

The Trial of J. B. McLachlan

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Résumé de l'article

En octobre 1923, la Cour suprême de la Nouvelle-Ecosse condamnait le secrétaire-trésorier régional du syndicat des mineurs du Cap Breton, James B. McLachlan, sous trois chefs d'accusation de libelle séditeuse, chacune étant passible d'une peine de vingt ans d'emprisonnement. Le procès eut l'allure d'un événement national tant à cause de l'importance des gens qui y étaient impliqués qu'à cause du caractère exceptionnel des accusations portées. En effet, le cas fut présenté par le procureur de la couronne, Walter J. O'Hearn, comme étant une occasion de juger non pas un homme mais un principe, à savoir, si l'on permettrait aux doctrines soviétiques de s'épanouir en Nouvelle-Ecosse.

L'auteur analyse les événements qui entourèrent le procès, tant avant qu'après, tout en les replaçant dans le contexte des luttes syndicales qui marquèrent le début du XXe siècle. Selon lui, le cas McLachlan en fut un où la loi concernant la sédition servit un double but: mettre un frein à la liberté d'expression, d'une part, et punir des syndicalistes radicaux d'autre part. Ce cas toutefois, rappelle-t-il, appartient à une période de transition dans l'histoire ouvrière canadienne. James B. McLachlan eut la mauvaise fortune d'être à l'intersection de la voie ancienne et de la nouvelle en ce début des années 1920, soit au moment où l'on commença à faire de plus en plus appel à la loi plutôt qu'à la force brutale pour régler les conflits.

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DAVID FRANK

Shortly after two o'clock on the afternoon of 17 October 1923 the jury returned to pronounce its verdict in a trial in the Supreme Court of Nova Scotia in Halifax. The charges consisted of three counts of seditious libel under Section 132 of the Criminal Code, each punishable by up to 20 years' imprisonment. The case had attracted national attention, for the charge was an unusual one and the proceedings involved several prominent figures in Nova Scotia. Appearing for the Crown was the province's attorney general, Walter J. O'Hearn. In his address to the jury he declared the case to be "the most important that had come before the courts of Nova Scotia in recent years"; the identity of the prisoner was less important than "the principle involved, the principle as to whether or not the doctrines of Soviet Russia should flourish in Nova Scotia". O'Hearn had entered the provincial government only a few months earlier, in December 1922, and added, "I determined when I assumed the office I now hold that I would lock horns with men of this nature." Appearing for the defence was Colonel Gordon S. Harrington, a former mayor of Glace Bay and a leading figure in the provincial Conservative party. He told the jury that the trial had been "a nauseating, abominable fizzle"; in the alleged seditious remarks, the accused was "only voicing the opinions of the thousands he represented among the miners of Cape Breton"; if the prisoner was "red" then so too were those who elected him annually to union office. Harrington concluded by referring to the famous trial of Joseph Howe in the same city on similar charges almost a century earlier, and reminded the jury that Howe had won an acquittal, which was, he noted, "the fate the prisoner in this case deserved".¹

Sedition trials are not common events in Canadian history; yet the charge has been used more frequently than is commonly realized, and Kenneth McNaught has suggested there is sufficient evidence to reveal a tradition of political trials in Canada.² What defines a political trial, McNaught has noted, is the overt confrontation between the forces of change and the forces of continuity, an approach which underlines the significance of historical context in the study of legal questions. To know the law one must read it, but to know the uses of the law, an historical approach is essential. The trial of J.B. McLachlan on charges of seditious libel has never received close scrutiny, despite its intrinsic interest as one of the more dramatic events in Canadian labour history in the 1920s. Moreover, as an episode in the history of Canadian law, the case

1. *Sydney Post*, 18 October 1923.

2. Kenneth McNaught, "Political trials and the Canadian political tradition", in M.L. Friedland, ed., *Courts and Trials: A Multidisciplinary Approach* (Toronto, 1975), pp. 137-61.

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of *The King vs. James B. McLachlan* clearly demonstrates the very broad applications of a loosely defined offence such as sedition.³

Like J.S. Woodsworth, who was charged with seditious libel during the Winnipeg General Strike in 1919, McLachlan was arrested in the midst of turbulent events in Canadian labour history. The origins of the case were closely bound up with the events of the early 1920s in industrial Cape Breton. At the time of his arrest in July 1923, McLachlan was secretary-treasurer of District 26, United Mine Workers of America, a position he had occupied almost continuously since the establishment of the district in 1909. A veteran of the Scottish coalfields and of the early days of the UMWA in Nova Scotia, a longtime socialist and later Communist, by the 1920s McLachlan had become the symbol of radical trade unionism in Nova Scotia.⁴

During 1922, the year of the first great confrontation between the Nova Scotia coal miners and the British Empire Steel Corporation, a significant change took place in the leadership of District 26. Delegates to the annual convention in Truro in June 1922 had adopted spirited declarations denouncing the capitalist system: "we proclaim openly to all the world that we are out for the complete overthrow of the capitalist system and capitalist state, peaceably if we may, forcibly if we must." This was followed in August by the election of an executive in which the key positions were won by men associated with the "red" declarations. McLachlan, re-elected by a two-to-one vote, was the only member of the old executive to be re-elected; president Robert Baxter was defeated by a Westville miner, Dan Livingstone, by a vote of 7,170 to 1,695. Present at the June convention had been a representative of the Workers' Party of Canada, Tim Buck, and during the following year speakers such as "Red" Malcolm Bruce and "Moscow" Jack MacDonald, as they were nicknamed locally, made speaking tours of the coalfields. McLachlan and other leaders joined the WPC, and McLachlan attended the party's convention in Toronto in February 1923. A party organizer from Toronto and Winnipeg, Tom Bell, was appointed editor of the union-backed *Maritime Labor Herald*. By the time the union leaders led a parade through the streets of Glace Bay on 1 May 1923, following a red banner with the

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3. For an account of the history of seditious offences in Canada, see M.L. Friedland, *National Security: The Legal Dimensions*, [a study prepared for the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police], (Hull, 1980). See also Mark MacGuigan, "Seditious Libel and Related Offences in England, the United States, and Canada", *The Report of the Special Committee on Hate Propaganda in Canada* (Ottawa, 1966), Appendix I, and Peter MacKinnon, "Conspiracy and Sedition as Canadian Political Crimes", *McGill Law Journal*, 23 (1977), pp. 622-43. Some general issues are considered in F.R. Scott, *Civil Liberties and Canadian Federalism* (Toronto, 1959) and D.A. Schmeiser, *Civil Liberties in Canada* (London, 1964).
 4. General surveys of labour history in industrial Cape Breton are available in Paul MacEwan, *Miners and Steelworkers: Labour in Cape Breton* (Toronto, 1976), and Don Macgillivray, "Industrial Unrest in Cape Breton, 1919-1925" (M.A. thesis, University of New Brunswick, 1971). On the background of J.B. McLachlan, see David Frank, "The Making of a Labour Leader: The Early Years of J.B. McLachlan", paper presented to the Atlantic Canada Studies Conference, Halifax, 1980.

