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Activists in the Age of Rights

The Struggle for Human Rights in Canada - 1945-1960

by

Ross Lambertson
B.A., University of Victoria, 1965
M.A., University of Chicago, 1968

A Dissertation Submitted in Partial Fulfillment of the
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We accept this dissertation as conforming to the required standard

Dr. Ian MacPherson, Supervisor (Department of History)

Dr. Eric Sager, Departmental Member (Department of History)

Prof. John P.S. McLaren, Departmental Member (Faculty of Law)

Prof. Hamar Foster, Departmental Member (Faculty of Law)

Prof. James Walker, External Examiner (Department of History, University of Waterloo)

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University of Victoria

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Supervisor: Prof. Ian MacPherson

ABSTRACT

From 1945 to 1960 Canada began to move into what has been called "the age of rights." At the end of the Second World War the nation paid lip service to "British liberties," but both the state and private individuals frequently violated the libertarian rights of political radicals as well as the egalitarian rights of certain unpopular ethnic and religious minorities. By 1960 a discourse of human rights had largely replaced the British liberties approach, and the country enjoyed a far higher level of respect for minority rights, in part because of a number of legal changes -- Supreme Court decisions, anti-discrimination legislation, and a Bill of Rights.

This dissertation examines this shift, focussing upon the activities of members of the Canadian "human rights policy community." Relying largely upon primary resources, it presents a number of case studies, demonstrating how human rights activists dealt with the deportation of Japanese Canadians, the Gouzenko Affair, the problem of discriminatory restrictive covenants, the Cold War, the need for an effective fair accommodation law in Ontario in general and the town of Dresden in particular, and the struggle for a bill of rights.

In presenting these case studies, this dissertation also focusses upon the activities of a number of key interest groups within the human rights community: the coalition known as the Cooperative Committee on Japanese Canadians, the Canadian Jewish Congress, the Jewish Labour Committee, and a number of civil liberties organizations (especially the liberal Civil Liberties Association of Toronto and the communist Civil Rights Union). Attention is paid to the reasons for their successes and failures; within the general context of economic, social, and cultural changes, special attention is paid to the way in which these interest groups made their own history, using the resources available to them.

Examiners:

Dr. Ian MacPherson, Supervisor (Department of History)

Examiners (cont.)

Dr. Eric Sager, Departmental Member (Department of History)

Prof. John P.S. McLaren, Departmental Member (Faculty of Law)

Prof. Hamar Foster, Departmental Member (Faculty of Law)

Prof. James Walker, External Examiner (Department of History, University of Waterloo)

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Finally, it needs to be stressed that this dissertation would probably never have been written if the author had not been pressured into returning to school by his wife, Carol Hathaway, and his friend, Al Grove (who enlisted the support of Prof. Ken Coates). They need to take much of the credit for the production of this manuscript, but none of the blame for its short-comings.

DEDICATION

To Carol -- my best critic and strongest supporter.

ACRONYMS

Because some of the civil liberties organizations changed their names at different points, this list includes the date at which each one was founded.

ACCL - All-Canadian Congress of Labour
ACL - Association for Civil Liberties (Toronto) - 1949
ACLU - American Civil Liberties Union - 1920
BCCLA - British Columbia Civil Liberties Association - 1962
CAAE - Canadian Association of Adult Education
CASW - Canadian Association of Scientific Workers
CBA - Canadian Bar Association
CCCJ - Canadian Council of Christians and Jews
CCF - Cooperative Commonwealth Federation
CCJC - Cooperative Committee for Japanese Canadians
CCL - Canadian Congress of Labour
CCLA - Canadian Civil Liberties Association - 1964
CCLPA - Canadian Civil Liberties Protective Association - 1933
CFBR - Committee for a Bill of Rights
CIIA - Canadian Institute of International Affairs
CIPA - Canadian Institute of Public Affairs
CJC - Canadian Jewish Congress
CJCA - Canadian Jewish Congress Archives
CLAM - Civil Liberties Association of Manitoba - 1946
CLAT - Civil Liberties Association of Toronto - 1940
CLAW - Civil Liberties Association of Winnipeg - 1939/40
CLAM - Civil Liberties Association of Manitoba - 1946
CLC - Canadian Labour Congress
CLDL - Canadian Labour Defense League
CLPD - Canadian League for Peace and Democracy
CNCR - Canadian National Committee on Refugees and Victims of Political Persecution
CPC - Communist Party of Canada
CRCIA - Committee for the Repeal of the Chinese Immigration Act
CRLF - Canadian Rights and Liberties Federation - 1972
CRU - Civil Rights Union - 1946
CSU - Canadian Seamen's Union
CUA - Vancouver Civic Unity Association
DOCR - Defence of Canada Regulations
ECCR - Emergency Committee for Civil Rights - 1946
FEP - Fair Employment Practices (Act)
FAP - Fair Accommodation Practices Act
FCSO - Fellowship for a Christian Social Order

FEFRA	- Female Employees Fair Remuneration Act
FEPA	- Fair Employment Practices Act
FOR	- Fellowship of Reconciliation
ILGWU	- International Ladies' Garment Workers Union
IWW	- International Workers of the World
JACLR	- Joint Advisory Committee on Labour Relations (of the Canadian Jewish Congress and the Jewish Labour Committee)
JCCA	- Japanese Canadian Citizen's Association
JCCD	- Japanese Canadian Committee for Democracy
JLC	- Jewish Labour Committee
JPRC	- Joint Public Relations Committee (of the Canadian Jewish Congress and B'Nai B'rith)
LDR	- League for Democratic Rights - 1950
LPP	- Labour Progressive Party
LSR	- League for Social Reconstruction
MCCC	- Montreal Committee on Canadian Citizenship
MCCLU	- Montreal [branch] Canadian Civil Liberties Union (aka Montreal Civil Liberties Union) - 1937
MCLA	- Montreal Civil Liberties Association - 1946
MCLU	- Montreal Civil Liberties Union - 1948
NCCSF	- National Council for Canadian-Soviet Friendship
NCDR	- National Council on Democratic Rights
NCHR	- National Committee on Human Rights (CLC) - 1956
NCW	- National Council of Women
NETPA	- National Emergency Transitional Powers Act
NIAC	- National Interchurch Advisory Committee on the Resettlement of Japanese Canadians
NUA	- National Unity Association (Chatham, Dresden, and North Buxton) - 1948
OCCLU	- Ottawa [branch] Canadian Civil Liberties Union - 1939/40
OCLA	- Ottawa Civil Liberties Association - 1946
OLCHR	- Ontario Labour Committee on Human Rights
ORDA	- Ontario Racial Discrimination Act (1944)
SCM	- Student Christian Movement
TCCLU	- Toronto [branch], Canadian Civil Liberties Union - 1938
TLC	- Trades and Labor Congress
TLCHR	- Toronto Labour Committee on Human Rights
UAW	- United Autoworkers
UBC-CCLU	- University of British Columbia [branch] Canadian Civil Liberties Union - 1947
UDHR	- Universal Declaration of Human Rights (1948)
UE	- United Electrical, Radio and Machine Workers of America
UJPO	- United Jewish People's Order

UJRWRA	- United Jewish Refugee War Relief Agencies
ULFTA	- Ukrainian Labor-Farmer Temples Association
USWA	- United Steelworkers of America
VCC	- Vancouver Consultative Council
VCCLU	- Vancouver [branch] Canadian Civil Liberties Union - 1938
WEA	- Workers' Educational Association
WIB	- Wartime Information Board
WIL	- Women's International League for Peace and Freedom
WMA	- War Measures Act

INTRODUCTION

A: PROLOGUE

We live in "the age of rights." As Louis Henkin has noted, "Human rights is the idea of our time, the only political-moral idea that has received universal acceptance. The Universal Declaration of Human Rights [UDHR], adopted by the United Nations General Assembly in 1948, has been approved by virtually all governments representing all societies. Human rights are enshrined in the constitutions of virtually every one of today's 170 states."[1]

Canada is no exception to this general rule. We too are engaged in "rights talk."[2] The 1982 Charter stands as a formal constitutional recognition that we respect "human rights and fundamental freedoms," and is supplemented by a wide variety of federal and provincial human rights acts prohibiting a multitude of discriminatory practices. Indeed, it has been suggested that, as Canadians have become increasingly secular, we have replaced God with a new, liberal deity -- the worship of human rights.[3]

How did this occur? To some degree, of course, Canadians are simply part of a world-wide revolution in ideas, discourse, and behaviour. Before World War II there was scant mention of human rights in international law, and the Charter of the League of Nations contained no explicit mention of the concept. As Hannah Arendt has pointed out, only marginal figures talked about human rights, and no politician took them seriously.[4]

Yet the Canadian experience was also unique, for this change took place within a particular context of cultural values, social structure, political institutions, and individual striving. To examine the details of the Canadian version of the "rights revolution" is a legitimate and important goal for a historian.

This dissertation focusses upon the first years of the Canadian rights revolution, from about 1945 to 1960. Prior to 1945 Canadians seldom used the term "human rights," but instead tended to speak of their heritage of "precious British liberties." This freedom, however, was cribbed, hedged, and tarnished, for it was frequently withheld from those on the margins of society: communists, radical trade unionists, Asians, members of minority religious groups such as Jehovah's Witnesses or Doukhobors, outspoken members of

academic and religious communities, or women who threatened the patriarchal traditions of the nation.[5]

In addition, in 1945 (and for a while afterwards) it was not uncommon for certain members of the House of Commons to make racist statements about Asian Canadians or to make thinly-veiled anti-semitic remarks. It was also common for even liberal newspapers to refer to "Japs" in their headlines, and the exclusion of blacks and Jews from private clubs was not unusual.[6] By 1960 such racial and religious discrimination was no longer so acceptable. The nation was far from being a liberal paradise of multicultural equality, but the sharp edges of prejudice had been significantly eroded by a developing consensus that discrimination was inconsistent with fundamental Canadian values. Canadians had begun to move "towards the regime of tolerance."[7]

This toleration also extended to political radicalism. Although Canada passed through a sort of post-war "McCarthyism," in which the classical liberal rights of free speech and freedom of association had been curtailed by both government and the general public, fears of communism had peaked in the early 1950s.[8] By 1960 Canadians felt less threatened, and therefore less willing to cower behind authoritarian policies.

This increased respect for human rights led to some important legal changes. For example, in 1945 many of the basic rights of citizenship, including the right to vote, were denied to most Asian Canadians, to Hutterites, Mennonites, and Doukhobors, the Inuit {"Eskimos"), and to any Native Canadians living on reserves.[9] By 1960 almost all such rights violations were ended.

Yet more had occurred than just the elimination of discriminatory statutes. By 1960 a series of newly-minted legal protections at both the federal and provincial level prohibited discrimination in the field of employment as well as in the provision of public services. Moreover, protection against discrimination, as well as limited protection for basic legal and political rights, had been developed by a series of important Supreme Court decisions, and enshrined into a national Bill of Rights. While Canada still lacked a constitutionally entrenched document along the lines of the American Bill of Rights, the nation had taken a tentative step in that direction.[10]

To be sure, Canada's entry into the age of rights did not suddenly begin in 1945. There had been public demands, before and during the war, for better treatment of minority groups. Moreover, the "British liberties" of this period shielded the rights of more than just the dominant elites; on some occasions members of unpopular minority groups had been able to use the courts to defend their rights.

Similarly, Canadian attitudes towards human rights continued to evolve after 1960. Religious and racial discrimination, although now weaker, still persisted. People also turned their attention to new issues: "second wave" feminism, equality for the mentally and physically challenged, or the gay rights movement. By the end of the century the evolution of the Canadian "rights consciousness" had gone far beyond the values of the immediate postwar years.

Rights protections also evolved after 1960. The next few years saw the emergence of modern human rights codes at both the federal level and in all provinces,[11] as well as the creation of the Charter of Rights and Freedoms in 1982. These, in turn, began to reflect new ways of protecting old rights as well as protection for "new" rights concepts unthought of in 1960 -- employment equity, institutional accommodation, equal pay for work of equal value, the protection of the rights of the disabled, and equality for gays and lesbians.

Yet the changes of the 1960s and beyond could not have taken place without the revolutionary changes of the 1940s and 1950s. The fifteen years from 1945 to 1960 were pivotal. They marked the end of an older era in which the Depression and the Second World War fostered limitations on traditional "British liberties," and the beginning of a modern era in which unprecedented prosperity and stability helped to generate respect for fundamental human rights.

B: HUMAN RIGHTS AND CIVIL LIBERTIES

What is meant by the term "human rights," and how is it connected to the phrase "civil liberties?"[12] For the purposes of this dissertation "human rights" are primarily moral concepts believed by many people to be true. Whether or not they are philosophically tenable, or simply "nonsense on stilts," as Jeremy Bentham once said of an earlier version of human rights (natural law), does not need to be discussed here.[13] It is beyond dispute that they exist as a concept in people's minds, that they have an effect on people's behaviour, and that they have been written into various pieces of international and national legislation. They are, therefore, grist for the mill of historical investigation.

It is generally agreed that human rights are rooted in human dignity; human rights supporters maintain that one is morally entitled to certain standards of decent treatment by virtue of one's membership in the human race (rather than membership in a particular state or the possession of certain qualities such as wealth, gender, race, age, or religion). In the words of Catholic philosopher Jacques Maritain, writing at the dawn of the "age of rights," each individual "possesses rights because of the very fact that it is a person, a whole, master of itself and its acts, and which consequently is not merely a means to an end, but an end, which must be treated as such."[14]

Human rights can be either individual or collective. While individual human rights are in theory based upon a person's significance as an individual human being, collective rights are a recognition that membership in a group can also be an essential part of the human condition. While individual human rights can be exercised by a single individual, collective rights are meaningless unless all members of the collectivity enjoy them. For example, although a single person can exercise the individual right of free speech, the right of "self-determination" can only be exercised by a collectivity, such as a nation.[15]

This dissertation is concerned primarily with individual rights, not collective rights. It therefore largely ignores the issue of Québec's striving for national self-determination, as well as the analogous issue of provincial rights. It also says nothing about the struggle of aboriginal peoples for self-determination, denominational school rights, language rights, or

labour's right to strike and to engage in collective bargaining. There is also little or nothing about the collective rights of Doukhobors, Mennonites, Hutterites, or Jehovah's Witnesses.[16] This does not mean that these rights are less important than individual rights. Avoiding them is simply a way of focussing attention upon one particular aspect of human rights history.

Yet narrowing the focus on individual rights is not enough. The scope of individual rights can be seen as stretching along a vast continuum which begins with libertarian rights (such as the right to free speech) and classical liberal egalitarian rights (such as the right to the equal protection of the law),[17] then moves through "modern" egalitarian rights (such as the right to state protection against unjustifiable discrimination), and ends with social rights (such as the right to adequate health care or a reasonable standard of living). These categories more or less parallel an ideological continuum, running from classical liberalism (concerned with libertarian rights and the rights of formal equality), through reform liberalism (which values classical liberal rights but is also concerned with anti-discrimination protection), to social democracy (which adds to liberal rights a demand that such things as adequate health care be considered rights rather than privileges).

This dissertation examines only libertarian and egalitarian rights, not social rights. Narrowing the focus in this fashion is not a denial that "social rights" exist and should be enshrined in law (although this is a contentious political issue). Nor does it suggest that liberal rights are more important than social rights, or that only a liberal perspective on human rights is valid. Rather, it merely reflects a premise that it is both legitimate and practical to narrow our attention to this important sub-category of human rights.[18]

These libertarian and egalitarian rights can be collectively grouped together as "civil liberties." Walter Tarnopolsky has written that "there are almost as many classifications [of civil liberties] as there are writers on the subject,"[19] but in this dissertation, "civil liberties" are defined as those human rights which are essential to the operation of a modern liberal-democratic state.[20] They therefore include a wide range of libertarian rights: political freedoms, such as the right to free speech; legal freedoms, such as the right to a fair trial; and economic freedoms, such as the right to own property. In addition, civil liberties include egalitarian rights -- both the classical liberal right to equality before the law without

discrimination, and the modern (reform liberal) egalitarian right to state protection against unjust discrimination.[21]

C: THE HUMAN RIGHTS COMMUNITY

The post-war evolution of civil liberties in Canada did not happen automatically. In retrospect, it can be seen as a progression of achievements, a succession of short-term goals pursued by certain committed Canadians, for the most part acting collectively as members of political interest groups.[22]

It is often assumed that interest group politics is a relatively recent phenomenon in Canada. For example, as Paul Pross points out, R. M. Dawson's influential political science text, The Government of Canada, first published in 1946, did not mention pressure groups at all. While Pross argues that "pressure groups are essential in any modern state," and agrees that by the 1970s pressure groups politics had become central to the operation of the Canadian political system, he suggests that Dawson ignored such organizations because they were at that time politically negligible.[23]

While it is true that the last twenty years or so has seen a proliferation of interest groups, some organizations nevertheless sometimes played an important political role in the immediate post-war period. In fact, the early Canadian political scientists such as Dawson may have ignored them because of the dominant legal-institutional paradigm rather than because of any lack of potential data.[24] Even a cursory examination of the politics of human rights in the immediate post-war period suggests that interest groups played an important role in the development of public policy.[25]

This dissertation focusses upon the human rights groups that were operating in Canada from 1945 to 1960, explaining how they operated within the economic, social, ideological, and institutional context of the times.[26] These groups fell into two main categories. The first consisted of self-proclaimed "civil liberties" groups which had a strong interest in libertarian rights but were also willing to do battle for anti-discrimination legislation. For the most part, these organizations were "public interest groups," committed to the promotion of civil liberties for all citizens.[27] While at times they were split ideologically between the communists on the left and the liberals/social democrats on the right, together they made up what can be called the Canadian "civil liberties community."[28]

The second category consisted of what can be called an "equality rights community," consisting of organizations which avoided the field of libertarian rights and concentrated primarily upon egalitarian issues. These equality rights groups were, on the whole, "private interest groups," more concerned with furthering the pragmatic interests of their members than with fostering the collective good of society, although in practice the pursuit of the latter was often seen as a means of improving the former.[29]

As this dissertation will illustrate, such rights groups can also be categorized in other ways. While some of them were "specialized" rights groups, dealing solely with human rights issues, others were "tangential" rights groups, concerned with many other issues besides human rights. For example, while civil liberties groups operated as specialized rights groups, most ethnic organizations and trade unions had only a tangential interest in human rights; because their primary goal was the well-being of their own constituents, taking up civil liberties issues was only one of many possible options.

Yet, while this dissertation focusses primarily on rights groups, it also ranges somewhat more broadly. In contemporary political science many scholars now make use of the concept of a "policy community," defined by Paul Pross as:

> that part of a political system that -- by virtue of its functional responsibilities, its vested interests, and its specialized knowledge -- acquires a dominant voice in determining government decisions in a specific field of public activity, and is generally permitted by society at large and the public authorities in particular to determine public policy in that field.[30]

A policy community can consist of two major components, a "sub-government" and an "attentive public." The former is the policy-making body in the field, and includes not only the pertinent governmental bodies but also those institutionalized interest groups with the resources to be major players (including, in some instances, day-by-day communication with government officials on key issues). The latter includes "any government agencies, private institutions, pressure groups, specific interests, and individuals -- including academics, consultants and journalists -- who are affected by, or interested in, the policies of specific agencies and who follow, and attempt to influence, those policies, but do not participate in policy-making on a regular basis."[31]

Using these concepts, one can speak of a Canadian post-war "human rights policy community" embracing not just civil libertarian groups and equality rights groups, but also selected individuals, journalists, lawyers, law school professors, and politicians who all shared a strong interest in human rights. Identifying this community, and explaining its interconnections, is one of the goals of this dissertation.[32]

Another useful concept is that of the "policy network." William Coleman and Grace Skogstad have defined a policy network as "the properties that characterize the relationships among the particular set of actors that forms around an issue of importance to the policy community."[33] In other words, one can speak of a Canadian post-war "human rights policy network" each time the members of the community worked together and focussed upon a particular policy issue. Therefore, another of the tasks undertaken in this dissertation is the identification of the major human rights policy networks, and an explanation of a representative sampling: the deportation of Japanese Canadians, the Gouzenko Affair, discriminatory restrictive covenants, certain Cold War issues, provincial anti-discrimination legislation, and the struggle for a bill of rights.

Such a focus imposes some limitations and raises certain questions. For example, many human rights issues which are important today were either ignored or weakly voiced by the rights groups of the immediate post-war period. As a result, a number of important issues, such as censorship, are almost unmentioned in this dissertation.[34] In addition, this work says little or nothing about the rights of women,[35] gays and lesbians,[36] the physically and mentally challenged, and a number of other special interest groups.[37] This does not mean, of course, that members of these groups did not suffer discrimination, or that it was trivial. It simply means that this dissertation focusses on major public issues during a specific time period, rather than examining all the major wrongs.[38]

The institutional focus of this dissertation also means that "French Canada" is both important and peripheral. A number of Québec-centred issues, such as the infamous "padlock law," had a major impact on the national scene. However, within Québec most of the rights activists were Anglophones; only a few Québécois played a role in these organizations. Prior to the Quiet Revolution in Québec, debate over "*la survivance*" of the people, and the

corresponding matter of provincial rights, played better upon the political stage than any discussions of individual liberties.

Finally, an institutional approach raises an important question -- how successful were these organizations and why? According to the sociological approach known as "resource mobilization theory" (RMT) a group will be successful in part to the extent that it can mobilize a variety of resources, such as money, organization, and labour, as well as non-material resources such as "respectability," legitimacy, solidarity, loyalty, etc. The historian, no less than other academics, needs to be concerned with information about such variables.[39]

Yet as Marxists like to remind us, although people make their own history, it is not under conditions which they have chosen. The success of a group will to some degree be contingent upon certain external factors: the nature of the economy, the political culture, and the institutional-legal framework within which it operates. An analysis of these factors, especially with an eye to explaining the barriers to human rights activity in the years before 1945, is the subject of the first chapter of this dissertation. This, in turn, sets the stage for a discussion of Canada's post-war entry into "the age of rights."

ENDNOTES FOR "INTRODUCTION"

[1]Louis Henkin, The Age of Rights (New York: Columbia University Press, 1990), ix. See also the following by the former Director of Studies at the International Institute of Human Rights: "During my tenure ... I observed that -- whatever the severe political and ideological differences among faculty, staff, and students from some sixty countries, including Iron Curtain and Third World Nations -- everyone without exception favored human rights! To have opposed human rights would have been *lèse majesté*: the equivalent of an American's opposing apple pie, motherhood, or the flag" (John Warwick Montgomery, Human Rights and Human Dignity [Edmonton: Canadian Institute for Law, Theology, and Public Policy, 1995], 15-16).

The literature on human rights is immense; a good introduction is Maurice Cranston, "What Are Human Rights?" in The Human Rights Reader, ed. Walter Laqueur and Barry Rubin (New York: Signet, 1979). For a look at the historical evolution of the concept, see Louis Henkin, The Rights of Man Today (Boulder, Colorado: The Westview Press, 1978). A good introduction to the history of human rights in Canada is Ronald Manzer, "Human Rights in Domestic Politics and Policy," in Human Rights in Canadian Foreign Policy, ed. Robert O. Matthews and Cranford Pratt (Kingston and Montréal: McGill-Queen's University Press, 1988), 23-45.

[2]This is the title of an influential book on American politics which suggests that although discourse about human rights is a "universal language," there are different "dialects," and notes in passing that the Canadian version is somewhat less individualistic than the American; see Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse (New York: The Free Press, 1991), x, 12-3.

[3]Rainer Knopff, Human Rights & Social Technology: The New War on Discrimination (Ottawa: Carleton University Press, 1989), 216. Knopff is a conservative "Charter skeptic" who is critical of rights discourse. For another Canadian criticism of rights discourse, see Robert Martin, "The Canadian Charter of Rights and Freedoms is Antidemocratic and Un-Canadian," in Crosscurrents: Contemporary Political Issues, 3rd ed., ed. Mark Charlton and Paul Barker, (Scarborough: Nelson Canada, 1994), 98-102.

[4]Jeremy Waldron, "Nonsense upon stilts? -- a reply," in 'Nonsense Upon Stilts': Bentham, Burke and Marx on the Rights of Man, ed. Jeremy Waldron, (London: Methuen, 1987), 153-56; Hannah Arendt, The Origins of Totalitarianism (New York: Meridien, 1958), 292.

[5]Mariana Valverde writes that "The nation was ... seen as held together by a common subjectivity, whose constant re-creation at the individual level ensured the continued survival of the collectivity. The collectivity thus organized had very specific class, gender, and racial/ethnic characteristics, generally supporting the domination of Anglo-Saxon middle-class males over all others but allowing women of the right class and ethnicity a substantial role,

as long as they participated in the construction of women in general as beings who, despite their heroic and largely unaided deeds in maternity, were dependent on male protection" (Mariana Valverde, The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925 [Toronto: McClelland and Stewart 1991], 33. For a brief summary of some of the pre-1945 violations of rights, see Chapter 1 of this dissertation.

[6]These issues are discussed in Chapters 2, 4, and 6.

[7]The phrase "towards the regime of tolerance" is the subtitle of the "Epilogue" in Thomas Berger's book, Fragile Freedoms: Human Rights and Dissent in Canada (Toronto: Irwin, 1981). This book is not based on original research, but is a good introductory overview of Canadian human rights history.

[8]Anti-communism and its effect on civil liberties is discussed in Chapters 3 and 5. The term "McCarthyism" is used here to designate a period of anti-communist hysteria and repression. Reg Whitaker has suggested that Canada enjoyed a "relative absence" of McCarthyism during the 1950s, provided one equates McCarthyism with non-governmental "political repression" of communists rather than with "state repression" ("Left-wing Dissent and the State: Canada in the Cold War Era," in Dissent and the State, ed. C.E.S. Franks [Toronto: Oxford University Press, 1989]). However, there are enough examples of political repression in Canadian post-war history to warrant the use of the term "McCarthyism," provided one is clear that there was both political and state repression in Canada, but that the former phenomenon appears to have been far greater in the United States than in Canada.

[9]J. Patrick Boyer, Political Rights: The Legal Framework of Elections in Canada (Toronto: Butterworths, 1981), 129-34. As Boyer points out, there were two exceptions to the federal disenfranchisement of native Indians (normally living on reserves): those who had served in the armed forces during wartime, and those who had chosen to waive their traditional exemption from taxation on personal property.

[10]According to F.R. Scott, the noted constitutional lawyer and civil libertarian (discussed more fully in Chapter 1), "Constitutionally speaking, the 1950s was predominantly the decade of human rights" ("Expanding Concepts of Human Rights," in F.R. Scott, Essays on the Constitution: Aspects of Canadian Law and Politics [Toronto: University of Toronto Press, 1977], 353-361, at 354.) For a discussion of the struggle for anti-discrimination legislation, see Chapters 4 and 6 of this dissertation. For a discussion of the Supreme Court decisions and the struggle for a bill of rights, see Chapter 7.

[11]Human rights codes, beginning in Ontario in 1962, went further than the earlier anti-discrimination statutes in two ways: they prohibited a broad range of discrimination (often consolidating earlier statutes), and they set up relatively independent commissions mandated to enforce the law and educate the public (Walter S. Tarnopolsky, Discrimination and the Law in Canada [Toronto: Richard De Boo, 1982], 31).

[12]Another term which needs defining here is "civil rights." The American perspective, which affects Canadian perceptions of law as well as other aspects of culture, has made the notion of "civil rights" almost synonymous with the struggle of blacks for access to desegregated facilities and the franchise. Since the Canadian constitution allocates power over "property and civil rights" to the provinces, it is tempting to think that issues of fundamental liberty and equality are completely within provincial jurisdiction. (As Chapter 7 will demonstrate, until the 1950s it was frequently maintained in some quarters that the constitution gave the provinces virtually sole jurisdiction over civil liberties.) However, today it is understood that the phrase simply gives the provinces jurisdiction over such matters as the ownership of property, the making of contracts, and the ability to sue for damages; it is not synonymous with the notion of "civil liberties" (Peter Hogg, Constitutional Law of Canada [Toronto: Carswell, 1977], 298).

[13]It is worth noting, however, that the concept of human rights can be seen as in part a resuscitated version of natural law theory, the result of a human desire to find a set of moral guideposts in the face of the atrocities of Naziism and the horrors of the Second World War.

[14]Jacques Maritain, The Rights of Man and Natural Law, trans. Doris C. Anson (New York: Scribner's, 1943), 65.

[15]The 1948 UDHR sets out a wide scope of "human rights and fundamental freedoms," but because of ideological disagreements among the UN states its principles were implemented by the creation of two different covenants, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). Both covenants refer to the "right to self-determination," as well as to a number of other rights (discussed below). Information about the UDHR and the covenants can be found in The United Nations and Human Rights (New York: United Nations Department of Public Information, 1984).

[16]These groups have been examined by other authors, such as George Woodcock and Ivan Avakumovic, The Doukhobors (Toronto: McClelland and Stewart, 1977); William Kaplan, State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights (Toronto: University of Toronto Press, 1989); William Janzen, Limits on Liberty: The Experience of Mennonite, Hutterite, and Doukhobor Communities in Canada (Toronto: University of Toronto Press, 1993). All of these groups have suffered collective violations of individual rights in addition to violations of their collective rights.

[17]The concepts of egalitarian rights and libertarian rights, while analytically distinct, are often intertwined. For example, the decision to prosecute members of a minority religious group (such as the Jehovah's Witnesses) can be seen as primarily a violation of their libertarian right to freedom of religion, but it also may indicate that their religious egalitarian rights are being violated. In addition, anti-discrimination laws are intended to promote the equality of members of minority groups, but they do so at the expense of the liberty of members of other groups (i.e., taking away their freedom to discriminate).

[18]Historically, Marxists have frequently tended to see liberal rights as mere "bourgeois" obfuscations of the underlying reality of class oppression. Not all radical theorists, however, are so unsympathetic to liberal rights. Note the point made by the Marxist historian, E.P. Thompson: "I am insisting only upon the obvious point, which some modern Marxists have overlooked, that there is a difference between arbitrary power and the rule of law. We ought to expose the shams and inequities which may be concealed beneath this law. But the rule of law itself, the imposing of effective inhibitions upon power and the defence of the citizen from power's all-intrusive claims, seems to me an unqualified human good" (Whigs and Hunters: The Origin of the Black Act [New York: Pantheon, 1975], 266). Note also how political scientist C.B. Macpherson (discussed in Chapter 3) attempted to combine a liberal commitment to civil liberties with a Marxist critique of capitalism.

[19]Walter S. Tarnopolsky, The Canadian Bill of Rights (Toronto: Carswell, 1966), 3.

[20]What follows is based upon the categories used by Tarnopolsky in The Canadian Bill of Rights, 3, which in turn was based upon Bora Laskin, "An Inquiry into the Diefenbaker Bill of Rights," Canadian Bar Review XXXVII (1959): 77-134. This dissertation modifies their discussions by stressing the way in which "classical" egalitarian rights differ from "modern" (post-war) ones.

[21]Since 1960 egalitarian rights have also come to include affirmative action programs that move society away from the liberal ideal of formal equality towards equality of opportunity and even equality of condition. On the whole, this is most strongly opposed by those most wedded to classical liberal individualism.

[22]For the purposes of this dissertation, the terms "interest group" and "pressure group" will be used synonymously, to refer to organizations which attempt to affect public policy by any means short of actually seeking electoral office. This includes both directly lobbying government or attempting to change the attitudes of the public in the hope that this will ultimately have an impact upon policy.

[23]R. MacGregor Dawson, The Government of Canada (Toronto: University of Toronto Press, 1946), cited in A. Paul Pross, Group Politics and Public Policy (Toronto: Oxford University Press, 1986), 1-2.

[24]In the 1940s, before the dawn of the so-called "behavioural revolution," political scientists operated primarily according to a paradigm which focussed on the study of laws and institutions. This meant that often they were blind to the political behaviour of non-governmental organizations such as interest groups.

[25]For examples of later political scientists examining early interest groups, see Margaret Eileen Beattie, "Pressure Group Politics: The Case of the Student Christian Movement of Canada" (Ph.D. diss., University of Alberta, 1972); Howe, "Human Rights Policy in Ontario: The Tension Between Positive and Negative State Laws" (Ph.D. diss., University of Toronto, 1988).

[26]The term "human rights group" needs to be treated with some care. It is used in this dissertation as a generic term embracing both civil liberties groups and equality rights organizations during the period from 1945 to 1960. In later years, however, some interest groups have specifically identified themselves as "human rights" organizations rather than "civil liberties" groups, stressing equality more than freedom. (For example, in British Columbia the B.C. Human Rights Coalition is today quite distinct from the B.C. Civil Liberties Association, and takes very different stands on a number of issues, especially hate propaganda and pornography.) It needs to be stressed that no organizations during the period covered by this dissertation ever called themselves "human rights" groups in this specific non-generic sense.

[27]Jeffrey Berry has defined a public interest group as "one that seeks a collective good, the achievement of which will not selectively and materially benefit the membership of the organization." See his Lobbying for the People: The Political Behaviour of Public Interest Groups (Princeton: Princeton University Press, 1977), 7.

[28]For important studies of Canadian libertarian rights, many of which mention groups in the civil liberties community, see: Irving Abella, ed., On Strike: Six Key Labour Struggles in Canada 1919-1949 (Toronto: James Lorimer, 1975); Lita Rose Betcherman, The Little Band: The Clashes between the Communists and the Canadian Establishment, 1928-1932 (Ottawa: Denau, n.d.); Lorne Brown, When Freedom Was Lost: The Unemployed, the Agitator, and the State (Montréal: Black Rose Books, 1987); Ramsay Cook, "Canadian Liberties in Wartime: A Study of the Defence of Canada Regulations and Some Canadian Attitudes to Civil Liberties in Wartime 1939-1945" (M.A. thesis, Queen's University, 1955); Ramsay Cook, "Canadian Freedom in Wartime," in His Own Man: Essays in Honour of Arthur Reginald Marsden Lower, ed. W.H. Heick and Roger Graham (Montréal: McGill-Queen's University Press, 1974), 37-52; Larry Hannant, The Infernal Machine: Investigating the Loyalty of Canada's Citizens (Toronto: University of Toronto Press, 1995); Michiel Horn, "'Free Speech Within the Law': the Letter of the Sixty-Eight Toronto Professors, 1931," Ontario History 72 (March, 1980): 27-48; Michiel Horn, The League for Social Reconstruction: Intellectual Origins of the Democratic Left in Canada 1930-1942 (Toronto: University of Toronto Press, 1980), Chapter 10; Kaplan, State and Salvation; Mark Leier, "Solidarity on Occasion: The Vancouver Free Speech Fights of 1909 and 1912," Labour/Le Travail 23 (Spring 1989): 39-66; J. Petryshyn, "Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labour Defense League, 1925-1940," Labour/Le Travail 10 (Autumn 1982): 39-63; Barbara Roberts, "Shovelling Out the 'Mutinous': Political Deportation from Canada Before 1936," Labour/Le Travail 18 (Fall, 1986): 77-110, and Whence They Came: Deportation from Canada 1900-1935 (Ottawa: University of Ottawa, 1988); Suzanne Skebo, "Liberty and Authority: Civil Liberties in Toronto, 1929-1935" (M.A. thesis, University of British Columbia, 1968); Thomas Socknat, Witness Against War: Pacifism in Canada, 1900-1945 (Toronto: University of Toronto Press, 1987), 200-11; Reg Whitaker, "Official Repression of Communism During World War II," Labour/Le Travail 17 (Spring 1986): 135-166; Reg Whitaker and Gary Marcuse, Cold War Canada: The Making of a National Insecurity State, 1945-1957 (Toronto: University of Toronto Press, 1994).

[29]For some important studies of discrimination in Canada, including references to equality rights groups, see the above note 16 on minority religious groups. See also: Donald George Anderson, "The Development of Human Rights Protection in British Columbia" (M.A. thesis, University of British Columbia, 1986); Irving Abella and Harold Troper, None is Too Many: Canada and the Jews of Europe 1933-1948 (Toronto: Lester & Orpen Dennys, 1983); Ken Adachi, The Enemy that Never Was (Toronto: McClelland and Stewart, 1976) [on the treatment of Japanese Canadians]; John Bagnall, "The Ontario Conservatives and the Development of Anti-Discrimination Policy" (Ph.D. diss., Queen's University, 1984); R. Brian Howe, "Human Rights Policy in Ontario," and "The Evolution of Human Rights Policy in Ontario," Canadian Journal of Political Science XXIV (December 1991): 783-802; Carol F. Lee, "The Road to Enfranchisement: Chinese and Japanese in British Columbia," BC Studies 30 (Summer 1976): 44-76; Gordon Mackintosh, "The Development of the Canadian Human Rights Act: A Case Study of The Legislative Process" (M.A. thesis, University of Manitoba, 1982); Herbert A. Sohn, "Human Rights Legislation in Ontario: A Case Study" (Ph.D. diss., University of Toronto, 1975); James W. St. G. Walker, "Race," Rights and the Law in the Supreme Court of Canada: Historical Case Studies (Waterloo: Wilfrid Laurier Press, 1997); Robin W. Winks, The Blacks in Canada: A History (Yale and Montréal: Yale University Press and McGill-Queen's University Press, 1971).

[30]Pross, Group Politics, 1986), 98. For a theoretical discussion, and an application of this concept to the Canadian setting, see William D. Coleman and Grace Skogstad, eds., Policy Communities and Public Policy in Canada (Toronto: Copp Clark, 1990).

[31]Pross, Group Politics, 98-9.

[32]Most studies of rights issues touch upon libertarian or egalitarian interest group activity, but not both (as one can see in notes 27 and 28, above). This dissertation, however, examines both kinds of behaviour; whether or not an organization was pursuing primarily libertarian or egalitarian goals, its members were still human rights activists, part of a common endeavour.

[33]William D. Coleman and Grace Skogstad, "Policy Communities and Policy Networks: A Structural Approach" in Policy Communities and Public Policy in Canada, 14-33 at 26. See also Chapter 6 ("Policy Communities and Networks") of Leslie A. Pal, Beyond Policy Analysis: Public Issue Management in Turbulent Times (Scarborough, Ont.: International Thomson Publishing, 1997).

[34]This is not to say that civil liberties groups were completely unconcerned about censorship. For example, the memorandum sent by Irving Himel of the Toronto Association for Civil Liberties to CCF leader M.J. Coldwell on 4 November, 1949, lists some of the censorship issues of the time (Canadian Labour Congress [CLC] Papers, vol. 335, file "Civil Liberties - General, 1949-1963"). On the whole, however, there was little concern about censorship manifested by civil liberties groups.

[35]Women's issues were not entirely dormant during this period. See, for example, Dean Beeby, "Women in the Ontario CCF, 1940-1950," Ontario History 74 (December 1982): 258-

283; Julie Guard, "Fair Play or Fair Pay? Gender Relations, Class Consciousness, and Union Solidarity in the Canadian UE," Labour/Le Travail 37 (Spring 1997): 149-77; Ann Porter, "Women and Income Security in the Post-War Period: The Case of Unemployment Insurance, 1945-1962, Labour/Le Travail 31 (Spring 1993): 111-44; Shirley Tillotson, "Human Rights Law as Prism: Women's Organizations, Unions, and Ontario's Female Employees Fair Remuneration Act, 1951," Canadian Historical Review 72, no. 4 (1991): 532-57. For specific studies of women's groups, see: Elizabeth Forbes, With Enthusiasm and Faith: History of the Canadian Federation of Business and Professional Women's Clubs - La Fédération Canadienne des Clubs de Femmes de Carrières Libérales et Commerciales - 1930-1972 (Ottawa: Canadian Federation of Business and Professional Women's Clubs, 1974); N.E.S. Griffiths, The Splendid Vision: Centennial History of the National Council of Women of Canada, 1893-1993 (Ottawa: Carleton University Press, 1993). See also Jill Vickers, "The Intellectual Origins of the Women's Movements in Canada," in Challenging Times: The Women's Movement in Canada and the United States, ed. Constance Backhouse and David H. Flaherty (Montreal and Kingston: McGill-Queen's University Press, 1982).

[36]For gay and lesbian history in Canada, see Gary Kinsman, The Regulation of Desire: Sexuality in Canada (Montréal: Black Rose Books, 1987). He indicates (at 147) that the first gay rights group, the Association for Social Knowledge (ASK), was not formed until 1964. See also Gary Kinsman, "'Character Weaknesses' and 'Fruit Machines': Towards an Analysis of The Anti-Homosexual Security Campaign in the Canadian Civil Service," Labour/Le Travail 35 (Spring 1995): 133-161; Daniel J. Robinson and David Kimmel, "The Queer Career of Homosexual Security Vetting in Cold War Canada," Canadian Historical Review 75, no. 3 (September, 1994): 320-345.

[37]For example, note Dominique Marshall's discussions of the evolution of children's rights: "Reconstructing Politics, the Canadian Welfare State and the Ambiguity of Children's Rights, 1940-1950," in Uncertain Horizons: Canadians and Their World in 1945, ed. Greg Donaghy (Kingston: Canadian Committee for the History of the Second World War, 1997); "The Language of Children's Rights, the Formation of the Welfare State, and the Democratic Experience of Poor Families in Quebec, 1940-55," Canadian Historical Review 78, no. 3 (September 1997): 409-441.

[38]C. Wright Mills once wrote that the task of the sociologist is to transform private concerns into public wrongs. It is the task of interest groups (or the news media) to transform these public wrongs into issues. To analyze the injustices of a historical period is to rely upon subjective standards; to analyze the issues is to utilize, as much as is ever possible, objective standards. A good example of a public wrong that was not a public issue during this period was involuntary sexual sterilization. As Ruth Marina McDonald has pointed out, there was little opposition to the Alberta Sexual Sterilization Program until the late 1960s: "A Policy of Privilege: The Alberta Sexual Sterilization Program 1928-1972" (M.A. thesis, University of Victoria, 1996).

39.For a discussion of RMT, see Eduardo Canel, "New Social Movement Theory and Resource Mobilization: The Need for Integration," in Organizing Dissent: Contemporary Social Movements in Theory and Practice, ed. William K. Carroll (Canada: Garamond Press, 1992).

The concept of "respectability" is rooted in class, but it also touches upon other key social indicators, such as race, religion, political orientation, and morality (including sexual orientation and discretion). The norm in English Canada was traditionally white, Anglo-Saxon, upper middle class, capitalist, heterosexual, and male. Indeed, most of the rights struggles of our history are really equality struggles -- those seen as "disreputable" outsiders fighting to achieve some degree of parity with those within "respectable" society. To succeed, however, they often made alliances with people who were sufficiently detached from the political elite so as to question it but at the same time sufficiently part of it (i.e., "respectable") so that they were heard. A good example of this can be found in an NFB video ("Rhyme and Reason") on the life of the poet/law professor/civil libertarian, Frank Scott. As the son of an Anglican arch-deacon, with Canadian roots that went back several generations, Scott was eminently respectable, and aware that this gave him more latitude than most other people to make unpopular statements and take positions that irritated the elites. As such, his association with rights groups lent them a certain cachet which enhanced their power to influence governments.

CHAPTER 1 - HUMAN RIGHTS PRIOR TO 1945

A: INTRODUCTION

This chapter does two things. First, it examines the state of human rights in the pre-war and war-time periods, pointing out some of the major rights issues, and explaining briefly some of the reasons why there occurred so many egregious violations of fundamental egalitarian and libertarian rights. It furthermore identifies a number of obstacles to the development of what can be seen as a modern perspective on individual rights. Examining the context of these early rights violations is essential to an understanding of how, after the war, shifts in the economy, political culture, and legislation aided Canada's transition into the modern age of rights.

The second part of this chapter examines the human rights community which operated within this pre-1945 context. The post-war human rights community soon took off in new directions, attracting new sources of support, and creating new coalitions, but in at least the early years it was strongly rooted in ideas, organizations, and activists who were anything but new. It did not burst forth fully-formed from the minds of its members, but rather reflected many of the struggles and stratagems of earlier years. To comprehend it, therefore, it is necessary to develop some understanding of its roots.

B: RIGHTS VIOLATIONS AND THEIR CAUSES

Historical research provides abundant instances of rights violations in the years prior to the Second World War. For example, the egalitarian rights of people of Japanese, Chinese, and East Indian ancestry were routinely violated by the British Columbia government, and this led to disenfranchisement by the federal government. In addition, their rights to equality were

undermined by acts of private discrimination, as was also the case in many parts of Canada for blacks, Jews, and people of native ancestry.[1]

Libertarian rights were also frequently invaded. For a while, Section 98 of the Criminal Code made Canada the world's only self-proclaimed democracy outlawing the Communist Party, and provincial/municipal authorities frequently made it very difficult for all sorts of political dissenters, including communist and (at times) non-communist trade unions, to hold public meetings.[2] When s. 98 was repealed in the 1930s, the Québec government responded by creating the infamous Padlock Act which de facto made illegal any political organization suspected of communist tendencies.[3]

From 1914-1918 and 1939-1945 the power of the government was enhanced by the War Measures Act (WMA), a law which gave the cabinet virtually untrammelled dictatorial powers. In 1939 Ottawa used the WMA to issue the Defence of Canada Regulations (DOCR), a set of rules which Ramsay Cook has called the "most serious restrictions upon the civil liberties of Canadians since Confederation," and which far surpassed anything in the United Kingdom. A number of groups, including the Jehovah's Witnesses, the Communist Party, and even the largely inoffensive Technocracy, were declared illegal organizations. In addition, almost all the Japanese Canadians living on the West Coast were deprived of much of their property and forced to relocate to other parts of the country.[4]

There appear to be four major reasons why so many rights violations took place in the years prior to 1945.[5] First, Canada was still in an early stage of capitalist development. Compared to the post-war period, the nation had fairly low levels of urbanization, higher education, and affluence, and this did not provide fertile ground for the growth of tolerance and respect for basic civil liberties.[6] As Morton and Granatstein have put it, "Until the 1940s, Canada had been a poor country, with much of the meanness poverty tends to produce. Pre-war Canadians often knew little beyond their own distractions and neighbourhoods, which were small, largely homogeneous, and exclusive. There was usually no room in them for Japanese or Chinese Canadians, and scant tolerance for Jews or blacks or those with 'different' attitudes or beliefs."[7]

This was, moreover, intensified by the laissez-faire nature of Canada's political economy. This meant that employers frequently utilized whatever means possible, including the authoritarian powers of the state, to limit the rights of workers to free expression and association. At the same time, the workers themselves often resorted to discriminatory practices against minority groups in order to defend their tenuous economic status. It was a time when the welfare state was not much more than a gleam in the eyes of reform liberals, and Canadians lived with few state interventions into the market-place. The absence of anti-discrimination legislation, and even the protection of a bill of rights, was not so remarkable in a society that had no unemployment insurance, family allowances, or Keynesian counter-cyclical fiscal policies.[8]

Second, the economic system created a number of specific problems, such as high immigration levels from non-British areas, the failure of capitalism during the 1930s to sustain high levels of performance legitimacy, and the rise of communism as an attractive counter-ideology. These all threatened the political and social elites of both English Canada and Québec.[9] The "strategic calculations" of the elites were often such that it seemed eminently reasonable and even fair to limit the liberties of political radicals and deny full equality to members of certain minority ethnic groups.[10]

The third set of factors contributing to rights violations was the nature of Canada's political culture.[11] While it is important to realize the limits of this concept as an explanatory device,[12] the values of a political culture help shape both perceptions and evaluations of social "reality." It is the political culture, in other words, which helps to determine whether or not members of minority ethnic groups, or political radicals, are seen as threats to the elites of a society, and it is the political culture which suggests whether or not it is legitimate to infringe on the fundamental rights of those who are perceived to be threats.[13]

A political culture includes, among other things, certain ideological perspectives -- belief systems about the distribution of political power, ownership and distribution of wealth, the nature of freedom and equality, and the proper role of government.[14] It is useful to see the political culture of a society as embracing a "dominant ideology" as well as competing alternative counter ideologies. In other words, at the core of a political culture stands a belief

system which legitimizes the status quo, and supports the social/political elites, while at the periphery there may be other belief systems which question the standard values and suggest alternatives to the economic, political, and social "establishment."[15]

In the years before 1945 there existed two dominant ideologies in Canada, one in French Canada (Québec) and one in English Canada. The dominant ideology of Québec was a distinctly illiberal and undemocratic conservatism, one that was hostile to civil liberties in general.[16] Since this dissertation deals primarily with English Canada, it is not necessary to explain this ideology in detail, but some understanding of the Québec political culture is important, for (as noted earlier) the province often had a national impact on human rights issues, both before and after 1945, especially because of the anti-communist and anti-Jehovah's Witnesses policies of Premier Maurice Duplessis. The dominant ideology of English Canada in the years before 1945 was liberal-democracy with a tory touch.[17] It was liberal in that it put a high premium on certain aspects of individual freedom: respect for private property and freedom of contract, the rule of law enforced by an independent judiciary, participation in representative and responsible government, and little government intrusion into the fields of speech, religion, and association.[18] It was democratic (more or less) in that it supported representative and responsible government, as well as the right to vote of all citizens other than the members of a few ethnic and religious minorities. Finally, it was touched with toryism in the sense that there was a strong sense of connection with Britain, especially with the Monarchy, and a belief in the primacy of authority and order.[19]

All three of these ideological elements -- liberalism, democracy, and the tory touch -- contained clusters of values which inhibited Canada's entry into the "age of rights." For example, the traditional liberal ethos was classical liberalism, an ideological predisposition towards individual liberty that emphasized the minimal state. This meant that although classical liberalism supported traditional civil liberties, it inhibited the growth of ideas about improving protection of egalitarian rights through anti-discrimination legislation.

Classical liberals also maintained a Whiggish view of British history which considered an unchecked executive to be the most significant threat to the freedom of citizens. As such, classical liberals saw British constitutional principles such as parliamentary supremacy, the

common law, and an independent judiciary as bedrock guarantors of civil liberties. They were strongly influenced by the British constitutional scholar, A.V. Dicey, who referred to parliamentary supremacy as "the very keystone of the law of the constitution," and maintained that the English were secure in their enjoyment of personal freedom without an American-style bill of rights. As he put it, the elements of the British constitution were "for practical purposes worth a hundred constitutional articles guaranteeing individual liberty."[20] Such thinking constituted a major barrier to the acceptance of any proposals for a Canadian bill of rights.

One manifestation of this classical liberal smugness was frequent references to the legitimizing power of the "precious British liberties." This discourse was ambiguous and contested. On the one hand, it could be used to support both individual liberty and formal legal equality; in fact, it was used not only by classical liberals, but also by trade unionists,[21] social democrats,[22] and even at times by communists.[23] On the other hand, it could be interpreted in a very authoritarian or inegalitarian fashion. For example, when the Toronto police were harassing communists in the early 1930s, the liberal Toronto Star commented that this approach was "un-British and wholly American," but the local Police Commission argued that its policies were consistent with the British tradition of "free speech within the law."[24]

Moreover, the "British liberties" discourse had certain implicit inegalitarian biases. To begin with, although in theory the "British" tradition referred to values available to all citizens,[25] it carried with it connotations of Anglo-Saxon superiority which had little resonance for many French Canadians or foreign-born citizens. Worse still, it could be used to justify the withholding of basic citizenship rights to those who were seen as somehow unfit, either through innate characteristics or because of certain behaviour.[26]

If the "British liberties" discourse identified a major source of classical liberal pride, a discourse of "executive despotism" marked one of its major fears. During the war classical liberals began to express alarm about the many powers delegated by Parliament to the Crown and exercised either by cabinet ministers or civil servants. As one classical liberal put it, lamenting not so much the DOCR but the passage of over 16,000 orders-in-council, "[d]emocratic institutions cannot survive the abandonment by a freely elected people's

Legislature of its exclusive legislative power to hordes of functionaries. A bureaucratic dictatorship is not democracy. It is dictatorship."[27]

Of course, this "dictatorship" was a response to the exceptional circumstances of the war, and most Canadians hoped that when peace was achieved the nation would revert to its traditional form of responsible government. However, even before the war, classical liberals had begun to worry about the growth of bureaucracy and rule by decree that seemed to go hand-in-hand with the development of the welfare state. In short, at the end of the war classical liberals were expressing significant worries about a weakened Parliament resulting in increasing rule by cabinet and the bureaucracy -- the discourse of "executive despotism."[28] As long as classical liberals were fixated on this problem, it would be difficult for them to admit the danger of Parliamentary despotism, and the consequent need for a bill of rights to curb legislated rights violations.[29]

Certain ideas about democracy also impeded the growth of respect for human rights. A concern with "executive despotism" went hand-in-hand with a notion of democracy that privileged liberty over equality. Moreover, this was exacerbated by a majoritarian conception of democracy. The franchise and certain other rights of citizenship were still withheld from Asians, aboriginals living on reserves, and members of communitarian religious groups, such as the Doukhobors.[30] For many people, this was completely acceptable because they viewed as democratic, and therefore legitimate, anything which had been done by a government representing the majority of the people.[31]

Another obstacle to respect for human rights came from the "tory touch" of Canada's political culture. Tories accepted the liberal values of freedom and the democratic values of equality, but they nevertheless wished to subordinate them to their over-arching commitment to the British connection, the monarchy, a faith in the cultural superiority of the British (or Anglo-Saxon) peoples, and a belief in the necessity of law and order.

While racism and nativism were elements of Canada's political culture that transcended most ideological barriers,[32] they were augmented by tory notions of British racial and cultural superiority. As one historian has noted, "a group's desirability ... varied almost directly with its members' physical and cultural distance from London (England), and the degree to which

their skin pigmentation conformed to Anglo-Saxon white."[33] Until the lode-stone of the Canadian identity shifted, and the nation moved closer to civic nationalism, it would be difficult to achieve a regime of tolerance for "strange" or "exotic" minority ethnic groups.[34]

The "tory touch" may also have contributed to an authoritarian element of the Canadian political culture. Many commentators have acknowledged this characteristic -- Margaret Atwood has noted that "Canada must be the only country in the world where a policeman is used as a national symbol," Edgar Z. Friedenberg has argued that we exhibit too much "deference to authority," and Northrop Frye has referred to our "garrison mentality."[35] Whether or not it is true, as has been argued by some scholars, that this authoritarianism stems from our tory "counter-revolutionary" past,[36] there is certainly some evidence that in the period before 1945 those who were the strongest tory supporters of the British connection were also often the strongest authoritarians.[37]

In addition, a tory-touched "deference to authority" may have inhibited the early growth of civil liberties organizations. As a member of Parliament later reminisced in the House of Commons, looking back at his war-time activities with a Toronto civil liberties group, "We were regarded as very queer people, rather open to suspicion in belonging to any such organization."[38] While membership in a civil liberties group in any country demands a certain level of idiosyncratic independence, it may be that it was even more necessary in Canada than in certain other countries, such as the United States.[39]

Having said this, however, it is important to see that in many ways Canadian political culture in general, and toryism in particular, were also convenient receptacles which held and shaped a current of thought that transcended national boundaries. This was the late nineteenth and early twentieth century emphasis on moral regulation, an emphasis which was present in many of the English-speaking countries of that period. Much of what today would be seen as flagrant violations of fundamental rights and liberties -- racist immigration and domestic policies, the eugenics movement, temperance legislation, birth control regulation, and much of the policy dealing with aboriginal peoples -- can be seen as reflecting in part an illiberal desire to impose a certain set of moral standards and behaviour, initially connected to the so-called "social purity" movement. In post-Confederation Canada, Tina Loo and Carolyn

Strange have argued, "the overriding objective ... was to build a great nation, not just with a transcontinental railway and stout farmers, but with citizens made good," and this passion for moral regulation continued into the period just prior to the Second World War.[40]

This was, in short, a period in which certain social activists attempted to move the state, as Loo and Strange put it, from "an impassive laissez-faire institution to an interventionist moral watchdog." It was only after the Second World War that this was replaced by a third approach, the creation of the welfare state.[41] In retrospect, this now appears as the triumph of liberalism over conservative "regulationism," but it was not the triumph of the older classical laissez-faire liberalism, but rather the ascendency of the newer reform liberalism.[42]

Paradoxically, however, while the welfare state ideas of reform liberalism were in part intended to create good citizens in a less interventionist way than that of the moral regulators, reform liberalism nevertheless pointed the way towards a form of regulation that would have a profound effect upon race relations in Canada. Those who began to embrace the reform liberal notion that the state has an obligation to provide the conditions under which people can flourish and reach their fullest potential began to see that one of these conditions might be the prohibition of ethnic discrimination. However, in 1945 this was still a contentious notion, strongly opposed by classical liberals. For example, when in 1944 the Ontario government passed a rather weak prototype, the Ontario Racial Discrimination Act (ORDA), the classical-liberal Globe and Mail castigated the government for entering a field that it had no business attempting to regulate.[43]

Another threat to classical liberalism, especially its British liberties discourse, was the new discourse of human rights, a language with a broader scope and more universal appeal. In August 1941 Roosevelt and Churchill issued the Atlantic Charter, affirming their commitment to the democratic right of self-government as well as "freedom from fear and want." More importantly, they prefaced the document with a statement that victory over the Axis powers was "essential to decent life, liberty, independence and religious freedom, and to preserve human rights and justice...."[44] Used as a propaganda weapon against the Axis powers, this document helped focus attention in Canada upon problems of racial

discrimination. In 1943, for example, an article in Canadian Forum suggested that Canadians were already in the midst of a "revolution, a social transformation," and that steps taken by Ottawa to deal with racial discrimination in the work-place demonstrated to the world that Canadians were "sincere" about the Atlantic Charter.[45]

By June of 1945 Canadians had an even stronger international document to serve as a land-mark. The preamble of the Charter of the United Nations refers to "fundamental human rights" as well as "the dignity and worth of the human person," and Articles 1 and 55 enshrine the principles of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." This document therefore gave support to the idea that citizens of a nation such as Canada are entitled to certain basic rights, not because they are citizens but because they are human beings. Although this notion was only partially written into international law (the UDHR was not created until 1948), the United Nations Charter introduced a new discourse of "human rights," one that was used increasingly in the years after the war.[46]

Ideas about democracy were also changing. New social scientific theories about race made it increasingly difficult to justify the exclusion of racial minorities from full participation in the life of the body politic.[47] In addition, the Second World War spurred Canadian academics to think more deeply about the nature of democracy (as opposed to totalitarianism),[48] and helped to change Canadian attitudes about the rights of minorities. Any form of discrimination based on notions of race was increasingly regarded as an abrogation of democratic principles.[49] For example, in a series of 1944 editorials on Ottawa's decision to disenfranchise Japanese Canadians outside of British Columbia,[50] B.K. Sandwell's Saturday Night argued that it violated one of "the most vital principles of democracy," and added that disenfranchising minorities such as Japanese Canadians on the basis of racial background was "very, very Nazi." Canada was moving away from ideas of majoritarian democracy towards the concept of rights democracy.[51]

The fourth important barrier to respect for human rights was the institutional/legal context. While economic, social, and cultural background helps to determine the options available to political interest groups, decisions are also affected by what Alan Cairns has

called "a pyramid of the policies of many yesterdays;"[52] from the perspective of individual rights in Canada, the apex of the inherited policy pyramid consisted of several constitutional decisions made in 1867.

To begin with, Canada was created as a colony, and a colony she remained until 1931. This created a major political tension between a tory obsession with the British connection and a liberal fixation on national freedom. After 1931, although there remained a few "loose ends," such as delegation by the Monarch of all prerogative powers to the Governor General (in 1947), the ending of appeals to the Privy Council (in 1949), and the development of a constitutional amending formula (in 1982), Canadians began to shift their attention away from matters involving national autonomy, toward issues of individual rights.[53] Yet this shift had only just begun when the Second World War broke out; only in the post-war period would Canadians truly make the transition "from Colony to Nation."[54]

Most important to rights activists, perhaps, was the decision in 1867 to give Canada "a constitution similar in principle to that of the United Kingdom." This phrase in the preamble of the British North America [BNA] Act was widely understood as giving Canadians a constitutional right to their "precious British liberties." In practice, this meant that citizens enjoyed what has been called a "common law bill of rights" -- a set of assumptions about legislative intent which judges used, not to strike down legislation, but to find interpretations which would minimize violations of certain liberal freedoms, such as the right to property, free speech, or a fair trial.[55] This method of rights protection, however, was subject to the overriding principle of parliamentary supremacy; in the face of any "clear statement" by a legislature that it wished to violate such rights, the courts had no recourse other than acceptance.[56]

As noted earlier, because of their faith in the common law, the framers of the Canadian constitution did not include an American-style Bill of Rights. Certain portions of the BNA Act, along with those sections protecting the collective minority rights of both English and French Canadians, made up what has been called "the beginnings of a Bill of Rights" for Canadians, but these provided no protection for either egalitarian rights against racial discrimination or libertarian rights of free speech or free assembly.[57]

By 1945 the constitution had not significantly changed, save for the achievement of Canadian sovereignty in 1931. Within this context, however, three important political developments had taken place. To begin with, except for the limited rights protected in the BNA Act, the courts could strike down legislation abridging basic civil liberties only if the law violated the federal-provincial division of powers in the constitution. Otherwise, parliamentary supremacy trumped civil liberties.[58]

In addition, there were almost no statutes protecting minorities against private discrimination. It is true that in 1944 George Drew's minority Conservative government, under considerable pressure from the left, including two LPP legislators, created what is usually considered to be the first "modern" anti-discrimination statute -- the 1944 Ontario Racial Discrimination Act (ORDA) -- which forbade public signs "indicating discrimination or an intention to discriminate."[59] However, no other acts of racial or religious discrimination were prohibited by the law. The notion of making such behaviour a quasi-criminal offense was still blocked by the classical liberal values of individual liberty and the free market.

Finally, the common law, in the hands of a judiciary committed to classical liberal notions provided little protection against discrimination. A number of judicial decisions, culminating in the 1940 Christie v. York case, involving a refusal of service to a black man, had made it clear that the classical liberal values of freedom of contract took precedence over any concern about egalitarian human rights. As one commentator wrote, "the judiciary and the common law had been tried and found wanting."[60]

The only glimmer of hope lay in a decision of the Supreme Court of Canada handed down in 1938. The case arose when Alberta passed legislation which required local newspapers to print, along with regular news and editorials, stories which presented the Social Credit government's reasons for its radical policies.[61] The legislation was killed by the Supreme Court (in what is usually known the Alberta Press case), on the technical grounds that the bills violated the federal-provincial division of powers in the constitution, but two of the judges also suggested that limiting certain rights of free expression was beyond the legitimate scope of a provincial legislature. In other words, because the preamble of the BNA Act called for "a constitution similar in principle to that of the United Kingdom," and because

freedom of speech is "the breath of life of parliamentary institutions," certain limitations on free speech in Canada might actually be unconstitutional.[62]

This "implied bill of rights" argument, however, was simply the obiter of a minority on the Supreme Court, and therefore not legally binding. It also purported to limit only provincial legislatures, although the argument was theoretically capable of being extended to the federal parliament. It therefore remained in 1945 simply a potential course of action, dependent upon whatever judges should be appointed to the Supreme Court, and subject in addition to the final approval of the Privy Council. In short, the human rights community had little to work with in the way of legal tools. Subsequent chapters illustrate how its members struggled to apply the limited legal protections available to them, protested any piece of new legislation which they saw as regressive, and lobbied for legal innovations that would enhance their powers in the fight for basic civil liberties.

C: THE EARLY HUMAN RIGHTS COMMUNITY

Given the many barriers to the full enjoyment of both libertarian and egalitarian rights, it is perhaps not surprising that in 1945 the human rights community was a fairly young and somewhat fragile entity. While the civil libertarian impulse existed even in the nineteenth century,[63] and some tangential rights groups fought for free speech at the turn of the century,[64] as well as during the First World War and at the time of the Winnipeg Strike,[65] most of the rights groups operating in 1945, especially the civil liberties organizations, had been formed, or become interested in human rights, in response to the emergencies of the Great Depression and the Second World War.

The groups which made up the emerging human rights community can be placed in several different categories.[66] To begin with, there were a number of minority ethnic and religious groups, representing Canadians with a wide range of backgrounds, such as those of Japanese, Chinese, and Jewish heritage. These were private interest groups, concerned with furthering the rights of their own narrow constituencies, and often they ignored the interests of other minority groups. For example, the Japanese Canadian Citizens League lobbied on behalf of full citizenship status just for its own members, rather than demanding a wholesale change that would include Chinese, East Indians, and aboriginal peoples.[67]

Some groups, however, began to see themselves as part of a community of "outsiders," and realized that coalition-building was a source of potential strength. In the 1930s, for example, the Jewish community joined with certain liberal Christians to form the Canadian National Committee on Refugees and Victims of Political Persecution (CNCR) in order to break down the anti-semitic immigration barriers erected by the Canadian government. Later, during the war, Canadian Jews joined forces with some activists in the black community to persuade Ottawa's national wartime employment service not to accept any discriminatory labour requests from employers.[68] A human rights community was starting to emerge.

Labour unions constituted another category within this nascent human rights community. Trade unions had always had an interest in libertarian values; after all, the right

to express unpopular ideas and the rights to organize and demonstrate are fundamental to the formation and success of trade unions. Not surprisingly, therefore, the Trades and Labour Congress (TLC) was one of the many organizations in the 1930s that called for the repeal of s. 98 of the Criminal Code. It also participated in local protests against police authoritarianism in Québec,[69] and took part in the nation-wide protest against Québec's Padlock Act.[70]

However, the commitment of trade unions to certain egalitarian values had traditionally been either non-existent or luke-warm. In British Columbia, especially, organized labour had a long history of anti-Asian political action,[71] and the TLC Platform of Principles in 1945 still called for "Exclusion of all races that cannot be properly assimilated into the national life of Canada." Yet this was in fact an anachronism, for in 1944 the TLC had taken a major step towards embracing the new human rights ethos, forming a National Standing Committee on Racial Discrimination (later called the National Standing Committee Against Racial Discrimination). As later chapters will demonstrate, the TLC was about to become an active participant in the post-war human rights community.[72]

The other major trade union umbrella organization in Canada, the Canadian Congress of Labour (CCL), carried with it no racist policy baggage, in part because it was a fairly recent addition to the labour scene.[73] Moreover, it had close connections with the social-democratic Cooperative Commonwealth Federation (CCF), having even endorsed that party during the war as the "political arm of labour." Since the CCF from the very beginning had taken a stance on human rights that was more liberal than socialist,[74] one might easily have predicted in 1945 that the CCL would soon provide strong support for civil liberties work.[75]

For a while, during the 1930s, the incipient rights community also had included a number of groups such as The Canadian League for Peace and Democracy (CLPD) and the Canadian Labour Defense League (CLDL). Neither of these were "real" civil liberties organizations. The former was set up to defend only the civil liberties of radical left-wing workers and organizers, while the latter had interests that were, as its name indicated, rather broader than just civil liberties.[76]

Neither of these groups lasted longer than the war and the DOCR. When Hitler invaded the USSR, in June of 1941, the latter became an ally of Canada's. As a result, state

repression of communists diminished significantly, and the CLDL's role was taken up by a new communist-dominated organization, called the National Council on Democratic Rights (NCDR).[77] In the spring of 1942 the NCDR held two large wartime conferences on civil liberties, one in Toronto and one in Montréal, and also submitted a memorandum to the federal Minister of Justice. Now, however, the Communist Party "line" had changed from pacificism to militarism, and civil liberties issues became increasingly irrelevant. Although the NCDR requested the release of interned "anti-fascists," it primarily lobbied the government for "democratic total war." Since the government soon agreed to release the internees, and had no intentions of slowing down the war effort, the NCDR had little reason to continue and appears to have soon withered away.[78]

Aside from those in the different ethnic, labour, and communist organizations, a number of more "respectable" Canadians helped during this early period to develop a human rights community. As noted earlier, from the very beginning the CCF supported both egalitarian and libertarian human rights. So too did the members of its "brains trust," the League for Social Reconstruction (LSR),[79] especially Harry Cassidy,[80] Eugene Forsey,[81] King Gordon,[82] and F.R. Scott.[83] In existence from 1932 to 1942, the LSR spoke out on a number of civil liberties issues, especially criticizing Québec's padlock law and Ontario Premier Hepburn's authoritarian treatment of the automobile workers during the Oshawa strike.[84]

The civil libertarian impulse for members of the LSR, as well as for a number of other rights activists during the pre-1945 period, was often rooted in a belief system known as the Social Gospel, sometimes referred to (after the 1930s) as Radical Christianity. As Richard Allen has pointed out, at the core of the Social Gospel world-view lay a "conviction that Christianity required a passionate commitment to social involvement." During the Depression of the 1930s, when an increasingly large segment of the public became unemployed and poverty-stricken, this commitment was frequently linked to a belief that Christian principles were incompatible with capitalism, and that only a radical economic change could provide social justice.[85]

Initially the Social Gospel movement may have been inimical to many civil liberties, for it was connected to the passion for moral regulation which swept Canada during the early

part of this century.[86] On the other hand, there appear to be at least two ways in which this aspect of Christianity engendered support for human rights. First, a belief that all people are equal in the eyes of the Lord led to the position that minority groups should enjoy all of the rights and privileges of the ordinary Canadian. Even more important, legal and political civil liberties were seen as a means to an end. Increasingly aware that the Depression had heightened class tensions, radical Christians realized that suppression of free speech and police authoritarianism were ways by which the capitalists could repress dissent and inhibit pressures for a radical restructuring of the economic system.[87]

Christian radicalism had two main outlets: activism within the churches, especially the United Church,[88] and membership in a number of national groups. One of the most important of these was the Fellowship of Reconciliation (FOR), which was founded on the eve of the first World War in England as a pacifist organization, and established in Canada after 1918. The FOR soon became the focal point of non-sectarian pacifism, but it demonstrated in addition a strong tangential interest in civil liberties, no doubt in part because of the way the government had treated pacifists during the Great War.[89]

For example, in 1931 the Toronto FOR decided to hold a free speech forum to protest police harassment of political radicals, a decision which was extremely controversial at a time when many members of the establishment did not believe that communists were entitled to traditional British liberties.[90] Later, led by Carlyle King during the war,[91] the FOR again took up the cause of civil liberties and then began to turn its attention to egalitarian rights, setting up a committee on race relations and working closely with other groups on the Japanese Canadian issue.[92] (Chapter 2 of this dissertation deals with the CCJC, or Cooperative Committee on Japanese Canadians, a coalition which the FOR helped to create, and which protested Ottawa's plans for the deportation of Japanese Canadians, the nation's first major post-war human rights issue.)

Another manifestation of radical Christianity was the Student Christian Movement (SCM). Created in England by returning First World War veterans who wished to eliminate the social injustices which (in their minds) were the primary cause of war, it became a major focus of pacifism on university campuses in Canada during the 1930s. The organization

appears to have been only sporadically concerned about rights violations, but the organization's focus began to shift as the threat of fascism made pacifism no longer tenable for many Christians. The SCM soon became concerned about discrimination against minority groups, and several times took a strong stance against the treatment of Japanese Canadians.[93]

A third radical Christian organization was the Fellowship for a Christian Social Order (FCSO), many of whose members had earlier been active in the SCM. The FCSO called itself "an association of Christians whose religious convictions have led them to the belief that the creation of a new Social Order is essential to the realization of the Kingdom of God."[94] At first, this meant speaking to the United Church clergy and laity in the same way that the SCM spoke to Christians on university campuses, but by 1938 the organization was non-denominational.

Many FCSO members had a strong interest in civil liberties. During World War II the government's infringements on civil liberties jarred the FCSO into defending the right of communists to organize and speak freely, and later in the war the organization began to address a number of egalitarian rights issues such as anti-semitism, discrimination against blacks, and the treatment of Japanese Canadians.[95]

The FCSO's wartime concern with human rights was in some ways a shift in focus from revolution to reform, representing the supremacy of wartime Christian liberalism over the Depression-era emphasis on Christian socialism. Like so many organizations during and after the war, there was a fundamental incompatibility between communists and social democrats, and the latter were driving out the former.[96] Yet by 1945 the FCSO was on its last legs. It suffered from what might be called an onslaught of secularism; a number of its members had lost interest in working within church groups and became increasingly interested in working within organizations with no formal religious ties.[97] In other words, while radical Christianity contributed to the early post-war human rights community, it was a rapidly weakening force.

Another wellspring of human rights activism, which was largely secular but partially overlapped with the radical Christians, was the amorphous collectivity of social democrats and reform liberals which Doug Owram has called the "new reform elite." The members of

this elite, who were connected by a web of personal, professional, and voluntary organizational ties, believed that the state could be a positive agency of social change, and recognized that "while freedom once meant freedom from government regulation, it now must also mean freedom by means of government regulation." They were, in short, the intellectual shock troops of the modern welfare state.[98] A fair number of the people identified by Owram as members of this elite were also part of the human rights community: Liberal politician Brooke Claxton,[99] newspaperman Grant Dexter,[100] Eugene Forsey, King Gordon, Arthur Lower,[101] businessman J.M. Macdonnell,[102] B.K. Sandwell,[103] F.R. Scott, Frank Underhill,[104] and E.J. Tarr, a prominent businessman and head of the Canadian Institute of International Affairs (CIIA).[105] Their civil liberties activity stemmed from a commitment to individual freedom, a belief that intellectuals should make a difference, and an ability to generate pressure through close professional and interpersonal ties with different politicians.

Members of this intellectual-political elite participated in a number of voluntary groups with "interlocking directorates," such as the CIIA, the League of Nations Society, and the Canadian Clubs. These were not formal lobby groups, but part of what has been called "the Canadian movement," an establishment network of upper middle-class individuals who were primarily concerned with discussing national unity and the evolution of Canada's status within the British Empire, as well as its internationalist role within the League of Nations. Initially they had been relatively unconcerned with domestic social issues, but their consciousness was shifted by the achievement of Canadian sovereignty in 1931, the social dislocations of the Depression, and the problems of the war. Social welfare issues, including human rights concerns, began to supplant the topic of Canada's national evolution.[106]

From the perspective of human rights, the CIIA was a particularly important group. All of the members of the "new reform elite" listed above were associated with the CIIA during the 1930s and 1940s, as were also two Manitoba civil libertarians, professors W.J. Waines[107] and W.L. Morton,[108] and a prominent Toronto civil libertarian, Malcolm W. Wallace (the principal of University College).[109] Most importantly for the purposes of this dissertation, although the CIIA was primarily concerned with international problems, it had an impact on thinking about domestic human rights problems through books such as The

Japanese Canadians, and Canada and the Orient.[110] Another tangential rights organization attractive to members of the reform elite was the Canadian Association for Adult Education (CAAE). While at first glance one might not think of an adult education organization as a likely candidate for the active promotion of human rights, in fact this role was a logical corollary of its commitment to educate adults about social issues, especially since the "educational radicals" of the period were often radical Christians with links to the FCSO and SCM, as well as to the LSR and CCF.[111] For example, the CAAE director, E.A. Corbett,[112] was a civil libertarian activist during and after the war. In addition, the editor of Food for Thought, its educational magazine in the early part of the war, was another civil libertarian, R.S. Lambert.[113] Both during and after the war, this periodical ran articles about libertarian or egalitarian rights.[114]

During the 1930s and early 1940s radical Christians, social democrats, and reform liberals also poured their energies into the creation of Canada's first civil liberties organizations. The proximate cause was the many civil liberties violations created by the emergency situations of, first, the Great Depression and second, the war.

The earliest pioneer of the Canadian civil liberties movement was A. Stiernotte, a member of the Calgary branch of the LSR.[115] Inspired by the American Civil Liberties Union (ACLU), he sent off a number of letters to other LSR members, especially Frank Scott and Frank Underhill, about the possibility of establishing a similar organization in Canada. He also sent a letter to Canadian Forum which proposed the founding of a national group through the LSR.[116] Then, in early 1933, he informed Scott that Canada's first civil liberties group had just been formed in Edmonton.[117] The chair of this group, which was called the Canadian Civil Liberties Protective Association (CCLPA), was Lieutenant Col. G.W. Macleod. The Secretary was Ella C. Timbres, the Assistant Secretary was Stiernotte, and one of the members of its advisory board was Aaron Mosher, the anti-communist president of the All-Canadian Congress of Labour (ACCL).[118] The organization lasted only a few years, however, although its secretary kept in regular touch with Frank Scott, in the hope that other groups might be formed and a national organization would ultimately link them together.[119]

Although Scott was interested in establishing a national civil liberties organization, and corresponded about this with several of his contemporaries, he seems to have had little success.[120] In any case, much of his attention was focussed on abuses in his home province of Québec. In 1934 he became involved with an Emergency Committee for the Protection of Civil Liberties, an ad hoc group opposed to the "Certain Meetings Advertising Act" (also known as the "David bill"), which forced people to obtain prior approval from local chiefs of police before passing out circulars. This turned out to be a useful means of silencing not just communists but also troublesome trade unionists.[121]

The Emergency Committee members began to think about establishing a more permanent organization when, in the fall of 1936, a delegation arrived in Montréal to present the case for the Spanish Republicans and to raise money for their cause. The controversy surrounding this visit, involving allegations that the delegates were communists, produced an anti-democratic mixture of right-wing mob intimidation, government partiality, and free speech violations.[122] Then, in March 1937, Maurice Duplessis created the padlock law. By April a number of citizens had set up an organization that was grandiosely, misleadingly, and optimistically called the Montréal branch of the Canadian Civil Liberties Union (MCCLU), or the Section de Montréal, Société Canadienne des Droits de l'Homme. Its founders hoped that it would spark the creation of a number of other affiliated groups which together would form a national organization.[123]

At first Scott was not publicly associated with the group (although by 1940 his name appears on the letterhead as a member of the advisory council), but he appears to have had considerable influence behind the scenes. Many of the original executive members were either friends or colleagues, for the most part respectable intellectuals and professionals with a strong bias towards social democracy and (in some cases) radical Christianity. For example, the chair, Hubert Desaulniers (the only francophone of the group) was the provincial president of the CCF,[124] the vice-chair, R.L. Calder, Q.C., ran for office several times as a CCF candidate and served on the provincial executive of the party,[125] and the legal counsel, J.K. Mergler, was one of the founding members of the Montréal branch of the LSR.[126] Radical Christians were represented by R.B.Y. Scott, a professor at United Theological College who

was active in the FCSO,[127] and Eugene Forsey, a social democrat with strong ties to the FCSO, as well as the LSR and CCF.

The Padlock Act was not used until November, but by early 1938 English Canadian opposition reached a fever pitch. The MCCLU presented a petition for disallowance, supported in Québec by: the Montréal Presbytery of the United Church, the SCM, the FOR, the LSR, the CCF, many local trade unions, and a smattering of other groups.[128] R.L. Calder, working with the communist CLPD, toured the country in order to raise public awareness, and soon garnered support from a variety of sources -- a committee of the Canadian Bar Association (CBA), local labour groups, a number of university professors and students, and a diversity of religious leaders. Some opponents of the law no doubt saw the issue as an excuse for venting anti-French and anti-Catholic sentiment (especially when R.L. Calder pointed out that the law had been used to prevent the free distribution of Protestant bibles), and the frequent application of the law not just to communists but to any trade union or mildly left-wing politician meant that much of this protest was based on pragmatic self-interest. Nevertheless, the tenor of much of the criticism was that the legislation was wrong in principle, an "Un-British" violation of traditional notions of freedom and justice.[129]

Ironically, Duplessis can be seen as the unwitting godfather of the Canadian civil liberties movement, for his legislation (and Calder's tour) sparked the creation of autonomous branches of the Canadian Civil Liberties Union in both Toronto and Vancouver. Then, in June 1938 a large protest delegation from Toronto went to Ottawa, claiming to represent over two hundred organizations, with more than 100,000 supporters. The delegation requested that the Dominion government disallow the law (as it had recently with certain Alberta statutes that interfered with fundamental economic rights),[130] but on 6 July the federal Minister of Justice, deferring to the principle of provincial rights as well as the influence of Québec within the Liberal Party, announced that Ottawa would neither disallow the law nor refer it to the courts as a reference case.[131]

During 1938 and 1939 the MCCLU participated in several unsuccessful court challenges against the padlock law.[132] At the same time, it began to expand its interests, calling for a constitutional bill of rights and fighting against a number of civil liberties

violations, such as anti-strike legislation, municipal prohibitions of communist meetings, censorship, and anti-semitism in Québec. By 1939 the group embraced over 1300 members, with a budget of over $4,500, a sign that the increasingly repressive policies of the Duplessis government had created a substantial civil libertarian back-lash.[133]

Shortly after war broke out, Duplessis went to the polls, where he was defeated by the provincial Liberals. The new government did not enforce the padlock law, but neither did Duplessis when he came back to power in 1944. The real focus of civil liberties groups during the war was Ottawa and the DOCR.[134] Conflict between social democrats and communists (both within and without the Communist Party) was a frequent concern during this period. F.R. Scott worried from the beginning about the intractable problem of creating a civil liberties group that would be democratic but safe from a communist take-over.[135] Then, in the early part of the war, the issue of Communist Party membership became particularly contentious, for when the USSR and Germany signed a peace treaty the international "party line" suddenly preached opposition to the war effort. As a result, communist support for civil liberties was frequently seen as a devious means to a disreputable end.[136]

By February 1940 the executive of the MCCLU still contained many social democrats (such as Desaulniers, Mergler, and Calder), but some of its newer members leaned further towards the communist left. For example, executive secretary R.A.C. Ballantyne was not a member of the Communist Party, but he was an important member of the literary and intellectual radical left community in Montréal, who had been fired from the Montréal Gazette for his efforts at trade union organization and who became one of the contributing editors of the communist newspaper, Canadian Tribune.[137] The vice-chair, Raymond Boyer, also moved in the same circles, and shortly after the war was arrested during the Gouzenko Affair; he was sent to prison for passing military secrets to the Soviet Union.[138] The treasurer, Agatha Chapman, was later implicated in the Gouzenko investigations (although not prosecuted), and after the war supported the communist-dominated Civil Rights Union (CRU).[139]

Tensions between communists and non-communists in the Montréal group came to a head in May of 1940 when a National Conference on Civil Liberty was sponsored by the MCCLU and a number of tangential rights groups including the FCSO and LSR.[140] The

meeting was well-attended, but it resulted in allegations that the group had been taken over by communists. As a result, the Montréal group was unable to achieve one of its immediate goals -- creating a national civil liberties organization.[141]

The MCCLU denied that it was under communist control, but by early 1941 the liberals and social democrats were being driven out. Both RCMP reports and private correspondence make it clear that, although not all of the members of the executive were communists, the party had direct control over a majority of the membership and thereby indirect control over the leadership. When the Communist Party began to support the "democratic" war against fascism after Germany's invasion of the USSR in 1941, the MCCLU agreed to suspend operations "until a need ... should again become apparent." Just as communist-dominated trade unions during this period eschewed strikes and any labour action that would impede support for the Soviet Union, so too the communist civil libertarians put their principles temporarily in abeyance.[142]

The Ottawa branch of the Canadian Civil Liberties Union (OCCLU) also died early in the war. In late 1939 the CCF secretary, David Lewis, helped to develop a local civil liberties committee composed for the most part of lawyers and members of the labour movement. Yet almost as soon as the organization was created, Lewis worried that the communists in Ottawa, who had recently formed a CLDL branch in that city, would threaten the civil liberties group. He wrote to Eugene Forsey, saying that "the communists are making a drive to capture the union. If they succeed the organization will become useless so far as effective work is concerned and our people will fight shy of it. Personally I would not blame them under the circumstances."[143] The OCCLU does not appear to have continued for much longer.

Yet three major civil liberties groups did manage to survive the communist/non-communist hostilities.[144] When Calder visited Toronto in April of 1938 and spoke about the padlock law to a large conference sponsored by the local TLC council, the delegates immediately chose a committee which soon evolved into a Toronto branch of the Canadian Civil Liberties Union (TCCLU). This organization took an active part in the campaign against

the padlock law until its members reorganized in early 1940 and renamed themselves the Civil Liberties Association of Toronto (CLAT).[145]

The executive and council of this new group was eminently "respectable" -- its president was B.K. Sandwell of Saturday Night, and he was assisted by many well-known social democrats, leavened by a smattering of liberals and conservatives.[146] Initially the organization had a completely open policy about accepting new members, but by early 1941 the communists were attempting to elect some of their supporters to the Council, and the CLAT executive was planning the adoption of a rigorous membership policy as well as seeking out new members on the right.[147] Years later, one of the CLAT's first vice-presidents, J.M. Macdonell, reminisced in the House of Commons about communists in the CLAT, saying that they were well-organized and had "an unlimited amount of time to spend at meetings." As a result, noted Macdonell, he and other non-communists often had to stay at meetings until midnight, for fear of losing a crucial vote.[148]

No complete list of the CLAT executive and Council seems to be available for 1945, but it is clear that by 1944 the organization was still dominated by "respectable" members of the non-communist left and liberal right. The wealthy businessman Sir Ellsworth Flavelle was president, and the vice-presidents were the writer Morley Callaghan,[149] the head of the Workers' Educational Association (WEA) Drummond Wren,[150] the CCF MPP J.W. Noseworthy,[151] and the principal of University College, Malcolm W. Wallace.[152] The CLAT council consisted of well over 40 people, including the lawyer and CCF activist, F.A. Brewin;[153] CAAE President E.A. Corbett; Canadian Forum editor Eleanor Godfrey; Toronto Sun editorialist Margaret Gould;[154] the well-connected educator Mrs. W.L. Grant;[155] CCF activist Professor G.A. Grube of the University of Toronto;[156] Ontario CCF leader E.B. Jolliffe; the Anglican minister Rev. Dr. W.W. Judd;[157] the author and former CAAE employee R.S. Lambert; CCF MPP Agnes MacPhail;[158] CCF MPP and Steelworkers Director Charles Millard;[159] the Reverend J.R. Mutchmor of the United Church Board of Evangelism; B.K. Sandwell of Saturday Night; Clifford Sifton, owner of the Winnipeg Free Press;[160] Mrs. C.B. Sissons, the president of the Women's International League for Peace and Freedom (WIL);[161] and George Tatham, a pacifist academic at the University of Toronto.[162]

A few members of the Council leaned to the left. For example, J.L. Cohen was well known for his work as a lawyer defending communists (and Jehovah's Witnesses),[163] Rae Lucock was a radical left CCF member,[164] while Helen Burpee and Barker Fairley later became involved with the post-war communist civil liberties organization called the CRU.[165] The most overtly radical member was labour leader C.S. Jackson, head of the United Electrical Workers Union (UE). Although Jackson never admitted to being a member of the Communist Party or LPP, and indeed had some contempt for its leaders, he was certainly a small-c communist. Because of his radical views the government interned him during the early part of the war, and he too was later associated with the CRU.[166]

Most of the above were still connected with the CLAT at war's end. By that time Tatham was the President, and the Council had several additions, including the Rev. Gordon Domm,[167] the philosopher George Grant (who was working for the CAAE but left Toronto in 1945),[168] and Ben Lappin. The latter name is particularly interesting, because Lappin was the executive secretary of the CJC and B'Nai B'rith Joint Public Relations Committee (JPRC), and as such represented an important link between the CLAT and organized Jewry.[169]

Throughout most of the war the CLAT confined itself primarily to DOCR abuses.[170] On the whole, it took a principled stance, defending the rights of communists as well as non-communists, and towards the end of the war devoted considerable attention to the property rights violations suffered by the communist Ukrainian Labor Farmer Temple Association (ULFTA).[171]

There were several important war-time civil liberties issues which the CLAT does not appear to have dealt with, including the internment and forcible relocation of West Coast Japanese Canadians.[172] While it is today conventional wisdom that the internment policy was a violation of liberal democratic values, virtually all liberals in 1942 saw it as a necessary evil, justifiable in terms of national security as well as a defence against the possibility of anti-Japanese mob violence. Those members of the human rights community who might under different conditions have protested government policy were instead supportive. Even the CCF, which had long advocated equal rights for minority ethnic groups, was unwilling to criticize the government,[173] and the churches were likewise on the side of the government.[174]

It is therefore not surprising that the CLAT refrained from attacking Ottawa on this important civil liberties issue.[175]

Later in the war the CLAT began to turn its attention from libertarian to egalitarian issues: sponsoring conferences on "combatting racial and religious prejudice," instituting an Anti-Discrimination Committee, and working on a number of Japanese Canadian concerns, such as their disenfranchisement by Ottawa and the discriminatory municipal practices directed against them in Ontario.[176] It also began to adopt the emerging rhetoric of human rights. As the CLAT explained in a document summarizing its anti-discrimination activities, "it is not too much to say that wars and the terrible consequences of war have arisen as much from the refusal, whether through ignorance or wilfulness, to recognize basic human rights, as from any other cause."[177]

Another civil liberties organization that survived the war was the Civil Liberties Association of Winnipeg (CLAW). This group began when four reform liberals and social democrats joined together in September of 1939 to send a letter of protest to the Prime Minister about the suspension of civil liberties.[178] These critics were history professor Arthur Lower, philosophy professor and United Church Minister David Owens,[179] Lloyd Stinson (also a United Church Minister, who became Manitoba CCF party leader in the early 1950s),[180] and Alistair Stewart (a FCSO member and chartered accountant who became CCF MP for Winnipeg North at the end of the war).[181] Within half a year this nucleus had expanded into first a Provisional Committee for Canadian Civil Liberties and then the CLAW. This group included, in addition to the original activists, two other Winnipeg Professors, W.J. Waines, and W.L. Morton,[182] as well as business economist Mitchell Sharp[183] and the influential E.J. Tarr of the CIIA.[184]

Like the Toronto group, the CLAW initially focussed on the effects of the DOCR and was unconcerned about the Japanese Canadian internment/relocation policy. However, also like the CLAT, in the latter part of the war it began to pay attention to equality rights, turning its attention to the Japanese Canadian disenfranchisement issue.[185]

Communists attempted on several occasions to join the CLAW, but they were unsuccessful, for the organization operated as a closed system in order to ensure that only the

"right" kind of people be admitted.[186] It also trimmed its ideological sails more than its counterparts in other cities. For example, in a major deviation from civil libertarian principles, it refused to help the Vancouver branch of the Canadian Civil Liberties Union (VCCLU) fight the case of William Ravenor, charged during the war with possession of seditious literature in his left-wing bookstore. The Winnipeg group feared that by supporting a communist it would lose its respectability.[187]

The Vancouver organization which asked for help was, however, no Communist Party "front" organization.[188] It is true that shortly after it was formed, in May 1938, Archbishop Duke of the local Catholic Church suggested that it was ideologically tainted, since its honourary director, Garnett G. Sedgewick, had publicly stated his strong opposition to Québec's padlock law. This, however, was clearly uninformed criticism, and Sedgewick, the highly respected head of the English department, after whom the main UBC library is now named, was quick to disavow any connections to the communists on the part of himself and his organization. Sedgewick considered himself to be a social democrat with liberal views on civil liberties; he would never have supported a communist-dominated organization.[189]

During the war the executive of the VCCLU consisted of the usual mixture of leftist academics, social activists, lawyers, and politicians. In addition to Sedgewick, its UBC professors included Sylvia Thrupp (History), W.L. MacDonald (English), Hunter Lewis (English),[190] A.F.B. Clark (Classics), and Louis A. MacKay (Classics).[191] The last-named, a self-described socialist, was Chair for a short time, as was also CCF MLA Laura E. Jamieson.[192] The Notice Secretary was Nathan Nemetz, a lawyer with CCF connections who later switched to the Liberals and still later became Chief Justice of the province.[193] The most radical member of the executive was probably Garfield King, a lawyer with a reputation for taking on radical left clients; King was not known to be a member of the Communist Party, but he was seen as sympathetic to its cause.[194]

Like the other civil liberties organizations, the primary focus of the Vancouver group during the war was the federal government's civil liberties violations, and the Ravenor case seems to have taken up much of the group's early energies. The VCCLU did not protest Ottawa's forcible relocation of Japanese Canadians in 1942, believing (like many other

groups) that dispersal would in the long run help them to become assimilated. Later it turned its attention to the plight of ULFTA, but by the end of the war the organization appears to have wound down, its members perhaps assuming that peace would bring an end to the DOCR and the restoration of traditional British liberties.[195]

In 1945 Sedgewick was still the honourary chair of the VCCLU. The "real" chair was Prof. Louis A. Mackay of UBC, and the vice-chairs were A.F.B. Clark and W.L. MacDonald.[196] To give some balance to this intellectual bias, the executive also contained Garfield King as Counsel, and a young lawyer, David Freeman.[197] Taking the executive and its advisory board together, the institution was clearly a "respectable" organization whose members on the whole had either liberal or social democratic predilections.[198]

Aside from lobby groups, the human rights community also included the press. Although the Conservative Toronto Telegram and even the Liberal Globe and Mail tended to take authoritarian positions on civil liberties issues,[199] a few other newspapers espoused more liberal views. The Vancouver Sun, for example, claimed on its mast-head that it was "A newspaper devoted to progress and democracy, tolerance and freedom of human thought," while the Winnipeg Free Press championed "Freedom of Trade, Liberty of Religion, Equality of Civil Rights."

In practice, however, the positions taken by these and other newspapers was a complex mixture of self-interest, ideology, and political partisanship. For example, the Sun was a Liberal newspaper, but despite its masthead it was hardly liberal in its attitude towards Asians; during the war it churned out a steady diet of illiberal anti-Japanese stories and editorials.[200]

The Winnipeg Free Press, by contrast, was not only Liberal but adamantly liberal, with close ties to the CLAW. Before the war it had opposed Ottawa's anti-semitic immigration policy, and during the war it provided moderate criticism of the government's violations of legal and political civil liberties, railing against the "racialists" who supported Ottawa's wartime disenfranchisement of Japanese Canadians.[201]

The Toronto Star and Ottawa Citizen were both large "L" and small "l" liberal newspapers. The latter was one of the many Southam newspapers, and its managing editor,

Harry S. Southam, was highly sympathetic to civil liberties.[202] It did not have a very high circulation, but its base in Ottawa gave it considerable influence. The Star, on the other hand, had the largest circulation in Canada, and reflected the liberal predilections of its owner, J.E. Atkinson, who could almost always be counted upon to oppose both authoritarian and inegalitarian government policies. Moreover, under Atkinson the newspaper (sometimes called Red Star by its right-wing critics) increasingly became reform liberal verging on social democratic.

Two periodicals also provided strong support for individual rights and liberties. According to Ramsay Cook, during the war the classical liberal Saturday Night and the social democratic Canadian Forum became "unofficial organs of the Canadian civil liberties organizations."[203] The former journal reflected the liberalism of its editor, B.K. Sandwell; during the war it carried a number of articles on libertarian and egalitarian rights, and towards the end of the war it protested the treatment of Japanese Canadians.[204] The latter journal reflected the interests of the LSR and CCF. Two of its editors during the war, George Grube and Eleanor Godfrey, were also activists in the CLAT. Even before the war, however, the Forum had often published articles on civil liberties, especially on the padlock law, and during the war it paid especial attention to the DOCR, later shifting its focus to egalitarian issues, including the treatment of Japanese Canadians.[205] While Saturday Night pontificated to the business and political elite of the country, exposing them to ideas about civil liberties that were no doubt often at odds with their tory values, Canadian Forum preached to the converted, keeping them informed about current issues and campaigns.

An important but peripheral member of the human rights community was the CBA. This organization, which represented the elite of the Canadian legal community, and therefore had close connections with the political and economic elites, was highly libertarian in its attitude towards rights, almost exclusively concerned with what this dissertation has referred to as the perceived dangers of "executive despotism."[206] For example, when the CBA Committee on Civil Liberties presented a report to the Annual Meeting of the organization in August 1944, it was apparently unconcerned about the wartime civil liberties violations of groups such as the Jehovah's Witnesses, the Communist Party, Japanese Canadians, or

ULFTA. In fact, there was no mention of egalitarian rights at all. Instead, much of the report was a discussion of "the Rule of Law so dear to the British subject ... which is the guarantee of all essential liberties, even in time of war." This analysis included an admission that legislation by order-in-council was at times necessary during wartime, but a contained a warning that the approach smacked too much of "autocracy" and should be eschewed in peace time. As the report noted, "Governments that try to place in the mind of the people the same respect for orders and regulations of delegated bodies, as for public laws of Parliament, simply degrade the whole system to the level of dictatorship."[207] The nascent post-war emphasis on egalitarian "human rights" was not going to be promoted by the highly conservative CBA.

D: CONCLUSION

How can one sum up the state of the Canadian human rights community at the end of World War II? The social upheaval of the Great Depression had focussed the attention of a diverse collection of reform liberals, social democrats, radical Christians, minority ethnic groups, and labour unions on a number of rights issues, especially state repression of political protest. This resulted in the formation of several ad hoc coalitions, as well as the creation of Canada's first civil liberties organizations.

In 1939 the DOCR re-emphasized the fragility of traditional "British liberties," spurring the development of new civil liberties groups, but by 1945 it was widely believed that much of this was a temporary aberration and that in the post-war era Canadians would revert to a situation of relative normality. However, a new human rights democratic discourse had begun to emerge, and several organizations began to focus their attention upon the more long-term problems of racism and discrimination.

The human rights community at the end of the war contained some tangential rights groups, such as the CJC or the TLC and CCL. At the centre of the rights community, however, stood a number of civil liberties organizations, some relatively strong and others in need of resuscitation. The members of these groups were predominantly middle-class,[208] primarily British,[209] mostly male,[210] usually Protestant,[211] and largely but by no means exclusively social democratic.[212] Most were "elite non-conformists" who enjoyed enough acceptance in "respectable" bourgeois society that they could exert some pressure from within, but were sufficiently distant from its core that they could be critical of its hypocrisies and suggest alternatives to the status quo.[213]

Yet, in 1945 there was still no national civil liberties organization, and the human rights community was undeveloped. What were the reasons for this? After all, in the United States the ACLU had become a major defender of civil liberties, hiring a permanent staff lawyer, and taking a number of important cases to the nation's Supreme Court.[214] Canada probably lagged behind for a number of reasons. To begin with, as suggested earlier, the economic pre-conditions for the development of a welfare state were a recent phenomenon.

In addition, the "tory touch" of the political culture favoured authoritarianism and British ethnic chauvinism rather than a genuine respect for individual liberty and respect for the rights of minority groups. Too few people perceived any discrepancies between cherish values and actual practices when they thought about Canadian society.[215]

In addition, there were institutional barriers to the successful organization of these civil liberties groups. For example, without a bill of rights there was no clear focus for civil liberties groups, and little legal leverage for pursuing test cases.[216] In addition, the federal-provincial division of powers, as well as geographical isolation, helped to fragment groups into separate provincial organizations. At the same time, they had no governmental ministries or agencies upon which to focus their efforts; the notion of special human rights commissions still lay in the future.

Internecine political struggles during the war also sapped the vitality of civil liberties groups. The liberal and social democratic civil libertarians mistrusted their communist counterparts, and many communist members had demonstrated that civil liberties were less important than support for the Soviet Union. As a result, communist infiltration had subsequently rendered some civil liberties groups moribund.

Finally, the surviving groups were limited by their largely voluntary and ad hoc nature. In an era long before governmental funding, they depended primarily upon the work of amateurs and a sprinkling of membership donations. What was necessary was the development of rights groups with secure sources of finance and the ability to hire permanent professional staff.[217]

In retrospect, a major question facing the human rights community at the end of the war was whether or not the forked road of progress led in the direction of political radicalism or reform. Of course, much depended upon the ability of the federal government (and the international community) to make the post-war era one of economic growth and high employment, and to build upon social policies that could smooth down the rougher edges of capitalism. Already, however, the triumph of liberalism over radical socialism seemed to be underway. For a number of organizations and individuals, class analysis was being replaced by a liberal-democratic perspective. For example, while the FCSO constitution had been

drafted in the language of class struggle in 1935, by the end of the war it had been rewritten to reflect a less radical concern about "human rights."[218]

Like other key political concepts, the emerging notion of "human rights" in 1945 was ambiguous. It was widely understood to embrace conceptions of liberty and equality, but there was room for debate as to what might be the proper proportions of each, and as to what exactly they might mean. Increasingly, however, it was starting to look as if the state would be sacrificing some liberty on the altar of equality, by means of a limited redistribution of wealth and social benefits. It remained to be seen whether or not this would pave the way for a further sacrifice of classical liberal freedom -- the passage of anti-discrimination legislation.

In 1945, however, the major glaring violation of equality rights was the treatment of Asian Canadians, especially those of Japanese extraction. As the next chapter will indicate, one aspect of this, Ottawa's plans to deport a large number of Japanese Canadians, sparked the first major human rights issue to seize the attention of the Canadian human rights community. This issue, which F.R. Scott saw as the most pressing manifestation of a broader issue -- racism in Canada -- marked the beginning of the nation's post-war entry into "the age of rights."[219]

ENDNOTES FOR CHAPTER 1

[1]Most of the books and articles mentioned in the "Introduction" of this dissertation deal at least in part with pre-war egalitarian rights violations as well as post-war issues.

[2]Throughout this dissertation the term "Communist" will be used to designate members of the Communist Party (or Labour Progressive Party, as it became known during the second World War). The term "communist" will be used to designate those who appear to have been Marxists but not necessarily members of the Party. Many, if not all, of these people were members of "the movement," and some of these joined organizations, often called "front groups," which maintained close ties to the Party but refrained from any formal affiliation. For a discussion of the concept of "front groups," as well as the distinction between the Communist Party and "the movement" in Canada, see Douglas Charles Rowland, "Canadian Communism: The Post-Stalinist Phase" (M.A. thesis, University of Manitoba, 1964), 123. For the reminiscences of a member of "the movement," see Gordon Lunan, The Making of a Spy (Montréal: Robert Davies Publishing, 1995), especially 91-2, 98.

[3]Most of the books and articles mentioned in the "Introduction" of this dissertation deal at least in part with pre-war libertarian rights violations as well as post-war issues.

[4]Ramsay Cook, "Canadian Liberties in Wartime," 81. For other discussions of civil liberties during the war, see his "Canadian Freedom in Wartime"; Whitaker, "Official Repression"; Hannant, The Infernal Machine.

[5]A recent analysis has postulated two theories about why people disagree about rights -- "the error interpretation, which treats opposition to democratic rights as rooted in a failure to understand the norms of the political culture, and the contestability interpretation, which views disagreement over democratic rights as driven by the conflict of values." The authors go on to say that the two theories are not mutually exclusive, but they claim that their empirical study demonstrates that the latter theory explains far more than has previously been acknowledged (Paul M. Sniderman and others. The Clash of Rights: Liberty, Equality, and Legitimacy in Pluralist Democracy [New Haven: Yale University Press, 1996], 237). This dissertation's explanation of changing attitudes towards human rights is congruent with both theories.

[6]Empirical support for the connection between urbanization and support for civil liberties, as well as between higher education and civil libertarian values, was first presented in Samuel Stouffer, Communism, Conformism and Civil Liberties (New York: John Wiley, 1966). Most studies have confirmed this. For a fairly recent analysis, with reference to most of these studies, see Paul M. Sniderman and others, "Principled Tolerance and the American Mass Public," British Journal of Political Science 19 (1989): 25-45. For a discussion of the way in which post-war economic development has created in a number of countries a "post-

materialist" culture shift which includes increased respect for egalitarian rights, see Ronald Inglehart, Culture Shift in Advanced Industrial Society (Princeton, New Jersey: Princeton University Press, 1990), especially Chapter 2. Note, however, that Inglehart's argument suggests that the major impact of this probably did not take place until the 1960s.

[7]Morton and Granatstein, Victory 1945, 253. Morton and Granatstein argue that the war helped to change these attitudes. This is true, but the changes were consolidated and enhanced in the period of prosperity following the war.

