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Résumé de l'article

En 1931, huit dirigeants du Parti communiste du Canada (pcc) ont été reconnus coupables en vertu de l'article 98 – une loi fédérale qui criminalisait la défense de la politique radicale – et le parti a été déclaré illégal au Canada. La Ligue de défense ouvrière (ldo), l'organisation auxiliaire responsable des affaires juridiques du parti, a mené une campagne intense visant à obtenir la libération des dirigeants du parti et l'abrogation de l'article 98. Cette campagne comprenait la distribution de brochures, l'organisation de manifestations et même la production d'une pièce de théâtre intitulée *Eight Men Speak*. Les représentants de l'État canadien, dirigés par le Premier ministre R. B. Bennett, ont répondu aux efforts du parti de manière oppressive. Les gardiens de prison ont tiré des coups de fusil sur la cellule du secrétaire général du pcc, Tim Buck, dans le pénitencier de Kingston, et Bennett lui-même a ordonné l'interdiction de la mise en scène de *Eight Men Speak* à Toronto. De telles réactions spontanées ont toutefois permis aux dirigeants de la ldo de mener un travail significatif. Cet article soutient que la ldo a habilement accentué sa propre répression, en conservant l'article 98 pertinent pour la population votante du Canada et en dénonçant le capitalisme et l'État canadien aux yeux du public canadien.

## ARTICLE

# “A Sharp Offensive in all Directions:” The Canadian Labour Defense League and the Fight against Section 98, 1931–1936

**C. Scott Eaton**

AT DUSK ON 20 OCTOBER 1932, the general secretary of the Communist Party of Canada (CPC), Timothy Buck, sat alone in his cell at Kingston Penitentiary. Moments later, pandemonium erupted. Soldiers had been hired by the prison’s warden to break up an inmate demonstration, and prison guards had been provided with guns for the occasion. These state officials had surrounded the prison and began firing shots into a number of the cells. Buck later recalled seeing them approach:

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

Prison guards and troops had fired both rifles and shotguns at Buck, but narrowly missed with each shot.<sup>2</sup> Outraged, the CPC later charged that “the government stands responsible for the attempted murder of Tim Buck.”<sup>3</sup> Notably, Buck had found himself in prison for being “an officer” of an “unlawful

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1. Tim Buck, *Yours in the Struggle: Reminiscences of Tim Buck*, ed. William Beeching & Phyllis Clarke (Toronto: NC Press, 1977), 221–222.

2. Canada, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa 1938) (hereafter *Archambault Report*), 80, 97.

3. Oscar Ryan, *The “Sedition” of A.E. Smith* (Toronto: Canadian Labour Defense League, District Central Council, 1934), 19.

organization” (the CPC). The law that criminalized his party was Section 98 of Canada’s Criminal Code.

The bill that codified Section 98 was introduced into Canada’s House of Commons on 27 June 1919 by then Minister of Justice, Arthur Meighen.<sup>4</sup> In its final form, it read as follows:

Any association ... whose professed purpose ... is to bring about governmental, industrial, or economic change within Canada by use of force, violence, or by threats of such injury, or which teaches, advocates, or defends the use of force ... in order to accomplish such change ... shall be an unlawful organization.<sup>5</sup>

Canada’s lawmakers designed Section 98 in an effort to eradicate radical organizations that favoured extraparliamentary tactics (e.g. organizing unions, conducting strikes, delivering soapbox speeches) in their attempts to effect fundamental social change. The law could be utilized quite broadly. If, during a trial, the Crown could convince the court that an organization advocated violence, then upon a guilty verdict that organization would be declared illegal in Canada, leaving its members, officers, and representatives to face a maximum sentence of twenty years’ imprisonment. Once an organization was officially deemed unlawful, only an individual’s membership needed to be established in court in order to secure a conviction. This could be achieved by producing evidence of the accused’s attendance at an organization’s meeting, their speaking favourably about the organization in public, or their distribution of the organization’s literature. The law stated that if evidence of this nature was given, “it shall be assumed, in absence of proof to the contrary, that [the accused] is a member of such unlawful association,” leaving the burden of proof on the accused, rather than the Crown, even in instances where no membership card could be provided.

Section 98 also aimed to curtail the distribution of radical literature. Anyone found in possession of or distributing literature deemed to be advocating violence as a means to accomplish “governmental, industrial, or economic change,” if convicted, faced a maximum punishment of twenty years’ imprisonment. Further, the law made it illegal for Canadians to conduct business with any organizations deemed illegal under the law. It forbade property holders to rent or lease their space to such associations and carried a maximum penalty of a \$5,000 fine, five years’ imprisonment, or both. Contemporary professor of law and ardent civil libertarian F. R. Scott criticized the law, emphasizing that “for permanent restriction of rights of association, freedom of discussion, printing and distribution of literature, and for severity of punishment,

4. Judy Fudge & Eric Tucker, *Labour before the Law: The Regulation of Workers’ Collective Action in Canada, 1900–1948* (Toronto: Oxford University Press, 2001), 108–109.

5. As cited in Richard Fidler, “Proscribing Unlawful Associations: The Swift Rise and Agonizing Demise of Section 98,” unpublished manuscript, Osgoode Hall Law School, 1984.

[Section 98] is unequalled in the history of Canada and probably of any British country for centuries past."<sup>6</sup>

Section 98 lay dormant for a number of years. In August 1931, however, the Royal Canadian Mounted Police (RCMP) in coordination with the Toronto Police Commission (TPC) arrested seven of the CPC's leaders: Tom Ewen, Tim Buck, Matthew Popovich, Tom Hill, Sam Carr, Malcolm Bruce, and John Boychuk. During the arrests, police also happened across two other Communists: Tomo Čačić, Yugoslavian-born member of the CPC – though not a member of the party's leadership – and Mike Golinski, a member of the Young Communist League (YCL).<sup>7</sup> The nine were charged with being both members and officers of an unlawful organization, contrary to Section 98 of the Criminal Code. In short, based on a plethora of CPC documents and publications, the Crown argued that one of the party's central objectives was "a deliberate, continuous, subtle plan or conspiracy ... to overturn by force, by violence, by bloodshed all the existing institutions of Church and State in Canada."<sup>8</sup> As a defence, the accused argued that the CPC did not advocate for a violent revolution, but rather, based on its philosophic beliefs, steadfastly argued that a violent conflict between the working class and the bourgeois class was a historical inevitability. The presiding judge was Justice William Wright, a 73-year-old prominent Liberal Party member who in 1929 had shown antagonism toward the CPC in a seditious libel case against Aarvo Vaara, the editor of the CPC's Finnish-Canadian newspaper, *Vapaus*. Wright's attitude remained unchanged in the trial of the CPC leaders, as evidenced by his charge to the jury, in which he attempted to tarnish the testimony of the accused:

If a man is charged with a serious crime, is he not interested in putting the most favourable view of the facts before the Jury? Is he not under a temptation to perhaps distort the facts so as to establish his own innocence? It is all a question for you, gentlemen; you are not obliged to accept the evidence of any witness.<sup>9</sup>

6. F. R. Scott, "The Trial of the Toronto Communists," *Queen's Quarterly* 39 (1932): 512–513.

7. Numerous sources affirm that Čačić and Golinski were arrested only by chance. John Manley states that Čačić was "a minor party functionary who had been in the wrong place at the wrong time." Further, Dennis Molinaro observes that Čačić was arrested only because he was at the office of the Workers' Unity League when the RCMP raided it: "Čačić's RCMP security file confirms that the service had no information on him before the trial." See Manley, "Audacity, audacity, still more audacity": Tim Buck, The Party, and the People, 1932–1939," *Labour/Le Travail* 49 (Spring 2002): 1; Molinaro, "A Species of Treason?: Deportation and Nation-Building in the Case of Tomo Čačić, 1931–1934," *Canadian Historical Review* 91, 1 (2010): 70; *Canada's Party of Socialism: History of the Communist Party of Canada, 1921–1976* (Toronto: Progress Books, 1982), 76. For a note on Golinski, see Lita-Rose Betcherman, *The Little Band: The Clashes between the Communists and the Political and Legal Establishment in Canada, 1928–1932* (Ottawa: Deneau, 1982), 174–175.

8. "Prosecution's Opening Address to the Jury," Record of Proceedings, *Rex v. Buck et al.*, Attorney General, RG 4, Series 1–1, Communist Party of Canada Papers (hereafter AG, CPC Papers), reel 36, 28L0138, 1–3, 14, Public Archives of Ontario (hereafter PAO).

9. "Charge to the Jury," Record of Proceedings, *Rex v. Buck et al.*, AG, CPC Papers, reel 37,

Despite a passionate and captivating three-hour address to the jury from Buck, who had defended himself throughout the trial, the jury took only two hours to deliberate. Each of the nine, save for Golinski, was convicted. Čačić received two years' imprisonment, and the others each received five.<sup>10</sup>

However, the convictions of the CPC leaders did not destroy the party, as the government had intended. The Canadian Labour Defense League (CLDL) – a CPC organization devoted to monetarily and strategically helping Canada's workers navigate the country's criminal process – worked tirelessly toward attaining both the release of the CPC leaders and the repeal of Section 98. Its campaign was intricate, utilizing a multitude of manoeuvres, from form letters addressed to Canadian government officials to a theatrical play that caricatured the government's repressive actions. In the years after the trial, public sympathy for the party grew, and membership in both the CPC and the CLDL increased dramatically. In 1934, Buck was released from custody a hero, and by 1936, the law that had imprisoned him was repealed.<sup>11</sup> While lawmakers had intended to thwart the efforts of the Communists, the conviction of the CPC leaders actually produced the opposite effect; as Ivan Avakumovic notes, when Buck was released from prison, he found that the CPC was actually "in much better shape than at the time of his arrest."<sup>12</sup>

This article assesses the CLDL's political manoeuvres in the aftermath of the 1931 trial. It asks the following questions: What was contained in the CLDL's blueprint for working toward the repeal of Section 98? How did the CLDL frame its arguments, and how did both the government and Canada's populace react? Ultimately, what results did its work produce? While the CLDL did not single-handedly manufacture the repeal of Section 98, its work kept both the CPC and the law newsworthy, preventing Mackenzie King from reneging on his promise to repeal the law when he was elected prime minister in 1935. Although J. B. Mackenzie argues that the repeal of Section 98 was a steadfast "Liberal policy" by the late 1920s, with the economy dwindling and an ever-intensifying international political climate, the implications of leaving Section 98 intact had to

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28L0176, 12, PAO.

10. The Crown had dropped the charges against Golinski prior to closing arguments. See Record of Proceedings, *Rex v. Buck et al.*, AG, CPC Papers, reel 37, 28L0129, 766–777, PAO. For a detailed description of the trial, see Scott, "Trial of the Toronto Communists"; Dennis G. Molinaro, "Section 98: The Trial of *Rex v. Buck et al.* and the 'State of Exception' in Canada, 1919–36," in Barry Wright, Eric Tucker & Susan Binnie, eds., *Canadian State Trials*, vol. 4, *Security, Dissent, and the Limits of Toleration in War and Peace, 1914–1939* (Toronto: Osgoode Society for Canadian Legal History, 2015), 324–353; C. Scott Eaton, "Capitalism on Trial: Section 98, the Communist Party of Canada, and the Battle for Legality in the Interwar Period," MA thesis, Simon Fraser University, 2015.

11. Ivan Avakumovic, *The Communist Party in Canada: A History* (Toronto: McClelland & Stewart, 1975), 87–90.

12. Avakumovic, *Communist Party in Canada*, 90. See also Manley, "Audacity," 11–15.

continually be made clear to Canada's lawmakers.<sup>13</sup> This is where the CLDL was so successful. Each piece of its literature and each protest it held was not simply a cultural expression, but rather, a calculated political manoeuvre. The organization elegantly used the repression of the CPC as a way to advance its legal agenda and to keep Section 98 relevant, stressing how the law was prejudiced. The organization was effectively able to place capitalism – as well as the Canadian state – on trial in the eyes of the Canadian public. To achieve this end, the CLDL's post-trial campaign saw a three-pronged approach: production of anti-capitalist literature that revealed some of the contradictions of capitalist justice; direct pressure on the government through letters, petitions, and demonstrations; and sensational responses to oppressive state behaviour.

### A Brief Historiography

THE EVENTS SURROUNDING SECTION 98 and the conviction of Buck and the other party members represent an important episode in the history of the relationship between the Canadian state – e.g. federal and provincial governments, judiciary, police – and the CPC.<sup>14</sup> Although it has recently seen renewed attention, the party's role in these events has not been afforded the attention that it merits. There are at least two reasons for this. First, historians who have assessed Section 98 have largely opted for a top-down approach, fixating on the government's motives for enacting such a repressive law.<sup>15</sup> Mackenzie,

13. J. B. Mackenzie, "Section 98, Criminal Code and Freedom of Expression in Canada," *Queen's Law Journal*, 1, 4 (1972): 480–483; Jaroslav Petryshyn, "Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labour Defense League, 1925–1940," *Labour/Le Travail* 10 (Autumn 1982): 50. Both scholars have noted that Mackenzie King promised to repeal Section 98, and that the House of Commons voted to do so numerous times throughout the 1920s – all on Liberal-introduced bills. Although this point has been used to contend that the election of a Liberal majority government in 1935 ensured the law's repeal, it is worth noting that no bills to repeal the law were introduced between 1930 and 1933, and the 1933 iteration was the last such bill to be introduced prior to the 1935 election.