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slogans "Workers of the World, Unite" and "Long Live Communism", there were ample anxieties about the spread of radical influences in industrial Cape Breton.⁵

Those concerned included the international office of the UMWA, who objected to the district's plan to affiliate to the Red International of Labour Unions, an idea endorsed at the June convention. It had been a flamboyant, largely symbolic gesture, and the union leaders in fact pursued a cautious policy, writing to request a ruling from President John L. Lewis on the district's right to join the Red International. When the UMWA issued an extensive report stating that the Red International was "an outgrowth of the One Big Union" and ordering District 26 to withdraw its application, the district executive voted to comply; explained McLachlan, "we are prepared to retreat from almost any position, rather than give anybody the opportunity to smash our solidarity." This retreat failed to satisfy the international union, which continued to cast doubts on the legitimacy of the policies pursued by District 26. When a committee of investigation visited in May 1923, they reported not only "a splendid feeling of loyalty to the United Mine Workers" but also "ample evidence of the machinations of the red outfit of Moscow".⁶

The struggle for union recognition at the large steel plant in Sydney proved the most explosive development of 1923. Despite the longstanding labour traditions in industrial Cape Breton, the steelworkers had repeatedly failed to win recognition of their unions, but by the fall of 1922 a new organizing campaign on behalf of the Amalgamated Association of Iron, Steel and Tin Workers of America was underway in Sydney. In December 1922 the steelworkers voted to reject a company proposal for a plant council, and in February a walkout closed the plant for five days. Neither show of strength was sufficient to establish union recognition, and the steelworkers braced for the next confrontation. Increasingly, the coal miners' leaders saw the fight for union recognition at the steel plant as an opportunity to take joint action against a common employer. When an official from the federal Department of Labour visited Sydney in March 1923, he was intrigued to find that the steelworkers' leaders appeared for his meeting accompanied by the miners' officers; indeed, he reported, they appeared to have formed "something like a local One Big Union"; McLachlan and Livingstone both spoke at length and declared that "the miners were determined to support the steelworkers, and if necessary that they would come out in sympathy with them".⁷ Meanwhile, worried by the progress of labour organization at the steel plant and by the presence of radical influences in local unions, Besco president Roy Wolvin sounded the alarm at a meeting of the Sydney Board of Trade, urging members to "drive the radicals out of Cape Breton"; the board subsequently produced a resolution denouncing "Cape Breton Bolshevism".⁸

5. David Frank, "Class Conflict in the Coal Industry: Cape Breton 1922", in G.S. Kealey and P. Warrion, eds., *Essays in Canadian Working Class History* (Toronto, 1976), pp. 161-84.

6. *Maritime Labor Herald*, 13 January 1923; *The Worker*, 1 March 1923; *United Mine Workers' Journal*, 1 and 15 February, and 22 June 1923.

7. Public Archives of Canada (hereafter PAC), Records of the Department of Labour, RG27, vol. 143, file 611.04:10, memorandum by E. McG. Quirk, 26 March 1923.

8. PAC, W.L. Mackenzie King Papers, MG26 J1, pp. 76159-60, Paul McNeil and J.B. McLachlan to King, 29 March 1923.

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The Liberal provincial government of E.H. Armstrong soon adopted strong measures. At the time of the miners' strike in 1922, the cabinet had authorized the creation of a special provincial police force. Although the force was not used in 1922, the provincial police were mobilized in March 1923 and stationed in Sydney in expectation of an imminent confrontation at the steel plant. These actions won the premier a variety of congratulations, including an encouraging message from his predecessor, George H. Murray, who was also prone to attribute industrial difficulties to radical influences: "I am glad to see you are taking no nonsense from the 'reds'. That is the proper attitude, even if a political issue were created."⁹

The steel strike did not materialize as expected, but before their departure from Sydney in May, "Armstrong's Army" embarked on a series of raids in quest of what was described as "literature of a seditious nature". Riding into Glace Bay on the evening of 14 May, a squad of provincial police performed a hurried search of the offices of District 26; they failed to uncover any literature of the desired type, but did seize the red flag which had been used in the May Day parade two weeks earlier. Returning the following night, the police also searched the homes of several radical leaders and union officers; at McLachlan's house they retrieved a copy of the constitution of the Red International. This reading matter was soon forwarded to Attorney-General O'Hearn, who by this stage was clearly contemplating legal action against local labour leaders: "Book found possession McLachlan filled with sedition," he telegraphed Premier Armstrong. "Will peruse 1919 amendment and King vs. Russell in Ottawa before advising you."¹⁰

The attorney-general waited to proceed. The opportunity came at the end of June 1923, in stormy events precipitated by the long-expected renewal of conflict at the Sydney steel plant. When the Besco board of directors once more rejected the union's request for recognition, the steelworkers launched a strike and began to shut down the plant on the morning of 28 June. For several days there were tumultuous scenes at the plant gates as crowds of pickets blocked traffic and attempted to prevent non-strikers from entering the plant; masked men broke into the plant and forceably removed maintenance men from the boilerhouses and coke ovens; attempts to read the Riot Act were met with howls of derision and well-aimed stones. As on previous occasions in Cape Breton, military aid to the civil power was invoked, and the first soldiers arrived from Halifax on 30 June and erected machine guns at the plant gates. The provincial police were also reassembled and arrived in Sydney on Sunday 1 July. That evening at about 7:30 p.m. a squad of sixteen mounted provincial police, led by Colonel Eric McDonald, charged through the pickets at the plant gates, swinging their clubs and driving the crowd before them into a underpass and up Victoria Road into Whitney Pier, attacking all who came in their path. The day would be remembered as Sydney's Bloody Sunday, or Sydney's Peterloo. As the news spread to the surrounding district,

9. Public Archives of Nova Scotia (hereafter PANS), E.H. Armstrong Papers, vol. 11A, file 15, p. 3828, G.H. Murray to Armstrong, 10 April 1923.

10. *Sydney Post*, 15 and 19 May 1923; PANS, Armstrong Papers, W.J. O'Hearn to Armstrong, 20 May 1923.

