mirrors the sovereign’s relationship to law which is one of inclusion and exclusion. It possesses the unique ability to withdraw itself from law and to exclude itself by creating a ‘state of exception’ or state of emergency. For Agamben, this power relates directly to the sovereign’s ability to create citizens and non-citizens. He terms these non-citizens homo sacer, individuals that can be excluded from the protection of law, but find themselves at the mercy of it. He contends that the sovereign’s ability to declare and institute a ‘state of exception’ has increasingly become, for Western liberal democracies, a ‘paradigm of governance.’ Agamben’s theories, when applied to Canada’s history of repression, provide us with a way of understanding seemingly isolated events.

Rather than describe the transgressions of the state against citizens and immigrants as they occurred in history, I aim to demonstrate how sovereign power can not only legally separate itself from law to institute a state of emergency but that the normalization of the emergency was not automatic. In this way, my work departs from Agamben; while theoretically the exception and the norm are inseparable, in reality the emergency had to be normalized to function outside the declared emergency state; it was a process that was susceptible to change and challenges. My goal is not to demonstrate that an emergency law was used against activists; rather, I aim to reveal how the emergency state and the norm, while theoretically inseparable from each other,
was a fluid and shifting state that had to be developed and accepted. Section 98 was integral to this process. This work explores the effect of that process on people and society, from allowing the state to engage in nation-building through the use of the criminal law, to justifying police violence against activists and the creation of even more repressive emergency laws, to the ability to use state power to unmake citizens and deny immigrant activists the protection of law. In addition, the study offers insight into how repression was resisted through broad-based organizing.

The task of the dissertation is not to resolve the paradox of modern sovereignty’s ability to institute a ‘state of exception’ or state of emergency. The goal is a more modest one: to detach the exception from the norm to demonstrate that the two are not separate, but one. There is no paradox as one cannot exist without the other. I do not dispute that this fundamental component of sovereignty will continue as long as there are states. Rather, a historical perspective can demonstrate how the powers of sovereign states are ‘contingent’ and shifting and as a result are susceptible to change.

Whitaker, Kealey, and Parnaby’s work contains some important connections with this study mainly that the Canadian state engaged in a long-standing practice of politically policing its citizens. However, this study contains some distinct contributions and departures from their work. Whitaker, Kealey, and Parnaby focused on the intelligence gathering and political policing practices of the RCMP/CSIS. The focus here is on the law and its relationship to policing ideology and the ability of the state to normalize emergency measures. In addition, I examine the long-term ramifications and broader effect of this, its relationship to nation-building and the effect of these laws and practices on their human targets. My interests are the legal and
theoretical mechanics that made such policing possible, and the relationship of such actions to sovereign power, nationalism, and democracy.

The dissertation makes an important contribution to legal history in Canada by demonstrating the process by which emergencies are normalized and how that process is essential to our understanding of repressive actions and the law’s role in sanctioning such actions. In addition, it contributes to intelligence studies and theory by demonstrating how culture was an important factor in determining how the state identified and interpreted its targets and underpinned the intelligence cycle. Moreover, it demonstrates that the targets of the state, i.e. communists, had more freedom from Moscow to direct Party policy, thus adding to revisionist literature on the CPC. Even during the party’s notorious Third Period, CPC members wanted to cooperate with moderate leftists on common goals, such as by repealing Section 98. This study contributes to immigration and transnational studies by demonstrating how certain transnational-immigrant activists became leaders in the CPC and were radicalized in Canada and identified with a region or a people rather than a country or state. And lastly, the study shows how deportation affected their lives as Section 98 was closely linked to the deportation of communists during this period. It makes a substantial contribution to civil rights history by demonstrating that the movement to repeal Section 98, led by the Canadian Labor Defense League (CLDL) a Communist-backed group, gave rise to an early civil rights movement in Canada.

This work on Section 98 aims to bring the discussion of state repression full-circle. Cultural history’s infusion into studies of state repression often portray sovereign power as diffuse and this study seeks to reintroduce sovereign power as being central to state repression while at the same time acknowledging its more long-term and subtle aims. Such a revised view of Section 98 not only sharply changes how we interpret its broader significance to legal and
labour studies, but connects it to a historical pattern of using emergency measures in peacetime. The study presents a dramatic shift in our understandings of hitherto distinct and separate moments of emergency and normalcy. The interwar period is ideal for such a study as it was neither a moment of emergency in the sense that an official emergency was declared by the government, nor was it an altogether peaceful time. This setting allows for an interrogation of how state power is exercised in both a heavy handed and subtle way in a liberal-democracy, as well as enabling a study of the implications of state power, and its broader significance for society. An examination of Section 98 and its use during a paradoxical moment of peaceful unrest allows us to complicate our understanding of terms such as democracy and liberalism (or liberal-state), terms too often considered absolute and whose meaning is often uncontested. Understanding the normalization of emergency measures as a process, and understanding how that process worked, from its creation to its effects, is key to understanding how repression exists and functions in democratic societies that normally view such practices as antithetical to liberalism.

The study draws on a wide variety of sources, including prime ministerial papers, House of Commons debates, newspapers, criminal trial transcripts and evidence, deportation hearing transcripts, RCMP and CSIS files, J.S. Woodworth’s papers, the F.R. Scott Fonds and the Canadian Commonwealth Federation (CCF) records, and the Communist International (CI) fonds. The study makes use of the extensive Robert S. Kenny collection at the Thomas Fisher Library in Toronto and its records of the Canadian Labor Defense League (CLDL). It also draws on the labour press, including Finnish, German, Polish, and Croatian newspapers, in addition to a wide variety of secondary sources by labour, immigration, and legal scholars.
A brief note on terminology. I use the term ‘state’ not in an effort to mask agency, but when engaging in broad analysis and in reference to, as Alan Greer and Ian Radforth state, ‘a number of institutions which together constitute its [the state’s] reality, and which interact with other parts called the state system.’ Keeping this definition in mind, I use the term ‘authorities’ as a short-hand reference for those individuals who were members of state institutions and charged with protecting the state, for example: immigration officers, politicians, police, and Crown Attorneys. I have chosen to forgo use of the term ‘radical’ to refer to individuals who sought to challenge the political and economic status quo because the word has become associated with the international conflict against Salafi Jihadists; it has become connected to movements and individuals engaged in acts of violence against state actors and civilians—quite unlike the actions of those who advocated for social change in the interwar period. Instead, I have chosen to use the term ‘activist’ to refer to those individuals agitating for social change through frontline activities such as in strikes and protests. I use the term ‘leftists’ to refer to those on the political left and when I need to distinguish between leftists, I use adjectives such as ‘moderate leftists’ on the one hand and, on the other, ‘radical leftists’ to describe those on the far left such as communists who believed in revolution but did not actively engage in violent acts against the Canadian state or people. ‘Radical’ is used when discussing authorities’ perceptions of activists. I use ‘progressives’ and ‘leftists’ interchangeably.

I begin with the First World War, when the Canadian government enshrined in law its authority to define and declare a ‘state of exception’ with the WMA and P.C. 2384 which set the precedent for Section 98’s creation and the extension of political policing into peacetime. Section 98 was not a reactionary law but a deliberate planned attempt by the government to normalize the abnormal. Chapter two demonstrates how culture determined why Section 98 was
used; culture determined how state authorities saw, interpreted, and responded to their targets. The CPC became a central concern for authorities because of a widespread belief that the CPC represented a foreign and alien culture and it was this belief that largely determined why the CPC was branded as an enemy by the government. By regarding communism as a foreign invader, the use of emergency measures was easier to justify. Chapter three examines what happens when accused are tried with violating an emergency law in a peacetime court. It details the first successful prosecution using Section 98 in Canada, i.e. the trial of *Rex v. Buck et al.*

Criminalizing the expression of political ideologies like communism indirectly led to communism being on trial; the expression of ideas was equated with a criminal act. Chapter four and five reveal the effects of the Buck et al. trial and Section 98 on Canadian society. Chapter four illustrates the fallout for transnational–immigrant activists from the Buck et al. conviction and the court’s finding that the CPC was an unlawful organization. The conviction led to a widespread campaign to deport immigrant CPC members, even to places where they risked torture or execution for their beliefs. Chapter five details other lesser-known cases of Section 98 and the multitude of ways Section 98 was used, including the harassment and intimidation of protesters, strikers, and labour sympathizers during the early to mid-1930s. It served as a model for the creation of more repressive laws, particularly in Quebec. Chapter six examines how the normalization of the emergency was resisted. It focuses on the efforts of leftists to repeal Section 98 which was largely led by the CLDL. I examine the Bennett government’s last attempt to use Section 98 against the On-to-Ottawa Trek leaders and reveal how the country’s first widespread movement to defend civil rights began with the effort to repeal Section 98.

This work serves as an important and necessary study in the seemingly never-ending heightened security climate post-9/11. By re-examining Section 98, we can historicize the
increasing normalization of emergency measures that occurred after 9/11 with the creation of laws such as the Patriot Act in the United States and Canada’s ‘Anti-Terrorism bill’ which amended numerous laws. We can explain and understand how such powers are created and maintained as well as being susceptible to change and challenges. Historians can thus begin to see serious violations of civil liberties in Canadian history less as moments of crisis, and rather as a systemic, recurring pattern that began when Section 98 enabled the ‘permanence of the temporary.’

CHAPTER 1

The First World War was an important moment in Canadian history. Canadians won the battle of Vimy Ridge and earned the right to sign the armistice. Canada was coming into its own as a nation state, due in large part to its wartime sacrifices.\(^1\) The war led to other changes as well. Prime Minister Robert Borden, a firm believer in a non-interventionist form of government, adjusted his stance over the course of the war. The problems that arose during the war, whether economic, labour, or social, led the government to incrementally increase its level of encroachment on many aspects of Canadian life. The war altered society and the state's relationship to it.\(^2\)

A crucial and understudied element of the war's drastic changes to Canadian life is the way the state of emergency and wartime powers of the War Measures Act (WMA) became a permanent feature of Canadian life. Following the end of the First World War, a wartime measure designed to deal with the labour revolt (1917-1925) entered the Criminal Code as Section 98. The consensus of the historical literature is that Section 98 was a ‘reactionary law’ that was created to deal with the revolt.\(^3\) I argue that Section 98 was a deliberate and planned attempt by the government to devise a long-term solution to left-wing activism. The government believed that the country’s long-term security was maintained by outlawing ideologies it deemed disloyal. To achieve this, the emergency had to continue beyond the end of the revolt. Section 98 was integral to the process of normalizing emergency measures. Previous authors argued that repression was directed at immigrants because of their ethnicity while others maintained that repression was class based.\(^4\) I demonstrate that left-wing activists were targeted because of both their class and their ethnicity. In the eyes of the government, class and ethnicity were linked.
The government’s opposition to a perceived foreign and radical culture clouded the status of British-born activists who have received little attention in the historical literature. Their adoption of radical leftist ideas drew attention to their status as immigrants. While not entirely regarded as foreign in the same vein as left-wing Eastern European immigrants, their adoption of leftist ideology cast them, in the opinions of some, as race traitors. It was the fear of British activists among lawmakers that justified the extension of emergency laws beyond the state of emergency. They were a group that could easily enter Canada, and because of their ethnicity, easily infect the domestic population with their ideas.5

I demonstrate first how the creation of the WMA provided the government with the power to decide what constituted an emergency, and how it used this power to target activists and ideologies deemed disloyal, and in addition, how class and ethnicity were linked in the eyes of authorities. I next revisit the Winnipeg General Strike and labour revolt, revealing how Section 98 and Section 41 of the Immigration Act were created as a way for the government to normalize and extend emergency laws beyond the end of the WMA. I conclude with the debates of the 1920s which illustrate how the threat of the British activist kept Section 98 and the 1919 amendments to Section 41 in force and therefore extending and entrenching the emergency into the normal.6

A STATE OF EMERGENCY

Robert Borden's Union government was plagued by problems as Canada's involvement in the First World War dragged on. Wartime production led to a massive spike in inflation toward the end of the war. Citizens were accusing industry and the government of wartime profiteering, activists were opposing the war and capitalism, and national unity was fractured when the
government created the Military Services Act, which made conscription mandatory and contributed to violent protests in Quebec where the Act was bitterly opposed.

In hindsight, the War Measures Act of 1914 was supposed to have alleviated many of the government's ills. The War Measures Act, modeled after Britain's Defense of the Realm Act, or the D.O.R.A., was designed to be broad enough to help the government deal with any problem it would face over the course of the war. The Act enabled the government to draft what were known as Privy Council Orders or Orders-in-Council. It enabled the government to declare an emergency and then to issue decrees for war and security purposes, with no direct parliamentary oversight, apart from ratification of the emergency.

Little remains in the archival records on the origins of the War Measures Act—a huge loss, given the importance of the legislation to Canadian history. Much of what remains about the drafting of the Act can be found in William Francis O'Connor's notes, which were prepared in the mid-1920s, for Prime Minister Borden to assist him in writing his memoirs. O'Connor, a close confidant of Borden and supporter of the Conservatives, was a lawyer practicing in Halifax. He later served as the Presiding Commissioner of the Board of Commerce from 1919-1920 as well as being appointed as Law Clerk to the Senate in 1934 by Prime Minister R.B. Bennett. At one point in 1911, O'Connor even bluntly put it to Borden that he would be the best candidate for the 'Roman Catholic vacancy' on the Nova Scotia Supreme Court, a suggestion to which Borden responded favorably, but for whatever reason the appointment never transpired.7 In 1914, the government looked to O'Connor to advise it on drafting wartime legislation in a similar vein as the D.O.R.A. Previous attempts at drafting the legislation were not going well. Justice Minister Charles Doherty produced a draft, largely written by Toronto lawyer Zebulon Lash, which like the D.O.R.A., attempted to predict what powers the government might need
during the war. O'Connor did not believe the draft was an efficient one. The war was barely underway and the draft of the bill was already three-and-a-half feet of galley proof. He suggested the government create a 'blanket' act, so broad in scope that anticipation of future problems would be unnecessary. There was some fear that such a bill would never stand a chance of getting support from the opposition Liberals. O'Connor decided to send feelers out and approached Edward Mortimer Macdonald, a well-known member of the Liberals. He impressed upon Macdonald the importance of the legislation and asked if he would find out how the Liberals felt about it. Macdonald reported that after consulting with Laurier, he was told to 'make absolutely sure that you omit no power that the government may need.' With the backroom blessing of the Liberals, the bill easily passed the House after briefly going to committee, and according to O'Connor, 'sailed through the Senate without an adverse ripple.' The new law was barely on the radar of the Canadian press. As Murray Greenwood observes, the coverage of the law in over a dozen newspapers spanned a mere one-hundred-fifty words.8

Of the few changes made to the bill, one of the most relevant to Section 98's creation was the addition of what became section 4. Section 4 stated:

The issue of a proclamation by His majesty, or under the authority of the Governor in Council shall be conclusive evidence that war, invasion, or insurrection, real or apprehended, exists and has existed for any period of time therein stated, and of its continuance, until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists.9

The WMA's section 4 provided the government with the ability to define and set the boundaries of what constituted an emergency and how long it was to last. Unlike the D.O.R.A., which gave 'His majesty in Council power to make Regulations during the present [emphasis mine] War for Defence of the Realm,' the WMA had no end date. It was the sole power of the government to
decide when the emergency would start or end. In this respect, the Act conferred unprecedented powers on the government, unlike the D.O.R.A., for an undefined length of time. Further, the wording of 'insurrection, real or apprehended,' made it possible for the Act to have a peacetime application.

Greenwood has argued that the drafters of the WMA had not intended for it to be used outside of the war. He cites contemporaries’ use of language when discussing the WMA, including Borden, who referred to the WMA as a 'wartime' measure in his memoirs. Canada did not have the power to declare war independent from Britain, and the government may never have viewed the WMA as having a peacetime application, but its very nature as a blanket Act made this a possibility. As Martin Friedland has argued, the vagueness in the government's wording in defining a crisis, i.e. 'war real or apprehended,' and its ability to define the emergency situation and when it should end, made it possible that the Act would function at some point in peacetime as well. Case law was on the government's side. During the war the government regulated prices of certain goods and continued that practice for a short time after it ended. The Winnipeg Free Press bought paper from Fort Francis Pulp and Paper and brought a claim against Fort Francis Pulp after the war because it was charging more for its paper than the amount regulated by the government through an Order-in-Council. Fort Francis lost the case, with the WMA held to be still in effect after the end of the war, the Court declaring that the government had 'considerable freedom to judge as to the sufficiency of the emergency upon which it bases its actions.'

The drafters of the WMA, principally O'Connor, believed that his version of the WMA marked an improvement over the D.O.R.A. The D.O.R.A., he claimed, was amended often, whereas the WMA governed Canada during the war 'from start to finish’ without any
amendments. He believed that his version of the WMA was the most effective type of act.\textsuperscript{11} While the climate of war fueled a sense of fear or insecurity, the government’s attempt to improve the WMA, by making it better at dealing with threats than its British counterpart, reveals a calculated and planned response. The government understood exactly what type of Act it was passing and the powers it would confer. Such threats in need of containment would eventually include public displays of opposition to the war and opposition to capitalism.

When the First World War began, British nationalism was running high within English-Canadian society. Enlistment was voluntary and many young men were initially eager to serve, viewing the war as a chance for adventure while doing their duty for the good of the empire. Newspapers churned out propaganda daily, encouraging everyone to do their part for the war effort. Recruitment organizations led parades to boost enlistment, donations for soldiers’ families were collected, schoolchildren collected scrap metal, and women’s groups made socks for soldiers overseas. Women entered the formal workforce in record numbers, ensuring industry could keep up with wartime production demands. Everyone was encouraged to do their part to fight 'for democracy.'\textsuperscript{12}

This sense of nobleness in fighting for King and country was shattered when waves of the broken bodies of young men returned to Canadian shores and the lists of dead grew enormous. The government passed numerous Orders-in-Council to try and keep the economy and wartime production stable, and to combat dwindling morale and growing discontent with the war. Some of these measures included: the creation of a press-censor, the registration of all workers to deal with labour shortages, an income tax to help fund the war, and daylight saving time to reduce energy consumption. Among the new policies was the internment and registration of immigrants from enemy nations who were viewed with suspicion, many being branded as ’enemy aliens.’\textsuperscript{13}
After Borden was elected in 1917 with a Union government consisting of Conservatives and Liberals, conscription became mandatory with the Military Services Act. A once non-interventionist government had, by 1917, begun intervening in a whole host of areas of Canadians’ lives from the economy and industry to labour. Canadian capitalists helped serve as administrators of the government's new policies with respect to industry and labour. These new interventions, coupled with the negative stories of the horrors of the war emerging from the front, created a growing distaste among Canadians both for the war and the government.

Discontent and unrest continued to grow. Conscription in Quebec was met with violent uprisings, commonly known as the Easter Riots. The violence and opposition in Quebec was interpreted by the government as the beginning of a rebellion, and in fearing a civil war, it put down the rioters with a deployment of 6,000 troops, and the suspension of *habeas corpus*. The 1918 Easter Riots in Quebec City led to the passing of P.C. 834 which gave the government the legal authority to crush any perceived insurrections with military force and the imposition of martial law. As Borden declared, ‘When there is an emergency…’ the government would endeavor to ‘act instantly.’ Borden claimed the government would maintain order not only in Quebec but in ‘every part of Canada.’ The quelling of the Easter Riots was a template for how the government interpreted and responded to opposition. The government viewed the rioters not as citizens expressing dissent toward government policy, but as agitators seeking civil war. Any public display of opposition was treated as disloyal, and was met with a violent and stern response.

In addition to the unrest, the cost of living was sharply rising as wartime production soared and so did the demand for goods. Trade unionism was growing, and when the government engaged in a policy of banning strikes toward the end of the war, discontent only
grew. Some people were challenging the government, the war and the economic system they believed was responsible for all the misfortune in society.\textsuperscript{16}

Socialists and anarchists opposed the war and many wanted to create a new society by ending capitalism. Groups such as the Industrial Workers of the World (IWW) and political parties such as the Social Democratic Party (SDP) engaged in general strikes and protests to pursue their causes. Following the October Revolution in Russia in 1917, in which the Bolsheviks overthrew the Czar, many activists in Canada and other countries, including the United States and Britain, became emboldened by the Bolsheviks success and ramped up their propaganda and protests. The government kept a close watch on the activities of leftist groups—Dominion Police and Royal North West Mounted Police (RNWP) recruited spies to keep close tabs on the labour unrest.\textsuperscript{17} Calls from industry for the government to take action against activists began as early as 1917 and continued throughout 1918. In February, industry groups, such as the Imperial Munitions Board, were informing the government of labour disruptions caused by the IWW in logging and shipbuilding.\textsuperscript{18} The government believed that it needed to do something to combat activists. It thought that many of them were entering Canada from the U.S. to avoid prosecution. The American government went on the offensive against groups such as the IWW through new legislation in 1917 called the Espionage Act. The Act was meant to target individuals or groups that sought to stir up 'disaffection' that could endanger the war effort. The Act criminalized the distribution of ‘treasonable or anarchistic’ material. It provided for sweeping powers over the press to target writing that 'may be useful to the enemy.'\textsuperscript{19} Loyalty to the state was a defining feature of the Act. Industry was putting pressure on the Canadian government to respond to leftist activists in a similar vein as the Americans. For instance, on 22 March 1918, the Temiskaming Mine Managers' Association notified the government that mine
managers were having a difficult time with activists, such as James Simpson of Toronto, who would later head the Toronto Trades and Labour Council and become mayor, and that 'inflamatory' speeches were sympathetic to the Bolsheviki Socialists of Russia. Police officials across the country met in early 1918 to study the issue and sought guidance and advice from American authorities. Canadian police wanted to know what the Americans were doing to combat the problem in their country. Radical leftists, be it of the anarchist or socialist variety (politicians often believed the two to be synonymous), were frequently portrayed as 'dangerous foreigners' at work in Canadian society. The Acting Chief Commissioner of Police, Albert J. Cawdron, called on the government to devise an Order-in-Council that would outlaw any meetings in a foreign language and ban foreign literature to halt leftist propaganda. The Chief Commissioner of the Dominion Police, Percy Sherwood, told the government in May 1918 that he received reports from industry that 'Alien enemies' were preparing to stir up trouble at Port Arthur and Fort William. 'Finlanders' in particular, he noted, were a 'disturbing element.' The IWW in Canada was categorized by the Dominion Police as an 'invasion,' and Finnish activists, many of whom were members, were regarded by some Anglo-Canadians as 'anarchists.' In Winnipeg in May 1918, construction workers on strike were described by the business community as being unnaturalized foreigners.

Fears of foreign, Bolshevik subversives operating in Canada were strong enough for Borden to turn to a trusted advisor to help devise a solution. That advisor was C.H. Cahan, a Montreal-based lawyer who was well connected with the Conservatives, and had high political ambitions. As early as 1912, Justice Minister Doherty sought to hire Cahan to act as the government's counsel on a series of freight cases that were to go before the Railway Commission. At the time, Cahan felt he was too busy to accept, but would consider something
else in the future.26 On 19 May 1918 Borden made an appeal to Cahan to investigate radicalism in Canada. He wanted to know if measures that were tried in the United States, such as the creation of the American Protective League (APL), should be adopted in Canada.27 The APL was a voluntary organization backed by the American government. The purpose of the group was to encourage members to hunt for anyone whose loyalty was suspect and to report them to the Department of Justice. The group would resolve issues itself through physical violence and intimidation, including horsewhipping farmers who refused to donate to the Red Cross. It was known to commit murder, as it did when one American who was branded as disloyal was wrapped in an American flag and killed in the street. The group was responsible for hangings of IWW members.28 Cahan accepted the offer. He made his first report to Justice Minister Doherty on 20 July 1919.

In his report, Cahan wrote that he consulted with American officials about their response to radicalism. He toured many U.S. and Canadian cities to gauge the unrest occurring across the northern half of the continent. Cahan told Doherty that he had been in touch with British intelligence operating in the United States. He concluded that he did not believe that enemy aliens, such as German immigrants, posed a significant threat to the government at the present time. Instead, Cahan was concerned with other immigrants he believed were enemies. He believed that Eastern European people were directly responsible for spreading ‘socialistic doctrines' in Canada. It was this material that Cahan believed was stirring up unrest. Furthermore, he said he did not believe that a group like the APL would work in Canada. In fact, he thought it would lead to more unrest. In Quebec he thought such a group would end up targeting protestants and in Ontario Roman Catholics would be targeted by this type of group.
Cahan acknowledged that there was widespread unrest in Canada. He believed that people were angry over food prices, the Military Services Act, the treatment of returned soldiers, and were discontent with the way the government was running the country. He maintained that 'the enthusiasm of the Canadian people in respect of the war is rapidly diminishing,' and that the 'moral purpose of the people' to sacrifice everything for the war is 'sadly weakened.' He thought that Canadians were getting too selfish. For example, he claimed that workers, fed-up with stories of profiteering, now wanted their share of profits, and the returned solider expected ‘everything.’ The unrest that was occurring was due to the population’s weakened sense of purpose and the ability of Canadians to continue the war to achieve victory. If the people were stronger they could resist the urges to engage in strikes and other protests, and presumably by Cahan's logic, other selfish behavior. The solution, according to Cahan, was to re-energize the population, to reinvigorate their patriotic spirit so they could harden their resolve to continue fighting. He believed himself up to the task and thought that extending the powers of the Dominion Police was the best way to restore the people's moral fiber. For Cahan, by stopping those responsible for the unrest, i.e. those spreading socialist doctrines, the weakened population would be restored to full strength and once again support the war effort. It is unclear whether Cahan actually believed this scheme would work or if he was setting the stage to justify a position for himself in the government. Borden was supportive of Cahan's efforts, as was Doherty who asked Cahan to devise solutions for how to end the unrest in Canada and restore Canadians' resolve.²⁹

There were some officials who, unlike Cahan, thought groups like the IWW or the SDP posed no significant threat. Chief Commissioner Percy Sherwood of the Dominion Police after thoroughly investigating the complaints he received about the IWW across the country, reported
to Doherty that 'no trace of IWW activity could be found in this country.' Sherwood presented a much more moderate stance than the previous Acting Commissioner, Albert Cawdron. While he admitted that some IWW literature had been imported by groups such as the SDP, Sherwood did not believe the SDP 'exist[s] for any sinister purpose, but rather for the improvement of their conditions as workers and toward the securing of better pay.' The admission by the Chief was a rare one among law enforcement; Sherwood's counterpart, A. B. Perry, chief of the RNMP and soon-to-be first Commissioner of the Royal Canadian Mounted Police (RCMP), was much more of a hard-liner when it came to leftists. Perry believed that the 'pernicious doctrines of Bolshevism' were present throughout the country and foreigners were especially vulnerable to them. Sherwood was clearly no supporter of communism or activists, but he did not believe after collaborating with police across the country, that the IWW or SDP posed any real threat.

Cahan responded to Doherty's request for a plan to deal with left-wing activists with a lengthy report. Cahan believed that the current policy of registering enemy aliens was acceptable but wanted the list expanded to include three more nationalities—Russians, Ukrainians and Finns—as they were 'thoroughly saturated' with socialist ideology. Cahan detailed how governments in other Allied countries had dealt with groups like the IWW. In Australia, the IWW was considered an unlawful organization for the duration of the war and for six months after its end. In the United States, the IWW's leadership was arrested. Cahan warned that delegates of the Russian Bolsheviks had arrived in Canada and the United States and that the propaganda literature they were spreading had to be contained. Bolsheviki, he argued, were 'alien enemies.' Cahan gave examples of the seditious literature that he believed needed to be stopped; included were poems by Jack London, the acclaimed novelist, who protested the war. He provided numerous examples of literature from such groups as the SDP that called for an end
to capitalism and the war. To combat the spread of socialism he suggested banning a number of organizations immediately, including the IWW and SDP. All foreign literature should be banned and its distribution prohibited. 'Drastic regulations,' Cahan claimed, 'should be drawn up under the War Measures Act for the purpose of preventing foreign propagandists from advocating and organizing revolution in Canada.' Cahan believed that a Public Safety branch should be created to oversee the execution of the new measures, similar to that in the United States, and these measures and the office overseeing them, should continue into peacetime. In the United States, he argued, even though the federal government was restrained by the Constitution, it recognized that 'even in times of peace, [the government] has found it necessary… to extend the authority of the Attorney General.' Cahan was eager for the creation of a body in Canada similar to the U.S. government's new Bureau of Investigation, with himself at the helm.\(^ {31}\)

As the government pondered Cahan's report he continued to send more information both to Borden and Doherty to further support his claims that Bolsheviks were at work in Canada and the United States in seeking revolution. Cahan forwarded U.S. intelligence reports that detailed how the new Soviet government sought to combat counter-revolution propaganda in the United States and Canada and to sabotage munitions in Canada and the U.S. that were headed to Russia. The Allies at this time were actively supporting military operations led by the White Russians who opposed the new Soviet government.\(^ {32}\) The government announced its plan for dealing with left-wing activists on 24 September 1918, and it was clear that the hard-liners had won as the plan wholeheartedly endorsed Cahan's suggestions. A Public Safety Branch, with Cahan heading it up, was created. It introduced two new Orders-in-Council in line with Cahan's suggestions and other Western powers, such as Australia and the United States: P.C. 2381, which outlawed all foreign language papers and presses and P.C. 2384, which was more
substantial and broader in scope. P.C. 2384 linked ethnic groups, such as Finns and Russians, with radical leftists and banned other left-wing groups. The following is the list of 'unlawful organizations' and the qualifications for being regarded as such:

a) The Industrial Workers of the World;
   Russian Social Democratic Party;
   The Russian Revolutionary Group;
   The Russian Social Revolutionists;
   The Russian Workers Union;
   The Ukrainian Revolutionary Group;
   The Ukrainian Social Democratic Party;
   The Social Democratic Party;
   The Social Labour Party;
   Group of Social Democrats of Bolsheviki;
   Group of Social Democrats of Anarchists;
   The Workers International Industrial Union;
   Chinese Nationalist League; and
   Chinese Labour Association

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

c) Any organization declared unlawful by the Governor-in-Council 33

The government immediately targeted left-wing organizations and gave itself the option of quickly declaring any group unlawful during the course of the war should the need arise. It outlawed the distribution of literature produced by these groups and the possession of it. In addition, the new measure had a reverse onus provision. An individual was presumed guilty of violating the law if he/she was a member of one of the listed groups or was in possession of any
literature deemed seditious by officers.\textsuperscript{34} As other historians have argued, P.C. 2384's focus was on labour and the left and allowed for the government to engage in 'political policing.'\textsuperscript{35}

Cahan’s recommendations were not entirely novel. Political policing of immigrants (with deportation as punishment) became legal after the government passed Bill 102 on 22 March 1910, creating Section 41 of the Immigration Act. This Section was nearly identical to Section 2 of the U.S. Immigration Act of 1903, which permitted the deportation of ‘anarchists, or persons who believe in or advocate the overthrow by force and violence of the Government of the United States...’ It prevented the immigration of anyone holding these views.\textsuperscript{36} The explanatory notes for Section 41 in 1910 detail how the U.S. government was justified in taking measures to deal with anarchists and the Canadian version was similarly designed to prevent such persons from becoming a menace in Canada. Section 41 stated that 'whenever any person other than a Canadian citizen advocates in Canada the overthrow by force or violence the government of or constituted authority' of Canada or Great Britain would be liable to deportation. Anyone who caused a public disorder, attempted to or created a riot, or belonged to any organization, secret or otherwise, that taught 'disbelief to organized government' were eligible for deportation.\textsuperscript{37} These measures enabled the government to regulate what ideologies immigrants should adhere to by outlawing the expression of unwanted ones. The changes being proposed by Cahan were based on the Espionage Act, and the U.S. measures taken in 1903, against immigrants. In sum, P.C. 2384 extended measures initially designed to deport and detain immigrant activists during the prewar era to the entire Canadian population during the war.

Following the creation of P.C. 2384, the government targeted potential Bolshevik revolutionaries, most notably the leader of the SDP, Isaac Bainbridge. He was pursued by the government, Ian Milligan has argued, because of the SDP's strong ethnic base and the SDP's
widely outspoken opposition to the war and capitalism more generally.\textsuperscript{38} Mass arrests became regular occurrences. The new laws and arrests did not find favour with members of Borden's Union government. Newton Rowell, president of the Privy Council and former Ontario Liberal leader, was not pleased with the government's actions which were undertaken while he was in Western Canada meeting with police officials (he had the RNWMP cabinet file). While he did not have sympathy for Bolsheviks, he was opposed to outlawing political parties, like the SDP, simply because of their views. Rowell argued that there was nothing in the SDP's constitution that warranted attacking this labour party. He told Borden and Doherty that the only way to combat the SDP’s ideas was to publicly debate them and that repression was not in the public interest. That the SDP had existed ‘for more than ten years’ without being a target by the authorities, left the government with no excuse, in Rowell’s opinion, for banning the Party.\textsuperscript{39} 

Rowell thought that by engaging in such actions instead of public debate, the government would only be uniting the progressive elements of society into insisting that freedom of speech and ‘freedom of thought’ is not curtailed. He believed that questioning the economy should be a protected right. Thomas Crerar, a prominent Western Canadian Liberal and future Progressive Party leader, opposed heavy-handed actions, arguing that Cahan's policies were 'the very negation of the first principle of democracy.'\textsuperscript{40} Cahan defended his position, sensing that his opponents would find favour with Borden and have the new laws struck down, or worse, his job and office would be shuttered. In a letter to Minister of the Interior Arthur Meighen, Cahan tried to justify his method of dealing with activists by whipping up the prospect of revolution and claiming he needed more staff and more resources to contain the problem.\textsuperscript{41} Cahan's office did not get the resources it sought and he subsequently resigned in January 1919; his office was disbanded. No sources remain to explain why Borden pulled the plug on Cahan’s plans. We
can only surmise that Borden was receptive to Cahan’s critics, because he felt he needed to keep his Union government united during the war and immediately following it. With Borden off to Europe in the Spring of 1919, for the Paris peace conference and Sir Thomas White acting in his place in Canada, P.C. 2384 was rescinded on 2 April 1919.

The creation of the WMA and P.C. 2384 set important precedents for dealing with left-wing activists and how loyalty to the state could be maintained, in addition to revealing the importance the government placed on advisors. Individuals like O’Connor and Cahan wielded important influence within Borden’s government and were largely responsible for both the WMA and P.C. 2384. They were opportunistic and sought to achieve important roles in government.

The WMA and P.C. 2384 were based on laws in other Allied countries: the former modeled after the D.O.R.A. in Britain, and the latter based on the Espionage Act in the United States, as well as early versions of the U.S. Immigration Act and Section 41 in Canada’s 1910 Immigration Act. For the government, left-wing activists were an international threat. In the case of the WMA, its creators believed that the broader the power given to the state, the better. The government felt it needed to be in lock-step with its southern neighbor in dealing with activists—lest they seek safe haven in Canada. Canadian policymakers’ views of left-wing activists were influenced by its international allies. Most importantly, the First World War provided the government with the ability to set the terms for what constituted an emergency. It established that in times of emergency, policing political ideology was acceptable to ensure the loyalty of citizens. In addition, this policing was not only based on class lines—class and ethnicity were often linked when it came to the government’s perception of leftists. P.C. 2384 banned Finnish, Russian, Eastern European, and socialist groups. Where one was born or what language one spoke could easily determine whether an individual was regarded as loyal. Even
those of British descent were regarded as foreign to some extent, should they make the mistake of falling in line with socialists or anarchists. For instance, in the case of Charles Watson and Harold Cheeseman, the two were arrested in Toronto on 1 January 1919 for 'disseminating Bolshevik propaganda.' After their arrests, they were charged with being in possession of illegal literature such as Marx's *Wage Labor and Capital* among other titles. Watson was given a three-year sentence in Kingston Penitentiary and fined $500 and Cheeseman received six months in jail. The stiff sentence was supposed to be a deterrent, as the judge believed that, 'Persons of British birth or descent above all should not forget the orderly traditions of their race. It would be a disgrace if they associated themselves with the propaganda of foreign cut-throats.' The pair were viewed as traitors to their race for supporting the ideology of foreign activists. With the war concluded, it would only be a matter of months before the government found itself again faced with an emergency situation at the hands of foreign activists, be they British or otherwise.

WINNIPEG

The rich, who have become rich on war profits, know that this is the price of blood...They live trembling at the thought of the future. They are afraid of retribution. They live in fear today and dread tomorrow. They feel deep down that there is a day of reckoning.

These sentiments, expressed during the Winnipeg General Strike, illustrate the high level of discontent felt by workers during the revolt of 1919 and paint a picture of a working-class interested in social change. The unrest in 1918 intensified after the war: workers' grievances still remained unresolved. Many were still working in dangerous conditions, for very long hours, and low pay. Unemployment rose with the end of wartime production and an influx of returning soldiers. Labour was in full revolt in 1919; approximately 150,000 workers took part in 428
separate struggles. Kealey has estimated that in 1919 the equivalent of nearly 3.5 million days of work were lost to industrial conflicts. The Winnipeg General Strike served as the epicentre and climax of the national revolt.\footnote{46}

There are a host of studies that deal with the strike and its violent end, and so for the sake of brevity I will deal with the issues most pertinent to Section 98 and its creation in Parliament. The general strike began on 15 May 1919. Tensions between building workers and the Winnipeg building exchange were ongoing throughout the spring of 1919. Negotiations broke down when metal workers failed to secure a deal with the employers’ council to have their union recognized; both groups sought support from Winnipeg's Trade and Labour Council which called for a general strike. The result was that nearly 30,000 workers walked off their jobs in support of their fellow workers. The scale of the strike reflected the tensions felt by workers in Canadian society. Sympathy strikes broke-out across the country in Vancouver, Toronto, and Montreal. Winnipeg effectively shut down and was run by a Central Strike Committee, consisting of British-born workers such as R.B. Russell, William Ivens, R.E. Bray, A.A. Heaps, John Queen, and George Armstrong. Almost immediately, a group of business and industry leaders, called the Citizens’ Committee of 1000, led by local lawyer A.J. Andrews, opposed the strike and sought to devise an end to it by working directly with federal government representatives. A.J. Andrews, in particular, worked closely with Arthur Meighen to pressure Ottawa to enact new legislation that would permit the prosecution and deportation of those responsible for the strike—largely blamed on foreign Bolsheviks seeking revolution.\footnote{47}

Before the strike began, the government had been searching for solutions to the unrest. It commissioned a special committee, headed by Solicitor General Hugh Guthrie, on the 1st of May 1919, to report on the existing sedition laws of the country. The Special Committee consisted of
both Liberal and Conservative members of the government.\(^{48}\) No transcript exists of that committee, but its findings were tabled in the House of Commons on 6 June 1919, with the strike well underway. Given the government's previous responses toward labour and leftists, the committee's findings were expected: Canada's laws needed to be strengthened. Cahan and his Orders-in-Council were gone, but there were many in the government that shared his ideas about left-wing activists.

Once again, Canada was aiming to be in sync with its allies. Frustrated with the inability to easily deport and arrest anarchists and socialists, the U.S. government responded to the demands of law enforcement and strengthened both the Espionage Act and the Immigration Act in 1918.\(^{49}\) The new laws broadly expanded the definition of an anarchist to include persons who ‘advise, advocate, or teach, or who are members of, or affiliated with, any organization, society, or group, that advises, advocates, or teaches opposition to all organized government.’\(^{50}\) The U.K. followed suit. It extended wartime measures against immigrants into peacetime with the 1919 Aliens Restriction Act which contained similar powers as the U.S. measures, in addition to restricting employment for immigrants.\(^{51}\) In nearly an identical fashion as its allies, the Canadian special committee made two suggestions: to amend the Immigration Act and to create a new Criminal Code section specifically relating to political offences. The changes would be made together. These two provisions would be in place during peacetime, the same as the U.S. and U.K. laws.

The first changes were made to the Immigration Act. Minister of Immigration and Colonization J.A. Calder introduced Bill no. 132 to amend the Immigration Act on 6 June 1919. The amendment would target 'persons who advocated the overthrow of government, the destruction of property, and so on' and place them in the category of the 'prohibited classes,'
thereby allowing them to be deported. The bill would strike out Section 15 of the act which read 'whenever any person other than a Canadian citizen advocates in Canada the overthrow etc.' and amend Section 41 which would now read 'every person who by word or act in Canada seeks to overthrow by force or violence the government of or constituted authority' of Canada or Great Britain would be liable to deportation. The changes would be retroactive to May 1910. The bill was designed to target political activists that were British subjects, such as many of the leaders and participants of the Winnipeg strike. The bill passed the House and Senate on 6 June in approximately twenty minutes, which according to Meighen, 'certainly beat all records.' British-born, naturalized immigrants could now be legally deported.

Meanwhile, the Winnipeg strike took a violent turn within days of the passing of Section 41's new amendments, and it was put down by the RNWMP. A.J. Andrews of the Citizens’ Committee served as Crown in the case against the leaders; although he was eager for new sedition laws and deportation powers, they were not used. A number of the strike's leaders ended up being charged with seditious conspiracy and seditious libel. The new amendments to Section 41 were highly controversial, particularly its retroactive element that allowed for statements dating back to 1910 to be used against prospective deportees. It was opposed by influential British-Canadian trade union leaders, such as Tom Moore. Using these new deportation measures would have been politically disastrous. By convicting the leaders under the Criminal Code, it served Andrews’ goal of criminalizing the strike.

The end of the strike did not change much for the government. The events at Winnipeg were still regarded as a budding Soviet-style revolution led by foreigners. The Special Committee to investigate sedition in Canada was created before the strike. The general strike reinforced the view of committee members that P.C. 2384 needed to be revived. Some were
eager for changes to sedition, including Commissioner Perry, who according to Senator Robinson wanted 'that Criminal Code amendment' that Guthrie introduced passed so that he could 'take general action throughout Western Canada at an early date.' Despite Perry's eagerness, the mass action he wanted to take with what would become Section 98, would have seriously inflamed already high tensions and the resulting trials would have exposed numerous agents the service had undercover in Western Canada.

On 10 June 1919, Hugh Guthrie moved that the House adopt the report of the Special Committee on sedition and seditious propaganda that was presented on 6 June. Guthrie presented the government's case, stressing that the recommendations of the Committee would not target established labour groups. He denied that the Committee was a response to the Winnipeg General Strike as the *Globe* and other media had reported. Guthrie reminded the House that the Committee was assembled before the Strike began. He admitted that the Committee was concerned with political and labour unrest in Canada and around the world. Guthrie argued that organizations distributing dangerous propaganda were a threat to freedom and many were openly operating in the U.S. and Europe as well as in Canada, and needed to be controlled. Just like during the First World War, radical leftists were an international threat. He believed that these were organizations 'not native to the soil of this free country,’ but were ‘foreign importations.’ Being in-sync with Canada’s allies on sedition, and not just quelling domestic unrest, was a pressing concern for the government.

Implementing these Criminal Code changes would work in conjunction with the amendments to the Immigration Act. The Criminal Code sections would target the existing foreign organizations and naturalized activists and the changes to the Immigration Act would
allow for non-naturalized activists to be deported. Left-wing activists, be they foreign or domestic, were targeted with the changes to the Immigration Act and Criminal Code.

Guthrie continued and stated that sedition was not well understood in Canada and that Canadians should look to England who was more experienced with the subject. His analysis was that England and Canada had a policy of 'passive inaction' in which not every soapbox orator would face charges of sedition. But, he claimed, the war had changed the world; there were now more threats to liberty from different schools of thought and unrest existed throughout the world. Canada, along with other nations, had to face the reality of the new situation. Guthrie reminded the House that during the war censorship and other provisions existed within the Orders-in-Council that targeted groups of a seditious nature, but since the signing of the armistice and the softening of these powers, these radical groups were becoming more intrepid. He concluded: 'I believe the time has come when action should be taken by this Parliament to put in statutory form some, at least, of the provisions which did appear in those Orders-in-Council.' Guthrie believed that the seriousness of the labour situation warranted the re-creation of P.C. 2384, but this time it would function as a permanent part of Canada's Criminal Code, rather than a temporary wartime power.

He claimed that the proposed amendments to the Criminal Code would not be radical and that much of the Code would remain the same—with the exception of two 'slight' changes. The first dealt with unlawful associations: any organization could be found to be unlawful if it supported any governmental or economic change in Canada by the use of force or violence. All its members would be found guilty of an offence if the association was declared unlawful and all its property could be seized. What constituted force remained undefined. Section two of the report dealt with sedition and seditious offences. He recounted the history of sedition law in
Canada and how an original definition of sedition was struck out of the 1892 Criminal Code draft bill that sought to codify the English criminal law in Canada. At that time the House opted to leave sedition undefined and allow its definition to fall to the common law. Despite leaving sedition undefined, the Committee recommended that Section 133 of the Code be struck out, which was known as the 'saving clause,' in that a writing or speech would not be found to be seditious if it was done in good faith to right an injustice or if the speech or document drew attention to a mistake the Crown or government had made. Guthrie stated that this clause was 'too broad' and acted as a 'cloak and shield' for offenders to hide behind. Prosecutions around the country, he claimed, had failed due to the existence of the clause. The report suggested striking out the penalty section for sedition (Section 134); instead of having the penalty for the offence be a maximum of two years, the penalty provision should be one to twenty years in prison. The committee defined a seditious publication, something the Code did not do. Guthrie stated that a charge of seditious libel could still take place but that now the Code contained a new section that would expressly define a seditious publication as: one where anyone who printed, distributed, or possessed material that 'advocated, advised or defended' or 'taught' that force or violence be used to accomplish government or economic change would be guilty. The new section would cover circulating the material through the mail—no previous law made it an offence to circulate material. He believed these changes would make Canada’s sedition laws clearer. He brought to the House's attention that the U.S. laws were much harsher and that the security of both Canada and the United States were at risk.59

In essence, what Guthrie was suggesting was the creation of a new Code section that would define a particular brand of sedition, or as Meighen decades later put it, the communist brand.60 These proposed changes were part of a gradual transition in the purpose of Canada’s
Criminal Code and the expectations of what the Code could achieve. Over the 19th century, the state increasingly shifted from 'reactive to preemptive' in the way it dealt with political crimes. The conception of allegiance changed from what was formally a personal bond between the subject and the sovereign to loyalty to an 'abstract state.' With this transition came the acceptance of withdrawing one's allegiance to that state, should it no longer serve the interests of the people. Within Britain and British North America there was, as Susan Binnie and Barry Wright have stated, a 'growing Lockean notion that criticism of authority was a right.' Seditious words, libels, and conspiracies were common law offences, with legislative encroachments added in the late 18th and 19th centuries. The offences were legislatively restated in the 1892 Canadian Criminal Code, although the opportunity to set out a precise and limited, modern definition of sedition was lost. In Sir John Thompson's original bill to codify Canadian criminal law in 1892, seditious intention was defined as: an intention that sought to 'bring into hatred or contempt' the governing authority, to 'excite' citizens into 'alteration of any matters of state' by unlawful means or to promote 'disaffection' or 'ill-will' between classes. As Desmond Brown details, the necessity of a definition for sedition was challenged in the House. Louis Davies, for example, argued that sedition offences were intimately connected to the common law, which is 'elastic and justly elastic. It is made by the prudence of the judges...to suit the development of the people and the constitution.' A defined sedition law would cripple the ability of judges to weigh each case on its own merits, which an offence such as sedition demanded, given the incredibly fine line between sedition and freedom of speech. While the concession left much in the hands of judicial discretion, the Code included a saving clause as a reference point. Section 133 stated that no one could be found guilty of sedition for lawfully criticizing the government. However, as Guthrie made clear, the Special Committee of 1919 recommended the removal of that very
clause, the effect of which would be to limit the ability of judges to distinguish between what was seditious and what was legitimate expression of free speech. Instead, the government would draw the line with the recommended amendments; there would be no reference to lawful criticism, and simple association with unlawful organizations was deemed seditious. The Special Committee aimed to make a sweeping wartime measure into a permanent feature of Canadian criminal law.

Charles Murphy of the Liberal Party was the only person who opposed the Committee’s report. Murphy told the House that the Committee was bitterly divided on the need for any reforms to the Criminal Code and particularly with regard to sedition and propaganda. Murphy cited Guthrie's opening remarks about newspapers, claiming the reforms were due to the Winnipeg General Strike, as evidence that people would take these reforms as attacks against labour. With that, the report was concurred in by the House.65

On 27 June 1919, Arthur Meighen, then acting Minister of Justice, tabled Bill 160 which contained the suggested amendments to the Criminal Code. The amendments were bundled with other crime amendments, such as trespass on militia property and the carrying of concealed weapons without a permit. The bill went into second reading on 1 July 1919. One of the first issues to be discussed was the concealed weapons amendment which made it an offence to carry a firearm without a permit. Meighen used the opportunity to blame foreigners for firearm offenses and link them to his sedition amendments. He claimed that with this legislation no alien would be able to possess a firearm; and recently there were dangerous immigrants found with weapons. These dangerous men were 'not British subjects; they are very often alien enemies.'66 There was some concern by Members of the House in discussing this bill in reference to aliens and not all British subjects. Guthrie defended Meighen, claiming that over the past few years
nearly all serious violent crimes in Ontario were caused by foreigners. The strategy of the government was to portray foreigners as the cause of violent gun crime and to follow-up these Criminal Code amendments with the changes to sedition, creating the impression that foreigners were concealing guns and preparing for revolution. Meighen was questioned as to why he did not regard British subjects as being just as dangerous, given that the government recently passed legislation that enabled the deportation of British subjects. He said he did, but added: 'there is a certain class of British subjects to whom we have extended the law...we have, under the stress of exceptional circumstances, seen fit to enact that law.' The exceptional law was the amendment to Section 41, with the ‘certain class’ being socialist British-born activists. As Meighen stated, those British subjects that were targeted by Canada's changes to immigration were of a different class, i.e. they were radical leftists and that class of British, in his eyes at least, was dangerous. There was scarcely any opposition to the bill which passed its third reading.

Senator James Alexander Lougheed, Conservative government leader in the Senate, introduced Bill 160 and continued the government’s strategy of linking foreigners to violence. He claimed the amendments were needed to target 'unrest and disturbance' in Canada that had been brought about 'chiefly by aliens.' Even though the new Code section was applicable to all Canadians, many still believed that it would only affect naturalized aliens because only 'aliens' were ‘radicals.’ Lougheed stated that the government was aware of many foreign organizations that advocated anarchy and the 'subversion of our present institutions and government.' Lougheed cited that these discoveries were made in Winnipeg as well as in a widespread movement throughout the country. Before heeding Lougheed's call to quickly pass the bill, Senator Gideon Robertson, a labour man, wanted an explanation of what force meant in the bill when used in reference to 'industrial or economic change within Canada by use of force or
violence.’ Lougheed presumed it referred to physical force. Robertson would only support the bill so long as the meaning of force was physical force. The Senate did agree to amend the bill's minimum sentence of one year and instead leave the minimum to the judge's discretion. Senator Lawrence Power of the Liberals took exception to the removal of Section 133 of the Code, the sedition saving clause, which received no debate in the House of Commons, arguing that such a clause was worth having in the Code to allow for free speech that rightfully criticized the government's actions. To strike it out, he argued, would be to 'Prussianize the Canadian system.'

Lougheed assured Power that no one who had a good intention would be penalized and that the 'latitude' of the Canadian law has allowed for the first time in history the establishment of a 'Russian form of revolutionary government in one of our principal cities [Winnipeg].' Before the bill was passed for the third time, Power offered cautionary words:

> It is said that hard cases make bad laws, and the unfortunate occurrences in Winnipeg and elsewhere throughout the country have naturally caused people to some extent to lose their heads, and measures which may be very appropriately passed to deal with these revolutionaries are perhaps liable to make trouble for decent, honest, loyal people at some later date; that is all. I think we ought to be very careful that we do not pass some legislation which will interfere with the reasonable rights and liberties of our people.

Power's fears were disregarded and Section 97 a) and b), later to be renamed Section 98, received Royal Assent on 7 July 1919 and came into effect the 1 October 1919.

The new section was nearly identical to P.C. 2384. Three specific sections will be discussed in greater detail as they pertain to the key trials of the interwar period: 98(1) which dealt with 'unlawful organizations;' 98(3) which contained definitions for members or officers of unlawful organizations and 98(8) which dealt seditious actions by individuals.

Section 98(1) was designed to outlaw radical political groups ‘whose professed purpose’ was to ‘bring about any governmental, industrial or economic change,’ by the use of ‘force or
violence’ or any group that advocated or taught such beliefs. Parliament sought to target socialist or communist groups with its expanded definition of sedition in Section 98(1) but it created more questions than answers. Section 98 contained no definition of 'force.’ Labour groups opposed Section 98 fearing strikes would be classed as 'forcing economic change' and unions as 'unlawful organizations.' Justice Metcalfe's closing remarks in the R.B. Russell trial following the Winnipeg General Strike reinforced their fears. Metcalfe considered strikes as a means of using 'force' to win concessions as well as being able to inspire 'terror.' The section contained no definition for 'teaching' or 'advocating.' Did an association have to actively advise its members to commit a violent act or did simply telling them there would be an 'eventual' revolution, following Karl Marx, qualify as teaching or advocating? For instance, the CPC did indeed teach that the proletariat would overthrow the bourgeoisie in a revolution but Marx never stipulated that the revolution would be violent and only stipulated that it would occur when conditions were 'ripe.' These were issues debated amongst CPC members and between Marxists, but Section 98 did not take into account such nuances. A group that embraced the general view that a revolution was necessary and inevitable was potentially unlawful under this section.

Subsection 3 of Section 98 made it an offense for anyone to be a member or officer of such an organization. No procedures in the Code set out how a group could be classified as unlawful other than by a judicial determination in the context of a trial. This omission created the potential for an individual to be charged with being a member or officer of an unlawful organization without the organization having been previously classified as such by a lawful authority. Such was the situation that leading members of the CPC faced in their November 1931 trial.
Finally, Subsection 8 extended Section 98's reach. *Any* person who ‘...prints, publishes, edits, issues, circulates, sells, or offers for sale or distribution any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication or document of any kind’ that taught or advocated the use of force to accomplish governmental change, if convicted, could face imprisonment for twenty years. The vagueness of the terms 'force,' and 'teaching' and 'advocating' was thus extended to documents. An individual could be guilty under s. 98(8) for simply sharing an 'unlawful' article in a newspaper with another person or for sharing their socialist or communist views with others if the discussion included Marx's theories on revolution. Other subsections of s. 98 were just as draconian. Section 98(2) allowed the RCMP to seize property suspected of belonging to an unlawful organization. Section 98 (5) provided that anyone renting a hall to a group that was later found to be an unlawful organization could be fined $5000 and face imprisonment. 98 (11) made it a 'duty' of any government worker in any department to seize any book or document covered by the section and turn it over immediately to the RCMP. This made civil servants an untrained body of intelligence gatherers for the government.

Section 98 severely hampered an individual's free speech and association largely because the terms in the section such as 'force,' 'teaching' and 'advocating' could be broadly interpreted by judges. Moreover it facilitated convictions. Section 98 (4) stipulated that to prove membership in an unlawful association the Crown only needed to establish that a person had 'attended meetings,' 'spoken publicly in advocacy of an unlawful organization,' or 'distributed literature.' These actions created a rebuttable presumption that the individual was a member of an unlawful organization. If an individual spoke out in support of an 'unlawful organization' or attended a meeting of a group that was later found to be an unlawful organization, that person would be
required to prove her or his innocence. In effect, an individual who believed in or sympathized with communism had to keep their political views secret.

The creation of Section 98 and the amendment to Section 41 created no stir out-of-doors among the press and no significant protest or opposition was mounted to the new laws. Canadians, it seemed, were largely indifferent. There was scant press coverage of the new law across the country and what did appear was supportive of the government's actions, with the exception of some trade unions that feared how broadly the new law would be applied. Editorials in major papers mentioned how force or violence should not be used to effect change, even if force remained undefined in the new section. As one reporter put it, 'humanity needs growth not explosion.' The *Halifax Chronicle* cautioned that when freedom is 'misinterpreted' it 'degenerate[s] into license.' The paper's editors argued just before Section 98 was passed that it 'will be almost universally applauded,' as it makes its way through Parliament. Bolshevism, the paper claimed, had 'infected' 'our people,' and this law would halt the 'disseminators of social disease' because before Section 98, 'we were left without protection against domestic germ-carriers and germ-breeders.' While the law was unprecedented in Canada, it should be regarded as 'commendable.' While the Immigration Act took care of foreigners, the editors warned, immigrants were not the biggest threat. ‘Their British disciples are more daring and more effective than they' it warned. Outside of the Commons M.P.s expressed their views on the issue. Arthur Meighen regarded all sympathetic strikes as unlawful and disruptive and he called the Winnipeg General Strike, a 'usurpation' of government authority. While he claimed he supported collective bargaining, he viewed unions and striking as 'perpetual Bolshevism.' Labour disruption of this type was a sign of treasonous activity. The Prime Minister shared these views when he wrote in his diary that the Winnipeg strikers had created a revolutionary plot to
overthrow the government and create a Soviet-style one. His views on the strike intimate why P.C. 2384 needed to be re-created. In an address to labour in the Ottawa Citizen in 1919, he claimed that strikes and lockouts were ‘almost as destructive as war itself...a constant recurrence of lockouts or strikes’ would make it difficult for the country to return to a state of normalcy.\textsuperscript{82} If labour disruption was regarded by the government to be almost as serious as war, a wartime response by the government would not be unusual. Senator Captain C.G. Power of Quebec stated during the passing of Section 41’s amendment and Section 98 that 'the truth is, if you look at the names of the persons who are leading in these demonstrations, they are not foreign names; they are all British and American.'\textsuperscript{83} Power went on to say in an interview, 'If the free air of Canada does not suit the undesirables, let us deport them. Let us deport them whether they are from the slums of Warsaw, or the Ghetto of Rome, or whether they are the scourings of Whitechapel or the dock rats of Liverpool.'\textsuperscript{84} In the eyes of a number of lawmakers, British-born activists should be treated no differently than other immigrant activists.