[8]Discussions of welfare state development do not normally view the growth of anti-discrimination legislation as a part of the growth of the welfare state. See, for example, Keith G. Banting, The Welfare State and Canadian Federalism, 2nd ed. (Kingston and Montréal: McGill-Queen's University Press, 1987); James Struthers, The Limits of Affluence: Welfare in Ontario, 1920-1970 (Toronto: University of Toronto Press, 1994). For writings that do mention a link, see: Donald Bellamy, "Social Policy in Ontario," in The Province of Ontario: Its Social Services, 11th edition, ed. Bessie Touzel (Toronto: Ontario Social Development Council, 1983); Leslie A. Pal, "Federalism, Social Policy, and the Constitution," in Canadian Social Welfare Policy: Federal and Provincial Dimensions, ed. Jacqueline S. Ismail (Kingston and Montréal: McGill-Queen's University Press, 1985). See also the work on anti-discrimination statutes which links them to the growth of the "ethical" or "positive" state: Ronald Manzer, Public Policies and Political Development in Canada (Toronto: University of Toronto Press, 1985); Anderson, "The Development of Human Rights Protection"; Howe, "Human Rights Policy."

[9]"The ruling classes, without organized opposition, are no respecters of civil liberties when the pre-eminent power of capital is threatened" (Gary Teeple, Globalization and the Decline of Social Reform [Toronto: Garamond Press, 1995], 109).

[10]For a theoretical discussion of how people's "strategic calculations" about their situation affect their attitudes towards rights, see Paul M. Sniderman and others, "Political Culture and the Problem of Standards: Mass and Elite Attitudes Toward Language Rights in the Canadian Charter of Rights and Freedoms," Canadian Journal of Political Science 22 (1989): 259-284.

[11]There are many different definitions of "political culture," but this dissertation relies upon the following: "...the ideas, assumptions, values, and beliefs that condition political action. It affects the way we use politics, the kinds of social problems we address, and the solutions we attempt. Political culture serves as a filter or lens through which political actors view the world ... [It] is the language of political discourse, the vocabulary and grammar of political controversy and understanding" (David Bell, "Political Culture in Canada," in Canadian Politics in the 1990s, ed. Michael S. Whittington and Glen Williams [Toronto: Nelson Canada, 1995], 105-128, at 110). For an extensive look at the political culture of Canada, see David Bell and Lorne Tepperman, The Roots of Diversity: A Look at Canadian Political Culture (Toronto: McLelland and Stewart, 1979).

[12]See, for example, David J. Elkins and Richard E.B. Simeon "A Cause in Search of its Effect, or What Does Political Culture Explain?" Comparative Politics II (1978): 127-145. As the authors point out, differences in behaviour in two different countries may be attributable to factors other than culture, such as different rates of industrialization and urbanization.

[13]Sniderman and his colleagues have argued that perceptions are crucial in affecting people's "strategic calculations" about how to deal with the rights of others ("Political Culture and the Problems of Standards"). In addition, Brian How, following Gunnar Myrdal, has argued that a perceived dissonance between social behaviour and the cherished values of a political culture may result in changes in the former to bring them more into harmony with the latter; in other words, certain "discrepancy effects" may foster social change in the field human rights (Myrdal, An American Dilemma [New York: Harper, 1944]; Howe, "The Evolution of Human Rights Policy in Ontario," and "Human Rights Policy in Ontario.")

[14]The term "political culture" did not initially embrace the concept of ideology, but some political scientists now use it in this broader sense. See, for example, Bell, "Political Culture," 109.

[15]For a discussion of the concepts of "dominant ideology" and "counter ideology" in the Canadian context, see M. Patricia Marchak, Ideological Perspectives on Canada (Toronto: McGraw-Hill, 1975), 1-2.

[16]In explaining why the majority of Canadians meekly accepted the government's civil liberties violations during the Second World War, Ramsay Cook has argued that "the roots of liberalism have not grown deep in the arid soil of Canada's heterogeneous community" (Cook, "Canadian Liberties in Wartime," 278). By this he meant, in part, that liberalism was undermined in part by the illiberal values of French-Canadians (as well as by the values of non-British immigrants). For a discussion of the "lack of a democratic philosophy" in Québec before the Quiet Revolution of the 1960s, see Herbert F. Quinn, The Union Nationale: A Study in Quebec Nationalism (Toronto: University of Toronto Press, 1963), 14-19.

[17]The best-known version of the "tory touch" thesis is that of Gad Horowitz, in "Conservatism, Liberalism, and Socialism in Canada: An Interpretation," Canadian Journal of Economics and Political Science 32 (1966): 143-171. See also Chapter 1 of his Canadian Labour in Politics (Toronto: University of Toronto Press, 1968). This has been the topic of heated debate; the most recent criticism, which argues that the traditional alternative to liberalism was "civic republicanism," can be found in Canada's Origins: Liberal, Tory or Republican?, ed. Janet Ajzenstat and Peter J. Smith (Ottawa: Carleton University Press, 1995); see also Nelson Wiseman, Janet Ajzenstat, and Peter J. Smith, "Are Canadian tory-touched liberals?", in Crosscurrents: Contemporary Political Issues, 3rd. ed., ed. Mark Charlton and Paul Barker (Scarborough: Nelson, 1998), 70-93. Much of this debate centres on Canadian political culture in the eighteenth and nineteenth centuries; in this dissertation, however, the term "tory touch" is limited to a discussion of the nature of Canada's political culture in the mid-twentieth century.

[18]Rod Preece has argued that Canadian tories were liberals with a Burkeian touch ("The Myth of the Red Tory," Canadian Journal of Political and Social Theory I, no. 2 (Spring-Summer, 1977): 3-28; "The Political Wisdom of Sir John A. Macdonald," Canadian Journal of Political Science 17, no. 3 (September, 1984): 459-486. Nevertheless, the term "tory" will be used in this dissertation to indicate the conservative elements of the Canadian political culture.

[19]Of course, within the different regions of English Canada one could find different variations on this political culture. The "tory touch" was no doubt stronger in Ontario than in, say, Alberta.

[20]A.V. Dicey, Introduction to the Study of the Law of the Constitution, 10th ed. (London: Macmillan, 1962), 70, 201. Dicey also suggested (at 207) that "with us the individual rights are the basis, not the result, of the law of the constitution."

It is difficult to over-estimate the impact of Dicey's liberal values on Canadians, especially those trained in the law. Writing in 1950, F.R. Scott remarked that "Most of us in the law schools are reared in the Diceyan gospel" (Civil Liberties and Canadian Federalism [Toronto: University of Toronto Press, 1959], 12).

At a deeper level, Dicey also reflected an underlying positivism that rejected natural law thinking. According to Frank Scott, post-war proposals for a bill of rights stemmed from a revived interest in natural law thinking, much of which was a response to legal international developments, especially the UDHR ("Dominion Jurisdiction Over Human Rights and Fundamental Freedoms," The Canadian Bar Review XXVII [1949]: 497-536, at 497-8).

[21]See the workers' demands for "British justice" for those arrested because of the Winnipeg Strike, discussed in Tom Mitchell, "'Repressive Measures': A.J. Andrews, the Committee of 1000 and the Campaign Against Radicalism After the Winnipeg General Strike," left history 3.2 & 4.2 (Fall 1995 - Spring 1996): 133-67, at 140.

[22]See F.R. Scott's letter to the Montréal Gazette, 3 February 1931, reprinted in F.R. Scott, A New Endeavour: Selected Political Essays, Letters, and Addresses, ed. Michiel Horn, (Toronto: University of Toronto Press, 1986), at 3-4; note also his article, "The Trial of the Toronto Communists," in Essays on the Constitution, 49-59, where he says (at 49) that the trial of Tim Buck and other Communists "caused many Canadians to ask themselves for the first time just what our British traditions of freedom of speech and association really mean, if anything." (This article was originally published in Queen's Quarterly 39 [1932]: 512-27).

[23]See, for example, "On Guard For Civil Liberty! What the War Measures Act Means to YOU," a pamphlet issued by the Canadian Labor Defence League in February 1940. On the cover is a picture of Magna Carta shackled by a ball and chain. Inside (at 5) is an exhortation to "defend those rights that all Canadians, all Britishers, have, since the days of Magna Carta, considered their precious heritage" (UBC Special Collections). See also J. Petryshyn, "Class Conflict and Civil Liberties," at 62.

[24]Skebo, "Liberty and Authority," 32-34; Toronto Star, 11 February 1931. Note also the remark by Escott Reid: "In the twenties and thirties most of the big business men in the

English-speaking communities of Canada professed great admiration for Britain and British traditions yet many, possibly most of them, advocated curbs on freedom of speech repugnant to British traditions. Probably they thought that freedom of speech, particularly at universities, would endanger their material interests. French radical-socialists in the thirties were said to have their hearts on their left and their purses on their right. These big business men had pro-British sentiments on their left and their material interests on their right" (Radical Mandarin: The Memoirs of Escott Reid [Toronto: University of Toronto Press 1989], 31.

[25]See, for example, Sir Wilfrid Laurier's praise of the British institutions which provided liberty for all Canadians ("Political Liberalism," in Canadian Political Thought, ed. H.D. Forbes [Toronto: Oxford University Press, 1985], 134-151 at 150).

[26]Sir John A. Macdonald, for example, argued that the Chinese should not be enfranchised because they had "no British instincts or British feelings or aspirations" (Hansard, House of Commons, 4 May 1885, 1582). Discussing s. 41 of the Immigration Act in the 1920s and 1930s, Barbara Roberts has claimed that "Insofar as deportation law, policy, and practice were concerned, the right to British liberties was based on a social contract, and could be forfeited when individuals broke that social contract by becoming unemployed, sick, radical, or in some other way a threat to the social order or a liability on the public" (Roberts, "Shovelling Out the 'Mutinous'," 109).

[27]Walter S. Johnson, "The Reign of Law Under An Expanding Bureaucracy," Canadian Bar Review XXII (1944): 380-90; this was an address to the Québec Bar Convention, given in September 1943. See also the "Inter Alia" editorials of R.M. Willes Chitty, in The Fortnightly Law Journal: 15 September 1944, 15 October 1944, and 1 May 1945. For more about Canadian lawyers' fear of executive power, see the discussion of the Canadian Bar Association (CBA) later in this chapter.

[28]Some of this fear was based on the influence of Lord Hewart's warning to his compatriots in the 1930s, in a book called The New Despotism. For information about its impact on Canada, see: Ronald Cheffins and R.N. Tucker, The Constitutional Process in Canada, 2d ed. (Toronto: McGraw-Hill Ryerson, 1976), 50-51; Doug Owram, The Government Generation: Canadian Intellectuals and the State 1900-1945 (Toronto: University of Toronto Press, 1986), 166.

[29]In addition, any suggestions that egalitarian human rights issues be settled by means of government intervention could also resurrect fears of "executive despotism."

[30]For a discussion of the tensions between the egalitarianism of classical liberalism and the discrimination of populist democracy in late nineteenth-century British Columbia, see John P.S. McLaren, "The Early British Columbia Supreme Court and the 'Chinese Question': Echoes of the Rule of Law," in Glimpses of Canadian Legal History, ed. Dale Gibson and W. Wesley Pue (Winnipeg: Legal Research Institute, 1991), 111-54.

[31]Referring primarily to English/French relationships, Kenneth D. McRae has called majoritarianism "The Achilles heel of the Canadian political system. It is the *damnosa hereditas* of Anglo-American democracy and Lockean political theory and liberal society...." (Consociational Democracy: Political Accommodation in Segmented Societies [Toronto: McClelland and Stewart 1974]), 301. Janzen has also used the concept of majoritarianism to explain rights violations of certain religious minority groups, such as Doukhobors, Hutterites, and Mennonites (Limits on Liberty, 2-3). For a discussion of the differences between the "tribal" variant of majoritarian democracy, and modern liberal democracy, see Raymond D. Gastil, "What Kind of Democracy? Atlantic, June 1990.

[32]See Walker, "Race," Rights and the Law, especially Chapter 1; Howard Palmer, Patterns of Prejudice: A History of Nativism in Alberta (Toronto: McClelland and Stewart, 1982).

[33]Howard Palmer, "Reluctant Hosts: Anglo-Canadian Views of Multiculturalism in the Twentieth Century," in Readings in Canadian History: Post Confederation, ed. R. Douglas Francis and Donald B. Smith (Toronto: Holt, Rinehart and Winston, 1990), 192-210 at 194. (Palmer was discussing immigration criteria, but the hierarchy applied to society generally.)

[34]Michael Ignatieff has used the terms "civic" and "ethnic" nationalism in his book Blood and Belonging: Journeys Into the New Nationalism (Toronto: Penguin Books Canada, 1994). As he says, "This nationalism is called civic because it envisages the nation as a community of equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values" (6). See John F. Davidson, "Churchmen Chart the Course of a New Order," Canadian Forum 23 (November 1943): 188-9, for an example of how "keeping Canada British" was becoming an unpopular idea among the religious elite).

[35]Atwood, Survival (Toronto: House of Anansi, 1972), 171; Edgar Z. Friedenberg, Deference to Authority (White Plains, New York: M.E. Sharpe, 1980); Northrop Fry, "Conclusion" in Literary History of Canada, ed. Carl F. Klinck (Toronto: University of Toronto Press, 1965), 830. Larry Hannant has used Friedenberg's thesis, with some modification, to help explain Canadian policy towards security fingerprinting during the war (The Infernal Machine, 229-234). The "garrison mentality" concept has been used by Michiel Horn to explain authoritarianism in Toronto in the early 1930s ("'Free Speech Within the Law'," at 43).

[36]For a useful analysis of the arguments of different authors that Canada has a Tory counter-revolutionary and "cratophiliac" heritage, see Seymour Martin Lipset, Continental Divide: The Values and Institutions of the United States and Canada (New York: Routledge, 1990). For a critique, see Chapter One of Ajzenstat and Smith, Canada's Origins.

[37]For an example of the way in which loyalty to Britain and authoritarianism often went hand-in-hand, note the case of Frank Underhill (discussed later), who in 1940 made a rather scholarly speech in which he noted that Canada now had "two loyalties" -- British and American -- and predicted that the latter would become increasingly important. This led to demands that he be dismissed from his university, and he came very close to losing his job. As his biographer has put it, discussing the thin political ice on which Underhill often skated,

"The Establishment could accept criticism of the abstract concept of capitalism and the nebulous term 'big business' so long as there were no names attached to these labels. But to attack its sacred faith in the British connection or to undermine its devotion to the imperial cause was heresy" (R. Douglas Francis, Frank H. Underhill: Intellectual Provocateur [Toronto: University of Toronto Press, 1986], 94; see also Horn, The League for Social Reconstruction, Chapter 10).

[38]J.M. Macdonell in Hansard, House of Commons, 6 January 1958, 2909. Macdonell pointed out that allegations of communist infiltration made it especially difficult for members of the civil liberties group to justify their activities.

[39]Tory-touched Canadians may also be less ruggedly individualistic and more collectivistic than Americans. (Note Glendon's remarks about our form of "rights talk," mentioned in note 2 of Chapter 1) This too could inhibit the growth of civil liberties organizations.

[40]Tina Loo and Carolyn Strange, Making Good: Law and Moral Regulation in Canada, 1867-1939 (Toronto: University of Toronto Press, 1997), 8, 60. See also Valverde, The Age of Light, Soap, and Water.

[41]Making Good, 60, 147.

[42]Of course, the Second World War accustomed people to a high level of non-moral regulation, and this caused considerable soul-searching at the time. For example, note the ideas of A.R.M. Lower, liberal history professor and civil libertarian (who is discussed in more detail later in this chapter and in Chapter 7). Lower argued that the war had created "a vast increase in the edifice of control" over the lives of Canadians, and protection against the abuse of these powers depended in part upon social scientists taking an active role in public life. See his article, "The Social Sciences in the Post-War World," Canadian Historical Review 22 (March 1941), 1-6; this is discussed in A.B. McKillop, Matters of Mind: The University in Ontario, 1791-1951 (Toronto: University of Toronto Press, 1994), 545-6. In addition, note the efforts of the Wartime Information Board, "to neutralize the skeptics' belief that centralized bureaucracy exercised undue influence" (William R. Young, "Building Citizenship: English Canada and Propaganda during the Second War," Journal of Canadian Studies 16 [Autumn-Winter 1981], 121).

[43]This legislation is discussed in slightly more detail later in this chapter. The Globe editorials were: "Racial Bill Not the Cure," and "Racial Bill Safeguarded, 10, 13 March 1944.

[44]Quoted in Waldron, Nonsense Upon Stilts, 154.

[45]Douglas MacLennan, "Racial Discrimination in Canada," Canadian Forum 23 (October 1943): 164-5. The Charter did not specifically mention racial discrimination, but MacLennan obviously felt that the right of racial equality was implied. For other war-time references to the Atlantic Charter in the context of human rights, see Hansard, House of Commons, 30 June 1943, 4212 (speech by Angus MacInnis); Grace and Angus MacInnis, "Oriental

Canadians -- Outcasts or Citizens," referring to an April 1943 resolution of the British Columbia section of the CCF, dealing with Japanese Canadians, which relied in part upon the Atlantic Charter for justification (Cooperative Committee on Japanese Canadians [CCJC] Papers, vol. 3, file 16). Note also the reference to "the rights of man" in the Globe and Mail, obviously a precursor to the discourse of "human rights" ("Racial Bill Safeguarded," 13 March 1944).

[46]Of course, this new shift in discourse was gradual. See, for example, the 1947 pamphlet by B.K. Sandwell called "The State and Human Rights," in which he intertwines references to human rights, democratic rights, and British liberty (vol. VII, no. 2 of the Canadian Association for Adult Education and the Canadian Institute of International Affairs "Behind the Headlines" series).

[47]See Walker, "Race," Rights and the Law, 18; Palmer, Patterns of Prejudice, 176. For an example of this, see the war-time pamphlet by CCF activists Grace and Angus MacInnis, "Oriental Canadians -- Outcasts or Citizens," which opens with a lengthy quote from the anthropologist Ruth Benedict on the way racism oversimplifies the world and creates insupportable divisions (CCJC Papers, vol. 3, file 16).

[48]McKillop, Matters of Mind, 543-4.

[49]The notion of a democracy of ethnic inclusiveness led also to changes in the idea of citizenship. Prior to 1947, when the Canadian Citizenship Act came into effect, the status of Canadians was governed by a confusing collection of laws: the 1910 Immigration Act, the 1914 Naturalization Act, and the 1921 Canadian National Act. Moreover, Canadians were legally "British subjects" rather than citizens of Canada, and none of these laws set out in any detail the rights and privileges of being a Canadian. However, in the 1930s and 1940s liberal Canadians began to claim that citizenship should embrace a wide range of rights for all, regardless of racial background. For example, in a brief submitted to the Rowell-Sirois Royal Commission in the late 1930s, history professor A.R.M. Lower and two other colleagues argued that "a certain minimum of civil rights must belong to Canadian citizenship." Later, during the war, a number of wartime organizations advocating respect for the rights of Japanese Canadians identified themselves as "citizenship" organizations -- the Consultative Council for Co-operation in Wartime Problems of Canadian Citizenship in Vancouver, and the Montréal Committee on Canadian Citizenship. (The Lower brief is discussed in Chapter 7, and the citizenship organizations are examined in Chapter 2 of this dissertation.) See also the above-mentioned pamphlet, "Oriental Canadians -- Outcasts or Citizens" CCJC Papers, vol. 3, file 16.

[50]This was a decision to remove the federal franchise from those Japanese Canadians who had been forced out of British Columbia during the war. As British Columbia residents they had been deprived much earlier of the right to vote provincially, and this automatically prevented them from voting federally. Now that they were subject to the largely non-discriminatory franchise laws of other provinces, Ottawa moved to plug the "loophole."

[51]Saturday Night: "What Citizenship?" 3 June 1944; "Japanese Canadians," 24 June 1944; "Will of the People," 15 July 1945. See also: "Mr. Mackenzie's Racialism," and "Racialism in Toronto," Winnipeg Free Press, 26 September and 1 December 1944; "Pandering to Prejudice," Canadian Forum, August 1944; Edith Fowke and A.G. Watson, "Democracy and the Japanese Canadians," Canadian Forum, July 1945.

Note also that even the government adopted the anti-Nazi discourse. In a speech to the House of Commons, Prime Minister King said in the summer of 1944 that "We must not permit in Canada the hateful doctrine of racialism which is the basis of the Nazi system everywhere." King's speech can be found in Hansard, House of Commons, 4 August 1944, at 5917, and it was resurrected in a critical editorial entitled "A Bad and Expensive Policy," in the Toronto Star, 9 March 1948.

[52]Alan Cairns, "The Embedded State: State-Society Relations in Canada," in State and Society: Canada in Comparative Perspective, ed. Keith Banting (Toronto: University of Toronto Press 1986), 53-83, at 69. Cairns is an advocate of the "new institutionalist" approach to political studies, which emphasizes the importance of institutional factors in explaining policy. For an explanation of this approach, see Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in Bringing the State Back In, ed. Peter B. Evans, Dietrich Rueschmeyer, Theda Skocpol (Cambridge: Cambridge University Press 1985), 3-37, especially at 4-5.

[53]As will be explained later in this chapter, many of the post-war civil libertarians had been, before the war, members of organizations concerned with international relations and Canadian nationalism, such as the Canadian Institute of International Affairs, the League of Nations Society, and the Canadian Club (Owram, The Government Generation, 152).

[54]From Colony to Nation is, of course, the title of a history of Canada by Arthur Lower (Toronto: Longmans Canada, 1946). Note also that in 1946 B.K. Sandwell argued that the main impulse of Canadian history had been a search for national freedom, which after the war was only just being replaced by a search for individual freedom ("Public Opinion and Civil Liberty," Winnipeg Free Press, 28 February 1947).

[55]John Willis, "Statute Interpretation in a Nutshell," The Canadian Bar Review XVI (January 1938): 1-27, at 17; Peter Hogg, Constitutional Law of Canada, 419.

[56]Walter Tarnopolsky called this the "restrictive interpretation technique" for the judicial protection of civil liberties ("The Canadian Bill of Rights From Diefenbaker to Drybones," McGill Law Journal 17, no. 3 [1971]: 437-74, at 438).

[57]These sections, which were intended to protect the people against a despotic executive, included a guarantee of annual parliaments (s. 20), a five-year limitation on the life of each parliament (s. 50), the right to representation by population (s. 51), and the right to an independent judiciary (s. 99). The special protection for minority rights existed primarily for English Protestants in Québec and French Catholics outside of that province, and was

entrenched in sections 93 and 133. For a discussion of these "beginnings of a Bill of Rights," see F.R. Scott, "Dominion Jurisdiction Over Human Rights and Fundamental Freedoms," Canadian Bar Review XXVII (May 1949): 497-536.

[58]Walter Tarnopolsky called this the "power allocation technique" for the judicial protection of civil liberties ("The Canadian Bill of Rights From Diefenbaker to Drybones," 438).

[59]An Act to prevent the Publication of Discriminatory Matters Referring to Race or Creed, SO 1944, c. 31. For a history of the political background to this bill, see Chapter 1 of Bagnall, "The Ontario Conservatives." For a legal summary of early anti-discrimination legislation, including a few minor forerunners of the ORDA, see Tarnopolsky, Discrimination and the Law, at 25-6. According to Tarnopolsky, the earliest anti-discrimination law in Canada was a 1931 British Columbia Unemployment Relief Act amendment which prohibited "political discrimination" in awarding money for relief projects. It was amended again the following year so as to prohibit political, racial or religious discrimination in awarding money for relief projects. However, another researcher has noted that "the earliest federal anti-discrimination initiatives were specifically related to equal pay in the war industries. An order-in-council in 1918 created government policy that females doing work ordinarily performed by males should be given equal pay for equal work" (Mackintosh, "The Development of the Canadian Human Rights Act," 1).

[60]Ian A. Hunter, "The Origin, Development and Interpretation of Human Rights Legislation," in The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms, ed. R. St. J. Macdonald and John P. Humphrey, (Toronto: Butterworths, 1979), 77-109; Christie v. York (1940) 1 DLR 81. See generally D.A. Schmeiser, Civil Liberties in Canada (London: Oxford University Press, 1964), Chapter VI; Tarnopolsky Discrimination and the Law in Canada, Chapter 1. In addition, Chapter 3 of Walker's "Race," Rights and the Law is devoted to the legal and political circumstances of the Christie case.

[61]An Act to ensure the Publication of Accurate News and Information, SA 1937, 3rd session, Bill 9.

[62]Reference re Alberta Statutes [1938] SCR 100; the quotation (at 133) comes from Chief Justice Lyman Duff.

[63]For nineteenth-century examples of the civil libertarian impulse, which seem to have been rooted in classical liberalism, see John McLaren's analysis of the early British Columbia judiciary, Ramsay Cook's discussion of the Toronto Secular Society, or R.C. Macleod's explanation of Edward Blake's opposition to the creation of the North West Mounted Police (Ramsay Cook, The Regenerators: Social Criticism in Late Victorian English Canada [Toronto: University of Toronto Press, 1985], 57; McLaren, "The Early British Columbia Supreme Court"; R.C. Macleod, The NWMP and Law Enforcement 1873-1905 [Toronto: University of Toronto Press, 1976], 163).

[64]Donald Avery, "Dangerous Foreigners" - European Immigrant Workers and Labour Radicalism in Canada 1896-1932 (Toronto: McClelland and Stewart, 1979); Leier, "Solidarity on Occasion."

[65]A. Ross McCormack, Reformers, Rebels, and Revolutionaries: The Western Canadian Radical Movement, 1899-1919 (Toronto: University of Toronto Press, 1977), 152-9; Kenneth McNaught, A Prophet in Politics: A Biography of J.S. Woodsworth (Toronto: University of Toronto Press, 1959), Chapters 8 and 9.

[66]For the sake of theoretical consistency, it is necessary to include in the human rights community certain prisoners' rights organizations such as the Canadian Penal Association, the Canadian Corrections Association, as well as the John Howard and Elizabeth Fry Societies. However, although there was some interconnection between these groups and certain other rights groups (for example, civil libertarians F.R. Scott and R.L. Calder were both involved in prison reform), for the most part the prisoners' rights groups stayed separate from the rest of the human rights community. This dissertation therefore excludes them from consideration. (Scott and Calder are mentioned at 55 of John Kidman, The Canadian Prison: The Story of a Tragedy [Toronto: Ryerson Press, 1947]).

[67]Adachi, The Enemy That Never Was. During the war, for a variety of reasons, domestic and international, the Chinese Canadian and Japanese Canadian communities seem to have been completely estranged.

[68]Abella and Troper, None is Too Many, 45; Gerald E. Dirks, Canada's Refugee Policy: Indifference or Opportunism? (Montréal and London: McGill-Queen's University Press, 1977), 62-71, 94-6; MacLennan, "Racial Discrimination in Canada."

[69]For an example of trade unions becoming involved in a civil liberties issue, see the case of Nick Zynchuk, who in 1933 was shot in the back by a Montréal police officer when Zynchuk was attempting to reclaim his furniture following an eviction from his apartment. This led to large protests, and the formation of an ad hoc coalition which included the Trades and Labor Congress, the Central Branch of the Montréal Labor Party, and the Canadian Labor Defense League (discussed later in this chapter). For more information, see F.R. Scott, "Freedom of Speech in Canada," in Essays on the Constitution, 60-75, at 71; J. King Gordon, "The Politics of Poetry," in On F.R. Scott: Essays on His Contributions to Law, Literature, and Politics, ed. Sandra Djwa and R. St J. Macdonald (Kingston and Montréal: McGill-Queen's University Press, 1983), 17-27, at 23-4; Dorothy Livesay, Right Hand Left Hand (Erin, Ontario: Press Porcepic 1977), 14, 72, 84, 87, 94; "Information Bulletin" of the Committee on Social and Economic Research of the Montréal Presbytery, United Church of Canada, Woodsworth Papers, vol. 5, file 9.

[70]Skebo, "Liberty and Authority," 40, 55; Cook, "Canadian Liberties in Wartime," Chapter VII; "An Un-Canadian Law," Toronto Star, 7 April 1948; Malcolm Mackenzie Ross (General Secretary, Canadian League for Peace and Democracy) to "friends," 11 February 1938, Park

Papers, vol. 8, file 134; "Notes on Reports of Activities 1946-7," 70, 90-94, 100, 101, Kalmen Kaplansky Papers, vol. 20, file 2. See also TLC opposition to an inter-war proposal by Canadian police that European immigrants be finger-printed (Avery, Dangerous Foreigners, 109).

[71]See, for example, Gillian Creese, "Class, Ethnicity, and Conflict: The Case of Chinese and Japanese Immigrants, 1880-1923," in Workers, Capital, and the State in British Columbia: Selected Papers, ed. Rennie Warburton and David Coburn (Vancouver: University of British Columbia Press, 1988), 55-85; Gillian Creese, "Exclusion or Solidarity? Vancouver Workers Confront the 'Oriental Problem," BC Studies 86 (Winter 1988-89): 24-49.

[72]Kalmen Kaplansky, "Commentaries," Kaplansky Papers, vol. 20, 1946-7, 85, 90; Senate Standing Committee on Immigration and Labour, Proceedings, no. 4, 1947, 185.

[73]The TLC was the older of the two organizations, for the most part representing trade unions with a craft background -- the elite of the trade union movement. These unions were usually affiliated members of "international" (i.e., American) trade unions in the American Federation of Labour (AFL). The CCL, on the other hand, which had only been in existence since 1940, primarily represented industrial unions, and had close ties to the American Committee of Industrial Organization (CIO), which had earlier been expelled from the AFL.

[74]The authors of the Regina Manifesto in 1933 called for: "Freedom of speech and assembly for all; repeal of Section 98 of the Criminal Code; amendment of the Immigration Act to prevent the present inhuman policy of deportation; equal treatment before the law of all residents of Canada irrespective of race, nationality or religious or political beliefs" ("The Regina Manifesto," in Forbes, Canadian Political Thought, 41-50). Walter Young has argued that in many ways Canadian social democrats were both liberal and socialist -- "Their liberalism kept them from being communists while their socialism prevented them from becoming liberals" (Walter Young, The Anatomy of a Party: The National CCF 1932-61 [Toronto: University of Toronto Press, 1969], 137). However, it might be better to say that their liberalism was often a means to their socialist end. As F.R.Scott put it, "Freedom of speech is being demanded, not simply, as in the past, to discuss variations of policy within an accepted framework of fundamental ideas, but to question the fundamental ideas themselves" (Scott, "Freedom of Speech in Canada," Papers and Proceedings, Canadian Political Science Association, 1933, reprinted in F.R. Scott, Essays on the Constitution, 61-75 at 62). Note Michiel Horn's summary of Scott: "If he was a collectivist in his economic views, he was a liberal in his political outlook, a strong supporter of what he conceived to be Canada's legal and constitutional traditions, a believer in personal freedom" (Frank R. Scott, A New Endeavour: Selected Political Essays, Letters, and Addresses, ed. M. Horn [Toronto: University of Toronto Press, 1986], xlvi).

[75]The CCL, unlike the TLC, as yet had no national standing committee on discrimination. For more on this, see Chapter 4 of this dissertation.

[76]For information about the CLDL, see J. Petryshyn, "Class Conflict." See also the many references in Betcherman, The Little Band. For information about the CLAWF, see Socknat, Witness Against War, 164; Michiel Horn, The League for Social Reconstruction, 65-6.

[77]This is discussed briefly by A.E. Smith in his autobiography, All My Life (Toronto: Progress Books, c. 1949), 205-212.

[78]NCDR "Memorandum," Park Papers, vol. 8, file 144. See also Whitaker, "Official Repression."

[79]Horn, The League for Social Reconstruction.

[80]Harry Cassidy, an economist, was one of the sixty-eight University of Toronto professors who signed the letter of support for the FOR's right to free speech in 1931. He was also active in the LSR and CCF, and taught social work at a number of universities. From 1945 to 1951 he was director of the School of Social Work at the University of Toronto, and he was one of the founding members of the Toronto Association for Civil Liberties (the ACL, discussed in more detail in Chapter 5). For more information about Cassidy, see Allan Irving, "Canadian Fabians: The Work and Thought of Harry Cassidy and Leonard Marsh, 1930-1945," Canadian Journal of Social Work Education/Review canadienne d'éducation en service social 7 (1981): 7-18.

[81]Forsey was a radical Christian who helped found both the LSR and the CCF. He worked with the Montréal branch of the Canadian Civil Liberties Union (MCCLU) during the 1930s, and wrote a series of articles in Canadian Forum about the padlock law in Québec (see Chapter 5 of this dissertation). He later became Research Director of the Canadian Congress of Labour, and in his later years was best-known as a constitutional pundit and a Senator. For more information, see Frank Milligan, "Eugene Forsey: An Intellectual Biography," (Ph.D. diss., University of Alberta, 1987); Eugene Forsey, A Life on the Fringe: The Memoirs of Eugene Forsey (Toronto: Oxford University Press, 1990).

[82]J. King Gordon taught at United Theological College in Montréal in the 1930s, and then became national secretary for the radical Christian Fellowship for a Christian Social Order (FCSO). By 1945 he had left Canada for the United States, where he was the managing editor of The Nation. Gordon was one of the founding members of the LSR and the CCF (which got him fired from his job at United Theological College). He also had an interest in civil liberties, including an unsuccessful attempt to set up an early civil liberties organization in Montréal (Milner [ACLU] to Gordon, 29 November 1932, Scott Papers, vol. 9, file 8, Reel H-1220; J. King Gordon, "The Politics of Poetry."

[83]F.R. (Frank) Scott was a Montréal law school professor and poet who came from a "respectable" Anglophone family and had links to many important pre-war organizations, including the Canadian Club movement, the Canadian Association of International Affairs, and the League for Social Reconstruction. He began speaking out on civil liberties and social justice issues (including penal reform) in the 1930s, and became well known as one of

Canada's pre-eminent civil libertarians, as well as a key figure in the CCF. Scott's first major public pronouncement on civil liberties was a series of letters in the Montréal Gazette, 2, 4, 5 February 1931, protesting the high-handed treatment of political radicals by the police in Montréal and Toronto. In 1932 he published an article, "The Trial of the Toronto Communists," in Queen's Quarterly 39 (1932): 512-27, and in 1933 he presented to the Canadian Political Science Association a paper entitled "Freedom of Speech in Canada." The best sources of information about Scott are in Terrence Maxwell Campbell, "The Social and Political Thought of F.R. Scott," M.A. thesis, Queen's University, 1977; Djwa and Macdonald, On F.R. Scott; Sandra Djwa, The Politics of the Imagination: A Life of F.R. Scott (Toronto and Vancouver: Douglas and McIntyre, 1987). See also the 1982 National Film Board video, "F.R.Scott -- Rhyme and Reason."

[84]For more information, see Horn, The League for Social Reconstruction. Horn points out (at 29) that the original LSR manifesto had no mention of civil liberties, including minority egalitarian rights, but this did not reflect any lack of interest, and they were included in the redrafted manifesto of 1938. Note also that the journal Canadian Forum (mentioned below) served as a transmission belt for the ideas of the LSR.

[85]Richard Allen, The Social Passion: Religion and Social Reform in Canada, 1914-1928 (Toronto: University of Toronto Press, 1971), 16. Allen concludes (at 356) that "The epilogue of the social gospel is the prologue of the Radical Christianity of the years of the great depression." For a discussion of how one group (the Student Christian Movement) shifted from the Social Gospel to radical Christianity, see Beattie, "Pressure Group Politics." Beatty argues (at 26) that radical Christianity was simply "a variant" of the Social Gospel. For a revisionist discussion of the Social Gospel movement in Canada, including a discussion of the way in which during the 1930s it was to some degree replaced by personal evangelism, see Nancy Christie, and Michael Gauvreau, A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940 (Montréal and Kingston: McGill-Queens, 1996).

[86]Valverde, The Age of Soap, Light, and Water, 18. According to Valverde, many of the people in the social gospel movement were also active in the social purity movement, but the two movements were analytically different -- "while the focus of social gospel activity was the economy and the social relations arising from production, social purity focused on the sexual and moral aspects of social life."

[87]CCF stalwart Eugene Forsey, for example, threw himself into civil liberties work in the 1930s because he became frustrated with the party's inability to address this problem. (Milligan, "Eugene Forsey," 252-4, 268, 285, 294-5).

[88]For discussions of the churches' positions on s. 98, anti-semitism, certain elements of the DOCR, and ULFTA, see Skebo, "Liberty and Authority," 54; Nineteenth Annual Report of the Board of Evangelism and Social Service, 8 March 1944, 26-7, United Church/Victoria University Archives; Abella and Troper, None is Too Many, 35, 45, 65; Alan Davies and

Marilyn Felcher Nefsky, "The United Church and the Jewish Plight During the Nazi Era, 1933-1945, Canadian Jewish Historical Society Journal 8 (Fall, 1984): 66-71. For analysis of how the churches dealt with the treatment of Japanese Canadians, see Marilyn Joan Harrison, "The Social Influence of the United Church of Canada in British Columbia, 1930-1948" (M.A. thesis, University of British Columbia, 1975); C. Trevor Bamford, "The Unwelcomed Stranger: The Anglican Church's Relationship to the Japanese Canadians in British Columbia 1900-1945" (M.A. thesis, Vancouver School of Theology, 1988); Michael Hemmings, "The Church and the Japanese in Canada, 1941-1946: Ambulance Wagon to Embattled Army?" (Ph.D. diss., Vancouver School of Theology, 1990).

[89]For a discussion of the torture and death of conscientious objector David Wells at the Minto Street barracks in 1918, see Socknat, Witness Against War, 84.

[90]When the FOR, as a result of this meeting was smeared by the authorities as "communistic," sixty-eight Toronto professors sent an open letter to four local newspapers, deploring this attitude and affirming a belief in "the free public expression of opinions, however unpopular or erroneous." The Toronto "establishment" reacted very critically to such an expression of civil libertarian principle, and the majority of the press was also critical. While the professors were not formally censured, it was clear that they had gone too far and that future impertinences would not be tolerated (Michiel Horn, "'Free Speech Within the Law': the Letter of the Sixty-Eight Toronto Professors, 1931," Ontario History 72 [March, 1980]: 27-48). Several of these professors were later associated with Canada's early civil liberties movement: Harry Cassidy, Barker Fairley, George Grube, Frank Underhill, E.J. Urwick, Malcolm Wallace, and Hardolph Wasteneys.

[91]Carlyle King was a professor of English at the University of Saskatchewan who served as the first national chair of the FOR in the late 1930s and during the war, and also became president of the CCF in Saskatchewan. He does not appear to have been directly involved in any civil liberties organization, but he certainly appreciated the value of free speech, having been attacked in 1938 for making pacifist comments in public (Socknat, Witness Against War, 215, 217).

[92]Socknat, Witness Against War, 293; see also 89, 125, 134-5, 191, 201-2, 215, 220, 276-7, 279; Michiel Horn, "'Free Speech Within the Law'," 27-48; "Redistribution Sound if Not Carried to Silly Extremes Says FOR Letter," The New Canadian, 2 September 1944. Many members of the FOR were Social Gospel Christians, but it also attracted a few non-Christian pacifists and social reformers; the first president of the Toronto FOR was reform Rabbi Maurice N. Eisendrath of Holy Blossom Temple.

[93]Beattie, "Pressure Group Politics," 136-7, 142-3, 182, 224; Socknat, Witness Against War, 104, 155-7, 165; Hemmings, "The Church and the Japanese," 109, 189 (note 7); SCM National Council Minutes, 7-12 September 1945 (Appendix C), Student Christian Movement Papers, vol. 84-94, file 25; "SCM Group at University of BC Petitions Ottawa" and "University Students Protest Government Deportation Plans," The New Canadian, 10

November 1945 and 12 January 1946.

For a brief discussion of student politics during the 1930s, with references to the SCM, see Chapter 6 of Paul Axelrod, Making a Middle Class: Student Life in English Canada during the Thirties, (Montréal and Kingston: McGill-Queen's University Press, 1990). As Beattie points out, during the immediate post-war period the SCM supported a variety of human rights causes, including equal rights for Japanese Canadians, demands for fair accommodation and fair practices legislation in Ontario, the struggle for a bill of rights, demands for a racially neutral immigration policy, and criticism of the Criminal Code revisions in the early 1950s ("Pressure Group Politics," 182-4).

[94]The FCSO "Basis of Agreement," in "The Fellowship," New Outlook 10 (May 1934): 380, quoted in Roger C. Hutchinson, "The Fellowship For a Christian Social Order: A Social Ethical Analysis of a Christian Social Movement" (Ph.D. diss., Toronto School of Theology, Victoria University, 1975), 129.

[95]For example, the FCSO sponsored a June 1943 meeting of the Cooperative Committee for Japanese Canadians (the CCJC, discussed in more detail in the next chapter), and in 1944 it opposed the federal bill to disenfranchise Japanese Canadians. It also began to support the Citizen's Forum project of the CAAE during the war, organizing listeners' groups and publishing articles in its journal, Canadian Social Action ("Toronto Organizes Committee," The New Canadian, 26 June 1943; "Toronto Groups Protest to Ottawa Against Federal Disenfranchisement Bill," The New Canadian, 24 June 1944; Hutchinson, "The Fellowship," 223).

[96]Hutchinson, "The Fellowship," 162, 191-2, 217-28; Socknat, Witness Against War, 138-43, 214-5.

[97]Hutchinson, "The Fellowship," Chapter IX. See also R.B.Y. Scott's explanation, in Socknat, Witness Against War, note 96, at 340. FCSO activists in Toronto later formed a group called the Racial Friendship and Equal Rights Council, which had close ties to the local black community. Information about this group is in the Ontario Jewish Archives' collection of the Joint Community Relations Committee (originally called the Joint Public Relations Committee), henceforth referred to as the JPRC Papers], JPRC Correspondence 1947, Reel 1, file 25.

[98]Chapter 6 of Owram's The Government Generation is called "The Formation of a New Reform Elite, 1930-1945." The members of this elite were primarily well educated, upper or middle class, in the same younger age cohort (about aged 35), anglophone, and male. In terms of party affiliation, they were primarily CCF or Liberal, with the occasional Conservative. The quotation on freedom comes from Vincent Massey, and is found at page 189.

[99]Although initially a Tory, in the early 1930s Claxton had considered collaborating with F.R. Scott, Eugene Forsey, George Ferguson, Graham Spry, and Frank Underhill on a book dealing with social problems. Later he was outraged by Duplessis' padlock law, and became

involved in the preliminary organization of the Montréal Civil Liberties Union. During the war, as a cabinet minister, he defended John Grierson of the National Film Board when the public servant was accused of being a communist (David Jay Bercuson, True Patriot: The Life of Brooke Claxton, 1898-1960 [Toronto: University of Toronto Press], 64, 81; Claxton to Noad, 26 October 1936, Scott papers, vol. 10, file 13, Reel H-1222).

[100]Grant Dexter was a member of "the Liberal press establishment" -- five people who had considerable impact upon public perceptions and acceptance of government policy (Patrick Brennan, Reporting the Nation's Business: Press-Government Relations during the Liberal Years, 1935-1957 [Toronto: University of Toronto Press 1994], x-xi, 5). In 1945 Dexter became editor of the Winnipeg Free Press, and a member of the advisory board of the Civil Liberties Association of Manitoba.

[101]Arthur Lower was a professor of History at United College in Winnipeg during the war, where he was active in the Civil Liberties Association of Winnipeg (discussed below); shortly after the war he moved to Queen's University, where he supported the struggle for a national bill of rights (discussed in Chapter 7). For information about Lower as a historian, a liberal, and a civil libertarian, see Carl Berger, The Writing of Canadian History: Aspects of English-Canadian Historical Writing since 1900, 2nd ed. (Toronto: University of Toronto Press 1986), Chapter 5, 202-6; Lower's autobiography, My First Seventy-Five Years (Toronto: Macmillan, 1967), 207, 211-12, 233-38, 306-11, 351; Wilf H. Heick, History and Myth: Arthur Lower and the Making of Canadian Nationalism (Vancouver: University of British Columbia Press, 1975). See also W.H. Heick and Roger Graham, eds., His Own Man: Essays in Honour of Arthur Reginald Marsden Lower (Montréal: McGill-Queen's University Press, 1974), and Lower's This Most Famous Stream: The Liberal Democratic Way of Life (Toronto: Ryerson, 1954).

[102]Macdonnell was a lawyer and an executive with the National Trust company. He headed the Montréal Canadian Club in the late 1920s, and was a good friend of fellow CIIA activist Arthur Lower, who called him an advocate of "traditional Tory imperialism." He later became one of the reform-minded "Port Hopefuls" of the Conservative Party, and was elected a Tory MP in 1945. During the war he was a leading member of the Civil Liberties Association of Toronto (discussed below), and he demonstrated his principles in a practical fashion when, as a member of the Board of Governors of the University of Toronto, he defended Frank Underhill's right to academic free speech (Lower, My First Seventy-Five Years, 206; Horn, The League For Social Reconstruction, 195).

It is symptomatic of the small and almost incestuous nature of the Canadian social/political elites at this time that Macdonnell was the uncle of one of the CLAT's members, the philosopher George Grant, who was then working for the Canadian Association of Adult Education (CAAE) as secretary for "Citizens' Forum." Grant, in turn, was the nephew of Raleigh Parkin, a Montréal Sun Life insurance executive who supported the CLAT, and the son of Maude Grant, a member of the CLAT during the war (see below) and one of the founders of the CLAT's successor organization, discussed in Chapter 5 of this dissertation (William Christian, George Grant: A Biography [Toronto: University of Toronto Press,

1993], 5; Ron Faris, The Passionate Educators: Voluntary Associations and the Struggle for Control of Adult Educational Broadcasting in Canada 1919-52 [Toronto: Peter Martin, 1975], 34-5; G.R. Parkin Papers, vol. 17, file "Civil Liberties Associations, 1936-1946").

[103]One of the elder statesmen of the Canadian intelligentsia, Sandwell was a polymath who had taught economics at McGill and headed the English department at Queen's. He later became a fellow of the Royal Society of Canada, a member of the CBC Board of Governors, and Rector of Queen's University. In 1932 he had become editor of the influential journal Saturday Night, which provided him with a pulpit from which he could issue firm but well-reasoned editorial comments on Canadian art, literature, economics, politics, and international affairs. His commitment to civil liberties began at least as early as the 1930s. He wrote fifteen articles on the subject of prison reform between the years 1931 and 1940, and supported the Archambault Royal Commission report on prisons when it came out in 1938. He also supported the principle of admitting Jewish refugees from Nazi persecution, and served as the first president of the CLAT in 1940. Originally Sandwell was a classical liberal -- he considered John Stuart Mill to be a model for "the more liberal-minded among civilized people," and he worried about the growth of the "new despotism" of the welfare state. His anti-communism, however, sometimes led him to support certain limitations on free speech and association. In addition, as later chapters of this dissertation will demonstrate, he slowly came to terms with certain reform liberal ideas, such as anti-discrimination legislation. After the war he remained active in Toronto civil liberties organizations, participating as well in the Committee for a Bill of Rights (CFBR) and the Canadian Council of Christians and Jews (CCJC). He retired from his position as editor of Saturday Night in 1951, but until his death in 1954 kept busy with civil liberties work and writing -- he chaired the Journal Advisory Committee of the CIIA-sponsored International Journal (contributing a number of his own reviews and articles), and also put out a weekly column called "Sandwell Here" in the Financial Post. Sandwell's post-war human rights activities are discussed in all the chapters of this dissertation. For background information, see Owram, Government Generation, 141; Who's Who; Canadian Encyclopedia; Thelma LeCocq, "Good-Humored Oracle," Maclean's, 1 April 1946; Patrick Boyer, A Passion for Justice: The Legacy of James Chalmers McRuer (Toronto: Osgoode 1994), 400, note 35; Abella and Troper, None is Too Many, 41 and 64. See also his Saturday Night editorials (many of which are mentioned in the following pages), as well as his article on "Civil Liberties," in Rights and Liberties in Our Time: Addresses Given at the Canadian Institute on Public Affairs, 1946, ed. Martyn Estall (Toronto: Ryerson Press 1947), 96-108 at 99; and "Our Heritage of Freedom," in Our Heritage of Freedom, ed. B.K. Sandwell (Toronto: Nelson 1937), 49-53, at 52.

[104]Underhill was a social democratic activist in the years before 1945, involved in both the LSR and the CCF, and operating as an intellectual gadfly, often in the pages of The Canadian Forum. He was also one of the controversial professors who had supported the free speech rights of the FOR in 1931. He does not appear to have been on the executive of any civil liberties groups, but letters in the F.R. Scott Papers suggest that Underhill gave advice to several people in the 1930s about establishing civil liberties organizations (Underhill to Stiernotte, 23 November 1932, vol. 9, file 8, Reel H-1220; Scott to Underhill, 10 March

1936, vol. 9, file 9, Reel H-1221. For more about Underhill, see Berger, The Writing of Canadian History, Chapter 3; Francis, Frank H. Underhill.

[105]Tarr was president of the Monarch Life Assurance Company, had close links with the Canadian Club movement, and for many years headed the influential Canadian Institute of International Affairs (discussed below). For more information, see Owram, Government Generation, 156, 185, and Reid, Radical Mandarin, 78, 114, 116. For Tarr's work on the Japanese Canadian issue after the war, see Chapter 2 of this dissertation. Tarr retained his ties after the war with the Winnipeg civil libertarians, becoming a member of the advisory board of a new Manitoba organization. When he died, Bruce Hutchison wrote that "everyone in Ottawa knew that few Canadians of this generation had a more powerful effect on the nation's affairs" ("Loose Ends," Victoria Times, 20 November 1950).

[106]The term "interlocking directorates" comes from Brooke Claxton (quoted in Faris, The Passionate Educators, 15). The major groups of the "Canadian movement" were the Association of Canadian Clubs, the League of Nations Society, the CIIA, and the Canadian League. Owram discusses the groups at 152 of The Government Generation. Ron Faris also discusses them briefly, and stresses that the CIIA successfully attracted members of the political, corporate, and intellectual elite, but not the agrarian or labour elite (The Passionate Educators, at 14; see also Bercuson, True Patriot, 60-5). For a discussion of the bureaucratic elite, almost all of whom belonged to the CIIA, see J.L. Granatstein, The Ottawa Men: The Civil Service Mandarins, 1935-1957 (Toronto: Oxford University Press, 1982), especially 13.

[107]W.J. Waines taught Political Economy at the University of Manitoba during the war, and later became Dean of Arts and Science. Along with other academics, such as Lower and Morton, he was an active supporter of the Civil Liberties Association of Winnipeg (CLAW), and continued to work with its successor, the Civil Liberties Association of Manitoba (CLAM).

[108]Like Lower, William Morton taught History (at the University of Manitoba) during the war; unlike Lower, he remained in Winnipeg after 1945. He too was active in the formation and lobbying of the CLAW, and continued to work with its successor, the CLAM. For information about Morton as a historian, a conservative, and a civil libertarian, see Carl Berger, The Writing of Canadian History, Chapter 10.

[109]Malcolm Wallace was another of the professors who had signed the 1931 letter in support of the FOR's right to hold public meetings on controversial issues. He was president of the CIIA from 1943 to 1945. His role as a civil libertarian is mentioned below.

[110]Charles H. Young and Helen R.Y. Reid, The Japanese Canadians (Toronto: University of Toronto Press, 1939); Charles J. Woodsworth, Canada and the Orient: A Study in International Relations (Toronto: Macmillan, 1941). The CIIA also published F.R. Scott's Canada Today: A Study of Her National Interests and National Policy (Toronto: Oxford University Press, 1939), as well as Alexander Brady and F.R. Scott, eds. Canada After the

War: Studies in Political, Social and Economic Policies for Post-War Canada (Toronto: Macmillan, 1943). Each book carried a caveat that it represented only the opinions of the author or authors; the organization was not in the business of lobbying directly for social change.

[111]Michael Welton, "'On the Eve of a Great Mass Movement,' Reflections on the Origins of the CAAE," in Choosing Our Future: Adult Education and Public Policy in Canada, ed. Frank Cassidy and Ron Faris (Toronto: OISE Press 1987), 12-35, at 15. See also Ron Faris, The Passionate Educators; Friesen, "Adult Education."

[112]E.A. Corbett was one of the leading intellectual social reformers of the period, a man with "a burning social conscience, fired by the Social Gospel theology," and an early member of the Canadian League. He was director of the CAAE from 1936 to 1950, when he stepped down and became Honourary Chairman. Corbett had been a vice-president of the Toronto Civil Liberties Association (CLAT) when it was formed in 1940, and remained active in civil liberties throughout the war and in the immediate post-war period (Faris, The Passionate Educators, 23, 34-6.) Corbett joined the Committee for a Bill of Rights in the late 1940s, and then worked with a reconstituted Toronto civil liberties organization (the Association of Civil Liberties [ACL], discussed below). There is no set of files for the ACL, but different archival sources indicate that Corbett was President from at least the spring of 1954 to the summer of 1960.

[113]R.S. Lambert was editor of the CAAE Food for Thought until 1941, and served on the Council of the CLAT. After the war he was head of the CBC School Broadcasts Department, and continued to write for both adults and children. In 1950 he won the Governor General's Prize for Juvenile Literature (Faris, The Passionate Educators, 35; Cook, "Civil Liberties in Wartime," 96, 139; Saturday Night, 6 June 1950, 25).

[114]During the prewar period the CAAE was primarily concerned with rural education, but during the early 1940s its Food for Thought published a series of articles about civil liberties in wartime. Then, towards the end of the war, the CAAE produced an educational series called "The Democratic Way," which dealt with a number of human rights topics, including "Freedom and the Law," and "The Problem of Race." It also published a rebuttal to anti-semitism in a pamphlet "What About the Jews?" (The Food for Thought articles are: "This Freedom: A Guide to Good Citizenship in Time of War," January 1940; "Mind Under Fire: The March of Propaganda in Wartime," May 1940; "Youth, War and Idealism: A Plea for Dynamic Democracy," October 1940. Copies of "The Democratic Way" pamphlets, which seem to be aimed at school teachers, are in the CLC Papers, vol. 355, file "Racial Discrimination, Part 2, 1945-1952." "What about the Jews?" is in vol. 12 of the Silcox Papers in the United Church Archives).

[115]As Chapter 2 of this dissertation notes, by 1945 Stiernotte was living in Vancouver and associated with a human rights organization called the Vancouver Consultative Council (VCC). According to Nathan Nemetz, who knew him at the time, Stiernotte was a minister

from Oklahoma (interview, 19 April 1995). For information about the parlous state of free speech rights in Calgary at the time that Stiernotte decided that Canada needed a civil liberties organization, see David Bright, "The State, the Unemployed, and the Communist Party in Calgary, 1930-5," The Canadian Historical Review 78 (December 1997): 538-565.

[116]Stiernotte to Scott, 25 October 1932, Taylor (Vancouver LSR) and Thomas (Toronto LSR) to Stiernotte, 28 October 1932, Scott to Stiernotte, 31 October 1932, and Stiernotte to Scott, 8 November 1932, Scott Papers, vol. 9, file 8, Reel H-1220; letter from A. Stiernotte, Canadian Forum, December 1932: 119. The ACLU was founded in 1920. In Britain, the National Council for Civil Liberties (NCCL), was formed in 1934. (Scott was a member of the NCCL for some time.) For more on these foreign civil liberties groups, see Samuel Walker, In Defense of American Liberties: A History of the ACLU (New York: Oxford University Press, 1990); Mark Lilly, The National Council for Civil Liberties: The First Fifty Years (London: Macmillan, 1984).

[117]Stiernotte to Scott, 10 February 1933, Scott Papers, vol. 9, file 8.

[118]For more information about Mosher and the ACCL, see Irving Abella, Nationalism, Communism, and Canadian Labour: The CIO, the Communist Party, and the Canadian Congress of Labour 1935-1956 (Toronto: University of Toronto Press, 1973), 44-53. As noted in Chapter 3 of this dissertation, Mosher later served on the executive of the post-war Ottawa Civil Liberties Association (OCLA).

[119]There are a number of letters in file 8 of the Scott papers between Stiernotte and Scott and also, in files 8 and 9, letters between Scott and the CCLPA secretary, Ella C. Timbres. See also the letter in file 13 from Stiernotte to Scott, 22 May 1937, explaining the death of the organization.

[120]Jack G. King, who was involved with the Citizen's Defence Movement of Regina, an organization created in the wake of the On-to-Ottawa trek, wrote to Scott in 1936, suggesting the creation of a national civil liberties organization, and Scott then wrote about this to several of his friends (King to Scott, 25 February, 1936; Scott to Spry, 5 March 1936; Scott to Underhill, 10 March 1936, and Scott to King, 10 March 1936, Scott Papers, vol. 9, file 9, Reel H-1221.

[121]Scott Papers, vol. 9, file 8, Reel H-1220; see especially the form letter from the Committee (sent to Scott), 12 February 1934. Scott also formed a civil liberties committee within the Montréal LSR branch in 1935 (Milligan, "Eugene Forsey," 253).

[122]Cam [Ballantyne] to Frank [Park], n.d. (1947?), Park Papers, vol. 7, file 133; Calder to Scott, 24 October 1936, and other contemporary letters in this file, Scott Papers, vol. 9, file 9, Reel H-1221; Djwa, The Politics of the Imagination, 170-76. One of the groups sponsoring this visit was the Committee for Medical Aid to Spain, chaired by Scott.

[123]An Act to protect the Province against communistic propaganda, c. 11, SQ 41; MCCLU Bulletin nos. 1, 2 February 1938, CCF Papers, vol. 146, file "Civil Liberties Union"; Ballantyne to Lower, 3 February 1940, Lower Papers, vol. 46, file 17. There is a sketchy discussion of the origins of this group in Lucie Laurin, Des Luttes et des droits: Antécédents et histoire de la Ligue des Droits de l'Homme de 1936 à 1975 (Montréal: éditions du Méridien, 1985), 19-21. See also Andrée Lévesque, Virage à Gauche Interdit: Les communistes, les socialistes et leurs ennemis au Québec 1929-1939 (Montréal: Boréal Express 1984), 143.

Note that the organization's principled defense of free speech was tempered by pragmatic considerations. One member has reported that the MCCLU distinguished "between the civil rights of those who supported civil rights, and those who wished to subvert them. It refused to defend the civil rights of fascists on the ground that, objectively, to do so would be to subvert civil liberty" (Cam [Ballantyne] to Frank [Park], n.d. (1947?), Park Papers, vol. 7, file 133).

[124]Laurin, Des Luttes, 20. Andrée Lévesque Olssen says that Desaulniers was the French Secretary of the party in 1937 ("The Canadian Left in Québec During the Great Depression: The Communist Party of Canada and the Co-Operative Commonwealth Federation in Québec, 1929-39," [Ph.D. diss., Duke University, 1973], 121).

[125]For a short biography of Calder, one of the "doughtiest warriors" of the MCCLU, see Forsey, A Life, 133-4. See also the biographical sketch in the Park Papers, vol. 8, file 134, a brief reference in David Lewis, The Good Fight: Political Memoirs 1909-1958 (Toronto: Macmillan, 1981), 210, and a mention of him as a prison reformer working with F.R. Scott in Kidman, The Canadian Prison.

[126]Djwa, Politics of the Imagination, 138.

[127]Socknat, Witness, 141.

[128]Canadian Annual Review of Public Affairs, 1937 and 1938 (Toronto: Carswell, 1940), 219-20; MCCLU Bulletin nos. 1, 2 February, 1938, CCF Papers, vol. 146, file "Civil Liberties Union." The petition for disallowance was drawn up by Eugene Forsey; see his autobiography, A Life on the Fringe, 190-191.

[129]Toronto Star: "Calder Denied Hall - Raps Padlock Law," 12 February 1938; "Warns Ontario May Awake to See Padlock Law Here," 17 February 1938; "Pastor Thinks Rome's Hand Behind Québec 'Padlock'," 21 February 1938; "An Un-Canadian Law," 7 April 1948; "Disallowance is Demanded of Padlock Law in Québec," 11 April 1938; R.L. Calder, "Our Vanishing Civil Liberties" (CLPD pamphlet), William Bennett Memorial Collection.

[130]Three pieces of Alberta legislation were disallowed by Ottawa in 1937, and three others were reserved by the Lieutenant Governor of the province. All three of the latter, including the previously mentioned "Press bill," were declared *ultra vires* by the Supreme Court of

Canada. Between 1938 and 1942, eight more Alberta statutes were disallowed. Not all of them, however, should be seen as simply the federal protection of property rights; the statute disallowed in 1942 prohibited the sale of land to enemy aliens and Hutterites, and Ottawa claimed that it interfered with federal jurisdiction (G.V. La Forest, Disallowance and Reservation of Provincial Legislation (Ottawa: Department of Justice, 1955, 75-82).

[131]MCCLU Bulletin no. 3 and no. 4, CCF Papers, vol. 146, file "Civil Liberties Union."

[132]This is discussed in more detail in Chapter 5.

[133]Desaulniers to David Lewis, 22 February 1939, Ballantyne to Lewis, 2 March 1939, and MCCLU Bulletin no. 8, CCF Papers, vol. 146, file "Civil Liberties Union"; MCCLU Bulletin no. 9, Park Papers, vol. 7, file 133; Betcherman, The Swastika and the Maple Leaf: Fascist Movements in Canada in the Thirties (Don Mills: Fitzhenry & Whiteside, 1975), 95-6; MCCLU "Statement of Receipts and Expenditures for the Year Ending March 31, 1939," Scott Papers, vol. 10, file 13, Reel H-1222.

[134]Ramsay Cook has concluded that "Though all the credit for the revisions that were made in the Defence of Canada regulations cannot be given to the civil liberties associations, as there were other groups and individuals who lodged protests, these organizations were undoubtedly the most potent single force in forcing the acceptance of changes" ("Civil Liberties in Wartime," 171).

[135]Scott to Jack King, 10 March 1936, and Scott to D.L. Goodwin, 15 November 1937, Scott Papers, vol. 9, file 9, Reel H-1221, and vol. 10, file 13, Reel H-1222. Note, however, that several civil libertarian members of the CCF, including Eugene Forsey and David Lewis, were cautiously sympathetic to the creation of a "united front" after Duplessis came to power, especially because his policies moved the communists "from a revolutionary position to one scarcely distinguishable from liberalism"; the padlock law helped to bring the two left wing parties together in a tentative alliance (Olssen, "The Canadian Left in Québec," 210-216, 220-1).

[136]Ivan Avakumovic, The Communist Party in Canada: A History (Toronto: McLelland and Stewart, 1975), Chapter 5, "From an 'Imperialist' to a 'Just' War."

[137]For references to Ballantyne, see Gordon Lunan, The Making of a Spy (Montréal: Robert Davies Publishing, 1995), 26, 98-9. Ballantyne is described briefly in Merrily Weisbord, The Strangest Dream: Canadian Communists, The Spy Trials, and the Cold War (Toronto: Lester & Orpen Dennys, 1983), 69-72.

[138]Boyer's role in the Gouzenko Affair is mentioned briefly in Chapter 3. Boyer had earned a Doctor of Philosophy in organic chemistry at McGill, and then did post-graduate work at Harvard, the Sorbonne, and the University of Vienna. At the last-named institution he left the sciences and started taking courses in the humanities and observing the struggles between fascists and socialists. When he returned to Canada he became a member of the communist

movement, as well as the MCCLU. During the war, while he was doing scientific research for the government, he became president of the Canadian Association of Scientific Workers (Weisbord, The Strangest Dream, 71-92).

[139]Agatha Chapman's role in the Gouzenko Affair is mentioned briefly in Chapter 3. Although Chapman claimed to be the great-granddaughter of the Conservative Sir Charles Tupper, she was drawn to radical Christianity, communism, and the civil liberties movement. During the war she was a member of the FCSO national executive, and in 1945 served on the editorial committee of the FCSO organ Christian Social Action. According to Gordon Lunan, she was a member of the communist "movement" who had been fired from her job from the Sun Life Company for belonging to the MCCLU (she was its treasurer). She achieved some measure of notoriety when she testified before the Kellock-Taschereau Royal Commission and identified some of the people who attended left-wing study groups that she had hosted. In 1947, as Chapter 5 of this dissertation points out, she attended a World Conference on Human Rights in London as a representative of the CRU (FCSO pamphlet, 1943-5, and "FCSO No Longer National Organization," October 1945, Christian Social Action, FCSO Papers; CRU Information Bulletin, "Report of Proposed Congress on Human Rights," n.d. (December 1948?), Park Papers, vol. 9, file 154; Hutchinson, "The Fellowship," 279; Lunan, The Making of a Spy, 95; "Agatha Chapman Wins Acquittal in Espionage Case," Globe, 28 November 1946; "The Evidence of Agatha Chapman," in Bothwell and Granatstein, The Gouzenko Transcripts, 332-335). See also her testimony in Hon. Justice Robert Taschereau, and Hon. Justice R.L. Kellock, The Report of the Royal Commission to Investigate the Facts Relating to and the Circumstances Surrounding the Communication, by Public Officials and Other Persons in Positions of Trust of Secret and Confidential Information to Agents of a Foreign Power (Ottawa: King's Printer 1946), 459-471.

[140]Montréal Daily Star, 20 May 1940; MCCLU "Bulletin" no. 11, April 1940, CCF Papers, vol. 146, file "Civil Liberties Union."

[141]Report of Constable Appleton to Staff Sergeant Leopold, 29 May 1940, CSIS files at Solicitor General's reading room, document 158; Montréal Daily Star, 20 May 1940; MCCLU "Statement" (n.d.), Lower Papers, vol. 30, file 46; copy of the draft constitution of the proposed Canadian Civil Liberties Union, and "Bulletin" no. 11, April 1940, CCF Papers, vol. 146, file "Civil liberties union."

[142]Report from RCMP Superintendent Gagnon, 21 November 1940, CSIS files at Solicitor General's reading room, document 158; G.R. Parkin to J.W. Macdonnell, 18 March 1941, Parkin Papers, vol. 17, file "Civil Liberties Association"; RCMP report from "C" Division, 19 April 1941, CSIS files at Solicitor General's reading room, document 158; Brewin to Lower, 21 February 1941, Lower Papers, vol. 46, file 19; Scott to Lower, 3 April 1946, Lower Papers, vol. 46, file 21; Cam [Ballantyne] to Frank [Park], n.d. (1947?), Park Papers, vol. 7, file 133; Fabry to Fraser, 26 April 1946, and Fabry to Fraser, 31 August 1946, Scott Papers, vol. 10, file 7; Hannant, The Infernal Machine, 236-7.

[143]Lewis to Forsey, 6 January 1940, CCF Papers, vol. 146, file "Civil Liberties Union." See also in the same file: Lewis to Ballantyne, 17 January 1940, M.M. Maclean to Lewis, 20 January, 1940, and Lewis to R.L. Calder, 23 April 1940.

[144]There may have been several smaller groups that surfaced temporarily. For example, document 158 of the CSIS files at the Solicitor General's reading room contains some references to a Regina Civil Liberties Committee in August of 1941.

[145]Toronto Star: "Conference on Civil Liberties" [editorial], 10 April 1938, "Disallowance is Demanded of Padlock Law in Quebec," 11 April 1938, and "'Hepburn Storm Troopers' Cited at Padlock Meeting," 14 November 1938; a document with a handwritten date (21 April 1938) reports on the meeting which formally accepted the organization's constitution, "Joint Public Relations Committee Cases 1938-1946," JPRC Papers, vol. 1, file PR 117; "Report of the Reorganization Committee of the Civil Liberties Union" (including a Draft Constitution), 7 March 1940, CCF Papers, vol. 147, file "Civil Liberties Union."

[146]"Members of the Council of the Civil Liberties Association of Toronto," Lower Papers, vol. 46, file 17. Note, however, the above-mentioned reference by Macdonell about the disreputability of membership in the CLAT (Hansard, House of Commons, 6 January 1958, 2909).

[147]"Report of the Reorganization Committee of the Civil Liberties Union," CCF Papers, vol. 147, file "Civil Liberties Union"; Brewin to Lower, 21 February 1941, Lower Papers, vol. 46, file 19.

[148]Hansard, House of Commons, 3 May 1950, 2132. A little later, CCF leader M.J. Coldwell supported Macdonell's remarks about communist infiltration (at 2134).

[149]Callaghan was active in the CLAT from the beginning, and also attempted to revive it just after the war (Oscar Cohen to Rabbi Feinberg, 7 December 1946, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24). It is possible that Callaghan's interest in civil liberties came in part from his legal training; he articled in 1925 with the prominent lawyer Joseph Sedgwick (himself a vice-president of the CLAT's successor group in 1949). More importantly, he maintained what he called 'an anarchistic angle' on the world. As his biographer has noted, "During the period of McCarthyism in the United States and increased official surveillance in Canada, he began to articulate what would later become an openly anarchic response to officialdom" (Gary Boire, Morley Callaghan: Literary Anarchist (Toronto: ECW Press, 1994), 12, 94. However, he does not seem to have been active in any post-war civil liberties organizations after about 1946.

[150]For more information about Drummond Wren, see Chapter 4.

[151]Noseworthy had been a vice-president of the organization in 1943.

[152]After the war, Wallace was one of the founding members of the Toronto ACL in 1949, and he stayed active throughout the 1950s.

[153]According to J.T. Morley, in his study of the CCF in Ontario, the party was dominated by an oligarchy of six people from 1942 to 1951. One of these was Andrew Brewin, the President of the Ontario CCF from 1946 to 1949, who also served as a member of what Walter Young calls the "ruling elite" of the party at the national level. Except for his democratic socialism, Brewin was clearly a member of the Canadian social elite. As Morley notes, he was the son of an Anglican clergyman whose parishioners numbered many members of the Canadian "aristocracy," and Brewin himself had gone to public school in England, studied law at Osgoode Hall, and articled with the respected J.C. McRuer (also a member of the CLAT during the early part of the war). He was also a member of the CIIA (Morley, Secular Socialists: The CCF/NDP In Ontario: A Biography [Montréal and Kingston: McGill-Queen's University Press, 1984], 177; Young, Anatomy of a Party, 168; Who's Who, 1947). As the next chapter of this dissertation will indicate, Brewin was also a key player in the struggle against the deportation of Japanese Canadians.

[154]Margaret Gould was what today would be called "doubly disadvantaged" (as a target for discrimination), being both female and Jewish. Originally Sarah Gold, a needle trades worker, she became a social worker and served as the full-time secretary of the Toronto Child Welfare Council in 1930. Gould also developed strong feminist and radical left views, and before the war joined the LSR, became an editor of the radical left New Frontier, and wrote approvingly about what she had seen on a trip to the USSR (which led to allegations that she was a communist). Despite her gender and ethnicity, she achieved journalistic success, becoming a member of the editorial staff of the Toronto Star, and from that position wielded considerable influence through her articles and editorials. After the war, as Chapters 2 and 3 of this dissertation indicate, she was involved in both the struggle against the deportation of Japanese Canadians, and opposition to Ottawa's policy in the Gouzenko Affair. The American government considered Gould a subversive, and refused her entry to New York in 1949. Still later, she was one of the activists who formed the Canadian Peace Congress (Ruth A. Frager, Sweatshop Strife: Class, Ethnicity, and Gender in the Jewish Labour Movement of Toronto, 1900-1939 [Toronto: University of Toronto Press, 1992], 143; Harkness, J.E. Atkinson, 315; Livesay, Right Hand, Left Hand, 14; Gary Moffatt, A History of the Canadian Peace Movement, 2nd ed. [Ottawa: Grape Vine Press, 1982], 18; Stuart E. Rosenberg, The Jewish Community in Canada vol. I: A History, [Toronto: McClelland and Stewart 1970], 160; Joan Sangster, Dreams of Equality: Women on the Canadian Left, 1920-1950 [Toronto: McClelland and Stewart, 1989], 157, 160; Reg Whitaker, Double Standard: The Secret History of Canadian Immigration [Toronto: Lester and Orpen Dennys, 1987], 152; Gale Willis, A Marriage of Convenience: Business and Social Work in Toronto, 1918-1957 [Toronto: University of Toronto Press, 1995], 60, 73, 79).

[155]The mother of philosopher George Grant, Mrs. W.L. (Maude) Grant had been warden (dean of women) of Asburne Hall at the University of Manchester (1903-1911) and of Royal Victoria College, McGill (1937-1940). According to her friend Eugene Forsey, "she could

have run the whole British Empire at the height of its power single-handed." She was also eminently respectable, the daughter of George Parkin, the wife of William Grant, and related to marriage to both Vincent Massey and Tory politician (and civil libertarian) James Macdonnell (NAC finding aid in the W.L. Grant Papers; Christian, George Grant, 50 [quoting Forsey]).

[156]George Grube, one of the controversial professors who had supported the free speech rights of the FOR in 1931, was another of the CLAT members identified by Morley as a member of the six-man Ontario CCF oligarchy. He was a Belgian-born professor of classics at Trinity College (University of Toronto), and served on provincial and national CCF executives until the early 1960s, at one point acting as the provincial president (Morley, Secular Socialists, 177-8). During the war, Grube wrote a number of articles on civil liberties in Canadian Forum, such as "Civil Liberties in War Time," July 1940: 106-7, and "Those Defence Regulations," January 1941: 304-306.

[157]The Rev. Canon W.W. Judd was the head of the Department of Social Service of the Anglican Church. Judd had deep roots in the social reform movements of the 1930s. He had been an activist in the League of Nations Society, and a prominent opponent of anti-semitism who joined the CNCR. At the end of the war he was a member of the CLAT council, and chair of the Social Relations Department of The Canadian Council of Churches, an ecumenical body which embraced most of the major organized Christian religions in Canada. As Chapter 2 of this dissertation indicates, he was also involved in the struggle against the deportation of Japanese Canadians. For more information, see: Abella and Troper, None is Too Many, 45; Speisman, "Antisemitism in Ontario: 127; Who's Who.

[158]MacPhail had been a vice-president of the organization in 1943.

[159]Charles Millard, the Canadian national director of the Steelworkers union (United Steelworkers of America) from 1942 to 1956, was an important member of the Canadian human rights community during and after the war. A deeply religious man, he served as chairman of the Religion-Labor Foundation of Canada, as a member of the Board of Evangelism and Social Service of the United Church of Canada, and as an advisory council member of the FOR. He later became a board member of the Canadian Council of Christians and Jews (CCCJ) shortly after it was founded in 1947. As later chapters of this dissertation indicate, Millard played an important supporting role in the fight against the deportation of Japanese Canadians, helped found the Toronto Association of Civil Liberties (ACL), and ensured that the Steelworkers supported the anti-discrimination work of the Jewish Labour Committee (JLC). His support for such causes was especially valuable because of his links to the CCF; he served as a CCF vice-president (and Ontario CCF President) throughout the 1940s, and was an Ontario MPP from 1943 to 1945 and again from 1948 to 1951. Along with CLAT activists Brewin and Grube, he was one of the members of the Ontario CCF ruling oligarchy (Morley, Secular Socialists, 177-8; Laurel Sefton MacDowell, "The Career of a Canadian Trade Union Leader: C.H. Millard, 1937-1946," Rélations industrielles / Industrial Relations, 43 [1988]; Andrew Carew, "Charles Millard, A Canadian in the International

Labour Movement: A Case Study of the ICFTU 1955-61," Labour/Le Travail 37 [Spring 1956]; miscellaneous FOR, CCJC, and ACL papers).

[160]Clifford Sifton was not always a strong civil libertarian; on the issue of academic freedom he took the position that "the people who pay the piper have the right to call the tune" (letter to Ontario Premier Hepburn, quoted in McKillop, Matters of Mind, 400-1).

[161]Anna Sissons, an early member of the LSR and a founder of the Ontario CCF, was president of the Toronto branch of the WIL before the war, and a vice-president of the national organization in 1943. The WIL was formed in 1915 by pacifist radical feminists in Toronto, and over the years became closely connected to a number of people with radical left, social democratic, and Social Gospel tendencies, moving from a narrow anti-war focus to embrace broader issues of social justice such as the reception of refugees from Nazi Germany and opposition to the padlock law. Then, during the war it began to support civil liberties, coming together with other like-minded groups (including the FOR, CCF, and YWCA) to form a "Committee for the Maintenance of Peace Time Liberties" After the war, the WIL was a supporter of the campaign to prevent the deportation of Japanese Canadians (see Chapter 2), and in Vancouver the WIL later took a stand in favour of civil libertarian free speech in the Martin case (mentioned in Chapter 5). For more information, see: Jamie Disbrow, "Exclusion by Due Process - Martin v. Law Society of British Columbia: A Cold War Eclipse of Civil Liberties," (M.A. thesis, University of Ottawa, 1996), 183; Irene Howard, The Struggle for Social Justice in British Columbia: Helena Gutteridge, the Unknown Reformer (Vancouver: UBC Press, 1992), 249, 255; Livesay, Right Hand, Left Hand, 224-5; Barbara Roberts, "Women's Peace Activism in Canada," in Beyond the Vote: Canadian Women and Politics, ed. Linda Kealey and Joan Sangster (Toronto: University of Toronto Press, 1989), 276-308; Socknat, Witness Against War, 105, 133-4, 176, 178, 191, 216.

[162]George Tatham was a professor of Geography whose pacifism is discussed in Socknat, Witness for War, 269. In 1945 he was the president of the CLAT and continued his connections with the FOR, serving as an advisory member of the organization; later, he served on the national board of directors of the CCJC, and worked with the CCCJ (miscellaneous CLAT and CCJC papers).

[163]Betcherman, The Little Band, 47, 69, 116; Kaplan, State and Salvation, 60.

[164]Rae Lucock was a founder of the Housewives' Consumers' Association who served during the war as a CCF MPP in Ontario. Later she was expelled from the CCF for her alleged communist sympathies. In later years, as president of the Congress of Canadian Women, Lucock was involved in protests against the execution of the Rosenbergs (Canadian Tribune, 17 November 1952), and she was also active in the radical left Canadian Peace Congress. She is discussed in Sangster, Dreams of Equality, 188; and in Dean Beeby, "Women in the Ontario CCF, 1940-1950," Ontario History, 74 (December 1982): 258-283, at 273.

[165]Barker Fairly, professor of German at the University of Toronto, had been one of the sixty-eight professors who in 1931 signed a letter supporting the free speech rights of the FOR. In the thirties he was the literary editor of the left-wing Canadian Forum. He was friends with a number of radical leftists, such as S.B. Ryerson and Dorothy Livesay, and his wife (Margaret) was active in the communist movement. She too was connected with the civil liberties community, having been a member of the TCCLU in 1938. Later, in 1948, she gave the CRU the distribution rights to her book The Spirit of Canadian Democracy, and the organization used this as a way of making money, recommending that its members buy copies for themselves and as Christmas presents (RCMP report [containing CRU document, n.d. (1948?)], CSIS Files, vol. 3440, file "Civil Rights Union," 718). When the Fairleys were asked to cut short a trip and leave the United States in 1949 because of their left-wing political views, the CRU took up their cause and tried to publicize it ("Civil Rights," vol. 3, no. 1 [June 1949], Park Papers, vol. 9, file 155). For more information about the Fairleys, see: David Kimmel and Gregory S. Kealey, "With Our Own Hands: Margaret Fairley and the 'Real Makers' of Canada," Labour/Le Travail, 31 (Spring 1993), 253-85. (For more about the CRU, see Chapters 3 and 5 of this dissertation.)

[166]Doug Smith, Cold Warrior: C.S. Jackson and the United Electrical Workers (St. John's: Canadian Committee on Labour History, 1997).

[167]Gordon Domm was a United Church minister who had opposed anti-semitism during the 1930s. After the war he was active in the Committee to Repeal the Chinese Immigration Act (CRCIA), and he stayed interested in human rights, serving in the late 1950s on the advisory council of the Association for Civil Liberties (ACL) in Toronto (Stephen Speisman, "Antisemitism in Ontario: The Twentieth Century," in AntiSemitism in Canada: History and Interpretation, ed. Alan Davies [Waterloo: Wilfrid Laurier University Press, 1992], 113-133; United Church Archives files; ACL membership list, 1950, Ontario Labour Committee Papers, vol. 9, file 9-3; Himel to Canadian Citizenship Council, 15 April 1957, Canadian Citizenship Council Papers, vol. 72, file "National Committee on Human Rights 1956-60").

[168]Grant was, of course, also the son of civil libertarian Mrs. W.L. (Maude) Grant, discussed above.

[169]"To all members of the Council," 1 May 1944, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24; "A Plan to Found a Permanent Organization to Study and Promote Inter-Cultural Relations," December 1944, Parkin Papers, vol. 17, file "Civil Liberties Associations, 1936-1946"; Christian, George Grant, 112.

[170]Cook, "Canadian Liberties in Wartime."

[171]"An Appeal for Justice - The Case of the Seized Properties of the Ukrainian Labor Farmer Temple Association" (1944 CLAT pamphlet), CLC Papers, vol. 335, file "Civil Rights - Civil Liberties Association of Toronto - An Appeal for Justice"; John Kolasky, The Shattered Illusion: The History of Ukrainian Pro-Communist Organizations in Canada (Toronto: Peter

Martin Associates, 1979), 23-42. Note that Sandwell, who had little use for communists, publicly supported the ULFTA cause in part because he saw it as a matter of principle involving property rights ("Property Rights," Saturday Night, 1 July 1944).

[172]Two other omissions were Ottawa's wartime security-screening system (and fingerprinting programme) and the so-called "Gestapo Affair" in 1945. See Caplan, The Dilemma of Canadian Socialism, Chapter 11; G.M.A. Grube, "The LeBel Report and Civil Liberties," Canadian Forum, December 1945: 208-212, at 212; Hannant, The Infernal Machine, 225; David Lewis, The Good Fight: Political Memoirs 1909-1958 (Toronto: Macmillan, 1981), 268-70.

[173]Werner Cohn, "The Persecution of Japanese Canadians and the Political Left in British Columbia, December 1941-March 1942," BC Studies (1985-86): 3-22. See also Chapter 3.

[174]See especially W. Peter Ward, White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia, 2nd ed. (Montréal: McGill-Queen's University Press, 1990), 165. See also Adachi, The Enemy That Never Was, 219, 236; Forrest E. La Violette, The Canadian Japanese and World War II: A Sociological and Psychological Account (Toronto: University of Toronto Press, 1948), 5-23, 37; Sunahara, The Politics of Racism, 86; Harrison, "The Social Influence of the United Church"; Bamford, "The Unwelcomed Stranger," 27; Hemmings, "The Church and the Japanese in Canada, 1-3. For a discussion which suggests that retrospective liberal anger about the evacuation (but not the property confiscation and deportation policies) might be "misplaced," see J.J. Granatstein, and Gregory A. Johnson, "The Evacuation of the Japanese Canadians, 1942: A Realist Critique of the Received Version," in On Guard for Thee: War, Ethnicity, and the Canadian State, 1939-1945, ed. Norman Hillmer, Bohdan Kordan, and Lubomyr Luciuk (Kingston: Canadian Committee for the History of the Second World War, 1988), 101-129.

[175]The CLAT completely ignored the Japanese Canadian issue when its members appeared before a parliamentary committee dealing with the DOCR; see "Representations to the Select Committee of the House of Commons on the Defence of Canada Regulations, J.L. Cohen Papers, vol. 20, file 2807, discussed in Kaplan, State and Salvation, 98.

[176]Ottawa's order-in-council PC 1457 severely limited the ability of Japanese Canadians to acquire real property or engage in agriculture. By 1943 the Cooperative Committee on Japanese Canadians (CCJC) saw this as one of the most serious violations of civil liberties, significantly impeding Japanese Canadian resettlement and assimilation (CCJC "Combined Report of the Men's and Women's Sub-Committees," 1 November 1943, CCJC Papers, vol. 2, file 13). See also: CLAT letter to "Property Owners Association of Toronto," 21 April 1944, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24; "A Matter of Personal Culture," Toronto Star, 26 April 1944; La Violette, "The Canadian Japanese and World War II," 253, note 33; "Toronto Committee Organizes For Action on Citizenship Rights," and "Toronto Groups Will Campaign: Seek Fair Treatment for Niseis," The New Canadian, 27 January 1945 and 30 June 1945. For more on the CCJC, see Chapter 2.

[177]"A Plan to Found a Permanent Organization to Study and Promote Inter-Cultural Relations," December 1944, Parkin Papers, vol. 17, file "Civil Liberties Association."

[178]Lower Papers, vol. 146, files 17-19.

[179]In his autobiography Arthur Lower calls Owens [misspelled as "Owen"] a close friend, and "a man whose intellectual capacities would have carried him far, had he not been weighted down by an undue ballast of humility" (My First Seventy-Five Years, 167).

[180]Lloyd Stinson, Political Warriors: Recollections of a Social Democrat (Winnipeg: Queenston House, 1975).

[181]Stinson, Political Warriors, 36-7, 78; Hutchinson, "The Fellowship," Appendix II: "FCSO National Officers," 279-81. Towards the end of the war Stewart had been involved in a fight to achieve equality for Jews at the University of Manitoba Medical School; see Percy Barsky, "How 'Numerus Clausus' Was Ended in the Manitoba Medical School," Jewish Historical Society of Canada 1 (October 1977): 75-81. Stewart was the first MP (even before John Diefenbaker) to call for a federal bill of rights; for information about this, see Chapter 7.

[182]Both Waines and Morton were, along with Lower, members of what Owram calls the "reform elite" of this period.

[183]Mitchell Sharp went on to be a high ranking federal public servant and a cabinet minister under Trudeau. His name is misspelled on the organization's letterhead, but there is no doubt that he was one of the members; he remembers being recruited by Arthur Lower "to make representations to the government regarding what was regarded as the arbitrary and unnecessary detention of some Canadians of Italian origin" (letter to the author, 20 September, 1996). For more information, see Mitchell Sharp, Which Reminds Me... A Memoir ((Toronto: University of Toronto Press, 1994).

[184]The organization also had close ties to the liberal (and Liberal) Winnipeg Free Press (discussed below).

[185]Cook, "Civil Liberties in Wartime"; Lower to Mackenzie King, 27 June 1944, W.L.M. King Papers, vol. 363, file 363, Reel C-7052, documents 314501-3.

[186]Lower to Brewin, 1 April 1940; Lower to Siverts, 25 February 1940, Lower Papers, vol. 46, file 17C. See also Hannant, The Infernal Machine, 223, 234-5.

[187]Cook, "Civil Liberties in Wartime," 162-3.

[188]Larry Hannant (Infernal Machine, 222-3) has argued that the Vancouver group was "communist inspired," although less communist-dominated than the Montréal group. However, Hannant does not provide any evidence other than the unreliable assessments of the RCMP.

[189]The VCCLU was formed in response to the padlock law (speech by A.F.B. Clark, n.d., MacLeod Papers, file 1). See also: "Free Speech Inalienable Right of All," Vancouver Sun, 20 May 1938; letter from G.G. Sedgewick, Vancouver Sun, 22 April 1938; "Archbishop Duke, Sedgewick Debate Québec Padlock Law," Vancouver Daily Province, 30 April 1938. According to a close friend of Sedgewick's, "He was a lifelong liberal, a Fabian socialist" (Bob apRoberts to G.P.V. Akrigg, 13 December [n.d.], Akrigg Papers, UBC Special Collections, vol 21, file 3). See also the tribute to Sedgewick, written shortly after his death, by Mamie Moloney in her column, "In One Ear," Vancouver Sun, 15 September 1949.

[190]Hunter Lewis, who was chair of the VCCLU for a while after the war, had a strong interest in censorship. His papers contain a number of documents referring to banned literature, including some correspondence between Lewis and West Coast author Roderick Haig-Brown concerning the banning of Edmund Wilson's Memoirs of Hecate County. He was also, for a while, national president of the Federation of Canadian Artists, and interested in the preservation and encouragement of West Coast native Indian art (Hunter Lewis Family Papers).

[191]The Canadian Who's Who, (Toronto: Trans Canada Press, 1948).

[192]Laura Jamieson had a long history of involvement in pacifist causes, including organizing the Vancouver chapter of the WIL. Having made the transition from liberal to reformist social democrat, she was elected a CCF MLA in 1939 and not defeated until 1945 (Connie Carter and Eileen Daoust, "From Home to House: Women in the BC Legislature," in Not Just Pin Money: Selected Essays on The History of Women's Work in British Columbia, ed. Barbara Latham and Roberta Pazdro, [Victoria: Camosun College, 1984], 389-405 at 395; Socknat, Witness Against War, 106; Sangster, Dreams of Equality, 117, 195).

[193]Jack Batten, Judges (Toronto: Macmillan, 1986), Chapter 5; interview with Nathan Nemetz, 12 April 1995; interview with David Freeman, 14 April 1995. In the 1950s Nemetz sat on the board of directors of the Western Canada branch of the CCJC (Arnold Papers, file 211.1).

[194]Interview with David Freeman, 14 April 1995. According to Freeman, King's brother had been a communist labour organizer who was executed in the United States on trumped-up charges. Radical left labour lawyer John Stanton has remembered King as "an accomplished, sensitive and scholarly gentleman who combined the talents of a theatrical director, an actor and a fearless man in the courtroom" (John Stanton, Never Say Die! The Life and Times of a Pioneer Labour Lawyer [Ottawa: Steel Rail Publishing, 1987], 15).

[195]Cook, "Civil Liberties in Wartime," 162-3; "Civil Liberties Safe in Canada Says Sedgewick," Vancouver Sun, 25 April 1942; "Liberties Union Urges Justice for Ukrainians," Vancouver Sun, 7 May 1943; "UBC Professor Defends Loyalty of Nisei Canadians; Hits Racialism," [Sedgwick retrospectively defending the internment and relocation policy] The New Canadian, 17 November 1945.

[196]Interview with David Freeman, 14 April 1995.

[197]Freeman was somewhat of an anomaly on the West Coast, a Jewish Zionist who was also active in the CCCJ, serving for a while as co-chair of the western region branch. He also had strong social democratic inclinations, and had been active in the CCF during the 1930s (interview, 21 April 1995).

[198]The VCCLU advisory board included, among others: A.T. Alsbury (prominent CCFer), Mildred Fahrni (discussed in the next chapter), Lawren Harris (famous artist), Duncan C. Macnair (CCF supporter with a communist background, married to writer and social activist Dorothy Livesay), Mamie Moloney (Vancouver Sun columnist), Nathan Nemetz (mentioned above), John Shadbolt (prominent artist), and E.J. Urwick (professor of Political Economy, and one of those who had signed the letter protesting the FOR's right to free speech in 1931).

[199]For a discussion of the responses of the Star, Globe, and Telegram to violations of legal and political civil liberties in the 1930s, see Suzanne Skebo, "Liberty and Authority." See also Harkness, J.E. Atkinson of the Star, 78, 307; Cook, "Civil Liberties in Wartime," (his discussion of newspapers is limited). The Globe authoritarianism in the 1930s gave way to a more classical liberal orientation towards human rights issues (discussed in more detail in later chapters). However, by the end of the war the Globe was no longer a Liberal paper. In the hands of its editor, Oakley Dalgleish, it now supported the Conservatives, and continued to do so throughout the rest of the 1940s and the 1950s, reflecting the interests of the Tory establishment in Toronto (David Hayes, Power and Influence: The Globe and Mail and the News Revolution (Toronto: Key Porter Books, 1992), 57-71). Note, however, that the motto of the Globe was still "the subject who is truly loyal to the Chief Magistrate will neither advise nor submit to arbitrary measures," and even before the end of the Second World War the newspaper went on record as opposing the Padlock law and the war-time ban on communism; see, for example, references in its editorial, "Racial Bill Not the Cure," 10 March 1944.

[200]For example, "Start Now to Plan for Jap Exclusion," 31 August 1942; "Removed for the Duration -- and Permanently?" 26 September 1942; "Keep the Japs Out," 18 April 1944; "We Oppose Votes For Japs," 10 July 1944. Note that the Sun did not represent all British Columbians; the Vancouver Province, with a larger circulation than the Sun, was not so strongly anti-Japanese.

[201]Abella and Troper, None is Too Many, 64; Cook, "Canadian Freedom in Wartime," 47, 50; Free Press: "The Elections Act," 3 July 1944; "Racial Discrimination," 8 July 1944; "Better, But Not Right," 18 July 1944; "Mr Mackenzie's Racialism," 26 September 1944; "Racialism in Toronto," 1 December 1944.

The Free Press editor J.W. Dafoe, his associate George Ferguson, and his Ottawa correspondent Grant Dexter, all were part of Owram's "new reform elite" (Owram, The Government Generation, 185; see also Brennan, Reporting the Nation's Business). Ferguson was a member of the CLAW advisory council during the war; Dexter replaced him as associate editor of the Free Press in 1946 and also joined the advisory council of the newly-

constituted Manitoba Civil Liberties Association.

[202]In 1946 Southam became honourary director of the newly-formed Ottawa Civil Liberties Association (OCLA).

[203]Cook, "Canadian Liberties in Wartime," 209.

[204]"Discrimination Signs," 18 March 1944; "Japanese Canadians," 24 June 1944; "A Cowardly Device" [Japanese Canadian disenfranchisement], and "Property Rights" [ULFTA], 1 July 1944; L. McL. Atkinson, "The Japanese Controversy is Reviving Liberalism," 15 July 1944; "Once a Jap...?" 3 March 1945; "Jehovah's Witnesses," 10 March 1945. Note, however, that the magazine sometimes compromised its civil libertarian principles; see especially its initial acceptance of the forcible relocation of Japanese Canadians, and its attitude towards communists and Technocracy: untitled article [on Japanese Canadians], and "The Communist Party" 28 February 1942; "Technocracy Again," 9 May 1942.

[205]Early civil libertarian Canadian Forum articles include: "Civil Liberties in Québec," May 1937, 42; Claris Edwin Silcox, "Eastview and the Public Good," May 1937; E.A. Forsey's "Under the Padlock," May 1938, "The Padlock Law Again," February 1938, and "The Padlock -- New Style," March 1939, as well as a selection of editorials on civil liberties during the war, entitled "Civil Liberties," each month from December 1939 to December, 1940. See also Louise Harvey Smith, "Anti-Semitism in Québec," June 1940; G.M.A. Grube, "Civil Liberties in War Time," July 1940, and "Those Defence Regulations," January 1941.

Canadian Forum also published the following on racism and/or Japanese Canadians later in the war: Douglas MacLennan, "Racial Discrimination in Canada," October 1943; "Combatting Anti-Semitism," February 1944; "Pandering to prejudice," August 1944; Edith Fowke and A.G. Watson, "Democracy and the Japanese Canadian," July 1945.

[206]In a discussion of this, written not long after the war, F.R. Scott noted that fear of the "new despotism" in the legal profession was usually voiced by "judges and practicing lawyers" rather than by "teachers and scholars" (F.R. Scott, "Administrative Law: 1923-1947," The Canadian Bar Review XXVI [1948]: 268-285, at 270). See also Tarnopolsky, The Canadian Bill of Rights, 6 (citing as evidence the Proceedings of the CBA for 1943 to 1946).

[207]Gustave Monette (chairman), "Report of Committee on Civil Liberties," Canadian Bar Review XXII (1944): 598-617.

[208]Larry Hannant has suggested that the class bias of civil liberties groups blinded them to some working-class issues, such as finger-printing in defense industries (Infernal Machine, 238).

[209]Even in Montréal, despite the involvement of some French-Canadians, most members were of British extraction. There are not very many "Jewish," Eastern European, or Asian names on the letterhead lists of these groups.

[210]The executive members, as one might expect in society of that period, were almost entirely male, with the occasional strong female as the exception that proved the rule. However, the rank and file members may have been far more evenly divided between the sexes. A list of members of the TCCLU, without a date but probably 1938, has 175 names with about 98 of them women (JPRC Papers, Joint Public Relations Committee Cases 1938-1946, vol. 1, file PR 117).

[211]It is, of course, not always possible to identify the religious denomination of political activists. However, given the large number of activists coming from a Protestant radical Christian background, it is likely that Catholics were probably not very well represented. Moreover, research has not identified any names of people formally connected to the Catholic Church.

[212]The leading role of social democrats is consistent with a recent study which finds that contemporary social-political elites are not as supportive of human rights as earlier scholars have claimed, but that members of the CCF are usually well in advance of the general population (Sniderman and others, The Clash of Rights).

[213]The term "elite non-conformists" was used by Abella and Troper to refer to the CNCR, but it is a fairly accurate description of most of the non-communist activists who had an interest in human rights (None Is Too Many, 284).

[214]Walker, In Defense of American Liberties.

[215]For a brief discussion of "discrepancy effects," see note 13 above.

[216]The traditional criterion for membership in the ACLU during this period was simply whether or not one supported the principles of the American Bill of Rights; in the words of Roger Baldwin, "The avoidance of any issue except the defense of the Bill of Rights has marked the Civil Liberties Union since its beginning" (Peggy Lamson, Roger Baldwin: Founder of the American Civil Liberties Union [Boston: Houghton Mifflin, 1976], 155). For a discussion of the successful Bill of Rights cases pursued by the ACLU during the 1930s, see Part III of Walker, In Defense of American Liberties. As Walker points out (at 112) the decision of the ACLU to hire a permanent staff lawyer in 1941 was largely the result of the American Supreme Court's strong support for civil liberties in the Bill of Rights.

[217]The ideas of "resource mobilization theory" (RMT) were mentioned in the "Introduction."

[218]Hutchinson, "The Fellowship for a Christian Social Order," 222, note 13. See also Chapter IX for his discussion of the war-time struggle within the FCSO between the CCF "progressives" and the communist "radicals." Note also Michiel Horn's suggestion that the LSR hovered "between liberal humanitarianism and socialism," but over time shifted from the latter to the former (The League For Social Reconstruction, 205).

[219]"The real problem we have to solve in Canada has nothing directly to do with the Japanese at all; it is the problem of racial intolerance. The problem is only aggravated by the deportations" (F.R. Scott, letter to the editor, January 1946; sent to fifty-five newspapers, published in eleven; reproduced in Chapter XIV of F.R. Scott, Essays on the Constitution,

CHAPTER 2 - THE COOPERATIVE COMMITTEE AND THE JAPANESE CANADIAN "DEPORTATION " ISSUE

A: INTRODUCTION

As noted in the previous chapter, during the final years of the Second World War the Canadian human rights community began to turn its attention from libertarian to egalitarian issues, and to embrace the discourse of democratic human rights. This meant dealing with two different kinds of problems -- discrimination imposed by the state, and discrimination by private individuals or businesses.[1] This chapter focusses on one way in which the human rights community attacked state violations of egalitarian rights, while later chapters (especially Chapters 4 and 6) deal primarily with the problem of private discrimination.

As was also noted in Chapter 1, the most pressing human rights issue at the end of the war was undoubtedly the Dominion government's plan to "deport" several thousand Japanese Canadians.[2] This resulted in a storm of protest by a large and effective "policy network" at the centre of which stood a Toronto-based coalition, the Cooperative Committee for Japanese Canadians (CCJC).[3]

The CCJC has been examined rather superficially by historians dealing with the war-time and post-war treatment of Japanese Canadians; often an emphasis on "the politics of racism" has obscured any analysis of what might be called "the politics of human rights."[4] In other words, most of these historians have not examined the CCJC in any great detail, or looked at its constituent parts, the people involved, or the way in which it was connected to other elements of the human rights policy community. They have also neglected the civil liberties organizations of this period, especially the central player in the CCJC coalition, the Civil Liberties Association of Toronto (CLAT).[5] This chapter seeks to redress this neglect.

The history of the CCJC can be seen as falling into three stages: an initial phase in which it dealt with resettlement issues in Toronto, and was largely apolitical; a second stage in which it became the defender of Japanese Canadian civil liberties, and grew into a highly

political coalition; and a third stage in which it focussed on restitution for property losses, and "down-sized" back into a small largely apolitical committee.

This chapter deals primarily with the second stage of the CCJC, from 1945 to 1947, and pays special attention to the deportation issue and the organizations which joined the coalition to fight the government's policy. Most of these groups had been established before or during the war, and are mentioned in Chapter 1, but a number of them, especially radical Christian and liberal pacifist groups, became increasingly irrelevant in the secular Cold War society. Moreover, some of the most important members of the human rights community in the 1950s were either marginal or not represented at all in the CCJC. In addition, the CCJC was a narrow-focus coalition dealing with the rights of a particular minority. By contrast, most human rights coalitions in the immediate post-war era dealt with issues important to a wide spectrum of groups -- primarily anti-discrimination legislation and lobbying for a national bill of rights.

Yet in some ways the CCJC was a harbinger of the modern human rights period. Its attack on Ottawa's deportation plans symbolized the renewed interest in egalitarian rights which had already begun to emerge during the war and which suffused much of the human rights activism in the subsequent years. In addition, several of the organizations which played a central role in the post-war era, and which are discussed in detail in later chapters, were pivotal actors within the CCJC. In retrospect, one can see that the deportation struggle marked the beginning of a new era of respect for human rights in Canada.