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the coal miners crowded into protest meetings to proclaim support for the steelworkers and to demand the withdrawal of troops and police. There was a 24-hour delay while the union officers presented the demands to company officials; then the sympathetic strike was underway. Throughout the coalfield, work stopped at midnight on 3 July and some ten thousand coal miners were on strike.¹¹

The following morning McLachlan composed the document which was to be the central piece of evidence in his prosecution. It was a circular letter to the local unions of District 26:

To officers and members of Local Unions:

Brothers: This office has been informed that all the Waterford, Sydney Mines and Glace Bay sub-districts are out on strike this morning as a protest against the importation of Provincial Police and Federal troops into Sydney to intimidate the steel workers into continuing work at 32¢ per hour. On Sunday night last these Provincial Police in the most brutal manner rode down the people at Whitney Pier who were on the street, most of whom were coming from Church. Neither age, sex or physical disabilities were proof against these brutes. One old woman over seventy years of age was beaten into insensibility and may die. A boy nine years old was trampled under the horses' feet and his breast bone crushed in. One woman was beaten over the head with a police club and gave premature birth to a child. The child is dead and the woman's life is despaired of. Men and women were beaten up inside their own homes. Against the brutes the miners are on strike. The Government of Nova Scotia is the guilty and responsible party for this crime. No miner or mine worker can remain at work while this Government turns Sydney into a jungle; to do so is to sink your manhood and allow Armstrong and his miserable bunch of grafting politicians to trample your last shred of freedom on the sand. Call a meeting of your Local at once and decide to spread the fight against Armstrong to every mine in Nova Scotia. Act at once. Tomorrow may be too late.¹²

At once a report from the secretary-treasurer and a call to arms, the letter was an attempt to explain the causes of the sympathetic strike and to spread the protest to the other coalfields in Nova Scotia. As usual with district correspondence, a stencil was prepared and copies of the letter, over McLachlan's signature, were placed in the mail to various locals in the district. Another copy was taken by district president Dan Livingstone, addressed to Besco vice-president D.H. McDougall, the senior company

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11. *Sydney Post*, 28, 29 and 30 June and 3 and 4 July 1923; *Maritime Labor Herald*, 7 July 1923. A useful selection of interviews and documents is presented in "The 1923 Strike in Steel and the Miners' Sympathetic Strike", *Cape Breton's Magazine*, 22 (1979). On the use of the police and armed forces see Don Macgillivray, "Military Aid to the Civil Power: The Cape Breton Experience in the 1920s", *Acadiensis*, III (Spring 1974), pp. 45-64.
 12. PAC, Records of the Department of Justice, RG13 C2, vol. 1233, *The King vs. James B. McLachlan*, pp. 4-5 [transcript of the case in the Supreme Court of Nova Scotia sitting as a Criminal Court of Appeal, 1923]. I am grateful to Mr. James M. Whalen of the Public Archives of Canada for his assistance in gaining access to this document.

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official resident in Cape Breton, and hand-delivered to the coal company offices in Glace Bay.¹³

The arrests came the following evening, 6 July 1923. Sydney police chief J.B. McCormick received a telegram from Attorney-General O'Hearn informing him that warrants had been issued in Halifax for the arrest of McLachlan and Livingstone. The charges were described by O'Hearn as "unlawfully publishing false tales whereby injury or mischief was likely to be occasioned to a public interest, namely the government and provincial police of Nova Scotia, contrary to Sec. 136 of the code". Following these instructions and trailed by a carload of provincial police, Chief McCormick and his deputy drove to Glace Bay and found their quarry at the union offices. When they learned the policemen's mission, McLachlan and Livingstone were reported "greatly surprised", but agreed to accompany the police to Sydney. The following day Chief McCormick drove the two men across the island to the Strait of Canso; they boarded the train for Halifax, where they were lodged in the county jail.¹⁴

The arrests had the effect of removing the principal union leaders from Cape Breton at the height of the industrial crisis. As vice-president Alex S. McIntyre had departed for the mainland coalfields, the *Sydney Post* commented that as a result of the arrests, "it is not now known who will direct the strike campaign". Indeed it soon became obvious that O'Hearn hoped the prisoners would be absent from the scene for a lengthy period of time. In Halifax an intense legal battle developed over the question of bail for the union leaders. When they appeared for a hearing before Halifax stipendiary magistrate M.B. Archibald on 8 July, Andrew Cluney, K.C., appearing on behalf of O'Hearn, argued that the prisoners were men of considerable public influence and "opposed allowing these men to be at large at the present time to go back to Cape Breton and continue to do acts to the injury of the public". On behalf of the prisoners, John A. Walker, a young lawyer and an associate of Harrington, argued that the stated offence was a relatively minor one and that bail should be granted as a matter of course; he also argued that the weight of evidence apparent against the accused should be taken into account: while the warrant stated the offence was committed in Halifax, it was a matter of common knowledge that the accused were both three hundred miles distant from the scene of the alleged crime. Bail was denied, but Walker persisted, and after applying for a writ of *habeas corpus* placed the argument before Justice J.A. Chisholm of the Supreme Court of Nova Scotia. Attorney-General O'Hearn appeared in person to oppose the petition, but Justice Chisholm allowed bail and the men were released on 11 July.¹⁵

13. The King vs. McLachlan, pp. 45-7. A more abbreviated, but similar, report was contained in the RCMP's secret weekly report on radical activities, 12 July 1923: "on Sunday night the Provincial Police charged the crowd through the subway and Victoria Road, with the result that quite a number of strikers and other people were injured. . . .": see PAC, King Papers, MG26 J4, vol. 89, p. 68755.

14. *Sydney Post*, 7 July 1923.

15. *Sydney Post*, 7 and 9 July 1923; *Dominion Law Reports*, 4 (1923), pp. 1047-9. At O'Hearn's insistence, the issue of bail for the prisoners was considered by a panel of supreme court judges on 24 July 1923, who confirmed the actions of Justice Chisholm.