One of the most outspoken critics of the government's changes to sedition was the Toronto Trades and Labour Council which repeatedly petitioned the House throughout the 1920s to repeal Sections 98 and 41. The Council's lawyer J.G. O' Donoghue, in an interview with the Star, commented on the situation facing labour in 1919 during the trials of the Winnipeg Strike leaders: 'If labour does nothing,' in response to the convictions of the Strike leaders he said, 'then labour is an ass, because its rights have been taken away.' He argued that changes to the sedition laws were a threat to everyone and were a relic of the ‘old ascendancy and autocratic days.'\textsuperscript{85}

The creation of Section 98 was integral to the process of normalizing emergency measures. The plans for its creation began before the Winnipeg General Strike. Using the new amendments to the Criminal Code and Immigration Act against the Winnipeg strikers would
have inflamed tensions, but this does not explain why these new laws were not used. While authorities were sensitive to avoid further hostilities with workers, they were still willing to use violent and deadly means to quell unrest, regardless of how workers would interpret such actions. The fact that the government did not rush through Section 98’s creation once the Strike escalated, even though it could have as it did with the Section 41 amendments, suggests that Section 98 was always intended to be used later. The government viewed the threat of left-wing activism as international, and the plans to normalize emergency measures had much to do with Canada’s place in an Anglo-American alliance that was opposed to radical leftists. Throughout Section 98’s transition from bill to law, the threat posed by British activists was invoked by officials to justify extending emergency measures into peacetime. These views would continue into the 1920s, a period of relative calm, to continue the process of integrating the emergency and the norm.

A STATE OF POTENTIALITY

Throughout the 1920s the labour revolt never seemed far from the minds of lawmakers. Even though the labour revolt was now firmly in Canada’s past, the debates of the 1920s reveal that MPs and Senators alike believed that British activists still posed a threat to Canada because of the rise of communist agitation in Britain and Canadian labour disruptions, such as the large-scale BESCO strikes in Nova Scotia in 1923. Debates, as Jérôme Ouelett and Frédéric Roussel-Beaulieu have argued, are important sources for revealing public concerns and opposing attitudes, and they provide a wealth of information about policy issues. The 1920s debates in the House and Senate reveal the tensions surrounding the rights of British activists and their place as citizens; many M.P.s believed that political ideology determined nationality rather than place of birth. For some, a British subject was no different than a foreign Bolshevik if a supporter of
socialism. This was a contested claim, with some believing that British-born activists should be treated differently than other immigrants. The debates demonstrate how conceptions of citizenship and its obligations were unstable. They illustrate why many believed that the exceptional law of Section 98 and Section 41’s 1919 amendment needed to remain. Parliament members thought that the threat of revolution continually hung in the air, the potential was always there for another Winnipeg or worse.

In the summer of 1920, fully one year after Section 41's amendments and Section 98’s creation, Bill X2 was introduced to the Senate by the Minister of Labour, Gideon Robertson. The bill aimed to amend Section 41 of the Immigration Act to protect British subjects from deportation after they acquired naturalization. A.B. Crosby began the debate in the Senate and argued against the bill. He claimed that labour was not concerned with this bill, and curiously, as a Senator, felt himself to be 'as close to the workingman as anyone can...I am truly and sincerely of the working classes.' Section 41’s amendments were necessary because, as Crosby stated, 'God knows what would have happened if it had not gone through.' He argued that the people who were truly responsible for the creation of this legislation were not workers. They were 'agitators’ who came to Canada seeking revolution, even if they were from Britain. Besides, he continued, he saw no harm in leaving the laws unchanged.

Senator W.H. Sharpe echoed the sentiment of Crosby, stating that as the law stood, the honest labourer or the good citizen’ had nothing to be afraid of. Sharpe stressed that only one year ago, leaders of the Winnipeg General Strike wanted to turn the parliament buildings of Winnipeg into the seat of power for a Soviet government and that radical leftists were not only confined to Western Canada. They were now scattered amongst average Canadians in Toronto and in every major city. Sharpe believed Canada should follow the U.S. lead, as he believed it
did in drafting the original legislation, and by deporting 'reds' like the U.S. did with anarchist Emma Goldman. 'If the law was good enough last year,' he argued, 'it is good enough for me this year.'

Senator G.G. Foster claimed that Winnipeg fell to the 'red hand of rebellion, anarchy, and revolt.' He believed that other major urban centers were being corrupted by the same ideological poison. If Section 41 was amended there would be no protection for Canada’s major cities.

In committee, Senator George Bradbury argued that an emergency may have necessitated the creation of this Act but that it had now surely passed. The Minister of Labour attempted to clear up matters by repeating the reasons for its introduction, and reiterating what had transpired in the House during the summer of 1919. Robertson claimed that the amendments to the Immigration Act were designed to target foreign agitators in the country because Section 98 did not exist yet. Robertson read out Section 98 and argued that with this section in the Code, Section 41 of the Immigration Act could be amended to its pre-1919 state. Robertson claimed the amendments were 'un-British' and unconstitutional because it denied British subjects a trial before being deported. While Robertson had no issue with other immigrants being deported without a trial, a British subject should not be met with the same fate. At least if British subjects were charged and convicted under Section 98, they would face a criminal trial and then could face deportation. His argument was unconvincing to the Senate; the bill was rejected in committee.

Robinson used Section 98 to justify amending what he felt was un-British legislation because Section 41 permitted the deportation of British subjects for their political views without trial. The rights of the British subject were tied to Magna Carta, and the natural law brought forth by Hobbes, Locke, and Adam Smith. He believed British subjects were denied the legal
protections thought by many legislators to be central to British history, identity, and ethnicity. The judging of the political views of a British subject by the Immigration Department and deporting them without trial were unsettling for some lawmakers. While it had been perfectly acceptable to deport immigrants not from the mother country for their political beliefs and without a trial, the issue was not as clear cut for British activists. The idea of justice was central to British identity and ethnicity. The memory of Winnipeg underlay the discussion; it was now a symbol for the violent revolution that could await Canada if the 1919 amendments were removed.

Following the 1921 election win of Mackenzie King's Liberals and the introduction of the Labour Party and Progressive Party to the House of Commons, J.S. Woodsworth, of the Manitoba Independent Labour Party, was eager to repeal Section 98 and amend Section 41. Woodsworth had some experience with sedition as he was charged with seditious libel during the Winnipeg General Strike for reciting a Bible verse. He had firsthand knowledge of how easily the new laws could be misused. The former Methodist minister, turned social activist and politician, had a long history of working to aid immigrant communities in Winnipeg and labour in general. He viewed the legislative changes of 1919 as an affront to democratic values. His political thoughts on liberty were largely influenced by John Stuart Mill. He believed, as McNaught puts it, there was an 'organic relationship between civil liberty and social good.' His first effort to repeal the laws took place in 1922 when he tabled Bills 16 and 17, which were designed to repeal the changes made to the Immigration Act and to repeal Section 98. On 10 April 1922, Ernest Lapointe of the Liberals, and Prime Minister Mackenzie King both suggested that Woodsworth 's bills be discussed in a special committee. Woodsworth, being new to the
house and unfamiliar with House procedures, agreed. He later felt that the Liberals suggestion was designed to sidetrack the bill which ultimately failed to pass.95

Woodsworth often claimed in the House that Section 98 targeted labour and his claims were somewhat justified given that force was never defined in Section 98. While lawmakers could not reasonably list all the ways force could be interpreted, the labour movement feared that leaving the definition entirely up to judicial discretion invited judges hostile to labour to regard labour actions, such as strikes, as ‘force.’ In the 1920 report on the proceedings of the Trades and Labour Congress of Canada, J.G. O'Donoghue, its legal counsel, outlined how the section could be used against labour groups and used Judge Metcalfe's charge to the jury in the sedition trial of R.B. Russell, one of the Winnipeg Strike leaders in 1919, to prove his point. In his charge Metcalfe stated:

Mr. Russell gave us his idea of a sympathetic strike. He said, 'When a dispute originates between an employer and his employees, and when the labour organizations see that organization being beat, they come to their assistance by calling a strike to force their employers to bring force to bear upon the original disputants to make a settlement.' That is Russell's definition given in the box...force, force, force.96

The report detailed how a court was justified in using the 'natural or dictionary sense' to define force. In regards to terrorism, Judge Metcalfe believed terrorism in Russell's case could be incited ‘without hitting a man over the head. You can incite terror of starvation; you can incite terror of thirst [through strikes].97 For the Trades and Labour Council, the sedition trials of the Strike leaders in Winnipeg in 1919 drove home just how easily Section 98 could be applied to strike activity.

Arthur Meighen defended Section 98 and Section 41. At one point, he sarcastically claimed that many people would like to believe that Section 98 and Section 41’s amendment
were only passed because of the insecurity and chaotic 'atmosphere of the time.' He believed that many people had an arrogant view of the past and thought that it was all too easy to claim that everyone was deceived by events and rashly created the chaos they sought to prevent. 

For Meighen, the climate of the period was not a factor in the creation of Section 98. Section 98 and Section 41 were calculated and planned, they were not reactionary laws. During the debates of the period, he reminded Woodsworth that it was anarchists that were the targets and that regardless of where a person was born, including Great Britain, they should be treated the same, foreigners were foreigners. Political ideology trumped all else, including nationalism.

Woodsworth remained undeterred by the failure of 1922 and in 1923 he brought forth another bill to repeal Section 98 and re-insert Section 133's safeguard clause for sedition. M.P.s were concerned that the bill would weaken Canada’s protection from radical leftists. The debate again raised the issue of who was and was not to be considered a Canadian citizen. The Immigration Act stated that a Canadian citizen was a person born in Canada or a British subject that acquired domicile after five years. 

Liberal member Charles Stewart refused to believe that Section 41 provided for a British subject to be deported after acquiring naturalization. John Baxter of the Conservatives argued that the Act must be confined to the term Canadian citizen because you could not turn Canadians out of their own country; you should only be able to deport immigrants that acquired citizenship through naturalization, essentially by cancelling their naturalization. Samuel Jacobs, a Liberal, argued that that would produce a 'citizen without a country.' Members agreed that the Immigration Act should no longer target British subjects if they acquired naturalization, and even Meighen agreed that the climate of unrest had passed, but that immigrants from other countries should still face the threat of deportation. 

Woodsworth attacked the act as a whole for unfairly seeking to deport people without trial because of their
political views. Woodsworth wanted the principles of justice—central to British identity—extended to include all immigrants. The House passed the bill and sent it to the Senate. The Senate had no interest in debating the changes the House proposed to Section 41; they were rejected outright. As for Woodsworth's attempt to repeal Section 98, it never made it to second reading before the session of Parliament ended.

For Canadian Senators, the threat of radical British leftists was still present, but the debates demonstrated that not everyone believed radical British leftists posed a threat nor should they be considered the same as other immigrant activists. There were several reasons that Senators may have rejected the House’s bill. Following 1919, the RCMP informed the government that British activists were an ongoing threat to Canada. Since its formation after the labour revolt, the service regularly spied on anyone suspected of communist activity. An RCMP security bulletin, dated 2 September 1920, noted that foreign agitators believed that 'English-speaking' workers were ready for revolt and that: 'recent events in Great Britain such as the “hands off Russia” agitation and the threat of a general strike by the Triple Alliance are encouraging the seditious minded.' Indeed, the RCMP noted that 'the promptitude with which revolutionary actions in England provoke' activists in Canada was increasing and that Canadian leftists were increasingly relying on the English rather than the American revolutionary presses.\textsuperscript{102} With the RCMP confirming that British reds were influencing Canadian activists, it was not surprising that some in Parliament were not keen on altering Section 41. The British reds had an advantage that some foreign activists did not: they could speak English and help influence Anglo-Canadians to join their cause.

The U.K.’s repression of communists occurred during the 1920s and made headlines in Canada. In 1921, similar to the U.S. and Canada, the U.K. was taking measures to up the legal
penalties for sedition and trying to stamp out seditious publications. In September 1925, U.K. authorities aimed to seize activists and deport aliens. Scotland Yard was reportedly looking for reds of British nationality who were working for Moscow. On 25 October 1925, the headlines in Canada focused on the arrest of prominent leaders of the Communist Party of Great Britain (CPGB). With all these sensational stories making the front page of Canadian papers, it was little wonder that a largely Conservative Senate would have blocked any attempt to undo the 1919 legislation.

There was ample evidence in the minds of some M.P.’s that British activists were still at work fomenting discord within Canada. In March 1924, Woodsworth made an impassioned speech in the House detailing the treatment of Nova Scotia miners by police and their employer, the British Empire Steel Corporation (BESCO). The trouble began late in 1921, when management told union leaders that they intended to cut the wages of the miners by 25 per cent and cancel their previous agreement—in total reducing the wages of the miners by one-third. J.B. McLachlan, Secretary of the Mine Workers of Nova Scotia and Communist Party of Canada member, was an active leader in the negotiations and a British ‘radical’ (born in Scotland). As David Frank reveals, McLachlan pushed for a campaign of ‘working with your coat on,’ a policy that amounted to striking on the job by reducing the output of the mine. The policy received support from the membership and condemnation from management and Ottawa by way of the Minister of Labour, James Murdock. McLachlan wanted to unite the miners with steelworkers employed by BESCO, with the goal of linking the unions to the Red International of Labour Unions (RILU). The RILU was a Moscow-based international body that encouraged the formation of militant industrial unions which could one day, in their view, form a workers’ army.

McLachlan's CPC membership and vocal opposition to capitalism and militant labour activities
soon drew the ire of the authorities. Police raided his home and found a copy of the RILU’s constitution. On 1 July 1923, the coal miners decided to strike for a return to their 1921 rates and in support of their steelworker brethren, whose strike was floundering. Ottawa and the Province had had enough of the coal miners; military troops arrived just before the strike occurred on 30 June and set up tents and machine gun posts on BESCO property. At 7:30 PM, under the command of Colonel Eric McDonald, the provincial police rode into a crowd of striking workers, attacking anyone that came into their path. McLachlan sent out a letter to the workers, condemning the government and police action, and on 6 July, he was charged with publishing false news as his letter to the workers in Cape Breton had mysteriously found its way to the *Halifax Chronicle*. The actions of the police, which were confirmed by the RCMP, and the dispatch of military troops to support industry against the strikers, reinforced how seriously the government viewed large-scale labour actions. These were treated as emergencies that needed to be swiftly dealt with to prevent another emergency situation like 1919.\textsuperscript{106}

With the re-election of Mackenzie King and the Liberals in 1926, Section 98 and Section 41 would receive much more attention by the government. Elected to another minority government, the Liberals depended on the cooperation of the Progressive Party to stay in power. There now had to be a serious attempt, on the part of the Liberals, to repeal both sections to secure the support of the Progressives or the government could fall. At the start of the first session, R.B. Bennett of the Conservatives went on the attack, accusing the Liberals of making deals with the opposition parties to stay in power even, though the Conservatives won more seats. The deal included sincere efforts to amend the Immigration Act and Criminal Code. Bennett referred to the government as a ‘majority of three.’\textsuperscript{107}
The Liberals planned on introducing two bills before the summer, Bill 153, which called for the repeal of Section 98, and Bill 91, which would undo the 1919 changes to Section 41. On 31 May 1926, the Liberals introduced Bill 153. Ernest Lapointe, the Minister of Justice, introduced the bill as seeking to undo changes made to the Criminal Code that were put in place so that certain portions of the War Measures Act could continue to deal with unrest. Lapointe stated that the Trades and Labour Congress had asked every year that these changes be removed, as they feared they would unfairly be used to target labour. Lapointe argued that there were enough protections in the Code to deal with sedition and that Section 98 should be repealed. He stressed that the Section was a copy of the United States law on sedition and that the British method of dealing with sedition in the common law was a better one.  

Before Bill 153 proceeded further, Bill 91 was debated on 2 June. Familiar arguments from the previous debates were introduced again, but this time Ambrose Bury of the Conservatives wanted to discuss Bill 153 together with Bill 91. Bury's argument was that if Bill 153 and Bill 91 were both passed, one could no longer be deported or charged for being a member of an unlawful association or for advocating or defending governmental change by force. Seditious foreigners, he maintained, would be protected if both bills passed. Lapointe argued that an immigrant could be found guilty under another section of the Code, if engaged in seditious activity and subsequently deported. Woodsworth reiterated the need for a jury trial for deportation but Meighen scoffed at Woodworth's suggestion, saying no one ever had the right to a jury trial for deportation in Canada. The House went into recess. The final vote would have to come after debate on the repeal of Section 98.

On 4 June, debate commenced on Bill 153 to repeal Section 98. Woodworth pointed out that a simple bystander listening to a speech from a member of presumed unlawful association
could be found guilty under Section 98 as he or she would be required to prove their innocence. Horatio Hocken of the Conservatives attacked the arguments of Lapointe and Woodsworth by introducing the spectre of communism to the debate. He argued that the 'Soviet emissaries are found not only in Great Britain, but in this country, in the United States, in China...all over the world, and when this Dominion may be made the special object of their attack nobody can tell.'

H.H. Stevens, a Conservative, agreed with his fellow party member, arguing that Section 98 was designed to prevent the 'wrecking' of Canada's democracy. The Sections were worthless to the 'ordinary citizen,' but were necessary to combat the threat of evil that foreign cut-throats may be planning – in the form of revolution or insurrection. He was emphatic that these laws protected average people.

The only way for that protection to remain was for these laws to exist indefinitely. The bill passed its third reading and the House adjourned at two minutes to midnight.

On 7 June, debate resumed on Bill 91 to amend Section 41 of the Immigration Act. Bury, again, introduced the need to keep Section 41 as it was because of the repeal of Section 98 which just passed in the House. R.B. Bennett offered a defense of Section 41 arguing that it covered offenses not contained in the Criminal Code, but neglected to mention the existing sedition laws, beyond Section 98. Bennett claimed that Toronto had become the central hub for communist propaganda, and that Toronto groups were distributing the material across the country. With Section 98 repealed, Section 41 must remain as it was.

Even though it was the Immigration Act amendment that was being debated, the discussion returned to focus on Section 98. Thomas Cantley, a Conservative, argued that since no one had been convicted under the section, what was the harm in keeping it on the books? Besides, he thought there was never a time when Section 98 and 41 were more needed. The emergency of the revolt still lingered.
many Conservative members was summed up by Edmond Ryckman. Ultimately there was no good reason for Canada to want to invite activists over from Britain, he maintained, 'a Clydeside ship man, who probably does not act as he should and has been subject to the law in England, or a cockney from Limehouse, is not entitled upon his landing on these shores to the same standing [of] a Canadian citizen.'\textsuperscript{116} Regardless of the opposition to the bill it passed its third reading\textsuperscript{117}

The bills were now in the hands of the Senate, which debated Bill 91 on 15 June. In his description of Bill 91, Raoul Dandurand made continual references to Bill 153. Senator Foster claimed that once you start wiping out one bill, you will remove another and end up with nothing.\textsuperscript{118} On division, Bill 91 failed to go to second reading. On 17 June, Bill 153 was debated in committee by the Senate. Dandurand reiterated how Section 98 was 'exceptional legislation, made because of the exceptional times through which we were passing' and was thus no longer necessary.\textsuperscript{119} Senator Beaubien disagreed, arguing that 'socialistic principles' are being spread particularly in places such as Montreal and that even a 'good liberal paper' such as the Winnipeg \textit{Free Press} was reporting its spread throughout Canada.\textsuperscript{120} Senator Griesbach brought up the issue of the prosecution of the CPGB members and questioned why Canada should lessen its sedition legislation when Great Britain had tightened its laws to deal with communists in the U.K.\textsuperscript{121} The communists in Canada, Senator Beaubien argued, not only threatened the East Coast in Cape Breton but the 'free and breezy west' and even Montreal.\textsuperscript{122} The Senate defeated the bill. Even the attempt to reinsert the sedition saving clause back to Section 133 was rejected for fear of weakening the other sections.\textsuperscript{123} Conservative Senators still felt British and other foreign activists posed a threat. They agreed with Conservative House member Thomas Church that Canada should follow Australia's lead in battling activists, and quoting the Australian Prime Minister, Church stated, 'We will make this a white man's country. It does not matter whether
the anarchist comes from Europe or the British Isles, he will be deported.' ¹²⁴ Whiteness along with citizenship was questioned because of one's political beliefs. For some, the British activist occupied a space in which she was not a citizen and yet not a foreigner.

The continuation of emergency powers was a central theme of the debates and so was the issue of who should be protected from deportation, particularly if the individual was British. As sociologist T.H. Marshall has argued in his classic study on citizenship, citizenship may be classified as legal, political, or social. One may have civil duties to undertake to be classed as a citizen, while social status may entitle a person to citizenship. Citizenship can therefore be acquired or denied to segments of society.¹²⁵ In this case, while being a British subject entitled one to be a citizen of the empire, some Canadian lawmakers sought to create a conception of citizenship that denied individuals the right to citizenship in Canada based on political beliefs. Their citizenship should be undone if they expressed the beliefs of, and by extension subscribed to, a foreign seditious ideology.¹²⁶ But such views were not wholeheartedly endorsed; House members opposed British subjects being treated the same as other foreign activists. As Ferguson notes, for British immigrants these debates revealed how 'their international status was unclear, their rights abroad uncertain, and their identity decidedly unstable.'¹²⁷ This was glaringly apparent as House members were conflicted about what to do with British activists and what rights they had as citizens.

CONCLUSION

Section 98 was not a reactionary law; its creation was central to the process of normalizing emergency measures. Such a process began with the government’s ability to define and declare an emergency with the WMA. This power led to the creation of P.C. 2384 because the government believed that the spread of radical leftist ideology was an emergency that
required emergency measures. The policy continued a trend that began in Canada in 1910 by targeting the politics of immigrants, and was in-line with Canada’s allies. Loyalty was secured by pre-emptively striking out against any activity that could lead to treasonous action—loyalty was security. International influences were important to Section 98’s creation. Lawmakers linked class and ethnicity in creating P.C. 2384 and in justifying the extension of the emergency into peacetime. As the debates in the House of Commons and Senate of the 1920s reveal, politicians continued to believe that British activists posed a threat to Canadian society, and as a result, Section 98 and the amendments to Section 41 needed to live on. Politics influenced a citizen’s identity, but these ideas were contested when applied to British activists. When the Great Depression arrived in the 1930s and a vocal and militant Communist Party of Canada (CPC) started advocating for the unemployed, many in Parliament believed that it was 1919 all over again.
The onset of the Great Depression gripped the country in turmoil. The dustbowl dried up crops in the West, grain prices plummeted, and the staggering rise in the number of unemployed left many wondering if the world as they knew it was finished. Many were claiming to have the solution to end the exceptional period of depression stalking the country, from the Social Credit Party of William Aberhart to the Canadian Nationalist Party to the Communist Party of Canada (CPC). The 1930s were a time when ‘the politics of chaos’ seemed the norm.¹ In 1930 the Conservative Party, led by R.B. Bennett, swept into power, forming a majority government that promised to end the Depression and restore Canadians’ faith in their country. The CPC was of particular concern to Bennett. A wealthy western businessman and lawyer, Bennett and his right-wing government despised the CPC and its fellow travellers. The government, along with many Canadians, viewed the CPC as representative of a foreign and alien culture that threatened to destroy the country and its cultural heritage. This perception shaped the government’s decision to prosecute the CPC leaders. Their prosecution reinforced the need for emergency measures and continued the process of normalization. For the government, charging CPC members with violating Section 98 was logical because they were perceived as plotting and engaging in revolution.

The culture of the CPC was central to how authorities viewed the group. The CPC viewed itself as leading the way toward a socialist, gender equal, multi-ethnic, Canadian republic. Previous authors have argued that the CPC, while primarily consisting of foreign members, only wanted new Anglo and French members during Moscow’s Third Period and
some members were hostile toward the Party’s immigrant base. In contributing to revisionist literature on the CPC, I contend that party members were conflicted about the obligations of the CPC with respect to foreign members, and worked to accommodate them while seeking new Anglo and French recruits. Key to how the CPC dealt with its ethnic base was how the nation was understood within communist thought.

The historical literature has viewed the arrest of CPC leaders in 1931 as reflective of the state’s war on communism during the Depression, and that the intelligence cycle was successful for authorities, in that the Royal Canadian Mounted Police (RCMP) succeeded in gathering and analyzing intelligence to act on a threat. I contend that the reasons for the CPC’s prosecution were more complex; cultural views shaped how the state interpreted and responded to the CPC. I argue that the intelligence cycle was underpinned by culture.

I first outline how the CPC both welcomed and marginalized its foreign-born members and struggled to implement Moscow’s directives. I then contrast the CPC’s ideas for a future Canada with the hegemonic interpretation of the CPC. Many saw the Party as an alien culture that threatened Canada’s culture and heritage. I conclude by examining how the cultural perceptions of the CPC determined the state’s response. The CPC’s support for the unemployed was perceived by the state as the Party carrying out a revolutionary agenda, and Section 98 seemed the logical choice for stopping revolution. Cultural perceptions played an important role in maintaining emergency measures.

THE CPC AND THE NATIONAL QUESTION

Many authors have detailed the CPC’s early history, and so I will revisit only the most pertinent details for the sake of brevity. The CPC was created out of an amalgamation of like-
minded leftist groups that took place over several years with the earliest version of a Canadian Communist Party existing in secret in 1919. Following the successful 1917 Russian Revolution and the creation of the Communist International (CI), the CI openly supported the creation of communist parties throughout the globe. The Canadian version originated in 1921 near Guelph, Ontario. From its inception, the CPC had accepted the discipline of the CI, as Ian Angus argues, ‘as binding upon all delegates present and ...its entire membership, without any reservations.’

For much of the 1920s the party concentrated its efforts within the trade union movement where the party sought to unite workers on the basis of their industry and not their individual trades by merging craft unions, often working against other established organizations such as the American Federation of Labor (AFL) and the Trades and Labour Congress. In addition to work within unions, the Party set up other subsidiary organizations such as the Canadian Labour Defense League (CLDL) in 1925 to assist workers who were arrested for engaging in militant activity, such as strikes, and the Young Communist League (YCL) in 1924.

With the Party heavily invested in industrial unions and industries, it attracted a large foreign-born membership. Immigrants with some experience in their homelands with socialism or communism helped provide necessary leadership roles within the Party. Language branches were always a central component of the Party; they supported the foreign-born membership and encouraged recruitment in working-class, immigrant communities. The relationship with these branches would become strained as the CPC shifted its policies in the late 1920s to be in line with the CI.

During 1928, Joseph Stalin moved to take control of the Soviet Union and eliminate his rivals. Stalin and Nicolai Bukharin (a prominent Bolshevik theorist who fell victim to Stalin's purges in the 1930s) argued that capitalism had entered its ‘Third Period’ which was the last
phase of capitalism and thus its demise was near at hand. While many communists had come to believe that Stalin had foreseen the coming Depression, there has never been any evidence to suggest that he knew that the world economy would soon collapse. The pair argued that after the Great War, capitalism had gone through three phases of development and that it was in its final Third Period in 1928. It would soon be in a state of crisis because of increased worker dissatisfaction, due to capitalism’s increased production demands, and would soon fall to a worker-led revolution. National parties were required to adhere to a policy of strict discipline in preparation for capitalism’s demise. At the Sixth Congress of the CI in Moscow, the CI changed its policies so that all international parties were to adhere to the principles of the Third Period, which entailed (in the name of resistance to fascism) fighting with social democrats and other labour groups, and contesting them whenever possible. These groups were seen as not being real revolutionaries in that they stalled the collapse of capitalism by seeking to work with other capitalist parties in preserving the capitalist state and reforming it— which the Third Period hard-liners believed was impossible. Third Period ideology thus viewed social democrats as ‘social fascists’ for their perceived devotion to the capitalist state. Moscow and the CPC were obsessed with having workers view the CPC as leaders of the labour movement rather than their social democrat rivals. Within Canada, the newly formed Workers’ Unity League (WUL), which was affiliated with Moscow’s Red International of Labour Unions and largely controlled by the CPC, would help to create revolutionary unions. By 1929, the CPC had adopted Moscow’s new line and was purging itself of more moderate members who opposed the Stalin line, such as former leaders Maurice Spector and Jack Macdonald.¹⁰

National parties across the globe were strongly tied to Moscow, but there is no agreement as to how subservient they were.¹¹ What is significant is that by 1929, when the Party leadership
had agreed to follow Stalin’s new line, with Tim Buck as the new leader, they called for a ramped-up public campaign that sought to bring the class battle out into the open streets in cities across the country, to organize and lead the unorganized including the unemployed, and to create new revolutionary unions that would contest more moderate labour unions and eventually form the backbone of a new workers’ army.\textsuperscript{12}

The Third Period demands of the CI clashed with the reality of party recruitment in Canada. While the Party certainly needed its ethnic base, it desperately needed Anglo and French members to appeal to the Canadian masses. The ethnic conflicts taking place within the CPC demonstrated just how different the CPC's view of a Canadian nation was from mainstream Canadian society and how the party struggled to implement Moscow’s policy given the importance of immigrants to the CPC.

Under pressure from the CI in Moscow to incorporate more Anglo-Saxons into the CPC, Tim Buck noted in a CPC meeting that ‘the language of Canada (outside Quebec) is English, while our Party is 90% foreign.’\textsuperscript{13} Historian Ivan Avakumovic argued that for Anglo-Saxons who came into contact with Communists, the largely foreign makeup of the Party made it look like a movement composed of ethnic aliens.\textsuperscript{14} Party meeting minutes and CI directives throughout the Third Period frequently stressed the importance of acquiring more Anglo-Saxon and French-Canadian members. As suggested by an attempt in 1931 to recruit members in south Winnipeg, the CPC was frequently frustrated in such campaigns.\textsuperscript{15} By 1934, the Party viewed itself as one that was isolated from the majority of workers, except immigrants.\textsuperscript{16} A Party resolution dictated that the solution was to overcome the 'lopsided development' of the Party by recruiting at least 150 Canadian-born workers in Anglo areas of the city.\textsuperscript{17} The top party brass made their concern with the failure of the CPC to recruit Anglo-Saxons quite clear during
elections. In one instance, Buck claimed that ‘for a couple of months I was overwhelmed with invitations for supper to Ukrainian and Jewish comrades to meet other Ukrainian and Jewish comrades. I have yet to meet an Englishman at one of these suppers.’

Buck was not alone in his frustration. The CI frequently voiced its displeasure with the Party’s inability to secure more Anglo-Saxon members. Without them, the CI opined, the CPC would not reflect the composition of the working class in Canada. The party devoted more resources to studying why the party was failing to register among Anglo-Saxon voters. Relations with ethnic groups in the party, such as with the Finns and Ukrainians, were strained on more than one occasion. Indeed, Ukrainians in the Party considered themselves to be ‘Ukrainian Communists.’ A similar view was expressed by members of other ethnic groups that blended their culture with their political lives such as Finns, Yiddish-speaking Jews, Poles, Germans, and Croatians. At times, the Anglo CPC leadership and its Ukrainian and Finnish critics would take their disputes all the way to Moscow.

The language used by some Anglo party members occasionally contained strands of resentment and hatred when discussing the large ethnic makeup of the CPC. In one meeting, the minutes show that ‘some comrades believed that if some immigrants left the party,’ it would be a ‘better party.’ Appearances mattered. If the CPC were to appeal to Anglo-Saxon or Canadian-born residents, it had to look the part. Rather than valuing its many minority members, the party sometimes viewed its foreign members negatively, as elements undermining its attractiveness to the Anglo-Saxon majority.

The failure to secure more domestic-born workers was not solely due to the Party having an Anglo/French-centric view. Party members struggled to implement Moscow’s directives. The large number of linguistic minorities within the Party posed practical problems for the CPC —
financially and logistically. In February 1926, the Ukrainian Labour Farmer Temple Association (ULFTA) had made it known to the CPC that it desired a youth group of its own, to which it could teach politics and the Ukrainian culture, in addition to running ethnic-based magazines. The Party was initially opposed to the idea, not because it was afraid it would dissuade Anglo-Saxon youth from joining the party, but because it feared that Ukrainian youth would leave the Party’s Young Communist League in favour of this new group. The Party was concerned about who would finance the ethnic magazines. After much debate, the youth group was permitted to go ahead, but its publications were not funded by the party.23

The diverse ethnic groups within the CPC made translation a real problem for a cash-starved organization. A meeting in September 1926 discussed the difficulties of managing so many diverse groups of immigrants. Conducting business in numerous languages was viewed as a major problem and the party attempted to reorganize its membership along language lines as opposed to regions which, it was hoped, would decrease the number of languages and hence translators. Despite the problems with organizing and communication, the party acknowledged that it had to make ‘whatever concessions’ were necessary because it could not afford to lose any support among its foreign members.24

Evidence that the Party feared it was losing control of ethnic members appeared frequently in Party documents. On 14 March 1926, the CPC desired an increase in ‘Canadian content’ in the Finnish paper Vapaus. The Party thought it would make the paper more relevant to English readers and make supervision of the paper’s content easier for Party leaders. The motion was opposed by Finns who viewed the action as an unwanted Anglo-Saxon incursion into a Finnish paper. In the same meeting, the CPC discussed the request of its Finnish and Jewish
members for more sporting organizations. The central concern of the Party was that it would lose control of these social groups, if the sporting groups were created.\textsuperscript{25}

Under Third Period conditions, such debates intensified. The drive for a monolithic party, combating social fascists and locked in life-or-death struggles, pushed ethnic minorities to the margins—paradoxically, the very nativism of the state’s repressive campaign against the party meant the CPC could not really transform itself into an all-Canadian party. The CPC’s turn toward the new line of the Third Period exacerbated tensions in 1929-30 between the Finnish, Ukrainian, Jewish, and Anglo-Saxon leadership, resulting in the purging of members from these often semi-autonomous groups.\textsuperscript{26}

The Comintern was called to resolve conflicts between groups and frequently had to remind leaders of the role of ethnicity in the Third Period. In a letter from the Executive Committee of the Communist International, the Comintern wrote that sectarianism and what it termed, ‘narrow nationalism,’ had to be fought by the Party, only ‘committed communists’ should be recruited.\textsuperscript{27} The Party and the Comintern were concerned that the various ethnic groups established would become social sub-groups detracting from party politics. But the CPC leadership and the Comintern did not recognize the importance of these social gatherings for ethnic groups. Indeed, as Ian Radforth, Carmela Patrias, and Ruth Frager have demonstrated, left-wing groups of Finns, Jews, and others, viewed themselves as living the revolution in their daily lives and the plays, concerts, and other activities that took place in their ethnic halls served both cultural and political purposes.\textsuperscript{28}

Support for the unemployed demonstrated the Party’s support for ethnic diversity. The party regularly challenged ideas of racial hierarchy and demonstrations provided opportunities for foreign and British workers to accomplish symbolic unity. While ethnic disputes were not
entirely solved, Anglos were joining the Party because of its support for the unemployed. Between 1929 and 1934 it saw an increase in Anglo members from 5 to 25 per cent.\textsuperscript{29}

Alongside such Third Period disciplining of the often rebellious language groups, one must set the new emphasis on the nation. At a meeting with foreign workers’ delegations in 1927, Stalin outlined the Communist position on the national question. When asked how Russia differed from capitalist countries in its treatment of minorities, Stalin replied that in capitalist states ‘second class nationalities’ are created because of nationalist oppression. In the Soviet Union, he believed that national inequalities and oppression were eliminated. He claimed that self-determination of nations led to different nationalities voluntarily uniting into one federated state. He viewed it a policy of ‘national equality.’\textsuperscript{30} To be a loyal Communist was to validate the nation and encourage its self-determination.

Self-determination and national autonomy or cultural-national autonomy were not equal concepts. For instance, Stalin argued that only supporting cultural autonomy encouraged separatism within a state. Cultural autonomy was not real political power. It was illusory and served only to divide people along national lines, placing emphasis on cultural differences, and thereby encouraging war and division. Workers and bourgeois, despite any shared national culture, were culturally different because of their class. Cultural autonomy in capitalist states divided the proletariat along national lines and ensured their continued enslavement by the bourgeois.\textsuperscript{31} Stalin argued that only self-determination, in the political sense, would ensure true national liberation. Ethnic minorities living in a land dominated by one nation must have access to equal rights to ensure their self-determination. Regional autonomy was viewed by the Center as a central component to self-determination. Moreover, class would serve to bind diverse groups of nationalities in their quest for self-determination. But the Soviet policy toward the
national question shifted over time. Prior to 1917, self-determination for national minorities was of paramount importance in solving the national question. After 1918, Stalin still supported self-determination, but only if it could ‘be subordinated to the principles of socialism.’ Stalin believed that through socialism the problem of ‘backwardness’ could be overcome because ‘these peoples [national minorities in Russia] … were mistrustful of the Russians, and were deeply influenced by religion.’ The immediate task of Soviet power then, was to improve their economic condition, to provide educational facilities, to attract as far as possible the local intelligentsia, and to conduct socialist propaganda in the local language. Through these efforts, national minorities would achieve a ‘higher stage’ of socialism. An example of Stalin's argument in the Canadian context would be the Francophone population whose oppressors were the Anglo population, both in a class and ethnic sense. Helping the French Canadians achieve national self-determination, while still under socialism, would allow them to be truly liberated. Indeed, the CI had instructed the CPC to further draw out the French-Anglo tensions to win over more French-Canadian workers to the Party.

In 1934, Stalin explained the importance of national liberation movements to the Communist Party. National equality would result from the removal of bourgeois oppressors. The national question would be resolved by ‘…fighting for the right of nations to self-determination, the aim of Social-Democracy is to put an end to the policy of national oppression.’ Capitalist states, he claimed, fanned the flames of nationalist divisions to exploit them. Class conscious workers could never truly rally around the ‘national’ flag of capitalists.

International solidarity would allow people of different nationalities to assist each other in national self-determination movements as well as achieving class equality. For many Ukrainians, Finns, and Jews, and other national minorities, the Soviets held out a promise of
national liberation within a new social and political order. The Soviet Union could provide a way for these national groups to fulfill their goals of self-determination and autonomy while remaining a part of the communist movement. Stalin’s theories and the reality that faced national minorities who wanted self-determination were quite different. There are far too many examples of how Stalin violently sought to achieve his version of ‘national equality.’ But while these promises were brutally and violently betrayed by Stalin, this should not detract from the widespread belief in them in the early to mid-1930s.\(^36\)

On 22 January 1931, the CPC made clear its views with respect to immigrants. The minutes of a Polibureau meeting state that many immigrant workers were largely involved in unskilled work or were unemployed and were the lowest paid and most exploited of the proletariat. The minutes addressed the national question stating ‘…one of the most important needs for mobilizing the workers IS THE UNITY OF THE NATIVE AND FOREIGN BORN WORKERS WITHOUT WHICH NO REAL MASS CLASS STRUGGLE IS POSSIBLE.\(^37\) As much as the Party wanted to increase Anglo-Saxon membership, it greatly desired unity between native-born members and the foreign-born. Ethnic divisions would only serve to fracture the Party and allow the state to unify workers under its nation. A patriotic immigrant, devoted to the Canadian nation, would be obliged to sacrifice his or her national self-determination, and forced to assimilate to the capitalist nation, resulting in national and class oppression.\(^38\) The meeting minutes outline the need to build the ethnic press in Canada. Language organizations might serve as the bridge between immigrants and the CPC. Providing immigrant workers with sport and cultural activities was important, although the Party believed it could not risk letting these leisure activities ‘become an aim in themselves.’\(^39\) The CPC could not risk engaging in cultural-
autonomy policies alone, which could result in division or separatism, thereby splitting the Party along national lines.

The CPC thus positioned itself as a radical political alternative within Canadian society by 1929. It simultaneously welcomed ethnic diversity within the party and marginalized it by seeking more Anglo-Saxon and French-Canadian members, all the while stressing that although immigrants were welcome, culture was to be subordinate to the principles of socialism. The CPC was, implicitly, imagining a socialist, post-British, non-racialized nation.

The CPC took a radical stance in advocating for equality between men and women. The CPC’s position was largely based on its understanding of the ‘Soviet woman.’ Women were emancipated under Soviet law and, like their male counterparts, could work in any position. Though the sexes were officially equal, women held few posts in the Comintern and none in its upper echelons of power. Still, communism offered advantages to Canadian women. In Canada, women were only legally declared persons in 1929. Women in the civil service had to resign their positions if they married. The CPC did its best to publicize the role of women in Soviet life and in the communist movement, broadly speaking. During International Women’s Day celebrations, the CPC made demands in marches for unemployment insurance for all workers, sought the creation of day-care facilities, paid maternity leave, an end to discriminatory treatment of married women workers, and the creation of school meal programs and clothing for children of unemployed workers. There were no groups, other than the CPC, calling for such changes and for a number of women, the CPC held out promises of utopia.40

The Party did try to put some of its beliefs into practice by following Moscow’s lead and creating a Women’s Department within the party. Headed by Florence Custance in 1922, the Department was instrumental in helping bring together women in different ethnic groups. In
1924, under the Women’s Labour League (WLL), it published its own paper, the *Women Worker*; the paper recognized oppression against women in the workplace and at home.\(^{41}\) Several women occupied important roles in the party, most notably Becky Buhay, Jeanne Corbin, and Annie Buller. But while the Party claimed to support the place of women in the Party, its Third Period turn wanted to bring women’s groups under Party control. Custance, who died in 1929, was posthumously accused of taking a ‘right deviation.’ Women’s groups were increasingly viewed by the CI as pursuing separatist agendas when the real struggle, according to the CI, was the class struggle. The family increasingly held more importance to the Soviets, and the Party and the CI scorned homosexuality or any other unconventional [sic] unions. While marriage was expected to be between equals, as Levesque states, ‘equality referred more to wages than the laundry.’\(^{42}\)

Despite the Third Period demands, women continued to play crucial roles in the CPC and the movement. Only the CPC had made such explicit and vocal demands for women’s equality in Canada, the Party’s own limitations in this area notwithstanding. Of those that engaged in pitched battles and occupied leading posts in the Party like Corbin or Buller, their dedication, tenacity and courage were never in question. As for other women married to Party members, their activism was not so easily measured, as they were often absent from official meetings and marches, largely because they did the tasks their male counterparts abstained from, such as raising children and work in the home. For young, single women the Party offered more freedom than they could find in any other group.\(^{43}\) The CPC presented a radical deviation from mainstream cultural ideas about women’s rights in Canada.

In addition to the CPC’s promises of equality for women and attempts to bring together Anglo, French Canadian, and immigrant workers under the banner of communism, it wanted a
new relationship between Canada and Britain. In an interview with the Star in 1927, then Party leader Jack Macdonald put forth the CPC's position toward the U.K. He argued along the lines of Lenin, that imperialism worked to the detriment of the working-class, bluntly stating that sovereignty for people would only be obtained with the end of imperialism. The Party stood for Canadian independence from Britain, and Canada should sever its relationship with Britain and refuse to fight in British wars. Extending the argument, Macdonald proclaimed his support for ‘national colonial movements everywhere.’ When asked whether the Party was actively working in Canada to support independence from Britain he replied that it was. He claimed that even if workers achieved their goals through the Parliamentary system, he questioned if they would ever be realized because ‘the ruling classes have always used force.’ Both Macdonald and former leader Maurice Spector detailed their support for the Soviet Union and strongly believed that the U.K. was preparing for war against the Soviets, a line frequently touted by Moscow at the time.

The position taken by the former leaders was met with conflict as members struggled to find their footing in Moscow's new line. Sam Carr, a leading member of the Party, had a different vision than Macdonald and claimed that the first priority should be to fight against the Canadian bourgeoisie which, he claimed, was the principal oppressor of the Canadian working-classes and held more power in Canada than their British and American counterparts in the country. By 1931, Carr's version of struggle won out among Anglo members. In spite of the party's desire to battle the Canadian bourgeoisie first on the way to revolution, the Party did continue to bring attention to what it believed were imperialist actions across the globe. This propaganda was motivated by a fear that an international conflict was a threat to the Soviet Union, as the CI often claimed. The communist paper The Worker drew attention to and supported mass demonstrations in Ireland for Irish independence, opposed British military
actions in Yemen, supported Philippine peasant uprisings against landlords, opposed European imperialism on the African continent, and British rule in India. It is unknown how widespread support for such movements was on the ground within the Party, but it regularly publicized its opposition to colonialism throughout the globe.\textsuperscript{46}

The CPC needed to recruit the most exploited members of the working-class, such as women and immigrants, into what was essentially an international communist culture or even nation. This collective movement was held together through a mixture of force and consent. One had to be a member voluntarily, but purges were used by the leadership to ensure one's loyalty. It explicitly opposed what it saw as British imperialism and colonialism in Canada as well as abroad. This was the CPC's vision for a future Canada: a society that respected cultural differences, espoused equality between men and women, was economically and politically a communist state united with other communist nations and independent of British rule, for Canada would never become a workers’ republic as long as it was under the British monarchy. The communist nation would resemble a community of communities, united internationally. In joining the CPC, one’s imagined community was based on class rather than ethnicity or gender. In spite of these ideals, centralized control was still present in the movement. While members struggled to interpret and implement Moscow’s directives, directives from the CI were still expected to be followed. In sum, the communist movement or conception of the nation was antithetical to the dominant British model of Canada in the interwar period.

‘FOREIGNERS… WHO HAVE NO INTEREST IN OUR COUNTRY’

For Canadian authorities, the potential threats to the country from previous years remained as the 1920s drew to a close. The fear of a return to 1919 and the British activist remained, but much more pressing was the current spread of communism in Canada which was
present in a number of ethnic communities: Finns, Ukrainians, Poles, Germans, Croatians, Hungarians, Russians, and Yiddish speaking Jews. In its security bulletins, the RCMP monitored these communities and noted any public meetings held by 'foreign-born revolutionaries.' CPC ideals of a socialist, post-British, non-racialized Canada that would come about through a worker-led revolution did not sit well with Canadian authorities. The RCMP's very creation was tied to monitoring leftist activity and it was focused on communism for much of its history. As early as 1921, the service trained agents to go undercover and become active members of the CPC, most notably John Leopold, alias Jack Esselwein, who would later testify for the RCMP at the CPC trial in 1931.

If communism was perceived by some politicians to be entering Canada during the mid-1920s, by the late 1920s and early 1930s, it was rampant. From 1928-1930, communism was frequently cited by politicians as the new threat that endangered the nation and made Section 98 and Section 41 all the more valuable. Throughout 1928-1929, the CPC openly confronted the police, particularly in Toronto, as communists agitated for their right to free speech by making public speeches and leading large public rallies. The frequent attempts by the police to break-up CPC public meetings or rallies resulted in the emergence of a free-speech campaign that involved professors at the University of Toronto. These Communist speeches and public gatherings were anathema to Brigadier-General Denis C. Draper, Toronto's new Police Chief in 1929, who led the Toronto police in its attacks on reds. He made clear, in a speech to the Empire Club of Canada, that a good citizen was one which possessed 'loyalty to the British Empire,' and a good Canadian was a citizen that was 'endowed with... true and loyal patriotism.' Communists were opposed to capitalism and the government and far from Draper's view of the good citizen.
Police violence against CPC members and supporters occurred in cities throughout the country, but despite the CPC successes in gaining the sympathy of some members of Canadian society, the CPC agitation failed to translate to votes at the ballot box. The government was aware of these failures. For instance, in the 1930 federal election, Richard Bedford Bennett led the Conservatives to a majority over Mackenzie King and the Liberal party. The CPC contested nine constituencies, and only managed 7,601 votes out of the total 168,540.

During the heated exchanges between police and Communists, there were three last-ditch efforts to have Section 98 repealed before the Liberals lost the election to the Conservatives. All attempts failed. The frequent attempts to repeal it had grown tiring, even for the Liberals, with Lapointe stating in 1930, 'Clause 2 covers the same bill as has passed this house six times...This has been debated so many times that I presume I need not again give the purpose...'52 The bill received no debate and was quickly passed, but handily defeated by a Conservative-dominated Senate.

There was one area where the Liberals did have some success. On 30 April, the House debated and passed Bill 187 to amend the Immigration Act's Section 41 to allow for the protection of British subjects from deportation, if they had acquired naturalization. The Senate finally agreed to pass the bill. As long as individuals could still be deported for their political views before naturalization was acquired and Section 98 remained in the Criminal Code, the Senate believed this combination to offer enough security against British activists particularly since the U.K. had jailed the CPGB’s leading members and was aggressively targeting the communists there. Other foreigners were a more pressing threat.

With Bennett’s Conservative party at the helm, pressure on politicians and law enforcement to prosecute the CPC continued to grow from a number of places. The shift in the
authorities’ attention was now on foreign communists, not from the U.K., but from Eastern Europe. Ideas of what was truly British, and hence Canadian, were espoused by many. Industry groups across the country wanted the government to take action against communists. In 1932, J. R. Smith of West Canadian Collieries Ltd. in Alberta wanted to be kept up to speed on what actions were being taken by the government in regards to communists and warned the government of the red penetration of the ‘foreign element,’ which was causing difficulties for his industry. Communists, he stated, might not do any harm in a community where there was a larger percentage of ‘English speaking people,’ but could certainly ‘inflame the minds of the foreign element.’ The government’s duty was to prevent the communists from influencing immigrants. Writing to Prime Minister Bennett in 1930, G.L.E. Strong, of Sherwood Foresters, believed that the problem of communism was linked to immigration from eastern and central Europe that was causing discontent among his workers. It was only being spread by a few ‘English speaking renegades.’ Strong thought that tightening up immigration by not allowing more distant family members of settled immigrants to immigrate might alleviate the problem.

The Employers Association of Manitoba met with the Winnipeg Board of Trade and two federal ministers, W. A. Gordon, the Minister of Mines, and T. G. Murphy, the Minister of the Interior. As a result of the meeting, the Association sent Justice Minister Hugh Guthrie a list of the Fish Commission recommendations which had recently concluded in the United States. The Commission looked at the penetration of communism into American society and suggested ways of containing it. The Employers Association sent the same recommendations to Bennett. The recommendations included increasing police surveillance of communists, tightening immigration, and declaring ‘illegal any CP branches operating as a section of the Communist International or any part of a CP’ that was ‘advocating the overthrow of our form of government.
by force or violence or affiliated with the Communist International at Moscow be declared illegal [sic]. The Employers Association of Manitoba used the identical wording of Section 98 to drive their point home. Much like the Canadian business community during the Winnipeg General Strike, industry groups had an important impact on how the government dealt with communism in Canada during the Depression.

Bennett’s office was flooded with letters from city councils from across the country that supported a motion originally put forth by the Sudbury city council. The motion called on the federal government to ‘deport undesirables and communists.’ Again the connection was made that all communists must necessarily be foreigners eligible for deportation. Many municipal leaders held these views. In June of 1929, in a meeting between Mayor Craig of Kingston and Mayor McBride of Toronto, Craig quipped that Toronto's communists had made it clear Kingston was more British than Toronto, because in Kingston, 'we are all British.' McBride promptly corrected him by stating that 'Our stopping of Communistic meetings shows that we are truly British.' The repression of activists in Toronto was considered a necessary measure in protecting Toronto's Britishness.

Bennett’s government took an interest in all the suggestions. Indeed, not much persuasion was needed to convince Bennett’s government to take action against communism. The Prime Minister played an active role in intelligence matters and had no problem taking matters into his own hands. He had in his possession membership lists of Communists; these lists included a person's name and home address. He occasionally asked people who wrote to him complaining of communists to supply names of reds to forward to the RCMP or Immigration Department. In one instance, following the CPC trial, a letter was sent to Bennett from a man named Nicholas Mihaychuck, protesting the imprisonment of the CPC leaders and demanding
the repeal of Section 98. Bennett forwarded the man's name and information to General MacBrian of the RCMP and instructed MacBrian to cancel the man's naturalization certificate if possible (if he had one) and deport him. Bennett told MacBrian he did not like the man's 'impudent tone' toward the 'administration of justice.' Bennett supported tightening immigration to prevent more communists from entering the country. His personal role in helping to prosecute communists was connected to his strong religious outlook and his overly controlling manner of running the government. He was ridiculed for once referring to the federal government as 'my government' and for strictly controlling his cabinet ministers. He rarely responded to letters about communists, except when he received a letter from someone expressing anti-communist views or from members of the religious community.

Many religious leaders shared these views. A missionary conference of the Knox Presbyterian Church on 7 May 1929 asked its members if 'this country is going to keep British or is it going to turn foreign?' Those in attendance replied 'British for all time!' The question was posed by the Reverend Hanna of the Knox Church. It hosted a meeting that welcomed speakers from an anti-communist group called the Canadian Christian Crusade (CCC). Hanna noted that 38 different languages were being spoken in Winnipeg and that 48 per cent of the population of Saskatchewan was comprised of foreigners. If they were 'properly' assimilated to British ways, they would avoid the perils of communism. 'Me swear...me drink whiskey, me a Canadian,' was the mistaken view these foreigners had of Canada, said Hanna. 'We have a great task on our hands to educate, and civilize and Christianize these people,' he continued. Civilization was tied to Christianity and Britishness.

The Presbyterians were not the only religious group concerned with the godlessness of communism. The Catholic Church assisted the RCMP in spying when it could. The Church
supported the Toronto Red Squad’s attempts at cracking down on suspected reds. The Church publicly defended the harsh actions of Toronto police against communists. RCMP surveillance records were found within Archdiocesan files. The files focused on immigrant groups such as Ukrainians and Finns who, according to church officials, sought to ‘implant in children atheistic, revolutionary and communistic opinions and prejudices.’ The children would eventually regard Russia as its own, the Church feared, and scorn religion and their own government.  

Foreigners in Toronto were corrupting the youth and children of Canada with radical ideas. In addition to the Catholic Church in Toronto, in Montreal the Catholic Church engaged in an anti-communist campaign aimed at preventing Francophone workers from joining the party.

Within the communist section of his papers, Bennett kept books that were anti-communist in nature which explained communism and its dangers. This material helped form the P.M.’s worldview of communism and leftist activists. Other prominent Conservatives shared these views. Ontario Attorney General, William H. Price, wrote—in regards to Buck et al.’s appeal after the 1931 trial—that ‘Canada’s foundation rested upon Christian civilization. We have a constitution that spells liberty and peace. Communism brings not peace but a sword, and for that reason is not welcome in our midst.’ Price went on speaking tours denouncing communism’s influence on Canada’s Christian roots. At an annual meeting of the Orange Order, and in speeches at Knox Church in Toronto, Price detailed how the fight against communism was a fight against atheism. Communism was against the King, who obeys the law and fears God. Because it breeds atheism, Price claimed it ‘aims at the breaking up of the family.’ The individual, he argued, was central to the family and parental responsibility. Communism’s focus on ‘the masses,’ he said, ‘wipes out the home and creates a commune.’ It creates ‘free love, as we rear our children like animals,’ with ‘the State herding the children’ into groups and
eliminating parental responsibility. For Ontario’s Attorney General, and the Prime Minister, communism’s threat to Canada’s religious institutions threatened their conception of a paternalistic and hetero-normative view of the family. By seeking an egalitarian society, the role of the father in the family, indeed of both parents in Price’s eyes, would be gone. For Price, a family was a heterosexual, married couple with children. For him and other leading Canadians who saw the family as being the central regulating body for society, communism threatened society as a whole: the State in a free-love society, without traditional marital bonds, raised animalistic children who lacked the firm and paternalistic structure the individual family unit provided.

Several judges, such as Emerson Coatsworth and Robert Brown, who worked on other communist trials, believed that the values of a liberal Canada were synonymous with being British, while communism was foreign. The sacredness of property and the rights of property owners, held to be British values, were paramount. They agreed with Crown prosecutor Wilkins, when he argued that ‘the Communist Party is made [up] of foreigners… who have no interest in our country, by that I mean they do not hold any real estate.’

In referring to communists as foreigners, Mayor McBride of Toronto felt that ‘foreigners should not be allowed to come here and undermine the religious views of our young people.’ Indeed, the atheistic element of communism, warned The Globe’s editors, could result in the ‘plant[ing of] a tree whose fruit will mean the downfall of nations.’ At a University of Toronto debate on free speech in 1929, McBride remarked, ‘We are not opposed to free speech, but we are opposed to Communism because of the way it preaches sedition, blasphemy and slander.’ At an Orange Lodge meeting, McBride criticized the professors at the University of Toronto who dared believe that communists should have the right to free speech, stating, ‘If that is the kind of
ideas the university is putting into the heads of the young men of this city, it is time we got rid of those teachers...’

It was not only business, church leaders, and politicians that shared these views about communism. Similar sentiments appeared throughout the popular press. The editorial in The Globe on 23 January 1931 stated that the risk of ‘Red free speech’ and propaganda would not work on the ‘intelligent British born or French-Canadian.’ Immigrants who were unaware of British traditions were the most vulnerable to the ‘enemy within the gates.’ The police and educators’ duty was to protect and help immigrants become ‘good British citizens,’ and thus believe in liberal ‘British’ values such as the right to own property. The Mail and Empire commented that Canada was soon to be overrun by foreigners, and that it must ‘remain British in its ideas and culture’ and the balance of the immigrant stock should be from places that believed in the ‘ideas of freedom.’ The Telegram in 1929 stated that ‘the loyalty of the British born...from the slums of London or Toronto is to be preferred to the mongrel internationalism of a transported Europe.’ Letters from the public contained similar statements. ‘Common Sense’ criticized the idea that any communist should have a right to free speech, saying: ‘Men seek to incite their fellowmen to sedition and revolution using a foreign jargon to conceal their propaganda. Are not the authorities justified in putting a stop to it? ...Your anarchist is a far greater menace to society than your sneak thief.’ The American Federation of Labor declared its support in fighting communism. Canadian branches of the Ku Klux Klan supported the fight against communism and foreigners which played into its ideology that all non-Anglo-Saxon immigration should end. For its part, the Orange Lodge resolved at a national meeting that the federal government should prevent the spread of communism by requiring every voter to first attest to their belief in the deity, their allegiance to the King, and their ability to read and write
English. Various ethnic organizations were eager to denounce communism, including the Ukrainian, Hungarian, Croatian, and Serbian communities. Long-standing ethnic conflicts played out in the hunt for communists. In a letter to Bennett in 1931, Mike Borbowski, writing on behalf of the Welland, Ontario Polish Society, protested the abuse of Poles by Ukrainians within the Polish community, claiming the Poles were Canadian citizens while the Ukrainians were all members of communist organizations.

In formulations of good citizenship, Britishness, Christianity, property, and propriety were combined, while those who were beyond the pale were a threat and should be deported. Canada's institutions needed to be defended against unseen, foreign intruders, particularly in the exceptional economic climate of the times. In the House of Commons, G. B. Nicholson argued that the CPC was based in a foreign country and sought to ‘undermine Canadian institutions as well as those of every other country similar to ours.’ In a letter to Prime Minister Bennett, Alberta Premier Brownlee argued that deportations could help stop foreigners getting free meals at the expense of the government. There was no trouble in the province with who Brownlee considered to be ‘our own people’ i.e. ‘English and Scots.’ Premier Tolmie, of British Columbia, believed that communists were foreign disturbers. Tolmie maintained that the situation in B.C. was grave, and that reds with English and Scottish names were giving the public ‘false impressions’ about communism—which was clearly foreign. Both premiers called on the government to step up prosecutions and deportations of communists. Prime Minister Bennett agreed with his premiers about the value of deportation in protecting British subjects and preserving Canada's British values and society. Bennett instructed Tolmie to give him the names of alleged communists as soon as they were convicted, so that he could immediately forward the names to the Department of Immigration. The government would then begin
deportation proceedings. Bennett viewed communism as an attack on Canadian civilization.