B: THE DEVELOPMENT OF A POLICY NETWORK

As noted in Chapter 1, almost no Canadians publicly opposed the wartime internment and forcible relocation of Japanese Canadians. However, relocation was a short-term reaction to a perceived threat. The long-term "problem" was the concentration of Japanese Canadians living on the West Coast. A partial solution was the voluntary dispersal of these people to provinces other than British Columbia, which Ottawa facilitated in part by assuring the other provinces that resettlement was only a temporary wartime expedient. However, the possibility of their return to the West Coast hung like a sword of Damocles over both the province of British Columbia and the federal government in Ottawa. One possible way of preventing them from returning to the province was to encourage their permanent relocation in other provinces, despite Ottawa's promises to the contrary. Another "final solution" was to deport them to Japan as soon as the war ended.[6]

Although a policy of dispersal and assimilation flies in the face of our contemporary commitment to multiculturalism, it was strongly supported by most liberals during and immediately after the war. For example, Norman Black, a retired academic and social democrat who staunchly supported Japanese Canadians on the West Coast, wrote a Saturday Night article in which he stated that "The rational cure of undue geographical and occupational concentration is geographical and occupational dispersion." In order to facilitate this, he said, Ottawa should provide fair compensation for expropriated property, and it should lend money for down-payments on homes and necessary equipment. At the same time, he argued against forcible exclusion from British Columbia, as well as any deportation whatsoever from Canada.[7]

Support for voluntary dispersal was often linked with the ability of Japanese Canadians to become assimilated. In British Columbia it was an article of faith among supporters of deportation that "Orientals cannot be assimilated in Canada." This belief was often expressed in the Legislative Assembly, with the CCF members arguing to the contrary. Sometimes such exchanges led to strange outcomes. For example, when in the spring of 1945 a CCF member, Laura Jamieson,[8] went on the attack with a tongue-in-cheek remark that

Canadian Scots also were not yet assimilated, a short while later another member, R.C. 'Claymore' MacDonald had himself piped into the House, wearing his traditional Highland costume.[9]

The second-generation Nisei, of course, knew full well that assimilation was possible, if only the English (and Scots) could jettison their racist traditions. Many of them believed, moreover, that voluntary dispersal would be an effective means to such a goal. The Japanese Canadian Committee for Democracy (JCCD), a Nisei-dominated organization based in Toronto which was intimately involved in fighting the deportation policy, fully supported the principle of dispersal leading to assimilation.[10] Similarly, Thomas Shoyama, the editor of the influential Japanese Canadian newspaper, The New Canadian, frequently defended voluntary dispersal. As he wrote on one occasion: "Our challenge is simply whether we are going to cower timorously here in BC and be regarded merely as beasts of burden; or whether we are going to strike out boldly to work and fight for the right to be human beings."[11]

But if dispersal (especially voluntary dispersal) was widely acceptable, only a vocal minority supported the notion of wholesale deportation. Although a Canadian Institute of Public Opinion (Gallup) poll in December 1943 indicated that slightly over 50% of Canadians, and a substantial majority of British Columbians, were in favour of deportation, support for this proposal quickly slipped, so that within a few months only 33% of Canadians supported the idea.[12]

In addition, as noted in Chapter 1, a very loosely integrated policy network supporting the rights of Japanese Canadians had already appeared in 1944, in opposition to Ottawa's disenfranchisement of those Japanese Canadians who had left British Columbia in the wake of the forcible relocation/internment policy. Although the network had not been entirely successful, it nevertheless served a warning to the government that many Canadians were outraged and willing to vent their displeasure at policies which violated fundamental equality rights. As one contemporary commentator put it, it was "one of the most encouraging evidences of the survival of a liberal spirit that this country has presented in a long time."[13]

In August 1944 the Prime Minister made a speech in the House which set out government policy on the matter of Japanese Canadians, and acknowledged that most of them had remained loyal during the war. He made it clear that only disloyal members of the community would be deported, and that the rest would be dispersed throughout Canada (although he argued that a permanent barrier to their return would be undesirable). He also paid lip service to the new human rights values brought out by the war, saying that "We must not permit in Canada the hateful doctrine of racialism which is the basis of the nazi system everywhere."[14]

Although historian J.L. Granatstein has referred to the government's policy as "a disgrace to a liberal democracy," the human rights community was moderately encouraged by the Prime Minister's speech. The CCJC, for example, agreed that dispersal was a necessary anodyne to West Coast racism. Its only complaint at this time was that the government intended to investigate the loyalty of Japanese Canadians by setting up a quasi-judicial commission; the CCJC felt that no such testing was necessary, given the record of the community as a whole.[15]

In February of 1945 Ottawa provided more details about the future of Japanese Canadians. Unlike the American government, which had recently removed all controls on Japanese Americans,[16] it announced a "voluntary repatriation" programme whereby Japanese Canadians could opt either to move east of the Rocky Mountains or be sent to Japan for free as soon as might be practical. By May over 6,000 repatriation forms had been signed, on behalf of over 10,000 men, women and children, most of them Canadian citizens, and representing over 40% of the Japanese Canadian population.[17]

Ottawa's deportation policy came under attack from different quarters. A number of British Columbians maintained that it was impossible to distinguish the disloyal from the loyal, and that at the end of the war Ottawa should immediately deport all Canadian of Japanese extraction. On the other hand, many liberal citizens argued that deportation was an inappropriate response in either some or all cases, and alleged that not all of the "repatriation" signatures were truly voluntary. Many Japanese Canadians soon began claiming that they had been subtly coerced into applying for transport to Japan.[18]

The major opposition came from the CCJC. When Japanese Canadians had first arrived in Toronto, they were helped by a number of volunteers, several of whom had been missionaries in Japan, and who represented the YWCA as well as the women's missionary societies of the United Church and the Church of England. These formed a Cooperative Committee on Japanese-Canadian Arrivals, in June 1943, a purely philanthropic organization, with no intention of entering into the broader political scene. By 1944 it had accepted membership from other groups, started to engage in lobbying, and was calling itself informally the Cooperative Committee for Japanese Canadians. It was not, however, sufficiently well-organized for a full-scale political campaign against the federal disenfranchisement legislation (perhaps because it had begun to lobby Toronto municipal government to deal with discrimination against recently-arrived evacuees), and could only manage letters of protest from individual members.[19]

The better to fight the new deportation policy, the CCJC called a special meeting in late May of 1945, to which a number of organizations were invited. The result was a decision to oppose the government's policy and reorganize the group as a federation formally called the Cooperative Committee on Japanese Canadians (CCJC). The secretary remained Donalda MacMillan, a woman of "inexhaustible energy and singleness of purpose" who had lived in Japan for some time with her husband, a United Church missionary.[20] The chair of the altered body was the Reverend James Finlay, an outspoken and sometimes controversial United Church minister with a strong pacifist background and a long commitment to the cause of Japanese Canadians. The CCJC was now ready to undertake Canada's first major post-war human rights effort.[21]

It is not easy to summarize the different organizations that made up the CCJC coalition, but they fall into a number of categories.[22] The most obvious is, of course, minority groups; the Japanese community was represented by the above-mentioned JCCD as well as the Japanese Canadian Citizenship Defense Committee (JCCDC)[23] and the National Japanese Canadian Citizens' Association (NJCCA).[24] The coalition was also joined by the Jewish community, represented by the Canadian Jewish Congress (CJC).[25] However, there was little support from other minority groups, who for the most part continued to work in isolation,

maintaining a high level of what today would be called "identity politics." Sometimes this was probably the result of hostility to Japanese Canadians; for example, aboriginal peoples[26] and the Chinese[27] often saw them as economic competitors. In other cases this was probably the result of rudimentary politicization; the black community in Canada, for example, had no national organization.[28]

Christian bodies were among the strongest supporters of the CCJC, a reflection of the continued power of the Social Gospel.[29] In its early years the CCJC was almost entirely made up of representatives from Christian churches and church-affiliated bodies. In addition, individual national church organizations also gave their support: Baptists, Catholics, Anglicans, Presbyterians, Evangelicals, Church of Christ (Disciples), Society of Friends (Quakers), and several ecumenical organizations such as the National Interchurch Advisory Committee on the Resettlement of Japanese Canadians (NIAC),[30] the Inter-Varsity Christian Fellowship, and the Religious Education Council of Canada.[31] Finally, the CCJC was supported and "infiltrated" by a number of pacifist organizations with roots in the Social Gospel and radical Christian tradition, especially the FOR, the SCM and the FCSO (until its dissolution in 1945).[32]

The CCJC was also formally supported by some trade unions, an early example of the emerging "social unionism" of the post-war period.[33] One of these was the United Electrical, Radio and Machine Workers of America (UE), usually considered a communist-dominated organization, led by the controversial leader C.S. Jackson, the CLAT Council member who had been imprisoned for a while during the war because of his communist ties.[34] This was balanced by support from the United Steelworkers of America, a union closely associated with the CCF, and led by the anti-communist Charles Millard, also a member of the CLAT Council.[35]

The Toronto Labour Council also supported the CCJC. This was a municipal umbrella organization for CCL unions. Since the President of the Toronto Labour Council was Murray Cotterill, the Publicity Director of the Steelworkers, and (from 1947 on) a strong executive member of the Toronto Joint Labour Committee to Combat Racial Intolerance, it is not surprising that this body joined the CCJC coalition.[36]

There were also two professional "unions" supporting the CCJC: the Canadian Association of Scientific Workers (CASW) and the Canadian Association of Social Workers. The former organization was probably dominated by scientists on the extreme left. At this time the president of the CASW was Raymond Boyer, a former activist within the MCLU, a McGill professor, a scientist, and a strong believer in the Soviet Union as a force for peace and social justice. Another leading member of the union was David Shugar. Together the two men were about to achieve notoriety when, in the spring of 1946, they were arrested as part of the Gouzenko Affair revelations.[37]

Civil liberties groups also supported the CCJC. As noted in Chapter 1, by 1945 a number of these organizations had become moribund, and many people hoped that the end of the war-time DOCR would make the remaining three bodies (the CLAT, the CLAW, and the VCCLU) largely unnecessary. On the other hand, some civil libertarians had begun to turn their attention to the problem of racial prejudice and discrimination. The deportation issue helped to concentrate this emerging focus and gave new life to the civil libertarian movement.

Although only the CLAT was formally a member of the CCJC, the other two organizations took a strong interest in the issue. By the fall of 1945 the CLAW had sent a number of letters off to the government and MPs, as well as drafting a substantial brief for the Prime Minister. In addition, its President, the historian Arthur Lower, sent a long letter expressing his concerns to Stuart Garson, a personal friend who had been Premier of Manitoba and was now a cabinet minister in the King government.[38]

In 1946 the CLAW reconstituted itself into a new organization, the Civil Liberties Association of Manitoba (CLAM).[39] Arthur Lower was no longer in charge, having departed for a year of study leave in Toronto,[40] but the organization remained controlled by the old guard, a largely liberal collection of academics -- the new president was the political economist Professor W.K. Waines, the vice-presidents were the historian W.L. Morton and the law professor Samuel Freedman,[41] while the secretary-treasurer was the philosophy professor David Owens.[42] Although the organization soon focussed primarily on the Gouzenko crisis, it continued to send off letters about the Japanese Canadian deportation

issue, usually emphasizing the fact that the governing party should live up to its "liberal" principles.[43]

The VCCLU also became involved. As noted in Chapter 1, this body had been concerned about the DOCR and suppression of free speech, but did not protest Ottawa's forcible dispersal policy in 1942. Then, towards the end of the war, its major preoccupation seems to have been the property rights of the Ukrainian Labor-Farmer Temples (ULFTA). It was only in the fall of 1945 that it began to turn to the deportation issue. This was no doubt facilitated by the fact that one of its leading members, Hunter Lewis, was also the chair of the Vancouver CCJC regional committee.[44]

In addition to the CLAT, CLAW, and VCCLU, three new civil liberties organizations sprang to life in 1946, when the CCJC was both lobbying Ottawa and litigating the case before the Supreme Court and then the Privy Council. First, a group of citizens formed the Ottawa Civil Liberties Association (OCLA) in the spring, partly in response to the deportation crisis, and partly as a result of the Gouzenko Affair which had just erupted. This organization is discussed in more detail in the next chapter (which deals with the Gouzenko Affair). It was a "respectable" organization, composed for the most part of liberals and social democrats, the honourary president of which was Harry Southam, the publisher of the liberal Ottawa Citizen, and at least one member, Edith Holtom,[45] was active in the local CCJC committee. Shortly after it was created, the OCLA quickly sent off a resolution of protest to the federal government, as well as lobbying individual MPs to oppose all such "departures from British practice." The OCLA President also published a lengthy lead editorial on the subject in the Toronto Daily Star.[46]

The second civil liberties group formed during this period was the Montréal Civil Liberties Association (MCLA), rising from the ashes of the MCCLU after its destruction by internecine fighting between social democrats and communists during the war.[47] According to Angus Cameron, the first president of the MCLA, there was probably only one communist on the eighteen person executive, and to forestall "Communist domination" the group's constitution made membership contingent upon approval by the executive. As a result, almost none of the former MCCLU activists were prominent in the new MCLA.[48]

These MCLA people were all "respectable" and primarily Anglophone. The chair was the Rev. Angus de M. Cameron, a Unitarian Minister, the vice-chair was Constance Garneau, the wife of a prominent Montréal businessman, and the secretary-treasurer was the Rev. Claude de Mestral, a United Church minister.[49] One of the members was Roger Ouimet, a Liberal lawyer who was the son-in-law of Liberal politician Ernest Lapointe and was later appointed a judge.[50] Another was Burton Keirstead, a McGill political economy professor and well-known CBC commentator on public affairs.[51] There were also several social-democrats: CCF activists Thérèse Casgrain,[52] Frank Scott,[53] the socially-conscious author Gwethalyn Graham, and Jacques Perrault, a professor of law at the University of Montréal, who was a supporter of the Parti Social Démocratique (and later the CCF), as well as a board member of Le Devoir.[54] The organization also boasted the support of civil liberties lawyer Bernard Mergler, as well as Leslie Roberts, a journalist and author who had been executive assistant to Minister of Defense Norman Rogers.[55]

Because it was a relative new-comer, the MCLA played at best a minor role in the deportation struggle, although in November 1946 it did place a large advertisement in the Montréal Gazette, criticizing the fact that Japanese were still forbidden to travel to, and settle on, the West Coast.[56] The MCLA advertisement did not mention the deportation issue, probably because the matter was *sub judice* the Privy Council. In any case, within a month the MCLA was busy with a more pressing local matter, the treatment of the Jehovah's Witnesses in Québec.[57]

The third civil liberties group formed during this period was the Emergency Committee for Civil Rights (ECCR), which by the end of the year was renamed the Civil Rights Union (CRU). As Chapter 3 explains in more detail, this was a group of radical left members of the CLAT which split away primarily over dissention about the best response to the Gouzenko crisis. The CRU spoke out about the treatment of the Japanese as soon as it had been formed, but like the MCLA, it said little about the deportation issue. Instead it called for the granting of full citizenship rights (including the abolition of travel restrictions), a fair settlement for economic claims, and assistance for those who had relocated from British Columbia to other parts of Canada.[58]

In addition to support from civil liberties groups, there were a number of women's organizations that joined the CCJC. Aside from gaining the support of "women's associations and missionary societies of all the leading denominations -- local and provincial,"[59] the CCJC included the YWCA, an organization which is not normally thought of as a human rights group, but which had more than a passing interest in anti-discrimination activity during the immediate post-war period.[60] In addition, the CCJC included the National Council of Women (NCW), "the organization of middle and upper class English-Canadian women" in this period between the first and second waves of feminism,[61] and the Women's International League for Peace and Freedom (WIL), a left-leaning pacifist group with a long history of social activism.[62]

The coalition also included "student Organizations in all the leading Canadian Universities."[63] The CCJC activists clearly made an effort to attract students, and the SCM in particular was an active supporter of the cause on campuses. At the University of Toronto, moreover, the students formed a campus committee on Japanese Canadians and elected as its chair Don Franco, president of the university Humanist Club.[64]

Because the central headquarters of the CCJC was in Toronto, and almost all Japanese Canadians had lived in British Columbia prior to 1942, it was important for the CCJC to have a West Coast organization with which it could work closely. To some degree the VCCLU might have served this purpose, but a more obvious candidate was the Vancouver Consultative Council (VCC). This organization had been created as the Consultative Council for Co-operation in Wartime Problems of Canadian Citizenship in 1942 by a number of representatives of religious organizations such as the FCSO, the Vancouver Christian Youth Federation, and the United Church, as well as some secular left-wing groups such as the WIL and the CCF. The members had not challenged the legitimacy of Ottawa's evacuation policy, but cooperated with the Security Commission and initially attempted "to facilitate the exchange of information between groups who see the Japanese problem in BC as a national problem which is a challenge to citizenship, Christianity and our common humanity."[65]

The VCC had begun political lobbying as early as the fall of 1942 when it asked the City of Vancouver to revoke a recent resolution calling for the ultimate deportation of

Japanese Canadians. In 1943 it had prepared a petition for Ottawa on the matter of Japanese Canadian resettlement, and by 1944 it had asked the Prime Minister to override provincial interests east of British Columbia by implementing a policy of permanent dispersal and resettlement. Only this, the VCC had argued, would undermine West Coast demands for deportation, a "wicked and preposterous" proposal reminiscent of the "characteristic racial attitude of Naziism."[66]

In 1945 the VCC was still an organization with a strong core of religious supporters. Its list of eleven executive members included three Church ministers: A.J. McLachlan, the chair of the Social Service Committee of the Baptist Convention of British Columbia; Hugh M. Rae, the former president of the British Columbia Conference of the United Church Ministers, and a former VCC chair; and Hugh Dobson, the Western Field Secretary for Evangelism and Social Service (United Church) and also Associate Secretary of the United Church Board of Evangelism.[67] Many of the other members, however, were democratic socialists whose connection to organized religion was less formal. For example, one of them was A. Stiernotte, the LSR/CCF activist who had been instrumental in the early thirties in creating Canada's first civil liberties group in Edmonton. Another was Laura Jamieson, the CCF MLA who had for a while during the war been the chair of the VCCLU and was also active in the WIL. Yet another was Mildred (Mrs. Walter) Fahrni, also active in the WIL, who later became the FOR National Secretary.[68]

Two other VCC board members were especially important. One was the President, Norman Black, the author of the 1944 Saturday Night article (which the CCJC had reproduced as a pamphlet entitled "A Challenge to Patriotism and Statesmanship.")[69] The other author was W.H.H. Norman, a United Church Minister and former FCSO activist who had been born in Japan and was intimately familiar with the language and culture of that nation. Howard Norman was the brother of Herbert Norman, the brilliant Japan scholar in the Department of External Affairs who later was publicly targeted as an alleged communist and committed suicide as a result of this harassment. During part of the war, Howard Norman worked on the West Coast as an instructor in S-20, the Canadian Army Japanese Language School (Pacific Command), where he was in close contact with a number of influential

members of the Japanese Canadian community. He was also the first member of the clergy to protest against Ottawa's policy of selling off confiscated Japanese Canadian property in 1943, arguing that it violated their basic citizenship rights and was "nothing more or less than a Canadian variant of the Nuremburg laws against Jews." For the next few years he wrote a number of articles and pamphlets about the treatment of Japanese Canadians, some of which the VCC and CCJC used as ammunition in their struggle against the government.[70]

C: FROM LOBBYING TO LITIGATION

The CCJC began to ponder, in the spring and summer of 1945, the most effective way of combatting Ottawa's deportation policy. Its first move was to draw up, at its founding meeting in May, a petition which asked for full rights of citizenship for Japanese Canadians, indemnity for property losses, removal of restrictions on purchases of property, and a request that those who signed applications to leave for Japanese be permitted to reverse their decisions. This petition was presented to the government by a delegation of the FOR on 8 June.[71]

At about the same time that the CCJC was establishing itself as a national network, the Japanese Canadians in British Columbia were challenging the government's deportation policy by obtaining writs against the Security Commission, claiming that it had no legal power to deport any of them. However, by early August they had learned that the case had failed on a technicality -- the Security Commission had been dissolved in 1943. As a result, they began to consider some other way of taking legal action. No doubt the CCJC felt that such litigation would be unnecessary if only the government could be persuaded to change its policy.[72]

Lobbying was an alternative to litigation, but effective lobbying was in part dependent upon organization and sheer weight of numbers. Because it initially represented only about 25 groups, the CCJC executive immediately began working to obtain the support of other influential groups and individuals within the human rights community, especially those that had taken a stand on the recent federal disenfranchisement issue. To help this, the executive secretary of the FOR undertook a tour of western Canada. At the same time, the CCJC began to lobby the government directly and indirectly.[73]

The direct approach involved preparing a brief and sending a delegation to Ottawa.[74] The brief, addressed directly to the Prime Minister, is an important document for two reasons. First, it represented the first manifestation of public opposition to the deportation policy. Second, it constitutes one of the earliest examples of argument based not upon the "British liberties" discourse, but upon the human rights approach which was to become ubiquitous in the post-war era.

The brief opened by identifying the CCJC as an organization "composed of representatives of returned Canadian missionaries and other persons concerned with safeguarding the maximum human rights and the freedom of loyal persons of Japanese descent during the time of war," and noted that the most recent Toronto meeting on deportation had been attended by delegates from forty concerned organizations. The brief then mentioned King's policy speech of July 1944, and congratulated him for demonstrating "respect for human rights." As it pointed out, the San Francisco Charter (which had created the United Nations in June, and which Canada had signed) included a pledge "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, language, religion or sex." Ottawa's deportation policy, the brief added, might constitute a "Nazi treatment of an innocent and highly reputable minority."[75]

The brief then suggested that those who had asked for repatriation had done so within the context of a Hobson's choice: either continue in a manifestly inhospitable country, moving to new areas in the East that were for the most part unknown, or give up and go to Japan. Those who opted for Japan had, in many cases, submitted to the "temptation to give up the weary struggle for equality."

A better approach for the Japanese Canadians, the CCJC argued, would be to permit them to withdraw their original "repatriation" applications if they desired. At the same time, Ottawa could make the choice easier by taking a number of steps, including granting all Japanese Canadians full citizenship rights, providing aid for rehabilitation and for permanent resettlement outside of British Columbia, removing the restrictions which still made it difficult to purchase property, and indemnifying those who had lost property as a result of the relocation policy.

To supplement this brief, a delegation soon travelled to Ottawa.[76] It consisted of a Japanese Canadian, Kinzie Tanaka, the president of the JCCD,[77] and a number of non-Japanese who represented a fairly wide spectrum of "respectable" society: Donalda Macmillan the CCJC secretary, B.K. Sandwell, J.H. Fowler (of the national YMCA),[78] Don Franco (president of the Humanist Club of the University of Toronto), George Reany, and Eugene Forsey (CCL Research Director).[79]

The delegation met with both Norman Robertson of the Department of the Secretary of State, and Arthur Brown, a lawyer for the Department of Labour. The delegates dealt with a number of issues, including compensation for property losses and the "restrictive legislation" which made it difficult to facilitate the redistribution of Japanese Canadians from the West Coast to the rest of Canada.[80] However most of the delegates' attention was directed to the deportation policy. They argued that deportation was inappropriate for Japanese Canadians, even those who had been disloyal. Moreover, they stressed that most Japanese who were raised in Canada, whether or not born in this country, were loyal citizens. Those who had signed the "repatriation" request were operating under "a mental and emotional strain," especially because the alternative seemed to be moving to Eastern Canada, which was reputed to be often inhospitable to those who had already relocated. Signing the form, in other words, was not necessarily evidence of disloyalty.[81]

The delegates also made an argument which suggests either that Canadian churches were not as principled as one might believe, or that they were attempting to win over the government by appeals to *Realpolitik*. They noted "that Canadian churches have a considerable investment of energy and money in Japanese missions, and that if undue and unjust pressure is put upon Japanese citizens in Canada, and they are sent out of the country with a sense of injustice, irreparable harm will be done to missionary enterprise." In other words, federal policy threatened the long-term interests of the missionary societies.[82]

The interviews with Robertson and Brown were not fruitful. The officials defended Ottawa's policies, and furthermore claimed that they were not aware of any public opposition to the deportation plans. Even worse, the possibility of a massive deportation moved suddenly from the realm of a relatively distant possibility to an immediate probability, for the American use of nuclear weapons brought the war in the Pacific to a sudden close. By 15 August all hostilities had ceased, and by 2 September Japan had surrendered unconditionally. If the Canadian government wished to send its "disloyal" citizens to Japan, there was nothing that the Japanese government could do to stop it.

Meanwhile, the CCJC executive had decided that it was necessary to reach the government indirectly by rousing public opinion. They began communicating with

organizations not already part of the coalition, issuing press releases, and sending out copies of a pamphlet, "What About the Japanese Canadians?", written by the VCC activist, Howard Norman. It laid out in detail most of the same arguments raised by the delegation: most Japanese were loyal to Canada, deportation was wrong, and the Canadian government needed to encourage the Japanese Canadians to relocate.[83]

Copies of this pamphlet were distributed to both the public and to all members of Parliament, including the Prime Minister and his cabinet. It was accompanied by a letter which once again adopted the new discourse of human rights: "It is no exaggeration to say that the manner in which we deal with this problem determines the measure of our ability to fulfil the pledge [to respect human rights, in the United Nations Charter,] made with other nations at San Francisco."[84]

The government remained unsympathetic to the CCJC argument. For one thing, it was hard to demonstrate that the Japanese Canadians had acted under duress when they asked for "repatriation," and the brief to the government had not made a very convincing case on this point.[85] In addition, a confidential memorandum to Prime Minister King stressed that there had been "no duress whatever," although it was admitted that the notice in March announcing the policy was unfortunately not worded as clearly as it might have been, thereby creating a possible unintended threat. The memorandum added that a Red Cross delegate had recently investigated this point, and it concluded that "he could find no evidence whatever of duress or undue influence. He said that many probably signed out of a fear that there was little future for them in Canada, and this has undoubtedly been an important factor. However, the delegate said that this was an entirely different matter from the threats that had been suggested by some." In short, the author suggested that the government was not directly responsible for any duress. That it might be responsible indirectly, because of its earlier policies and its reluctance to make Japanese Canadians feel welcome, did not seem to occur to him.[86]

In addition, the government was under considerable political pressure from what the memorandum called "large and influential groups in British Columbia, many of whom are determined that the Japanese shall never be allowed to return to that province." Since many of these were Liberals, especially cabinet minister Ian Mackenzie, it was clear that the

government faced serious political trouble if it did not act decisively. Yet at this time King was in the uncomfortable situation of having promised the other provinces that the war-time dispersal would not be permanent. Since the other provinces were not willing to offer the hand of friendship to Japanese Canadians, the easiest solution seemed to be massive deportation.[87]

On 3 October the NIAC wrote to the federal government, asking it to abandon its deportation policy, but a few days later the government introduced Bill 15 -- the National Emergency Transitional Powers Act -- to replace the War Measures Act, which was due to lapse at the end of the year. Clause G of the legislation was intended to give the government the emergency power to control "the entry into Canada, exclusion and deportation, and revocation of nationality" of any group of peoples. While there was no specific mention of Japanese Canadians, it was clear that this was aimed directly at them and would permit the government to proceed with its deportation plans.[88] As the government had realized, the Immigration Act did not provide sufficient power for massive deportation, and therefore it became necessary either to amend the legislation or proceed by means of executive fiat. Since the government wished to "reduce the numbers" of Japanese Canadians as quickly as possible, and no doubt because it was also becoming cognizant of the political pressures that could be brought to bear during legislative debate, it seems to have decided on the latter approach.[89]

The CCJC of course opposed this legislation, and encouraged all cooperating groups to protest; a flood of letters began to inundate the government. At the same time, the CCJC sent copies of its pamphlet, "From Citizens to Refugees -- It's Happening Here!" to all MPs, and also sent copies to its affiliated groups, urging them to distribute it as widely as possible. In all, 75,000 copies were printed and sent out.[90]

The title of this pamphlet was especially timely. Just a few days earlier federal cabinet minister Paul Martin had introduced Bill 20, the Canadian Citizenship Act. Increasingly, people were beginning to consider what were, and should be, the rights of Canadian citizenship.[91] At the same time, the pamphlet also tapped into the emergent democratic human rights discourse, referring to the Atlantic Charter and the Charter of the United Nations as sign-posts for the treatment of Japanese Canadians. The end of the war, coupled with these

new human rights concerns, was creating a dramatic turn-around in public opinion, and a critical response to the deportation policy that surprised many observers at the time. For example, by October of 1945 the government had received seventy-seven letters opposing the deportation policy, thirty-seven of which had arrived since the end of the war (only seven letters favouring the policy). In addition, the leader of the CCF wrote to the Prime Minister in the middle of October and advised him that his party would be levelling strong criticism against the government on this matter.[92]

The opponents of deportation also helped to stimulate public interest by holding open forums. For example, in late October Dr. Jarvis McCurdy[93] of the CLAT travelled to Ottawa to speak on this issue. He asked those attending to protest individually, and the meeting also produced a collective resolution to be sent to the Prime Minister, "asserting the right of Japanese Canadians to free choice in repatriation" and urging that those remaining in Canada "be admitted to full rights of citizenship."[94]

Moreover, a number of Canadian newspapers began to oppose Ottawa's deportation policy. The Toronto Star, for example, paid close attention to the activities of the CCJC and supported their cause with a series of editorials which relied heavily upon the democratic anti-nazi discourse and also employed references to the United Nations Charter and the concept of human rights. It even published articles showing the human and personal costs of deportation. While some other newspapers -- the Halifax Herald, for example, still were locked into an implicitly racist world view which identified all people of Japanese ancestry as essentially the same, and pointed to war-time Japanese atrocities as evidence that even Japanese Canadians were somehow inferior, the Star attempted to rebut these facile generalizations. Moreover, the Star even managed to insert references to the illiberalism of the deportation policy when discussing other attacks upon civil liberties, such as the government's handling of the Gouzenko Affair.[95]

Opposition to the government's deportation policy was no doubt especially serious for King and his cabinet when it came from newspapers that were both liberal and Liberal, such as the Winnipeg Free Press. A close reading of the debates in the House of Commons suggests that the Free Press was perhaps the most influential media critic of Ottawa's policy

on Japanese Canadians; on several occasions its editorials were quoted approvingly by CCF MPs.[96] As noted, in Chapter 1, the Free Press had begun to support Japanese Canadians when Ottawa attempted to disenfranchise them in 1944. It soon began to argue in favour of voluntary dispersal and assimilation, and even urged the Manitoba government to release Ottawa from its earlier promise that war-time relocation of Japanese Canadians from British Columbia to other provinces would not be permanent. It then provided substantial coverage of the deportation issue, including information about the CCJC supporters in Winnipeg, and criticized government policy by using the democratic anti-nazi discourse, as well as appealing to more traditional liberal arguments about freedom and the rule of law. At the same time, it began to link this issue to broader problems of the rights of citizens in a liberal democracy, attacking the principle of broad delegation of powers by Parliament to cabinet, and later using the deportation issue as part of its campaign for a Canadian bill of rights, a concept still new to most Canadians.[97]

It was becoming clear to Ottawa that deportation was not going to be easy. According to a confidential memorandum from Gordon Robertson, Secretary to the Cabinet, the government would suffer considerable "embarrassment" unless it reviewed its policy. He noted the large number of submissions favouring a "moderate" policy on deportation, with opposition primarily from "church groups" and the Winnipeg Free Press, as well as the Toronto Star and the Ottawa Citizen, and pointed out that the 1944 Gallup poll indicated a shift of opinion in the direction of tolerance. Even in the recent federal election, he added, the Liberals and Conservatives in British Columbia had chosen not to make an issue of the CCF's traditional support for Japanese Canadian rights. Robertson also noted that the government's "embarrassment" in the previous year's disenfranchisement issue indicated that Canadians wanted nothing less than fair treatment. Finally, he admitted what the CCJC had argued all along: "There is no doubt but that in many cases the applications for "repatriation" reflected, not a desire to go to Japan, but despair of ever securing a livelihood or fair treatment in Canada in the future."[98]

Nevertheless, in November Labour Minister Humphrey Mitchell stated that the government was committed to "repatriating" most of those who had signed the forms; their

loyalty, he maintained, was suspect.[99] He conceded that Ottawa would accept any withdrawals of repatriation requests made prior to the surrender of Japan on 2 September, but it would merely "review" the cases of those who had requested withdrawal after the surrender.[100] Moreover, he insisted that there had been no coercion of those signing repatriation requests, and mentioned the Red Cross investigation that had found no evidence of intimidation.[101]

The CCJC was not appeased, and a few days later sent a telegram to the Prime Minister which asked the courts to consider all applications for cancellation of deportation, regardless of when they were requested.[102] By now some of the civil liberties groups outside of Toronto had begun to join the struggle. For example, the CLAW sent a letter of protest which suggested that Bill 15 was an illiberal document which attacked the "integrity of Canadian citizenship."[103] The VCCLU also sent off a formal protest, after first holding a mass meeting to protest Bill 15 which was attended by at least 1,000 people. The speakers at this meeting included a wide variety of liberal "influentials" on the West Coast, including Garfield King of the VCCLU, CCF MLA Dorothy Steeves, Vancouver Sun columnist Elmore Philpott,[104] a speaker from the Junior Board of Trade, a member of the League of Nations Society, a speaker from the BC Teachers' Federation, and representatives of the local Anglican, United, and Baptist Churches. Interestingly, there was also a representative from the LPP; this suggests that the end of the war not only made it acceptable for liberals to work with communists, but that the human rights discourse had led communists on the west coast to soften their position on Japanese Canadians.[105]

Pressure also mounted from within the House of Commons, although not from all opposition parties. The Japanese Canadians were still quite unpopular, and those who called for their fair treatment were still in a minority, at least in British Columbia. As a result, neither the Conservatives nor the Social Credit members used this as an issue for attacking the government.[106]

On the other hand, most of the left-wing members of the House did criticize the government, especially the British Columbia CCF members Angus MacInnis and Bert Herridge.[107] MacInnis had a long tradition of supporting equal rights for Asians, despite the

dangers of political extinction that accompanied such a position.[108] In November he castigated government policy as a violation of democratic tradition, Christian principles, and the human rights concepts enshrined in the United Nations Charter.[109]

As a result of this pressure, the government quietly amended Bill 15, and when the House gave third reading to the legislation on December 7 there was no granting of any deportation powers to the government. For a short while it looked as if the CCJC had won its battle.[110]

However, on 15 December the government issued a number of orders-in-council pursuant to the broad grant of powers it still enjoyed in the twilight days of the War Measures Act. PC 7355 permitted deportations as an emergency measure, PC 7356 revoked the Canadian status of any naturalized Japanese Canadians, and PC 7357 authorized the creation of a special commission with the power to investigate the loyalty of Japanese nationals and naturalized Canadians of Japanese origin and to recommend deportation.[111]

The decision of the government to proceed in this manner had several effects. First of all, it demonstrated that Ottawa, used to governing through orders-in-council during the war, was quite willing to circumvent Parliament, thereby adding fuel to fears about the growth of "executive despotism." As B.K. Sandwell pointed out in a Saturday Night editorial, this was "one of the most astounding defiances of the will of Parliament that this country has ever witnessed." As subsequent chapters will demonstrate, this decision helped convince a number of Canadians that a bill of rights would be a useful method to restrain the powers of the federal cabinet.[112]

A second result of this decision was that the opponents of deportation believed that political pressure had not changed the government's mind. It was now necessary for the human rights community to think about an alternative way of fighting Ottawa, especially because the deportations were scheduled to begin on 6 January 1946. As a result, in late December a special CCJC committee met several times to consider strategy.[113]

The CCJC was no longer dominated by former missionaries and other church people.[114] A majority of the committee members were representatives of the CLAT: its President George Tatham;[115] University of Toronto academic Jarvis McCurdy; the left-leaning

journalist Margaret Gould;[116] the CCF activist, CLAT representative, and lawyer Andrew Brewin;[117] and (of course) B.K. Sandwell. The others consisted of CCJC secretary Donalda MacMillan and JCCD representatives Kunio Hidaka and Kinzie Tanaka.[118]

The committee decided to launch a multi-pronged attack against Ottawa. First, in the last few days of 1945 a special CCJC committee decided to follow the advice of Andrew Brewin and challenge the legality of the government's policy. Acting on behalf of Yutaka Shimoyama, a Canadian-born citizen, and Yae Nasu, a naturalized Canadian, the CCJC obtained a writ stating that the deportation orders-in-council were "invalid, illegal, and beyond the powers of the governor-in-council." Interestingly, the announcement in Canadian newspapers did not mention the CCJC, but stated that "a voluntary citizens' committee" had taken this action.[119] The sponsors were listed as "B.K. Sandwell editor of Saturday Night; J.E. Atkinson, president of the Toronto Star; George V. Ferguson, editor of the Winnipeg Free Press; Prof. George Tatham of Toronto, president of the Civil Liberties Association, Mrs. W.K. Fraser of Toronto, and Andrew Brewin, Toronto solicitor, among others."[120]

The CCJC also stepped up the political pressure on Ottawa, holding public meetings and encouraging supporters to lobby the government. For example, on 10 January 1946 the CCJC and the CLAT jointly held a meeting in Toronto to protest the "condemnation of Canadians without trial or justice" and to send Ottawa a formal telegram of protest.[121] Over 600 people attended the meeting, which was chaired by Sandwell and addressed by two Senators who were long-term human rights supporters: Arthur Roebuck[122] and Cairine Wilson.[123] Another speaker was Rabbi Abraham Feinberg, a left-leaning American who ministered at Toronto's Holy Blossom Temple (Reform), but who noted that he appeared on behalf of the entire Toronto Jewish community and "as a trembling instrument of six million Jews who have been slaughtered in Europe for no other reason than that they were Jews."[124]

The same meeting also sent a resolution to the Ontario government, asking Premier Drew "to state publicly Ontario's responsibility and willingness to accept the citizenship and residence of Canadians of Japanese origin on a basis of equality with Canadians of other national origins." The purpose of this was to demonstrate to Ottawa that the British Columbia "problem" could be solved without recourse to deportation. As noted earlier, Ottawa's

promise that dispersal from the West Coast would only be temporary engendered fears in BC that the Japanese Canadians might return in significant numbers. The pressure had eased somewhat earlier, on 20 December, when the Manitoba government issued a press release stating that it was in favour of full citizenship rights for Japanese Canadians, including the right to live in any province. Yet by far the largest group had relocated to Ontario, so the CCJC was therefore moderately pleased when the Ontario Attorney General responded by stating that he had no power to exclude Japanese Canadians from his province. This was not exactly an enthusiastic welcome, but it opened the door to permanent settlement.[125]

Although Ottawa had been receiving letters about its deportation policy since the summer of 1945, it now became swamped with almost a thousand protesting letters and telegrams from a wide variety of CCJC-affiliated groups, many of them at the grass-roots level.[126] At the same time, it became apparent that Canadian public opinion opposed the government's policy. In early January the Gallup Poll organization announced that 62% of Canadians now believed that those Japanese Canadians who were also citizens should be allowed to stay.[127]

Pressure on the government also came from the liberal press, including the Toronto Globe and Mail,[128] the Toronto Star,[129] the Winnipeg Free Press,[130] the Canadian Forum[131] and Saturday Night.[132] As the Globe put it, "The upsurge of public conscience against the discriminatory treatment of Canadians of Japanese origin shows how deep are the democratic instincts of the Canadian people." It added that "It would bring lasting disgrace on the Canadian people if a temporary hysteria, inflamed by war, were to result in a wholesale deportation, Nazi fashion."[133]

These elements of the press were natural members of the wider Canadian human rights community, for as noted in Chapter 1, they had taken liberal positions on civil liberties issues before 1945.[134] However, they were also responding in part to pressure from the CCJC. As Sidney Olyan has pointed out, the CCJC made effective and sophisticated use of the newspapers during its political phase, monitoring their coverage and frequently sending out press releases as well as kits of materials in order to stimulate favourable editorial comment.

The executive also attempted to develop close ties with a number of newspaper editors and reporters. These manoeuverings helped to keep the issue in the public eye.[135]

Another route pursued by the CCJC was to send a delegation in early January of 1946 to meet with the Acting Minister of Justice and his Deputy Minister. The group, consisting of Sandwell, Tatham, Brewin and Donalda MacMillan, pointed out that not only was the deportation policy morally wrong, but also unconstitutional. Ottawa, Brewin argued, only had the power to deport aliens, and he asked Ottawa to submit this matter to the Supreme Court as a reference case.[136]

Previously intransigent, the government now compromised -- if the CCJC would withdraw its legal challenge then Ottawa would send the matter as a reference case to the Supreme Court of Canada, and would also suspend all deportations pending a decision by that body.[137] By now the cabinet had seen that public support for the CCJC could not be ignored, and although Brewin's legal arguments were not regarded as very persuasive, the Prime Minister and a majority of his cabinet ministers may well have been hoping that the deportation policy would indeed be struck down, thereby getting them "off the hook."[138]

The CCJC executive realized that it would be expensive to participate as an intervener in a reference case. They had already decided to offer Donalda's husband, the Rev. Hugh MacMillan,[139] the job of full-time paid secretary, and they now agreed to hire Andrew Brewin as legal counsel. Soon after, they also agreed that J.R. Cartwright would actually argue their position before the Supreme Court. One of the foremost lawyers of the period, who became Chief Justice of the Supreme Court in the 1950s, Cartwright was a valuable addition to their legal arsenal, but not one who came cheaply.[140] The immediate financial goal of the CCJC was therefore the raising of $7,000.[141]

The money was acquired in a number of ways. One source was the network of CCJC member groups which had developed across Canada, in Vancouver, Calgary, Edmonton, Lethbridge, Regina, Saskatoon, Winnipeg, London, Guelph, Brantford, Hamilton, Ottawa, and Montréal.[142] In addition, the CCJC central committee in Toronto arranged for one of its active members, Edith Fowke,[143] to write an article called "Japanese Canadians" in the January 1946 issue of the influential social democratic Canadian Forum, and this was

reprinted as a pamphlet, a thousand copies of which were sent out to organizations targeted as probable sources of financial assistance. At the same time, Hugh MacMillan began a nation-wide tour, generating public support for the cause.[144]

CCJC-affiliated groups also raised money.[145] The CLAT immediately undertook a fund-raising campaign among its members, and used its meeting in January to solicit contributions from the general public. Other organizations, especially the JCCD, the SCM, and the churches, began to solicit funds from their respective constituencies. However, this was not just a "grass-roots" effort; Toronto Star owner J.R. Atkinson gave the organization $1,000 and lent it another $1,000, which was in turn matched by a second loan from J.S. McLean of Canada Packers.[146]

In Montréal, a number of people formed the Montréal Committee on Canadian Citizenship (MCCC), the goal of which was "full civil rights for all Canadian minorities irrespective of racial origin or creed."[147] This somewhat bicultural organization included a number of prominent social democrats and civil libertarians, such as Frank Scott, Jacques Perrault, Roger Ouimet, and Thérèse Casgrain. One of its short-term goals was the raising of money to fund the Supreme Court challenge.[148]

The VCC also raised money for the cause. It issued a broadsheet called "Orders-in-Council Threaten Your Citizenship!" which emphasized not just the "racialist" nature of the orders-in-council but also stressed that they had been issued in apparent defiance of the will of Parliament. It exhorted its readers to write the Prime Minister, to arrange for public meetings (using guest speakers from the VCCLU), and to send contributions for the test case to the VCC.[149]

When the Supreme Court heard the Japanese Canadian Reference case, a number of positions were presented. Support for the deportation policy came, of course, from the lawyers representing the federal government, as well as from the counsel for British Columbia.[150] The other side of the argument came from the CCF government of Saskatchewan (represented by Andrew Brewin) and the CCJC (also represented by Brewin, as well as by J.R. Cartwright and another lawyer, J.A. MacLennan). The crux of the matter was whether or not the federal government had virtually unlimited powers under the "Peace

Order and Good Government" clause of the BNA Act, and the pursuant War Measures Act. In other words, were there any significant limits on Parliament, or upon the cabinet in cases where Parliament delegated extreme powers to that body?

In February 1946 the court handed down a decision which satisfied almost nobody. The Court held that the National Emergency Transitional Powers Act, in continuing the powers given to Ottawa by the War Measures Act to promote the "Peace, order, and good government" of the nation, clearly permitted Ottawa to deport any adult male Japanese Canadians who had asked for "repatriation" but not rescinded their requests prior to the end of the war. In the words of Chief Justice Rinfret, the cabinet was "the sole judge of the necessity or advisability of these measures." However, a majority of the court also found that there was insufficient justification for the deportation of their wives and children. In its Solomon-like wisdom, the Supreme Court gave Ottawa carte blanche to pursue its policy of deportation, but only if it was willing to suffer the political fall-out that would ensue from the cutting apart of families.[151]

The CCJC immediately decided to appeal, arguing that the separation of families would be "a policy of inhumanity." Its executive therefore began a second fund-raising campaign, this time with the goal of $10,500 to take the case to the Judicial Committee of the Privy Council in London. The JCCD agreed to raise $4,000 from the Canadian Japanese community, the Toronto committee of the CCJC pledged $1,000, and similar or lesser amounts were expected from the numerous regional CCJC committees. The centre-piece of this second campaign was a new CCJC pamphlet, entitled "Our Japanese Canadians: Citizens Not Exiles," written by Forrest E. La Violette, a professor of sociology at McGill and member of the local CCJC branch who had been providing support to the Japanese Canadian community since at least the disenfranchisement struggle.[152]

Over the next few months 50,000 copies of the pamphlet were distributed, and money quickly poured in, including $1,000 from the government of Saskatchewan. By the time the case was over, the CCJC and its supporters had raised over $17,000, more than enough to cover the $11,600 it spent on litigation, as well as salaries and literature, travel, and office supplies.[153]

The CCJC continued to apply political pressure, although Ottawa had quickly decided to postpone any deportations until after the Privy Council decision, no doubt because, as B.K. Sandwell noted in an editorial, public opinion would not tolerate the forcible breaking up of families.[154] Andrew Brewin obtained an interview with Gordon Robertson, the Cabinet Secretary, and suggested that the government should consider withdrawing the deportation orders-in-council. Failing that, said Brewin, the government could consider having its Loyalty Commission hear all the deportation cases individually. At the very least, it should agree not to carry out any involuntary deportations before the Privy Council handed down its decision.[155]

The government made no commitments at the time, but a few days later a Special Cabinet Committee on the Japanese decided to defer any action except for voluntary deportations until the Privy Council had handed down its decision.[156] Then, about a month later, the CCJC obtained an audience with the Prime Minister.[157] A number of influential CCJC supporters accompanied Hugh MacMillan: the influential businessman, CIIA leader, and CLAM supporter E.J. Tarr,[158] Liberal MP David Croll,[159] CCF leader M.J. Coldwell, and the CCF activist and union leader Charles Millard.[160] Andrew Brewin laid out the main CCJC arguments against the deportation policy, some of which were legal (i.e. the emergency war-time situation no longer existed), but most of which were moral: the policy discounted Canadian citizenship, it was racially discriminatory, and it was unjust and inhumane. He also stressed once more that many of the repatriation requests had not been truly voluntary, and he emphasized how the policy violated the commitments of human rights laid out in the United Nations Charter.[161]

On the same day as the meeting with the Prime Minister, the CCJC sent all members of Parliament a copy of a "Memorandum" which criticized Ottawa for proceeding through executive fiat in a manner which violated the human rights values of the United Nations Charter by employing "the methods of Naziism."[162] However, neither this nor the meeting with the Prime Minister had any immediate effect. The government continued to wait until the Privy Council decided the case.[163]

Yet the case began to attract unfavourable attention abroad. According to Hugh Macmillan, in a letter published in Saturday Night, Americans were asking the CCJC for information, and papers such as the Washington Post wrote critical editorials. He pointed out that the Canadian government's policy had been referred to in that newspaper as "an odious manifestation of Canadian racialism."[164]

When the Privy Council heard the appeal, in July, Andrew Brewin was once again the CCJC lawyer, this time assisted by two eminent British lawyers. However, much to the chagrin of the Canadian human rights community, on 2 December 1946 the Privy Council ruled entirely in favour of Ottawa, holding that it had the power to deport even the native-born wives and children of Japanese Canadians.[165] This meant, as Andrew Brewin noted a few weeks later, in a speech which argued the need for a Canadian bill of rights, that "the courts have no power, at least in war time, to prevent the complete abrogation of civil liberties by the executive acting as the agent of Parliament."[166]

The decision was unwelcome for the CCJC, but perhaps not unexpected. They had already stated that, if they lost the case, they would immediately ask the government to abandon its deportation plans. They also had been told that the government was eager to find a solution to the matter, but did not want to be seen as capitulating to political pressure. As a result, when the decision was announced, the CCJC did not launch another campaign other than to request, once again, that Ottawa abandon its deportation policy, arguing that "the hard feelings of war time have died down" and that there were "altered circumstances since the orders were passed." It privately told Ottawa, however, that the VCC was quite willing to embarrass the government, and was proceeding with the publication of a new pamphlet, 40,000 copies of which were to be released as quickly as possible.[167]

The liberal press, once again, supported the CCJC position. The Globe, for example, noted that there is a distinction between legal right and moral correctness, and added that the deportation policy was "wrong, unjust, and un-Canadian," as well as an attack on the rights of Canadian citizenship.[168]

The CCJC was prepared for some quiet lobbying of the Prime Minister with yet another delegation, consisting of Andrew Brewin, James Finlay, B.K. Sandwell, Hugh

MacMillan, and VCC delegate Norman Black.[169] However, within a month it became clear that the organization had won. On 24 January the government stated that its deportation policy was "no longer necessary," although it maintained that the success of its resettlement program (for Japanese Canadians within Canada) necessitated the continuation of restrictions on travel and West Coast fishing licences.[170]

The CCJC congratulated the government for repealing the orders-in-council, but continued to battle for the end of these restrictions, as well as for a just settlement of Japanese Canadian property claims. As the organization proclaimed, "Until Japanese Canadians enjoy the same rights and privileges as their fellow citizens of other races, the job is not complete."[171] However, these issues did not have the immediacy that could generate the high level of public involvement which emerged just after the war, and the CCJC began to lose its position as the central player within the Canadian human rights community, at the same time diminishing in size from a large coalition protecting civil liberties to a small committee focussing entirely on property reparations. By the early 1950s most of these issues had been settled, and the CCJC wound up its affairs.[172]

D: CONCLUSION

The CCJC stands as the first major human rights coalition of the immediate post-war period and symbolizes the new human rights interest that was emerging out of the struggle against totalitarianism. Although it is proper that Canadians remember with shame the treatment of Japanese Canadians in the 1940s, it is also appropriate to recall that a great many citizens were appalled at Ottawa's policies, especially its deportation plans, and that they rallied together in opposition. As this chapter has demonstrated, the issue raised the ire of a broad spectrum of what political scientists call "the attentive public," and the CCJC, by virtue of its frequent communication with the government on this matter, became part of what might be seen as an ad hoc "sub-government."[173]

There is of course room for debate about how effective the CCJC coalition actually was. Perhaps it might have done more had it taken a stronger stance earlier.[174] Moreover, Ottawa did not just capitulate to public pressure. Calls for involuntary deportation had diminished in part because of the success of Ottawa's voluntary deportation program (although it was not entirely voluntary for the Canadian-born children of those who returned to Japan). There remained at the end of 1946 only about 1000 Japanese Canadians who might be forcibly deported, and these numbers were too small for Ottawa to risk any further public criticism.[175]

In addition, the government could afford to be magnanimous because two waves of relocated Japanese Canadians had moved east out of British Columbia. The first consisted of those willing to move during the war, in the hope that something better than life in the internment camps awaited them. Then, in the summer of 1946, Ottawa implemented what Sunahara calls "the second uprooting" -- a policy of involuntary dispersal for most Japanese Canadians still living in British Columbia. By December Ontario had more Japanese than British Columbia.[176] This fact, together with the "success" of Ottawa's property liquidation, as well as the continuation of discriminatory travel restrictions, meant that return to British Columbia was, for most Japanese Canadians, highly unlikely. The British Columbia "problem" had largely been solved.

Moreover, had the government proceeded with involuntary deportations, it might have had to contend with the threat of further legal pressure from the CCJC. Two editorials in the Winnipeg Free Press pointed out that any more attempts at deportation might lead to further litigation, using legal arguments not relied upon in the reference case. At first glance it is not clear what those arguments might have been, but at least one possibility is suggested in a Saturday Night editorial published in the summer of 1946 when the CCJC was awaiting the decision of the Privy Council. According to B.K. Sandwell, the government had passed an order-in-council (PC 10773) in 1942 which provided that any Canadian "who requests to be moved to an enemy country during a war" would lose his or her status as a British subject. This also applied to any wives and dependent children. This rule, which Sandwell said had been in effect "up the Government's sleeve," had not been known to the CCJC and was therefore not part of their legal arguments before either the Supreme Court or the Privy Council. He suggested that had they known of it, they would have included it, and he added that "if the government attempts to put this order into effect it will be necessary for someone to face the expense of another submission in order to determine whether it has actually the right to do so." Knowing that this "someone" would probably be the CCJC may have helped persuade the government to back off.[177]

Yet CCJC support for the Japanese Canadian community may not have been an unalloyed blessing. Peter Nunoda has argued that the interests of Japanese Canadians were sometimes ill-served by the leadership of the CCJC who, after all, saw the situation from a somewhat different perspective.[178] This may indeed be true, and it is certainly correct that the CCJC activists, like virtually all liberals in Canada, were convinced that Japanese Canadians would be best served by relocation from British Columbia, followed by assimilation. On the other hand, perhaps this view, supported by many of the Nisei at the time, was a realistic appraisal of the situation. In an interesting passage which has been ignored by recent historians writing about Japanese Canadians, the CCJC supporter, Forrest La Violette, briefly compared the treatment of Japanese American in the post-war era with the treatment of their Canadian counterparts, and noted that there had been considerable post-war anti-Japanese violence in the United States. He concluded that "The absence of violence ... [in Canada]

makes Canadians feel that their method of handling the Japanese problem has been superior. In efforts to avoid such open conflict, the Canadian people require a greater length of time, and it may be that over a long period 'better' results may be achieved."[179]

In any case, as Nunoda concedes, the Japanese Canadians could not possibly have fought so effectively against the federal government if they had done so without their white allies. Only a Caucasian-dominated organization like the CCJC, with links to the Canadian establishment and support from a number of well-known "respectable" and largely middle-class citizens, could have exerted much pressure on Ottawa.[180]

Aside from questions about effectiveness, this examination of the issue of Japanese Canadian deportation sheds some interesting light on the nature and activities of the "human rights policy community" in the immediate post-war period. First, it demonstrates that although the deportation issue galvanized public opinion and pressured Ottawa to change its policies, the anti-deportation movement does not represent a clean break with the war-time period, for it had its roots in organizations which had emerged during the war and even before the war. These groups were the repositories of a number of values: pacifism, the Social Gospel, reform liberalism, and social democracy. They were mobilized into a broad coalition in large part by appeals to the emerging war-time emphasis on human rights, as well as references to the anti-Nazi democratic discourse and a new emphasis on the rights of Canadian citizenship. For a number of people, most clearly the liberal pacifists, it was as if a new channel suddenly emerged for social reformist energies. The result was the CCJC.

A second point worth noting is that the CCJC was successful not just because its cause was "right" (both morally and in the sense that it fitted into the nascent human rights ethos), but also because it was politically sophisticated. It is no easy task to bring together and retain a large number of organizations. The CCJC executive did this, and also managed to lobby Ottawa, both directly and indirectly, by employing a large number of techniques: public demonstrations, massaging the news media, producing and distributing pamphlets, coordinating letter-writing campaigns, obtaining the support of "influentials," making personal contacts, and sending delegations to Ottawa.

All this was possible because there really was a human rights "community" in the mid 1940s. Not only did it exist as an analytic concept (i.e. a set of organizations actively involved in the promotion of human rights), but it was also a community in an empirical sense. In other words, there existed a myriad of connections between different organizations, politicians, and the press. A key figure in one group was often a key figure in several other groups, and an organization committed to one human rights cause was generally committed to a number of such causes.[181]

This human rights community also can be seen from another perspective. Some critics of Canadian society in the 1990s lament the contemporary rise of "identity politics" and the way in which this inhibits what political scientists call the "aggregation of interests," creating a kind of fragmented pluralism of competing rights groups as well as a diminished sense of civic obligation.[182] From a historical perspective, these trends constitute a reversion to an earlier state, one which was typical of the period before World War II, when the human rights community was badly fragmented into different ethnic/religious communities, and the sense of civic obligation was blunted by the emphasis on "British liberties" discourse. The CCJC demonstrated, in a way that had not been done before, the possibility for coalition-building on the basis of a broadly principled concept of democratic human rights. As this dissertation will demonstrate in later chapters, the CCJC was a harbinger of future coalition-building and a willingness of many groups, especially minority ethnic groups, to transcend their narrow "identity politics" orientation and come together with others for the sake of a broader conception of civic justice.[183]

At the same time, however, the human rights community was a kind of counter-establishment, an alternative elite which in many ways reflected the establishment which it criticized. It is true that there was room for minorities -- minority ethnic groups, minority religions, women, union leaders, and even communists were sometimes represented. Yet the most active members were usually "respectable" -- white, Anglo-Saxon, well-educated, male, and (with some exceptions) only marginally to the left of centre, such as ministers, lawyers, journalists, professors, or non-communist politicians.

This human rights community was also a counter-establishment in the sense that its centre was clearly in the Canadian heartland. While there were significant groups on the Western periphery[184] -- with BC especially important when it came to the treatment of Japanese -- the most influential groups and actors tended to be those who could speak most readily to the public in Toronto and to the politicians in Ottawa.[185] It is not without significance that the CLAT, which played a key role in the activities of the CCJC, soon began calling itself the "Civil Liberties Association," as if headquarters in Toronto is by itself enough to confer national stature on any organization.

Finally, it is important that the deportation issue began during the war and ended as the Cold War was beginning. One can see the early divisions between communists and non-communists which were soon to split the human rights community. The CCJC initially contained some groups which were identified with communist leaders, but the coalition was almost exclusively liberal and social democratic.

What was not evident, even by 1948, when the deportation issue had been resolved, was how the human rights community would deal with future issues, and which groups would predominate. Yet the VCC was by then in the process of winding down, and the CCJC was no longer acting as an emergency lynch-pin for the national human rights community.[186] New problems were engendering new groups, new coalitions, and new strategies for change.

ENDNOTES FOR CHAPTER 2

[1]Of course, it can be argued that a concern for egalitarian rights also involves the redistribution of wealth through policies such as state-driven unemployment insurance, family allowance, and old age pensions. As should be clear by now, however, this dissertation focusses primarily upon the narrower "equality of right" of classical liberal-democracy and the "equality of opportunity" which comes from reform liberal anti-discrimination laws.

[2]The term most frequently used in the contemporary press was "deportation." Ottawa's policy was officially called "repatriation," but the term was often inappropriate, for many people had never been to Japan. On the other hand, as R.L. Gabrielle Nishiguchi has pointed out, in strict legal terms none of the Canadian residents and citizen sent to Japan were actually deported ("'Reducing the Numbers': "The 'Transportation' of the Canadian Japanese [1941-1947]," M.A. thesis, Carleton University, 1993, especially at 128). Note also that several other issues faced Japanese Canadians at the end of the war: disenfranchisement in British Columbia and also (for most Japanese Canadians) at the federal level; reimbursement for property seized during relocation and internment; forcible relocation (for most Japanese Canadians) out of British Columbia to points east; and restrictions on travel back to the West Coast.

[3]See the Introduction of this dissertation for a discussion of "policy networks." According to Berry, Lobbying for the People (at 254), coalitions are a common technique of public interest groups. The CCJC was not a "pure" public interest coalition, given the central role of the Japanese community, but most of its leading activists and organizations can be seen as having an idealistic rather than pragmatic interest in supporting the CCJC's goals.

[4]Standard works on the treatment of the Japanese Canadians during and immediately after the Second World War, which also touch upon the CCJC, include: Ken Adachi, The Enemy That Never Was; Forrest E. La Violette, The Canadian Japanese and World War II: A Sociological and Psychological Account (Toronto: University of Toronto Press, 1948); Patricia Roy, J.L. Granatstein, Masako Iino, and Hiroko Takamura, Mutual Hostages: Canadians and Japanese during the Second World War (Toronto: University of Toronto Press, 1996); Ann Gomer Sunahara, The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War (Toronto: James Lorimer, 1981); Ward, White Canada Forever. An important unpublished source is Peter Takaji Nunoda, "A Community in Transition and Conflict: The Japanese Canadians, 1935-1951" (Ph.D. diss., University of Manitoba, 1991).

The best short discussion of the CCJC is the pamphlet by Edith Fowke, They Made Democracy Work: The Story of the Co-Operative Committee on Japanese Canadians, n.d., UBC Special Collections. An apparent rough draft of this, which is not always as accurate, but which sometimes has additional material, is "A Record of the Work of the Cooperative Committee on Japanese Canadians June 1943 to September 1947," CCJC Papers, vol. II, file 4. A longer but not very helpful analysis of the CCJC can be found in Sidney Olyan, "Democracy in Action: A Study of the Co-Operative Committee on Japanese Canadians," (M.A. Thesis, University of Toronto School of Social Work, 1951).

[5]There is no mention of the Toronto Civil Liberties Association in the indexes of either Adachi or Sunahara. The latter does, however, mention an "Ontario Civil Liberties Association" a few times; this obviously is a mistake -- she means the CLAT. There is one reference to the CLAT in La Violette, The Canadian Japanese and World War II, 253. The most credit is given in Fowke's They Made Democracy Work.

[6]For a discussion of Ottawa's promises, and an exhortation that Manitoba accept some Japanese Canadians permanently as a partial alternative to deportation, see "Manitoba Can Take a Lead," Winnipeg Free Press, 18 October 1945. For an exhaustive exploration of the evolution of Ottawa's "deportation" policy, designed as a way of diminishing the number of Japanese Canadians who were to be spread across Canada, see Nishiguchi, "'Reducing the Numbers'."

[7]Norman Fergus Black, "The Problems of Japanese Canadians, and Solutions," Saturday Night, 5 February 1944, 12. Dr. Norman Fergus Black had been a lecturer in teaching methods at UBC. He was also well-known as a supporter of the CCF. He ran for the Vancouver School Board on at least one occasion, and for many years edited the BC Teachers' Federation organ The BC Teacher. During the war he had several times written and spoken out on toleration and minority group issues, including anti-semitism, and he was the co-author of the pamphlet "Save Canadian Children and Canadian Honour," which emphasized that Ottawa's deportation policy would violate the "basic human rights" of thousands of Canadian children by sending them to a foreign land ("Save Canadian Children and Canadian Honour," VCC pamphlet, n.d. [1945?], CCJC Papers, vol. III, file 16. See references in The New Canadian: "Loyalty to World Community Eliminates Racial Clashes," 28 August 1943; "Do 'Four Freedoms' Exist?" 27 November 1943; "Christian Social Council's 'Challenge to Patriotism and Statesmanship'," 27 May 1944; "Dr. Black," 7 April 1945; "Controversy Rages," 16 February 1946. In addition, see Black's pamphlet "What About the Jews?" [CAAE, 1944], Dobson Papers, vol. B31, file C [v]).

[8]Jamieson is mentioned briefly in Chapter 1.

[9]La Violette refers to this incident, taking it from an article in the Vancouver Sun on 8 March 1945 (The Canadian Japanese and World War II, 9, note 2).

[10]For a discussion of the JCCD, and its commitment to dispersal and assimilation, see Nunoda, "A Community in Transition," especially 229-30. The organization was formed in 1943 out of two early CCJC sub-committees, and worked with the CCJC until 1947, when it was dissolved, its members joining the Toronto chapter of the Japanese Canadian Citizens Association and becoming the National Japanese Canadian Citizens Association (NJCCA), with George Tanaka its full-time executive secretary. In the following years Tanaka and the NJCCA ensured that the Japanese Canadian community was represented in most major human rights efforts, and Tanaka worked closely with organizations such as the Jewish Labour Committee and the Toronto Civil Liberties Association. See: Adachi, The Enemy That Never Was, 290; Sunahara, The Politics of Racism, 154; Ito, We Went to War, 280. Tanaka had been the secretary of the men's sub-committee of the CCJC ("Combined Report of the Men's

and Women's Sub-Committees," CCJC Papers, vol. 2, file 13). Chapters 4, 5, 6, and 7 mention Tanaka and the NJCCA in later human rights issues.

[11]"Admiration for Stout Folks East," The New Canadian, 4 September 1943. Initially edited and published by Thomas Shoyama, a university-educated Nisei who after the war worked for the Saskatchewan government and still later became deputy minister of finance in Ottawa, the newspaper carried a wide spectrum of stories that would interest the national Japanese Canadian community. The newspaper consistently informed its readership about the activities of the CCJC, but also reported many other human rights issues, such as the fight of the BC aboriginal peoples to become enfranchised or the Ontario Jewish community's fight against discrimination in the ownership of property ("Indians Protest Franchise Law," and "Ontario's Anti-Discrimination Act," The New Canadian, 31 July 1943, 30 September 1944). At the end of the war, Shoyama was replaced as editor, and then publisher, by Kasey Oyama, who moved the newspaper to Winnipeg. Mr. Shoyama was kind enough to read an early draft of this chapter; he made several corrections, and provided a number of valuable insights about the people and times of this period.

[12]"Slim Majority of Canadians Favour 'Repatriation' Says Poll," and "Public Opinion on 'Repatriation'," [editorial] The New Canadian, 8 January 1944; "Cross-country Poll Against Deportation of Citizens," The New Canadian, February 26 1944. For information about opposition to deportation from some segments of the Church, long before it became official policy, see Hemmings, "The Church and the Japanese in Canada, 107-8. For an interesting argument about the strength of those in British Columbia who were not bigoted concerning Japanese Canadians, see the letter from H.D. Dawson in Saturday Night, 12 January 1946.

[13]L. M. Atkinson, "The Japanese Controversy is Reviving Liberalism," Saturday Night, 15 July 1944, 6; "Toronto Groups Protest to Ottawa Against Federal Disenfranchisement Bill," and "The Fight for the Vote," The New Canadian, 24 June and 3 August 1944.

[14]Hansard, House of Commons, 4 August 1944, 5915-8, at 5917. Note that Norman Robertson later explained the policy, based on proposals which he had drafted as "a compromise between a very vocal demand for the total expulsion of all persons of Japanese racial origin, regardless of conduct or loyalty, and the less articulate feeling in the country that flagrant racial discrimination was one of the things the war was being fought against" (quoted at 166 of J.L. Granatstein, A Man of Influence: Norman A. Robertson and Canadian Statecraft 1929-68 (Ottawa: Denau, 1981). Nishiguchi has argued, however, that Ottawa actually was pursuing two parallel policies, one public and one private; the private policy was intended to reduce as much as possible the number of Japanese Canadians, in part by creating an extremely broad definition of disloyalty ("'Reducing the Numbers'," 93-5).

[15]Granatstein, A Man of Influence, 167; Fowke, They Made Democracy Work, 9. It is interesting to note that early as August several Japanese Canadians in British Columbia asked to be repatriated to Japan, and this was explained as a natural response to the government's relocation/internment policy -- "'It doesn't mean they are disloyal,' [Thomas] Shoyama said

in an interview with the Vancouver Sun ... 'They are fed up with the treatment they have got here and think they will get better treatment in Japan" ("Confirms Report Japs Ask for Repatriation," Winnipeg Free Press, 12 August 1944).

[16]Nishiguchi has argued that the American decision was a "bombshell" which made it much more difficult to persuade Japanese Canadian evacuees to leave the province, and contributed to the development of what became the "deportation" policy ("'Reducing the Numbers'," 101).

[17]Fowke, They Made Democracy Work, 10; R.G.R. [Gordon Robertson, Cabinet Secretary] to [Hume] Wrong [External Affairs], 24 October 1945, R.G. Robertson Papers, vol. 1, file 11. This document notes that of the people who signed, 2,461 were Canadian-born, with 3,484 children under the age of sixteen.

[18]A copy of a petition to Ottawa from "The Japanese Repatriation Committee" in the summer of 1946, an organization which included among its sponsors the Liberal MP Tom Reid, is in the CCJC Papers, vol. III, file 2. For information about the involuntary nature of deportation, see Fowke, They Made Democracy Work, 10, 16; Sunahara, The Politics of Racism, Chapter 6. According to La Violette, much of the original impetus for fighting deportation came from church mission workers in the camps (The Canadian Japanese and World War II, 248).

[19]Fowke, They Made Democracy Work, 5. The decision to change the name of the organization to the Toronto Cooperative Committee on Japanese Canadians was synonymous with a decision in early 1944 to broaden the base of the organization beyond its traditional support of churches, YWCA, and social service organizations. This was done at the instigation of the CLAT, according to a newsletter of that organization (minutes of the Cooperative Committee on Japanese-Canadian Arrivals in Toronto, CCJC Papers, vol. 1, file "Correspondence and Minutes 1943-56"; CLAT newsletter, "To Members of the Civil Liberties Association, Past and Present," June 1946, Park Papers, vol. 8, file 150).

[20]Fowke, They Made Democracy Work, 10-11; "Co-operative Committee for Japanese Canadians Formed," The New Canadian, 30 June 1945. Mrs. MacMillan had lived in Formosa, which at the time belonged to Japan. After the war, she and her husband returned; see "MacMillans Leave for Formosa Soon," The New Canadian, 20 September 1947, and "National JCCA: The Symbol of Organized Effort," The New Canadian, 3 November 1948.

[21]Originally a Methodist, James Finlay was minister at Carlton Street United Church in Toronto from 1938 to 1959. A life-long pacifist, he supported a controversial anti-war United Church resolution in 1939. During the war his church in Toronto became a centre of community support for Japanese Canadians, providing them with temporary living accommodation, and Finlay provided an important connection between this ethnic minority and the Canadian pacifist community. (At this time Finlay was also broadcasting social justice messages over the radio, with an estimated audience of 40,000). After the war Finlay stayed active in the FOR and represented that organization in several of the delegations seeking anti-discrimination legislation in Ontario. He also served as an advisory board member of the

CLAT's successor, the Toronto Association of Civil Liberties (ACL) -- and helped to found the Canadian Peace Congress (Fowke, They Made Democracy Work, 11; Moffatt, A History of the Canadian Peace Movement, 18; Socknat, Witness Against War, 200-2, 211, 277, 220, 253, 290; Douglas Walkington, United Church Ministers, 1925-1980 (United Church Archives); Albert Watson, "Profile: People, pacifism Finlay's Concerns," United Church Observer, May 1984; obituary, The London Free Press, 6 August 1992).

[22]Edith Fowke's pamphlet, They Made Democracy Work, deals with the origins and history of the CCJC from the very beginning to the end of 1951, when it was winding up its operations, which by then were focussed entirely upon property reparations. The pamphlet, which is not widely available, contains a useful list of the organizations which "lent their support" to the CCJC; the list seems to have been taken from the "Memorandum for the Members of the House of Commons and Senate of Canada on The Orders-in-Council P.C. 7355, 7356, 7357, for the Deportation of Canadians of Japanese Racial Origin," April 1946, CCJC Papers, vol. 3, file 16. (The "Memorandum" also has a useful list of individuals who supported the CCJC.) Note, however, that the CCJC Papers also contain an undated list with some supporting organizations (e.g. the Worker's Educational Association, or the Home Service Association) which do not appear in the other two sources (CCJC Papers, vol. 1, file 1 [Part 2]).

[23]Little or no published information is available on the JCCDC. It may have represented the radical (probably communist) element within the Japanese Canadian community. Its executive secretary was Kunio Hidaka, who also served on the executive of the CCJC. Evidence of Hidaka's left-wing leanings are fairly clear. In 1945 he moved that a letter be sent to the Congress on Canadian-Soviet Friendship (CCSF) outlining the goals of the CCJC. The CCSF was usually regarded as a "communist front" organization (see Chapter 3), and it was never listed as an official supporter of the CCJC. Later, Hidaka worked as a volunteer member of the "communist front" CRU (see Chapters 3 and 5), helping to write a brief to the Joint Senate and House Committee on Human Rights (Minutes of CCJC meeting, 19 November 1945, CCJC Papers, vol. 1, file "Correspondence and Minutes 1943-56"; CRU "Civil Rights Union" [Executive Secretary's Report to CRU Membership Meeting, Oct. 27th, 1948], Park Papers, vol. 9, file 154).

[24]The most important group, as far as the deportation issue is concerned, was the JCCD, which as noted above, merged with the JCCA to form the NJCCA in 1947. As Nunoda points out, travel restrictions imposed by Ottawa made it initially impossible to form a national Japanese Canadian society, and the CCJC therefore filled "a temporary void in the province of Ontario." However, because the JCCD was so dependent on the CCJC, it increasingly "moved in lockstep with the latter organization ("A Community in Transition," 152, 160, 387).

Mention should also be made of the Civil Rights Defence Committee in Winnipeg. This appears to have been a Nisei organization which, among other things, contributed considerable money to the Privy Council litigation ("$10,500 Needed For Privy Council Appeal," The New Canadian, 13 April 1946).

[25]The CJC is an umbrella organization for Jewish groups in Canada, with a mandate "to carry on and assist in efforts for the improvement of the social and economic and cultural conditions of Jewry" (Rosenberg, The Jewish Community in Canada, vol. 2: In the Midst of Freedom, 47). As noted in Chapter 1, before and during the war the CJC had been active in trying to admit more Jews to Canada, and had also done some lobbying on behalf of domestic anti-discrimination policies. Joining the CCJC symbolized the CJC's post-war commitment to the broad field of human rights, some manifestations of which are discussed in later chapters.

[26]As Carol Lee has pointed out, West Coast natives were enthusiastic supporters of expulsion in 1942, and in 1946 the Native Brotherhood called for continued exclusion of Japanese Canadians from the West Coast. The reason for this seems to have been economic competition; whites, Japanese Canadians, and native Indians had long been divided over access to the coastal fishing industry (Lee, "The Road to Enfranchisement," 58-9, 72-3).

[27]The Chinese Canadians were supported, beginning in 1946, by a largely "white" organization called the Committee for the Repeal of the Chinese Immigration Act (CRCIA), and although some members of this body had ties to organization which also supported the Japanese Canadians, it did not formally support the CCJC. See: "Chinese Seeking Removal of Ban on Immigration," Toronto Star, 31 October 1946; "Delegation Urges Repeal of Chinese Immigration Law," Ottawa Citizen, 6 December 1946; "Adopt Resolution to Repeal Chinese Immigration Act, Globe, 27 January 1947; Irving Himel, Chinese Rights in Canada [pamphlet from the Toronto Star and the Ottawa Citizen, and published by the CRCIA], n.d., JPRC Papers, Joint Community Relations Committee Collection, vol. 4, file 8, "Civil Rights Legislation"; McEvoy, "A Symbol," 34.

[28]Although no black organization is listed formally as a member of the CCJC, the Home Service Association (HSA) and the Afro Community Church both appear on a working list of organizations in the CCJC files (List of "Regional Committees," groups, and individuals, n.d., CCJC Papers, vol. 1, file 1 [part 2]). The HSA was later (and perhaps earlier) involved with the FOR and the CLAT.

[29]The Church did not really oppose evacuation/internment, but according to Michael Hemmings, "The Church was not as silent or absent as has frequently been asserted, and the Church's responses to the Japanese was determined not only by anti-Japanese sentiments, but also by wartime tensions and by what was believed to be Christian principles" ("The Church and the Japanese," 5). This suggests that it was not difficult, after people no longer feared a Japanese Canadian invasion, for the Church to adopt a more liberal attitude on both the disenfranchisement and deportation issues.

[30]The National Interchurch Advisory Committee on the Resettlement of Japanese Canadians (NIAC) consisted of leading representatives of the Baptist, United, Presbyterian, Catholic, and Anglican churches: E.H. Bingham, General Secretary, Baptist Convention of Ontario and Québec; Rev. George Dorey, Board of Home Missions, United Church of Canada; Rev. E.H. Johnson, Presbyterian Church of Canada; Rev. W.W. Judd, of the Department of Social Service, Church of England in Canada [and a CLAT council member]; Rev. Fr. A.E.

McQuillen, Rector, St. Michael's Roman Catholic Cathedral, Toronto; and Rev. C.H. Schutt of Toronto. NIAC took an interest in the plight of Japanese Canadians even before Ottawa extended their disenfranchisement in 1944; according to Hemmings, in early 1943 it produced and sent to all parish churches, and to the federal government, a pamphlet called "Some Facts Concerning the Japanese" ("The Church and the Japanese," 58).

[31]Most of these groups, as well as a few others, were members of a larger organization, The Canadian Council of Churches, which independently lobbied the Prime Minister and his cabinet, asking that at least naturalized Japanese Canadians who had signed the repatriation agreement should not be summarily deported until they had a chance to plead their cases (Department of Labour, vol. 657, 17 January 1946). Note that one Christian group missing from the CCJC was the Jehovah's Witnesses, although the Witnesses were later very important for their free speech and religious campaign in Québec and their lobbying for a bill of rights (see chapters 4, 5 and 7).

[32]The FOR, SCM, and FCSO are mentioned briefly in Chapter 1. Thomas Socknat (Witness Against War, 219) has argued that "pacifism was an important force in the development of Canadian social values during the first half of the twentieth century." The human rights movement appears to have been one of its beneficiaries. Not only were the FOR and SCM pacifist, but also the Society of Friends and the WIL (mentioned below). In addition, as this chapter will point out, many of the people active in the CCJC were also members of pacifist organizations, including the FCSO (mentioned in Chapter 1, and defunct by the end of 1945). For example, James Finlay was active in the FOR (as noted earlier) and Margaret Boos, the CCJC secretary in the post-deportation era, was also heavily involved in the FOR as well as the FCSO. In addition, CLAT president George Tatham, who worked closely with CCJC leaders on the deportation issue, was also a pacifist with close ties to the FOR, Mildred Fahrni (discussed below) was a strong FOR supporter, CCJC activist Edith Fowke (also discussed below) was one of the editors of the FOR organ Reconciliation, and Mrs. F.T. (Edith) Holtom (discussed later in this chapter), who chaired the Ottawa regional CCJC committee, was one of the Ontario region representatives on the FOR executive.

[33]Social unionism is discussed in more detail in Chapter 6.

[34]See Chapter 1.

[35]Millard is discussed briefly in Chapter 1.

[36]Cotterill was also a member of the CRCIA. The Toronto Joint Labour Committee to Combat Racial Intolerance was set up as part of a Jewish Labour Committee programme, which is discussed in considerable detail in Chapter 6.

[37]These cases are discussed in Chapter 4. Whether or not the CASW was radical, according to Donald Avery it included, in 1945, "an impressive number of Canada's leading scientists" ("Allied Scientific Co-operation and Soviet Espionage in Canada, 1941-45," in Espionage:

Past, Present, Future?, ed. Wesley K. Wark [Frank Cass: Ilford, Essex, 1994], note 115). See also a brief discussion in Paul Dufour, "'Eggheads' and Espionage: The Gouzenko Affair in Canada," Journal of Canadian Studies 16, (Fall-Winter 1981).

[38]Lower to Maybank, Lower to Claxton, and Lower to Martin, 29 October 1945, Lower Papers, vol 46, file C-20; Owens to King, 30 November 1945, W.L.M. King Papers, vol. 389, Reel C-9879, document 349331-2; Winnipeg Tribune, 4 Dec 1945, in King Papers, vol. 389, Reel C-9879, document 349334-8; Garson to Lower [reply to Lower], 21 January 1946, Lower Papers, vol. 46, file C-20.

[39]The point of transition from CLAW to CLAM is obfuscated, since members of the latter organization for a while used stationery with the letterhead of the former group.

[40]For information about Lower's decision to leave Winnipeg and to give up the CLAW presidency, see My First Seventy-Five Years, 298-9 and a letter from Lower to David [Owens], 17 June 1946, Lower Papers, vol. 46, file 21.

[41]Freedman, who had been a member of the CLAW advisory committee during the war, taught law at the University of Manitoba. Appointed a judge in 1952, he later became the first Jewish Chief Justice of the province (Stuart E. Rosenberg, The Jewish Community in Canada, vol. 1, 31, 188; vol 2, 187).

[42]The advisory council included some of the 1945 members, as well as Grant Dexter (who had replaced G.V. Ferguson on the Free Press), Arthur Lower (despite his absence), and E.J. Tarr.

[43]Lower to Howard Green, 7 April 1946, Lower Papers, vol. 46, file C-21; Owens to King, 25 Jan 1947, King Papers, vol. 426, Reel C-11040, document 387873.

[44]"Repatriation Forms are Not Valid," The New Canadian, 3 October 1945; CCJC list of regional committees, n.d., CCJC Papers, McMaster University, file: "Reports." The VLCA may have taken a stance against the disenfranchisement of the Japanese Canadians, but the author is not aware of any documents about this.

[45]Mrs. F.T. (Edith) Holtom chaired the Ottawa regional CCJC committee. She was a committed pacifist who served as an Ontario region representative on the FOR executive and was also active in the FCSO as well as (after 1948) the Ottawa Peace Council. She was also active in the Ottawa Civil Liberties Association (OCLA), a well as an Ottawa group which seems to have been a sort of quasi-civil libertarian organization, called the Ottawa People's Forum. In the words of its Bulletin No. 1, April 1948: "Individual Freedom is the heritage of every citizen of the British Commonwealth. The People's Forum embodies that glorious concept and thus serves and preserves true Democracy!" (Edith E. Holtom Papers, vol. 2, file "People's Forum, 1946-48"; OCLA documents in the Wilfrid Eggleston Papers).

[46]Stanley Rands to Wilfrid Eggleston, 9 May, 1946, Eggleston Papers, vol. 14, file 4; "Resolution of Protest of the Ottawa Civil Liberties Association," n.d. [31 May 1946?] Park Papers, vol. 9, file 151; Eggleston to "Dear Sir," 8 July 1946, Diefenbaker Papers, 1940-1956 series, vol. 10, file "Civil Liberties -- Ottawa Civil Liberties Association"; Wilfrid Eggleston, "Racial Discrimination Discreditable to Canada." Toronto Star, 3 August 1946; minutes of the first meeting of the OCLA council, 17 September 1946, Park Papers, vol. 9, file 151. The OCLA also sent off a protest about the deportation issue on 13 June 1946 (see Chapter 3). At about the same time, it also agreed to help Japanese Canadians work and assimilate in Ottawa (The New Canadian, 10 August 1946).

[47]The demise of the MCCLU is briefly discussion in Chapter 1. The MCLA also had roots in the Montréal Committee on Canadian Citizenship (MCCC), discussed later in this chapter.

[48]Cameron to [Roger] Baldwin, 29 November and 29 February 1946, American Civil Liberties Union [ACLU] Papers, vol. 2732. Several of them had also been members of the Montréal Committee on Canadian Citizenship (the MCCC, discussed below). There is a list of members in an MCLU advertisement in the Montréal Gazette, 12 November 1946. Members listed in the advertisement, in addition to those listed in the body of this dissertation, were: the Very Rev. K.C. Evans, Roma Goodwin, François Hertel, Claude Hurtubise, and the Rev. William. Orr Mulligan.

[49]See Claude de Mestral, Mémoires d'un Homme Libre (Montréal: Méridien, 1986), 78-80. De Mestral also published a series of articles on Québec religious and social issues in the United Church Observer.

[50]Kaplan, State and Salvation, 246-7, and note 52 at 320; Conrad Black, Duplessis (Toronto: McClelland and Stewart 1977), 342.

[51]Keirstead, a close friend of F.R. Scott, is described by Djwa as an economics professor at McGill and later a political scientist at the University of Toronto (The Politics of the Imagination, 247, 260, and 389).

[52]For more information about Casgrain, who in 1951 became leader of the provincial branch of the CCF, see her autobiography, A Woman in a Man's World (Toronto: McClelland and Stewart, 1972). See also Susan Mann Trofimenkoff, "Thérèse Casgrain and the CCF in Québec," Beyond the Vote: Canadian Women and Politics, in Linda Kealey and Joan Sangster, eds. (Toronto: University of Toronto Press, 1989), 139-168.

[53]Scott is mentioned briefly in Chapter 1. It is worth noting that Scott, unlike almost everyone else in Canada, publicly criticized the federal government's evacuation policy when it was being implemented. In the spring of 1942, in an article called "What Ought to be Done With Our Japanese, (a) Native Born, (b) Others?" he warned that "we must not let war hysteria at this time to lead us to ill-advised and undemocratic treatment of Canadian-born Japanese" (Financial Post, 21 March 1942). As noted later in this chapter, Scott was instrumental in forming not only the MCLA, but also the Montréal Committee on Canadian Citizenship

(MCCC) in 1946. However, first, in January 1946, he launched a broadside against Ottawa's deportation policy with a letter sent to fifty-five newspapers in Canada (eleven of them published it). Scott condemned the federal government's policy in the strongest possible terms, arguing that it was a hypocritical attack upon the "fundamental civil liberties" of all Canadians. This letter has been reproduced as Chapter XIV of F.R. Scott, Essays on the Constitution, 190-92. In the same file is a letter from Scott to his MP, Douglas Abbott (Minister of Defense), sent on 21 December 1945, in which Scott referred to the government deportation policy as "unpardonable cruelty" and unprecedented in the way it did "violence" to liberal ideas (Scott Papers, vol. 17, file 8, reel H-1275).

[54]Perrault later helped Scott in the case of Roncarelli v. Duplessis, which arose when Premier Duplessis ordered the cancellation of the liquor licence of a Witness named Frank Roncarelli. It is mentioned briefly in Chapters 4, 5 and 7. For information about Perrault, see "Pure List for Roncarelli case," Scott Papers, vol. 104, file 16; Michael D. Behiels, Prelude to Québec's Quiet Revolution: Liberalism versus Neo-nationalism, 1945-1960 (Kingston and Montréal: McGill-Queen's University Press 1985), 328, note 37; Black, Duplessis, 345, 384, 653; Trofimenkoff, "Thérèse Casgrain and the CCF in Québec," 151.

[55]Mergler was one of the few MCLA members (perhaps the only one) involved with the MCCLU during the war. Leslie Roberts later came under suspicion for being either a Communist Party member or a "fellow traveller," in part because his book, Home From the Cold Wars, suggested that the United States shared some of the blame for international communist/non-communist tensions. He was exonerated on further investigation by the American government (Whitaker, Double Standard, 151-2; Whitaker and Marcuse, Cold War Canada, 272).

[56]MCLU advertisement, Montréal Gazette, 12 November 1946. This advertisement also criticized the government for its handling of the Gouzenko affair (discussed in Chapter 3).

[57]"Mass Rally at Montréal Gives Duplessis Warning," Montréal Star, and "Power Raps Duplessis and Ottawa For Acts He Terms Undemocratic," Montréal Gazette, 13 December 1946. The precipitating cause of this was the cancellation of Frank Roncarelli's liquor licence (discussed briefly in Chapter 5).

[58]Civil Rights [ECCR/CRU newsletter], vol. 1, no. 3, 31 October 1946. Subsequent issues of the newsletter also dealt with the treatment of the Japanese Canadians, but actual CRU efforts seem to have initially focussed on the Gouzenko Affair. At the same time, some members of the Japanese Canadian community agreed to support the ECCR/CRU; see "Nisei Co-op Anniversary Dance to Benefit Civil Rights Committee," and "Anniversary Dance Proceeds Donated to Civil Rights Group," The New Canadian, 9 November 1946 and 4 January 1947. (The latter article also points out that C.B. Macpherson of the CRU called attention on the CAAE Citizens' Forum radio program to the need for a claims commission on evacuation losses.)

[59]The quotation is taken directly from the list in Fowke's pamphlet, They Made Democracy Work.

[60]As noted earlier, the YWCA had been involved with the CCJC when it was simply a committee to help Japanese Canadians adapt to the problems of resettlement in Toronto. In later years the YWCA was represented in, or officially supported, major delegations to the Ontario government asking for improved anti-discrimination protection, in 1950, 1954, 1956, and 1958 (Sohn, "Human Rights Legislation in Ontario," 382-393; Chapters 4 and 6, below). The YWCA was also part of a women's coalition in 1954 which asked Ottawa to create a Women's Bureau in the federal department of Labour (Jill Vickers, Pauline Rankin, Christine Appelle, Politics As If Women Mattered: A Political Analysis of the National Action Committee on the Status of Women [Toronto: University of Toronto Press, 1993], 47).

[61]The NCW is often remembered as a narrow-focus women's rights group, but during the war it started to commit itself to general human rights principles when it supported the Atlantic Charter, the United Nations, and the notion of a non-discriminatory immigration policy. By the end of the decade the NCW was working actively for a broad spectrum of rights, including support for a bill of rights, promoting certain native Indian rights, and a commitment to improved race relations; support for the CCJC was an early step in this direction (N.E.S. Griffiths, The Splendid Vision, 207, 229-232, 247-8, 256, 269-71, 282; Porter, "Women and Income Security," 111-44, at 134). Note, however, that the NCW does not seem to have worked closely with other post-war human rights coalitions, or organizations such as the CLAT. In this sense its support for the CCJC was not a harbinger of things to come.

[62]For more about the WIL, see Chapter 1. The president of the WIL, Anna Sissons, was also a member of the CLAT executive. As noted earlier in this chapter, some members of the Vancouver WIL were involved in the committee which became the VCC. Members of this branch of the WIL included many prominent left-wingers: Lucy Woodsworth, Laura Jamieson (discussed later in this chapter), Dorothy Steeves, and Mildred Fahrni (also discussed later), and the poet, Dorothy Livesay.

[63]Fowke, They Made Democracy Work (list of groups). Other student groups included The Northern Alberta Young People's Union, and the Presbyterian Young People's Union, as well as the YMCA and YWCA (discussed above).

[64]"Students Organize Committee to Protest Expatriation Move," The New Canadian, 24 October 1945; Nisei Affairs, vol. 1, no. 2, 28 August 1945. Franco had already been closely involved in the deportation issue, for he had participated in the initial CCJC delegation to Ottawa in the summer of 1945 (discussed below).

[65]Some Council minutes, as well as the original "Statement of Purpose," are in the papers of W.P. Bunt, the Superintendent of the United Church Home Mission in British Columbia, in the Vancouver School of Theology, vol. 1, file 3. These minutes contain a proposal to set up a liaison committee which would include Issei and Nisei, and demonstrate that several

members of the Japanese Canadian community attended meetings in the early days of the organization (before they were forcible removed to Kaslo, in the interior of the province): Rev. K. Shimizu (Minister at the Powell Street United Church in Vancouver) and Dr. Shimotakahara. The members of the VCC executive committee in 1944, however, were all non-Japanese: Norman Black, William M. Armstrong (high school principal), Rev. A.J. MacLachlan (Baptist minister), Father B.J. Quigley (Catholic priest), Mrs. R.C. Weldon (WCTU secretary and ex-chair of the Social Services Committee of the Baptist Convention of B.C.), D.R. Poole (business manager). Rev. Father Cooper (Anglican minister), Hugh M. Rae (President of the BC Conference of the United Church), and W.H.H. Norman (United Church minister).

[66]"Memorandum of Representations made to His Worship the Mayor and Vancouver City Council," 9 September, 1942, Bunt Papers, vol. 1, file 3; "Churchmen Opposed to 'Nazi Way'," Vancouver Sun, 10 December 1942; Fowke, They Made Democracy Work, 7 [explaining why the petition idea was dropped]; VCC to W.L.M. King, 29 May 1944, King Papers, vol. 354, Reel C-7048, document 308236-7. The letter of 29 May included a copy of the pamphlet "A Challenge to Patriotism and Statesmanship" (discussed below).

Both VCC communications suggested that calls for deportation were Nazi-like, but they also contained other arguments. The brief to Vancouver added that deportation would be contrary to "British Tradition," would violate "the basic principles of the Christian religion," and might ultimately lead to a post-war disaffection in Japan that could have a "disastrous effect on trade relations." The letter to King also referred to trade relations, and added that deportation might contribute to the disintegration of the British Empire as well as helping to bring about a third World War against "nations aligned on the basis of colour." Finally, it suggested that deportation did violence to the conscience of a large portion of the Canadian public.

[67]VCC letter to W.L.M. King, 18 October 1945, King Papers, vol. 379, Reel C-9871, documents 329695-7. Some of these executive members are identified in the earlier letter to W.L.M. King, 29 May 1944, King Papers, vol. 354, Reel C-7048, document 308236-7. See Christie and Gauvreau, A Full-Orbed Christianity, for a number of references to Dobson, who prior to the Second World War was a Social Gospel advocate of the welfare state.

[68]Mildred Fahrni came from a Social Gospel family. Her father was the Methodist minister A.B. Osterhout, and the family was close friends with the Woodsworths. Educated at UBC in English and philosophy, she later studied social work at Bryn Mawr. During the war she worked with relocated Japanese Canadians in Slocan, and after the war she continued to support cause embracing pacifism, human rights, and social democracy, as well as becoming the National Secretary of the FOR from 1948 to 1952 (Irene Howard, "Mildred Fahrni -- The Makings of a Pacifist," British Columbia Historical News 19, no. 3 [1986]: 21-3; Sangster, Dreams of Equality, 193; "Mildred Fahrni Memoirs Project Précis," Mildred Fahrni Papers, vol. 5, file 4). According to Thomas Shoyama, Mildred Fahrni's brother, Roy, helped make it possible to publish early editions of The New Canadian, for he rented his publishing facilities to the Japanese Canadians who were relocated to Kaslo (personal communication

to the author).

[69]This was first reproduced as a pamphlet by the Christian Social Council of Canada ("Christian Social Council's 'Challenge to Patriotism and Statesmanship'," The New Canadian, 27 May 1944). The CCJC reproduced it a second time and distributed 10,000 copies across the country (Fowke, They Made Democracy Work, 7).

[70]Ito, We Went to War, 212, 224-6 [including reference to September 1945 Vancouver CJOR radio "Town Meeting of the Air," organized by Norman]; FCSO pamphlet, 1944, FCSO Christian Social Action Records, United Church Archives; Hemmings, "The Church and the Japanese," 69. Examples of Norman's writings are: "The Solution is Simple -- Just Give the Chance for Job, Home, School," United Church Observer, 1 June 1944 (reproduced in The New Canadian, 24 June 1944); "Do Christians Keep Faith?" United Church Observer, 15 August 1944, 7; W.H.H. Norman, "What About the Japanese Canadians?" (Vancouver Consultative Council, n.d.), UBC Special Collections; A.W. Neill and Rev. W.H.H. Norman, "Pro and Con -- Should Japanese-Canadians be Sent Back to Japan?" British Columbia Digest 1 (December 1945): 2-11.

[71]"Toronto Groups Will Campaign: Seek Fair Treatment for Niseis," The New Canadian, 30 June 1945.

[72]The New Canadian: "Three Evacuees Will Contest Validity of Repatriation in BC Supreme Court," "BCSC Announced Dissolved As Court Case Enters New Phase," and "Repat. Test Case Reopens," 19 July, 8 August, and 14 August 1945.

[73]"FOR Secretary To Speak on Nisei," The New Canadian, 29 August 1946; Minutes of "Enlarged Committee of Co-operative Committee on Japanese-Canadians," 29 June 1945, CCJC Papers, vol. 1, file "Correspondence and Minutes" 1943-56."

[74]This was decided at the second meeting of the CCJC. It was also decided to lobby the Mayor of Toronto and City Council to allow more Japanese Canadians to live in the city, and to grant them trade licences ("Toronto Groups Will Campaign: Seek Fair Treatment for Niseis," The New Canadian, 30 June 1945).

[75]A copy of the "Brief Re Patriation of Japanese Canadians," 25 July 1945, is in the CCJC Papers, vol. 2, file 5.

[76]Fowke, "They Made Democracy Work," 12. There is a similar list in Nisei Affairs, August 20, 1945 (CLC Papers, vol. 335, file "Racial Discrimination: Japanese Canadians"), but it makes no mention of Sandwell. Neither of these sources mention Norman Dowd, the Executive Secretary of the CCL, but he is listed as one of the members of the delegation in an article published in The New Canadian ("Co-op. Committee Protests Repatriation," 29 August 1945). However, his signature is not on the brief submitted to the government.

[77]Almost the entire executive of the JCCD had recently demonstrated their loyalty to Canada by enlisting (as interpreters) in the Canadian Army for overseas service in Asia. However, Tanaka spoke only English and no Japanese, and in any case, because he was neither Canadian-born nor naturalized he could not volunteer. He therefore remained to carry on most of the work of the organization (Sunahara, Politics of Racism, 135; Ito, We Went to War, 142-3, 195, 223).

[78]The YMCA was an important tangential human rights group both during and after the war, often working closely with other organizations in anti-discrimination work. It protested Ottawa's wartime disenfranchisement of Japanese, and supported the CCJC in the deportation struggle ("Toronto Groups Protest to Ottawa Against Federal Disenfranchisement Bill," The New Canadian, 24 June 1944). It also created the Canadian Institute of Public Affairs (CIPA), now known as the Couchiching Conference. In 1946 this focussed in human rights by organizing a series of talks which resulted in the publication of Martyn Estall, ed., Rights and Liberties in Our Time. Other references to the post-war human rights activity of the YMCA can be found in Chapters 3 and 7.

[79]Forsey, a social democrat and civil libertarian, is mentioned briefly in Chapter 1.

[80]The delegation agreed, as did most liberals at the time, that the "redistribution" of Japanese Canadians was necessary.

[81]"Report of G.J.A. Reany on visit of delegation to Ottawa re the Japanese in Canada, Monday, July 30th, 1945," CCJC Papers, vol. 2, file 13.

[82]Nunoda ("A Community," note 403, at 222) calls this argument "incomprehensible" on the grounds that Canadian missionaries had abandoned Japan well before the outbreak of the war. However, the churches may have been looking into the future, and certainly some Canadian missionaries returned to Japan after the war.

[83]Fowke, They Made Democracy Work, 12; W.H.H. Norman, "What About the Japanese Canadians?" (VCC, n.d.), UBC Special Collections.

[84]CCJC letter, 7 September 1945, CCJC Papers, vol. 2, file 9.

[85]The CCJC made a strong case for the existence of duress in their pamphlet by Fowke, They Made Democracy Work, at 16.

[86]R.G.R. [Gordon Robertson] memorandum, "Re Treatment of Japanese Persons in Canada," 9 October 1945, Robertson Papers, vol. 1, file 12. Robertson added that the Red Cross report should be "treated with some reservations." Robertson was not, however, unsympathetic to the CCJC position. In a memo sent to the Prime Minister, dated 17 September 1945, he noted that the pamphlet "What about the Japanese Canadians?" was "an excellent presentation of the case for a fair and human settlement," and added that "It has been noticeable in recent correspondence that there is a definite movement on foot, that is apparently being fostered

particularly by the United Church of Canada, to counter the extreme racist attitude that has been taken by many people with regard to this problem" (King Papers, vol. 387, Reel C-9877, documents 346954-56).

[87]As noted earlier, this is also Nishiguchi's explanation in her "'Reducing the Numbers'." She points out (at 115) that by 12 September the Special Cabinet Committee on Repatriation and Relocation had already decided to proceed with the deportation of all those who had signed up for repatriation before 1 September.

[88]NIAC to King, CCJC Papers, vol. 2, file 9; Hansard, House of Commons, 5 October 1945, 799 [first reading of Bill 15]; 23 November 1945, 2448 [second reading of Bill 15]. The NETPA is discussed briefly in Chapter 1. This overly-broad language of Bill 15 also alienated provincial premiers, who pressured Ottawa to change the bill ("The Man With A Notebook [Blair Fraser]," "Backstage At Ottawa: Can a Civil Servant Say What He Thinks?," Maclean's, 1 January 1946, 15).

[89]For a discussion of Gordon Robertson's view of the Immigration Act, and the alternative, see Nishiguchi, "'Reducing the Numbers'," 116.

[90]Mrs. Hugh MacMillan to Dear Friend, 29 October 1945, and copy of pamphlet, CCJC files, vol. 2, file 12; CCJC "News Bulletin ... Regarding Japanese Canadians," 10 December 1945, Parkin Papers, vol 17, file "Civil Liberties Association." The VCC sent a letter to the Prime Minister, dated 18 October 1945, linking the Japanese issue to the broader issue of citizenship (King Papers, vol. 379, Reel C-9871, document 329695; Fowke, They Made Democracy Work, 13, 14.

The CCJC files contain a number of newspaper clippings from across Canada chronicling student protest and highlighting the role of the SCM in organizing public meetings and statements of protest. Student interest in Japanese Canadians did not begin in 1945, but the deportation issue certainly galvanized many students into activity. The government had obviously touched upon a nerve by threatening to deport Canadian born citizens. One activist at the University of Toronto, identified in an undated news clipping as Jan Meisel, a recent immigrant, said that he joined the protest because he had lost most of his family in Europe because of racism, and was disappointed to find it here in Canada (CCJC Papers, vol. 3, file 20). According to La Violette The Canadian Japanese and World War II, (note 28 at 250), a summary of student protest in Canada can be found in the McGill Daily, 6 November 1945.

[91]Hansard, House of Commons, 22 October 1945, 1335 [first reading of Bill 20].

[92]R.G.R. to Wrong, 24 October 1945, Robertson Papers, vol. 1, file 11; "Protest Looms," The New Canadian, 3 November 1945. The surprise of contemporary observers about the change in opinion and protest is mentioned in La Violette, The Canadian Japanese, 247.

[93]Jarvis McCurdy was a professor of philosophy at the University of Toronto. He had written an article, "Citizens or Slaves," about the plight of Japanese Canadians, in the March 1944

issue of the FOR newsletter, Reconciliation (CLC Papers, vol. 355, file: "Racial Discrimination - Japanese Canadians"). This was republished as "Civil Liberties -- They're Simple Things," in The New Canadian, 20 January 1945. He also served as a guest speaker for the CLAT on Japanese Canadian issues (Nunoda, "A Community," 210).

[94]RCMP report, quoted in Nunoda, "A Community in Transition," 210.

[95]Toronto Star: "The Plight of Japanese-Canadians," 7 August 1945 [identified by La Violette, The Canadian Japanese and World War II, as the first editorial in the Canadian press supporting the campaign against deportation]; "The Seeds of Fascism," 23 November 1945 [editorial by Charles Herbert Huestis]; "Urges Sending Japan Home Missionaries of 'Our Way'," 23 November 1945; "Whose Fault? Not Theirs," [attacking the Halifax Herald] 17 December 1945; "10,000 Jap-Canadians Affected by Decision" and "Take Japs to Privy Council Must Separate Families?" 20 February 1946; "If I Go What Would I Do? I Can't Even Talk Japanese," 22 February 1946; "Detailed 'For Interrogation," 26 February 1946; "Jap-Canadians' Fight Gets Montréal Help," 28 February 1946. As noted later in this Chapter, both Margaret Gould, one of the senior Star editorialists during this period, and the newspaper's owner, J.E. Atkinson, were strong supporters of the CCJC.

[96]Hansard, House of Commons, 17 June 1944, 4918 (Knowles); 12 August 1944, 6414 (Knowles); 17 December 1945, 3702 (Stewart); 9 April 1946, 698 (Stewart); 24 April 1947, 2368 (Knowles).

[97]Winnipeg Free Press: "We Will Regret Racialism," 19 September 1945: "Have We Shoddy Citizenship?" 28 September 1945; "Shall Decency Prevail?" 6 October 1945; "Emergency Controls," 17 October 1945; "Manitoba Can Take a Lead," 18 October 1945; "Our Japanese Issue, Vital," 19 October 1945; "Halt Deportation Proceedings," 9 November 1945. On the need for a bill of rights, see "Morally Indefensible," 7 December 1946.

[98]R.G.R. to Wrong, 24 October 1945, Robertson Papers, vol. 1, file 11. The Citizen had reprinted the Toronto Star editorial, "The Plight of Japanese-Canadians," on 17 August.

[99]Hansard, House of Commons, 21 November 1945, 2375-6.

[100]According to Gordon Robertson, Ottawa had received considerably fewer than 200 applications for withdrawal from Canadians (as opposed to Japanese nationals) by August 31 (R.G.R. to Wrong, 24 October 1945, Robertson Papers, vol. 1, file 11).

[101]It is interesting that neither Fowke, Adachi, nor Sunahara refer to this Red Cross study, which clearly strengthened the government's position.

[102]CCJC to W.L.M. King, 24 November 1945, King Papers, vol. 387, Reel C-9877, document 346970.

[103]Owens to King, 30 November 1945, King Papers, vol. 389, Reel C-9879, document 349331-2. At about this time the CLAW also sent a petition to all Senators and MPs from Manitoba, asking them to vote against the offending portions of Bill 15, suggesting that it was incompatible with the traditional British liberties of Canadians ("Dear Sirs," n.d., King Papers, vol. 389, Reel C-9879, document 349334).

[104]Philpott wrote for the Sun, but his columns also appeared in other newspapers. For example, see his column "No Japs Opposed" in the Ottawa Citizen, 20 November 1945. Philpott seems to have had a strong interest in civil liberties, and lobbied to obtain the vote for Sikhs in Canada ("Sikhs Celebrate," Saturday Night, 13 December, 1947). He later served on the advisory board of the VCCLU, and was for a while involved in the BC peace movement (Moffatt, A History of the Canadian Peace Movement, 18). Philpott was also politically active. He was first a Liberal, joined the Ontario CCF in the 1930s, but left because of fears of communist infiltration, and then came back to the Liberal Party, serving as an MP from 1953-1957 (Avakumovic, Socialism in Canada, 108, 133).

[105]Fowke, They Made Democracy Work, 15-7; "Repatriation Forms are Not Valid," The New Canadian, 3 October 1945; "1000 Claim Nationality law 'Unjust'," Vancouver Sun, 28 November 1945; "Civil Liberties Meeting Demands Deletion of Clause "G" in Bill 15," The New Canadian, 1 December 1945 [also containing references to other protests in Canada]; Freeman (VCCLU secretary) to W.L.M. King, 7 January 1946, King Papers 1946, Reel C-9167, document 361521.

The VCCLU also had the satisfaction of annoying British Columbia's exclusionist politicians. According to one of them, Liberal MP Thomas Reid, these "foolish professors and unwise teachers," especially Garnett Sedgewick, were purveyors of misinformation. He consequently spent some time addressing these gad-flies in one of his speeches, attempting to refute their arguments through a series of half-truths, innuendoes, and his belief that the Japanese could never be assimilated (Hansard, House of Commons, 22 November 1945, 2411-8).

[106]Hansard, House of Commons, 22 November 1945, at 2417 (PC MP Howard Green); 22 November 1945 at 2430 (Socred MP Solon Low).

[107]There was one avowedly-communist MP, Fred Rose of the LPP. Although the LPP in Ontario were strong supporters of anti-discrimination human rights protection (see Chapter 4), Rose did not explicitly condemn the deportation policy, and indicated that he still believed that some Japanese Canadians had been involved in espionage on the West Coast prior to World War II. However, he did say that "It is always dangerous when you start 'picking against' one group" (Hansard, House of Commons, 22 November 1945, 2423). It is possible that the LPP was regionally split on the issue of deportation. On 16 December 1944 and 13 January 1945 The New Canadian published articles ("Exclusion Looms" and "Labour Progressives Racist") which indicated that the LPP on the West Coast supported deportation.