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Having won their first legal battle, the union leaders returned from jail in time to participate in an extraordinary episode which almost changed the outcome of the 1923 strike. As the events of the strike unfolded, the Governor-General, Lord Byng of Vimy, was wending his way by train on an extended tour of the Maritimes, timed to coincide with the 150th anniversary of the landing of the *Hector* at Pictou. Prime Minister William Lyon Mackenzie King was sufficiently embarrassed by the turbulent labour scene and the presence of federal troops to cancel his own plans to participate in the Pictou celebrations, but the Governor-General himself soon became involved in the industrial dispute. Together with Mayor Dan Willie Morrison of Glace Bay, a labour member of the provincial legislature, Livingstone and McLachlan requested an interview with Byng, who, after consulting the cabinet member in attendance, Pictou MP and Minister of National Defence E.M. Macdonald, agreed to meet them in his private railway car. The interview took place on 17 July, and at the end the four men shook hands; the two union leaders, teetotallers both, watched while the Governor-General and the mayor of Glace Bay shared a drink. The outcome of the discussion was later a matter of dispute. Mayor Morrison claimed that an agreement had been reached that the provincial police would be withdrawn within twenty-four hours of the miners' return to work and that a royal commission would be appointed to investigate the steelworkers' grievances. Macdonald insisted that the Governor-General had merely clarified the union's position and had no authority to conclude any agreement with the union leaders. Although the evidence suggests a minor constitutional crisis may have been in the making, the Prime Minister was prepared to overlook the ambiguities. King telegraphed Macdonald that he was prepared to offer the appointment of a royal commission in exchange for a return to work, and the following day he added that if the strike could be ended on such terms, "no time should be lost in agreeing to them".¹⁶

Before any action could be taken, the delicate situation was upset by other developments. Like Attorney-General O'Hearn, UMW President John L. Lewis had also been waiting to take action against the radical leadership in District 26. Before the strike, he had already ordered that new elections be held in the district, a step which did not greatly alarm the leadership, as elections were already scheduled for the month of August. Responding to an appeal from Besco officials at the outbreak of the sympathetic strike, Lewis issued a warning that a sympathetic strike was in violation of contract and against union policy, and that the withdrawal of maintenance men from the mines was also indefensible. After some delay, vice-president McIntyre replied on behalf of the executive, stating "our international must understand that its jurisdiction does not give it authority to prohibit workers in Canada waging a political struggle against use of armed forces which are being used to smash our labour movement." Lewis was unconvinced, and on the evening of 17 July he released a long telegram

16. The episode may be followed in PAC, King Papers, E.M. Macdonald to King, 16, 17, 21 and 22 July 1923; King to Macdonald, 17, 18 and 22 July 1923 and F.A. MacGregor to Macdonald, 20 July 1923. See also C.B. Wade, "History of District 26, United Mine Workers of America, 1919-1941", (unpublished manuscript, 1950), chapter IV, where the account is based on interviews with D.W. Morrison.

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suspending the district's autonomy. The executive officers were ordered removed from office and the membership were instructed to return to work. Silby Barrett, the former international board member defeated at the August 1922 elections, was appointed provisional president of District 26. Lewis' letter to Livingstone concluded with formidable charges:

I am familiar with the constant intrigue between yourself and your evil-genius, McLachlan, and your revolutionary masters in Moscow. . . . No doubt the present strike in Nova Scotia corresponds to your idea of a revolution against the British government and is in pursuance thereof. . . . You may as well know now as at any time in the future that the United Mine Workers is not a political institution and cannot be used to promote the fallacious whims of any political fanatic who seems to strike down the established institutions of his government.

The arrest of the union leaders had failed to break the coal miners' solidarity, but Lewis' intervention was the blow that defeated the sympathetic strike. The coal miners gradually returned to work during the remainder of the month, and the steel strike was formally ended on 2 August.¹⁷

Meanwhile the legal charges against McLachlan and Livingstone made their way through the Nova Scotia courts, and were forwarded for trial at the fall criminal term of the Supreme Court of Nova Scotia in Halifax. On 24 September Walker attempted to have the trial removed to Sydney, where the court would also be sitting to consider criminal cases; he argued that a trial in Halifax imposed heavy expenses on the defendants and that it was proper for the trial to be conducted in the locality where the alleged offence was committed. O'Hearn appeared in court to oppose this motion, stating that Halifax was the appropriate venue since the initial charges had been based on the appearance of McLachlan's letter in the Halifax *Morning Chronicle*. It had not been shown, he argued, that a fair trial was not to be had in Halifax, whereas in the Sydney district juries had recently brought in at least 18 "no bills" in looting and assault cases arising from the industrial conflict.¹⁸ He might also have noted that his own attempt to try Malcolm Bruce for making seditious utterances at a public meeting in Glace Bay in May had failed disastrously when the charges were dismissed by a local court in June.¹⁹ O'Hearn prevailed, and on 2 October the grand jury returned true bills in the charges against the two men.²⁰

17. *Sydney Post*, 12 and 18 July 1923; *United Mine Workers' Journal*, 1 August 1923.

18. *Sydney Post*, 17 August and 22 and 25 September 1923.

19. On the case of Malcolm Bruce, see *Halifax Chronicle*, 8 May 1923; *Sydney Post*, 30 May 1923; *Sydney Record*, 7 June 1923, and the account by Dawn Fraser, *Echoes from Labor's War: Industrial Cape Breton in the 1920s* (Toronto, 1976), pp. 60-5. The search of McLachlan's house in May 1923 had been carried out on the strength of a search warrant for Bruce.

20. *Sydney Post*, 3 October 1923. By this stage it was also determined to proceed separately against the two men. Livingstone's case was held over to February 1924, and subsequently to October 1924, but the case was never prosecuted.

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During this time there had been a subtle shift in the nature of the charges in the case. Originally McLachlan and Livingstone were charged under Section 136 of the Criminal Code for “publishing false news”, but the indictment presented in court in October referred instead to “a seditious libel concerning His Majesty’s Government of and for the Province of Nova Scotia and the Provincial Police established under the laws of the Province”. The indictment then cited the “seditious matter” in full, namely the text of McLachlan’s circular letter. The indictment also stated that the offence had been committed on three separate occasions — in Glace Bay, in Halifax, and in Thorburn, a mining town in Pictou County.²¹ The revision of the charges made the offence a substantially more serious one. Offences under Section 136 were punishable by a term of one year’s imprisonment, whereas each charge of seditious libel was punishable by up to 20 years’ imprisonment, a penalty which had been increased from two years under the Criminal Code amendments of July 1919.²²

The amended charges also implied a change in the nature of the case against the union leaders. Initially, the focus was on the veracity of McLachlan’s letter, but under the revised charge, attention was focused on the intentions of the author. In his opening remarks at the trial on 15 October, O’Hearn confirmed this view of the case with the following explanation of the significance of McLachlan’s circular letter: “the issue is not whether the statement published is false or true. There are many things which are true but cannot be published. It is not the question of the truth of the statement, but a question of whether it was said with the intention of creating dissatisfaction and disturbance.”²³ “Away false teachings of my youth,” commented Dawn Fraser. “It’s now a crime to speak the truth!”²⁴

Nevertheless, the Crown’s case relied heavily on detailed descriptions of the events at the steel company gates. Several witnesses described the disorderly scenes at the steel plant in some detail. Captain D.A. Noble, head of the Besco police force, stated that rioting had continued at the steel plant continuously from Thursday when the strike began until Sunday night; Colonel Eric McDonald, commissioner of the provincial police, described the scene on his arrival on Friday, 29 June: “the crowd outside the gate seemed to have control of all that part of the town, and the local police or steel company’s police were not able to appear on the street.” The witnesses went on to describe the efforts of the provincial police to, in McDonald’s words, “send the crowd home”, and Sydney police chief J.B. McCormick reported there was “practically no trouble” at the plant gates afterwards. Mining engineer Walter Hurd underlined the importance of company efforts to control access to the plant, stating that

21. *The King vs. McLachlan*, p. 4.