14. This article opts to use Ralph Miliband's definition of the state. Miliband argues that "the government, the administration, the military and the police, the judicial branch, sub-central governments and parliamentary assemblies" all make up the state, and that state power is wielded "by the people who occupy the leading positions in each of these institutions." See Miliband, *The State in Capitalist Society: The Analysis of the Western System of Power* (New York: Quartet Books, 1973), 50. I use the word "state" to refer to officials across governments, police departments, and the country's judiciary.

15. F. R. Scott contemporaneously criticized the law in his 1932 article "The Trial of the Toronto Communists." As a civil libertarian, Scott was critical of the attack on the CPC. He saw Section 98 as hypocritical of state officials who claimed that they so desperately protected British institutions; it was an example of reactionary, rather than rational and well-reasoned, law-making. The CPC's strategic efforts, however, are missing from the narrative: the state plays the role of a despotic oligarchy while the accused party members passively accept their cruel fate. It has been over 80 years since Scott's piece was published, and still, the interpretation of the trial has changed minimally. Richard Fidler insists that a strong-armed

for example, has studied the attitudes toward Section 98 of many of the personalities in both the House of Commons and the country's judiciary. He traces the inception of the law to an overreaction of both Parliament and big business toward militant unionism, and he notes the political problems that arose with the law's repeal. But largely absent from the narrative is the CPC. In Mackenzie's scrutiny of the 1931 trial, for instance, he neglects to mention that Buck's defence was self-conducted, instead noting that "Hugh John MacDonald [appeared] for all defendants."<sup>16</sup> More recently, Dennis Molinaro has argued that Section 98 was a watershed in the creation of a Canadian national political identity, setting a precedent for allowing emergency legislation to be used during peacetime. While Molinaro has examined the trial of the CPC leaders, he is most interested in the law's role in deporting Canada's radicals and foreign-born communists. After the eight CPC leaders were convicted, he observes, the RCMP moved quickly to deport foreign-born members of the party. Such members were swept from across the country to Halifax, where they were put in front of a three-member board of inquiry picked by the Department of Immigration. The board's decision was binding, and of the eleven party members who had deportation hearings, ten were ordered deported – including Tomo Čačić. Though the CLDL fought hard to have these deportations delayed and overturned, it was no match for government officials who worked hard to have the party members removed from the country before the CLDL filed writs of *habeas corpus*. Although Molinaro's primary concern with Section 98 is not its importance to the party's history, he does argue that although the broad movement to repeal the law achieved its goal, its "win against the state did not cut very deep." The movement focused on a law, and a symbol of repression, rather than on state power.<sup>17</sup>

Secondly, historians of the CPC have long been uniformly consumed by a single debate: to what extent the party was tightly controlled from abroad – by the dictates of the Communist International (Comintern) in Moscow – and to

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Canadian state ensured the conviction of the CPC leaders in a backroom fashion. Crown prosecutors, he notes, were able to have the case's original judge replaced with Justice William Wright; such actions, Fidler remarks, reveal "the substance – and the very real limits – of the independence of the judiciary." Fidler, "Proscribing Unlawful Associations," 34. Lita-Rose Betcherman has also criticized the Canadian state for its blatant bias in the trial. For example, Justice Wright would not allow the CPC's counsel to offer an explanation of any of the party's Marxist literature, because interpreting these documents was the job of the jury. As Betcherman remarks, "the idea that the philosophy of Marx and Lenin could be understood without commentary from a few quotations displays, at best, the judge's naiveté." Betcherman, *The Little Band*, 192.

16. Mackenzie, "Section 98," 476. A similar story is presented in Thomas R. Berger, *Fragile Freedoms: Human Rights and Dissent in Canada* (Toronto & Vancouver: Clarke, Irwin, 1981), 127–162.

17. Dennis G. Molinaro, *An Exceptional Law: Section 98 and the Emergency State, 1919–1936* (Toronto: Osgoode Society for Canadian Legal History, 2017), 218. See also Molinaro, "Trial of *Rex v. Buck et al.*," 348–352; Molinaro, "A Species of Treason?"



what extent it was able to exercise authority at a local level. Earlier historians, writing between the 1960s and the 1980s, generally visualized Communist parties (CPS) in a structuralist manner, treating them as part of an international communist hierarchy with the Comintern in Moscow dictating the majority of their policies. William Rodney, for example, argues that "inevitably, the failure of the Canadian party to become a political force within the Dominion must be attributed to the Comintern, and ultimately, to the Communist Party of the Soviet Union."<sup>18</sup> Since the end of the Cold War, the narrative has transformed. Bryan Palmer, for example, lobbies for a new historical understanding of the existence of – and contemporary debates surrounding – Trotskyism as a means of understanding how CPS acclimatized in different countries outside of the Soviet Union.<sup>19</sup> Examining "dissident streams within the Bolshevik tradition," Palmer remarks, helps us to recognize "a revolutionary left that both learned from the Soviet revolution and its leaders and remained alive to the need to cultivate creatively transformative social movements rooted in the realities of non-Russian conditions and societies."<sup>20</sup> Other historians have stressed that communist history should be studied from the bottom up, looking at both national and local initiatives of national CPS. John Manley, for instance, asserts that despite the party leadership's staunch support for Stalin and his directives in the late 1920s, it was the local organizers and the party members themselves who determined the party's direction.<sup>21</sup> Nuanced

18. William Rodney, *Soldiers of the International: A History of the Communist Party of Canada, 1919–1929* (Toronto: University of Toronto Press, 1968), 160. For works similar to Rodney's, see Ian Angus, *Canadian Bolsheviks: The Early Years of the Communist Party of Canada* (Montréal: Vanguard, 1981); Avakumovic, *Communist Party in Canada*; Norman Penner, *The Canadian Left: A Critical Analysis* (Scarborough: Prentice Hall, 1977); Norman Penner, *Canadian Communism: The Stalin Years and Beyond* (Toronto: Methuen, 1988); Harvey Klehr, *The Heyday of American Communism: The Depression Decade* (New York: Basic Books, 1984); Theodore Draper, *American Communism and Soviet Russia* (New York: Viking Press, 1960).

19. Bryan D. Palmer, "Maurice Spector, James P. Cannon, and the Origins of Canadian Trotskyism," *Labour/Le Travail* 56 (Fall 2005): 91–148.

20. Palmer, "Canadian Trotskyism," 91–92.

21. John Manley, "Canadian Communists, Revolutionary Unionism, and the 'Third Period': The Workers' Unity League, 1929–1935," *Journal of the Canadian Historical Association* 5, 1 (1994): 167–194; John Manley, "'Communists Love Canada!': The Communist Party of Canada, the 'People,' and the Popular Front, 1933–1939," *Journal of Canadian Studies* 36, 4 (2002): 59–86; John Manley, "Communists and Autoworkers: The Struggle for Industrial Unionism in the Canadian Automobile Industry, 1925–36," *Labour/Le Travail* 17 (Spring 1986): 105–133. For similar works on the Communist Party USA, see Robin D. G. Kelley, *Hammer and Hoe: Alabama Communists during the Great Depression* (Chapel Hill: University of North Carolina Press, 1990); Randi Storch, *Red Chicago: American Communism at its Grassroots, 1928–35* (Chicago: University of Illinois Press, 2007); Jacob A. Zumoff, *The Communist International and US Communism, 1919–1929* (Chicago: Haymarket Books, 2015).



histories of the CPC such as these reveal much about the worldview of the CPC and the global hierarchy of which it was a part.

Jaroslav Petryshyn's 1981 article "Class Conflict and Civil Liberties" remains the best examination of the party's relationship with Section 98. Petryshyn's goal was to "reconstruct the origins and activities of the CLDL and assess its role in the turbulent and violent interwar years." Accordingly, he focuses on the strategic vision of the organization. He notes that although the CLDL began as an organization devoted to providing legal services and material relief to workers victimized by state oppression, the 1931 trial of the CPC marked a turn in the overall purpose of the League. "After the convictions," he remarks, "the CLDL shifted its emphasis somewhat from simply defending people to changing the law."<sup>22</sup> The League grew extremely interested in removing Section 98 from the Criminal Code, as well as other anti-labour laws from Canada's statute books. To this effect, it held a number of "Repeal Conferences," increased the number of publications that it produced (as well as the quantity it distributed), and boosted the numbers and intensity of demonstrations and meetings that it held. Indeed, in the two years after the trial of the CPC leaders, the CLDL disseminated approximately five million pieces of literature.<sup>23</sup> As Petryshyn has remarked, the CLDL was able "to act as a vehicle of legitimate dissent against the apparent submergence of democratic values and personal liberties."<sup>24</sup> Impressively, Petryshyn avoids getting engrossed in the debate regarding Moscow control. Though Petryshyn's is an important

22. Petryshyn, "Class Conflict," 49.

23. Petryshyn, "Class Conflict," 39, 49, 52.

24. Petryshyn, "Class Conflict," 63. Other academics have considered parts of the CLDL's campaign, assessing its literature in relation to the antagonism between the working class and the Canadian state in the Great Depression. Most of these works focus on *Eight Men Speak* – a political play produced by the CLDL and the Workers' Experimental Theatre that critiqued Section 98 – and identify the play as a cultural expression of Canadian radicals in the 1930s. Candida Rifkind, for example, comments on the play's role as a working-class weapon meant to comically mock the state's repression of the CPC: "Given the state's direct intervention into this performance ... resistance is at work in both the drama on stage and the larger performance in which it is nested. The play stands for, but is also part of, the processes of the law." Rifkind recognizes that the play was a legal tool of the CLDL; her primary interest, however, is on the play's cultural and stylistic importance to Canada's literary tradition and to ideas of femininity. Rifkind's work is part of a broader camp of English scholarship that is interested in radical cultural expression in the 1930s and whether it can be labelled as a tradition. Rifkind, *Comrades and Critics: Women, Literature, and the Left in 1930s Canada* (Toronto: University of Toronto Press, 2008), 141. See also Alan Filewod, "Performance and Memory in the Party: Dismembering the Workers' Theatre Movement," *Essays on Canadian Writing* 80 (Fall 2003): 59–77; Alan Filewod, "The Comintern and the Canon: Workers' Theatre, *Eight Men Speak*, and the Genealogy of *Mise en Scène*," *Australasian Drama Studies* 29 (October 1996): 16–32; Alan Filewod, *Committing Theatre: Theatre Radicalism and Political Intervention in Canada* (Toronto: Between the Lines, 2011); Bart Vartour, "Writing Left: The Emergence of Modernism in English Canadian Literature," PhD thesis, Dalhousie University, 2011.

article, the history of the CLDL, the CPC, and Section 98 is more complex than his work suggests.

Despite a small historiography on the party's relationship with Section 98 specifically, historians have had much to say about how workers have strategically responded to repressive laws. Writing in 1975, E. P. Thompson, in *Whigs and Hunters*, analyzed the nature of law and class relations:

It [the law] is clearly an instrument of the *de facto* ruling class: it both defines and defends these rulers' claims upon resources and labour-power – it says what shall be property and what shall be crime – and it mediates class relations with a set of appropriate rules and sanctions, all of which, ultimately, confirm and consolidate existing class power.<sup>25</sup>

Still, historically, the ruled have not merely been suppressed by the law, but have fought for their rights through legal procedures. "When it ceased to be possible to continue to fight at law," notes Thompson, people "still felt a sense of legal wrong." The ruled questioned the state's power and ultimately viewed this power as illegitimate.<sup>26</sup> Accordingly, Thompson notes that "if the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class's hegemony." Thus, in instances where a law is plainly exploitative, it is more easily challenged by the oppressed.<sup>27</sup> Palmer has documented such a process in a Canadian context. He discerns noticeable trends in how working-class protests have helped to shape Canada's laws. He describes the law in post-Confederation Canada – from its formative years until about the 1880s – as less about protecting rights and more about "which side could mobilize force more successfully."<sup>28</sup> In the field of labour law, this translated into a battle of whether or not workers were able to organize successfully. Persistent pressure from labourers in the form of strikes forced authorities to offer some concessions. The 1872 *Trades Union Act* was the most significant, as it legalized and safeguarded union activity. Of course, the Canadian government did not simply submit to the will of the working class, and this legislation was not necessarily the victory that workers perceived: "It granted unions status only if they followed certain legal guidelines, which none did, and it was quickly followed by other pieces of legislation that hemmed in what workers could do in strike situations." Still, in Palmer's mind, the law is not irrevocable, but is instead negotiated; the formulation of codified

25. E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975), 259.

26. Thompson, *Whigs and Hunters*, 260–261.

27. Thompson, *Whigs and Hunters*, 259–263.

28. Bryan Palmer, "What's Law Got to Do with It? Historical Considerations on Class Struggle, Boundaries of Constraint, and Capitalist Authority," *Osgoode Hall Law Journal* 41, 2/3 (2003): 471.

labour law in 19th-century Canada was a give and take between the country's ruling and working classes.<sup>29</sup>

Most recently, and perhaps most significantly, Stephen Endicott's *Raising the Workers' Flag* stresses the importance of studying the practical activities of radical organizations in Canada.<sup>30</sup> Endicott discusses the Workers' Unity League's (WUL) "Workers' Economic Conference" of 1932. This conference saw workers in Ottawa demanding "non-contributory unemployment insurance, shorter working days, and discontinuance of police-terror," as well as a delegation of workers storming the prime minister's office to engage in a heated debate with R. B. Bennett. While Endicott comments that the WUL first got approval from Moscow for the conference, he also points to its broader strategic importance:

The immediate impetus for the "On-to-Ottawa" trek, precursor of a more famous one three years later, came from the idea that when faced with repression the best response was not to retreat into dimly lit cellars but to carry out some public activity, as spectacular as possible, so as to gain attention for the plight of the people and for the solutions offered by a united front led by the communists.... Even if the trek did not visibly and immediately change the course of Canadian politics ... such a gathering could regenerate the determination and morale of the left and baptize many new workers into the world of organized resistance and collective struggle.<sup>31</sup>

Endicott's work is impressive because it examines the work of the WUL without its main emphasis being on whether Moscow was calling the shots. Instead, it offers important analysis of both the WUL strategies and its successes and failures. Moreover, his observation has obvious ramifications for the history of the CPC and Section 98. Regardless of its relationship with Moscow, during its campaign for the repeal of Section 98 – which took place during both the Comintern's Third Period and its Popular Front period – the CPC capitalized on the economic, social, and political realities of the time in order to substantiate its voice. Its campaign was undoubtedly conducted as spectacularly as possible, and its actions were more pragmatic than they were doctrinal, which resonated with a multitude of Canadians.