[108]Adachi, The Enemy, 160, 182-3, 195. See also the war-time pamphlet by Grace and Angus MacInnis, "Oriental Canadians -- Outcasts or Citizens" (CCJC Papers, vol. 3, file 16). Note that in the spring of 1944 MacInnis was criticized, even by liberals, for introducing a bill to make hate propaganda illegal. See his explanation in "The Meaning and Purpose of Bill 37" (Angus MacInnis Papers, vol. 41B, file 14), and Elmore Philpott, "As I See It: Bill 37 Mistaken and Dangerous," Vancouver Sun, 11 May 1944.

[109]MacInnis: Hansard, House of Commons, 30 June 1943, 4214; 21 November 1945, 2385, 2389; Herridge: Hansard, House of Commons, 22 November 1945, 2400-1. For more on MacInnis and Japanese Canadians, see Adachi, The Enemy, 160-1, 182-3, 195; Cohn, "The Persecution," 14.

[110]Hansard, House of Commons, 3 December 1945, 2843 (second reading of Bill 15 resumed); 4 December 1945, 2908 (Hlynka mentions that Clause G has been omitted); 7 December 1945, 3009 (third reading of Bill 15).

[111]These orders-in-council were first mentioned by the Prime Minister on 17 December 1945 (Hansard, House of Commons, 3696-7). They were continued in force after the end of 1945 by PC 8418 of the recently-passed National Transitional Emergency Powers Act.

[112]"Defiance of Parliament," Saturday Night, 23 February 1946. The concept "executive despotism" was discussed briefly in Chapter 1. For more about the bill of rights struggle, see Chapters 3 and 7.

The decision to deport by order-in-council was attacked by the CCF in the House on 17 December 1945. See the speeches in Hansard by MacInnis (3695) and Stewart (3704). Later, John Diefenbaker criticized the federal government's deportation policy, but only on the grounds that it was done through order-in-council rather than through legislation (Hansard, House of Commons, 21 March 1946, 139). Diefenbaker made essentially the same argument a year later, on 16 May 1947, at 3154. In fairness to Diefenbaker, he had suggested that Clause G of Bill 15 was "a denial of the rights of British citizenship," but he nevertheless implied that it would be acceptable to do this by statute rather than by order-in-council (23 November 1945, 2454-5).

[113]"Appointment of CCJC steering committee," and Minutes of "Enlarged Meeting of representatives of co-operating groups," 21 December 1945, CCJC files, vol. 1, file "Correspondence and Minutes, 1943-56."

[114]A list of the executive committee of the CCJC at about this time, however, included only one CLAT member, Dr. Jarvis McCurdy. The rest were the Rev. Finlay, Mrs MacMillan, Miss Chappell, Miss Kaufman, Mr. J.H. Fowler, Mr. Jim Gripton, Mrs. Hugh Wolfenden, Mr. Kinzie Tanaka, Mr. Kunio Hidaka, Mr. Ted Nichols, Miss Norah Fujita, and Mr. Albert Watson (CCJC Papers, vol. 1, file 1 (part 2).

[115]Tatham is discussed briefly in Chapter 1.

[116]Margaret Gould is discussed briefly in Chapter 1.

[117]Andrew Brewin is discussed briefly in Chapter 1.

[118]Tatham to CLAT members, 2 January 1946, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24; "A Record of the Work," 6. Tatham is not listed in the latter document (although he is mentioned as a key CLAT member of the CCJC), but he is listed by Nunoda ("A Community," 250), who in turn does not list Gould.

[119]Fowke, They Made Democracy Work, 18-19 (in the SCC decision, Shimoyama's first name is given as Utaka); "Writs Are Issued Challenging Move to Deport Japs," Globe, 27 December 1945.

Meanwhile, the Winnipeg-based Civil Rights Defence Committee had an action scheduled in Court of King's Bench on behalf of a Japanese national, a naturalized Japanese Canadian, and a Canadian-born citizen of Japanese extraction. The group decided to postpone the case because of the CCJC litigation ("Winnipeg Group will Withhold Action," The New Canadian, 12 January 1946).

[120]Note that almost all of these people were associated with civil liberties organizations, especially the CLAT. As mentioned earlier, Sandwell, Tatham, and Brewin were on the CLAT executive. Mrs. Fraser was almost certainly Isabel Fraser, the secretary of the organization. As also noted earlier, Ferguson had been on the advisory board of the CLAW during the war. He was part of the group of reform liberals who were crucial in gaining acceptance for the welfare state and he has also been identified as one of the central figures of "the Liberal press establishment" (Owram, The Government Generation, 185; Brennan, Reporting the Nation's Business, x-xi).

[121]"Mass Meeting Unit [sic] in Opposing Japanese Ousting," Toronto Globe, 11 January 1946; Donalda MacMillan to W.L.M. King, 11 January 1946, King Papers, vol. 401, Reel C-9168, document 362519-20.

[122]Roebuck also wrote privately to Minister of Labour Humphrey Mitchell, decrying the "bigotry and race prejudice" of the British Columbia MPs, and exhorting the minister to act in accordance with principles of "British Justice" (14 January 1945, Arthur Roebuck Papers, vol. 4, file 9).

Arthur Roebuck's career demonstrated a strong attachment to human rights. He achieved a certain amount of progressive fame when he was expelled from Ontario Premier Mitchell Hepburn's cabinet for taking a too-liberal position during the Oshawa strike. He also was sympathetic to the interests of the Jewish community, and in addition was one of the few Liberal MPs to take a civil libertarian stand in opposition to the government's DOC Regulations. In 1944 he had been the only Liberal MP to denounce the disenfranchisement of Japanese Canadians. Now, recently elevated to the Senate, he was once again at loggerheads with the Liberal Party, pointing out that the Japanese Canadians were still being treated differently than those of German or Italian descent. Later, in 1946, Roebuck was instrumental in getting the Senate Standing Committee on Immigration and Labour to re-

examine the discriminatory nature of Canadian government immigration policy, and he chaired the 1950 Senate Special Committee on Human Rights and Fundamental Freedoms (Irving Abella, "Oshawa 1937," in On Strike: Six Key Labour Struggles in Canada 1919-1949, ed. Irving Abella, [Toronto: James Lorimer, 1975], 93-128, at 113; Cook, "Civil Liberties in Wartime," 239-40; Abella and Troper, None Is Too Many, 183, 229; Hansard, House of Commons, 17 June 1944, 424; Chapter 7 of this dissertation).

[123]Senator Wilson is best known as the first woman appointed to the Senate, but she was also an important member of the human rights community. In the 1930s she had been involved with the League of Nations Society and then with the CNCR (see Chapter 1). In 1944 she had been among the minority of Senators who voted against the disenfranchisement of Japanese Canadians. A few months after the Toronto demonstration Senator Wilson (along with Senator Roebuck) sponsored the founding meeting of the Ottawa Civil Liberties Association (see Chapter 3). Later, she worked to liberalize immigration and refugee policies, as well as reform of the divorce laws, and served as a national director of the CCCJ -- the Canadian Council of Christians and Jews (Abella, None Is Too Many, 45; Hansard, Senate, 30 June 1944, 282-3, 285; Franca Iacovetta, "'A Respectable Feminist': The Political Career of Senator Cairine Wilson, 1921-1962," in Beyond the Vote: Canadian Women and Politics, Linda Kealey and Joan Sangster, eds. [Toronto: University of Toronto Press, 1989], 63-85).

[124]In the immediate post-war period Feinberg was one of the most visible public figures of the human rights community, as a rabbi, a public speaker, the Chair of the Joint Public Relations Committee of B'nai B'rith and the CJC, and a member of the CLAT. He had made deportation the subject of one of his "sermons" at Holy Blossom ("Rabbi Raps Fascist Tendencies in Treatment of Japanese Canadians," The New Canadian, 8 December 1945). Feinberg later played a key role in the struggle for anti-discrimination legislation, and he also became involved in the Canadian peace movement (Abraham L. Feinberg, Storm the Streets of Jericho [Toronto and Montréal: McClelland & Stewart, 1964], 62-71, 103, 166, 251, 264-5, 292-314; Moffatt, History of the Canadian Peace Movement, 30-2; Dorothy Sangster, "The Impulsive Crusader of Holy Blossom," Maclean's, 1 October 1950, 16-7, 28-9; Chapters 4, 5, 6, and 7 of this dissertation).

[125]CCJC Resolution to Premier Drew, 10 January 1946, CCJC Papers, vol. 1, file 3; Manitoba government press release, 20 December 1945, Lower Papers, vol. 46, file C-21; CCJC News Bulletin, 24 January 1946, Roebuck Papers, vol. 4, file 9.

The CCJC also made efforts to remove other obstacles to resettlement, especially in Toronto ("Committee Acts to Remove Ban on Entries into Toronto," and "Avoid Concentration Says Supervisor," The New Canadian, 16 February 1946.

[126]Fowke, They Made Democracy Work, 19-20; R.G.R. to King, 4 March 1946, Robertson Papers, vol. 1, file 1-9, The government had already been receiving considerable pressure, including about 60 to 70 letters a week; see R.G.R. memorandum to Mr. [Norman] Robertson, 6 December 1945, and R.G.R. memorandum to Mr. Wrong, 24 October 1945 (Robertson Papers, vol. 1, file 1-11). Note also that on 10 January a delegation from the

Canadian Council of Churches met the Prime Minister to express displeasure with the deportation policy (CCJC News Bulletin, 24 January 1946, CCJC Papers, vol. II, file 1).

[127]Only 27% opposed deportation of the Japanese residents who had no Canadian citizenship ("The Gallup Poll," Winnipeg Free Press, 5 January 1946). The 1944 poll (mentioned above) did not make a distinction between citizens and non-citizens.

[128]"Unworthy of Canada," 14 January 1946; "Legality Beside the Point," Feb 21, 1946. The Globe is identified here as a "liberal" paper because of its attitude towards race relations, notwithstanding its Tory inclinations (see Chapter 1).

[129]"10,000 Jap-Canadians Affected by Decision," and "Take Japs to Privy Council Must Separate Families?" 20 February 1946; "If I Go What Would I Do? I Can't Even Talk Japanese," 22 February 1946; "Detailed 'For Interrogation'," 26 February 1946; "Jap-Canadians' Fight Gets Montreal Help," 28 February 1946.

[130]"City Barristers Critical of Ottawa Action To Deport Japanese Nationals," 5 January 1946. For later editorials, see: "Morally Indefensible," 7 December 1946; "Japanese Canadians," 9 December 1946.

[131]The Canadian Forum published a number of articles on Japanese Canadians, perhaps in part because Edith Fowke was an editor. See: Edith Fowke and A.G. Watson, "Democracy and the Japanese Canadian," July 1945; editorial: "Interesting Testimony," October 1945; Edith Fowke, "Japanese Canadians," January 1946; Dorothy Fraser, "Unconscious fascism," February 1946; "The Supreme Court Decision," March 1946; Edith Fowke, review of Forrest E. La Violette, Americans of Japanese Ancestry, May, 1946; Edith Fowke, "Justice and Japanese Canadians," January 1947; "Japanese-Canadian Property," [editorial] September 1947; "Second-Class Citizens" [editorial] April 1948; Edith Fowke, review of La Violette, The Canadian Japanese and World War II, November 1948.

[132]Saturday Night editorials not only opposed deportation but also featured stories about assimilation as an alternative to deportation: "Deportation of Citizens," 12 January 1946 [in which Sandwell admitted his connection to the CCJC]; "A B.C. Deduction," 16 February 1946; "Defiance of Parliament" and "Pressure of Opinion," 23 February 1946. It was the deportation issue which suggested to Sandwell that perhaps Canada needed a bill of rights ("Bill of Rights," Saturday Night, 2 February 1946).

[133]"Unworthy of Canada," 14 January 1946. In a speech given after the deportation crisis was over, Andrew Brewin made special mention of the assistance of the Star, the Globe, the Free Press, the Citizen, and Saturday Night (draft of speech by Andrew Brewin, 27 January 1947, ACLU Papers, vol. A, file 7).

[134]Of course, as noted in Chapter One, the classical liberalism of the Globe disposed it to oppose anti-discrimination legislation. However, the newspaper came down firmly against prejudice and discrimination: "[w]e sympathize with those minorities which it [i.e. the ORDA]

is designed to protect. The Globe and Mail does not have to establish with its readers how it stands on racial and religious intolerance. We have opposed anti-Semitism in all its forms as we have exposed and opposed those who deal in religious bigotry. ("Racial Bill Not the Cure," (10 March 1944).

[135]Olyan, "Democracy in Action," 65-8. However, Olyan points out (at 73-4) that the CCJC did not make much use of radio.

[136]Fowke, They Made Democracy Work, 19.

[137]Some Japanese Canadians had already left "voluntarily." As Nishiguchi points out, there had been five sailings between 31 May and 24 December 1945. A total of 3,964 people were "transported" (rather than "deported"), over sixty-five percent of them either Canadian born or naturalized citizens ("'Reducing the Numbers'," 3, 128).

[138]Fowke, They Made Democracy Work, 19; "A Record of the Work"; memorandum from F.P. Varcoe, Deputy Minister of Justice, to Norman Robertson, Under-Secretary of State for External Affairs, 4 January 1946, King Papers, vol. 283, file 2965 (quoted in Sunahara, The Politics of Racism, 137-8); "The Man With A Notebook {Blair Fraser]," "Backstage in Ottawa," Maclean's Magazine, 15 April 1946, 66-7; Nunoda, "A Community in Transition," 251.

[139]As noted earlier, Hugh MacMillan was a United Church minister who had been a missionary to Japanese-occupied Formosa before the war. According to Fowke, he had been a member of a British government mission to San Francisco in 1945, and was not available as the CCJC's first paid secretary until early 1946 (They Made Democracy Work, 13-4, 20).

[140]According to Snell and Vaughan, John Cartwright was a central figure of the Ontario legal establishment, "born to the law and to a position of social prominence." He was the chief Crown prosecutor in the Gouzenko-related Shugar case (see Chapter 3) and represented human rights activists in the Drummond Wren and Noble and Wolf restrictive covenant cases (see Chapter 4 of this dissertation). After he was appointed to the Supreme Court in 1949, his decisions were marked by a libertarian defense of the rights of the accused that was balanced by deference to the principle of legislative supremacy. After 1960 he was well-known for his civil libertarian support of the Diefenbaker Bill of Rights in his Robertson and Rosetanni decision, which was soon negated by his change of mind in the Drybones decision. He was Chief Justice of Canada from 1967 to 1970 (James G. Snell and Frederick Vaughan, The Supreme Court of Canada: History of the Institution [Toronto: University of Toronto Press, 1985], 202, 208-10, 259).

[141]Minutes of CCJC meeting, 19 November 1945, CCJC files, vol. 1, file "Correspondence and Minutes" 1943-56"; Fowke, They Made Democracy Work, 13-4, 19; report of CCJC meeting, 22 January, 1946, CCJC files, vol. 1, file "Correspondence and Minutes" 1943-56." The fee for Cartwright was $2,000, and Brewin charged $1500.

[142]There is a list of the different local Co-operative Committees on Japanese Canadians in the Lewis Papers, vol. 1, file 12. Not all of these had names that clearly indicated their narrow focus of interest; for example, note the Civil Rights Defence Committee in Winnipeg. A similar list is in the CCJC Papers at McMaster University, in the file "Reports." It is not clear exactly when these different groups were formed, but the Winnipeg group was created on 11 December ("Winnipeg Co-operative Committee Formed; Will Fight Deportation," The New Canadian, 15 December 1945).

[143]It was Edith Fowke who later wrote the "official" story of the CCJC in the pamphlet They Made Democracy Work. Fowke was a member of the FOR, a CCF activist, a member of the editorial board of Canadian Forum, and one of the editors of the FOR organ Reconciliation, as well as editor (in the 1960s) of the Indian-Eskimo Association Bulletin, but she is probably best known today as a collector and transcriber of Canadian folk songs (Socknat, Witness Against War, note 85 at 352; Joan Sangster, Dreams of Equality: Women on the Canadian Left, 1920-1950 [Toronto: McClelland and Stewart, 1989], 202).

[144]Fowke, They Made Democracy Work, 20; Edith Fowke, "Japanese Canadians," Canadian Forum, January 1946, 231-2; "Japanese Canadians" [pamphlet], CCJC Papers, vol. 3, file 16; report of CCJC meeting, 22 January, 1946, CCJC Papers, vol. 1, file "Correspondence and Minutes 1943-56"; "Toronto Committee Starts Drive for Funds," The New Canadian, 26 January 1946.

[145]There were over forty national and local organizations in the CCJC by the end of December, 1945 (CCJC flyer, 28 December 1945, CCJC Papers, vol. II, file 13).

[146]Fowke, They Made Democracy Work, 20; Tatham to CLAT members, 2 January 1946, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24. Other civil liberties associations no doubt also contributed money, although no records seem to be available. Certainly they supported the cause by lobbying; see, for example, Lower (for the CLAM) to Howard Green, 7 April 1946, Lower Papers, vol 46, file C-21.

[147]The group was initially called the Montréal Provisional Committee on Japanese Canadians, but its members changed its name after deciding to pursue a more general human rights focus. Among other tasks, the organization attempted to help Japanese Canadians who wished to settle in Québec. See: "Jap-Canadians' Fight Gets Montréal Help," Montréal Star, 28 February 1946; "Committee Plans Meeting to Protest Deportation," The New Canadian, 30 March 1946; assorted documents, Scott Papers, vol. 17, file "Japanese-Canadians 1943-47," Reel H-12745.

[148]Members of the executive committee (in addition to Casgrain, Ouimet, Perrault, and Scott): the Rev. Canon P.S.C. Powles (who had organized the Montréal CCJC committee), Paul Baby, Rev. G.R. Cragg, Mme. George Garneau, John H. Hobart, Leon Lalande, Lady Marier, Jean-Marie Nadeau, Margaret Peck (the chair of the Montréal CCJC committee), Gordon K. Stewart, Rev. H.G. Tuttle, and Marjorie A. Watson. As noted earlier, several of these people

soon also formed the MCLA in 1946.

[149]"Orders-in-Council Threaten Your Citizenship!" CCJC Papers, vol. 3, file 16.

[150]It is interesting to note that, along with its factum, Ottawa filed a copy of a secret message sent originally to the Canadian Ambassador in Washington, noting that "It is difficult to proceed with redistribution and relaxation of control over Japanese remaining in Canada until repatriates and deportees are removed (cited in Nishiguchi, "'Reducing the Numbers'," 122). This would seem to be an attempt to get the Supreme Court to see the legal problem within the broader political context.

[151]In the Matter of a Reference As to the Validity of Orders in Council of the 15th Day of December, 1945 (P.C. 7355, 7356 and 7357), in Relation to Persons of the Japanese Race (1946) SCR 248; "10,000 Jap-Canadians Affected by Decision" and "Take Japs to Privy Council Must Separate Families?" Toronto Star, 20 February 1946. Two of the judges, including the civil libertarian Mr. Justice Ivan Rand, argued that Ottawa also had no legal power to deport Canadian citizens. (Some of Rand's later decisions are discussed in Chapters 4 and 7). For a discussion of the difficulty which the SCC decision created for the federal government, see the N.A.R. [Norman Robertson] memo to King, 27 February 1947, Robertson Papers, vol. 1, file 1-9. Note also that the Attorney General of BC "expressed pleasure at the decision," and called for the immediate deportation of Japanese in Canada ("Attorney-General of B.C. Wants Japs Deported at Once," Globe, 21 February 1944).

[152]Minutes of CCJC executive meeting, 5 April 1946, CCJC files, vol. 1, file "Correspondence and Minutes" 1943-56"; Fowke, They Made Democracy Work, 21-3; "Our Japanese Canadians; Citizens, Not Exiles." April 1946, CCJC files, vol. 3, file 16. For information about La Violette, see: La Violette to Black, 19 June 1944, Dobson Papers, vol. B24, file 15; Nisei Affairs vol. 1, no. 1, 28 August 1945: 10; Casgrain, A Woman, 102. As noted earlier, La Violette later wrote The Canadian Japanese and World War II, produced with the help of the CIIA. He also wrote one of the first books on aboriginal rights in Canada, The Struggle for Survival: Indian Cultures and the Protestant Ethic in B.C. (Toronto: University of Toronto Press, 1973).

[153]"Financial Statement," 1 May 1946 to 30 June 1947, Scott Papers, vol. 17, file "Japanese-Canadians 1943-47," Reel H-12745; CCJC News bulletin #7, 14 September 1946, CCJC Papers, vol. 1, file "Notes, Reports 1946-1953"; CCJC Financial Statement, 1 May 1946-30 June 1947, Ontario Labour Committee [OLC] Papers, vol. 11, file 10; "$10,500 Needed" and "Toronto Group Issues Pamphlet on Japanese," The New Canadian, 13 April and 18 May 1946. Note also that Japanese groups in British Columbia began planning to raise funds for an appeal as soon as they heard the Supreme Court decision ("Attorney-General of B.C. Want Japs Deported at Once," Globe, 21 February 1944).

[154]"May Be Year Ere Action on Japs Possible," Star, 22 February 1946; "Deportation Decision," Saturday Night, 16 March 1946.

[155]R.G. Robertson to W.L.M. King, 22 February 1946, Secretary of State for Citizenship and Immigration, vol. 283, file 2965.

[156]R.G. Robertson to W.L.M. King, 27 February 1946, Secretary of State for Citizenship and Immigration, vol. 283, file 2965.

[157]Fowke, They Made Democracy Work, 22. In addition to the Prime Minister, the CCJC met with cabinet ministers Louis St. Laurent and Ian Mackenzie as well as several high-ranking bureaucrats ("Minutes of a Meeting Concerning the Japanese in Canada," 26 March 1946, Secretary of State for Citizenship and Immigration, vol. 283, file 2965).

[158]Tarr was discussed briefly in Chapter 1. In early 1946 he was one of a number of prominent lawyers in Winnipeg, including the radical MLA Lewis St. George Stubbs, who issued a public criticism of Ottawa's deportation policy ("City Barristers Critical of Ottawa Action To Deport Japanese Nationals," Winnipeg Free Press, 5 January 1946).

Tarr's support of the CCJC was enhanced by his long association with the CIIA. That organization never endorsed the CCJC officially, but it did produce a timely book in 1948, when the issue of property compensation was still controversial: La Violette, The Canadian Japanese and World War II. In addition, a number of people connected with the CIIA either spoke out against deportation or were connected with groups that took a stance. For example, a former CIIA president who publicly condemned the government's policy was J.B. Coyne, a leading member of the Manitoba bar who was later appointed to the Manitoba Court of Appeal ("Deportations Held 'Morally Unjustified'," Winnipeg Free Press, 3 December 1946; Who's Who, 1949-51). Furthermore, Malcolm Wallace of the CLAT had been a national CIIA president, and several members of the Winnipeg/Manitoba Civil Liberties Association, such as Waines and Morton, were also active in the CIIA ("Contributors to This Issue," International Journal IV (Summer 1949): 290).

[159]Croll, who was a social democrat in Liberal clothing, did not break ranks with the government in the House, but in February 1946 he made a speech at the University of Toronto (along with Andrew Brewin and Kinzie Tanaka) in which he argued that government policy violated the principles of the United Nations Charter ("Habeas Corpus is Basis of Law, Order-in-Council Revokes This Decides Jap-Canadian Forum," The [University of Toronto] Varsity, 15 February 1946, CCJC files, vol. 3, file 20).

For a discussion of Croll, including some information about his support for Japanese Canadians, and their subsequent honouring of him, see R. Warren James, The People's Senator: The Life and Times of David A. Croll, (Vancouver: Douglas and McIntyre, 1990), 121-3; "Liberal prided himself on being in vanguard" [obituary], Globe, 13 June 1991. Before the war he had come into conflict with Ontario Premier Mitchell Hepburn, who removed him from the cabinet (along with Arthur Roebuck) because he did not support the Premier's policy during the 1937 Oshawa strike. Croll (later Senator Croll) carried his small-l liberal values with him into federal politics; he was a public supporter of the CRCIA ("Chinese Not 'Second Class' Croll Wants Ban Ended," Toronto Star, 30 July 1946), and the late 1950s saw him on the advisory board of the Toronto Association for Civil Liberties as well as the Canadian

Council of Christians and Jews (CCCJ). His human rights activities are mentioned briefly in Chapters 4, 5, and 7, and his role in promoting the federal FEP Act, passed in 1953, is noted in Mackintosh, "The Development of the Canadian Human Rights Act," at 19. Croll is also significant for being the first Jew appointed to the Senate (in 1955), which paradoxically was also a reflection of anti-semitism, since the Prime Minister did not feel that Canada was ready for a Jewish cabinet minister, and the Senate position was a sort of "consolation prize."

[160]Millard spoke from the perspective of organized labour, saying that there was no objection to a permanent resettlement of Japanese Canadians outside of British Columbia, and adding that the deportation policy would cause problems with the World Federation of Trade Unions ("Minutes of a Meeting," 3). Sandwell was supposed to be a member of the delegation, but was unable to attend (CCJC "News Bulletin #5," 30 March 1946, CLC Papers, vol. 335, file "Racial Discrimination - Japanese Canadians").

[161]"Minutes of a Meeting," 1-2.

[162]"Memorandum for the Members of the House of Commons," April 1946, CCJC Papers, vol. 3, file 16. A number of prominent people were specifically noted in this memorandum as supporters of the CCJC; several have been mentioned earlier in this chapter: Joseph Atkinson, Norman Black, Thérèse Casgrain, M.J. Coldwell, David Cross, T.C. Douglas, George Ferguson, Roger Ouimet, Canon Powles, George Reany, Senator Roebuck, B.K. Sandwell, E.J. Tarr, and Senator Cairine Wilson. Another supporter was Eric Morse, who was also involved at about this time with the OCLA and the struggle for a national bill of rights. Morse was a member of the CIIA, as well as national secretary of the United Nations Association in Canada (Who's Who; Chapters 3 and 7 of this dissertation).

[163]The government had defended its policy when it met with the CCJC, and King would only promise that their concerns would be seriously considered ("Minutes of a Meeting," 3-4).

[164]Saturday Night, 22 June 1946.

[165]"Canada's Jap Deportation Order Ruled Valid By Privy Council," Winnipeg Free Press, 2 December 1946. The case is reported as Co-operative Committee on Japanese Canadians v. A.G. Canada (1947) A.C. 87, 1 DLR 577.

[166]Draft of speech by Andrew Brewin, 27 January 1947, ACLU Papers, vol. A, file 7. This speech was delivered at a rally called "Freedom Is Your Affair," jointly sponsored in Toronto by the CLAT and the CRU. For more information, see the Roebuck Papers, vol. 1, file 15.

[167]CCJC Executive meeting "Minutes," 23 November 1946, CCJC Papers, vol. 1, file "Correspondence and Minutes" 1943-56"; CCJC "News bulletin #7," 14 September 1946, CCJC Papers, vol. 1, file "Notes, Reports 1946-1953"; Mrs. H. MacMillan to Miss M. Peck, 26 November 1946, and to Miss R. Lindenfield, 8 December 1946, quoted in Olyan, "Democracy in Action," 86-7; CCJC public statement, CCJC files, vol. 2, file 13; VCC to "Dear Friend," 6 March 1947, CCJC Papers, vol. 2, file 10.

The CCJC also called on Ottawa to remove the remaining travel restrictions on Japanese Canadians, and to give them "fair compensation" for property losses.

[168]"Remove the Stain," Globe, 4 December 1946.

[169]CCJC executive meeting "Minutes," 12 December 1946, CCJC Papers, vol. 1, file "Correspondence and Minutes, 1943-56"; VCC to "Dear Friend," 6 March 1947, CCJC Papers, vol. 2, file 10.

[170]Federal government press release, 24 January 1947, CCJC Papers, vol. 2, file 13; "Revoke Japs Deportation Order," and "No More Japs Will Be Deported, Ottawa Says," Toronto Star, 24 January 1947. The story in the Globe said that "[t]he revocation of the deportation order is something of an empty gesture since it has been known for some time that the government had no intention of using it" (Warren Baldwin, "Ottawa Repeals Orders Held Valid in Courts For Deportation of Japs," 25 January 1947).

[171]Fowke, They Made Democracy Work, 24. On 26 October 1946 the CCJC had asked Edith Fowke, Kinzie Tanaka and Kunio Hidaka to form a sub-committee "to investigate and report on present legal restrictions and the sale of property belonging to persons of Japanese ancestry after their evacuation in 1942" ("Report of the Sub-committee on Restrictions and Property Losses," CCJC Papers, vol. 2, file 10).

Other groups also continued to complain about the treatment of Japanese Canadians. For example, in March 1947 the VCCLU sent the Prime Minister a lengthy brief praising his discontinuation of the deportation policy but criticizing the different rules which continued to limit the mobility rights of Japanese Canadians, especially those prohibiting them from travelling to British Columbia. Other protests followed, both against the provincial government (which in 1948 tried to keep Japanese Canadians from logging Crown timber) and against the federal government for its continued travel restrictions (King Papers, JCCA Papers, vol. 14, file 13; Adachi, The Enemy That Never Was, 344; Hunter Lewis to Mackenzie King, 8 March 1948, JCCA Papers, vol. 14, file 16). During this period, the VCCLU also supported the campaign of the CRCIA (McEvoy, "A Symbol," note 78 at 42. See also the letter from the CLAM: Owens to King, 25 January 1947, King Papers, vol. 426, Reel C-11040, document 387873).

[172]Fowke, They Made Democracy Work, 24-31.

[173]The terms "attentive public" and "sub-government" are defined in the "Introduction."

[174]See Nunoda, "A Community in Transition," 224-5. See also the comments of Blair Fraser that government representatives were arguing in early 1946 that earlier political pressure would have helped the liberals in the King cabinet stand up to the anti-Japanese demands of British Columbia Liberals such as cabinet minister Ian Mackenzie ("The Man With A Notebook" [Blair Fraser], "Backstage At Ottawa," Maclean's 15 (15 April 1946): at 66-7.

[175]According to Patricia Roy, "the change in public opinion only partially explains the cabinet decision." She mentions the success of voluntary deportation and the dispersal policy (Mutual Hostages, 182). The CCJC estimated that about half of the people who returned to Japan were Canadian-born children, who became "foreigners in a strange land" (CCJC Bulletin #7, 14 September 1946, CLC Papers, vol. 335, file "Racial Discrimination - Japanese Canadians." For a discussion of the fate of some of these, see Pierre Berton, "Marie Went Back to the Dark Ages," Maclean's, 15 July 1951, 20, 48-9.

[176]Nunoda, "A Community in Transition," 390; Sunahara, Politics of Racism, 140-3. Earlier, both Manitoba and Saskatchewan had agreed to accept relocated Japanese Canadians, and Ontario had tacitly acquiesced also.

[177]"Morally Indefensible" and "Japanese Canadians," Winnipeg Free Press, 7 and 9 December, 1946; B.K. Sandwell, "A Dubious Future for Japanese Children Who Get Deported," and "More of PC 10773," Saturday Night, 22 and 29 June 1946.

[178]Nunoda, "A Community in Transition and Conflict." However, Nunoda goes too far when he says (at 223) that the CCJC "conceded the government's right to violate ... civil liberties by forcing the Japanese to disperse themselves across the country." At no time did the CCJC ever support anything other than voluntary dispersal, including government support to make it easier for those who were uprooted.

[179]La Violette, The Canadian Japanese and World War II, 285.

[180]Nunoda, "A Community in Transition," 395-6. Nunoda also points out (at 389) that both the CCJC and the JCCD were dominated by members of the middle class, and that this gave their decisions, especially those dealing with compensation (after the deportation struggle), a class bias.

[181]There were, however, some exceptions to the rule. As noted earlier, this dissertation does not say much about the Jehovah's Witnesses or about prisoners' rights organizations such as the John Howard Society. While these were part of the human rights community in the analytic sense, on the whole they seem to have had little contact with the network of human rights groups discussed in this dissertation.

[182]Pal, Beyond Policy Analysis, 48, 209; Jean Bethke Elshtain, Democracy on Trial (Concord, Ontario: Anansi, 1993), 15ff.

[183]Some awareness of the pioneering nature of the CCJC was demonstrated in the CAAE "Citizens' Forum" pamphlet no. 20 (n.d.), "Is Politics the Answer?" Talking about the need for "political action in the larger sense," the author notes that "[r]ecently men and women of all political parties have organized to protest the treatment of Japanese-Canadian citizens. They have formed the sort of 'pressure group' which is legitimate in a democracy, because it is not motivated by narrow self-interest" (Angus MacInnis Memorial Collection, vol. 31-B, file 4).

[184]There is very little evidence of support from the Atlantic provinces. Later chapters in this dissertation also indicate that the impulses of civil libertarianism and human rights activism were far stronger in Central Canada and the West than in the Atlantic region.

[185]It has been suggested that the resettlement of Japanese Canadians in Ontario helped to "educate" the local population about their real nature, and thereby undermine the stereotypes which had been disseminated from British Columbia (La Violette, The Canadian Japanese, 289).

[186]After the war the VCC underwent a name change, becoming the Vancouver Consultative Council for Study of Problems of Citizenship, and expanded its horizons to other topics, such as the plight of Chinese Canadians. However, because it had been a war-time ad hoc group by 1948 its executive was beginning to wind down the organization and let other groups carry on its work for racial harmony (Black to W.L.M. King, 27 February 1947, King Papers, vol. 420, Reel C-11035, document 381612-3; Black to Roméo Girard, 1 June 1948, JLC Papers, vol. 34, file 2).

CHAPTER 3 - CIVIL LIBERTIES GROUPS AND THE GOUZENKO AFFAIR

A: INTRODUCTION

If the Japanese deportation struggle was the first major post-war human rights issue in Canada, the second was the Gouzenko Affair. In the fall of 1945, just as the CCJC was starting to rouse Canadian opinion against Ottawa's deportation policy, the federal government was secretly dealing with the disturbing revelations of Igor Gouzenko, a Russian cipher clerk in Ottawa who had defected and revealed information about a Soviet espionage network operating in Canada. Then, in the spring of 1946, even as the Supreme Court was writing its decision on the deportation orders-in-council, Ottawa revealed to the Canadian public the existence of this spy ring, and reacted in a way which many people regarded as an egregious violation of human rights. This was "the Gouzenko Affair."[1]

The two issues were, of course, in some ways rather different. The deportation struggle involved a negation of certain traditional civil liberties, such as citizenship and security of the person, but it was rooted in a racist disregard for the right of an ethnic minority to equal treatment. The Gouzenko Affair, on the other hand, was not primarily a matter of egalitarian human rights, but rather an issue of traditional legal civil liberties. As a result, while both involved human rights, they engendered somewhat different reactions on the part of Canadian citizens. Although the same newspapers that had taken a liberal stand on deportation also objected to these rights violations, the organizational reaction to the issue came primarily from civil liberties groups, churches, trade unions, and ethnic organizations played only a minor role. In other words, the Canadian human rights community was to some degree divided by the distinction between the emerging human rights emphasis on racial equality and the traditional civil libertarian concern for legal rights and freedoms.[2]

The Gouzenko Affair also demonstrates the existence of another division in the human rights community, one that was only implicit in the deportation struggle -- a split between

communists on the one hand and liberals and social democrats on the other. As noted in Chapter 1, the LPP had largely abandoned the field of civil liberties during the latter part of the war, for fear of damaging the war effort and impeding aid to the Soviet Union. Now that the war was over, it was possible that civil liberties would once again be important to them, protecting rights of free speech and association that made it possible to engage in radical politics and labour work.[3] As this chapter will demonstrate, the Gouzenko Affair badly split the civil liberties movement. In the new era of the Cold War -- which Igor Gouzenko helped to precipitate -- it became increasingly difficult to reach a consensus on such thorny matters as freedom of speech, freedom of assembly, and the right to a fair trial.[4]

The Gouzenko Affair has been the subject of many reports and investigations, most of which are critical of Ottawa. The point of this chapter is not so much to outline the civil liberties violations as to discuss the way in which the human rights community reacted to them. The Gouzenko Affair stimulated a renewed interest in civil liberties, and was a catalyst for the creation of a number of civil liberties organizations and the emergence of a new human rights "policy network." It also suggested to a number of Canadians that government could not be trusted, even in peace time, to protect what were still usually called the traditional "British liberties." One result of this was the post-war movement for a bill of rights.

While civil libertarians were concerned with a number of broad principles raised by the Gouzenko Affair, and realized that many people had suffered rights violations, one case in particular seemed to catch their attention. This chapter therefore also looks in some detail at the case of David Shugar. Almost completely forgotten today, he was one of the early victims of the Cold War in Canada, and one of the failures of the civil liberties movement.

B: IGOR GOUZENKO AND THE GOVERNMENT'S RESPONSE

On 5 September 1945, only a few days after the unconditional surrender of the Japanese and the end of the Second World War, a heretofore obscure Soviet cipher clerk named Igor Gouzenko defected in Ottawa to the Canadian government, bringing with him information about a Soviet spy ring operating in North America. The following day Prime Minister King was told that a "most terrible thing had happened," and he learned that, as King wrote in his diary, Gouzenko "had enough evidence there to prove that instead of being friends the Russians were really enemies."[5]

Not long after, the government issued the first of several orders-in-council which severely limited the rights of Canadians. Although the general public was not yet aware of Gouzenko and Ottawa's responses, the country was sliding into a period of civil liberties violations which indicated once again the willingness of the authorities to respond to threats with a high level of "overkill." This order-in-council, PC 6444, was legal because the War Measures Act remained in effect until the end of the year. It was unusual because it was kept secret not only from the Canadian public, but also from most federal cabinet ministers. Only the Prime Minister and three other members of the cabinet were aware of its existence.[6] It seems to have been issued because the government initially wanted to suppress information about the espionage network, but at the same time wanted the power to arrest one of the alleged spies, Alan Nunn May, a British atomic scientist who might at any moment be leaving Canada and returning to England.[7]

Nevertheless, Ottawa was reluctant to take action. Although the British government urged Canada to arrest May as soon as possible, King (as usual) temporized. May was allowed to return to England, where he was kept under close surveillance by MI5. When it became clear to the Canadian government that the British were about to arrest May, acting Prime Minister Louis St. Laurent authorized a second secret order-in-council on 6 October, giving the Canadian police broad powers to detain and question people suspected of espionage -- no formal charges had to be laid, and the traditional legal rights of access to legal counsel and habeas corpus were suspended.[8]

This order-in-council was a legal blunderbuss, capable of enormous damage to the civil liberties of both the guilty and the innocent alike. The civil liberties implications of the order, however, do not seem to have overly worried the cabinet. When the British Prime Minister later in the month talked about detaining May under special powers, King said that he doubted that Canada "had the same authority at law for examining individuals on the score of suspicion." More importantly, when the issue was later raised in the House, St. Laurent at first claimed that no such order-in-council existed; the following day he retracted the statement, claiming that he had forgotten about PC 6444 and inadvertently misled the House.[9]

Yet although Ottawa had created a powerful legal weapon, the authorities were not immediately ready to pull the metaphorical trigger. It was only after several months of RCMP investigation, extensive discussions between the Canadian, American, and British authorities at the highest level, and a fear that the story could no longer be kept secret, that a decision was finally taken to use the secret order-in-council. However, first the government appointed a Royal Commission to study the matter. The body, usually known as the Kellock-Taschereau Royal Commission, consisted of two Supreme Court judges. Its mandate was "to inquire into and report upon which public officials and persons in positions of trust or otherwise have communicated, directly or indirectly, secret and confidential information, the disclosure of which might be inimical to the safety and interests of Canada, to the agents of a Foreign Power, and the facts relating to and the circumstances surrounding such communication." It began work -- in secret -- on 6 February 1946.[10]

On 13 February Igor Gouzenko himself began to testify before the Commission, naming certain Canadians as spies. The following day the Commission wrote to the Minister of Justice, asking that a number of suspects be taken into custody. This was done on the morning of 15 February, using the secret order-in-council of 6 October, 1945. Further detentions took place as the Commission gathered more evidence about the spy ring.[11]

The prisoners were held at Rockcliffe RCMP barracks in Ottawa, in solitary confinement, with the lights on day and night and the windows nailed shut. At first they were not allowed any visitors (including lawyers), nor any mail, they were not permitted to communicate with anyone, including even their guards, and they were told little about the

reasons for their incarceration. After a while, they were permitted to send off mail, but subject to extreme censorship.

One of the suspects was a Polish-born naturalized Canadian named David Shugar. A graduate of McGill University with a doctorate in physics, Shugar had worked as a radar specialist with the Canadian Navy on problems of submarine-detection.[12] Some sense of what Shugar and the others experienced is captured in a letter he sent to the Minister of Justice:

> In response to repeated requests for information, I was finally informed, last night, that mail between my wife and myself is being withheld at your orders, because of complaints included in my letters. As a result, I was left without news of my wife for five days; this action is, in my opinion, not only arbitrary and unjust, but inhuman as well.[13]

Shugar also claimed that he had tried on nineteen different occasions to get in touch with a lawyer, but permission had been refused. He added that for fifteen days he was kept under constant guard in a small stifling room with a naked 200-watt light burning continually, and to protest this treatment he had gone on a four-day hunger strike.[14] According to another of the internees, Gordon Lunan, Shugar was one of the least cooperative of the suspects, who "figuratively and almost literally spat in [the] eye" of one of the main RCMP officers. Lunan also suggested that the ordeal for Shugar was even worse because he was Jewish and several of the officers were anti-Semitic. As one RCMP officer said, "it was his duty to send those damned Jews back where they came from."[15]

Shugar did his best to protest publicly. As soon as he was allowed to communicate with his wife, she sent a letter of complaint to the Prime Minister and released it through her lawyer as a public statement to the press. She charged that "Gestapo methods" had been used by the police, who took away much of the family's private correspondence, as well as her childhood diaries, and had repeatedly refused to tell her the grounds on which her husband was being held. She also informed the public about the way that her husband had at first been denied both counsel and communication with his wife. Then, a few days later, Shugar's lawyer, A.W. Beament, protested publicly that the authorities had prevented him from asking Shugar whether or not to proceed with an application for habeas corpus.[16]

These early newspaper stories did not mention the Shugars by name, but a few months later, when he was no longer detained and could speak to the press himself, David Shugar made a public statement about the way that he had been kept in solitary confinement, including references to the "stifling" nature of the room in which he was held. Clearly, this was a man who felt outraged about his treatment, and had no intention of submitting quietly and deferentially to the authority of the state.[17]

Some of the detainees were more easily intimidated than Shugar. After a few days of incarceration, four of them were individually questioned by the RCMP, and asked whether they had given any information to the Soviets. During the interrogation, which of course took place without any lawyers present, the prisoners were subject to verbal harassment and intimidation in order to elicit full confessions. All four prisoners confessed, which made it possible for the government to consider laying charges under the Official Secrets Act.[18] (They could not be charged with treason, since the USSR was an ally of Canada at the time that information was handed over to it.) First, however, they were sent for further interrogation by the Kellock-Taschereau Royal Commission.[19]

The Commission investigation also led to allegations that civil liberties were violated. As one of the accused recalled the situation almost forty years later,

> [t]he very first thing that was said to me was, "You are under oath and you will answer all questions." I wasn't given any indication that I had any right whatsoever not to answer questions. Those of us who appeared before them in the first group had no knowledge that we had a right to counsel, or that we were in any danger because we had no counsel.[20]

When Shugar was brought before the Royal Commission a short while later, he told the Commissioners that his lawyer had informed him that he did not have to answer all questions. The Commissioners responded by stating that he had no alternative but to reply to all questions put to him. When he balked at this treatment, one of the judges threatened him with punishment, at one point shaking his fist at him. As Shugar later wrote in a letter to the Minister of Justice, "If I am to judge by the treatment accorded to me yesterday afternoon before your Royal Commission, I can only come to the conclusion that, as a Canadian citizen, I have been completely stripped of all my rights before the law."[21]

Did the Commissioners deny Shugar and the others their legal rights? In their final report the Commissioners included a section devoted to "Law and Procedure" which in effect constituted an after-the-fact defence of their behaviour. As they pointed out, their duties were set out under The Inquiries Act, which gave commissioners the power to compel witnesses to give testimony. The real problem was whether or not another statute, The Canada Evidence Act,[22] obliged them to inform the accused that they had a right to counsel. The Commissioners concluded that it imposed such an obligation upon them only when a criminal charge had already been laid, and that it did not apply in the Gouzenko investigations. As a result, they concluded, "In some instances we considered it expedient, in the exercise of the discretion given to us, not to accede immediately to the request of a witness for representation, although in most instances we did so upon the request being made."[23]

This was an effective means of securing confessions, and several key government civil servants later justified this as a necessary evil. Especially in the case of the first four interrogations, the Commission obtained much information which helped the Crown to prosecute and obtain convictions. Later, when some civil liberties were restored, the inquiry was less fruitful.[24]

Keeping the suspects insulated from legal advice was especially useful because of s. 5 of the Canada Evidence Act. This stated that if a witness objected to a question on the grounds that the answer might later prove incriminating in a criminal trial, the witness must provide an answer, but it could not later be used as evidence in any criminal proceeding against the witness (except in a prosecution for perjury). Without a lawyer to advise the importance of such an objection, a suspect could unwittingly provide information that could later lead to a criminal conviction. The decision of the Royal Commission to keep some suspects separated from legal counsel was certainly legal, and no doubt "expedient," but it was hardly ethical.[25]

The government knew that its response was an unprecedented infringement of traditional civil liberties. On 13 February King had written in his diary, "I can see where a great cry will be raised, having had a Commission sit in secret, and men and women arrested

and detained under an order-in-council passed really under War Measures powers. I will be held up to the world as the very opposite of a democrat. It is part of the inevitable."[26]

Over the next few months the Kellock-Taschereau Commission continued to investigate and report to the government, and King continued to worry privately. He was upset at the length of time the suspects were being detained, and angry that some of the wives had written to him and not received any answer. As he wrote in his diary, "people will not stand for individual liberty being curtailed or men being detained and denied counsel and fair trial before being kept in prison. The whole proceedings are far too much like those of Russia itself."[27]

However, whether by accident or design, the civil liberties issue was at first somewhat overshadowed by fears about nuclear war. Although the government did not mention the atomic bomb when it initially released information about the spy scandal, it was at first believed that the spy network had handed over information involving atomic secrets. The Toronto Globe and Mail, for example, carried banner headlines: "Atom Secret Leaks to Soviets." Initially the government did nothing to contradict this, and for about a month the Canadian public was given little further official information. The result, of course, was what one observer called "a flood of hearsay and gossip."[28]

On 2 March the Commission issued its first interim report, and for the first time most of the federal cabinet ministers, as well as the Canadian public, learned officially about Igor Gouzenko, as well as the names of four of the alleged spies. Shortly afterwards, the first of them, Emma Woikin, appeared before a magistrate and was sent to trial.[29]

Revelations about a spy ring operating in Canada shocked and disillusioned many Canadians. The Soviet Union was suddenly turned from a gallant ally into a reprehensible undeclared enemy. While there is no doubt that Canadian conservatives, and especially the RCMP, had never lost their antipathy to communism, many liberals and socialists were comfortable in a war-time alliance with a nation that formally supported egalitarian rights and had a constitution which proclaimed the values of free speech and association.[30]

Disillusionment with the Soviet Union also went hand-in-hand with a loss of faith in Canadians and their public service, for the political universe had suddenly been shaken by a

dangerous seismic tremor. For example, Norman Robertson, King's deputy minister for External Affairs, and a key government player in the Gouzenko Affair, was appalled to learn that he was acquainted with several of the alleged spies, one of whom was the associate secretary of the Ottawa branch of the CIIA.[31] Blair Fraser, the influential Maclean's Magazine editor, and supporter of the OCLA, noted with anguish that he personally knew six of the accused, and had "a considerable mutual acquaintance" with four others. This was proof of what he called "the Communist flair for infiltration."[32] In short, the authorities in Ottawa were badly rattled by the revelations.

On 15 March 1946 the Prime Minister tabled in the House the second interim report of the Royal Commission, and the nation was stunned when it was announced that the authorities had also picked up Fred Rose, an LPP member of Parliament.[33] Because the facts were just beginning to appear, the opposition said little about the civil liberties implications of the case that day, although the leader of the Conservative opposition, John Bracken, noted that "the refusal of habeas corpus proceedings, the holding of men without a legal charge against them, without the right of bail and without the right to have counsel, is a serious matter to all who pride themselves on the principles of British justice;" he added that only the "safety of the state" could justify this. Of course, even the government could agree with this. Where the government differed from its critics was that it consistently maintained that the danger to the state was so great that it legitimized significant violations of traditional British liberties.[34]

Over the next few days the government made further explanations to the House, including a statement that no atomic secrets had been revealed by the spy network and an explanation as to why Minister of Justice St. Laurent had inadvertently misled the House when (in December) he had said that there were no more secret orders-in-council. It also explained, in a way which highlighted the distinction between what Paul Romney has called the "constitutionalist" position rather than the "legalist" position, that the government had never really abrogated the right of habeas corpus.[35] In the words of St. Laurent,

> [a]ll that the habeas corpus statute provides for is that anyone who is detained may require that he be brought before a judge so that the judge will determine whether or not there is a legal case for his detention. Any one of these persons could have applied

> for and obtained a writ of habeas corpus, but it would have done him no good, because as soon as the judge would have been shown the order-in-council under which such person was detained, and the order-in-council which authorized it, he would have said "You are legally detained."[36]

When the Conservative MP Davie Fulton then asked how a person held incommunicado could bring a writ of habeas corpus, St. Laurent admitted that it would "not have been easy," but affirmed that such a person would still have had a legal right. In short, there had been no breach of the rule of law.[37]

Nevertheless, the government still welcomed criticism in the House. As St. Laurent said, "it is good, when extraordinary measures are taken, that they should be looked at very closely, and that those who venture to take them should feel that they have to respond to the tribunal of public opinion."[38]

Few parliamentarians, other than cabinet ministers, spoke in favour of the government's policy, but it was clear that Ottawa stood somewhere in the middle of the ideological spectrum, resisting even more authoritarian pressures from right-wing Westerners and Québecois. For example, Solon Low of the Social Credit Party made a speech which roundly criticized the government, but more for being soft on communism than for any civil liberties violations. Similarly, Liberal backbencher Wilfred LaCroix recommended that Ottawa outlaw all communist activity, as he himself had attempted with a private member's bill in 1940. Frederic Dorion (an Independent) and Pierre Gauthier (a Liberal who had previously been a Bloc Populaire MP) wholeheartedly supported the government, articulating a manichean position which contrasted the "good" RCMP with the "bad" communists.[39]

The most significant Parliamentary criticism of the government came from three individuals: M. J. Coldwell, the leader of the CCF; John Diefenbaker, a relatively obscure Conservative back-bencher; and C.G. (Chubby) Power, a Liberal back-bencher who until recently had been a member of King's cabinet.[40] Coldwell was the first to voice serious doubts about the government's policy. Noting that the Liberal government had a war-time tradition of civil liberties violations, he referred to allegations by some of the detainees that they had been held in brightly lit rooms without any access to relatives, friends, or legal counsel. Some of this, he added, "savours of the totalitarian system." He then went on to draw the attention

of the government to the importance of legal safeguards of "British liberty," using as support the maiden speech of Wilfrid Laurier in 1874.[41]

The major criticism of the government seemed to come from the Conservative Party, or more specifically, from John Diefenbaker.[42] According to historian Arthur Lower, who corresponded frequently with Diefenbaker about the need for a bill of rights, the majority of the Conservative Party members were initially unwilling to attack the Liberals on this matter. No doubt many of them were conservatives leaning to the right, willing to limit civil liberties in the interests of authority, especially where the spectre of communism stalked the nation.[43]

On 21 March, Diefenbaker made a speech which joined together the Gouzenko Affair, the Japanese deportation issue, and the continued internment of some Jehovah's Witnesses. All of these civil libertarian violations, said Diefenbaker, indicated the need for a bill of rights that would restrain government. Since the government had, the day before, introduced its Canadian Citizenship bill into the House for first reading, Diefenbaker asked that the legislation be amended to include a list of citizens' rights.[44]

Notwithstanding this call for a bill of rights, and a laudatory reference to the American system, Diefenbaker's view of civil liberties was primarily Diceyan, using the "British liberties" discourse with numerous references to Magna Carta and the rule of law. Moreover, his speech reveals not so much the "state despotism" discourse but a fear of the executive branch. As he said:

> Parliament abdicated many of its rights during the war, and today the government is endeavouring to perpetuate this temporary abdication. We placed our rights in pawn during the war as security for victory. Today we are asking that those rights be restored to us and that parliament be assured of the prestige to which it is entitled by reason of our democratic development and the heritage that is ours.[45]

He also pointed out that this was not the first post-war example of a cabinet tendency towards despotism, recalling that not only was the government proceeding to deport Japanese Canadians by means of an order-in-council, but it was doing so in apparent violation of the will of Parliament.[46]

Most Liberals, of course, supported the government; party discipline ensured that they refrained from saying anything about either the despotism of the state or the executive.

However, party consensus was broken by C.G. Power. According to B.K. Sandwell, the editor of Saturday Night, Power had been a moderating voice within the cabinet during the war, opposed to flagrant violations of civil liberties. Now, on the same day that Diefenbaker spoke, Power made a strong and well-publicized speech in Parliament which criticized the government for subverting traditional "British liberties." Beginning with a comparison of Magna Carta and PC 6444, he went on to quote from the 1944 report of the civil liberties committee of the Canadian Bar Association (CBA), which had affirmed some of the fundamental rights of Canadian citizens, including "almost sacred" criminal law protections such as the right "not to be detained at the mere arbitrary whim of the Crown," the right "not to be coerced to give any information or evidence against oneself," and the right to counsel.[47] After a few more remarks, including a lament about the lack of "a Canadian spirit" he returned to the liberal traditions and Magna Carta, saying that:

> As for me, brought up in an atmosphere wherein a framed photograph of Magna Carta was on almost every wall, accompanied with a warrant for the execution of Charles I, and steeped through my reading in the traditions of the martyrs of liberty and freedom, I cannot wish to turn back the pages of history seven hundred years and repeal Magna Carta. I cannot by my silence appear to approve even tacitly what I believe to have been a great mistake on the part of the government. If this is to be the funeral of liberalism I do not desire to be even an honourary pall-bearer at the funeral.[48]

Power's speech, which one law-school dean suggested was "the most vigorous criticism" of the government on this issue coming from any politician, stands as an excellent example of the "constitutionalist" reaction to civil liberties violations. While Ottawa maintained throughout the Gouzenko Affair that it had acted scrupulously within the law, taking actions that were supported by orders-in-council which in turn were passed pursuant to statutes that in turn were intra vires, Power was taking the position that Ottawa had acted in violation of the spirit of the constitution. It was not so much the death of liberalism that he feared, but the death of the "constitutionalist" approach at the hands of a government hiding behind a "legalist" conception of the rule of law.[49]

Meanwhile, the Royal Commission continued to investigate. By 29 March, when the government released the Commission's third interim report, all the detainees had been

thoroughly examined. Shortly afterwards, having used it to the fullest, the government repealed PC 6444.[50] Ottawa no longer possessed any residual war-time emergency powers to suspend the normal British liberties under the common law.

The trials continued throughout the spring, and were (with the exception of LPP organizer Sam Carr, who had escaped to the United States) finished in March of 1947. In some cases, such as that of Emma Woikin, the Crown obtained a conviction, but in the case of David Shugar, the magistrate concluded that there was insufficient evidence upon which to proceed to trial.[51]

Meanwhile, civil liberties organizations began to respond to the crisis. The Civil Liberties Association of Toronto (CLAT), which one might have expected to be in the forefront of the protest, chose discretion rather than confrontation. Although its April annual general meeting decided that the organization should take immediate action, the Council did nothing other than send a letter of protest to the Prime Minister.[52] The organization then remained quiet until it issued a report in June, noting that

> [t]he Council decided, and has since been supported by strong legal advice in its decision that it would not serve the interests of our Association to hold any sort of public meeting or demonstration until more facts are known and the trials in the courts are over. When that time comes, any seeming violations of civil liberties will be investigated and if substantiated the Civil Liberties Association will have to demand with the fullest publicity -- pamphlets, broadcasts or whatever is considered advisable -- an investigation into the operation of justice in this country.[53]

There are several possible reasons why the CLAT issued such a mild rebuke so late. June Callwood has argued that B. K. Sandwell served as a moderating influence on this matter. While George Tatham was the CLAT president at this time, the anti-communist Sandwell was still a member of the executive and no doubt very influential. According to Callwood, "Mackenzie King took care to keep Sandwell informed of the reasons the government required the War Measures Act, and why he thought the detentions in the barracks were necessary. Sandwell, flattered and sympathetic, influenced the decision of the CLAT to support the government and disapprove of protesters."[54]

It is not clear that Callwood is correct on this point. She unfortunately has no footnotes in her book, and presents no evidence for this claim, but it is certainly true that King

at least tried to get in touch with Sandwell "to give him an inside story so as not to have the Civil Liberties body begin to criticise without knowing of the retention [incarceration?] of civil servants."[55] Yet Sandwell's Saturday Night did not entirely approve of what was happening. Sandwell excoriated both the government and the Royal Commission for violating "British liberties" without adequate justification.[56] Nevertheless, in one editorial he intimated that there was little point in continuing to flog the government after it had repealed PC 6444, and he suggested that the accused were receiving fair trials despite their "unjustifiable" treatment by the Royal Commission. Therefore, he explained, he could not join with former members of the CLAT to raise a fund for "removing the prejudice caused to the defendants in the espionage case."[57]

These former members of the CLAT had formed a sub-group in April called the Emergency Committee for Civil Rights (ECCR). This committee increasingly began to distance itself from the parent body, which, already weakened towards the end of the war, went into a period of temporary decline.[58] The ECCR, by contrast became a tenacious critic of the government during this period, no doubt because it represented a less cautious and conservative brand of civil libertarianism than did CLAT leaders such as Sandwell. From almost the very beginning there were allegations that the organization was a "communist front" organization,[59] but such a label was overly-simplistic and misleading. While some of its members were part of "the movement" -- an amorphous, fragmented, and unofficial scattering of largely bourgeois intellectuals and artistes who were sympathetic to the Marxist critique of capitalism[60] -- several were either liberals or social democrats. Like war-time civil libertarians, most of them were "elite conformists," people sufficiently successful in their chosen fields of expertise that they could afford to express unpopular ideas, and sufficiently contrarian in their thinking that they were suspicious of conventional wisdom and governmental authority.[61]

For example, although he never became an executive member of the organization, Dr. E.A. Corbett was initially one of its activists.[62] As noted in Chapter 1 of this dissertation, Corbett was the President of the CAAE and had a long history of ties to the CLAT, including holding the position of vice-president for a while during the war. While Corbett was certainly

a social democrat with roots in the Social Gospel movement, he could hardly be accused of being a communist. More likely his initial support for the ECCR came simply out of a feeling that the CLAT should take stronger action, whether or not the accused were really communists.[63]

Similar concerns motivated Martyn Estall, one of the ECCR executive members. Estall, who at the time was Assistant Director of the CAAE, and national secretary of its Citizen's Forum,[64] was steeped in the United Church's Social Gospel/radical Christianity tradition, and had worked during the war with the FCSO, although by 1945 he seems to have experienced (like many others in that organization) a loss of faith in the ability of the Church and Christianity to provide answers for social problems.[65] Estall knew many activists within the radical left.[66] His connection with the FCSO had brought him into contact with Agatha Chapman and Frank Park, both of whom had close ties to many of the people involved in the Gouzenko revelations.[67] Moreover, he had a passing acquaintance with several of the alleged spies -- Israel Halperin he had met through his academic contacts, he knew Gordon Lunan when they both worked at the Wartime Information Board, and David Shugar had been at university with him. However, Estall was certainly no communist "fellow traveller," and he became involved in the ECCR not because of friendship but out of principle, for he was deeply angered at the way in which the government had treated these people by violating their basic civil liberties.[68]

A number of the ECCR executive were professors at the University of Toronto. C.A. Ashley was professor of commerce, A.T. DeLury was emeritus professor of mathematics, Leopold Infeld was associate professor of mathematics, J.D. Ketchum was an associate professor of psychology, and C.B. Macpherson was assistant professor of political economy.[69] Many of them, moreover, had left-wing leanings. For example, like so many human rights activists of this period, Ketchum came out of the Social Gospel tradition; he had been the chair of the SCM in the early 1920s, and both Infeld and Macpherson were even further to the left.[70]

Of all these committee members, Infeld was certainly the most controversial. A physicist and mathematician who had left his native Poland because of anti-semitic

persecution and then taught in the United States for a few years before coming to Canada, Infeld was a close colleague of Einstein and he had written several books which shed light on the latter's life and theories.[71] Like his mentor, Einstein, he displayed a strong interest in social justice issues and considered himself a "progressive."[72] This attracted the attention of the RCMP, especially after he co-founded (with Barker Fairley) the Canadian-Soviet Friendship Society and helped sponsor a pro-Russian National Unity Rally in Toronto in 1942.[73]

He was also a member (along with David Shugar) of the executive of the Science Committee of the National Council for Canadian-Soviet Friendship (NCCSF). This was an organization which, during the war, had been mantled in some respectability; its official patron had been none other than the Prime Minister himself, and the president was the financier (and former CLAT president), Sir Ellsworth Flavelle. In the eyes of the Kellock-Taschereau Commissioners, however, this organization had become little more than a communist "front" organization, and its members were therefore highly suspect.[74]

After the war, Infeld supported a variety of human rights causes. He and his wife (Dr. Helen Infeld) joined the CRCIA to protest the Chinese Immigration Act, and he began speaking out about the dangers of nuclear war. In 1946 he wrote a pamphlet for the CAAE/CIIA "Behind the Headlines" series, called "Atomic Energy and World Government," and also advocated, at a meeting of the CIIA, the outlawing of the atom bomb, a position which linked him to the peace movement, which was increasingly viewed by the authorities as communist-dominated. Then, a few years later, he became a topic of much speculation when he decided to return with his family to Poland for a year's sabbatical. This prompted a wave of right-wing hysterical attacks in which a number of people, most noticeably the Progressive Conservative leader George Drew, publicly stated that Infeld might carry atomic bomb secrets to the enemy if he were allowed to visit Poland. It was also revealed that Infeld had been under RCMP surveillance, and the controversy resurfaced a few months later when Infeld, appalled at the criticism he had received, decided to resign from the University of Toronto and live permanently in Poland. In the context of Cold War rhetoric, this decision probably solidified public opinion that he was a "red." It certainly helped to persuade the Canadian government; when he arrived in Poland he was asked by the Canadian embassy to

surrender his passport, and later his two children were stripped of their citizenship through a special order-in-council.[75]

It is important, when discussing the ideological leanings of people like Infeld, to recognize that many Canadians belonged, during this period, to the communist "movement." For the most part they were idealists, appalled at the way in which the capitalist system had spawned unemployment, fascism, and war. As Bryan Palmer has suggested, historians should have "a two-sided appreciation of the Communist experience," one that recognizes that while some communists were "bureaucratic sycophants of Stalin," others were independent thinkers who were drawn to the higher principles of democracy and human rights which they believed were at risk in Canadian society.[76] It is quite likely that Infeld fell into the latter category, and most likely was not even a member of the LPP.[77] Unfortunately, in the increasingly chilly climate of the Cold War, such fine distinctions were often blurred or ignored.[78]

C.B. Macpherson, the political philosopher, was also in "the movement." He and his wife Kay (later to become a well-known Canadian feminist and president of the National Action Committee on the Status of Women) were good friends of some of the people who had been picked up by the police, and initially had worried that they too might be arrested. As Kay Macpherson has written in her memoirs, she and her husband stood by their friends during the Gouzenko Affair, even in the face of conservative pressure from the university board, and were gratified that these friends -- unlike some of the others -- were finally exonerated.[79]

It was, however, not surprising that the Macphersons were closely involved with some of the accused. While C.B. Macpherson was too critical a thinker ever to be bound by the narrow doctrines of party dogma, he and his wife rubbed shoulders with many people who clearly believed in the moral superiority of the Soviet Union. He himself during this period maintained that the defects of Stalinism were overrated. In a review of Igor Gouzenko's memoirs, This Was My Choice: Gouzenko's Story, published in 1949, Macpherson called it yet another of the genre of works "purporting to disclose the total baseness of the Soviet regime." Much of this is "fantasy," he asserted, noting that the gullible public was unfortunately swallowing it holus-bolus.[80]

Yet Macpherson was more than just a critic of the conventional anti-Soviet wisdom. He taught political science from a Marxist perspective, and his writings tried to meld together socialist beliefs about economic planning with liberal views about personal freedom and democracy.[81] It is true, as LPP theoretician Stanley Ryerson has admitted, that some activists on the far left regarded democracy as "merely a formal, tactical-instrumental device in the class struggle." But it is also true, as Ryerson has added, that others such as C.B. Macpherson held firm to "democracy-as-content, as a fundamental human value." Macpherson's commitment to the ECCR, and later to its successor, the CRU, suggests that the organizations were more than simply "communist front" organizations intent on bamboozling the public. Rather, they were deeply committed to promoting the civil liberties essential to a well-functioning democratic political system.[82]

Not all of the ECCR activists were academics. One of the executive members was A.Y. Jackson, the famous Canadian painter.[83] Another was Jefferson Hurley, a Toronto business executive. The first chair of the ECCR, Margaret Spaulding, was a well-connected university-educated Toronto millionaire who had been a vice-president of the CLAT. Her father had been the president of Imperial Oil in Sarnia, where she had been raised, and she had inherited half of his wealth, which was considerable. This permitted her to devote herself to charitable and voluntary work, including care for the aged and the establishment of the St. John's Convalescent Hospital (just north of Toronto). During the war she received an MBE for her activities.[84]

By 1946 Margaret Spaulding was eminently respectable, except that she had a reputation for radical ideas and sympathies.[85] There is some disagreement among her family as to whether or not she supported the LPP, but she was probably part of "the movement," and for a while served as a vice-chair of the politically-suspect NCCSF. As a Rosedale matron who knew many people in the Canadian social elite, and a strong-willed, intelligent, and articulate woman who liked being on the public stage, she probably made an excellent spokesperson for the ECCR.[86]

Margaret Gould was another person connected to the ECCR. A close friend of Margaret Spaulding, she was the well-known Toronto Star journalist who (as noted in

Chapters 1 and 2) was involved with the CCJC, as well as with other human rights organizations such as the CLAT and CRCIA. She worked with Margaret Spaulding on Jewish rights issues and Spaulding was instrumental in getting Gould admitted as the first Jewish member of the University of Toronto Women's Club. Gould was a member of the Star's editorial board at the time of the Gouzenko crisis, and was responsible for at least some of its editorials criticizing the government in extremely strong language.[87] In addition, she may have informally lobbied the owner of the Star, Joseph Atkinson; according to the minutes of the meeting she attended on 10 May, he made a contribution of $1,156.86 to the ECCR.[88]

Another person unofficially associated with the ECCR (and with its successor the CRU) was Frank Park, a lawyer who was also a close friend of the Macphersons and several of the accused. Park initially provided legal advice to some of the arrested, and later attended some of the ECCR meetings. On the surface, Park was a "respectable" social democrat, with connections to the FCSO, the CCF, and the CIIA, but he was also active in the LPP, the Director of the NCCSF, and he even wrote pseudonymous articles for the communist Canadian Tribune. Moreover, he seems to have been widely viewed as at least a "fellow traveller." When the Kellock-Taschereau Royal Commission interrogated John Grierson, the head of the National Film Board and the Wartime Information Board (WIB), it suggested that he had perhaps hired Park because of his communist sympathies.[89]

Like Macpherson and many other people on the far left, Park did not share the disillusionment of the liberals and social democrats about the USSR, and refused to admit that Stalin's Russia was totalitarian. As Director of the NCCSF, he maintained that Gouzenko had given an erroneous picture of life in the USSR, and a few years later he produced (with his wife) an account of a trip to the Soviet Union which can only be described as an uncritical panegyric. He saw the Gouzenko Affair as having created an unfortunate level of anti-Soviet public antipathy, and wrote in the CIIA International Journal that "[t]o restore Canadian-Soviet relations to some degree of normalcy may not be easy. It can be done. It has to be done in the interests of Canada."[90]

Another interesting member of the ECCR, but an employee (executive secretary) rather than a board member, was Ken Woodsworth, the nephew of the recently-deceased

leader of the CCF. In the 1930s Ken Woodsworth had been the chair of the Canadian Youth Congress, and also chair of the Canadian Youth Committee to Aid Spain. According to Ivan Avakumovic, "Unlike his more famous relative, he did not find it difficult to collaborate with the Communists either before or after the outbreak of the Second World War," so it is perhaps not surprising that he was able to work with the radical ECCR board members.[91]

Although in time the Gouzenko Affair produced "a nationwide recrudescence of civil liberties activities in the Dominion," the ECCR was the major pressure group, raising and spending over $9,000 in a short period of time. This went for an office, a paid secretary, a detailed analysis of rights violations by the authorities and the Royal Commission, the frequent lobbying of the government, and the mailing of 15,000 pieces of literature.[92] These mailings consisted primarily of copies of four "Civil Rights" bulletins, a well as four large full-page newspaper advertisements which criticized the authorities, asked for donations, and promised that the ECCR would educate Canadians about their civil liberties, as well as providing for "legal and technical assistance where needed." The ads also drew attention to certain violations of traditional British liberties: the right not to be detained by arbitrary authority; the right not to be arrested other than according to the ordinary law of the land; the right not to be compelled to give evidence against oneself; the right to have an open trial; and the right to a full defence, with the assistance of a lawyer. One advertisement began with a quotation from Magna Carta, and reminded Canadians that the CBA, in its 1944 report, had viewed these rights as having "almost sacred significance."[93]

The ECCR was not the only civil liberties organizations to protest against the actions of the government and the Kellock-Taschereau Commission.[94] In March a number of concerned citizens began planning the creation of a new organization -- the Ottawa Civil Liberties Association (OCLA) which would immediately turn its attention to the Gouzenko Affair.[95] Unlike the ECCR, however, this organization was supported by a broad spectrum of the Canadian elite, with the list of sponsors including Liberal Senators Arthur Roebuck and Cairine Wilson, A.R. Mosher of the CCL, and H.S. Southam, publisher of the liberal Ottawa Citizen. When the inaugural meeting of the OCLA was held, on 15 May, the key-note

speakers included such luminaries as Senator Roebuck, CCF leader M.J. Coldwell, Conservative MP John Diefenbaker, and Blair Fraser, the Ottawa editor of Maclean's.[96]

The new group met a week later for an organizational meeting in which it selected a council and executive, including its first president, Wilfrid Eggleston. By the summer the OCLA had about two hundred members, led by an elected Council of twenty-one.[97] Like most civil libertarians, they were "elite nonconformists" who were important within their own fields of endeavour but willing to take the risk of attacking the government for policies which were often widely supported by the general public. They represented, moreover, a broad spectrum of classes. Five of the council were religious ministers, the honourary director was the businessman Harry S. Southam of the Ottawa Citizen, and the executive council contained both union leader A.R. Mosher[98] and Eric Morse, the national secretary of the United Nations Association in Canada.[99]

The OCLA also appears to have been one of the last attempts to create a civil liberties organization which spanned the increasing ideological gulf between the far left and those further to the right. According to one of the council members, the communists had about a quarter of the general membership, and by 1947 controlled about 8 of the 21 council seats. One of these was no doubt the first secretary of the OCLA, Lukin Robinson, a demographer at the Dominion Bureau of Statistics, and self-described "radical socialist" or "fellow traveller" of the LPP.[100]

Another member of the original Council was David Heaps, the parliamentary secretary to M.J. Coldwell. It is interesting to note that although Heaps was associated with the CCF, he believed that events were creating "a wave of anti-Russian feeling ... sweeping the country which was a danger to peace and our good relations with the USSR." Over the protests of the anti-communist Eggleston, Heaps was also supported by Agatha Chapman, a radical left economist and former MCCLU member who had testified before the Gouzenko Commission.[101] According to Chapman, "in protesting against the breaches of civil liberties which had been committed in the conduct of the enquiry, we would have some effect in reducing this [anti-Soviet] feeling." In short, for some members of the OCLA, civil liberties issues were linked to good relations with the USSR.[102]

Most other members, however, seem to have stood further right on the political spectrum. For example, the first OCLA president, Wilfrid Eggleston, was a prominent free-lance journalist who, ironically, had served at one time as the chief war-time censor for the government in Ottawa. A man who called himself a liberal in the mold of John Stuart Mill, Eggleston was also the Ottawa editor of Saturday Night.[103] In the fall of 1946 he resigned as president, and was replaced by J.P. Erichsen-Brown, an Ottawa lawyer who served as counsel for Emma Woikin, the first of the accused spies to be tried in court. Erichsen-Brown came from a family with strong social democratic and civil libertarian tendencies, and was fundamentally opposed to the membership of communists on a civil liberties organization.[104]

Tensions between communists and non-communists came to a head in early 1947, at the OCLA's general meeting. In a letter to Frank Scott, Erichsen-Brown wrote that "the Commies turned out all their cohorts in town" in order to remove him from the OCLA presidency as well as its council. As a result, the new president was Morris Fyfe, an Ottawa lawyer.[105] However, according to Erichsen-Brown, the OCLA council was still dominated by non-communists; he mentioned in particular Fyfe, Eggleston, Blair Fraser, CCL executive Norman Dowd, and CCF activist Donald C. McDonald.[106]

Before its energies were sapped by internecine squabbling, the OCLA members leaped into action with great enthusiasm.[107] The interim organizing committee appointed a fact-finding committee, which even before the 15 May meeting had produced a report which thoroughly criticized the government and the Royal Commission. This document agreed with the ECCR that the Kellock-Taschereau Commission had gone beyond its fact-finding role to act as a quasi-court in declaring certain people guilty and "implanting in the public mind, by this method, the certainty that these untried persons were guilty." At the same time, it agreed that several elementary procedural rights had been violated, such as the right to counsel and information about the right to remain silent.[108]

Unlike the report of the ECCR, however, the OCLA report emphasized a number of other violations of civil liberties; for example, it claimed that the detainees had been subjected to a campaign of verbal brutality and vilification by the RCMP, and argued that the

Commission had appealed to prejudice by referring to the birth-place of a Polish-born suspect [probably David Shugar] while omitting to do so in the cases of those born in Britain.

On the basis of this initial report, on 13 June the OCLA executive council approved a "resolution of protest" as well as a second resolution condemning the federal government for its plans to deport Japanese Canadians. The council decided that both resolutions would soon be sent to the Cabinet, members of Parliament, Senators, other civil liberties groups, and all daily newspapers in Canada. At the same time, however, the council decided not to work closely with the ECCR. According to the council minutes, "It was felt that since the Emergency Committee had been set up for a special purpose, whereas our Association had taken a 'middle' stand concerning the breaches of civil liberties which had occurred in connection with the espionage enquiry we would be better advised to carry on our work on our own." Reading between the lines, this probably means that the Toronto group was too closely connected personally to many of the accused, and that its membership was seen as excessively left-wing.[109]

Another group which became concerned about Ottawa's response to the Gouzenko Affair was the Civil Liberties Association of Winnipeg (CLAW), the group which changed its name after the war to the Civil Liberties Association of Manitoba (CLAM). With Arthur Lower as its president until the summer of 1946, the CLAW was well-positioned to do more than simply send off letters of protest; Lower shared his concerns and proposed strategies -- including a call for a Canadian bill of rights -- with a number of influential Canadians such as Blair Fraser and F.R. Scott.[110] However, it seems to have been David Owens who began lobbying the government about the Gouzenko trials in general and David Shugar in particular. Owens wrote to Diefenbaker in early May, deploring Ottawa's violation of Shugar's civil liberties and praising Diefenbaker as "the spokesman of true liberalism" in the House. Shortly afterwards, Owens wrote the Prime Minister, deploring what he called the "third degree" treatment of Shugar, and noting that "As a liberal of long standing, I am deeply pained by all this. The latest events make a sort of paralysis enter one's soul." He also sent off several letters to Paul Martin, the federal government's Secretary of State, in which he noted that both the deportation issue and the Gouzenko Affair demonstrated that Ottawa had

unfortunately "developed a temper favourable to arbitrary methods." The government's policy, he said "is a shabby kind of liberalism, if it is liberalism at all."[111]

Press comment on the Gouzenko Affair reflected -- as one would expect -- ideological divisions between left and right. However, this was not yet simply a Cold War cleavage between communists and non-communists. Instead, a variety of opinions were emerging in reaction to the new post-war reality.[112] On the far right stood several journals such as the Toronto Telegram and the Montréal Gazette. The latter, described by one contemporary observer as "the traditional Canadian exponent of conservatism," eschewed its normal policy of attacking the Liberal government, and instead decried the way the Conservative opposition raised "legalistic objections" to Ottawa's policy. According to the Gazette, the Conservatives were guilty of "untimely constitutional pedantry." From this perspective, the demands of order and state security -- especially in the context of anti-communism -- legitimized any emergency violations of traditional civil liberties.[113]

Somewhat to the left of the conservative position (but still on the right of the ideological spectrum) stood the classical liberals, such as Toronto lawyer R.M. Willes Chitty, who chaired the Ontario sub-committee of the CBA civil liberties committee. In late February he publicly protested the "Gestapo tactics" of the federal government, and stated that he would pressure the CBA into taking a public stand at its annual meeting in August.[114] As editor of the Fortnightly Law Journal, a sort of trade magazine for the Ontario bar, Chitty was nicely poised to snipe continually at the federal government. During the immediate post-war period his editorials showed no interest in such egalitarian civil liberties issues as the deportation of Japanese Canadians, but often fulminated against Ottawa's decision to replace the War Measures Act with the National Emergency Powers Act after the war, which Chitty saw as part of a general slide into the totalitarianism of bureaucratic state control. He also criticized the "New Despotism" of the rising welfare state, deploring what he viewed as deviations from the sacred principle of the rule of law.[115]

When Chitty turned his editorial attention to the Gouzenko crisis, his strongest diatribes were launched against the dangers of the newly-emerging welfare state, providing a perfect example of the tendency, mentioned in Chapter 1, of some classical liberals to

conflate their fear of cabinet despotism with their fear of the emerging welfare state. His most famous attack was an article which was reprinted approvingly in both the Globe and Saturday Night. (It was also roundly criticised in the House of Commons by conservative Liberal MP Dorion.) According to Chitty, who never shrank from hyperbole when riding his favourite hobby horse, the Gouzenko revelations were an excuse "for Ottawa after six years of bureaucratic orgy ultimately to pass beyond the pale of mere bureaucracy and adopt the final role of dictatorship by tearing up [Magna Carta,] the most venerated document in the proud history of the British people." The fact that the accused had not been given access to lawyers and brought before the courts immediately upon their "arrest" swept away "all the fruits of the struggle of the British peoples for freedom and democracy," and finally consolidated "the transition in Canada from the appearance of democracy to totalitarianism in fact." He continued on in this vein, warning of the dangers to judicial independence engendered by the appointment of Supreme Court justices to the Royal Commission, and going so far as to decry "the shadow of fear [which] lengthens across the country as the hand of the political police reaches out to snatch men and women from their homes into the concentration camp."[116]

While Chitty's rhetoric was extreme, and the Rockcliffe barracks were hardly Auschwitz, his worries about the dangers of bureaucratic despotism were not unusual. For example, in the famous Eldorado Mines case the federal cabinet had issued a post-war order-in-council which permitted a commissioner to conduct an inquiry "in such manner as he, in his absolute discretion, may deem proper," including the right to exclude counsel. It also empowered the commission to authorize an investigator to enter premises, search them, and confiscate evidence. This was decried in the liberal press, as well as by Conservatives in the House of Commons.[117] In addition, John Diefenbaker soon began calling upon Canadians to join in a crusade to re-establish freedom in Canada. Speaking at a meeting of a Montréal Progressive Conservative riding association in May, Diefenbaker suggested that the Liberal government was wedded to the notion of government by order-in-council, and referred to the Liberal regime as a "dictatorship of bureaucracy."[118]

As pointed out in Chapter 1, the classical liberal concern about the dangers of the welfare state was more common among lawyers than among lay-people. The liberal press was

for the most part reform liberal rather than classical liberal, and therefore supportive of the growth of the welfare state. As a result, press analyses of the Gouzenko crisis usually avoided references to "bureaucratic despotism" and concentrated on how the cabinet and Royal Commission had violated the substantive civil liberties of Canadian citizens without the explicit consent of Parliament.[119]

Consider, for example, the influential liberal journal Saturday Night. As noted in earlier chapters, its editor, B.K. Sandwell, was interested in egalitarian rights (such as the Japanese deportation issue) as much as libertarian values. However, he was a strong believer in classical liberalism, even going so far as to argue during the Gouzenko Affair that the CCF "can never really respect individual rights or liberties except when they do not happen to conflict with Socialism."[120]

One of Sandwell's first critical editorials on the Gouzenko Affair was written in mid-March, and demonstrated more of a concern with "state despotism" than with the tyranny of an unchecked cabinet. Dubious about the Commissioners' assurances that the accused had voluntarily foregone their right to counsel, he pointed out that a denial of counsel was "a flagrant violation of the fundamental principles of liberty as conceived in British countries," adding that the Civil Liberties Committee of the CBA had stated in 1944 that these principles had "acquired almost sacred significance."[121]

Within a month Sandwell became aware that things were even worse than he had feared. He pointed out in a lead editorial that order-in-council PC 6444 was more authoritarian than anything passed during the war. As he noted, there were certain safeguards in Section 22 of the Defence of Canada Regulations (DOCR), such as an obligation to inform a person of the grounds of detention, to inform the detainee's family, and to permit that person to obtain legal counsel. He added that he was dismayed that some newspapers, such as the Montréal Gazette and the Toronto Telegram, were supporting the government on the grounds that the civil liberties of the accused had been violated "in accordance with the terms of the law enacted by Parliament." As he said in a later editorial, "it is ... constitutional theory, that Parliament should not interfere with rights so sacred as Habeas Corpus without the gravest of reasons."[122] In short, the "constitutionalist" position rather than the "legalist"

position underlay Sandwell's "British liberties" analysis of the Gouzenko Affair's civil rights violations.

At the same time, however, Sandwell also worried about the tendency in Ottawa to govern by orders-in-council. As noted in Chapter 2, he wrote a number of columns about the way in which Japanese Canadians had been stripped of their rights through orders-in-council rather than through legislation, and one of his columns referred to "the vicious principle involved in all government by secret orders."[123] Moreover, it was not just the deportation issue and the spy trials that worried Sandwell. His magazine also expressed concern, as did a number of other periodicals, about the "cabinet despotism" of a secret order-in-council, PC 6577. According to Sandwell, this abolished habeas corpus "for any person 'suspected' by any uniformed member of the Canadian armed forces, of being a deserter from the U.S. forces." This order, like the one used to arrest the suspected spies in the Gouzenko Affair, and the deportation orders, was passed in the fall of 1945, after the wartime emergency had ended.[124]

As was also noted in Chapter 2, the Japanese deportation issue helped to persuade Sandwell at one point that perhaps Canada needed a bill of rights to restrain the executive. One would have thought that the Gouzenko crisis should have strengthened his resolve on this matter. However, such was not the case. When John Diefenbaker, responding in part to both the deportation issue and the Gouzenko Affair, suggested that the new Citizenship Bill contain a bill of rights, Sandwell was skeptical. Rather than using this as an opportunity to create a bulwark against "cabinet despotism," he fell back upon the traditional Diceyan position of parliamentary supremacy backed by a vigilant public: "There is much value in the doctrine that the powers of such legislative bodies should be restricted only by the good sense and moderation of their members -- and thus in the long run of the people who elect them."[125]

Other liberal newspapers contained comments which warned of the dangers of both "state despotism" and "cabinet despotism," but unlike Chitty they did not normally link the latter to the development of the welfare state.[126] For example, while the Globe initially used the announcement of a spy scandal as an excuse for some red-bashing, it soon applauded the civil libertarian speeches of John Diefenbaker and C.G. Power, accusing the government of

violating traditional British liberties, and suggesting not only that it was anti-democratic but that it was also employing "totalitarian methods."[127]

The Winnipeg Free Press also attacked the government. An editorial by Bruce Hutchison deplored the "star chamber" tactics of the federal government, which he said had denied the "oldest of our liberties," the right to a fair and public trial. He added that this was done "without consulting Parliament," and lamented that the cabinet could act so irresponsibly, suggesting that neither the public nor Parliament (with the exception of C.G. Power) was interested in stopping government from adopting the methods of a "totalitarian state." A few weeks later, just after David Shugar was acquitted, the Free Press also excoriated the government for its intolerable "star chamber methods," which violated British principles such as Magna Carta and were the methods of a police state rather than a democracy. (A few days later, Diefenbaker read out this editorial in the House of Commons, stressing that it came from a Liberal newspaper.) Then, some months later, in an editorial exhorting the CBA to take a principled civil libertarian stance, the Free Press continued these themes, claiming that Ottawa had subverted "British freedom and Canadian justice." It also stated that part of the problem was an excess of governmental discretion, and suggested that part of the solution might be a bill of rights.[128]

The Toronto Star also was concerned about both the powers of the state and an unchecked cabinet. About ten days after the first arrests in February, the Star expressed "concern" that the state was prohibiting the thirteen suspects from having access to legal advice, and added that "only a military emergency such as does not exist would warrant the undemocratic and, in fact, dictatorial course which such a detention involves." Two days later it published a second editorial, pointing out that Ottawa's behaviour was contrary to "British" tradition, and "savours too much of totalitarianism." Later editorials fretted about the granting of excessive powers to the police and suggested that the federal cabinet should divest itself of those special law-making powers which were inappropriate in a peace-time situation.[129]

Although one might have expected an equally vigorous attack against the government by the CCF-affiliated Canadian Forum, there was little protest in this periodical. Aside from one editorial which decried "this startling departure from the methods of British justice," the

main comment was more of a defence of social democracy than a broadside against Ottawa. Written by Donald C. MacDonald, the CCF activist and OCLA member who later became the head of the CCF/NDP in Ontario, the article contrasted the social democratic perception of civil liberties with the arguments of R..M.W. Chitty, suggesting that his type of concern for civil liberties was "basically an economic interest, repeating a determination to block, if possible, the advance toward a planned direction of our economy." From MacDonald's perspective, the more important civil liberties issue was not the necessity of reining in the executive but the need to exert democratic control over the state -- ensuring not only respect for traditional legal freedoms but also developing protections for new economic rights, such as the right to join unions, to strike, and to picket. These rights, he stressed, were just as important as traditional property rights, and he took umbrage at a recent article by B.K. Sandwell which suggested that the social democrats' denigration of property rights made them inadequate defenders of civil liberties.[130]

Finally, on the far left the LPP officially viewed Ottawa's response to Gouzenko's revelations as a "red-bashing" scheme. As M.J. Coldwell pointed out to the House, the LPP press ran stories, "widely quoted in the Soviet Union," that the government was engaged in a "plot" against the far left wing of the labour movement and the USSR.[131] Communists also maintained that civil liberties were jeopardized. The Canadian Tribune, for example, was careful to give press coverage to the exoneration of David Shugar, as well as to the activities of civil liberties organizations, especially if they criticized the Kellock-Taschereau Commission. Above all, the communist press supported LPP MP Fred Rose, who claimed to be innocent. This in turn created a subsidiary civil liberties issue (which also attracted the attention of the liberal press), when the Montréal police broke up public demonstrations and arrested LPP supporters distributing tracts criticizing the government's treatment of Rose.[132]

The Gouzenko Affair also engendered criticism from people and groups which were normally at best tangential members of the human rights community. For example, the University Women's Club in Kingston sent a resolution to the Prime Minister which made no explicit reference to any civil liberties violations, but urged the government to maintain the "basic rights of Canadian citizens" which are part of our British heritage.[133]

The Canadian public also heard from individuals who were not formally associated with any rights organizations.[134] For example, Lewis St. George Stubbs, a political maverick but not a member of the communist party,[135] addressed a large meeting in Winnipeg on May Day, 1946, in support of Fred Rose, who by that time had been convicted of violating the Official Secrets Act. Stubbs argued that "[h]e was a Jew, a Communist, and an MP from Québec, in short, an ideal victim for the bigshots. When the big powers make up their minds to get you, nothing will stop them."[136]

A more temperate criticism of the government was delivered in an address to the Saskatchewan Law Society on 23 May by Dean F.C. Cronkite of the University of Saskatchewan Law School. Cronkite made an impassioned but dispirited evaluation of the state of civil liberties in Canada. He noted that some protests had been made, but maintained that most of these came either from the LPP or from the legal profession. He was heartened by the objections raised by some members of the House, especially Diefenbaker and Power, but he realized that these members were only a very few trying to stem a tide of authoritarianism. He quoted with disapproval the vitriolic anti-communist remarks of MP Pierre Gauthier, but was most depressed by the results of a recent public opinion poll. On 15 May the Canadian Institute of Public Opinion (Gallup poll) had issued a report on this matter, in which it revealed that 93% of Canadians over the age of 21 had heard of the "Russian spy reports," but that only 16% of the population disapproved of the policy of the government, while many were undecided, and a substantial 61% believed that the government had "acted wisely." Moreover, of those who disapproved of the government, only 20% -- about 3% of the total population -- disapproved of the suspension of the rights of citizens; the rest either disapproved of the publicity (15%) or felt that the government had been too lenient (65%). If ever there was evidence that the Canadian political culture entails considerable deference to authority, this was it.[137]

Like other civil libertarians, Cronkite worried about the public response -- or lack of it.[138] He referred to the "lethargy" of the Canadian people, and suggested that the country was ripe for creeping fascism. While he was careful to say that he did not think that anyone in the government had plans to create a dictatorship, he said that during the war Canadians had

become accustomed to the "habit of executive legislation," and in a country "filled with fear and hatred" this was a dangerous combination. Finally, he said, "in my opinion we are in for it....I can see only fascism ahead or chaos followed by fascism." Perhaps he was slightly heartened when the Law Society of Saskatchewan shortly afterwards adopted a resolution which, while not entirely supportive of civil liberties, at least implicitly criticized the government and drew attention to the liberal principle of the rule of law.[139]

Other supporters of British traditions levelled different criticisms at government. For example, Senator Arthur Roebuck, who was now acting as the lawyer for one of the accused, was asked to speak at the annual meeting of the Ontario Police Association. He delivered a broadside which attacked the general principle of using judges in commissions of inquiry, and castigated Kellock and Taschereau in particular for violating the civil rights of the accused by disregarding "the great beacons in English law which light the way to freedom and security, the Magna Carta of 1215, the Petition of Right of 1627, the Habeas Corpus Act of 1679, the Bill of Rights of 1688."[140]

In the middle of all this, on 27 June, the Commission sent the government its fourth and final report, which turned out to be as contentious as anything that had so far transpired. It was a self-serving document that justified the civil liberties abuses of the last few months by making frequent references to Gouzenko's testimony about the dangers of a Soviet "fifth column" in Canada. As the Commissioners put it, "Essentially what has happened is the transplanting of a conspiratorial technique, which was first developed in less fortunate countries to promote an underground struggle against tyranny, to a democratic society where it is singularly inappropriate."[141]

The report also denounced or declared guilty a number of people who had not yet been tried, including one (David Shugar) who had been exonerated in the courts, and several who could not be tried because of lack of evidence.[142] A number of civil libertarians therefore complained that the release of this report harmed the administration of justice. Moreover, these allegations were made on the basis of what civil libertarians felt was hearsay evidence and opinion, with the Commissioners claiming that their findings were valid no matter what

was decided in any court of law! In other words, to the traditional principle of legal guilt, they had added a new category of extra-judicial guilt.[143]

The most extensive criticism of the Commission's final report came from the ECCR. In mid-August the organization sent a copy to Ottawa, using this as an excuse for publicly denouncing the commissioners. There are no names appended to this brief, "Justice and Justice Only?" but it appears to have been written by someone with legal training -- probably Frank Park.[144]

The ECCR document criticized the government and the Kellock-Taschereau Commission on a number of grounds. It argued, first of all, that there was no need to appoint the Commission in the first place. "If a secret, confidential job had to be done, it should not have been done by a Royal Commission. The job was a police job and any investigation by the police which disclosed grounds for a prosecution should have been followed by immediate action. Those accused should have been brought before the courts and charged in the ordinary way." In the eyes of the ECCR, "the Commissioners were simply being asked to give their O.K -- the approval and prestige of two Supreme Court judges -- to the conclusions already reached by ... the RCMP."[145]

The Commission itself, according to the ECCR, improperly acted as a court of law, finding some people guilty rather than simply collecting evidence. Moreover, after usurping the functions of a court, the Commission compounded the injustice by departing from the normal rules of evidence binding on the courts. Since the alleged spies were already incarcerated, and facing the imminent possibility of prosecution, they were as much entitled to a warning that they were not obliged to speak as would be any person apprehended by the police under normal circumstances.[146]

Finally, the ECCR pointed out that there was also, in hind-sight, no pragmatic defence of these civil liberties violations. As the author of the brief said,

> [i]t does not appear that any material of such importance to the safety of the state was uncovered by the process of detention as might, in time of emergency, justify the exercise of such arbitrary powers.... The chief result of the detention has been as was pointed out in the [July 1 ECCR] "open letter to the Prime Minister of Canada" to intimidate those detained and induce them to incriminate themselves.[147]

The ECCR Report does not appear to have had much effect, at least at the obvious level of public debate. For example, the association sent a copy to John Diefenbaker, asking for comments, but Diefenbaker did not reply, and at no time mentioned the report in any of his speeches. References to the ECCR and its report were virtually non-existent in Hansard and in the contemporary press. At a time when paranoia about communism was blossoming, "respectable" members of society appear to have suddenly become very careful not to associate themselves with the radical left.[148]

Nevertheless, civil liberties continued to be a "hot" topic. The Canadian Institute of Public Opinion had responded by doing another Gallup poll, this one intended to reveal the public's knowledge of fundamental civil liberties. The poll revealed that a majority of Canadians were not fully aware of all their rights concerning such matters as the requirement of a warrant for arrest, the right to a lawyer, or the right to refuse to answer questions, and they also had little understanding of Magna Carta or the principle of habeas corpus. For civil libertarians this was all the more alarming because some people were proposing permanent limits on certain rights. The Chief Constables Association of Canada, for example, was suggesting that the country would be well served by the fingerprinting of all citizens, and the influential conservative journal in Montréal, Relations, called for the complete banning of the LPP.[149]

Conservative authoritarian tendencies also surfaced in the proceedings of the CBA.[150] As noted earlier, C.G. Power's parliamentary speech in March referred to the 1944 CBA civil liberties committee report. This had been mildly critical of the government's war-time limitations on civil liberties, listed certain criminal law rights which had an "almost sacred significance," and implicitly suggested the need for a national bill of rights.[151] In the summer of 1946 the same committee delivered a report on the Gouzenko Affair, criticizing the government's handling of the matter and recommending that the CBA pass three resolutions: the first giving "uncompromising support of the Rule of Law," and "strongly disapproving" any governmental action which infringed upon freedom under the law; the second advocating an amendment to the Canada Evidence Act that would give a witness the right to claim "absolute privilege" (i.e. immunity from future prosecution) for any evidence he might

provide, unless at the time that he was compelled to give evidence he was informed of his right to claim such privilege and chose not to do so; and the third calling for a cessation of the practice of using judges as Commissioners and the publication of their reports prior to any trials.[152]

The committee report was not unanimous, and when it was submitted to the AGM, the dissenting committee member told the audience that the government's actions had been necessary on the grounds that it had been "a moment of peril and of crisis." Some other members of the audience went even further in supporting the government and the Royal Commission; one member argued that Canada was "in the midst of the greatest struggle of the human race -- the struggle between the system of free enterprise and that of the controlled economy." A substantial number of members therefore called for an expurgated report which made no explicit reference to the Commission.[153]

This CBA decision illustrates an important general truth about civil liberties. Many studies of public attitudes towards rights and liberties have pointed out that the better-educated members of society, especially lawyers, are more likely to support these principles than members of the general public. This has provided evidence for the so-called theory of "democratic elitism," which argues that the continued health of a democracy is dependent upon the existence of powerful (but tolerant) elites. However, a study published in 1991 argues that ideology plays a more significant role; the authors note that in the modern age social democratic elites are extremely civil libertarian, but conservative elites are no more committed to these rights than the conservative masses.[154] The CBA debate supports this revisionist interpretation. While lawyers as a group in Canada were well-versed in the rhetoric of the British liberties tradition, including a reflexive obeisance to Magna Carta, they were also part of the economic-political elite, and therefore frequently conservative in their orientation. Dominated by what one contemporary report referred to as the "old guard," it is not surprising that in 1946 many CBA members were reluctant to criticize the government.[155]

Moreover, conservative principles were buttressed by considerations of self-interest. The Supreme Court judges who made up the Royal Commission were, of course, respected former members of the Association, and its membership also included the Minister of Justice.

In addition, the president of the CBA, E.K. Williams, served as the Commission's chief counsel, and several other prominent members of the Association had either worked closely with the Commission or acted as prosecutors. For example, Gerald Fauteux, the honourary secretary of the CBA (and later Chief Justice of Canada), was assistant counsel for the Kellock-Taschereau Commission.[156]

On the other hand, the "old guard" was opposed by some young (or perhaps middle-aged) Turks. R.M.W. Chitty, for example, took the position that "The lawyer stands for the rule of law between subject and subject, and between subject and government. Even if the state be in direst peril, we are still a democracy and we must still adhere to democratic principles. If we adopt totalitarian methods to save democracy, we kill democracy."[157]

In the final analysis, the members of the CBA chose to have their cake and eat it too. A large majority of the members voted to reject the report while still accepting its principles. In the words of the Canadian Bar Review, "[t]he report made it clear that the members, while desiring to go on record in favour of the specific recommendations of the report, were not prepared to include therewith any criticism of the government in its handling of the espionage matter." In short, conservatism dominated the association, which leaned more in the direction of law and order than of individual liberty.[158]

Trials continued into the fall of 1946, and civil liberties organizations continued to comment. No doubt the members of the Montréal civil liberties community took an especially keen interest in the Gouzenko Affair, since several members of the now moribund MCCLU had been implicated, including Agatha Chapman, Samuel Burman, Gordon Lunan, and Raymond Boyer.[159] Indeed, the last two were not only accused but also convicted of violating the Official Secrets Act.[160]

In November, the newly-formed MCLA published a newspaper advertisement criticizing PC 6444, the operations of the Kellock-Taschereau Commission, the Japanese Canadian deportation policy, and the use of injunctions as a strike-breaking tool.[161] Aside from this advertisement, however, the MCLA seems to have been relatively quiet, perhaps because by this time both the deportation issue and the Gouzenko trials were almost over. In any case, as noted in Chapter 2, the association only really came alive in December, when

Duplessis' persecution of the Jehovah's Witnesses created the momentum for a large public protest meeting.

Meanwhile, the ECCR continued to attack both the government and the Kellock-Taschereau Commission in its news bulletin "Civil Rights," and attempted to extend its connections into the field of organized labour. The two major trade union umbrella groups, the TLC and CCL, were sufficiently disturbed by Ottawa's treatment of the Gouzenko Affair that they both passed resolutions of condemnation at their annual conventions in September. By then the ECCR had obtained endorsement and/or financial support from a number of trade union locals: The Toronto District Trades and Labour Council, the B.C. District of the Mine, Mill and Smelter Workers, the United Electrical Workers, the United Garment Workers, and the Lumber and Sawmill Workers. In addition, the Toronto TLC had named two delegates to attend meetings of the committee: Ford Brand and S. Lapedes.[162]

The selection of the two delegates probably reflects an attempt to balance the left and the right within the TLC. Ford Brand, an Orangeman, was politically active in the CCF, with a strong interest in the field of human rights and civil liberties -- a member of the CRCIA, and later the first chairman of the Toronto Labour Committee on human rights (which was to take a major role in demanding an anti-discrimination legislation in Ontario).[163] Sam Lapedes also had a strong interest in human rights; he was one of the people who, at the TLC's 1947 convention, introduced a resolution calling for a bill of rights. However, as a strong communist activist he was the sworn enemy of social democrats within the trade union movement. For example, he opposed the founding of the Toronto Labour Committee on human rights, on the grounds that it was instituted by the anti-communist social democratic Jewish Labour Committee (JLC). Later, as the Cold War heated up, Lapedes was one of the people expelled from the mainstream trade union movement, and spearheaded a bitter struggle between the communist-dominated Canadian Garment Workers Union and the "right-wing" United Garment Workers of America.[164]

The representation of individual unions, on the other hand, clearly indicates that the ECCR appealed almost entirely to communist-dominated organizations. Mine-Mill, the Electrical Workers, and the Canadian Seamen's Union, for example, were all unions that came

under attack from the liberal and social-democratic "right-wing" trade unions because of their communist leadership.[165]

Shortly afterwards, on 22 October, the ECCR changed its name, in recognition of its desire to constitute a permanent civil liberties organization dealing not just with the Gouzenko Affair, but with a wide spectrum of issues, including the treatment of Japanese Canadians (as discussed in Chapter 2). It now called itself the Civil Rights Union (CRU), and its constitution stated that its purpose was "to set forth the basic civil rights of Canadians; to protect every Canadian from the arbitrary suspension of these rights; and to raise funds for the above purpose and for legal and technical assistance where needed." Among other things, it recommended the adoption of a Canadian bill of rights. The organization continued to speak out on Gouzenko-related matters, and by early 1947 it was proposing to circulate a petition asking the federal government to set up a Parliamentary inquiry that would investigate the civil liberties violations which resulted from the Gouzenko Affair.[166]

The executive of this new organization was, on the whole, fairly left-wing, consisting of most of the original ECCR members. Mrs. Spaulding once again was the chair, and the rest of the executive consisted of Ashley, DeLury, Estall, Hurley, Infeld, Jackson, Ketchum, and Macpherson. Within a year or so, the letterhead of the organization included a few new members on the executive, including Barker Fairley (professor of German at the University of Toronto), C.S. Jackson (the well-known communist leader of the Electrical Worker's union), and Clare Pentland (an economic historian with strong left-wing tendencies).[167] As Chapter 5 will demonstrate, this organization was widely regarded as a "communist front" by the authorities and increasingly shunned by most other (liberal) civil liberties groups, but it continued to soldier on, taking up a number of libertarian and egalitarian rights causes in the late 1940s and early 1950s.