22. *Revised Statutes of Canada*, 1906, vol. III, pp. 2453-4; *Statutes of Canada, 1919*, Chapter 46, pp. 307-10. The 1919 amendments also created a new section of the Criminal Code, Section 97A, which like the repeal of Section 133, also broadened the scope of seditious offences. See also J.B. Mackenzie, “Section 98, Criminal Code and Freedom of Expression in Canada”, *Queen’s Law Journal*, 1 (1972), pp. 469-83.

23. *Sydney Post*, 16 October 1923.

24. Fraser, *Echoes from Labor’s War*, pp. 70-1.

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if left unattended the potential damage to the coke ovens would involve a cost of \$2 million to repair.²⁵

The remainder of the prosecution's case focused more closely on McLachlan's opinions and actions. The book which had been taken from McLachlan's house in May was entered as an exhibit, as was a copy of the published minutes of the 1922 district convention; excerpts from the radical resolutions of that meeting were read into the record. Colonel McDonald reported also that in a meeting with company officials on 3 July, in negotiations to avert the sympathetic strike, McLachlan had stated the following words: "to hell with the property of the British Empire Steel Corporation". By calling the union's office secretary, it was established that McLachlan had indeed authored the circular letter of 4 July, a point confirmed by Canadian Press correspondent Andrew Merkel, who had verified the authenticity of the document with McLachlan. Two union members from Pictou County were called to testify to the receipt of the letter by union locals in that district. The news editor of the *Morning Chronicle* testified that he had published the document — under the headline "Miners are duped by the circulation of false statements" — in the 6 July edition of the Halifax newspaper.²⁶

The prosecution called a total of twelve witnesses; the defence called none. When witnesses began to give evidence regarding events in Sydney, Harrington objected to testimony on this subject; if the truth of McLachlan's statement was not an acceptable defence, then evidence of the events should not be allowed. O'Hearn replied that the purpose was to show "general industrial disorder in Cape Breton", since "seditious intention shall be judged from the times in which the thing was done." Judge Mellish ruled that the evidence was to be allowed. Harrington then objected that some thirty witnesses would be required to present the defence's view of the events. As the defence was financially unable to bring witnesses from Cape Breton, he would be bound to move for a change of venue. Judge Mellish in response noted simply, "you are objecting to the evidence on the ground that you have not witnesses to meet it; I rule that is a bad ground; that is the short end to that." At the end of the trial Harrington placed a formal motion for a change of venue, on the grounds that "there is no possibility of the defendant getting witnesses here."²⁷

Despite the lack of defence witnesses, Harrington and Walker were able to draw out some relevant evidence in their cross-examination of the Crown's witnesses. It was established that the proposal to join the Red International had been subsequently withdrawn by the district. In cross-examination of Colonel McDonald, Harrington was able to offer a corrected version of the statement attributed to McLachlan on 3 July: "if you put the women and children of the miners in one scale and the property of the

25. *The King vs. McLachlan*, pp. 9-14, 22-6, 28-34, 38-42 and 51-2.

26. *Ibid.*, pp. 33, 45-7, 53-4, 58 and 60-4.

27. *Ibid.*, pp. 10-1 and 65. In the course of the trial the defence also presented objections to the form of the indictment, an irregularity in the selection of the jury, and the admission in evidence of the book found in McLachlan's home.

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Dominion Coal Company in the other, then I say if it is between the two, it is to hell with the property of the Dominion Coal Company.” It was established as well that McLachlan had not been present at the riotous scenes in Sydney, but that there was subsequently “quite a bit of talk” about the actions of the provincial police and the Sydney police commission had held hearings on the behaviour of the police. In his questioning Harrington was thus able skilfully to suggest that McLachlan’s account was not without foundation; indeed he was able to introduce into the proceedings the name and address of the pregnant woman assailed by the provincial police in one of the incidents referred to in McLachlan’s letter. Harrington also elicited evidence that conditions at the steel plant gates had appeared relatively peaceful for most of Sunday, 1 July, and he alleged that the provincial police were determined to, in words he attributed to Colonel McDonald, “put on a show about eight that night at No. 4 gate”. He implied also that the police might well have “passed the rum jar copiously around” before taking to the street.²⁸

Perhaps the most significant testimony was brought forth on Walker’s cross-examination of Andrew Merkel, the CP correspondent. Merkel explained the rather indirect route by which McLachlan’s letter had reached Halifax and appeared in the press there, thus providing the original basis for his arrest on charges of “publishing false news”. Arriving in Sydney on 4 July, Merkel went to the offices of the *Sydney Record*, a daily newspaper known for its sympathies for the Liberal government and the steel company. There F.W. Gray, the assistant to Besco vice-president D.H. McDougall, handed him a typewritten copy of McLachlan’s letter, which had apparently been prepared from the copy Livingstone delivered to company offices earlier in the day. This was the first time Merkel had seen the document, and, he recalled, “Mr. Gray suggested I put it on the wire and distribute it.” After speaking with McLachlan to confirm the authenticity of the letter, Merkel then filed his report, and the document appeared the following day in the *Halifax Morning Chronicle* and other newspapers. O’Hearn re-examined the witness, but Merkel firmly maintained that the document was not published in the press until after it was released by F.W. Gray. Harrington later emphasized the significance of this evidence in his final address to the jury: “if McLachlan is guilty for sending this letter to the locals of his union, why is not F.W. Gray of the steel company not also guilty for having it published? . . . Why aren’t there more people in [the] dock besides McLachlan?”²⁹

The most remarkable aspect of the trial, however, was the muted behaviour of the prisoner. Those who attended must have been disappointed to experience none of the legendary platform abilities which had made him such an effective performer at union meetings and conciliation boards. Instead McLachlan sat in uncharacteristic silence, arms crossed, pipe clenched firmly in his mouth, maintaining what one reporter described as “an air of sang froid” through the proceedings: “the worse [*sic*] he looked for, apparently, was disagreement by the jury.”³⁰ McLachlan spoke only once

28. *Ibid.*, pp. 15-22, 26-8, 34-8, 42-4 and 62-3.