This article owes much to Petryshyn's work on the CLDL and to the new camp of CPC history spearheaded by historians like Endicott. It looks to continue in their footsteps. In this sense, it is not meant to be a systemic, legal history of Section 98, nor is it a history of non-party encounters with the law.

29. Palmer, "Historical Considerations," 471–473.

30. Stephen Endicott, *Raising the Workers' Flag: The Workers' Unity League of Canada, 1930–1936* (Toronto: University of Toronto Press, 2012). Endicott is critical of historians – including Palmer – who have characterized Canada's Communists as "'the product of subservience,' and 'slavish adherence' to the Comintern" (p. 340). See also Kevin Morgan, "The Trouble with Revisionism: or Communist History with the History Left In," *Labour/Le Travail* 63 (Spring 2009): 131–155.

31. Endicott, *Raising the Workers' Flag*, 132.

Rather, it is a detailed look at the CLDL's actions, an assessment of their strategies, and an interpretation of their contribution to the repeal of Section 98.

### The CLDL and Section 98: An Intricate Relationship

IN 1925, a DISPUTE IN DRUMHELLER, Alberta, erupted when the executive of District 18 of the United Mine Workers of America (UMWA) agreed to the terms of a new contract that saw wages reduced by 15 per cent, without putting the contract to the union's rank and file. The CPC – which had long been at odds with the UMWA, arguing that the international union did not represent Canadian interests – advocated for members to withdraw from the union. Shortly thereafter, the CPC organized a rival organization, the Mine Workers' Union of Canada (MWUC). When the mine operators refused to negotiate with the MWUC, its membership picketed Drumheller mines in an attempt to prevent members of the UMWA from working. The result was a violent conflict in which at least one miner was shot by Alberta's provincial police force and numerous members of the MWUC were arrested.<sup>32</sup>

As a result of these arrests, the funds of the MWUC drained quickly, making the operation of a protracted strike problematic. Tim Buck organized a small party meeting in an effort to establish a "non-partisan" committee for the purposes of raising funds for the Drumheller strikers' legal costs, such as lawyers' fees and court fines. Though aimed at immediate tasks, the committee resolved that the organization should be permanent and operate in the defence of workers who had been persecuted by capitalist forces attempting to quash the class struggle. The CLDL was the resulting organization. Although it was largely unsuccessful in defending the Drumheller strikers, the CLDL continued to fight for the rights of workers until 1940, when it was blacklisted under the Defence of Canada Regulations.<sup>33</sup>

The League's first general secretary was Florence Custance, a founding member of the CPC. Custance, however, became seriously ill in early 1929, and the position was given to A. E. Smith. When Custance passed away later that year, Smith took tight control of the CLDL along with Becky Buhay-Ewen, a long-time Marxist who had taken an active role within the CPC in worker education and in managing the party's major newspaper, *The Worker*.<sup>34</sup> Unlike

32. Allen Seager, "A History of the Mine Workers' Union of Canada, 1925–1936," MA thesis, McGill University, 1977, 16–53; Jaroslav Petryshyn, "A.E. Smith and the Canadian Labour Defense League," PhD thesis, University of Western Ontario, 1977, 99–101.

33. Petryshyn, "Smith and the CLDL," 102; Petryshyn, "Class Conflict," 62.

34. Buhay-Ewen, born in London, England, had immigrated to Montréal in 1913 with her family. Already versed in Marxist and Socialist theory, Buhay-Ewen quickly associated with many of North America's socialist organizations, including the Socialist Party of Canada and the One Big Union. She came to the CPC in 1922 – then the Workers' Party of Canada – and quickly rose through the party's ranks. Her connection to the campaign for the repeal of Section 98 was also very personal, as her husband, Tom Ewen, was one of the eight convicted

Buhay-Ewen, Smith had been acquainted with Marxism for only a few years when the CLDL was born. A long-time Methodist clergyman, Smith had been attracted to socialism in the early years of the 20th century. After his attempts to effect major reform within the Methodist church were thwarted, Smith drifted away from religion and toward the CPC, joining in 1925.<sup>35</sup> Although the CLDL maintained that it was “non-partisan,” its leadership – all high-ranking CPC members – ensured that it functioned as a legal apparatus for the CPC.<sup>36</sup>

The CLDL’s first national convention, in 1927, laid out the organization’s aims. Officially, there were eight goals. Four, however, demonstrated the CLDL’s general strategy:

To provide legal defense for all workers prosecuted for expressions of opinion or for working class activity;

To initiate and centralize special campaigns for the defence and release of working class victims of the courts in their struggle for the betterment of their conditions;

To work for the repeal of all anti-working class laws;

To collect material and give publicity to facts regarding the persecution of workers and to expose secret anti-labour activities, labour spy systems, etc.<sup>37</sup>

The CLDL’s platform showed that it was prepared to protect workers against convictions under anti-labour laws. For those workers who had been unjustly convicted and imprisoned, the League served to offer financial relief, organizing campaigns for the release of prisoners if the circumstances were correct.<sup>38</sup> The League’s aims also reflected its position as an auxiliary organization of the CPC. Its goal of repealing all anti-working-class laws was certainly more revolutionary than others, and one that adhered to communist theory. And the League was devoted to keeping the CPC brand alive and relevant by publicizing injustices that the capitalist system of justice perpetrated against Canada’s working class. Thus, the CLDL’s course of action was more fluid than it was dogmatically determined. At times, it acted with revolution and social change in mind, and at times its actions were responses to specific challenges.

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in the 1931 trial. For an excellent biographical sketch of Buhay-Ewen’s life, see Anne F. Toews, “For Liberty, Bread, and Love: Annie Buller, Becky Buhay, and the Forging of Communist Militant Femininity in Canada, 1918–1939,” MA thesis, Simon Fraser University, 2009.

35. Smith recalls reading Marx’s *Communist Manifesto* in 1917 and, shortly thereafter, preaching that “Jesus was a Communist.” Based on his readings, Smith attempted to make radical changes to the platform of the Methodist church in Brandon (e.g. changing one of the church’s goals from “the amelioration of poverty among the people” to “the abolition of poverty among the people”). By 1919, the church had resolved that Smith was no longer to preach on its behalf. See A. E. Smith, *All My Life: An Autobiography* (Toronto: Progress Books, 1977), 42–61.

36. For a detailed biography of Smith, see Petryshyn, “Smith and the CLDL,” 1–87. For a brief sketch of the life of Custance, see Rodney, *Soldiers of the International*, 164–165.

37. Petryshyn, “Smith and the CLDL,” 107–108.

38. Petryshyn, “Smith and the CLDL,” 107.

Section 98 presented an immense challenge to the CLDL. With large numbers of workers being arrested under the law throughout the country, the organization struggled to keep up with the amassing expenses associated with funding legal defences. Simultaneously, however, Section 98 presented the CLDL with an ideal opportunity to conduct meaningful work that would assist in the realization of its goals. Both the arrest and trial of the CPC leaders were by their very nature dramatic – and likely to gain an audience if appropriately marketed.<sup>39</sup> Accordingly, the CLDL prepared extensively for the trial.<sup>40</sup> From the outset, Smith was unconvinced that the jury would acquit the CPC leaders. On 13 October 1931, Smith wrote:

The atmosphere that is being prepared is bourne out by the speech of the Attorney General Price, who plainly stated that the purpose of the arrests and raids was to outlaw the Communist Party. ... The capitalist press is carrying on almost daily propaganda and agitation demanding the outlawry of the Communist Party, arrests and deportations. ... [I]t is obvious that these newspapers, these officials of law and high offices have already prejudged the case, making a "fair" trial practically impossible.<sup>41</sup>

Believing that a fixed guilty verdict was impending, Smith decided to contest this injustice by producing a counternarrative: the CLDL would "elect their own jury of workers from coast to coast" who were to be present in the courtroom "and make their own verdict as to the merits of the case and the individuals who [were] on trial." Twelve mock jurors were selected by and from Canada's "working class itself": six from Ontario, and one each from Vancouver, Alberta, Saskatoon, Winnipeg, Montréal, and Nova Scotia.<sup>42</sup> The responsibility of the self-styled "Workers' Jury" was to logically demonstrate that various state officials were deliberately attempting to suppress the CPC. They argued, for example, that "particular care was taken to exclude, during the final stages of the trial, those known to be friendly to the views of the accused. Not for

39. Tom Ewen and Tom Hill both evaded police for several days. Ewen, in fact, reported to the *Globe* that he would turn himself in to authorities once he had finished "arranging his personal affairs." See "Reds Rounded Up," *Globe*, 12 August 1931; "Two Communists, Bruce and Cohen, Arrested in City," *Vancouver Daily Province*, 12 August 1931; "Ewan Is Expected to Surrender Soon," *Toronto Star*, 13 August 1931; "Police Are Evaded by Ewan," *Globe*, 15 August 1931; "Police Bring Back Alleged Communist," *Toronto Star*, 15 August 1931; "Ewan Gives Up to Face Charge of Communism," *Toronto Star*, 17 August 1931.

40. Beyond strategy, the CLDL was largely responsible for gathering the necessary funds to finance the defence for the CPC leaders. This was not an easy task; on top of legal fees, bail for each man was set at \$15,000. See "Proceedings on the Taking of Bail," Record of Proceedings, *Rex v. Buck et al.*, AG, CPC Papers, reel 26, 28L0002-28L0014, PAO.

41. CLDL to all Workers' Rights and Anti-Deportation Conferences; to all United Front Defense Conferences, 13 October 1931, MS 00179, box 39, folder 18, Robert S. Kenny Collection, Thomas Fisher Rare Book Library, University of Toronto (hereafter RSK).

42. The pamphlet does not specify the cities in Alberta or Nova Scotia. See CLDL to all Workers' Rights and Anti-Deportation Conferences; to all United Front Defense Conferences, RSK.

twenty-five years have the city police been used so openly in a county trial.<sup>43</sup> At the end of the trial – after the jury returned a verdict of guilty, and the Workers’ Jury a verdict of not guilty – the CLDL published a pamphlet entitled *Not Guilty! The Verdict of a Workers’ Jury*. The pamphlet included a detailed description of the events of the trial, a preface written by prominent CPC member Oscar Ryan, and a previously published article by F. R. Scott entitled “Communists, Senators and All That,” which was critical of Section 98.

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

Despite all attempts to prevent them from explaining their case, they [the accused] made a scathing indictment of capitalist society and showed that it was capitalism that was on trial in this court. Capitalism, they stated, could promise nothing else but crises and misery. ... For three hours he [Buck] spoke, analytical, exposing the system of capitalism, still accusing his accusers! Buck showed clearly that it was the representatives of “law and order” who used force and violence against the workers.<sup>44</sup>

The Workers’ Jury endorsed the idea that instead of the CPC leaders, it was capitalism that was on trial. Further, they called on “the working masses of Canada, [and] all liberal-minded people to voice their indignation and protest against the convictions, to demand the release of these eight workers and the Repeal of Section 98.”<sup>45</sup>

*Not Guilty!* was the first pamphlet in a larger series of publications protesting the convictions of the CPC leaders and exposing the trial’s injustices. The CLDL also printed *An Indictment of Capitalism: The Speech of Tim Buck*, a complete transcript of Buck’s closing address to the jury, which included an extended introduction written by the imprisoned leader before he entered the penitentiary.<sup>46</sup> In a 1935 pamphlet, the CLDL claimed that the “issue sold like wild fire and today not a copy is left for sale.”<sup>47</sup> For further exposure, the League published a pamphlet called *The Story of the Trial of the Eight Communist Leaders: November 2nd to November 13th, 1931*. This pamphlet, written by “J.S.,” continued in the spirit of putting capitalism on trial. After listing the charges on which the CPC leaders were being tried, the author wrote:

43. Multiple people note that TPC had tried to keep workers out of the courtroom. See, for example, Betcherman, *The Little Band*, 183; Ryan, *Conscience for Canada*, 152. The Workers’ Jury also makes reference to this fact. See CLDL, *Not Guilty! The Verdict of the Workers’ Jury, on the Trial and Conviction of the Eight Communist Leaders* (Toronto: CLDL, National Executive Committee, 1931), 10.