Quebec's Liberal government, led by Louis-Alexandre Taschereau, violently sought to crush communism and had support from Quebec's Catholic community. Montreal Bishop Gauthier feared communism was less interested in overthrowing capitalism than it was in condemning Catholicism. So great was this fear that all Montreal churches on 25 January 1931 condemned communism during the morning homilies. Communism was frequently damned in Henri Bourassa's Catholic newspaper *Le Devoir*.

Prosecutions of prominent and low-level CPC members were frequent. In 1932, Taschereau, who served as the Attorney General, asked Chief Maurice Lalonde of the Province's police service, to have stenographers record every speech given at public Communist meetings. Like Toronto, Montreal had its own Red Squad and worked with provincial police and the RCMP in tracking communists through the use of informants. Even prominent, moderate leftists such as F.R. Scott and Eugene Forsey were regarded by RCMP informants as being 'communist agitators.'

‘FOREIGNERS, PARADING THE TOWN...HAD A TERRIFYING EFFECT ON A LOT OF PEOPLE’

The government recognized the CPC's ability to organize with minimal resources unemployed workers across the country. As the economic crisis deepened, the highly vocal, public agitation of the CPC for the right to preach its doctrines shifted to advocating for the right of the unemployed to receive relief. The unemployed provided the CPC with more potential troops, with little to lose, who could be persuaded to see the economic crisis as the result of the
failure of capitalism. The CPC strategy focused on the lack of relief for the unemployed. It pressured the government for the creation of a national, non-contributory form of unemployment insurance. Bennett's government opposed unemployment insurance—partly out of the government's ideological belief that it would not provide hand-outs and partly due to an inability to provide such a program because of constitutional limitations. The Depression enabled the CPC to conduct large rallies and marches of unemployed workers in cities across the country. In several Ontario cities, such as Port Arthur and Fort William (now known as Thunder Bay), Sudbury, and Cochrane, nearly 1,000 unemployed workers marched through the small towns. In October 1930 in Port Arthur, both the Mayor and Crown Attorney of Port Arthur pleaded to Ottawa and the Attorney General of Ontario for assistance. The unemployed (who were considered communists) had claimed during marches and parades that they would begin destroying shops and property. An RCMP detachment was sent to break up the marches. In the case of Port Arthur, raids led by the RCMP and local police were conducted of various homes and offices believed to be linked to the CPC.

The men’s status as single and unemployed increased the government’s anxiety. Many believed communism supported the break-up of the traditional family unit. In the eyes of authorities, communists were corrupting these single men and luring them away from pursuing a family and employment. For instance, the Crown Attorney of Port Arthur was relieved when Mounties arrived. ‘If they had not been sent,’ he wrote, ‘I am perfectly sure there would have been a lot of bloodshed. You can understand that hundreds of men, almost all foreigners, parading the town, threatening to take possession of the place, had a terrifying effect on a lot of people.’ The invasion of foreign single men had been firmly quelled by the strong, masculine Mountie presence. Cultural perceptions of communism led authorities to see the unrest as the
start of a foreign, communist-led revolt and responded to it with force. Personal letters from unemployed workers to Prime Minister Bennett during the Depression reveal that many unemployed workers simply wanted work and not a wholesale change in the political or economic system. The marches themselves were assertions of masculinity by the participants in an expression of entrenched gender norms as men struggled to reclaim a lost sense of masculinity caused by their unemployment and loss of status as the breadwinner in the family. The Attorney General of Ontario, Colonel William Price who was a firm believer in Communism’s threat to the family, noted that it was the incident at Port Arthur that greatly motivated him to begin working on prosecuting the CPC.

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The RCMP assisted the government in preparing the case against the CPC and shared the government’s view of it as an alien group. It believed that a Section 98 conviction was the best way to stop the spread of this culture. For a conviction to be secured, authorities had to change the way they approached communism. The rallies the CPC held in Montreal, Toronto, and other areas, led to some members facing charges with small jail sentences or fines, such as vagrancy or charges of unlawful assembly, and none of these directly impacted the CPC on a large scale. Section 98 provided a solution to stopping the Party, but how it was used against the party had to change. For instance, in November 1929 Charlie Sims, a CPC organizer, and five supporters were the first individuals charged under Section 98 for distributing pamphlets advocating governmental change.

The case against the group, known as *Rex v. Emily Weir et al*, was the first test-case for Section 98. J.L. Cohen, a prominent lawyer who often assisted the CPC, was able to secure an acquittal and the charges were dropped. In his closing remarks, the presiding judge found that 'revolutionary' was too ambiguous, and regardless, the pamphlet did not fit this definition. If a
Section 98 conviction was to have maximum effect on the Party it would have to target the group as a whole. Police had to stop approaching the problem of communism on an individual basis. They had to stop prosecuting individuals for individual acts. Police needed their actions to be in line with their perceptions and approach the problem of communism for what they believed it was: a subversive foreign group seeking revolution. Only attacking the group as a whole, which the CPC represented, could stop it and Section 98 was suited for the task.

In 1931, the federal Conservative government, along with the governments of provinces such as Ontario and Alberta, and with the support of numerous municipal governments and leaders in industry and business produced an organized and coordinated effort to have the CPC declared an unlawful organization in violation of Section 98(1) between the years 1921 and 1930 and its members arrested.

Municipal, as well as provincial police, the Attorney General’s office, and even the Postmaster were all in close communication with each other throughout 1931. Reports in communist papers such as *The Worker* were constantly surveyed for signs of offending or illegal language. Sergeant Marshall of the Toronto police reiterated the cultural assumptions that communists were foreign subversives plotting revolution. In a letter to Draper, he wrote, ‘there is no way in which we can combat these people [communists] without force, as apparently the majority of Citizens do not realize how serious a matter it is, and what proportions things are getting to.’ Foreign revolutionaries had to be quelled with force.

Just months before the trial of Buck et al took place in Toronto, police chiefs from across the country met with RCMP Commissioner Starnes in the office of the Justice Minister Hugh Guthrie. While in press reports the government denied the meeting was to discuss communism,
in a letter to Attorney General Price, Guthrie confirms that communism was the major focus of the meeting:

Dear Colonel Price, I desire to draw to your attention the situation which exists throughout Canada and more particularly in the Province of Ontario in regard to Communist activities…which I fear has gained some foothold in Canada, more particularly during the past year and a half, while unemployment has been so general. Guthrie informed Price that the RCMP had large amounts of information that would prove useful to him including intercepted transmissions. For instance, Scotland Yard had furnished the RCMP with a copy of a telegram from Toronto to Moscow on 1 March 1931. The telegram was believed to have come from the CPC and possibly Buck. It stated that the ‘Canadian imperialist government took initiative in war preparations against USSR by placing embargo on Soviet imports.’ Canadian workers and farmers would be mobilized in a campaign against the embargo and ‘for defense of USSR.’ The telegram reinforced the view that CPC members were agents of the Soviet Union and not merely ideological followers of it. Guthrie stated that if Price concluded that action should be taken, the federal government and the RCMP would offer their complete cooperation, as the RCMP had undercover agents working within the CPC for years.

Joseph Sedgwick who worked in the Attorney General’s office remembers Price telling him in a meeting, ‘I’m under pressure from Ottawa to take action against the Reds.’ Price seemed to care little about the situation saying that he would go ahead with prosecuting communists so long as the ‘boys in Ottawa’ were satisfied. RCMP Commissioner Starnes told Sedgwick about an agent that agreed to testify against the CPC, later identified as Sergeant Leopold. His attempts at securing another former RCMP officer doing undercover work in the U.K. were unsuccessful; authorities in the U.K. wanted the officer to continue his work. Despite the events in Port Arthur, Price decided not to proceed with prosecution right away since despite all the
information he possessed, he still felt that making the case that the party supported the use of violence against the state would prove to be difficult.\textsuperscript{103}

Information flowed into Price's office as the months followed even on suspected communists from the past. In a memo from Price to fellow Crown solicitor Joseph Sedgwick, Price mentioned that Major Knowles of Barrie was in charge of internment camps in Nova Scotia and Kapuskasing during the war and had a list of 73 communists. Price suggested Sedgwick meet Knowles to discuss it.\textsuperscript{104} Indeed, Price was doing his best to accumulate as many names of communists as possible to aid in further prosecutions and deportations after the trial. Crown lawyers from Manitoba, Saskatchewan, and many Canadian cities complied, sending Price the names and addresses of as many communists as they could.\textsuperscript{105} The trial garnered international attention. The American Consul wanted to be kept up to speed on the prosecution should the Americans be able to use anything in prosecuting communists in the U.S.\textsuperscript{106}

The perception of communism as an alien ideology shaped the government's response to it. Communism was not a political ideology up for debate, its supporters were part of a culture that had to be resisted and stamped out. The CPC was a paradoxical organization in a liberal society, one that should not exist, but did: Communists were an ‘impossible subject.’\textsuperscript{107} Once the CPC began organizing the unemployed, the government saw exactly what it knew had been coming: the beginning of a communist led uprising. Stopping such an uprising was difficult and required the use of surveillance and undercover agents. A group working in the shadows, plotting revolution, needed to be targeted in a similarly secretive fashion. Foreign revolutionary fighters that had begun assembling their army of the unemployed needed to be put down with force. Whitaker, Kealey, and Parnaby have argued that in regards to the prosecution of the CPC leadership, the intelligence cycle worked in that authorities were successful in planning,
collecting, processing, analyzing, and disseminating intelligence which led to successful arrests and prosecutions of CPC members. While there is no dispute it worked, key to understanding how the cycle worked and how such targets of intelligence were ever identified lies in the cultural perceptions of the period. The cycle was shaped by cultural biases and perceptions. Who government authorities needed to target and collect intelligence on, and what it meant and what needed to be done about it, was funneled through cultural perceptions and stereotypes. The use of an emergency power against the impossible subject seemed logical for authorities. It was the context of the emergency, the exceptional period of Depression facing the country that convinced a right-wing government to act against what they had already been 'seeing' for years—the CPC plotting and now finally beginning to carry out revolution.

THE ARREST

At 6 PM on the night of 11 August 1931, 18 police officers, consisting of six RCMP members, six OPP officers, and six Toronto police officers, gathered in the hall of the OPP Commissioner's office. The group waited and smoked in the hall, wondering what they were being assembled to do that night. When they were called in, Major-General Williams began the briefing: ‘Gentlemen we are going to strike a death blow at the Communist party—we hope.’ He ordered the officers to arrest the party leaders, search their headquarters and homes, and ‘seize every paper and every document’ that could link the party members to Russia. The arrests were to occur simultaneously, Williams explained, ‘to the second,’ if possible.

The operation had a military-like feel. The strike on the targets and their headquarters would occur with to the second precision. Officers were sent out at 7 PM to arrest their targets. The CPC headquarters at 70 Lombard Street in Toronto was raided as well as The Worker and
WUL offices at 68A Adelaide St. The original arrest warrant was issued for Tim Buck, A.T. Hill, Tom Ewan, John Boychuk, Sam Carr, Malcolm Bruce, and Matthew Popovich.110 According to press reports, after the raids Toronto police announced they were in possession of evidence that proved $18,000 was forwarded to the CPC from Moscow through New York with $11,000 going to Communists in Winnipeg. Curiously the evidence was never produced at the CPC trial. Buck was arrested at the headquarters, while Boychuck was arrested at home, both without incident. Malcolm Bruce and Sam Carr were arrested in Vancouver that same night. Despite Williams’ call for precision, the raids were hardly well coordinated or executed.111

The same night as the raid at CPC headquarters, Detective Frank Zaneth of the RCMP went to Tim Buck's house to arrest him, not being sure where Buck was or if he had already been arrested. Zaneth, previously an undercover officer in the CPC for the RCMP, broke into Buck's house while both Buck and his wife were out, and while alone in the house seized various booklets and materials including documents relating to Buck's membership in the CPC. The documents included meeting minutes and letterhead indicating that the CPC was a section of the CI. 112

Two more arrests took place the following day. Police arrived at Matthew Popovich's house to arrest him on 12 August. Officer Daniel Mann and William Simpson managed to catch Popovich at home during dinner. As they entered the house, Popovich calmly put his coat on and told the officers he had expected his arrest just not so soon. Popovich was taken into the cruiser, cautioned, arrested and taken to the Don jail.113 At the CPC offices the same night, an officer had discovered party member Tomo Čačić trying to enter the WUL office. Detective John Nimmo of Toronto police called in to question him asked Čačić what his position was, to which Čačić replied he had none. Čačić said he was there to see the ‘girl that does the typing,’
but could not remember her name. Nimmo proceeded to arrest Čačić and search him. Nimmo found a credential that was signed by Buck that indicated that Čačić was the National Organizer for the South Slav Bureau of the Party. Another credential, signed by A.E. Smith, identified him as an organizer for the Canadian Labour Defense League. Čačić made no mention of his standing in the party before he was arrested and shown the credentials by Nimmo. Čačić was arrested presumably because Nimmo thought he had caught a leader of the party. In reality Čačić was a foot soldier in the wrong place at the wrong time.\footnote{114}

Amos T. Hill was arrested in Cochrane by the OPP on 13 August. Despite his claim that he had been followed by police for weeks, Hill continued to take part in public speeches and meetings even on the night of 11 August when all the other raids took place. Police had less luck in arresting Tom Ewan. George Fish of the RCMP and Detective Waterhouse of Toronto police, finding no one home at Ewan's house, decided to break in and search it. After ransacking the residence, they camped out across the street in their cruiser hoping to catch Ewan coming home. What they were not aware of was that Ewan had actually arrived home while the officers were ransacking his home, but he was told by his landlord not to go upstairs and so he promptly left. The officers did find 22 year-old Mike Golinsky (known as Mike Gilmore) trying to enter Ewan's house at 3 AM. Golinsky explained to the police that he was in town from Calgary to attend a Young Communist Conference and having little money was essentially camping out with Ewan for the time being. Golinsky told the officers he was a Communist. His pockets were searched, communist material found, and he was promptly arrested.\footnote{115} Tom Ewan eventually walked into Toronto police headquarters on 17 August, reportedly smiling as he was arrested. He turned himself in on the advice of Buck who wanted Ewan to give himself up presumably for propaganda purposes.\footnote{116}
All of those arrested were charged with violating Section 98 between the years 1920 and 1930, with no indication of how exactly they had done so. Books, membership lists, and letters between party members praising the Soviet Union, in addition to Marxist literature from the Soviet Union were used as evidence. Photos of the evidence were splashed across the pages of newspapers, such as *The Evening Telegram*, accompanied by ominous headlines such as 'Police Raid and Arrest in Sudden, Secret Move against Reds in Canada.'

People may have expected to see photos of tagged weapons, cash and other contraband, but instead they showed stacks of books and boxes of paper. The papers seemed to imply that these reds were preparing for revolution, but nothing was ever stated as to how the men had violated Section 98. The arrests were largely portrayed as preventative. Section 98, for the police, was interpreted as a Code section designed to arrest communists for being communists.

The only detailed description of Buck's arrest comes from Buck. He claimed that when he asked why he was being arrested the officer replied:

‘It's not necessary, I am ordered to arrest you. You are charged under Section 98 of the Criminal Code.’

I [Buck] said, ‘Charged with what?’

He said, ‘Well Section 98 is rather sweeping...you should know all about it and it's not necessary to charge you with any specific crime. You're charged with infringing the terms of Section 98 of the Criminal Code and it is not my duty to describe what those terms are.’

While no explanation of how the men had violated Section 98 was needed, the arrests had a Kafkaesque air about them. Even if Buck was mistaken and the officer did include the subsection when he informed Buck of his arrest, the breadth of Section 98 made it difficult for someone to know exactly what they had done wrong. No further answers were required by authorities. One had to assume that one's actions over the past ten years had led to this moment.
In the view of the government and the mainstream press, Section 98 was used for precisely the reason it was created, to stop subversive foreign communists from leading an uprising.

CONCLUSION

The Communist Party of Canada sought to build its base during Moscow’s Third Period by uniting domestic-born and foreign-born workers. It presented a radical, alternative conception of the Canadian nation. It was not seeking to do away with Canada through a Soviet-style revolution, but dramatically alter it to an ethnically plural, worker-led communist state, with equality between men and women, independence from the U.K., and membership in the international communist movement. The Party did not seek the destruction of Canada, but a dramatic remaking of it. The CPC vision was at odds with much of Canadian society which sought not a complete alteration of society in the Great Depression, but its repair. The CPC, branded by many as being a representative of a foreign and alien culture, came under the direct fire of a newly elected federal Conservative government that sought the Party's complete annihilation. Cultural perceptions determined how and why authorities saw the CPC as a threat and how to respond. With Section 98, the government had at its disposal an exceptional law that could completely outlaw the Party, and stop the CPC’s march to revolution. The popular perception of the CPC as a foreign revolutionary group justified the continued existence, and use of emergency measures against the party. The nine accused found themselves in the spectacle of an ordinary criminal court being tried for violating what was, in essence, a wartime emergency law.
Nine accused members of the Communist Party of Canada (CPC), Tim Buck, John Boychuk, Malcolm Bruce, Sam Carr, A.T. Hill, Tomo Čačić, Tom Ewan, Mike Golinsky, and Matthew Popovich, entered Toronto's Old City Hall courthouse on 2 November 1931. The nine were indicted on three counts: being officers and members of an unlawful organization, to wit the CPC, and for being party to a seditious conspiracy. The 1931 trial of the CPC members, or the ‘Eight’ as they later came to be known, was the best-documented, largest, and best-known trial involving Section 98. Previous works on the trial have discussed it as an example of how the CPC threatened the established order in Canada and stressed how the government prosecuted the CPC to stamp out communism. No study has examined how criminal law targeted political ideology in the case of Buck et al., nor has a study delved into the broader significance of the trial on Canadian society.¹ Section 98 made it possible for the law to indirectly target political ideology by targeting the unlawful expressions of groups and individuals. The CPC trial offers a unique window into how an emergency law operated in a peacetime courtroom, from the challenges the Crown had in indicting the accused, to evidence admission. Canadians’ support for the trial and conviction reveals how they were becoming more comfortable living with the emergency.

In this chapter I argue that Section 98 made it possible for the CPC’s ideology to serve as the *actus reus* (the criminal act). The accused did not engage in any acts of violence, or have plans for engaging in violent acts against the state. While Section 98 did not state that it was illegal to believe in ideologies, like communism, it was directed at suppressing open expression
of support for unpopular ideologies by individuals and organizations like the CPC. The government and leading Canadians viewed communist ideology as a threat to the country’s British and liberal culture. To prove the accused guilty of belonging to an unlawful organization, the Crown needed to prove the CPC was unlawful, thus the political ideology of the accused was on trial. I will first demonstrate how the difficulties the Crown had in submitting an indictment to the Grand Jury reveal that prosecuting ideology, not simply prosecuting members of an unlawful organization, was the goal of the Crown. I will focus next on the Crown's case, showing how the trial’s essential premise, that the ideology of the accused functioned as the criminal act, was something only possible in a Section 98 trial. The idea that the CPC members were foreigners working for a foreign power was central to the Crown's argument and its ability to establish the blameworthiness of the accused. I conclude with the case for the defence, which recognized that the ideology of communism was the real focus of the trial and sought to counter the Crown's case by arguing that believing in Marxism was not criminal but merely represented an alternative method of understanding history. Revolution, the defence argued, was an inevitable historical event. The resulting conviction of the accused placed members of the CPC in a precarious position: they were all guilty of an offense before receiving a trial. Foreign-born members were entirely abandoned by the law in that they were automatically eligible for deportation. Such treatments were possible because of the authorities’ ability to use a law derived from wartime powers during a time of peace.

POLITICAL INTENTIONS

Norman Sommerville and Joseph Sedgwick represented the Crown and Hugh J. Macdonald and Onie Brown represented the defendants. Tim Buck defended himself. Initially,
Attorney General William Price considered the possibility of Sedgwick as the lead attorney because he had been working on the case since March 1931. Sedgwick was born in Leeds, England, and a graduate of the University of Toronto. He still considered himself fairly new to the profession having been called to the bar only seven years prior to the trial. He informed the Attorney General's office that he could work on the case with another solicitor. Price told Deputy Attorney General Bayly that a special Crown Attorney would be assigned. The more seasoned Norman Sommerville was to take the role of leading the Crown. Sommerville, called to the bar in 1902, was originally a defense lawyer and had close ties with the federal and provincial Tories. Sedgwick was named junior counsel and despite his hesitation in leading the case on his own, he seemed upset by the decision. In an interview with Sedgwick decades after the trial, Betcherman stated that Sedgwick regarded his trial partner as a 'second rate lawyer but a prominent Tory.'

The grand-nephew of Prime Minister Sir John A. Macdonald, Hugh Macdonald was a graduate of Trinity College, and held both an LLD and PhD. The accused were well represented with Macdonald, a lawyer with comparable experience to Sommerville. Onie Brown was a young lawyer who had just been called to the bar in 1929. Notably missing on the defense team was J.L. Cohen, who had defended many members of the CPC. An early defender of civil rights in Canada, Cohen abhorred what he viewed as state repression against communists during the Depression and the brutal tactics of the police in suppressing free speech and association. Cohen, however, was not representing the Party in 1931 because of a falling out with the Party leadership. Cohen opposed Section 98, which he believed pronounced 'guilt by association often in a retroactive manner.' Despite being offered a large retainer by the Party, Cohen declined. CPC member Tom McEwen believed Cohen’s new obligations were to his new client, the
International Ladies Garment Workers Union, which often battled with the communists during the 1920s. But according to historian Laurel Sefton MacDowell, Cohen's deteriorating relationship with the Communist leadership had more to do with it than his loyalty to other clients. The Party leadership wanted the trial to serve as a propaganda piece. Buck representing himself was part of this strategy. Cohen would have none of it, and was not interested in the 'spectacular sort of defence' the CPC wanted and was not about to have his client tell him how to run a defence. MacDowell stated that when Cohen learned Buck was to defend himself, he 'lost his temper and washed his hands of the whole thing,' as well as turning away other cases from the CPC legal defence organization, the Canadian Labour Defense League (CLDL) headed by A.E. Smith. Cohen referred the CPC case to Hugh Macdonald who agreed to take it. Macdonald did his best to fight the case on legal grounds and not cater to the CPC's desires to turn the trial into a potential recruitment platform.

Justice William H. Wright was the presiding judge, known among his peers for his stern courtroom demeanour. Originally a teacher before turning to law, he spent much of his time engaged in social activities, such as being the Deputy Grand Master of his Masonic Lodge and president of the Ontario Curling Association. Wright, who was sixty-six at the time, practiced out of Flesherton and Owen Sound, Ontario. In 1929, he presided over the sedition trial of another prominent CPC member, Arvo Vaara, the editor of the Finnish-language newspaper Vapaus, in Sudbury. Vaara was found guilty by jury after Wright displayed hostility toward communist ideology.

The CPC trial was extensively covered by prominent Ontario papers and to a lesser extent by newspapers in other provinces. Reporters from papers such as the Toronto Star, The Globe, The Telegram, and the Ottawa Citizen sat in on the proceedings and documented testimony in
their papers. The communist paper *The Worker* closely watched the trial, with Oscar Ryan reporting, despite allegations that it and other labour papers were initially denied access to the courtroom.5

In October, 1931, the Crown presented a copy of the indictment and depositions taken at the preliminary hearing to Chief Justice Rose. Rose requested the material in advance of the Crown's presentation to the Grand Jury, foreseeing problems with the indictment. The Grand Jury system at this time consisted of a set of jurors that would decide if a case should go to trial after being presented with the Crown's indictment and studying the evidence. If a trial was warranted, a *true bill* was declared and the case proceeded to trial. The Grand Jury system was replaced in Canada in the 1970s with a preliminary hearing, overseen by a judge.

Norman Sommerville presented the indictment to Rose. The accused were charged with violating subsection three of Section 98: being members of an unlawful organization; and for violating Section 133A of the Code: being part of a seditious conspiracy. When Section 98 was created, the draft that entered the Code contained an error. It stated that, 'Any person who acts or professes to act as an officer of any such unlawful association, *and* [emphasis mine] who shall sell, speak, write or publish anything...6 Rose argued that membership in an unlawful organization was not an offence because the first 'and' in the section was conjunctive. It was thus only an offence to be an officer in the organization and do one of the following enumerated things. Norman Sommerville was forced to confer with the Deputy Attorney General of Ontario, Edward Bayly, and fellow Crown Attorney of Toronto, Major Eric Norman Armour. They argued that while Rose was correct in a grammatical sense, it did not make a difference. The section would work, they argued, if the word 'and' was read as a disjunctive 'or.' Rose was not convinced and claimed that if the Crown decided to go ahead with the indictment, he would be
forced to instruct the Grand Jury that no crime had been committed. The Crown deferred submitting the indictment. Sommerville met with W. Stewart Edwards, the Federal Deputy Minister of Justice, who accepted Sommerville’s interpretation of Section 98 and agreed to help prepare a history of Section 98 for Rose to persuade him to see things as they did.⁷

Edwards' briefing note outlined how Section 98 had been modeled on P.C. 2384, which used the word 'or' instead of 'and' throughout the section. For instance, it defined a member of an unlawful association as any person who:

...while Canada is engaged in war, shall act, or profess to act as an officer of any such unlawful association or [emphasis mine] who shall sell, speak, write or publish anything as a representative or professed representative of any such unlawful organization or become or continue to be a member thereof...shall be guilty of an offence.⁸

Edwards’ focus was on what Parliament intended in drafting Section 98 rather than what was actually drafted. He claimed that 'our argument is that Parliament has clearly indicated that the least possible relationship constitutes an offence.'⁹ Edwards thus claimed that the grammatical error in subsection three's construction resulted in a 'manifest absurdity or repugnance at variance with the intention of the Legislature.' Parliament intended to outlaw all unlawful organizations and their activities 'or with the teaching or advocacy of the political doctrines of such an association.' He concluded his argument with examples of cases where 'and' was read as 'or' and the maxim, 'salus populi est suprema lex,' (the welfare of the people shall be the supreme law of the land) to reinforce Parliament's intentions when drafting Section 98.¹⁰

On 16 October, Rose heard the Crown's arguments and read the brief, but remained thoroughly unconvinced. He stated that the only way for the trial to proceed was for Parliament to alter Section 98, when it resumed, and have the accused tried at the Spring Assizes; this was unacceptable to Sommerville. Rose claimed that even if he were wrong in his interpretation, the
defence would surely raise the issue, thus leading to a protracted legal battle. Joseph Sedgwick proposed a solution: the Crown could charge all the accused with being officers. Evidence could be submitted to prove the unlawfulness of the association, and following an alteration of the subsection in the next Parliamentary session, 'proceedings could be taken against those who are mere members of the association, as was always intended.' The goal was to ensnare the entire Party and all its members with one trial, which was why the Crown did not charge the accused under subsection eight. Since there was no procedure for establishing that an organization was unlawful in advance of a prosecution, the Crown assumed that by charging the accused under subsection three they would have the opportunity to prove the CPC's unlawfulness in court. The indictment was revised and presented to the Grand Jury and a true bill was handed down. The goal of Section 98 was to stamp out communism across the country as the government intended the law to function exactly as P.C. 2384 did in 1918. Much like it had done with the SDP in 1918, the government wished to use Section 98, as Newton Rowell stated in reference to the SDP in 1918, to outlaw a 'political party' that 'has been in existence for more than ten years without calling for any public action against it' because it opposed its 'ideas.'

The accused were arraigned on 2 November 1931 at Toronto's old City Hall and pleaded not guilty. Tim Buck stated he could not enter a plea because there was a motion to quash the indictment. The Crown's troubles with the indictment were not finished. Defence lawyer for the accused, Hugh Macdonald, introduced a motion to quash the indictment stating that the Section 98 charge of being a member of an unlawful association was not a sufficient statement of an offence. He argued that the real and substantive issue of the offense lay with the supposed unlawfulness of the CPC. Section 98 contained provisions stipulating how an association was unlawful, but there is no indication of how the association on trial was unlawful. No such overt
act is mentioned in the indictment that would make the Party fit this designation. Macdonald argued that the defence had no idea of what it needed to meet because nowhere in the indictment was it detailed how the CPC was an unlawful organization over the past 10 years. Macdonald stated, 'We are taken over a period of ten years without the faintest indication of what is going to be brought up against us.'

Macdonald argued that there was no parallel to this case as it 'was the first case that has arisen under this section.' There was no precedent, not even, according to Macdonald, in the English courts. Macdonald's argument was a simple one: how could individuals be guilty of being officers of an unlawful association when the association itself had not been proven to be unlawful?

Justice Wright argued that it should be sufficient if an offence has been stated within the language of the Code. But Macdonald went further and argued that even if the judge held that this count should stand, Macdonald had a right to particulars, for if he took the count as it stood in the indictment, it would be the equivalent of indicting one of the accused for a murder that had occurred sometime in the past 10 years. Macdonald argued that the same issue applied to the count of seditious conspiracy; as he bluntly stated, 'what was the conspiracy?'

Macdonald argued that this was a bigger issue than mere language. When Sommerville offered particulars for the third count, Wright correctly stated that it would not satisfy Macdonald, who was arguing that the counts were 'bad in law.' Macdonald agreed with the judge's summary, though Wright seemed surprised by Macdonald's stance, at one point commenting 'by alleging that the Communist Party of Canada constitutes an unlawful association that is not sufficient?'

Macdonald maintained that the counts were indeed 'bad in law' but that counts one and two did not constitute an offense at all. If the judge did not agree and allowed the counts to stand, then Macdonald stated he would have to see particulars. Producing them would be difficult for the
Crown given that the CPC had not engaged in any actual acts that violated the Code. He then rephrased his position: ‘If the association be lawful then membership in it is not a crime at all. So that the cart is put before the horse, so to speak, in the count as it stands.’ How could members of an organization be tried with being part of an unlawful group without details of how the crime was committed?\textsuperscript{19}

Macdonald cited the appeal case of Issac Bainbridge, leader of the Social Democratic Party, who was charged a decade earlier with seditious libel, as his reference point. The count, in addition to using the language of the Code, must set out the manner in which the crime was committed. Wright disagreed, arguing that in the case of murder, for instance, it was not necessary to state that murder was committed by shooting, or other means. Macdonald argued that the Code had not changed, and that if there was nothing else stated in the counts, beyond the offence, he would not know what he was expected to meet. He argued that the Crown should state exactly how the CPC had been unlawful for the past ten years. All Macdonald had in the way of particulars was a list of 200 possible exhibits that the Crown might or may not use. He reiterated his point that the counts were far too broad for him to defend and should be quashed.

Sommerville argued that the first and second counts properly set out the offence because the section itself defined an unlawful association. He cited Section 852 of the Code, arguing that the indictment 'may be made in popular language without any technical averments...not essential to be proved.'\textsuperscript{20} He argued that because the nine were members of the CPC, and the CPC was part of the CI, and that the CI advocated sedition by intending to 'incite ill will' between 'his majesty's subjects,' the accused were guilty of an offence. For the third count, the accused were charged with seditious conspiracy because of the CPC’s ties to the CI. The Crown believed the connection would prove the party's unlawfulness. Wright agreed that the first two counts
Macdonald was not satisfied with the Crown's particulars for the Section 98 counts because they did not address his complaints. They merely stated that the CPC was an unlawful organization as per Section 98's subsection one, but did not demonstrate how it was unlawful. He felt it impossible to defend his clients if he did not know what the CPC did over the past ten years to warrant the charge against its members. The Crown was allowed to proceed without first having the CPC legally classified as unlawful.

Pleas of not guilty were entered by the accused. With the trial set to proceed, the Crown would have to prove that not only were the accused officers of the CPC, but that the CPC itself was an unlawful association. The nine were denied bail. Sommerville told the court that a pamphlet was being circulated, advocating for a demonstration to be held at Queen's Park to protest the trial. Macdonald knew nothing of it, but the judge agreed that bail be denied and he ordered the 'guilty parties' to be brought to court to be found in contempt. Sommerville claimed he knew where the circulars were being printed. Wright's justification for denying bail was that he did not trust that the accused would not participate in the demonstration; this was after all a 'very extraordinary proceeding.' The Crown made good on its word and brought in Joseph Kleinstine and Bernard Meslin for contempt of court the following morning. A rally, planned for the first night of the trial in Queen's Park, was broken up by Toronto police before it could get underway. Over 200 people were quickly dispersed by the police.

Jury selection began on 3 November. The defence frequently challenged jurors. The press reported that Macdonald issued nearly 90 challenges in all. Most notably, Buck opposed the selection of Hugh Aird, son of Sir John Aird, the President of the Canadian Bank of Commerce. Twelve were finally selected from the ninety-nine called. The final twelve selected were largely
trade workers or farmers. Buck was denied permission to sit next to Hugh Macdonald; Wright claimed that it was a rule that prisoners charged with offences where the penalty was greater than five years could not leave the box. 'I do not propose to depart from it,' Wright stated.

‘A SMALL RUTHLESS, IRON-DISCIPLINED GROUP... WITH BAYONET AND RIFLE’

Sommerville delivered the opening address to the court. His goal was to demonstrate that the CPC was linked to the CI and therefore should be regarded as an unlawful organization. He began by reading the jury Section 98 of the Code as well as Section 133A, for the third count of seditious conspiracy. Sommerville emphasized the evil and treacherous nature of the CPC, stressing 'it is not argument, criticism, ideas, speeches, theories, that are here in issue, but...the deliberate, long continued, subtle, Moscow controlled plot to overturn, by force of arms, by violence, by bloodshed, our institutions of church and state.' The CPC was not interested in the ‘peaceful capturing of Parliament;' this was a 'small, ruthless, iron-disciplined group' that wanted to copy their Bolshevik heroes in Russia and 'with bayonet and rifle' achieve the 'bathing of the Country in a bath of blood.' This was a war against Parliament by foreign fighters and subversives.

Sommerville detailed how the Party was constructed and how it operated. He described the tactics of the Party in demonstrations which he believed were designed to 'intensify the antagonisms between classes and to place the CPC as the leader' and to turn 'artificial situations into civil strife and revolution.' No evidence or examples of how the CPC was stirring up revolution were offered. The largest protests and conflicts with police, leading up to the arrest of the accused, were demonstrations advocating state-run unemployment insurance and, in 1929, protests for the right to free speech. There were no examples of revolutionary work that
Sommerville could draw upon in his opening address. Instead he relied principally on the ideology of the CPC. Sommerville claimed he would show that the CPC was a 'world-wide party, of which Canada is an integral section' and that the CPC is 'not a thing standing alone.' Sommerville's goal was to argue that the CPC’s positions and theories were criminal acts, arguments made possible only because of Section 98. To secure a conviction under Section 98, Sommerville needed ideology to function as the actus reus.

Sommerville began his case by attempting to establish that the accused were officers of the Party. The Crown argued that leaders in the Party should be regarded as officers. Its evidence was often inconsistent and largely consisted of testimony from police officers who arrested the accused on 11 August 1931. For instance, William Simpson, who arrested Matthew Popovich, claimed he knew Popovich and John Boychuk to be leaders in the CPC because he witnessed them make several speeches at CPC gatherings, but during the Preliminary hearings before the Grand Jury, he claimed he never saw Popovich give a speech. All attempts by Macdonald to challenge the admission of evidence were stymied. Two of the accused, Mike Golinsky and Tomo Čačić, were charged by police because they were suspected of being Communists. Golinsky was arrested when police found him at Tom Ewan's house and he admitted he was a Communist when asked by officers. Tomo Čačić, who was hanging around the Worker's Unity League (WUL) office, was arrested on 12 August after officers questioned him about his membership in the Party. Neither Golinsky nor Čačić were on the original arrest warrant. Macdonald argued that Golinsky was in fact under arrest before admitting his membership in the CPC as he was not permitted to leave the presence of the arresting officers; this was confirmed by arresting office, George Fish. The officers’ testimonies, Macdonald argued, in regards to what Golinsky told them about being a CPC member, should not be
admitted. The testimony was still allowed and Wright prevented Macdonald from probing the issue further. When Wright asked Macdonald if he had more questions, he replied 'I would do so if I thought I was serving any good purpose by asking further questions.'

Court was adjourned until 10 AM the following day. The Crown began by presenting its star witness in the case, Sergeant John Leopold of the RCMP. As historians such as Gregory Kealey and Steve Hewitt have documented, John Leopold worked as an undercover agent for the RCMP and penetrated the CPC under the alias Jack Esselwain. He eventually became head of the Regina branch of the Party. He joined the Party very early in its history, late in 1921. He was expelled by the Party in May 1928. Leopold was an atypical Mountie for his time: he was an immigrant from Bohemia, now part of the Czech Republic, who had arrived in Canada in 1913. In 1914, 79 per cent of Mounties were British born. At five feet, four inches in height, Leopold was four inches shorter than the requirements for entry to the service; nor did his chest size meet the standard thirty-eight inches. Additionally, he had arrived in Canada from a region considered an enemy during the First World War, and was not naturalized until 1923. Still, his timing was good, joining the service in 1918, at time when it had become interested in trying to make inroads into the labour movement. There was a strong belief in Canadian society that there was a connection between radical leftists and ethnicity, a belief which manifested itself during the course of the CPC trial. With Leopold being able to speak six European languages, he was deemed a good fit for going undercover. Most officers of Anglo backgrounds had a difficult time trying to do secret intelligence work within the movement. This kind of intelligence gathering was frowned upon and considered in both military and police circles as being un-British because of the belief that Britishness involved a defence of civil liberties, which
undercover work undermined. With a foreigner engaging in such activities, there was apparently no ideological contradiction in Leopold gathering secret intelligence.

In his testimony Leopold went over his time with the Party and his duties in it. These included becoming the Secretary of the Regina branch and attending Party meetings and conventions. He had attended five conventions of the Party since it was created in 1921. He identified nearly all the accused as having attended the same conventions, except for Golinsky and Čačić. Because of Leopold's involvement with the Party, his testimony was crucial for the Crown. Leopold identified many of the accused as officers of the Party. Leopold's testimony centered on the CPC's connection to the CI, a connection the Crown considered central to its case. Leopold was asked to identify the emblem of the CPC, which contained a hammer and sickle, prompting Sommerville to note that 'it is a duplicate of the Moscow seal.' Leopold testified that some of the accused, including Buck, Hill, and Bruce, made trips to Moscow to attend Congresses of the CI or for training during the years Leopold was a Party member. He testified that the Young Communist League was created to indoctrinate youth into communist ideology, The Worker was an official party paper, and that Hill and Boychuk represented the Finnish and Ukrainian wings of the party. He identified Tom Ewan as head of the party's radical union organization, the WUL. His principal purpose in this early testimony was to assist the Crown in proving the details of the accused membership in the Party. Macdonald was not interested in cross-examining Leopold on the details of membership; he wanted to examine Leopold's evidence more generally at a later time.

A.E. Smith, who was head of the CPC-controlled the Canadian Labor Defence League (CLDL), was called to the stand and examined by Sedgwick as a Crown witness. He testified that Buck, Hill, Boychuk, Popovich, Ewan, Bruce, and Carr were all Party leaders and part of the
Party's political committee. Smith claimed that he only had a general understanding that Čačić was a communist and saw no Party membership credentials. Čačić was in possession of a CLDL pamphlet when arrested and Smith testified that Čačić was an organizer for the CLDL, which was not on trial. Unlike many of the others on trial, Čačić was never a Party leader in the CPC and had limited standing in the Party. Like his co-accused Golinsky, he was not a part of the Political Bureau that formed the Party leadership nor did he head up any of the Party's subsidiary wings or organizations.

The most damning evidence against Čačić had come from A.E. Smith. He was shown a copy of the Canadian Labour Defender, a periodical published by Smith's CLDL. In it there was an article on the trial with the headline, 'The historical trial of the nine Communist Party leaders.' When asked if he thought this correct, Smith replied that he thought it was. For propaganda that could benefit the Party, Čačić's role as a Party 'leader' was sealed in court. When the Crown asked Smith about Golinsky’s role in the party, he tried to retract his statement about the article being accurate. He claimed he did not know Golinsky as a member of the CPC or outside of the trial and claimed that the headline was not correct. Why Smith did not clear Čačić of being a Party leader and defended Golinsky is uncertain. But since Čačić did have a previous falling out with the Party leadership over finances for the Party's low-level members, it is possible that the relationship was never fully repaired.

Shifting its focus to the aims and tactics of the Party to prove it was an unlawful organization, the Crown tried to introduce a booklet it claimed was the CPC’s constitution and had been seized from Boychuk's home. Macdonald objected to its admission arguing that a booklet found in Boychuk’s residence did not qualify the Crown to claim it was the constitution
of the Party. He elaborated: 'The booklet does not prove itself by its mere production.'

Macdonald tied his objection to his earlier problem with the trial proceeding:

...in order to obtain a conviction under the first two counts it must be established as an independent proposition in the first instance, that the communist party is an unlawful organization, because until that is done, membership is no offence...the Crown cannot come in the back door... 

Macdonald was waiting for the Crown to produce evidence of the CPC's unlawfulness before proving his clients were members and officers of it. He believed that no offense had taken place if the accused were proved members of the CPC without first demonstrating the CPC's unlawfulness. Paradoxically, the Crown needed to first prove the accused were members of an unlawful organization to produce evidence of its unlawfulness. While Macdonald was opposed to this roundabout method of establishing guilt, there was nothing preventing the Crown from taking this route. It was in accordance with the law and Section 98. The lack of procedure in the Section for establishing the unlawfulness of an organization could be established at trial, and the Crown's strategy was accepted by Wright.

Wright did agree with Macdonald that the constitution of an organization could not be proved in such a way. Sommerville protested as there were no precedents to follow in proving a Constitution in such a case as no other cases had fallen under this section of the Code. He had a larger obstacle to overcome as the issue would relate to all documents seized. Sommerville attempted to persuade Wright that he should have a case for admitting this material in regards to the seditious conspiracy count, but Wright was not allowing it. Sommerville then argued that the documents seized at the organization's headquarters should be allowed into evidence.

Macdonald's objection still applied; there must be evidence submitted to show that the document is what it is claimed to be. But Wright disagreed, arguing that a document claiming to be a
constitution of an organization, and found in the organization's headquarters, should be considered to be *prima facie* evidence.\textsuperscript{38} The Crown was allowed to submit the evidence with the help of Sergeant Leopold.

Leopold took the stand again and Sommerville asked him to describe the first contact he had with the Party. He claimed it was a letter from Popovich, adding that he had a copy of it and could furnish it later. When asked by Sommerville about the whereabouts of the original, Leopold claimed he destroyed it. Macdonald protested the Crown entering into evidence a copy of a letter that was deliberately destroyed. Wright overruled him. Leopold's justification for the destruction of the letter was that in the early, underground days of the CPC, which operated as the Workers’ Party of Canada, letters and documents were ordered to be destroyed after being read, but he had made a copy of the letter. This did not satisfy Macdonald, but he had no choice.

When asked by Sommerville what the aims of the Party were when it was established, Leopold couched his answer in the language of Section 98. He claimed the CPC sought to 'organize the working class of Canada for the overthrow of the existing conditions in this country...by existing conditions, I mean the economic institutions, the state and the social order in general.' When Sommerville asked how this would be done, Leopold answered, 'by the application of violence and force.'\textsuperscript{39} The Crown relied on Leopold to provide another important piece of testimony concerning party finances. He claimed that some financial expenses were defrayed by the CI and that at least $3,000 was spent in Canada to get the Party started. He claimed all of the $3,000 came from the CI, but that it did not continue after 1922 as the Party was supposed to be self-sufficient.\textsuperscript{40} Sommerville was surely pleased with Leopold. He was able to further bolster the Crown's position that the CI had a direct and strong influence on the CPC, if it provided so much in the early days in the way of finances.
Leopold gave a detailed history of the transformation of the Party over the years, tracing its early days as an underground party known to members as the 'Z' party, the founding in 1921 of an 'above ground' party (The Workers’ Party), the liquidation of the 'Z' party, and the formation of an 'above ground only party.' (The Workers’ Party was renamed the CPC in 1924). Sommerville attempted to demonstrate that the Party always followed Moscow's direction on issues such as liquidating its underground party and coming out into the open as the CPC.

Sommerville's goal was to demonstrate that the CPC knowingly viewed itself as illegal in its early days because of its support for revolution under Moscow's guidance. Sommerville began entering seized documents into evidence. Macdonald again challenged the admission of seized documents and letters on the same grounds as earlier. This time though, Wright promptly overruled Macdonald on the grounds that anything seized at Party headquarters should be considered to be prima facie evidence of what they claim to show. But Macdonald would again illustrate the validity of his objection. Sommerville entered into evidence a document found in Party headquarters from the CI which outlined the statutes of the CI, but it was dated 1920 — before the CPC had even existed. The document was taken from the library of the organization. Macdonald objected. Wright again overruled Macdonald's objection citing that the document was prima facie evidence and that the CI statutes resembled resolutions similar to the Party's own and should be allowed.41

Leopold retook the stand and Sommerville began reading him sections from one of the earliest publications of the CPC in Canada, *The Communist*. Sommerville read:

...as...strikes grow in number and intensity, they acquire political character...this culminates in armed insurrection and civil war aimed directly at the destruction of the Capitalist State...the task of the proletariat consists of destroying the entire machinery of the bourgeois state, including all the parliamentary institutions.42
Sommerville continued reading for some time, highlighting more ideological jargon such as the phrase 'Long live the Proletarian Revolution!' But even these passages were demonstrations of ideology not action. Sommerville sought to equate these ideas with actions. After reading lengthier excerpts, Sommerville asked Leopold a simple question: 'Was this the party you joined in the year 1921?' Leopold's answered 'It is.'

Sommerville read from Party material including a document reporting on the Second Congress of the CI which detailed the conditions for a party, such as the CPC, to join the CI. Sommerville read all 21 clauses to the court. His goal with the material from the CI was to demonstrate that because of the CPC's ties to Moscow, which supported a worker-led revolution, the accused were part of a seditious conspiracy. Sommerville, at one point, read for hours and Sedgwick took over to give Sommerville a break from reading. He concluded the day with more excerpts from the CI, including speeches and addresses by the Communist theoretician Bukharin. The court was getting ready to be adjourned, but before leaving, Macdonald expressed his difficulties with the trial thus far. He had a list only of exhibits for the trial and had received them only three days prior. He was told by the Crown that he would have copies of the material, but had received none. He brought up the issue of bail for the accused and did manage to convince the court that bail should be granted. He entered into another exchange with Wright on the matter of the Crown bringing up communist theory in court; their exchange is worth citing at length. Macdonald questioned Sommerville's bringing up:

...all the teachings and doctrines of communism, that is something entirely out of the ordinary range of--
Wright: I don't think it goes that wide.
Macdonald: ...as I understand it, that is where it will eventually come down.
Wright: No, it is the object of this particular organization, not the general doctrines of communism.
Macdonald: The general doctrines explains the objects.
Wright: I don't think it is that wide at all. The Crown has to bring it within definition of the Criminal Code. The whole question is, was it unlawful, or does it fall within the prohibitive objects mentioned in the Code--what its affirmatives are matters not... you have to meet that.
Macdonald: What is the Communist answer to the meaning the Crown puts on the expressions contained?
Wright: That is quite right.
Macdonald: That is, I assure your Lordship a very difficult question to meet.
Wright: I am sure it is.  

The Crown only needed to prove that the CPC material fell within the range of Section 98, a simple task given that the propaganda of the CI and CPC repeatedly mentioned the inevitable proletarian revolt. Wright ruled that the documentary evidence and communist theory were two separate things, which Macdonald knew was not true. After all, the Communist Manifesto was a Crown exhibit. The general doctrines of communism, broadly speaking, did explain the objects, e.g. the evidence. The ideology or theory of communism as Macdonald correctly understood it could not be carved away from the CPC; it was its sole reason for being and thus it was on trial along with the CPC. Macdonald’s only option was to argue that Marxist ideology did not seek an immediate revolution, but rather sought to predict it. He needed to prove that communism was an ideology, or a theory, and not a call to arms.

Leopold was cross-examined by Macdonald on 5 November. Macdonald's strategy was to paint Leopold as more than just a police officer working undercover. He attempted to show that Leopold was at the very least a fellow traveller of communist ideology, and therefore his testimony was unreliable. Macdonald began his cross-examination by asking Leopold about the various organizations he was connected to, besides the CPC, which included the Saskatchewan Fair Board as a Trades and Labour Council member in Regina in 1924-1925. Leopold stated that he was a member of the One Big Union (OBU) in the Regina and Winnipeg district before he
joined the CPC in Regina. Leopold revealed that he knew Malcolm Bruce before he was a CPC member and had asked Bruce if he wanted an invite to join the meeting Leopold was scheduled to attend. Macdonald reminded Leopold of his days in the OBU before joining the CPC in which Leopold operated independently and was not in touch with his superiors about the CPC. Macdonald recalled his attendance and participation in the CPC-led demonstration that occurred at the American Consulate in 1928 over the execution of two anarchists, Ferdinando Sacco and Bertolomeo Vanzetti, in the U.S. Leopold went so far as to carry a protest banner in the march. Many had believed the two men were innocent and had opposed their execution.

Leopold admitted there was little difference between the underground 'Z' Communist party and the open Worker’s Party that existed in the early 1920s. Macdonald next pressed Leopold as to his understanding of Marxism and communist theories. Wright interjected, reminding Macdonald that only certain phrases of communist theory were under trial; how the Court could prosecute only certain phrases of communist theory was never made clear. When asked specifically about armed rebellion and Marxism, Leopold responded, 'it is the recognition of the fact that it cannot be done otherwise.' Macdonald pressed to further emphasize the communist belief in the inevitability of revolution. He argued that Marxism was a belief system, and not an ideology that sought immediate economic or political change. Marxism was history, or put another way— it was a method of studying history. The CPC could make revolutionary statements because the inevitability of revolution was a belief about the way history would unfold; the accused had not actually engaged in any violence. Macdonald would return to this main line of defence when he presented his case.

In re-examining Leopold, Sommerville paid particular attention to his role in the demonstration at the American Consulate for Sacco and Vanzetti. He had trouble getting
responses out of Leopold, who refused to answer questions about the demonstration’s purpose, until Wright led him to an answer: 'Is it propaganda?' Wright asked. 'It is propaganda, naturally, yes,' Leopold replied. It is unclear why Leopold had difficulty answering these questions. It is possible he felt unable to provide a satisfactory answer to explain his role in the demonstration or maybe he was more heavily invested in it than he wanted to admit. Leopold left the stand after having to restate that he was hired as a regular police officer for the RCMP, but was undercover. After he left, Sommerville reminded Wright that Leopold did in fact join the RNWMP in 1918. Wright agreed, but given the unusual nature of his activities, Wright wanted to be sure Leopold 'could be classed as a police officer.' Such undercover work at this time was a rarity and Wright felt uneasy about Leopold's double-life.

The remainder of the Crown's case focused on the CPC's ties to the CI. Sommerville demonstrated how the CPC purged moderate members and towed the Moscow line in its daily activities. Its hostility toward social democrats and more moderate labour groups as well as its attempts to discipline its language organizations were raised as examples of the CPC’s close affiliation to the CI. Sommerville portrayed the CPC as a group full of aliens, one that endeavoured to replace the bourgeois and British culture with one that was foreign and communist. Troves of documents that provided examples of revolutionary language and Marx's theories of scientific materialism were read in court.

One of the last pieces of evidence for the Crown was a publication known as the Vasiliev pamphlet. Sommerville's strategy resembled that of U.K. authorities against the Communist Party of Great Britain when the fabricated Zinoviev letter of 1924 was used by authorities to prove that Moscow was inciting revolution in the U.K. The Vasiliev pamphlet was intended to be the Crown’s crucial link between the CI and the CPC; it was meant to demonstrate how the CI
had directed the CPC to engage in violence. The pamphlet consisted of a series of recommendations written by B. Vasiliev of the CI that detailed how communist organizations could assist members in revolutionary actions. Vasiliev lamented the poor fighting skills of demonstrators, noting that even when some members threw stones at police, it only demonstrated that 'our comrades don't know how to throw stones.’ Stating that ‘it is not enough to pick up a stone and throw it, but it is important that that stone should hit its target.’ Vasiliev recommended a regimen of stone-throwing practice for members.

Sommerville wanted to link the pamphlet to the CPC through the testimonies of police officers who had attended a demonstration in Toronto on 1 May 1931. Officer William Nursey of the Toronto police testified that the assembly which took place was unlawful because stones were thrown during the demonstration. Macdonald objected, stating that Nursey had no evidence that any Communists threw stones, that the accused were at the demonstration, or how the unidentified stone-thrower(s) were connected to the accused. Wright allowed the testimony.

Sommerville concluded the case for the Crown by reading more excerpts on communist theory, this time from Bukharin's *ABC of Communism*. In sum, the Crown sought to demonstrate how the ideology of the CPC made it an unlawful association, which was essential to secure a conviction under Section 98. The Crown's evidence rested on Party documents and the testimony of Sergeant Leopold. According to the Crown, it was the CPC's support for a proletarian revolution, coupled with its close relationship to Moscow, that made the CPC unlawful and hence its members guilty of belonging to an unlawful association. The CPC committed no violent act and the Crown never had to prove that it did to obtain a conviction. The Crown merely had to prove that the CPC's teachings, i.e. the expression of its ideology,
advocated violence. Not only was *The Communist Manifesto* evidence of the CPC's unlawfulness, but if the party was found to be unlawful, one could not legally purchase a copy or other literature that contained communist teachings. As well, it would be a criminal act to attend Party meetings.\(^{59}\)

Newspapers across the country covered the trial. Most of them began regular daily coverage after Leopold took the stand while a number of Ontario papers had covered the trial from its beginning.\(^{60}\) Some Toronto papers, such as *The Globe*, covered the trial in the city news section; after Leopold's testimony, the trial made front-page coverage. The idea of an RCMP spy posing as a Communist and giving secret intelligence as evidence excited the imagination of journalists and readers alike. The story had the elements of a suspenseful international thriller: a secret agent going undercover to expose an international ring of agents who wanted to overthrow the government. Newspapers across the country contained headlines such as 'Policeman acted as Red Leader,' 'Mountie 9 Years as Red,' 'R.C.M.P. Detective Who Operated as Communist Seemed Reddest of Reds.' In Winnipeg, 'Communists Planned Revolt Says Counsel,' was a headline story along with Leopold's testimony. *The Gazette* played up the drama of Leopold's testimony declaring 'Reds Planned armed Revolt.' Ontario papers sensationalized the events unfolding in Toronto's Old City Hall. Within *The Globe*'s three-page coverage of the trial, and under the sub-heading 'Definitely under Moscow,' *The Globe* summarized Leopold's testimony with some embellishment. All CPC members, it claimed, had to swear an oath to Moscow to join the Party. *The Globe* highlighted how the Party used secret codes to communicate to members through periodicals. The paper outlined how the Party adhered to the ‘twenty-one points’ of the CI, but paid much more attention to how members, in the early days of the Party, used secret names to identify each other. *The Star* was not much different. It outlined some
segments of the trial testimony with sensational headlines, a 'Red Army was planned' and the CPC 'Must take over the Machinery' of the country. *The Star* did point out that admissibility of some of the evidence came into contention during the proceedings. The newspaper headlines were somewhat understandable. Stories of undercover intelligence-work were uncommon as it was a fairly new practice in policing. The RCMP itself was scarcely over ten years old at this point and tales of secret evidence and international plots made for interesting reading. The trial making the front page of papers certainly turned the gaze of Canadians to what was happening in that Toronto courtroom.

‘YOU HAVE TO PLAY THE PART’

Newspapers across the country were in support of the Crown's position. In reporting on the events of the trial, many of them focused on segments that would no doubt inflame conservative British-Canadian readers. Some papers focused on testimony that discussed the CI's goal of attracting more French-Canadian workers, relying on their anti-British views to attract them to the party. The CPC's goal was, according to *The Globe*, to 'foster race hostility.' *The Star* reported that 'Civil War [was] urged' and that the Communists sought a 'final overthrow' of capitalism. *The Gazette* reminded its readers how 'Canadian Reds Look to Russia as Fatherland,' and in editorials during the trial the editors supported Premier Taschereau's tough stance against communism stating that 'The Province of Quebec with its traditions of industry, of respect for constitutional government, of family devotion and religious observance, is no place in which the poison of communism should be permitted to work its social and economic mischief.' *The Calgary Daily Herald* supported Leopold's undercover work and defended him. There would always be people who would scoff at this type of policing, but it was the only way to uncover
subversive groups. One had to ‘fight the devil with fire to beat him at his own game.’ Similar sentiments in support of the Crown's position were expressed in papers in other provinces such as B.C. and Manitoba.⁶³

*The Calgary Daily Herald*’s editorial provides a window into the reservations the public had about Leopold, his evidence, and whether going undercover was an acceptable means of collecting evidence. *The Star* attempted to come to Leopold’s defence. At the end of the first week of the trial, it set out to conduct a feature interview with him as he had become somewhat of an unlikely celebrity due to the trial. *The Star* did its best to sensationalize the interview. ‘Was your life ever attempted?’ Leopold was asked. ‘I don’t think so,’ he replied, ‘Not as far as I’m concerned.’ Leopold was not giving the interviewer, Frederick Griffin, much to work with so Griffin pressed for more: ‘You did get threats, though?’ ‘Yes,’ Leopold answered, ‘in Toronto after I was expelled from the party...but I ignored them.’