29. *Ibid.*, pp. 54-5.

30. *Sydney Post*, 19 October 1923.

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during the trial. This was to interrupt O'Hearn's final address to the jury; when the attorney general claimed that a red flag had been seized at McLachlan's home, he interjected briefly, "there was no red flag; he never said it." A trivial point perhaps, but one that seemed to sound a note of frustration on McLachlan's part in the final hours of the trial. The powerful use of language was one of the strongest weapons in the labour leader's personal arsenal, yet McLachlan was never called as a witness nor invited to address the court. It is difficult to imagine him intimidated by lawyers or silent against his will; indeed one of the defence lawyers has recalled that McLachlan did not speak in court because he did not want to.³¹ In a trial in Cape Breton McLachlan would undoubtedly have insisted on a vigorous, personal defence; in Halifax, however, if not reconciled to a guilty verdict, he was doubtful enough to entrust his fate to the judgement of his lawyers.

The role of the trial judge, Justice Humphrey Mellish, had also affected the conduct of the case. The decision to admit evidence regarding "general industrial disorder in Cape Breton" apparently surprised the defence, yet Mellish supported this line of inquiry, on several occasions putting direct questions to witnesses regarding the Sydney disturbances. In Harrington's view, the refusal to allow a change of venue prevented the defence from presenting the witnesses necessary to refute the Crown's case. Also, although several items of evidence offered by the Crown were not accepted, Mellish did allow the Crown to introduce the copy of the constitution of the Red International collected at McLachlan's home in May.

The judge's charge to the jury was particularly important. In a marvelous circularity, Section 132 stated: "seditious words are words expressive of a seditious intention. A seditious libel is a libel expressive of a seditious intention." Nowhere in the Criminal Code was the crime of sedition actually defined. For the benefit of the jury Mellish quoted also the accepted authority of the day, Stephen's *History of the Criminal Law of England*: sedition embraced

all those practices, whether by words, deed, or writing, which fall short of high treason, but directly tend to have for their object to excite discontent or dissatisfaction; to excite ill-will between different classes of the King's subjects; to create public disturbances, or to lead to civil war; to bring into hatred or contempt the sovereign of the government, the laws or constitution of the realm, and generally all endeavours to promote public disorder.

Mellish qualified this sweeping definition by reading Section 133 of the Criminal Code, a section which specified the permissible scope of social criticism not to be considered seditious, beginning with the words: "no one shall be deemed to have a seditious intention only because he intends in good faith, (a) to show that His Majesty has been misled or mistaken in his measures; or, (b) to point out errors or defects in the government or constitution. . . ." Mellish need not have offered this qualification; he was apparently not aware that this section had been removed from the Criminal Code

31. Interview with John A. Walker, Halifax, 23 September 1976.

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in the amendments of 1919. He was, however, aware of the “more modern” penalty for sedition — up to 20 years’ imprisonment — enacted at the same time.³²

Mellish then turned to the case at hand. He indicated that there was no question as to McLachlan’s responsibility for publication of the document; the distribution of the letter to the union locals “in itself was a publication”; in the case of the appearance of the letter in Halifax — where there were no union locals — Mellish suggested the following reasoning: “I don’t think it unreasonable to say that when a document of that kind once became distributed in the way McLachlan intended it should be distributed that he would naturally expect it would be published all over Nova Scotia and get into the newspapers also.” As to the question whether the document was seditious under the definition provided, Mellish had few doubts: “it is capable of a seditious construction, I may tell you, gentlemen; and the next question for you is, whether it was intended that the construction should be put upon it.” In considering that issue, Mellish continued, it was relevant to consider the reasons why it was being urged that the military and the police be withdrawn from Sydney:

You are told by counsel for the defence that the police were there to break the strike. Was that the purpose for which the police were there? Or were the police there to maintain order? What interest had the Glace Bay miners in having the police removed from Sydney? . . . Was it to give the strikers a free hand to do as they had been doing before? That is a question for you to consider, as to whether this document was intended to operate and incite people against law and order, — the orderly government of the community by the executive of the people.

It was also relevant, to “consider his opinions, and those of the party whom he represents”; for the benefit of the jury he quoted excerpts from the radical resolutions of June 1922 and drew attention to the “seditious literature” in McLachlan’s possession.³³

Thus instructed, the jury retired to consider their verdict and returned one and a half hours later to pronounce the prisoner guilty on all three counts. It was hardly a surprising result. The attorney general had seen the case as a personal crusade against the man he regarded as the personification of Cape Breton Bolshevism. In his conduct of the case and in his charge to the jury, the trial judge had virtually directed a verdict of guilty; moreover, Judge Mellish, “who ruled over his court as would an emperor”, was well-known as “an outstanding corporationist on the bench” and on previous

32. *The King vs. McLachlan*, pp. 67-8.

33. *Ibid.*, pp. 68-70.

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occasions had displayed his judicial prejudices against the coal miners' union.³⁴ For their part, the defence lawyers had presented no coherent line of defence in the course of the trial. Their strategy seemed to be based largely on technical objections and perhaps the hope of a successful appeal. Harrington seemed surprised by the judge's decision to admit evidence of the Sydney disturbances and, probably unreasonably, accepted the argument that truth was no defence in a case of seditious libel. Although Harrington himself had drawn the parallel with the trial of Joseph Howe, he failed to recognize that one of the lessons of that case had been that this restriction could be easily evaded in the process of clarifying the defendant's intentions. The failure to present a single witness or to hear from the accused must surely have seemed curious to the jury, twelve citizens of Halifax and Dartmouth whose knowledge of conditions in industrial Cape Breton was no doubt limited. There we face another contrast with the trial of Howe, for although Howe addressed the jury at extraordinary length and with exceptional skill, it has also been pointed out that Howe faced a jury of peers and acquaintances who might be expected to be sympathetic to his position.³⁵ It may be excessive to claim that Harrington exploited the case to promote the fortunes of the Conservative party and prove the iniquity of the Liberal government, but nevertheless the defence was an ineffectual one.