44. CLDL, *Not Guilty!*, 11.

45. CLDL, *Not Guilty!*, 17–18.

46. Tim Buck, *An Indictment of Capitalism: The Speech of Tim Buck, Address to the Jury on November 12th, 1931 at the trial of the eight leaders of the Communist Party of Canada during November 2nd to November 13th, 1931* (Toronto: CLDL, 1931).

47. Frank Lucas, *In Defense* (Vancouver: CLDL, District Executive Committee, 1935), 9.



These are the charges they lay against Tim Buck and his comrades. This is what I, the Canadian worker, am condemned for. But I accuse those who condemn me. ... I accuse them of brutally clubbing men and women in workers' meetings. I accuse them of beating unemployed, starving workers over the head with truncheons. ... I accuse them of sending fifty thousand Canadian soldiers to be butchered, gassed, crippled and destroyed between 1914 and 1918. This is where force and violence is to be found.<sup>48</sup>

These pamphlets worked to produce a counternarrative that challenged the idea that communism was violent. Instead, the CLDL argued, the state's use of violence – through both the police and government-enforced conscription – invariably targeted the country's workers. Further, the country's courts operated in the name of the bourgeois class and were thus illegitimate. Thus, through these writings, the CLDL looked to expose state prejudices toward workers, to introduce Canadians to their worldview, and to recruit them for their project of unified resistance.

The next such publication surfaced in 1933. In April of that year, Joe Derry – a member of the YCL from York Township – spoke at a United Workers' Association meeting, where he decried war as a tool of the imperialist bourgeoisie and called on Canada's young workers to defend the Soviet Union in the event that it was attacked. Derry was arrested and charged under Section 98, and his trial date was set for December.<sup>49</sup> In cooperation with the CLDL, the YCL printed a pamphlet, *Section 98: Twenty Years for Fighting Hunger*, that dealt with the arrest of Derry. Instead of simply describing the events of the arrest, however, the pamphlet attempted to "reveal the essential facts characterizing this case ... in a novel way" – by satirizing the affair.<sup>50</sup> It reads as a transcript of Derry's trial, with over-the-top statements from characters such as Derry, the CLDL, and "The Iron Heel" – R. B. Bennett. Bennett's character, for example, is asked to respond to the statement that the Canadian government is "composed of and controlled by bankers and rich capitalists." He responds:

It is not true! ... If we, the rich people, are wealthy, it is because we earned it by the sweat of our brow. ... Section 98 is a divinely inspired law and must be used to preserve our sacred institutions. My advice is – keep away from Communism or those organizations which I consider red. It is not good for your health. We have the RCMP and jails, and we know how to use them.<sup>51</sup>

The conclusion of the publication was conceptually similar to *Not Guilty!* and *The Story of the Trial of the Eight Communist Leaders*, in that it reversed the

48. CLDL, *The Story of the Trial of the Eight Communist Leaders: November 2nd to November 13th* (Toronto: CLDL, National Executive Committee, 1931), 5.

49. "A Record of Section 98: Thirty Arrests under this Section since 1931," box 43, folder 11, RSK; "Smith Pinch-Hits as Main Speaker Barred at Border," *Globe*, 19 February 1934.

50. "Preface," *Section 98: Twenty Years for Fighting Hunger* (Toronto: Young Communist League of Canada, n.d.), n.p.

51. "The Iron Heel Speaks," *Section 98: Twenty Years*, n.p.

roles of the state and the working class: “it is not the YCL that is on trial – BUT THE CAPITALIST CLASS AND THE SYSTEM IT REPRESENTS.”<sup>52</sup>

Derry was only one of a number of Communists to be arrested under Section 98 after the 1931 trial. In fact, in the years after the trial, police forces and Crown attorneys began using Section 98 with such haste that the CLDL was flooded with clients to defend. A 1934 CLDL report notes this tendency:

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

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

Vancouver, December 27th, 1933 – Pete Driscoll, Princeton unemployed organizer, originally charged under Section 98, was convicted on a lesser charge and sentenced to forty-one days at hard labor. He conducted his own defense in court.<sup>53</sup>

In addition to arresting workers, police officers also used search warrants issued under Section 98 to raid meetings, homes, and premises of workers’ organizations and to seize “literature, records and other documents” they deemed to be of interest.<sup>54</sup>

Dave Chalmers, as the report notes, was arrested and charged under Section 98 in Port Colborne, Ontario, in June 1932. According to his file, Chalmers – a radical from Montréal – had attended a meeting where he had spoken “in favour of the release of the Communists imprisoned in Kingston.” When he began to use phrases such as “turning Imperialist war into Civil war,” the city’s chief of police feared that trouble was brewing and arrested Chalmers, charging him under Section 98. Upon reflecting on the file, Crown attorney Joseph Sedgewick determined that there was not enough evidence to take the charge to trial, as there was nothing to prove Chalmers’ connection to the CPC and nothing proving that he had advocated force or violence. “In fact,” Sedgewick noted, “the evidence was that during the speech he [Chalmers] decried the use of force or violence, stating that the Communist Party never had countenanced such tactics.” Sedgewick noted that upon conferring with the police, the case’s Crown attorney (“Mr. Cowper” – T. D. Cowper, K.C.), and Chalmers’ lawyer (“Mr. Brown” – Onie Brown, who had worked for the CPC in the trial of Buck et al.), he decided to dismiss the case, based partially on the fact that Mr. Brown had promised to take Chalmers out of Port Colborne.<sup>55</sup> The police, as these events suggest, were able to use Section 98 as a means to break up meetings that adopted a pro-Communist line, largely without repercussions,

52. “An Appeal,” *Section 98: Twenty Years*, n.p.; emphasis in original.

53. “A Record of Section 98,” RSK.

54. “A Record of Section 98,” RSK.

55. Joseph Sedgewick, “Report on *Rex v. Chalmers*,” AG, RG 4–32, File 1552/1932, PAO.

whether or not there was enough evidence to render charges against those arrested.

Because the use of Section 98 – as well as other anti-labour laws – had increased, the need to educate workers about what to do if arrested and charged with a crime became apparent. The CLDL's response was to print an educational pamphlet entitled *Workers' Self-Defense in the Courts*.<sup>56</sup> This brochure attempted to guide workers through the processes of a trial in the Canadian court system – from the moment of arrest to appealing verdicts or sentences – without the aid of a lawyer. The idea for an educational pamphlet of this nature was not original. In the acknowledgements section, the CLDL thanked the International Labor Defense of the United States of America (ILD) for use of its comparable pamphlet, *Under Arrest! Workers' Self-Defense in the Courts*.<sup>57</sup>

In *Under Arrest!*, the ILD noted the reason for the pamphlet's publication: "an ever-increasing burden is being thrown upon the forces of the International Labor Defense by the great increase in arrests. It cannot always provide the assistance of lawyers, unless the seriousness and political importance of the case requires it. Therefore we print this pamphlet."<sup>58</sup> Like the ILD, the CLDL was experiencing financial hardship. As Petryshyn has observed, by 1930 the CLDL was tackling more legal cases than its finances could handle, and it had accrued a deficit of approximately \$2,500. To make matters worse, in April 1931, J. L. Cohen pressed the CLDL to pay over \$1,300 in outstanding legal fees.<sup>59</sup> Still, the CLDL believed that self-defence in the courts served a greater purpose. In *Workers' Self-Defense*, the League remarked:

Workers are encouraged by the Canadian Labor Defense League ... to conduct, wherever possible, their own defense before the capitalist courts. The reason for this is not alone in the desire to avoid spending workers' money in paying lawyers' fees, but particularly because workers' self-defense plays an important role in exposing the nature of capitalist justice and in bringing out the class implications of the trial before the working class at large.<sup>60</sup>

56. CLDL, *Workers' Self-Defense in the Courts* (Toronto: CLDL, National Executive Committee, 1933).

57. Nor was the ILD the first organization to publish a workers' self-defence document. In the opening pages of *Under Arrest!*, the ILD remarked that such pamphlets were the brainchild of Elena Stasova, president of Comintern's International Red Aid – an organization of which the CLDL and the ILD were both members. See ILD, *Under Arrest! Workers' Self-Defense in the Courts* (New York n.d.), 4.

58. ILD, *Under Arrest!*, 6.

59. Petryshyn, "Class Conflict," 44. J. L. Cohen was a proficient labour lawyer who worked closely with the CLDL and defended some of the CPC's most prominent members, such as Beckie Buhay-Ewen, Tim Buck, and Harvey Murphy. For a biography of Cohen, see Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen* (Toronto: Osgoode Society for Canadian Legal History, 2001).

60. CLDL, *Workers' Self-Defense*, 3.

The CLDL believed that when workers defended themselves in court – as Buck had done – it helped to reveal the ways in which Canada’s judicial system was stacked against them. Hired lawyers could often get stuck in arguments pertaining to legal jargon. With self-conducted legal defences, however, workers were better able to challenge the class structures evident within the courtroom – and to provide important quotable quips for the country’s newspapers.

Workers were also reminded to underscore the class nature of their arrest. “You are charged,” the pamphlet reads, “with breaking a city by-law by distributing leaflets. ... You must point out that business firms, Liberal and Conservative parties, religious societies, etc., distribute leaflets without being arrested.”<sup>61</sup> Workers were encouraged to make frequent objections to the prosecutor’s questions, to the presentation of the Crown’s evidence, and to any evidence that did not specifically pertain to the charge.<sup>62</sup> On the whole, *Workers’ Self-Defense in the Courts* exposed some of the ways in which the court system was overtly unfair to the working class, all the while teaching people how to combat these challenges.

These pamphlets were important in the CLDL’s relationship to Section 98. Some worked as public service announcements, giving evidence of the law’s draconian character, while others offered tangible advice to individuals on how to fight back if they found themselves within the legal system’s purview. Publications, however, could not serve as the CLDL’s only method for forcing the repeal of Section 98, because they did not pressure the government directly. For this reason, the CLDL organized protests, petitions, and demonstrations to elicit a state response to their demands, bolstering the CPC’s image as a legitimate, non-violent organization.

The League did not have to act alone in its work, as the arrests and convictions of the CPC leaders sparked the interest of many party sympathizers. On 19 August 1931, for example, Ralph Spooner, director of the Canadian Civil Liberties Union (CCLU), wrote to Ontario’s Attorney General, W. H. Price, noting that “we have failed to see any acts of terrorism, or force, or violence, except that practiced and followed by police officers themselves.” At the end of his letter, Spooner warned Price that the CCLU would “give the matter proper publicity.”<sup>63</sup> Spooner’s actions provoked a response from the state. In early 1932, as Erika Dyck notes, the police in Toronto detained Spooner after he had created an organization called the Workers Educational Association of Canada. In one of the association’s circulars, Spooner asserts that he was physically assaulted by guards and imprisoned in the Mental Hospital of Ontario.

61. CLDL, *Workers’ Self-Defense*, 9.

62. CLDL, *Workers’ Self-Defense*, 14.

63. Ralph Spooner to W. H. Price, 19 August 1931, box 26, folder 1, RSK.

Spooner was later moved to Edmonton and deported to the United States as "an alleged dangerous maniac not desired in Canada."<sup>64</sup>

Price was a popular target among letter writers. One John J. Kennedy of Toronto reminded Price that it was the government's failure to properly deal with the country's economy that legitimized the CPC's platform in the first place. "I wished to God," he stated, "I could get this fact driven into your heads, that you yourselves are intirely respensible [*sic*] for the cause of having to pronounce this Judgement upon them [the CPC leaders] and others. ... [Y]ou fill the pens with the poor to overflowing, [with] victims more sinned against than sinning [who] should be occupied in legitimate labor."<sup>65</sup> This letter writer was cognizant of what the CPC called "capitalist justice," and he demanded that the state stop repressing Canada's workers.

Although some level of pressure was being lodged from outside of the CLDL, the organization worked hard to *systematically* increase the number and intensity of such anti-government protests. In February 1932, the CLDL hosted the "Eastern Canada Conference for the Repeal of Section 98 of the Criminal Code" (the Repeal Conference) in Hamilton, Ontario. Delegates from 23 towns, representing 166 organizations, were present. Smith offered an opening report in which he explained the nature of the trial and the purpose of the conference:

The verdict of guilty was to be expected in the courts of capitalism. ... The Communist Party was on trial not so much because of any advocacy of "force and violence" ... but because it has urged and led the masses to fight for bread, to demand the satisfaction of their pressing needs; because the Communist Party was an effecting, and perhaps the most effective, anti-Bennett organization and influence in Canada. ... The CLDL calls upon the conference to assume a sharp offensive in all directions against political reaction as in Section 98.<sup>66</sup>

The Repeal Conference was charged with the job of organizing a delegation to be sent to Bennett's office, as well as collecting 200,000 signatures on a petition for the release of the CPC leaders and the repeal of Section 98.<sup>67</sup>

To help with its offensive, the CLDL called on its membership and CPC-affiliated organizations. Almost immediately after the arrests of the CPC leaders, Price began receiving written protests from a breadth of labour organizations. On 17 August 1931, for example, workers from Saskatoon mailed a resolution to Price to "emphatically protest against the recent arrests of working-class leaders ... and against the attempts to declare illegal the Communist Party of Canada and thereby start a campaign to suppress working-class organization

64. Erika Dyck, *Facing Eugenics: Reproduction, Sterilization, and the Politics of Choice* (Toronto: University of Toronto Press, 2013), 50.