*The Star* attempted to restore Leopold’s damaged masculinity and assured the public his undercover work did not leave a lasting impression. Leopold’s early life as a rugged homesteader was highlighted as was the little-known story of a time when Leopold bunked overnight with a Moscow agent and felt scared during the night – a significant point because Leopold ‘was not apparently easily scared.’ The headline of the story made this clear. It declared that Leopold was one to ‘live by his wits’ and a man who ‘ignored threats.’ There were suggestions circulating in the public that Leopold never wore a uniform before he testified at the CPC trial, the implication being that he was less masculine, less of a Mountie than other regular officers. *The Star* sought to rectify this, reporting that for the past three years, Leopold was away in the North and ‘carrying on the traditional way of the Mounted.’ That should ease the public and silence accusations that he never wore the Mountie uniform except when he came to court.⁶⁴ If there was
still any doubt as to Leopold's manliness as a Mountie, *The Star* noted that Leopold had 'shot every kind of big game in the Rockies and the north.' The interview even discovered that during Leopold's early days of 'appearing as a harmless little radical,' he used to sneak away from Regina and spend a few days 'banging at the birds' much the same as a 'sporting capitalist' would have done. Leopold's role as a real Mountie was under suspicion, as was his support of capitalism, after posing as a radical leftist. Taking a break from his undercover work, and mimicking a sporting and masculine capitalist by killing a few animals from time to time, helped the public digest Leopold's role as an undercover Mountie. Leopold did betray some of his sympathies for the activists around whom he had spent so much time. When asked, 'How did you find the Communists as men?' he replied, 'Just human beings ... they don't differ from the rest of us.‘

*Star* reporter Frederick Griffin continued his interview with Leopold into Saturday's edition, where it made the front page. The headline, 'Mountie was afraid he'd talk in his sleep to Soviet Agent,' was sure to continue to draw in readers eager to read of a real life spy drama. Leopold claimed that he could not just be passive in his undercover role because he had to gain the confidence of members. He claimed he was so successful that he garnered the trust of a Moscow organizer that was visiting Canada: 'a real Russian' as *The Star* put it. Leopold outlined how he had to share a bed with this agent while he was touring Canada. He recounted how he feared saying too much in his sleep. He discussed how he and the Moscow representative got along well. 'You became bosom pals?' he was asked. 'Absolutely' replied Leopold. He ate, slept, and travelled with the man to meetings. The close friendship Leopold seemed to be describing needed to be put back into perspective by Griffin to stress that this was all acting.
Griffin asked, 'How did you manage to make yourself show a sufficient hatred of capitalism?'

'You have to play the part.' Leopold explained.

The paper recounted his early days in the formation of the Party until his eventual departure in 1928 when the CPC leadership discovered his double role and notified Leopold of his expulsion. 'The notice was not given to you violently?' Griffin asked with surprise. 'No, by mail. Very businesslike.' Leopold stated. 'Did you feel in danger then?' he was asked. 'No, I felt quite safe...' Leopold flatly stated. For a spy thriller, Leopold's story did not seem to have enough danger to it. 'Did you carry a gun during your years as Comrade Esselwein?' Griffin asked. Leopold balked at the suggestion, 'Oh, no, no, no, I was never armed,' he replied. Griffin clearly tried to search for just where exactly the danger in Leopold's story was, but he was coming up empty. The Communists were violent leftists were they not? But Leopold's tales hardly portrayed a sense of danger despite Griffin’s attempts to find it. When given another opportunity to elaborate on his role at the CPC demonstration in front of the American consulate, Leopold claimed he was roped into it because he happened to stop by the Party headquarters in Toronto just in time for the CPC march. He claimed that he was carrying a banner for the CPC during the protest because he had taken it from the women next to whom he had been walking after it got too heavy for her. So, as The Star put it, 'chivalry' was Leopold's 'undoing.' Curiously, Leopold did not discuss his early days in the labour movement and refused to comment further about his experiences. Despite his role as a Mountie and Griffin's clear attempt to portray him as such, complete with his masculine bravado in the face of danger, Leopold still could not completely convince his interviewer of his intentions. His ethnicity and undercover role as a Communist continued to work against him. Griffin noted how this 'Bohemian-born Mountie' with his 'suave poker face,' was intelligent. He was surprised that Leopold's motivation in the
operation, in his opinion, was not the well being of the public. He thought that Leopold did not resemble a typical police officer. Instead of ending his interview with praise for Leopold, which had seemed to be Griffin's goal only one day earlier, the article ended with trepidation, telling readers that Leopold was a cold, calculating individual. If Leopold could not portray the communist movement in a more menacing light, Griffin’s piece implied, maybe the taint of leftist ideology remained.

Curiously absent in its coverage of the trial was the CPC's own paper The Worker. The paper had a bi-weekly run, but despite the huge significance of the trial for the party, no special issue or edition was drafted to provide more coverage of the trial. The paper ran only two editions that focused on the trial, one when it began and one when it was over. The paper had set up a 'workers’ jury' that weighed the evidence throughout the trial and predictably decided the accused were not guilty. The author of the article failed to note that the actual jury consisted of farmers and workers.

The press coverage of the trial reinforced the Crown's argument that the CPC was a foreign body, subservient to Moscow, and seeking to engage in a Canadian revolution. Papers sought to deflect criticism from Sergeant Leopold and protect his status as an RCMP officer. There was scant attention paid to the actual actions of the party; the ideas of the CPC were treated as evidence enough of the guilt of the accused. Section 98 was the law, and no questioning of it appeared in the press. Even within The Worker, the repeal of Section 98 was never its focus. The paper simply advocated for an acquittal and only well after the accused were convicted did the paper begin calling for Section 98's repeal. Indeed the 'workers’ jury' that the Communists set up as a propaganda mechanism still tried the accused under Section 98 in their mock trial. In other words, both within the CPC's own paper and the mainstream
Canadian press, the trial was portrayed as an important one, but never an illegitimate one. *The Worker* protested the authorities’ prosecuting the CPC members for their ideology, but did not dispute the ability of the authorities to do so, at least before their members lost the trial. The trial, while highly significant in the eyes of the public, was not regarded as exceptional. Section 98 and the trial being considered normal marked a significant advancement in the normalizing of emergency measures.

**‘A METHOD OF CONCEIVING HISTORY’**

The case for the defence began on 6 November 1931, the same day the Crown's case concluded. Macdonald's task was difficult; he would have to demonstrate that communist ideology did not make the CPC an unlawful organization under Section 98. This was no easy task, given that communists believed in a worker-led revolution. But Macdonald did have some room to maneuver. He knew that the party's ideas were being tried and that ideas are flexible and elastic. His strategy was to call the accused to the stand and challenge the Crown's interpretation of documents. The defence would admit that communists supported revolution, but maintain that this was not illegal. For communists, revolution was inevitable. Marxism, he argued, was simply a different way of interpreting history. For the defence, it was history that was on trial.

Macdonald stated that the defence would go through the Crown's evidence and 'explain it and indicate that it does not mean what it appears to mean.' Wright was sceptical, 'how can any witness come and say that it [a document] does not mean this or that? That is for the jury.' Macdonald argued that the situation before the court is 'what is, in effect, a philosophic system which puts into practice the doctrines of Marx and Engels and Lenin.' Wright would not allow it,
and claimed that the trial was not a trial on theory just on the evidence before the court. He did not want to get into communist theory, but it was impossible not to since every major communist publication was a court exhibit from the writings of Lenin and Bukharin to Karl Marx.

Macdonald maintained that he should be permitted to explain expressions and terminology. Wright ceded that if a term was unclear it was fine for him to do so. 70 Macdonald would have to rely on Wright and the Crown having limited knowledge of communist ideology to convince the court that all the phrases he sought to challenge were ambiguous. Court resumed at noon on 6 November with Tim Buck taking the stand.

      Buck explained the formation of the CPC and its activities in the trade unions. Macdonald asked Buck whether violence was the result of CPC activities; he stated that it never was. Macdonald moved to the subject of Leopold's role in the CPC. Buck testified that he knew Leopold as an active member of the Party and not just a passive one.71 Macdonald next read the CPC Constitution (Exhibit 24). Reading the phrase 'revolutionary Marxism,' he asked Buck to explain it. Wright interjected stating that he ruled that the interpretation of the Constitution was for the jury alone to decide. But when Macdonald argued that 'revolutionary Marxism, the expression in itself is absolutely meaningless as it stands there, to any Jury,' Wright reluctantly agreed and permitted him to continue.72 Wright questioned Buck directly: 'What is the meaning of revolutionary Marxism?' With enthusiasm Buck explained its meaning.

      Buck gave a detailed history of Marxism, describing it as a philosophy, and lost much of his audience in the process.73 Buck tried to simplify things, 'Dialectical materialism, the law of value and surplus value and class struggle,' he explained, ‘are the basis for Marx's philosophy.’ He explained that it provided for an analysis of capitalism and a means of interpreting history. He explained that when CPC members use the term 'revolutionary Marxism' they refer to this
method of analyzing the development of history, the state and political economy. When Wright asked if it was only a method of analysis, Buck replied that Marxist philosophy carries its 'own conclusions' that are 'revolutionary,' and continued, saying it is a 'method of conceiving of history.' The testimony was fast becoming a discussion of history, economy, and society. Wright probed further: 'would not a short definition be, that this is an absolute change in the method of analyzing history?' Buck agreed and Wright continued, 'history, economy, and social change?' Buck added, 'just for clarity, almost absolute, with the difference: that the system that was here first, was built according to the system being our philosophy...' Wright asked, 'In other words evolutionary as well as revolutionary?' Buck agreed. Wright continued his discussion with Buck, getting to the heart of the issue, 'what kind of a revolution is this revolutionary Marxism? Is it violent or peaceful?' Buck had a difficult time providing a simple 'yes' or 'no' answer. He was being asked to categorize how a future proletarian revolution would come about. The question and testimony were theoretical but it was evidence. Buck tried to provide a detailed explanation of the purpose of revolutionary Marxism, but Wright wanted a 'yes' or 'no' answer. Buck stated that the method of revolution was never prescribed by Marx. Revolution could be violent or peaceful, it depended, Buck said, 'on the other party,' the state. When asked about the CI being the highest command for the CPC, Buck did not deny it, in fact, he agreed.

Macdonald questioned Buck about the Vasiliev pamphlet. Buck claimed he had never read it and that it must have come in the mail, along with numerous other pamphlets that arrived regularly from the U.S. Buck explained that the pamphlet had no binding authority over the CPC and was not an official document of the CI. But what did force or violence mean to the CPC? How did their interpretation connect to the historic inevitability of a Marxist revolution? Macdonald debated the issue with Wright and its relevance to Section 98. The historic
inevitability aspect of Marxism meant that its teachings argued that history would progress to a certain point when class warfare and conflict would be inevitable. This was different than indirectly teaching force or violence as Wright claimed Marxism did. It was theoretical. What words meant in the broader context of how the CPC understood history was, in Macdonald's opinion, highly relevant. What the CPC taught was identical to their beliefs and intentions, and the court maintained these were not on trial, but they were. It was impossible for them not to be.

Macdonald and Wright continued to discuss just what type of force and violence the CPC was aiming for, if at all, and when and how. They discussed the wording of Section 98, especially the use of force or violence to produce a governmental or economic change. The court was concerned with the direct result of the CPC's teachings; Macdonald argued that if violence did take place in some future revolution, it was incidental and not a direct result of the CPC's teachings. Sommerville maintained that the purpose of the CPC was to destroy capitalism and all its institutions. But Macdonald countered that Marx was prophetic. The CPC in following Marxist theory was preparing for the moment when revolution arrived. It was similar to a Second Coming in Christian religious teachings. The debate continued with the Crown, defence, and judge trying to ascertain when the revolution would arrive and who was to be responsible for it if and when it came. The discussion centered on whether Marxist terms expressed by the accused were expressions of violence or just theories. As this battle for interpretation played out in the courtroom, the interplay reveals how they were both correct.

From the standpoint of the law, such expressions did advocate force or violence to produce economic or governmental change. The expressions fit Section 98 but at the same time these were expressions of theories. This fascinating exchange reveals how this courtroom became an exceptional space; theory and law clashed in the courtroom as Marxism was held up to scrutiny.
by the Crown and defence to come to a conclusion about whether the expression of these ideas, and indirectly the ideas themselves, were legal or illegal in Canada.

All of these issues could only have arisen in a court dealing with a Section 98 prosecution where ideas were considered criminal acts. More difficulties continued to arise for the defence. Wright ruled that Buck could only speak to his own opinion and not to the Party’s, but Macdonald disagreed, arguing that as Party Secretary Buck could speak for the CPC. Macdonald pointed out that Section 98 could 'cut both ways.' If Buck was breaking the law for being an officer of an unlawful organization, who should speak for the organization if one is found to be guilty of being a member of it, if not the members, or indeed the leader of the organization? How could the organization speak for the membership and not the members for the organization? What was the organization without its members? Wright was firm on his ruling; the party secretary could not speak for the party. Sommerville's cross-examination of Buck failed to yield much. Any attempts by Sommerville to challenge Buck on the violent nature of revolution were stymied. Buck held firm to the principle that revolution was an inevitable historic event.

Tom Ewan testified next. Leader of the CPC's militant WUL, Ewan was fiercely ideological. After denying the CPC engaged in violence, Ewan denied that the Vasiliev pamphlet was binding on the CPC or that the CPC sought to engage in violence. On the question of CI influence on the CPC, Ewan denied that the CPC received orders from Moscow, insisting that it only received guidance. Ewan was unwilling to admit the CI exerted control over the Party. Much to the chagrin of the defence, Ewan was eager to spar with Sommerville during his cross-examination, which continued for hours. Sensing Ewan's eagerness to extol communist ideology, Sommerville barraged Ewan with a slew of questions relating to Moscow’s guidance
of the CPC. He cited examples such as when the CPC had a dispute with the Finnish members of the Party over the perceived opposition of the Finnish labour paper *Vapaus* to the new Moscow line in 1931. Sommerville accused Ewan of trying to strong-arm party members in the language groups. Finding it difficult to defend himself against Sommerville's attack, Ewan used more party propaganda in his answers. For example, on the issue of moderate unions, Ewan stated that they sought class peace, but when Sommerville replied by asking whether he believed in class peace, Ewan said no. Similarly, when Sommerville asked: ‘And you develop as much as resistance as possible on the part of the workers?’ Ewan replied: ‘the maximum amount of resistance to starvation.’  

(Ewan claimed he supported a workers’ defence corps.) Ewan replied in the affirmative to Wright’s question: ‘Do you deny the right of the police to interfere with your demonstrations?’ For Ewan, the right of the CPC to express its politics in public superseded the authority of any law.

During the court's afternoon session, Sommerville continued questioning Ewan about the language organizations’ independence from both the CPC and the CI. Sommerville argued that from time to time the CPC complained about some of the activities of the organizations to the CI. He asked about a complaint the CPC made because Ukrainian members were singing ‘O Canada.’ Ewan claimed he did not remember the complaint, but that it was possible. But Sommerville pressed on claiming the CPC leadership was offended by the Ukrainians’ actions. Ewan claimed he had no recollection of this, but could not answer why the complaints ever went to Moscow to begin with. Sommerville next sought to target Ewan's loyalty. He asked if the Soviet Union was considered the ‘Fatherland,’ and if every member of the Party was taught to be loyal to it. Ewan replied that loyalty to the Soviet Union was important to the Party. Sommerville questioned where Party members loyalties would lie in a hypothetical war between Canada and
Russia and Ewan responded: ‘We advocate defence of the Soviet Union... No matter who the aggressor against the Soviet Union is.’ Ewan's defence of the Soviet Union made it more difficult for Macdonald to argue that the Party was not a band of foreign subversives.

A.T. Hill and Malcolm Bruce testified for the defence. Hill, a member of the Finnish Organization of Canada, and Bruce, once editor of the party's newspaper The Worker, both denied that the CPC engaged in violent activities or supported revolution. Bruce reinforced the defence's case, arguing communism was an ideology and revolution lay 'in the lap of history.' Sommerville made little headway in his cross-examination.

After a brief questioning of Golinsky, in which he testified that he had no significant role in the Party, and a brief cross-examination, the Crown withdrew charges against him. Čačić did not take the stand and despite the Crown's flimsy evidence of his status as an officer, charges were not withdrawn. The case for the defence was now finished.

Wright wanted to end the trial as quickly as possible and turned to Buck, asking if he wished to address the jury. Buck wanted more time to prepare, but had no choice but to proceed. In an impromptu speech, Buck spoke to the jury for three hours. ‘Communism is on trial here today,’ he told the jury. 'If we are convicted, Canada will be the only English-speaking nation in the world in which the Communist party is illegal. The only country in the world with a democratic parliament which outlaws Communism is Japan.' After numerous interjections by Wright, Buck claimed: ‘World revolution does not mean merely the releasing of a horde of men with beards, but a release of all the forces which join together to destroy the system of imperialist capitalism.’ In what was later called by the CLDL, Buck's 'Indictment of Capitalism,' Buck's performance in his address drew the party faithful to him. He had proven himself, in their eyes, to be a capable leader.
Court resumed on the morning of 12 November with both Macdonald and Sommerville
addressing the jury. Macdonald went first and highlighted the extraordinary nature of the trial.
'These charges are of a new and unprecedented nature, not only in this court but in any British
court,' Macdonald told the jury. He continued:

In any ordinary trial the accused would be charged with some certain act. There can be
no crime, broadly speaking, without criminal intent...If men advocate a system of
economics - socialism -... that is not a crime. That is the essence of our existence -
change... This is simply an international body of men with similar views as of how they
can best improve the lot of mankind.\textsuperscript{92}

For Macdonald, what was at issue in the trial was not that imperialist capitalists were out
to crush communism in Canada. It was the manner in which law was being used to influence
one's politics through the Criminal Code. While the Party and the CI wanted to use the trial for
propaganda, Macdonald demonstrated throughout the trial how law was being used for political
purposes. He was faced with an insurmountable task in defending the accused, he knew he
would lose, but he could at least expose the trial and Section 98 as inconsistent with the
principles of British justice.

Sommerville addressed the jury next. The jury's duty, he argued, 'is to save the state
from the insidious teaching of Bolshevism.'\textsuperscript{93} Sommerville began his address by telling the jury
that the literature coming from Russia were not simply academic theories and that for Buck and
his comrades these documents meant real revolution. He reminded them of the secret formation
of the CPC, playing up the foreign origins of the Party: 'Can you picture this foreigner from
Latvia carrying out the orders of Moscow and meeting, Buck, Popovich et al and thus organizing
the CPC? Russian leadership, Russian chairman, Russian program, Russian money, and an
entirely Russian conception....'\textsuperscript{94} According to this logic, the accused had aligned themselves
with these foreigners and renounced their ties to Canada. There is, Sommerville stated, 'but one
CI, one Communist Party throughout the world,' and all were members of it. Moscow called the shots. The Party existed not to introduce reforms, Sommerville cautioned, but rather to exploit everyday needs a springboard to lead workers to revolution. The Party in Moscow that overthrew the Czar was the same party operating in Toronto and preparing to overthrow Parliament. Sommerville outlined the authority of the State for the jury. 'It is the fundamental right of every state to preserve itself against attack from within as well as without and to punish those who abuse the freedom of the land...' Calling them the 'guardians of the state,' Sommerville warned the jury that to acquit these men would be to give approval to the teachings of Moscow. He called on them to help him in his war against communism:

... in the shadow of Remembrance day...I call upon you in the name of your own land to give me men to match my mountains, give me men to match my plains, men of courage, men of vision, men with wisdom in their brains. Give me the men on this jury...give me men who have devotion to the finest traditions of our race, and I'll give you the men who will say that sedition shall not stalk the land...’

Then with all the intensity he could muster, Sommerville gravely warned the jury, 'DO NOT FORGET THE QUESTION OF THE ALLEGIANCE OF THESE MEN TO THE FATHERLAND.'

The Crown's strategy throughout the trial was to portray the accused as traitors because they subscribed to a foreign and dangerous ideology and acted at the behest of Moscow. This argument was central to the Crown's ability to establish the blameworthiness of the accused, particularly for the count of seditious conspiracy, which was solely based on the CPC's connections to the CI. These activists were race-traitors who betrayed their duty to be good, moral citizens by being loyal to the wrong patriarch, the Soviet fatherland. The Crown used a war narrative to appeal to the jury members’ sense of loyalty and patriotic duty. With the Crown
portraying itself as the masculine figure of the brave general, and the jury as his brave male soldiers, the jury would be pushing back the foreign army and protecting the land and race of Canada by delivering a guilty verdict. Sommerville was no doubt eager for the trial to wrap up on Remembrance Day to add further symbolism to his argument, but he had to settle instead for 13 November.

Wright began his charge to the jury stressing that what was important was whether the accused came under the language of the Code. In regards to Section 98, Wright stated:

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...whether it is harsh or not, it is the law...it is the duty of every loyal Canadian citizen to peacefully submit to the law. Wright articulated the importance of the CPC’s trial and Section 98 broadly speaking. Whether the law was unusual or harsh, it was still the law.

Within two hours the jury returned a verdict of guilty on all three counts. When court resumed on 13 November, Macdonald asked for leniency, arguing that the Eight were 'political criminals, because their views on political questions bring them into conflict with the State.' In passing his sentence, Wright stated that the crimes, 'were of a serious nature,' because of the way in which the CPC, 'made special appeals to those who were not born in Canada and who were not versed perhaps in the spirit of Canadianism.' The Eight were not 'political criminals,' but had committed 'a species of treason,' for striking 'at the very foundation of our social and governmental fabric in this country.' Wright recommended deportation for those who were foreign-born. Macdonald informed him that there would be an appeal.

The greatest crime of the accused, as Wright indicated, was their attempt to indoctrinate the foreign-born. Communism was not part of the spirit of Canadianism. The CPC was a
perceived threat to the state's hegemony and the state had responded with Section 98. Wright's words highlighted not just the exceptional status of the court and Section 98 but the newly acquired status of CPC members as more than political criminals. They exemplified an entirely different class of criminal: a species of treason. They were a scourge on society, to be outcast from the social fabric. By outlawing the CPC, the criminal law helped the government set the boundaries of what political ideologies would be acceptable in Canada: communism was not one of them.

Many of Canada’s leading papers expressed their support for the verdict, and even the New York Times commented on the trial. It recognized the implications of the trial in that thousands could now be arrested because of the decision. The trial served as a strong message to the Canadian public to avoid the dangers of communism. The didactic message of the trial was not lost on the editors of the Toronto Daily Star as the front page headline on 13 November read: 'Communism in Canada is Dealt Death-Blow Today by Sentences.'

The eight appealed the conviction on the following grounds: that the indictment against the accused was 'bad in law' as Macdonald had outlined during the trial, that the judge refused to allow the defence to show the aims and objects of communism, that there were peaceful communist revolutions and that the question of force, violence etc. in the teachings of communism. Macdonald argued violence or force is not the 'direct result of any act of the accused or any act of the Communist Party of Canada and the evidence does not prove a charge within Section 98 of the Criminal Code.' The accused were represented at the appeal on 13 and 14 January 1932 by I.F. Hellmuth and Hugh Macdonald; Sedgwick and Sommerville represented the Crown. Chief Justices Middleton, Masten, Orde, and Grant heard the appeal and upheld the conviction under Section 98 on 19 February, but struck down the seditious conspiracy
charge which was found insufficient. The Court believed that the indictment was insufficiently worded as it was not clear exactly what the conspiracy was. The Crown's bill of particulars did not resolve the problems with the indictment for the third count. According to the judges, given that the first two counts were the more serious charges, dismissing the third count would have no bearing on the sentences. The Court's reason for upholding the convictions on the first two counts (those under Section 98) followed the same logic as the trial; the CPC was directly linked to the CI and thus all the CI teachings were those of the CPC. The CI documents that appeared during the trial were again put on record during the appeal, complete with all the mentions of 'civil war,' 'armed rebellion,' and 'violent defeat of the bourgeoisie.' Theories and statements from the theses and statues of the CI were portrayed as if they described actual events that had occurred in Canada. On these grounds and Leopold's evidence, the conviction was upheld.

CONCLUSION

Stopping the spread of communism was Section 98's principal intent and its significance lies in the way it demonstrated how what was permitted during a time of war—political policing—became acceptable in peacetime, once Section 98 entered the Criminal Code. The heart of the Crown's case rested on demonstrating how the ideology and, by extension, the political beliefs of the accused, were criminal acts. The broader significance of the Buck et al. trial to Canadian society was not just whether the trial was fair or was a violation of civil liberties: it was the way in which a wartime emergency power had become a part of everyday Canadian society by becoming a part of the Criminal Code, and the way in which this emergency equated ideas with criminal acts as the trial plainly illustrated. The Crown was successful in making its case that the CPC and its ideology expressed foreign teachings that advocated the
overthrow of the government and economic system, despite the defence’s claims that communist ideology was an alternative means of interpreting history and society.

With the CPC classed as unlawful, members were now on notice. Authorities in Canada were taking whatever exceptional measures were needed to rid the country of communism’s insidious teachings: hunting and flushing out other CPC members who would now be forced into hiding.

Cover of Oscar Ryan’s pamphlet Deported! which protested the deportation of the ‘Halifax Ten.’ Oscar Ryan, Deported! : The struggle against deportations and for the defense of the foreign-born workers: the case of the ten prisoners in Halifax, of the thousands who face deportation (Toronto: Canadian Labor Defense League, 1932).

Stickers that members of the CLDL stuck to posts and buildings during a protest in front of the Department of Immigration and Colonization office in November 1932. From LAC, RG 76 volume 738 file 513057.

Halifax Ten members Arvo Vaara and Martin Pohjansalo. Vapaus 4 May 1933.
Halifax Ten member Toivo Stahlberg. Vapaus 4 May 1933.

Photo of Tomo Čačić when first incarcerated, only member of Buck et al. to be deported. LAC, RG 73 volume 579 file 2663.

Photo of Tomo Čačić while imprisoned at Kingston Penitentiary. LAC, RG 73 volume 579 file 2663.

Photos of the Halifax Ten in Detention at Halifax. The RCMP worried that these leaked photos, which display the tight living conditions of the detainees while in their cells, would elicit the public’s sympathy. *The Canadian Labor Defender*, 4 June, 1932.
A worker protesting the death of Nicholas Zynchuck displays his poster outside the funeral parlour housing the body of Nicholas Zynchuck. ‘Zynchuck Case,’ LAC, F.R. Scott Fonds, Volume 30.

The Verdun Workers’ Association in a funeral march for Nicholas Zynchuck. 11 March 1933, *The Montreal Herald*. 

Cover of the *Canadian Labor Defender* protesting Section 98, June 1934.
Section 98 repeal meeting flyer created by the Canadian Labor Defence League (CLDL). From Thomas Fisher Library, Kenny MS 179, Box 39, File 18
CHAPTER 4

Following the conviction of Buck et al, the government engaged in one of the most widespread political deportation campaigns in Canadian history. The history of deportation has received little attention from historians, aside from Barbara Roberts’ classic monograph From Whence They Came: Deportation from Canada 1900-1935. While highly influential, Roberts’ work is limited in explaining the broader ramifications of deportation policy and how such laws were possible in a democratic state.\(^1\) Since its publication, much of the historical literature on deportation has focused on particular historical events and has largely dealt with government policy.\(^2\) The post–9/11 era of state-sponsored deportations of suspected terrorists has brought new life to the topic, as well as new theories and approaches from such disciplines as sociology, philosophy, and the political sciences.\(^3\) This chapter focuses on how Section 98 and the normalizing of emergency measures affected those communists most vulnerable to the state’s repression after Buck et al’s conviction: transnational activists. It pays attention to the social history of the human targets, but blends this approach with a focus on the laws and state actors responsible for creating and carrying out deportation policies, and incorporating new interdisciplinary theoretical approaches. This approach provides a greater understanding of how political deportations occurred in a liberal society such as Canada and broadens our understanding of why transnational activists were the targets of these policies in the 1930s.

The chapter explains how the broad goal of deportation as a nation-building effort was possible in a democracy.\(^4\) I argue that such extreme measures against immigrant activists were possible because of how immigration law that targeted communist activists, namely Section 41
of the Immigration Act, allowed the government to legally circumvent the law. Judicial and policing practices normally reserved for a state of emergency, such as secret arrests and trials and relaxed standards of evidence submission, were used against immigrants during a time of peace. The use of exceptional measures against immigrants was an acceptable and normal component of immigration law. Transnational activists were a target for authorities primarily because they occupied an anomic space. They often had no country with which to identify, but rather viewed themselves as members of a people, such as their ethnic group, and part of the communist movement. Section 41 of the Immigration Act was an ideal tool for the government in dealing with these seemingly unassimilable activists by enabling authorities to prosecute immigrants for their political beliefs without providing them with the same legal protections as citizens. Deportation was the ultimate means of restricting physical freedom. The state could exert direct control over bodies, or what Giorgio Agamben has termed, their ‘bare life,’ thus maintaining their exceptional state outside the realm of citizenship and law.

I will demonstrate the effectiveness of Section 41 through the case of the Halifax Ten, as they came to be known in the labour press, and the deportation of Tomo Čačić, the only member of Buck et al who was eligible for deportation. While archival records of communist deportations are fragmented, as are case files on deportees generally, records of the deportation of more prominent CPC members, such as this case, are available. Through these records I will provide as much information as is available on the lives of the deportees so as to give a more human face to those individuals the state was targeting. To do so, I draw on information from immigration case files, the Royal Canadian Mounted Police (RCMP) records, and the ethnic labour press, including translated Finnish, Polish, Croatian, Ukrainian, and German papers. A number of these immigrants were transnational activists who viewed Canada as one front in the international
communist struggle. Many of them came to North America as sojourners and became radicalized while on the job, working in dangerous conditions.

I first discuss the lead-up to the arrest and the arrest of The Ten. I focus next on Section 41, drawing on the work of Nicholas De Genova and Giorgio Agamben to show how deportation controlled entry into citizenship. Next, I provide a window into the lives of the deportees, followed by a discussion of reactions to the arrests. In the final section, I examine what became of deportees after their expulsion from Canada, illustrating how jarring the effect of deportation was on their lives and how for some, it cost them their lives.

A ‘SPRING CLEANING’

Once the Buck et al trial was completed, authorities quickly began preparations to deport immigrant members of the Party. Their actions were foreshadowed in the ethnic press shortly after the trial concluded. The Finnish labour paper Vapaus and the Polish conservative paper Gazeta Katolicka w Kanadzie both reported that Mayor Ralph Webb of Winnipeg, a fervent anti-communist, was publicly calling on the government to take further actions against communists and engage in a ‘spring cleaning.’ Following the unsuccessful appeal of Buck et al in February 1932, the immigration department, in cooperation with the RCMP and provincial authorities, began one of the most disturbing round-ups of the era.

Preparation for the raids began on 11 December 1931. The RCMP sent out notices to its districts across the country, informing commanding officers that the service was contacted by the Immigration Department, which required assistance in arresting CPC members for deportation. Officers were reminded that they must, while planning the raids and carrying them out, maintain ‘absolute secrecy...until zero hour.’ It is unknown how many round-ups of CPC members took
place during the 1930s because political deportations were often carried out under the guise of other reasons such as when an immigrant became unemployed and was in need of relief.\textsuperscript{10}

On the night of 2 May 1932 the round-up began. This operation, the most extensive and clandestine of its kind, sought to nab some well-known leaders of language organizations in the CPC, such as Arvo Vaara, Conrad Cesinger, Dmytro Chomicki, and Ivan Sembaj—most of whom were arrested during the first week of May. Martin Pohjansalo, translator for the Finnish paper \textit{Vapaus}, and Arvo Vaara who was the former editor of the paper, were arrested in Sudbury by the OPP.\textsuperscript{11} John Farkas was arrested in Oshawa, Dan Chomicki and Conrad Cesinger in Winnipeg. Ivan Sembaj was picked up in Edmonton, and Hans Kist and Gottfried Zurcher were arrested in Vancouver. In Montreal, Steve Worozcyt, or Worebek, of the Ukrainian Farmer Labour Temple Association (UFLTA) was arrested and, on 19 May, Toivo, or John, Stahlberg of the Finnish Organization of Canada (FOC) was arrested. In the majority of cases, the men were arrested overnight and whisked away by train to Halifax.

According to some press reports, these raids were the second in a week. On 7 May, \textit{The Toronto Star} reported that dozens of Finnish and British people had been secretly rounded up the week before and quickly deported, all of whom were under heavy RCMP guard. No details were available as to who they were and how many there were.\textsuperscript{12} Others arrested were not eligible for deportation and were released, including Orton Wade, a Canadian-born citizen.\textsuperscript{13}

SECTION 41: ‘LIFE AT THE FOUNDATION OF THE ORDER’

While the Halifax Ten fought their deportations, their options were limited. The Immigration Act of 1910 set out the parameters of politically based deportations in Section 41, with procedural regulations set out in Section 42. The Act provided for the deportation of non-
naturalized or domiciled immigrants that sought to ‘create a riot or public disorder’ in Canada or who were ‘member[s] of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government.’ Both groups, it stated, ‘shall…be deemed to belong to the prohibited or undesirable classes, and shall be liable to deportation.’ These measures were intended to deal with the wave of prewar radicalism linked to socialist and anarchist groups operating in Canada and the United States. On 6 June 1919, Section 41 had been amended during the Winnipeg General Strike to allow for British-born immigrants to be deported, a response to the labour revolt and the influence of A.J. Andrews and the Citizens’ Committee of 1000. The amendments were heavily influenced by American legislation. During the General Strike (15 May to 25 June), the government and Andrews intended to target those responsible for the Strike (British-born workers) although the changes were not used because they would have been politically disastrous. The wording of the Section was identical to Section 98. This is what the Halifax Ten were up against.

Section 41 gave the government more power in dealing with foreign activists than Section 98, which required that persons charged be tried in a criminal court. Deportation, as Roberts remarks, ‘was an administrative, not a judicial matter,’ meaning that ‘prospective deports did not have the rights that they would have in a judicial process.’ And ‘the deportation process was overturned by the courts only when the Department got caught being sloppy in its procedures.’ By abiding by regulations created by Parliament, the Immigration Department was safe to carry out deportations legally and free from public scrutiny. Paradoxically, to keep the country secure and to protect the rule of law, Canadian immigration officials needed laws to allow them to operate outside of the public gaze.
As mentioned earlier, Section 42 of the Immigration Act detailed the procedures for carrying out deportations. To determine if the Halifax Ten met the requirements for being deported, they appeared before a Board of Inquiry which consisted of three individuals handpicked by the department. The Board acted as judge and jury in the cases. Separate deportation hearings were held for each of the ten individuals. Sergeant Leopold of the RCMP, the star witness in the Buck et al. trial, was called to the hearings to give evidence. The Immigration Department’s reasoning for having Leopold testify in these hearings was so he could identify the CPC as an illegal organization and submit evidence collected during the trial about the deportees, and prove their membership.\(^\text{19}\) This would then establish the undesirable status of the deportee under Section 41 in that they advocated or taught the overthrow of government by force and violence by belonging to the CPC, making them eligible for deportation. The conviction of Buck et al. under Section 98 was thus a crucial step to the deportation of communists.

Lawyers for the deportees, if they were lucky enough to have one, had few options. A deportee had no right to a jury, even though they were, in many ways, being tried for their actions and under law were entitled to a fair trial. They could not challenge the admissibility of evidence or call witnesses to support them. They could challenge the right of the Immigration Department to detain them, i.e., file a *habeas corpus* challenge, but these often failed as they were required to be carried out in the city where the deportee was held and the Department often moved individuals to skirt these challenges. To quash a challenge, the Department needed only to prove that it followed its own rules.\(^\text{20}\) The deportees had to stand accused of an offense and be held accountable for it, but the process was still an administrative matter. Leopold, along with
other undercover RCMP agents, testified at each of the deportees’ hearings. Leopold testified that he believed all the organizations the men were affiliated with were unlawful.21

The CLDL’s lawyers filed a *habeas corpus* challenge to dispute the detention of the Halifax Ten.22 When it was rejected by Justice Carroll, the CLDL appealed to the Supreme Court of Canada. The appeal centred on the lack of particulars provided by the Immigration Department to the appellants. The lawyers questioned how the men could be detained if the Department could not show the men were guilty of belonging to an unlawful association at the time of their arrest, and only at some point in their past? But the Court found that all that was required was that the allegations were made with ‘reasonable certainty’ in regards to the appellants’ ‘violation of the act’ (Section 41).23 It did not matter whether the deportees were active Communists or not. The Court stressed that ‘there is no analogy between a complaint under the Immigration Act and an indictment on a criminal charge.’ For instance, in a criminal case the Crown could not compel the accused to take the witness stand, while in a deportation hearing, the deportee was often the ‘chief witness’ compelled to face the accusations of the Department or face immediate deportation.24 In sum, the Department followed the laws that allowed it to carry out deportations as effortlessly as possible and deny deportees the protections found in the criminal law. These were exceptional powers, yet normal components of Canada's Immigration Act.

Section 41 was a law that enabled the government to target the politics of transnational activists outside of long-established legal principles. In many ways, it was a law designed to circumvent law. Section 41 was meant to set the boundaries of acceptable political ideology for immigrants and domestic-born Canadians alike by demonstrating the characteristics of those who were not qualified as citizens. Deportation served as a powerful nation-building tool. As
Nicholas De Genova argues, with deportation, ‘the whole totalizing regime of citizenship and alienage, belonging and deportability...is deployed against particular persons in a manner that is...irreversibly individualizing.' In this case, the state possessed the power to unmake and recast citizens, removing them from the social fabric. Transnational activists threatened the composition of the nation by their very being. Indeed, as Linda Bosniak writes, ‘it is...the very fact of their hereness...that renders [immigrants] deportable.’ They were the most susceptible to the direct power of the state, where citizenship and non-citizenship were decided at its whim.

These transnational activists exemplified Giorgio Agamben's figure of the homo sacer, a term he uses to describe a person whose life has become ruled by law, but who has no access to law or protection from it: someone who is a ‘non-being’ under the law. As De Genova illustrates, a person's freedom of movement, which deportation unequivocally denies, enables the state to rule directly over an immigrant's ‘bare life,’ or a life lived in the most basic animalistic sense. Indeed, citizenship, as Agamben argues, is not simply a status that determines who one's rulers are, but rather one that ‘literally identifies...the members of the sovereign.’ It is the state that seeks to undertake the making of a people. Membership via citizenship places ‘the very natural life...at the foundation of the order,’ thus ‘birth immediately becomes nation’ and ‘rights are attributed’ to people ‘solely to the extent that’ an individual serves as the ‘vanishing ground...of the citizen.’ De Genova points out that the state determines ‘exactly whose nativity may serve to verify national belonging.’ Once national belonging is ascertained, the citizen has access to the legal protections the state offers, such as the protection of property, due process of law, and by way of birth and national belonging, protection against deportation. Deportation serves as a regulatory method of preserving the people of the state so defined. As such, deportation under the Immigration Act cannot be compared to the criminal law, as confirmed by
the Supreme Court.\textsuperscript{29} Immigration laws, such as Section 41, controlled those individuals that presented the greatest challenge to the state's people-making through citizenship and confined them to an exceptional, lawless state of being. They were targets of the law and denied any protection against it.

THE HALIFAX TEN AND TOMO ČAČIĆ

The files in the archives, coupled with accounts from newspapers, have provided a window into the identities of the deportees and the secretive deportation tactics that the Canadian government engaged in during the 1930s. This highly clandestine operation sought to nab some well-known leaders of language organizations in the CPC, such as Arvo Vaara, Conrad Cesinger and Dmytro Chomicki, and Ivan Sembaj. But besides being high-ranking members of the Party, the majority of the Halifax Ten, and Tomo Čačić, were sojourners before joining the Party. Their initial intention was to work and then return home but they discovered communism and joined the movement in North America. They identified with a region or ethnicity rather than a state.

Arvo Vaara was born in Vassan Laani, Truvan Pitaja, Finland, on 28 January 1891 and baptized Lutheran. Vaara worked as a farmhand and in construction. He arrived in Canada in December 1908 as a sojourner, never intending to stay in North America. Like many other immigrants of the period, he came to Canada to find work, often doing difficult jobs that many Canadians avoided.\textsuperscript{30} His intention was to move back to Finland and buy his own farm. By 1924, he had settled in Sudbury and became the editor of the Finnish labour paper \textit{Vapaus}, a daily published by the Finnish Organization of Canada. Vaara never identified with any one nationality. While he was born in what is today Finland, it was a part of the Russian Empire at
the time of his birth and during his youth. Finnish citizenship did not exist at the time. Vaara quipped that he never actually knew what his citizenship was.\textsuperscript{31}

Vaara became an influential CPC member because of his strong links to the Finnish community and his role in running \textit{Vapaus}. But he often clashed with Party leadership, especially during the rise of Stalin's so-called Third Period of capitalism when Moscow demanded strict party discipline.\textsuperscript{32} Vaara was known to the authorities. In 1928, he was convicted of seditious libel after allegedly writing an editorial in \textit{Vapaus} criticizing the British monarchy.\textsuperscript{33} Vaara was described as a loyal follower of the CPC and at the age of forty he was considered an ‘old hat’ at leftist activism.

There are few recorded details about Vaara’s private life. In an interview with \textit{The Toronto Star}, an unnamed former Sudbury city councillor and co-worker of Vaara gave his impressions of him, stating that Vaara lived alone, rarely drank, and was never seen with women. He told the reporter that Vaara was generally a quiet individual. The \textit{Star} reported that Vaara would probably not stay in Finland but would go to ‘Korea’ and from there to the Soviet Union. The reporter misunderstood: the source probably meant that Vaara would travel to Karelia, a border region between Finland and the Soviet Union that attracted many unemployed Finns from Canada over the course of the 1930s.

The desire to leave Canada for Karelia developed into a type of ‘Karelia fever’ among left-wing Finns, as historians Varpu Lindström and Evgeny Efremkin have demonstrated.\textsuperscript{34} The Soviet eastern side had become the Karelia Autonomous Republic of the Soviet Union (KASSR) in 1923. Unbeknownst to communist Finns in North America, over the course of the 1930s, Stalin's forces began large-scale programs of pacifying the area by imprisoning or liquidating
any perceived threats, which included Finns. Historians have estimated that thousands of Finns were executed or transferred to prison camps in the Soviet Union during this period.\textsuperscript{35}

Conrad Cesinger was born 25 February 1901 in Augsburg, Bavaria, in Germany. He worked in Germany in a chemical lab and possessed a college education from a technical school. He left Germany for the same reason as the other deportees— to find work. A single man, he sailed from the port of Bremen and arrived in Canada in July 1926, docking at Halifax. Cesinger travelled to Winnipeg before making his way to Saskatchewan where he worked as a farmhand. He returned to Winnipeg in 1931. Much like Vaara, Cesinger discovered communism in Canada while working in difficult conditions. After a string of injuries, which included having his hands ‘frozen,’ Cesinger was unable to continue as a farmhand. He filed a claim with the Compensation Board against his employer, the Northwest Lumber Company, but his claim was refused.\textsuperscript{36}

Cesinger’s main task in the Party was to build the popularity of the CPC among German-speaking workers. He quickly climbed the Party ranks and, in 1931, was appointed to the newly minted National Party Fraction Bureau (NPFB), which was the controlling body behind the German Workers and Farmers Association (GWFA). The GWFA, much like the Finnish Organization of Canada (FOC) and the Ukrainian Farmer Labour Temple Association (UFLTA), was an ethnic association that blended politics with culture.\textsuperscript{37} It was based in Winnipeg and was closely aligned with the CPC and run by prominent CPC members such as Jacob Penner. According to RCMP documents, Cesinger was second-in-command of the organization, behind Penner. Cesinger served as editor of the German labour paper \textit{Deutsche Arbeiterzeitung (DAZ)}. However, much like Vaara’s resistance to \textit{Vapaus} towing the new Moscow line, Cesinger claimed at his deportation hearing that despite his being made secretary of the NPFB, he did not
support the GWFA toeing the new Moscow line. He claimed there was some discussion within the GWFA to ‘get closer to the Communist Party’ but that he opposed it becoming a wing of the CPC. It is unclear whether Cesinger made the claims to try to avoid deportation or if he really was opposed to the GWFA becoming closer to the CPC. 38

Dmytro Chomicki (known as Dan Holmes) was one of the few whose immigration file was retained by the Immigration Department. The RCMP retained their records on him. Chomicki was born in the village of Ottynia, Austria, on 3 December 1898. He arrived in Canada with his parents in 1913 when he was fifteen. After the First World War, the place of his birth became part of what is today Poland. Chomicki, like Vaara, never thought of himself as a citizen of any country. The Austria of his birth no longer existed at the time of his application for naturalization in April 1927, which was denied, presumably because of his ties to the CPC. Baptized Catholic, he married Marion Perchal in 1921 at Holy Ghost Catholic Church in Winnipeg. Together they had one daughter, Makie. Although Chomicki started an apprenticeship in Austria as a machinist, he never completed it and worked in Winnipeg as a printer for the Workers and Farmers Publishing Association, which published Ukrainian Labor News and Working Women, among other labour papers. Chomicki was a member of the CPC and served on the District 7 Executive Bureau in Winnipeg. The RCMP considered him to be an important member of the UFLTA and a skilled printer, which was a valuable asset to the group. 39 While serving as Secretary of the Bureau, Chomicki had an important role in trying to recruit Polish immigrants. Although Chomicki did not consider himself a Pole, his language skills were an asset for the Party (he identified with being Western Ukrainian). 40

It is uncertain what success Chomicki had in his attempts to draw more Poles into the CPC. The Party's Polish contingent was increasing enough that the CPC created a Polish labour
paper called *Budzik*. *Budzik* began publication in 1932, and was later succeeded by the paper *Glos Pracy.*

Alas, little remains in the archives on Ivan Sembaj. He was a native of Poland but, at his deportation hearing in 1932, claimed to be a citizen of the Soviet Union. He arrived in Canada in October 1923, was married, and had a Canadian-born child. He briefly worked on farms in Manitoba before joining the ULFTA, where he was an executive member of the organization at the time of his deportation. He was a member of the Workers Benevolent Association and the Canadian Labour Defense League (CLDL). The immigration authorities regarded him as intelligent and hence dangerous. He was forty-years old at the time of his deportation.

That the RCMP included these four men in its round-up made sense given they all occupied senior positions in their respective CPC language groups and that authorities feared the communists’ attempts at drawing in immigrants to their cause. The reason for the arrest of the remaining men was not so clear. Gottfried Zurcher, Stefan Worozcyt, and Hans Kist were small potatoes in the ranks of the Party, though Zurcher and his spouse (who was arrested and described in mainstream media reports as ‘Mrs. Frederick Zurcher wife of Gottfried Zurcher’) and Stefan Worozcyt were all members of the CLDL, which was known for its agitation for workers’ rights. While Hans Kist was not a CLDL member, he was a highly vocal member of the CPC.

Gottfried Zurcher was born in Switzerland. He arrived in Canada on 9 September 1927 and lived with a friend in Manitoba who had promised him farm employment. He worked as a farm labourer for ten months before becoming a welder with the Manitoba Bridge and Iron Works. He then relocated to Vancouver. Zurcher pursued full-time activities with the CLDL after 1931. He was married and thirty-two years old at the time of his arrest in 1932. His wife
was arrested and taken to Halifax. She was described in *The Worker* as head of the CLDL’s Vancouver branch. She was just as much or more of a target for authorities because of her work in the CLDL. The lack of details about her illustrates that while a number of prominent women were recognized in the communist movement, some were only recognized based on their status as being married to an activist. *The Worker* only mentioned her so as to demonstrate the harshness of the state’s tactics in deporting Zurcher’s wife, rather than recognizing her status and participation in the movement in her own right.⁴⁴

The deportation of Zurcher’s spouse, and that of other women involved in the communist movement, reveals that women activists were treated no differently by the authorities than their male counterparts. If they were eligible for deportation, the department would see it through. However, women did face additional scrutiny by immigration authorities broadly speaking. They were subjected to deportation for moral reasons, both in the United States and Canada. For example, women were deported for being a ‘fallen’ girl by having a child outside of marriage.⁴⁵

A native of what would today be known as Poland, Stefan Worozcyt arrived in Canada in 1926 to take up farm work in Western Canada. But Worozcyt skipped out on his train and instead landed in Hamilton, and later in Montreal, where he worked as a window cleaner. Worozcyt was not a particularly high-standing party member. The only evidence the Immigration Department had on him was that he was a member of the UFLTA, the CLDL, and the Society for Assisting the Liberation Movement in Western Ukraine. Though born in Poland, Worozcyt identified as being Western Ukrainian, not Polish. He was from the region known as Galicia in Eastern Europe. He was thirty-years old and single when arrested.⁴⁶

At the time of his deportation in 1930, Hans Kist was a recent arrival to Canada, unlike his fellow deportees. He arrived in Vancouver and sought farm work, soon joining the CPC. He
was involved in strikes at Fraser Mills and in unemployment rallies in Vancouver. Kist was a member of the National Unemployed Workers Association and the Friends of the Soviet Union, both of which had ties to the CPC. Like his fellow deportees, he admitted to being a member of the CPC until it was declared unlawful. Kist was confrontational with authorities, leading the Immigration Department to categorizing him as ‘saturated with communistic beliefs’ and ‘...a thorough going troublemaker.’ Kist was dangerous because of his lack of respect for the law.47

The remaining individuals that made up the Halifax Ten were Martin Pohjansalo, John Farkas, and Toivo Stahlberg. They were arrested as a result of the fishing expedition initiated by Ontario’s Attorney General William Price. In preparation for the Buck et al. trial, Price solicited the names of Communists from Crown Attorneys across the country so they could act quickly against them once the group was convicted.48 Few details of their lives remain. We do know that Martin Pohjansalo, known as Parker, was born in Finland and was single and twenty-two years old at the time of his deportation. Having arrived in Canada on 23 May 1913 as a three-year-old when his parents came to Toronto, he knew no country other than Canada. Becoming the associate editor of Vapaus, Pohjansalo travelled and worked closely with Vaara. Crown Attorney Wilkins of Sudbury identified him as a known Communist.49

John Farkas was a single worker from Hungary who was thirty-years old at the time of his deportation. Having arrived in Canada on 23 July 1926, Farkas later moved to Oshawa in February 1928, after brief stints in the West looking for work. He started a grocery store on Albert Street in Oshawa’s downtown core, but his idealism led to his bankruptcy; unable to turn away unemployed workers needing food, he was forced to close his store.

Farkas became a member of the CPC, but had problems with the Party. He was known to local police. When he was involved in a fist fight with Ed Macdonald, the unemployed organizer
for the CPC in Oshawa, he was charged with disorderly conduct. Farkas cut ties with the CPC after the fight. He participated in marches for the unemployed but never spoke again at meetings. Farkas reportedly said he was “through making public demonstrations for communism.” His grocery-store partner, Carney, stated that he and Farkas would frequently have debates about religion, as Carney was active in the local Greek Orthodox Catholic Church. Carney stated that despite the debates, he would not go so far as to consider Farkas an atheist. (An indication that, among CPC members and supporters, religion may not have been totally absent from their lives despite the views of the Party.)

He was a member of the CLDL, the Unemployed Workers Association, and the Hungarian Workers Club. Farkas most came to the attention of the Immigration Department through various sources because he had several encounters with the provincial police, and Crown Attorney J.A. McGibbon of Oshawa told Attorney General Price about Farkas’ spreading of communist propaganda in the city. The immigration department concurred with McGibbon that Farkas was a constant source of trouble in Oshawa.

Toivo ‘John’ Stahlberg was born in Finland and arrived in Quebec in 1910. Stahlberg travelled to the U.S. and resided there for ten years. He received his U.S. naturalization in 1917. A blacksmith by trade, Stahlberg worked as a ticket agent for steamship companies before serving as the business manager for Vapaus. His residence in Canada began in October 1925 while still periodically travelling to the U.S. Stahlberg left the CPC in 1928 during the Stalinization period of the Party, but stayed with Vapaus, presumably because he disagreed with the Third Period policies of the Party at the time. With the turn of Vapaus to the new line it is doubtful that he would have found much freedom staying with the paper. He was a member of the FOC, presumed by the Immigration Department to be a radical Communist group. He was married and forty-years old at the time of this arrest.
Tomo Čačić's deportation case was high-profile because he was the only member of the Buck et al. trial in 1931 who was eligible for deportation. His deportation was carried out one year after the Halifax Ten hearings, after completing his sentence. Sources on Čačić’s life are rich because he was an avid writer. He wrote to his Canadian comrades in the Yugoslav labour press in Canada for years after being deported. His writings provide a unique, first-hand account of the life of a transnational activist who was deported from Canada. Like many of the other members of the Halifax Ten, Čačić was radicalized in North America after first travelling to the United States and later moving to Canada in 1925. He presumably joined the CPC in 1927. Much like members of other ethnic groups, Čačić served a useful role for the CPC as an organizer in the Croatian community. He was instrumental in creating a labour paper for Yugoslav workers entitled *Borba*. A prolific writer, many of his writings survive to the present day. Čačić described the need for *Borba’s* creation in the following way:

> Our immigrants had a very hard life. In the beginning they were doing seasonal jobs in mines and forestry and building roads and railroads... At that time there was no clubs for us, except some clubs that were organized by the Kingdom of Jugoslavia. There were no newspapers except some that were organized by Serbs. Our immigrants that were chased away from their homeland by the Kingdom did not want to hear about that paper.  

For Čačić, his Yugoslavia was a workers’ state that included Croatians and not the Kingdom of Yugoslavia which he regarded as a Serbian state under the rule of King Alexander.

Čačić had worked hard in his early years at the CPC, and in his writings he displayed pride in his ability to learn English on his own and to serve as editor of *Borba*. In some of his writings he discussed the difficulties of the community in setting up a paper: ‘our immigrants were mostly peasants & working class, mostly with no education or qualifications to manage a paper. The ones with education went into business. I became editor of the paper and prayed that we would do a good job.’ The CPC provided an ideal political option where he could express both his
nationalist and communist ideals. While the CPC certainly did its best to subordinate its language organizations, it still continued to value them and to value immigrants like Čačić, Vaara, and Chomicki. The CPC was the only organization available that provided a space for the expression of their ethnicity and their politics, however conflict-ridden the relationship became.

Like other deportees, Čačić had an important role in the Party but was never a big fish, at least not until his arrest. He had a falling out with the Party brass when he openly criticized the Party's lack of funding for lay members. In his later years he engaged in public battles with comrades, defending his role at Borba. Čačić’s subordinate in the early days of Borba, Franjo Ugrin, wrote to the Yugoslavian labour paper Jedinstvo in 1966 about the early years of labour radicalism among Yugoslavs living in Canada. He discussed his early work with Čačić in trying to get Borba started: ‘The only salaried employee at that time was comrade Čačić who worked as the editor - if we can call it a salary - for it was such a small amount of money that it was absolutely insufficient for even one daily meal at 25 cents.’ Ugrin details how the paper started to grow and expand just before the CPC leadership was arrested. He claimed that Čačić’s arrest nearly ‘beheaded’ their movement and that his arrest was a result of ‘his own improvidence.’ Petar Žapkar replaced him as the editor but was arrested shortly after and deported along with Čačić.Čačić took exception to Ugrin’s statements. According to Čačić, Ugrin was ‘my right arm’ in issuing the paper but he resented Ugrin, faulting him for his own arrest. He told his interviewer that across the globe ‘thousands of the best revolutionaries were arrested before 1941.’ In Yugoslavia, he claimed that many were jailed for years or murdered. ‘Were they all arrested because it was their fault?’ Čačić asked. He doubted that, and concluded that ‘they were arrested because they were revolutionaries.’

163
Čačić’s RCMP security file confirms that he was never a leading figure and his arrest was because he was in the wrong place at the wrong time. His file raises questions about other elements of his interpretation of the events of 1931, which implied an official interest in quelling Yugoslav sedition. According to Čačić, after his arrest, the Yugoslav consulate in Canada ‘were hoping that once I was gone the paper [Borba] would disappear in Canada. They were mistaken, Borba was under new management and other newspapers began to appear.’ Čačić’s belief that he had been arrested to silence his work in the ethnic labour press and that Yugoslav officials in Canada were involved was unfounded. His arrest was not premeditated and the RCMP was entirely unaware of his activities prior to it.

The cases of the Halifax Ten and Tomo Čačić shed light on the transnational activist during the interwar period. Much like other anarchist transnationals, those immigrants that joined the CPC viewed Canada as but one locale in an international struggle. These cases shed light on communism among immigrant workers, of all the members of the Halifax Ten, only one, Ivan Sembaj, confirmed that he had socialist leanings before arriving in Canada. The remainder of these individuals were sojourners who had no intention of remaining permanently in Canada but rather sought to return to their homelands. These immigrants remained in Canada, became activists in the communist movement, with a number of them climbing the ranks within the CPC. They were not foreign activists coming to Canada, but rather foreigners that became activists in Canada. While in the Finnish community, left-wing leaders fleeing the Finnish Civil war helped to spread the communist message to fellow Finns and no doubt had some influence on immigrants of other ethnicities, the same cannot be easily said of other groups such as the Croatians, Poles or Germans. In sum, it was North American industrial capitalism, and the inherent contradictions within it, that created these communists.
The Halifax Ten and Tomo Čačić were ‘rebels without a country.’¹⁶² They represented what Marx called 'a class with radical chains.'¹⁶³ Those that had no property and no standing within society and were the antithesis to capitalism and the modern state were created out of it, as capitalism created the means by which workers were thrust into a global labour market as ‘unprotected, and rightless proletarians.’¹⁶⁴ They did not identify with a specific state but with a region of a country, or put more succinctly, a people. Once they were established by state authorities as Communists, they were cast out of Canadian society. For a number of these immigrants, there was no homeland for them to go to and receive protection. Chomicki’s homeland had its borders redrawn after the First World War. Vaara’s Finland was not the Finland of his birth. Čačić was an enemy of the Kingdom of Yugoslavia for being a Croatian communist nationalist. These activists challenged the hegemony of the capitalist state, and more importantly, defended the ability of immigrants to define themselves. Deportation served as the ultimate tool to control and regulate a freedom central to their lives and the ability to sustain themselves in a world of mobile capital: their freedom of movement. By deporting them, the government preserved the right of the state to continue to make its own people. More importantly, it was the government's ability to have the exceptional powers of Section 41 as a regular and normal function of Canada's immigration law that enabled these deportations to be classed as legal and acceptable.