By the spring of 1947, however, the Gouzenko Affair was essentially over. The government announced early in the year that it was going to set up a parliamentary committee to examine "questions of human rights and fundamental freedoms and the manner in which those obligations accepted by all members of the United Nations may best be implemented." This committee, which was formed later in the spring, attracted interest group criticism about

the Gouzenko Affair, but it also broadened the range of debate, so that other human rights issues began to share the spotlight.[168]

In addition, by March 1947 all of the Gouzenko trials were over, with the exception of LPP organizer Sam Carr, who had fled to the United States and was only arrested in 1949. In the final tally, twelve people were convicted (although two were freed on appeal), six people were acquitted at trial, and two people were freed when charges were withdrawn. Of the people convicted, one was Fred Rose, the LPP member of Parliament, and another was Sam Carr. Both of them received the longest sentences, six years in prison. Most of the others received sentences from two to five years in duration. David Shugar, as the next section of this chapter will explain in more detail, was exonerated twice -- once when the magistrate found that there was insufficient evidence to proceed with a trial, and again when he was found not guilty by a judge.[169]

Was justice served? As always, this is in part a matter of ideological perspective. The liberal view, either classical or reform, emphasizes the traditional freedoms of the individual and would limit them only in extraordinary circumstances. The conservative view, on the other hand, defends public order over individual freedom. Yet looking back, even the relatively conservative scholars Granatstein and Bothwell have written that "[i]t is difficult to avoid the conclusion that the Canadian government, confronted with an extraordinary situation, reacted with arbitrary and harsh measures that threatened to ape the standards of the society that the Soviet spies were serving."[170]

In part, evaluation depends upon whether one adopts a "legalistic" or "constitutionalist" viewpoint. It is true, as the government was fond of repeating in the House of Commons, that everything was done with a punctilious regard for legal niceties. The rule of law, so beloved of conservatives and liberals alike, was scrupulously followed. Yet this "legalistic" defence seems somehow inadequate, especially in the light of the effect that internment and interrogation had upon the suspects. From the perspective of someone like David Shugar, the authorities had violated his traditional common law rights, the "precious British liberties" which were supposed to stand as a major difference between ordered civilization and despotism, rights which had acquired an "almost sacred significance"

(according to the CBA report of 1944). In this sense, the government and the Royal Commission acted unconstitutionally, deviating from the spirit of the fundamental law at the same time that they adhered rigorously to the letter of the law.[171]

Of course, it is always possible to invoke the principle of state security to justify measures which violate the spirit of the constitution, and no doubt some of those convicted would have been declared not guilty if they had been allowed early access to legal aid.[172] But there is no evidence that the state was ever really endangered.[173] For one thing, no atomic secrets were revealed, and the information provided to the Soviets was on the whole fairly innocuous. For example, when Raymond Boyer, who received two years in prison, handed over information about RDX, a secret explosive, he did so because at the time the Soviets were still Canadian allies and he felt that they needed the information. Moreover, the information he handed over was not the formula for the manufacture of RDX, but rather information that would enable the Russian Technical Mission to know what to ask for when they were visiting establishments in Canada. Looking back years later, Boyer argued, "I didn't realize it was the beginning of the Cold War."[174]

In fact, the alleged Soviet "spy network" was a small loose collection of naive idealists rather than a deadly efficient conspiracy. Contrary to the claims of Igor Gouzenko and the Kellock-Taschereau Royal Commission, there never was a "fifth column" with tentacles reaching into every cranny of Canadian society. It is hard to see how a few convictions under the Official Secrets Act could justify the treatment of the prisoners in Rockcliffe barracks, and the entire affair seems in retrospect to have been a massive example of authoritarian "overkill." In the final analysis, the Canadian government traded its "precious British liberties" birthright for nothing more than a mess of pottage.

C: DAVID SHUGAR

Canadian civil liberties organizations were, as the previous section has indicated, concerned about a number of aspects of the Gouzenko Affair. An examination of their records, however, suggests that some of them took an especial interest in the treatment of one of the alleged spies in particular, David Shugar. For many people who lived through the Gouzenko trials, the treatment of Shugar seemed to be especially odious.

As the Kellock-Taschereau Commission tells us, David Shugar was born in Poland in 1915, and came to Canada at age four or five. He received both a bachelor's degree and a doctorate from McGill University, and entered the Canadian Navy as an Electrical Sub-Lieutenant in 1944 where he worked as a radar specialist dealing with submarine-detection research. In 1946, when he was detained as a suspected spy, he had been discharged from the Navy and was employed by the Department of National Health and Welfare.[175]

As noted earlier, Shugar had been one of the internees who insisted on his legal rights, sending the Royal Commission six requests for a lawyer as well as thirteen similar written protests to the Prime Minister and Minister of Justice. When he "went public" with his story shortly after his first appearance in court, he received a certain degree of sympathy from the liberal press, as well as attention in the House of Commons.[176]

The Commissioners' Second Interim Report of 14 March recommended that Shugar should be prosecuted, for "there would seem to be no answer on the evidence before us to a charge of conspiring to communicate secret information to an agent of the USSR." It maintained that there was evidence in the Gouzenko papers that someone code-named "Prometheus" was working with LPP organizer Sam Carr and had agreed to provide him with information about his radar research. The Soviets believed that Prometheus had agreed to provide them with such information, using Carr as an intermediary, and the Commissioners argued that not only was Shugar the shadowy figure Prometheus but that Shugar had indeed agreed to provide classified information.[177]

Why did the Commissioners come to this conclusion? The evidence seems to have been largely circumstantial. The Gouzenko papers demonstrated that the Soviets were interested in Shugar's research, and that he knew Sam Carr. Moreover, his name actually

appeared in the documents (although he was never identified as Prometheus), and the Commissioners seem to have believed that if the Soviets were expecting information it must have been because Shugar had encouraged them.[178]

In addition, the Commissioners had found Shugar to be uncooperative; he quibbled about what constituted "communism," and balked at some questions, claiming that his legal counsel had informed him that he had the right not to answer. This clearly frustrated the Commissioners, who were especially interested in his political ideas, since another of the suspects alleged that Shugar's ideology was communist and that he had been one of the people responsible for the establishing of what the Commissioners believed was a communist-dominated organization, the Canadian Association of Scientific Workers (CASW).[179] Shugar denied the allegation that he was a communist, but he had helped to organize the CASW, and was a member of its Ottawa branch executive. Moreover, he was (as noted earlier) active in another suspect group, the NCCSF. Finally, he admitted to having attended "a study group on socialism," and refused to provide names of all the people he had known in that group.[180]

The Commissioners did not say explicitly that they considered Shugar to be guilty because of his association with communists, but they did report that they "were not impressed by the demeanour of Shugar, or by his denials, which we do not accept. In our view we think he knows more than he was prepared to disclose." As one group of contemporary civil libertarians observed, to rely upon character judgement rather than a careful weighing of the evidence in determining guilt was an unjust deviation from the traditional model of British justice.[181]

On the basis of the Commission's report, Shugar was unofficially suspended from his position with the Department of National Health and Welfare, and in April the government charged him under the Official Secrets Act with conspiring to communicate secret information to an agent of a foreign power.[182] However, as noted earlier, the magistrate dismissed the charges for want of sufficient evidence. He was then reinstated in his job, and except for a law-suit for defamation which he had begun against the Ottawa Evening Citizen, probably believed that he had no more legal problems.[183]

However, the final report of the Royal Commission, presented to the government on 27 June, took the unusual step of disagreeing publicly with the magistrate who had refused to send Shugar to trial.[184] It also presented new information which had not been available at the time of Shugar's court appearance, testimony that long before the Gouzenko revelations Shugar had acted in ways which were highly suspicious, asking questions about radar research which were completely outside his technical field.[185] On the basis of this new information the Commissioners reaffirmed their conclusion that Shugar had conspired to communicate secret information, and alleged that he had also breached section 4 of the Official Secrets Act -- using secret information entrusted to him by the State in a way that was "for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State." In effect, this was a recommendation that he be charged a second time.[186]

Although the report had not yet been made available to the press or the general public, the government dismissed Shugar from his job, "in view of the report of the Royal Commission." Shortly afterwards, he wrote Minister of Justice St. Laurent, saying "I now find myself in the position of having been deprived of my employment, and my name blackened to such a degree as would probably exclude me from obtaining other suitable employment." He therefore asked the government for help, noting that "I therefore feel that it is only common justice that my name should be cleared by the Crown and that I should be re-instated in my employment; or, failing that, that the Crown should immediately prosecute me for any offences that the officers of the Crown feel I may have committed and thus give me an opportunity to clear my name in the courts."[187]

At about the same time, Shugar also wrote for help to the OCLA. He claimed that he was innocent, and added that both Gouzenko and the chief Crown prosecutor, J. R. Cartwright,[188] had testified in court that the Soviet embassy had never received any information from Shugar. Here again he pointed out that he had been unjustly dismissed from his employment and that his name had been unfairly besmirched.[189]

The OCLA appears to have been split as to whether or not to support Shugar's case. One board member, Paul Gardner, pushed hard for the group to take up what he saw as "the absolutely clear case of the character assassination of Dr. Shugar," a kind of "persecution"

that might have been rooted in the fact that the original acquittal" annoyed the Commission by preventing its report from acceptance as accurate in every particular." Other members, including OCLA President Wilfrid Eggleston, wanted to move slowly for fear that they did not have all pertinent information. In addition, some members felt that Gardner was a communist -- not a member of the LPP, but probably a member of "the movement." In short, the Cold War was starting to divide communists from non-communists in the OCLA just as it had done in the CLAT. As a result, the Ottawa group found it much easier to take a strong stand on the Japanese Canadian issue than on the questions raised by the Gouzenko Affair trials.[190]

Nevertheless, the OCLA did protest, making public two resolutions at the end of July. The first was a reaction to the final report of the Royal Commission, and the way in which (as noted earlier) it made extra-judicial decisions about guilt and innocence. The second resolution protested the dismissal of David Shugar and said, in part, "We demand that the British and Canadian principle of 'innocent until proven guilty' be upheld by restoring to Dr. Shugar his means of livelihood unless and until he is found guilty by due process." Both resolutions were sent out to all members of Parliament, and formed the basis for an advertisement published in the Ottawa newspapers.[191]

The Ottawa group may have doing "splendid work," as William Irving, a CCF MP, wrote back to Wilfrid Eggleston, but the government nevertheless continued with its plans to prosecute David Shugar. Soon the OCLA was moved to protest yet again when Shugar informed them that the Minister of Veterans Affairs had now refused, without providing any explanation, to grant his veterans' out-of-work allowance. The association sent off a resolution calling for the granting of such allowances "unless and until he is found guilty by due process of law."[192]

Another group which supported David Shugar was the executive of the CASW, which wrote to the Acting Minister of National Health and Revenue, pointing out that their member should not have been dismissed on the basis of charges which were "insufficient even to warrant his committal for trial." It is perhaps not surprising that this organization protested. As earlier, not only was Shugar a member of this professional trade union, but also its

president was Raymond Boyer, one of the Gouzenko accused who was later found guilty and incarcerated.[193]

Meanwhile, the federal government had risen to Dr. Shugar's challenge. On 7 August he appeared in court for a second time, charged with conspiring to violate section 4 of the Official Secrets Act (i.e. the improper use of secret information entrusted to his possession). Shugar elected trial by jury, was released on bail, and had his preliminary hearing scheduled for early September. In the meantime, the Royal Commission released its final report to the press on 15 August, and Shugar found that they had devoted a full thirty-eight pages to his case. He also dismissed the allegations as "rubbish."[194]

At about this time, the ECCR took up the case of Dr. Shugar, issuing a press release which complained about Ottawa charging him for a second time, and protesting his dismissal from the public service. The organization also wrote directly to the Department of National Health and Welfare about the termination of his employment.[195]

Unlike the Ottawa group, which was plagued by a number of resignations over the summer and fall, and which in early 1947 was badly divided between communists and non-communists,[196] the ECCR was thriving. By the middle of August it had published the first issue of what was to become a regular newsletter, "Civil Rights" and had received a total of over $7,600 in contributions. The group printed 3,500 copies of this newsletter for wide distribution and stated that from now on the ECCR would not limit itself only to discussions of the Gouzenko Affair; it intended to carry articles on "all aspects of civil rights and their violations," and invited readers to make submissions on the need for a Canadian bill of rights.[197]

Meanwhile, the issue of Dr. Shugar's dismissal was raised in the House of Commons by CCF MP William Irvine. As noted earlier, Shugar had been informed that he was being dismissed "in view of the report of the Royal Commission," but the government had later stated -- in response to a request from CASW -- that because Dr. Shugar had simply been hired for a special assignment, his services were now no longer required. Irvine referred to the correspondence between the government and CASW, and asked the government to explain, "[j]ust what was the reason for the discharge of Doctor Shugar?"[198]

In response to Irvine's question, Justice Minister Louis St. Laurent intimated that Shugar was indeed let go because the spy allegations had shaken the government's confidence in him, and added that:

> I know of an interview between Dr. Shugar and the minister in which the attitude of Dr. Shugar was such that even if there had been nothing else, his minister would not have considered retaining him in his employment. Dr. Shugar was perhaps convinced, because of the depth of his feeling in the matter, that what he was saying was so, but he stated there that the Royal Commissioners had deliberately falsified evidence. I would not retain in the service of my department anyone who expressed to me the opinion that two of the Justices of the Supreme Court of Canada had deliberately falsified evidence.[199]

According to the ECCR newsletter, however, presumably on the basis of information provided to the committee by Dr. Shugar, the above-mentioned interview took place on the afternoon of 18 July, after the dismissal of Shugar. It also pointed out that the espionage charges may have been a convenient excuse for dismissing a troublesome employee. This was corroborated by the CCL organ, Canadian Unionist, which said that Dr. Shugar had been dismissed on two previous occasions for union activity, but on each occasion the dismissal had been successfully protested.[200]

Dr. Shugar continued to fight his former employer, clearly annoyed by what he considered to be cavalier and arbitrary treatment, and he appealed for help to a variety of organizations: the Canadian Legion, the Canadian Congress of Labour, the Ottawa and Montréal Civil Liberties Associations, and the Emergency Committee for Civil Rights. The latter organization monitored his case carefully, and noted that Ottawa seemed to be giving him the bureaucratic "run around" on the issue of his veteran's out-of-work allowance by claiming that he was not entitled to it since there was surely work available somewhere for a man of his calibre.[201]

In the middle of this, Shugar appeared a second time before the same magistrate who had earlier refused to commit him for trial. This time, the additional evidence of the Kellock-Taschereau Commission convinced the magistrate that Shugar should be tried. As a result, his trial in Ontario county court began on 27 November 1946. Aside from the fact that he was

before the courts for a second time, and had not managed to be either reinstated in his job or to find alternative employment, this trial must have been extremely difficult for Shugar. Some of his colleagues testified that they had started to suspect his loyalty long before Gouzenko defected (the newspaper reports of the trial included headlines in which Shugar's behaviour was called "disgusting" by one witness), and Shugar's own testimony at one point was described by the trial judge as "very, very lame." A casual reader of the newspapers would probably have concluded that Shugar was clearly guilty.[202]

Despite this, even the Crown attorney had to agree in court that there was no evidence that Shugar had ever handed over any material to the Soviets. Since he was also unable to prove that Shugar had conspired to do so, Shugar was found not guilty on 7 December. Considering that the Official Secrets Act contained a "reverse onus" clause, and also permitted convictions not just for a broad range of prohibited offences, but also for attempts to commit these offences, this decision seemed to be a complete exoneration.[203]

Shugar then wrote to Paul Martin, the Minister of National Health and Welfare, asking to be reinstated in his old job, and pointing out that he was eager to finish some of the projects on which he had been working. He also emphasized that he had been informed that his dismissal was caused by the final report of the Kellock-Taschereau Commission; he considered that the court decision now rendered those allegations nugatory and pointed out that reinstatement would go even further in clearing his name.[204]

According to Shugar, the Minister did not reply, and therefore he then wrote to the Prime Minister, explaining his situation in detail. This time he asked for more than reinstatement. He suggested that the government disassociate itself from the parts of the Kellock-Taschereau Report which alleged that he had violated the law, that the report should be withdrawn from circulation, and that all those who already had obtained a copy of the report be informed that Shugar had been exonerated in a court of law. He also asked for reimbursement for his legal costs, as well as an indemnity for the damage done to his reputation.[205]

Shugar was never reinstated, and the government did nothing to clear his name or reimburse him. In part this was the result of his decision to institute an action against the

RCMP, claiming damages for false imprisonment. He was informed curtly by the new Minister of Justice that, "[i]n view of this action, on your part, I assume that you do not expect consideration to be given to any of the several requests contained in your letter."[206]

Unable to find any kind of scientific work, and still barred from collecting his veteran's benefits, Shugar enlisted the support of both the CRU and the CLAM, but their lobbying efforts were fruitless. He also attempted to interest John Diefenbaker in his case, again without success. (The records do not reveal why Diefenbaker refused to help).[207] At the same time, Shugar's efforts to obtain redress through the judicial system also seems to have failed.[208] Embittered by the entire experience, he returned to his native Poland, where he achieved considerable success as a scientist.[209] For a while it looked as if the Canadian government would then deliver a *coup de grace* by revoking Shugar's citizenship (as it did in the case of convicted spy Fred Rose). However, the diminished tensions of the Cold War in the late 1950s, coupled with a change in governments in 1957, resulted in a decision not to proceed.[210]

Government insiders continued to believe that they had treated Shugar fairly. For example, the minister of Health and Welfare, Brooke Claxton, refused to change his mind even much later. Claxton was certainly not a hard-line authoritarian Liberal. As noted in Chapter 1, he had been part of the "reform elite" prior to 1945, and had a history of sympathy for civil libertarian causes. However, because he claimed to know that Shugar was under suspicion for espionage even before the Gouzenko revelations, he maintained even after his retirement that the decision not to rehire Shugar was justifiable on security grounds. He argued that the only reasons for hiring Shugar was his specialized knowledge that could only be useful if he were given access to classified information.[211]

Claxton's argument is quite astounding, for the Kellock-Taschereau Commission never suggested that Shugar had been under suspicion of espionage before the Gouzenko revelations. Perhaps Claxton was referring to the fact that Shugar's boss had been suspicious of him, intimating that Shugar was interested in some petty industrial espionage.[212]

Claxton's statement is, however, not surprising because it is typical of the approach taken by the Canadian government towards suspected "commies" in the public service -- i.e.,

easing people out quietly so as not to create any fuss. This ideological cleansing of Canada's public service had begun even before the final report of the Kellock-Taschereau Commission had been made public, and was justified on the grounds that it best safeguarded the interests of the state without destroying the careers of the suspects. Obviously Shugar was one of the first to go, but in his case the publicity generated by the Royal Commission made it impossible for him to slip quietly into a new position.[213]

Shugar's reputation might have been less blackened if the Kellock-Taschereau Commission had not been so adamant about its role as the sole arbiter of the truth. As noted earlier, it maligned the reputation of the alleged spies who had been exonerated in court, saying "Whatever the view there taken [i.e. in the courts] the findings of the Commission, arrived at under its own procedure, and on the evidence before it, are not affected and remain valid." Then, on 30 January 1947, a note was added to the Report saying that "It should not be assumed that in any case the evidence before the Royal Commission and that adduced in the criminal proceedings were the same."

These statements were seen by civil libertarians as unjustifiable. The CLAM, for example, said that:

> We submit that this statement by the Commissioners and the note taken together can only mean that, regardless of the decision of the Courts, in the opinion of the Commissioners -- two justices of the Supreme Court of Canada -- these persons, who were acquitted by the Court, are nevertheless guilty. In view of this we see no reason to revise our opinion that an injustice is being done by the continued circulation of the Report, and an affront offered to the administration of justice in Canada.[214]

By the time that the association made the above protest, however, it realized that the government was not going to admit to any mistakes. Ilsley, the new Minister of Justice, refused to repudiate the note, and all the association could do was record its disapprobation of the government's decision and look forward to the findings of the recently-appointed Parliamentary committee on human rights. It, they hoped, would provide a useful forum "for a rally of liberal sentiment in this country which will set a Bill of Rights in the constitution.[215] Individual outrages such as the treatment of Dr. Shugar would perhaps now be solved by attention to broad legal and moral principles.

In the final analysis, however, the Shugar case illustrated the limits of civil libertarian "quiet diplomacy." It is clear that most contemporary civil libertarians felt that Dr. Shugar had been treated in an extremely shabby fashion, both directly and indirectly. Like all of the detainees, he had been held in conditions which shattered his preconceptions about the level of "British liberties" available to Canadian citizens. As well, there seems to be evidence that as a Polish-born Jew he was an outsider who could not expect much sympathy from the authorities, especially when he refused to cooperate meekly and made a fuss about the violations of his rights. He was then singled out for persecution by the government's decision to appeal his first acquittal, the decision to fire him from his job, the refusal of veteran's benefits, the decision not to reinstate him after his second acquittal in late 1946, and his extra-judicial "conviction" by the Royal Commission. None of this was changed by the support he received from civil liberties groups, however, and he remained one of the first victims of the newly-emerging Cold War.

D: CONCLUSION

It was the best of times and the worst of times. As this chapter has pointed out, this was a period of intense disillusionment on the part of those who were interested in the right of the citizen -- disillusionment with Canada's ally, the Soviet Union, with the Liberal government, with the general public, and with the very nature of the constitution. As the war ended, civil libertarians had high hopes that the dictatorial powers of the federal executive would be eliminated and Canada would move effortlessly back into something approximating normalcy. Instead, the Liberal government continued to declare a state of emergency, and used its extraordinary powers not only to attempt the deportation of certain Canadian citizens, but also to incarcerate a number of people while denying them their much-vaunted "British liberties." Even worse, Parliament proved to be a toothless watch-dog, and the general public was apathetic, an indifferent trainer unlikely to punish the watch-dog in the next election.

Yet it was also the best of times. As B.K. Sandwell pointed out, the war had inevitably drawn off some of the younger talent from civil liberties groups, but by 1946 many of the returned veterans were willing to defend democracy on the home front.[216] Moreover, the Gouzenko Affair (as well as the deportation plans) gave them reasons to get involved. Early post-war government policy prodded the CBA into a public debate about fundamental rights, aroused the press, and helped to generate a number of new civil liberties groups. To be sure, it quickly became apparent that the Gouzenko Affair had the immediate result of dividing the human rights policy network into "right-wing" and "radical" civil libertarians, but this could be seen at the time as only a temporary aberration, one that might soon be papered over. Indeed, by early 1947, when most of the trials were over, civil libertarians were in the process of meeting to discuss the formation of a national organization.[217] They were also talking more and more about the need for a bill of rights. It was a time for considerable optimism, when no one could foresee the problems that the Cold War would throw in their way.

ENDNOTES FOR CHAPTER 3

[1]Details of the "Gouzenko Affair" may be found in Robert Bothwell and J.L. Granatstein, The Gouzenko Transcripts: The Evidence Presented to the Kellock-Taschereau Royal Commission of 1946 (Toronto: Deneau, n.d.); D. Smith, Diplomacy of Fear (Toronto: University of Toronto Press, 1988); Granatstein, A Man of Influence, Chapter 6; John Sawatsky, Gouzenko: The Untold Story (Toronto: Macmillan, 1984); J.L. Granatstein and David Stafford, Spy Wars: Espionage and Canada from Gouzenko to Glasnost (Toronto: Key Porter, 1990). For discussions which concentrate upon one or more of the accused, see: Weisbord, The Strangest Dream; June Callwood, Emma (Toronto: Stoddart, 1984); Lunan, The Making of a Spy.

[2]Of course, some people's interest in egalitarian "human rights" issues may have led them to support civil liberties groups. For example, Edith Holtom (discussed briefly in Chapter 2), who was the chair of the Ottawa CCJC regional committee, became an activist in the Ottawa Civil Liberties Association (discussed below).

[3]This is not to suggest that all people on the radical left (small-c communists) saw civil liberties in purely utilitarian and self-serving terms. However, there is considerable evidence that the CPC/LPP was willing to change its position on a number of issues, including civil liberties, as the political situation (and Moscow) dictated. See, for example, the discussion in Chapter 1 of the Communist Party during World War II.

[4]Although the term "Cold War" was not used during the Gouzenko Affair, it was on 4 March 1946, the day that the Kellock-Taschereau Commission produced its first (interim) report, that Winston Churchill delivered his famous "Iron Curtain" warning in a speech delivered in the United States.

[5]King Diaries, 6 September 1945, quoted in Granatstein, A Man of Influence, 171.

[6]Several cabinet ministers knew enough to sign the order-in-council, but for a matter of several months only King and his Minister of Justice, Louis St. Laurent, knew that there was an entire spy ring operating in Canada (Granatstein, A Man of Influence, 176). The full text of PC 644 can be found in the Kellock-Taschereau Report, the Report of the Royal Commission Appointed under Order-in-council P.C. 411 of February 5, 1946 to investigate the facts relating to and the circumstances surrounding the communication, by public officials and other persons in positions of trust of secret and confidential information to agents of a foreign power (Ottawa: King's Printer 1946), 649-50.

[7]King Diaries for 10 September 1945, as quoted in Smith, Diplomacy of Fear, 96.

[8]King was on his way to Britain at the time, and the order was issued by the Minister of Justice, Louis St. Laurent.

[9]Hansard, House of Commons, 18 March 1946, 50-1; 19 March 1946, 89-2. This order-in-council remained valid in 1946 because of the terms of the National Emergency Transitional Powers Act, which, as noted in Chapter 1, was passed on 5 December 1945 to replace the War Measures Act and continued all orders-in-council passed pursuant to it.

[10]Report of the Royal Commission, 7.

[11]"Atom Secret Leaks to Soviet - Civil Servants Held For Ottawa Probe," Toronto Globe, 16 February [dateline 15 February] 1946. As pointed out by Frank Park, a radical civil libertarian lawyer who knew many of the detainees, "To a person in custody the distinction between detention and arrest may seem academic. Legally it was not. Since the detainees were not arrested, they were not charged, and no warning [about self-incriminating statements] was called for" (Frank Park, "Gouzenko: Guilt and Innocence" [review of Bothwell and Granatstein's The Gouzenko Transcripts], Canadian Forum, March 1983, 30-31).

[12]Report of the Royal Commission, 281; "Government Revokes Citizenship of Rose, Moves Against Shugar," Globe, 28 June 1957.

[13]Shugar to Minister of Justice, 5 March 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065323. For a full account of Shugar's incarceration and his treatment by the authorities, including the Royal Commission, see his letter to Diefenbaker, 12 April 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065333. CCF leader M.J. Coldwell mentioned in the House a similar story of anger and despair (Hansard, House of Commons, 18 March 1946, 56). On the other hand, the RCMP denied that they had treated the detainees in an inappropriate fashion, and one newspaper story mentioned in the House by St. Laurent indicated that not all of the accused were angry about mistreatment ("RCMP Deny Third Degree in Spy Case," Globe, 22 March 1946; Hansard, House of Commons, 26 March 1946, 129-30).

[14]"Star Chamber Methods," Toronto Star, 30 April 1946.

[15]Lunan, The Making of A Spy, 161, 179. Anti-semitism was an important and often ignored sub-text of the Gouzenko Affair. As Maclean's editor Blair Fraser wrote, "Anti-Semites have been gloating over the fact that of the 17 persons named [by Gouzenko], six are Jews and two others are married to Jews. Anti-Semites have no cause to gloat -- quite the reverse. As the [Kellock-Taschereau] Commission pointed out, it's precisely because of anti-Semitism in Canada that many of these people transferred their loyalty to the USSR" ("Backstage At Ottawa," by "The Man With a Notebook," Maclean's, 1 September 1946. The Commission's discussion of anti-semitism is at 81-2 of its Report.

[16]"Wife of Man Detained Charges RCMP Using Gestapo Methods," Ottawa Journal, 27 February 1946; "Letter to Client Held Up -- Suspect's Counsel Charges," Toronto Star, 9

March 1946. Both articles refer to Shugar's lawyer, A.W. Beament.

[17]"Star Chamber Methods," Star, 30 April 1946.

[18]An Act respecting Official Secrets, SC 1939, c. 49.

[19]The first four were: Emma Woikin, Gordon Lunan, Edward W. Mazerall, and Kathleen Mary Willsher. According to Callwood's Emma (143-4), based upon interviews with some of the internees, at least one of the prisoners was told that they could be shot. In addition "Prisoners were told that there had been suicide attempts, information calculated to increase their despair and terror. Those who were Jewish were subjected to racial taunts. Those who protested the questioning were advised that they wouldn't be allowed to see their families until they cooperated."

[20]Callwood, Emma, 149. See the criticism of Arthur Roebuck in a speech quoted in the Star, 30 July 1946, used by the CRU in their memorandum, "Justice and Justice Only?," Herridge Papers, vol. 22, file 12.

[21]Shugar was interrogated on 8 March, and a portion of the interview can be found in Bothwell and Granatstein, The Gouzenko Transcripts, 270-8. See also: Shugar to Diefenbaker, 5 March 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065323; Shugar to Minister of Justice, [copy] 9 March 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065326; "Star Chamber Methods," Star, 30 April 1946. A document called "This Is the Report of a Fact-Finding Committee" in the MacLeod Papers, file 25, probably produced by the Emergency Committee for Civil Rights (discussed below), itemizes twenty-seven different categories of breaches of civil liberties on the part of the authorities, including the Commissioners.

[22]An Act respecting Witnesses and Evidence, RSC 1927, c. 59.

[23]Report of the Commission, 676.

[24]See Granatstein, A Man of Influence (178), referring to King Diaries, 27 February 1946, and interviews with Mrs. Graham Spry and with Arnold Smith. Granatstein says that Norman Robertson (King's deputy minister for External Affairs) also supported the suspension of civil liberties on the grounds that those arrested would not be able to warn any of their friends. This could only have been a marginal consideration, however, since most of the suspects were rounded up en masse, and the government the same day issued a press release which explained in general terms the existence of a spy ring. Under these circumstances, it would have to be a very dim spy indeed who would not be warned by the disappearance of former contacts.

[25]Interestingly, the leading case on this was decided by the Supreme Court in the same year as the Gouzenko Affair -- Tass v. the King [1946] SCR 103.

[26]Pickersgill and Forster, The Mackenzie King Record, III, 136; see also 282. There are different explanations as to why King was willing to run the gauntlet of criticism, although all agree that the fundamental motive was the extraction of evidence at all costs. For example, Denis Smith has written, "Mackenzie King seemed desperately to need the evidence of confessions and convictions (however obtained) to prove to the Soviet Union and the Canadian public that the revelations were justified -- and thus, perhaps, to prevent potential Russian retaliation" (Smith, Diplomacy of Fear, 135). On the other hand, convicted spy Gordon Lunan has argued that obtaining irrefutable evidence of Russian espionage was a useful way of preparing the public for the Cold War, just at the time that Winston Churchill was warning of the dangers of an "Iron Curtain" (Lunan, The Making of a Spy, 173).

[27]Pickersgill and Forster, The Mackenzie King Record, III, 138. Some information about the internment of the detainees was made public fairly early, including denial of access to counsel. See, for example, "Persons Held in Spy Inquiry Have Not Even Seen Each Other," Ottawa Journal, 25 February 1946.

[28]"Atom Secret Leaks to Soviet," Globe, 16 February [dateline 15 February] 1946; Wilfrid Eggleston, "Canada's First Spy Case Remains a Mystery to Puzzled Public," Saturday Night, 6 March 1946. Note also the speculation about atomic secrets, based on an analysis of the language of PC 6444, in "Russians Made Concerted Efforts To Get Secrets, Probe Order Says," as well as the banner headlines, "Russia Requires 5 Years to Build Bomb," Ottawa Journal, 27 February 1946.

[29]The interim reports are included as appendices in the Report of the Royal Commission, at 693 and 697. As early as 18 February the Ottawa Journal informed the public that "Ivor Gosenko" of the Russian Embassy was one of those held for questioning. The story of Emma Woikin is told in detail in Callwood's Emma.

[30]The perceived legitimacy of communism in 1945 is not absolutely clear. Reg Whitaker, for example, argues that "the evidence for a pro-Soviet 'popular front' mentality developing in public opinion is mixed" ("Official Repression of Communism During World War II," Labour/Le Travail, 17 [Spring 1986]: 135-166). Certainly, however, the communists were not as demonized as they had been in the 1930s, or would be within a few years. For example, during the Ontario election in the summer of 1945 the LPP formed an alliance with Mitchell Hepburn's Liberals. This did not result in a win for Hepburn, but it did contribute to the stunning losses of the CCF (Gerald L. Caplan, The Dilemma of Canadian Socialism: The CCF in Ontario [Toronto: McClelland and Stewart, 1973], Chapter 10). Note also that, among liberal civil libertarians, none was more anti-communist than B.K. Sandwell, the editor of Saturday Night, but even Sandwell had announced that the communists were not going to strive for a revolution when war ended ("Communists Change Front, Says Sandwell," Saturday Night, 26 January 1944). The Gouzenko revelations helped to change such attitudes.

[31]Granatstein, A Man of Influence, 174-5.

[32]"Why Did They Spy?" and "How Did the Reds Get Under the Bed?' in "Backstage At Ottawa" by "The Man With the Notebook [Blair Fraser], Maclean's, 15 April 1946, and 1 September 1946. Fraser, a CIIA member, was one of the five central figures of what Brennan has called "the Liberal press establishment" of this time. A friend of F.R. Scott, he was not a Marxist or a radical, but had "a lifelong suspicion of privilege ... a fundamental open-mindedness, and a genuine sympathy for the underdog" (Brennan, Reporting the Nation's Business, x-xi, 106. 108). Fraser was a member of the OCLA by at least 1947 (Erichsen-Brown to Scott, 7 February 1947, Scott Papers, vol. 10, file 7, Reel H-1222).

[33]Hansard, House of Commons, 15 March 1946, 4ff. The Second Session of Parliament had opened the previous day, and King had informed the House that he would soon be making a statement about the Gouzenko Affair. Meanwhile, he tabled PC 6444 and the first interim report of the Royal Commission.

[34]Hansard, House of Commons, 15 March 1946, 4ff. Bracken's remarks are at 6.

[35]Romney defines "legalism" as "the justification of alleged infringements [of civil rights and liberties] by invoking the lawfulness of the authority by which such actions are taken." He uses the concept "constitutionalism" to designate an alleged infringement of civil liberties being justified by appeals "to standards of state conduct that are supposedly sanctified by long usage, implied contract, or both" (Paul Romney, "From Constitutionalism to Legalism: Trial by Jury, Responsible Government, and the Rule of Law in the Canadian Political Culture," Law and History Review 7 [Spring 1989]: 121-174, at 121). See also his "From the Rule of Law to Responsible Government: Ontario Political Culture and the Roots of Canadian Statism," Canadian Historical Association Papers (1989), 86-118, where he explains his terms in light of the court/country (whig/republican) dichotomy developed by J.G. Pocock. According to Romney, the "constitutionalist" approach has, in Canadian history, been more powerful in the field of federal-provincial relations than in the arena of individual-state relations.

[36]Hansard, House of Commons, 19 March 1946, 92.

[37]Hansard, House of Commons, 19 March 1946, 92.

[38]Hansard, House of Commons, 18 March 1946, 88.

[39]Hansard, House of Commons, 19 March 1946, 65-6; 21 March 1946, 174; 22 March 1946, 195; 26 March 1946, 260. As Chapter 5 notes, LaCroix was a persistent and aggressive anti-communist, frequently trying to make the LPP an illegal organization.

[40]A Conservative MP, Arthur Smith from Calgary West, also made a strong speech which criticized the government's civil liberties violations, and Bert Herridge of the CCF supported Power's speech (Hansard, House of Commons, 19 March 1946, 83-8; 26 March 1946, 285).

[41]Hansard, House of Commons, 18 March 1946, 56. M.J. Coldwell and his CCF compatriot, Alistair Stewart, also criticized Ottawa's handling of the spy issue a few months later, but they dissipated much of their energy by concentrating on some of the short-comings of Diefenbaker's proposal -- an idea which had actually been first proposed in the House by Stewart about six months previously (Hansard, House of Commons, 8 May 1946, 1340, 1343).

[42]According to B.K. Sandwell, it was the Conservative Party that had taken over the role of "guardian of the rights of the individual" in Parliament ("A Tragic Error," Saturday Night, 18 May 1946).

[43]"I do not often find myself in much sympathy with Tories, but D. [Diefenbaker] is hardly a Tory, not very far to the right of centre, and I know that he is himself sincerely convinced of the necessity doing something about civil liberties. It is not a party attitude with him. In fact, the position he has taken during the espionage business has been giving his party the greatest alarm. He spoke against the advice of some of the other stalwarts, who, when they saw public reaction, hastened to assure him that he had said the things they had always been saying" (Lower to Henderson, 24 July 1946, Lower Papers, vol. 46, file 21).

[44]Hansard, House of Commons, 21 March 1946, 137-40; "Citizenship to Be Given All Living in Canada Under New Legislation," Globe, 3 April 1946. The somewhat selective recollections of Diefenbaker on this issue are in John G. Diefenbaker, One Canada: Memoirs of the Right Honourable John G. Diefenbaker, vol. I: The Crusading Years 1895-1956 (Toronto: Macmillan 1975), 225. For more about the struggle for a bill of rights, see Chapter 7 of this dissertation.

[45]Hansard, House of Commons, 21 March 1946, 138. Diefenbaker also made references to "Star Chamber," an important element of the "British liberties" discourse.

[46]Hansard, House of Commons, 21 March 1946, 139.

[47]The CBA report was discussed briefly in Chapter 1.

[48]"Friends of Liberty," Saturday Night, 20 April 1946; Hansard, House of Commons, 21 March 1946, 169-73; "Ask Bill of Rights to Protect Liberties - C.G. Power Joins Ranks of Critics," and "The Price of Liberty" [editorial], Globe, 22 and 23 March 1946; Bruce Hutchison, "The Spectre in Ottawa," Winnipeg Free Press, 11 April 1946. Power was much later praised in the House of Commons, by CCF member of Parliament Stanley Knowles, as one of the few civil libertarians in the House during the Winnipeg Strike (Hansard, 6 January 1960, 2925).

[49]F.C. Cronkite, "Civil Liberties in Canada," Saskatchewan Bar Review 11 (December 1946): 61-72, at 68.

[50]"Spy Order Suspending Normal Legal Rights Revoked by Cabinet," Globe, 2 April 1946. King had been eager to repeal the order-in-council quickly, to avoid as much interference with individual liberties as possible (Pickersgill and Forster, The Mackenzie King Record, III, 157).

[51]Shugar's case is discussed in more detail later in this chapter.

[52]"Memorandum" to CLAT executive from ECCR, 26 October 1946, Grant Papers, vol. 47.

[53]"To Members of the Civil Liberties Association, Past and Present," Park Papers, vol. 8, file 150 (June date hand-written at top); also in the Mrs. W.L. Grant Papers, vol. 47, file: "Notes and Memoranda, Civil Liberties Association." Caution seems to have been the watch-word of the CLAT. Paul Gardner, a former member of the CLAT council, and a member of the OCLA, maintained that it had moved too slowly on the war-time Ukrainian Farmer-Labor property issue, and also on the Japanese Canadian deportation issue (Gardner to Eggleston, 21 July 1946, Eggleston Papers, vol. 14, file 14).

[54]Callwood, Emma, 204.

[55]Pickersgill and Forster, The Mackenzie King Record, III, 138.

[56]Saturday Night's response to the Gouzenko Affair is discussed later in this chapter.

[57]"Fact and Prejudice," Saturday Night, 1 June 1946. The government repealed PC 6444 on 31 March 1946, and the dissidents left the CLAT the following month.

[58]In a letter "To Members of the Civil Liberties Association, Past and Present" the executive spoke of "a lack of funds and lack of support. Attendance at general meetings and even at the last two annual meeting has been very meagre, nominations for the Council have been made by a very few members, and busy council member have come to meetings only to find themselves without a quorum." This letter is not dated, but one copy has a pencilled-in date of "June 1946," some time after the schism (Park Papers, vol. 8, file 150). Note, however, that as late as November, 1946, Margaret Spaulding still referred to herself as a member of both the ECCR and the CLAT (Spaulding to Baldwin [ACLU], 6 November 1946, ACLU Papers, vol. 2732).

[59]A letter to the editor by T. Patrick was published in the Globe on 16 July 1946, suggesting that the ECCR might be a "Communist front." In a response, published on 19 July, Paul Gardner (of the OCLA) denied that the members were Communists.

[60]Rowland, "Canadian Communism," 123; Lunan, The Making of a Spy, 92; see also Weisbord, The Strangest Dream.

[61]The term "elite conformists" was used in Chapter 1 to describe the pre-war and war-time civil libertarians. For evidence that government policy during the Gouzenko Affair was broadly supported by the general public, see the Gallup poll evidence of 15 May 1946,

discussed below.

[62]"Memorandum" to CLAT executive from ECCR, 26 October 1946, Grant Papers, vol. 47. Identification of the ECCR activists discussed in the next few paragraphs comes primarily from: "Statement of Purpose," 21 April 1950, Park Papers, vol. 9, file 154; "Magna Carta Day" [press release], 10 June 1946, Macleod Papers, file 4; telephone interview with Kay Macpherson, 20 October 1994; "To Defend Civil Rights," [advertisement] Star and Globe, 10 May 1946.

[63]"Meeting of the Emergency Committee for Civil Rights," 18 May 1946, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24. Dr. Corbett made an impassioned speech at the May annual meeting of the CAAE, calling the Gouzenko Affair "the most serious threat to the liberties of the individual in the history of this country," and suggesting that the association work to educate Canadians about their civil liberties (quoted in Faris, The Passionate Educators, 36).

[64]As noted in Chapters 1 and 2, the CAAE had a strong interest in human rights, including the Japanese Canadian deportation struggle. Its Citizens' Forum broadcasts and publication continued to educate the Canadian public on human rights long after the deportation issue was over. See, for example: "Do we need a Bill of Rights in Canada?" 1946-7; "Is There Freedom of the Press in Canada, 1946-7; "Should We Have Fair Employment Practices Acts in Canada?" 1947-8; "Racial and religious prejudice: how can we combat it?" 8 December 1949; "Can we guarantee human rights in Canada?" 16 March 1950; "Should we outlaw communism in Canada?" 15 March, 1951; "Can McCarthyism Happen Here: Are Canadian Civil Liberties in Danger?" 11 November 1954; "Immigration: A Threat to Your Job?" January 1958; "What can one person do about: racial discrimination, nuclear tests?" December 1959. (Most, but not all, of this list is taken from "Human Rights Research in Canada: A Bibliography," [Ottawa: Queen's Printer, Secretary of State, 1970].)

[65]Interview with Martyn Estall, 19 June 1995; Hutchinson, "The Fellowship," 63, 236-9; Faris The Passionate Educators, 117; Milligan, "Eugene Forsey," 324; interview, 19 June, 1995. Before the war, Estall had written an article called "The Marxist Challenge," published in Towards the Christian Revolution, ed. Gregory Vlastos and R.B.Y. Scott (Chicago: Willett Clark 1936). His position can be summed up by the sentence (at 224), "the Marxist challenge is simply, but momentously, a challenge to Christianity to fulfil its appointed task, to make real its own gospel." At Vlastos' urging, Estall wrote this under a pseudonym ["Propheticus"], for fear that the title alone might smear him as a communist and prevent him from finding a teaching job.

[66]Of course, Estall also had close ties to many non-communists. Among his FCSO colleagues, for example, were social democratic human rights activists such as James Finlay and Margaret Boos (of the CCJC). At the same time, he was also connected to the middle-of-the-road Canadian Institute of Public Affairs (CIPA), where he rubbed shoulders with such prominent civil libertarians as E.A. Corbett, E.J. Tarr, and B.K. Sandwell; in 1947 he edited a book on

rights and liberties which was the end product of the most recent CIPA Lake Couchiching Conference (FCSO pamphlet, 1943-4, CSA files; Martyn Estall, ed., Rights and Liberties in Our Time).

[67]"The Issues We Face: A Report on the Montréal-Ottawa Regional Conference," Christian Social Action (CSA) files, April [1945?]; interview with Martyn Estall. It is also interesting to note, although certainly not to suggest guilt by association, that when Estall had taught English for a while to immigrants at the YMCA in Montréal Fred Rose had been one of his students. Park and Chapman are both discussed in more detail later in this chapter.

[68]One of the interesting common denominators of many people involved in the Gouzenko Affair was their previous employment in the Wartime Information Board (WIB) in Ottawa. Members of the ECCR who had worked there included Estall, Ketchum, Macpherson, and Park. Among the accused who had worked there were Gordon Lunan (who was convicted) and Fred Poland (who was acquitted).

[69]"Magna Carta Day" [press release], 10 June 1946, Macleod Papers, file 4.

[70](Who's Who; Stephen Endicott, James G. Endicott: Rebel Out of China (Toronto: University of Toronto Press, 1980), 49-50. Ketchum had worked as a government propagandist during World War II, as a member of the Bureau of Public Information (Young, "Building Citizenship," 121).

[71]Leopold Infeld, Quest: The Evolution of a Scientist (New York: Garden City, 1941), and Why I Left Canada: Reflections on Science and Politics (Montréal and London: McGill-Queen's University Press, 1978).

[72]Infeld, Why I Left Canada, 29, 38. Infeld refers briefly to the ECCR, without mentioning it by name, noting that both he and Fairley were immediately dubbed "fellow travellers" for their role in the organization.

[73]Infeld, Why I Left Canada, 28; RCMP Report, May 1946, CSIS Files, vol. 3440, file "Civil Rights Union," 929; RCMP Report, 22 August 1946, CSIS Files, vol. 3440, file "Civil Rights Union," 905-7.

[74]Avery, "Allied Scientific Co-operation and Soviet Espionage in Canada," 113 and note 88.

[75]"Prof. Infeld in Warsaw Resigns Post at U. of T.," Star, 21 September 1950; "Prof. Infeld Stays in Poland but Doubt He Took A-Secrets," Globe, 22 September 1950; Infeld, Why I Left, 60-1. (Note also the editorial about Infeld and his apologia for the USSR regarding the Katyn Forest massacre, in "A Tragic Descent," Saturday Night, 3 May 1952.) Reg Whitaker has discussed Infeld briefly; he notes that "The persecution of this distinguished scientist surely constitutes ones of the worst examples of McCarthyism in this era in Canada" (Whitaker, Double Standard, 179 and 189).

[76]Palmer, "Introduction," 7-8; Jack Scott, A Communist Life: Jack Scott and the Canadian Workers Movement, 1927-1985 (St. John's: Committee on Canadian Labour History, 1988). Of course, it was hard to be an independent thinker if one were a member of the LPP itself, but it is clear that some of them believed that the USSR was not as illiberal as the Canadian press normally indicated.

For an analysis of the importance of "democracy" in Canadian communist thought, see Clarke, "Application of Marxist Thought to Canada," Chapter VII. For a random example of an LPP leader employing democratic discourse, see where Tim Buck talks about the struggle of "democratic Canadians" against s. 98 of the Criminal Code, the "Garson amendments" to the Code, and other subversions of democracy (Tim Buck, Thirty Years, 1922-1952: The Story of the Communist Movement in Canada [Toronto: Progress Books, n.d.]: 219, 221).

[77]Whitaker and Marcuse portray Infeld as a victim of Canadian McCarthyism (Cold War Canada, 107). This seems to be accurate enough, given that most people were incapable of distinguishing between a communist and a Communist (i.e. an LPP member). Infeld was probably the former, according to Martyn Estall (interview, 19 June 1995), and Infeld certainly confirmed that impression in Canada when he spoke at the World Peace Conference in Warsaw a few months after he returned to Poland ("Did They Protest Too Much?" Victoria Times, 20 November 1950).

[78]Of course, it was difficult to distinguish between members of "the movement" who were not covert party members and those who were. As Gordon Lunan, one of the convicted spies, has written, referring to a number of people in artistic/intellectual wing of the communist movement: "Let me not call them communists. Whether they were or not remains their secret. Except amongst our closest associates we never asked" (Lunan, The Making of a Spy, 98-9).

[79]Callwood, Emma, 106-7; Kay Macpherson, When in Doubt, Do Both: The Times of My Life (Toronto: University of Toronto Press 1994), 60-1. According to Kay Macpherson, Harold Innis "put his own job on the line" to defend the academic freedom of her husband during this period.

[80]Kay Macpherson, When in Doubt, 79; C.B. Macpherson, "Review," International Journal. IV (Spring 1949): 169-70.

[81]Macpherson has written that his academic goal was "to work out a revision of liberal-democratic theory, a revision which clearly owes a great deal to Marx, in the hope of making that theory more democratic while rescuing that valuable part of the liberal tradition which is submerged when liberalism is identified with capitalist market relations" (C.B. Macpherson, "Humanist democracy and elusive Marxism: a response to Minogue and Svacek," Canadian Journal of Political Science 9 (1976): 423-30, at 423. For more about his ideas, see David Morrice, C.B. Macpherson's Critique of Liberal Democracy and Capitalism," Political Studies XLII (1994): 646-661; Daniel Drache and Arthur Kroker, "C.B. Macpherson, 1911-1987," Canadian Journal of Political and Social Theory / Revue canadienne de théorie politique et sociale XI, no. 3 (1987): 99-105. For a bibliography of Macpherson's writings, see Alkis

Kontos, ed., Powers, Possessions and Freedom: Essays in honour of C.B. Macpherson (Toronto: University of Toronto Press, 1979).

Kay Macpherson also had strong civil libertarian impulses. Years after the Gouzenko Affair, she served on the board of the Canadian Civil Liberties Association (When in Doubt, 183).

[82]S.B. Ryerson, "Property and Some Limitations on Liberty," in Papers Presented at the Fifty-second Annual Meeting of the Canadian Political Science Association (1980), 12, quoted in Gregory S. Kealey, "Stanley Bréhaut Ryerson" Canadian Revolutionary Intellectual" Part II, Studies in Political Economy: A Socialist Review 9 (Fall 1982): 133-170 at 147.

[83]Jackson does not mention any radical political activity in his autobiography, A Painter's Country: The Autobiography of A.Y. Jackson (Toronto: Clark, Irwin 1958).

[84]"Magna Carta Day" [press release], 10 June 1946, Macleod Papers, file 4; telephone Interview with Mary Spaulding (daughter-in-law), 7 June 1996: interviews with Neil Spaulding (grand-son), 9 June 1996, and Alice Berry (former daughter-in-law), 27 May 1998; background notes of Thomas C. Roberts, "The Story of the Padlock Law," Endicott Papers, vol. 63, file 1329. Spaulding's involvement in the successor of the ECCR, the Civil Rights Union (CRU), and the national communist civil liberties umbrella group called the League for Democratic Right (LDR), is discussed briefly in Chapter 5 of this dissertation.

[85]She was, however, divorced, which in those days was less respectable than is the case today.

[86]Interviews with Mary Spaulding and Neil Spaulding; RCMP report [including document, "Liable to Arrest on Entry to US"], 28 March 1952, CSIS Files, vol. 3440, file "Civil Rights Union," 254. The RCMP concluded, after checking their records, that Spaulding was not a Communist party member (RCMP Report, 24 April 1948, CSIS Files, vol. 3440, file "Civil Rights Union," 821). However, when the RCMP later investigated Mrs. Spaulding for her association with the League for Democratic Rights, they decided that she was indeed an LPP member. This may say something about Mrs. Spaulding, or it may say more about the poor quality of RCMP information (Nicholson [RCMP commissioner] to Garson [Minister of Justice], 30 July 1951, CSIS Files, vol. 3440, file "Civil Rights Union," 386).

[87]Following a speech on this matter by Senator Roebuck, Gould wrote a letter to him on 30 July, 1946, saying: "I am so grateful to you for your leadership on this problem at this time; the good you will do will be reaped by generations, I feel sure. I feel a foreboding that we are approaching dark days in Canada; I feel sad, too, that this country has been allowed to slop on the sort of slime that brought Fascism to Europe." She added that she was working on an editorial that would do justice to the problem (Roebuck Papers, vol. 1, file 15); the editorial was probably "Judges As Commissioners" Star, 6 August 1946.

[88]"Meeting of the Emergency Committee for Civil Rights," 18 May 1946, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24; interview with Mary Spaulding. The Toronto Star did

not often mention the ECCR, but when it did it made no suggestion that it was a Communist party "front" organization; see "The Protection of Civil Rights," 20 December 1946. The American authorities regarded Gould as a dangerous "pinko" who exerted far too much influence over the editorial policies of the Star, although it has been suggested that some of her influence came from her ability to speak shrilly enough to penetrate the hearing of the Star's publisher, the partly-deaf Joseph Atkinson (Whitaker, Double Standard, 152; Harkness, J.E. Atkinson of the Star, 315).

[89]"Civil Rights" (CRU newsletter), vol. 2, no. 2, July-August 1948, Park Papers vol. 8, file 143; NAC finding aid on Frank Park; Macpherson, When in Doubt, 49, 61; Callwood, Emma, 106, 148 (Callwood states that Macpherson and Park co-authored the New Brunswick CCF constitution); Whitaker, Cold War Canada, 236 (quoting from the Royal Commission), 414, and 465, note 21 (claiming that Park's pseudonym in the Canadian Tribune was Frank Williams); "Contributors to This Issue," International Journal II (Spring 1947), (identifying Park as a former member of the Fredericton branch of the CIIA executive).

When the Ottawa Civil Liberties Association was formed (see below), Park attended a meeting as a representative of the ECCR (Minutes of the Ottawa Civil Liberties Association General Organizational Meeting, 22 May 1946, Eggleston Papers, vol. 9, file 151).

[90]"Text of Statement [by NCCSF] on 4th Report of Taschereau-Kellock Commission," 21 August 1946, Herridge Papers, vol. 22, file 12; Libbie and Frank Park, Moscow -- As Two Canadians Saw It (Toronto: Canadian-Soviet Friendship Society 1951); Frank Park, "Soviet Russia -- A Review of the Future," International Journal II (Spring 1947): 173-177 at 177.

According to Whitaker and Marcuse, the NCCSF was definitely a communist "front" organization, but one which had considerable non-communist support until the Gouzenko revelations; after 1946 its appeal to non-communists withered away (Cold War Canada, 211-2).

[91]Socknat, Witness Against War, 167-9; Ivan Avakumovic, The Communist Party in Canada, 125; "Meeting of the Emergency Committee for Civil Rights," 18 May 1946, JPRC Papers, JPRC Correspondence 1947, Reel 1, file 24.

[92]Leslie Roberts (a member of the MCLA), "The Issues in Canada's Spy Trials," The World, 1 September 1946 (copy in the King Papers, vol. 401, Reel C-9169, document 364525); "The Protection of Civil Rights" [editorial noting that the most active civil liberties group had been the ECCR], Toronto Star, 20 December 1946; "Minutes of Exploratory Conference," 28-9 December 1946, Park Papers, vol. 9, file 156; RCMP Memorandum to Inspector Leopold, 23 April 1947, and ECCR/CRU Financial Statement (24 April to 31 December 1946) in RCMP Report, 16 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 856 and 865-879 at 864. The figure of 15,000 pieces of literature comes from a report which deals with both the ECCR and its successor, the CRU. This report also mentions seven press releases and ten "protests."

[93]"To Defend Civil Rights," Globe and Star, 10 May 1946; "The Methods of the Kellock-Taschereau Commission," Globe, 22 May 1946 and Star, 21 May 1946; "On Magna Carta Day," Globe and Star, June 15, 1946; "Dominion Day 1867-1946, An Open Letter to the Prime Minister of Canada," Globe and Star, 29 June 1946.

[94]Research has not revealed any reaction by the VCCLU, although its records are fragmentary and scattered. There is, however, at least one reference to a Vancouver organization named the Emergency Council for Democratic Rights (ECDR), which may have been an attempted west coast counterpart to the ECCR ("Meet Called on 'Denial' of Rights," Vancouver News-Herald, 21 March, 1946).

[95]As Chapter 2 has noted, the Japanese deportation issue also helped to precipitate the formation of the OCLA, but the organization was initially touted as a response to the Gouzenko crisis ("In Defence of Liberty," Ottawa Citizen [editorial], 13 May 1946). The chair of the OCLA organizing committee was Stanley Rands, a socialist who had lost his job in the field of adult education because of his alleged communist tendencies. In 1945 he was hired by the National Film Board, where he worked for several years until he was fired for attempting to organize a public employees union. He later wrote a book called Privilege and Policy on the history of the community-clinic movement, which his wife finished after he died in 1985 (Rands to Eggleston, 9 May 1946, Eggleston Papers, vol. 14, file 14; "Lives Lived" [obituary of wife, Doris Rands], Globe and Mail 26 August 1997).

[96]Stanley Rands (Chairman, Pro Tem organizing committee) to Wilfrid Eggleston, 9 May 1946, Eggleston papers, vol. 14, file 14. The main members of the organizing committee were, in addition to Stanley Rands: Molly Flaherty, Lillian Stoddart, Sybil Wright, Paul Gardner, David Heaps, Lukin Robinson, and David Woodsworth. The association was initially called the Civil Liberties Union, but after the first meeting it was renamed the Ottawa Civil Liberties Association (minutes of the General Organizational Meeting, 22 May 1946, Eggleston Papers, vol. 9, file 151). For information about Southam, see Charles Bruce, News and the Southams (Toronto: Macmillan, 1968), 264, 275.

[97]Minutes of the general organizational meeting of the OCLA, 22 May 1946, Park papers, vol. 9, file 151; Heaps to Baldwin (ACLU), 24 June 1946, ACLU Papers, vol. 2732. Several of the ministers resigned within a few months (Minutes of the Third General Membership Meeting of the OCLA, 15 October 1946, Eggleston Papers, vol. 14, file 18). The following discussion of OCLA activists is not entirely complete. It has proven difficult to "track down" and identify some members, such as Henri Masson the vice-president.

[98]As noted in Chapter 1, Mosher had previously served on the advisory board of Canada's first civil liberties organization, the Canadian Civil Liberties Protective Association. However, according to a telephone interview with Lukin Robinson, 16 Sept 1996, Mosher was one of the members who did little other than to lend his formal support to the group as well as provide his CCL office for meetings.

[99]Morse had been senior history master at Trinity College School in the thirties before he entered the RCAF during the war. He later became National Director of the Association of Canadian Clubs. He was also a member of the CIIA, and a close friend of Blair Fraser, the Maclean's Ottawa editor (Who's Who; obituary of Denis Murray Coolican by Rudy Platiel, Globe, 25 October 1995).

[100]Robinson was also a friend of David Shugar. His outspoken views were later to get him into trouble; he was told in 1949 that he was unlikely ever to be promoted as long as he worked for the Canadian government, and he left to work at the United Nations. Later he returned to Canada and worked as research director for the communist-dominated Mine-Mill union. Among other tasks, he wrote their briefs to the government protesting the Garson amendments to the Criminal Code (telephone interview with Lukin Robinson, 16 September 1996; Robinson could identify only one other Council member as a radical -- David Woodsworth).

[101]Chapman is discussed briefly in Chapter 1.

[102]Minutes of General Meeting of the Ottawa Civil Liberties Association, 18 June 1946, Park Papers, vol. 9, file 151.

[103]Eggleston was elected in absentia and under duress, so it is perhaps not surprising that he resigned after a short while (Wilfrid Eggleston, While I Still Remember (Toronto: Ryerson Press, 1968). Eggleston's personal views of the Gouzenko Affair can be found in his article, "Canadian Espionage Report will be a Best Seller This Year" (Saturday Night, 27 July 1946). According to Eggleston, there were some compelling reasons for the approach taken by government, which was nevertheless an infringement of "the traditional liberties of the individual."

[104]Erichsen-Brown became president of the association in late 1946. One of Erichsen-Brown's sisters was Gwethalyn Graham, a member of the newly-constituted MCLA, but better known as the author of Earth and High Heaven, a recent best-selling novel about love and anti-semitism. Another sister, Isabel Lebourdais, later wrote a popular book in which she alleged that a young teen-ager, Steven Truscott, had been wrongly convicted for a sex-killing (Callwood, Emma; Elspeth Cameron, "The Wrong Time and the Wrong Place: Gwethalyn Graham, 1913-1965," in Elspeth Cameron and Janice Dickin, eds., Great Dames [Toronto: University of Toronto Press, 1997]); Isabel Lebourdais, The Trial of Stephen Truscott [Toronto: McClelland and Stewart, 1966]). A.Y. Jackson, the painter and founding member of the ECCR, was a friend of the family, and describes them briefly in his autobiography, A Painter's Country, 75-6. For more about Erichsen-Brown, who later joined External Affairs as a legal adviser, and was Canadian Commissioner on the International Control Commission in Vietnam, see his obituary in the Globe, 23 August 1997. For his comments on communists in the OCLA, see Erichsen-Brown to Scott, 7 February 1947, Scott Papers, vol, 10, file 7.

[105]Erichsen-Brown to Scott, 7 February 1947, Scott Papers, vol. 10, file 7. Erichsen-Brown neglected to inform Scott as to the identity of the new OCLA president, but other documents

make it clear that Fyfe had assumed that position; see, for example, Fyfe to "Dear Sir," 6 March 1947, King Papers, vol. 421, Reel C-11037, document 384686. Fyfe was a member of the firm of Beament and Beament, the lawyers representing David Shugar, and in the fall of 1946 he published a condemnation of the Kellock-Taschereau Commission. Interestingly, he had also been a member of the short-lived Ottawa branch of the Canadian Civil Liberties Union (OCCLU) in 1940 (M.H. Fyfe, "Some Legal Aspects of the Report of the Royal Commission on Espionage," Canadian Bar Review XXIV [1946]: 777-84; Maclean to Lewis, CCF Papers, vol. 147, file "Civil Liberties Union").

[106]Donald C. Macdonald became the leader of the Ontario wing of the CCF during the 1950s. Although not mentioned by Erichsen-Brown in his letter to Scott, another social democratic member of the OCLA council was Edith Holtom. As noted in Chapter 1, she was a committed pacifist, a member of the both the FOR and the FCSO, and an activist within the CCJC.

[107]It is not exactly clear when the association died, but by 1950 a group of Ottawa citizens were attempting to start a new civil liberties organization ("Dear Friend," 6 April 1950, Eggleston Papers, vol. 14, file 17). This new organization probably did not last long either.

[108]"Summary of the Report of a Fact-Finding Committee," n.d. [May 1946?], Eggleston Papers, vol. 14, file 14.

[109]Council Minutes, 13 June 1946, Park Papers, vol. 9, file 151; see also the arms-length treatment given the ECCR by the Ottawa group in the minutes of the sixth council meeting, 26 September 1946, Eggleston Papers, vol. 14, file 18. A letter containing the text of the resolutions was sent out a little later, after the resolutions were approved by a general meeting of the association; see the general letter from Eggleston, 8 July 1949, Eggleston Papers, vol. 14, file 14.

[110]Lower to Blair Fraser, 9 March 1946, and Fraser to Lower, 14 March 1946, Lower Papers, vol 46, files C-20, 21; Lower to F.R. Scott, 18 March 1946, Lower Papers, vol. 46, file 21.

[111]Owens to Diefenbaker, 2 May 1946, Diefenbaker Papers, Series III, vol. 2, Reel M-7414, document 001203; Owens to King, 9 May 1946, King Papers, 1946, vol. 411, Reel C-9174, document 371082; Owens to Martin, 20 June 1946, Lower Papers, vol. 46, file 21 (both letters were personal, although Owens mentions his association with the CLAM in the latter).

[112]Compare this to the statement, "There was ... something approximating unanimity in the press and in Parliament in the response to the questions of civil liberties involved in the [Gouzenko] case" (Bothwell and Granatstein, The Gouzenko Transcripts, 15).

[113]This analysis of the Montréal Gazette, and some of the subsequent press analysis, comes from an article by Donald C. MacDonald, "The Deepening Crisis in Civil Liberties," Canadian Forum, September 1946, 131-133. The article is discussed in more detail later in this chapter. In the fall of 1946 the Gazette published a series entitled "Red Shadow Over Canada" which the ECCR called a violation of the rights of the alleged spies whose cases were still *sub*

judice. The ECCR protested to the editor, the Minister of Justice, and other civil liberties organizations (Spaulding to Bassett, 9 October 1946, King Papers, vol 416, file "Secretary of State, Dominion Affairs," Reel C-9179, document 377947-8). The Telegram defence of the government is attacked in "Inter Alia," The Fortnightly Law Journal 15 (15 April 1946): 273; see also Sandwell's attack in "Constitutional Rights" and "Liberty Again," Saturday Night, 6 April 1946, 3 and 7 August 1946.

[114]"Rights of 13 Held Flouted by Gestapo Tactics -- Chitty," Toronto Star, 28 February 1946.

[115]"Inter Alia," The Fortnightly Law Journal, 1 October 1945; 15 October 1945; 15 November 1945. Chitty's address to the CBA convention in 1946 was described as "a stirring challenge to defend democracy against the dangers of totalitarianism." Its title was "Beware the Bureaucrat" (Canadian Bar Review, 1946, 702). Later, when the Ontario government was moving hesitantly to create effective anti-discrimination legislation, Chitty was clearly opposed; see "Inter Alia," Chitty's Law Journal [replacing The Fortnightly Law Journal], November 1954: 219.

[116]"Inter Alia," The Fortnightly Law Journal, 15 March 1946; reprinted as "Totalitarianism Growing Unheeded in Canada" in Saturday Night, 23 March 1946; according to MacDonald it was also reprinted in the Globe. Dorion's attack is in Hansard, House of Commons, 26 March 1946, 260.

Chitty also republished the Winnipeg Free Press editorial "Lawyers and Liberty," 29 August 1946, which called upon the CBA to take a strong stand on the Gouzenko Affair (The Fortnightly Law Journal, 16 September 1946). Later, in 1947, Chitty linked the Gouzenko Affair with demands for a bill of rights, and his editorials became increasingly supportive of this idea; see Chapter 7 of this dissertation.

[117]"The Man With A Notebook [Blair Fraser]," "Backstage At Ottawa: Spy Hunt Hang-Over," 15 Maclean's, 1 April 1946. The Eldorado case was cited by Conservative MP Davie Fulton, in explaining his support for Diefenbaker's proposed bill of rights, and Diefenbaker referred to it several times in later years (Hansard, House of Commons, 7 May 1946, 1306; 20 February 1953, 2242; 7 February 1955, 894).

[118]"Crusade Urged For Freedom," Montréal Star, 17 May 1946.

[119]During the post-war period the Conservative Party often emphasized the classical liberal discourse of the "New Despotism," sometimes mixing it into Cold War rhetoric. According to Brennan, this alienated both the majority of journalists and the senior bureaucrats in Ottawa, who entertained reform liberal views about the development of the welfare state. See, for example, a speech by Conservative leader George Drew: "We are fighting for personal and economic freedom here in Canada today [and] are in a very real danger of losing that fight to the bureaucrats who accept the basic philosophy of Karl Marx no matter what political name they may adopt" (Brennan, Reporting the Nation's Business, 150-1). However, the liberal press still had some concerns about "cabinet despotism." See, for example, the Winnipeg Free

Press editorial, "Too Much Discretion" (1 May 1946), which lamented how Parliament had delegated discretionary powers to the cabinet for the collecting of income tax.

[120]"A Tragic Error," Saturday Night, 18 May 1946; for a criticism of this article by a CCF activist, see Donald C. MacDonald, "The Deepening Crisis in Civil Liberties," Canadian Forum, September 1946.

[121]"No Counsel Wanted," Saturday Night, 16 March 1946.

[122]"No Safeguards," and "A Tragic Error," Saturday Night, 30 March 1946, and 18 May 1946. See also: "Constitutional Rights," 6 April 1946; "Friends of Liberty," 20 April 1946; "Who Will Judge?" 27 April 1946. Sandwell initially appears to have believed that the government was violating the traditions of the constitution. Soon, however, he argued that PC 6444 was *ultra vires;* "Unconstitutional?" Saturday Night, 13 April 1946.

[123]B.K. Sandwell, "A Dubious Future for Japanese Children Who Get Deported," Saturday Night, 22 June 1947.

[124]"Running Wild," Saturday Night, 20 April 1946; see also "What's Become of Magna Charta?" Maclean's, 15 May 1946. Sandwell noted that both the Winnipeg Free Press and the Toronto Globe had written strong editorials; he conceded that the order-in-council had been cancelled as soon as it had been brought up in the House, but argued that it never should have been passed in the first place.

[125]"Bill of Rights Idea," Saturday Night, 18 May 1946.

[126]In addition to the periodicals mentioned here, see also "Liberty is Vital," Maclean's, 1 April 1946, 2.

[127]"The Cost of Friendship," 18 February 1946; "The Price of Liberty," 23 March 1946; "The Wrong Admitted," 3 April 1946; "Mr. Diefenbaker's Fine Service," 10 May 1946.

[128]Winnipeg Free Press: Bruce Hutchison, "The Spectre in Ottawa," 11 April 1946; "Star Chamber Methods," 30 April 1946; "Lawyers and Liberty," 29 August 1946 (reprinted in Fortnightly Law Journal, 16 September 1946, 57-8). The reference by Diefenbaker is in Hansard, House of Commons, 7 May 1946, 1314.

The Free Press had a history of support for a bill of rights which predated the Gouzenko Affair, and continued on long after. This is discussed in Chapter 7 of this dissertation.

[129]Toronto Star: "Detained 'For Interrogation'," 26 February 1946; "Civil Rights in State of Suspense," 28 February 1946; "The Police Mind," 1 March 1946; "Time for a Return to Normal," 19 March 1946. The Star also reprinted a critical editorial from the 25 February edition of the Ottawa Citizen: "Rights of Detained Persons," 27 February 1946.

[130]Canadian Forum: "The Spy Business," April 1946, 1; MacDonald, "The Deepening Crisis." MacDonald was Education and Information Secretary for the CCF National Office from 1946 to 1949. His ties to OCLA are mentioned briefly in Chapter 5. For more information about him, see the Canadian Who's Who (1997), and his memoirs, The Happy Warrior: Political Memoirs (Toronto: Fitzhenry & Whiteside, 1988). Another Canadian Forum article on the Gouzenko Affair was by Lester H. Philipps, "'Preventive Detention' in Canada," June 1948, 56-59.

[131]Hansard, House of Commons, 18 March 1946, 55. See also the reference to the "shocking" reaction of the USSR in "Some Thoughts About This Spy Business" [editorial], Ottawa Journal, 26 February 1946. The LPP protests seem to have been nation-wide; see, for example, its public meeting in Vancouver, attended by over 1,000 people ("Spy 'Hysteria' Said Anti-Labor Move," Vancouver News-Herald, 25 March 1946).

[132]Canadian Tribune: "Shugar Freed in `Spy' Charge," 4 May 1946; "Defend Rights is Aim of New Ottawa Group," 25 May 1946; Probe 'Spy' Report Civil Union Urges," 25 January 1947; Avakumovic, The Communist Party in Canada, 172. On the subject of the "seditious" supporters of Rose, including civil liberties protests from organized labour, see: "Stamping Out," and "Contempt of Court," Saturday Night, 23 March and 6 April 1946; "Labour Council Protests Action in Rose Case," and "Seditious Leaflet Said Distributed by Student," Globe, 6 and 9 December 1946. Years later, in his memoirs, LPP head Tim Buck wrote that Fred Rose "had been trapped in a chain of circumstances and was a victim of what, in my opinion, came close to being a calculated frame-up for the political purpose of changing relations between Canada and the Soviet Union (William Beeching and Phyllis Clarke, eds., Yours in the Struggle: Reminiscences of Tim Buck [Toronto: NC Press, 1977], 355).

[133]Mrs. J.R.R. Campbell to King, 18 April 1946, King Papers, vol. 400, Reel C-9167, document 361481. University Women's Clubs occasionally became involved in non-feminist human rights issues during the 1940s and 1950s, but never in a prominent way. For some limited information about the role of the Canadian Federation of University Women's Clubs in lobbying Ottawa on women's issues, see Jill Vickers, Pauline Rankin, Christine Appelle, Politics As If Women Mattered, 47.

[134]In some cases, the price of protest may have been high. It has been suggested that Glen Shortliffe, a professor at Queen's University, may have been barred from entry into the United States because the RCMP took an interest in him as a result of a letter in which he and other faculty members protested violations of the "rights of the individual" (Whitaker and Marcuse, Cold War Canada, 105).

[135]Lewis St. George Stubbs, a lawyer and politician, had a long history of support for civil libertarian causes, beginning with the libel trial of F.J. Dixon following the Winnipeg Strike. Stubbs had originally been a Liberal, and served for a while as a County Court judge in Manitoba, where he achieved a reputation for being biased against the wealthy elements of society. He left the bench in a cloud of controversy in the early 1930s, and subsequently

became a member of the CCF, although he later sat in the Manitoba legislature as an Independent. While an MLA, he pursued a number of liberal causes, including opposition to the padlock law, a call for a bill of rights in the BNA Act (see Chapter 7), and opposition to the deportation of Japanese Canadians. According to one of his social democratic friends, Lloyd Stinson, "In political philosophy Stubbs was a doctrinaire socialist, impatient with the gradualist policies of the CCF, adamantly opposed to the old parties but not a communist; he often voted with the CCF in his years as a member from 1936 to 1949" (Lewis St. George Stubbs [grandson], A Majority of One: The Life and Times of Lewis St. George Stubbs, [Winnipeg: Queenston House, 1983]; Lloyd Stinson, Political Warriors: Recollections of a Social Democrat [Winnipeg: Queenston House, 1975], 93; "Cry for Freedom," and "City Barristers Critical of Ottawa Action To Deport Japanese Nationals," Winnipeg Free Press, 5 February 1938 and 5 January 1946).

[136]Stubbs, A Majority of One, 200.

[137]"Most Voters Think Government 'Acted Wisely' in Spy Case," Toronto Star, 15 May 1946; Cronkite, "Civil Liberties in Canada," 61. One sign of the authoritarian attitudes unleashed by the Gouzenko Affair was the decision of the Chief Constables' Association to lobby for a system of universal fingerprinting in Canada. This was reported and roundly criticized in a Toronto Star editorial, "Next Step -- Fingerprinting?" 29 July 1946.

[138]B.K. Sandwell, for example, wrote that the general public had been "dragooned and hypnotized into a state" in which most people believed that justice had been served ("No Safeguards," Saturday Night, 30 March 1946). See too the criticism of public complacency in R. M. Willes Chitty, "Totalitarianism Growing Unheeded in Canada," Saturday Night, 23 March 1946. Also, Arthur Lower wrote in private to Blair Fraser that it was "the apathy of the average Canadian" that was permitting "something unpleasantly close to dictatorship" (9 March 1946, Lower Papers, vol. 46, file C-20). Finally, note Bruce Hutchison's comment that the worst thing about Gouzenko was not the government's actions, but that the public was "taking it lying down" ("The Spectre in Ottawa," Free Press, 11 April 1946).

[139]Cronkite, "Civil Liberties in Canada," 70-1. The resolution was as follows: "We desire to record our conviction that only persons suspected of having committed offences against the law, whether directly involving the State or the right of citizens, should be proceeded against, and then only by due process of law, and that the right to a fair and impartial hearing before the regular court of justice with privileges of the attendance of counsel at all stages, if the accused so desires, and resort to the remedies of Habeas Corpus, certiorari and appeal should not be abridged, suspended or impaired, except *by direct action of parliament* in time of war or great peril to the Nation." (Emphasis added; the association was, in the best Diceyan tradition, worried more about violations of the Rule of Law, and executive despotism, than excessive governmental interference with the fundamental rights of citizens). It was quoted in the ECCR newsletter, "Civil Rights," vol. 1, no. 2, September 1946, Park papers, vol. 9, file 155.

[140]"Roebuck Says Probe Judges 'Amateurs in Police Work'," Toronto Star, 30 July 1946. Roebuck represented Israel Halperin before the Royal Commission, and his appearance is detailed in Bothwell and Granatstein, The Gouzenko Transcripts, 316-7.

[141]Report of the Royal Commission, 19, 83. For an argument that Gouzenko and the Royal Commission helped to fuel the fires of Cold War paranoia, notwithstanding that the spy network was really a very small and amateurish operation, see James Littleton, Target Nation: Canada and the Western Intelligence Network (Toronto: Lester and Orpen Dennys), 1986, 20.

[142]Three people were denounced on the basis that "they did not take part in subversive activities but would have done so if required."

[143]CRU memorandum: "Justice and Justice Only?" Herridge Papers, vol. 22, file 12; "Resolution of Protest By the Ottawa Civil Liberties Association" [date of draft covering letter: 31 July 1946], King Papers, vol. 401, Reel C-9169, document 363934. See also the later criticism of the CLAM: Owens and Waines to Ilsley (Minister of Justice), 21 June 1947, Papers of the Special Joint Committee on Human Rights and Fundamental Freedoms (1947), Acc. 1987-88 / 146, vol. 51, file: "Human Rights (1947-48)."

[144]"Committee for Civil Rights Raps Espionage Report," Ottawa Citizen, 14 August 1946; Justice and Justice Only?" Eggleston Papers, vol. 14, file 16.

[145]"Justice and Justice Now," 5, 7.

[146]"Justice and Justice Now," 7, 13. For a detailed analysis of the Commission's approach, which largely agrees with the ECCR analysis, see Fyfe, "Some Legal Aspects," 777-84. As Fyfe notes at 778: "The report ... makes it clear that the Commissioners felt it their duty not only to report misconduct, but, in effect, either to perform the function of the grand jury or magistrate [determining if a *prima facie* case had been made] or to provide briefs for counsel who would conduct the prosecutions for the Crown." This approach, he added, led the Commissioners to use interpretations of the Inquiries Act and the Canada Evidence Act which were plausible but hardly justifiable.

[147]"Justice and Justice Now," 14.

[148]Spaulding [ECCR] to Diefenbaker, 10 August 1946, Diefenbaker Papers, 1940-1956 series, vol. 9, file "Civil Liberties - General, n.d., 1943-1955," Reel M7417, document 006282. The Toronto Star did provide occasional positive coverage of the ECCR, in addition to publishing its advertisements. See, for example, "Civil Rights Group Raps Shugar Charge," 8 August 1946; "The Protection of Civil Rights," 20 December 1946.

[149]"Most in Dominion Know Their Rights Under Law," and "Find 75-82 P.C. Don't Know Basis of Our Civil Rights," Toronto Star, 7 August and 10 August 1946; "Next Step -- Fingerprinting?" Toronto Star, 29 July 1946 (this was reported in an editorial which decried

the proposal, linked it to the "police mind" manifested in the Gouzenko Affair, and pointed out that wartime national registration cards were unfortunately still in use). The proposal of Relations was reported in "Unlawful parties," Saturday Night, 6 July 1946; in this editorial Sandwell strongly disagreed with the proposal, suggesting that the better approach was prosecution for illegal behaviour.

[150]Local branches of the CBA seemed reluctant to comment on the Gouzenko Affair until after the Royal Commission made its final report. See, for example, the undocumented reference to the Ontario Bar Association decision on 1 March to table a resolution of condemnation: "On PC's 6444 and 411," [ECCR document?, n.d. c.1946], Macleod Papers, file 25.

[151]Report of the Committee on Civil Liberties," August 1944, Canadian Bar Review, XXII (September 1944): 617.

[152]Report of "The Twenty-Eighth Annual Meeting" of the CBA, August 1946, The Canadian Bar Review XXIV (1946): 697-711, at 705-6.

[153]"The Twenty-Eighth Annual Meeting," 706-7.

[154]Chapter 1 of this dissertation referred to Stouffer, Communism, Conformism and Civil Liberties, which established a correlation between education and support for civil liberties. This work (and other empirical investigations) also provided support for the theory of "democratic elitism." The 1991 study attacking this theory is by Paul M. Sniderman and others, "The Fallacy of Democratic Elitism: Elite Competition and Commitment to Civil Liberties," British Journal of Political Science 21 (1991): 357-370.

[155]"Members of Bar Wait for Report on Civil Liberty," Globe, 30 August 1946.

[156]"Members of Bar Wait"; Cronkite, "Civil Liberties in Canada," 65. In addition, CBA member John Cartwright was the chief Crown prosecutor for the Commission (see below).

[157]"Bar Group Will Study Protection of Civil Liberties," Globe, 30 August 1946; Report of "The Twenty-Eighth Annual Meeting" of the CBA, August 1946, The Canadian Bar Review XXIV (1946): 697-711, at 706. Chitty also said that the report did not go far enough; he wanted the association to take a stand on the protection of property rights, and argued that picketers preventing people from entering or leaving buildings were violating a fundamental civil liberty.

[158]"The Twenty-Eighth Annual Meeting," 708; "Reject Report on Spy Case But Accept its Proposals," Star, 31 August 1946 [includes the text of the CBA report]; "Lawyers Insist Rights of Citizens Protected," Globe, 31 August 1946 [also includes the text of the CBA report]; B.K. Sandwell, "Bar Association Utters Clarion Call for Renewal of Liberties," Saturday Night, 14 September 1946 [Sandwell was pleased with the report, arguing that de-linking it to the Gouzenko Affair fooled nobody].

[159]Boyer's membership in the MCCLU is mentioned in Chapter 1.

[160]The Report of the Royal Commission refers to the Montréal civil liberties (MCCLU) connection for Burman (364, 366) and Boyer (435), and suggests that possibly Adams was a member (224). Gordon Lunan has noted in his memoirs that he was active in the MCCLU (The Making of a Spy, 95). Boyer had been a member of the executive committee of the MCCLU in the late 1930s and early 1940s. June Callwood has described him as "a brilliant, aristocratic, wealthy professor at McGill University and an explosives expert with the National Research council." By all accounts, he was attracted to communism for idealistic reasons, and believed that since the USSR was Canada's ally, he was doing no harm by handing over minor classified information. After Boyer was released from prison, he became a criminologist, and worked with the Montreal-based Ligue de droits de l'homme in the 1970s. He was the first president of the Québec NGO, l'Office des Droites de Détenu-e-s, and a member of the executive of the national Canadian Rights and Liberties Federation from 1974-76 (Callwood, Emma, 104, 125; Weisbord, The Strangest Dream, 70ff.; Laurin, Des Luttes et des droits, 22, 143; Littleton, Target Nation, 1986, 20).

[161]Memorandum to Inspector Leopold [about the founding MCLA meeting, 17 May 1946], 23 August 1946, CSIS Files, vol. 3440, file "Civil Rights Union," 896; Scott to Baldwin, 20 April 1945, ACLU Papers, vol. 2657; Scott to Lower, 3 April 1946, and Angus Cameron to Scott, 10 July 1946, Scott Papers, vol. 10, file 7; "Freedom ... is Your Affair," Montréal Star, 12 November 1946.

[162]"Civil Rights," vol. 1, no. 2, September 15 1946; "Civil Rights," vol. 1, no. 3, 31 October 1946, Macleod Papers, file 12.

[163]Miscellaneous CRCIA documents and Kaplansky Papers; see Chapter 6 of this dissertation.

[164]On Lapedes and the bill of rights issue, see "Left-Wing Union Move on Bill of Rights Issue Splits TLC Convention," Globe, 27 September 1947. For a discussion of Lapedes' opposition to the JLC, see Chapter 6 of this dissertation. On his expulsion from the TLC, see "Labour Council Ousts Three Labelled Reds, Warns More to Follow," Globe, 22 Sept 1950, and for material on his later battles in the garment industry, see Toronto Telegram, 8 August 1952; Financial Post, 16 August 1952. See also the press release of the Canadian Jewish Congress, condemning the tactics of Lapedes and the Canadian Garment Workers Union, 1 October, 1952, JLC Papers, vol. 41, file 8.

[165]The fight within the CCL between communist and non-communist unions is discussed in Abella, Nationalism, Communism, and Canadian Labour. See also William Kaplan, Everything That Floats: Pat Sullivan, Hal Banks, and the Seamen's Unions of Canada (Toronto: University of Toronto Press 1987).

[166]"Civil Rights Union" [brief history], Papers of the Special Joint Committee on Human Rights and Fundamental Freedoms, vol. 51, file: "Human Rights (1947-48)"; letter from Margaret Spaulding [protesting the treatment of one of the accused spies, Edward Mazerall],

Toronto Globe, 4 December 1946; "Civil Rights," vol. 1, no. 4, 20 December 1946, Park Papers, vol. 9, file 155; "Let Parliament Enquire," Ottawa Citizen, 25 January 1947; "Dick Ruling on Civil Rights Held Example for Ottawa" [resolution from public meeting held by CLAT and CRU], Toronto Star, 28 January 1947.

[167]Miscellaneous CRU correspondence. Other members at different times were: Dorothy Henderson (secretary); Jack Cowan (treasurer), H. Goodman, J. Kellerman, Ben Manson, T. Curran, J.H. Sword, and J.M. Wainberg. Barker Fairley and C.S. Jackson are discussed briefly in Chapter 1 of this dissertation. Information about Pentland and some of his left-wing connections can be found in Phyllis Clarke, "Application of Marxist Thought to Canada," (Ph.D. diss., University of Toronto, 1977), 233; Gregory S. Kealey, "Stanley Bréhaut Ryerson" Canadian Revolutionary Intellectual" Part II, Studies in Political Economy: A Socialist Review 9 (Fall 1982): 133-170 at 137, 149; Gerald Friesen, "H.C. Pentland and Continuing Education at the University of Manitoba: Teaching Labour History to Trade Unionists," Labour/Le Travail 31 (Spring 1993): 301-13.

[168]Hansard, House of Commons, 30 January 1947, 1. This committee is discussed in more detail in Chapter 7.

[169]A comprehensive list of the accused, and the outcomes of their trials, is in Appendix D of Sawatsky's Gouzenko, at 286. One of the more unsavoury stories emerging in the aftermath of the Gouzenko affair involves the treatment of Fred Rose. In 1957 Rose's citizenship was revoked by special order-in-council, on the grounds that he had been living in Poland for two years, and had "not maintained substantial connection with Canada." When he asked for permission the following year to visit Canada on the occasion of his daughter's wedding the government refused, and when David Lewis tried to help him come back for a visit in 1966 he was again turned down (Weisbord, The Strangest Dream, 169).

[170]Bothwell and Granatstein, The Gouzenko Transcripts, 17.

[171]The CRU used the CBA report to buttress its argument that the government and Commission had violated "basic civil rights" ("Justice and Justice Only?" Herridge Papers, vol. 22, file 12).

[172]Especially in the case of the first four interrogations, information was obtained which the state was able to use with great effect. Later, when some civil liberties were restored, the inquiry was less fruitful. As one External Affairs officer later recalled, a number of confessions were extracted in the early days of the suspects' confinement, but as soon as the government permitted them to receive visitors the accused ended their cooperation (Granatstein, A Man of Influence, 178; see also the reminiscences of one of the first four accused, Ned Mazerall, in Callwood's Emma, 149).

[173]Granatstein, A Man of Influence, 174, 178-9; Smith, Diplomacy of Fear, 130-5. The strongest defence of the government and the Royal Commission would seem to be that the

entire political establishment was badly rattled by Gouzenko's revelations and erred on the side of caution. However, it is difficult to conclude that a less cautious and more liberal policy would have significantly endangered Canada.

[174]Weisbord, The Strangest Dream, 151. See also Littleton, Target Nation, 19-21.

[175]Report of the Royal Commission, 281. As one civil libertarian commentary noted, only the foreign birth-place of Shugar was mentioned in the Commission report, although at least two other alleged spies were born abroad, in Britain ("Summary of a Report of a Fact-Finding Committee," Eggleston Papers, vol. 14, file 14). This fact-finding committee may have been set up by the OCLA, but its report has some similarities to another report, probably written by the ECCR, called "This Is the Report of a Fact-Finding Committee" (MacLeod Papers, file 25).

[176]Smith in Hansard, House of Commons, 8 May 1946, 1336 [quoting 25 April Ottawa Citizen story on Shugar]; "Dr. Shugar's Serious Charges," Toronto Star [editorial] 26 April 1946; "A Grave Mistake," 27 April 1946, Saturday Night; "Star Chamber Methods," Toronto Star, 30 April 1946; "A Blot on the Record" [editorial], Maclean's, 1 June 1946, 2; Paul Gardner, "Character Judgment is a Nazi Legal Device," Saturday Night, 29 June 1946 [Shugar is used here as an example]. Other references in Hansard are at 8 May, 1323; 15 July, 3440; July 29, 3970-1; 7 August, 4412; August 31, 5741.

[177]Kellock-Taschereau Second Interim Report, Appendix B of Report of the Royal Commission, 697-703, at 702.

[178]Kellock-Taschereau Second Interim Report, 701-2; Bothwell and Granatstein, The Gouzenko Transcripts, 270-278.

[179]Bothwell and Granatstein, The Gouzenko Transcripts, 249-51, 270-278; CASW, a supporter of the CCJC, is discussed briefly in Chapter 2. As Dufour has pointed out, CASW itself was a victim of the Cold War. Stigmatized as a Communist front organization by the Kellock-Taschereau Commission (at 70 of the Report) it soon had trouble recruiting new members, grew increasingly weaker, and finally died in the mid-1950s (Dufour, "'Eggheads'," 196).

[180]Bothwell and Granatstein, The Gouzenko Transcripts, 270-278; Report of the Royal Commission, 170. Shugar's involvement with the NCCSF is not mentioned in the report of the Commission, but it is safe to assume that the Commissioners knew about it.

[181]Kellock-Taschereau Second Interim Report, 702; "Judging by Intuition: A National-Socialist Principle of Law" [drawing parallels between Kellock-Taschereau and Nazi criminal law], and "On the Treatment of Untried Suspects by Royal Commission Reports," n.d. [probably ECCR reports], MacLeod Papers, file 25. Of course, the common law permits a judge, when assessing the truth of the accused's testimony, to assess the character of the accused, but it does not permit such an assessment to determine a conclusion of guilt or

innocence.

[182]For a discussion of s. 3 of the Act, which deals with the communication of secret information, and the Criminal Code definition of conspiracy, see Report of the Royal Commission, 315-6.

[183]"Orders Halperin To Stand Trial, Releases Shugar," Globe, April 26, 1946; Shugar to St. Laurent, 1 August 1948, Diefenbaker Papers, vol. 82, Reel M-7450, document 065357; "Dr. David Shugar Released From Lone Espionage Charge," Ottawa Citizen, 25 April 1946.

[184]As Morris Fyfe, put it, the Commissioners took "the extraordinary course of including in their report what might be termed a brief on appeal in which they do not hesitate to take issue with the magistrate" who had refused to commit Shugar for trial ("Some Legal Aspects," 779). This, he noted, was consistent with their approach of going beyond the task of simply reporting misconduct.

[185]Report of the Royal Commission, 281-318. Fyfe has also criticized the way the Commissioners treated Shugar after this new evidence was presented to them, suggesting that he had not been clearly informed of a right to present new testimony prior to their decision to make new allegations of misconduct ("Some Legal Aspects," 783-4).

[186]Report of the Royal Commission, 317-8. Section 4 of the Official Secrets Act prohibits using secret information for the benefit of a foreign power.

[187]Shugar to St. Laurent, 1 August 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065357-60.

[188]Cartwright was the same lawyer who had recently acted as counsel for the CCJC, as mentioned in Chapter 2.

[189]G.D. Cameron, for Deputy Minister of National Health and Welfare, to Shugar, 19 July 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065338 (Shugar had been dismissed earlier; this was a letter in reply to his request for the reason); Shugar to Eggleston, 20 July 1946, Eggleston Papers, vol. 14, file 14.

[190]Gardner to Eggleston, 21 July 1946, Eggleston to Gardner, 22 July 1946, and Gardner to Eggleston, 23 July 1946, Eggleston Papers, vol. 14, file 14. In these letters, although Gardner assured Eggleston that he was a liberal, he argued with Eggleston that civil liberties in the Soviet Union were not as limited as some writers on the right had suggested. It is difficult to assess Gardner's ideological position. According to Lunan, Gardner was part of the "movement" (The Making of a Spy, 98), but according to Lukin Robinson, he was definitely not (telephone interview, Sept 16, 1996). In any case, Gardner's scathing indictment of the government and the Royal Commission, "Character Judgment is a Nazi Legal Device," was certainly acceptable to B.K. Sandwell, who published it in Saturday Night, 29 June 1946.

[191]Minutes of special membership meeting of the OCLA, 24 July 1946, general letter from Eggleston, with resolutions appended, 31 July 1946, and minutes of the fourth meeting of the OCLA council, 29 July 1946: Park papers, vol. 9, file 151; "Canadian Liberty -- 1946" [advertisement], Ottawa Journal, 2 August 1946.

[192]Irvine to Eggleston, 14 August 1946, Eggleston Papers, vol. 14, file 14; minutes of the fifth meeting of the OCLA, 17 September 1946, and general letter from Masson, vice-president of the OCLA, with resolutions appended, 29 October 1946, Park Papers, vol. 9, file 151. The Ottawa group continued to be less aggressive than Paul Gardner wanted. When St. Laurent attacked Shugar in a public statement (see below), Gardner immediately sent off a letter to Prime Minister King, but as a private citizen without any mention of the OCLA. He did, however, append a copy of the ECCR bulletin "Civil Rights." See Gardner to King, 3 September 1946, in King Papers, vol. 402, Reel C-9169, document 364520, along with appended document 364521-6.

[193]T.M. Dauphinée (CASW Chair) to Hon. Dr. McCann, 27 July 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065348. For a discussion of Shugar's earlier activities as national secretary of the National Association of Technical Employees, as well as CASW, see Whitaker and Marcuse, Cold War Canada, 87-8, 97-8. Dufour has argued that most of CASW's efforts at this time went to defending Boyer rather than Shugar ("'Eggheads'," 195), but his evidence is not entirely persuasive.

[194]The charge was erroneously reported in the 7 August CP story, carried in huge headlines: "Re-Arrest Shugar" Toronto Star, 7 August 1946. A week later CP issued a retraction, noting that the charge read: "That Shugar in the year 1944 and 1945 did in the cities of Toronto and Ottawa and other places within Canada conspire with one Samuel Carr [of the LPP; one of the other accused] and with persons unknown to commit an indictable offence, namely for a purpose prejudicial to the safety or interest of the state, to obtain, collect, record or communicate to another person or persons information calculated to be or might be or intended to be directly or indirectly useful to a foreign power contrary to provisions of Section 3 (1c) of the Official Secrets Act" ("Charge Against Dr. Shugar Is One of Conspiring," Ottawa Citizen, 14 August 1946). See also "'Rubbish' Says Dr. David Shugar of New References," and "Devotes 38 Pages to Shugar Case," Ottawa Journal, 16 August 1946.

[195]"Civil Rights," vol. 1, no. 1, 15 August 1946, Eggleston Papers, vol. 14, file 5; "Civil Rights Group Raps Shugar Charge," Toronto Star, 8 August 1946.

[196]Erichsen-Brown to Scott, 7 February 1947, Scott Papers, vol, 10, file 7. According to Erichsen-Brown, the "commies" had managed to control the AGM, but had not yet taken over control of the executive.

[197]"Civil Rights," vol. 1, no. 1, 15 August 1946, Eggleston Papers, vol. 14, file 5.

[198]James McCann (Acting Minister, Department of National Health and Welfare) to M.M. Callan, Secretary of Ottawa branch of CASW, 7 August 1946, and Dauphinée (CASW chair) to McCann, 21 August 1946, Diefenbaker Papers, vol. 82, Reel M-7450, documents 065362-3; Hansard, House of Commons, 31 August 1946, 5741-2.

[199]Hansard, House of Commons, 31 August 1946, 5743 (quoted in "Civil Rights," vol. 1, no. 2, 15 September 1946, Park Papers, vol. 9, file 155). It is interesting to note that Irvine had received a letter from the OCLA on the Shugar case, and wrote back on 14 August 1946 that he agreed with the organization's concerns (Eggleston Papers, vol. 14, file 14).

[200]"Civil Rights," vol. 1, no. 2, 15 September 1946. The Canadian Unionist editorial, mentioned in "Civil Rights," appeared in August 1946.

[201]"Civil Rights," vol. 1, no. 3, 31 October 1946, Macleod Papers, file 12.

[202]Globe: "Shugar Conduct Called 'Disgusting' By Prof. Beamish," 28 November 1946; "Gave Russia No Data, Shugar Says in Defense," 30 November 1946; "Shugar's Reason for Meeting Carr 'Very, Very Lame'," 2 December 1946.

[203]"Shugar Cleared For Second Time of Spy Charge," Globe, 8 December 1946. The "reverse onus" presumption of guilt clause of the Official Secrets Act had been criticized in a Toronto Star editorial ("The Official Secrets Act") as early as 12 March 1946.

[204]Shugar to Martin, 22 December 1946, Diefenbaker Papers, vol. 82, Reel M-7450, document 065367.

[205]Shugar to King, Diefenbaker Papers, vol. 82, Reel M-7450, document 065369.

[206]Ilsley to Shugar, 8 March 1947, Diefenbaker Papers, vol. 82, Reel M-7450, document 065370. The next document in this file, dated 12 March 1970, is a reply probably written by Shugar's lawyer (the signature is illegible), pointing out that "it would be a shocking thing if a subject, in order to obtain legitimate redress from the Crown, were compelled as a condition of such redress, to waive his rights against servants of the Crown who have been guilty of tortious act against his person."

[207]Callwood writes in Emma (at 212) that "A blizzard of letters to Health and Welfare and appeals to Mackenzie King produced a solid wall of rejection." See also: Spaulding (CRU) to King, 16 May 1947, King Papers, vol. 432, Reel C-11044, document 394059-61; Owens to King and to Martin, 24 February 1947, King Papers, 1947, vol. 426, Reel C-11040, document 387874-5; Prime Minister's Office to Owens (CLAM), 6 March 1947, King Papers, vol. 424, Reel C-11038, document 385904; Diefenbaker to Shugar: "This will acknowledge receipt of your letter of recent date with enclosures. I have read over the material submitted by you and at this time I can add nothing to what I told you the last time I talked to you," 25 March 1947, Diefenbaker papers, Series III, vol. 82, file "Royal Commission on Espionage - Dr. David Shugar," Reel M-7450, document 065374.

[208]This lawsuit may not have gone to court. According to Lunan, 207, Shugar successfully sued Time news magazine and other publications for damages. This may be the same lawsuit mentioned in the Globe on 26 April 1946, although the story referred only to Shugar taking umbrage against a story in the Ottawa Citizen. In any case, no information about the outcome of such private lawsuits has turned up.

[209]Gordon Lunan says that Shugar first moved to France, but Canadian authorities managed to have him removed from that position, whereupon he moved back to his native Poland and did important work in the study of DNA, being honoured for his work in 1988 at a meeting of the 16th International Congress of Genetics (The Making of a Spy, 207-8).

David Shugar's brother informed the author of this dissertation, in a short telephone conversation, that there is absolutely no possibility of any contact by historians with David Shugar about the Gouzenko Affair; the tone of the conversation was acrimonious and curt.

[210]Whitaker, Double Standard, 191; "Government Revokes Citizenship of Rose, Moves Against Shugar," Globe, 28 June 1957.

[211]Bercuson, True Patriot, 142-3.

[212]On the other hand, "Shugar's union activities branded him as a left-wing agitator with professional societies and former employers (and likely the RCMP) even before ... 1944" (Whitaker and Marcuse, Cold War Canada, 88).

[213]"Action Has Already Been Taken to Purge Service of 'Reds'," Ottawa Journal, 16 August 1946. For a discussion of civil service purges, which actually began in May of 1946, see Whitaker and Marcuse, Cold War Canada, Chapter 7.

Note that later, as Minister of National Defence, Claxton was again responsible for some purging of suspected communists, but he always maintained that quietly letting people go did less damage to their reputation than the American system of public inquiries. This of course begs the question as to how many of these people were genuine security risks.

[214]Waines and Owens to Ilsley, 21 June 1946, Papers of the Special Joint Committee on Human Rights and Fundamental Freedoms (1947), vol. 51, file: "Human Rights (1947-48)."

[215]"Waines and Owens to Ilsley, 21 June 1946, Papers of the Special Joint Committee on Human Rights and Fundamental Freedoms (1947), vol. 51, file: "Human Rights (1947-48)."

[216]"Interest in Liberty," Saturday Night, 29 June 1946. Note also the remark by J.H. Gray that "One of the healthy signs in our democracy has been the great resurgence of interest in civil liberties since the end of the war" ("Resurgence of Civil Liberty," Winnipeg Free Press, 7 February 1947).

[217]See Chapter 5 of this dissertation.

CHAPTER 4 - THE CANADIAN JEWISH CONGRESS AND DISCRIMINATORY RESTRICTIVE COVENANTS

A: INTRODUCTION[1]

If the first two major human rights issues of the immediate post-war period were the Japanese Canadian deportation crisis and the Gouzenko Affair, the third was the long-term problem of racial and religious discrimination.[2] Initially this involved both discrimination imposed by the state and discrimination by private individuals or businesses, but by the late 1940s much of the former had been eliminated,[3] and the Canadian human rights policy community turned most of its attention to discrimination by private individuals and corporations.[4]

In 1945 private discrimination was directed against a number of minority ethnic and religious groups, especially blacks, native people, people of Asian origin, and members of minority religious groups, including Jehovah's Witnesses, Hutterites, Mennonites, Doukhobors, and Jews. The level of demonstrated prejudice was to some degree a function of demographic clustering. For example, discrimination against Asians was strongest on the West Coast, Hutterites were widely regarded as a problem on the Prairies, blacks encountered the most prejudice in certain small towns in southern Ontario and in Nova Scotia, while anti-semitic practices were perhaps most common in Montréal and in parts of Ontario.

Post-war anti-semitism took many forms. There were still limitations on the number of Jews that could enter study and teach in certain university faculties, many private clubs were "restricted," and people with Jewish-sounding names were often the victims of discrimination in employment and the provision of public services such as hotel accommodation, apartment rentals, or the sale of property.[5]

Although the Jewish community was frequently the object of discrimination, it was sufficiently affluent and well-organized to do something about it. The main representative of Canadian Jews, the Canadian Jewish Congress (CJC), had been reborn in the 1930s, largely in response to the growth of anti-semitism and world fascism.[6] As pointed out in Chapter 1,

it had lobbied before and during the Second World War for improved human rights protection, and had also taken a minor role in the CCJC coalition.[7] It had joined forces in 1938 with B'nai B'rith, a Jewish service organization, to form an anti-discrimination committee known as the Joint Public Relations Committee (JPRC). This organization had equal representation from the two constituent groups, but it was agreed that all public statements would be made by the CJC, as the official voice of Jews in Canada. In the post-war era, much of the anti-discrimination work of the Jewish community was performed by the JPRC and made public by the CJC.[8]

This anti-discrimination work involved two different approaches, lobbying and litigation. The CJC frequently asked governments, especially the Ontario government of Leslie Frost, to pass legislation that would make it illegal to discriminate against members of minority ethnic and religious groups. At the same time, it also helped to take two "test cases" through the courts.[9]

This chapter is a discussion of the human rights policy network which dealt with these cases -- how they arose, the way in which they moved through the judicial system, their role in the context of the broader struggle for anti-discrimination legislation, and the impact they had on not just the litigants but also on society as a whole. Previous chapters in this dissertation have focussed primarily upon how human rights interest groups lobbied government, either directly through representations to ministers, members of parliament, and senior bureaucrats, or indirectly by attempting to influence public opinion. With few exceptions, most notably the CCJC's participation in the Japanese-Canadian deportation reference case, little was said about litigation. In this chapter, however, it is obvious that litigation was the primary route to success for the human rights community. The arguments employed by the human rights activists were therefore often highly legalistic, as they strove to influence judges as well as politicians. As a result, this chapter examines in some detail the dialectical conversation between lobbyists and the judiciary -- the legal arguments of the former and the legal responses of the latter.

B: THE DRUMMOND WREN CASE

The Workers' Educational Association (WEA) was a non-partisan organization devoted to the principle of "education for citizenship" within the labour movement.[10] In the summer of 1944 the WEA decided to buy a piece of property on which it would erect a model home to be raffled off as a fund-raising ploy. The organization then found that the property was subject to a restrictive covenant, a legal device which has been defined as "an agreement which restricts the uses of real property," so that the new purchaser undertakes some obligation pertaining to the property's future use.[11] In many cases restrictive covenants are innocuous, and may refer to the use of a roadway or involve limitations on renovations. In this case, however, the covenant incorporated the principle of ethnic/religious discrimination, for it constituted an agreement that the owner would not sell the property to "Jews or persons of objectionable nationality."[12]

As the organization later stated, its members were "deeply shocked" to find such a restriction placed on the property, and its members "resolved not only to have the infamous clause removed but to protest strongly against the incipient Fascism it exemplified." The WEA therefore asked the Ontario Supreme Court to remove the discriminatory restrictive covenant from the property deed. The judge first ordered that other property owners in the area should be given a chance to appear, and soon two of them indicated that they would oppose the application. Although the vendor stated that he had no further concern because the sale of the property had been completed, and although over time the other property owners seem to have withdrawn their objections, the WEA decided to continue with the case, seeing this as a chance to make a foray into the field of human rights.[13]

Rather than fight the covenant on its own, however, the WEA had taken its problem to the JPRC. Since restrictive covenants were a common anti-semitic device in Ontario during this period,[14] and the Jewish community had been concerned about them for some time,[15] the JPRC agreed to provide "all financial assistance" for testing the covenant in court and guaranteed that the WEA would suffer no financial loss by reselling the property and building its model house elsewhere. The JPRC then asked the CJC to become publicly involved as "the

official representative organization of Canadian Jewry," and the CJC agreed to cooperate in what turned out to be the first of its many "networking" efforts to promote egalitarian human rights. The CJC then moved to get permission from the Ontario Supreme Court to intervene on behalf of Canadian Jews.[16]

Having another organization become involved as an intervenor is common enough today in Canada, especially in the Charter era, and was not remarkable in the United States during the 1940s with organizations such as the ACLU and NAACP engaged in "judicial lobbying," but it was relatively unknown in Canada at that time. This case therefore was potentially the beginning of a new stage of human rights activism.