65. John J. Kennedy to Attorney General, 16 November 1931, box 39, folder 18, RSK.

66. Speech of A. E. Smith, Record of Proceedings, Eastern Canada Conference for the Repeal of Section 98 of the Criminal Code (hereafter Repeal Conference), Hamilton, 6–7 February 1932: Resolutions, Ottawa Deputation Reports, Proceedings, etc. box 26, folder 1, RSK.

67. Speech of A.E. Smith, Repeal Conference, RSK.

and expression as a whole.<sup>68</sup> On 22 August, the Lethbridge Miners Union mailed a similar resolution to Price, adding that they opposed the seizure of CPC books and literature related to the trial. Workers from Kirkland Lake, Sudbury, Cobalt, Ottawa, and Winnipeg, along with the Russian Workers' Club of Hamilton, the Workers Benevolent Association, the Ukrainian Labour Farmer Temple Association (ULFTA), and the Finnish Organization of Canada (FOC), among other groups, all sent resolutions to Price.<sup>69</sup> The support for CPC leaders was geographically expansive, and to maximize the effect of these letters, the CLDL created a blank, fillable resolution regarding Section 98, which it sent to labour organizations countrywide, to be completed and mailed to Bennett's administration.<sup>70</sup> Bennett and his cabinet continued to receive such letters protesting Section 98 until its eventual repeal.

In December 1932, the CLDL arranged a demonstration speaking out against both Section 98 and Bennett's administration. The pamphlet promoting the event denounced Bennett's attitude toward workers: "In the first eleven months of 1932 class terror against Canadian Workers totalled at least 754 arrests, 184 convictions, ... 44 political deportations, and one murdered [*sic*] – this is Bennett's Iron Heel answer to the starving masses: Arrests, Jailings, Deportations and Murder." The League invited Windsorites to show up in Lanspeary Park and show their support for the demand of the release of all workers "jailed for their labor activity."<sup>71</sup>

Beckie Buhay-Ewen took a more creative approach to organizing a protest. She organized a debate with Raymond Morand, Conservative MP of Essex East, Ontario, and Minister without Portfolio. When Morand declined by letter to attend, Buhay-Ewen changed the event description – from a "debate" to a "talk" – and wrote a fiery response that was featured on the event's poster:

Dear Mr. Morand,

Your letter is typical of the attitude of your party, the government, and the capitalist class generally. ... The workers know, Mr. Morand, that Section 98 is capitalist class legislation designed to suppress the workers' movement. ... We will continue to rally thousands upon thousands against Section 98 – to leave no stone unturned until the men your government imprisoned in Kingston are freed and Section 98 is repealed.

68. Mass Meeting of Saskatchewan Workers to W. H. Price, AG, CPC Papers, reel 38, 29L0588, PAO.

69. AG, CPC Papers, reel 38, 29L0566–29L0630, PAO.

70. "Resolution Re: Section 98 of the C.C.C.," box 39, folder 18, RSK.

71. CLDL, "Demonstrate! Protest on Dec. 16th, Lanspeary Park, Friday, 2:30PM," box 39, folder 18, RSK.

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

Yours Truly,  
Beckie Buhay-Ewen<sup>72</sup>

Buhay-Ewen was able to simultaneously discredit the Conservative Party and organize an audience of people sympathetic to the CPC in a show of strength against Section 98.

Perhaps the most direct form of protest, however, took the form of delegations sent to talk with government officials. In November 1933, Smith and seven other CLDL members marched to Parliament Hill to present demands to Bennett and his cabinet. Bennett received the delegation, which demanded the release of the CPC leaders and the repeal of Section 98. Bennett, however, maintained his party's position: he stated "with emphasis that 'it would not be repealed.'" He further remarked that "the eight Communists were treated no differently from other prisoners." When the delegation asserted that Buck had sustained a hernia and was not being given adequate medical attention, Minister of Justice Hugh Guthrie retorted, "Tim Buck's health is excellent." Eventually, out of frustration, Bennett had six of the eight CLDL members expelled from his office.<sup>73</sup>

Pressuring a different level of government, in July 1934, the CLDL organized a "Hunger March." Approximately 2,500 marchers paraded through Toronto toward Queen's Park, and throughout the parade, "'The International' was freely sung and the children participants shouted 'We want Tim Buck.'" On 1 August, a delegation of 200 people marched to Ontario's Provincial Legislature to meet with the province's premier, Mitchell Hepburn. The delegation presented demands "which were numerous and similar to those enunciated by the Communist Party and the Workers' Unity League" since the leaders of the CPC had been incarcerated. Hepburn – who had only been in office for about one month – apparently exclaimed "God bless your work!" as the delegation was leaving.<sup>74</sup>

Rather than retreat into hiding, the CPC used the CLDL to place its story in front of the court of public opinion. The League publicized the party's views on Section 98, and the trial of the CPC leaders, views that were much more radical than the mainstream press allowed. The CLDL organized for a flood of protest letters to find their way into the mailboxes of government officials. And they further organized demonstrations meant to capture the public's attention and to preserve the momentum of its campaign.

72. CLDL, "Workers of the Border Cities! Beckie Buhay-Ewen Talk at Empire Theatre (Pitt Street), in lieu of Dr. Morand, M.P.," n.d., box 39, folder 18, RSK.

73. "Bennett Impatient over Reds' Claims; 'Show Smith Out,'" *Globe*, 18 November 1933.

74. Gregory S. Kealey & Reg Whitaker, eds., *RCMP Security Bulletins: The Depression Years, Part One* (St. John's: Canadian Committee on Labour History, 1993), 187–189.



## Reacting to the State: Capitalizing on Capitalist Justice

IN MID-OCTOBER 1932, WHILE the CPC leaders were serving their sentences in Kingston Penitentiary, several prisoners organized a protest in an attempt to present their grievances to the prison's warden and to force a public investigation into the prison's poor conditions. The plan was to walk out of their shops at 3:00 p.m. on 17 October and to peacefully petition the warden to present their demands to the federal government in Ottawa. The warden, however, uncovered the plan ahead of time, and at zero hour on 17 October, some 450 prisoners found themselves locked in their shops. Although the prisoners managed to escape and gather in the mailroom, some rioting occurred when soldiers – who had been called in by the warden – advanced toward the protestors. Soldiers fired shots into the mailroom, and some prisoners responded by breaking machines and by pushing guards and officers toward the front of the room – to “receive ... shots if any were fired into the room.”<sup>75</sup> Eventually an agreement was reached between the protestors and the warden whereby the “warden was to make representations to Ottawa as to the grievances of the men, no one was to be punished for the riot until after a fair trial, and the men were to be allowed to go back to work the next day.”<sup>76</sup>

Although the prison staff initially respected the agreement, on 19 October the protestors grew restless as their grievances had not been recorded, nor presented to Ottawa. At 11:30 a.m., prisoners were returned to their cells in expectation of a forthcoming lunch. No such lunch was provided. In fact, prisoners were confined to their cells until the evening of 20 October. Some organized a demonstration in their cells, claiming that the prison's superintendent had breached the agreement by not allowing them out for their daily exercise. Upon seeing the demonstration, which involved some destruction of prison property, the superintendent instructed the militia to come and aid prison staff with the conflict. Numerous troops arrived within ten or twelve minutes, and throughout the course of the night, “considerable shooting took place.”<sup>77</sup>

It later became known that “at least three rifle bullets and ten pellets of buck shot” were fired into Buck's prison cell, and that these shots had been fired “by someone who knew that Buck was in the cell at the time.”<sup>78</sup> Recounting the event at a speech years later, Buck remarked,

75. *Archambault Report*, 74–75.

76. *Archambault Report*, 75.

77. *Archambault Report*, 79.

78. The commission concluded that the shots fired into Buck's cell were a deliberate attempt to injure Buck. This was not the only instance of guards firing their weapons at prisoners – between 7:00 and 8:00 p.m. on the same night, a prisoner by the name of Price “was shot in the right shoulder by a rifle bullet.” Price, the commission concluded, “remained in his cell for twenty-two hours after being hit, and during that time he received no medical attention or food.” See *Archambault Report*, 80, 97.

The whole rear wall of my cell was splashed and spattered with bullets. ... In the words of an old imperialist veteran in the same block, it was no accident but damned good shooting when you realized that they put six rifle bullets within a space of 11 by 16 inches fired at an angle and from three floors below.<sup>79</sup>

After the chaos had dissipated, two inspectors conducted an investigation into both the prisoners' protest of 17 October and the shootings of 20 October. The investigation condemned Buck for instigating the tumult on 17 October and further concluded that shots were fired into his cell only as a means to "scare the convicts." The report concluded that this was "the only reasonable means possible to suppress what was taking place."<sup>80</sup> Buck was to be put on trial for his role in the rioting.

While the news of shots being fired at Buck was not immediately made known to the public, Canada's mainstream press had split opinions about the prisoners' demonstration. The *Toronto Star* admitted that the prisoners' demands had some merit, though it still named Buck as one of the leaders of the so-called "cigarette paper" mutiny.<sup>81</sup> The *Globe* – one of the most vocal anti-CPC papers – asserted that the inmates, and especially Buck, were to blame for the riot. On 24 October 1932, for example, the *Globe* decried the riot as a "carefully planned coup" with Buck at the helm. Those inmates that revolted, the editors warned, were men who "would not act as they did were they not incited by convicts of the 'Red' type."<sup>82</sup>

The CLDL countered this narrative. Predictably, it condemned the prison. The League interpreted the riot as an indication of the failure of the government and prison administrators to properly tend to inmates' basic needs. Many of their demands were scarcely unreasonable: shorter work hours, more recreation time, better heating in the cells, and more and better food.<sup>83</sup> On 1 November 1932, a meeting of about 700 people gathered at the Ukrainian Labour Temple on Bathurst Street in Toronto to listen to a delegation of the CLDL that had visited both Kingston and Ottawa, including A. E. Smith and Alice Buck, wife of Tim. Those present passed a resolution demanding an open inquiry into the conditions of Kingston Penitentiary. As the *Globe* reported, there were "occasional scattered boos and jeers at the mention of the police, but there was nothing resembling a disturbance." Still, at the conclusion of the meeting, those in attendance reportedly "sang the International and gave three cheers for the eight Communists in the penitentiary."<sup>84</sup> This gathering

79. Kealey & Whitaker, eds., *RCMP Security Bulletins*, 443–444.

80. *Archambault Report*, 91.

81. "Cigarette Paper' Mutiny Quelled in Kingston," *Toronto Daily Star*, 20 October 1932.

82. "New Tactics Adopted in Kingston Report," *Globe*, 24 October 1932.

83. Smith, *All My Life*, 142.

84. "Open Inquiry Asked into Kingston Riots," *Globe*, 2 November 1932.

evidently caught the attention of the TPC; just two days after, the commission revoked the ULFTA's hall licence for the Ukrainian Labour Temple.<sup>85</sup>

Still, the CLDL pressed onward to expose the penitentiary's poor conditions. The League constructed a form letter that could be sent to both the Minister of Justice in Ottawa and the penitentiary's warden. The letter listed four demands: "rescinding the frame-up indictment against Tim Buck"; "removal of the eight from solitary confinement"; "establishment of minimum rights for political prisoners, such as uncensored correspondence, right to receive books and publications, ... right to contact with the labor movement, etc."; and "a public enquiry into conditions in Kingston Penitentiary." The letter featured blank lines on which organizations could write their name and the number of members being represented.<sup>86</sup>

By early 1933, numerous newspapers were genuinely shocked by how little information had been made available to the press.<sup>87</sup> The *Peterborough Examiner*, for example, asserted that "the prison authorities and the Government will be guilty of bad judgement if they persist in the attitude that no information in regard to prisons must be given out." The *Globe* concluded that "while there is no desire to pet the criminal, there is nevertheless an insistent demand that regulations shall not be put into effect which will keep from the public a knowledge of the conditions which are being imposed by the jailers upon the prisoners entrusted to their keeping."<sup>88</sup> At this point, little attention was paid to the CPC or to Buck, except to decry his role in the riots.

At the end of June, Buck finally stood trial for his role in the prison riots. As in the 1931 trial, Buck decided to defend himself, though he did obtain W. F. Nickle – former Attorney General of Ontario – and his son W. M. Nickle as counsel.<sup>89</sup> Buck first questioned a number of prison employees and inmates about his role in the demonstration, with varying degrees of success. On 3 July, however, Buck questioned a prison guard by the name of James Henderson. Buck probed: Were you "one of the men who tried to murder me in my cell on Oct. 20?"<sup>90</sup> This question sent the courtroom into a stir. When Buck later recalled the event, he noted that W. F. Nickle had advised against employing

85. "Ukrainian Hall Ordered Closed by Police Board," *Globe*, 4 November 1932.