‘PROTEST THESE ACTIONS’

Following the arrest of the Halifax Ten and their transfer to Halifax, reaction from the ethnic community and CPC language groups was swift and strong. For instance, Deutsche Arbeiterzeitung (DAZ) reported that when Cesinger was arrested he was not allowed to contact a lawyer. The paper used the event as propaganda to issue a call to arms, stating, ‘... protest these
actions perpetrated in democratic Canada, which eclipse even the darkest days of Tsarist Russia’ and ‘demand the release of Comrade Cesinger and the abducted leaders of the Canadian proletariat!’\textsuperscript{65} DAZ was not the only paper calling on its community members for mass action. Similar calls to action were made in Vapaus and Glos Pracy which claimed that shortly after the arrests, mass protests from community members took place in Winnipeg’s Market Square with thousands adopting a resolution calling for the ‘unconditional release of imprisoned labourers’ in Halifax.\textsuperscript{66} The CLDL initiated a campaign to focus the public’s attention on the plight of the prisoners, claiming they could face death or torture if sent back to their home countries. It arranged rallies and protests to demand the release of the Halifax Ten and Čačić. The CLDL provided legal representation for the men and challenged their detention in Halifax. Although limited funds often hampered its best efforts at resistance, the CLDL published a ‘Manifesto’ in Glos Pracy and other papers calling on readers to call for the release of the men.\textsuperscript{67}

Other ethnic labour papers detailed accounts of torture and executions that faced communist deportees.\textsuperscript{68} Even the RCMP advised the government of the fate awaiting deportees sent to regions in Europe.\textsuperscript{69} The Worker frequently reported on political deportations but devoted much attention to the case of the Halifax 10, presumably because a number of the men held a higher status in the Party and because of the brazenness of the operation. The paper used the deportations as propaganda, categorizing all of those arrested as leaders and claiming that the secret kidnappings were evidence of the government doing the bidding of industry. It, too, called on its readers to protest the deportations.\textsuperscript{70}

At times, the CLDL engaged in more creative ways of protesting deportation beyond rallies and petitions. After the Buck et al. trial, Tomo Čačić, when mentioned alongside his comrades, was suddenly one of the CPC leaders.\textsuperscript{71} The play, Eight Men Speak, was an agitprop
performance dramatizing the trial and imprisonment of the eight defendants in Buck et al. The performers took the roles of the Eight convicted and spoke directly to the audience informing them of their hardships in prison. Čačić’s character served a useful purpose in not only protesting his prison conditions but deportations in general. In Act IV the characters introduce him and he speaks to the audience. His character tells the audience of his imprisonment and life in jail and then his captors ‘devise a new torture. They order me deported to fascist Jugo Slavia. They know it means my certain death...Workers, you can put an end to this! (He points through the bars to the audience)’ All the characters then turn to the audience and point ‘Will you? (pause).’

The play, as well as Čačić’s coverage in the Communist press as a CPC leader, served to draw attention to Čačić’s plight and the deportations in general. It demonstrated how Čačić’s recent celebrity status in the Party was only due to his arrest along with the other top Party officials. His previous work had received little to no attention. Čačić, as symbol, served to bring the plight of immigrant Communists to people’s attention, but at the expense of the accomplishments of the real Čačić.

While the secretive nature of the arrests sparked outrage in the House of Commons and in some of the mainstream press, it is doubtful that any of it affected the government’s efforts to halt the deportations. As this case reveals, the Immigration Department merely took greater steps to ensure a strong legal case. As Roberts suggests, it is doubtful that many citizens truly realized how deportations of immigrant activists were such a perversion of legal principles during this period.

CITIZENS WITHOUT A COUNTRY?
Tracing what happened to the deportees after leaving Canada reinforces how deportation provided the state with the power to rule over a deportee’s life and body, and demonstrates the very real effect of deportation on people’s lives. While information on what happened to all members of the Halifax Ten remains incomplete, grim details about some of the men have emerged. The majority of the deportations occurred in December 1932. Dan Chomicki was deported to Poland in January of 1933, as was Steve Worozcyt. Gottfried Zurcher and his spouse were sent to Switzerland at the same time. Although not a Russian citizen, Sembaj was deported to Russia in July 1933, the delays due to the inability of the Immigration Department to secure a passport for him. The *Toronto Star* reported that the Department had a difficult time deporting him because he was a ‘man without a country.’ (There had been passport delays for some of the other men as well). An active Communist in Canada, Hans Kist presumably continued to participate in the movement when he returned to Germany. *DAZ* reported that Kist was taken into custody by Nazi authorities and placed in a concentration camp. While in the camp, his torturers continually placed cement blocks on his legs, effectively crushing them. He is presumed to have died from massive hemorrhaging. The *Toronto Star* reported that the Nazi authorities were seeking the deportation of other German Communists from Canadian officials. In the ensuing years, Kist’s immigration file was purged from Canadian archival records. *DAZ* noted that Kist had left behind a wife and child in Vancouver. His obituary in the paper stated, ‘Now another worker’s life has fallen victim to the capitalist terror. The day of reckoning will come.’ While *DAZ* mourned the death of a comrade, it used the occasion to drive home the threats that deportees faced.

Ivan Sembaj maintained his ties with his Ukrainian comrades in Canada after his deportation. However, Sembaj and other prominent Ukrainian leftists were not to be included in
Stalin's communism. Upon his arrival in Russia, Sembaj was arrested and placed in Stalin's Gulag. He presumably died in custody. In a sad act of betrayal, some of Sembaj's colleagues in Canada wrote in the ethnic press that Sembaj must have betrayed the communist movement and gone the way of Trotsky by being an ‘enemy agent.’

Toivo Stahlberg, was naturalized in the United States and was deported there although it is unclear where he ended up later. Stahlberg's letters to his comrades contained the usual anti-capitalist cries found in other communist propaganda, in addition to providing insights about how anti-communist Finns assisted the Canadian government. In a 1933 letter to Vapaus, Stahlberg detailed how ‘military commander Mr. Helmberg,’ of the White Finnish forces ‘acted as a witness in the case against comrades Vaara and Parker’ and how he suspected that supporters of the Finnish monarchy or White Finns in Montreal tracked his movements within Montreal, facilitating his arrest.

The fates of Arvo Vaara, one of the most prominent CPC members to be deported, and of Martin Pohjansalo were first reported in Vapaus shortly after their deportation. Vaara and Pohjansalo managed to get a postcard out shortly after they left Canada on 17 December 1932. Vapaus included the text of Vaara's card in an article dated 5 January 1933. Vaara mentioned that they were due to arrive in England on 23 December and were hoping to ‘see if there will be a chance to change the destination of our trip, which I hear is Helsinki.’ Adding that ‘we have not suffered from seasickness,’ he signed off: ‘Proletarian greetings to all of Canada’s workers, A. Vaara.’ The next update came on 17 March 1933, when Vapaus stated that the two men were in the Soviet Union. The Soviet International Red Aid (IRA), a type of international version of the CLDL, was known to assist deportees facing deportation to countries hostile to communism. The group presumably assisted the pair with their escape.
Updates on the two ceased for decades. The only mention of their possible fate came from an editorial in 1958 entitled ‘Let's Stick to the Facts Please,’ in which Vapaus’ editors were trying to counter earlier claims made by its rival social-democratic paper, Vapaa Sana, which claimed that the dreams that many Finns had of Soviet Karelia were false. It wrote,

...Thousands of Finnish-Canadians went there...The communist Okhrana picked them up one by one… sending some of them to be shot straight away, and others to be exiled to prison camps in different parts of Russia...

In a chilling description, Vapaa Sana recounted the horrors of Stalin's purge of Soviet Karelia. Close friends of Vaara mentioned that he probably would travel to Soviet Karelia when deported.

For its part, Vapaus defended its position that while it was perfectly willing to discuss Stalin's crimes, these were ‘lies.’ It accused Vapaa Sana of spreading propaganda. Vapaus believed it was the same kind of misinformation Sana was pushing for years, such as when it claimed that others had perished under similar conditions:

...Arvo Vaara, Hilja Kratz, Martin Parker and many others have been ‘liquidated’ in Soviet-Carelia [sic] – although it is known facts that Arvo Vaara died an old man from natural causes, Hilja Kratz is at the moment well-off somewhere in a nursing home in Moscow, and that Martin Parker (Pohjansalo) is in some responsible office, most likely, also in Moscow. Just to mention a few.

Vapaus's claims that Vaara ‘died an old man’ or that Pohjansalo was working in some unnamed ‘responsible office’ sounded like pathetic attempts to deny what the editors knew but desperately wanted to pretend was not true: Vaara and Pohjansalo were both executed along with thousands of others, presumably because their socialism and nationalism were not acceptable to Stalin.

Things were not so grim for the others who were deported. Not much is known about what happened to Conrad Cesinger after he landed in Germany. The RCMP continued to keep watch over the ethnic press in Canada well into the Cold War. In the anti-Nazi German paper, Volksteinne, the RCMP noted that an article appeared in the August 1947 issue with the headline...
‘Conrad Cesinger is in Germany.’ It reported that Cesinger managed to continue his international fight in the communist movement and that he was working with the German socialist party to help rebuild Germany after the fall of the Nazis. Cesinger wrote to his fellow comrades from East Germany following the War. His letter details the devastation Germany suffered and the plight of refugees. He lamented that people were talking about rebuilding cities ravaged by bombs, but forgetting about the ‘human wrecks’ that ‘struggle[d] for their bare existence.’ He provided a chilling description of Germany’s descent into Nazism and the destruction of the country for Canadian readers:

> Millions of people were on the move, fleering from a fate that had already caught up with them. And thousands ended their own lives when the dawn heralded the coming of a new day. The Witches’ Sabbath was over, the glamour faded. You can experience a catastrophe, but describing one is impossible...a flood may have disastrous consequences, and the panic spreading in the wake of a fire in a cinema doesn’t bear thinking about; but to imagine the ground dropping away from under a nation of 60 million people is, to the human mind, inconceivable.

In spite of the devastation, Cesinger described the attempts to rebuild by ‘the people...tormented by the Nazis’ as hope in the chaos. These were the people, he wrote, that ‘were the ones spat upon as subhuman beings and stateless folk.’ Cesinger played an active role in the Socialist Unity Party of Germany. His activism that began in Canada continued in war-torn Germany. He had found a new purpose in rebuilding the war-torn nation of his birth and continued his support for a renewal of the country in line with his activism.

Dan Chomicki survived his return. In Poland, he took up arms against fascism in Europe by joining the Polish Liberation Army while Poland was occupied by the Nazis. When the Nazis were driven out by the incoming Red Army, Chomicki was rewarded for his efforts, the Soviets
claiming that he had been instrumental in winning key battles against the Nazis. He was promoted to Colonel and awarded the Order of the Red Army for gallantry.86

Despite Chomicki’s successes in Europe, Canada was never far from his mind. He wrote to his friends in Canada through a number of Ukrainian labour papers. In one letter in 1946, he described being visited by a Canadian-Ukrainian delegation that was surveying liberated Poland. Ever the proponent of communist ideology, Chomicki praised Canadian Communists for taking Stalin's new line: ‘You see, the situation was such that we were ready to unite with the devil himself as long as it would help us defeat Hitlerism and achieve true democracy.’ He told readers: ‘... you shall see me soon in the film that will be shown at the Polish labour hall [in Winnipeg] when the delegation returns to Canada. Convey my best greetings to our parents and tell them that I hope to see them soon.’87 Chomicki made several attempts to visit his parents. Following the War, a number of Polish veterans were welcomed into Canada by the Canadian government. Chomicki approached the Chargé d’Affaires for a six-week visa to enter Canada, but no response from Canada was received in Warsaw. His spouse, Marie Ann Chomicki, wrote to Mackenzie King in 1947 to plead that Chomicki be allowed to enter Canada.88 But her letter fell on deaf ears. For as much as the Liberals may have protested the deportations in the House when they were taking place, once in power they offered no help to the Chomicki family. External Affairs referred the issue to the RCMP, whose response was hardly surprising; no special consideration should be given. As L.H. Nicholson, Assistant Director of Criminal Investigation for the RCMP noted, ‘this man is a communist.’ Nicholson added that the Party or Ukrainian Communists might use Chomicki’s visit as an attempt to stir up propaganda.89

Marie and her daughter were reunited with Chomicki in Poland, but he still made attempts to return to Canada. In 1952 he became Head of the Immigration Department in
Warsaw and planned to try to join the Polish Legation in Ottawa. External Affairs and the RCMP both ensured that no visa would be granted to Chomicki. Marie and her daughter returned to Canada after Chomicki's death on 27 July 1957. Prominent CPC member Leslie Morris honoured him in the labour paper, the Canadian Forward, and recalled how he had joined the Worker's Party with Chomicki in 1921. He recounted how Chomicki loved Canada dearly and ‘possessed a quiet bravery which stood him in good stead during the lonely years of village exile...’ Morris concluded the obituary: ‘The memory of this dear friend will remain with us, as well his story of police brutality in the Hungry Thirties.’ Chomicki died in Poland still trying to find a way to return to the country he considered home.

Tomo Čačić continued to fight for the international communist movement after his deportation in 1933. With the aid of U.K. Communists that were contacted by the CLDL, Čačić made a daring escape from his train car that was to take him to Yugoslavia. From there he made his way to the Soviet Union and wrote home to friends, praising Stalin's Soviet Union. Curiously, despite the praise, at the first opportunity Čačić left the Soviet Union and never again wrote as fondly of it as he had while he was there. It is possible that Čačić's brand of communism did not fit with Stalin's but he knew enough to not say otherwise while in the Soviet Union. At the outbreak of the Spanish Civil War, Čačić left for Spain in March 1937 and joined the International Brigade for the defence of Republican Spain. It is presumed that he enlisted on his own accord. He was joined by several of his Canadian comrades who were all from his Croatian hometown. During 1937-1938, Čačić became Captain in charge of a company fighting deep in enemy territory near Villanueva de Cordoba. Čačić stayed in the conflict until its conclusion and fought in northern Catalonia until he was forced to flee with 500,000 others into France, where he then entered a concentration camp not far from St. Cyprien. The RCMP
continued to gather intelligence on Čačić, much like they did for Chomicki and Cesinger, from the ethnic labour press in Canada. Judging from the RCMP file, the service’s officers took whatever information they acquired from translated papers at face value. Translators did not provide word-by-word translations, but often summarized information they deemed to be pertinent. The service so heavily relied on the press reports that it closed its file on Čačić when, in 1942, Novosti, a Borba successor, wrongly announced his death in Spain.93

According to Čačić, the concentration camp conditions were difficult to bear. He wrote to the ethnic paper Slobodna Misao (another successor to Borba) in 1940: ‘Although the workers are in good humour I can’t wait to get out of this province because it rains 345 days a year. The weather here is miserable and changing almost 24 hours a day.’ The paper Slobodna Misao was known for its Croatian separatist sentiments as well as being a Communist-controlled paper. The paper claimed in an article entitled ‘Croats and the war in Spain’ that Republican victory in Spain would mean ‘the international situation will favour the liberation struggle of the Croatian people.’94 Fascist influences were present in Croatia and were ultra-nationalist in nature, but Communist Croatians were deeply nationalistic as well. Čačić would have shared the paper’s vision of a future proletarian-led state of Yugoslavia where nations, such as Croatia, were self-determining and retained their regional autonomy.

Years later, writing in 1958, Čačić described his condition in the camp as brutal. People slept outside with no protection from the elements and meals were ‘100 grams of bread and cabbage a day,’ with people waiting in line for hours for water.95 Čačić claimed that several of his wounded friends died in the camp. He had harsh words for the French government: ‘Not one leading capitalist regime in the world was as brutal as the French. They are real barbarians.’ He found it surprising that even though France was ‘occupied by Germans and both times Russia,
England and America saved them,’ they had no qualms after the Second World War ‘starting wars in their colonies that were fighting for their freedom.’

Čačić left the camp in 1941 and began working in a mine in northern France until he became aware of Hitler’s invasion of Yugoslavia. He crossed through occupied France (without a visa or passport) and entered Nazi Germany. He worked in the construction industry until he could secure a fake passport and entered Nazi-occupied Yugoslavia in January 1942. Čačić at this time claims that he ‘was suffering from tuberculosis’ and thus not really ‘capable of joining the Partisan war’ (he writes: ‘I did not look like a man but as a dead body.’). But ‘afraid to go home or to the hospital,’ he had no choice but ‘to go into the Partisan army.’ Because Čačić could not risk being detected by officials for fear of being imprisoned or killed, he joined the Yugoslav Partisans instead of recuperating. He joined for personal nationalist sentiments but was a means of survival. ‘In the army,’ he wrote:

I had light duties, lectured in the front lines of war, later I was sent to do field work and I was responsible for West Lika and one area of the Croatian coast (Primorje) where I was an organizer of the Partisan group and transferred people & material from the island to the inland of the country. In October of 1943 I was injured in the right leg and sent to Italy for treatment and my leg was amputated above the knee and I was treated for TB.

He returned to Yugoslavia at war’s end in 1945, retired at the age of fifty four and worked for twenty more years organizing workers’ councils and living off a modest pension. He was no doubt proud to witness the formation of a Communist state he had a hand in creating, one that was strongly nationalist and not under Stalin's rule.

Čačić was frequently celebrated in Canada’s ethnic labour press, specifically the Yugoslav papers. In 1961, he was referred to as ‘a genuine revolutionary’ and a ‘pioneer of the revolutionary press in Canada.’ In his later years, the RCMP referred to him as the ‘notorious
Čačić died on 10 September 1969. On 19 September 1969, Jedinstvo printed the following:

Tomo Čačić died on Tuesday in Višnjevac near Osijek at the age of 73... It seemed as if the distance between Yugoslavia and those faraway metropolises of America, prairies of the Soviet Union and combat fields of Spain actually meant nothing at all to him. Until today, despite his age of 73, he never considered giving up as an option.Čačić, like the other members of the Halifax Ten whose post-deportation stories have been discovered, continued to be deeply dedicated to his communist beliefs and rarely seemed to shy away from conflict. Revolution was simply a part of the class struggle and when it materialized these transnational activists joined the battle, notwithstanding its location, even if the price of fighting was their life. They saw little conflict in taking up the independence movements that were linked to their people or region while still remaining devoted Communists and part of their own communist nation of sorts. They viewed conflicts such as the Spanish Civil War as another front in an international war. For these activists, they may not have had a country or state to call their own, but they were not without a people.

CONCLUSION

Deportation enabled the government to define the qualities and boundaries of citizenship, including what kind of political ideology citizens should subscribe to if they were to belong in Canada. Transnational activists such as the Halifax Ten inhabited a liminal or exceptional space. They viewed themselves as being part of a people, rather than a place and, as a result, they remained outside the legal protection of the law. They were perceived by the Canadian
government and immigration authorities as beyond the pale and a threat to the state's perceived right to make its own people.

They were targeted with laws such as Section 41, which maintained their lawless or exceptional status as non-citizens, and hence non-beings. Deportation as a nation-building function was made possible because Section 41 enabled exceptional measures to function as the normal methods for dealing with immigrant activists. Section 98 had an important role in these deportations. Evidence seized in the raids against the CPC in August 1931 was crucial to demonstrating the deportees’ links to the CPC and its subsidiary organizations. The testimony from RCMP officers, such as Sergeant Leopold, gave the deportation hearings an air of legitimacy, even if they did not afford deportees anywhere near the same legal rights as a criminal trial. While the government continued in its quest to purge Canada of foreign activists, the majority of these immigrants discovered communism in Canada. They became Communists because of the working conditions on the job, which were dangerous, underpaid, and demeaning.

Even within this movement there were divisions that could not be reconciled, as some like Sembaj, Vaara, and Pohjansalo discovered. What they believed their movement to be was not what Stalin dictated it was. For good or for ill, these immigrants struggled abroad to see their movement realized. Canada was just one of the many fronts in what they believed to be an international struggle. During the process, they continued to see themselves not as stateless beings, but as Arvo Vaara claimed, they viewed themselves as ‘citizens of the world.’

While these immigrants engaged in their individual battles overseas, the Canadian government continued its struggle against communism at home, and at an ever accelerated pace.
CHAPTER 5

During the 1930s, the government policy of deporting foreign-born communists occurred alongside a general campaign of repression against all communists both real and suspected. The mid-1930s served as fertile ground for left-wing activism. The Depression kept unemployment high and authorities continued to use law enforcement to disrupt demonstrations, protests, and strikes. Section 98 was deployed by law enforcement as a means of combating communism but with mixed success. The Communist Party of Canada (CPC) was driven underground, but it was not completely eliminated. The goal of authorities was to label the CPC’s subsidiary organizations as unlawful, or at the very least, have leading members of these groups sent to jail. Section 98 was one tool in the legal arsenal.

This chapter will focus on the civil unrest and state repression of the mid-1930s. Previous studies of the period have focused on specific repressive events, repression in specific provinces, or as it related to Royal Canadian Mounted Police (RCMP) surveillance.\(^1\) In contrast, I focus on explaining the reasons for the repression and demonstrate how Section 98 was an integral part of it. I examine the effect of state repression on those most vulnerable, namely communists. Section 98’s creation began the process of normalizing emergency measures and this accelerated in the 1930s. I argue that repression occurred because the government drafted new laws to give itself broader powers to deal with the economic emergency of the Depression. Section 98 provided the legal sanction for the authorities to crackdown on communists. It was used in a multitude of ways to repress communists and their sympathizers and provided a model for even more repressive laws. The effects of these measures are plainly illustrated by how police viewed communists as criminals, or in some cases sub-human, following the Buck et al.
The chapter begins by focusing on how industry leaders and prominent citizens across the country kept pressure on the government to continue its front against communism and how the CPC resisted this offensive. I focus next on how Section 98 played an important role in the repression of the period. The trial of Arthur 'Slim' Evans demonstrates how Section 98 was used in a multitude of ways by law enforcement, from intimidating hall owners to facilitating frequent searches of persons and property. I discuss lesser-known cases involving Section 98 and demonstrate how it was used to repress free speech and worked alongside other repressive laws. I conclude with the murder of Montreal's Nicholas Zynchuck. This murder, and the exoneration of his killer, shows how low the image of the communist had sunk in the eyes of law enforcement after the Buck et al. trial. The incident was a stark revelation of the type of repression that Section 98 made possible in Canada.

DEFENDING THE NEED FOR 'UNUSUAL LEGISLATION' AND THE CPC RESPONSE

The federal government continued repressing communists and fellow travellers through the use of the criminal law following the Buck et al trial. There was support for this strategy from like-minded individuals in industry and in provincial and municipal governments. For instance, in March 1933, the City of Prince Albert Police Committee informed Prime Minister Bennett that they had adopted the 23 December 1932 resolution passed by Vancouver's Board of Police Commissioners. The resolution sought a tightening of the Immigration Act, and more deportations, which would stop enabling communist agitators to remain in Canada.² The Princeton Board of Trade thought the foreign element was dangerous in Canada and it too wanted more deportations. Conservative elements in ethnic communities denounced communism, as the Ukrainian Sporting Association did on 18 June 1933.³ Winnipeg Mayor
Ralph Webb, instrumental in pushing the fight against the CPC in 1931, continued the pressure on the federal government following the Buck et al trial. Manitoba had still not pursued action against communists with Section 98, and Webb vented his frustrations with the federal government. Writing to H.H. Stevens, Minister of Trade and Commerce, he stated that the 'situation was getting serious in Winnipeg,' and questioned how long the government would allow communist groups to continue operating. Bennett was receptive to the anti-communist letters and information. He continued to forward any intelligence he received and gave people advice on what to do about communists in their area. He kept tabs on any information his ministers received, such as when in April 1932 Immigration Minister Gordon received information from lawyer J.C. MacCorkindale of Toronto. MacCorkindale was told by one Joe Gallagher that communists were planning parades where they would wear returned badges similar to ones worn by the Canadian Legion. MacCorkindale worried about the effect on the public if the demonstration became disorderly. He offered his aid in breaking up the organization that wanted to lead the march. Doing so, he believed, would return the 'majority of the rank and file...back to proper Conservative lines of thinking.' It is not known whether Bennett took him up on the offer.

Bennett continued to do his part in combating communism. For instance, he kept in close touch with J.R. Smith of West Canadian Collieries Ltd. in Blairmore, Alberta, asking him to advise him of communist movements. Smith told Bennett late in 1932 that reds were active in strikes and among the unemployed, and the government needed to prevent further penetration of red influence, particularly within the city government where the reds had a majority, and thus had the 'foreign element' under their control. Bennett encouraged citizens in other provinces, including Quebec, to press the Attorney General of the province to pursue Section 98 charges.
against communist groups. Bennett continued his attempts to gather intelligence. For example, after he received a letter from Alec Lockwood, in Manitoba, in which Lockwood wrote that agitators were mostly of 'foreign birth,' Bennett asked him to contact the Attorney General, and asked for the names of suspected Communists 'in confidence' so that he could try and have them deported. He congratulated Lockwood for his 'fine sense of public duty as a citizen of Canada.' The Prime Minister was more than eager to try and deport suspected communists even if it was under the nose of the provincial authorities.

Other fellow Conservatives, such as Hugh Guthrie and Attorney General Colonel William Price, did their best to spread the message about the evils of communism and defend Section 98. Price gave a number of speeches at conservative organizations such as at the annual Orange Order celebration in Kingston in 1932, the Women's Canadian Club, and at Knox Church in Toronto, at the behest of the Canadian Christian Crusade, a prominent anti-communist group in the area. He gave a guest lecture at a summer school for the Young Conservatives Association in 1933 where he defended Section 98. He told his young audience how Canada had a 'foretaste of revolution' with the Winnipeg General Strike in 1919. He equated Section 98 with similar legislation from other countries such as Britain's 'Defence of the Realm Act,' arguing that 'the passing of unusual legislation to meet the needs of perilous times is one of the duties of government.' Section 98, he argued, ensured that Canada is protected from the violent overthrow of the government, for 'communism or fascism are foreign to Canada.' Section 98, he claimed, was designed to ensure 'a peaceful progression' of governments. Canada's most anti-democratic law in peacetime, according to Price, would safeguard democracy against the threat of communism, which he regarded as being equivalent to fascism. At his other speaking engagements, Price spread the message that it was communism that was pulling people away
from Christianity and that its purpose was the 'breaking up of the family,' and that 'our
civilization is based on Christian teachings.' Section 98 was a tool to help preserve a Christian,
paternal, and capitalist version of the family. Communism, as mentioned in chapter two,
threatened the masculine, hetero-norms of the family in which leading government officials
believed. Anxieties about how communism threatened the family played out during the
unemployment marches in 1931, when predominately single unemployed men marched in the
streets of numerous towns, and in how relief was distributed; single men were ineligible for
relief. The government’s strategy for dealing with the Depression was not only about improving
the economic situation; it was about maintaining a particular construction of the family. Men
with families were eligible for relief to keep the unit together while single, unemployed men
were treated as potential threats. 10

Ethnicity was another factor in the government’s evaluation of who was wrecking
Canada’s democracy. When Price addressed the annual meeting of the Liberal-Conservative
Association of Toronto, with the Prime Minister in attendance, he posed the question to his
audience, in regards to foreigners, ‘why let them ruin the country?’ He answered it by reminding
people that ‘any leader today must do things for the state even if it hurts his party’ and that no
actions can be taken ‘that wound in any way hurt the state.’11 The exceptional period of
Depression demanded the government use exceptional measures. The state had to be protected at
all costs, even if it meant taking unpopular or anti-democratic actions.

The normalization of emergency powers continued as Canada approached the 1930s. In
1927, Mackenzie King’s government made significant changes to the War Measures Act
(WMA). It removed Sections 2 and 5 from the WMA, two sections that specifically referenced
the War. ‘War’ in the short title of the act was now equated with ‘emergency’ as evidence of
insurrections, as well as war, was moved into Section 2 under the subtitle ‘Evidence of War.’ The new long title: ‘An Act to confer certain powers upon the Governor in Council in the event of War, Invasion, or Insurrection,’ cemented the Act as a broad emergency power more powerful than the British Emergency Powers Act, 1920.\textsuperscript{12}

The Unemployment and Farm Relief Act of 1931 stipulated that relief for the unemployed was a local matter, but provided the government with the ability to spend as much as it needed and gave it the power to lend money to provinces or municipalities, should they find themselves in need. Bennett claimed that the government needed greater power to deal with threats to law and order. The formal title of the Act was ‘An Act to confer certain powers upon the Governor in Council in respect to unemployment and farm relief, and the maintenance of peace, order and good government in Canada.’ The preamble stated that the Act would give the government ‘the powers necessary to insure the speedy and unhampered prosecution’ of administering relief and ‘the maintenance of peace, order and good government.’\textsuperscript{13} The Act never stipulated what these broad powers were or the measures it would take, but Bennett’s introduction of the bill in the House left little doubt. He claimed that his government needed broad discretionary powers to combat groups that spread ‘their pernicious political doctrines’ and that his government would ‘free this country from those who have proved themselves unworthy of Canadian citizenship,’ e.g. communists. Mackenzie King countered by holding up a copy of the War Measures Act and claimed that ‘my right hon. friend is asking for precisely the same powers,’ outside of a state of war. The irony was rich, given the changes King’s government made to the WMA just four years earlier. Bennett was unwavering, ‘This is a land of freedom...where men may think what they will and say what they will, as long as they do not attack the foundations upon which our civilization has been built...’\textsuperscript{14} Bennett combined the
emergency economic measures with powers he claimed the government needed to combat communists. More importantly, these broad powers were designed to be used in peacetime. While the Act was set to expire in March 1932, it served as an important signal that open expression of dissent would not be tolerated. Bennett had effectively given law enforcement the government’s blessing to engage in a widespread crackdown against left-wing activists. The exceptional economic crisis of the Great Depression provided the government with another opportunity to normalize exceptional or emergency measures to deal with anyone threatening ‘peace, order, and good government.’ Authorities were permitted to use whatever ‘powers were necessary.’ The Act provided a broad mandate for the type of measures the government could use against anyone threatening these ideals. It set the tone for the repression that followed.

Not surprisingly, anyone who sought Section 98's removal was regarded as disloyal and this attitude was reflected in the debates of the period, with J.S. Woodsworth and other progressive members being regularly accused of being unpatriotic for seeking Section 98’s repeal. Bennett scoffed at the idea of repealing Section 98 because no other law could 'touch communism.' The communist agitation of the day, Conservatives claimed, proved Section 98’s necessity. The Conservative Party was by no means alone in its assessment of the evils of communism. Not only did numerous press outlets and law enforcement back the government’s actions against communists, as previous chapters have revealed, but many in the legal establishment supported the government. The Canadian Bar Review, for instance, remarked in regards to the Buck et al trial that the jury ‘have launched a movement against the Communist International...more than that, we may now begin to contemplate the failure of the attempt to Russianize this planet into the worst of all possible worlds.’ Even though the government had support for its tough stance on communism, the CI and the
CPC sought to counter the offensive.

THE ILLEGAL CPC

In the fall of 1931, just before the Buck trial began, the Party and the Comintern began preparing for the possibility that the Party would be outlawed. The CPC ramped up its propaganda machine just before the trial, instructing the Canadian Labour Defense League (CLDL) to start a defence fund and begin mobilizing to agitate against Section 98 and deportations. The Party leadership expressed its frustration with the lack of publicity the trial received, which the leaders deemed was partly the fault of members. In October 1931, the CPC leadership admitted there was a lack of money available for fighting legal cases and that members were putting local cases ahead of the case involving the CPC leadership. The Party Executive classified it as a failure to 'understand the seriousness' of the Buck et al. trial. The Comintern advanced its own theories for why the trial was a failure for the Party besides the finding of illegality. The Comintern argued that the Party was caught unprepared; it had insufficient organizational strength, a 'deep-rooted legalism' and a 'law ideological level of members' accounted for serious mistakes during the trial. The members’ defence was based on the theory of the 'automatic collapse' of capitalism and failed to portray the CPC as the organization instrumental in its collapse; the defence should have focused less on defending the inevitability of revolution and more on using the 'court to explain the party program to the broad masses.' According to the Comintern, there was no point in having a CPC, since in the testimony of the CPC leadership during the trial, revolution would come automatically. The Comintern warned that this argument was folly as the bourgeoisie will never voluntarily surrender its power. The members’ failure, according to the Comintern, was that they were too focused on defending themselves and by extension the party. The propaganda message was
especially important to the CI, and the failure of the members to push it was the result of 'right opportunism' within the Party.\textsuperscript{22}

While the CI chided Party members for not using the trial as a valuable outlet for propaganda, it still believed that the Party could survive. It lost few members and still held an underground recruitment campaign. The CI correctly recognized that the Party was only illegal in Ontario. A strategy was needed for members in other provinces as it would be 'erroneous to imagine that the decision of the Ontario court does not affect the position in other provinces.' In other words, other provinces would try to copy Ontario’s strategy, and the Party should assume this would happen. Public meetings were stopped immediately but the identity of the Party message should not be hidden; it should be carried out through other legal forms.\textsuperscript{23} The strategies for operating in a state of illegality or semi-legality were sent to all Party districts in October 1931 before the verdict in the Buck et al. trial was issued. The strategy involved holding underground leadership committees, having only small Party groups, keeping no membership records, only referring to members by numbers, holding Party meetings in homes, and keeping organizers known to police away from demonstrations. In addition, a reserve list of Party secretaries should be created, Party ‘secrets’ should be held at secret locations, and locations for printing should change often. Should a member be arrested, they were to deny membership; if members were charged under Section 98, the cases should be fought individually and not as a group. Members were dissuaded from travelling in groups. The strategy included the creation of a counter-intelligence unit and the creation of a theory paper on illegality. Members were encouraged to continue participating in elections.\textsuperscript{24}

The strategy for maintaining Party operations in a state of semi-illegality worked because despite the authorities’ best efforts, no other CPC-controlled group was ever found guilty under
Section 98. Ironically, the authorities’ legal offensive against the party in 1931 made it more
difficult to stop and contain the CPC. The trial of 1931 had the effect of scattering the Party into
the wind. CPC members joined other legal organizations which enabled the CPC to continue
spreading its message. Section 98 contributed to the growth of communism and made it more
difficult to contain.

The CLDL’s advocacy for Section 98’s repeal was having an effect on how authorities
charged individuals with violating Section 98. A letter from Joseph Sedgwick to Col. Price
details the government strategy for dealing with communists. As chapters one and two outline,
state authorities often viewed communism as a foreign, imported culture linked to immigrant
activists. Immigrant members of communities, such as the Finnish, Ukrainian, Yiddish-speaking
Jews, and immigrants from Eastern Europe nations like Poland and the former Yugoslavia were
often presumed to be more susceptible to communism. Many of the CPC’s members were from
these communities. Authorities equally despised the British Communist who was viewed as
being corrupted by a foreign and dangerous culture. Indeed, the Anglo-Saxon Communist was
the state’s main concern after the deportation of foreign CPC members in 1932. Explaining that
he contacted the RCMP and Bennett about the issue, Sedgwick reported that he did not believe
that ‘foreign agitators’ posed much of a threat anymore. He thought that the government should
not worry 'within limits,' as the Communists do a good job attracting opposition, adding: 'I do not
think it possible for them to convert our Anglo-Saxon stock.' Sedgwick’s letter was frank in its
assessment. Immigrants from the listed countries were traditionally the focus of the government
and where it thought communism originated. Anglo-Saxons were described as superior and able
to resist the influence of Communists, unlike some immigrants.
Sedgwick advised Price that for language groups and other subsidiaries of the CPC, Section 98 should be 'disregarded.' Prosecutions should take place 'only where there is actual violence, sedition or any other breach of the established and uncontroversial law.' It is clear from Sedgwick's letter that Section 98 would be used selectively as the controversy surrounding the law was growing. While foreign-born Communists did not represent the threat that they once had, Sedgwick believed that Bennett ‘was absolutely right’ when he claimed that the CPC ‘was now the CLDL,' and future prosecutions against prominent Communists should be 'against [A.E.] Smith and the other Anglo-Saxons or English-speaking foreigners in charge of the CLDL, and against The Worker.' If authorities pursued a Section 98 charge, the RCMP may have enough evidence for a conviction. He concluded his letter by restating that the 'influence of propaganda among the foreign born, while annoying, is not dangerous.' The government's deportation campaign against foreign-born activists, from Sedgwick and Bennett's perspective, worked and the focus was now on Anglo-Saxon leaders. For despite their ethnic superiority, it was presumed that Anglo-Saxon Communists and 'English speaking foreigners,' posed a risk to Canada's Anglo-Saxon stock.\textsuperscript{27} Personal vengeance was a factor in Bennett's targeting of Smith and the CLDL. Responding to the Mayor of Verdun, who congratulated Bennett for removing A.E. Smith from his office during a meeting (in November 1933) when Smith advocated for the release of the Eight, an end to deportations, and Section 98's repeal, Bennett wrote that it was time to stop ‘Smith and his followers’ from spreading ‘propaganda of gross misrepresentation’ and to prevent liberty from ‘degenerat[ing] into license.'\textsuperscript{28} Bennett, a devout Methodist, despised Smith, presumably because of Smith's past as a Methodist minister. Bennett viewed Smith as a traitor to his former profession or, worse, to God. Bennett replied to a letter from J.A. Miller who complained about a sermon at an American United Church by a pastor who knew Smith.
He responded by saying 'if he knows Smith, he should know his history...everyone of the old officials of the Church know the type of man he is.'

The government's focus for the remainder of Bennett's term in office would be on Anglo-Saxon Communists and those groups affiliated with the CPC. Section 98 would be reserved for exceptional cases. One particularly 'dangerous' Anglo-Saxon operating in B.C. was believed by the RCMP to be the next big CPC fish that needed to be caught with Section 98. He was often known by his nickname, Slim Evans.

'AN EXTREME RADICAL’

In April 1932, Arthur 'Slim' Evans came under the focus of the RCMP. Born on 24 April 1890 in Toronto, Evans moved West at an early age, seeking work as a carpenter. He had a history with the RCMP, having been convicted of stealing union funds while working for the United Mine Workers of America in Alberta. At the time of his arrest, Evans worked as an organizer for the Workers’ Unity League (WUL) and was active across the West. The RCMP thought his previous conviction would prove an embarrassment for any local union leaders that wanted his help in organizing workers, but this was not the case. The RCMP regarded him as an ‘extreme radical.’ Constable N.E. Macfarlane described Evans and his Unity League as 'making the only worthwhile progress towards organization' in B.C. among the needle trades and longshoremen. Evans’s RCMP file remains heavily redacted. Intelligence on Evans often came from other workers who acted as informants for the RCMP, but were active in organizing unions themselves. Their motives were competitive because providing information to the RCMP could hamper the competition that the WUL was posing to other unions. For instance, Evans successfully persuaded the Fisherman's Union to adopt the radical position of no negotiation or arbitration. The Lumber Workers were adopting the militant WUL’s models, much to the chagrin
of other groups such as the American Federation of Labor (AFL). Evans left Vancouver to attend a conference on the unemployed in Ottawa and on his way back to B.C. went on a speaking tour throughout the West on behalf of the National Unemployed Worker's Association, a subsidiary of the WUL. He gave numerous speeches supporting striking workers. Vancouver City Police notified the RCMP that if Evans returned to Vancouver they would arrest him on a charge of vagrancy for his being a general nuisance. The RCMP was eager to stop Evans and was forced to admit that his speaking abilities left him 'in a class by himself,' as one informant put it. The Attorney General of B.C. took a keen interest in Evans. He was investigating communism in the province and he thought Evans was the reason it was spreading. The question for the authorities was how to silence him. He was careful in his speeches to spread the communist message, but denied his membership in the CPC. Their opportunity would come when Evans’s organizing skills were called upon by Tulameen coal mine workers in Princeton, B.C. in September 1932.

The workers sought the WUL’s assistance to help them win back a 10 per cent wage cut the company refused to restore. The WUL notified Evans and suggested he include Princeton in his itinerary. Evans held several meetings in November where he denounced the government, the mine managers and owners, and the actions of the provincial police and RCMP in breaking up strikes. In one meeting, the RCMP reported that Evans said that change could not be done by way of the ballot box and workers had to fight to make gains, but not damage property as workers needed infrastructure intact after capitalism was overthrown. He denied being a member of the CPC, but believed in their message. Evans stated he was amazed that all that stood between what workers needed was some storefront glass, and that instead of singing 'God Save the King,' they should sing, 'God Save Our Class,' and 'To Hell with the King.'
situation in Princeton was tense as the mine manager, George Murray, and several other loyal employees attended Evans's meetings and warned him to leave town. Witnesses reported that while police frequently stood watch over the meetings, none were present when Murray and his entourage arrived one night to attend an Evans speech. It is hardly surprising that local authorities despised him. At one meeting he reportedly pointed at the police at the back of the hall and said, 'Just because those two yellow legs are standing at the back don't let them stop you from voicing your opinions or speaking your piece.' At another Princeton meeting he reportedly walked up to a police officer and offered advice on how the police could curb his activities, 'Make sure your gun is loaded, look down the barrel, and pull the trigger.' Evans and other workers claimed that the police worked closely with the local Klu Klux Klan to assist them in intimidating the workers not to strike, and some strikers like John Beronich, said they were badly beaten by Klan members. Witnesses stated that Murray visited the homes of employees that spoke out against him and beat them. Evans, along with four others, was arrested on 7 December, four days after the strike took a violent turn. Some witnessed police ride into strikers on horseback and club pedestrians and anyone in sight, including a fourteen-year-old boy. One man, Eli Djakovick, claimed he was beaten so badly that he suffered permanent hearing loss.

The RCMP was unsure of what charge to lay against Evans. They wanted to put Evans away in prison for as long as possible and they wanted to use him to snag other CPC-allied groups. Section 98 offered the best solution because it would take him out of the Communist organizing job, potentially for years and give the Crown the chance to snag groups linked to him. In the RCMP reports on Evans, S. T. Wood pondered whether it might be possible to use Evans as a link to the WUL and Mine Workers Union to get both organizations banned. Crown Attorney Bullock-Webster, who tried the case against him, was in agreement with charging
Evans with violating Section 98(1) and asked the RCMP for any evidence it had seized from local raids in Vancouver so it could make the connection between Evans and the CPC. The Crown would then link him to other groups, and their unlawfulness would be established.\textsuperscript{36} \textit{The Worker} reported that initially all the men arrested with Evans were charged with violating Section 98. \textit{The Worker} later reported that only Evans was being held for violating Section 98. The reports reflected a change in the Crown's strategy. He was initially charged with being a member of an unlawful organization, the CPC. But the Crown abandoned the idea of linking him to the CPC or WUL because proving the connection would have been extremely difficult; there was no direct evidence. His charges were later changed to violating Section 98(8) i.e. for giving speeches in November of 1932. The Crown alleged he advocated and taught that the economic and governmental system should be changed by force.\textsuperscript{37} After initially being denied bail, it was granted on 29 January 1933.

Though the mine owners eventually gave in to the strikers’ demands on 17 December, the situation was still volatile for much of 1933. Former strikers had their houses raided frequently by police with search warrants, granted under Section 98(6), looking for seditious literature. Several hall owners were warned by police that they could face charges under Section 98 if they continued renting their halls for any union or worker-led meetings. Evans claimed that he was searched three times over the corresponding months and every location he visited was searched by police for evidence. He said that on 28 April 1933, he was kidnapped by approximately twenty-five armed men and taken to Coyle, seventy-five miles from Princeton and placed on a train to Vancouver. He claimed that the men included two police constables and the President of the Board of Trade, P. Gregory, who told Evans that if he returned to Princeton he would do so at his own risk. Evans exited the train at his first opportunity and took the first one back to
Princeton. The men were charged with kidnapping, but at their trial, witnesses for the accused stated they all had tea together and that Evans voluntarily accepted the paid train ticket bought by a citizens ‘volunteer committee.’ The judge dismissed the charges. His trial was originally scheduled to begin on 12 June 1933, but he submitted an affidavit of prejudice in the selection of the jury on the grounds that it was not representative of all the electoral districts in the area, as was earlier stipulated. He claimed the continual police harassment hampered his ability to formulate a defence. The trial was pushed back to September. 38

Evans’s trial began on 11 September 1933 in Vernon B.C. in the Superior Court of British Columbia with Justice W.A. Macdonald presiding. His trial provides a window into how an individual Section 98 case was handled by the Court in contrast to the group prosecution of the CPC. In addition, the trial reveals how the word ‘force’ in Section 98 was interpreted by judges.

The trial began with a request from Evans’s lawyer, Gordon Grant. Evans wanted to examine and cross-examine witnesses with his lawyer answering questions of law, and suggesting questions to Evans for his cross-examinations. While the judge pondered the request, he did not allow it. He could sit with his counsel instead of in the prisoner's box, but he had to conduct his own defence, if that was what he wanted. However, Macdonald provided Evans with quite a bit of leeway during the trial, and sometimes helped him formulate questions so he could avoid asking leading ones, which he often did. Evans could still rely on Grant for advice when court was not in session and to present legal challenges such as requesting a dismissal. 39

The Crown's case against him consisted of officer testimony. Numerous officers testified that at meetings with coal miners Evans stated that while he was not a member of the CPC, he agreed with their platform and thought capitalism around the world should fall. Evans’s
statements at organizing meetings were the main evidence against him. Similar speeches were made on two other occasions in November of 1932. Evans managed to have officers admit that he was a menace to the community and business because of his organizing. In one exchange when Evans cross-examined Officer Corporal Thompson, Thompson claimed that Evans’s instructions to workers to be 'militant' was equivalent to asking them to engage in violence since that was how he interpreted the meaning of militant. In addition, Thompson claimed, 'the audience must be taken into consideration...an audience of men that barely understand English, hearing terms like that, are affected thereby.' According to Thompson, foreign workers might run to their dictionaries to look up 'militant' and realize that it means use 'force,' in which case Evans’s speeches could have easily inflamed the minds of malleable foreigners. Evans retorted by asking Thompson if he ever thought to look up the word himself. Thompson claimed he did not. Throughout his cross-examination Evans tried to demonstrate that police repression was used against the strikers. He confronted Officer Thompson about threatening hall owners with Section 98. Thompson admitted that hall owners were read the penalties of Section 98(5) but that officers did not force any halls to ban meetings from taking place and only gave 'advice.' He acknowledged that several closed. But Evans’s admirable defence of the miners and his exposing of police brutality in halting the strike did little in addressing the charges against him.

At the heart of the case against him was the interpretation of the word 'force.' What force was Evans advocating? He tried to demonstrate that force could be interpreted in several ways. At the opening of the case for the defence his counsel presented a motion calling for a dismissal on account of there having been no crime committed. Grant argued that even if Evans was telling people that the workers would take over the government, he never said when or advocated that they do it. Grant contended this was a matter of opinion or 'prophecy.' This was not teaching
or advocating the use of force to produce economic or government change. Grant stated that had Evans told the workers at the meetings to 'Go out and use force to obtain communism,' only then would he have committed a Section 98 offense. These arguments had no sway with the Court. Section 98, according to the trial judge, was created 'to stop the teaching of communism in Canada.' Evans was more interested in exposing police misconduct than addressing the charges. His defence consisted of calling witnesses to testify on the police use of force during the strike, along with several others who witnessed his speeches and did not believe he advocated the overthrow of the government. The vast majority of his witnesses reiterated the events of the strike and the police crackdown against the miners. In addressing the jury, Justice Macdonald repeated Justice Wright's comments about Section 98 in the Buck et al. trial. He reminded the jury that in regards to Section 98, 'whether that be good law, or bad law, it does not concern you...that is the law of the land.' He then quoted Justice Wright from the Buck et al. trial explaining that Section 98 was exceptional, but it was the law. Evans was convicted on all counts.

Evans’s appeal was heard in February 1934 in the B.C. Court of Appeal before five justices, Justice M.A. MacDonald presiding. Grant represented him and argued that no evidence of guilt was produced at the trial. He claimed that the statements his client uttered did not constitute an advocacy of force, and that any law-abiding citizen could have uttered them and not be found guilty of violating Section 98. But the judges argued that Evans’s statement to the strikers, 'Then we will have to fight,' constituted an advocacy of force. Grant argued that when the judge stated that Section 98 was created to stop the spread of communism, he influenced the jury. MacDonald dismissed the claim, arguing that no objection was made at trial and that the 'trial judge merely stated his opinion.' Justice McPhillips summed up the sentiments of the
judges when he claimed that Evans's 'vituperation' of the police demonstrated that he thought 'all those in authority should be subverted...It was all a means to an end of getting rid of the authority of the government.' His appeal was dismissed and the judges ruled that his sentence would begin on the day his appeal was dismissed, on 6 March, even though Evans had been in custody since his conviction in September 1933. This had the effect of adding six months to his sentence. 48

Much like at the Buck et al. trial, Section 98 enabled the Crown to claim that the advocacy of certain ideas was a criminal act. No evidence demonstrated that Evans taught anyone or encouraged anyone to use force to overthrow the government. His utterances of force were directed at the miners in attendance at the meeting; they had to fight to defend their position by striking. Such was the broad reach of Section 98 that innocuous statements was construed by judges to mean that Evans was advocating that people engage in armed rebellion against the government. It was used to curb organizing activities and silence union supporters. Evans’ case demonstrated how without actually charging an individual, Section 98 was used as a form of intimidation to break-up or prevent public meetings and to continually provide police with the legal authority to search for seditious material. In addition, his case revealed how the CI advised members to deny CPC membership, which many did when confronted. 49 But the strategy had no effect on the ability of the authorities to prosecute someone for violating Section 98 as judges had a large degree of leeway in their interpretation of the word ‘force’ in the section. Authorities reserved their use of Section 98 for prominent CPC members, and as a means of intimidating others, such as hall owners.

THE OTHER CASES

Throughout the 1930s and before Section 98’s 1936 repeal, more Section 98 charges took place as did protests against it amidst widespread unemployment. Clashes between police and
strikers/protesters occurred across the country. Large-scale arrests were becoming commonplace. During some of the larger clashes with police, it was not unheard of for fifty or more persons to be arrested at one time. These arrests were occurring in nearly every province across the country. No doubt Bennett's anti-communist fervor increased as the unrest continued. Bennett surprised his fellow conservatives with how far he was willing to prepare for revolution. In 1932, the WUL organized a demonstration of the unemployed and held a conference in Ottawa. A delegation was sent to meet Bennett, but he only agreed to meet on the steps of parliament. He had a strong message for the group. An armoured car patrolled the grounds along with two armed RCMP detachments while a third mounted detachment lay hidden but at the ready. This deployment was arranged to meet a delegation of twelve workers armed with a petition. After a heated exchange of ideologies, the men walked away in an anti-climactic fashion. The conservative Ottawa Journal described the charade as un-British, and decried '...this Chicago-like flaunting of fire-arms... smacks more of fascism than of Canadian constitutional authority.' Bennett prepared himself for the revolution that never came and never was.

Within this tense climate, documented cases of Section 98 remain difficult to trace because many provincial archives purged their trial transcripts from the 1930s. The best source of evidence of Section 98 prosecutions is the radical labour press. Mainstream press outlets reported only on large, well-known cases like Buck et al. and to some extent the Evans trial. But papers such as the CPC's The Worker went to great lengths to keep track of Section 98's use against the paper's friends and allies. These stories contained their fair share of anti-capitalist rhetoric, but the reporting does not seem questionable or inaccurate when stories that appeared in The Worker, such as those from the Buck et al. trial, are compared to mainstream papers.
The Worker reported on three Section 98 cases in 1932. The first involved Steve Koslov in Montreal. Koslov was charged with violating subsection three of Section 98 in the summer of 1932 while distributing anti-deportation leaflets on behalf of the CLDL. Koslov was searched by police who found a button with the words, 'Build the revolutionary movement.' Presumably the unlawful organization he was a member of was the CLDL. At his trial on 21 June, the Crown attempted to link Koslov and his button to the leaflets he was distributing and the CLDL, which the defence argued had nothing to do with his charges. The defence argued that the button was not displayed or worn, as Section 98 required; it was found in Koslov's pocket. On 28 June, Koslov was acquitted. The judge agreed with the defence, reasoning that Koslov had not been wearing the button as Section 98 required and agreed with the defence. The wording of Section 98 enabled Koslov to escape conviction.52

Another Section 98 case involved George Kellog. The story in The Worker described a pre-trial hearing. Kellog was unemployed and arrested under Section 98 for distributing leaflets protesting the Bennett government's relief camps for single, unemployed men. W. Ogden, an organizer for an ex-servicemen's organization who worked undercover as a police agent, was the star witness for the Crown. But the judge failed to find enough evidence for the case to proceed and Kellog was released.53

A case involving Section 98 appeared in Port Arthur on 8 December 1932. The Worker reported that Slim Whalen, an immigrant of unknown origin living at 81 Cumberland, Port Arthur, was ordered deported after being convicted of 'registering at a hotel under a false name.' His property was reportedly seized under Section 98. Apparently the CLDL lawyer representing Whalen angered the judge when he suggested that if a 'London banker' had registered under the wrong name no one would have noticed. The judge allegedly claimed that he had never been so
disrespected in his thirty-five years as a judge. Trial records for this period from Port Arthur could not be located. It is not known why Whalen's property was seized under Section 98 and what the initial charge against him was. Nor could his deportation be confirmed. ‘Slim Whalen’ was a nickname.\footnote{54}

Several cases of Section 98 and acts of police repression against activists did garner more attention and coverage both in The Worker and in mainstream papers such as The Toronto Star and Globe. On 12 January 1933, at a meeting of unemployed workers that was designed to organize an Ontario hunger march to protest relief conditions, the Toronto Police Red Squad entered the meeting and arrested everyone in attendance—forty-five people in all. Two individuals, George Beatty and James Baker, were reportedly charged with violating Section 98, but court records could not be located to confirm whether they were actually tried under Section 98. The case may have been similar to the case against those arrested alongside Evans, where the Crown opted to try the accused with violating a lesser offense so as to increase the likelihood of a conviction. It was a common tactic at the time. For instance, in December 1932, the WUL helped organize an Alberta hunger march, attended by several thousand supporters, which was violently broken up by police. Murdoch Clarke and Roy Berlando, well known members of the Mine Workers Union of Canada and the WUL, were part of the organizing team. They, along with twenty-five others, were convicted of unlawful assembly, although the authorities originally hinted at proceeding under Section 98 for all of those charged.\footnote{55}

In the case of David Chalmers, a prominent Communist from the Montreal area, he was stopped in Port Colborne while on a speaking tour advocating for the release of Buck et al for reportedly using communist phrases such as ‘turning imperialist war into civil war.’ The Chief of Police was present at the meeting and arrested Chalmers for violating Section 98. The only
evidence that was produced came from a local news reporter. Joseph Sedgwick attended a pre-
trial hearing and detailed the events in a letter to Edward Bayly, the Deputy Attorney General. 
Sedgwick stated that Chalmers’s lawyer asked for a dismissal in exchange for Chalmers agreeing
to not return to Port Colborne. The Crown Attorney, T.D. Cowper, and the police were both 
satisfied with this as there was little hope of getting a conviction. Nothing was found on 
Chalmers linking him to the CPC (he was presumably charged with violating subsection 3) and 
Chalmers’s speech actually decried the use of violence or force. The case was discharged by the 
attending magistrate and Sedgwick believed it was the best outcome possible, given the 
circumstances.56

Two cases of Section 98 that garnered more attention than most were the cases of Rex v. 
Derry and Rex v. Feigelman. Trial transcripts for these cases were among those purged by both 
the Ontario and Montreal archives. What remains are scattered accounts of the cases in the press 
and their trial dockets confirming that the Crown sought a Section 98 conviction. Joe Derry 
(Dyvoyck) was an active and leading member of the Young Communist League (YCL), a CPC-
controlled group that was designed for Communist youth. After giving a speech in York County, 
protesting the arrival of a Japanese Naval Squadron in Victoria, B.C., Derry was arrested by 
Toronto police on 6 April for violating subsection three of Section 98, being a member of an 
unlawful organization, the YCL. The Crown's goal was to have this subsidiary of the CPC 
outlawed. D. Goldstick represented Derry at his preliminary hearing and argued that during the 
Buck trial, Mike Golinsky, a member of the YCL, had his charges dismissed because he argued 
that the YCL was not considered an unlawful organization. The judge did not agree, arguing that 
the Crown dismissed charges against Golinsky because it had insufficient evidence to link him to 
the CPC, not the YCL. The Crown's case with Derry centered on linking the YCL to the CPC.
The Crown presented copies of the CLDL publication the *Labor Defender*, the *USSR in Construction, Masses Song Book*, and other periodicals available for purchase from newsstands as evidence. Other evidence against Derry consisted of membership cards for a Workers Sports Association, as well as cartoons and drawings seized from Derry's home. One young witness who testified for the Crown apparently claimed that he signed an affidavit for police only because of police intimidation. Toronto police detectives testified for the Crown.57 The case did not go to trial until late in 1934 which allowed Derry, while out on bail, to travel the country on a speaking tour with the CLDL that was organized under the name of the ‘Joe Derry Defense Committee.’ Derry travelled to Ottawa, Timmins, and Cochrane, Ontario in addition to Montreal and Verdun, denouncing Section 98 and demanding the release of Arthur Evans and Tim Buck et al.58 The charges against Derry accorded him a bigger audience and more recognition than he would have ever received. He was now a victim of the Canadian state's repression. When the case went to trial in December 1934, the presiding judge, Justice O'Connell, claimed that the Crown had failed to produce any evidence proving Joe Derry to be a member of an unlawful association. The Crown's apparent hodgepodge assembly of publicly available documents and testimony of police officers was nowhere near what was available during the Buck et al. trial, and without a Leopold type of undercover officer's testimony, the linkages between the YCL and CPC that the Crown provided were too thin. Derry was acquitted of the charges.59

The case of *Rex v. Feigelman* occurred among a general backdrop of censorship and an intense offensive against communism in Quebec which reached its highest points in 1933-1934. In January of 1933, Taschereau ramped up the campaign against Communists after opposition leader Maurice Duplessis wrongfully accused them of burning down Saint-Jacques Church. In April, Deputy Attorney General Charles Lanctôt met with Superintendent Frederick J. Mead of
Montreal's RCMP detachment, urging the service to seize seditious publications without a warrant. Mead explained that the federal RCMP would only be able to use such powers in an emergency, such as a revolution, and Quebec was not experiencing one. In addition to a broad campaign against communists, Lanctôt wanted Bella Gordon's band of Communists to be prosecuted, but noted they were 'very active and very cautious, and had for [a] lawyer the Jew Garber,' i.e. CLDL lawyer Michael Garber.60

Taschereau's government found a way around the need to declare an emergency to seditious material seized without a warrant. Bill 28 was introduced in January 1934 and dramatically upped the ante in the Quebec government's battle with communists. The bill would provide police with unprecedented censorship powers and was designed to curtail protests and the sale and distribution of radical literature. Mr. David stated publicly that the bill was directly aimed at Communist activities in the province.61 The CLDL and WUL were both highly active in Quebec, agitating against police repression and the repeal of Section 98 along with protesting the government's lack of unemployment relief. Much like in other provinces, protests and strikes were being met with violent responses from police with some of the largest clashes occurring at Rouyn and the Noranda Mines. Seventy-seven were arrested on 11 December 1933 as strikers clashed with police on the road to the logging camps. The most notable of the arrests were of prominent CLDL and WUL organizers such as Harry Raketti, Jeanne Corbin, Annie Evanik, and Jerry Donahue.62

Bill 28 was opposed by progressives in the province such as F.R. Scott and the Emergency Committee for the Protection of Civil Liberties, a group of liberal-minded citizens which hastily came together after Bill 28 passed Quebec's Lower House in January 1934. The bill passed as
the Certain Meetings and Advertising Act, better known as the David Bill, having been named after L.A. David. Its key points read as follows:

3. No person shall distribute or cause to be distributed, post up or cause to be posted up, or otherwise made public, a circular in a city or town, unless such circular shall have been submitted to and been approved by the chief of police. Approval contemplated by section 3 shall not be granted if the printer, maker or author of the circular is not domiciled in this Province. Every person who commits any infringement of this Act shall be liable, in addition to the costs, to a fine not exceeding one hundred dollars. Any member of the Provincial or municipal police may seize and confiscate, in any place whatsoever, any circular distributed, posted up or otherwise made public.