The case also exemplified a particular way of looking at the courts. As Paul Weiler once pointed out, in an influential Canadian Bar Review article based upon contemporary American legal theories, there are two different but intellectually-tenable ways of viewing the judicial role. One, which he called the "adjudicator" model, assumes that our judges should be primarily concerned with the settlement of disputes between litigants. The other, which he called the "policy-maker" model, maintains that judges have a responsibility which goes beyond providing a solution to the disputants and includes an obligation to consider the policy impact that the decision will have upon society at large. As Weiler also pointed out, "if the essence of judicial decision-making is the formulation of general policy for society, it is obvious that all those whose positions are affected by the policy have an interest in the best possible argument being made to the court ... [and] there is a tendency in such a theory to develop a device for allowing interested groups representation in judicial policy-making by allowing them to participate in the argument which influences the court." The CJC's interest in such representation indicated support for this policy-making role, as did also the court's decision to allow the Jewish group intervener status.[17]

Up to this point, the WEA had not been prominent in the human rights community. For example, it was not listed formally as a member of the CCJC.[18] However, by the very nature of its goal, educating the working class, it could hardly be a conservative supporter of the status quo. The organization's executive probably saw this as a golden opportunity to

create a bond with the CJC, a relatively affluent organization that might well support further efforts in the anti-discrimination field.[19]

It is interesting to note that the CJC was willing to work with the WEA even though its leader, Drummond Wren, had been accused of pro-communist bias as early as 1937, and allegations continued from time to time throughout the war and then well on into the late 1940s. Wren himself denied that he was a communist, and during the war (as mentioned in Chapter 1) he had been a vice-president of the generally non-communist CLAT, but he certainly had radical socialist tendencies which made him vulnerable to "red-bashing" attacks.[20]

There are a number of reasons why these allegations of communism probably did not disturb the CJC in 1944. Towards the end of the war the LPP was at the height of its popularity and respectability, and its main enemy was the CCF rather than the main-stream parties. This antipathy was to some degree duplicated within the Jewish community, with the social democratic Jewish Labour Committee (JLC) acting as the natural enemy of all communist organizations, including the United Jewish People's Order (UJPO).[21] Since UJPO and not the JLC was a member of the otherwise largely bourgeois CJC, and since the LPP member of the Ontario legislature, Joseph Salsberg, was also active in the CJC, it is perhaps+ not too surprising that the CJC was willing to work with the WEA on a case which involved, as the WEA claimed, "the struggle against group hate and all anti-democratic movements."[22]

First, however, a different restrictive covenant case had reached the courts. On 9 March 1945, in the case of Re McDougall and Waddell, Mr. Justice Chevrier of the Ontario Supreme Court (trial division), upheld a covenant prohibiting the sale or occupation of a piece of land to any person "other than Gentiles (non-Semitic) of European or British or Irish or Scottish origin." While he felt that the words of the 1944 Ontario Racial Discrimination Act (ORDA) could not be extended to this particular covenant, the judge nevertheless took advantage of the case to deliver a sermon on the "outstanding evil" of religious and racial prejudice, pointing out the hypocrisy of those who condemned the recent Nazi holocaust but practiced discrimination in Ontario.[23]

Meanwhile, the WEA and the CJC were putting together a legal team. The WEA employed Irving Himel, the liberal Toronto lawyer from a middle-class Jewish background who was soon to became active in the Committee for the Repeal of the Chinese Immigration Act (CRCIA), the Committee for a Bill of Rights (CFBR), and the ACL.[24] He had brought in some elite legal help in the form of J.R. Cartwright, the lawyer who (in 1946) represented the CCJC in the deportation case and acted as the government counsel in the Gouzenko Affair. In addition, it was decided that the CJC lawyer would be J.M. Bennett, chairman of the JPRC legal subcommittee, and that he would be assisted behind the scenes by three other members of the subcommittee: Professor Jacob Finkelman of the University of Toronto Law School (Chair of the Ontario Labour Relations Board and later Chair of the federal Public Service Staff Relations Board), Bora Laskin of Osgoode Hall Law School (later Chief Justice of Canada), and Charles L. Dubin, also of Osgoode Hall (and later Chief Justice of Ontario). This was clearly a "high-powered" legal team.[25]

Shortly after Mr. Justice Chevrier had handed down his decision in May, counsel for the WEA appeared before Mr. Justice Keiller Mackay of the Ontario Supreme Court (trial division), claiming that the restrictive covenant on the WEA property should be declared invalid. No lawyers appeared for the other side. Four arguments were presented -- it went against public policy, it was a restraint on alienation, it was ambiguous ("void for uncertainty"), and it contravened the ORDA.[26]

On 31 October Mr. Justice Mackay struck down the restrictive covenant, agreeing with Drummond Wren's lawyers on three of their arguments (public policy, alienation, and uncertainty) and avoiding the fourth (that it contravened the ORDA). Mackay crafted a ground-breaking decision which reflected the emergent human rights discourse of the immediate post-war era. His decision also illustrates how far a judge can go when willing to shed the mantle of legal formalism and engage in "principled" policy-making. He quoted with approval American Supreme Court justice Benjamin Cardozo, who said that:

> [e]xisting rules and principles can give us our present location, our bearing, our latitude and longitude. The inn that shelters for the night is not the journey's end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth.[27]

The existing principle which Mackay attempted to expand was that of "public policy." He began by noting that judges are not supposed to enforce certain contracts, and quoted a legal source: "Any agreement which tends to be injurious to the public or against the public good is void as being contrary to public policy."[28] He then argued that in the mid-1940s discrimination was now contrary to public policy. He referred to the fact that the Master of Titles in Toronto had already stopped registering any deeds which contained restrictive covenants, but his strongest evidence was a number of explicitly political decisions.[29] At the international level, he mentioned the human rights references of the United Nations' Charter, as well as the earlier Atlantic Charter. He also found evidence of changing public policy at the provincial level, noting Ontario's ORDA as well as an anti-discrimination measure in the province's Insurance Act and regulations passed pursuant to the Community Halls Act.[30]

After having established to his own satisfaction the existence of a newly-emergent human rights element in public policy, Mackay then turned to the question as to whether or not this particular covenant violated this policy. The covenant was, he said, "offensive" to public policy because "nothing could be more calculated to create or deepen divisions between existing religious and ethnic groups in this Province than covenants of this sort." He then reinforced his argument by noting the role that anti-semitism had recently played in the ideology of the Nazis, and quoted extensively from speeches by Roosevelt, Churchill, and De Gaulle in support of the rights of Jews. Finally, he referred to anti-discrimination provisions supported by the World Trade Union Congress, the Latin American Act of Chapultepec, and even Article 123 of the Soviet Constitution.[31]

Mackay then turned to the argument that the covenant was invalid as a "restraint on alienation." To alienate property is to transfer it to another person, and the common law in general prohibits limits on the right to alienate property, viewing them as violations of the principle of freedom of contract. (In other words, a person who attempts to restrict the future alienation of property is attempting to limit the freedom of a later owner to dispose of the property in subsequent contracts.)[32] Unfortunately for the WEA and CJC, however, a British precedent had created a serious exception to this general principle. In 1875, in a case known as Macleay, the British courts were asked to rule on the legitimacy of a will which prohibited

the inheritor of a piece of land from selling to anyone outside his family. The British judge who settled this dispute ruled that the will was valid, and he therefore set a precedent that legitimated at least one form of restraint on alienation of property -- restrictive covenants based on family status.[33]

Although Macleay was frequently criticized, the principle of stare decisis and the deference shown by Canadian judges for British decisions ensured that by 1944 the decision constituted an important exception to the principle of freedom of contract. (Paradoxically, as noted in Chapter 1, the Canadian judiciary tolerated few exceptions to this principle when dealing with private acts of discrimination in the provision of public services.) In addition, it was widely believed that Macleay legitimated, by analogy, restraints on alienation of property based on other criteria, such as religious or racial status. As a result, no Canadian judge had ever used the principle of freedom of contract to strike down a discriminatory restrictive covenant.[34]

Mackay, however, was willing to exercise some judicial creativity. He distinguished the Macleay precedent by arguing that the covenant in that case had been limited to the life of a particular individual, while in Drummond Wren the covenant theoretically went on forever. As a result, he was able to conclude that the classical liberal concept of freedom of contract nullified the Toronto restrictive covenant on the grounds that it constituted an impermissible restriction on the alienation of property.[35]

Mackay's third argument was that the covenant was void for uncertainty -- in other words, the ambiguity of the covenant made it impossible to decide exactly what was intended and therefore impossible to enforce. As he noted, the phrase "persons of objectionable nationality" was impossibly vague, and even the term "Jews" was unclear; he intimated that it was uncertain whether it referred to people of the Jewish faith, or people of Jewish ancestry, and if so, how much Jewish ancestry was sufficient to render the purchaser ineligible.[36]

Having disposed of the covenant on three grounds, Mackay sidestepped the argument that the ORDA could be interpreted in a different fashion than Mr. Justice Chevrier had done in the McDougall and Wadell case, and that its prohibition against discriminatory notices and

signs could be seen as prohibiting registration of a restrictive covenant in the Ontario land Registry Office. He did note however, in an *obiter dictum,* that the argument appeared to have "considerable merit."[37]

The immediate result of the Drummond Wren decision was jubilation on the part of the Jewish community and support from even classical liberals. It was front page news in the Toronto Globe and Mail, which printed lengthy portions of the decision, as well as comments from Bennett the CJC lawyer and Rabbi Abraham Feinberg of Holy Blossom Temple (and Chair of the JPRC). The latter referred to the ruling as a "triumph for Canadian democracy" which emphasized the "moral foundations of this postwar democratic world," and used the anti-Nazi discourse to connect the decision to "the young men of all creeds who fought and bled together overseas in a fellowship of danger."[38]

On the following day, the Globe carried an editorial which mixed together the traditional British liberties discourse with the newly-emerging rights talk. It referred to the United Nations' support for fundamental human rights, and excoriated race prejudice as "a poison which perverts the personality, corrupts human relationships, and eventually destroys the institutions of society." Then, it added that the decision stood "on the noblest level of jurisprudence ... in the main stream of the humane tradition of British justice." Some months later, J.V. McAree, an influential civil libertarian columnist for the newspaper, wrote a long editorial on the decision which supported it and stressed its importance to Canadians. He pointed out that discrimination was a two-edged sword, capable of being turned against any group, including Anglo-Saxons, and stressed how dangerous it could be in a society as ethnically and culturally diverse as Canada.[39] Although both the Globe editorialists and McAree believed firmly in wiping out racial prejudice through education rather than law, and later staunchly opposed provincial anti-discrimination legislation, they were not alarmed by legal reform instituted by a progressive activist judge.[40]

Of course, there may be another reason why the Globe writers could support Drummond Wren. As noted earlier, discriminatory restrictive covenants undermined the important principle of freedom of contract. When the Globe editorialists supported the Mackay decision, they may have intuitively recognized that his argument about alienation of

property was actually a classical liberal viewpoint, a return to the values of the nineteenth century rather than a reform liberal revolution.

What further effect did the case have? In his recent book Courts and Country, W.A. Bogart has presented "a plea against overreliance on litigation" as a means of social reform. One part of his argument asserts that scholars should examine the "impact" of court decisions -- that term being defined as "all policy-related consequences of a decision," including not only compliant behaviour but other responses such as attempts at legislative nullification. As Bogart says, drawing upon American and Canadian discussions of "impact analysis," one should be skeptical about claims that litigation can easily solve social problems.[41]

Tracing the impact of a judicial decision, however, can be a complex task. The Drummond Wren decision was not appealed, and therefore remained the settled law of Ontario, but it certainly did not lead to a flood of litigation.[42] Its immediate impact seemed to be that it gave encouragement in a number of ways to those who were agreed that racial and religious discrimination was unacceptable.

The WEA, for example, used the case as a means of increasing its public profile and moving ever further into the field of human rights. With the financial support of the CJC, the WEA produced a pamphlet about the case entitled "A Victory for Democracy." This set out the essentials of the case and explained how the organizations had come to fight this particular manifestation of "incipient fascism." Both the WEA and the CJC profited from the publicity generated by this pamphlet, which was widely distributed in both Canada and the United States.[43]

The WEA hoped to take a continuing active role in the human rights field. Shortly after the decision was handed down, it asked the CJC to fund its work on "bettering group relations." Then, in 1946, it joined the CCL in a campaign against racial bigotry which included a number of floats in Labour Day parades in Toronto, Hamilton, Windsor, and St. Catherine's. In the following year, Wren suggested to the CJC that the two organizations should cooperate in anti-discrimination work, which he saw as largely an educational issue which the WEA was well-equipped to undertake.[44] However, by 1947 the CJC had began to worry about allegations that Wren was a communist, and although they received some

reassurances to the contrary, these allegations probably scared them off.[45] There is no evidence that the CJC did any more work with the WEA; indeed, the latter soon disappeared from sight as an active player in the Canadian human rights policy community.[46]

Drummond Wren also had an impact outside of Canada. Because of the way in which Mackay had used the Atlantic Charter and the United Nations Charter to decide a domestic law case, a writer in the Canadian Bar Review considered it as a step towards "an increasing supremacy of international law over municipal law," and one law school professor in the United States saw it as "a landmark case in the legal order of the entire world, and one that should always be held in honour."[47]

The case also played a minor role in the leading American decision of Shelley v. Kramer, in which the United States Supreme Court extended the meaning of the equal protection clause of the Fourteenth Amendment of the American Constitution in order to prohibit the judicial enforcement of a discriminatory restrictive covenant by a state court. While the Court's constitutional interpretation was not affected directly by Drummond Wren, the American Attorney General used it to persuade the Court that restrictive covenants were indeed a form of racial discrimination.[48]

The domestic legal impact of Drummond Wren, however, was in fact severely curtailed. In the first place, Mackay's decision could be viewed as an aberration, while as a decision of a trial court it was not binding on other courts. Moreover, prejudice and anti-semitism were manifested in more than just discriminatory restrictive covenants; Jews and members of other minority groups faced problems in all sorts of social transactions, including employment, rental accommodation, and even access to facilities open to the general public. However, as noted in Chapter 1, the Supreme Court had made it clear that the principle of freedom of contract stood in the way of any judicial activism that might strike down these forms of discrimination. The major solution to such practices would have to come from legislation, and the CJC soon became heavily involved in efforts to obtain anti-discrimination legislation in Ontario.

Yet within a few years the CJC became involved in another case, which it took all the way to the Supreme Court of Canada. As the next section of this chapter demonstrates, Noble

and Wolf was not just a simple dispute between two parties, but an important part of a much larger struggle, demonstrating how even in the pre-Charter era an interest group might decide to pursue litigation as an alternative form of political warfare.[49]

C: THE NOBLE AND WOLF CASE

In April of 1948 a London (Ontario) businessman named Bernard Wolf agreed to purchase some real estate from its owner, Annie Noble. This property, at a Lake Huron resort called the Beach O'Pines, had been purchased by Mrs. Noble in 1933, at which time she signed an agreement that she would not later sell the property to "any person of the Jewish, Hebrew, Semitic, Negro or coloured race or blood."[50]

Because Bernard Wolf was Jewish, he was concerned that the covenant might invalidate his purchase of the property, and on the advice of his lawyer he insisted that Mrs. Noble obtain a court order declaring the restrictive covenant invalid.[51] She proceed to do this, with her lawyer using the same arguments in support of the motion as had been used by Drummond Wren's lawyers. But in the WEA case the motion had been unopposed. In this case several property owners in the Beach O'Pines resort raised objections and wanted the covenant to be respected.

Bernard Wolf turned to Edward Richmond, a young lawyer in London who had recently graduated from law school. When Richmond heard that the Beach O'Pines people had obtained the services of a prominent Toronto lawyer (G.C. Morden, K.C., later a justice of the Ontario Court of Appeal) to block the application, he decided that it might be wise to obtain some extra legal weight for their side and suggested John Cartwright, the lawyer who had represented the WEA three years earlier.[52]

When the case was taken before Mr. Justice Schroeder of the Ontario Supreme Court (trial division), in May of 1948, Cartwright represented Annie Noble, Richmond acted for Bernard Wolf, and Morden represented the other land owners, who had formed a group called the Beach O'Pines Protective Association. The company which had originally created the restrictive covenant, the Frank S. Salter Company, Ltd., was not represented by counsel, because it had ceased to exist.[53]

Technically, Annie Noble was bringing a motion before the court, requesting an order which would declare that Wolf's Jewishness was not a valid impediment to his purchase of the land. To obtain this order, Cartwright argued that the restrictive covenant was void on the

same three grounds that had been used by Mr. Justice Mackay in Drummond Wren: public policy, uncertainty, and a restraint on alienation of property.[54] The judge refused to make the order, ruling that the covenant was valid on all three grounds. He first dismissed the argument that the covenant was void as a restraint on alienation of property, admitting that there was a general rule against barring alienation, but noting that there were several exceptions, including the one created by Jessel in the Macleay case, which had been "consistently" followed in the Ontario courts. Because the covenant only referred to certain groups, and was effective only until 1962, he ruled that it was merely a partial restraint on alienation and therefore valid.[55]

When he came to the issue of uncertainty, Schroeder admitted that there might be cases where it would be difficult to tell whether or not a person is "really" Jewish and should be prohibited from purchasing the property, but he concluded that in general terms the meaning of the covenant was clear enough to remain valid. As he said, "The question arising in cases of this character must surely be dealt with in a practical way. How otherwise could the statistical records of our country or of any country be maintained?"[56]

The argument to which Schroeder devoted the most attention was the issue of public policy, especially the reasoning of Mackay which had received so much attention when he decided Drummond Wren. Schroeder stated flatly that Mackay had interpreted the law incorrectly and that he (Schroeder) did not have to follow the precedent since it was decided by a court of co-ordinate jurisdiction. He pointed out also that when Mackay decided the case he had been handicapped by hearing counsel argue only for one side; Schroeder, on the other hand, had been able to hear the arguments of those property owners who wished the restrictive covenant to be upheld.[57]

Schroeder also distinguished the Drummond Wren precedent by noting the difference between residential property (purchased by the WEA) and "summer colony" property (being sold by Annie Noble). In the former case, he argued, the property was "shelter," while in the latter case it was "recreation." He implied that he would be less sympathetic to discrimination which denied the former than to discrimination which denied the latter.[58]

The real basis of his argument, however, was that most of the examples used by Mr. Justice Mackay, such as the United Nations Charter, were not legally binding in Canada, and were not sufficient justification for what he felt had been a form of "judicial legislation." As he said,

> [i]t is trite law that common law rights are not to be deemed to be abrogated by statute unless the legislative intent to do so is expressed in very clear language. It follows logically, it seems to me, that for a Court to invent new heads of public policy and found thereon nullification of established rights or obligations -- in a sense embarking upon a course of judicial legislation -- is a mode of procedure not to be encouraged or approved.[59]

This argument suggests that the disagreement between Mackay and Schroeder was not necessarily based on different commitments to the emerging values of human rights, but could be rooted in alternative views of the judicial role. Schroeder was taking a position that was far more typical of the Canadian judiciary at this time -- the view that judges are supposed to "find" the law, and not "create" it.[60] The judiciary is often, and was certainly in the late 1940s, a conservative institution, hesitant to change the law retroactively for fear of doing an injustice to those who have made financial plans contingent upon established points of law. Moreover, Canadians were during this period still a colonial nation insofar as they were subject to Privy Council decisions in non-criminal cases; it was more revolutionary than evolutionary to suggest that the common law should be adapted to new circumstances by a Canadian rather than a British court, and Schroeder was clearly no radical.[61]

On the other hand, it would be naive to assume that a commitment to judicial restraint was the only reason why Schroeder came to the conclusion that he could not strike down the covenant. It is quite likely that Schroeder was also disturbed by the possibilities opened up by Mackay, and that what he was really doing was weighing the principle of what might be called "freedom of association" against the principle of "freedom from discrimination" -- classical liberal freedom versus reform liberal equality.[62]

There is, of course, another explanation for Schroeder's decision, one that stresses racism rather than any commitment to abstract notions of freedom. While it is impossible to determine whether or not Schroeder was actually bigoted, this possibility should not be ruled

out, for in the late 1940s some members of the bench shared the racist and anti-semitic attitudes which were still common in many parts of "respectable" society. For example, at about this time an Ontario judge wrote in private to the Premier of Ontario, saying that he was opposed to any law which limited his right to an exclusive neighbourhood -- "I do not want a coon or any Jew squatting beside me, and I know way down in your heart you do not."[63] Similarly, one of the Beach O'Pines Protective Association members was an Ontario County Court judge who in 1955 received considerable criticism for quashing the convictions of two racist restaurant owners in a case which tested for the first time the validity of the Ontario Fair Accommodation Practices Act.[64]

In any case, Schroeder's decision surprised and "gravely disappointed" Cartwright, who wrote to Richmond, suggesting to him that an appeal would have a very good chance of succeeding.[65] Whether or not Wolf would have continued at this point is not entirely clear; the costs in terms of money, time, and personal energy for a legal appeal can be considerable, especially if it seems that the fight may go all the way to the Supreme Court. But the case had now become far more than a simple dispute between two parties, it had become a political battle. Soon after Schroeder's decision was handed down, the head of the CJC wrote to Ben Kayfetz of the JPRC. He pointed out that the judgement was "from a legal point very convincing," and that it was important to the Jewish community that an appeal overturn it. He therefore asked Kayfetz to get in touch with Cartwright and Wolf and arrange for a meeting -- at the CJC's expense -- with a lawyer who was said to be the best authority on restrictive covenants in American law. This marked the beginning of the process by which the CJC increasingly came to encourage Bernard Wolf in his legal struggle, and with their support he decided to appeal.[66]

There was, of course, more to the Noble and Wolf case than simply a dispute between two litigants, one of whom was now supported by a relatively powerful ethnic/religious interest group. The CJC was part of a larger human rights policy community that had a strong interest in seeing Bernard Wolf win his case, and which also saw the dispute as simply one small part in a larger fight for anti-discrimination law. As noted in Chapters 1 and 2 of this dissertation, the new human rights discourse had begun to take root during the Second World

War, but the attempt to deport a substantial number of Japanese Canadians after the war had further sensitized many Canadians to the dangers of racial discrimination. By 1948 the struggle for Japanese Canadian rights was winding down, but the press had given considerable publicity to a number of issues which made it clear that minorities -- especially blacks -- still faced all kinds of prejudice and barriers to the full enjoyment of Canadian citizenship.[67] For example, in 1945 a black youth was denied entry to the Icelandia skating rink in Toronto, and when his father lodged a protest with one of the city aldermen, the case because a minor brouhaha, with public demonstrations that included a large contingent of students from the University of Toronto.[68] A year later, another well-publicized incident arose in the same city when pressure from the American Contract Bridge League caused the Toronto Whist Club to bar a black from participating in one of its tournaments. In 1947 attention was focussed upon the problems of Marisse Scott, a black nursing student in Owen Sound, and the following year political tensions mounted when it was reported that a black man had been turned away from the Dundurn Park pavilion in Hamilton. Finally, the town of Dresden (Ontario) was beginning to achieve a certain degree of notoriety as a town in which it was necessary to hold a referendum in order to force certain businesses to cease discriminating against local blacks.[69]

More attention was also being paid to anti-semitism. As noted in Chapter 2, the report of the Kellock-Taschereau Commission suggested that widespread prejudice against Jews might have been one of the reasons why certain Jewish Canadians had become disillusioned with their country and then betrayed it. For those who denied that anti-semitism was a problem, Maclean's Magazine, which was becoming a beacon of liberal journalism during this period,[70] published an article called "No Jews Need Apply," which demonstrated how recent informal tests of businesses revealed a high level of discrimination against Jews in employment situations.[71]

Not only was ethnic/racial prejudice becoming increasingly disreputable in the late 1940s, but it was also generating calls for political action. Several municipalities passed licensing by-laws which prohibited certain businesses from practicing racial or religious discrimination, and the Ontario CCF twice introduced "An Act to Protect Certain Civil

Rights" into the provincial legislature. These bills were proposals for a provincial bill of rights, modelled on the 1947 Saskatchewan Bill of Rights which had recently been passed by Tommy Douglas' CCF government.[72] They called for protection of both libertarian and egalitarian rights, with the CCF (and the two communist MPPs) justifying the idea by reference not only to the Gouzenko crisis but also to recent incidents of racial discrimination in Ontario. They were defeated by the Tory majority in the legislature, however, with Premier George Drew's government maintaining that Ontario was one of the most tolerant societies in the world and did not need any further law in this field, and also pointing out that any statute which purported to bind the legislature "would impair the sovereignty of parliament."[73]

A few days after Schroeder handed down his decision, the leader of the Ontario CCF, Edward Jolliffe, used the Noble and Wolf case as an excuse to raise once again the need for a provincial bill of rights. He noted that the decision of the judge was regrettable, and emphasized that future litigation would be unnecessary if only the Tories would pass the appropriate legislation. Had he simply called for a bill which prohibited restrictive covenants, perhaps the government might have listened, but instead his demand for a far-reaching and even revolutionary change fell upon deaf ears. For human rights supporters to make any progress it would be necessary for them to delink egalitarian issues from legal/political issues, to separate anti-discrimination legislation from safeguards against "state despotism" and "executive despotism," and to proceed in a fashion that was less ambitious and far more incremental.[74]

Meanwhile, Bernard Wolf was planning to take his case to the Ontario Court of Appeal. First he made an agreement with Mrs. Noble that he would reimburse her for any costs she might incur as a result of protracted litigation, including rental fees. This ensured that she would continue to be a part of the litigation process, despite the fact that she had no real interest in the higher principles involved.[75] He then supplemented his legal stable with Norman Borins, KC, and J. Shirley Denison, KC. The latter was a well-known property law specialist with impeccable Anglo-Saxon credentials within the Ontario establishment, while Borins, who acted informally as the representative of the CJC, had been until recently the assistant Crown Attorney for Toronto.[76]

Standing behind Borins was the entire weight of the legal affairs committee of the JPRC, including such people as Bora Laskin. This meant, however, that there was some debate as to what arguments should be used in the appeal. Some members argued that Mackay's "public policy" argument should be stressed, and that it was inappropriate for a Jewish organization to take the position that the covenant was void for uncertainty. After all, the CJC was based on the idea that the Jewish identity is clear and must be protected; it would be paradoxical to argue that the term "Jew" in a restrictive covenant is uncertain. Cartwright, however, argued forcefully that judicial conservatism would likely prevent the successful use of the public policy argument, and that technical arguments such as the one about "void for uncertainty" were far more likely to succeed. He said that the public would not pay attention to the reasons why the covenant was defeated, but would simply pay attention to the result.[77]

Therefore, when the case went before the Ontario Court of Appeal in early January of 1949,[78] the Noble and Wolf legal team used the uncertainty argument in their formal notice of appeal, as well as the other two used in Drummond Wren and in the arguments before Schroeder -- public policy and restraint on alienation of property.[79] In their oral submissions to the court, however, the lawyers added two other arguments. First, they maintained that the anti-semitic restriction within the covenant was unenforceable because it did not "run with the land" -- in other words, it applied only to the people who had originally signed it, and not to anyone who might subsequently purchase the land.[80] As noted earlier, most restrictive covenants are quite innocuous, involving limitations on the future use of property with regard to matters such as renovations or road access, and the leading British precedent of Tulk v. Moxhay makes it quite clear that they are legally enforceable.[81] The lawyers for Noble and Wolf, however, distinguished this precedent, arguing that it only applied to property usage, not ownership. Claiming that the covenant applied to the owner rather than to the land therefore strengthened their argument that the courts should not enforce it.[82]

Second, the lawyers for the appellants suggested that the covenant violated s. 1 of the ORDA and that the appellate court should overturn the recent Ontario court decision by Justice Chevrier in Re McDougall and Waddell. As noted earlier, Mr. Justice Mackay had sidestepped this issue in the Drummond Wren decision, but since he had noted that the

argument had "considerable merit," it seemed reasonable to raise it again.[83] Edward Richmond has recalled that the lawyers for Bernard Wolf and Annie Noble received a "hostile reception" from the appellate judges, who constantly interrupted with objections about their line of attack. Several judges were quoted in the Globe as dismissing the public policy argument, with one judge (Mr. Justice Henderson) stating that:

> [a]t the moment, I am inclined to think that if we declared this covenant void, we would stir up a good deal more hate in the community than otherwise. It might create hate, ill-will, and probably violence there.[84]

In addition, the judges were extremely critical of arguments that laws outside of the province might demonstrate a changing public policy. According to Ben Kayfetz, who was present in the courtroom as an observer for the JPRC, one judge said to Borins when he was citing the recently-passed Universal Declaration of Human Rights (UDHR), "May I remind counsel that he is in the Province of Ontario, not the United Nations."[85] In the face of such comments, as Richmond has recalled, "it looked ominous," and when the Court of Appeal reserved judgment he feared that Mr. Justice Schroeder's decision would probably be upheld.

There was, of course, another parallel course of action open to the CJC -- lobbying for legislative change. One way to do this was through its traditional policy of "quiet diplomacy," meeting with senior bureaucrats, cabinet ministers, or influential back-benchers in order to convince them that reason and/or justice mandated government action. Increasingly, however, it had become clear that this approach was largely ineffectual; in 1947 and 1948 low-key demands for a provincial Fair Employment Practices (FEP) Act had met with considerable resistance, often based on denials that racial and religious discrimination constituted a problem in Canada. This led the CJC to consider alternative solutions, including what in contemporary terms would be called "networking," as well as more public confrontations with cabinet by means of large delegations and the presentation of briefs.[86]

One way in which the CJC reached out to other rights-oriented groups was by sponsoring Race Relations Institutes in Toronto. The first of these was held in 1947, sponsored by the Fellowship of Reconciliation (FOR) along with the CJC, the Japanese-Canadian Committee for Democracy, the Home Service Association (Negro), and the

Provisional Labour Committee to Combat Racial Intolerance (soon to become a standing Toronto labour committee). The CJC next joined with these groups in a permanent ad hoc committee and used the third annual Race Relations Institute in February of 1949 to draw attention to the issue of discriminatory restrictive covenants.[87] One of the keynote speakers was Ben Kayfetz of the JPRC, who managed to attract considerable attention by pointing out a particularly extreme covenant which seemed to discriminate against even those of English and Irish extraction. What he did not reveal at the time, perhaps for fear of offending the Conservative Party, was that the property was owned by J.W. Murphy, a Conservative MPP from Lambton West.[88]

At about this time, the CJC began to work with a resuscitated and reformed Toronto civil liberties organization called the Association for Civil Liberties (ACL). Chapter 5 of this dissertation will discuss the genesis and composition of this group in more detail. For the moment it is enough to say that its executive consisted primarily of those members of the CLAT who had remained after the radicals of the ECCR departed in 1946; it was therefore composed for the most part of "respectable" individuals, with liberal or social democratic leanings, and ties to the social, political, and intellectual elites of the nation.

The ACL also had close ties with the Jewish community. Its secretary, Irving Himel, was a member of the JPRC, and one of its executive council members, Rabbi Abraham Feinberg, was Ontario JPRC chairman. Its Council also included Jewish activists Samuel Kraisman,[89] J.S. Midanik,[90] and Irving Oelbaum,[91] as well as Liberal MP David Croll.[92] Finally, the secretary of the ACL's Committee on Group Relations was the local JPRC secretary (first Ben Lappin and then Ben Kayfitz), and one of its members was H.M. Caiserman, the general secretary of the CJC in Montréal.[93]

The CJC was connected to the ACL in another, less obvious way. In the late 1940s the CJC had joined forces with the JLC in order to set up a series of local labour committees intended to combat discrimination against not only Jews, but ethnic and religious minorities generally. One of these organizations was the Toronto Joint Labour Committee to Combat Racial Intolerance, the secretary of which was (in early 1949) Vivian Mahood. When the ACL was formed, she became a member of the organization's council, and the chair of its

"Committee on Group Relations." A key position within this organization was therefore held by a woman who was formally responsible to the local labour community, but who was also paid and advised by the JLC's executive director, and part of whose salary was subsidized by the CJC.[94]

With strong input from organizations dedicated to combatting discrimination, it is not surprising to find that the ACL was explicitly created to focus as much upon egalitarian rights as upon the traditional libertarian rights. This was an important shift in focus. For example, when Toronto's first civil liberties group (the TCCLU) had been formed in 1938, it had described itself as "an organization of men and women who believe that democratic government is essential to the welfare of Canada; that democracy can only be successful where the citizen has the fullest opportunity for free discussion and for the exercise of that civic freedom which is traditionally associated with the very name of British citizenship." By contrast, the ACL's constitution stated that its purpose was "to promote respect for and observance of fundamental human rights and civil liberties, particularly in Canada." In other words, over time there had been a movement away from the British liberties discourse towards human rights discourse, away from classical liberal libertarianism towards reform liberal egalitarianism.[95]

Meanwhile, the political situation had also changed somewhat. Although the Conservatives remained in power, the small "c" conservative George Drew had stepped down as leader and Premier, and was by now replaced with the more liberal Leslie Frost. As a result, one of the first major efforts of the ACL was to propose new anti-discrimination legislation, and on 7 June a delegation of about thirty-five people met with Frost and his Attorney General, Dana Porter (who, incidently, had at one time been associated with the ACL's predecessor, the CLAT).[96] While this was an ad hoc coalition representing a number of groups, it was formally an ACL delegation, with Irving Himel presenting an ACL brief. Although no-one foresaw it, this was the first of six major delegations headed by Himel. Each time the ACL acted as an umbrella organization for a large number of rights-oriented groups, and each submission demanded ever-improved anti-discrimination legislation.[97]

The delegation and brief provided a valuable summary of the human rights community as well as the state of human rights in central Canada in the late 1940s. In some ways the membership was similar to the groups which formed the CCJC to lobby Ottawa on the Japanese deportation issue, although it had the flavour of a Toronto-centred group rather than a provincial or national coalition. For example, the delegation embraced a number of religious institutions, including the Bathurst St. United Church, the Church of All Nations, the First Unitarian Church, and Rabbi Feinberg's Holy Blossom Temple. It is worth noting, however, that there was no direct representation of radical Christian groups, although at least one of the major spokespersons, ACL President R.S.K. Seeley, had close ties with the SCM.[98]

Another similarity between this group and the earlier CCJC coalition was that a number of trade unions were represented, although by now in the Cold War none of them had any "taint" of communism -- the International Bookbinders Union, the ILGWU, the Oil Workers Union, the Printing Pressman's Union, the Street Railwaymen's Union, the Textile Workers Union, the United Packinghouse Workers Union, as well as the CCL and the TLC-affiliated Toronto and District Labour Council.[99]

A major difference between the CCJC and the later coalition was the strong ethnic representation in the 1949 group. In the mid-1940s the Japanese Canadian community had been supported primarily by "waspish" organizations, although the CJC had played a minor role. Now, only a few years later, it appeared that ethnic communities had began to learn the value of coalition-building. The Japanese Canadian Citizens' Association (JCCA) was a supporter, supplemented not only by the Jewish community (represented by the CJC and B'Nai B'rith), but also by the Canadian Polish Congress, the Chinese community of Toronto, and the Negro community of Toronto.[100]

Both coalitions also had some representation from women, but only from a few groups. The human rights movement in the post-war era was in many ways "two solitudes," with a division between "women's issues" and other interests that helped to marginalize women from the human rights main-stream.[101] The National Council of Women (NCW), which had joined the CCJC, was for some reason not part of the 1949 delegation (although it did take part in the next, much larger, delegation to Frost in 1950). The only women's

organization involved in the 1949 effort was the YWCA, a group which played a consistent if marginal role in human rights issues throughout the 1950s. Moreover, no women at the 1949 delegation read any of the statements to the Premier, and the only names clearly identifiable as women participants were Vivien Mahood and Mrs. W.L. Grant, both of whom, of course, represented groups which were not especially interested in women's issues.[102]

Interestingly, the WEA was not part of the 1949 coalition, which is surprising considering its strong post-war interest in human rights. Most likely, allegations of its communist links had made the liberals and social democrats leery of including the WEA in their coalition. This is probably also the reason why the Civil Rights Union (CRU) was also not included. The Cold War had already begun to marginalize communists as much in matters concerning egalitarian rights as in the fields of legal and political rights.[103]

As noted, the 1949 delegation presented Frost with a brief calling for anti-discrimination legislation. It painted an interesting picture of contemporary discrimination in three areas (employment, property, and the use of public places), and then recommended governmental responses. In the field of employment, it suggested that the government follow the lead of the American states which had already passed FEP legislation.[104] To deal with prejudice in the provision of public services, it recommended provincial legislation to ensure that municipal licences for hotels and restaurants would be awarded only to firms that refrained from discrimination. Its proposed solution to the problem of discrimination in property sales was an amendment to the ORDA which would invalidate discriminatory restrictive covenants. Legislation of this nature, the authors of the brief suggested, would be consistent with the fundamental principles of Canadian democracy, and would also uphold the nation's obligations under the recent UDHR.

A number of representatives of the ACL spoke at this meeting. On the issue of restrictive covenants, the speaker was Rabbi Abraham Feinberg, who specifically mentioned Mr. Justice Schroeder's decision, arguing that it demonstrated the need for legislative reform, especially because such covenants made it impossible for people to be judged on the basis of their merits as individuals. In passing, the Rabbi made a particularly interesting remark which high-lighted the limited goals of these human rights activists, a reflection of their incremental

approach: "I cannot object to the fact that a Jew cannot purchase or use certain summer resort property; but I do resent the fact that groups of people gather together and sign a property deed definitely based on the idea that my people are unworthy of association."[105]

Frost was "visibly moved" by the presentations, especially by a speech from the Rev. W.C. Perry, of the Grant Afro-Methodist Episcopal Church in Toronto, who spoke eloquently about the treatment of blacks in Toronto and southwestern Ontario. The Premier therefore promised to give serious consideration to the idea of anti-discrimination legislation in the near future.[106]

Frost knew, however, that his caucus contained a great many conservatives, including a number of Orange Lodge members, often from small-town or rural backgrounds, who were unsympathetic to the notion that the state should limit the "freedom" of individuals to discriminate. Many of these, no doubt, were in full agreement with J.W. Murphy, the Conservative MPP who actively practiced discrimination in the sale and rental of his property.[107]

Only a few days after the ACL meeting with Frost, on 9 June, the Ontario Court of Appeal decision handed down its decision in the Noble and Wolf case. This in effect nullified Mackay's decision in Drummond Wren, for the five judges unanimously upheld the validity of the restrictive covenant, siding with Mr. Justice Schroeder on the issues of alienation, uncertainty, and public policy. As Cartwright had predicted, they were unwilling to make new policy, and this time the Chief Justice echoed Schroeder's concerns, warning against "rules of law to enforce what can only be of natural growth."[108]

The Court of Appeal also refused to entertain any new arguments that had not been used in the original motion before Mr. Justice Schroeder, a motion which had relied upon the Drummond Wren precedent. This meant that they employed a narrow interpretation of a legal principle to sidestep the question as to whether the covenant was void because it did not "run with the land."[109] If it is true, as suggested earlier, that the judicial role can be categorized in terms of two polar opposites, one the "dispute adjudication model" which looks simply at the arguments of the litigants, and the other the "policy-making model" which looks beyond the interests of the litigants to the wider social ramifications on society, the Court of Appeal

appears to have been wedded to the former approach. To put it another way, refusing to consider the new argument presented by Cartwright indicated a preoccupation with process rather than outcome.[110]

A narrowly technical approach, however, can also serve to mask subterranean value preferences, and this conception of the judicial role may well have been part of a broader conservative or traditionalist orientation. The judges' emphasis on the importance of slow natural legal growth had a distinctly Burkeian flavour, and it is possible to discern an underlying conservatism in their references to the importance of such classical liberal values as the rights of a "free people," "sanctity of contract," and "freedom of association."[111]

There may also have been another, less obvious, value preference underlying the decision. The Chief Justice was clearly not sympathetic to a Jewish person using the law to force himself into a community where he was not wanted, and anti-semitism may have had some effect upon his conclusions:

> It is in evidence that the Beach O'Pines development was undertaken, and is organized, as a place where the owners of the several parcels of land comprised in the development may establish summer homes at a place suitable for such purpose, on the eastern shore of Lake Huron, removed from any large communities. It is common knowledge that, in the life usually led at such places, there is much intermingling, in an informal and social way, of the residents and their guests, especially at the beach. That the summer colony should be congenial is of the essence of a pleasant holiday in such circumstances. The purpose of [the discriminatory covenant]... is obviously to assure, in some degree, that the residents are of a class who will get along together. To magnify this innocent and modest effort to establish and maintain a place suitable for a pleasant summer residence into an enterprise that offends against some public policy, requires a stronger imagination than I possess.[112]

By now the Noble and Wolf decision had become a major public issue, supported by some newspapers and opposed by others. For example, the classical liberal Globe and Mail applauded the Court of Appeal judgement, publishing a long editorial which emphasized the difference between the right to shelter and the right to free association. A restriction which excluded certain groups from joining with a collection of like-minded associates had "dangerous implications," said the editor, and would do nothing to promote the tolerance which can only come through "natural growth" -- the term used by Chief Justice Robertson.

Indeed, any limitation on the right of free association might actually add to "social tensions."[113]

As might have been expected, the reform liberal Toronto Star disagreed with the Globe and the Court. The Star argued that tolerance could also be the result of "cultivated growth," and that "The law can be made a powerful implement in its cultivation." The Star pointed to the success of anti-discrimination legislation in New York, and suggested that if the Supreme Court of Canada were to uphold the Ontario decision the government of the province should consider prohibitory legislation.[114]

In an interesting contrast, the Hebrew Daily Journal of Toronto was somewhat critical of the court's decision. An editorial pointed out that some Jewish organizations discriminated in selling or renting their property, suggesting that it is the "democratic right" to choose one's neighbours, and arguing that Wolf had no justification in forcing himself into an area where he was not wanted.[115]

Meanwhile, interest groups were also attacking the judicial decision. For example, George Tanaka of the JCCA had learned the importance of building and maintaining a human rights network, and he was quick to criticize the outcome of the appeal.[116] Another strong criticism came from JPRC chairman, Rabbi Feinberg, who began by attacking the covenant itself, which he said differed "only in degree from the dangerous nonsense and blood-worship of naziism." He then made numerous references to such covenants as a threat to fundamental democratic principles, pointing out that the decision was a blow against cooperation and "spiritual one-ness," and claiming that one of the judges had within the last few years insisted that Canada is a "Christian country." He ended his statement with a brilliant rhetorical question; noting that members of so-called "inferior" races had recently given their lives for their country during the war, he asked, "Shall a military cemetery be the chief symbol of the Canadian community, the only place where Canada's citizens can dwell in the complete companionship of equality?"[117]

By this time, restrictive covenants had become so important an issue that the Canadian Institute of Public Opinion (the Gallup poll) decided to ask the question, "If you were buying a home and the neighbours asked you to sign an agreement promising not to sell or rent it

later to people of certain races or colour, would you be willing or not willing to sign such an agreement?" The results of this poll were heartening to those fighting against discriminatory restrictive covenants; in a report for the CJC, the secretary of the organization's Committee on Social and Economic Studies argued that "the people of Canada overwhelmingly -- by a more than two-thirds majority -- seem to favour the belief that racial restrictive covenants are not in Canada's best interests."[118]

To get the law changed, however, was not going to be easy, given the recent decision by the Ontario Court of Appeal. After having lost his legal case once again, Bernard Wolf was understandably disheartened, and Edward Richmond confided privately that Wolf "would like to wash his hands of the whole matter." Mrs. Noble was even more unenthusiastic, and quite understandably concerned about the financial implications of the case. However, by now the case had become even less a simple dispute between two parties and even more a publicly-contested policy issue, with a variety of groups taking a keen interest in the outcome. Therefore, shortly after the appellate decision, the CJC agreed to finance an appeal to the Supreme Court of Canada. Bernard Wolf was happy to be relieved of the financial burden of carrying the litigation, and Annie Noble also agreed, as long as she was assured (once again) that she would not suffer any financial loss from what was becoming an interminable series of manoeuvres. Yet the nature of the compensation became something of a stumbling block, as Mrs. Noble insisted on receiving not only a rent for the duration, but also an interest payment on the income she had temporarily foregone. While Bernard Wolf and the CJC agreed that these were "onerous" terms, they felt that they had no choice but to agree, believing that her continued participation as a litigant was essential.[119]

At the same time, the labour community helped keep up the pressure for legislation prohibiting discriminatory restrictive covenants. For example, in September 1949 the TLC held its national convention in Calgary, and through the report of its Standing Committee on Racial Discrimination outlined a number of human rights issues in Canada, including the unsatisfactory nature of the law in the wake of the Noble and Wolf decision. The report also referred to positions taken by the Toronto District Labour Council and the Toronto Labour Committee Against Racial Intolerance, and called upon all the provinces, and Ottawa, to pass

legislation barring discriminatory restrictive covenants. The report was unanimously adopted by the convention and received considerable publicity. The front page of the Calgary Albertan displayed the headline "Racial Bias Scored By Labour." The human rights issues taken up by the TLC, including discriminatory restrictive covenants, were achieving national prominence.[120]

The ACL also kept up the pressure, acting as the public face of the CJC, the JLC, and a multitude of other groups.[121] In January of 1950 it met for the second time with Premier Frost to request human rights legislation. This time the ACL brought together about seventy organizations and several hundred people, in a massive show of support for legislative change. A brief was read by Dr. R.S.K. Seeley of the ACL, and the participants included many individuals who had long been active in the human rights community.[122]

As with the 1949 delegation, the endorsing groups included religious organizations, trade unions, ethnic communities, women's groups, and a number of other bodies, but this time there was greater diversity and also far more representation from areas outside Toronto, including both provincial and national organizations. For example, the religious groups included a number of Toronto Baptist, United, and Unitarian churches, but the United Church of Canada's Board of Evangelism and Social Services was also represented, as was the Canadian Council of Churches, the Canadian Friends Service Committee, the Church of England Council for Social Services, and the Presbyterian Church in Canada.[123] In addition, there was still some representation from organizations associated with radical Christianity, such as the FOR and the national SCM. In the increasingly secular post-war period, such organizations no longer enjoyed the central role that they had earlier played in the CCJC, but there were still enough radical Christians active in the human rights movement to ensure that they did not vanish completely.[124]

The representation of trade unions had also broadened and diversified. The CCL endorsed the brief, as did the two Ontario umbrella organizations (TLC and CCL). The JLC was of course supportive, as was its Toronto labour committee, but this time the brief was supported by several locals of the Steelworkers and Autoworkers, most of which were outside Toronto. In addition, there was endorsement by the United Packinghouse Workers,

the ILGWU, the Canadian Brotherhood of Railway Employees, and the all-black Brotherhood of Sleeping Car Porters.[125]

A number of ethnic groups, representing blacks, Chinese, Finns, Japanese, and Polish Canadians endorsed the brief, but by far the greatest support from an "ethnic" community came from Jews. To the support of the CJC and B'Nai B'rith (Eastern Canada Council) was added the voices of the National Council of Jewish Women of Canada, the Hamilton Council of Jewish Organizations, and the London Jewish Young People's League.[126]

The National Council of Women, absent from the 1949 roster, was once again part of the rights coalition, as it had been with the Japanese deportation issue at the end of the war. A number of other groups also represented women, including the Ladies Auxiliary of the Brotherhood of Sleeping Car Porters, the Registered Nurses Association of Ontario, the Women's Missionary Society of the United Church of Canada, and the London YWCA.[127]

Finally, there were a number of other groups. Some were political, such as the CCF Youth Movement, the Ontario CCF Council, and the Young Liberals of Ontario. Others were educational, such as the CAAE, the Canadian Education Association, the Ontario Division of the Canadian Home and School Association, and the Ontario Teachers Federation. Still others, such as the Toronto Branch of the United Nations Association and the Toronto World Federalists, can best be categorized as either progressive internationalist or progressive domestic organizations. Support also came from a number of minor human rights groups outside Toronto -- the CAAE Committee on Group Relations, the London Inter-Faith Inter-Race Committee, and the Windsor Interracial Council.[128]

As with the 1949 ACL brief and delegation, the 1950 lobby saw restrictive covenants as only a small part of the larger problem of racial and ethnic discrimination in Ontario, and therefore concentrated its efforts upon a demand for a provincial board that would deal with "discrimination as it affects people in employment, in public places, in housing and ownership of property."[129] It was, in effect, a demand for a broad-spectrum human rights body, modelled loosely after the New York State Commission Against Discrimination, which would investigate complaints, attempt to conciliate, and if necessary "take more effective efforts to remove the discrimination." In addition, it would be empowered "to conduct a continuous

program of education of the public." The brief defended this proposal with several references to the principle of democracy, and also placed the issue squarely in the context of evolving conceptions of the liberal state: "Of one thing there can be no doubt -- that this problem of discrimination will never be reduced or removed by laissez-faire means, but only if an affirmative programme of action under government leadership is put into action."[130]

Notwithstanding the political pressures brought to bear by the 1950 delegation, Premier Frost was still somewhat dubious about the desirability of such legislation, saying that he needed to discuss this policy area with his cabinet ministers. Probably because the brief was not sufficiently incremental in its approach, Frost was not able to win much cabinet support.[131] However, his Attorney General, Dana Porter, did suggest that the government should introduce legislation dealing with discriminatory restrictive covenants. This Frost did, early in the year, along with another bill which declared void all collective labour agreements which discriminated on the basis of race or creed. In short, he began his foray into anti-discrimination legislation by avoiding undue offense to conservatives and placating them with limitations on trade unions.[132]

Frost had astutely judged the temper of the times. When his government first announced, in the Speech from the Throne on 16 February 1950, its intention to deal with "discriminatory covenants in deeds," it was publicly supported by B.K. Sandwell, the editor of Saturday Night who was still active in the ACL.[133] As noted earlier in this dissertation, Sandwell can best be described as a nineteenth-century classical liberal, skeptical about government intrusions into the liberties of citizens. Although he had not opposed the passage of the ORDA in 1944, he had been generally unsupportive, arguing that the legislation would probably be ineffective in dealing with religious and racial bigotry.[134] Then, in 1947, he had commented negatively upon both a resolution of the CAAE which called for fair employment practices legislation and a Gallup poll which showed that 64 per cent of the Canadian public were in favour of such laws; his response was that many of those who supported the concept in theory might not actually be in favour of it in practice, and that such a law might interfere with legitimate discrimination on the basis of ability.[135]

Sandwell, however, was moving slowly in the direction of reform liberalism. When the CCF introduced a provincial bill of rights in March 1948 he was still dubious about the efficacy of the fair employment proposals, but supported the other sections, particularly those which prohibited discrimination in the fields of education and public entertainment facilities.[136]

By 1950 Sandwell had apparently been convinced of the need for a broad spectrum of anti-discrimination legislation. In commenting upon the delegation before Premier Frost, he pointed out that the proposal was supported by a "large and highly diversified section of public opinion," and was therefore worthy of support. In his eyes, the successful examples of pioneering American laws indicated that legislation in Ontario could be successfully introduced.[137]

It was not surprising, therefore, that Sandwell then gave strong support to Frost's proposal to deal with discriminatory restrictive covenants. True to his classical liberal approach, however, he refused to criticize the government for what a number of people soon felt was a major flaw in the bill -- its application only to future restrictive covenants. In a second editorial a few weeks later, Sandwell approved this cautious approach which refrained from interfering holus-bolus with existing contracts; he maintained that those who wished to challenge individual existing covenants could seek redress in the courts or, failing success there, ask the government to take action on a case-by-case basis.[138]

When the promised legislation was introduced in the legislature (on the same day that Sandwell's second editorial appeared), it indeed was a prospective bill only, leaving alone all current discriminatory covenants. According to Premier Frost, who defended this decision in the House, current property law included tens of thousands of property deeds, a substantial number of which contained "all sorts of little reservations." To cast into doubt the legal validity of all these agreements, even when many of the reservations were not a significant problem, would be "a very drastic step" which would not be in the best interests of economic development.[139]

On the other hand, Frost maintained, a prospective invalidation of discriminatory restrictive covenants would actually promote economic development. He indicated that he was concerned about problems of urban growth and community planning, both of which

might be impeded by even a few people erecting racist barriers to property ownership. Should past covenants turn out to obstruct economic growth, then the government might step in again and, as Sandwell had suggested, deal with such restrictions on a case-by-case basis.[140]

Frost's emphasis on the need to promote economic growth can be explained in several ways which are not mutually exclusive. First, he may have been trying to persuade his caucus that such legislation was desirable. As noted earlier, a large number of the Conservatives were rural conservatives, often members of the Orange Lodge or other Protestant groups, and not usually given to flights of rhetoric about the universal rights of man. While Frost ruled his caucus and cabinet with a firm hand, he no doubt was also appealing to them in a language of "business interest" which they could easily understand.[141]

At the same time, it seems clear that Frost was a somewhat more open-minded and tolerant individual than many of his colleagues.[142] He also had considerable respect for both J.B. Salsberg and A.A. Macleod, the LPP representatives from the urban ethnic heartland of Toronto, both of whom had been advocating anti-discrimination legislation for some time. He was not likely to dismiss an idea simply because it came from a communist, especially when it came from Macleod, for whom Frost had considerable friendship and perhaps even admiration. However, he was clearly attuned to the anti-communist values of his day, and saw things from a Cold War perspective. Legislation which improved the human rights record of Canada also demonstrated, in his eyes, the moral superiority of capitalism over communism.[143]

At the same time, the legislation also reflected the value changes taking place in Ontario. Not only were people increasingly accepting state interference in the market-place, but they were also defending this in the language of democracy and human rights, with frequent references to the UDHR. It may also be the case, as Brian Howe has suggested, that the political culture of Ontario, a "red tory province," made it more receptive than other provinces to ideas of human rights reform.[144]

However, the government came under heavy fire for not making the legislation retroactive. Both the CCF and the LPP representatives in the House attacked it, but the government stuck to its guns, although it did listen to criticisms that the original bill was too narrow in its list of prohibited discriminations. It therefore altered the bill so that not only was

discrimination prohibited on the basis of race and creed but also where it involved colour, ancestry, nationality, and place of origin. On 24 March 1950, the Conveyancing and Law of Property Amendment Act came into effect, the first statute in Canada to prohibit discriminatory restrictive covenants explicitly, and the first Ontario anti-discrimination law since the 1944 ORDA.[145]

The human rights community was pleased, but saw this as only a first step towards the goal of prohibiting racial and religious discrimination. Over the next few months a number of organizations immediately wrote to Frost, congratulating him for starting, and advising him to continue the journey. Aside from Seeley of the ACL and certain Jewish groups, many of these were organizations that had not been included in the 1950 brief and delegation -- the Council of Canadian South Slavs, several locals of the UE, a local of the Rubber, Cork, Linoleum and Plastic Workers, and Sam Lapedes on behalf of the United Garment Workers. It is probable that many of these groups had not been included in the 1950 brief because they were communist; the UE was run by C.S. Jackson, and widely regarded as a communist-dominated union, and Sam Lapedes also was considered to be a dangerous "red." Communist support for egalitarian human rights could only be expressed outside of the "respectable" mainstream coalitions led by the ACL.[146]

Shortly afterwards, on 22 April 1950, the Manitoba legislature passed a similar law, An Act to amend the Law of Property Act. Here too, however, the legislation was prospective rather than retrospective, almost word for word a duplication of the Ontario legislation.[147] This meant that by now three Canadian provinces had curtailed discriminatory restrictive covenants by legislative fiat (the 1947 Saskatchewan Bill of Rights prohibited, among other things, discrimination in the sale, lease, rental, and occupancy of land. There was no explicit reference to restrictive covenants, but they were probably covered implicitly).[148]

Meanwhile, the Ontario legislation, being prospective, did not make Noble and Wolf's case moot, but it posed an interesting legal question -- should the lawyers for Noble and Wolf refer to the legislation in their arguments to the Supreme Court? Since John Cartwright had been appointed to the court in December of 1949 he had been replaced by J.J. Robinette, already well on his way to becoming one of the best-respected and most famous trial lawyers

in Canada. After giving the matter considerable thought, Robinette finally came to the conclusion that since the Ontario Court of Appeal had not considered the soon-to-be-passed legislation it would not be desirable to refer to the statute.[149]

The case went before the Supreme Court on 13 June 1950. Mr. Justice Cartwright, of course, did not participate, so it was heard by a panel of seven judges: Patrick Kerwin, Robert Taschereau, Ivan Rand, Roy Kellock, Willard Estey, Charles Locke, and Honoré Fauteux. (The other missing judge was Chief Justice Thibaudeau Rinfret.) The Noble and Wolf case was one of the first to come before the Supreme Court following its emancipation in 1949 from the control of the Judicial Committee of the Privy Council. This was the "Rinfret" Court, which remained unchanged in its composition from 1950 until 1954 and was altered only slightly until 1958. During this period the Supreme Court achieved a reputation as a strong supporter of fundamental civil liberties, especially the liberties of Jehovah's Witnesses in Québec, but also including the rights of communists and socialists in that province. In short, this was a court that was about to enter a period of strong civil libertarian activism.[150]

The arguments before the court took four days. J.J. Robinette opened for the appellants (Noble and Wolf), and he was followed by their other lawyers, Shirley Denison and Norman Borins. Their arguments were essentially the same as those that they had used before the Ontario Court of Appeal -- that the covenant was a violation of public policy (following the United Nations Charter, the UDHR, etc.), void for uncertainty, a restraint on alienation of property, and invalid on the grounds that it did not "run with the land." This latter argument, which had been unacceptable to the Ontario appellate court, because it had not been earlier argued before Mr. Justice Schroeder, was this time considered by the Supreme Court justices. In other words, rather than follow the narrow "dispute adjudication model" of decision-making, as the Ontario Court of Appeal had done, the judges chose to follow the broader "policy-making" model, in recognition that the issue had policy ramifications wider than the interests of the litigants.[151]

K.G. Morden, arguing for the defendants, played upon the summer resort argument which had been so persuasive for the Chief Justice of Ontario -- that the Drummond Wren

precedent did not apply because the Beach O'Pines was like a club, involving recreational property rather than shelter, a community limited only to people who were mutually "congenial." He also pointed out that the value of the property would depreciate if the covenant was not upheld, that Annie Noble had known of the covenant when she bought the property, and that she had enjoyed its benefits for 16 years. In addition, he suggested that the public had an interest in upholding contracts and protecting the right of freedom of association. Finally, he maintained that the covenant could not be void for uncertainty because the very existence of the CJC demonstrated that the word "Jew" had a clear and precise definition.[152]

According to Edward Richmond, the judges of the Supreme Court appeared to be "much more sympathetic" to the lawyers for Noble and Wolf than had been the case in the Ontario court. He especially remembers the questioning of Mr. Justice Ivan Rand, soon to become the best-known liberal on the court:

> I recall that when counsel for the Beach O'Pines Association was arguing that if this sale were permitted, his clients feared that their property would depreciate in value. Mr. Justice Ivan Rand responded that if persons such as Albert Einstein or Artur Rubinstein were to purchase cottages in the Beach O'Pines, members of the Beach O'Pines Association should be honoured to have them as neighbors.
>
> He then posed a question to counsel for the Beach O'Pines Association which I shall always remember for its dramatic impact and which, as far as I was concerned, destroyed the case for supporting the restrictive covenant.
>
> The question he asked was this: suppose a Gentile buys a cottage in the Beach O'Pines, he not being in any way restricted by the covenant, and suppose he then marries a Jewess. Suppose they have no children and he dies without a will leaving his widow as his only next-of-kin.
>
> Since Ontario has a statute which states that in such circumstances ownership of the property of the deceased devolves to his next-of-kin, how then can this restrictive covenant prevent the Jewess widow from becoming by the law of Ontario the owner of the Beach O'Pines property?[153]

According to Richmond, the Noble and Wolf lawyers were somewhat chagrined that they had not previously thought of this hypothetical example, but immediately realized that it undermined the case presented by the Beach O'Pines property owners. No agreement between private citizens will be upheld by the courts if it comes in conflict with a statute.

The Supreme Court, after hearing all the arguments, reserved its judgment. Several months later, on 20 November, it handed down its decision. The appeal was allowed; in other words, the covenant was struck down, and Bernard Wolf (as well as the CJC) had finally won.[154]

The win was based on only two of the CJC lawyers' arguments. The judges avoided any real discussion of the argument about restraint on alienation, perhaps because distinguishing the Macleay precedent was too radical an innovation for them. However, they warmly embraced the argument that the covenant was void for uncertainty, with Justices Rand, Kellock, Fauteux, and Estey forming a solid majority on this point. These judges also agreed that the "new" argument about the covenant not running with the land was sufficient to invalidate the restriction, and on this point they were joined by the three other justices, Kerwin, Taschereau, and Locke.[155]

None of the judges, however, was willing to follow the lead of Mr. Justice Mackay by relying upon the argument of public policy. While the court had not displayed the narrow technical approach of the Ontario Court of Appeal, it seemed reluctant to engage in what might be considered judicial legislation.

Why did the Supreme Court of Canada lean in the direction of judicial restraint when it was about to enter an era of civil libertarian activism? Remember that the Ontario government (as well as Manitoba) had clearly refused to invalidate all past covenants such as the one at issue in Noble and Wolf. Unlike the civil liberties case, Boucher,[156] decided in the same year, the Supreme Court was not dealing with an ambiguous piece of legislation that could legitimately be interpreted in either a conservative or a liberal fashion. Instead, it was dealing with an area of the common law which had only recently been examined and partially modified by the Ontario legislature. To rework the law in such a situation the Supreme Court had to don the mantle of legal formalism and strike down the law on very narrow technical legal grounds. For a court only recently unshackled from the authority of the Privy Council, and possessing only a limited store of political legitimacy, the Supreme Court recognized the dangers of activist jurisprudence.

The Noble and Wolf case soon became a staple of law school textbooks on constitutional law, but these seldom discussed whether or not its importance was symbolic or real.[157] What, in fact was the "impact" of this decision? Superficially, it was simply the adjudication of a dispute between two sets of litigants. The Supreme Court decision therefore meant that Bernard Wolf could finally purchase the property from Annie Noble, free from any fear that the other property owners of the Beach O'Pines resort would challenge his title. Yet by this time he was not interested at all in the property, and when he was approached by one of the people who had opposed him before the Court of Appeal he decided to sell. It is one of the abiding ironies of the case that the property remained, at least for a while, totally free of Jews and other members of "objectionable nationalities."[158]

Of course, as far as Wolf was concerned, the case had become more a fight for a principle than for a particular summer cottage. Indeed, although the litigation had proved costly for him, his final act was to donate $1,000.00 to the CJC to help the organization pay for any expenses not recovered through the court costs allocated by the Supreme Court. Wolf had in some way become a representative of the Ontario human rights community, especially the CJC. Without the support of this organization he might not have taken the case all the way to the Supreme Court, and his win was also theirs.[159]

But what was the impact of the decision in policy terms? The initial response to the decision was exactly what had been predicted by John Cartwright when he persuaded the CJC to play the "uncertainty" card rather than to put too much weight on "public policy" -- the impression was created that restrictive covenants were nullified, without much understanding of the technical reasons for the decision.[160] Moreover, the editorial comments across the country were generally positive. The left-liberal Toronto Star concluded that "it is unlikely that similar covenants will form part of future real estate transactions in the Dominion," and even the usually conservative Montréal Daily Star applauded the decision, calling such covenants "socially immoral" and in violation of the Four Freedoms (of Roosevelt's wartime speech) as well as the Declaration of Human Rights.[161]

Even more significantly, the classical liberal Globe supported the decision as a defense of freedom of contract. Although it pontificated that "[t]olerance is an individual trait and can

be cultivated only by education," it distinguished the Supreme Court decision from laws (such as the 1944 ORDA) which interfered with individual liberty. According to the Globe editorialist, the decision actually expanded freedom rather than contracting it, for it "affirmed the right of an individual to sell property."[162]

On the other hand, the decision did not create a legal barrier to all discriminatory restrictive covenants. If an original covenantor had been willing to sue, on the basis of a covenant that was more precise than the one recently examined by the Supreme Court, and if this covenant had been one that predated the Ontario or Manitoba legislation, or one that had been drawn up at any time in any other province, then such a covenant might indeed have been upheld in court.[163]

Yet such litigation does not seem to have taken place. When D.A. Schmeiser published his 1964 book Civil Liberties in Canada, he stated that the decision "certainly sounded the death-knell for any restrictive covenant based on racial discrimination."[164] The JPRC and the JLC both monitored the situation in Ontario, but although they found a few cases of discriminatory restrictive covenants in the immediate wake of the Supreme Court decision, these seem to have been resolved without legal action. For a time the Conservative legislator J.W. Murphy was intransigent on the matter of his property rights, and the JPRC contemplated legal proceedings, but no further action was taken (for reasons that are not clear). A few years later the JPRC also investigated the Thorncrest Village development, west of Toronto, which appeared to have created a legal agreement to get around the legislation, but here also it was not necessary to proceed to the courts.[165] One of the most interesting situations appeared in Windsor, where a JLC-affiliated labour committee for human rights learned that a builder and a realty firm had entered into an unofficial agreement to respect, as far as blacks were concerned, restrictive covenants still on the books. Ironically, this builder was president of the local Jewish Community Council! The issue was soon resolved through informal pressure on the part of the Windsor labour committee, as well as a decision by the City of Windsor that all land sales in the future would include a no-discrimination clause. Here, as with the other cases, it appeared that although the law was somewhat ahead of the values of some members of society, it was not difficult to ensure compliance.[166]

During this period, of course, the CJC and other groups in the Ontario human rights community kept up the pressure on Leslie Frost to pass legislation which would deal with other forms of racial and religious discrimination. Success began in 1951 when the Ontario legislature passed Canada's first Fair Employment Practices (or FEP) legislation, the preamble of which partially vindicated Mackay's activist and controversial decision in Drummond Wren, proclaiming that:

> [I]t is contrary to public policy in Ontario to discriminate against men and women in respect of their employment because of race, creed, colour, nationality, ancestry or place of origin; [and] ... desirable to enact a measure designed to promote observance of this principle ... in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations....[167]

The legislation went on to ban discrimination in the work place, and in trade union membership, on the grounds of "race, creed, colour, nationality, ancestry or place of origin. It was a more radical step forward than the earlier Conveyancing Act amendment, for while the latter merely negated discriminatory restrictive covenants, the former actually prohibited certain activities (although it provided for conciliation of complaints before any further action on a complaint could take place).[168] It was followed, in the same year, by a similar piece of legislation, Ontario's first female equal pay legislation (known as FEFRA, for Female Employees Fair Remuneration Act),[169] and in 1954 Ontario created a law against discrimination in public services (called FAPA, for Fair Accommodations Practices Act). Meanwhile, other rights groups outside Ontario were influenced by these innovations, and began their own lobbying; by 1960 almost all provinces and Ottawa had similar anti-discrimination legislation.[170] The struggle which began in Ontario had spread throughout the nation.

The CJC played an important role in this process, but it had no clear master-plan, and at first was sufficiently heartened by the Noble and Wolf case that it planned further "judicial lobbying." Shortly after the Supreme Court decision, Saul Hayes, the National Executive Director of the CJC, wrote to Professor Joseph Finkelman, noting that he was inclined to pursue a second test case, one in which the public policy argument alone would be used. As he said, "In view of the fact that both Manitoba and Ontario have legislation for future

contracts; the Eastern provinces are outside the realm of possibility anyway; Québec hasn't the same legal system; Saskatchewan has a Bill of Rights, so we are left with a test case to be made at a convenient time in British Columbia."[171]

Strangely enough, however, the situation in British Columbia was not as simple as Hayes thought. When the Supreme Court decision was announced, the provincial Land Registry Office in British Columbia made a public statement that for the past thirty-nine years it had been policy not to register any land conveyances containing racially restrictive covenants. According to their records, in an unreported case in January of 1911, Chief Justice Gordon Hunter had declared void a restriction against the sale of a certain property to any people of the Chinese race. This decision had guided the government ever since. Nevertheless, there still existed a number of restrictive covenants in many of the fashionable areas of the city; for example, the well-to-do "British Properties" had restrictions which excluded "Africans, Asiatics or those of African descent, except servants."[172]

It seemed clear, however, from the responses of minority community leaders in Vancouver, that the Supreme Court decision would not lead to a wave of litigation to challenge these vestigial barriers to integration. The head of the Chinese Benevolent Association, Foon Sien, said that "The Chinese take such color bars philosophically. If people don't want us, then we'll go somewhere else." Similarly, the chair of the local branch of the CJC stated that "No one wants to go and live with a bunch of hypocrites." It was probably because of attitudes like these that the CJC did not proceed with a second test case in British Columbia.[173]

However, in the spring of the next year CCF leader Harold Winch introduced not only a Saskatchewan-style provincial bill of rights but also a bill to remove discriminatory restrictive covenants. Neither was successful, for the right-wing Social Credit government in Victoria was not eager to pass any legislation which interfered with property rights in order to combat racial or religious discrimination. To be sure, the bill against restrictive covenants could have been viewed as a blow in favour of freedom of contract, but more likely it was perceived by the government as a tainted fruit from the poison tree of democratic socialism.[174]

Although the B.C. government did take some subsequent steps to deal with discrimination -- for example, the weak Equal Pay Act of 1953 provided for equal pay for men and women performing the same work in the same establishment, and a FEP Act was passed in 1956 -- it was slow to produce legislation which would prohibit discrimination in the provision of public services, including discrimination by means of restrictive covenants. The West Coast human rights community therefore continued to lobby for effective legislation. For example, in 1957 the JLC-affiliated human rights committee in Vancouver presented a report to the convention of the BC Federation of Labour which decried discriminatory restrictive covenants, and a resolution was passed which called upon the government to outlaw them. The following year, the BC Federation's Human Rights Committee presented a memorandum to the provincial cabinet on FEP and FAP legislation which pointed out that, despite the Noble and Wolf case, "these restrictive covenants still exist and respectable citizens are still being refused an opportunity of living in certain residential areas because of their race, colour or creed."[175]

This dissertation is supposed to end in 1960, but perhaps the reader will forgive a brief excursion into more recent history. British Columbia's first FAP legislation was passed in 1961, but it did not explicitly prohibit discriminatory restrictive covenants and merely forbade discrimination in "the accommodation, services, or facilities available to the public in any place to which the public is customarily admitted."[176] Even in 1973 Jack Wasserman in the Vancouver Sun was querulously noting that "...for some unexplainable reasons the [racial] clause still hangs around, in legal limbo constituting the most vicious affront to any right-minded person who happens to stumble across it." He also implied that these restrictive covenants still meant, at the very least, the necessity of extra legal work to add a nullifying clause in the conveyancing papers.[177]

This "loose end" was finally tied up by the right-wing Social Credit regime of Bill Bennett. In the summer of 1978 his government replaced the Land Registry Act with the Land Titles Act, s. 218 of which voided all discriminatory restrictive covenants, not just prospectively but retroactively also. It is no doubt a sign of the changing mores that this was

done with no fanfare and no opposition. What had been too daring for Leslie Frost in the 1950s was simply minor housecleaning for Bill Bennett almost thirty years later.[178]

D: CONCLUSION

If it is true that judicial decisions are not made in a socio-political vacuum, then the study of the law should aim at explicating the context in which judicial decisions are made. This chapter has demonstrated how the restrictive covenant decisions of justices Mackay, Schroeder, the Ontario Court of Appeal, and the Supreme Court of Canada were reflections of a much broader political struggle.

There were three stages, to some degree sequential but also overlapping, in the struggle for the elimination of restrictive covenants (as well as for fair employment and fair accommodation legislation.)[179] First, there was a process of general value change, which itself had several elements, beginning with the growth of a strong feeling within respectable Canadian society that democracy was legitimate, as well as an increasing shift from talk about "British liberties" to the newer post-war discourse of human rights. While the economic dislocations of the 1930s had earlier convinced some people that ideologies such as fascism or communism might be necessary, by 1945 any talk of anti-democratic values was widely seen as a breach of faith with those Canadians who had died in the recent war. At the same time, although the "real" meaning of democracy was unsettled, an increasing number of people were inclined to believe that it involved respect for human rights, including the equality of races. The seeds of this change had been sown in official pronouncements such as the Atlantic Charter and the UDHR, and they had flourished in Canadian soil made increasingly receptive by post-war economic changes where an educated, urbanized, and sensitized population was economically secure and in no mood to look for ethnic minority scape-goats.

The second stage involved the perception of a tension between these democratic values and social reality. The ability to see a conflict between political practice and rights theory is first of all essential for those who are "victims," for without the ability to see one's situation in terms of basic rights one is unlikely to make any claims for redress. As this chapter has indicated, even among the Jewish community of Ontario, the development of rights-awareness, and a willingness to fight for one's rights, was a slow process which was not complete even in the early 1950s.[180]

Of course, it is also necessary that new ideas about rights also develop some legitimacy among the general public, or at least among the political influentials. As long as members of the political elite refuse to see an issue as one of basic rights, those who are calling for change will probably make little progress. As this chapter has demonstrated, most of the Ontario court judges saw the Noble and Wolf restrictive covenant as simply a reasonable limitation to provide for "congenial" social intercourse, a kind of "freedom to discriminate" that seemed eminently reasonable to people raised and educated in a time before the post-war age of human rights. Nevertheless, for a growing number of influential Canadians, racist or anti-semitic discrimination was increasingly seen as incompatible with the new values of human rights.

The third stage involved a debate about how best to resolve this tension between cherished values and perceived social evil.[181] This debate was part of a larger struggle between the advocates of classical liberalism and reform liberalism, a struggle which included debate over the necessity of unemployment insurance, the proliferation of administrative tribunals, or calls for socialized medicine. In simplified terms, this was one of the battles over the growth of the welfare state, a conflict between freedom and equality, with classical liberals wanting freedom from governmental intervention and reform liberals advocating more equality through governmental intervention. (Paradoxically, of course, it was the usually laissez-faire United States that provided the first examples of anti-discrimination legislation, paving the way for reform liberals in Canada.)

This conflict was fought out within a number of venues. Among newspapers, the Globe represented the older classical liberal libertarian position while the Star exemplified the newer reform liberal egalitarian point of view. Within organizations such as the ACL, there were those, such as B.K. Sandwell, who initially emphasized the classical liberal British liberties of an older era, while others, such as Vivien Mahood, leaned forward in the direction of human rights. Within the Ontario judiciary, however, only Mr. Justice Mackay enthusiastically embraced this brave new *Weltanschauung*; the other judges proved more conservative, unwilling to move far beyond their traditional commitment to the liberty of the individual.

Yet these political values were also intertwined with different attitudes towards the judicial role. Mr. Justice Mackay engaged in judicial activism, willing to leap into the breach where legislators feared to tread. The other judges demonstrated judicial restraint; they moved cautiously, trying to avoid any criticism that they were usurping the legislative function, especially since the Ontario government had explicitly eschewed the negation of existing covenants. For the judges of the Supreme Court, caution was especially important, given its newly-minted status as a court supreme in more than just its name.[182] A majority of its judges therefore were forced to walk a jurisprudential tight-rope, leaning in the direction of human rights, but not so far that they would undermine the court's reputation as an impartial tribunal that simply "finds" the law. Their decision was therefore "political," not in the sense that they were partisan, but in that they cautiously chose the least controversial way of promoting human rights policy.

Of course, if ever there was a case in which the judges knew the social and political background of the litigation, it was Noble and Wolf. The case had been well-publicized, it was part of a major lobbying campaign by the CJC and other groups, and one of the lawyers intimately concerned with the case was now himself part of the Supreme Court brotherhood. The judges were well aware that they were not just settling a dispute, they were also making controversial policy.

However, the litigation was not a "test case" from the beginning. What began as an attempt to ensure the validity of a contract developed into a question of principle for Bernard Wolf, and then a matter of national importance for the CJC. It was not the best possible test case -- a cottage is not a home, as the Ontario judges implied, and Mrs. Noble was not the perfect team player -- but in the final analysis the CJC saw an opportunity and seized it, playing the "cards" that had been dealt with determination and skill. Without its support the case would probably never have reached the Supreme Court and the law of restrictive covenants would have been left to the tender mercies of provincial legislatures.

Given the successes of Drummond Wren and Noble and Wolf, one might have thought that the CJC would launch more test cases in the next few years. As it turned out, most of the important human rights cases of the 1950s were fought by Jehovah's Witnesses rather than

the Jewish community. There are several reasons for this. In the first place, the absence of any bill of rights made it difficult to launch a test case on constitutional grounds. Secondly, the kind of problems that faced the Jehovah's Witnesses -- criminal law charges and discrimination by state officials -- lent themselves to defenses which utilized traditional liberal legal rights.[183] The Canadian Jewish community, by contrast, was more concerned with discrimination by private parties in the fields of employment, accommodation, education, and other public services, and these problems were largely outside of the scope of the legal system.

As the result, the CJC seems to have refrained from launching test cases and instead lobbied for education and legislation -- running tests to determine "scientifically" the existence of discriminatory practices, disseminating this information, and calling for newer and broader anti-discrimination laws, reforms to the Chinese immigration statute, a Canadian bill of rights, and Criminal Code amendments to combat hate propaganda.[184]

Within the Jewish community, however, there was another group that played an equally important role in the post-war human rights community. This was the JLC, an organization which was both a competitor of, and a collaborator with, the CJC. A later chapter of this dissertation, therefore, looks in considerable detail at the JLC, and presents yet another case study illustrating a portion of the struggle for anti-discrimination law in Canada.

ENDNOTES FOR CHAPTER 4

[1]This chapter was almost entirely written some time before the publication of Walker's "'Race,' Rights and the Law," Chapter 4 of which contains a detailed analysis of the events of, and jurisprudence dealing with, the Drummond Wren and Noble and Wolf cases. Any changes to this dissertation that are based upon Walker's book have been fully noted.

[2]This ranking of issues is to some degree arbitrary. For example, there is no doubt that the problem of discrimination against Jehovah's Witnesses, only touched upon lightly in this dissertation, was one of the major human rights issues in the immediate post-war era.

[3]For discussions of shifts in anti-Asian franchise legislation and immigration policy, see: Lee, "The Road to Enfranchisement; McEvoy, "'A Symbol of Racial Discrimination'."

[4]Note, however, that immigration policy did not become *de jure* racially neutral until 1962. For more on this, see: Freda Hawkins, Canada and Immigration: Public Policy and Public Concern (Montréal and London: McGill-Queen's University Press, 1972), Chapters 4 and 5; Avery, Reluctant Host, Chapter 8; Taylor, "Racism in Canadian Immigration Policy"; Vic Satzewich, "Racism and Canadian Immigration Policy: The Government's View of Caribbean Migration, 1962-1966," Canadian Ethnic Studies XXI, no. 1 (1989): 77-97.

In addition, certain minority religious groups also suffered state discrimination. See Woodcock and Avakumovic. The Doukhobors; M. James Penton, Jehovah's Witnesses in Canada (Toronto: Macmillan, 1976); Kaplan, State and Salvation; Gary Botting, Fundamental Freedoms and Jehovah's Witnesses (Calgary: University of Calgary Press, 1993); Janzen, Limits on Liberty.

Finally, the treatment of aboriginal peoples still remained a national disgrace. See Don Purich, Our Land: Native Rights in Canada (Toronto: James Lorimer, 1986); J.R. Miller, Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada (Toronto: University of Toronto Press, 1989); Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1949-1989 (Vancouver: UBC Press, 1990).

[5]There does not seem to be a good overview of anti-semitism in the immediate post-war era, even in the otherwise excellent collection edited by Alan Davies, AntiSemitism in Canada. One article in the book, Howard Palmer's "Antisemitism in Alberta" (167-195), says that by the 1950s the phenomenon in Alberta was quickly disappearing, partly because the province was becoming more urban, prosperous, and business-oriented. See also Yaacov Glickman, "Anti-Semitism and Jewish Social Cohesion in Canada," in Racism in Canada, ed. Ormond McKague (Saskatoon: Fifth House Publishers, 1991). For a contemporary discussion, see Pierre Berton, "No Jews Need Apply," Maclean's, 1 November 1948.

[6]Stuart E. Rosenberg, The Jewish Community in Canada, vol. 2: In the Midst of Freedom (Toronto: McClelland and Stewart, 1970), 44-6.

[7]Although this chapter will refer to the CJC as a single entity, it was very decentralized, with little coordination between the main branches (Québec, Ontario, Western, and Pacific). Much of the national work, including the legal cases discussed in this chapter, was done by the Ontario (central) region rather than by the national headquarters in Montréal. Later, in the 1950s, the main office was moved to Toronto (interview with Ben Kayfetz, former executive director of the JPRC, 7 June 1996).

[8]B. [Ben] G. Kayfetz, introduction to the "Finding Aid of the Joint Community Relations Committee 1938-78," Ontario Jewish Archives; Rosenberg, In the Midst of Freedom, 46. According to Speisman, "Undoubtedly, 1938 represented the nadir in Jewish fortunes in Ontario, with public condemnation and stereotyping now commonplace" ("Antisemitism in Ontario," 125).

[9]Re Drummond Wren [1945] OR 778, 4 DLR 674; Noble and Wolf v. Alley [1951] SCR 64, 1 DLR 321.

[10]Ian Radforth and Joan Sangster, "'A Link Between Labour and Learning': The Workers' Educational Association in Ontario, 1917-1951," Labour/Le Travailleur, 8/9 (Autumn/ Spring 1981/82): 41-78. As the authors point out (at 51-2), many of the WEA leaders (although not all) saw workers' education as one means to a socialist goal. See also Friesen, "Adult Education and Union Education," at 169.

[11]Daphne A. Dukelow and Betsy Nuse, The Dictionary of Canadian Law (Toronto: Carswell 1991).

[12]These details are set out in the decision of the Ontario High Court in Re Drummond Wren [1945] OR 778, 4 DLR, 674.

[13]A Victory for Democracy (Workers' Educational Society pamphlet, n.d.), CLC Papers, vol. 355, file: "Racial Discrimination, Part 2, 1945-1952"; "Property Buyers Fight Clause Barring Jews," Globe and Mail, 24 August 1944; "Adjournment in Land Case," Globe and Mail, 25 August 1944; "Further Action Planned on Anti-Semitic Clause" Globe and Mail, 1 September 1944.

[14]According to one report, the worst areas in Ontario were Windsor and Hamilton (J. V. McAree, "Can't Block Jews as Property Owners," Globe and Mail, 12 February 1946). According to McAree, the usual covenant in Hamilton stated that "None of the lands described herein shall be used or occupied or let or sold to Negroes or Asiatics, Bulgarians, Austrians, Russians, Serbs, Romanians, Turks, Armenians, whether British subjects or not, or foreign-born Italians, Greeks or Jews."

[15]The CJC had unsuccessfully asked the Ontario government in 1938 to pass legislation which would nullify discriminatory restrictive covenants (CJC [Ontario] "Review of Congress Activities," September 1938, JPRC Papers, vol. 72, file "Pre 1943").

[16]"Further Action Planned on Anti-Semitic Clause"; JPRC Papers, Correspondence 1947, file 45, Reel 2. The same file suggests also that, at about the same time, the CJC and the WEA were negotiating the joint production of a pamphlet on tolerance (Lappin to Oelbaum, 17 July 1944).

The Drummond Wren case also demonstrates some of the problems in interest-group networking. Reverend Mutchmor, of the United Church Evangelism and Social Service Board, which often took a strong stand on human rights issues, was unwilling to become involved because the WEA intended to raffle off the house. As Mutchmor wrote, "The action of the Canadian Jewish Congress in going to the courts to get fair treatment is one that we can understand and support, but we cannot do much to help you when you publicly set yourselves against us on a gambling project" (Mutchmor to Feinberg, 1 and 11 September 1944, JPRC Papers, JPRC Correspondence 1947, file 45, Reel 2.

[17]Weiler, "Two Models of Judicial Decision-Making," Canadian Bar Review XLVI (1968): 406-471, esp. 406-7, 445-6. This article has also been reproduced and used as a teaching tool in F.L. Morton, ed., Law, Politics and the Judicial Process in Canada (Calgary: University of Calgary Press, 1984).

[18]See Chapter 2. Note, however, that the WEA name does appear on a working list of organizations in vol. 1, file 1 [part 2]) of the CCJC Papers.

[19]Within a year a member of the WEA approached the JPRC for $5,000 to do work on "bettering group relations." The JPRC was sympathetic, but suggested that the WEA should approach the CJC directly (JPRC Minutes, 27 June 1945, JPRC Papers, box 72, file "1945-46"). It is also worth noting that at about this time Wren became one of the contributing editors to Today: An Anglo-Jewish Monthly, which was published in Toronto and devoted to attacking anti-semitism as well as improving Jewish-Gentile relations. Some of the other contributing editors were distinctly radical: Leopold Infeld and Barker Fairly (of the ECCR/CRU), and Bernard Mergler (of the Montréal Civil Liberties Union; a lawyer known for defending radicals such as Kent Rowley).

[20]Radforth and Sangster assert that Wren was not a communist ("A Link," 67). This is also implied in the analysis of Gerald Friesen and Lucy Taksa, "Workers' Education in Australia and Canada: A Comparative Approach to Labour's Cultural History," Labour/Le Travail 38 (Fall 1996): 170-197; Wren's attitude to education (at 188) appears to have owed far more to Mill than to Marx, stressing the need to present all sides of a question so that students could make up their own minds. However, two prominent CCL/CCF activists, Charles Millard and Eugene Forsey, did their best to convince others that Wren and the WEA were communist (Radforth and Sangster, "A Link," 66-7, 71-6; Marcus Klee, "Class, Mass Media, and the State: The Making and Unmaking of National Working-Class Radio Broadcasting in Canada, 1935-1944" (unpublished paper presented at the 1994 Learned Societies Conference), 11, note 39. See also the "Introduction" to the "Inventory of the Workers' Educational Association Papers," May 1970, CLC Papers, vol. 242, file 7.

[21]For more about the JLC and its relationship with the CJC, see Chapter 6 of this dissertation.

[22]"A Victory for Democracy," CLC Papers, vol. 355, file "Racial Discrimination, Part 2: 1945-1952."

[23]Re McDougall and Waddell [1945] 2 DLR 244; "Judge Denounces Discrimination in Land Deeds," Globe and Mail, 10 March 1945. It is interesting to note that the JPRC at one time planned to approach Chevrier and ask him to postpone his case since it would set a precedent (JPRC Minutes, 31 January 1945, JPRC Papers, vol. 72, file "1945-6").

[24]The CRCIA is discussed briefly in Chapter 2 of this dissertation. In 1946 Himel published an article in the Toronto Star entitled "Chinese Seeking Removal of Ban on Immigration," asking "justice loving" Canadians to support the repeal of the 1923 Chinese Immigration Act (which prevented Chinese men in Canada from bringing their wives and children into Canada). As a result of this article he was asked by the Canadian Chinese community to work on their behalf, and became the legal counsel and lobbyist for CRCIA until the exclusionist legislation was repealed in May of 1947 (Toronto Star, 31 October 1946; interview with Irving Himel, 26 July 1994; Irving Himel, "Chinese Rights in Canada" n.d. [pamphlet reprinted from the Toronto Star and the Ottawa Citizen, published by the CRCIA], JPRC Papers, vol. 4, file 8; Armstrong, Ngai and Himel to W.L.M. King, 7 February and 26 November, 1947, King Papers, vol. 420, Reel C-11035, documents 381003 and 381095; Armstrong, Ngai and Himel to The Senate Committee on Immigration and Labour, 10 March 1948, JCCA Papers, vol. 13, file 21).

Himel's role in the CFBR is discussed in Chapter 7, and his role in the ACL is discussed in Chapters 5, 6, and 7. Because Himel acted as counsel for a number of communist-dominated trade unions in his youth, and also worked for the WEA, Eugene Forsey thought that he was a communist (Forsey to N.S. Dowd [Executive Secretary of the CLC], 23 April 1946, CLC Papers, vol. 242, file 7). However, Himel was in fact a very moderate liberal. His major influence in university was the left-liberal Frank Underhill, and he later became good friends with John Diefenbaker (interview 26 July 1994). In addition, the ACL was staunchly anti-communist.

[25]"Transcript of hearing before Justice Mackay in the Drummond Wren case," JPRC Papers, JPRC Correspondence 1947, file 45, Reel 2; "A Victory for Democracy." The 12 March 1945 minutes of the JPRC note that the brief was being prepared for Cartwright by Laskin and an assistant (JPRC Papers, vol. 72, file "1945-6").

[26]The hearing took place on 1 May. Technically, the WEA asked for a declaration that the covenant was invalid, relying upon the fact that s. 60 of the Conveyancing and Law of Property Act (RSO 1937, c. 152) gave the judiciary discretionary powers to modify any covenant annexed to land. See "Transcript of hearing before Justice Mackay in the Drummond Wren case," JPRC Papers, JPRC Correspondence 1947, file 45, Reel 2; Re Drummond Wren at 675.

[27]Re Drummond Wren, 676. By "legal formalism" is meant the notion that judges only "find" the law, and that decisions are reached simply by applying legal rules in a syllogistic fashion. By "principled" judicial decision-making is meant the notion that judges both can and should sometimes decide cases by referring to the legal principles which underlie rules. Both of these ideal types are alternatives to the notion of "legal realists" that the indeterminacy of law imposes no limitations whatsoever upon the decisions of the judiciary. In the "principled" explanation, the values of the judges will have some impact upon their decision-making, but they are also limited by the relatively inelastic nature of legal principles. This approach has been developed by Ronald Dworkin, Taking Rights Seriously (Cambridge, Massachusetts: Harvard University Press, 1977), especially Chapter 4. For a lengthy application of this idea to Canada, see Paul Weiler, In the Last Resort: A Critical Study of the Supreme Court of Canada (Toronto: Carswell/Methuen 1974), Chapter 2. For a good summary of the alternative theories of judicial decision-making, see Peter H. Russell, The Judiciary in Canada: The Third Branch of Government (Toronto: McGraw-Hill Ryerson 1987), 13-17.

[28]Re Drummond Wren, 676.

[29]Re Drummond Wren, 676. On 30 November 1945, Charles L. Deacon, Master of Titles, Land Office (Toronto) wrote to Rabbi Feinberg of the JPRC in response to a letter of 23 November which thanked him for the position he had taken since his appointment in 1924 -- refusing to accept registration of any transfer that contained "an offensive clause or condition of a racial or creedal nature" JPRC Papers, JPRC Correspondence 1947, file 45, Reel 2.

[30]Re Drummond Wren, 677-678. The Insurance Act amendment was SO 1932, c. 24, s. 4. For a discussion of the passage of this early anti-discrimination law, see Walker, "Race," Rights and the Law," 193.

[31]Re Drummond Wren, 678-81.

[32]The basis for this had been set long ago in a series of British precedents. In a last gasp of feudalism, eighteenth-century wealthy land-owners had often attempted to "settle" their lands by making it impossible for their heirs to sell them off to anyone with enough money. This, however, was an interference with the free market which tied up capital and inhibited economic growth. By the nineteenth century a number of liberal precedents had undermined the legal validity of these settlements, in effect limiting the contractual rights of the immediate land-owners (to "settle" their land) in order to expand the contractual rights of their heirs (to dispose of the land however they desired). See: D.A.L. Smout, "An Inquiry into the Law on Racial and Religious Restraints on Alienation," The Canadian Bar Review XXX (November 1952): 862-880, at 863-4; P.S. Atiyah, The Rise and Fall of Freedom of Contract (Oxford: Clarendon Press, 1979), 87-89, 110-111, 131-5.

[33]Re Macleay (1875), L.R. 20 Eq. 186. The case is discussed in Smout, "An Inquiry," at 865-7. It is one of the ironies of legal history that the judge who decided Macleay, and therefore created later problems for the CJC, was himself Jewish.

[34]See Smout, "An Inquiry," 865-6. However, there was one British Columbia decision, unreported, in which a discriminatory restrictive covenant had been nullified by judicial decision. This is discussed later in this chapter. For a discussion of some early Ontario cases dealing with discriminatory restrictive covenants, see Walker, "Race," Rights and the Law, 200-1.

[35]Re Drummond Wren, 681.

[36]Re Drummond Wren, 681-2.

[37]Re Drummond Wren, 682. This argument had clearly been a long shot, especially since it disagreed with Mr. Justice Chevrier's decision. The WEA lawyers had argued that the restrictive covenant was a violation of the ORDA because registration in the Registry Office constituted publication of a discriminatory notice. This was a far cry from the kind of public sign saying "No Jews Admitted" that the legislation had been created to deal with.

[38]"Anti-Semitic Land-Sale Clause Declared Illegal," Globe, 1 November 1945.

[39]"Blow to Prejudice," Globe [editorial], 2 November 1945; J. V. McAree, "Can't Block Jews as Property Owners," Globe, 12 February 1946. For the Globe's position on the ORDA, advocating public education rather than prohibition, see "Racial Bill Not the Cure," and "Racial Bill Safeguarded," 10 and 13 March 1944.

[40]The classical liberal position of the Globe is discussed later in this chapter. For an exposition of McAree's opposition to anti-discrimination legislation interfering with the private sector, see "How Not to Make Friends," Globe, 13 February 1950.

[41]W.A. Bogart, Courts and Country: The Limits of Litigation and the Social and Political Life of Canada (Toronto: Oxford University Press, 1994), 4, Chapter Two.

[42]The only post-Drummond Wren case mentioned by J.R. Cartwright in his attack on the Noble and Wolf restrictive covenant was Re Cuthburt and Posluns, decided on 12 June 1946 (Re Noble and Wolf, [1948] OR 579, at 507).

[43]"A Victory for Democracy." The files of the CJC contain many letters from individuals and groups (including the NAACP in the United States) either thanking them for this pamphlet or asking for extra copies (JPRC Papers, JPRC Correspondence 1947, file 45, Reel 2).

[44]JPRC Minutes, 27 June 1945 and 24 January 1946, JPRC Papers, JPRC Correspondence 1946, vol. 72, file "1945-46," and vol. 3, file 1; "Racial Hatred Ancient Foe, Wipe It From Hearts -- Labor," Toronto Star, 31 August 1946; Wren to S. Grand, 26 September 1947, JPRC Papers, JPRC Correspondence 1947, file 45, Reel 2. During this period Wren was a member of the CRCIA (discussed briefly in Chapter 2); it is not clear if he did this on his own initiative or as the head of the WEA.

[45]Zaitlin to Hayes, 28 February 1947, CJC Archives, ZA 1947, vol. 10, file 127; Zaitlin to Grand, 18 March 1947, and Grand to Zaitlin, 21 March 1947, JPRC Papers, JPRC Correspondence 1947, file 50, Reel 2. For an interesting example of how the CJC worked with Salsberg on lobbying for anti-discrimination (FEP) legislation, but acknowledged that his party ties were becoming an increasing liability, see JPRC Minutes, 17 September and 23 October 1947, JPRC Papers, JPRC Correspondence 1947, vol. 3, file 2.

[46]Allegations of communist infiltration into the WEA dogged the organization in 1946, and reappeared again in 1950, with allegations by A.R. Mosher of the CCL. Although there may have been other reasons for the alienation of the WEA from the mainstream human rights community, this was probably a significant factor (WEA "Board Minutes," 2 November 1947, WEA Papers; CLC Papers, vol. 242, file 7: General Correspondence Workers' Educational Association 1946-1954; Mosher to Muir [Royal Bank of Canada], 3 November 1950, CLC Papers, vol. 204, file 9).

[47]C.B. Bourne, "Case and Comment," Canadian Bar Review XXIX (November 1951): 969-74 at 971; Paul Sayre, "Shelly v. Kramer and United Nations Law," 34 Iowa Law Review 1 (1948): 1-11 at 1-2.

[48]Shelley v. Kramer 334 US 1 (1948). The CJC was encouraged to note that the United States Attorney General had in part relied upon the Drummond Wren decision when arguing his case before the American Supreme Court; see Congress "Bulletin," July 1949, CJC Archives, vol. 5, file 54; Ben G. Kayfetz, "Segregation and the Courts," The New Canadian, 3 November 1948. For a discussion of this, see Walker, "Race," Rights and the Law, 205.

[49]Re Noble and Wolf [1948] OR 579.

[50]Noble and Wolf v. Alley et al. [1951] SCR 64, [1951] 1 DLR 321; "Noble and Wolf Manuscript," Edward Richmond Papers, file "Noble and Wolf, 1951-1953"; Edward Richmond, "Racially Restrictive Covenants and the Judiciary in Canada," unpublished document, n.d. (personal copy, kindly made available by Mr. Richmond).

[51]Bernard (Pinchas Baer) Wolf was not only Jewish, but a leading member of the London (Ontario) Jewish Community. Born in the Ukraine, he has been described as a "secularist by upbringing" who nevertheless supported Jewish philanthropic, social, and cultural causes, including the London Jewish Community Council and the Canadian Friends of the Hebrew University (Ben Kayfetz, "Wolf legacy: end to restrictive property clauses," The Canadian Jewish News, 22 January 1987).

[52]Richmond was Secretary of the London branch of the CCF. He was also Jewish, although as this chapter will demonstrate, not all Jews believed that Wolf should "rock the boat" in this fashion. See: Kayfetz, "Wolf Legacy"; Edward Richmond, "More Thoughts on Wolf Property Case," The Canadian Jewish News, 19 February 1987; Richmond to Jolliffe, 22 June 1948, Richmond Papers, file "Noble and Wolf, 1948"; interview with Ben Kayfetz, 7 June 1996).

[53]Re Noble and Wolf [1948], 579. As Walker points out, the protective association had first asked a local lawyer to offer to buy Mr. Wolf's Agreement of Purchase and Sale, at a profit for him. When he refused, they retained Morden as their counsel ("Race," Rights, and the Law, 206-7).

[54]Re Noble and Wolf [1948], 582-3.

[55]Re Noble and Wolf [1948], 583-4. The decision was handed down on 11 June, 1948.

[56]Re Noble and Wolf [1948], 585, 590.

[57]Re Noble and Wolf [1948], 583.

[58]Re Noble and Wolf [1948], 590-1.

[59]Re Noble and Wolf [1948], 596-7. Part of this passage was quoted with approval in a Globe and Mail editorial, "Tolerance and the Law," 14 June 1948, which added that "It is for the Legislature or Parliament to decide, in what degree, or in what aspects, the basic right of agreement between persons shall be abridged or forbidden."

[60]Ted Jolliffe, leader of the Ontario CCF, agreed privately with the Schroeder decision, writing to Richmond, on 23 June 1948, that "After all, we do not want judges to make law; we want law to be made by the elected representatives of the people" (Richmond Papers, file "Noble and Wolf, 1948").

[61]The Supreme Court of Canada, even after appeals to the Privy Council were abolished in 1949, waited ten years before overturning a use of Lords common law precedent; it finally did so in Fleming v. Atkinson [1959] SCR 513, 18 DLR (2d) 81. For a discussion of this case, as well as an analysis of principled judicial decision-making, see Weiler, In the Last Resort, 58-65.

As an illustration of the power of British precedents in the late 1940s, note that when Noble and Wolf went to the Ontario Court of Appeal, one of the justices emphasized that the House of Lords had in a "comparatively recent case" taken a strong stand against extending the doctrine of public policy in an analogous area of the law; see Associate Justice Hogg in Re Noble and Wolf, Ontario Court of Appeal [1949], 4 DLR, OR 503, at 530.

[62]The term "freedom of association" was later used by one of the appeal judges, Associate Justice Hope, in his support of Schroeder's decision. See Re Noble and Wolf [1949], at 525.

[63]Roger Graham, Old Man Ontario: Leslie M. Frost, (Toronto: University of Toronto Press, 1990), 263. The letter was written by Judge J.A. McGibbon to Premier Leslie Frost, shortly after Schroeder had handed down his decision, and after Frost had passed legislation which prospectively nullified any discriminatory restrictive covenants (this amendment to the Conveyancing Act is discussed later in this chapter). Frost responded to McGibbon with a letter pointing out that such attitudes ran contrary to the policy of the United Church, of

which McGibbon was a member.

[64]See the discussion of the Dresden case in Chapter 6 of this dissertation.

[65]Cartwright to Richmond, 12, 16 June 1948, Richmond Papers, file 1.

[66]Saul Hayes to "Ben" [Kayfetz], 5 July 1948, CJC archives, ZA 1948, vol. 6, file 75b; Kayfetz, "Wolf legacy." As Walker points out, Wolf was both a rich man (with assets of over $2 million) and a man committed to his "mission" of improving the legal status of Jews ("Race," Rights, and the Law, 211). Nevertheless, without the support of the CJC he might not have proceeded further.

[67]For a discussion of race prejudice at this time, see Dorothy Fraser, "Unconscious Fascism," Canadian Forum, February 1946, 265-6.

[68]Also, a Jewish girl was refused entry to the rink in February 1947. These incidents are explained in more detail in Chapter 2 of Bagnall, "The Ontario Conservatives." For the memoirs of the father of the black youth turned away from the ice rink, see Donna Hill, ed., A Black Man's Toronto 1914-1980: The Reminiscences of Harry Gairey (Toronto: The Multicultural History Society of Ontario, 1981). For information about the role of the CJC in protesting the Icelandia incident, see the letters in the JPRC Papers, JPRC Correspondence 1947, file 10, Reel 2.

[69]Bagnall, "Ontario Conservatives," Chapter 2. For another contemporary incident of a black fighting against racial discrimination, which had national press coverage at the time, see the story of Viola Desmond in New Glasgow, Nova Scotia. There is a short discussion in Winks, The Blacks in Canada, 433; the story was also reported in the Toronto Star (30 November 1946), and Saturday Night (7 December 1946). Note that during this time period the Globe ran a series of four articles on the problems of blacks in Toronto, beginning with "They Get Bread Without Butter in Canada," 21 February 1947. For a discussion of the Dresden affair, see Chapter 6 of this dissertation.

[70]In the late 1940s and early 1950s Maclean's often published articles dealing with minority groups and prejudice. See, for example: Jack Scott "Why BC Draws the Color Line," and Pierre Berton, "'They're Only Japs'," 1 February 1948; Sidney Katz, "Jim Crow Lives in Dresden," 1 November 1949; Pierre Berton, "Marie Went Back to the Dark Ages," 15 July 1951.

Pierre Berton claims in his autobiography that he was responsible for many of Maclean's post-war articles on minority groups and prejudice. This was a reflection of his egalitarian liberal values; he mentions how at one point he was involved in a kind of reverse-discrimination restrictive covenant situation, refusing to sell property to people who were known to be anti-semitic (Pierre Berton, My Times: Living With History 1947-1995 [Toronto: Seal Books, Doubleday, 1995]: 25-9, 68). Berton, who also did radio broadcasts on the need for anti-discrimination legislation, at one point worked closely on summer resort

discrimination with Alan Borovoy (secretary of the Toronto labour committee; now general counsel of the Canadian Civil Liberties Association), and still later became a board member of the CCLA (Toronto labour committee Annual Report, 1952, and reports for December 1960 and January 1961, JLC Papers, vol. 41, file 4, and vol. 43, file 1; My Times, 208, 439, 338-40).