86. "Protest Resolution: Against Cruel Treatment of Eight Workers' Leaders in Kingston Penitentiary To: The Minister of Justice, Ottawa; The Warden, Kingston Penitentiary, Kingston, Ontario," n.d., box 39, folder 18, RSK.

87. "The Whole Story Needed," *Globe*, 8 February 1933.

88. Similarly, the *Ottawa Journal* remarked, "The Department of Justice, we think, will have to work out some better plan than the one now in effect if it wishes to save exaggeration and sensationalism in reports from the penitentiaries." Excerpts from each paper were printed in the *Globe's* editorial: "Where Prison Policy Errs," *Globe*, 9 June 1933.

89. "Tim Buck on Trial in Riot Aftermath; Queries Witnesses," *Globe*, 24 June 1933; Buck, *Yours in the Struggle*, 229–241.

90. "Slaying Attempt Is Hinted by Buck Querying Guard," *Globe*, 4 July 1933.

such a manoeuvre – “it’s not only anti-government, but ... a little bit like sticking your neck out to make a propaganda point, rather than sticking to the facts and proving your innocence.” However, Buck reminded Nickle that he was less concerned with attaining an innocent verdict than with forcing the story of his shooting into the open and exerting pressure on the government to initiate a public enquiry into the riot.<sup>91</sup> The presiding judge – Judge Deroche – eventually found Buck guilty for his role in the riot, sentencing him to serve an additional nine months in Kingston Penitentiary.<sup>92</sup>

If Buck’s intention was to acquire media attention, his interrogation of the prison guard had the desired effect. On 3 August, the *Globe* printed an editorial entitled “Tim Buck’s Evidence.” It declared:

The *Globe* has no admiration for Tim Buck; and certainly none for the extreme views that have brought him to his present situation; but if, as he says, penitentiary guards fired at him while locked in his cell, The *Globe* condemns such an attack as a dastardly attempt at murder. There is no other word for it. Is this evidence true? That is what the people of Canada demand to know. Absolute silence on the part of the authorities points to the stunning possibility that it is. Tim Buck has provided another unanswerable argument for the appointment of a capable Commission to investigate the administration of penitentiaries in the Dominion; and especially the Portsmouth institution.<sup>93</sup>

Throughout 1933, the *Globe* and its readers would continue to call for a commission of inquiry.<sup>94</sup> In a letter to the editor, one reader called for reform in the Kingston Penitentiary, remarking that it was “high time indeed to have a thorough overhauling of the system now in force.”<sup>95</sup>

The CLDL and the Workers’ Experimental Theatre (WET) – a CPC-organized theatrical organization with numerous local drama clubs around the country – attempted to capitalize on the attention that news of the riots and of Buck’s shooting was garnering. From its inception in 1932, the WET in Toronto was busy, as Alan Filewod writes, “staging a series of agitprops and mass chants at factories, picket lines, party rallies, and May Day celebrations.”<sup>96</sup> As Toby Gordon Ryan – a CPC member and a primary mover within the WET – recalls in her memoirs, the WET was meant to “contribute, in a theatrical way, to the protest movements then developing for civil rights, for jobs, for unemployment insurance, for union organization.”<sup>97</sup> The events at Kingston Penitentiary

91. Buck, *Yours in the Struggle*, 238.

92. *Archambault Report*, 82; Buck, *Yours in the Struggle*, 239–241.

93. “Tim Buck’s Evidence,” *Globe*, 3 August 1933.

94. See, for example, “The Penitentiary Problem,” *Globe*, 11 August 1933.

95. “Let in the Light!,” *Globe*, 28 August 1933. This was just one letter in a series of letters to the editor regarding Kingston Penitentiary.

96. Filewod, “Performance and Memory,” 64.

97. Toby Gordon Ryan, *Stage Left: Canadian Theatre in the Thirties, a Memoir* (Toronto: CTR Publications, 1981), 30.

presented the CLDL with an opportunity to land supporters by theatrically challenging the state's legitimacy. By caricaturing the state as a despotic villain, the CLDL could attract support for the release of the CPC leaders and the repeal of Section 98 from people not typically sympathetic with the left. The WET was chosen as the forum of choice, and *Eight Men Speak* was the resulting production. The play was written by four members of the WET in Toronto: Oscar Ryan, Ed Cecil-Smith, Mildred Goldberg, and Frank Love (credited as "H. Francis"). Ryan, who simultaneously served as publicity director for the CLDL, recalled that "we in the CLDL felt that something had to be done to rouse public sentiment against Section 98 more effectively than through leaflets, mass meetings, petitions, and other traditional ways. We thought, *Why not have a play?*"<sup>98</sup>

*Eight Men Speak* was a spectacularly comedic and political production. In its first two acts, the play presents much of the CPC's history. Act 2, scene 4 depicts the party's problem with being perceived as a violent, foreign party – a perception that did not work in its favour. It features a "very flashily dressed woman and a man" sitting at a table in a cabaret; the stage directions further note that the couple are "middle aged, and evidently of the bourgeoisie":

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

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

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

While the play mocks people who held such views, it also ascribes some of the blame to the mainstream press. It refers to Toronto's *Mail & Empire*, for instance, as the "Toronto Wail and Vampire."<sup>99</sup>

Act 2, scene 7 satirizes both the trial of the CPC leaders in 1931 and Buck's trial for his role in the Kingston Penitentiary riots of October 1932. In the first trial, the stage directions specify that the jury sits in the jury box, which has a lid overtop. The lid is lifted by a character named "Mountie," and the following takes place:

*Immediately the Mountie lifts the lid of the Jury Box, up pop six Jurors. ... Each Juror wears an identical mask – that of a stodgy, vacant looking face. ... When the lid is lifted, the six heads all pop up with hands lifted, these they let fall limply over the edge of the box and sit staring vacantly ahead of them. Behind them, pinned to the lid of the box, are six more masks, all stodgy and dumb. The movements of the Jurors are mechanical and exaggerated. They move only when the Judge moves and then they ape his gestures.*<sup>100</sup>

98. Gordon Ryan, *Stage Left*, 44; emphasis in original.

99. Ryan et al., *Eight Men Speak*, 21–22.

100. Ryan et al., *Eight Men Speak*, 24.

The "stodgy, vacant looking" masks were a statement that the jury at the trial of the CPC leaders was disengaged with the trial and unable to process its broader importance. Moreover, the fact that the only movements of the jurors in the play are imitations of the judge's mannerisms was a statement that Judge Wright, in his charge to the jury, had unjustly asserted that the CPC leaders were guilty, and that the jury had blindly followed this unreasonable prejudice.<sup>101</sup>

The depiction of Buck's 1933 trial – for his involvement in the 1932 riots at Kingston Penitentiary – is less critical; however, the character of Judge Deroche is portrayed as spineless. After listening to Buck's closing argument, the judge remarks:

There is no evidence that you were the instigator of the assemblage which terminated in a riot. I am also satisfied you had an honest desire that no one should be injured. But since (*here he stumbles and gropes awkwardly for words*) well, you know, that is, you were there in the crowd, and since you became a leader by (*very vaguely*) er speaking to the convicts, I must find you guilty you know.<sup>102</sup>

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

There is no evidence that you were an instigator of the assembly which developed into a riot. ... I believe you, Buck, and the other witnesses, that the intention was a peaceful assembly. ... But, as I said before, being a part of the unlawful assembly which developed into a riot, you are responsible for the consequences of the riot, and I must sentence you to some term of imprisonment.<sup>103</sup>

Although the difference is subtle, it is significant. *Eight Men Speak* is critical of the judge's verdict: according to the play, Deroche should have acquitted Buck. Because Deroche recognized that the defendant had had no intention of initiating a riot, there was no unbending need to produce a conviction.<sup>104</sup>

101. In their memoirs, both Tim Buck and A. E. Smith recount how the CPC leaders failed strategically in the selection process. Buck recalled that being tried by a judge and jury had been attorney Hugh MacDonald's idea: "We mistakenly elected a jury trial. Hugh MacDonald persuaded us that a jury trial is the most democratic, that we must beware the danger of simply being tried on the basis of the letter of the law." However, Buck further remarked, the party had little experience in the way of jury trials, as this was the first time that any of them had been indicted for a criminal offence. As a result, they had agreed to let MacDonald take control of the selection process. According to Buck, the lawyer "challenged every professional man, and finished with a jury made up almost entirely of farmers and retired people." While in theory this jury might have been more sympathetic to the views of the CPC, both Buck and Smith remembered gaining no such advantage. Buck noted that "what was to happen was completely over their heads," and Smith remarked that "there were times when some of the faces registered a total blank." Buck, *Yours in the Struggle*, 171; Smith, *All My Life*, 133.

102. Ryan et al., *Eight Men Speak*, 26.

103. *Archambault Report*, 82–83.

104. For a more detailed analysis of *Eight Men Speak*, see Filewod, *Committing Theatre*.

*Eight Men Speak* premiered at Toronto's Standard Theatre on 4 December 1933. Among those attending the performance was a stenographer hired by the TPC. The commission immediately took to ensuring that the play would not be performed again at the theatre. After consultation with the TPC, Ontario's "Inspector of Theatres" issued a warning to the hall's owner, I. J. Weinrot, stating that if his theatre – or any other in Ontario – allowed another performance of *Eight Men Speak*, the hall's licence would be immediately revoked.<sup>105</sup> Further, Detective-Sergeant Nursey compiled a report about the play's performance and dispatched it to Bennett's administration in Ottawa. Bennett received and read the brief. His secretary replied to the TPC and remarked that Bennett was of the opinion that "appropriate action should be taken through the Attorney-General of the Province to protect society against these attacks."<sup>106</sup> Although the Progressive Arts Club had made plans for a second performance in January 1934, they were quickly halted by the TPC. Similarly, in Manitoba, a performance of *Eight Men Speak* was booked for May 1934 at Winnipeg's Walker Theatre; however, the city's municipal commissioner and chief of police prohibited the play's performance. In June 1934, Bennett's administration demanded that the acting Postmaster General, P. T. Coolican, blacklist *Eight Men Speak*, revoking its right to be transported by post in Canada.<sup>107</sup>

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

It is more than passing strange ... that now the leaders in a democratic society should employ manifestly un-democratic procedure to safeguard its existence. Does not such procedure either justify the contention of the Communists that democracy is a lie to delude the masses, or amounts to an abject confession that its days of usefulness are over and the ominous handwriting has long since been inscribed upon the wall? ... Let the Communists speak out of their experiences and let us hear their interpretations of the times in which we are passing. They are bound to be fraught with meaning.<sup>108</sup>

The *Toronto Daily Star* reported the ban somewhat indifferently, but suggested that government officials should not have acted on the play: "It does not seem desirable that court trials should be parodied on the stage, but to prevent the undesirable by resorting to unlawful methods on the part of the authorities is more undesirable still because worse results can flow from it."<sup>109</sup>

Bennett's administration continued with its heavy-handed oppression of pro-communist ideas. On 17 January 1934, the CLDL held a meeting at

105. Vartour, "Writing Left," 139.

106. Ryan et al., *Eight Men Speak*, xvi.

107. Ryan et al., *Eight Men Speak*, 80–90.

108. Ryan et al., *Eight Men Speak*, 69.

109. Ryan et al., *Eight Men Speak*, 74–75.



Toronto's Hygeia Hall for the purposes of protesting the banning of *Eight Men Speak*. Members of the TPC's Red Squad were in attendance and taking notes. While giving a speech, A. E. Smith referenced the attempted shooting of Tim Buck and "charged [Bennett's] government with responsibility for this attempted assassination of the leader of the Communist party." The members of the TPC who were present compiled a report of this speech, and based on this account, the Crown elected to charge Smith with sedition.<sup>110</sup>

The CLDL was critical of the Crown for laying charges against Smith. The League organized an "A.E. Smith United Defense Conference." The conference issued leaflets, one of which connected Smith's trial with Buck's attempted murder and called for an investigation into the shooting:

Tim Buck in Kingston has made the definite charge that he was shot at. Thousands demanded that this charge be investigated. ... Thousands demanded their [the CPC leaders'] release and the Repeal of Section 98. ... But the government had refused to budge an inch, the government has met protest with vilification and added terror. What other deduction could the masses of people in this country make of a government that refuses the investigation of an attempted murder that the government itself is implicated? Otherwise, why no investigation? ... Why the attempt to gag all criticism through the indictment on sedition charges of the man who more than anyone else has forced this issue into the open?<sup>111</sup>

The pamphlet warned the government that the Defense Conference had decided to launch "a mighty campaign against this sedition frame-up," and it placed further demands on Bennett's administration: a special hearing on the shooting at Buck "where Tim Buck and A.E. Smith and others will be called as witnesses"; the repeal of Section 98; the removal of the ban on *Eight Men Speak*; and the release of a malnourished and "dangerously ill" Sam Carr from Kingston Penitentiary.<sup>112</sup>

That same year, Oscar Ryan, co-writer of *Eight Men Speak*, prepared a pamphlet for the CLDL entitled *The "Sedition" of A.E. Smith*. It begins by comparing the lives of Smith and R. B. Bennett in parallel columns. Smith's biography, Bart Vartour observes, is written "in earnest prose that nonetheless turns into a hagiographic documentation."<sup>113</sup> Comparatively, Bennett's biography is a parody that documents the birth and life of a devil-child:

On July 3rd, 1870, the ocean seethed. At Hopewell, N.B., the earth groaned. Above, the heavens parted in fire. A babe was born into the comfortable household of Mr. and Mrs. Bennett. All who saw the creature marvelled, not so much at its beet-red face and bellowing

110. Smith, *All My Life*, 166; "A.E. Smith Indicted on Sedition Charge; True Bill Returned," *Globe*, 31 January 1934.

111. "A Call! To the Working and Liberal Minded People of Toronto," A.E. Smith United Defense Conference, n.d., box 39, folder 10, rsk.