The legal aftermath of the case continued for several months. The prisoner appeared for sentencing on 31 October. On his behalf, Walker made a strong plea for leniency and urged that the prisoner be given a suspended sentence; the attorney general replied that McLachlan had been fairly convicted of "a very serious offence against the law of Canada" and reminded the court that a conviction, "generally speaking, was designed for the purpose of impressing the community". Mellish pronounced a sentence of two years in Dorchester Penitentiary on each of the three offences, the sentences to run concurrently.³⁶ Walker immediately applied for bail pending an appeal on behalf of the prisoner. Chief Justice R.E. Harris — a former president of the Nova Scotia Steel and Coal Company — denied the application, and

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34. Opinions of Mellish are included in R.A. Kanigsberg, *Trials and Tribulations of a Bluenose Barrister* (Halifax, 1977), p. 36, and in an incomplete letter from Sydney to J.S. Woodsworth, 9 February 1924, in PAC, J.S. Woodsworth Papers, MG 27 III C7, vol. 11. He had in 1918 tried a case in which the Dominion Coal Company and several officials were charged with manslaughter as a result of a notable mine disaster (a case in which he directed the jury to deliver a not guilty verdict without leaving the box), and in 1922 Mellish had given a controversial interpretation of the Industrial Disputes Investigation Act which allowed Besco to implement an immediate wage reduction; "Mine Explosion in New Waterford, 1917", *Cape Breton's Magazine*, 21 (1978), pp. 1-11; PANS, Records of the Supreme Court of Nova Scotia, "Opinion of Mellish, J., *UMW et al. vs. Dominion Coal et al.*", 10 January 1922; *Maritime Labor Herald*, 11 February 1922.
35. Joseph A. Chisholm, "The King vs. Joseph Howe: Prosecution for Libel", *Canadian Bar Review*, XIII (October 1935), pp. 584-93; J.M. Beck, "'A Fool for a Client': The Trial of Joseph Howe", *Acadiensis*, III (Spring 1974), pp. 27-44. The jury included the following: one accountant, two truckmen, two farmers, one grocer, one butcher, one messenger, one porter, one waiter, one barber and one carpenter.
36. *Sydney Post*, 1 November 1923.

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McLachlan remained in the Halifax county jail until the appeal was decided on 8 January 1924.

The appeal was heard on 17 December 1923 before the province's newly established court of criminal appeal. The defence presented arguments based on eleven points of law, including errors on the part of the trial judge, defects in the indictment, an irregularity in the constitution of the jury, the improper admission of evidence, the court's lack of jurisdiction, and the prisoner's inability to make a full defence. With the concurrence of the four other judges sitting on the appeal, Chief Justice Harris delivered the judgement. In the light of Merkel's direct evidence on how the document reached the Halifax *Chronicle*, the conviction on the charge of publication in Halifax was set aside; on the other two counts the conviction was upheld. The judgement overlooked the fact that the Halifax charge had determined the unfavourable venue and ruled that the Supreme Court did have the jurisdiction to try McLachlan in Halifax on all three charges.³⁷ There was one further legal step in the case. On 29 January Walker presented a motion for leave to appeal the case to the Privy Council, and on 16 February 1924 this was granted. Justice Russell noted that at least one significant issue was at stake: "the use that may be made of books or documents found in the library of a suspected person presents a question of 'great general and public importance'." However, the matter never was submitted to the Privy Council, and the case passed on into the untapped obscurity of legal history.³⁸

Despite the legal issues raised in the case, there was little doubt in the minds of contemporaries that this was above all a political trial. While coal miners in Cape Breton passed resolutions protesting the outcome of the trial, Besco president Roy Wolvin was telegraphing his congratulations to Attorney General O'Hearn.³⁹ Soon after the conviction was announced, a flood of telegrams, letters and petitions began to arrive in the offices of the Minister of Justice in Ottawa, many of them inspired by appeals from the Nova Scotia Workers' Defence Committee.⁴⁰ From Cape Breton there were protests from local unions and public meetings, and, following the failure of the appeal, resolutions from the town councils in the coal towns and in Sydney requesting McLachlan's release. Most of the protests from across the country were from trades and labour councils and local unions, appealing not only for the release of McLachlan or for a new trial but also in some cases for the repeal of all the sedition laws. From his retirement in Oakville, Phillips Thompson wrote directly to the Prime

37. *Nova Scotia Law Reports*, 56 (1924), pp. 413-31; *Canadian Criminal Cases*, XLI (1924), pp. 249-62. The first of these states, incorrectly, that Judge Mellish served as a member of the appeal court on this case.

38. *Dominion Law Reports*, 1 (1924), pp. 1109-12; *Crankshaw's Criminal Code of Canada*, 7th edition, p. 577.

39. *Sydney Post*, 22 and 24 October 1923; Nova Scotia, Royal Commission on Coal Mining Industry [Duncan Commission, 1925], "Minutes of Evidence", p. 1085.

40. The Nova Scotia Workers' Defence Committee, which may be considered a precursor of the Canadian Labour Defence League, raised more than \$12,000 between July 1923 and January 1924 on behalf of McLachlan and others arrested in the industrial conflicts in 1923; Wade, "History of District 26", chapter IV.

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Minister, warning his old acquaintance, "it would be much to be regretted should Canada follow the bad example of the degenerate republic across the border, with its judicial frame-ups, its scores of political prisoners and its brutal suppression of free speech. . . ."41 In the House of Commons and on speaking tours, J.S. Woodsworth took a close interest in the case and also pressured the government to release McLachlan.⁴² Similarly, the executive council of the Trades and Labour Congress of Canada made a case on McLachlan's behalf at their annual meeting with the Dominion cabinet in January 1924.⁴³

As it became clear the government might take action to release McLachlan, there were also counterprotests. The Employers' Association of Manitoba, supported by the Winnipeg Board of Trade, warned against such action: "it would have a most injurious effect on this country and result in further acts of sedition and lawlessness and disobedience to the authority of the State."⁴⁴ Two Nova Scotia Liberal MPs expressed concern at the possible consequences of McLachlan's release, and Attorney General O'Hearn met with the solicitor general to explain his view that "it is not in the interests of peace and order in the community that he should receive any clemency while he maintains his present defiant attitude."⁴⁵ Besco president Roy Wolvin also wrote to the Prime Minister to express his views:

I have had much experience with this man's activities and I consider him a dangerously clever "Red". He has cost the coal mining companies of Nova Scotia many millions of dollars and the miners an equal amount. Some leaders in this district today will say with bravado to let him come back but I do not agree with them. He is the concentrated cause of past unrest in this district and with him away for a few years, possibly, his teachings may be forgotten.⁴⁶

McLachlan was released from Dorchester Penitentiary on 5 March 1924 on a ticket-of-leave which required him to report regularly to the local chief of police until his sentence formally expired on 30 October 1925. When he reached New Glasgow late on a rainy evening, he received a "triumphal reception" from the Pictou County miners. The Academy of Music was packed to the doors when McLachlan appeared on

41. PAC, Records of the Department of Justice, RG13 C2, vol. 1233, file 25777, Phillippe [sic] Thompson to W.L. Mackenzie King, 5 December 1923 (copy).