[71]Pierre Berton, "No Jews Need Apply, Maclean's," 1 November 1948. See also "Faculty Gave Us Breaks' No Bias -- Jewish Grads," Toronto Star, 22 November 1945 [arising out of allegations by CCF MP Alistair Stewart that there was anti-semitic discrimination at the University of Toronto in pharmacy, medicine, and dentistry]; "Live and Let Live" [editorial], Globe, 11 May 1946; "No True Democracy," Saturday Night, 15 June 1946; Mary Lowrey Ross, "Daryl Zanuck's Screen Editorial on the Anti-Semitic Problem, Saturday Night, 6 March 1948 [dealing with the Hollywood film on anti-semitism, "Gentleman's Agreement"].

[72]The Saskatchewan Bill of Rights Act, SS 1947, c. 35 ("An Act to protect Certain Civil Rights"). This law not only guaranteed political rights but also egalitarian rights, including discrimination in the sale, lease, rental, and occupancy of land. The legislation was primarily quasi-criminal legislation, with fines from $25 to $200 for breaches, but it also permitted aggrieved parties to seek injunctions against any persons depriving them of their rights under the act. For more about this legislation, in the context of the struggle for a national bill of rights, see Chapter 7.

[73]Bagnall, "The Ontario Conservatives," Chapter 2; 31 March 1948, 601-6; "Tories Spend Night Session Slaughtering CCF Bills," Toronto Star, 29 October 1947; "Can't Cure Intolerance by Law, Says Blackwell as CCF Bill Defeated," Globe, 29 October 1947; "Bill to Outlaw Race Intolerance Defeated," Globe, 1 April 1948. The two municipal bylaws were in Toronto (no. 248, passed 21 February 1947) and Hamilton (no. 3022, passed 27 May 1947).

[74]"Ontario Bill of Rights Demanded by Jolliffe," Toronto Star, 21 June 1948; Richmond to Jolliffe, 22 June 1948, and Jolliffe to Richmond, 23 June 1948, Richmond Papers, file "Noble and Wolf, 1948." The letter from Richmond indicates that he was unhappy with the way that Jolliffe dealt with the matter, suggesting that his remarks absolved the courts of their responsibility for striking down such covenants.

For discussions of the "incremental" approach to human rights legislation, which was adopted by most human rights activists, including the CJC, see Herbert Sohn, "Human Rights Legislation," 278-281; R. Brian Howe: "The Evolution of Human Rights Policy in Ontario," 791, "Incrementalism and Human Rights Reform," and ""Human Rights Policy in Ontario," 122; John Bagnall, "The Ontario Conservatives," note 52, at 99 and note 114, at 338. For a brief discussion of a wide scope of early Ontario anti-discrimination legislation, see P.V. MacDonald, "Race Relations and Canadian Law," 18 Faculty of Law Review (University of Toronto), (April 1960), 115-127, at 125.

[75]Egener (representing Annie Noble) to Richmond, 16 June 1948, Richmond Papers, file 1. It was considered essential that the case be appealed in Noble's name as well as that of Wolf (Richmond to Kayfetz, 30 June 1949, Richmond Papers, file "Noble and Wolf, 1949").

[76]Kayfetz to "Dear Friend," 5 January 1949, JPRC Papers, vol. 3, file "Restrictive Covenant, 1949." For a brief discussion of Borins, "one of Toronto's most eminent criminal and civil counsel," see: Jack Batten, Judges, 172; "Ontario Needs Borstal System Badly -- Retiring Crown," Toronto Star, 13 December 1946. Borins had already done legal work for the CJC, and was a member of the JPRC legal committee.

For those not familiar with the Ontario legal profession during this period, it is perhaps useful to note that "Shirley" was male. He had been suggested by Cartwright, who called him "one of the foremost authorities on real estate law" and "the counsel most adequately equipped for argument on this point" (JPRC Papers, vol. 3, file, "Restrictive Covenants, 1949").

[77]Kayfetz, "Wolf legacy."

[78]The appeal was taken to the Ontario Supreme Court on 20 September 1948, but the court ruled that all 35 property owners must be notified (only 8 were represented at the time), and the case was adjourned until this could be done (Kayfetz, "Segregation and the Courts").

[79]Re Noble and Wolf, Ontario Court of Appeal [1949] OR 503, at 514. This time Denison and Borins formally represented Wolf, while Cartwright argued on behalf of Noble. By now the alienation argument had now become divided into two: "that the said clause is an illegal and void restraint upon the freedom of alienation of the lands thereby affected," and "that the said clause is void and unenforceable as a restraint upon the alienation, occupancy and use of land because of race or blood, such being a novel restraint unknown to and unrecognized by the common law." Although this distinction was followed in the appeal to the Supreme Court of Canada, for the sake of simplicity this paper will lump these two separate arguments together as the "restraint on alienation" argument.

[80]"The phrase "to run with the land" is "[s]aid of a covenant with land conveyed in fee when either the right to take advantage of it or the liability to perform it passes to the person to whom that land is assigned" (Dukelow and Nuse, The Dictionary of Canadian Law).

[81]According to the Lord Chancellor, "[t]hat this Court has jurisdiction to enforce a contract between the owner of land and his neighbour purchasing a part of it, that the latter shall either use or abstain from using the land purchased in a particular way, is what I never knew disputed." This quotation from the case of Tulk v. Moxhay (1848), 2 Ph. 774, 41 ER 1143 is found in 18 L.J. Ch. 83, quoted by Justice Kerwin in the case of Noble and Wolf v. Alley, at 67.

[82]Re Noble and Wolf [1949], 504-6.

[83]Re Noble and Wolf [1949], 509.

[84]Richmond, "Racially Restrictive Covenants and the Judiciary in Canada"; "Unique in British Law, Appeal Seeks to End Huron Resort Race Ban," Globe, 11 January 1949. The Ontario Reports also indicate fairly hostile questioning by the judges.

[85]Kayfetz, "Wolf legacy." It was around this time that Frank Scott was arguing that Ottawa should officially endorse the UDHR through a resolution in the House. He suggested that it might have an impact upon the courts in deciding whether or not to use the "public policy" argument to strike down discriminatory restrictive covenants (Scott, "Dominion Jurisdiction Over Human Rights," 534).

[86]A very good summary of the limits of CJC quiet diplomacy can be found in Sohn, "Human Right Legislation," 90-4. The CJC did not entirely abandon its low-key approach. For example, note the meeting with Attorney General Dana Porter in March 1950, about the government's proposed legislation on restrictive covenants (Kayfetz to Feinberg, 8 March 1950, CJC Archives, ZA 1951, vol. 7, file 64). See also the references in Chapter 6 of this dissertation. One of the more interesting examples of "networking" was the association between the CJC and the Canadian Association of Adult Education (CAAE). The latter created a national anti-discrimination Committee on Group Relations which was initially funded by the CJC. See Roby Kidd, Roby Kidd: Adult Educator (Toronto: OISE Press 1995), 64; CAAE national conference report, 26-9 May 1947, CLC Papers, vol. 335, file: "Racial Discrimination, J.C."; "Committee on Group Relations in Canada," January 1948, JLC Papers, vol. 19, file 6.

[87]Kalmen Kaplansky, "Notes," 1946-7, 187, 193-99, and 1948, 16-19, 42-51, Kaplansky Papers, vol. 20, files 3 and 5; Race Relations Institute flyer, 23-25 May [1947], JCCA Papers, vol. 13, file 20; transcript of radio broadcast [n.d.] on the Institute by Les Wismer of the Toronto labour committee, JLC Papers, vol. 34, file 1.

[88]"English, Irish Jews Reported Among Those Barred From Property," Toronto Star, 28 February 1949. Murphy refused either to rent or sell any of his property to people who did not come from north-western Europe. To this end he had created a restrictive covenant intended to keep his property out of the hands of "any person wholly or partly negro, Asiatic coloured or Semitic blood, nor to any person less than four generations removed from that part of Europe lying south of latitude 55" and east of longitude 15" east." According to Kayfetz, the covenant's references to European coordinates of latitude and longitude would have ruled out all except those from Scotland, Denmark, and southern Norway. The JPRC discussed this case, but decided to take no action until Noble and Wolf had been decided (Kayfetz to A. Lampel, 15 March 1949; Lampel to Kayfetz, 21 March 1949, JPRC Papers, vol. 3, file "Restrictive Covenants, 1949").

[89]According to Kaplansky's "Notes," 1946-7 (29), Kraisman was strongly identified with the CJC.

[90]In the 1950s J.S. Midanik was also a member of the JLC Toronto executive and Chairman of the Legal Committee for Civil Rights of the ACL. In the 1960s he was one of the people

who helped set up the successor of the ACL, the Canadian Civil Liberties Association (CCLA), and for a while served as its chairman of the board (miscellaneous JLC, ACL, and CCLA Papers).

[91]J.I. Oelbaum was not only active in the JPRC, but also sat on the national board of directors of the Canadian Council of Christians and Jews (CCJC). This dissertation has already mentioned in passing a number of people who were also CCJC members: David Croll, Charles Millard, B.K. Sandwell, George Tatham, R.G. Wallace, and Senator Cairine Wilson. This organization, which had as its motto, "For Justice, Amity, Understanding and Co-operation among Protestants, Catholics and Jews," and which sponsored a "Brotherhood Week" every year, can be seen as a post-war human rights organization which, although not participating in any lobbying efforts, at least helped human rights activists to "network."

[92]For a list of the executive and the advisory council, see Himel to Dana Porter, 17 May 1949, Frost Papers, vol. 6, file "Association for Civil Liberties." A partial list of Council members is attached to a letter from Himel to Tanaka, 9 May 1949, JCCA Papers, "JCCA Projects - Civil Liberties," vol. 15, file 23. The Toronto CJC files show that Midanik, Croll, and Oelbaum, as well as Irving Himel, were part of the JPRC in the late 1940s and early 1950s.

[93]Committee on Group Relations membership list, Ontario Labour Committee on Human Rights [OLCHR] Papers, vol. 9, file 1. (The OLCHR Papers include many of the papers of the Toronto labour committee.)

[94]The relationship between the CJC, the JLC, and the labour committees are described in more detail in Chapter 6 of this dissertation. The CJC did not have any real say in the running of the labour committees; the real power (in addition to the committee executives) was Kalmen Kaplansky, the JLC executive director.

[95]Text of a 1938 draft of a TCCLU press release, JPRC Papers, Joint Public Relations Committee Cases 1938-1946, vol 1, file PR 117; "Constitution of the [Toronto] Association for Civil Liberties [ACL]" n.d. (11 March 1949?), OLCHR Papers, vol. 9, file 3. The constitution of the CLAT was also fundamentally a classical liberal document, emphasizing democratic freedoms and "traditional British liberties," with no emphasis on egalitarian rights; it also, however, reflected the problems of the day, referring to the need to limit freedoms in wartime ("Draft Constitution of the Civil Liberties Association of Toronto," n.d. [1940?], Lower Papers, vol. 46, file 17.

[96]"Brief in Respect to Legislation Dealing with Expressions of Racial and Religious Discrimination in Ontario," Grant Papers, vol. 47, file "Notes and Memoranda Civil Liberties Association"; "Delegation Impresses Frost: Says He'll Act on Race Discrimination," Toronto Star, 8 June 1949; "Demand New Law to Guard Rights of Racial Groups," Globe, 8 June 1949; Kaplansky "Report," June 1949, Kaplansky Papers, vol. 20, file 8. Comments about the meeting can be found in Mahood to Frost, 13 May 1949, and Himel to Porter, 27 May 1949, Frost Papers, vol. 6, file "Association for Civil Liberties." This meeting is also

discussed, with references to an interview with Himel, in Bagnall, 118-24. Dana Porter's name is listed as one of the signatories of a CLAT document called "statement of Civil Liberties Association," presented to Parliament during the war and protesting certain violations of free speech and association; however, he does not appear to have been a member of the Council (Arthur Lower Papers, vol. 48, file 29.)

[97]The other ACL delegations were: 24 January 1950; 28 March 1951; 24 March 1954; 9 February 1956; 21 January 1958. Herbert Sohn has listed all of them (except the 1951 delegation) in the appendices of his dissertation; the 1949 delegation is in Appendix G, at 382 of "Human Rights Legislation in Ontario."

[98]Reginald Sidney Kingsley Seeley, MA, an Anglican minister who was active in the SCM, served as the Provost and Vice-Chancellor of Trinity College at the University of Toronto from 1945 to 1957. He was the first president of the ACL, in 1949, and held this position until 1954. He remained a vice president of the organization until his death in a car accident in 1957 (finding aid, R.S.K. Seeley Papers, Trinity College Archives; SCM Papers, Victoria University Archives, University of Toronto; miscellaneous ACL papers).

[99]It is surprising to note that neither the Steelworkers nor the Autoworkers were directly represented, since both unions became very active in the human rights community (see Chapter 6).

[100]Sohn's list does not give any specific name to the Chinese and black groups, although he lists as a participant William White of the Home Service Association, a Toronto black people's organization.

The Japanese Canadian community was consistently "educated" about human rights issues by its national newspaper, The New Canadian. For example, note the following articles on restrictive covenants: "Ontario's Anti-Discrimination Act" [editorial from Toronto Star], 30 September 1944; Ben G. Kayfetz, "Segregation and the Courts," 3 November 1948; "JCCA Conference Protests Court Decision on Restrictive Covenant as 'Dangerous'," and "The Restrictive Covenant Ruling" [editorial], 15 June 1949.

[101]Women's equality issues during this period included the struggle for federal and provincial FEFRA legislation (Female Employees Fair Remuneration Acts), changes in the Unemployment Insurance Act, and lobbying by an all-female coalition to create a Women's Bureau in the federal department of Labour (Vickers, Rankin, and Appelle, Politics As If Women Mattered, 47). For a discussion of how "women's issues" were marginalized even in the CCF, see Beeby, "Women in the Ontario CCF."

On the other hand, women's organizations were not uninterested in other human rights issues. See, for example, the list of resolutions in Chapter XXV of Forbes, With Enthusiasm and Faith. Note also, in addition to the struggle for FEFRA, an interest in a national bill of rights, equal rights for aboriginals, and the improvement of race relations, in N.E.S. Griffiths, The Splendid Vision, 247-8, 246, 269, 282.

[102]Mahood represented the Toronto labour committee, and Mrs. Grant represented the ACL.

[103]For information about the CRU, see Chapters 3, 5, and 7 of this dissertation.

[104]The pioneering American FEP policies were well known in Canada. See, for example, Robert J. Alexander, "Fair Employment Practices Legislation," Canadian Forum, May 1948. During the war President Roosevelt had set up a Fair Employment Practices (FEP) committee for American armed forces and the federal government, and in 1945 New York had passed legislation which prohibited discrimination in employment and union membership. In the same year New Jersey created similar legislation, followed later by Massachusetts in 1946 and Connecticut in 1947. For a good discussion of how the United States was responding to post-war racial tensions, and how Harry Truman was "twisting liberalism in new [reform liberal] directions," see John Frederick Martin, Civil Rights and the Crisis of Liberalism: The Democratic Party 1945-1976 (Boulder: Westview Press, 1979), 69-76.

[105]"Delegation Impresses Frost," Toronto Star, 8 June 1949.

[106]Based on an interview by John Bagnall with A.O.C. Cole, reporter for the Toronto Star, in Bagnall "The Ontario Conservatives," 122-4. However, according to another observer, "I might say I was not favorably impressed with the Premier's attitude. He was half an hour late for his appointment, and slumped in his chair in an indifferent fashion. He responded in trite phrases, seemed little interested, and made few comments. In essence one might say his attitude was lip service, with a quite apparent intention of doing nothing what so ever. I would not, of course, say that the delegation was wasted. Far from it. It is only the opening gun" (Vivien Mahood, quoted in Kalmen Kaplansky's June 1949 "Report," Kaplansky Papers, vol 20, file 8).

[107]Bagnall points out in "Ontario Conservatives" (at 200) that "in 1950 sixteen percent of Ontario Conservative MPPs belonged to the Orange Lodge, forty-nine percent to the Masonic Order, and fifty-five percent to at least one of these two organizations." He also provides, at 33 and 276, an analysis of opposition to human rights laws by the Orange Lodge in Ontario. Note also that Frost himself was a member of the Orange Lodge, but in his case (as with many others) membership was probably based more on pragmatic reasons (i.e. political and social contacts) than because of the order's ideological proclivities (Bagnall, 183, note 6, and 383).

[108]Re Noble and Wolf, 523; "Resort Owners' Right to Bar Jews, Negroes Upheld in Appeal Court," Globe, 10 June 1949.

[109]Re Noble and Wolf, 516, 520 (decision of the Chief Justice); 528 (decision of Mr. Justice Hogg).

[110]For a discussion of the "policy-making" and "dispute adjudication models," see Weiler, "Two Models of Judicial Decision-Making."

[111]Re Noble and Wolf, 523 (Robertson), 524 (Henderson), 525 (Hope). It is interesting to note that Hope also argued that freedom of association was an implicit part of democracy; the post-war democratic discourse could be appropriated by the right as well as the left.

[112]Re Noble and Wolf, 522-3.

[113]"Tolerance and law," Globe, 11 June 1949. The Globe editorialist was obviously troubled about the proper answer to the issue of discriminatory restrictive covenants. See, for example, the editorial "Tolerance and the Law," written on 14 June 1948, just after Schroeder's decision, in which the newspaper cautiously supported the notion of a legislated solution.

[114]"The Law Should Be Changed," Toronto Star, 13 June 1949.

[115]"Without Hysteria," 13 June 1949, Hebrew Daily Journal. A detailed rebuttal to this editorial can be found in the Ontario Jewish Archives; the copy is unsigned, but no doubt was written by Ben Kayfetz, secretary of the JPRC. It is interesting to note that when the Gallup poll on restrictive covenants was publicized (see below) the journal changed its editorial policy (Kayfetz to Hebrew Daily Journal, 16 June 1949; Kayfetz to Wolf, 22 August 1949, JPRC Papers, vol. 3, file, "Restrictive Covenants, 1949").

Members of the Montréal Jewish community, who lived in a more conservative milieu than did Ontario Jews, were also skeptical about the desirability of "rocking the boat." See Kayfetz to Richmond, 2 November 1950, JPRC Papers, vol. 72, file "Restrictive Covenants."

[116]CJC Bulletin for July 1949, Canadian Jewish Congress Archives [CJCA], ZA 1948, vol. 5, file 54; "Protest Ruling in Racial Case," Globe, 11 June 1949. George Tanaka worked closely with the ACL, and in 1950 the JCCA became an affiliate member (Tanaka to Himel, 24 February 1950, JCCA Papers, vol. 13, file 10).

[117]Tanaka's and Feinberg's messages can be found in "Should Change Law Rabbi Feinberg Says as Covenant Upheld," Toronto Star, 16 June 1949. A few short quotations from Feinberg's press release were included in "Resort Owners' Right," Globe, 10 June 1949. The CJC Bulletin for July 1949 also contains the text of Feinberg's remarks, as well as press comments by MP David Croll and the ACL (CJC Papers, CJCA, ZA 1949, vol. 5, file 54).

[118]Memo, "Canadian Public Opinion on Racial Restrictive Covenants," n.d., CJCA, ZA 1949, vol. 5, file 54. See also CJC "Memorandum for National and Regional Public Relations Committees and Members of Dominion Council," 2 September 1949, Bernard Wolf Papers, file 1. This poll, as well as one done in 1947, asking people to approve or disapprove the concept of a FEP law (in which 64% of Ontarians approved), was used in a brief presented by a human rights delegation to Ontario's premier in 1950 (see Chapter 6 of this dissertation). It is also interesting to note that the first (1947) poll was in part funded by the CJC; it is plausible to assume that they also helped to fund the one on restrictive covenants ("Activities Report" to JPRC [Ben Kayfetz?], 28 May 1947, JPRC Papers, JPRC Correspondence 1947, file 23, Reel 3.

[119]Richmond Papers, file "Noble and Wolf, 1949": Richmond to Kayfetz, 30 June 1949; Kayfetz to Richmond, 5 July 1949; Richmond to Kayfetz, 19 July 1949; Kayfetz to Richmond, 3 August 1949; Richmond to Kayfetz, 16 August 1949.

[120]Kaplansky, "Notes" 1949, 89-99. What was not widely recognized, however, was that much of the credit for raising these issues in Calgary belonged indirectly to the JLC. It was Kaplansky, the JLC executive director, who actually wrote the TLC report, even though it was presented by Claude Jodoin, the Chairman of the TLC Standing Committee on Racial Discrimination. Kaplansky says at 89 of his 1949 "Notes" that "This Report ... marks the full integration of our [JLC] work with that of the Trades and Labour Congress of Canada."

[121]Herbert Sohn has suggested that the JLC, the JPRC, and the ACL formed a "triumvirate" as the three most important organizations in the Ontario human rights community in the late 1940s and early 1950s ("Human Rights Legislation in Ontario," 277).

[122]"40 Organizations Seek Legislation on Discrimination," Globe, 24 January 1950; "Brief from 70 Groups Asks Wider Legislation to Fight Legislation," Globe, 25 January 1950; "Seventy Organizations Demand Law to End Racial Discrimination," Toronto Star, 24 January 1950. The deputation is discussed in Bagnall, "The Ontario Conservatives," at 139 ff., and also in Sohn, "Human Rights Legislation," at 105 ff. Sohn has a complete list of supporting groups and participants in Appendix H. For a copy of the brief (with a list of supporting groups and participants), see "A Brief to the Premier of Ontario," CCL Papers, vol. 335, file "Civil Rights - Association for Civil Liberties."

[123]There was, however, little representation from the other larger churches (unless one counts the Canadian Federation of Catholic College students as a church group). Actual participants in the delegation included several religious leaders well-known for human rights support: Canon W.W. Judd of the Church of England, Gordon Domm of Bathhurst St. United Church in Toronto, and Rev. James Finlay of the FOR. They were supplemented by ministers from Baptist, United, and Presbyterian churches in Toronto and a representative of the Canadian Council of Churches.

[124]See Beattie, "Pressure Group Politics," for a discussion of SCM activity after the war. Note, however, that Ralph Whitehead Barker suggests that the post-war period "combined prosperity with pessimism, making people relatively content with their economic situation." He also argues that the Cold War created a resistance to social pronouncements by the United Church ("The United Church and the Social Question: A Study of the Social and Theological Outlook of the United Church of Canada after Thirty-Five Years," [D.D. diss., Toronto Graduate School of Theological Studies and Emmanuel College, 1961], 231-2).

[125]Trade union participants in the delegation included the president of the Ontario Federation of Labour, a regional director of the Canadian Brotherhood of Railway Employees (CBRE), a representative of the Brotherhood of Sleeping Car Porters, Vivien Mahood of the Toronto labour committee, and Eamon Park (a CCF member of the Ontario legislature, an official in the Steelworkers, and a representative of the CCL Political Action Committee).

[126]George Tanaka represented the Japanese Canadian community, and Harry Gairey (whose son had once been refused entry to the Toronto Icelandia skating rink) attended as a representative of the all-black Brotherhood of Sleeping Car Porters (CPR Division). Other representatives of the black community of Ontario included William Carter and Hugh Burnett from Dresden (see Chapter 6). The Jewish community was represented by Rabbi Feinberg and Ben Kayfetz.

[127]Women were represented by Mrs. W.R. Lang of the National Council of women and Mrs. R.L. Jose of the Women's Missionary Society of the United Church.

[128]These "other" groups were not strongly represented. However, the Windsor Interracial Council sent Lyle Talbot, a black community activist and an active member of Local 200 of the UAW. For more information about this group, see Sohn, "Human Rights Legislation," 78, and Canadian Senate, Special Committee on Human Rights and Fundamental Freedoms, Minutes of Proceedings and Evidence (1950), 253. For some information about Talbot, see Kalmen Kaplansky, "Notes," 1950, 27; Carol Talbot (Talbot's daughter), Growing Up Black in Canada (Toronto: Williams-Wallace Publishers, 1984).

Ben Kayfetz has emphasized the importance of the brief being supported by the Ontario Command of the Canadian Legion. In the post-war period some elements in the Legion favoured human rights reforms, as a result of members' wartime experiences. The Orde Wingate branch in Ontario, which was Jewish, was particularly active (interview, 7 June 1996).

[129]Appendix A of the brief mentioned a number of recent cases of discrimination in Ontario; almost half of it was devoted to a discussion of restrictive covenants and the Noble and Wolf case.

[130]"A Brief to the Premier of Ontario," CCL Papers, vol. 335, file "Civil Rights - Association for Civil Liberties."

[131]"'Got Frost Brush-Off' Over Discrimination, Delegation 'Disgusted'," Toronto Star, 24 January 1950.

[132]This analysis is drawn in part from John Bagnall, who relied upon interviews for some of his explanation. See "The Ontario Conservatives," 145-55.

[133]B.K. Sandwell, "A Good Advance," Saturday Night, 28 February 1950. In addition, R.S.K. Seeley of the ACL publicly congratulated Frost, and also wrote to him privately, saying that he was glad Frost was planning to outlaw restrictive covenants and should now look at the need for a fair employment law ("Liberties Group Applauds Frost," Globe, 18 February 1950; Seeley to Frost, 17 February 1950, Leslie Frost Papers, vol. 6, file "Association for Civil Liberties").

[134]"Discrimination Signs," Saturday Night, 18 March 1944.

[135]"Employment Problem," Saturday Night, 4 July 1947. Sandwell asked, "How can any law be enforced that will prohibit the discrimination on race and religion and leave unimpaired the right of discrimination on ability and honesty?" He also asked, for the people supporting such laws, "What would be their reaction if they found a Negro waiting to shave them in a barber shop?"

[136]"Freedom By Law," Saturday Night, 28 March 1948.

[137]"Discrimination Problem," Saturday Night, 7 February 1950. See also his editorial, "Fair Employment Law," Saturday Night, 27 June 1950. Not all classical liberals agreed with Sandwell; the influential Globe columnist, J.V. McAree, held what might be described as a transitional position, supporting legislated prohibitions against discrimination by hotels and licenced bodies, but nowhere else ("How Not to Make Friends," Globe, 13 February 1950).

[138]B.K. Sandwell, "A Good Advance," Saturday Night, 28 February 1950.

[139]This is taken from the Ontario legislative Debates, 22 March 1950, D-7, and is discussed in Bagnall, "The Ontario Conservatives," at 158. See also the memo from Ben Kayfetz to Rabbi A.L. Feinberg, 8 March 1950, in which he relays the arguments made to him in a private conversation with Dana Porter. According to Porter, the government was not sure how many discriminatory covenants were in existence, and was worried about alienating public opinion if legislation was passed which turned out to interfere with a large number of property contracts (CJCA, ZA 1951, vol. 7, file 64).

[140]Ontario Debates, 28 February 1950, A-7 to A-8; 22 March 1950, C-6 to E-5. For a discussion of the central importance of economic factors on decisions to introduce this and other anti-discrimination legislation in Ontario, see Bagnall, "The Ontario Conservatives."

[141]For a discussion of Frost's approach to government, and a short look at his human rights policies, see Graham, Old Man Ontario, 172-3, 262-66.

[142]Note the discussion of Frost's response to Judge McGibbon, at note 62, above.

[143]Bagnall, "The Ontario Conservatives," 197, 229-31, 307. For a discussion of the way in which communist support for egalitarian human rights both strengthened and weakened the cause, see Chapter 6 of this dissertation. For a suggestion of the role Noble and Wolf played in Cold War tensions, see the comment of Rabbi Feinberg describing the 1950 Supreme Court decision as "a potent weapon in the cold war of ideology between communism and the West," eliminating a covenant which was an "iron curtain of snobbery and segregation" ("Minority Groups Hail Judgment as Landmark," Globe, 21 November 1950).

[144]Howe, "Incrementalism and Human Rights Reform."

[145]Statutes of Ontario, 1950, Chapter 11. As noted previously, the Saskatchewan Bill of Rights contained an implicit prohibition against such covenants.

[146]All letters found in Frost Papers, vol. 48, file 87-G.

[147]Chapter 33 of the Manitoba Statutes, 1950, stated in section 1 that "Every covenant made after this section comes into force that, but for this section, would be annexed to and run with land and that restricts the sale, ownership, occupation, or use, of land because of the race, colour, nationality, ancestry, place of origin, or creed of any person shall be void."

[148]"Every person and every class of persons shall enjoy the right to acquire by purchase, to own in fee simple or otherwise, to lease, rent and to occupy any lands ... without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons."

Two years after the passage of the statute, its drafter, Morris C. Shumiatcher, wrote (in a letter to H. Frank, 11 January 1949) that "Restrictive covenants, which have not been at all common in Saskatchewan, have been reviewed, and there appears no evidence of their existence" (JLC Papers vol. 47, file 22).

[149]Borins to Richmond, 9 May 1950, Richmond Papers, file 1950. Borins added that "there is another reason for omitting such reference which I will explain to you when we have an opportunity to meet in Toronto."

[150]Snell and Vaughan, The Supreme Court of Canada, 196-202, 206-8, 260-1. Peter Russell has listed the civil liberties cases which the Supreme Court decided during this period, and Noble and Wolf is the first of its major cases; see Peter H. Russell, The Supreme Court of Canada as a Bilingual and Bicultural Institution (Ottawa: Information Canada 1969), 230-1, and The Judiciary in Canada: The Third Branch of Government (Toronto: McGraw-Hill Ryerson 1987), 342, 372.

[151]Edward Richmond, draft article on the Noble and Wolf case, n.d., 6, Richmond Papers, file: "Noble and Wolf 1951-1953"; Edward Richmond, "Racially Restrictive Covenants and the Judiciary in Canada, 17-8"; "Race, Color Bar 'Invalid,' Rules Supreme Court," Toronto Star, 20 November 1950; "Racial Ban Invalid" [editorial], Star, 21 November 1950. Note that Mr. Justice Locke's decision in Noble and Wolf asserted that the appeal should have been dismissed, on the grounds that the argument about the covenant not running with the land was not raised before Mr. Justice Schroeder. As Locke said, "The learned judges of the Court of Appeal for Ontario had exercised their discretion and declined to consider the matter and I think we should not interfere with their decision (80).

[152]Richmond, "Racially Restrictive Covenants and the Judiciary in Canada, 18-20"; "Race, Color Bar 'Invalid,' Rules Supreme Court"; "Racial Ban Invalid."

[153]Kayfetz, "Wolf legacy"; Richmond, "More thoughts," and "Racially Restrictive Covenants and the Judiciary," 20. It is perhaps not surprising that Rand should pose such a question. Aside from his acknowledged legal brilliance, his values were clearly liberal as well as sympathetic to the Jewish community. In the late 1940s he had been Canada's representative

to the United Nations Special Committee on Palestine and had played such an important role in recommending the establishment of Israel that many years later the Canadian Jewish community helped establish the Ivan C. Rand Chair in Law at the Faculty of Law in Hebrew University, Jerusalem (Rosenberg, In the Midst of Freedom, 43).

[154]Noble and Wolf v. Alley [1951] SCR 64, 1 DLR 321; "Race Bar in Land Deed Upset by Supreme Court," Globe, 21 November 1950. The appellants were also awarded costs for the appeals to the Ontario Court of Appeal and to the Supreme Court of Canada.

[155]As noted earlier, Locke would have dismissed the appeal on the grounds that the Court should not consider the "new" argument that the covenant did not run with the land, but he agreed with the Chief Justice of Ontario's decision on the other legal points.

It is interesting that this is one of the few 1950s civil liberties cases which did not create a split between the Anglo-Saxon liberal majority (especially Rand, Kellock, and Estey) and the minority of Francophone conservative judges. For a discussion of divisions within the court, and a statistical analysis of ratios of agreement between judges in civil liberties cases, see Russell, The Supreme Court of Canada, 130-5.

[156]Boucher v. R. [1951] SCR 265. Aimé Boucher was a Jehovah's Witness who circulated an inflammatory anti-Catholic tract called "Quebec's Burning Hate." He was charged with sedition, but the Supreme Court ruled that the law was insufficiently broad to cover the document in question. The Supreme Court decision and the background of the case is discussed in Kaplan, State and Salvation, 236-41.

[157]The case was mentioned in most constitutional law textbooks. It was partly reproduced, along with Drummond Wren, in one reader used in the 1970s: J. Noel Lyon and Ronald G. Atkey, Canadian Constitutional Law in a Modern Perspective (Toronto: University of Toronto Press, 1970), 37-52. James Walker discusses a number of legal cases which, although not exactly dealing with discriminatory restrictive covenants directly analogous to the one struck down in Noble and Wolf, nevertheless utilized the precedent ("Race," Rights, and the Law, 236-42).

[158]Richmond to Kayfitz, 11 April 1951, file 3, and Wolf to Kayfetz, 16 October 1951, Wolf Papers.

[159]Wolf to Kayfitz, 16 October 1951, Wolf Papers, file 3. Note that although appeals to the Privy Council in Britain had been abolished in 1949, the case had begun prior to this, and therefore the Beach O'Pines faction could have carried on with litigation. Since they did not, the Supreme Court decision settled the law.

[160]Kayfetz, "Wolf Legacy." While the Globe's extensive front page story was clear about the *ratio decidendi* of the court ("Race Bars in Land Deed Upset by Supreme Court," 21 November 1950), several other newspapers reported at first that the Supreme Court had adopted the public policy argument ("Court Outlaws Racial Bars to Land Title," Victoria

Daily Times, 20 November 1950; "Race, Color Bar 'Invalid,' Rules Supreme Court," Toronto Star, 20 November 1950). Later editorials were quick to point out that the public policy argument had not been adopted by the Court, but this probably did not do much to alter the initial impression ("Restrictive Covenants," Globe, 22 November 1950; "Racial Ban Invalid," Toronto Star, 21 November 1950; "The Supreme Court's Decision In That Racial Ban Case," Ottawa Journal, 23 November 1950).

[161]"Racial Ban Invalid"; "Practicing What We Preach," Montréal Daily Star, 21 November 1950; see also "The Supreme Court's Decision In That Racial Ban Case."

[162]"Restrictive Covenants."

[163]The article by Smout ("An Inquiry,"), written a few years after the Supreme Court decision was handed down, gives a detailed and pessimistic analysis of the limits of the decision (see especially 875-880). See also Allan Goldstein, "Racial Restrictive Covenants," 9 [University of Toronto] School of Law Review 31 (1951), 30-36, at 35. Note also that the Supreme Court decision, in accepting the argument that a restrictive covenant does not "run with the land," created some potential problems for the interpretation of the Ontario and Manitoba statutes which invalidated any future discriminatory covenant which "would be annexed to and run with land." (This problem is pointed out at 24 of Richmond "Racially Restrictive Covenants.")

[164]Schmeiser, Civil Liberties in Canada, 276.

[165]"Aide-Mémoire," 12 November 1951, JPRC Papers, vol. 4, file 2; JPRC Minutes, 23 September 1952, JPRC Papers, vol. 5, file 2.

[166]Of course, no law can eliminate all forms of a particular evil. As recently as 1966 blacks in the southern Ontario town of Amherstburg claimed that many "gentlemen's agreements" or "unwritten" restrictive covenants limited property rental/sales in their area ("Brief to the Mayor's Committee (Amherstburg) by SECAA [South Essex Citizens Advancement Association]," 21 February 1966, Alvin D. McCurdy Papers, vol. 48, file 2076-9-0-9).

[167]Ontario Fair Employment Practices Act, SO 1951, c. 24. The struggle for an Ontario FEP law is a complex story worth a separate chapter on its own. However, it has been well covered in a number of dissertations, including those by Sohn, Howe, and Bagnall. According to Dennis McDermott, former chairman of the FEP committee of local 439 of the Autoworkers' union, and also a member of the Toronto labour committee for human rights, Leslie Frost asked the Toronto human rights community for ammunition that would help him introduce a FEP law. As a result, McDermott, Eamon Park of the Steelworkers (also a member of the Toronto labour committee), Sidney Midanik (of the CJC), and several Ontario bureaucrats (including Tom Eberlee, who later became Deputy Minister of Labour) wrote a proposed bill in Park's basement, largely plagiarized from the New York legislation (interview, 24 July, 1994).

[168]Prosecution in the courts was possible if conciliation proved to be fruitless. The 1951 statute can be seen as standing half-way between the quasi-criminal law approach of the 1944 ORDA (which only provided for prosecution) and the 1962 Ontario Human Rights Act (which replaced the courts with quasi-judicial tribunals). The FEP Act (as well as the subsequent FAP and FEFRA statutes) were thus interim steps in the development of human rights administrative law, part of the trial-and-error growth of the administrative/welfare state.

[169]An Act to ensure Fair Remuneration to Female Employees, SO 1951, c. 26. For a discussion of the struggle for FEFRA, see Shirley Tillotson, "Human Rights Law as Prism," and for the Ontario FAP Act, see Chapter 6 of this dissertation. Analyses of the political background of Canadian anti-discrimination legislation outside Ontario include: Mackintosh, "The Development of the Canadian Human Rights"; Anderson, "The Development of Human Rights Protection in British Columbia"; Josie Bannerman, Kathy Chopik, and Ann Zurbrigg, "Cheap at Half the Price: The History of the Fight for Equal Pay in BC," in Not Just Pin Money: Selected Essays on the History of Women's Work in British Columbia, ed. Barbara K. Latham and Roberta J. Pazdro (Victoria: Camosun College, 1984): 297-313; Gillian Creese, "Power and Pay: The Union and Equal Pay at B.C. Electric/Hydro," Labour/Le Travail 32 (Fall 1993): 225-45. (Of course, there was more to the equality movement than the struggle for anti-discrimination legislation. For example, see Porter, "Women and Income Security.")

[170]An Act to promote Fair Accommodation Practices in Ontario, SO 1954, c. 28. Like the earlier FEP law, this statute began with a preamble which referred to the UDHR and stated that it was now "public policy" in Ontario to provide public services free from discrimination. The passage of these anti-discrimination laws made it increasingly likely that any restrictive covenant which managed to avoid the pitfalls of "uncertainty" and "not running with the land," might now be struck down by the courts on the grounds of "public policy." For a discussion of the utility of the public policy argument, see J.R. Shiff, "Public Policy and the Restrictive Covenant," Obiter Dicta 6 (Winter, 1951): 6-13.

[171]Hayes to Finkelman, 8 December 1950, CJCA, ZA 1950, vol. 5, file 44. For a later analysis of the legal status of discriminatory restrictive covenants, see Tarnopolsky, Discrimination and the Law in Canada, 34-5. According to Walker, there were also a number of anti-black restrictive covenants in Nova Scotia ("Race," Rights and the Law, 190); the fate of these covenants is a question for further research.

[172]"Racial Bans on Property Illegal in BC," Vancouver Sun, 21 November 1950; "Racial Restriction on Homes Illegal," Vancouver Province, 20 November 1950. The Registrar of Titles in Vancouver, H.S. Robinson, published an article in a legal journal about the Hunter decision, including a transcript of the ruling, and pointed out that because of it "there has never been a single case where a Registrar of Titles in this Province has called for evidence that a grantee is not of Jewish, Chinese or Negro blood, etc." ("Limited Restraints on Alienation," The Advocate 8 [1950]: 250-1).

[173]"Jews Hail Court Ruling, But Doubt Its Effect," Vancouver Province, 20 November 1950. See also the reference to Vancouver's restrictive covenants in R.A. Francis, "Chinese Canadians: 'Closed-Door' Policy?" Saturday Night, 9 January 1951; Hayes to Finkelman, 8 December 1950, CJCA, ZA 1950, vol. 5, file 44.

[174]JLC Report, April 1951, Kaplansky Papers, vol. 20, file 12. The two bills were no. 11 and no. 22, introduced on 6 April 1951. The latter was ruled out of order as "infringing on the prerogatives of the Crown." The author of this dissertation has not found any evidence that the VCCLU or UBC-CLU ever took up the issue of restrictive covenants in British Columbia.

For a general discussion of B.C. Social Credit ideology and anti-discrimination legislation, see Anderson, "The Development of Human Rights Protection in British Columbia," especially 51-54, and the "Conclusion" at 179-180.

[175]Anderson, "The Development of Human Rights Protection in British Columbia," 51-8; British Columbia Federation of Labour, 1957 "Proceedings," UBC library; Human Rights Committee of the BC Federation of Labour, "Memorandum" submitted to BC provincial cabinet, September 1958, Vancouver City Mayor's Papers, vol. 36 A7, file 106. In the late 1950s a FAP law was one of the major goals of the JLC-affiliated group, the Vancouver Labour Committee for Human Rights. For information about this group and its connection to the September 1958 brief, see the reports of its secretary, Bill Giesbrecht, to Sid Blum, 16 and 29 September, 1958 (JLC Papers, vol. 46, file 16), as well as Chapter 6 of this dissertation.

[176]An Act Respecting Public Accommodation Practices, SBC 1961, c. 50. The law also prohibited "any notice, sign, symbol, emblem, or other representation indicating discrimination or an intention to discriminate," and it might have been possible to use this section to invalidate a discriminatory restrictive covenant.

[177]"Finish Lines," Vancouver Sun, 10 May 1963; Jack Wasserman, "Reporter's Notebook," Vancouver Sun, 6 January 1973; some of this information comes from Susan Sangha, who kindly made available her unpublished paper written for the University of Victoria Law School, "'Home, Sweet Home,' Legal and Social Restrictions on Indian Settlement in British Columbia."

[178]Land Titles Act, SBC 1978, c. 25, s. 28. The statute stated that "A covenant that directly or indirectly restricts the sale, ownership, occupation, or use of land on account of the race, creed, colour, nationality, ancestry, or place of origin of a person, however created, whether before or after the coming into force of this section, is void and of no effect." A few years later, the Charter of Rights Amendment Act, SBC 1995, c. 68, amended s. 28 of the legislation by adding the word "sex" before "race," and this (along with other sections) was brought into force by B.C. Regulation 392/85 (British Columbia Gazette, Part II, 24 December 1995, 492).

[179]This interpretation in part builds upon Brian Howe's explanation of human rights legislation in Ontario (see especially the Introduction of his "Human Rights Policy in Ontario"), which in turn is based upon the ideas of C.B. Macpherson, Ronald Manzer, Gunnar Myrdal, and Samuel Huntingdon.

[180]The example of the Hebrew Daily Journal's resistance to political action is mentioned in note 115, above.

[181]This is where the "discrepancy effects" mentioned in note 13 of Chapter 1 may apply.

[182]However, Walker says "it is obvious in retrospect" that the Supreme Court could have been less cautious, and should have declared the covenant a violation of public policy ("Race," Rights, and the Law, 244-5).

[183]It is perhaps not surprising that many civil liberties cases have involved defenses against prosecution. Note, for example, the early aboriginal cases dealing with hunting and fishing rights. While the costs and difficulties of launching a court challenge have often deterred organizations from proceeding with civil litigation, the spectre of a stiff sentence under criminal law can focus the mind and stiffen the resolve wonderfully.

[184]Material about most of these issues can be found in the CJC Archives and the Ontario Jewish Archives.

CHAPTER 5 - CIVIL LIBERTIES GROUPS AND THE COLD WAR

A: INTRODUCTION

As noted earlier, the Canadian human rights policy community in 1945-1946 included a number of organizations. Some of them, such as the Cooperative Committee on Japanese Canadians (CCJC), the Committee to Repeal the Chinese Immigration Act (CRCIA), and the Canadian Jewish Congress (CJC), concerned themselves with egalitarian rather than libertarian rights and constituted an equality rights community. Others, while not ignoring egalitarian issues, focussed upon traditional liberties, such as freedom of speech or the right to a fair trial. These were the members of the post-war civil liberties community: the Civil Liberties Association of Toronto (CLAT), the Civil Rights Union (CRU), the Montréal Civil Liberties Association (MCLA), the Ottawa Civil Liberties Association (OCLA), the Civil Liberties Association of Manitoba (CLAM), and the Vancouver branch of the now-defunct Canadian Civil Liberties Union (VCCLU).

This chapter deals primarily with these civil liberties organizations, and focusses on their role in two human rights policy networks, one dealing with the Padlock Act and the other dealing with amendments to the Criminal Code. The chapter shows how the civil liberties groups tried unsuccessfully to create a national organization, and it also demonstrates that this resulted in the evolution of two competing national civil libertarian networks. At the centre of one stood the CLAT, reborn as the Association for Civil Liberties (ACL). This network was non-communist, largely bourgeois, and "respectable." The other network was called the League for Democratic Rights (LDR), an organization spawned primarily by the CRU. It was communist, mainly working-class, and marginalized.

These two rival networks became increasingly divided by the Cold War tensions of the post-war era, a period in Canada marked by considerable state repression of radical left-wing dissent.[1] While the "left" and "right" civil libertarians never fought openly, they seldom cooperated. The communists, as the outsiders, were often willing to make temporary

alliances, but the non-communists (or anti-communists) became increasingly opposed to any cooperation on issues that might jeopardize their claim to respectability. The result was, on the whole, a significant weakening of the civil liberties movement.

Neither the ACL nor the LDR is well-known today, but both are interesting organizations. This dissertation has already explained how the ACL worked with egalitarian groups such as the CJC to obtain anti-discrimination legislation in Ontario, and Chapter 6 of this dissertation returns to this theme, discussing in some detail the issue of Fair Accommodation Practices (FAP) law. In these campaigns the ACL "froze out" the LDR and its member organizations, believing that cooperation with any communist-tainted groups would diminish its influence. However, there were other issues, involving classical civil liberties, in which the LDR was able to exert considerable influence. This chapter examines two of these, the fight against the padlock law, and the campaign against Ottawa's amendments to the Criminal Code. The former is fairly well-known, but the LDR's impact has largely been ignored. The latter is almost entirely unknown, and the LDR's frenetic efforts to make it a national issue have never been fully investigated.

B: UNITY DEFERRED

Civil libertarians in Canada have often wanted to form a truly national organization. As noted in Chapter 1, when Montréal activists formed themselves into what they called a branch of the Canadian Civil Liberties Union (MCCLU) they hoped they would be the first of many different locals across the country. The war, as well as left-right ideological schisms, prevented the creation of a national umbrella organization, but in the spring of 1946 B.K. Sandwell raised the issue once again, writing in Saturday Night that the country urgently needed "a central office or clearing-house" for autonomous civil liberties groups in different parts of the country that would from time to time form a "united front" on national issues. He therefore asked any interested organizations to get in touch with him.[2]

One of these was the CRU.[3] As noted in Chapter 3, the Gouzenko Affair produced the ECCR as a radical left-wing splinter of the CLAT. It then evolved into the CRU, a fully-fledged civil liberties group concerned not only with the Gouzenko Affair and David Shugar but also with broader issues such as the treatment of Japanese-Canadians, the position of blacks in Canadian society, the persecution of Jehovah's Witnesses in Québec, censorship of books, and the need for a Canadian bill of rights.[4] It still hoped, in early 1947, that it would be able to work closely with the CLAT and perhaps even effect some sort of merger in the future, and the two organizations therefore carried on negotiations to that end.[5]

The other civil liberties organizations consisted primarily of liberals and social-democrats, and they too began to take an interest in a wide variety of rights issues. In Toronto the CLAT was still alive, albeit weakened by the defection of the ECCR/CRU, and had mainly been active as a part of the CCJC.[6] In Montréal the newly-born MCLA was just beginning to challenge Maurice Duplessis' treatment of Jehovah's Witnesses, which had also sparked the formation of a McGill University Civil Liberties League.[7] In Ottawa, the OCLA was about to propose that Ottawa amend a series of laws which had become controversial because of the Gouzenko Affair, such as the Inquiries Act, the Canada Evidence Act, and the Official Secrets Act, but it included demands for changes to the Dominion Elections Act which would give the vote to Indians, Doukhobours, and those of Asian extraction.[8] In

Winnipeg, the CLAM members were increasingly speaking out about how the new Canadian Citizenship Act and issues such as the Japanese Canadian deportation case, the Gouzenko Affair, and the Padlock Act demonstrated the need for a Canadian bill of rights. They also congratulated the Prime Minister on his decision not to deport Japanese Canadians, but admonished him that their West Coast property claims had yet to be satisfied.[9] In addition, the VCCLU continued to raise concerns about the treatment of Japanese Canadians, and added its voice to calls for the ending of the Chinese Immigration Act. By February 1947 students at UBC had formed a separate branch of the largely-defunct Canadian Civil Liberties Union, called the UBC-CCLU, and began to campaign for the enfranchisement of Japanese Canadians.[10]

Meanwhile, in late December 1946, delegates representing four of the civil liberties groups came together in an "exploratory conference." The OCLA hosted the meeting, and sent as its delegates J. P. Erichsen-Brown, Wilfrid Eggleston, Morris Fyfe, and Donald Macdonald, as well as Eric Morse as an afternoon alternate representative and Lukin Robinson as an evening alternate. The MCLA was represented by Frank Scott, the CLAT by George Tatham and Andrew Brewin, and the CRU delegates were Margaret Spaulding, C.S. Jackson, C.B. Macpherson, and Frank Park.[11]

In addition to the treatment of Japanese Canadians and the Gouzenko Affair, the delegates expressed concerns about the treatment of Jehovah's Witnesses, the continued existence of the padlock law, examples of racial discrimination, the use of injunctions and the Criminal Code to suppress strikes, censorship of books, the rights of civil servants, and the need for a bill of rights. No conclusions were reached, and on the bill of rights issue there was some disagreement as to whether or not Canada really needed such a constitutional innovation.[12]

The delegates did agree to set up committees that would work towards the creation of a national conference in the near future, as well as a draft constitution for the as yet un-named new national organization. They hoped to include the Winnipeg and Vancouver civil liberties organizations in future discussions, as well as, "if it turned out to exist, the Québec City Civil Liberties Association." There was also talk of forming ties with the CCJC, the

CRCIA, the civil liberties section of the CBA, the Québec and Ontario Committees for the Defence of Trade Union Rights, and the Ukrainian Civil Liberties Committee.[13]

Nevertheless, it was clear that tensions between communists and non-communists were divisive. One of the Ottawa delegates, J. P. Erichsen-Brown, objected to the idea of a national conference to which communists were invited, on the grounds that they were not really committed to civil liberties and democracy, and he added that "there was no place for them in a national civil liberties organization." According to the minutes of the meeting, these remarks "precipitated some heated debate."[14]

Nevertheless, the communist and non-communist civil liberties groups were still capable of some cooperation in these, the early days of the Cold War. For example, the CRU and the CLAT jointly sponsored a public meeting on 27 January 1947. Those who attended agreed to send Ottawa a resolution which urged that a parliamentary committee be set up "to investigate violations of civil rights in Canada, to hear representations from individuals and organizations on means of preventing future violations, and to make recommendations for a Canadian Bill of Rights."[15]

At about the same time, Morris Fyfe of the OCLA was busy drafting the constitution for a national civil liberties organization, working closely with Frank Scott of the MCLA, C.B. Macpherson of the CRU, George Grube of the CLAT, David Owens of the CLAM, and Hunter Lewis of the VCCLU.[16] In late April representatives of most of these groups met in a second conference in Ottawa, and approved in principle a draft constitution for a national civil liberties organization, to be called the Canadian Civil Liberties Council.[17]

The Council died still-born. For one thing, the creation of a parliamentary committee proved to be a more pressing issue than the long-range plans for a national council. Andrew Brewin of the CLAT recommended to Frank Scott that the nascent council would not be able to organize a presentation and that the different organizations should create an ad hoc lobby group. His advice was followed, and civil libertarian energies were poured into a new entity, the Committee for a Bill of Rights (CFBR).[18]

In addition, while the delegates to the Spring convention produced a draft constitution, they split badly on the issue of open versus closed membership.[19] Those who

wanted a closed membership argued that the organization should be open only to those groups "unselfishly interested in civil liberties," and worried about losing public support if it was seen as "being a front for the specific group which has an axe to grind." By contrast, the advocates of open membership claimed that "[w]e cannot afford to make distinctions between those who are defending their own rights and those who are disinterestedly interested in civil liberties as a whole. They are all defending civil liberties. To refuse the latter the right to admission would deny to the national association valuable accessions [sic] of energy and funds."[20]

This division, which was crucial, was rooted in differences of opinion about both strategy and ideology. In the 1930s Frank Scott had decided, after seeing the communist Canadian Labor Defense League (CLDL) in action, that there were two types of civil liberties organization. One was a mass movement, open to all members, and capable of creating pressure through large public protest meetings. This, he concluded, was not a very useful approach, at least in the province of Québec, where it would be difficult to get many francophones to join in. Scott's preference was for a much smaller organization which would engage in litigation and education. As he put it, its aim should be "to educate public opinion, to keep alive the civil liberties issue as the occasion demands, and to be influential as much by its personnel as by its members."[21]

Although Scott did not mention it, the tactics he suggested were tailor-made for influential liberals and social democrats, but not for communists. The Communist Party could rely upon thousands of dedicated members to turn up for a demonstration. Academics like Frank Scott, on the other hand, could be relied upon to write to politicians on a first-name basis, argue the morality of certain laws in the public forum of the main-stream press, and provide legal advice pro bono. It is not surprising that the non-communists at the national conference were strong advocates of a closed system of membership.

Of course, ideological differences also underlay the disagreement about open versus closed membership. As noted in earlier chapters, it was an article of faith among liberals and social democrats that the communists were extremely clever at taking over organizations; their committed membership and political skills often made it easy to overcome opposition

by half-hearted "amateurs." This was all the more serious because it was believed that most communists were hypocritical, supporters of a regime in the USSR which only paid lip service to fundamental civil liberties.[22] In addition, many "respectable" rights groups believed that any association with known communists would undermine their credibility and seriously diminish their influence.[23]

On the other hand, it is hard to believe that the CRU could have worked with the non-communists in any national civil liberties organization. Increasingly, the Cold War engendered on the right a weak-kneed version of civil libertarianism. Consider, for example, the rather astonishing editorial by Sandwell in another Saturday Night editorial in the summer of 1947. At that time shipping companies on the Great Lakes were refusing to allow members of the Canadian Seamen's Union (CSU) to work on their ships, arguing that they were communists. That the CSU was communist-dominated became clear after former CSU leader Pat Sullivan confessed, in March 1947, that he had been a secret member of the LPP. Sandwell, who was extremely anti-communist, responded with an argument which stretched his civil libertarian principles to the point of rupture. He noted that he was worried about attempts to exclude communists from trade unions, but not because this was a violation of fundamental free speech or free association rights; rather, Sandwell used the classical liberal rule of law argument, noting that it was dangerous to limit the rights of those who belonged to a lawful organization, but he added that:

> [w]e are therefore inclined to think that a restoration of Section 98 of the Criminal Code, purged of some of its more outrageous provisions as to the methods of enforcement, would be a better way of dealing with the present admittedly dangerous situation. We were never opposed to the provision which made membership in the Communist party (in its proper definition of a tight secret society with revolutionary aims) an offence against the law.[24]

For the CRU, on the other hand, the danger was not communist subversion but heavy-handed state intervention in a company-union conflict. Within a few months the company had locked out the CSU and union protests had resulted in over 50 seamen charged with violations of the Criminal Code and the Canada Shipping Act. Because a number of sailors had spent over a month in jail, unable to raise bail, the CRU arranged to provide $5,000 for

the release of five of them, and began working with other groups to raise further bail. Later, when the CSU members went out on strike against the shipping companies, and a number of seamen were again charged, the CRU supported the union in a number of ways, including invitations to explain their case at CRU-hosted public meetings. This support, however, was reciprocal; in 1949 the CRU moved its headquarters into the same address as that of the CSU. Between the classical liberal civil libertarianism of people like Sandwell and the radical left-wing civil libertarianism of the CRU there stretched an enormous gulf.[25]

C: THE CRU AND THE OTHERS

Following the failure of the national organizing conference, the CRU emerged as the most active and successful of the Canadian civil liberties groups.[26] By 1947 it had a budget of almost $10,000 for its newspaper advertisements, bulletins, legal assistance, and salaries,[27] and in the spring of 1948, just as the Cold War was congealing,[28] the group opened a campaign against civil liberties violations, taking out a full page advertisement in a number of Canadian newspapers.[29] Titled "This is a Free Country," the advertisement referred to several current human rights violations, including the egalitarian rights issue of continued travel restrictions on Japanese Canadians, as well as a number of legal/political rights abuses, such as the harassment of Jehovah's Witnesses in Québec,[30] the recent Prince Edward Island trade union legislation which limited freedom of association,[31] the sedition trials of radical unionists Madeleine Parent, Kent Rowley, and Azelus Beaucage in Québec,[32] the denial of school halls for LPP public meetings in Toronto,[33] Duplessis' renewed use of the padlock law, and the anti-communist LaCroix bill.[34] Above all, the advertisement also opened a CRU campaign for a national bill of rights.[35]

In addition, the CRU became increasingly concerned about the Cold War chill on freedom of speech and association, as Ottawa constructed what Reg Whitaker has called a "national security state."[36] For example, aside from the above-mentioned support of the CSU, the civil liberties group took a strong stand against the federal government's proposal to issue "loyalty" questionnaires to its civil servants, and carried on a publicity campaign against a subsequent less overt policy of loyalty testing.[37]

The rigorous defense of libertarian rights during this period also meant coming to the support of communists or communist "fellow-travellers," many of whom were alleged to be in the peace movement. For example, among other things the CRU decried the muzzling of the great (but "subversive") American black singer, Paul Robeson;[38] it tried to intervene against the attempted deportation of Reid Robinson, the international vice-president of the communist-dominated Mine, Mill and Smelter Workers Union (Mine-Mill);[39] it protested the American government's barring of Canadian trade unionists with a radical background who

wished to attend "international" union conferences in the USA;[40] it objected to police harassment of the Union of Unemployed Workers in Toronto;[41] and it fostered close ties with James Endicott and his Canadian Peace Congress, sometimes coming to the aid of peace activists who were harassed by the police.[42]

One case in particular seems to illustrate the interests, problems, and activities of the CRU in the very late 1940s -- the William Patterson incident, arising out of a civil rights rally on 15 December 1948 in Toronto. The meeting was chaired by C.B. Macpherson of the CRU, and there were to be two speakers: Morris Biderman, the National Director of the United Jewish People's Order (UJPO), and William Patterson, an American black civil rights activist who was the National Executive Secretary of the Civil Rights Congress, a communist-dominated rival to the ACLU. Patterson had recently returned from a meeting in England of the Provisional Committee for a World Conference on Human Rights.[43]

William Patterson never gave his speech. When he arrived at the Ontario airport he was refused entry to Canada, and held overnight. The following day he was released on a $500 bond, the conditions of which were that he would refrain from making any speeches pending an examination by a board of inquiry. He appeared at the CRU-sponsored meeting, but did not speak. Instead, his speech, which had been mailed before his departure, was read to the audience and the CRU provided the press with a picture of Patterson wearing a gag as he stood beside Mrs. Spaulding.[44]

At Patterson's hearing the government relied on the testimony of their RCMP expert on communism, Inspector John Leopold.[45] He maintained that the American Civil Rights Congress was a "subversive organization," and that Patterson was a member of the Communist Party of Illinois. Patterson, who was represented by Norman Borins,[46] denied both allegations, but the board decided that he should not be admitted to Canada on the grounds that he

> ...believes in and advocates the overthrow of the government of Canada by force and violence, and of constitutional law and authority, and he advocates and teaches the unlawful destruction of property. He is a member of and affiliated with an organization entertaining and teaching disbelief in and opposition to organized Government and advocating and teaching the unlawful destruction of property.[47]

Patterson then left the country, although the CRU retained David Croll to appeal the board's decision to the Minister responsible.[48] The CRU, meanwhile, had announced a "national appeal" for funds to pursue this case. With its customary attachment to the use of hortatory phrases and punctuation, the CRU "Information Bulletin" referred to this as a "special and urgent appeal," concluding with the words: "DEFEND THE RIGHT OF FREE SPEECH IN THE PATTERSON CASE! GIVE YOUR CONTRIBUTION NOW! URGE YOUR FRIENDS TO SEND DONATIONS! COLLECT FUNDS FROM YOUR ORGANIZATION!"[49]

Patterson's appeal does not seem to have been successful, for the issue soon disappeared from the attention of the "Information Bulletin." However, the CRU did manage to bring the incident to the attention of the Provisional Committee for a World Conference on Human Rights, which held a meeting in London in November, attended by delegates from a number of countries, including Canada. (Interestingly, the Canadian delegate was Agatha Chapman, the federally-employed economist who had been forced to testify before the Kellock-Taschereau Royal Commission, and who now was working in Cambridge.) As a result, the President of the Provisional Committee sent a protest to the government in Ottawa, pointing out that the United Nations Committee on Human Rights had recently expressed the view that international human rights connections should be encouraged.[50]

The Patterson incident exemplifies the Cold War split between "left" and "right" civil libertarians. None of the other civil liberties groups protested against Patterson's treatment, nor did the civil libertarian (but social democratic) Canadian Forum address the issue. B.K. Sandwell devoted a short editorial to it, but he argued that since Patterson had no legal right to enter Canada there was no injustice. He also pointed out that communists were not entirely principled civil libertarians -- "our Communist friends are most vociferous to the effect that no 'Fascist beast' should be permitted to enter."[51]

Nevertheless, during these early years of the Red Scare, when many Canadian radicals still believed that stories about Stalinist excesses were merely capitalist propaganda, and before most of the communists had been driven out of Canada's trade unions, the CRU seems to have been a moderately successful organization. It could not, of course, ever be considered

a completely respectable group, but it was certainly active. Its volunteers and paid staff managed to a produce a regular bulletin, "Civil Rights," as well as a weekly "Information Bulletin" going out to 4,000 trade union locals and other groups. They also ran full-page advertisements in newspapers, and of course lobbied government, held public meetings, and wrote letters.[52]

One reason for the success of the CRU is that its communist ties attracted those in "the movement." A person reading only the communist Canadian Tribune would conclude that the CRU was almost the only civil libertarian organization in Canada, and the RCMP reports on the CRU contain many translations of articles from the communist ethnic press which strongly encouraged people to support the CRU and its umbrella organization, the LDR.[53] The benign neglect and occasional criticism by the main-stream Canadian press was thus offset by articles for the true believers within the movement.

Support from certain communist-dominated trade unions no doubt also shored up the CRU. As noted already, CRU executive member C.S. Jackson was the president of the UE, and the organization also had close ties to the CSU.[54] Moreover, at least in the early stages of the Cold War, before the outbreak of hostilities in Korea, some organizations and people had not yet succumbed to the rhetoric which identified all radical left-wing organizations as enemies of freedom. The records of the CRU indicate, for example, that in addition to the above-mentioned public meeting which it co-sponsored with the CLAT in January 1947, it also took part in a large delegation to the Toronto Police Commissioners Office, asking for a "no discrimination" policy in licensing restaurants, theatres, skating rinks, and dance halls.[55] Then, in 1948 it joined with a number of clergymen, including CLAT member the Rev. Gordon Domm, to protest the arrest of UE organizer Ross Russell, and the same year it cooperated with the FCSO in providing a venue for a speech by the radical pacifist Harry Ward.[56] In addition, in early 1949 it hosted a "Freedom Festival" at which the CBC broadcasters Lister Sinclair and Lorne Greene were to appear,[57] and in 1950 one of the guest speakers at a CRU meeting protesting the padlocking of UJPO headquarters in Montréal was E.B. Jolliffe, the leader of the Ontario CCF.[58]

Another strength of the CRU was its use of rhetoric in advertisements and broadsheets. Although initially the ECCR advertisements and language had employed the traditional concept of "British liberties," using "Magna Carta day" as its symbolic hook, the organization later tended to avoid this fundamentally conservative discourse.[59] For example, one of its pamphlets was entitled "Freedom is Your Affair, and so are Civil Rights!" Instead of any mention of British liberties it contains a number of references to "civil liberties" or "civil rights," as well as the new concept of "human rights." All of this was part of a democratic discourse: "We believe that Canada needs a strong united Civil Rights organization alert to infringements of human rights, to defend and extend the democratic rights of all Canadians."[60] These were words with which most Canadians could identify.

There were other reasons why from 1946 to 1949 the CRU was arguably the most important civil liberties organization in Canada -- the commitment of its members, its central location in Toronto, and the weakness of the alternatives. The other Toronto group, the CLAT, was a weakened social democratic/liberal rump, finding it increasingly difficult to achieve a quorum at meetings. Despite the efforts of president George Tatham, it had become virtually moribund, except for the activities of one sub-section, the Committee for a Bill of Rights (CFBR).[61]

The regional groups were also relatively quiet.[62] The VCCLU, for example, took a strong stand on the status of native Indians in Canada,[63] but put most of its energies into the struggle for a bill of rights.[64] Occasionally it supported the rights of radicals on the left, criticizing the treatment of the communist-dominated CSU, or protesting the firing of an allegedly left-wing music teacher (John Goss) by the Vancouver Parks Board,[65] but its commitment to civil liberties was undermined by Cold War tensions. For example, although it took action in the Martin case (involving the question of whether or not a communist is fit to practice law), and set up a "Gordon Martin Fund," to pay for litigation, it later dropped the case altogether, perhaps because it became too controversial.[66]

The other Vancouver group, the UBC-CCLU, may have been slightly more active. Throughout the post-war period it took stands on a number of issues, including treatment of Japanese Canadians[67] and the struggle for a bill of rights.[68] Sometimes it also dealt with Cold

War issues, such as the Martin case or the problems of John Marshall (a librarian in Victoria who was hounded out of his position because of his activities in the peace movement),[69] but there is no evidence that the organization was very effective. For example, like the VCCLU it also became involved in the Marshall case, but only in a very minor way.[70]

The CLAM also continued to operate in a low-key fashion. Much of its interest was focussed on the struggle for a bill of rights, but it was also concerned with such matters as the arrest of a local CNR train operator (following a railroad wreck), as well as the treatment of Japanese Canadians, the LaCroix bill, and discrimination against Hutterites.[71]

The OCLA, on the other hand, disappeared from view altogether. Although it had about 200 members in 1946, its membership soon dwindled. The Ottawa group found it difficult to gain support in a town of civil servants, at a time when political activity of any sort was frowned upon by government, and an OCLA plan to launch a campaign for the rights of civil servants was unsuccessful.[72] Moreover, the group became the focus for bitter in-fighting between communists and non-communists. In 1947 Erichsen-Brown wrote to Frank Scott, telling him that "the Commies turned out all their cohorts in town" for the last general meeting, and voted him off the OCLA council. He noted that the association was still controlled by non-communists (including Eggleston, Fyfe, Blair Fraser, Donald C. MacDonald, and Norman Dowd), but he remained concerned about the problems of communist infiltration.[73] It was perhaps because of just such an ideological schism that the organization soon sputtered out, and although it was temporarily revived in 1948, it died once and for all soon afterwards.[74]

The MCLA was also a failure. In 1947 it had taken in membership fees of almost six hundred dollars and had spent double that on newspaper advertising. However, by 1948 the executive of the organization noted that it was less active than in the past, and had difficulty recruiting in the Francophone sector of the city.[75] The organization was still in existence in 1950, but Frank Scott lamented that there were unfortunately very few members.[76] Part of the problem seems to have been the impossibility of long-term cooperation between the left and the right; Scott's organization was being supplanted by a CRU-affiliated "communist front"

organization, the Montréal Civil Rights Union (MCLU), created in 1948 in response to the renewed use of the Padlock Act by Premier Duplessis.[77]

By late 1948, therefore, it was obvious to liberal and social democratic rights supporters that there was a need for a strong central-Canadian non-communist civil liberties organization. In preparation, Irving Himel asked the ACLU to send him current materials, including a copy of their constitution, and in March of 1949 several CFBR activists called a founding meeting of a new group -- the Toronto Association for Civil Liberties. Informally, (since they had pretensions to national status in the near future) they usually referred to it as the Association for Civil Liberties (ACL).[78]

As many as 300 people turned up at the founding meeting of the ACL, which chose as its first chair R.S.K. Seeley, the Provost and Vice-Chancellor of Trinity College.[79] Like its antecedent, the ACL was a "respectable" organization with many CCF members but enough liberals to give it a non-partisan cast. The chair of its committee for a bill of rights was B.K. Sandwell,[80] and several of the first vice-presidents were well-known either as human rights activists or members of the political/legal/intellectual elite: Rabbi Feinberg, Charles Millard, Malcolm Wallace, Joseph Sedgwick,[81] Harold M. Cassidy,[82] and Mrs. W.L. Grant.[83] In addition, the organization's first treasurer was W.P. Jenkins, a Unitarian minister,[84] and its Council included several other well-known non-communist members of the Canadian human rights policy community, including Andrew Brewin, James Finlay, George Tatham, E.A. Corbett, and George Tanaka, as well as the Liberal MP David Croll and a number of CCF politicians: E.B. Jolliffe, Eamon Park, and Lloyd Fell.

The ACL was not, of course, a completely open organization. Fear of communists ensured that the constitution stipulated that membership would not be available to members of other civil liberties groups. In addition, the real power was held by its executive council; the members were to have no say in the day to day administration of the organization. As a result, as long as the "respectable" liberals and social democrats could turn out enough members each year to elect their candidates to the council, the ACL would be relatively free of internecine wrangling between the left and right.[85]

Much of what the ACL did over the next few years involved egalitarian "reform liberal" rights, rather than classical civil liberties such as free speech or the right to a fair trial.[86] The ACL's role in the campaign against restrictive covenants has been discussed in Chapter 4 of this dissertation, while Chapter 6 looks at the campaign for effective FAP legislation in Ontario, and Chapter 7 touches upon the ACL's contribution to the struggle for a bill of rights, including the activities of the CLAT/ACL Committee for a Bill of Rights (CFBR).

Yet the ACL was involved in a number of other issues, many of them traditional civil liberties concerns: the Professor Hunter academic freedom case,[87] international support for the UDHR,[88] freedom of political speech on the CBC,[89] freedom of speech for the "Red Dean" of Canterbury[90] and for the Toronto Symphony Six,[91] federal amendments to the Criminal Code which were directed against subversion,[92] the Ontario penal system,[93] as well as the padlock law and other egregious civil liberties violations in Québec such as the treatment of Jehovah's Witnesses.[94] In addition, its briefs to government included references to a number of other civil liberties issues, including censorship of the NFB in both Québec and Alberta, federal import prohibitions against books by prominent authors such as Norman Mailer, James T. Farrell, and James Joyce; mob violence against both Jehovah's Witnesses and Baptists in Québec; anti-union legislation in both PEI and Québec; individual cases where criminal justice rights had been violated by the police in Ontario, including unjustifiable denial of the right to bail in strikes involving the Steelworkers and the CSU; the continued disenfranchisement of aboriginal peoples; and governmental discrimination against the Hutterites in the West.[95]

Throughout this period there was one single unifying thread: the continued presence of ACL voluntary secretary, Irving Himel. As noted in earlier chapters, Himel had been active in a number of human rights causes, acting as the WEA lawyer in the Drummond Wren case, working as a lobbyist for CRCIA and the Chinese community, and also volunteering as the secretary for the CFBR. Through his work with the CFBR he became intimately associated with members of the CLAT, and then participated in the process by which the CLAT was reborn as the ACL. He worked with this new organization as its secretary until the early

1960s, when he once again took part in an institutional transformation, this time producing the Canadian Civil Liberties Association (CCLA), an organization which has continued until the present.[96]

Usually running the ACL out of his home or his law office, Himel was an indefatigable worker who kept the organization alive even when other volunteers fell away; at times, it appeared to be a letterhead organization run mostly by a single man.[97] This reliance on voluntary labour rather than a professional staff no doubt severely hampered the ACL's efficiency. By contrast, the Toronto labour committee set up by Kalmen Kaplansky had a series of full-time paid secretaries, and was therefore better able to do the work of organizing meetings, pulling together ad hoc coalitions, and working with the local press. Therefore while Himel and the ACL got more of the publicity, a great deal of the work behind the scenes was done by several consecutive chairs of the ACL's Public Relations Committee who at the same time were the paid secretaries of the Toronto labour committee.[98]

Part of the problem may have been a lack of secure funding. While the Kaplansky network was never affluent, it could rely upon financial support from both the CJC and the trade union movement. The ACL, however, seems to have relied primarily upon donations from individuals, which can be sparse gleanings for an organization which almost by definition must take stances which challenge the conventional wisdom of polite society. Yet it did have one important source, the Sarco company in the United States, which manufactured "steam traps," and had set up branch-plants in a number of countries, including Canada. The sole owner, Clement Wells, was in the process of handing over his companies to his employees, and also wanted some of his profits to go towards the cause of civil liberties. As a result, in 1949 Mr. Wells' brother, of Sarco Canada Limited, wrote to McGill University, asking for help in distributing the funding. The principal of the university handed the letter to Frank Scott, who recommended that the money go to the ACL. In early January 1950 Himel wrote to Scott, thanking him for his recommendation, and noting that the association had "received a very generous contribution ... which brings us a little closer to our goal of establishing a permanent office for our work, with a permanent executive director in charge."[99]

By this time the word "Toronto" had been eliminated from the organization's letterhead, and the members were calling themselves "The Association for Civil Liberties." In addition, Himel was asking groups such as the CJC and the JCCA to become affiliate members, and suggesting to Frank Scott in Montréal that his organization join in the formation of a national association. As Canada entered into the second half of the twentieth century, it looked as if the country might indeed be on the verge of developing a Canadian equivalent of the ACLU.[100]

D: THE LDR

At the same time that the ACL was hoping to expand its hegemony, the CRU was also making national plans. By 1950 it was obvious that there was no chance of a reconciliation between it and the CRU, and The Senate Committee on Human Rights and Fundamental Freedoms was soliciting input from organizations, an opportunity for any national group to state its case. As a result, the executive of the CRU decided to create their own national civil liberties organization. On 21 April 1950 they convened a meeting in Toronto, along with the MCLU and another group called the Labour Defense Committee of Timmins,[101] and formed a national body called the League for Democratic Rights (LDR). Its purpose was "to act as a coordinating unit to draw together all the organizations all over Canada that were fighting to defend and extend our civil rights," and four days later the LDR presented its first brief to the Senate committee.[102]

The LDR was shunned by the "right wing" civil liberties organizations, but seventeen months later its letterhead claimed twenty-four affiliated branches in Sydney N.S., Québec City, Montréal, Ottawa, Toronto, Hamilton, Niagara Peninsula, London, Windsor, Sault St. Marie, Timmins, Port Arthur, Fort William, Winnipeg, Brandon, Regina, Moose Jaw, Saskatoon, Edmonton, Calgary, Newcastle (Alta), East Coulee (Alta), Lethbridge, and Vancouver. In 1953 it boasted "branches, committees, or affiliates in 31 centres across the country." This latter figure may have been somewhat inflated, but an examination of the financial reports of the LDR indicates that the organization expected, and received, regular donations of money from most of the above-mentioned groups, with Montréal and Toronto giving the most, followed by the Vancouver branch. In addition, it received regular infusions of money from a number of radical left-wing groups and unions, such as UJPO, the UE Workers, Mine-Mill, and the United Mine Workers of America. In short, the LDR could legitimately claim to be Canada's only national civil liberties organization, although one severely truncated by the absence of certain "right-wing" organizations such as the ACL or the VCCLU.[103]

The LDR's public face was that of a "non-partisan, national organization concerned solely with helping to defend and extend democratic rights in Canada,"[104] but it was commonly regarded as a communist-front organization.[105] After all, it frequently came to the aid of communists, it received considerable publicity in the pages of the communist Canadian Tribune, and it was able to call upon the LPP for volunteers to help organize meetings, pass out pamphlets, etc. On the other hand, there is no evidence that the LDR took orders or even funding from the LPP. It might be more accurate to see the LPP and the LDR as having a convergence of interests rather than a leader-follower relationship.[106]

Some of the LDR leaders were members of the LPP, but most were more likely members of "the movement," and probably independent-minded idealists rather than submissive followers of party discipline. For example, the first co-chair was Margaret Spaulding, the Rosedale millionaire, who had helped found both the ECCR and the CRU. As noted in Chapter 3, although Spaulding was certainly sympathetic to certain elements of marxist ideology, she was by no means a weak-willed follower.

The other co-chair was Edmond Major, who also served as the president of the MCLU. Major referred to himself before a parliamentary committee as an insurance salesman, but one LDR pamphlet described him as a war veteran who had attended university and at different times been an organizer with the CCL (in Montréal), the Industrial Workers of the World (IWW), and the UE Workers' union. (The latter two unions were widely-known as communist-dominated).[107]

The LDR executive secretary was Thomas Roberts, a former secretary of the Edmonton Labour Council (CCL) who had run for civic election in Edmonton as a member of the LPP. According to the same LDR pamphlet, he had been active in the Canadian Youth Congress and worked in several unions in the CCL, such the IWW, the Amalgamated Building and Construction Workers, Mine-Mill, the Alberta Farmers Union, and the People's Cooperative Bookstore Association in Vancouver.[108]

Yet another activist in the LDR was Roscoe Rodd, who was co-chair by about 1951 and national chair by 1953. A lawyer and King's Counsel from Windsor who had been a radical member of the FCSO before the war, he had been the national co-chair of the CRU,

and was married to Nora Rodd, an activist in the FCSO during the war and the Canadian Peace Congress during the 1950s. His own sympathies for the peace movement had increased his ties to the LPP, for which he had been forced out of his position as county solicitor. Rodd then became active in the LDR for some years and a number of his speeches may be found in different archival holdings, speeches which for the most part are verbose, legalistic, and full of the "British liberties" rhetoric.[109]

One of the vice-chairman of the LDR in 1952 was James Garfinkle, who had begun as a member of the CRU. Garfinkle was attracted to communist ideas during the depression and in 1936 had been involved with the Dr. Norman Bethune Youth Club in supporting Canada's unofficial anti-fascist troops, the Mackenzie-Papineau Battalion fighting in the Spanish Civil War. He graduated with a degree in chemistry from the University of Toronto, but instead of settling into a life of middle-class professionalism worked as a union organizer in the textile industry in Toronto. When war broke out he enlisted, went overseas, and was wounded. When he returned, he went back to university and obtained a law degree. He was active in the Canadian protests against the execution of the Rosenbergs, and spoke at their grave-site memorial on behalf of Canadians. Garfinkle was attracted to Marxism for idealistic reasons, and left both the CRU and the LDR at some point in the 1950s when he felt that they were too favourably inclined towards the USSR rather than acting as truly principled civil liberties organizations.[110]

While some of the LDR executive members were simply "fellow-travellers," David Kashtan was an important member of the LPP.[111] He had been active in the communist movement from his teen-age years, was one of the people convicted in what Frank Scott called the 1931 "Montréal sedition cases,"[112] and had served as National Secretary of the Canadian Young Communist League.[113]

Beckie Buhay was another LPP stalwart who played a role in the LDR. A leading member of the CPP/LPP in Toronto who had come to Canada just before the First World War, and who had been the second-in-command of the CLDL during the 1930s, she usually remained in the shadows of the LDR, no doubt so as to maintain the image that it was a truly non-partisan organization.[114] For example, an anonymous RCMP informer wrote that at the

1951 national meeting of the LDR she "did not appear to take a public part," but "was frequently noted in the background as if to guide the proceedings." Although she served as the chair of the LDR organization committee, her name never appeared on any of the LDP's pamphlets or letterhead.[115]

Despite its frequent defence of the rights of those on the radical left during the early 1950s, the LDR was a principled defender of a wide variety of civil liberties issues, many of them the same matters that concerned its "rival," the ACL.[116] For example, their separate briefs to the Senate Special Committee on Human Rights and Fundamental Freedoms in 1950 indicates that, in addition to a common support for a constitutional bill of rights, both groups were concerned with a fair number of similar issues, such as the padlock law, discrimination in Dresden, and the treatment of Jehovah's Witnesses.[117]

For the most part, however, the LDR concentrated upon three issues: eliminating the padlock law, opposing certain amendments to the Criminal Code, and the need for a bill of rights,.The next sections of this chapter deal with the first two campaigns, while Chapter 7 is an analysis of how a number of organizations, including the LDR, lobbied for an entrenchment of fundamental rights in the Canadian constitution.

E: THE PADLOCK LAW

As mentioned in Chapter I, the Padlock Act was Premier Duplessis' answer to the abolition of s. 98 of the Criminal Code. The term "padlock" did not actually appear in the legislation, but the statute made it illegal to use a house or allow it to be used "to propagate communism or bolshevism by any means whatsoever," and it gave the Québec Attorney General (who was also the Premier) the right to order the "closing of the house against its use for any purpose whatsoever for a period of not more than one year." The padlocking of a house could, therefore, take place without any trial.[118]

The opponents of the padlock law were a small minority in Québec, although the law was widely reviled outside the province.[119] Many of the opponents were social democratic civil libertarians, such as Eugene Forsey and Frank Scott, who saw the law as especially dangerous for two reasons: it gave the premier far too much discretionary power, and it not only unfairly limited the fundamental freedoms of communists but was also used at times to harass non-communists. In the 1930s, for example, the MCCLU (which was supported by Scott and Forsey), was unable to obtain accommodation for public meetings because property owners were threatened by the padlock. After the war, in the 1953 federal election, CCF candidates were forced to submit their election posters to the "anti-subversive" squad of the police before they could use them, and at about this time there had even been a raid on the office of the head of the provincial Liberal party, as well as arrests of Social Credit party members.[120]

Right-wing civil libertarians such as B.K. Sandwell also opposed the statute. For them the Padlock Act was odious not so much because it limited the free speech rights of communists but because it constituted an attack on private property and at the same time violated the rule of law. Padlocking someone's premises constituted a confiscation of property according to "the whim of the Attorney General," since the Attorney General (Premier Maurice Duplessis) had only to declare that the property was used for "subversive purposes" to make a padlocking legal. However, as Sandwell wrote in Saturday Night, "[i]f the nature

of subversive purposes were defined, and if the courts were allowed to determine whether the property had been used for such purposes or not, we should have no objection."[121]

A third group to oppose the padlock law was the communists. Obviously they had a pragmatic interest in the matter, for the legislation limited the activities of the LPP as well as any organization, including trade unions, which the government believed was dominated by communists.[122] Paradoxically, the communists were also in substantial agreement with Sandwell about the way in which the law endangered property -- LPP offices, the private homes of left-wing individuals, bookstores (such as the Victory Book Shop in Montréal, which was raided in 1948 and again in 1949), or collectively-owned meeting places (such as the UJPO Cultural Centre in Montréal, which was padlocked in 1950). All this was, as the communist-front MCLU argued in surprisingly conservative language, a denial of the "basic principles and rules of British justice."[123]

The fourth group consisted of the trade unionists themselves. Of course it was the communist-dominated trade unions that had the most to fear from Duplessis, but since the definition of communism was not contained in the legislation, but instead resided "in the cranium of Mr. Duplessis,"[124] it was possible for any trade union, especially one seriously threatening the prerogatives of employers, to find itself padlocked. In 1938, for example, Québec police had used the law to raid the homes of Steelworkers' union organizers and confiscate all union records, thereby providing a serious setback to union organization. Later, in the post-war period, Duplessis used the padlock law as part of a campaign against alleged communists in the trade union movement, and his government also created Bill 19, passed in 1954, which permitted the Québec Labour Relations Board to decertify any trade union that at any time since 1944 had "tolerated" communists among its organizers or officers. As Minister of Labour Antonio Barette put it, "Bill 19 is a measure that flows logically from the Padlock Law."[125]

As noted in Chapter 1, groups like the MCCLU initially petitioned Ottawa to disallow the Padlock Act but were turned down. It was also possible for Ottawa to send the matter to the courts as a "reference case," in order to obtain a judicial opinion as to its constitutionality, but this too the Liberal government refused, no doubt for fear of offending Québec voters.

Not for the first time, the issue of provincial rights was intertwined with individual rights, and the former proved to be paramount.[126]

These options were important, for it was not easy to mount a challenge to the padlock law. The owner of a padlocked property could petition the courts for a cancellation or suspension of the order, but the burden of proof was upon the owner to demonstrate that the property had not been used, or was used without the owner's knowledge, as a place from which communist propaganda was being spread.[127] However, for a person who had been forced out of padlocked premises, or refused accommodation because of a fear that a padlocking might result, there was no obvious legal redress. The best course of action would be a challenge to the constitutionality of the law, but it was not clear that a communist, or alleged communist, had legal standing to do this.[128]

In the late 1930s a way around this problem had been found by Muni Taub, a Communist Party activist in Montréal.[129] When the police padlocked the property he was renting, he persuaded the owner of the property, who was also his father-in-law, to sue him for damages caused by loss of rental income. He responded by arguing in court that the law was unconstitutional. In this case, the defendant's lawyer was R.L. Calder, counsel for (and one of the founders of) the MCCLU. Acting on behalf of Louis Fineberg, the plaintiff, were Abe Feiner and Albert Marcus, who frequently represented communists when they came before the courts in Montréal.[130]

Calder presented the court with a number of arguments against the validity of the padlock law: he argued that the law encroached on Ottawa's legislative jurisdiction, and he also used the Alberta Press Bill case argument that a law interfering with freedom of expression interferes unduly with the workings of the parliamentary process in Canada. Chief Justice Greenshields, however, concluded that the legislation did not interfere with freedom of expression, and was in any case clearly *intra vires* the provincial field of property and civil rights.[131]

The MCCLU initially planned to appeal the Fineberg case, and Frank Scott intervened for the organization by asking Louis St. Laurent, at that time still a lawyer in Québec City, to take over the legal task from Calder. St. Laurent was initially interested, but when war

broke out he declined, citing the dangers to national unity that might occur if the case were continued during a period of inevitable English-French tensions. Scott agreed with St. Laurent's reasoning, and the appeal was not pursued. The Fineberg case was one of the first civil liberties casualties of the war.[132]

In another case decided at about the same time, the MCCLU also defended two communists, François-Xavier Lessard and Joseph Drouin, who had been convicted of "conspiracy" after they had attempted to re-enter premises already padlocked. Arguments about the constitutionality of the law were dismissed as irrelevant both by the trial judge and by the Québec Court of Appeals, and this case also was not appealed any further.[133]

By 1939 the Padlock Act had been used 13 times but during the war it was held in abeyance, primarily because the federal DOCR put the Communist Party out of business by making it an illegal organization. Although the party was resurrected as the LPP, after the war the Québec government (with Duplessis once again serving as premier after a brief war-time hiatus) did not use the legislation again until February of 1948.[134] At that time a bitter strike in a small town in Québec had resulted in a sedition trial of several union activists. At the trial it had been established that a newspaper which was supporting the strikers, Combat, was an LPP publication, and Premier Duplessis used this as an excuse to padlock the newspaper offices, as well as the printing plant which had put it out.[135]

It was not, however, this case which led to a legal challenge of the law, but a padlocking which occurred a few months later. According to newspaper reports, the LPP in Montréal had decided to increase sales of the Canadian Tribune, and had about 3,000 copies ready for distribution in the home of John Switzman, a war veteran who had attended McGill, become president of the university LPP club, graduated in the spring of 1948 with a BA in engineering, and was now an LPP organizer. In the rather dramatic prose of an MCLU pamphlet,

> A bitterly cold night ... January 27, 1949. In a large third-floor on Park Avenue in Montréal's North End, John and Iris Switzman were sitting down to supper. Valerie, 20 months old, had just been put to bed. It was about 7 o'clock. But John and Iris never did eat their supper that night. And little Valerie never finished her sleep in her own little room.... The sound of heavy footsteps came up the stairway. The door burst open and ten burly men rushed into the room. They spread out all over

> the flat, ransacked every room, opened dresser-drawers, cupboards. They grabbed every book, every newspaper and magazine, every piece of paper with anything written on it and tossed them into large cartons. Directing these "operations" was a 250-pound man in a station-wagon coat and a black homburg. This was Paul Benoit, head of the "anti-subversive" squad of the Québec provincial police....
>
> Behind the police crowded a group of newspaper reporters and photographers who had been invited by Benoit to come along and see the "show"....
>
> The Switzmans protested. They tried to phone a lawyer for advice. But the police prevented them from using their own phone in their own house! Then they urged the police to at least leave the rear part of the flat, where the bedrooms were, where the baby was sleeping. It was no use. The whole house was to be cleared and padlocked. "Get Moving."
>
> John and Iris finally picked up their baby, dressed her, threw some clothes together in a valise and went to the house of John's mother. It was now one o'clock in the morning. Everyone trooped out and Paul Benoit placed a large padlock on the outside door, stuck an official seal on the padlock and grinned.[136]

This was the padlocking that was heard around the country, for it led to the legal case of Switzman v. Elbling, in which the constitutionality of the padlock law was finally taken to the Supreme Court of Canada.[137] Freda Elbling, the owner of the suite padlocked by the police, and the mother-in-law of John Switzman, decided to sue him for one year's rent plus damages and the costs of restoring the property to its condition prior to the padlocking.[138] Switzman agreed that he had been using the property for purposes illegal under the padlock law; he had sub-rented out part of the suite to the Canadian Tribune, and also to the Federation of Labour Youth, a communist organization. His defense, however, was that the law was unconstitutional and that therefore he was not responsible for Elbling's financial woes.[139]

Switzman's lawyers were Abraham Feiner and Albert Marcus; the same lawyers who had represented the plaintiff in the earlier Fineberg case now were arguing for the defendant in a very similar padlock law dispute. In her biography of F.R. Scott, Sandra Djwa notes that they were former students of the well-known CCF activist and civil libertarian. What she does not mention is that both of them had a long history of defending communists in Montréal, and had close ties to the LDR and the MCLU. In fact, in 1954 both went to a Vienna meeting of the International Conference of Lawyers for the Defence of Democratic Liberties, along with Paul Normandin of the MCLU and James Garfinkle of the LDR.[140]

Feiner and Marcus were unsuccessful at the trial level in 1949 and then at the Québec Court of Appeal in 1954. However, Justice Barclay of the latter court dissented, using the argument of the Alberta Press Bill case that by interfering with the free expression of political views the legislation also interfered with the parliamentary institutions of Canada and the rights of political participation set out by the Canada Elections Act. On the basis of this, Switzman's lawyers decided that he should appeal to the Supreme Court, and at this point they asked their former law school professor, Frank Scott, if he would help them with the case.[141]

Scott was at first somewhat hesitant about getting involved. He had been under attack for his political leadership in the CCF, and an editorial in the Montréal Star had argued that professors had no right to engage in partisan political affairs. In addition, Scott was already involved in another important constitutional case, Roncarelli v. Duplessis, in which Scott was helping a Jehovah's Witness sue the premier of the province for having caused, without any legal justification, the cancellation of his restaurant liquor licence.[142] In addition, Scott was a strong anti-communist, and the case was being backed not by his own organization, the virtually defunct MCLA, but by the LDR-affiliated MCLU, a group widely regarded as a "communist front." Superficially, the organization seemed not very radical -- it was headed by a former Presbyterian minister, Glendon Partridge, and Paul Normandin, its executive secretary, was doing post-graduate work under Scott at McGill University.[143] As Scott was no doubt aware, however, Partridge's sympathies lay very much with the far left, and the MCLU was one of the leading groups in the communist-dominated LDR.[144] Working with such people during the Cold War could harm one's reputation, at least with those people who could not distinguish between social democrats and communists.

Scott may have felt threatened, but he had both courage and principles, and agreed to take the case.[145] However, he stipulated that his name was not to be used by the MCLU in any campaign raising of funds for the legal costs in the case. It was clear that he was providing legal expertise in support of an important civil liberties principle, not political support for a communist-front organization.[146]

So far, however, the ethnic balance of the case was clearly lop-sided -- a Jewish Anglophone communist, two Jewish Anglophone radical left lawyers, and a social democratic Anglophone with Anglican roots. To redress this, Marcus and Feiner also brought in a francophone lawyer, Jacques Perrault. As noted in Chapter 2, Perrault was, like Scott, a social democrat, a civil libertarian, and a law professor. By this time he was also the head of the prestigious journal Le Devoir. He had previously joined Scott as counsel in the Roncarelli case when it proved difficult to find any lawyers willing to take the risk of challenging the authority of "Le Chef," and once again he stepped in where most other lawyers feared to tread. Just as importantly, he added some measure of French-Canadian "respectability" to the legal team; it would now be more difficult to say that the case represented a division between different cultural attitudes to communism.[147]

Meanwhile, the LDR had agreed that the MCLU should begin to raise money on its own, with or without Scott's name, and the latter organization soon announced a campaign to raise $10,000, including the publication of thirty thousand copies of the pamphlet, "The Padlock Law Threatens You!" to be purchased by supporting organizations and either sold or given away.[148] At the same time, the LDR encouraged its member organizations to contribute to the fund, while LPP supporters were bombarded with requests for money by the national and ethnic communist press.[149]

Financial support also came from more "respectable" sources. No doubt in order to allay suspicions about communist influence, Normandin set up an independent body called the "Trust Fund to Contest the Padlock Law," with himself as the Secretary-Treasurer and the board members a respectable collection of prominent lawyers, businessmen, and a politician without any obvious radical taint.[150] On a number of occasions, acquaintances wrote to Scott asking if they should donate money to a cause championed by people such as Normandin and Partridge. For example, Eugene Forsey wrote that he did not want his "money siphoned off into the Communist Party." Scott reassured potential donors that their money would be well spent, but added (for reasons that are not completely clear) that if there were any doubts they could send donations to David Lewis in Toronto. As a result, the campaign was supported

by many people who were quite anti-communist but believed that the law violated important civil libertarian principles.[151]

In any case, the padlock law had been so long reviled in English Canada that it perhaps would have been difficult not to raise money for Switzman's case. Even J.V. McAree, the liberal Globe columnist, supported Normandin wholeheartedly, quoting the pamphlet at some length and exhorting his readings to support the cause,[152] and the litigation was also financially supported by a number of "right wing" trade unions, including the Montréal Labour Council, the Winnipeg Labour Council, and the Alberta Federation of Industrial Unions.[153]

The MCLU and LDR were successful in raising enough money to fund the appeal, and the Supreme Court finally settled the case in 1957, eight years after the padlocking of the Switzman apartment, and twenty years after the passage of the legislation.[154] Using the so-called "division of powers" technique to strike down the padlock law, the Supreme Court ruled that it was in reality criminal law legislation, and therefore outside provincial jurisdiction. This meant, of course, that Elbling lost her lawsuit and Switzman did not have to pay damages. The case was one of the most important of the great civil libertarian decisions handed down by the Supreme Court during the 1950s.[155]

Because the case had begun before appeals to the Judicial Committee of the Privy Council were abolished in 1949, Duplessis still had the legal right to carry the issue to the higher court. He chose not to do so, however, claiming that "I have the intimate conviction it is the affair of the grand tribunal of public opinion in Québec."[156] As Duplessis was aware, no matter how unpopular his padlock law was among English Canadians, the majority of Québécois saw it as a legitimate bulwark against the threat of communism, many of them agreeing with Duplessis' aphorism that "communism is atheism."[157] Moreover, cases like Switzman also helped Duplessis portray himself as the nationalist defender of the rights of "fortress Québec." As he is alleged to have said on another occasion, "The Supreme Court is like the Tower of Pisa, it leans always in the same direction" -- towards Ottawa.[158] In the padlock law case Duplessis may have lost the legal battle but he gained considerable political credit.

No doubt Duplessis was also aware that the war against the communists had already largely been won, although not because of him. In the spring of 1956 Khrushchev had made his famous speech to the Twentieth Congress of the Communist Party, in which he acknowledged many of Stalin's excesses, and the same year brought revelations about the official toleration of anti-semitism in the USSR. This decimated the LPP. Most of the Jewish members resigned, including John Switzman, who by that time was the party Treasurer in Québec. When the Supreme Court handed down its decision Switzman probably had no interest at all in the outcome. What Duplessis could not do, Khrushchev had already achieved.[159]

F: THE LDR AND THE CRIMINAL CODE

During the 1950s the federal government proposed a number of changes to the Criminal Code. Many were relatively non-controversial, but some of them generated considerable public debate, for they touched upon basic rights of free speech and association, as well as more narrow-range rights such as labour's right to strike and picket. The proposed changes were another part of the creation of "the national security state," and as such they generated considerable opposition. While much of this came from liberal and social-democratic moderates, the far left and the LDR also played a significant role.

As mentioned earlier in this chapter, the LDR had campaigned against Liberal back-bencher Wilfrid LaCroix's frequent attempts to criminalize the LPP, but it was not until 1951 that the group faced a government bill to limit the traditional rights of political radicals (although in 1950 Conservative leader George Drew moved a resolution calling for the criminalizing of "Communist and similar activities").[160] To understand the 1951 legislation certain background information is essential.