The new law borrowed heavily from Section 98 by targeting public meetings and the spread of literature to curb communist ideology. But it was more drastic in the way it expanded police powers and limited free expression. Unlike Section 98, which targeted individuals or groups for attending meetings of an unlawful organization or for distributing literature, this bill required circulars to be pre-approved by police before they became public. A circular was required to state the printer's name and where the office was located. The bill was much more powerful than Section 98. Police could seize any radical publications anywhere in the province, even those that were for sale at newsstands or located in someone's home. A trial did not have to take place to decide whether the material was advocating force or violence. If it was not pre-approved by the police, it had no right to be made public. The law was designed to be more efficient in targeting disloyal actions than Section 98. While an individual could face a fine for contravening the Act, he/she could face criminal charges in addition to violating the Act. It set the stage for even more arrests and conflict in Montreal.

Montreal police initiated their own crackdown on the press before the law came into effect, using the old censorship powers of Section 98. On 13 January 1934, Saul Feigelman and his sister found themselves face-to-face with Section 98. Saul Feigelman, a Montreal art student,
and his sister operated a small bookstore named the Hidden Bookshop in Montreal's downtown core. Supportive of the kind of radical leftist politics that the CLDL espoused, they sold *La Vie Ouvrière* out of their store along with other titles sympathetic to the communist cause and titles that espoused an individual's right to civil liberties. Police entered the shop while Feigelman's sister, Ann, was working and charged the pair with violating Section 98 for having activist literature on the premises. Under orders from Chief Louis Jargail, police seized large quantities of books, newspapers, and other periodicals. When one of the attending constables, Constable Forget, was asked by the owners why the material was being taken he replied, 'We are seizing all seditious literature under Section 98 of the Criminal Code.' When asked why fictional stories by acclaimed novelist E.P. Openheim were being seized, he reportedly replied, 'I don't read.' Feigelman and his sister appeared in court on 16 January. Feigelman reported that other vendors appeared and pleaded guilty to Section 98 charges and received suspended sentences. This was confirmed by reports in *The Worker* in May 1934. Both Feigelman and his sister pleaded 'not guilty.' Following the charge, he was expelled from his art school and his case was remanded until 17 October. The family’s store was only open half-days because of their frequent court appearances. Justice Loranger heard the case in the fall session of the King’s Bench. Feigelman was found guilty and sentenced to one month in jail while his sister received a suspended sentence. No transcript exists of the trial; only trial dockets remain, but Justice Loranger's charge to the jury was read into the Commons by J.S. Woodsworth during the passage of Section 98's repeal bill in 1936.

Loranger's charge offers a glimpse into how the Quebec court perceived communism and Section 98. Beyond Loranger’s obvious anti-communism, he notes that Canada is Christian and that communism's godless ways are not to be tolerated particularly when spread to
impressionable youth. Loranger stresses that the purpose of Section 98 is to protect 'our people,' i.e. Canadians from communists. He seemed surprised that Feigelman's sister willingly showed police where the literature was and did so not because she was not an 'intelligent young girl,' as he claimed (she was in her 30s at the time of the trial), but because she was unaware that the material was illegal. Many other vendors thought the same when they pleaded guilty to violating Section 98. Such was the power of Section 98. Material that had been legal even after the Buck et al. trial could suddenly and without warning be found seditious when it suited the authorities.

Feigelman expressed his feelings about his arrest in an article published in The Worker. He wrote that he was back from his one-month vacation, i.e. prison, where he was sent 'not as a Communist, not as a revolutionist, but because I dared to sell the press of the French-Canadian working class.' Feigelman wrote that he often laughed while in prison, claiming that the 'boss class' would not arrest the publishers of the papers because that would violate the freedom of the press. Instead, he claimed, 'the art of intimidation' was being practiced as 'news dealers' were 'frightened' into pleading guilty in exchange for being released on suspended sentences and promises of 'never to display the paper on their stands. Thus in a quiet manner the newspaper would become illegal; there would be no jury trials, no publicity and no hue and cry about the attack on free press.' But Taschereau's plan, he claimed, backfired. He wrote that he and his sister fought the issue and if they won it would be a victory for publications like La Vie Ouvrière, and if not, the issue of the freedom of the press would be raised by the public.

Feigelman saw his case as a dire warning for all Canadians and in particular in Montreal for 'members of my own race, the Jewish workers in Quebec, particularly those belonging to the Canadian Jewish Congress or to the Zionist organizations.' Feigelman was correct in that his
case did become publicized given that it was described in the House of Commons and the RCMP kept tabs on the Feigelman case as it worked its way through the legal system.68

The attack on Montreal's press vendors continued throughout 1934 while Feigelman's case was working its way through the courts. Once the David Bill came into effect on 30 April, authorities wasted little time. On 1 May 1934, Montreal police raided the offices of the popular labour paper *La Vie Ouvrière*, and confiscated the entire 1 May edition of the paper. Several days earlier, the offices of the CLDL in Quebec were raided and copies of the May issue of the *Canadian Labor Defender* were confiscated. The new law made it much easier for authorities to engage in broad-based censorship. However, the raids had little effect on the activist movement in the city; *La Vie Ouvrière* reported that sales had jumped by 50 per cent since the police raid, and the paper held a funding drive to meet the increased demand.69 How many vendors faced Section 98 charges in addition to violating the David Bill is uncertain, given the lack of transcripts from this era.

Women were particularly active in the front lines of the Communist ranks and as a result faced repression with the same brutality as their male counterparts. Many nameless women fought on the frontlines of May Day marches, free-speech campaigns, and anti-war demonstrations against police. In August 1934, during a strike in the garment industry in Montreal, eleven of the twelve people arrested were women.70 The first Section 98 case was against a female activist, Emily Weir. Well known to authorities were some of the most notable female members of the CPC such as Becky Buhay, Jean Corbin, and Annie Buller. Buller’s criminal trial, during the trials of Estevan activists in 1931, reveals how women activists faced the same brutal treatment as men if not more so because of their gender. Buller’s trial attracted much attention for several reasons, including her strong skills as an orator, the severity of the riot
and because she was a woman. Not only was Buller being prosecuted entirely by men but, as Endicott observes, women faced ‘all-male juries, male judges, male newspaper editors, male prosecuting attorneys,’ and she was a member of the WUL and CPC, groups that, while officially advocating for equality, were male dominated. Moreover, she was married and a mother as well as a leading union organizer, demonstrating that it was not just single young women who were vocal activists. Given the lengths the RCMP took to secure convictions in the trial, including fabricating evidence, her conviction was assured. Worth noting is Justice Hector Macdonald’s remarks during sentenci.

He claimed that Buller was ‘more guilty than any of those who used physical force [in the riot]’ because she had ‘used, or rather abused’ her ‘fatal gift of eloquence...to stir up the feelings of the workers against the employers and as between class and class.’ The jury recommended leniency for Buller, possibly because of her gender, and because she was not at the riot. Macdonald believed that it was only because of Buller’s gender that the jury asked for leniency. He argued that because women sought equality with men, they should receive equal responsibility and so he sentenced her to one year hard labour and $500 in fines. While claiming to have given Buller an equal sentence as a man, Macdonald never saw past Buller’s gender. The sentence was harsher, not equal as the judge claimed, given that no witnesses could put Buller at the riot and that the jury asked for leniency. Buller’s persuasive charms, or fatal gift, made her more dangerous. Her belief in equality brought a stiff sentence for her limited involvement and she was not alone. Other female activists experienced similar fates (such as Sophie Sheinin, a leader in the National Unemployed Workers Association). Buller suffered at the hands of authorities who went to extra lengths to punish female activists for transgressing the gender role they believed women should play.71
The statistics available for this period reinforce the severity of the repression that was taking place during Bennett's years in office. The Canadian government's campaign against perceived radical activity and against real and suspected communists increased once the Great Depression was under way; the peak of unemployment was approximately 30 per cent in 1933. After Buck et al., the Canadian government increased the frequency and severity of its repressive activities. The CLDL claimed that in 1931 approximately 720 people were arrested with 155 being convicted for what they claimed were working-class activities. This was a marked increase from the previous year when they claimed approximately 200 persons were arrested. Their numbers included arrests for unlawful assembly, rioting, sedition, Section 98, assault, vagrancy, and disorderly conduct among others; the Section 98 numbers represented a fraction of those numbers. In 1932, the CLDL claimed 839 had been arrested and 195 convicted. In 1933, the up-tick in arrests continued. The group reported 1,167 arrests although these numbers included those charged with assault, vagrancy, and disorderly conduct among other crimes, an increase of 17 per cent from the previous year. The number of arrests grew: the first four months of 1934 saw 463 arrests. It is possible that the CLDL's numbers could have been inflated, given that the group's main purpose was to protest against state repression, hence higher numbers would make the group seem more needed than ever, and possibly increase its membership and donations. The group had an accurate account of whether repression was increasing after the Buck et al trial because it defended the bulk of those charged. Their estimates do not seem inflated when compared to figures obtained by more moderate leftists. In 1933, F.R. Scott attempted to find out how many arrests and convictions were occurring in the 1930s. According to official statistics from the Dominion Bureau of Statistics, the number of crimes for sedition before 1931 would have been so low that they would have been included in the miscellaneous
category. In 1932, the statistician that replied to Scott's query claimed that the year witnessed a great increase to the point that the crime now needed its own category. Statistics for 1932 were not available at the time of Scott's request, but the Department did state that in 1928 there were one-hundred-nineteen charges for rioting and unlawful assembly and one-hundred-three convictions. Those numbers increased in 1930 to 201 charges and 169 convictions. In 1931, there were 206 charges and 168 convictions.\textsuperscript{74} The CLDL's numbers included far more categories, but if the Bureau of Statistics number of convictions for just the category of rioting and unlawful assembly are any indication, the CLDL was \textit{underestimating} just how many were being arrested and convicted for what it deemed working-class political activities.

Section 98 played an important role in the repression of the period and in ensuring Bennett’s goal of preserving ‘peace, order and good government.’ It is certainly possible that as the Great Depression worsened, police could have cracked down on communists without Section 98. It was a powerful tool to enable the government to legally engage in political policing during peacetime as it had done during the First World War with P.C. 2384. Whether law enforcement chose to prosecute individuals under different sections of the Criminal Code in the 1930s does not diminish the fact that Section 98's creation reinforced the government's belief that it \textit{had the right} to police politics to maintain loyalty. It is impossible to speculate on the impact of the repression of the 1930s without Section 98, but it is certain that Section 98 had a role to play in the repression that took place, whether directly or indirectly. It was used in a multitude of ways, from legalizing the deportation of communist immigrants, to providing authorities with the legal sanction to engage in frequent and repeated searches of persons and places, to the shuttering of public meetings, to large-scale censorship, as well as influencing new repressive laws. Bennett and other members of his Department, and certainly many members of law enforcement,
believed that Section 98 was the only legal tool that could, as Bennett himself put it, 'touch communism.' It was a type of nuclear legal weapon against communism and it was used against the CPC to completely level it.

Once Section 98 began the process of normalizing the emergency, more laws followed. The WMA was amended to have a peacetime application, and the Unemployment and Farm Relief Act gave the government the legal tools it needed to use whatever measures it needed to preserve peace, order, and good government. Quebec’s David Bill built on Section 98, making it easier for police to engage in broad censorship campaigns. While repression was certainly tied to the country's unemployment situation, it is debatable that the repression against communists and their supporters during the 1930s would have reached the heights it did, had the CPC not been officially categorized and declared an unlawful organization. That conviction set law enforcement throughout the country on the lookout for potential CPC members and threw anyone suspected of being a Communist into an underclass of criminal, a 'species of treason,' as Justice Wright had put it. Section 98, and the conviction of Buck et al., emboldened authorities in their quest to stamp out communism. Indeed, as Judy Fudge and Eric Tucker have stated, even though the number of known Section 98 prosecutions was small, Section 98 and Buck et al.’s conviction ‘further legitimized the crackdown [against communists], at least in the eyes of politicians, law enforcement officials, and judges.’

These lesser-known cases of Section 98 and the general repression against communism illustrate the broad reach Section 98 had in Canadian society and the intense focus the authorities had on stamping it out. They reveal the government’s strategy, and its failure, in trying to outlaw the CPC’s many subsidiary groups. While acquittals could certainly occur in Section 98 cases, these were mostly because of the overzealousness of police and Crown Attorneys in prosecuting
even the most trivial of cases, such as that of Steve Koslov in Montreal. No one knows how many times Section 98 was used or how many people plead guilty. Only several cases made headlines, but even in those stories there is mention of other cases where no trials took place and only 'guilty' pleas were entered. Hugh Guthrie admitted during a speech he made before the Calgary Bar Association in 1933, Section 98 was proving effective during protests resulting from the unemployment situation in the country. Plea deals were common as the Chalmers case illustrates. The broad reach of Section 98 was best summed up by Norman Keys when in 1933 he wrote in *The Fortnightly Law Journal* that the limits of Section 98 were 'measured by a policeman's helmet.'

**THE MURDER OF AN IMMIGRANT (NICHOLAS ZYNCHUCK)**

The state-repression of the 1930s increased in 1933, particularly in Montreal as Premier Taschereau launched his aggressive campaign against communism. If the Buck et al. trial was the start of the repression against communists and fellow travellers during the Great Depression’s exceptional state, the case of Nicholas Zynchuck in Montreal represented the depths of it. It reduced the communist to the level of sub-human in the eyes of law enforcement and demonstrated how ethnicity and culture helped influence who was (and was not) a communist.

On the afternoon of 6 March 1933, Montreal police were called to 3962 St. Dominique St in Montreal's downtown core. St. Dominique contained a number of townhome complexes, many of which were rented to Polish immigrants, mainly Yiddish-speakers, working in nearby factories and shops. On this afternoon, police walked in on an eviction, the history of which dated back to the previous Friday. John Wlostizosk was a Polish immigrant who had been
renting 3962 with his wife. Wlostizosk fell on difficult times and became unemployed, probably because of the broken leg he nursed at the time of his eviction. He was two-months in arrears on his rent and was ordered to pay immediately or be forced to leave. Wlostizosk could not pay and the next day a court-ordered bailiff and his assistants attempted to evict the family, claiming that they had an order to do so from the Supreme Court. They were unsuccessful, and Mrs. Wlostizosk reported that she was thrown to the ground by the men and had her clothing torn.

The majority of witnesses stated that the bailiff returned at 2:30 p.m. on 7 March, and he and his assistants reportedly forced their way into the home, and pulled Wlostizosk out of his bed, dragging him outside. Wlostizosk's wife, while screaming, clung to the bed sheets as her husband was dragged out of the home and she was pushed down the stairs. Her screams drew neighbors from all around and soon a crowd of several hundred emerged, urging the couple to stand their ground and not leave. When constables Joseph Zappa, Paul Couchey, and Victor Jette of the Montreal Police arrived at the scene (later joined by Constable A. Cloutier), they found an angry mob, the bailiff's truck half-loaded with furniture and clothing from the home, a screaming Mrs. Wlostizosk standing on the steps to the house, and a half-clothed John Wlostizosk leaning against the house to keep himself up. At this point, Nicholas Zynchuck, a Polish immigrant, former Canadian Pacific Railway worker and a border at 3962 arrived home. He reportedly ran up to the house searching for his clothes. When told by bystanders that the items were in the truck, he entered it but found nothing of his inside. He reportedly then grabbed one of the bailiffs by the arm, saying 'I want my clothes.' The bailiff replied that he could not have them because everything in the house was being seized. When Zynchuck made for the house again, he was blocked by the three constables. The crowd, which grew to approximately 2,000, began removing furniture and items from the truck to prevent them from being taken.
From this point on, the eye-witness accounts drastically differed. Three witnesses and the officers claim that they saw Zynchuck grab a bar of some sort (reportedly an iron bed post) from the truck and began swinging it at the officers, slightly grazing one of them. As he turned to attack the bailiff's assistant, Constable Joseph Zappa fired his revolver, hitting Zynchuck in the back mid-swing. Fourteen others claimed Zynchuck had no bar. Yetta Rotter, of 3972 St. Dominique, gave her account to the Toronto Star the morning after the shooting, and it was corroborated by the majority of witnesses. Zynchuck, she said, ‘just asked them [the police] to let him get his clothes. Then someone said "shoot him," and the constable pulled out his gun and fired' as Zynchuck turned to leave. On the morning of 7 March, Constable Zappa, seated at the back of No. 12 Police Station was interviewed by his superiors, who included Assistant-Inspector A. Brodeur, with a Star reporter present. In the interview, which formed the basis for the official police report, Zappa claimed he shot Zynchuck, 'because, I was mad.' 'Why didn't you shoot over the man's head?' his superiors asked. The constable grinned and shrugged his shoulders, 'He's a communist.' When Zappa was asked if he was excited at the time he replied, 'No.'

Assistant-Inspector Brodeur announced a half-hour later that the shooting was 'justified under the circumstances though regrettable.' The public had to understand, he explained, that this section of the city 'is a hot-bed of communism.' René Clouette, the attending bailiff charged with evicting the family, told reporters an account that differed from that of the other witnesses. He claimed he went to the house on the afternoon of 6 March with about a dozen assistants but found men in the home who were adamant that the furniture not be taken and so he returned with about fifty assistants and began loading furniture. He claimed that one of the tenants, John Wlostizosk, entered the scene, walking in on his own accord but with crutches. He denied the
witness accounts that he and others dragged Wlostizosk out of bed by his feet and pushed his wife down the stairs of the home. The shooting occurred, he explained, as he and his men were loading the truck and the mob began taking things out of the truck.84

Led by Deputy Coroner Dr. Pierre Herbert, a coroner's inquiry with jury was ordered on 8 March to investigate Zynchuck's death. Antoine Senecal and Albert Berthiaume conducted the case for the Police and Michael Gerber, retained by the CLDL, cross-examined witnesses. The scene in Montreal was tense. Police were dispatched throughout the city to quell outbursts of protests following the shooting. One-hundred ‘communists’ were reportedly dispersed from Place Viger Square. The courtroom itself was under heavy police guard and a number of officers were armed with tear gas, should protesters threaten the court. The first witness examined was Adolph Sasnofvska of 4370 St. Dominique Street. He testified that Zynchuck was a Ukrainian born in Poland who came to Canada five years earlier and worked as a labourer. He was thirty-seven-years old at the time of his death. Sasnofvska's description of Zynchuck's ethnicity reveals he was an immigrant of Polish citizenship, but identified as being Ukrainian. He was presumably born in the former Eastern Galicia. René Clouette, the bailiff charged with evicting Wlostizosk, told the inquiry the same version he earlier provided to the media. His assistants gave a sensational account of Zynchuck grabbing a bed post, letting out a cry in his native Ukrainian, and then charging the house in a crazed, barbarian-style attack, wildly swinging the bed post.85

Zappa was called to the stand but did not want to testify. The Coroner told him that he was not obligated to do so, but one of the jurors stood up to say they wanted him to give evidence. A five minute recess was called. After conferring with Senecal and Berthiaume, who represented the police, Zappa gave his account of what happened. He claimed the crowd was
getting difficult to control and some people started taking furniture out of the truck. One of the people removing furniture darted towards him with a six foot iron bar. The man began swinging the pole as he approached Zappa. After taking one swing at Zappa and missing, Zappa claimed the man turned to swing at the bailiff, and as he swung, Zappa shot at his leg but his gun ‘kicked up’ and the man ‘was shot in the back.’ ‘I was afraid for my own life,’ he stated, and all he could do was fire in the man’s direction to protect himself. Under cross-examination Garber asked Zappa if Zynchuck first asked to enter the house. Zappa replied that he did not, and stated that Zynchuck got the bar from the truck, and tried to hit him but missed, and took another swing at Bertrand the bailiff before being shot. Garber asked Zappa why he did not fire a warning shot in the air. Zappa replied that he already threatened to do so but it had no effect on the crowd. He claimed that no one ordered him to shoot. Garber asked, 'Did you tell the reporter of The Star that you were mad when you shot?' Zappa replied 'Mad? Mad? Well I was not very happy.' Garber continued asking 'Were you asked by the Star reporter why you did not shoot over the man's head?' Zappa replied that the reporter just asked his name and left. He claimed he never told Zynchuck to move or he would shoot. Zappa's account seemed implausible.

Witness testimony contradicted the scene painted by the bailiff and officers. Robert Dubareau, a passerby who lived on St. Catherine, claimed he saw Zappa shoot Zynchuck and that there was no iron bar in Zynchuck's hands or any swinging of a bar by Zynchuck. Another witness, Mrs. Rotter said the same thing. The papers did not detail the accounts of other witnesses that contradicted the officers’ claims or note whether there had been other any other witnesses.

Curiously, the autopsy report was entered into evidence, but it is not clear if anyone discussed it further in court. The report, read into the record by Dr. Rosario Fontaine, stated that
the bullet entered Zynchuck from the right side of the back and travelled right to left tearing through a kidney before finally resting in his spine. The gun was fired from a distance of approximately four to five feet at most and no less than eighteen inches.\(^87\)

Inconsistencies in the bailiff and Zappa's testimonies went unaddressed. The press reported that some of Garber’s questioning was stopped; Garber was likely not allowed to question much of the evidence. The evidence that raised the most doubt about the officer’s version of events was the autopsy report. Zynchuck was shot at a maximum distance of four to five feet (with one paper reporting that the autopsy report stated he was shot at a distance of eighteen inches). This meant it was impossible for Zynchuck to have cleared a minimum six foot space around him with an iron-bar. The report seemed to match eyewitness accounts the morning after the shooting that stated that Zappa shot Zynchuck as he turned his back to the officer. He was shot in the back on the right side and the bullet travelled from right to left which could have occurred if Zynchuck, facing Zappa, had begun turning to the left to leave, exposing the right side to Zappa's revolver.\(^88\) Either way, the bulk of the evidence raised questions about the officers’ version of events, but to no effect. In a closing statement to the jury, Deputy Coroner Herbert reminded the public that,

> We have never had any problem with the French-Canadians, and it is always the foreigners who start such trouble. When four constables are faced with 500 angered foreigners their lives are in danger... I hope that this will be a lesson for other foreigners who attempt to resist the police.\(^89\)

The jury reached a decision in less than a minute and cleared Zappa of any misconduct.

That the coroner's inquiry failed to satisfy the St. Dominique community was obvious from the way it rallied behind their fallen member with one of the largest funeral processions the city of Montreal had ever seen. 15,000-20,000 people marched from Verdun to the funeral
parlour of William Ray at Arcade St. at 12:30 p.m. on 11 March. Some of those walking in the long columns of marchers hummed the 'Internationale' and CLDL musicians played for the marchers. Labour leaders made speeches reminding those in attendance of how Zynchuck was killed. The real culprit, some speakers claimed, was Bennett and his policies, while others said Zynchuck was killed because of private property. Some speakers insisted that the lives of workers were just as valuable as those of the 'bosses.' Workers’ Unity League representatives spoke at the funeral. Zynchuck's death brought the community out in the tens of thousands, but it is doubtful that everyone was there to hear the CLDL or WUL use Zynchuck's funeral as a means for spreading propaganda. Indeed, there was serious doubt as to whether Zynchuck was ever a Communist or that he belonged to the CLDL, the WUL, or any other labour organization. The Reverend R.G. Kataunoff of the Church of All Nations spoke at Zynchuck's funeral and stated that he knew Zynchuck as a member of the Ukrainian-Greek Catholic Church, who had no relatives and belonged to no Communist organizations. Some members of the CLDL and other Communist organizations went beyond condemning his death and used Zynchuck's funeral as a platform to preach political propaganda. They tried to paint Zynchuck as a communist killed for being a communist when he was actually killed because he was foreign-born and presumed a communist because of his ethnicity, class, and where he lived. Shortly after the funeral procession was underway Montreal police sent an even stronger message to the foreign community as a reprisal for Zappa's inquiry, and to prevent Communists from using his death as a spectacle for recruitment.

As the steady line of marchers quietly carried on down the street, some holding signs condemning the death of Zynchuck, plainclothes officers entered the crowd and so did 800 mounted officers that were lying in wait for the marchers. Officers charged into the funeral
procession dispersing people, punching and clubbing any that did not move quickly enough. Witnesses described the scene as chaotic; droves of people fled in terror. The crowd spilt into groups of fifty and even passerbys—not part of the march—were caught in the crosshairs of police. A woman on her way home who could not move fast enough for the officers was pushed into a snow drift. Witnesses watched in shock and horror as marchers were knocked to the ground and, when they did not get up quickly enough, faced even more punches and kicks. One man was passed from officer to officer who kicked or punched him for the length of a city block. Others witnessed a man beaten badly by police as he walked; he stopped walking to try to recuperate, only to have officers deliver a punishing blow from behind, knocking him unconscious to the ground where he was left.

Neither young nor old were spared the fury of the police. Nor were the reporters: Henry Prysky of the Gazette, and son of Sergeant-Detective Felix Prysky of the Homicide Department, was beaten by police even after he identified himself as a reporter. Mounted officers mowed over marchers, forcing them into the streets where other officers forced them back onto the sidewalk. According to witnesses the mourners never retaliated. They were determined to keep the march from turning into a riot or violent protest. Statements from witnesses, to the dismay of both the CLDL and Montreal police, affirmed that the vast majority of people at the funeral were there for Zynchuck and not in support of any Communist politics. The Verdun Worker's Association, who led the procession, denounced some press suggestions of Communist activity, citing that 35 per cent of their members had served in the Great War and strongly denouncing suggestions that their loyalty should be questioned. The mourners’ non-resistance did not deter police. One machinist, as the Herald described him, was walking along the street when police began clearing it. 'Suddenly I was tripped,' he said, ‘and thrown into a snow bank. While I lay
there two other men bent over me and struck me in the face.' The man claimed that police never asked him a single question before the beating started. A mile from the march, witnesses reported that a woman walking with a toddler was pushed by police for not walking fast enough, and that when she protested she and her toddler were forced into a snow bank.  

Montreal residents expressed outrage and condemned the events at the funeral. The *Herald*, in an editorial denounced the actions of police, and stated that ‘the actions of the police force on Saturday were a blot on the honour of the force… Had they been agents of Moscow they could not have served the cause of violence better.’* The Star, as well as the Gazette, was equally critical of the police for attacking the funeral. Besides reporting the attack on its own reporter, the Gazette detailed a bizarre scene in which two plainclothes officers, each ‘taking the other for a communist,’ got into a fight. They were eventually separated by officers who recognized them. One officer lost some teeth in the scuffle, but was dissuaded by other police from taking out an arrest warrant on the other officer. The two reportedly shook hands and police refused to release their names. 

The violence at Zynchuck's funeral prompted a strong response from community groups. Protests began immediately after the funeral. In one instance, 225 youth protested the death of Zynchuck and the events of the funeral at the Youth Forum on Drummond Street. Some of the most outspoken criticism of police actions, ironically, came from Christian churches and ministers who claimed it was the police, and not the Communists, that were behaving in an *un-British* manner. On 13 March, members of the Protestant Ministerial Association voted in the majority to appoint a committee that could represent Protestant churches, as well as a diverse segment of prominent citizens, to press for a judicial investigation into the events of the eviction.
at St. Dominique Street and Zynchuck's funeral. The committee was to be separate from religious institutions, but provide them with some representation.94

Called the Citizens’ Committee, the group consisted of prominent community members such as ministers, lawyers, and academics, including Professor F.R. Scott and law professor Warwick Chipman, a prominent member of the bar in Montreal. The committee heard evidence from ministers such as the Rev. Katsunoff, who spoke at Zynchuck's funeral and now reiterated his claims that Zynchuck was no Communist. He described the funeral and the events leading up to it after Zynchuck was shot. Wanting to give Zynchuck a funeral, he explained, were a dozen representatives of different societies, such as various Ukrainian and Polish groups. Katsunoff explained that a Greek-Catholic priest was approached to conduct the funeral but he was asked too late and could not do it in time. He claimed that the police kept one of Zynchuck’s closest friends detained for hours and compelled him to sign Zynchuck’s body over to them, as Katsunoff claims, to stop a funeral from being held. Montreal police recognized that a funeral for Zynchuck could become a spectacle for the communists. Katsunoff recalled how police tried to storm the funeral parlour in an effort to get Zynchuck’s body but people jammed the entrance to the parlour and stood watch until a funeral was arranged. Katsunoff told the committee that the funeral march was orderly until someone blew a whistle. Someone shouted, ‘Come on boys,’ and plain clothes officers jumped into the crowd. A banner held by one of the marchers that read 'Shot in the back,' was grabbed by police as they entered the crowd from all directions, beating the crowd as they entered. Katsunoff was sure that the two plainclothes men that he spoke to, 'smelt of some kind of liquor.' The committee heard that several witnesses of Zynchuck's death claimed they could swear under oath that they saw him shot as he turned his back to Zappa in an
effort to leave. It was later reported that Zynchuck's gravesite was purchased by an unnamed
sympathetic citizen of Montreal who had never personally met Zynchuck.95

The committee refrained from deciding anything and instead took a wait-and-see
approach until further official inquiries were completed. Following the publicity that the
committee meeting generated, Montreal Deputy Chief Charles Barnes, who oversaw the police
response to the funeral march, commented on the funeral, stating that he saw 'no trouble
anywhere' and witnessed no violence as the crowd was easily dispersed. Despite Barnes' attempt
at damage control, a new inquiry into Zynchuck's death was about to be called.96

On 14 March Joe Batula, a former fellow officer of Zynchuck's in the Polish Army, filed
a complaint against Zappa in the death of Zynchuck so that an arrest warrant could be issued
against him for manslaughter. Oscar Gagnon and Michael Garber, two lawyers retained by the
CLDL, represented Batula. Justice Victor Cusson agreed to issue a pre-warrant inquiry to
investigate whether a warrant should be issued for Zappa's arrest. He set the date of the hearing
for 21 March. Gagnon explained that a hearing was needed because all the evidence at the
coroner’s inquest ‘was designed to exculpate the constable, [and] that we had no chance to
present our evidence.’97 Gagnon's statement confirms that the evidence of witnesses that could
contradict Zappa and his fellow officers was suppressed during the Coroner's inquiry.

Zynchuck’s death and funeral spurred progressives into action and solidarity. In addition
to the frequent protests throughout the city, writers in the Canadian Forum claimed that these
events symbolized the illiberal state of Quebec. Zynchuck’s death and funeral became the
source of inspiration for a variety of poems, stories and plays, including a play entitledEviction
performed by the Worker’s Experimental Theatre. Poet Dorothy Livesay wrote a poem entitled
‘An Immigrant (Nick Zynchuck)’ and a story ‘Zynchuck’s Funeral.’ As mentioned earlier, F.R.
Scott was instrumental in forming an ad hoc group to protest the events and suggest reform. He had been outraged by witnessing a labourer who had been standing near the street during the funeral suddenly be knocked to the ground by a ‘ferocious punch to the jaw’ from a man later identified to be a plainclothes police officer. The CLDL temporarily united with the Trades and Labour Congress (TLC), and the Montreal Labour Party, to protest Zynchuck’s death and the funeral violence. They had support from the Protestant Ministerial Association, the Montreal Women’s Club, the Delorimier Liberal Reform Club, the League for Social Reconstruction, and the Montreal United Church’s Committee on Social and Economic Research.\(^98\)

The hearing began on 21 March. Oscar Gagnon of the CLDL stressed from the outset that this was not a trial, just an inquiry to decide whether an arrest warrant should be issued and thus a hearing of evidence \textit{ex parte} as per Article 655 of the Criminal Code was sufficient to issue the warrant. In an unexpected move, Justice Cusson allowed \textit{both} sides to present evidence, including witnesses called by Zappa’s counsel, Philippe Monette. Berthiaume was permitted to represent the police. Variations of Zynchuck's death were told to the court in English, Polish, and Yiddish. The courtroom initially was restricted to the public but by mid-morning the judge lifted the restrictions and it became filled to capacity.\(^99\)

The bailiff Clouette retold his version of events. But the majority of witnesses in this hearing told a different story than the one told by Zappa, his fellow constables, and the bailiff and his assistants during the Coroner's inquiry. These witnesses described how Zynchuck was shot in the back by Zappa as he turned to leave. Several witnesses claimed that the bailiff assistants shouted at the officers to shoot Zynchuck. Papers reported that Zappa's counsel, Mr. Monette, was very aggressive in his cross-examination of witnesses, leading Garber to ask the judge why cross-examination should even be allowed as this was not a trial. The judge claimed
he wanted all the facts before making his decision. The defense gave their interpretation next. It followed the same story as told during the coroner's inquest. The autopsy report was read into evidence again by Dr. Rosario Fontaine who claimed that based on the hole in Zynchuck's jacket, it might have been fired from a distance of four or five feet but not less than 18 inches. Witnesses for Zappa claimed the crowd was advancing until Zappa fired his gun.  

On 24 March, Judge Cusson announced that he had decided not to issue a warrant for Zappa's arrest, citing that riot conditions had prompted Zappa to shoot as Zynchuck was part of a crowd of thirty or more persons that were advancing on the officers. Whether Zynchuck was armed or not was inconsequential to the judge, 'killing one or more,' he stated, there being no other way to suppress the riot, constituted a 'justifiable homicide.' Curiously, Zappa's evidence, given on the day of the judge's decision, contained mention that the crowd was advancing on him and yet, even after the Coroner's report, Zappa claimed Zynchuck was 'six, eight, nine,' feet from him when he shot. The CLDL lawyers did not agree with the judge's finding, stating that it was significant that no iron bar was produced as evidence. When Cusson asked the lawyers what Zappa was to do beyond shooting, Garber replied, 'I believe that he'd have to read the Riot Act before shooting.' The judge pressed Garber further, asking 'Do you believe that a Montreal jury— or a jury anywhere—(you are a lawyer of reputation, Mr. Garber, and I appreciate you highly) but do you believe that any jury would find Constable Zappa guilty?' The judge insisted on an answer from Garber who replied, 'It might happen. There might be a jury that would find him guilty of manslaughter.' Cusson disagreed, stating he had no hesitation refusing the warrant. The CLDL made one last plea to Premier Taschereau, but it fell on deaf ears. The Citizen's Committee did not seek to further fan any flames: the legal process had run its course. The committee recommended that police not send plainclothes officers to break up crowds in the
future, something the police force said it would consider. Joseph Zappa was completely exonerated.\textsuperscript{101}

The case of Nicholas Zynchuck shows how far the repression against communists had gone in Canada. Section 98 was the law responsible for reducing the 'communist,' the ‘impossible subject’ within Canadian society, to an underclass of criminal after the Buck et al. trial. For law enforcement, communists were a scourge on society; any member of the CPC was automatically guilty of an offense. Members could never publicly admit they were CPC members or even publicly state that they believed in the same ideology without exposing themselves to the possibility of a Section 98 charge. But the most significant danger to Canadian society was how individuals were classified as being communists.

In light of the fact that many CPC members would simply deny membership, the Communist was not easy to spot. Some markers could potentially give one away, as in the case of Zynchuck, an Eastern European immigrant that worked as a labourer and lived in an area with a concentrated number of suspected Communists. In the eyes of law enforcement, communists were emblematic of what Foucault terms the 'Dangerous Individual.' Foucault argues that such a category of person was created over the course of the 19\textsuperscript{th} century as \textit{Homo Penalis} shifted to \textit{Homo Criminalis} or, in other words, the move from a Benthamite idea of legal sanction against what a person \textit{did} to what a person \textit{is}.\textsuperscript{102} Zynchuck was killed by Zappa because, as Zappa stated, 'he was a communist.' Only after was it discovered that Zappa had not killed a Communist, as he had thought, but a man who wanted to retrieve what few belongings he had before they were lost to him.

The role of police violence against communists throughout the Depression, starkly illustrated in the events of Zynchuck’s death and funeral, is important because of how it relates to
sovereign power and the state of exception. As Walter Benjamin demonstrates in ‘Critique of Violence,’ police have broad discretionary power. Police violence, for Benjamin, has a 'law-preserving' function. It occupies an anomic space in that it does not fit neatly into debates about whether violent means are justified to achieve a just end. This is because for Benjamin, police violence is not 'reasoned' but 'fate-imposed.' Police can involve themselves in a situation 'for security reasons...where no legal situation exists.' The police escort 'the citizen as a brutal encumbrance through a life regulated by ordinances, or simply supervising him [or her].' As Foucault argues, the police lack an essence when discipline is internalized throughout society. Instead, they become in a metaphysical way ever-present everywhere through the eyes of regular citizens. In this regard, the police, as Benjamin states, serve as a 'ghostly presence in the life of civilised states.' \(^{103}\) Agamben argues that the ability of police to decide issues of public order and security on a daily basis creates an area of indistinction between 'violence' and 'right' in an identical fashion to sovereign power which is both ruled by law and able to suspend law, and only the sovereign possess the power to kill and not be guilty of homicide. \(^{104}\) Thus Zynchuck's death at the hands of Zappa was fate-imposed violence because no legal situation had existed. Montreal police were responsible for resolving the situation as they saw fit in the moment and their cultural perceptions about who was and was not a threat guided their actions. The indiscriminate violence that the police unleashed upon the tens of thousands of marchers at Zynchuck's funeral, in broad daylight in downtown Montreal, was undertaken in a zone of indistinction, where police decided what action to take in the immediacy of the moment. Such was the case during the violent clashes of the 1930s, when police on horseback rode into strikers. During violent clashes police acted out of necessity. Arendt has argued that state violence can be interpreted as occurring because of a loss of control or a loss of power. In such cases state
authorities can perceive their actions as necessary. She states that ‘sheer violence comes into play when power is being lost.’ As the Depression worsened and the Left refused to stop its protests and strikes, the government increasingly believed it was an exceptional period and it could potentially lose control of the situation. Police were lawfully able to administer brutal levels of violence because it was they who determined, in the absence of a legal situation, how much force to use and whether it was acceptable in the fate of the moment against communists or dangerous individuals. For Agamben, these 'necessary' actions are integral to the creation of a zone of indistinction because 'necessity creates its own law.' Zappa's final exoneration by Justice Cusson reinforced how the police violence Zappa used against Zynchuck was an acceptable, law-preserving function, or in Cusson's oxymoronic phrase, it was justifiable homicide. The police, a symbolic and a real mechanism of sovereign power in the lives of citizens, could murder a presumed communist and not be guilty of a homicide.

CONCLUSION

The state-sanctioned repression of communists during the 1930s was made possible because of how the government and law enforcement believed the Depression to be an exceptional moment. The government continued the process of normalizing emergency measures by creating new ones and using Section 98. It was one of the government’s most potent weapons to combat leftist activism. Expressions of communism were criminalized because of it, and it gave legal sanction for police to engage in political policing. The government continued spreading the belief that communism was a foreign culture. The CPC, under direction from the Comintern, devised a method for continuing their propaganda even as repression against
members and fellow travellers continued. During the repression that followed the Buck et al. trial, Section 98 was used in various ways such as when Evans and other activists were charged with violating Section 98. It was a means for police to legally engage in repressive actions, from continual searches of property to stamping out the left-wing press. It was the death of Nichols Zynchuck that symbolized everything wrong with Section 98; people innocent of any crime, even political ones, could have their fate decided, their redness and hence their guilt decided on the spot, with the limits of their guilt measured by the 'size of a police officer's helmet.' Section 98’s endgame was approaching as its opponents became more organized and more vocal in their opposition to it. It would take a riot of historical proportions, new Section 98 arrests, and the mass support for a then novel concept, civil rights, to finally rein in its power.
Opposition to Section 98 began from the moment it was created, largely from trades and labour councils and progressive members in the House. But its opponents had little support from other leftists, largely because the early opposition to it was based on its symbolic power because it was never used. Following Buck et al. in 1931, many on the left were awakened to the dangers of Section 98 and mobilized on a massive scale to oppose it. For many progressives, Section 98 symbolized state repression. The drafters of Section 98 failed to take into consideration the law of unintended consequences. Section 98, and the repression linked to it, spurred the re-conception of what rights citizens were entitled to and which ones should be protected. No longer were only property rights sacrosanct; growing numbers of Canadians now believed that civil rights were in need of protection. Progressives argued that if the government had the power to engage in repression, Canadians were entitled to be protected against it. The normalization of emergency measures was a process, subject to change and resistance, and many Canadians were now aware of its dangers, and ready to resist it.

Previous studies on the history of human rights in Canada have maintained that an early rights movement began in the mid-1930s with the creation of the first civil liberties groups. These were tied to progressives such as F.R. Scott and the League for Social Reconstruction. These studies treat the Canadian Labour Defense League (CLDL)’s efforts as a precursor to this rights movement because the CLDL was only concerned about workers’ rights.¹ This view tended to marginalize the role of the CLDL in leading the first and largest, broad-based rights movement. It was the CLDL’s efforts that spurred other progressives to join the movement it launched. Canada’s rights movement was initially influenced by the CLDL, which sought to
protect the rights it felt workers were denied because of Section 98, such as the right to free
speech and assembly.

The chapter begins by focusing on the CLDL and its role in leading the advocacy to
repeal Section 98. I will first demonstrate that from a strategic standpoint, repealing Section 98
was critical for the group’s survival, and while it had the initial support of the Communist
International (CI), the CI had failed to anticipate just how liberal the CLDL would become. This
chapter contributes to the growing revisionist literature demonstrating that Communists did have
more autonomy from the CI than previously believed.² The CLDL strategy of trying to unite
with other leftists, before Moscow’s turn to a ‘United Front’ against fascism, was effective in
broadening support for the repeal of Section 98 by attracting moderate progressives and
respected thinkers such as Frank Underhill and F.R. Scott. I focus next on the Bennett
government’s determined effort to continue using Section 98 whenever it felt a conviction was
possible, such as in the case of the On-To-Ottawa Trekkers. The preliminary hearing of the Trek
leaders demonstrated that even with little evidence strike organizers were considered members of
an unlawful organization; the government was determined to use exceptional means to both end
the Trek and convict the leaders. I conclude with the election of the Liberal government of
Mackenzie King and Section 98’s repeal in 1936. Section 98's repeal led to a strengthening of
Canada’s sedition laws, resulting in a continuation of the process of normalizing emergency
measures.

THE CLDL AND THE MAKING OF LIBERAL COMMUNISTS

The calls for Section 98’s repeal began in the 1920s. As chapter one illustrated, J.S.
Woodsworth and other progressive members of the House, as well as the Trades and Labour
Congress, opposed Section 98 from its inception. So too did Mackenzie King’s government even
though Liberal and Conservative Senators voted against Section 98's repeal. It is unknown whether the Liberals genuinely supported Section 98's repeal or passed bills to keep their minority government knowing they would fail in the Senate (King promised House progressives that the Liberals would put forth bills to repeal Section 98). Those most directly affected by Section 98, the Communists, did not actively seek its repeal until Buck et al. were charged with violating it in the summer of 1931. When the CPC turned its attention to Section 98, it did so through its subsidiary group, the CLDL, which led the initiative to garner support for Section 98's repeal and for the protection of workers’ civil rights—a novel concept at the time.

When it was created in 1925, the CLDL was designed to function as a temporary body to provide immediate aid to striking members of the newly minted Mine Workers Union of Canada in the Drumheller-Wayne minefields of Alberta. In September of 1925, the initiative to establish a permanent body was taken by Tim Buck in cooperation with Moscow's group, the International Red Aid (IRA). The IRA was a body established by the Soviets to provide assistance to Communists around the globe both to support their revolutionary efforts and to aid members and their families who faced jail or persecution. The CI advised the CPC to establish such a body in Canada as early as 1924. The CLDL was modeled on the IRA and the International Labour Defense (ILD) created by the Communist Party of the United States of America (CPUSA) in June 1925.³

While the group's creation was heavily influenced by the Communists, its founding committee was diverse. The group was unsuccessful at preventing convictions in the case of the miners, but it did manage to raise $4,000 in support of them and their families.⁴ The CLDL disbanded its provisional committee after holding its first convention on 27 October 1927. Within two years the group had established fifty-two branches with 3,000 dues-paying members.
The group's constitution, established at its first convention, stated that the CLDL's main purpose was to 'unite all forces’ into a broad national body that would defend and provide support for workers that were prosecuted for their ‘activities within the Labor Movement,’ irrespective of their ‘political or industrial affiliations, race, colour, or nationality.’ Its mandate included providing aid to families of arrested workers, legal defence and funds for arrested workers, advocating for the 'repeal of anti-working class laws,' and defending foreign-born workers against 'persecution, unwarranted deportation and exclusion.' The CLDL was the only group at the time whose explicit purpose was to defend workers who faced the brunt of state repression and to provide aid to foreign workers facing deportation. It welcomed workers of all ideological leanings as members.

The group provided legal aid for workers during the late 1920s and into 1930, so much so that by February 1930 the group had a deficit of $2,500, most of it owed as lawyer fees, the lion's share to lawyer J.L. Cohen. The CI tried to structure the direction of the CLDL. Large recruitment and funding drives were held in March and June of 1931. As much as the CLDL was designed to be a group to appeal to all workers, the CPC leadership stressed the importance of foreign-born members to the CLDL. The party brass believed that the support of the CPC's language organizations was critical for the CLDL, and so was the issue of deportation. According to the CPC leadership, the CLDL's anti-deportation stance directly affected its existence because it needed the support of the CPC's ethnic base.

The group tried to draw women into its ranks. While few women rose to leadership positions in the CLDL as Jeanne Corbin did, the group attracted more women to its ranks than other CPC-affiliated groups. The list of delegates from its 1930 Congress included thirteen women whose recorded occupation was *housewife*, and from women’s groups such as
the Ladies Auxiliary of the Canadian Labour Defense League.\textsuperscript{8}

The CPC tried to steer the CLDL away from legal defences. It wanted the group to mobilize workers against international fascism and support 'class war prisoners,' stop the practice of paying fines for workers, and only provide legal defence to select cases, especially 'important political cases,' without defining what those were.\textsuperscript{9}

Once Buck et al. were convicted, the CLDL ramped-up its efforts to have Section 98 repealed. The headline in the CPC paper \textit{The Worker} on 21 November 1931 stated 'Mobilize for the Repeal of Section 98' and called for all workers to oppose Section 98 and to attend an upcoming conference organized by the CLDL. The paper claimed that 'no strikers' and 'NO LABOUR ORGANIZATION' were safe from prosecution.\textsuperscript{10} It linked Section 98 to the group's continued opposition to political deportations, and used the repeal of Section 98 to advocate for the release of Buck et al. The CLDL's strategy for building a repeal movement involved increasing the public's awareness by distributing pamphlets and holding conventions. It aimed to expand the CLDL and partner with as many groups as possible in support of repeal, including other labour organizations and parties. In addition to rallies and protests, it sent as many protest resolutions and petitions to Parliament as possible.

By July of 1933, the CLDL had gone to extraordinary lengths to organize and push for the repeal of Section 98. The group reported that 5,000,000 pieces of literature, mostly pamphlets and manifestos, had been distributed—2,000,000 of them in the first half of 1933. The group printed one booklet and three pamphlets on the trial of 'the Eight' which together had a circulation of 60,000.\textsuperscript{11} Meetings and conventions calling for Section 98's repeal were advertised in \textit{The Worker} nearly every month from 1932 to 1935. The group managed to organize a nationwide petition with approximately 200,000 signatures from individuals in 814 different cities and
presented it to Mackenzie King, J.S. Woodsworth, and Prime Minister Bennett. In the same year the CLDL secured 50,000 endorsements from Ontario workers in support of Section 98's repeal and printed 50,000 protest place cards. Protest resolutions were routinely sent to Hugh Guthrie, William Price, and R.B. Bennett. It is little wonder that the government's focus shifted to trying to stop the CLDL in 1933 and 1934. Led by A.E. Smith, a delegation of workers from a number of locales met with the Minister of Labour on 22 February 1933 to demand Section 98's repeal, Buck et al.'s release, and an end to deportations. They were rebuffed, but the CLDL made an impression on the government. In February 1933 Guthrie admitted to the House that he was sufficiently aware of the CLDL. He even assumed the League must be getting funds from somewhere because he was learning of 'the activities of this association through petitions from every quarter of this dominion,’ adding: ‘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.’ He noted that ‘there does not appear a single Anglo-Saxon or French Canadian name’ on the long petitions, only the ‘names of foreigners, unpronounceable names for the most part.’ He reiterated his point that because of the CLDL, Section 98 was more valuable than ever. He grudgingly admitted that the CLDL had built a huge movement against Section 98 and had even obtained the support of the churches.  

The authorities did not really believe the CLDL was run by immigrants. It knew it was being led by Anglo-Saxon Communists and it concerned them. Since Buck et al.’s conviction, the majority of the CLDL’s new members were Anglo-Saxon. The group grew rapidly and the CI took notice. From July 1931 to October of 1932, the group grew from 5,000 affiliated members to 14,360. From November of 1931 to August of 1932, forty repeal conferences were held in Ottawa, Toronto, Hamilton, Calgary, Winnipeg, Vancouver, Regina, Montreal, Glace
Bay, and Sudbury. On the whole the demonstrations were not large but the delegates represented many workers. In February of 1933, for example, 876 different bodies sent resolutions to the government representing 171,315 workers and farmers. 243 resolutions came from trade union locales representing 88,902 workers. The CLDL still undertook its legal defences, which continued to cause a financial crisis for the group. By July of 1933 the growth in the CLDL was remarkable: from a few hundred members in its early days to 16,471 by 1933, 7,023 of them hailing from the British Isles. Beyond sales of literature, it was the CLDL’s membership that kept the group alive. In 1932 the Labour Defender, went from a run of 1,500 to 6,500. The following year saw an increase in dues payments by 50 per cent at a time when 70 per cent of the CLDL’s membership was unemployed. The CLDL was being supported by those with the least means in Canada. After Buck et al.’s conviction, the group achieved what the CPC prior to 1931 could not: it grew at a quick rate, was able to draw in support from outside communist ranks and, most importantly, recruited Anglo-Saxons. The irony of the CLDL’s success cannot be overstated. Without Section 98, none of it would have been possible.

The CLDL built support for its repeal campaign among workers by framing Section 98 as reflective of capitalism’s flaws. It was a law designed to protect capitalism regardless of its failures. For instance, in circulars calling for Section 98's repeal, the group argued that Section 98 was 'capitalist legislation designed to suppress the workers’ movement, to render impossible the struggle against hunger, wage-cuts and war.' The message of repeal conferences was that by repealing Section 98, workers 'rights of free speech, free assembly and freedom of organization' would be ensured. Section 98's removal was tied to freeing 'class war prisoners' or political prisoners such as Buck et al. in Kingston. The CLDL sent letters to all trade unions and all workers’ and farmers’ organizations, encouraging them to participate in an eastern
congress against Section 98. In the letters, A.E. Smith mentioned the imprisonment of Buck et al. and the recent charges against Joe Derry and Arthur Evans, the number of arrests over the past six months for 'working-class activities,' and that Section 98 was ‘the most formidable expression, of this rise in terror.’ ¹⁸ Echoing throughout the pamphlets and CLDL conferences was that Section 98 represented the pinnacle of repression and capitalist cruelty. The arrest of Joe Derry was not just an attack against youth. The CLDL argued it was an ‘attack against working-class youth’ who sought to better their conditions and it represented an attack on ‘the whole working class to freedom of organization.’ ¹⁹

The CLDL stressed that Section 98 did not just target individuals, but organizations, and if Derry's group, the YCL, could be targeted by authorities so could every group in the labour movement. Section 98 was the authorities’ way of maintaining, according to the CLDL, the state's cruel 'starvation' policies against the unemployed. Repealing Section 98 would 'break through Bennett's terror.' ²⁰ The CLDL claimed it was, 'the duty of every person, and of every organization’ to protect the values of ‘democratic and constitutional criticism, to protest against such laws as that of Section 98.' ²¹ For the CLDL, the removal of Section 98 would pave the way for workers to demand immediate reforms and improve their living conditions, demand an end to unemployment, and possibly even capitalism itself. Section 98 was the barrier that kept workers from organizing and engaging in free speech in their own defence. It was, as Smith described it, the highest expression of the government's 'terror'. The CLDL's success in agitating and organizing tens of thousands for the repeal of Section 98 was because it broadened Section 98’s impact (any organization faced a potential charge) and it framed Section 98 as more than a law. For the CLDL, it was symbolic of state terror and the means by which the government silenced opposition. It was a political weapon. Such claims resonated among the tens of thousands of
unemployed youth in Canada during the worst years of the Depression, who were the bulk of the CLDL's members and main source of its funding.


The CLDL spread its views of Section 98 to other progressives and wanted their cooperation to build a widespread movement to repeal it. Repealing Section 98 meant ending unjust deportations and releasing Buck et al., but the CLDL hoped to pull more progressives into the Communist ranks. The call for cooperation came much earlier than the Soviet Union's official policy change for a ‘United Front’ against fascism in 1935. A.E. Smith made such an offer to J.S. Woodsworth before Buck et al. were charged on 22 April 1931. The two had a prior relationship working as Methodist ministers within the social gospel movement. Smith wanted Woodsworth to step up his attacks against Conservatives in the House of Commons and sharpen the class divisions between Bennett and the rest of the population. He claimed he did not agree with the vicious verbal attacks that CPC members had levied against social democrats, even though Smith continued the attacks in the 1930s. Woodsworth appreciated the letter, but declined the offer. But the CLDL would not give up on the message of cooperation.

In 1932-1933 the Co-operative Commonwealth Federation (CCF) was formed following two conventions, one in Calgary in 1932 and the other in Regina in 1933. The CCF was a loose federation of farmers, labourers, and socialists. Prominent early members included the Ginger Group—a group of progressive M.P.s united in their views and who sat apart from the mainstream parties in the House. With Woodsworth as the leader of the new federation, the group had support from the League for Social Reconstruction (LSR), a group largely led by intellectuals with members such as F.R. Scott, Frank Underhill, and Eugene Forsey, among
others. The LSR, Scott and Underhill specifically, were responsible for drafting the 'Regina Manifesto' which was the CCF's founding document, and presented at the group's Regina convention in 1933. Motivated by the seriousness of the Depression, the CCF's aims were to reform capitalism into a socialist state which they believed would put the interests of people first.  

The CLDL moved swiftly to make a connection with the group because of their similar aims, even though they disagreed on how to create a new socialist state (the CCF promoted socialism through democracy and economic reform and the Communists believed in the fall of capitalism through revolution.) Despite the difference, the CLDL approached the CCF to join forces in 1933 against Section 98, secure a release of the Eight, and stop unjustified deportations. The CLDL proposed a joint conference with an equal number of delegates from the CCF and CLDL to discuss building a united front in support of these goals. The CLDL's invitation indicated that it was open to any suggestions from the CCF on the issues. Woodsworth replied in the negative, and for good reason, for despite Smith and the CLDL's calls for cooperation, social democrats were still being branded by Communists as traitors to the working-class, dupes, and 'social fascists' in traditional Third Period inflammatory style. Becky Buhay of the CLDL responded to Woodsworth's rejection, claiming that the CLDL would go directly to the CCF membership in the absence of support from Woodsworth. The strategy was effective.

Several events in the 1930s fueled the CLDL's efforts at cooperation with progressives. In 1932, while the Eight were incarcerated, a riot broke out in Kingston Penitentiary in which 450 inmates protested their conditions. Buck was charged with inciting to riot and nine months were added to his sentence after his trial in 1932. An unknown guard fired seven shots into Buck's cell seven days after the riot occurred. Smith and the CLDL were incensed and accused
the government of trying to assassinate Buck. In the House, Guthrie claimed that the shots were only intended to frighten Buck. Smith led another delegation to Ottawa to meet Bennett and protest what Smith called the 'frame up' against him. He demanded Section 98's repeal and an investigation into the shooting. Saying no both to an investigation and to Section 98’s repeal, Bennett furiously ordered Smith out of his office. Then, as a result of Smith's repeated claims that the government was responsible for the shooting, and Bennett's hatred of him, Smith found himself charged with sedition early in 1934. But he was acquitted and the broad support he received from the public included CCF members, even though Smith continued to publicly blame Woodsworth for misrepresenting workers. Woodsworth forbade any cooperation with Communists, but as Smith put it, 'CCF clubs sent delegates to our defense conferences.' Given the similarities in ideology and goals, it was difficult for some CCF members to see the rationale of the CCF leadership's heavy-handed rejection of Communist calls for cooperation. With the Soviet Union officially promoting cooperation in 1935, things got worse for the CCF in 1936. CCF members in Ontario, led by Ben H. Spence, invited the support of Communists in a May Day celebration. Spence and three others were expelled from the CCF as were four CCF Ontario Clubs. The frequent Communist efforts at cooperation pushed Woodsworth and the CCF leadership to tighten party discipline.

While the effort of the CLDL to cooperate with CCF members is well documented, how the CI viewed these attempts at cooperation during its Third Period policy of class against class is not. Many historians have avoided discussion of how the CLDL fit in relation to the CI not only during the Third Period, but during the United Front or ‘Popular Front against Fascism.’ That the CLDL called for cooperation before Moscow’s turn to a popular front strategy strongly reveals the independence that Communist members and groups could exert from the CI.
Circumstances facing the CPC in Canada, such as the presence of Section 98 and Buck et al.’s conviction, forced the CLDL to function differently than other CPC-backed organizations such as the Workers’ Unity League (WUL). Similar to the WUL, the CLDL was by the time of the Third Period a Communist-led group that was by no means exempt from Third Period ideology. But in spite of Smith's claims that social democrats were not acting in labour's best interest, they were still encouraged to join the CLDL, in a clear attempt to boost the membership of the League. Such a call would have provoked tension with Moscow during the Third Period, particularly if the ‘social fascist’ new members did not become card-carrying Communists. The CLDL claimed to support all workers *regardless of political affiliation* or ethnicity. Despite the CLDL’s claims of support for all workers, there is little evidence that the group engaged in widespread efforts to help defend Aboriginals in Canada or, indeed, engage in any broad campaigns to defend the rights of racial minorities beyond its calls to end deportations. Still, it worked tirelessly to defend many workers in a legal system in which they otherwise had no means, much to the group’s financial detriment. It was starved for cash and nearly bankrupt by 1930 because of the large number of legal cases it took on, which included defending many social democrats as well as CPC members. By engaging in the bourgeois legal system that it opposed, and by working side-by-side with liberal lawyers, it simultaneously, albeit indirectly, sanctioned that which it opposed, a liberal state and its laws. By relying heavily on the support of foreign-born workers and defending them, the CLDL went against the grain of the policies of the CPC leadership with respect to the CPC's aims to recruit more Anglo-Saxon and French-Canadian workers. This was one of the Communist-led organizations, the WUL being the other significant one, that the CI would have little choice but to tolerate if it wanted to spread the Communist message in Canada after the CPC was found unlawful in November 1931.
The CI expressed its displeasure to Party members that the CPC conducted a defense that was *too* legal in 1931; it expressed dissatisfaction with the CLDL's early efforts at repealing Section 98. In 1932, well before the United Front policy of the Soviet Union was underway, the CI felt that the CLDL was blurring class lines and that its attempts at cooperation with social democrats and other leftists only benefitted trade unions. Even though the CI was not impressed with the CLDL's strategy, the CI admitted that the movement could strengthen the Party.\(^{31}\) Still, in spite of its many successes, the CI continued to take issue with the League's message and tactics even as it admitted that the CLDL was doing the most for communism in Canada, ironically, by defending workers’ legal rights. The CI admitted in 1934 that the CLDL's 'struggle against terror' appeared now as 'the spearhead of the whole movement.'