42. *Maritime Labor Herald*, 29 December 1923; PAC, Woodsworth Papers, vol. 2, O.D. Skelton to Woodsworth, 28 March 1924; then Dean of Arts at Queen's University, Skelton expressed surprise at the "mediaeval interpretation" of seditious libel which appeared to prevail in the case; also, he wondered why it was that strong statutory declarations prepared on behalf of the defendant regarding the disturbances in Sydney had not been offered in evidence.

43. PAC, Trades and Labour Congress of Canada, Executive Council Minutes, MG 28 I103, 11 and 12 January 1924; *Sydney Post*, 15 January 1924.

44. PAC, Records of the Department of Justice, RG13 C2, vol. 1233, file 25777, Charles Roland to Sir Lomer Gouin, 18 December 1923.

45. *Ibid.*, T.L. Kelly to W.L.M. King (copy), 10 January 1924; G.W. Kyte to E.J. McMurray, 18 January 1924; E.J. McMurray, "Memorandum for Mr. Clarke", 8 January 1924.

46. PAC, King Papers, R.M. Wolvin to King, 10 January 1924.

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the platform, "and the building fairly rocked with applause". The cheering coal miners found his fighting spirit undiminished by his time in jail. Entertaining the audience at length with the details of his trial, ridiculing the attorney general's statements, McLachlan explained the nature of his crime:

Sedition, said Mr. McLachlan, is when you protest against the wrongs inflicted on working men; when you protest against the resources of the province being put in the control of men like Roy Wolvin; when wage rates are forced on you without your consent. These things will be given back to the working class and their wrongs will eventually be redeemed. If you say that strongly enough, you are liable to get into jail for sedition.⁴⁷

Obviously unrepentant, McLachlan left on the midnight train for another hero's welcome in Cape Breton. In Glace Bay he would be asked to take on the editorship of the *Maritime Labor Herald*, and through this newspaper and later the *Nova Scotia Miner*, his remained a powerful voice in industrial Cape Breton. Yet the events of 1923 had marked a turning point in McLachlan's public career. Removed from union office, convicted on criminal charges, he had passed the peak of his influence among the coal miners.

In this the prosecution had enjoyed some success, and the conviction of McLachlan would be remembered as one of the major achievements of O'Hearn's stint as attorney general. For O'Hearn, however, it was a shortlived triumph; within a month the incorrigible McLachlan was soon repeating the same "seditious libel" which had resulted in his conviction, and these were by no means the most inflammatory of his public declarations over the following years. The arrest and conviction of McLachlan had not ended the influence of the radicals, nor resolved Cape Breton's industrial problems. It was the intervention of John L. Lewis, rather than the arrest of McLachlan, which broke the sympathetic strike in July 1923. When the UMWA restored the district's independence in September 1924, the coal miners immediately installed a slate of officers well-known as McLachlanites, and in most cases also members of the Workers' Party. The long struggle against Besco continued, and the final confrontation came in 1925. Like most of the Liberal MLAs, O'Hearn went down to defeat in the Liberal rout in July 1925; he later became a judge of the Halifax county court. For Gordon Harrington, though he lost the case, the trial helped confirm his reputation as a friend of labour's cause and that in turn helped the Conservative party sweep to victory in 1925; Harrington and the Conservatives carried all the seats in industrial Cape Breton in 1925, he and Walker both entered the new cabinet, and Harrington became premier of the province in 1930.

"Listen, my children, and you shall know/ Of a crime that happened long ago." In the narrative verse of Dawn Fraser, "The Case of Jim McLachlan" easily entered the popular culture of industrial Cape Breton.⁴⁸ Elsewhere, however, the case of The

47. *The Workers' Weekly* (Stellarton), 7 March 1924.

48. The first version of Dawn Fraser's "The Case of Jim McLachlan" appeared in the *Maritime Labor Herald*, 16 February 1924; see Fraser, *Echoes from Labor's War*, pp. 48-60.

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King vs. James B. McLachlan subsequently attracted little notice. One of the few writers to refer to the case considered that, even under the Supreme Court of Canada decision in the Boucher case in 1951, which tended to narrow the scope of seditious offences, McLachlan might still have been convicted.⁴⁹ Yet the history of this case surely reminds us that there is a need for greater attention to the establishment of historical context in studying issues in the history of Canadian law. While it is customary to scrutinize the intentions of the accused, in political trials such as McLachlan's it is necessary to examine other factors as well. "Depending on the questions asked," David Flaherty has rightly noted "legal history can find itself closely allied with political, social, economic, or intellectual history."⁵⁰

In this case the law of sedition had been used not only to curtail freedom of speech and to punish labour radicalism. In a day when the law allowed easy access to armed force in industrial disputes and offered no support for workers seeking union recognition, the arrest and prosecution of McLachlan came as a challenge to the growth of labour organization in the industrial community and particularly to the legitimacy of the sympathetic strike. Finally, let us also consider that the case belongs to a transitional moment in Canadian labour history, a period when the rule of force was gradually being supplanted by the rule of law. The use of military aid to the civil power, for instance, was being abandoned in labour disputes, largely as a result of the discreditable Cape Breton experiences of 1922 and 1923; in the meantime, the laws which could be used against radicals and unionists had undergone a considerable broadening in the wake of the Winnipeg General Strike and other anxieties of 1919. It was the misfortune of industrial Cape Breton and James Bryson McLachlan in 1923 to stand at the intersection of the old and the new; the sympathetic strike was challenged both by the rule of force and by the rule of law, leaving behind a legacy of considerable bitterness. All of this was closely observed by one of Walter O'Hearn's assistants in the McLachlan case, a young lawyer by the name of Angus L. Macdonald. As premier of Nova Scotia in 1937 he would introduce the Trade Union Act which promised to bring the steelworkers across the great divide separating the era of "labour's war" from the age of "industrial legality".⁵¹

49. Schmeiser, *Civil Liberties in Canada*, pp. 206-7 and 211.

50. David Flaherty, "Writing Canadian Legal History: An Introduction", in Flaherty, ed., *Essays in the History of Canadian Law*, I (Toronto, 1981), p. 4.

51. "The Coming of the Trade Union Act (1937)", *Cape Breton's Magazine*, 23 (August 1979). For subsequent national developments, see Laurel Sefton MacDowell, "The Formation of the Canadian Industrial Relations System During World War Two", *Labour/Le Travailleur*, 3 (1978), pp. 175-96.