112. "A Call!," rsk; "I Was Shot At!," A.E. Smith United Defense Conference, n.d., box 39, folder 10, rsk.

113. Vartour, "Writing Left," 152.

voice, but because of a strange phenomenon: For in one pudgy fist, the child grasped a bag of gold, and on one pink foot there grew a cast-iron heel.<sup>114</sup>

The contemporary depiction of Bennett is just as damning. In concluding the section, the pamphlet remarks, “He doesn’t eat two-bit meals and says that poverty is a wonderful thing for developing character and the various virtues. He is the millionaire premier of a millionaire cabinet and says that the iron heel of ruthlessness should be brought down on communism.”<sup>115</sup> By the end of the pamphlet, victory is predicted for the working class, as Ryan declares that the suppression of the CPC, or “the iron heel of ruthlessness,” was Bennett’s “Achilles’ heel.” He proclaims that “The workers of Canada, the farmers of Canada, and the friends of the working class, are determined to pierce that Iron Heel.”<sup>116</sup>

Petryshyn describes Smith’s trial – which began in late February 1934 – as “a comedy of errors.”<sup>117</sup> It immediately became clear that public sentiment was in favour of Smith, as he had built himself a reputation as an individual who, despite his political views, was respectable and altruistic. Toronto’s dailies editorialized largely in his favour.<sup>118</sup> Smith’s counsel was successfully able to convince the presiding judge, Justice Kingstone, that Tim Buck’s testimony would be paramount to Smith’s defence. When Buck testified, he promptly shouted “I was shot at—,” at which point the Crown objected and Buck was led out of the courtroom and escorted back to Kingston Penitentiary.<sup>119</sup> On 8 March 1934, after Justice Kingstone’s charge reminded the jury to be cognizant of Smith’s intent when delivering his speech, jurors acquitted Smith on the charge of sedition.<sup>120</sup>

Smith’s trial, in combination with the attempted murder of Buck, appears to have brought support to the CLDL. The *Globe* reported that since his trial, Smith had “received messages and letters from many persons hitherto opposed to him, political opponents, capitalists, and workers expressing their satisfaction with the result of the trial.” Furthermore, the *Globe* noted, while many of these people had previously been indifferent or apathetic to Smith’s cause, a

114. Ryan, “Sedition” of *A.E. Smith*, 3.

115. Ryan, “Sedition” of *A.E. Smith*, 4.

116. Ryan, “Sedition” of *A.E. Smith*, 19.

117. Petryshyn, “Class Conflict,” 58.

118. Indeed, the *Toronto Telegram*, the *Mail & Empire*, and the *Toronto Daily Star* all openly raised questions as to the state’s motives. The *Telegram* asked why Smith’s lawyer, Onie Brown, was granted only two weeks to organize his case when he had requested two full months, and the *Daily Star* asked why Smith was being tried for sedition, and not the less serious crime of slander. The *Globe*, however, remained silent until after a verdict had been rendered. See Petryshyn, “Class Conflict,” 54–58; “Tim Buck Also Had a Trial,” *Globe*, 10 March 1934.

119. Petryshyn, “Class Conflict,” 54, 58.

120. “A.E. Smith Is Found Not Guilty of Sedition,” *Globe*, 9 March 1934.

number of them "were now awakened to the situation and had become strong supporters of the Canadian Labor Defense League."<sup>121</sup>

Indeed, people were quickly becoming fans of Smith and the CLDL. On 14 March 1934, for instance, Toronto's *Mail & Empire* received a letter to the editor written by a person with the pseudonym "Mere Woman." This writer had clearly been shaped by the events since the 1931 trial. Based on an interest in Smith's trial, the letter writer remarked, she (or he) had attended a meeting at Massey Hall. "That meeting," she noted, "was a revelation both in regard to the extent and intensity of the popular indignation regarding this prosecution, as evidenced by the feeling of the vast audience, but also as to the personality of Mr. Smith himself."<sup>122</sup> Indeed, the writer was very impressed with Smith: "I found this gentleman not the vulgar uncouth person some would imagine, ranting against organized society and constituted authority, but a scholarly, thoughtful, cultured speaker sincerely concerned for the welfare of humanity."<sup>123</sup>

This letter's sole purpose, however, was not to compliment Smith. The writer further voiced displeasure at the lack of available information concerning the attempted murder of Buck. "Still unanswered," she pressed, "is the major question propounded by Rev. A.E. Smith, which goes to the very foundations of the integrity of our governmental institutions and the honor of our public men: was Tim Buck shot at? If so, then by whose authority and why?" Still further, the writer demanded that Canada's press take up the issue and fight for an investigation into the matter, regardless of their politics. She was critical of the *Globe* in this regard, noting that it appeared "only to be eager to defend our Courts which were not attacked."<sup>124</sup> This critique was in reference to an editorial published 10 March 1934 in the *Globe*, entitled "Tim Buck also had a trial." The editorial asserted:

The fact established is that the Labor Defense League and all other organizations or individuals who appeal to the courts of Canada will receive even-handed justice. ... Mr. Smith's acquittal is not a victory for any element in the community, or in Canada; but it is evidence that in this country the law is administered in the fairest way possible.<sup>125</sup>

This interpretation did not satisfy "Mere Woman." It ignored that the TPC had later "admitted that the charge was laid by mistake." "Commissioners frankly admit," she continued, "that had they known that the case depended on the accuracy of long-hand notes of a speech taken by a policeman and not upon a

121. "Victory Predicted for Labor Effort," *Globe*, 19 March 1934.

122. "'Mere Woman' to Editor of the Mail & Empire," 14 March 1934, box 33, folder 4, RSK.

123. "'Mere Woman,'" RSK.

124. "'Mere Woman,'" RSK.

125. "Tim Buck Also Had a Trial," *Globe*.

report made by a competent court stenographer, they would not have favoured the laying of the information."<sup>126</sup>

### Parliamentary Debates and the Repeal of Section 98

BEGINNING IN 1926, MEMBERS of Parliament began debating bills that proposed the repeal of Section 98. Two MPs were at the forefront of this drive: J. S. Woodsworth, leader of the Labour Party and, from 1932 onwards, leader of the Cooperative Commonwealth Federation (CCF); and Ernest Lapointe, Liberal MP for the Kamouraska district in Quebec and, at three different times, Minister of Justice in Mackenzie King's cabinet. In 1926, Lapointe proposed a bill that aimed to repeal Section 98. Members of Parliament voted in favour of the bill. Conservatives, however, held a majority in the Senate, where the bill was promptly defeated. Similar bills were put forward in 1927, 1928, 1929, and 1930, and each time, the bill was passed in the House of Commons but defeated in the Senate; in 1929, the Senate defeated the bill by only three votes.<sup>127</sup>

In 1933, Section 98 once again faced criticism in the House of Commons, as Woodsworth again put forth a bill for its repeal. He explained the necessity of the bill:

In the earlier days, when we sought to get rid of this piece of legislation, we were told that it was a dead letter, that it never had been used and probably never would be used. As a matter of fact, however, there are now some eight communists in Kingston penitentiary who were convicted under this legislation. I should like to point out that these men did not commit any overt act whatever. They were not convicted of urging the use of force, nor were they convicted of using force. They were convicted of belonging to an association which was said to be affiliated with a body in Russia which did believe in the use of force; on that type of evidence they were convicted. ... They were convicted for holding a certain belief, and I say that is something quite new in British law.<sup>128</sup>

Minister of Justice Hugh Guthrie was quick to defend Section 98 and the convictions of the CPC leaders. These men, he asserted, had been put on trial in front of a jury of their peers, who, with their verdict, found them guilty. The convictions were appealed to Ontario's Court of Appeal, where they were ultimately confirmed. Furthermore, prosecutions under the legislation had been "extremely rare," and the law was in no capacity aimed directly at labour or radical organizations.<sup>129</sup>

Although Woodsworth described the vast public outcry for the repeal of Section 98, Guthrie countered that most of the support had either come

126. "Mere Woman," RSK.

127. Fidler, "Proscribing Unlawful Associations," 18–23; Canada, Parliament, House of Commons (hereafter HOC), *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2096.

128. HOC, *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2097.

129. HOC, *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2101.

directly from or been prompted by the CLDL. In reference to receiving petitions, Guthrie proclaimed, "I am not overstating the case when I say that I have hundreds and hundreds of them. I have now ceased to acknowledge receipt of them. I merely hand them over to the mounted police." He assured his colleagues, however, "that in long petitions there does not appear a single Anglo-Saxon or French-Canadian name – nothing but names of foreigners, unpronounceable names for the most part."<sup>130</sup> Accordingly, in his view, these petitions did not need to be taken seriously. Lapointe quickly retorted that the president of the Trades and Labour Congress of Canada, Tom Moore – who vehemently opposed Section 98 – was not a Communist and, being born in Britain, was certainly not a foreigner.<sup>131</sup>

Woodsworth's bill found widespread support among members of the CCF, such as Agnes MacPhail and A. A. Heaps. In an attempt to discredit their party, J. R. MacNicol, Conservative MP for the Toronto-Northwest district, attempted to vaguely connect the CCF with communism. Citing the *Mail & Empire*, MacNicol quoted a speech given by Woodsworth in December 1932. He reminded MPs that, in this speech, Woodsworth had "assail[ed] the capitalist system" and "urged his hearers to be ready with practical solutions for some system to replace it as it crumbled." To this, MacNicol declared: "Well, the capitalist system is not going to crumble; it is going to remain right in existence."<sup>132</sup>

MacNicol further scolded the CCF, noting that MacPhail, MP for the Grey Southeast district in Ontario, had stated in a speech that "Canada has the least liberty of speech and action of any country."<sup>133</sup> This comment, he argued, implied that even Russia had greater freedom of speech and action. MacNicol, however, believed that "Canada's institutions and ... right of free speech [were] second to none."<sup>134</sup> Not one to back away from a debate, MacPhail dismissed the claims that the CCF and the CPC were in any way related. "We are not communists," she remarked, "and I may say that the heckling that we receive comes from the communists who hate [Woodsworth], myself and others ... because we, by striving to bring about reforms constitutionally, stand between the communists and the violence they desire."<sup>135</sup>

130. НОС, *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2102.

131. НОС, *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2102–2103.

132. НОС, *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2191.

133. MacPhail's political affiliation at this time is tricky to label precisely. In 1932 – in the midst of Canada's 17th session of Parliament – she helped to found the CCF. In 1934, during the same session, the United Farmers of Ontario withdrew from the CCF, as did MacPhail. She remained close with members of the CCF, however, and rejoined the party in 1940.

134. НОС, *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2191.

135. НОС, *Debates*, 17th Parl., 4th sess., 2 (1932–33): 2195.

MacPhail was correct to note the tensions between the CCF and the CPC. That year, in fact, the CLDL issued a pamphlet aimed at the membership of the CCF. The CLDL had, the pamphlet's author observed, sent a telegram to CCF leadership, proposing that the two organizations form a "united front" in an attempt to force the repeal of Section 98 and to achieve the release of those imprisoned under the law. "We suggested," the pamphlet notes, "that demonstrations, mass meetings, and delegations might be organized jointly to promote this objective."<sup>136</sup> Although the CCF agreed in principle with the goals of the CPC, the party replied in the negative:

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

We propose to pursue our own campaign for the repeal of Section 98, release of political prisoners, and the prevention of arbitrary deportations, by methods approved and adopted by our organizations.<sup>137</sup>

As this response suggests, the CCF and CPC were not ideologically compatible. Nonetheless, both worked for the repeal of Section 98 in complementary, if opposite, ways.<sup>138</sup> However, the CCF's response irritated the CLDL. "These words," the pamphlet asserted, "contain a subtle accusation against the CLDL, in that they imply our tacit advocacy of 'force and violence.' This is the kind of thing employed by the capitalist class against us."<sup>139</sup> Indeed, this was the very foundation of the Crown's case against the CPC leaders.

The CLDL additionally commented on the lack of immediacy in the CCF's plan: "Before the CCF will advise any action on behalf of [the] imprisoned workers, they (the CCF) must have become the government of the country! In the meantime, labor champions languish in jail, victims of an inhuman prison regime." Moreover, the League argued, the methods suggested to the CCF were scarcely violent: "Are not meetings, deputations and demonstrations constitutional?" The CLDL petitioned the rank-and-file members of the CCF to pressure the organization's leaders to properly support and unite with the CPC on the issue of Section 98.<sup>140</sup>

136. CLDL, *A Call to the Rank and File of the CCF! For United Front Action against Section 98 and for Release of Class War Prisoners* (Toronto: CLDL, National Office, September 1933).

137. "The CCF Statement," in CLDL, *Call to the Rank and File*.