This is not to say that the CLDL operated in a state of complete independence from the wishes of the CI, but that the realities facing the group's survival were paramount. At the very least, the CI seemed willing to have the CLDL continue its efforts at cooperation, provided it could interpret the CLDL's actions as trying to absorb CCF members and lead the labour movement, rather than advocating the protection of liberal freedoms, even if its constitution and actions revealed otherwise. However, the CI still believed that the CLDL was 'confus[ing] the masses' and making too many opportunistic mistakes, in that it was not 'assimilating' new members from the CCF.\(^{32}\) The CI doubted a mass movement to repeal Section 98 would be successful. It thought there were too many contradictions among the bourgeoisie and that members of the government had been anxious to appear democratic. The CI cited the Liberal party's support for Woodsworth's earlier attempts at repeal and even instances where Toronto's Police Chief was claiming that free speech was important. The CI believed that 'in a critical situation,' such as war with the Soviet Union, 'these contradictions would immediately
disappear. The CI argued that partnership with these groups was folly. If everyone from progressives and liberals were opposed to Section 98, it could result in workers thinking that it was the progressives, and not the communists, who represented them. The CI maintained that it was the Party that should be leading the movement for the repeal of Section 98, and the identity of the Party should not be 'submerged.'\textsuperscript{33}

The CLDL continued to seek partnerships by calling on all workers to join the fight against repression and Section 98's repeal even though it was not meeting Moscow's standards. By 1934, the CI believed that the group 'failed to improve organization' and still had not assimilated new CCF members.\textsuperscript{34} Part of the reason may have been the changes made to the CLDL's constitution in 1932. Still committing itself to the defence of all workers as it did in 1927, the CLDL now included a surprising addition to its list of aims for the organization; in addition to legal defence and fighting deportation, the group expanded its purpose: 'To fight for the right of free speech, free press, freedom of organization and assembly for the workers, and for the right to strike and picket, and defend themselves.'\textsuperscript{35} In this vein, the story of the CLDL contributes to a growing literature on individuals and groups of leftists that sought to defend the rights of workers, women, and racial minorities.\textsuperscript{36} The CLDL was a group conflicted by what was expected of it. Supporting individual freedom was at odds with the CI's goals of assimilating workers to the communist movement. It tried to live up to the CI's expectations but had to grapple with the reality facing its members and the threats posed by Section 98 and state repression. Assimilation of CCFers was not the main goal (even if it was the CI's); winning the fight against repression and freeing the CPC leadership was more important to the CLDL. Indeed, the CI argued that the CLDL's position on Section 98 was far 'too liberal.'\textsuperscript{37} The irony was rich; as early as 1931-1932, it was the Communist-led CLDL that began a mass campaign in
Canada to fight for the liberal rights of workers. A broad chorus of voices supporting Section 98’s repeal was necessary to remove it. CCF members, its leadership, and even its intellectuals, could agree that Section 98 had to go.

**COMMUNIST LIBERALS**

Francis Reginald Scott was one of the leading voices from Canada's intellectual community who bitterly opposed Section 98 and the repression of the 1930s. A law professor at Montreal's McGill University, a poet, and one of the early leaders in Canada’s civil rights movement, Scott grew into his socialism. His father was an Anglican Archdeacon in Montreal and exposed him to the Social Gospel movement, a brand of Christianity that promoted societal change and social action to create a heaven on earth. He attended Oxford as a Rhodes Scholar and was influenced by the British Fabians and by the writings of J.S. Woodsworth. Such a background shaped the young poet into a socialist who sought to place, as he wrote in 1933, 'human welfare above property rights.'

Scott was one of the founding members of the League for Social Reconstruction (LSR). Spurred by the devastating unemployment and poverty during the Depression and the state repression against progressives, the group sought a transformation of Canadian society that looked to the state to take the lead in securing the general well-being of society, from providing national healthcare to ensuring and protecting individual freedoms. Scott and the group were often regarded by the RCMP as communists for their social-democrat beliefs. The LSR played a leading role in the formation of the CCF with F.R. Scott and Frank Underhill in particular being responsible for the drafting of the CCF’s founding document, the ‘Regina Manifesto.’
Central to the LSR's conception of the state role in protecting individual freedoms was the elimination of Section 98. But for Scott and other leading members of the CCF, the repeal of Section 98 was not about capitalists seeking to silence calls for reform or even revolution, as the Communists believed. For these progressives, Section 98 was anathema to liberal democracy. It, and the repression tied to it during the 1930s, was un-British and hence anti-democratic. As Eric Adams writes, this period was a crucial one in the evolution of the concept of rights, with Scott playing an important role. Prior to the 1930s, rights that were protected by the state were largely property rights. For Scott, civil rights such as freedom of speech and assembly were necessary elements of, indeed essential, to constitutional law.\(^{41}\) Section 98 and its repeal were important in launching this change in thinking.

Discussions of how Section 98, and the deportations tied to it, was contrary to British traditions began in the debates to repeal Section 98 and Section 41 during the 1920s. J.S. Woodsworth argued that British justice demanded that a person receive a trial before being deported as it was akin to judging someone guilty of an offense. He argued that Section 98 was in violation of proud British values like freedom of speech. He referred to moments where revolution was acceptable, such as during England's Glorious Revolution of 1688. The history-based, British imagery continued into the 1936 debates for Section 98's repeal. Woodsworth read from an article stating:

> No nation ever became truly great save by successful sedition and revolution...The signature of King John was placed to the Magna Charta, wrenched from him by the nobles; revolution led King Charles to the block; the corn law riots - these were crimes against the law and seditious, but no one hangs his head in shame because of them.\(^ {42}\)

Woodsworth further explained that these words were read by R.B. Graham, K.C., a magistrate in his riding when he proposed a toast to England during the annual St. George's dinner complete
with music by the regimental band of the Princess Patricia's Canadian Light Infantry. For
Woodsworth, what made England truly great was the way in which turmoil changed the country
for the better and how its legal institutions treated sedition.

Scott and other progressives shared these ideas. Scott publicly denounced Section 98
after the trial of Buck et al. He was passionate in his condemnation even though his societal
status could have easily led him to retreat into a less controversial and more comfortable life.
Scott published an article in the *Queen's Quarterly* in 1931 about the trial and urged Canadians
to ask themselves 'what our traditions of freedom of speech and association really mean, if
anything.' He remarked how the Communist Party was a legitimate political party in nations
across Europe, including Britain. The English House of Commons at one point had a CP
member. He observed that with the Buck et al. verdict, Canada had aligned itself with 'Italy,
Japan, Poland and some of the more reactionary Balkan states,' but that only Canada had claimed
to be a democracy among them.\(^{43}\) Scott detailed the extraordinary powers of Section 98 and
argued that there was no 'particular incident, no attempt at rebellion which move the police to
make the arrests.'\(^{44}\) In regards to whether the Party sought change by unlawful means, Scott
pointed out that 'it is not difficult by ordinary legislation to destroy Canadian institutions. Nova
Scotia, he noted by way of example, had recently abolished the Legislative Council by legal
means. Deportees suspected of "red" activities' were tried before Boards of Inquiry, which are
'not composed of judges,' and hold 'secret trials,' he continued, 'this is as dictatorial and
contrary to Canadian traditions as anything could be, yet it is apparently legal.' Scott agreed with
the defence in the Buck trial remarking that revolution does not come about because 'parties
make them,' but because society changes. They are thus a '...part of the logic of history, which
Communists cannot prevent or create any more than capitalists can.' The Communist Party, he
concluded, was thus on trial for something which it had not advocated or taught, since it does not ‘advocate the inevitable.’

Following the publication of his essay, Scott gave public lectures on free speech and continued to write articles denouncing Section 98 and the deportations linked to it. For Scott, the deportation hearings at Halifax for the deportees like the Halifax Ten were a series of secret trials that were anathema to democracy. These were not actions that a British country engaged in. Scott was unwilling to join the CLDL or link himself to the group. He was a firm proponent and supporter of parliamentary democracy and, like other CCF members, as Walter Young explained, ‘their liberalism kept them from being communists while their socialism prevented them from being liberals.’ Scott fit into this category, although in the early years of the CLDL’s repeal campaign, he did lend some support.

In 1932, Scott published an article in the Canadian Forum entitled 'Not Guilty' that he permitted the CLDL to reprint as a pamphlet. In a heavily sardonic and sarcastic style, Scott chided everything from Prime Minister Bennett’s handling of the Depression to the Senate, and to the verdict in the case of the Toronto Communists, but he focused heavily on Section 98. He wrote:

... It was apparently invented by the state of New York, and it suited so well the famous American methods of repressing crime that we thought we had better copy it....Our parlour Bolsheviks had better understand what they are in for... has any Canadian bookseller ever sold a copy of the Communist Manifesto? Twenty years for him. Has any Canadian professor taught a class of students in political science that there are occasions when revolution is morally justifiable? Clap him in gaol with the Communists...

The article mocked Parliament’s creation of Section 98, ridiculing what Scott perceived as Parliament’s belief that the British law Canada inherited was somehow inferior because it lacked Section 98. The article was reprinted in the Communist paper The Worker and the party heralded Scott’s condemnation of Section 98 as brilliant.
Still, any initial aid that Scott lent to the CLDL in its repeal aims, like the right to reprint the aforementioned articles, was very modest. Not only did his liberalism conflict with the CLDL, but he resented Communists attacking social democrats like Woodsworth and himself. For instance, when approached in 1936 by Jack King, who was both a CLDL and CCF member, on the creation of a civil liberties organization, Scott responded by warning him against any kind of partnership with the Communists. While Scott and other progressives were wary of cooperation with communists, others such as Alfred Stiernotte, an engineer based out of the University of Alberta and member of the LSR's Calgary branch, believed that some cooperation was acceptable, given the need for a broad-based civil liberties organization. Stiernotte was not opposed to working with Communists to safeguard freedoms such as freedom of speech and assembly which Section 98 curtailed. But Scott and others, among them Underhill, were not interested in aligning the LSR with a group that Liberals or Conservatives could not get behind. There were divisions, as Lambertson mentions, with classic liberals who supported protection of freedoms but not the growth of the welfare state. While Underhill supported Stiernotte's proposal, he felt it would be too difficult for the LSR to get involved. 'If you can find the leadership somewhere,' he wrote, 'a great many of us would serve in the ranks. The leadership is at present being provided by the CLDL, who are doing very good work, as far as I can observe, but there isn't much use for the despised bourgeoisie trying to work along with the communists.' The CLDL was still only concerned with what it believed were workers’ rights. It had little interest in protecting the bourgeoisie. The lack of interest in the CLDL protecting the ‘bourgeoisie’ was probably because the CLDL believed that they needed little help protecting rights, and they certainly did not face the same hardships as working-class individuals.
immigrant workers, or the unemployed. Stiernotte went on to form the Canadian Civil Liberties Protective Association (CCLPA), Canada's first civil liberties association.\(^{51}\)

The group was short-lived, but Scott and other progressives did support organizations that had ties with, or were working with other Communists during particular moments of crisis, such as the Zynchuck affair, and the formation of the Emergency Committee for the Protection of Civil Liberties that opposed Quebec's David Bill. Others, such as R.L. Calder, a Crown Prosecutor and First World War veteran, had like many others in this period, shifted to the Left because of the state's repressive actions. He eventually left the Liberal party and ran for the CCF in 1939. Calder strongly believed in 'our British heritage of freedom' and believed that there was a 'sense of fairness and decency which abides in the Briton.' He saw Britishness as being intimately tied to freedom and fairness. This heritage was in need of protection and safeguarding, and for Calder, working with communists was not out of the question.\(^{52}\) The degree of separation between moderate progressives and communists involved in the protection of civil liberties was not immense. While the communist message of protecting workers’ rights to seek reform or even revolution, and moderate progressives' view that the state's violation of freedoms was not in keeping with British traditions were at times difficult to reconcile, they could both agree that repression needed to end and so did Section 98. The ‘Regina Manifesto’ included the removal of Section 98 as one of its principal goals.

Section 11 of Underhill's original draft stated the CCF stood for a ‘revival and maintenance’ of what were once established ‘individual rights in British countries, the rights of freedom of speech and assembly.’ In language similar to CLDL pamphlets the section continued stating that Canada had seen a rise in ‘Fascist tendencies among all government authorities. The lawless and brutal conduct of the police in breaking up public meetings and in dealing with
prisoners of whose pol-social [sic] views they do not approve must cease.' Section 98, the CCF claimed was created 'as an instrument of oppression against working class leaders[sic].' The final draft differed little from the original. 53 To many progressives, Section 98 was a blight on Canada's democracy. It was an aberration against what British justice truly stood for: freedom. Moreover, like the CLDL, moderate progressives viewed Section 98 as symbolic of the state repression of the period, an instrument of oppression. These progressives viewed themselves as upholding British traditions and liberty in stark contrast to more conservative elements and the Bennett government, which believed they were protecting British traditions with Section 98. The Bennett government's heavy-handed response to legitimate forms of protest would bring these divergent groups closer together in seeking Section 98's repeal, at least in the short term, when a band of unemployed young men clashed with police in Regina in the summer of 1935.

'A LAW UNTO THEMSELVES'

Amid the growing chorus of opponents to Section 98, it would be used one last time along with more repression to quell a perceived communist uprising. The On-to-Ottawa Trek leaders, Arthur Evans, George Black, Ivan Bell, Ernest Edwards, and Jack Cosgrove, were the last known individuals charged with violating Section 98. In the summer of 1935, they were charged with being members of an unlawful organization, the Relief Camp Workers Union (RCWU). In the case of Cosgrove he was charged with being a member of the WUL, and in the case of Evans, the CPC. Halting the Trek was the Bennett government's last stand against communism as the Conservatives were soundly defeated in the federal election in the fall of 1935. The Depression and the Regina Riot played an important role in Mackenzie King's Liberal campaign of 'King or Chaos.' The Regina Riot and the preliminary trial that followed illustrated
the exceptional measures Bennett was prepared to use against anything that remotely smacked of communism.

The origins of the On-to-Ottawa Trek dated back to 1932. Bennett, as mentioned in chapter two, had tenaciously clung to the idea that hard work, sacrifice, and perseverance would break the Depression and that relief only encouraged idleness. But even Bennett was forced to admit that borrowing and economic stimulus was needed.\(^{54}\) But this still did not solve the massive unemployment problem, as single, unemployed men were not eligible for local relief and were frequently drifting from town to town, via the top of freight cars or 'riding the rods' in search of work.

As many previous authors have argued, the On-to-Ottawa Trek was perceived as a problem by Bennett and others, such as RCMP commissioner MacBrien, because they viewed the unemployed as potential foot soldiers in the communist cause and the CPC actively worked to organize and engage them in protests through subsidiary organizations such as the WUL and the Single Man's Unemployment Association.\(^{55}\) My examination of the Trek will be brief. Bennett increased the RCMP by 300 members and spent an additional $250,000 on riot gear in December of 1931. At the same time, Bennett reluctantly provided more financial aid to provinces for relief, but not without strengthening the RCMP, this time by providing the Commissioner with the power to appoint special constables. MacBrien was quoted in 1932, at a veterans’ celebration, saying that if Canada was rid of communists, 'there would be no unemployment or unrest.' It was in this context that Canada's unemployed relief camps were created.\(^{56}\)

The camps, which housed single, unemployed men who were ineligible for relief, were an abysmal failure. Men were paid a menial 20 cents a day and, as one camp member recalled,
'it was just the right size to be insulting.' The policy created exactly what Bennett hoped to avoid. While the men’s survival was at least assured because they were fed and housed, the insulting payments led many of the men to view their conditions as little better than prisons or quasi-concentration camps. Communists wasted little time in organizing them.

The RCWU was in operation in 1933 under the auspices of the WUL. The Communist organizers promoted the idea that the camps were slave camps and called the men the 'royal twenty centers' reminding them of their state funded daily salary. As Waiser notes, the agitation was successful in that over the four-year period of the camps' existence, 'there were 359 strikes, demonstrations, and disturbances, while 17,391 men or 10 per cent of the total camp population were discharged for disciplinary reasons.' This militancy exploded in 1935 when the RCWU called in veteran organizer Arthur Evans to lead a strike involving camp workers in British Columbia, which began on 5 April 1935. Evans had already been campaigning for better conditions for camp workers. He organized a conference in March of 1935 which saw RCWU districts support seven demands, including raises and a work-and-wages programme, the right to vote for camp members, an end to DND control of the camps, and the repeal of Section 98. Strikers from various camps in B.C. converged on Vancouver in April. After spending two months in Vancouver, with none of their demands met, the issue of what to do next was put to the crowd of men. The group decided to take their concerns to Ottawa.

The Trekkers had public support in nearly every city where they stopped. Whether because of their youth (some were as young as sixteen) or the public sympathy felt for a generation of men lost to the Depression, people donated food and other items. However, not everyone was welcoming to the Trekkers. From its inception the trek was portrayed by officials such as Gary McGeer, Mayor of Vancouver, as a Communist movement that was 'openly
flouting constituted authority.\textsuperscript{61} RCMP Commissioner MacBrien was eager to put an end to the strike. So, too, was the federal government, which had stated in the House that unless aid was requested by a province, the government would not intervene to stop the Trek. But authorities did agree the Trek had to stop because, as RCMP Assistant Commissioner S.T. Wood put it, it was 'clearly a revolutionary movement.'\textsuperscript{62} The federal government decided to end the Trek. On 11 June, MacBrien advised Wood not to let it continue beyond Regina. Wood advised local police and Mounties in the area to be ready for trouble but not to carry a loaded sidearm or ammunition because the communists often sought to provoke police. In the House, Guthrie claimed the Trek contained communist elements and that 'law and order' needed to be upheld. Saskatchewan Liberal Premier Jim Gardiner had a rocky relationship with the Bennett government, and protested the federal government's decision to stop the Trek in his province. Bennett claimed that the railways had asked for assistance to stop the illegal use of their trains - a thinly-veiled excuse to justify the overstepping of the federal government's jurisdiction. Government officials met with Trek leaders, but with no resolution in sight, the stage was set for a violent end to the Trek.\textsuperscript{63} Given the authorities’ uneasiness about previous marches of unemployed, single men, with thousands of them now marching across the country and asserting their own masculine identities in trying to protect their respectability and dignity, the federal government felt compelled to act.

On 25 June, MacBrien instructed Wood that the Trek would be stopped by any means necessary and that the government would institute a state of emergency to halt it. The news was good for Wood, who regarded the Trekkers as 'carrying out the policy of the Communist party.'\textsuperscript{64} But Ottawa had no plan to declare an emergency; as far as can be determined, MacBrien was acting on his own. On 27 June, several Trekkers, including Jack Cosgrove, Ivan Bell, and Ernest
Edwards, attempted to leave the province by truck despite rumors that the RCMP had set up a road block and were turning back trucks. With the group under surveillance, Wood wired MacBrien telling him the government had to declare an emergency. MacBrien ordered Wood to proceed with any arrests and seizures he saw fit to carry out and said the government would back him. Wood advised the province of the situation. The RCMP now believed itself to have emergency powers that they had actually given to themselves.65

Cosgrove, Bell, and Edwards were arrested as they tried to leave the province. On the night of 1 July, Dominion Day, the authorities brought the Trek to a violent end at Market Square at 8PM as the Trek leaders addressed a crowd of Trekkers and citizens with children present. The RCMP swooped in as the leaders finished speeches at the Square, storming the crowd and breaking up the peaceful gathering. After clearing the square, officers were met by hordes of strikers, throwing every object available at them. Hundreds were injured. Detective Millar, of the Saskatchewan police, was killed in the melee when someone smashed a two-by-four across his head. Police retaliated after learning about Millar, indiscriminately clubbing and beating anyone found on the street. When trekkers had several officers cornered and threw missiles at them, police fired warning shots and Wood gave the order for every officer to have ammunition. Waiser describes the police that evening as being 'a law unto themselves.' When several other officers were caught by Trekkers throwing rocks, Staff Inspector McDougall of Regina police ordered his men to spread out and fire at will with no warning. Several trekkers were hit and retreated. Surprisingly none of the Trekkers died in the onslaught. Wood reported to MacBrien the following morning that the Riot was quelled with no shots fired. He was apparently unaware of the scale of the melee that ensued after Evans and the other leaders were arrested.66
The RCMP and local police launched their offensive believing they had emergency powers, and they did. The RCMP gave itself emergency powers (believing the official declaration was an eventual formality) to quash the Trek, and their actions were defended by and sanctioned by the government following the riot. Given the exceptional state, an exceptional law was used. Even though many in the public opposed Section 98 and its use, the Trek leaders were charged with violating Section 98 for being members of an unlawful organization, the Relief Camp Worker's Union. Cosgrove was charged with being a member of the WUL and Evans of the CPC. The Crown targeted all three organizations for being unlawful. Sergeant Leopold was brought into Regina, just before the riot, to help Crown Prosecutors build their case. Although Ottawa was convinced that the Trek was revolutionary in its character and leadership, the CI files are almost silent on the Trekkers and their movement. Initially, the Communist leadership did not support the Trekkers leaving Vancouver and thought it a foolish venture. While the government was using force and exceptional laws like Section 98 to quash the Trek, the CI was fixated with making sure that Communist candidates were prepared to face their CCF rivals in the coming federal election. Indeed, in a twenty-page document on Canada only one brief paragraph mentioned the Trek. One page in particular was scornful of the rebellious ways of Canadian members. The CI lamented that 'some comrades develop a bad attitude towards party discipline,' and give 'lip-service' to it, believing that discipline only belongs in the 'constitution' of the party, but it was important according to the CI. It was party discipline, after all, that the CI believed could help Communist candidates win elections against the CCF.

The preliminary hearing of Rex v. Ivan Bell, George Black, John Cowan Cosgrove, Arthur H. Evans, Ernest Edwards and Matthew Shaw began on 19 July 1935 with Walter B. Scott, Police Magistrate, presiding. H.E. Sampson appeared on behalf of the Attorney General,
and F.B. Bagshaw and E.C. Leslie appeared on behalf of the Minister of Justice. The hearing was initially delayed by several days as Bagshaw and Leslie wanted Matthew Shaw, who had left the province, brought back to stand trial with the others, even though Sampson did not believe there was enough evidence to convict him. Tom H. Newlove defended the accused. The Crown intended to prove that the Relief Camp Worker's Union was an unlawful organization, primarily through its connection to the Workers’ Unity League, which was affiliated with the CPC. The degrees of separation were many, to say the least, because even if the RCWU was affiliated with the CPC, affiliation alone was no crime even under Section 98. The Crown had to prove the RCWU shared the same beliefs as the CPC, which was not an easy thing to do as the Trekkers developed a reputation for being against violence.

The Crown’s evidence came largely from uniformed and undercover RCMP officers who penetrated the camps and from the local police. Additional evidence came from workers employed on the exhibition grounds that had housed the Trekkers in Regina. Witnesses identified items within the exhibition grounds, such as make-shift clubs and iron pipes. The Crown intended to show that the Trekkers were preparing to engage in violence at the behest of the leadership. The difficulty for the Crown was that none of the evidence could connect the leaders to the Communists.

Part of the Crown's case relied on trying to prove the RCWU's connection to the CPC. One way the Crown lawyers tried to do this was through Arthur Evans, whose ties to the CPC were well known by authorities, even if they were never proven in court. He had served jail time for violating Section 98. Newlove was worried about evidence that linked Evans to the CPC because he thought that Evans should be tried separately from the other accused. He believed that if evidence was entered against Evans, and his ties to the CPC demonstrated, it would
negatively affect the case against the other men. His attempts to halt the admission of such evidence failed. The evidence that concerned him was about an incident that occurred after Evans and the Trek leaders met with the Prime Minister. Evans was enraged after his meeting with Bennett and his cabinet and the flat refusal of the government to negotiate any of the Trekkers’ demands. Acting as a sacrificial lamb to save his fellow Trekkers from jail (and presumably anticipating where Cosgrove et al.’s Section 98 charges would lead), Evans declared at a Trek meeting that he knew Cosgrove and the others were not members of the Communist Party because he himself was a member. He claimed that Section 98 was an unfair law where individuals had to prove their innocence.71

Other evidence came from ‘Relief Camp Worker’ pamphlets, including one dated 20 July 1934, a year before the riot took place. Newlove protested, arguing that there was no evidence to show the men were members then, to which Leslie replied that this was ‘the class of evidence that was admitted in the case of *Rex v. Buck.*’ But Newlove argued that Buck, in conducting his own defence, ‘had not the legal training to object to it,’ adding: ‘evidence of something that transpired at a time when these men are not being charged with being members of an unlawful association, is not admissible to prove that the association is unlawful now.’ He elaborated:

the evidence went through in that case [Buck et al.] because [they] admitted that they were members of the Communist party, and also admitted apparently that that was still the existing thesis and tactics and policy of the Communist party...if they had not, I don't think that evidence should have gone in at all.72

Newlove argued that no one could assume that past policies were still relevant to a group presently on trial for violating Section 98, and if the Crown tried to use evidence of past CPC policies, such as with Leopold’s testimony, he would oppose it. Undercover officers gave evidence that the group was revolutionary, but could not explain why.73
The Crown called its expert witnesses to testify on the afternoon of 30 July. Inspector George Fish of the RCMP took the stand. He was the man responsible for the search of the WUL secretary Tom Ewan’s home in 1931, and when Fish was about to produce a letter found in Ewan's home, Newlove objected, claiming evidence from 1931 was not relevant. The Crown claimed the RCWU was unlawful because of acts it committed and its association with the WUL. Leslie claimed the defence needed to prove that what applied in 1931 did not apply now. Newlove disagreed, arguing, ‘there is some document, no matter what it purports to stand for, that was seized in 1931—surely that is no evidence that that association is unlawful in 1935—and particularly when you consider that this document was there and apparently has never been acted upon.’ For emphasis, he noted that there was no such a thing as a Relief Camp Workers’ Union in 1931. When Scott asked Newlove if he could simply show that there was no longer a connection between the group in 1931 and now, Newlove retorted, ‘Why should I have to?...even under Section 98, [the Crown] must prove that the accused, by their actions, or words, or something, indicated that they were members of an unlawful association.’ He then added: ‘would you be prepared to say that Great Britain was prepared to make a declaration of war now because...it [did] in 1914?’ Scott allowed the evidence, noting Newlove's objection. That afternoon testimony came from the Crown's best-known expert, Sergeant John Leopold of the RCMP. The Crown decided to tap the well one more time in an attempt to use the evidence that had worked so well in 1931 and in deporting foreign-born activists. Leopold recounted his history in the CPC and testified that the WUL was affiliated with the Red International of Labour Unions (RILU) and did the bidding of the CI. It was a group created in response to communists getting kicked out of established unions like those belonging to the American Federation of Labor (AFL). According to Leopold, this dual union movement would create revolutionary
unions and the WUL was the centre of such unions in Canada. Much like in the Buck et al. case, documents were read from the CI into court containing communist jargon about the workers overthrowing the bourgeoisie, as well as references to the RILU. The Crown’s goal, much like in 1931, was to prove the WUL was affiliated to the CPC and hence the CI, and assuming that the RCWU in being affiliated to the WUL must share the same ideology and hence be unlawful.

Leopold was cross-examined by Newlove. He aimed to make things more personal and uncomfortable for him. As Steve Hewitt notes, Leopold struggled with alcoholism while under cover and following the Buck trial. After reviewing Leopold's history in the Party, Newlove confronted him on his alcoholism and asked him if he was drinking heavily in Regina, which Leopold did not completely deny. He claimed he didn’t know and didn’t think so. Newlove continued, ‘Weren’t you drunk fairly regularly?’ Leopold said he wasn’t, but when Newlove asked him whether he was gambling on the wheat market, Leopold admitted that he ‘was dabbling.’ In addition to painting Leopold as an active member of the Party, like Macdonald tried to do years earlier, Newlove attacked his credibility by portraying him as a drunk who gambled away other people's money, whether from associates or the RCMP. Newlove asked Leopold to replay the events of the past several years and tried to make him look like a man who betrayed people he knew well both at the Buck trial and during the deportation hearings in 1932. Newlove's most successful line of questioning was about to end Leopold's usefulness for Crown lawyers in deporting and prosecuting communists.

He asked Leopold if he could swear that the Workers’ Unity League was currently affiliated with the Red International of Labour Unions. Leopold responded that it was in 1931. That was not good enough for Newlove, he aggressively pressed on, ‘Are you prepared to swear
that it is now?’ Leopold stumbled and tried to stick to his earlier answer, ‘I couldn't swear that it is now, but it was in 1931...’ Newlove would not let Leopold skirt the answer and repeatedly asked the question until he could force Leopold to relent. He finally did and answered ‘I am not prepared to swear it is affiliated, but it has connections.’ Newlove was not finished with Leopold. He questioned if Leopold could swear now that the WUL took orders from the Red International of Labour Unions in an attempt to quash Leopold’s usefulness in linking Canadian groups to Moscow. This time there wasn’t much fight left in him. Newlove only needed to ask the question once before Leopold answered ‘No, I am not prepared to swear now.’ For the Crown, the well had run dry as far as Leopold was concerned. He had no knowledge of the communist movement outside of his own experiences prior to 1931. Years after Buck et al., Newlove demonstrated how Leopold's usefulness had its limits. With Leopold's testimony complete, the Crown ended its case.  

The Crown agreed to dismiss the case against Bell, citing that it had insufficient evidence against him. All of the men except Cosgrove and Evans would be tried for being members of an unlawful association, the RCWU; Cosgrove would be tried for being a member of the WUL and Evans of the CPC. Newlove agreed to allow the evidence detailing Evans’s and Cosgrove’s memberships in their respective organizations produced in the preliminary hearing to be used at trial. Police Magistrate Walter Scott believed there was enough evidence against the accused to proceed to a trial.  

No evidence was ever produced to directly link the RCWU to the CPC. Instead, the Crown relied on linking the RCWU to other groups, hoping to eventually make connections to Moscow organizations. The crucial enemy for the Crown was time. They had no undercover officer in communist circles that was near any leaders, as Leopold had once been. Despite the
fact that there was no direct evidence to link the RCWU to Moscow and prove it advocated violence, the case would proceed to a trial. The government was determined to use exceptional means and laws to crush any hint of communism. The RCMP's raid that provoked the Regina Riot was defended by the federal government, even though the service had given itself the power to crush the strike using any means necessary. Wood was even prepared to use force after the Riot, had the government of Saskatchewan not aided in disbanding the Trekkers and sent them out of the province. He believed his men should have been armed with machine guns.\textsuperscript{82} While the Crown and the RCMP were certainly aware of the scant evidence against the accused, they proceeded with the case anyway.

The government was determined, as long as Bennett could cling to office, to crush his opponents. Arthur Evans began speaking out about the events of the strike while on bail, and was supported by local progressives and citizens that were upset by the events of the Riot. He distributed pamphlets which claimed that the federal government was behind the end of the Trek. Bennett personally contacted Tom Newlove, the Trekker's lawyer, telling him that Evans's claims in the pamphlets about the federal government were untrue. Newlove apparently disagreed and believed Evans and the locals’ versions of events. Bennett contended that the provincial Law Society might have something to say about the issue, and Newlove subsequently resigned as the Trekkers’ defence counsel.\textsuperscript{83} The government had no qualms about intimidating anyone trying to assist the Trekkers. The Bennett government's state of exception to deal with anything remotely related to communism finally ended on 14 October 1935 when Mackenzie King's Liberal Party swept into office, winning 70 per cent of seats. It was the largest majority government in Canadian history up to that point.
A FINE ‘PIECE OF POLITICAL COMEDY’

On 3 March 1936, the Section 98 case against the Trek leaders was dismissed, the Crown citing a lack of evidence. While there is little doubt that the Crown lacked evidence, the timing was important. It followed the closing statements of the Regina Riot inquiry, which cast some doubt on RCMP actions and testimony. More importantly, the Bennett government lost the election. While there is no evidence to prove that the new federal government was involved in the dismissal, it is likely that the Liberals, after campaigning on repealing Section 98, would not have wanted a high-profile Section 98 trial to occur so soon after taking office.

King offered no new or grand ideas during the campaign or following it. The message was a simple one: 'King or Chaos,' a slogan that fit the mood of the time. Although Bennett’s government did not cause the Depression, it did not help end it much either. Its restrictive trade policies and lack of dedicated support for the unemployed only made the Bennett government seem hopelessly out of touch with the plight of the common citizen. Moreover, the state-sanctioned repression of the period did not help Bennett's government at election time. He tried to campaign on a law-and-order platform, but it was difficult to convince the electorate of the claim amid the labour and social unrest. King did not have to offer much for the public to believe he was a better and safer choice. One in five voters sent a more radical candidate to Parliament, often from the ranks of the Social Credit Party or CCF, with the Communists still unable to secure an electoral win. The turn to less conventional parties was a sign not only of regional tensions, but of people's mistrust in the traditional parties. But King believed that people wanted a return to a more secure and safer option and it was only the Liberal party that had national support at this time. His instincts were correct.
Part of King's platform was the repeal of Section 98, a nod to the growing chorus of opposition to the law. On 2 August 1935, King outlined his views on Section 98 during a radio address. He told his audience that the Liberal party believed that ‘the excuse of the present crisis’ has led to the violation of individual rights. ‘Liberalism,’ he reminded people, stood for ‘the British principle of FREE SPEECH and FREE ASSOCIATION,’ and the Liberals would defend it by repealing ‘Section 98’ and ‘end the present practice of arbitrary deportations.’ He added that ‘the Liberal party will give no quarter to Communism in Canada. Those who advocate the overthrow, by force, of our existing institutions, are enemies of society, and should be so regarded.’

Ever the conciliator, King tried to appeal to the broad campaign calling for Section 98's repeal by arguing that Section 98 did not protect but instead trampled on British principles and justice. He appealed to those fearful of communism and its growth by reassuring them that Section 98 would not be needed to prevent communism, for which he had no sympathy.

The Liberal government's solution, which was designed to appeal to these two groups, was to repeal the bulk of Section 98's most offensive and contentious elements while preserving its core, namely its ability to set the terms for what political expressions were not acceptable. The solution was presented in a series of memos to King by Deputy Minister of Justice W. Stewart Edwards. Section 98 would be repealed, but Section 133, the sedition section, would be amended. Edwards began work on revising a suitable substitute for Section 98 with the Minister of Justice, Ernest Lapointe. In his letters to Lapointe, Edwards claimed that the goal was to remove Section 98's 'so-called objectionable' elements but still maintain the Code’s ability to target communists. Edwards and Lapointe outlined how other Code sections could preserve much of Section 98, such as Section 134 which dealt with seditious libel. The goal was to
amend the Code sufficiently so that elements of Section 98 that targeted communism were retained, and only those subsections of Section 98 that overlapped with other Code sections were repealed.

Edwards presented King with a summary of the changes to Section 133, which included adding a new subsection 4 which contained a new term called 'seditious intention.' Seditious words would be defined as words that expressed a seditious intention. Without limiting the generality of the definition, the new subsection 4 stated that a seditious intention was presumed where 'any person publishes or circulates any writing in which it is advocated, or teaches or advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change [emphasis mine].’ This single change was an important one, for when combined with other sections, such as Section 134, it preserved the core of Section 98’s subsection 8. It allowed the government to still target the expression of unwanted political ideologies such as communism. Stewart noted that in Section 133’s new subsection 4, he made sure the new subsection resolved Section 98 subsection 3’s ‘and/or’ problem. Stewart wrote that 'the presence of this conjunctive [had] embarrassed us in the Toronto prosecution and it does not, I think, properly express what Parliament intended.'

To reassure King that much of Section 98’s powers to target communism would not be lost, Edwards provided him with a side-by-side comparison of the new Section 133 with Section 98. Edwards stated that the new Section 133 did away with the ‘unlawful organization’ term, but there was no cause for worry. If authorities regarded a group as being unlawful, it could be found to be part of a seditious conspiracy, and individuals could be prosecuted if they expressed a 'seditious intention' contrary to the new Section 133(4). A seizure of the organization or individual’s property was still possible with a warrant. Section 98(3), the 'member' or 'officer' of
an unlawful organization subsection, would disappear completely as it would have no purpose, as would the subsection 5 which targeted hall owners who rented a hall to an unlawful organization. Stewart reminded King that authorities could still search property with warrants, negating the need for Section 98's subsection 6. Section 98(8) was preserved with both Section 133's amendment and the existing Section 134. Force was still undefined in Section 133 although Edwards did not feel a more constrictive definition was needed because of the addition to the section of the words 'without the authority of law.' The Liberals wanted to reduce the penalty for seditious offenses, outlined in Section 134, from twenty years to two. Section 98's subsections 10 and 11, the importation of material and the duty of government employees to seize it, would be removed with the changes.

The Code revisions were designed to maintain the state’s ability to target ideology. King's radio address, and the notes of Edwards and Lapointe, illustrate that the government never had any intention to do away with the state’s ability to target political expression. With the new amendments, only the most contentious aspects of Section 98 would be removed, such as subsection 5 that targeted hall owners or the seizure of imported materials. The government still retained the power to prosecute communists, and while the government wanted to reintroduce the sedition saving clause that allowed for legitimate grievances to be aired against the government, all of these were changes that only applied to the Criminal Code. The government always retained the power to invoke the War Measures Act to deal with unrest.

Bill 96’s second reading began on 19 June 1936. Ernest Lapointe opened the debate stating that the repeal of Section 98 ‘has been recommended by a tremendous majority of the electorate of Canada.’ ‘It was an issue everywhere,’ he added, including in his own province, where ‘the candidates supporting the then government made it the main topic of their campaign.'
He reviewed Section 98's history and highlighted how the Section was identical to P.C. 2384 minus the words, 'while Canada is engaged in war.' Lapointe stressed that the calls for repeal came from all directions in Canadian society, not just activists. He argued that Liberals believed it was 'dangerous to perpetuate in peace time enactments which are war time measures and designed to meet special emergencies...which exists in time of war.' ‘The danger,’ he added, ‘is mainly in the precedent which it creates… [for] if we can put aside the ordinary rules of law on a matter of this kind, why not put them aside on other matters as well?’. The Liberals believed that the special powers of Section 98 created a dangerous precedent, but the state already had the power to 'put aside the ordinary rules of law,' such as during the creation of P.C. 2384 and Section 98 or Section 41 in 1910 with respect to immigrants. Lapointe spelled out why Section 98 violated the rule of law by allowing searches of persons or property on mere suspicion of wrongdoing, by placing guilt on an individual for merely attending a meeting of an unlawful organization or renting a hall to one. Lapointe inadvertently demonstrated how Section 98 already set a new precedent. After his vigorous attack on the illiberal nature of Section 98, he stated that he would explain why, 'I propose to add a few words to Section 133...it is merely to make it clearer that nobody can by words or writing preach the use of force to bring about governmental changes.' He argued that fighting communism should be done by argument and should not rely on the 'Criminal Code as Section 98 had not prevented communism in any way' hence there was no reason to keep it.94

Despite Lapointe's defence of liberty, the Liberal’s motivation for the adding of 'a few words,' to Section 133 was the same as the Union government's when it created Section 98 in 1919, to make things clearer for the people and courts in regards to sedition. Repealing Section 98 by adding to Section 133 demonstrated the ongoing process of normalizing emergency
measures to support the political policing of all Canadians in peacetime. Section 98's creation was a precedent. Once P.C. 2384 became accepted as part of the Criminal Code in peacetime, it was easier to take the emergency measures that were normalized, and reorder them in different ways, such as by adding 'a few words' to a different Code section. Lapointe could amend the Code to retain the crux of Section 98 with no need for a Special Committee like that created in 1919.

J.S. Woodsworth questioned the new Section 133 amendments which was not surprising because he was an outspoken opponent of Section 98 and tried for years to get it repealed. Though he did praise the Liberals for ‘having introduced a measure providing for the repeal of Section 98 of the Criminal Code,’ adding: ‘I think perhaps I most admire the Liberals when they are pleading for political liberty.’ Honing in on the issue, he argued that ‘what he [Lapointe] gives with one hand he partly takes away with the other,’ then asked, ‘if we had sufficient protection [against sedition], as he said, in the Criminal Code, I ask him why it is necessary to strengthen the Criminal Code at this time.’ Woodsworth argued that the revisions were too broad and too sweeping as they stood, as many historical works have defended the right to use force against tyrannical governments, including English ones. He thought it strange that the Liberals were proposing this addition to sedition law, especially given that the Prime Minister was the grandson of William Lyon Mackenzie.

Conservative C.H. Cahan, the original drafter of P.C. 2384, came to the defence of Lapointe. He recounted the history of P.C. 2384, created to combat seditious literature being printed in Canada, and its role in combating seditious organizations operating in both Canada and the United States. He disagreed with Section 98 providing the RCMP with the authority to seize property, but believed that subsections 1 and 8 should be preserved. 'Now what the minister
has done, in order to camouflage what purports to be a complete repeal of Section 98,’ said Cahan, ‘is to make an addition to Section 133 dealing with sedition. Let us consider the matter fairly.’ Cahan felt that Lapointe's amendment should be broader, but conceded that as long as advocacy of force to produce governmental change was still in the Code, 'whether in 98 or in section 133 is immaterial to me, but it should be there,' and clear enough so that any magistrate did not have to 'search through a thousand cases,' to 'ascertain what the law of sedition really is.' For one of the creators of Section 98, the Liberal’s bill had its shortcomings but was otherwise acceptable.

There were dissenters who did not believe repealing Section 98 was a good idea. Herbert Wilton, a Conservative member representing Hamilton West, claimed that the threat of communism could not be understated. Communists were teaching their children 'to have no respect for the law and order’ and ‘advocating everything that is disrespectful to the social structure.’ ‘They come out of their places like rats out of holes in the middle of the night’ to distribute propaganda, he added, and those are the individuals that Section 98 targeted. He stressed that ‘no law abiding, self-respecting Canadian citizen need fear Section 98.’ Such beliefs were both common and expected in the House during the 1930s, as was R.B. Bennett's defence of Section 98. Bennett spoke at length in defence of the Section, arguing that 'national liberty is dependent upon the restraint of individual liberty.' The laws that 'restrain individual liberty,' were not 'enacted,' for the 'law abiding citizen but as restraints upon citizens who would convert liberty into licence.' Bennett claimed he and others had not 'for a single moment [a] desire to restrict or, curb liberty of speech.' He made it known for the first time that he was not in favour of the RCMP's power to seize property, but that the seizure of property is found in many other laws such as those applying to gaming houses. He claimed that Section 98's other
subsections were innocuous, including subsection 5 which dealt with the renting of halls to an unlawful organization. Bennett maintained that other laws made owners of property liable to prosecution if they permitted illegal activity to take place such as gambling. He claimed that reasonable citizens would not want Section 98 removed but amended. He cautioned, '...in these days is it desirable to repeal that section?' Bennett believed if people actually 'understood' the section they would want it modified not repealed.99

In committee the bill was slightly amended with the words 'within Canada' added to the end of Section 133(4): it was no longer an offense for a person to claim force should be used to remove another government outside of Canada. The bill was read a third time and passed later that afternoon.

The debates surrounding Section 98 revealed the influence of groups such as the CLDL, the CCF, and others such as the LSR. The central reason for repealing Section 98 was because the Section was believed to violate citizens’ rights, be it freedom of speech or association or property. While some Conservative members believed that individual rights should be curtailed for the good of the whole, the discussion within the House still centered on how best to protect the rights of Canadians and how Section 98 did or did not do that. More than one M.P. pointed out that the Liberal’s repeal of Section 98 was a half-measure. Subsection 4 of Section 133 ensured that a broad law affecting the politics of Canadians would still remain in the Code.

The Senate debated Bill 96 the next day, on 20 June. Following Senator Raul Dandurand's introduction of the bill, the similarities between subsection 4 and Section 98 were immediately pounced on by one of Section 98’s original creators, Senator Arthur Meighen. Meighen first attacked the notion that Section 98 was draconian and targeted political ideology, bluntly asking his peers, 'Does anyone suggest that in a time of peace anyone should be allowed
to advocate the use of force to bring about a change in government? Is that, all wrong in time of war, all right in time of peace?’ Meighen's critique of the bill demonstrated the logic behind Section 98’s creation, and why the Liberals opted to keep portions of it in the Code. It was created to criminalize actions that were not tolerable in war or peace. Section 98 clouded the boundary between a time of war and a time of peace, revealing that what could legally be done in a time of war was the same in a time of peace. Meighen highlighted why Section 98’s previous repeal bills never passed the Senate, ‘No such Bill as this affecting Section 98 was ever presented here,’ and that he would support this bill because while it repeals Section 98 it restores the crux of it. Meighen did not believe the revised Section 133 would have enough teeth as Section 98. He ended his comments about the bill with an attack on the Liberals: ‘The denunciation of it [Section 98] and the promise to repeal were only means to an end— an electoral end— and now we are given this repeal and this restoration, which are perhaps as fine a piece of political comedy as this century has seen.’ Dandurand did not challenge any of Meighen's claims and others, such as one of Bennett’s last appointed Conservative senators, Senator John Haig, joined his attacks. Haig claimed that with the current bill, ‘you make the law more comprehensive than it was before, because here you say intention is presumed against the accused.’ He was puzzled as to why the Government claimed they were going to repeal Section 98 because ‘If that was their intention, why this section 4? Why did they not tell the people it was going in?...Under this clause [Section 133, subsection 4] any person accused of seditious intention will have thrown upon him the onus of proving his innocence.’ He added that he did not oppose it at all but just thought the whole exercise a display of ‘hypocrisy.’ Dandurand's only defence for the Liberals was that he was not one of the Liberals campaigning on this issue in the last election. Of all the attacks by the Conservatives, there was no defence offered by Liberal senators. Senator George
Gordon of the Conservatives offered an explanation that went unchallenged, stating that the Minister of Justice 'knew that without it [subsection 4] no honest senator would vote for the repeal of Section 98.'\textsuperscript{102} There was truth to the statement since the Conservatives held a majority in the Senate since the end of the war.\textsuperscript{103} Meighen did not oppose the Bill but thought the draftsmanship faulty.\textsuperscript{104} The bill passed its third reading on 20 June 1936.

The new subsection did not actually go further than Section 98 as the Senators claimed. But in many ways, as Liberal members spelled out in memos to King, the amendment to Section 133 was similar to Section 98 as it could be combined with other measures already in the Code to achieve a similar effect. The new subsection was an attempt by the Liberals to placate the Senate and other hard-liners while ensuring an election promise was kept by repealing Section 98. For the Conservative senators to back the bill, they needed to reassure themselves that the new subsection would be just as effective in the courts, if not more so, than Section 98. Many of the comparisons between Section 133 and Section 98 were political attacks designed to portray Liberals as disingenuous in claiming they had repealed Section 98. But they were mostly correct. King did not want to be portrayed as being soft on communism and the Liberals would rather have been accused of being duplicitous than be seen as giving sanction and safe haven to communism.

While Section 98 was retained in some fashion after its repeal, the success of the repeal movement was substantial. Leftists of all stripes were able to temporarily agree on one crucial point: that Section 98 needed to go and people’s civil rights should be protected. After Section 98’s use in 1931, it was repealed five-years later. It was a strong demonstration of the power of collective organizing. The strength of the repeal movement to change the political climate of the time and force Section 98 into the shadows reveals how broad-based organizing, within an
exceptional period, kept a space open for public engagement and action, forcing the government to acknowledge the public’s power. It demonstrated that the normalization of emergency measures, which enabled political policing, and as a result nation-building, was a process that could be disrupted and challenged.

The repeal of Section 98 was largely hailed in newspapers across the country, even in those that previously saw no issue with Buck et al.’s conviction, a strong indication that the progressives did manage to change the opinion of the country. The Winnipeg Free Press denounced Meighen's claims that the repeal was a fake. It viewed Section 98's repeal as the final 'liquidation' of the General Strike, as it took 'seventeen years to heal the wounds inflicted on the public mind.' The Montreal Gazette, like other more conservative-minded papers such as the Globe, and Mail and Empire, was more cautious about Section 98's repeal, claiming that it would only embolden communists. The Globe feared that the repeal 'has led the agitators to believe they can carry on their work without danger,' though it did remind its readers that law and order had not fallen by the way side because of it. If the CPC was not emboldened, its members were certainly jubilant. The CPC celebrated and paid little attention to the revision of Section 133, probably because the unlawful organization component of Section 98 was removed so there was hope that a legal CPC would return. Buck quickly wrote to Lapointe asking him to overturn his conviction, but his request was denied. Nonetheless, Buck and company staged a demonstration at Queen's Park and burned Section 98 in effigy: a large book with '98' written on it. The Star thought it disingenuous of the Conservatives to pretend that 'the section was a credible one' or to 'obscure the fact that it had its origin in a war time order-in-council.' Other papers such as the Toronto Telegram noted that 'Section 98 has been killed, but its spirit goes marching on.' In the ethnic labour press the reception to Section 98’s repeal was mixed. For
instance, both *Vapaus* and *Glos Pracy* acknowledged that Section 133 was amended, but the greater victory that should be celebrated was Section 98’s repeal. The German labour press was more critical, claiming that in repealing Section 98, the government replaced it with ‘another law that would have a similar effect as Section 98.’ The paper referred to this as a ‘liberal manoeuvre.’ Both Sections 133 and 98, they claimed, should be repealed.\(^\text{110}\)

Section 98’s lasting effect on the CLDL and its leader, A.E. Smith, was more dramatic. The CLDL’s attempts to defend civil rights in Canada inadvertently changed the group and Smith’s view of it. Smith and the CLDL broadened their outlook. They were no longer concerned with only workers’ rights, but saw themselves as defenders of civil rights for all Canadians. For instance, within the records of the CLDL are A.E. Smith’s notes for a speech he gave on civil liberties in 1939. In them he quotes from John Stuart Mill, believing that rights were not natural but social and were rooted in the struggles of those who fought and ‘often died for liberty.’ He called on workers to be ‘rid of fear,’ for ‘the worth of a state is to be found after all, in the worth of the individuals which compose it.’ ‘Intolerance,’ he claimed, was to be rejected at all costs. ‘Social rights,’ he argued, ‘belong to you and me, not because we are rich or poor, wise or foolish—white or black; not because of our opinions or our prestige or not because of our social position—BUT BECAUSE WE ARE HUMAN BEINGS.’ After Section 98’s repeal, Smith and the CLDL viewed themselves in the same light as other defenders and fighters of civil liberties and part of that history. Their fight continued into the Second World War to protest the government’s use of the War Measures Act. The reasons behind their struggle, and their opposition to Section 98, were captured in a note in 1940 found in Smith’s records in which he claimed that in a democracy, ‘The most important aspect...IS THE FREEDOM OF THE MIND.’\(^\text{111}\)
CONCLUSION

Section 98's repeal movement was instrumental in the creation of a civil rights movement in Canada. Woodsworth's early attempts to put forth bills to repeal Section 98 in the House of Commons in the 1920s were the earliest efforts at repeal. It was not until the law was used against the CPC that a broad-based movement developed; this was due to the intense and sustained efforts of the CLDL. Their efforts at cooperation with other progressive groups, even if their actions were not entirely approved by the CI, were instrumental in bringing about the repeal of Section 98 and bringing the protection of individual rights into the mainstream. Progressives found like-minded allies in the CCF and in intellectuals such as those that formed the LSR. From across the spectrum they viewed Section 98 as a symbol of state repression that needed to be removed to safeguard the rights of Canadians. In spite of the demands for Section 98's repeal across the country, the federal government continued its attack on anything remotely tied to communism. This was apparent in the case against the On-to-Ottawa Trekkers and the government’s support for the RCMP’s actions during the Regina Riot. The government’s failed prosecution of the Trek leaders for violating Section 98 revealed how its end was in sight. Even though the Mackenzie King government repealed Section 98, its repeal was a half-measure. The government never rescinded the WMA and its ability to suspend law with law. Section 98's repeal resulted in Section 133's amendment. The process of normalizing the emergency continued. The Criminal Code still provided the legal sanction to police Canadians’ politics and indirectly regulate their ideological adherence. Section 133’s subsection 4 is still with Canadians in the current Criminal Code. Whether it will ever be used again, and whether it could withstand a Charter challenge are debatable, which speaks to the power that the repeal movement
was able to wield. Broad-based organizing was able to beat back Section 98, and in an exceptional and repressive space, keep a space open for public action and engagement and to resist repression. Section 98 ushered in a period of repression that was met with resistance. It was and remains, an exceptional law.
CONCLUSION

Section 98 originated as a wartime emergency measure, specifically designed to target radical leftist activity, and was transplanted into the Criminal Code after the War with a similar purpose in mind. The creation of Section 98, and political policing broadly speaking, was possible because of the illusory boundary between the exception and the norm. Former emergency measures became normalized and part of everyday life. This normalization was not automatic, regardless of how quickly it occurred in Parliament. It was a process that had to be nurtured and maintained, but was susceptible to challenges. The communist was a legal and political subject that did exist, but should not have existed in a liberal-democratic Canada. The state’s primary means of dealing with the impossible subject was through the use of emergency measures. The state alone possessed the power to withdraw itself from law to craft such powers. The subsequent normalization of broad discretionary measures was a necessary step in enabling the state to engage in a practice of nation-building through the use of the criminal law. For supporters of Section 98, the integrity of the nation was preserved by emergency measures that were antithetical to the liberalism that was inherent to it.

The War Measures Act (WMA) and the ability of the government to create a state of exception, or state of emergency, gave lawmakers the power to police the loyalty of citizens and immigrants. When the government created P.C. 2384 in September 1918, it took measures designed to repress immigrant activists (contained in the 1910 Immigration Act) and applied them to the entire population. During the war, leftist organizations were outlawed as was the expression of unwanted and dangerous ideologies such as communism or anarchism. It was the
labour revolt following the War that led the government to believe that the powers it gave itself during the War should be maintained indefinitely. The government carefully studied other nations’ sedition legislation, deportation policies, and wartime emergency powers, such as the United States’ 1917 Espionage Act and Great Britain’s 1914 Defence of the Realm Act (the D.O.R.A.), and sought to craft a more effective version of these laws. It was in lockstep with its international partners in combating unwanted, leftist ideologies. Section 98 was not a reactionary law, but rather one designed with care to provide the state with the ability to wield emergency measures at its discretion to battle the challenge communism presented to the liberal order.

With the start of the Great Depression, many people called on the government to outlaw the Communist Party of Canada (CPC) and deport communists who were perceived as foreign; these calls fell on sympathetic ears. Bennett’s government believed that communists represented a foreign and alien culture. Maintaining and supporting such a view was necessary to continue the process of normalizing the emergency. These views shaped the authorities’ response to the CPC. It was perceived as a subversive group secretly plotting revolution, not a legitimate party whose ideas should be debated or refuted. The intelligence cycle, the process of planning, collecting, processing, analyzing, and disseminating intelligence, was underpinned by culture. Culture determined how the state saw its targets. The CPC was a radical alternative to mainstream politics as it envisioned a multi-ethnic, socialist republic. It did not seek to do away with Canada, but remake it. Further, the Party faced internal squabbles about how best to implement Moscow’s directives while dealing with the realities facing the Party on the ground.

That Section 98 contributed to the regulation of Canadians’ politics is plainly illustrated in the case of *Rex v. Buck et al.* where the heart of the Crown's case rested on demonstrating how
the ideology of the accused was the criminal act. The Crown centered its case on proving that CPC members were agents of Moscow who planned to overthrow Parliament. It relied for evidence on Party literature, such as the Communist Manifesto, rather than actual plans or acts of violence. The defence countered that Marxism was a means of interpreting history and it was this interpretation that the Crown sought to outlaw.

The conviction of ‘the Eight’ provided law enforcement with the legal authority to arrest anyone who could be tied the CPC, but for the immigrant members of the Party, no such trial needed to take place. Many of these immigrants had no homeland or country to identify with, but considered themselves to be part of a people and the communist movement broadly speaking. They were denied the same legal protections as citizens but were vulnerable to laws such as Section 41 of the Immigration Act (1910) and the new unlawful status of the CPC. These activists were often deported to places where they faced torture or execution for their beliefs and thus resembled Agamben’s figure of the homo sacer. The case of the Halifax Ten demonstrates that many transnational activists were made in Canada not abroad. Many were sojourners who joined the communist movement in Canada because of unsafe and often degrading working conditions, a number of them becoming leaders in the movement. For many of the Ten, their support for communism aligned with their European nationalist views and more importantly, they identified with others along regional and class lines rather than with states as many of their homelands saw their borders redrawn after the First World War. This ability to define themselves placed them in direct conflict with a state like Canada that sought to make its own citizens.

The trials of Arthur Evans and others reveal the broad reach of Section 98. It was used in a number of ways such as intimating hall owners or in justifying repeated searches of persons or property. For progressives it came to symbolize the state’s repressive policies and provided the
legal sanction for police to hunt down communists. The murder of Nicholas Zynchuck and the brutality of Montreal police at his funeral revealed the depths of how low the figure of the communist had sunk in the eyes of law enforcement. The murder reinforced the urgent need for what the Canadian Labour Defense League (CLDL) had advocated since Buck et al.’s conviction, i.e. the repeal of Section 98.

The CLDL led a widespread campaign to repeal Section 98 and defend workers’ rights. CLDL activists sought cooperation with other moderate leftists such as those in the Cooperative Commonwealth Federation (CCF) and in the League of Social Reconstruction (LSR) before the CI’s official turn to a United Front policy against fascism. It was this mass movement led by the CLDL to repeal Section 98 that spurred the creation of an early rights movement in Canada. The need for the continuance of emergency measures was directly challenged. The Bennett government’s sanction of the RCMP’s use of force to end the On-to-Ottawa Trek and the subsequent arrests of its leadership revealed the length the government would go to crush communism. Despite the obstacles facing the progressive voices in the country, they managed to force the government to repeal Section 98 through broad-based organizing. The Liberals’ election win led to Section 98’s repeal, but the progressives’ lasting success was mixed. Section 133's amendment further demonstrated the Canadian government’s practice of normalizing the emergency with respect to the law's role in dealing with communism. Section 98’s ability to police politics was retained in the Criminal Code and its powers would continue to haunt Canadians in future emergencies.

Almost immediately following Section 98’s repeal and Section 133’s amendment, the Canadian government passed copycat laws. One of the best-known examples is Quebec’s ‘Act Respecting Communistic Propaganda,’ known as the ‘Padlock Act.’ Created by Maurice
Duplessis’s Union Nationale government, the law was expressly designed to combat communism in the province. The province possibly had federal backers for its new law. Hugh Guthrie advised Bennett that communism in Quebec was on the rise and in May 1935 provided the P.M.’s office with a report on communist activities. The report was subsequently forwarded to His Eminence the Cardinal at Quebec. Whether Bennett’s government sensed an election loss and the repeal of Section 98 or they simply felt the need to share intelligence with Quebec authorities is uncertain. Certainly officials in the Church and government needed no extra incentive to want to outlaw communism in the province, but the report from the federal government would have, at the very least, made the passing of the Padlock Act more justifiable in their eyes.

The similarities between the Padlock Act and Section 98 are numerous and were summarized by F.R. Scott and the newly minted Canadian Civil Liberties Union in their many protests against the law. For instance, Section 3 of the law made it an offense to ‘possess or occupy a house within the Province, to use it or allow anyone to make use of it to propagate Communism or Bolshevism.’ Section 12 made it an offense, to ‘print, to publish, in any manner whatsoever, or to distribute in the Province any newspaper, periodical, pamphlet, circular, document or writing whatsoever, propagating, or tending to propagate communism or bolshevism.’ The debt of gratitude the Padlock Act owed to Section 98 is readily apparent in just these two examples. Duplessis’s government would have viewed the law as an improvement over Section 98. For instance, the Padlock Act’s Section 3 combined Section 98’s subsections 1 and 5, but was more explicit and extended their reach. Not only could Quebec authorities shut down any hall, but they could shutter any private dwelling where communism was preached and the law explicitly named communism in the Act. There was no need for beating around the
bush. The law dispensed with the messy business of a criminal court trial to prove communism’s unlawfulness. It simply would not be allowed to be discussed— anywhere.³

Section 98’s influence continued to be felt beyond Quebec and the 1930s. During the Second World War, Section 98’s influence appeared in Regulation 62 of the 'Defence of Canada Regulations' added on 4 January 1940 by the Minister of Justice by Order-in-Council. It stated that any officer of an organization who committed the offense of disaffection would make each officer of that organization guilty of an offense, as well as any future member.⁴ Section 98 proved useful to the government of Pierre Trudeau during the October Crisis of 1970. Sections 3 and 4 of the Public Order Regulations of 1970, issued by the Trudeau government during the October Crisis, used the wording of Section 98 to outlaw the Front de Libération du Québec (FLQ) across the country. Section 3 stated that 'The group of persons or association known as Le Front de Libération du Québec and any successor group or successor association of the said Le Front de Libération du Québec or any group of persons or association that advocates the use of force or the commission of crime as a means of or as an aid in accomplishing governmental change within Canada is declared to be an unlawful association.'⁵ Currently the sedition section of the Criminal Code, Section 59 subsection 4 a) and b) stipulates that '...every one shall be presumed to have a seditious intention who a) teaches or advocates b) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.' 'Force' remains undefined in the Criminal Code in this section. The lack of a definition and reliance on judicial interpretation was one of the main contentions progressives had with Section 98.⁶

This dissertation has added to the growing literature on state repression and human rights in Canada and to the historiography of legal and immigration history. The broader significance
of the study is multi-faceted and far-reaching, particularly in today’s heightened security climate. Section 98 marked a moment in Canada’s history when the government began, to borrow from Agamben, using the state of exception as a ‘paradigm of governance.’ Exceptional powers were normalized to police the politics of Canadians indefinitely. It was a process that was ongoing and extended beyond Section 98’s repeal. The dissertation enables historians to re-examine repressive events in Canadian history and see them not as disconnected anomalies in a liberal society, but as the continuation of a process that started with Section 98. Future research can offer a revised look at a number of laws and events, from the Padlock Act, to the Gouzenko Affair and the Kellock-Taschereau Commission, the October Crisis, and the continued use of deportation in the late twentieth century and into the present, all of which can be linked and understood not just as moments when civil liberties were violated, but important moments when the state took significant steps in the process of normalizing emergency measures, though at times these steps were challenged; these events can be connected as part of an ongoing practice. With this new focus in mind, we can further scrutinize the legal mechanisms the state employed to preserve its hegemony, how targets were created and understood, and the effects of these policies on human targets, as well as the commonalities and differences between events. Such a new focus could lead to interpreting Canada less as an ‘insecurity state,’ and more as a developing ‘emergency state’ as governments continue to increasingly rely on and seek to normalize emergency measures. There is much work that remains to be done on states of emergency in Canadian history. More work on the international influences of states of emergencies is needed, particularly as Canadian authorities and lawmakers were often in close cooperation with their allies. Tracing how sovereign power can shift in an international context is worthy of more study, as are the ways in which activists sought to negotiate exceptional spaces
and continually tried to find ways of resisting repression during some of Canada’s most heightened security climates such as during the Second World War and Cold War. As ultimately states and governments are composed of individuals, more research into the cultural reasons why lawmakers and citizens support the state’s ability to wield exceptional powers is needed.

The study has important connections to the present day. The 2001 ‘Anti-Terrorism’ amendments to numerous Canadian laws, the events of Toronto’s G20 riots, and the Edward Snowden revelations continue the trend that began with Section 98. Within all these examples, emergency measures were used during a non-emergency state. The powers that the government granted to law enforcement following 9/11 bear resemblance to 1919 in that a threat facing the country would be present indefinitely. While some of these powers have been overturned by Charter challenges, many have not, and the present government has revived a number of lapsed powers such as preventive arrests and forcing individuals, even if they have not been charged with an offense, to testify at secret hearings or risk being jailed for up to a year. These measures have become part of Canada’s laws during peacetime.

During the G20 riots in Toronto in 2010, the Executive Council of Ontario issued an Order-in-Council to provide security forces with increased powers of arrest. No debate took place and there was no formal declaration of an emergency and none was needed. Toronto police told the public that the increased powers, originally created during the Second World War to protect strategic buildings, provided police with the power to arrest anyone within five meters of the security fence surrounding the G20 summit. Police detained people outside the fence, citing the new powers. Yet the increased powers only applied to the interior of the fence. When media asked Toronto Police Chief Bill Blair if police had the power to detain people on the outside of the fence, Blair smiled and claimed, ‘No, but I was trying to keep criminals out.’ Much like the
Zynchuck Affair, police operated in an area of indistinction between violence and right where, as Benjamin states, no legal situation existed. No formal federal inquiry was ever called to investigate the arrest of over 900 people, the largest mass arrest in Canadian history up to that point in time. Only two years later the record would be shattered when over 2500 people were arrested in the Quebec Student protests of 2012.⁸

The Edward Snowden affair reveals the ongoing normalization of emergency powers. Snowden, an employee of a security firm contracted by the United States National Security Agency (NSA) revealed a massive surveillance program undertaken by Western powers following 9/11 and directed at civilian communications. The Communications Security Establishment Canada (CSEC), Canada’s signals intelligence agency, reportedly participated in assisting the NSA with surveillance.⁹ The Snowden affair revealed how an activity, signals intelligence, originally developed and used during a state of war to intercept enemy communications, most notably during the Second World War, had become a normal function of states during peacetime and directed at the general population.

The state of exception has increasingly become a useful and too convenient tool for governments. These events reveal a systemic issue in governance. While the focus of this study has been on left-wing activists, the ability for western states such as Canada to normalize exceptional measures is by no means a left or right issue. It is a problem rooted in the mechanisms of sovereign power.¹⁰ The repression during the interwar period was as flagrant as it was brutal. The ability of a liberal democracy to transform emergency laws into permanent ones that ban expressions of an ideology that the state deems undesirable is profound, and it challenges and complicates our understanding of what a democratic state is and is capable of doing. This dissertation has revealed how states can divorce themselves from the values that are

282
presumed inherent in their structures such as respect for free speech, freedom of movement, and due process. In this way, democratic states, as Agamben has argued, contain ‘contiguity’ with totalitarian ones in their capacity to partake in the ‘politicization of life.’ He reminds us that Germany in the Second World War did not violate its constitution with its horrendous crimes—it legally suspended it. I contend that a different and more nuanced interpretation of the Canadian state is required. Instead of understanding western states such as Canada, the United States, and Britain as liberal-democratic states, we can complicate this view, and interpret them as states that practice liberal democracy. This suggested interpretation would acknowledge that a liberal-democratic state is not an absolute concept; but rather a fluid and organic ideal that shifts backwards as well as forwards, and is something that can always be improved upon, but may never be fully realized. It acknowledges that states exist independently of their professed ideological leanings. Such a revised interpretation forces an acknowledgement that moments of repression are not anomalies, but are made possible by a state’s ability to suspend its laws and principles in the name of security. It is a quality shared by every state—totalitarian and democratic alike. This study on Section 98 has historicized the use of emergency powers in peacetime. 9/11 did not fundamentally change the world with respect to governments’ uses of emergency measures in peacetime, be it in Canada or other nations such as the United States. The event accelerated a process that began much earlier with Section 98.

This work has complicated our understanding of how targets are made or seen. Culture had a profound effect on how authorities interpreted and responded to perceived threats. Communists in the 1930s were perceived as subversive agents seeking revolution and thus they were targeted in a subversive manner with the use of secret agents instead of being regarded as proponents of an ideology or different cultural worldview subject to public debate. The
authorities’ relentless repression only had the effect of spreading the communist message further and making it much harder to contain as it operated through various organizations. This study offers important insights for present day security in that culture is not easily separated from one’s assessment of a security threat.

Future studies must not only grapple with the state’s power to grant and protect rights, but its legal ability to take them away. Western societies still look to the same body that can protect rights as the one that can remove them, i.e., the state. The dissertation has revealed the fluidity that is identity, security threats, and citizenship and the legal protections entitled to citizens. Laws that originally restricted the political actions of immigrants became laws that restricted the actions of everyone, first in an emergency, then outside of it. The power of the state to make citizens and interpret threats still remains a pressing issue around the globe. Most recently, the government of the Dominican Republic gave the state the power to strip citizenship of anyone of Haitian descent, even if they were born in the Republic, making them instantly eligible for deportation. The current Canadian government seeks to make deportation an easier process in certain cases and once again enshrine the Minister with broad powers for deciding the fate of a deportee.  

Ultimately what made Section 98 significant was not just whether trials were fair or if abuses stemming from the law were violations of civil liberties or even how often it was used. It was the start of an ongoing process of normalizing emergency powers, how Section 98 made it possible to equate the expression of ideas and thoughts with criminal acts, and how policing ideas was used to shape the nation. Section 98 created a precedent that policing politics outside of an emergency was acceptable and that emergency measures could be used in a state of normalcy indefinitely. When liberal states engage in activities such as widespread intelligence-
gathering on citizens or invoking emergency measures in peacetime, these actions are often regarded as being paradoxical, in that violations of civil liberties are necessary to protect them. My contention with this work has been that no such paradox exists. The ability for states to invoke emergency measures whenever it is deemed necessary by authorities, an ability ingrained in the very fabric of modern states and sovereignty, reveals that the boundaries between the normal and the exception are not just permeable, they are artificial. Turning the emergency into the norm is a process of law, and a socially constructed one.

Despite its sustaining influence on Canadian society, Section 98 was repealed, if only partially. Broad-based collective organizing that united progressives across the spectrum pushed back against the process of normalizing the emergency. Repression met resistance. Activists compelled even the most conservative elements in Canada to acknowledge that Section 98 went too far. It was the efforts of progressives who dared to dream out-loud that were the loudest voices in forcing the government to acknowledge the rights its citizens were entitled to have. Within an exceptional space, these voices carved out their own space. The battle to repeal Section 98 led to recognition by lawmakers that members of Canadian society were entitled to civil liberties. Section 98 affords us a look at what broad-based community activism can achieve and gives us an indication of where future battles must be fought as people across the globe struggle to achieve the right to protect their rights.
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 to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury, in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend, shall be an unlawful association.

2. Any property, real or personal, belonging or suspected to belong to an unlawful association, or held or suspected to be held by any person for or on behalf thereof may, without warrant, be seized or taken possession of by any person thereunto authorized by the Commissioner of the Royal Canadian Mounted Police, and may thereupon be forfeited to His Majesty.

3. Any person who acts or professes to act as an officer of any such unlawful association, and who shall sell, speak, write or publish anything as the representative or professed representative of any such unlawful association, or become and continue to be a member thereof, or wear, carry or cause to be displayed upon or about his person or elsewhere, any badge, insignia, emblem, banner, motto, pennant, card, button or other device whatsoever, indicating or intended to show or suggest that he is a member of or in any wise associated with any such unlawful association, or who shall contribute anything as dues or otherwise, to it or to any one for it, or who shall solicit subscriptions or contributions for it, shall be guilty of an offence and liable to imprisonment for not more than twenty years.

4. In any prosecution under this section, if it be proved that the person charged has:
   a) attended meetings of an unlawful association; or,
   b) spoken publicly in advocacy of an unlawful association; or,
   c) distributed literature of an unlawful association by circulation through the Post Office mails of Canada, or otherwise;

   it shall be presumed, in the absence of proof to the contrary, that he is a member of such unlawful association.

5. Any owner, lessee, agent or superintendent of any building, room, premises or place, who knowingly permits therein any meeting of an unlawful association or any subsidiary association or branch or committee thereof, or any assemblage of persons who teach, advocate, advise or defend the use, without authority of the law, of force, violence or physical injury to person or property, or threats of such injury, shall be guilty of an offence under this section and shall be liable to a fine of not more than five thousand dollars or to imprisonment for not more than five years, or to both fine and imprisonment.

6. If any judge of any superior or county court, police or stipendiary magistrate, or any justice of the peace, is satisfied by information on oath that there is reasonable ground for suspecting that any contravention of this section has been or is about to be committed, he may issue a search warrant under his hand, authorizing any peace officer, police officer, or constable with such assistance as he may require, to enter at any time any premises or place mentioned in the
warrant, and to search 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, hand bills, posters, publications or documents which are found on or in such
premise 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 any
police or stipendiary magistrate, or by any justice of the peace, in a summary manner, and by
the procedure provided by Part XV of this Act, in so far as applicable, or subject to such
adaptations as may be necessary to meet the circumstances of the case.

8. Any person who prints, publishes, edits, issues, circulates, sells, or offers for sale or
distribution any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter,
writing, print, publication or document any kind, in which it 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 by mailing the same or causing the same to
be mailed or posted, in any Post Office, letter box, or other mail receptacle in Canada, shall be
guilty of an offence, and shall be liable to imprisonment for not more than twenty years.

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 this 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, steam boat 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 Commissioner of the Royal
Canadian Mounted Police. 1919,c.46, s.1.

NOTES

287
INTRODUCTION


4 Such actions can be understood as a process of ‘permanent exceptionalism’ as expressed by Leo Panitch and Donald Swartz, in The Assault on Trade Union Freedoms: From Consent to Coercion 3rd ed. (Toronto: Garamond Press, 2003).


6 The use of the criminal law to regulate political ideology is in keeping with the actions of law enforcement that engaged in ‘political policing’ for much of Canada’s history. Reg Whitaker, Gregory Kealey and Andrew Parrnaby, Secret Service: Political Policing in Canada from the Fenians to Fortress America (Toronto: University of Toronto Press, 2010) ; For more on state power and the shaping of citizens see Mariana Valverde, The Age of Light, Soap and Water: 19th Century Moral Reform in English Canada (Toronto: University of Toronto Press, 1991); Enakshi Dua, The Passage from Subjects to Aliens: Indian Migrants and the Racialization of Canadian Citizenship,’ Sociologie et Sociétés 31, 2 (Autumn 1999) :145-162; Franca Iacovetta, Gatekeepers: Reshaping Immigrant Lives in Cold War Canada (Toronto: Between the Lines Press, 2006).


Suffering lawfulness, pa... 20

The term was first used by Mathews and Albino in an article where they detail their challenge to a law which was used to detain opponents of apartheid in South Africa if an officer suspected an individual of acting on behalf of unlawful organizations, particularly Nelson Mandela's African National Congress. When the case came to the Appellate Division, the Court refused to place any restrictions on the 'legality of the detentions' and by doing so, the authors claim the Court accepted the 'permanence of the temporary,' placing South Africa in a permanent state of emergency where common laws could be passed that allowed the government to operate outside the rule of law. See A.S. Mathews and R.C. Albino, ‘The Permanence of the Temporary: An Examination of the 90 and 18 Day Detention Laws,’ 83, South African Law Journal (1966): 16-43 and David Dyzenhaus, ‘The Permanence of the Temporary: Can Emergency Powers be Normalized?’ in Ronald J. Daniels, Patrick Macklem and Kent Roach eds., The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill (Toronto: University of Toronto Press, 2001). Bill -C-36 (the ‘Anti-Terrorism Bill’) in 2001 amended the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime Act among others, to 'combat terrorism.' See Canada, First Session Thirty-Seventh Parliament, Elizabeth II, 2001, 49-50. For more on the legal questions and debates surrounding the bill, see...


Iacovetta, *Gatekeepers.*


Whitaker, Kealey and Parnaby, *Secret Service.*


See Agamben, *Homo Sacer.*


The term was first used by Mathews and Albino in an article where they detail their challenge to a law which was used to detain opponents of apartheid in South Africa if an officer suspected an individual of acting on behalf of unlawful organizations, particularly Nelson Mandela's African National Congress. When the case came to the Appellate Division, the Court refused to place any restrictions on the 'legality of the detentions' and by doing so, the authors claim the Court accepted the 'permanence of the temporary,' placing South Africa in a permanent state of emergency where common laws could be passed that allowed the government to operate outside the rule of law. See A.S. Mathews and R.C. Albino, ‘The Permanence of the Temporary: An Examination of the 90 and 18 Day Detention Laws,’ 83, South African Law Journal (1966): 16-43 and David Dyzenhaus, ‘The Permanence of the Temporary: Can Emergency Powers be Normalized?’ in Ronald J. Daniels, Patrick Macklem and Kent Roach eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001). Bill -C-36 (the ‘Anti-Terrorism Bill’) in 2001 amended the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime Act among others, to 'combat terrorism.' See Canada, First Session Thirty-Seventh Parliament, Elizabeth II, 2001, 49-50. For more on the legal questions and debates surrounding the bill, see...
CHAPTER 1


6 Section 98 was originally known as Section 97 a) and b) in 1919. After a Code restructuring that took place in 1927, Section 97 was renamed Section 98. I will refer to the section as Section 98 throughout the text for consistency and clarity.

7 O'Connor to Borden,' 16 October 1911, Robert Borden Papers (hereafter Borden Papers), Library and Archives Canada (hereafter LAC) MG 26 H, Volume 154, 82435.

8 W. F. O'Connor, '1914 General Notes,' Borden Papers, MG 26 H, Volume 336, 892; See Murray Greenwood’s discussion of the creation of the Act in, 'The Drafting and Passage of the War Measures Act,' Section 4, The War Measures Act, 1914


10 O'Connor, '1914 General Notes.'

11 Craig Heron and Myer Siemiatycki, The Great War, the State, and Working-Class Canada,' in Craig Heron ed., The Workers' Revolt in Canada 1917-1925 (Toronto: University of Toronto Press, 1998). For more on the war and the home front see Arthur Marwick, War and Social Change in the Twentieth Century: A Comparative Study of Britain, France, Germany, Russia, and the United States (London: Macmillan, 1974); Modris Eksteins, Rites of Spring: The Great War and the Birth of the Modern Age (Toronto: Lester and Orpen Dennys, 1989).


13 Previous to the creation of P.C. 834, the Militia Act required civil authorities who required military assistance to provide a written request to the federal government signed by a local magistrate, and two justices of the peace. The government’s P.C. 834 negated these requirements and allowed for direct intervention. See F.M. Auger, 'On the Brink of Civil War: The Canadian Government and the Suppression of the 1918 Quebec Easter Riots,' Canadian Historical Review 89 4 (December 2008): 508-511.

14 Ibid, 525-526.
291


Laura Tabili, ‘*We Ask for British Justice’: Workers and Racial Difference in Late Imperial Britain* (Ithaca, NY: Cornell University Press, 1994).


Ibid 182-83.

'Robertson to Borden,' 18 June 1919, Borden Papers, LAC, MG 26 H, volume 104, 62013.


Canada, *Debates 1919*, 3288.

Canada, *Debates 1919*, 3290.

Arthur Meighen, Canada, *Debates of the Senate*, (Ottawa: J. O. Patenaude Printer to the King, 1936) 619-621.


Ibid, 140.

Ibid, 140 and 153.

Canada, *Debates 1919*, 3292.

Canada, *Debates 1919*, 4357.

Canada, *Debates 1919*, 4358.

Canada, *Senate Debates*, 913.

Canada, *Senate Debates*, 913.

Canada, *Senate Debates*, 916.

Canada, *Senate Debates*, 917.

Cited to R.S.C. 1927, c. 36.

For a discussion on his statements see Canada, *Debates of the House of Commons First Session Fifteenth Parliament* (Ottawa: F.A. Acland Printer to the King, 1926) 4073.

See s.98 (3) in Appendix; R.S.C. 1927, c. 36.


'Freedom Not License,' 10 June 1919, Halifax Chronicle.

Premier Borden Appeals to Canadian Labour, Strikes a Danger in After-War Time,' 14 January 1919, Ottawa Citizen, found in Borden Papers, LAC, MG 26 H, volume 111, 60757.

Canada, Debates of the Senate (Ottawa: J. De Labroquerie Tache, 1919) 673.

Deport them all is Power's Plan,' The Toronto Daily Star, 3 June 1919, 8.


Canada. Debates of the Senate of the Dominion of Canada 1920, (Ottawa: Thomas Mulvey Printer to the King, 1920) 462.

Ibid.

Ibid 465.

Ibid 468.

Ibid 499.

Ibid 508.


Canada, Debates of the House of Commons First Session Fourteenth Parliament (Ottawa: F.A. Acland Printer to the King, 1922) 865; 3281-83.

Canada, Debates of the House of Commons First Session Fifteenth Parliament (Ottawa: F.A. Acland Printer to the King, 1926) 4073.

Ibid.

Debates 1922, 3285.

A Canadian citizen was defined in the 1910 Immigration Act as '1) a person born in Canada who had not become an alien, by marrying an alien or acquiring a different citizenship; 2) a British subject who had acquired Canadian domicile, which was three years of residence in Canada in 1910 and later changed to five years of residence in Canada in 1919; 3) a person naturalized as a citizen under Canadian law. Anyone who was not a British subject was an alien.' See Barbara Roberts, From Whence They Came: Deportation From Canada 1900-1935 (Ottawa: University of Ottawa Press, 1988) 25.

Canada, Debates of the House of Commons Second Session Fourteenth Parliament (Ottawa: F.A. Acland Printer to the King, 1923) 2430.

Ibid 2432.


CHAPTER 2


3 Whitaker, Kealey and Parnaby demonstrate how authorities were able to successfully strike the CPC arguing that the ‘intelligence cycle worked.’ See Whitaker, Kealey and Parnaby, Secret Service. For more on the intelligence
cycle (the process of planning, collecting, processing, analyzing, and disseminating intelligence) see Michael A. Turner, Why Secret Intelligence Fails (Dulles, VA: Potomac Books, 2005); Peter Gill and Mark Phythian, Intelligence in an insecure world (Cambridge, UK; Malden, MA: Polity Press, 2006); Michael Herman, Intelligence Power in Peace and War (Cambridge: Cambridge University Press, 1996).

Satia argues that British cultural perceptions shaped the British understanding of 'Arabia' during the First World War as the British attempted to pacify the region. Britain was a 'state that could not see' and used violence to control a region it did not understand including through the use of aerial bombardment during peacetime. The British perceived their enemies as intractable. This, coupled with the creation of a culture of violence due to the First World War, led to cultural biases and perceptions of the region. Thus culture shaped how the British Imperial state 'saw' their targets. See Priya Satia, Spies in Arabia: the Great War and the cultural foundations of Britain’s covert empire in the Middle East (New York: Oxford University Press, 2008).


See Penner, Canadian Communism, 64, 65; Avakumovic, The Communist Party, 31-36; Angus, Canadian Bolsheviks, 103.


More on the Stalinization of the CPC can be found in a number of histories on the CPC such as Rodney, Soldiers of the International. One of the more detailed treatments of this topic can be found in Angus' Canadian Bolsheviks, specifically chapters 11 and 12.


‘Letter from Charlie to Sam (Carr),’ 22 October 1931, LAC, CI fonds, Fond 495 File 121 Reel K-281.

‘Resolution on the Situation and Tasks of District 7,’ 4 May 1934, LAC,CI Fonds, Fond 495 File 63 Reel K-287.

Ibid.

Avakumovic, The Communist Party, 94.


‘Letter of P.B. To District No. 7,’ 1 October 1932, LAC, CI Fonds, Fond 495 File 140 Reel K-284.

22 ‘Minutes of the Political Bureau,’ 30 September 1926, LAC, CI Fonds, Fond 495 File 40 Reel K-274.
23 ‘Minutes of Central Executive Committee Meeting,’ 7 February 1926, LAC, CI Fonds, Fond 495 File 40 Reel K-274.
24 ‘Minutes of the Political Bureau,’ 30 September 1926, LAC, CI Fonds, Fond 495 File 40 Reel K-274.
25 ‘Minutes of the Political Bureau,’ 14 March 1926, LAC, CI Fonds, Fond 495 File 40 Reel K-274.
26 Angus, Canadian Bolsheviks, 272-281.
27 ‘Executive Committee of the Communist International to the Canadian Party,’ 1927, LAC, CI Fonds, Fond 495 File 46 Reel K-274.
29 Manley, ‘‘Starve, Be Damned!,’’ 480.
31 Stalin, ‘Marxism and the National Question,’ 332-344.
33 Canada, Supreme Court of Ontario – Rex vs. Tim Buck et al., LAC, vol. 738, RG76-B-1-a 71–5, file 513173, 290.
34 Stalin, Interviews With Foreign Workers’ Delegations, 9; Stalin, ‘Marxism and the National Question,’ 378-380.
35 Stalin, ‘Marxism and the National Question,’ 323.
36 In the Jewish case, the Soviet Union had promised an autonomous Jewish republic in eastern Russia called Birobidzhan. It would be a homeland for Jews that would be autonomous allowing for Jewish emancipation. Though the promise turned out to be a fraud, Jewish communists in North America supported the idea from the 1920s -1950s. See Henry Felix Srebnik, Jerusalem on the Amur: Birobidzhan and the Canadian Jewish Communist Movement, 1924-1951 (Montreal-Kingston:McGill-Queens’s University Press, 2008.)
37 ‘Minutes of the Political Bureau,’ 22 January 1931, LAC, Comintern Fonds, Fond 495 File 117 Reel K-281 [capitalization in original].
38 Stalin, ‘Marxism and the National Question,’ 323.
39 Ibid.


43 Ibid, 154-55.


49 Betcherman, *The Little Band*.


51 D. Draper, ‘Good Citizenship,’ *Empire Club of Canada Addresses Delivered to the Members During the Year 1928* (Toronto: The Club, 1929) 174.


54 ‘G.L.E Strong to Bennett,’ 27 August 1930, LAC, RB Papers, 94419-20.

55 Underline in original. ‘Employers Association of Manitoba to Bennett,’ 14 April 1931, LAC, RB Papers, 94525.

56 Calls for the deportation of undesirables and communists came from over 40 cities across all provinces in the country such as Orillia, Niagara Falls, Kingston, Port Perry, and Sherbrooke, Quebec among others. See Carrie M. Johnson, ‘Johnson to Bennett,’ 5 May 1931, LAC, RB papers, 94579.


58 ‘Bennett to MacBrian,’ 15 Dec 1931, LAC, RB Papers, 94971-74.

59 Neatby also documents a common joke among Canadians in the 1930s in which an angry Bennett was seen talking to himself while onlookers quipped that he must have been having a ‘cabinet meeting,’ Neatby, *The Politics of Chaos*, 50-2.

60 ‘Bennett to Ferland,’ 20 November 1933, LAC, RB Papers, 96553; ‘Bennett to Miller,’ 23 November 1933, LAC, RB Papers, 96557.

61 ‘Me Swear, Me Drink, Me a Canadian, Declares Newcomer,’ *The Globe*, 9 May 1929.


67 Betcherman, The Little Band, 44.
68 Betcherman, The Little Band, 22.
70 Horn, ‘Keeping Canada “Canadian,”’ 41.
72 ‘Fewer Foreigners and More British,’ 10 January 1929, Mail and Empire.
73 ‘Keep Canada Canadian,’ 8 June 1928, Telegram.
74 ‘Common Sense, ‘What has Christianity to do with it?’ 31 January 1929, The Toronto Daily Star.
75 ‘Committee Representing American Federation of Labor to Tim Buck,’ 27 August 1928, Archives of Ontario (hereafter AO) RG 4-32, file 3188/31, 290631.
76 Horn, ‘Keeping Canada Canadian,’ 45.
77 ‘Action Against Communism Urged, 16 June 1931, Hamilton Spectator, LAC, RB papers, 94771.
78 ‘Association Representing Ukrainians of Alberta to Bennett,’ 15 July 1933, LAC, RB Papers, 93449.
79 ‘Borbowski to Bennett,’ 28 March 1931, LAC, RB Papers, 94508.
81 Premier Brownlee, ‘Brownlee to Bennett,’ 14 January 1931, LAC, RB papers, 94455.
82 S.F. Tolmie, ‘Tolmie to Bennett,’ 13 June 1931, LAC, RB papers, 94763.
83 R.B. Bennett, ‘Bennett to Tolmie,’ 13 June 1931, LAC, RB papers, 94765.
84 For more on Taschereau’s political career see Bernard Vigod, Quebec Before Duplessis: The Political Career of Louis-Alexandre Taschereau (Kingston and Montreal: McGill-Queen’s University Press, 1986)
86 For more on these arrests see Marcel Fournier, Communisme et anticommunisme au Québec, 1920-1950 (Montréal, Éditions coopératives Albert Saint-Martin : 1979) and Andrée Lévesque, Le Québec et le monde communiste : Cowansville 1931,’ in Robert Comeau and Bernard Dionne, Le droit de se taire: Histoire des communistes au Québec, de la Première Guerre mondiale à la Révolution tranquille (Montréal : VLB Éditeur, 1989).
88 Manley, ‘Starve Be Damned!,’ 466-69.
89 Both the National Employment Commission in 1936 and the Rowell-Sirois Commission in 1937 reported that unemployment was a national problem that the federal government needed the power to deal with under an amended constitution. It was a finding that was initially met with hostility by Prime Minister Mackenzie-King. See Neatby, The Politics of Chaos, 83-4. For more on the creation of unemployment insurance and the CPC agitation for it see Struthers, No Fault of their Own; Manley, ‘Starve be Damned!’
90 ‘W.F. Langworthy to E. Bayley,’ 1 Nov 1930, AO, RG 4 1930, file 3178.
91 The bulk of letter writers from the hardest hit in Canadian society during the Depression (farmers, the unemployed, the elderly, sick or disabled) to R.B. Bennett reveal that many people sought relief and work during the Depression and not radical social change. Although as Neatby has argued, many new political parties emerged in the period as Canadians looked for alternatives and reform but overall there was little appetite for the drastic political changes sought by the CPC. See for instance Michael Bliss ed., The Wretched of Canada: Letters to R.B. Bennett 1930-35 (Toronto: University of Toronto Press, 1971); Neatby, The Politics of Chaos; See also Horn, The Dirty Thirties, Part VII.
CHAPTER 3


4 J.S. Woodworth protested against Wright's instructions to the jury during a session of Parliament in 1929 in a more general discussion about police repression of activists and free speech. See Woodworth's comments in Canada, *Debates of the House of Commons Third Session Sixteenth Parliament* (Ottawa: F. C. Acland, 1929) 2354-2355.

5 'Eyes of Masses on Trial of Nine,' *The Worker*, 7 November 1931, 1.
The Communists (Comintern) had its suspicions that the Canadians were modeling their case on the U.K. prosecution, although in the U.K. case the CPGB leaders were charged as individuals, the party itself was not outlawed as a result of the convictions of the leaders unlike the Canadian trial. See 'The imprisonment of the leaders of the CP of C and the declaration of the illegality of the party,' LAC, Comintern Fonds, Fond 495 File 126. For more on the Zinoviev letter see Gill Bennett, *Churchill's Man of Mystery* (New York: Routledge, 2007); Nigel West, *At Her Majesty's Secret Service: The Chiefs of Britain's Intelligence Agency, MI6*. (London: Greenhill Books, 2006).

The sale of communist material could warrant a Section 98 charge after the Buck trial. For instance, in 1934 a number of book sellers in Montreal were reported to have plead guilty to violating Section 98, presumably subsection 8, for distributing unlawful literature. The literature consisted of communist texts and periodicals such as the labour paper *La Vie Ouvrière* and the paper of the CLDL *The Canadian Labour Defender*. One vendor, Saul Feigelman and his sister refused to plead guilty. Their case was publicized in the House of Commons by J.S. Woodsworth. No transcript exists of the trial in which Feigelman was found guilty. See Saul Feigelman, 'Jailed for Selling La Vie Ouvriere,' 1 December 1934, *The Worker*; the RCMP kept a close watch on the case, see 'No.711 Weekly Summary Report on Revolutionary Organizations and Agitators in Canada,' in Gregory Kealey and Reg Whitaker eds., *R.C.M.P. Security Bulletins: The Depression Years Part 1, 1933-1934* (St.John's: Canadian Committee on Labour History, 1993) 89; 'Police Grab Whole French Paper Issue,' 12 May 1934, *The Worker*; 'La Vie Ouvriere Starts Campaign,' 30 June 1934, *The Worker*; Canada, *Debates of the House of Commons Eighteenth Parliament First Session* (Ottawa: J.G. Patenaude Printer to the King, 1936) 4231-33.


Frederick Griffin, 'Sgt. Leopold Real Mountie Served in Sub-Arctic Post,' 6 November 1931, *The Toronto Daily Star*.

Ibid.

Frederick Griffin, Mountie Was Afraid He'd Talk in His Sleep to Agent of Soviet,' 7 November 1931, *The Toronto Daily Star*.

Toward the end of the article the 'Worker's Jury' calls for Section 98's repeal. See 'Declaration of the Worker Jury Regarding the Trial, the Conviction and Sentence of Eight Leaders of Working Class,' 21 November 1931, *The Worker*.


Ibid, 378.


Ibid, 429.

Ibid, 440.

Ibid, 441.

*Rex vs. Tim Buck et al*, 448-50.

*Rex vs. Tim Buck et al*, 448-50.

*Rex vs. Tim Buck et al*, 452-53.

*Rex vs. Tim Buck et al*, 452-53.


*Rex vs. Tim Buck et al*, 472-73.

*Rex vs. Tim Buck et al*, 522.


Ibid, 598.


*Rex vs. Tim Buck et al*, 612.

Ibid, 735.

*Rex vs. Tim Buck et al*, 767.

Tim Buck, *An Indictment of Capitalism* (Toronto: Canadian Labour Defense League, 1932). Penner notes how the prosecution and imprisonment of the accused led to Buck receiving far more attention and praise. He was a virtual unknown before the trial and imprisonment. Norman Penner, *Canadian Communism: The Stalin Years and Beyond* (Toronto: Methuen, 1988) 110. 'Canada May Set Precedent in Communism, Buck Says,' *Toronto Daily Star*, 11 November 1931. There was truth in Buck's statement. For instance, although the leaders of the Communist Party of Great Britain were charged with seditious conspiracy in 1925 and later convicted, the charges were against the individuals and the party itself was never classified as unlawful. According to F.R. Scott, after the Buck et al trial and convictions, Canada joined Japan, Italy, Poland and the more 'reactionary Balkan states' in outlawing the communist party. See F.R. Scott, 'The Trial of the Toronto Communists,' *Queen's Quarterly* 39 (1932):512-27.


Norman Sommerville, 'Trial Importance of Trial Position of Jury,' AO, RG 4-32, file 3188/31, 28 L 0145.

Norman Sommerville, 'Closing Address to the Jury,' AO, RG 4-32, file 3188/31, 28 L0147.

Ibid, 28 L 0158.

Ibid, 28 L 0174.

Ibid [caps in original], 28 L 0175.

For more on gender and the state see Yasmeen Abu-Laban, *Gendering the Nation-State: Canadian and Comparative Perspectives* (Vancouver: University of British Columbia, 2009).

Wright, *Rex vs. Tim Buck et al*, 783-84.

CHAPTER 4

1 Barbara Roberts, From Whence They Came: Deportation from Canada 1930-1935 (Ottawa: University of Ottawa Press, 1988).
4 The state’s power to ‘mould’ citizens has been discussed in a number of contexts. See Franca Iacobetta, Gatekeepers: Reshaping Immigrant Lives in Cold War Canada (Toronto: Between the Lines Press, 2006); Mariana Valverde, The Age of Light, Soap and Water: 19th Century Moral Reform in English Canada (Toronto: University of Toronto Press, 1991); Enakshi Dua, ‘The Passage from Subjects to Aliens: Indian Migrants and the Racialization of Canadian Citizenship,’ Sociologie et Societes 31, 2 (Autumn 1999) :145-162; Himani Bannerji, The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender (Toronto: Canadian Scholars Press, 2000).
5 For more on transnational activists see Donna R. Gabaccia and Franca Iacobetta eds., Women, Gender, and Transnational Lives: Italian Workers of the World (Toronto: University of Toronto Press, 2002); Donna R. Gabaccia and Fraser M. Ottanelli, Italian Workers of the World: Labor Migration and the Formation of Multiethnic States (Champaign, IL: University of Illinois Press, 2001); Travis Tomchuk, Transnational Activists: Italian Anarchist
Networks in Southern Ontario and the Northeastern United States, 1915-1940 (Queen’s University, PhD dissertation, 2010).

6 For more on the ‘state of exception,’ see Agamben, State of Exception.
8 ‘Kommunistijahtien laajentamiseen valmistaudutaan,’ 16 November 1931, Vapaus; ‘Komuniści Skazani Na Więzienie i Deportację,’ 18 November 1931, Gazeta Katolicka w Kanadzie.
9 ‘J.H. MacBrien to The Officer Commanding D Division, Winnipeg,’ 11 December 1931, Library and Archives Canada (LAC), Record of the Canadian Security Intelligence Service [hereafter Record of CSIS], RG 146 Volume 3470 file 175/P3470.
10 Roberts, Whence They Came, 134-138.
11 ‘Sudbury Men’s Arrest Part of Wide Round-Up Rumored At Ottawa,’ 5 May 1932, The Toronto Star. See also Roberts’ discussion of the Halifax 10 in Whence They Came, 140-148.
13 See ‘J.H. MacBrien to The Officer Commanding D Division, Winnipeg,’ and Roberts, Whence They Came, 141, 142.
15 Roberts, Whence They Came, 18-19.
16 supra note 14.
17 supra note 15.
18 Roberts, Whence They Came, 29-36.
19 For instance, in the case of Tomo Čačić, a memorandum to the Minister of Justice outlines how his deportation could be challenged, see Frederick P. Varco, ‘Memorandum for the Minister of Justice,’ 1 December 1933, LAC, RG 13 volume 2014 file 1484 1932. For more on Čačić’s deportation see Molinaro, Species of Treason; Rasporich, ‘Tomo Čačić: Rebel without a Country.’
20 supra note 19; ‘Local Lawyer Retained for Man Held Here,’ The Halifax Chronicle, 29 December 1933, in LAC, Record of CSIS, RG 146 volume 4670 file 96-A-00149.
21 ‘Vaara, Board of Inquiry,’ 1932; ‘Dan Chomicki Board of Inquiry,’ 1932; See also LAC, RG 76-B-1-a, volume 738, file 513057.
22 The challenge represented all but Stahlberg and Zurcher. It is unclear if the CLDL represented them in a separate challenge or were hoping to set a precedent by securing the release of the others. See ‘In the Supreme Court of Nova Scotia in Banco Re: Steven Worozcyt and seven others,’ 1932, LAC, RG 76-B-1-a, volume 738, file 513057.
24 Ibid.
26 Bosniak, italics in original, The Citizen and the Alien, 139; see also De Genova, Deportation Regime, 38.
27 Agamben, Homo Sacer, 128.
28 De Genova, Deportation Regime, 46.
30 For more on Finnish workers and sojourning see Ian Radforth, Bushworkers and Bosses: Logging in Northern Ontario 1900-1980 (Toronto: University of Toronto Press, 1987).
32 Ivan Avakumovic, The Communist Party in Canada: A History (Toronto: McClelland and Stewart, 1975); Norman Penner, Canadian Communism: The Stalin Years and Beyond (Toronto: Methuen, 1988); Ian Angus,

33 Betcherman, The Little Band, chapter 3.


35 Ibid.

36 ‘Conrad Cessinger Board of Inquiry,’ Record of CSIS, RG 146 Volume 3470 file 175/P3470.


38 ‘Cesinger Board of Inquiry.’


40 ‘Holmes to Carr,’ underline in original, 23 March 1931, found in LAC, RG 76-I-A-1, volume 376, file 513111.


42 ‘R.H. Munroe to Joliffe re: Ivan Sembaj,’ 14 May 1932, LAC, RG 76-B-1-a, volume 738, file 513057.


44 ‘R.H. Munroe to Joliffe re: Gottfried Zurcher,’ 14 May 1932, LAC, RG 76-B-1-a, volume 738, file 513057; ‘Mrs. Zurcher to be Deported,’ 21 May 1932, The Worker.


46 ‘R.H. Munroe to Joliffe re: Stefan Worozczt,’ 14 May 1932, LAC, RG 76-B-1-a, volume 738, file 513057.


49 ‘R.H. Munroe to Joliffe re: Martin Parker,’ 14 May 1932, LAC, RG 76-B-1-a, volume 738, file 513057.


52 ‘R.H. Munroe to Joliffe re: John Farkas,’ 14 May 1932, LAC, RG 76-B-1-a, volume 738, file 513057.


54 Ibid.

55 Tomo Čačić quoted in S. Balen, ‘Razgovor sa Tomom Čačićem,’ Jedinstvo, 8 January 1957.

56 Ibid.

57 Franjo Ugrin, ‘Moja sjećanja,’ Jedinstvo. 18 November 1966, 2.


59 Tomo Čačić quoted in S. Balen, ‘Razgovor sa Tomom Čačićem.’

Radforth argues that while a number of ‘Red Finns’ emigrated to Canada and were active in the socialist movement, ‘a significant proportion’ of ‘apolitical’ immigrants became radicalized after their arrival in Canada. See Ian Radforth, ‘Finnish Radicalism and Labour Activism in the Northern Ontario Woods,’ in *A Nation of Immigrants.*


72 ‘Hans Kist von Nazis ermordet,’ 1 December 1933, *DAZ.*


Ibid. Čačić would support decolonization movements eloquently in his later years.
CHAPTER 5


2 ‘City of Prince Albert Police Committee to Bennett,’ 4 March 1933, LAC, RB Papers [hereafter RB Papers] 93336.

3 ‘Ukrainian Sporting Association to Bennett,’ 18 June 1933, LAC, RB Papers, 93430.

4 ‘Ralph Webb to W.L. Gordon,’ 21 March 1934, LAC, RB Papers, 93792.

5 ‘J.C. MacCorkindale to Wesley Gordon,’ 18 April 1932, LAC, RB Papers, 92972.

6 ‘J.R. Smith to Bennett,’ 19 December 1932, LAC, RB Papers, 94850.

7 ‘Bennett to Jean,’ 6 June 1935, LAC, RB Papers, 93967.

8 ‘Bennett to Lockwood,’ 8 July 1935, LAC, RB Papers, 93972.

9 ‘W.H. Price, ‘The Possibility of Peaceful Economic and Political Development with a Consideration in that Regard of Section 98 of the Criminal Code,’ 1933, Archives of Ontario (hereafter AO), RG 4-2, 4.27.

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12 Greenwood 305 306

13 S.C. 21-22, c.58, 1931.


17 Ibid 2188.

18 Ibid 2102.

20 'Minutes of the Political Bureau,' 24 October 1931, LAC, Communist International Fonds (hereafter CI Fonds), Fond 495 File 126 Reel K-281.

21 'Resolutions on the Tasks of the CP of C,' 22 October 1932, LAC, CI Fonds, Fond 495 File 131 Reel K-283.

22 'Minutes of the Political Bureau,' 24 October 1931, LAC, CI Fonds, Fond 495 File 126 Reel K-281.

23 'Methods of Illegal Work in the CP of C,' 8 August 1932, LAC, CI Fonds, Fond 495 File 136 Reel K-283.

24 N.E. Macfarlane, 'Extract from, or precis of, communication dated,' 31 May 1932, LAC, Record of the Canadian Intelligence Service (hereafter Record of CSIS) RG 146, volume 4670, file 94-A-00006; Inspector Mead of the RCMP regarded Evans as an 'extreme radical.' See 'S.T. Wood to the Commissioner,' 11 April 1932, LAC, Record of CSIS, RG 146, volume 4670, file 94-A-00006.


26 'Worker's Unity League Meeting,' 23 September 1932, LAC, Record of CSIS, RG 146, volume 4670, file 94-A-00006.


28 'S.T. Wood to the Commissioner,' 20 December 1932, LAC, Record of CSIS, RG 146, volume 4670, file 94-A-00006. See also 'S.T. Wood to the Commissioner of the RCMP,' 20 December 1932, LAC, Record of CSIS, RG 146, volume 4670, file 94-A-00006.


31 Rex v. Evans, 1-5.


33 Ibid, 68-70.


35 Gordon Grant, *Rex v. Evans*, 120.


37 W.A. Macdonald, 'Charge to the Jury,' 4-5.


40 See for instance the arrest of 29 marchers in a hunger march in Edmonton in 1933, or the arrest of over 80 strikers in a lumber strike at Rouyn, Quebec in 1933 and the fifty-one arrested in Port Arthur because of a lumber worker strike also in 1933. See ‘Rex v. John Gager et al,’ 16 January 1933, Provincial Archives of Alberta, GR1983.0001.

52 'Section 98 Invoked For Carrying a Button,' 25 June 1932, *The Worker*; 'Escapes Section 98 Conviction,' 2 July 1932, *The Worker*.

53 'Section 98 Charge Collapses in Alta,' 26 November 1932, *The Worker*.

54 'Section 98 Appears in Port Arthur; All Property Seized is Forfeited,' 17 December 1932, *The Worker*.

55 'Socialists and Labor Party Continue Attack On Workers Section 98 May be Charged,' 2 May 1933, *The Worker*.

56 'Sedgwick to Bayly,' 13 June 1932, AO, RG 4-32 file 1552.

57 'Arrest of Joe Derry is Threat Against Young Communist League,' 29 April 1933, *The Worker*; 'Sec. 98 Attack on YCL is an Attack on Working Class,' 27 May 1933, *The Worker*; 'Section 98 Used in Attack on Young Communist League,' 2 May 1933, *The Worker*.

58 'Derry Audiences Show Hatred of Section 98,' 2 September 1933, *The Worker*.

59 'Section 98 Charge Against Joe Derry Fails in Toronto,' 19 December 1934, *The Worker*.

60 Lévesque, 'Red Scares and Repression in Québec, 1919-1939.'


63 J.E. Keith, 'The Fascist Province,' *Canadian Forum*, April 1934 and 'Quebec’s Iron Heel,' November 1936.

64 Supra note 60.

65 Canada, *Debates of the House of Commons Eighteenth Parliament First Session* (Ottawa: J.G. Patenaude Printer to the King, 1936) 4231-33; 'Le Roi vs. Saul Feigelman – Ann Feigelman, Cour du Banc Du Roi – Montréal,' Bibliothèque et Archives nationales du Québec.

66 Ibid 4232.

67 Saul Feigelman, 'Jailed for Selling La Vie Ouvrière,' 1 December 1934, *The Worker*.


73 See 'The Iron Heel in Canada First Quarter 1934,' *The Labor Defender*, (June 1934) 10; The Iron Heel in Canada 1933,' *The Labor Defender*, (May 1934) 10; '1931 - A Year of Sharpest Terror Against Struggling Canadian Masses,' *The Labor Defender* (January 1932) 4; 'Notes: 1932 and Now,' *The Labor Defender* (Jan-Feb 1933) 2.


76 'The Uses of Section 98,' 29 July 1933, *The Worker*.

'Police Claim Officer Justified in Shooting,' 7 March 1933, The Star.

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supra note 77.

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'Ibid; 'Poli...
For instance, Clement regards the efforts of LSR members to form the Civil Liberties Protective Association as an attempt to form a ‘true rights association’ because it sought rights for all citizens. See Dominique Clement, *Canada’s Rights Revolution: Social Movements and Social Change, 1937-82* (Vancouver: University of British Columbia Press, 2008) 38. Lambertson regards the CLDL ‘at best’ a ‘proto-civil liberties organization’ because it only sought the protection of worker’s rights when the state was repressing them as well as ‘narrowly focused’ on usually ‘defending the rights of “foreigners.”’ See Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: University of Toronto Press, 2005) 24-25.


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26 Smith makes this claim in his autobiography. See A.E. Smith, _All My Life_ (Toronto: Everready Printers, 1949) 145.

27 Smith, _All my Life_, 165.

28 Ibid 168.

29 Young, _Anatomy of a Party_, chapter nine; Whitehorn argues that Woodsworth’s disciplining of CCF members for cooperating with communists reveals how the CCF was always structured as a party and not a ‘protest movement becalmed’ as Young argued. See Whitehorn, _Canadian Socialism_. Other examples of cooperation between CCFs and communists occurred in the Canadian Youth Congress (CYC) initiative led by the CPC. As Naylor observes, the CYC was more effective than the former CPC group, the ‘League Against War and Fascism’ in attracting CCF youth in the Co-operative Commonwealth Youth Movement (CCYM). See James Naylor, ‘Socialism for a New Generation: CCF Youth in the Popular Front Era,’ _Canadian Historical Review_ 94, 1 (March 2013): 69-70.


31 ‘Resolution on the Tasks of the CP of C,’ 22 October 1932, LAC, CI Fonds, Fond 495 File 131, Reel K-283.

32 ‘Norman to S,’ 7 April 1934, LAC, CI Fonds, Fond 495 File 162, Reel K-287.


34 ‘Resolution on Present Situation and CLDL Tasks,’ 16 November 1934, LAC, CI Fonds, Fond 495, File 1, Fond 495 File 166, Reel K-288.


40 See for instance Horn, ‘Frank Underhill’s Early Drafts of the Regina Manifesto.


44 Ibid, 514.


47 Young, _Anatomy of a Party_, 137.

48 F.R. Scott, ‘Communists, Senators, and all That,’ 10 August 1935, _The Worker_.

312

Lambertson 24-35.

51 Ibid 31; See also 'Scott to Timbres,' 29 May 1933, LAC, F.R. Scott Fonds, MG 30 211, volume 12 file 8.

52 Lambertson 34-35.


56 For more on the creation of the camps see Waiser 24; Struthers 75-81.

57 Waiser 35-37.

58 Ibid.

59 Ibid


62 Waiser 69.

63 Waiser 75, 95, 134-135. See also Whitaker, Kealey, Parnaby 131-138. For Arthur Evans' account of the meeting see Ben Swankey and Jean Evans Sheils, 'Work and Wages!': A Semi-Documentary Account of the Life and Times of Arthur H. (Slim) Evans 1890-1944 (Vancouver: Trade Union Research Bureau, 1977) 144-146.

64Waiser 142.

65 Ibid 154.

66 Ibid 171-184, 200, 203,212.

67 Waiser 59.

68 See for instance '8th Enlarged Plenum of CCCP,' June 1935, LAC, CI Fonds Fond 495 File 177.


70 See for instance testimony from Ibid 147-150.

71 Ibid 209-212.

72 Ibid 356-7.

73 Ibid 387-390.

74 Ibid 657.

75 Ibid 658.

76 Ibid 658-660.

77 Ibid 666.


80 Ibid, 710-711,719.
Ibid 711-726.
82 Waiser 232.
83 Ibid 245-246.
84 Ibid 253-255.
85 Neatby 75-83.
86 'Excerpt from Mr. King’s Second Radio Broadcast,' (caps in original) 2 August 1935, LAC, William Lyon Mackenzie-King papers (hereafter King papers), MG26-J4, volume 156, C112114.
88 Subsection 8 stipulated that anyone who...’prints, publishes, edits, issues, circulates, sells, or offers for sale or distribution any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication or document of any kind, in which is taught, advocated, advised or defended, or who shall in any manner teach, advocate or advise or defend the use, without authority of law, 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...shall be guilty of an offense...’ See C.C.C. 98 (8), R.S.C.1927.
90 Ibid, 'Memorandum Re: Repeal of Section 98 and amendment of Section 133 of the Criminal Code,' LAC, RG 13 volume 2809, file 136061; 'Edwards to King,' 12 June 1936, LAC, King papers, MG26-J4, volume 156, C112119-C112121.
91 Ibid.
92 Ernest Lapointe, House of Commons Debates 1936, 4225-4227.
93 Ibid 4228.
94 Ibid 4230.
95 J. S. Woodsworth, House of Commons Debates 1936, 4230.
96 Ibid 4232-35.
97 Cahan, House of Commons Debates 1936, 4237.
98 Herbert Wilton, House of Commons Debates 1936, 4243-44.
99 R.B. Bennett, House of Commons Debates 1936, 4245-4251.
100 Arthur Meighen, Canada, Debates of the Senate, (Ottawa: J. O. Patenaude Printer to the King, 1936) 619-621.
101 John Haig, Debates of the Senate 1936, 621-622.
102 George Gordon, Debates of the Senate 1936, 622.
103 'Section 98 is Gone,' 27 June 1936, Toronto Saturday Night.
104 Meighen, Debates of the Senate 1936, 622.
105 Grant Dexter, 'Liquidation of Winnipeg Strike,' 7 July 1936. Winnipeg Free Press.
106 'Section 98 and After,' 14 July 1936, The Gazette; 'Croll, Roebuck, Section 98 and Communists,' 9 July 1936, Toronto Mail & Empire.
108 'The Late Section 98,' 14 July 1936, The Toronto Star.
109 'Section 98 Done at Last,' 25 June 1936, Toronto Telegram.
110 'Rikoslain 98 pykälän peruuttaminen voitettiin joukkotoiminnan kautta,' 24 June 1936, Vapaus; ‘Drakońska Sekcja 98 Ma Być Skreślona,’ 13 June 1936, Glos Pracy; ‘Das Parlament verhandelt uber die Abschaffung Sektion 98,’ 17 June 1936, DAZ.
111 A.E. Smith, 'Notes on Civil Liberties,' Caps in original, TFL, Kenny MS 179 Box 39, File 12.
112 See Criminal Code of Canada, R.S.C., 1985, c. C-46, s.59 (4) (a) (b).

CONCLUSION

1 ‘Hugh Guthrie to Bennett,’ 17 May 1935, LAC, R.B. Bennett Papers, Reel M-989, 94340.


4 An officer who did not commit the act of disaffection would have to prove they had no knowledge of the actions of the guilty member. Regulation 62’s amendment also gave the government the power to consider an organization unlawful if an officer was found guilty of disaffection. All of the members would then be considered guilty of an offence. See R.S. Lambert, This Freedom: A Guide to Good Citizenship in a Time of War (Toronto: The Canadian Association for Adult Education, 1940) Addendum to page 9.


6 See Criminal Code of Canada, R.S.C., 1985, c. C-46, s.59 (4) (a) (b).

7 For instance, Justice Minister Anne McLellan in arguing against a ‘sunset clause’ in Bill C-36 the ‘Anti-Terrorism Bill,’ stated that ‘we cannot expect terrorism to disappear in a few years,’ and that legislation should be in place for an ‘extended’ period, see Anne McLellan, ‘Letters to the Editor: Anti-Terrorism Act,’ 25 October 2001, The Globe and Mail.


10 For instance, Agamben argues that ‘the state or the sovereign retains this potential to suspend the rule of law even when not doing so, just as we might say that in the stabilized form of constituted power the state retains the potentiality for exercising its full power to suspend the rule of law.’ See Leland de la Durantaye, Giorgio Agamben (Stanford: Stanford University Press, 2009) 232.


12 See for instance Robert Wright’s analysis of Canadian media following the attacks in which he argues that the inability of individuals to analyze the event without being portrayed as anti-American reinforced the ‘view that September 11th existed outside of history.’ It is a view that had achieved ‘hegemonic’ status. See Robert Wright, Virtual Sovereignty: Nationalism, Culture and the Canadian Question (Toronto: Canadian Scholar’s Press, 2004) 253. Such views were also often expressed by American policymakers responsible for the creation of new security measures and laws such as former Secretary of State Condoleezza Rice who in 2009 defended George W. Bush’s government’s support for exceptional security measures and interrogations stating, ‘anything that was legal and was going to make this country safe the president wanted to do...unless you were there, in a position of responsibility after September 11th, you cannot possibly imagine the dilemmas that you faced in trying to protect Americans.’ See Glen Kessler, ‘Rice Defends Enhanced Interrogations,’ 30 April 2009, The Washington Post.

13 The law provides for the deportation of undocumented residents of Haitian descent regardless if they were born in the Dominican Republic. It is also retroactive to 1929. See Lorgia García-Peña, ‘Suddenly, Illegal at Home,’ 12 December 2013, The New York Times; B-C43 makes it easier for the government to deport permanent residents from Canada if convicted of a criminal offense including minor offenses. Any permanent resident, no matter the length of time spent in Canada, with a past criminal conviction can be eligible for deportation. The Canadian Bar Association has urged the government to abandon the bill or significantly revise it. It has declined to do so. See Nicholas Keung, ‘Thousands could face deportation for minor crimes under Tory bill; Permanent residents could lose status, immigration lawyers say,’ 4 October 2012, The Toronto Star; ‘CBA Says Most Changes to Bill C-43 are “Unjustified,”’ 8 November 2012, Targeted News Service, Washington D.C.

14 See Agamben, State of Exception and Homo Sacer.
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