138. For a more comprehensive view of the work of social democrats and civil libertarians on the repeal of Section 98, see Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930–1960* (Toronto: University of Toronto Press, 2005), 16–67; Molinaro, *An Exceptional Law*, 191–201.

139. CLDL, *Call to the Rank and File*.

140. CLDL, *Call to the Rank and File*.

By 1934, the public's distaste for the law was patently clear to Bennett's administration. With an election approaching, Bennett began to grant some concessions to the CLDL and its supporters. On 29 June, Guthrie announced that Sam Carr and Matthew Popovich would be released from Kingston Penitentiary. Guthrie observed that both of these men had served half of their sentences and were thus eligible for parole; on account of their "good behaviour," the state recommended that both men be released.<sup>141</sup> Given the protests at the prison, it is difficult to imagine exactly the good behaviour to which Guthrie was referring. With pressure mounting for the repeal of Section 98 and for an investigation of Kingston Penitentiary, the continued incarceration of these men was perhaps more damaging to the government's reputation than was releasing them.

In July, the CLDL organized a large gathering at Queen's Park to celebrate the release of these men. On the way to the rally, Carr and Popovich were met at Toronto's Union Station by a large crowd that "cheered them lustily." The *Globe* reported that "comrades' embraced him [Carr] warmly, and kissed his cheeks. ... Fists were upraised in salute [and] bursts of song broke out." In that same year, Tom Hill, Malcolm Bruce, and John Boychuk were paroled.<sup>142</sup> The release of Tomo Čačić, however, did not prompt a celebration. In December 1933 the press reported that Čačić had been released after serving the entirety of his sentence. In reality, however, he had been put before a board of inquiry – consisting of only one person, "Officer Reynold of Kingston Penitentiary" – which concluded that he was a member of the undesirable class. This made Čačić liable to deportation, and he was scheduled to be sent to his country of birth, Yugoslavia, where he would face further imprisonment or even death on the basis of his political beliefs. Although the CLDL worked within the law to try to prevent his deportation, or at least to change the destination to the Soviet Union, Čačić was escorted from Canada in January 1934. Only through the CLDL's connection with International Red Aid was the League able to help him. His ship made a scheduled stop in Liverpool, England, where British members of International Red Aid issued Čačić a false Soviet passport. He was later able to escape custody and catch a train to Moscow.<sup>143</sup>

In late September 1934, Tom Ewen was released from Kingston Penitentiary, and finally, in November, so was Tim Buck, thus ending the imprisonment of the CPC leaders.<sup>144</sup> On 2 December, a rally was held at Maple Leaf Gardens to celebrate Buck's release. The RCMP reported that 17,000 people were in

141. "Two Prisoners Freed from Portsmouth Prison," *Globe*, 30 June 1934.

142. "Marching Radicals Clash with Firemen and Police Step In," *Globe*, 4 July 1934.

143. Molinaro, "A Species of Treason?," 79–84; "Imprisoned Red May Be Deported on His Release," *Globe*, 18 December 1933; "Ewen Released from Portsmouth; Arrives in City," *Globe*, 1 October 1934.

144. "Ewen Released from Portsmouth," *Globe*; "Toronto Reds Acclaim Buck on Arrival Here," *Globe*, 26 November 1934.



attendance and that on the main stage, there was a “monstrous picture of Lenin and Stalin almost 40 feet long and 30 feet high.” The rest of the stage was decorated in red and many of those in attendance wore red items of clothing. When, at the meeting’s opening, “God Save the King” was played, it was greeted with boos and hisses. Buck was carried to the stage on the shoulders of two men, and the crowd applauded thunderously upon seeing him.<sup>145</sup>

On 14 October 1935, a federal election was held to elect Canada’s 18th Parliament. Just prior, an article in *The Round Table: The Commonwealth Journal of International Affairs*, summed up Canada’s electoral environment: “the problem presented by the million and a quarter people who are still upon some form or another of public relief threatens to be a source of worry to all Canadian Governments for some time to come, and will constitute one of the main issues at the coming election.”<sup>146</sup> The events of the On to Ottawa Trek and the Regina riot in June had forced “awkward debate” in the House of Commons over the issue of unemployment relief, and Bennett’s Conservatives did not appear to have the support of labour. The journal predicted a “decisive victory for the Liberals” under Mackenzie King, noting that the party was “in better shape than any of their rivals” and that it enjoyed the support of many of the country’s news outlets. The results of the election fulfilled this prediction. While in 1930 the Conservative Party had enjoyed a majority government, securing 134 of the 245 seats in the House of Commons, Liberal candidates were elected in 173 ridings in 1935, obtaining a majority government of their own.<sup>147</sup> The election of Mackenzie King – whose campaign had involved a promise to remove Section 98 from the books – began the process of the law’s repeal for good.<sup>148</sup>

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

I felt a bit nervous and I went to see the deputy minister of justice, who, after looking wise for a moment or two, and turning over the pages, assured me that I was within the law in bringing them into the country. The sections in that regard were unnecessarily severe and I felt that the onus of proof being on any one attending a meeting to show that he was not

145. Kealey & Whitaker, eds., *RCMP Security Bulletins*, 439–444.

146. “Canada: The Parties and the Election,” *The Round Table: The Commonwealth Journal of International Affairs*, 25,100 (July, 1935): 813.

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

148. Mackenzie King argued that Section 98 worked contrary to British ideals of justice, but assured voters that its repeal would not permit communists to thrive in Canada. See Molinaro, *An Exceptional Law*, 211.

committing an unlawful act was perhaps a little strong, and also the subsection pertaining to owners of halls and people attending meetings.<sup>149</sup>

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

## Conclusion

AS A PIECE OF CANADIAN LEGISLATION, Section 98 was overtly political and fiercely contested. For both government and police officials, the law was about curtailing the ability of radicals to organize. The CPC, an openly revolutionary political party, was the first organization to be targeted. The convictions of the Toronto Communists could have, as lawmakers intended, crushed the CPC beyond the point of repair. When Justice Wright declared the party to be illegal in Canada, it meant that in Section 98 trials, it was no longer an acceptable defence to argue that the CPC did not advocate violence. The only issue up for debate was whether or not the accused was a member of the party, and if the Crown produced a membership card, or proved attendance at a party meeting, the burden of proof was shifted to the accused. Members of the CPC could have been arrested, tried, and perhaps convicted en masse. Moreover, the state could well have continued to use the law to attack other labour and immigrant organizations, such as the ULFTA and the FOC. Indeed, there is much evidence that these organizations were on the state's radar. The ULFTA's newspaper, *Working People*, was banned in 1918, and Winnipeg's Ukrainian Labour Temple was raided by the Royal Northwest Mounted Police (RNWMP) during the Winnipeg General Strike. Even the association's replacement paper, *Ukrainian Labour News*, was placed on the RNWMP's list of subversive publications.<sup>150</sup> The CPC's leaders, however, were well studied in the readings of Marx and Engels and were quite familiar with how to combat the capitalist system of justice.

It would be easy to label the CLDL's strategic manoeuvres as inconsequential in the repeal of Section 98. After all, the reformist CCF worked for years to force the repeal, as did Liberal leader Mackenzie King and Liberal MP Ernest Lapointe. Moreover, parts of Section 98 remained as legislation in Canada's seditions laws, as a clause was inserted stating that anyone who taught or advocated "the use of force ... as a means of accomplishing any governmental change" could be charged with having a seditious intention.<sup>151</sup> Even further,

149. HOC, *Debates*, 18th Parl., 1st sess., 4 (1936): 3911.

150. Gregory S. Kealey & Reg Whitaker, eds., *RCMP Bulletins: The Early Years, 1919–1929* (St. John's: Canadian Committee on Labour History, 1994), 652.

151. Molinaro, "Trial of *Rex v. Buck et al.*," 351. This law required, however, that an action actually be committed – e.g. seditious words spoken – and did not permit for the criminalization of individuals based solely on their membership in an "unlawful organization."

by World War II, the state found a new way to attack Canada's communists – and the radical left more generally. Passed prior to Canada's declaration of war, the Defence of Canada Regulations gave the state almost despotic powers. Historian Reg Whitaker remarks:

Among the provisions of this new regime were full powers of censorship over the press; preventative detention of anyone who might potentially act in a manner "prejudicial to the public safety or the safety of the state;" the prohibition of statements which "would or might be prejudicial to the safety of the state or the efficient prosecution of the war." A few months later, a regulation was added outlawing certain organizations, a list which eventually grew to include over 30 groups.<sup>152</sup>

The CPC, once again, found itself to be an unlawful organization in Canada. The party was never again able to mount the support that it had during the Great Depression.

But we should not overlook the utility of the tools and tactics employed by the CLDL in its fight against Section 98. Interestingly, most of them were not revolutionary: writing pamphlets and producing plays can scarcely be thought of as means to the upheaval of state power. While we can lament the lack of revolutionary vigour – or analyze whether or not such moves aligned with, or were directed by, Comintern policy – a more fruitful question might be this: What was the strategy informing the CLDL's manoeuvres? Here, I return to Endicott's observation that the CPC often opted to "carry out some public activity, as spectacular as possible." What we find is that the CLDL did exactly this, in a variety of ways, prompting numerous responses; it put capitalism on trial in front of the country's judiciary, federal government, and populace.

One of the strategies utilized by the party, flooding the state with letters of protest, proved effective. In fact, such an array of organizations (e.g. the CCLU, FOC, ULFTA, Russian Workers' Club of Hamilton) mailed letters to both Bennett's cabinet and the Office of the Attorney General of Ontario that in June 1936, as the House of Commons debated the subsection to Canada's sedition laws that looked strangely similar to Section 98, J. R. MacNicol warned that protests would occur forthwith if the amendment passed:

I would point out that all of those organizations ... having denounced the late government for maintaining section 98, will now howl their heads off against subsection 4 of section 133. ... Take, for instance, ULFTA, Ukrainian Labour-Farmers' Temple Association. I have no doubt they will protest against subsection 4 of section 133, and the NUWA, National, Unemployed Workers' Association, who have protested before, will likely protest again. The Workers' Ex-Service Men's League protested before and will undoubtedly protest again, and so will the UF, the United Front, the Canadian Labour Defence League, and the YCL, the Young Communists' League.<sup>153</sup>

152. Reg Whitaker, "Official Repression of Communism during World War II," *Labour/Le Travail* 17 (Spring 1986): 138.

153. НОС, *Debates*, 18th Parl., 1st sess., 4 (1936): 3911.

Although MacNicol advised that the House of Commons should ultimately "not pay attention" to these organizations, and vote in favour of the amendment, the fact that he felt the need to address these protests suggests that they were regarded soberly by MPs.

The circulation of party publications and direct government protest caught the attention of Bennett and his administration. In turn, Bennett acted to further suppress the voice of the CPC and CLDL. While it is tough to gauge the opinions of Canada's populace, as Avakumovic notes, in 1934 the CLDL was able to present to the federal government a petition with 459,000 signatures demanding, among other things, Buck's release and the repeal of Section 98.<sup>154</sup> These signatures comprised approximately 4.4 per cent of Canada's total population; evidently, people were talking about the CPC and about Section 98.<sup>155</sup> Further, the CLDL's campaign helped to alter the opinions of the Canadian public and the country's press. Even editors of the *Globe* – who disliked Tim Buck and favoured the convictions of the CPC leaders – seemed to come around to the party as news broke that shots had been fired at Buck.

Finally, the CLDL's extravagant reactions to the oppression of CPC members were also quite effective. In the early stages of its campaign, the party was able to make the trial of its leaders a spectacle for Canada's public. Though the convictions were generally applauded by the mainstream press, papers did comment on Buck's self-conducted defence and his three-hour address to the jury, and the CPC and Section 98 were brought into popular discussion.<sup>156</sup> Similarly, when troops fired shots at Buck in Kingston Penitentiary, the party pushed hard to make the story public and used it to pressure the government for both the release of the CPC leaders and for a royal commission into Canada's penal system. The push for prison reform resonated with non-radical Canadians. Indeed, MacPhail and the CCF had long worked to have conditions in Canada's prisons improved and to have corporal punishment reduced. Connecting the CPC's cause with the more mainstream movement of prison reform was a shrewd move.

The CLDL's most effective reactive tactic was perhaps the production of *Eight Men Speak*. The play's premiere at Toronto's Standard Theatre in December 1933 earned not only police presence, but the ire of Bennett himself. Moreover, it actually evoked further repression from Bennett, as performances of the play were banned and its circulation via mail was prohibited. Of course, these actions only fuelled the fire of the CLDL's campaign. By the time A. E. Smith was charged with sedition, sympathies for the CPC and the CLDL were at an

154. Avakumovic, *Communist Party in Canada*, 87–90.

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

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

all-time high, and an absence of legitimacy in the state's actions was tangible to many. Indeed, as Petryshyn reports, between 1932 and 1934 – the height of the League's campaign – the individual memberships of the CLDL doubled from approximately 10,000 to 20,000.<sup>157</sup> While the League was unable to sustain its size and success – it folded entirely in 1940 – it had managed to captivate and engage Canadians even at the height of its Third Period ideology. Moreover, its campaign was piloted over a gruelling five-year period and continued to strike a chord with Canadians throughout. This, in itself, was no small feat.

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157. Petryshyn, "Class Conflict," 53, 59.