As noted in Chapter 3, in the fall of 1945 the federal government had created a National Emergency Transitional Powers Act which, somewhat like the War Measures Act, granted Ottawa and the executive branch extraordinary powers. This legislation continued in force until 15 May 1947, whereupon Parliament passed a Continuation of Transitional Measures Act which referred to a continuing "national emergency arising out of the war," and the need "to ensure an orderly transition from war to peace." This legislation also gave Ottawa certain extraordinary powers, and was continued in force by means of orders-in-council until March 1951. By then the Cold War had "warmed up" considerably and the Korean War had broken out. In response, the government of Prime Minister St. Laurent introduced the Emergency Powers Act in order "to regulate the economy of Canada to meet the needs of defence and to ... safeguard it from disruption.[161] This legislation explained that it was not desirable to use the wide powers conferred by the War Measures Act to interfere with the "fundamental liberties of the individual," but it did grant the cabinet the power to issue orders in council "for the security, defence, peace, order and welfare of Canada," as long

as they did not relate to arrest, detention, exclusion or deportation, or the censoring of publications.[162]

Having thereby avoided most of the criticisms about the dangers of what earlier in this dissertation was called "executive despotism," Ottawa then proceeded to tighten up its control over subversive elements by means of ordinary legislation. However, Canadians were not officially at war; technically, the country was only engaged in "hostilities" by virtue of its support for the United Nations. This meant that the traditional law of treason, which in part prohibited assistance to any enemy at war with the Queen, was inadequate to deal with those who might help the North Koreans or the People's Republic of China. As a result, the Minister of Justice introduced Bill 391, which among other things broadened the definition of treason to include:

> ... assisting, while in or out of Canada, any enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are.[163]

The fact that "assistance" was not explicitly limited to actions rather than words worried a great many people, including the LDR. In the context of the times, it could be seen as a way of putting a chill on the right to express opinions, especially the opinions of people in the peace movement who were critical of the government's involvement in the Korean War.[164]

There were several other sections of Bill 391 intended to change what the Criminal Code calls "Offences Against Public Order." First, Ottawa proposed a law against sedition. At that time, the Criminal Code contained no definition of sedition, although it listed three different offences: uttering seditious words, seditious libels, or engaging in seditious conspiracies. The meaning of sedition was determined by the common law, which was not entirely clear, but seemed to include two different aspects: using speech which either brought government into contempt, or created ill-will and hostility among citizens.[165] With Bill 391 the government planned to punish sedition more severely by raising the maximum term of punishment from two to seven years and it also planned to create a new seditious offence --

wilful interference with the loyalty or discipline of members of the armed forces or the RCMP. This new offence was to be punishable by five years imprisonment.[166]

Another part of Bill 391 dealt with sabotage, and prohibited interference with property or machinery in any way that would endanger the safety or security of Canada. This also criminalized interference with property or machinery of any state "lawfully present in Canada"; it was obviously aimed at protecting United States armed forces stationed in Canada as part of the Cold War defense system. The penalty for this was a maximum of ten years imprisonment.[167]

The third element of Bill 391 with implications for civil libertarians had no obvious connection with Cold War issues -- it expanded the search powers of the police, giving them the right to enter and search any premises other than a dwelling-house, without a search warrant, if they believed "on reasonable grounds" that this would help investigation of certain offensive weapons and firearms violations.[168]

Responses to this legislation demonstrate how the Cold War had polarized the civil liberties community in Canada. As B.K. Sandwell wrote in Saturday Night, the changes did not attract much attention "from anybody except lawyers and communists," and Sandwell himself expressed only mild apprehension about the changes in the law.[169] A later article by Scott Young in the same magazine, with the sensationalist title, "Should I Keep My Commie Friend?" also demonstrated only luke-warm criticism of the legislation.[170] Similarly, although CCF MP Angus MacInnis worried that the legislation was being passed in an atmosphere of "hysteria," and Conservative MP John Diefenbaker warned that some of the changes were potentially "dangerous," neither of them could muster effective opposition. Indeed, Diefenbaker supported the general thrust of the changes, and in some fields advocated even stronger powers for the state. The strongest dissent in Parliament came from Senator Arthur Roebuck, but he was largely ignored, except by the communists, who made widespread use of his comments in their hortative literature.[171]

Yet the government was charting a rather moderate course that, while not entirely satisfactory to the civil libertarians within the House, certainly did not satisfy the anti-communist "hawks" on the opposition benches. For example, federal Minister of Justice

Stuart Garson assured the House that the term "assistance" in the new section on sedition applied only to physical acts rather than to speech; this, he said, was the way in which the judiciary had so far interpreted the term in other similar sections of the Criminal Code. When Conservative MP Davie Fulton asked the Minister if the proposed new section could be used to prosecute Mrs. Roscoe (Nora) Rodd, the prominent left-wing peace activist who had recently returned from Korea and broadcast remarks critical of the United Nations action, the Minister indicated (albeit hesitantly) that it would probably not apply to such a case.[172]

The legislation soon passed in the House, moved quickly through the Senate (notwithstanding Senator Roebuck's strong dissent), and received Royal Assent on 30 June 1951, much to the alarm of the radical left.[173] LPP leader Tim Buck suggested that the bill was a serious "internal threat against Canadian democracy," as well as part of a scheme to make Canada subservient to the United States and "plunge Canada into an aggressive imperialist war for the profit and aggrandizement of U.S. imperialism." At about the same time, the LDR and its constituent member organizations called the legislation "a most dangerous encroachment upon the rights of Canadians -- rights considered to be inalienable." Over the next few months they attempted to rouse Canadian opinion against the "Garson amendments" to the Criminal Code, publicizing the changes by means of broadsheets, newsletters, advertisements, and public meetings, and drawing extensively upon the criticisms of the legislation which had been expressed in both the House of Commons and the Senate.[174]

LDR criticism, however, was frequently inflated. For example, one broadsheet suggested that the legislation was passed with precipitous haste, with members of Parliament spending "less than ten minutes" on the first reading of the bill. Since first reading is always *pro forma*, it is hard to take this remark very seriously. Similarly, when the CRU suggested that the new law was a dangerous violation of free speech whereby criticism of the government might be construed as a form of "assistance" to the enemy, it failed to point out the Justice Minister's assertion that the term "assistance" was traditionally applied only to non-verbal behaviour.[175]

On the other hand, the LDR's concerns about the sabotage provision of the new law were grounded in a realistic fear that it might be used as an anti-strike provision. Over time

the mainstream trade union groups came to the same conclusion, and later worked hard to ensure that this section would be amended so as to prevent it from being used to prosecute those engaged in legitimate strikes.[176]

The LDR criticism of the 1951 "Garson amendments" soon formed, in 1952, the basis for its opposition to a new set of Criminal Code proposals, some of which incorporated the 1951 changes and some of which presented new challenges for civil libertarians. In 1949 the federal government had begun the first major revision of the Criminal Code since its creation in 1892, appointing a revision committee with a mandate to produce a draft bill. The committee report was tabled in the House in the spring of 1952, and the proposed Criminal Code amendment was shortly afterwards introduced into the Senate as Bill H-8.[177] Although the revision committee had been instructed not to make substantive changes to the criminal law, and simply to create a more streamlined and up-to-date codification, in some instances this proposed draft introduced significant substantive changes.[178]

The LDR criticisms (which will be summarized shortly) were initially directed against Bill H-8, but the organization was forced many times to redirect and rethink its attacks over the next few years, for the proposed new statute moved through an extremely lengthy and convoluted legislative process -- dying on the order paper while in the Senate, reintroduced as Bill 0 into the Senate, and becoming Bill 93 when it went back to the House of Commons.[179]

Once back in the House, the bill was referred to a parliamentary committee which was prepared to receive briefs and hold meetings with interested individuals and pressure groups. When the parliamentary committee tabled its report in May of 1953, it recommended several changes to the law. In the meantime, however, the St. Laurent government called an election, and therefore the entire process of legislation came temporarily to a halt. In November, with the Liberals back in power, yet another draft of the Criminal Code was introduced into the House of Commons, and in early 1954 Parliament was examining the details of the new legislation -- now called Bill 7. By 26 June the bill had finally passed through both houses and received Royal Assent (although it was not until 1 April, 1955 that it came into force).[180]

This legislation was roundly denounced by the LPP, but the fight against it was primarily carried by the LDR.[181] Throughout the two years between the first reading of Bill H-8 and the finalization of Bill 7 the LDR and its affiliates engaged in what was one of the largest and best-publicized civil liberties campaigns of the Cold War era.[182] It was intertwined with at least two of their other main causes -- the call for a national bill of rights (to be discussed in the next chapter), and the campaign to save the Rosenbergs from execution in the United States. For example, the 1951 broadsheet, "The Recent Amendments to the Criminal Code," ended with an argument in favour of a bill of rights, while Thomas Roberts argued at a "Save the Lives of the Rosenbergs" rally in 1952 that if Bill H-8 passed there might be Canadian Rosenbergs executed by the state.[183]

In September 1952 the national executive held a "special enlarged meeting" to discuss the Bill H-8 campaign, involving the raising of at least $3,000 by the local associations, half of which was to be forwarded to the national office in Toronto. It was agreed that this campaign would include such activities as educational meetings with trade unionists, local conferences, visits to local MPs, and the distribution of literature.[184]

The LDR used a variety of techniques to get its message across. Sometimes it sent out letters to trade union locals, asking them to get involved in the campaign.[185] At other times it issued press releases and paid for large newspaper advertisements, such as the one in the Toronto Globe and Mail, on 14 June 1952, called "Canadians Will Never be Silenced."[186] Frequently the LDR distributed protest postcards and pamphlets such as "Strike Penalty -- Ten Years in Jail," "Protect Our Democratic Rights," "It's a Crime," and "It's Still a Crime."[187] The postcards were printed without the name of any organization on them, and the LDR claimed to have produced several thousand of them, many handed out at factory gates to Canadian workers and others ordered by local union leaders.[188] The pamphlets, on the other hand, were clearly identified as LDR material, and the organization claimed to have printed and distributed hundreds of thousands of them in 1952 and again in 1953.[189]

In addition, when the House was going through its clause-by-clause analysis of the legislation in the spring of 1954, the Chair of the LDR, Roscoe Rodd, made a speaking tour

of Western Canada, attempting to stir up opposition to the more objectionable elements of the bill.[190]

The LDR also presented briefs to Parliament. For example, it formed a delegation to appear before a parliamentary committee in early 1953 in order to present a lengthy brief to the special House Committee on Bill 93. This delegation, consisting of Thomas Roberts, Roscoe Rodd, James Garfinkle, and a Miss Charlotte Gauthier from Montréal, received a rather cool reception from the members of the committee. Yet their brief adopted a tone and style different from that used in the LDR pamphlets and broadsheets, giving an extremely detailed analysis of those different sections of the bill which the LDR believed were either too harsh or too open to abuse.[191]

The LDR's overall criticism of the Criminal Code amendments is difficult to summarize, because the organization occasionally shifted its focus, sometimes without any apparent reason, and at other times in response to changes introduced at different stages in the course of the legislation's passage. The group concentrated, however, primarily upon the sections of the bill dealing with treason, sedition, sabotage, mischief, and criminal breach of contract (especially where the remedy interfered with transport and utility workers' right to strike).[192]

The LDR opposed the treason sections in the different versions of legislation primarily for the same reason it had opposed the 1951 Criminal Code changes -- the proposals extended the principle of treason (as a capital offense) to situations in which the country was not formally at war. However, with Bill H-8 the offence of treason was broadened once again, so that the law would now be directed at any person who "conspires" to assist an enemy or even "conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada." These conspiracy clauses, along with another clause which made it a crime to "form an intention" to conspire to do any of the prohibited treasonable acts, gave the authorities extremely wide-ranging powers. As the LDR pointed out, to make these activities peace-time crimes was bad enough, but it was draconian to attach the death penalty to them.[193]

When the legislation was examined by the senators, they decided that the offense of transmitting information to a foreign agent should be subject only to a fourteen year penalty. However, the special House of Commons committee disagreed and insisted that a penalty of 14 years should apply only where there was no state of war; in the case of war, life imprisonment should constitute the minimum sentence for that offence. Moreover, the offence of assisting hostile armed forces in peace-time continued to have a mandatory death penalty attached to it.[194]

The LDR also opposed the sedition sections of the proposed law. The group was concerned that the bill elevated the RCMP to the same level as the armed forces in prohibiting any wilful impairing of the "loyalty or discipline of a member of a force." In arguing against this, the LDR quoted Arthur Roebuck's Senate speech, in which he asked rhetorically, "are we living in this fine, free Canada of ours, or in Germany, where the ordinary citizen has to be careful about what he says to a policeman lest he encourage him to be insubordinate to his officers?" Such arguments swayed the government, and the final version of the legislation contained no such reference to the RCMP.[195]

As for the sabotage and mischief amendments, the LDR maintained that they could interfere with the traditional rights of labour to strike and picket. Here again the government listened to criticism and the final law contained saving clauses to protect these rights.[196]

The other area of the legislation which the LDR opposed most strenuously, the section dealing with criminal breach of contract, criminalized any breach of a collective agreement which wilfully endangered human life, deprived citizens of utilities (such as light, power, gas or water), or hampered the running of the railroads. This section was intended to deal with a drafting error in 1906 which made the original 1877 prohibition unenforceable. Minister of Justice Garson said that the error had been noted only when the authorities began their mid-century consolidation of the Criminal Code. Under pressure from the LDR, as well as the major trade union federations, the government introduced a saving clause to ensure that prosecution could not take place unless a strike occurred without the union complying with "all steps provided by law with respect to the settlement of industrial disputes."[197]

The LDR, however, argued that the proposal still endangered the bargaining rights of labour, pointing out that if a provincial government passed profoundly anti-labour and unfair dispute-settlement legislation, and a trade union felt the need to break the provincial law, the union would be subject also to the full force of the criminal law. Defending his bill in the House, Minister of Justice Garson contemptuously dismissed this argument, partly because it came from what he called "a communist front organization." As he asked rhetorically, "What sort of argument is it that a provision of a federal law puts anyone at the mercy of a democratically-elected provincial legislature anyway? Is that argument a vote of confidence in democracy?" Obviously the opposition in the House had less confidence in the democratic nature of the provinces than did Garson, for the section was only carried on division after considerable debate.[198]

The total package was finally passed by Parliament, sometimes with significant changes, but many times without any governmental concessions. It is hard to say how much the LDR influenced this process. A researcher relying only upon 1950s issues of the Canadian Tribune would quickly come to the conclusion that the LDR and its affiliates were almost the only civil libertarian groups in Canada at that time. Moreover, according to the Tribune, the LDR could be very effective -- one issue carried a story about how the Autoworkers at the Ford motorworks plant (Local 200) in Windsor decided to launch a campaign after hearing an address by LDR chairman Rodd. According to this report, the UAW workers were planning to issue 10,000 leaflets based on the pamphlet "Strike Penalty Ten Years."[199]

Yet the Tribune was hardly a neutral reporter of events, and shamelessly concentrated upon news stories that inflated the prestige and impact of the radical left. In addition to the LDR, the major trade union organizations, the ACL, and the CJC made in-person presentations before the parliamentary special committee, while an even larger number of non-communist groups made written presentations. Moreover, a number of MPs in the House, especially those in the CCF, frequently questioned the government about the civil libertarian implications of the Criminal Code amendments, and in the Upper House Senator Roebuck was an outstanding staunch critic of these changes. None of these critics was sympathetic to the LDR, and in the committee hearings the MPs were often rather hostile.[200]

It is especially difficult to judge what impact the LDR may have had upon the legislative process because many of their concerns about the potential threat of the legislation to the rights of trade union workers were matched by the concerns of the three major labour groups. For example, it is clear from the debates in the House of Commons that the TLC, the CCL, and the Canadian and Catholic Confederation of Labour were as worried about the criminal breach of contract issue as was the LDR. It is also clear, moreover, that the LDR was acting as an "outsider" which participated in the more formal part of the process (such as making representations to the Special Committee) but was not consulted at other times. By contrast, the government viewed the trade union umbrella groups as important "policy group" players which were consulted on a regular basis.[201]

The situation is also complicated by evidence that testimony from the far left about civil liberties issues was possibly counterproductive. As Whitaker and Marcuse have pointed out, it frequently occurred during the Cold War era that "ideas of the Left that happened to coincide with the Communist line of the moment were denounced as illegitimate," and this seems to have included civil libertarian concerns. For example, when the Minister of Justice referred to the testimony of LPP leader Tim Buck before the Special Committee, he said that "it is most unfortunate that the waters have been muddied to a certain extent." This suggests that Garson at least was tempted to dismiss civil libertarian concerns simply because they were being voiced by the wrong persons.[202]

On the other hand, representations by the LDR may have helped strengthen the hand of those with civil libertarian inclinations who were aware that the "free world"/communist division involved an ideological struggle as much as a conflict over security issues. For example, later in the debates on the sedition section of the Criminal Code revision, a CCF member of Parliament [Thomas S. Barnett] referred to "the all-out campaign being conducted at the present time by what are, to my way of thinking, certain subversive interests in connection with the revision of the Criminal Code. As far as I am concerned, if we leave the section the way it is [with inadequate protection for free speech] we simply are handing these people ammunition."[203]

If it is difficult to judge the degree of influence which the LDR exerted, it is also difficult to decide whether or not their criticisms of the proposed legislation were justifiable civil libertarian warnings. Certainly, the legislation that was finally passed did not result in an anti-communist reign of terror. There have been, for example, no reported cases of sedition or treason prosecutions since 1954, although in the years before that date there were twenty reported cases of the former, and five reported cases of the latter.[204] It is also true that some of the LDR concerns were over-reactions, a kind of left-wing "hysteria" to match that of the far right. On the other hand, some of their concerns were well-founded, especially those dealing with sedition and the RCMP (as the government subsequently recognized). Moreover, the legislation against rendering "assistance" to a peace-time enemy may well have put a chill on free speech, making it less likely that left-wing peace activists such as Nora Rodd would risk making inflammatory speeches. To paraphrase R.M. Dawson, regarding the rare instances in which the government used the law of treason as a reliable indication of the efficacy of its statutory controls is analogous to judging the efficacy of parental control by the number of times the child has been punished.[205]

G: CONCLUSION

The Canadian civil liberties community remained fragmented throughout the 1950s. During the Cold War there was no possibility of any long-term collaboration, let alone amalgamation, between the ACL and its allies on the one hand and the LDR network on the other. While these two solitudes might occasionally touch and lend each other support, as was the case in the Padlock Act litigation, such a connection was only a brief marriage of convenience and constituted the exception rather than the rule.

By the end of the decade, however, the LDR and its member organizations had completely disappeared. As noted previously, the Khrushchev revelations were disastrous for the MCLU, and his exposé of Stalinism seems to have had a similar effect upon other LDR organizations. Documents concerning the LDR and its affiliate groups such as the CRU and MCLU are non-existent after 1957, and the RCMP, always careful to keep an eye on organizations which it believed were subversive, no longer filed any reports.[206]

Despite the absence of competitors, the ACL did not manage to forge a national network. The organization remained sporadically active into the early 1960s, when Himel helped transform it into the Canadian Civil Liberties Union (CCLU), an organization which has remained in operation until the present.[207] For reasons that are not entirely clear, the ACL never managed to move from being a voluntary organization precariously founded on Irving Himel's ability and willingness to run it out of his law office. This limited its effectiveness, and made it hard to attract other organizations into its orbit.[208]

Of course, the ACL also found it hard to connect with civil liberties organizations that for the most part were either dead or dying.[209] It is difficult to say exactly why these non-communist groups disintegrated. This chapter has already touched on the demise of the OCLA and the MCLA. The other groups lasted only a little longer. The VCCLU, for example, sputtered along during the 1950s, sporadically taking a stand on issues such as the treatment of the Doukhobours,[210] and continuing its interest in the plight of native Indians,[211] but resisting any attempts to link the organization with the LDR.[212] According to one account, the group ended sometime in the early 1950s, allegedly because of a communist take-over.

It was certainly dead by 1963, when a new provincial group was formed, the British Columbia Civil Liberties Association (BCCLA).[213]

In the mid and late 1950s the other Vancouver civil liberties groups, the UBC-CCLU, often served as an adjunct of the Vancouver labour committee for human rights, helping with tests to see how well people were obeying anti-discrimination legislation.[214] It seems to have found few other causes to champion, however, and by about 1960 it too had disappeared from the scene.[215]

The CLAM had a similar history. In 1952 it joined forces with the Winnipeg labour committee for human rights and lobbied for a provincial FEP law. The two organizations cooperated on a number of egalitarian rights causes, but by the late 1950s the CLAM seems to have disappeared altogether.[216]

Why did these organizations disintegrate rather than come together in a truly national organization?[217] Cold War tensions can take some of the blame, but there were probably other reasons. Perhaps civil libertarians were divided by the regionalism which is an integral part of Canadian politics.[218] Many civil liberties issues seemed to fall under provincial jurisdiction, thereby suggesting purely local responses. On the other hand, a number of these problems were national. Changes to the Criminal Code, for example, fell under federal jurisdiction, while the Québec padlock law was widely seen as a national disgrace. There were strong incentives for local organizations to come together and unite.

More likely, the civil libertarian impulse simply waned in the late 1950s. Most of the groups had emerged in response to, or been rejuvenated by, human rights issues which marked the immediate post-war years: the Japanese Canadian deportation issue, the Gouzenko Affair, the renewed application of the padlock law, and the Criminal Code amendments. Then, in the late 1940s and early 1950s the Cold War provided a sense of crisis which helped to sustain some of the civil libertarian fervour. After 1956, however, the threat of communism subsided. Racism and prejudice remained significant threats to democratic equality, but these were the focus of egalitarian rights groups, and although the civil liberties organizations had begun to lend their aid to this cause even during the war, they seldom played more than a supporting role. With the exception of the bill of rights struggle, which

was more of a long-term goal than a response to a clear and present danger (and which is discussed in a later chapter of this dissertation) the groups found themselves without a *raison d'être*, devoid of windmills at which they might tilt. The old problems of the 1950s had begun to disappear, and it would take a different generation of civil libertarians to create their own responses to the new issues of the 1960s.

ENDNOTES FOR CHAPTER 5

[1]See Whitaker, Cold War Canada for a discussion of this period. As Whitaker has also pointed out, in "Official Repression" (at 196), the repression of radicals in Canada during this period can be described as "state repression," as opposed to the "political repression" of the United States. In other words, there was no political furore in Canada analogous to that associated with Senator Joe McCarthy in the United States.

[2]"Defending Liberty," Saturday Night, 6 April 1946.

[3]In this dissertation the acronym CRU refers to the organization based in Toronto. There appears to have been at least one other CRU in Canada, a like-minded group based in Fort William. (A copy of one of its letters, dated 7 February 1952, is in the Diefenbaker Papers, 1940-56 Series, vol. 9, document 006462.)

[4]A summary of ECCR/CRU activities in 1946 included 538 letters written to contributors, to individuals asking for information, and to civil liberties groups in Canada and abroad. The group also sent out 15,000 piece of literature (copies of four newspapers advertisements, and four CRU bulletins), and issued seven press releases and ten "protests" (RCMP Report [including excerpts of CRU summary], 4 April 1947, and Memorandum to Inspector Leopold [with excerpt from CRU report], 23 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 860-5 and 856).

[5]RCMP Report [including excerpts of CRU document], 16 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 860-5; "Minutes of Exploratory Conference Between the Montreal, Ottawa and Toronto Civil Liberties Associations and the Civil Rights Union," 28-9 December 1946, Eggleston Papers, vol. 14, file 16. See also the public meeting jointly hosted by the CLAT and CRU, reported in "Dick Ruling on Civil Rights Held Example for Ottawa," Toronto Star, 28 January 1947.

[6]"Minutes of Exploratory Conference." One issue which the CLAT addressed during this period, which reflected some of the emerging Cold War tensions, was the attempt of the Toronto Police Commission to prevent the communist black singer Paul Robeson from performing ("Allow Robeson Sing Here 'No Speeches' Is Condition," Toronto Star, 17 May 1947).

[7]The MCLA is discussed briefly in Chapter 3 of this dissertation. The McGill group (which may not have lasted very long) is mentioned in "Students Protest on Witnesses," Montréal Gazette, 13 December 1946.

[8]OCLA "Proposals," n.d. [1947?], Eggleston Papers, vol. 14, file 16.

[9]W.L. Morton, "A Study of the Citizenship Act" and W.J. Waines, "Definition of Civil Liberties" [transcripts of radio talks, January 1947], Park Papers, vol. 9, file 152; Owens to King, 25 January 1947, King Papers, vol. 426, Reel C-11040, document 387873; "To Members of the Parliament of Canada," 15 April 1947, Herridge Papers, vol. 22, file 10-1.

[10]"Voice of the People" [letter from Hunter Lewis for VCCLU], Vancouver News-Herald, 12 February 1947; Eric P. Nicol to Mackenzie King, 22 February 1947, King Papers, vol. 425, Reel C-11040, document 387688; H. Lewis to Mackenzie King, 25 March 1947, JCCA Papers, vol. 14, file 13; "Would Grant Vote to Japs," Vancouver Province, 26 March 1947; "Robbed of Civil Rights, Say Japanese Veterans," Globe, 16 March 1948; "Students Form Union Branch," Ubyssey, 11 February 1947; "Votes for BC Japanese Asked by UBC Civil Liberties Union," The New Canadian, 15 March 1947. The VCCLU was the last remaining member of the old 1930s loose confederation, the Canadian Civil Rights Union.

The author has not found much information about the UBC-CLU. However, one of its former members, Rolf Knight, is known in British Columbia as the co-author (with Maya Koizumi) of A Man Of Our Times: The Life History of a Japanese-Canadian Fisherman (Vancouver: New Star Books, 1976).

[11]"Minutes of Exploratory Conference," 28-9 December 1946, Park Papers, vol. 9, file 156.

[12]"Minutes of Exploratory Conference."

[13]There are no references to a Québec City Civil Liberties Association in the Québec provincial archival holdings; perhaps it did not exist. It has also proven impossible to find much information about the Québec Committee for the Defence of Trade Union Rights, and the Ontario Committee for the Defence of Trade Union Rights. (An RCMP report on the founding meeting of the Québec group is in "Calendar of Activities of the Civil Rights Union, January-February 1947," RCMP Report, 2 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 868.) The CRU attempted to have the two trade union groups included in the exploratory conference in late 1946, but the other civil liberties groups objected to the inclusion of organizations interested in only a narrow spectrum of civil liberties ("A Civil Rights Conference," Civil Rights vol. 1, no. 4, 20 December 1946, Park Papers, vol. 9, file 155; Erichsen-Brown to Arthur Lower, 20 December 1946 and 9 January 1947, Lower Papers, vol. 2, files A-27 and A-28). The CRU did, however, send a delegate to a Conference on Citizens' Rights, sponsored by the Québec Committee for the Defence of Trade Union Rights, on 1 February 1947 ("Calendar of Activities of the Civil Rights Union, January-February 1947," RCMP Report, 2 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 868).

[14]As noted in Chapter 3, Erichsen-Brown was so unpopular with the communists in Ottawa that they managed to remove him as president in February 1997. This confirmed his belief that "no civil liberty association can be organized in Canada to perform a really useful function and have any long term of life unless it has a selected membership with strong constitutional guards against communist infiltration" (Erichsen-Brown to Scott, 7 February 1947, Scott Papers, vol, 10, file 7).

[15]Spaulding to Ilsley, 5 February 1947, Park Papers, vol. 9, file 155. (A copy of the speech by Senator Roebuck to this rally, entitled "Freedom Is Your Affair," is in the Roebuck Papers, vol. 1, file 15.) Note also the attempts to get a Toronto by-law prohibiting discrimination, in part a reaction to the policies of the Icelandia skating rink (discussed briefly in Chapters 4 and 6 of this dissertation). The CRU claimed that it was one of the groups involved in this campaign ("Calendar of Activities of the Civil Rights Union, January-February 1947," RCMP Report, 2 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 868).

[16]Fyfe to Scott, 17 March 1947, and Scott to Grube, 21 March 1947, Scott Papers, vol. 10, file 8, Reel H-1222. The VCCLU had tried in 1942 to create a national civil liberties federation, and after the war had independently decided to pursue its long-standing goal of organizing a national federation of civil liberties groups. It was therefore happy to hear about the Eastern Canadian efforts (Hunter Lewis to Frank Scott, 16 April 1947, Scott Papers, vol. 10, file: "Civil Liberties, National Council 1946-1951," Reel H-1222).

[17]"Memorandum on Contentious Points in Draft Constitution," n.d. [May 1947?], and "Canadian Civil Liberties Council Constitution," Park Papers, vol. 9, file 156.

[18]Brewin to Scott, 24 March 1947, Scott Papers, vol. 10, file: "Civil Liberties, National Council 1946-1951," Reel H-1222. Note that even in the summer of 1947, Frank Park was still hoping that the Council might be created ("Re: Draft National Constitution," F.W.P. [Frank Park], 24 July 1947, Park Papers, vol. 9, file 156). The CFBR, which had Irving Himel as secretary and members of the CLAT at its core, is discussed in more detail in Chapter 7.

[19]A dispute over open versus closed membership also kept the CRU from reconnecting with the CLAT (RCMP Report [including excerpts of CRU document], 4 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 860-5).

[20]"Memorandum on Contentious Points in Draft Constitution." See also the "pragmatic" inclusionist position taken by Frank Park in "Re: Draft Constitution." Park had been in contact with former MCCLU stalwart Cameron Ballantyne about how to combat attempts to confine the civil liberties movement to "the better people" (Cam [Ballantyne] to Frank [Park], 1947, Park Papers, vol. 7, file 133).

[21]Scott to D.L. Goodwin, 13 November 1937, Scott Papers, vol. 10, file 13, Reel H-1222.

[22]"Call it Anti-Communism," Saturday Night, 28 June 1947; Donald C. Macdonald to F.R. Scott, 19 February 1947, Scott Papers, vol. 10, file 7, Reel H-1222, as well as Scott to Donald Macdonald, 21 February 1947, and Scott to Fyfe, 14 February 1947, file 8. Note also B.K. Sandwell's argument, writing of the CRU, that he had "no faith whatever in the honesty of any professed interest in civil rights by persons who believe in Marxism, the dictatorship of the proletariat, the one-party system of government, and the Leninist principle of the revolutionary vanguard" ("Communists and Rights," Saturday Night, 24 April 1948). See also "Civil Rights Union," Saturday Night, 26 June 1948, as well as the CRU advertisement, "Keep McCarthyism Out of Canada," Globe, 22 January 1954, and the response to this

advertisement in the Winnipeg Free Press on 23 January 1954, an editorial entitled "Hypocrisy."

[23]Note especially a letter from one influential JPRC member, Oscar Cohen, to Rabbi Feinberg, suggesting that the ECCR/CRU was probably communist and certainly unpopular, and that it should be persuaded not to lobby for FEP legislation, for fear of undermining the cause (7 December 1946, JPRC Papers, Correspondence 1947, Reel 1, file 24). See also the remark by Irving Himel that he got along well with many communist or radical left civil libertarians during the Cold War era, but that any involvement with them would have been "poison" in terms of public relations (interview, 6 June 1996).

[24]For a discussion of the CSU lock-out, including the federal government's anti-communist support of the shipping companies, see Kaplan, Everything That Floats, 48-50. Sandwell's editorial is "Barring Communists," Saturday Night, 10 July 1947, and similar sentiments are expressed in "Advocating Communism," in the same issue. Assuming that the unsigned short pieces at Saturday Night were written by Sandwell, note the following two anti-communist editorials: "On Communism" and "Growth of Disorder," 15 June 1946. Note also the signed editorials, "Section 98 Was Surely a Bad Law but We Might Draw a Better One," 16 August 1947, and "How much work would be done if there were no compulsion?" 13 September 1947, as well as "Expelling Communists," 28 March 1948. See also the 3 April 1948 editorial, "Canadians or Communists," in which Sandwell defended the decision of the Toronto Board of Education to forbid communists from holding meetings on school property; he argued that their rights should be curtailed according to the same principle used by the British government when considering the hiring of public servants: "membership of, and other forms of continuing association with, the Communist party may involve the acceptance by the individual of a loyalty which in certain circumstances can be inimical to the state."

[25]"Civil Rights," vol. 2, no. 1, 25 May 1948; "Hints Civil War May Come If U.S. Turns 'Police State'" [including speech by CSU President Harry Davis], Toronto Telegram, 30 June 1948; CRU "Information Bulletin" (Executive Secretary's Report to the CRU Membership), 27 October 1948, Park Papers, vol. 9, file 154; RCMP Report, 13 April 1949, CSIS Files, vol. 3440, file "Civil Rights Union," 651. For a discussion of the strike, and a tacit anti-communist business/governmental agreement to pursue extra-legal remedies, see Kaplan, Everything That Floats.

[26]Surprisingly, the organization is not even mentioned in Whitaker and Marcuse's Cold War Canada.

[27]RCMP Report [including excerpts of CRU document], 16 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 860-5." Financial documentation on a year-to-year basis does not seem to be available, but the CRU budgets in subsequent years were perhaps less than $10,000. For example, a CRU financial statement for the six months from May to September 1948 indicates that during this period the organization brought in about $3,444, but ran a deficit of over $700 (RCMP Report, 17 June 1948, CSIS files, vol. 3440, file "Civil Rights

Union," 795-6 at 798).

[28]The Cold War can be said to have begun with the Gouzenko Affair and Churchill's "Iron Curtain" speech in the spring of 1946, but it was not clear that the world was dividing into two hostile camps until early 1948, when the Soviets cut off road and rail traffic to Berlin and the government of Czechoslovakia was taken over by a communist coup d'état. According to Reg Whitaker, this was paralleled by a "Red Scare hysteria" in Canada, which included, among other things, 79 per cent of Canadians supporting Ottawa's policy to bar communists from entering the country (Double Standard, 161).

[29]This is a Free Country" [advertisement], Toronto Star and Windsor Daily Star, 12 April 1948; "Civil Rights," vol. 2, no. 1, 25 May 1948, Park Papers, vol. 9, file 155. For another list of concerns, see the CRU brief "To the Special Joint Committee of the Senate and the House of Commons of Canada on Human Rights and Fundamental Freedoms," n.d. [presented 4 June 1948], Macleod Papers, file 3; this is discussed briefly in Chapter 7.

[30]The CRU also supported the Jehovah's Witnesses in its "Information Bulletin" ("Fight for Freedom"), no. 4, September [1948?], Park Papers, vol. 9, file 154.

[31]This legislation, which was strongly attacked by trade unions, with the CLC asking for reservation and the TLC asking for disallowance, severely limited the rights of trade unions, especially those not limited entirely to the Island. For an analysis, see Eugene A. Forsey, "The Prince Edward Island Trade Union Act, 1948," Canadian Bar Review XXVI (October 1948): 1159-1181.

[32]As a result of a United Textile Workers' strike in Québec three trade union leaders were charged with seditious conspiracy. Their lawyers were Roger Ouimet, Jacques Perrault, and Bernard Mergler, all associated with the MCLA. The Parent trial began in November, and became a *cause célèbre* in Québec. It was in many ways a political trial, with the prosecutor taking advantage of the post-Gouzenko spy scare atmosphere. Parent was found guilty after a three month trial, but appealed. The process of appeals and retrials lasted until 1954 when Parent and Rowley were both acquitted (Rick Salutin, The Organizer: A Canadian Union Life [Toronto: James Lorimer, 1980], 60-64; CRU "Information Bulletin" ("Justice in Québec"), no. 2, n.d. [1948?], Park Papers, vol. 9, file 154; interview with Madeleine Parent in NFB video, "The Un-Canadians").

[33]"Bar Communists" and "Screen Political Line," Globe, 23 April 1948; Helen McMaster (Secretary, CRU) to Toronto Board of Education, March 1951, JCCA papers, vol. 14, file 18.

This was one issue where the anti-communist but liberal Globe was on the same side as the CRU; note the editorials, "Trustees of Democracy," 18 March 1948, and "Covered with Ridicule" 24 April 1948. According to an RCMP report of 27 April 1948, which says as much about the mind-set of its undercover agents as it does about the CRU: "[t]he meeting [to protest the school board policy] was well attended, approximately 1,000 people being present,

and was an enthusiastic one. The audience consisted chiefly of people of foreign origin, a large percentage of Jews, and there was quite a scattering of Japanese and Negroes. The Japanese were quite active at the meeting, distributing pamphlets and assisting in the collection..." (CSIS Files, vol. 3440, file "Civil Rights Union," 813).

[34]In late 1947 Liberal back-bencher Wilfred LaCroix (mentioned briefly in Chapter 3) introduced one of his many attempts to outlaw communists in Canada, a bill which would have provided for a prison sentence of up to twenty years (and a fine of up to $5,000) for any person who was a member of either the Communist Party or the LPP or "any association, society, or group or organization having similar aims or purposes," as well as any person who advocated or defended "the acts, principles or policies of such illegal organizations." The bill was clearly a civil libertarian's nightmare, but as a private member's bill it had virtually no chance of becoming law, and had been opposed in the House by both a CCF and a Liberal speaker. The CRU made it part of its new campaign against civil liberties violations, calling public meetings, distributing material on the LaCroix bill to 1,400 union locals, and making the law the focus of a large advertisement in the Globe. Finally, the CRU also gave the bill prominent coverage in its monthly broadsheet, and sent a telegram to the Minister of Justice, distributing copies of it to members of Parliament, and asking them to oppose the bill (Hansard, House of Commons, 10 December 1948, 124; Spaulding to Herridge, 6 April 1948, Herridge papers, vol. 22, file 11; "The LaCroix Bill" [advertisement], Globe, 24 May 1948; "Civil Rights," vol. 2, no 1, 25 May 1948). The Star refused to publish the advertisement, fearing that it was libellous (RCMP Report [including CRU campaign director's report] 17 June 1948, CSIS Files, vol. 3440, file "Civil Rights Union," 794-6).

[35]This is discussed in Chapter 7.

[36]"The national security state is a set of institutional arrangements, along with a set of attitudes appropriate to the working of those arrangements, that re-create in peacetime many of the conditions that made national mobilization possible in wartime. The prerequisite is an acceptance of a state of continuing emergency: the national security state is founded upon permanent national insecurity" (Whitaker, Double Standard, 6).

[37]CRU "Information Bulletin" ("Government Loyalty Questionnaires") n.d. [1948?], CRU "Information Bulletin" (Executive Secretary's Report to the CRU Membership), and "Re-Draft Copy of Half Page Ad for Ottawa Journal," 27 October 1948, Park Papers, vol. 9, file 154. Ottawa's post-Gouzenko "purge" of the civil service is discussed in some detail in Whitaker and Marcuse's Cold War Canada, 162-9. For an interesting analysis of the links between the Gouzenko Affair and the screening of public servants, see the radio broadcast of 18 February 1947, "Civil Rights and the Official Mind," given by C.B. Macpherson speaking as the vice-chair of the CRU (CSIS Files, vol. 3440, file "Civil Rights Union," 870-3).

[38]The CRU ran into censorship problems when it wanted to show a film about Robeson, and it later protested the fact that he was denied entry to Canada (clipping from Canadian

Tribune, 1 November 1948, and CRU press release, 2 February 1952, CSIS files, vol. 3440, file "Civil Rights Union," 743 and 252). The government's treatment of Robeson is touched on briefly in Whitaker, Double Standard, 169-70, and Whitaker and Marcuse's Cold War Canada, 371.

[39]When the government tried to deport Robinson, the CRU attempted (unsuccessfully) to appear on Robinson's behalf before the immigration board hearing, and also (again unsuccessfully) to persuade northern Ontario broadcasters that they should permit the union to purchase broadcast time in order to put its version of the story across (CRU "Information Bulletin" [Executive Secretary's Report to the CRU Membership], 27 October 1948, Park Papers, vol 9, file 154.) The attempted deportation of Robinson is discussed briefly in Whitaker and Marcuse's Cold War Canada, 193, and also in Abella, Nationalism, Communism, and Canadian Labour, 98-9. Although the CCL was beginning its communist purge at about this time, it could not afford to endorse the government's actions, and therefore it also opposed Robinson's deportation.

[40]CRU "Information Bulletin" (Executive Secretary's Report to the CRU Membership), 27 October 1948, Park Papers, vol. 9, file 154.

[41]CRU press release, 5 January 1950, Park Papers, vol. 9, file 154.

[42]Endicott had been a supporter of the CRU even before the founding of the Canadian Peace Congress ("Screen Political Line of Civil Rights Union Ere Use of School Again," Globe, 23 April 1948); CRU "Bulletin" ("You Have a Date at Eight"), n.d. [June 1948], Park Papers, vol. 9, file 154. For information about the CRU and the peace movement, see the cases of Krehm and Michnick, arrested for handing out peace pamphlets, as well as the CRU protest about the absence of police protection against right-wing "goons" disturbing a meeting of the National Assembly to Save Peace (Canadian Tribune, 31 July, 1950; LDR "Bulletin," vol. 1, no 1; McMaster [CRU] to Jennison [Canadian Peace Congress], 18 August 1950, Storrie [Canadian Peace Congress] to Porter [Ontario Attorney-General], 2 August 1950, and CRU Press Release, n.d. [August 1950?], Endicott Papers, vol. 63, file 1320; CRU "Information Bulletin" ("Individual Rights in Canada"), 19 October 1950, Park Papers, vol. 9, file 154; CRU "Information Bulletin," April 1951, and "The Right to Freedom of Information, n.d. [Spring 1951?], CSIS Files, vol. 3440, file "Civil Rights Union," 425 and 413-5).

[43]"Civil Rights Rally" [advertisement flyer], 15 December 1948, JCCA papers, vol. 13, file 22. From about 1946 to 1956, Patterson led the Civil Rights Congress, an organization which played an important role in the early days of the black civil rights movement. For more about Patterson, as well as a few references to his connection with the CRU and LDR, see Gerald Horne, Communist Front? The Civil Rights Congress, 1946-1956 (Cranbury N.J.: Associated University Presses, 1988).

The Provisional Committee for a World Conference was created in 1947 when delegates from a number of organizations in 15 countries, including Canada, came together in London to discuss international human rights issues. Its president was Elizabeth A. Allen of the

National Council for Civil Liberties in Great Britain, and the committee later staged a number of subsequent international conferences (CRU "Civil Rights," vol. 3, no. 2, July-August 1949, Park Papers, vol. 9, file 154).

[44]CRU "Information Bulletin" ("Freedom of Speech Defense Fund"), n.d. [1948?], and CRU "Information Bulletin" ("Freedom of Speech Defense Fund - For an Appeal in the Patterson Case"), no. 2, 17 December [1948], Park Papers, vol. 9, file 154; "A Denial of Civil Rights" [letter from Jefferson Hurley, Executive Secretary CRU], Ottawa Citizen 24 December 1948. The picture of Spaulding and Patterson does not seem to have been used by the mainstream press, but it appeared in the 1 January 1949 issue of The Ukrainian Canadian (copy in Endicott Papers, vol. 63, file 1316).

[45]Leopold had infiltrated the LPP in the 1920s under the pseudonym Jack Esselwein (Betcherman, The Little Band, 13).

[46]Borins, of the Borins and Croll law firm, is mentioned briefly in Chapter 4 as one of the lawyers taking the Noble and Wolf case.

[47]CRU "Information Bulletin," no. 2, 17 December [1948].

[48]Croll, the law firm partner of Borins, was the progressive Liberal politician well-known for his support of human rights causes such as the rights of Japanese Canadians (see Chapter 2), and served as a member of the JPRC (see Chapter 4). As Chapter 7 points out, he also helped in the struggle for a bill of rights.

[49]CRU "Information Bulletin," no. 2, 17 December [1948].

[50]CRU "Information Bulletin" ("Report on Proposed Congress of Human Rights"), n.d. (December 1948?), Park Papers, vol. 9, file 154. The CRU remained in touch with Patterson and the American Civil Rights Congress. When the Provisional Committee for a World Conference on Human Rights hosted its international convocation in Czechoslovakia in November of 1949, William Patterson planned to bring a message to the Prague conference on behalf of the CRU, and tentatively promised to visit Canada in order to make a full report on the activities of the Provisional Committee. However, research has not revealed whether or not he ever did this (CRU "Information Bulletin" ["The United Church and Civil Rights"], 11 November 1949, Park Papers, vol. 9, file 154).

[51]"The Border Ban," Saturday Night, 25 December 1948.

[52]"Freedom Fund Drive," n.d., Park Papers, vol. 9, file 154; RCMP Report, 17 June 1948, CSIS files, vol. 3440, file "Civil Rights Union," 795-6 at 798.

[53]Canadian Tribune: "Probe 'Spy' Report Civil Union Urges," 25 January 1947; "Violations of Civil Liberties on Increase, Bill of Rights Need is Urgent, Ottawa is Told," 19 June 1948; "Renowned Liberty Champion Dr. Ward Speaks on June 29 to Toronto CRU Fund Rally,"

26 June 1948; "Legion's Brasshats Sully Freedom's Name," 3 July 1948; Big Headlines: "Growing Demand for Peace, Bill of Rights," 14 November 1948; "Big Toronto Gathering Acts for Rosenbergs," 17 November 1952; "Rosenbergs Can Be Saved!" 24 November 1952. The following references are from a cursory scan of the RCMP reports in the CSIS files: 26 June 1948, 790 (Vestnik); 1 Nov 1948, 743 (Canadian Tribune); 3 March 1950, 620 (Pacific Tribune); 10 March 1950, 616 (Liaudies Balsas); 15 March 1950, 615 (Ukrainian Canadian); 8 February 1951, 503 (Wochenblatt); 24 July 1951, 388 (Canadian Hungarian Worker).

[54]There is no mention of Jackson's involvement in the CRU in Smith's biography, Cold Warrior. However, CRU documents indicate that he was more than a letter-head member of the executive. For example, Jackson represented the CRU at the Exploratory Conference in December 1946, and he was one of the key-note speakers at a public meeting in Toronto on 22 April 1948. Note also that George Harris, secretary-treasurer of the UE, was a major participant at a CRU rally ("Minutes of Exploratory Conference," 28 and 29 December 1946, Park Papers, vol. 9, file 156; CRU "Bulletin" [Report of the Campaign Director], n.d. [June 1949?], and CRU "Bulletin" ["Freedom of Speech Defence Fund"], n.d. [December 1948?], Park Papers, vol. 9, file 154).

[55]"Calendar of Activities of the Civil Rights Union, January-February 1947," RCMP Report, 2 April 1947, CSIS Files, vol. 3440, file "Civil Rights Union," 868.

[56]"Civil Rights," vol. 2, no. 1 (25 May 1948), Park Papers, vol. 9, file 155; CRU "Information Bulletin" ("Executive Secretary's Report to CRU Membership Meeting, Oct. 27th, 1948"), Park Papers, vol. 9, file 154. Ward was professor Emeritus of Union Theological College in New York. He had been, in 1917, on the executive of the National Civil Liberties Bureau, the predecessor of the ACLU, and he had supported that organization until 1940 when the ACLU split apart on the issue of civil liberties for communists. He maintained, after the war, that the USA, not the USSR, was the real enemy of peace (Endicott, Rebel Out of China, 261-4; Moffatt, A History of the Canadian Peace Movement, 18; Walker, In Defense of American Liberties, 21, 130-2; "Hints Civil War May Come If U.S. Turns 'Police State,'" Toronto Telegram, 30 June 1948).

[57]CRU "Civil Rights," vol. 3, no. 1, June 1949, and "Freedom Festival" [advertisement, n.d., 1949], Park Papers, vol. 9, files 155 and 154; RCMP report, 5 February 1949, CSIS Files, vol. 3440, file "Civil Rights Union," 668.

[58]CRU "Information Bulletin," n.d. [April 1950?], Endicott Papers, vol. 63, file 1316.

[59]See Chapter 3.

[60]"Freedom Is Your Affair," n.d. [1947], Park Papers, vol. 9, file 154. In later years, through its umbrella organization the LDR, the CRU began to stress indigenous Canadian democratic heritage, although it also sometimes reverted to references about British traditions. For example, according to an RCMP report (5 November 1951), at the LDR annual meeting,

"The stage of the church was decorated with large sized pictures of A.W. Smith, Louis Joseph Papineau and William Lyon Mackenzie." See also the document "Our Heritage of Liberty," by LDR leader Roscoe Rodd, which has pictures of the two nineteenth-century rebels on the cover (Park Papers, vol. 8, file 143). Interestingly, this was consistent with LPP hagiography. At the founding meeting of the LPP the wall was decorated not only with the Union Jack but with pictures of Mackenzie and Papineau, and its constitution also mentioned them (Colin D. Grimson, "The Communist Party of Canada, 1922-1946," [M.A. thesis, McGill University, 1966], 183).

[61]The CFBR is discussed in more detail in Chapter 7.

[62]Material on all of these groups is difficult to find. Further research on any one of the organizations may well reveal activity that escaped the attention of this researcher.

[63]"A Brief submitted June 28, 1947 by the Vancouver Branch Canadian Civil Liberties Union to the Special Joint Committee of the Senate and the House of Commons appointed to continue and complete the examination and consideration of the Indian Act" (UBC law library); Lewis to "Dear Sir" [members of parliament], 13 June 1950, Herridge Papers, vol. 22, file 10-1; "Group Moves to Delay 'Indian Bill' in House," Vancouver News-Herald, 15 June 1950; Kelly to Lewis and Lewis to Kelly, 19 January, 10, 14 November 1950, 6 February 1951, Hunter Lewis Papers, vol. 1, file 7; Hunter Lewis to David Lewis, 15 December 1950, CCF Papers, vol. 147, file: "Civil Liberties Union"; "Will You Help the Indians Help Themselves?" 8 March 1951, UBC Special Collections, spam 13152.

[64]Hunter Lewis to Ilsley, 20 August 1948, and "Submission of Committee for a Bill of Rights in Support of Statement for a Bill of Rights to the Special Joint Committee", n.d. [1947], Papers of the Special Joint Committee of the Senate and the House of Commons of Canada on Human Rights and Fundamental Freedoms, vol. 50; Nicol to King, 22 February 1947, Herridge Papers, vol. 10, file 10-1; Lewis to King [including supplementary letter], 25 March 1947, CCJC papers, vol. II, file 1 (microfilm: vol. 14, file 13).

[65]"City Liberties Union Raps Lake Ship Firms" and "Schizophrenia at Park Board," Vancouver News-Herald, 7 August 1948 and 11 May 1949; "Civil Liberties Union Attacks Firing of Goss," Vancouver Sun, 11 May 1949.

[66]Gordon Martin was refused admission to the British Columbia Bar Association in a case which stretched out from 1948 to 1950. It is not exactly clear as to why the VCCLU dropped the case. The best discussion of this, with references to both the VCCLU and the UBC-CCLU, is in Jamie Disbrow, "Exclusion by Due Process -- Martin v. Law Society of British Columbia: A Cold War Eclipse of Civil Liberties," (M.A. thesis, University of Ottawa, 1996), especially 110, 113, 190, 194-5, 205, and 210; Disbrow also mentions the Goss case in passing at 138.

[67]"Votes for BC Japanese Asked by UBC Civil Liberties Union," New Canadian, 15 March 1947; UBC-CCLU "Resolution" [opposed to barring travel and fishing rights for Japanese], 3 March 1948, JCCA Papers, vol. 14, file 16.

[68]J.A. MacDonald [UBC-CCLU secretary] to Ilsley, 16 January 1948, Special Joint Committee Papers, vol. 51.

[69]Marshall's case is discussed briefly in Len Scher's NFB video, "The Un-Canadians."

[70]Freda Messerschmidt [UBC-CCLU] to Arnold Webster, 23 March 1954, MacInnis Memorial Collection, vol. 28, file 3. The case is briefly discussed in "Not-so-Secret Files," Saturday Night, 27 March 1954, and Marshall is one of the subjects of "The Un-Canadians."

[71]Owens to King, 25 January 1947, vol. 426, Reel C-11040, document 38773; "Tedlie Arrest Hit by Group," and "Civil Liberties Union Warns of Hutterite Discrimination," Winnipeg Tribune, 11 May, 24 July 1948. For more about the CLAM and the struggle for a bill of rights, see Chapter 7.

[72]During this period the rights of civil servants were being eroded further by security concerns. See, for example, Whitaker and Marcuse, Cold War Canada, Chapter 7. One famous contemporary case involving free speech for public servants, which predated the creation of the OCLA, was the Brock Chisholm controversy. Chisholm, Deputy Minister of National Health, had spoken out several times against traditional ways of indoctrinating children in matters of faith and morals. As a result, the St. Jean Baptiste Association called for his removal ("The Man With A Notebook" [Blair Fraser], "Backstage At Ottawa: Can a Civil Servant Say What He Thinks?" Maclean's, 1 January 1946; Isabel Fraser [CLAT] to Mackenzie King [telegram], 2 January 1946, King Papers 1946, Reel C-9166, no. 364315; "Chisholm Resigns Health Post," Ottawa Journal, 24 July 1946).

[73]Erichsen-Brown to Scott, 7 February 1947, Scott Papers, vol. 10, file 7, Reel H-1222. As noted in Chapter 2, Norman Dowd was Executive Secretary of the CCL, and may have been also involved in the CCJC.

[74]Heaps to Baldwin, 21 June 1946, ACLU papers, vol. 2732; Rachlis [OCLA] to Baldwin, 2 March 1948, ACLU papers, vol. B, file 2; Rachlis to Scott, 2 March 1948, Scott Papers, vol. 10, file 7, Reel H-1222; "The Rights of Civil Servants," Ottawa Citizen, 23 June 1948; "The Civil Rights of Public Servants: A Tentative Study," n.d. [1948?], Park Papers, vol. 9, file 151; "Dear Friend," from Winnifred Harvey and others, 6 April 1950, Eggleston papers, vol. 14, file 17.

[75]Letter and financial statement from Angus DeM. Cameron to the MCLA membership, 27 March 1948, Park Papers, vol. 7, file 133; see also Himel to Scott, 3 February 1950, referring to certain unstated difficulties in the operation of the MCLA (Scott Papers, vol. 9, file 10, Reel H-1221).

[76]Scott to Himel, 13 November 1950, Scott Papers, vol. 9, file 10, Reel H-1221.

[77]MCLU "Civil Rights Bulletin," no. 1, 1 May 1948, Scott Papers, vol. 10, file 7, Reel H-1222; Scott to Himel, 1 February 1950, and 13 November 1950, Scott Papers, vol. 9, file 10, Reel H-1221. A former member of the LPP in Québec remembers the MCLU as a "communist front" (Gérard Fortin and Boyce Richardson, Life of the Party [Montréal: Véhicule Press, 1984], 176). In addition to fighting the padlock law, the MCLU fought a number of civil libertarian violations, such as a Montréal ban on leaflet distribution, harassment of boys selling a communist youth paper, a policy not to rent city property for rallies in support of strikers, the removal of a communist politician (Harry Binder) from Montréal city council, police brutality against picketers in the Québec town of Louiseville, and the sedition charges laid in connection with the Lachute strike. It also supported the LDR in its national struggles, such as the fight against the amendment of the Criminal Code, the fight for a national bill of rights, and support for the peace movement (RCMP Reports, CSIS Files, vol. 3394, file "Civil Liberties Union [LDR]: 19 March 1951 [containing Canadian Tribune clipping], 624; 29 March 1952 [containing copy of CRU "Information Bulletin," August 1951]; n.d. [1952?] [containing "See Here Mr. Houde," MCLU broadsheet]; 14 November 1952, 391; 29 December 1952 [containing Canadian Tribune clipping, n.d.], 326; 15 February 1955 [containing an issue of the Ukrainian Canadian], 66; "Civil Liberties Bulletin," no. 3, n.d. [1950?], and 20 November 1950, Scott Papers, vol. 9, file 10 and vol. 10, file 3).

[78]Himel to ACLU, 9 December 1948, and Himel to Fuller, 22 December 1948, ACLU Papers, vol. B, file 2; CLA Council and CFRB to Louis St. Laurent, 28 March 1949, ACLU Papers, vol. C, file 14; "Dear Friend" [letter announcing the founding meeting of the ACL, 2 March 1949], OLCHR Papers, vol. 9, file 1. See also the brief description by Sandwell, in which he blames communists for having wanted to take over the association and thereby precipitated a split: "'Reds Used My Name For Propaganda,' Quits Civil Liberties Association," Toronto Star, 19 September 1950 (the article is about the incorrect allegation of R.M.W. Chitty that the CLAT was communist).

[79]As noted in Chapter 4, Seeley was an Anglican minister who was active in the SCM and served as Provost of Trinity College in Toronto. He was followed in 1954 by an interim president (Dr. E.A. Elliot) who was soon replaced by long-term stalwart E.A. Corbett, the retired head of the CAAE (discussed briefly in Chapter 1), who remained the president until at least the 1960s.

[80]This list comes from two letters: Himel to Tanaka, 9 May 1949, and Himel to Dana Porter (Attorney General of Ontario), 17 May 1949, JCCA Papers. vol. 15, file 23.

[81]Joseph Sedgwick is described by Reg Whitaker as "an eminent lawyer of impeccable Tory credentials" (Double Standard, 219). He served as solicitor for the Ontario Attorney General from 1929-37, and in the 1950s he was on the Royal Commission that revised the Criminal Code. He also acted as legal counsel for Eric Adams in the Gouzenko spy trials; see Chapter

3 of Jack Batten, In Court (Toronto: Macmillan 1982).

[82]For a brief discussion of LSR activist Harry Cassidy, see Chapter 1.

[83]See Chapter 1 for a brief discussion of Maude Grant, one of the CLAT council members during the war.

[84]Jenkins acted as the ACL treasurer throughout the 1950s. In the late 1960s he was on the steering committee of the Manitoba Human Rights Association, representing the United Nations Association.

[85]"Statement of Purpose" [address to Civil Rights Congress by Margaret Spaulding], 21 April 1950, Park Papers, vol. 9, file 154.

[86]This is no doubt why the JCCA decided to become an affiliate member of the ACL in 1950 (Tanaka to Himel, 24 February 1950, JCCA Papers, vol. 13, file 18).

[87]Tatham to Lower, 15 November 1949, Lower Papers, vol. 46, file C-22. Other ACL letters can be found in the Hunter Papers, which were used by Michiel Horn in "Academic Freedom and the Dismissal of George Hunter," Dalhousie Review 69 (Fall 1989): 415-438. As Horn points out (at 435), the ACL finally decided that the matter be dropped, for although this was an academic freedom case, it was not clear how much of this involved Hunter's right to political free speech.

[88]CLA to St. Laurent, 28 March 1949, ACLU papers, vol. C, file 14 (asking the Prime Minister to support an American proposal to draft a treaty that would strengthen the UDHR).

[89]Seeley and Himel to W.A. Robinson (Chairman, Select Committee on Radio Broadcasting), 10 December 1951, Lower Papers, vol. 46, file 22. This letter protests "a proposal to restrict beyond the present regulations broadcasts of a scientific, psychiatric and philosophical nature over CBC." The letter includes a list of almost 50 groups which formed an ad hoc coalition in opposition to this proposal. See also R.S.K. Seeley, to "Dear Friend" (CCF Papers, vol. 147, file: Civil Liberties Union), and the article "The Right to Be Wrong," by Malcolm W. Wallace, in Food for Thought 12, no. 4 (January 1952): 3-4.

[90]Seeley to Lower, 19 September 1952, Lower Papers, vol. 46, file C-22; un-named document (n.d.) in Seeley Papers. The "Red Dean," the Rev. Hewlett Johnson, preached peace and co-existence with the USSR in two controversial trips to Canada (1948 and 1950); see Whitaker, Double Standard, 170-1; Whitaker and Marcuse, Cold War Canada, 366-7; Endicott, Rebel Out of China, 267-9. According to papers in the Seeley Papers, the president of the CLA was instrumental in finding a place for Johnson to speak in Toronto when other venues were closed to him because of his controversial opinions.

[91]The so-called "Toronto Symphony Six" were musicians fired from their jobs in 1951 because the American government would not let them enter the United States on security grounds arising from their alleged left-wing tendencies. This is discussed briefly in Whitaker, Double Standard, 153-4, Whitaker and Marcuse, Cold War Canada, 291-2, and Len Scher, The Un-Canadians: True Stories of the Blacklist Era (Toronto: Lester Publishing Limited, 1992), Chapter 1.

[92]"Select and Standing Committees of the Senate and House of Commons," vol. 1, 1953: "Minutes of Proceedings and Evidence of the Special [House of Commons] Committee on Bill No. 93 (Letter O of the Senate), report no 4, (10 and 11 March 1953), 137-150, Appendix "A" (160); Himel to Milling, 12 March 1953, OLC Papers, vol. 9, file 9-4. This legislation is discussed in more detail later in this chapter.

[93]"Statement of the Association for Civil Liberties to the Chairman and Members of the Provincial Legislative Select Committee on Reform Institutions," n.d. [1953?], OLC Papers, vol. 9, file 9-4. This recommends the humane treatment of people in custody, including improved legal aid, the payment of fines in instalments, and the elimination of corporal punishment.

[94]ACL to Duplessis, 2 February 1950, Scott Papers, vol. 9, file 10, Reel H-1221; Ben Kayfetz to Abraham Feinberg (CJC), 1 February 1950, JPRC Papers, vol. 3, file 18. (This letter notes that the ACL has prepared a statement on a recent padlock law incident in Montréal, but wants to issue it jointly with similar groups in Montréal, and is in touch with Frank Scott.)

[95]"Memorandum" (appended to letter from Himel to Coldwell), 4 November 1949, CLC Papers, vol. 335, file: "Civil Liberties - General, 1949-1963"; "A Brief on Human Rights and Fundamental Freedoms to a Special Committee of the Senate of Canada," n.d. [1950], CCL Papers, vol. 335, file: "Civil Rights - Association for Civil Liberties."

[96]Himel to Fuller, 22 December 1948, ACLU Papers, vol. B, file 2; interview with Irving Himel, 26 July 1994; interview with Harry Arthurs, 21 July 1994.

[97]See the discussion of Himel in Chapter 2. Remarks about Himel's group as a "letterhead association," and difficulties in working with him can be found in a letter from Donna Hill to Kaplansky, 26 March 1954, JLC papers, vol. 41, file 41-15; see also Eamon Park to Himel, 24 March 1954, vol. 41, file 41-15.

[98]The first chair of the CGR was Leslie Wismer from 1947-1948. He was followed by several others in the 1940s and 1950s: Vivien Mahood (1948-50); Gordon Milling (1950-1953); Donna Hill (1953-1954); Sid Blum (1954-1957); Alex Maxwell (1957-1959); Alan Borovoy (1959-1967). All of these people, employed by the Toronto labour committee, worked closely with the non-communist Toronto civil liberties groups.

[99]Scott to Baldwin and Scott to Himel, 23 November 1949; Scott to E.E. Wells (Sarco Canada) 29 November 1949; Baldwin (ACLU) to Morris L. Ernst, 8 December 1949; Himel

to Scott, 23 January 1950, Scott Papers, vol. 9, file 10, Reel H-1221.

There are no readily-available records pertaining to the finances of the ACL. Irving Himel recalls receiving several donations through Mr. Wells, but is unable to remember the exact amounts or the dates. He does remember, however, that the ACL still had a small "nest-egg" when it was transformed, in the early 1960s, into the CCLA (interview, June 6, 1996).

[100]Himel to Tanaka, 12 January 1950, JCCA papers, vol. 13, file 18; Himel to Scott, 19 October 1950, Scott Papers, vol. 9, file 10, Reel H-1221.

[101]According to Margaret Spaulding, the Timmins Labour Defense Committee was formed in December 1949 "when the police grossly neglected their duty and did nothing to prevent a violent attack on a group of peaceful citizens ... a hoodlum attack against the Ukrainian Labour Temple." The group was formed to defend against these right-wingers ("Statement of Purpose," 21 April 1950).

[102]"What is the League for Democratic Rights?" n.d. [September 1951?], Park Papers, vol. 9, file 161. The Senate committee and the LDR brief are discussed in more detail in Chapter 7. There are few references to the LDR in the published literature. Norman Penner mentions it (at 173) in Canadian Communism: The Stalin Years and Beyond (Toronto: Methuen 1988), and in Cold War Canada Reg Whitaker and Gary Marcuse briefly discuss (at 204) the LDR's campaign against changes in the Criminal Code in the 1950s.

[103]Miscellaneous LDR correspondence; "LDR National Executive to All LDR Branches and affiliated or associated organizations," 16 September 1952, RCMP Report, 8 October 1952, CSIS files, vol. 3394, file "Civil Liberties Union (LDR)," 191-2; Financial Report for 1952 and 1953, and "Dear Friends: Regarding Bill 93," 23 March 1953, RCMP Report, 28 March 1953, CSIS files, vol. 3394, file "Civil Liberties Union (LDR)," 125 and 303-5; "Literature Report, 15 April 1953, CSIS files, vol. 3394, file "Civil Liberties Union (LDR)," 298.

[104]LDR Constitution, n.d. [1950?], Park Papers, vol. 9, file 161.

[105]The department of Citizenship and Immigration identified the LDR as one of eight LPP "front organizations" (Whitaker, Double Standard, 177). See also "LDR statement replies to Garson charges," Canadian Tribune, 15 December 1952, and a speech by Conservative leader George Drew (Hansard, House of Commons, 2 May 1950, 2085-6).

[106]David Kashtan has recalled that the LPP supported the LDR, but denies that the party dictated policy. (Kashtan, an activist in the LPP and the LDR, gave extremely comprehensive interviews on 20 June 1995 and 6 June 1996.) For further evidence of close ties between the LPP and the LDR, see the report on the LDR from RCMP Commissioner Nicholson to Minister of Justice Garson: "On February 6th, 1951, the National Executive Committee of the LPP sent a directive to all Party leaders, organizations and leading committees exhorting them to take immediate action to support in every possible way the formation of the League for Democratic Rights branches in their areas" (CSIS Files, vol. 3440, file "Civil Rights

Union," 386). See also the letter from LPP leader Stewart Smith to "Dear Comrade," urging all members and clubs to support the LDR and go to public meetings and conferences (RCMP Report, 10 October 1951, CSIS Files, vol. 3440, file "Civil Rights Union," 330).

[107]Thomas C. Roberts, "The Story of the Padlock Law," [n.d.], Endicott Papers, vol. 63, file 1329; Senate Special Committee on Human Rights and Fundamental Freedoms, Minutes of Proceedings and Evidence (1950), at 238.

[108]Roberts, "The Story of the Padlock Law"; Cushing to Brogden, 28 October 1952, CLC Papers, vol. 18, file 11.

[109]"What Is the League for Democratic Rights?"; Roberts to the Special Committee on Immigration, 18 June 1952, CCL Papers, vol. 18, file 11. For examples of Rodd's rhetoric, see "Freedom! The People's Prerogative," speech given to LDR National Conference, 26-8 October 1951, Macleod Papers, file 5, and "Our Heritage of Liberty," LDR pamphlet, n.d. [1954?] Park Papers, vol. 8, file 143. There is a short account of Rodd's forced resignation as county solicitor in a news-clipping (without attribution or date) in the Endicott Papers, file 1320; see also Hutchinson, "The Fellowship for a Christian Social Order," 230, 281.

[110]This information comes from transcripts of eulogies delivered by David Kashtan and Ronald Biderman shortly after James Garfinkle's death. They were kindly provided by the daughter of James Garfinkle, Dr. Miriam Garfinkle.

[111]David Kashtan was the younger brother of William Kashtan, a long-time party activist who in 1964 became Secretary-General of the Communist Party. According to Ivan Avakumovic, at 146 of The Communist Party in Canada, David Kashtan was at one time secretary of the CPC. This, however, is an error; Avakumovic here confused David with his brother William.

[112]Scott's article on "The Montreal Sedition Cases" is in The Canadian Bar Review IX (December 1931): 756-761; Scott spells his name "Dave Kaston." The trial is also mentioned briefly in A.E. Smith's autobiography, All My Life, 130-1, and in Lévesque, Virage à Gauche Interdit, 135.

[113]Kashtan's name is listed as a member of the executive in the CRU "Information Bulletin," for September-October 1951 (Park Papers, vol. 9, file 161), and he remembers being extremely active in initiating and organizing its campaign to save the Rosenbergs from execution in the United States, as well as taking part in the LDR campaign to oppose the "Garson amendments" to the Criminal Code (interview with David Kashtan, 20 June 1995). The David Kashtan Papers deal primarily with the Canadian campaign to save the Rosenbergs and corroborate Kashtan's assertion that many of the activists were affiliated with the LDR. See also "Québec Red Bares Plot To Save Atom Spies -- Walsh Quits Party Over Rosenbergs," Winnipeg Free Press, 27 February 1953.

[114]Buhay and A.E. Smith headed the NCDR, the organization which superseded the CLDL in 1940. There is a short biography of Buhay in William Rodney, Soldiers of the International:

A History of the Communist Party of Canada 1919-1929 (Toronto: University of Toronto Press, 1968). See also references in Sangster, Dreams of Equality and Betcherman, The Little Band.

[115]"Report on National Conference Oct. 26-28, 1951," RCMP Report, 5 November 1951, CSIS files, vol. 4035, part 19, 550-1; Buhay "To All LDR Branches," 13 March 1952, RCMP Report, 27 February 1952, CSIS files, vol. 4035, part 19, 489.

[116]It may have been true, as Sandwell alleged, that LDR members were not willing to support the free speech rights of fascists, and in this way were somewhat limited in their principles ("The Border Ban," Saturday Night, 25 December 1948). On the other hand, since Sandwell himself was unwilling to extend full civil liberties protections to the communists, it is hard to claim that the communists were, when it came to "hard cases," any less principled than the more right-wing civil libertarians.

[117]"Resolutions Submitted to National Conference, 26-27 October 1951," Park Papers, vol. 9, file 161; CRU "Information Bulletin," December 1951, Macleod Papers, file 13; Roberts to "The Special Committee on Immigration," 18 June 1952, Diefenbaker Papers, 1940-1956 series, vol. 10, file "Civil Liberties - League for Democratic Rights, 1952-1954." Note, however, that the LDR brief mentioned several labour and "left-wing" issues not addressed by the ACL: suspected communists trying to enter Canada, the treatment of Paul Robeson, the execution of the Rosenbergs, and police harassment of peace activists.

[118]"An Act to protect the Province against communistic propaganda," SQ 1937, c. 11. The law also made it unlawful, with a punishment of imprisonment of from three to twelve months, "to print, to publish ... or to distribute in the province any newspaper, periodical, pamphlet, circular, document or writing whatsoever propagating or tending to propagate Communism or Bolshevism." Under this last section, any police officer could confiscate material, and the Attorney General could order it destroyed.

[119]Chapter 1 discussed briefly some of the criticism that came from other provinces. Within Québec, "Duplessis' vigorous anti-Communist crusade, his rigid enforcement of the Padlock Act, and his strategy of associating the Liberals with the Communists, played an important role in his electoral victories from 1944 onward" (Quinn, The Union Nationale, 129).

[120]Eugene Forsey, "Civil Liberties in Quebec," Canadian Forum, 17 (May 1937). Other articles by Forsey on the padlock law in Canadian Forum are: "The Padlock Act Again," 17 (February 1938); "Under the Padlock," 18 (May 1938); "The Padlock -- New Style," 19 (March 1939); See also Forsey's memoirs, A Life on the Fringe, 189-191. Note also the letter David Lewis (CCF National Secretary) sent out to groups, urging them to get involved in the campaign against the law (16 April 1938, CCF Papers, vol. 146, file "Civil Liberties Union"), and the 1955 MCLU pamphlet by Paul Normandin, "The Padlock Law Threatens You!" (CLC Papers, vol. 335, file "The Padlock Law, 1955").

[121]"Who Is Subversive?" Saturday Night, 14 August 1948. When Switzman's premises were locked up, and some copies of the Canadian Tribune confiscated, Sandwell again argued that this was an improper violation of property rights. He also pointed out that the law set a dangerous precedent; if it was permitted to do this to communists, it might happen to any other unpopular group. See the following Saturday Night editorials: "The Montreal Seizures," 15 February 1949; "Property Rights in Québec," 21 February 1950; "Judges, Officials, Padlocks," 18 July 1950. For an assessment which emphasized the "due process" argument, again without discussing the free speech/association aspects of the law, see the article by Wilfrid Eggleston, the former president of the OCLA, "Padlock Law Not Vindicated," Saturday Night, 13 February 1951. For another right wing civil libertarian criticism of the law, which also emphasized property rights, see the speech by Victor Sifton, 1 April 1954, reprinted as "Rights and Citizenship: The Threat to Our Freedom," Winnipeg Free Press Pamphlet no. 49.

[122]The communist press attacked the legislation the day after it was passed, claiming that it endangered the entire labour movement; see the Daily Clarion, 18 March 1937. Later, the editor of the communist-dominated CSU recalled that the law inhibited people from having contact with the union; this made it difficult to find meeting places and he had to mimeograph the newsletter rather than have it professionally printed (Jim Green, Against the Tide: The Story of the Canadian Seamen's Union [Toronto: Progress Books, 1986], 30). For personal accounts of life under the padlock law, see Fortin and Richardson, Life of the Party, 116, 143, 176, 188; Weisbord, The Strangest Dream, 53-4,74, 79-80, 95, 107-8, 130, 208, Salutin, The Organizer, 21.

[123]Canadian Tribune: "See Duplessis 'Padlock Act' Aimed at Terrorizing Unions," 21 February 1948; "Now -- Repeal the Padlock Law," 21 February 1955; "Padlock Act Victory 'Big Day for Canada'," 18 March 1957. See also: Edmond Major [MCLU], "Brief on the Need for a Bill of Rights Submitted to the Hon Stuart Garson, Minister of Justice and the Continuing Committee of the Dominion-Provincial Conference," n.d., Park Papers, vol. 8, file 143; Paul Normandin, "The Padlock Law Threatens You!"

[124]Senator Eugene Forsey, speech to Canadian Rights and Liberties Federation Annual General Meeting, April 1982.

[125]"See: "Duplessis 'Padlock Act' Aimed at Terrorizing Unions," Canadian Tribune, 21 February 1948; Abella, Nationalism, Communism, and Canadian Labour, 29. The records belonged to the Steelworkers' Organizing Committee (SWOC), one of the pioneers in industrial unionism. The quote by Barrette is from the MCLU pamphlet by Normandin, "The Padlock Law Threatens You."

[126]It was widely believed that Ottawa had consistently bowed to political pressure in its "kid gloves" treatment of the Québec padlock law. See, for example the Globe editorial, "After Twenty Years," 11 March 1957.

[127]This was provided for explicitly in sections 6-8 of the padlock law.

[128]The legal barriers impeding the MCCLU from launching a challenge to the statute were discussed in a letter from Scott to G. Miller, 18 November 1937, Scott Papers, vol. 10, file 13, Reel H-1222.

[129]In an earlier case, a Québec City man, François-Xavier Lessard, had "broken into" his own house after it had been padlocked and he was charged with "conspiring to interfere with a police officer." His case was pleaded by R.L. Calder, the MCCLU lawyer who had been arguing for some time that this was the best way to challenge the law. The challenge was unsuccessful, as was the appeal. (MCCLU "Bulletin" no. 6 [October 1938], no. 7 [January 1939], and no. 9 [June 1939]), CCF Papers, vol. 146, file "Civil Liberties Union"; Scott to G. Miller, 18 November 1937, Scott Papers, vol. 10, file 13, Reel H-1222.

[130]Fineberg v. Taub, 77 S.C. (Que.) 233. Information about the role of the MCCLU in this case can be found in a variety of documents in the Scott Papers, vol. 10, file 13, Reel H-1222. Other information about the case, and the later Switzman case can be found in Scher's book, The Un-Canadians, which contains an interview with Muni Taub (at 145) as well as with his lawyer, Albert Marcus (151). The author of this dissertation was granted a short interview with Taub's other lawyer, Abe Feiner, on 5 June 1995.

[131]Part of Greenshields' argument involved the curious point that the law did not prevent people from speaking their minds but only inhibited their ability to disseminate ideas in printed form. He added that "So far as the record shows, the question of the freedom of the press does not present itself for consideration in the present case." He was also reluctant to distinguish the case from an earlier decision, in which he himself had upheld as constitutional the power of the province to lock up houses being used for the purposes of prostitution -- Bédard v. Dawson [1922], 33 KB (Que.) 246. The case was later appealed to the Supreme Court of Canada, which upheld the constitutionality of the legislation ([1923] SCR 681), so that the decision stood as a possible barrier to any future constitutional challenge to the padlock law.

[132]Scott to St. Laurent, 15 June, 26 September 1939, Scott Papers, vol. 10, file 9, Reel H-1222.

[133]See "Bulletin" of the MCCLU, April and June 1939, Park Papers, vol. 7, file 133.

[134]For most of the war the Premier of Québec was the Liberal, Adélard Godbout. However, Duplessis became Premier again in August 1944.

[135]"Padlock Law is Fully Applied to Close Local Communist Paper," Montréal Gazette, 17 February 1948. These were the sedition trials of Parent, Rowley, and Beaucage, mentioned earlier in this chapter.

[136]Montréal Gazette: "Duplessis Policy is to Smash Reds," 19 January 1949; "McGill Disclaims Link By Switzman," 29 January; "McGill union suspends LPPers - Switzman hits at Padlock Law," 3 February; "The Padlock Law threatens You."

[137]There were other padlockings, some of which were also notorious, especially the padlocking of UJPO headquarters on 27 January 1950. See: "Centre Padlocked by Police, Literature Seized, Home Raided," Montréal Gazette, 28 January 1950; MCCLU Civil Liberties Bulletin" no. 3, n.d. [1950]; "Property Rights in Québec," Saturday Night, 21 February 1950 (also pointing out that the Montréal Star was afraid to print an UJPO advertisement.

As a result of the UJPO padlocking, a number of Christian clergymen (including de Mestral of the MCLA) sent a letter of protest to the editor of the Montréal Gazette. This was printed on 14 March and later reprinted and distributed as a pamphlet by UJPO ("Prominent Montreal Clergymen Protest Padlocking of Jewish Cultural Centre," Park Papers, vol. 7, file 133).

[138]The case was remarkably similar to the earlier Taub prosecution, leading one to speculate that perhaps Switzman and Elbling were colluding so as to challenge the law in court. However, Switzman is unwilling to discuss the case, and his lawyer, Mr. Feiner, could not recall whether or not the dispute had been artificially contrived (interview, 5 June 1995).

[139]This is taken from Scott's factum; there is a copy in the Scott papers, vol. 105, file 4. When the property was initially padlocked, Duplessis said that the lease had been taken out by Max Bailey, a Montréal municipal Councillor who was a "friend of Fred Rose and other Communists of the same ilk" ("Duplessis Defends 'Padlock Law' Raid on LPP Member," Ottawa Journal, 29 January, 1949).

[140]Djwa, The Politics of Imagination, 297; "Liste des Délégués" of the International Conference, kindly provided to me by Dr. Miriam Garfinkle, from her father's papers. She also included a list of those who had been invited, which included Frank Park and Roscoe Rodd, both of whom were active in the LDR.

[141]Switzman v. Dame Elbling et Vir et le Procureur Général de la Province de Québec [1954] B.R. 421; Djwa, The Politics of the Imagination, 298.

[142]Scott had been involved with the Roncarelli case since 1946; some of his recollections on this can be found in his "Pure List for Roncarelli Case," Scott Papers, vol. 104, file 16. See also Michel Sarra-Bournet, L'Affaire Roncarelli: Duplessis contre les Témoins de Jéhovah (Québec: Institut Québécois de Recherche Sur la Culture 1986). For a short discussion of Scott's role in the Switzman case, see Campbell, "The Social and Political Thought of F.R. Scott," 174-5. For a discussion of both the Roncarelli and Switzman cases, see Djwa, The Politics of the Imagination, 297-317.

[143]Scott to Forsey, 12 December 1955, Scott Papers, vol. 29, file 13, Reel H-1290.

[144]Partridge's wife was active in the LPP, and had run for Parliament in the 1944 election. After the war, where he served in the infantry, Partridge became a school teacher in Montréal, but for a while was forced to work in a factory because his outspoken opposition to the padlock law made the authorities leery about keeping him on as a teacher (Gertrude Partridge, Glendon Partridge: Remembrances, [Charlottetown: Renaissance Communications, 1991]: 30, 138. Mrs. Partridge kindly furnished the author with a copy of this document). By 1952 Partridge was the MCLU chair; since he became the National Chairman of the Canadian Committee to Secure Clemency in the Rosenberg Case, it is not surprising that he lent the full support of the MCLU to this "communist" cause (Partridge Papers; RCMP Report, 6 April 1954, CSIS Files, vol 3394, file "Civil Liberties Union [LDR]" 184-5).

[145]Scott claimed in "Pure List," 9-10 that as a university professor he was far more independent of such pressures than someone like A.L. Stein, Roncarelli's lawyer. He said elsewhere that "[t]he man who really showed guts in Roncarelli's case was A.L. Stein ... [who displayed] the kind of moral courage that is too rare in the practicing bar" (Ken Lefolii, "The poet who outfought Duplessis," Maclean's, 11 April 1959). On the other hand, Djwa's book makes it clear that Scott's position at McGill was by no means invulnerable.

[146]Marcus to Scott, 8 March 1955, Scott Papers, vol. 29, file 13, Reel H-1290.

[147]Djwa, The Politics of the Imagination, 298; "Pure List," 9-10; Robert Rumilly, Maurice Duplessis et son temps, Vol. 2, (Montréal: Fides, 1973), 540.

[148]RCMP Report (26 May 1955) of LDR meeting, CSIS Files, vol. 3394, file "Civil Liberties Union (LDR)," 287-291; "Dear Friend," and "Cher confrère," 8 March 1955, [letters from Normandin], CCF Papers, vol. 147, file: "Civil Liberties Union"; LDR "Civil Rights," vol. 1, no. 1, July 1955, and no. 2, October 1955, Park Papers, vol. 9, file 161.

[149]Support from the communist press and local ethnic community is often mentioned in the RCMP files; for example, according to a report of 13 May 1955 the Association of United Ukrainians in Port Arthur purchased copies of "The Padlock Law Threaten You!" and anti-padlock label tags to sell to its members, the money going back to the MCLU (CSIS Files, vol. 2294, file "Civil Liberties Union [LDR]," 39).

[150]Members of the trust board included: G.C. Papineau-Couture, Q.C., the Rev. Charles C. Cochrane, Charles M. Cotton, Dr. J. Cyril Flanagan, Dr. Charles A. Kirkland, MLA, and Goodridge Roberts (Diefenbaker Papers, Series III, vol. 10, file "Civil Liberties - Padlock Law," document 006909, Reel M-7417). According to Rumilly, Cochrane was a moderator of the Presbyterian Church, Cotton was a lawyer, Flanagan was a dentist, Roberts was a painter, and Kirkland was the mayor of Ville-Saint-Pierre and Opposition Whip in the Legislative Assembly (Maurice Duplessis, 540).

[151]See, for example, letters from Eugene Forsey, J.A. Corry [Dept. Political Science, Queen's University] and Larry Mackenzie [President UBC] to Scott, 6, 9 December 1955, and Scott's replies, 12 December 1955 and 19 January 1956, Scott Papers, vol. 29, file 13, Reel H-12.

See also "Trust Fund to Contest the Padlock Law," 16 January 1958, Scott Papers, vol. 29, file 13, Reel H-1290.

[152]"Canadian Opinion on the Padlock Law" [undated clipping], Diefenbaker Papers, 1940-1956 Series, vol. 10, file "Civil Liberties - Padlock law."

[153]LDR "Civil Rights," vol. 1, no. 2, October 1955, Park Papers, vol. 9, file 161.

[154]Switzman v. Elbling and AG of Québec [1957] SCR 285. The case was followed closely by the press. See, for example, "Padlock Case Defence Scores 'Moral Judgment' in Quebec," "Attack Quebec Law As Thought Control," and "Decision Pending on Padlock Law," Montréal Star, 8, 9, 10 November 1956.

[155]"Padlock Law Ruled Invalid For Invading Federal Field," Globe, 8 March 1957. Technically, the decision rested in large part upon the ability of the judges to "distinguish" the Supreme Court Bédard v. Dawson precedent. Behind this, however, lay the civil libertarian value systems of a majority of the Supreme Court judges, perhaps best exemplified by Mr. Justice Rand's remark that freedom of expression is "little less vital to man's mind and spirit than breathing is to his physical existence." Rand probably had considerable sympathy for F.R. Scott's argument before the court that the law was "thought-control legislation" ("Padlock Law in Québec Said Invalid," Globe, 9 November 1956).

For a discussion of the importance of this case in the development of the so-called "implied bill of rights," see Chapter 7 of this dissertation.

[156]Quoted in Ken Lefolii, "The poet who outfought Duplessis," 72.

[157]Duplessis said this at the time of the raid on Switzman's house ("Duplessis Policy is to Smash Reds," Montréal Gazette, 29 January 1949). According to Quinn, the padlock law was a significant factor contributing to Duplessis' election victories in the post-war period (The Union Nationale, 129).

[158]Pierre Leopard in Le Devoir, 29 January 1959, quoted in Michel Sarra-Bournet, L'Affaire Roncarelli, 145.

[159]For a discussion of the impact of Khrushchev's revelations and the internal struggles of the LPP which led to the resignation of many key members, see Chapter 8 of Avakumovic, The Communist Party in Canada, and Kealey, "Stanley B. Ryerson," f. As party stalwart Gérard Fortin recalls, "John Switzman had walked out of the Victory bookshop [in October 1956], leaving thousands of dollars worth of books and records untended" (Fortin and Richardson, Life of the Party, 186).

[160]Hansard, House of Commons, 2 May 1950, 2077 ff., especially 2082; for a comment on this, see former OCLA president and columnist Wilfrid Eggleston, "How to Deal With Communists," Saturday Night, 16 May 1950. See also "Conservatives Would Outlaw Communists," Montréal Star, 21 May 1948.

[161]Preamble of An Act to Confer Certain Emergency Powers upon the Governor in Council, SC 1951, c. 5.

[162]The Emergency Powers Act was scheduled to end in May 1952, unless Ottawa asked that it be extended. This was done until 1954. According to William Kaplan (State and Salvation, 269), the restraint shown here by Ottawa was more important than the later passage of Diefenbaker's bill of rights (which did nothing to prevent the War Measures Act from being used in the future). On the other hand, notwithstanding the civil liberties protections contained within the legislation, it was used for certain anti-communist actions, such as security screening for sailors on the Great Lakes. Note also that Ottawa had plans to use the War Measures Act again if it should appear to be necessary (Whitaker and Marcuse, Cold War Canada, 144, 203).

[163] This became section 74, subsection 1, paragraph (i) of the Criminal Code. Minister of Justice Garson explained this section to the Committee of the Whole on 24 June, 1951 (at 4632 of the House of Commons Hansard).

[164]The LDR did not explicitly refer to the peace movement, but one can find references in the Canadian Tribune, 6 July and 6 August 1951, and in Hansard (see below).

[165]Information about the passage of legislation dealing with sedition can be found in Desmond H. Brown, The Genesis of the Canadian Criminal Code of 1892 (Toronto: Osgoode Society, 1989). See also Penny B. Reedie, "The Process of Criminalization: An Examination of the Treason and Sedition Laws in Canada" (M.A. thesis, University of Ottawa, 1979). Some of the ambiguities of the common law of sedition were dealt with in the famous case of Boucher v. R. [1951] SCR 265. In deciding that case the Supreme Court held that mere creation of hostility or ill-will between citizens is not sufficient to create a seditious offence; there must be some incitement to violence or defiance of the authorities.

[166]The new punishment became s. 134, and the new offense became s. 132A of Chapter 47 of the 1951 Criminal Code.

[167]This became s. 509A of the 1951 Criminal Code amendment. For suggestions that this was a response to American concerns, see the story of 2 May 1951 in the Montréal Gazette, referred to by David Kashtan in his article "You Can Now Get 10 Years in Jail" (Canadian Tribune, 7 April 1952).

[168]This became s. 127 of the 1951 legislation.

[169]B.K. Sandwell, "Treason Is Getting Very Vague," Saturday Night, 21 August 1951. Moreover, Sandwell discussed only the new treason section. In May he and other liberal civil libertarians had been part of a delegation meeting with St. Laurent to discuss the possibility of a bill of rights for Canada. They may have been so focussed on this project that they had little energy to deal with the subsequent speedy passage of Bill 361. Note, however, his moderately strong approval of the LDR criticism of the 1951 Criminal Code amendments in

"What's Treason Nowadays?" Saturday Night, 3 May 1952.

[170]Scott Young, "Should I Keep My Commie Friend?" Saturday Night, 10 November 1951.

[171]See also Hansard, House of Commons 25 June 1951, at 4632, 4659, 4662; Hansard, Senate, 29 June 1950, 741-763. On these amendments the Globe tended to support Ottawa, or at least minimize the legislative defects, while the Ottawa Citizen was more critical. Globe editorials included: "Penalties for Subversive Acts," 28 June 1951; "The New Law of Treason," 16 May 1952; "No Hurry With New Code, 14 June 1952; "A Badly Drafted Code," 23 June 1952. Ottawa Citizen editorials included: "Changes in the Criminal Code," 11 April 1952; "What is Treason?" 2 May 1952; and "Revised Laws on Treason," 8 April 1954.

[172]Hansard, House of Commons, 25 June 1951, at 4639-40. As noted earlier, Mrs. Rodd was the wife of the left-wing Windsor lawyer who shortly afterwards became the leader of the LDR.

[173]The legislation passed third reading in the House on 25 June 1951, and in the Senate on 30 June (Hansard, House of Commons, 4690, and Senate, 765). It became An Act to amend the Criminal Code, SC 1951, c. 47.

[174]The amendment on treason was 74 (1) (i); the amendment on searches without warrants was 127 (1); the sedition change was 132A; the sabotage amendment was 509A.

On communist criticism, see the following Canadian Tribune articles: Tim Buck, "Their Viciousness Shows Their Fear," and "A Lawyer looks at the Garson gag laws" (written anonymously "By a Toronto lawyer"), 6 July 1951; David Kashtan, "You Can Now Get 10 Years in Jail," 7 April 1952; "An Open Letter to MP's from Tim Buck," 5 January 1953, reproduced in Tim Buck, Our Fight for Canada (Toronto: Progress Books, 1959), 139-41. See also: CRU "Information Bulletin," August 1951, September-October 1951, Endicott Papers, vol. 63, file 1316; "Resolutions Submitted to National Conference [of the LDR], Oct. 26-27, 1951," Park Papers, vol. 9, file 161; "The Recent Amendments to the Criminal Code," n.d. [July 1951?], Park Papers, vol. 8, file 139.

[175]"The Recent Amendments to the Criminal Code." It is also important to note something that the LDR pamphlets never mentioned -- in 1954 the government also eliminated certain offenses against the state. For example, it did away with the section on the taking and administering of unlawful oaths for the purpose of committing a seditious offence, and it also abolished the anachronistic offence of publishing a libel that tended to degrade a foreign sovereign. Similarly, the amendments repealed the anachronistic treason offences of killing or forming an intention to kill either the eldest son of the Sovereign or the Queen consort, or violating a Queen consort or wife of the eldest son of the ruling sovereign. It also was no longer a crime to instigate a foreigner to invade Canada (or the United Kingdom), to levy war if one were a foreign citizen of a state at peace with the Sovereign (or to assist the foreigner), to form an intention to depose the Sovereign or levy war against the Sovereign, or to stir up

any foreigner to invade Canada (or the United Kingdom).

[176]For example, the testimony of the CCL legal counsel, Maurice Wright, before the parliamentary committee dealing with the proposed amendments, contained several suggestions for improving the legislation. See "Minutes of Proceedings and Evidence of the Special [House of Commons] Committee on Bill No. 93 (Letter O of the Senate)," in "Select and Standing Committees of the Senate and House of Commons," vol. 1, 1953, 10-40. Wright discussed the issue of sabotage at 17-18, but noted (at 11) that the two most serious threats to organized labour were the sections on treason and mischief. See also Wright's testimony before the Senate Standing Committee on Banking and Commerce in the Spring of 1954. His discussion of the sabotage section is at 60 ("Select and Standing Committees of the Senate and House of Commons," vol. 3, 1953-4).

[177]The Globe carried the story on the front page with a huge headline: "Broaden Treason Law to Cover Spies, Plotters," 14 May 1952.

[178]This brief summary is taken primarily from the speech of the Minister of Justice, Stuart Garson, when he introduced a revised version of Bill H-8, now called Bill No. 93, into the House of Commons on 23 January 1953 (at 1272 of Hansard). For further information about the Senate discussion of H-8, see "Proceedings of the Standing Committee on Banking and Commerce," 11 June 1952, and 15-16 December 1952 in "Select and Standing Committees of the Senate and House of Commons," vol. 4, 1952, and vol. 2, 1953.

[179]According to the LDR, some of the Senate amendments improved the protection of civil liberties, but some had the opposite effect. Senate changes welcomed by the LDR included: the removal from the treason section the crime of conspiring with agents of a foreign power to do anything prejudicial to Canadian interests; the removal of the RCMP from the section which gave that body, along with the armed forces, special protection against those who counsel any form of disloyalty or insubordination; inserting the term "wilfully" into the clause prohibiting disloyalty or insubordination of the armed force. One of the changes deplored by the LDR was providing the mandatory death penalty for certain crimes of treason. (A copy of this brief can be found in the Endicott Papers, vol. 63, file 1317).

[180]The first reading of Bill 7 was moved 16 November, and second reading was moved 15 December.

[181]See note 170, above. For an "official" LPP/CPC version of this struggle, see Canada's Party of Socialism: History of the Communist Party of Canada 1921-1976 (Toronto: Progress Books, 1982), 190-1. This version is at times misleading. For example, it suggests that the government "made criticism of the government's foreign policy punishable by death." As the next few pages will demonstrate, this is not a tenable interpretation of the law.

[182]The most active affiliate was the CRU. For example, it publicized the issue through its "Information Bulletin" and advertisements in the press. See, for example, "Information

Bulletin," August, September-October 1951, and the advertisement, "Keep McCarthyism Out of Canada," 22 January 1954 in the Toronto Globe and Mail. Yet there is also evidence of activity by other affiliates. The August 1951 "Information Bulletin" refers to 500 people attending an open forum held by the Vancouver branch of the LDR in order to discuss the Criminal Code amendments and the need for a bill of rights. (Moreover, copies of pamphlets produced by the national LDR could be printed locally, with a local address; the Vancouver branch of the LDR often did this.) Note also the advertisement, n.d., "Democracy in Danger," issued jointly by the Toronto CRU, the Montréal CRU, and the LDR. Copies of the above-mentioned documents can be found in the Park Papers, vol. 9, file 155.

[183]See also the pamphlet, "It's a Free Country -- Isn't It?" which deals with both the Criminal Code amendments and the need for a bill of rights, and contains a copy of a draft "Declaration of the Rights of Canadians." A copy of this can be found in the CLC Papers, vol. 18, file 11. See also the LDR brief to the Special Committee on the Criminal Code, February 1953, or the broadsheet, "Magna Charta," issued 28 May 1953 (Endicott Papers, vol. 63, file 1317). The Rosenberg speech is mentioned in the Canadian Tribune, 17 November 1952. David Kashtan said that one of the most important things done by the LDR was its "save the Rosenbergs" campaign; despite the fact that the Rosenbergs were executed, he remembered that the issue served to stir the consciences of many Canadians and temporarily swelled the ranks of the LDR (interview, 20 June 1995).

[184]"To All LDR Branches and affiliated or associated organizations," 16 September 1952, RCMP Report, 8 October 1952, CSIS files, vol. 4035, part 22, 191. For the LDR balance sheet for 1951-2, showing a total budget of almost $8,000, see "To all Branches and Affiliated or Association Organizations," 27 February 1953, RCMP Report, 3 March 1953, CSIS files, vol. 4035, part 22, 128-30. See also the financial report about income from local groups, showing their monthly quotas, in "Dear Friends," 23 March 1953, RCMP Report [date illegible on copy], CSIS files, vol. 4035, part 21, 303-5.

[185]A few days after the bill was introduced into the Senate the national executive secretary of the LDR, Thomas C. Roberts, drafted an open letter in which he drew attention to some of the proposed changes which might adversely affect the rights of trade unionists; he also pointed out that the Senate committee had adopted an extremely tight deadline for submissions, and maintained that the bill might well be passed by Parliament before the Canadian public was really aware of what had happened. A copy of the letter may be found in the CLC Papers, vol. 28, file 11.

[186]See also the LDR press release of 19 November 1952, CLC Papers, vol. 18, file 11.

[187]"Strike Penalty" has no date, but must have been issued towards the end of June, 1952. The first printing of "Protect Our Democratic Rights" was September 1952, and the first printing of "It's a Crime" was January 1953. The date of "It's Still a Crime" must be late 1953. Copies of "Strike Penalty," "It's a Crime," and "It's Still a Crime" are in UBC Special Collections, SPAM 10877, 13146, and 19575. A copy of "Protect Our Democratic Rights" can be found

in the Park Papers, vol. 9, file 161.

[188]"Bulletin -- Bill 7 Campaign," 5 March 1954, Endicott Papers, vol. 63, file 1317; "LDR lawyers debate Bill O with Senate Committee," [including Autoworkers ordering "Ten Years in Jail"], 22 January 1952, RCMP Report, 22 January 1952, CSIS files, vol. 4035, part 21, 327.

[189]LDR report to branches and affiliate organizations, 22 December 1952, Park Papers, vol. 9, file 161; LDR financial statement, 16 October 1951 to 31 December 1952, Endicott Papers, vol. 63, file 1317. By 1953 the LDR claimed to have distributed 210,000 copies of the two pamphlets, "Strike Penalty," and "It's a Crime," and was planning to distribute another pamphlet called "It's Still a Crime," an updated attack on the Criminal Code amendments. Its newsletter of 23 October 1953 pointed out that even more copies of these briefs had to be distributed to the trade unionists of the country, and suggested that members target all municipal, provincial, and federal politicians, as well as clergymen, lawyers, school teachers, university professors, and students. (A copy of this bulletin is in the Endicott Papers, vol. 63, file 1317.) It is hard to estimate how successful the executive was in getting pamphlets and letters distributed, but in the CLC files there are several copies of letters exhorting action (e.g. letter to TLC from Thomas C. Roberts, 20 November 1953, and letter from Roscoe Rodd to "the Canadian Trade Union Movement," vol. 18, file 11). See also the LDR "Emergency Bulletin" (n.d., summer of 1953?), MacLeod Papers, file 5.

[190]LDR "Bulletin -- Bill 7 Campaign," 5 March 1954, Endicott Papers, vol. 63, file 1317.

[191]"Minutes of Proceedings and Evidence of the Special [House of Commons] Committee on Bill No. 93 (Letter O of the Senate)," in "Select and Standing Committees of the Senate and House of Commons" vol. 1, 1953, 79-94 and Appendix "A" at 106 [full text of brief]. See also the 30 November 1953 issue of the Canadian Tribune, where the article "Call for Action on Witchhunt Bill 7" mentions that on the previous weekend LDR leaders, along with Paul Normandin of the MCLU, had been in Ottawa for the purpose of speaking to parliamentarians about submitting the criminal law amendments to a Royal Commission.

[192]In its brief to Parliament the LDR also dealt at length with those sections pertaining to warrantless searches, the reading of the Riot Act, and loitering/public disturbances. At the same time, it also called for a number of other reforms pertaining to the right to trial by jury and habeas corpus, and it also asked for a statement of citizens' legal rights within the Criminal Code -- a sort of a mini-bill of rights.

[193]See analysis in "Strike Penalty." It must be admitted that the sub-section dealing with "forming an intention" was qualified by the phrase that the intention must be manifested by an "overt act." This can be seen as a way of protecting freedom of speech.

[194]Hansard, House of Commons, 5 April 1954, 3665 ff. In the final 1954 legislation (Chapter 51) treason is dealt with in ss. 46 and 47. Of course, even after the "hysteria" of the mid

1950s subsided, Canadian continued to live with this harsh peace-time legislation. The law was moderated somewhat in 1976, after the Canadian Parliament had voted to abolish capital punishment for ordinary criminal offenses. For example, peace-time assistance to an enemy became "high treason," punishable by life imprisonment (ss. 46 and 47).

[195]Roebuck's speech was made on 29 June 1951, is recorded at page 741 of the Senate Hansard, and is quoted in "Strike Penalty." The relevant sedition offense was s. 63 of the Criminal Code.

[196]In the 1954 amendment sabotage was prohibited by s. 52, and the saving clause was subsection (3).

[197]Hansard, House of Commons, 8 April 1954, 3887-9.

[198]Hansard, House of Commons, 8 April 1954, 3899-3916. It was not just the LDR that was worried about the impact of a criminal breach of contrast law. A number of MPs raised the issue in the House, referring to opposition from different sectors of the trade union movement. Both Davie Fulton of the Conservatives and Stanley Knowles of the CCF were very much against the clause.

[199]Canadian Tribune, 24 November 1952.

[200]A partial list of the groups was read to the House by the Minister of Justice on 15 December 1953 (Hansard, 945). The transcripts of the 1953 committee hearings are in "Minutes of Proceedings and Evidence of the Special [House of Commons] Committee on Bill No. 93 (Letter O of the Senate)" in "Select and Standing Committees of the Senate and House of Commons," vol. 1, 1953. For a critical summary of the LDR's arguments, warning that the LDR is "just another Communist-front organization," and a comment that the LDR was silent on the human rights implications of the 1953 Immigration Act amendment, see Circular Letter no. 319 of the CCL, 9 April 1954 (MacLeod Papers, file 5).

[201]For example, see Garson's reference to a meeting in his office, just a few days before the vote on the bill, in which he consulted with representatives of all three national trade union groups (Hansard, House of Commons, 6 April 1954, 3910). Note also the rather cool reception meted out to the LDR when its delegates appeared before the parliamentary committee on Bill 93. This seems to have been the day for perfunctory hearings of radical groups; the committee also listed to C.S. Jackson of the UE union and Rae Lucock of the Congress of Canadian Women ("Minutes and Proceedings," 4 March 1953, 94 and 101).

[202]Whitaker and Marcuse, Cold War Canada, 210. Garson's remarks about "muddying the waters" are in Hansard, House of Commons, 23 January 1953, at 1278. The LDR campaign against Bill H-8 alarmed a number of trade unionists, but did little to win approval from the national leaders. The files of the TLC, for example, contain a number of requests for information from union locals about the government's proposed legislation and responses which indicated that one should beware of "commie" criticism (CLC Papers, vol. 18, file 11,

"League for Democratic Rights").

[203]For a discussion of how the threat of international communism helped sway Leslie Frost to support anti-discrimination legislation, see Chapter 6 of this dissertation. Barnett's remarks are in Hansard, House of Commons, 6 April 1954, 3708.

[204]Reedie, "The Process of Criminalization," 35-50, 67-73.

[205]R.M. Dawson, The Government of Canada, 5th ed. (Toronto: University of Toronto Press, 1970), 366.

[206]There do not appear to be any archival records of these groups formally dissolving. The last document in the files of the author for the CRU is dated 25 Feb 1955, while the last LDR document comes from the Vancouver branch of the LDR and is dated 11 January 1956. As for the MCLU, there is an RCMP report dated 8 August 1957, which says "Please note that the 'Civil Liberties Union' has closed its office in Montréal" (CSIS Files, vol. 3394, file "Civil Liberties Union [LDR], 6).

[207]For information about the ACL's interests in 1960, see the memo from Ontario human rights bureaucrat Thomas Eberlee to Premier Frost, 9 November 1960 (Frost Papers, vol. 124, file: "Ontario anti-discrimination Commission"). The minutes of the Steering Committee which set up the CCLA, dated 3 December 1964, are in the June Callwood Papers, vol. 18, file 18-11.

[208]On 22 July 1954 Irving Himel wrote to A.R.M. Lower, in response to a letter in which Lower inquired as to whether the ACL still existed. Himel assured him that it did, but added that its voluntary nature restricted its activities (Lower Papers, vol. 46, file 22.)

[209]Moreover, as a relatively new and entirely volunteer civil liberties organization, the ACL was unable to co-opt the emergent labour committees which operated under the supervision of the JLC and which derived much of their support and power from their close connections with organized labour. These committees are discussed in more detail in the next chapter.

[210]"Liberties Union to Back Douks' Appeal," Vancouver Sun, 1 November 1950.

[211]"Preserve Indians' Dignity Says Brief," Vancouver News-Herald, 8 March 1951.

[212]"Liberties Union Frowns Upon Left Wingers," Vancouver Sun, 19 April 1950. One of the people attempting to forge closer ties between the VCCLU and the CRU's umbrella group, the LDR, was the communist lawyer John Stanton. Unfortunately, Stanton does not remember very much about the VCCLU, except to suggest that, like most civil liberties groups during this period, a fear of attracting the attention of "red bashers" weakened its commitment (interview, 18 May 1997).

[213]The allegation about communist infiltration comes from Bill Giesbrecht, a long-time CCF activist who was the secretary of the Vancouver labour committee. In a letter to David Orlikow (at that time the Director of the JLC), 6 January 1963, Giesbrecht wrote that one of the former members of the VCCLU claimed that "about 10 years ago the Van. branch of the Civil Liberties Union had an annual meeting: about a week before that, or maybe a month, a number of members from Toronto came here, joined up and swamped the executive. Not long after that it was finished" (JLC Papers, vol. 47, file 5). The BCCLA was founded in December 1962, although not registered until February 1963. On 9 December 1962, a "Conference on the State of Civil Liberties in B.C." was held at UBC. This was hosted by a group called the "BC Civil Liberties Organization Committee," made up of citizens who were concerned about the lack of a civil liberties group and who planned to set up a new group comparable to the American Civil Liberties Union ("Canadian Calendar," Canadian Forum, August 1962; "Conference on the State of Civil Liberties in B.C" [brochure], JLC Papers, vol. 47, file 4).

[214]For information about the UBC-CCLU assisting the Vancouver labour committee, see the JLC papers on the Vancouver Labour Committee for Human Rights: Charlton to Kaplansky, 22 February 1950, vol. 45, file 17; "Who's Who at the Joint Labor Institute," 20 April 1952, vol. 45, file 18; Knute Buttedahl, "Report on Activities," September 1953, vol. 45, file 20; Buttedahl to Kaplansky, 15 November 1953, vol. 45, file 22. See also "Survey of Racial Discrimination in Down-Town [Beer] Parlors," n.d. [1954], Steeves Papers, vol. 3, file 10.

[215]According to research by the UBC alma mater society archivist, it is not clear when the organization ended, but it was still in existence in 1959 (Sheldon Goldfarb [AMS Archivist] to Ross Lambertson, 26 August 1996).

[216]Tipping, "Report of [Winnipeg] Joint Labor Committee to Combat Racial Intolerance," 9, 16 February, 17 May, 1952, JLC Papers, vol. 44, file 4; Kaplansky to Tipping, 19 September 1952, and McNabb to Kaplansky, 22 December 1952, JLC papers, vol. 44, file 5; Orlikow to Kaplansky, 7 September 1954, JLC papers, vol. 44, file 11; David Orlikow, "Report," January, April, September, December 1955, and January 1956, JLC papers, vol. 44, files 13, 15, 16; brief to the government of Manitoba, 1956, JLC papers, vol. 44, file 16. Of course, an absence of archival material does not necessarily mean that a group disbanded; there may be evidence of later CLAM activity that the author did not find.

[217]Even today, in the last decade of the century, with a Charter of Rights serving as a touchstone, there has never been a truly national civil liberties organization uniting all regional groups. The CCLA claims to be a national group, but it does not embrace other civil liberties organizations, such as the BCCLA or La Ligue des droits et libertés.

[218]"The federal structure [of Canada] fragments social forces and inhibits their mobilization on a national basis .... It places major hurdles in the way of those who would mobilize national movements or seek national solutions" (David J. Elkins, Richard Simeon, et alia, Small Worlds: Provinces and Parties in Canadian Political Life [Toronto: Methuen 1980], 295).

CHAPTER 6 - THE JEWISH LABOUR COMMITTEE AND DRESDEN

A: INTRODUCTION

Previous chapters in this dissertation have discussed a number of post-war human rights issues, some of them egalitarian (such as the treatment of Japanese Canadians, or the campaign to eliminate restrictive covenants), and others libertarian (such as the Gouzenko Affair, or attempts by governments to curtail freedom of political speech). This chapter returns to the field of egalitarian rights, examining in some detail the struggle for Fair Accommodation Practices (FAP) legislation in Ontario, and the way in which the resulting human rights policy network focussed on a particular issue -- racial discrimination against blacks in the southern Ontario town of Dresden.[1]

In many ways this is a continuation of the political developments explained in earlier chapters. The Japanese Canadian and Jewish communities, for example, continued to play active roles in the human rights policy community, having learned that the best protection for a small ethnic group is a coalition with others and the support of broad principles. In addition, the Cold War rhetoric of the time continued to place a barrier between communist and non-communist organizations, increasingly marginalizing those with any radical political tendencies.

This chapter deals with an aspect of post-war Canada which has so far been only briefly touched upon in this dissertation, and which has moreover been largely ignored in historical analyses of the period -- the role of labour in fighting for human rights. As this chapter will demonstrate, the two major trade union organizations of Canada, as well as a number of their more powerful unions such as the United Autoworkers (UAW) and the United Steelworkers of America (USWA), played an important role in the fight for anti-discrimination legislation.[2]

Even more importantly, however, this chapter focusses on the central role of a number of predominantly Jewish trade unions which together formed the Jewish Labour Committee (JLC).[3] This relatively little-known organization had an impact on Canadian history out of all

proportion to its size, and it deserves to be far better known to Canadians. The next section of this chapter therefore briefly examines the origins of the JLC and explains how its human rights program was developed shortly after the war, in the face of considerable opposition from other forces. There follows a section which provides an overview of the complicated network of labour committees that implemented this program, and the penultimate section uses a particular case study to illustrate in some detail the importance of the JLC network, examining the fight for Ontario legislation to ban discrimination in the provision of services to the public, and explaining how the JLC struggled to ensure that the law was effectively applied, especially in the southern Ontario town of Dresden.

B: COMMITTEE VERSUS CONGRESS

In November 1947 two Canadian Jewish groups agreed to cooperate in running a human rights program. No newspaper made note of this decision, and it has escaped the interest of most historians. Nevertheless, this was a crucial step in the development of human rights in Canada; without this agreement our history might have moved in the same direction, but it would have moved perceptibly slower. If justice delayed is justice denied, then this decision spared a great many Canadians a denial of justice in the 1940s and 1950s.

The two organizations were the Canadian Jewish Congress (CJC) and the Jewish Labour Committee (JLC). Although they had a common interest in human rights and shared a common Jewish heritage, these groups were not natural allies. The CJC was an umbrella group for a large number of Jewish organizations, and notwithstanding that one of these was the communist-oriented United Jewish People's Order (UJPO), the CJC was predominantly middle-class in its composition and respectable in its approach; its political activity usually consisted of "quiet diplomacy" -- working behind the scenes to lobby politicians privately.[4]

The JLC, on the other hand, was proletarian and radical, less focussed on ethnic identity than worker solidarity, with leaders more at home in the rough and tumble world of labour confrontation than with quiet diplomacy. The organization had been founded in the United States in 1933, with roots in the Workmen's Circle, a radical social-democratic Jewish fraternal organization that had its origins in Eastern Europe. As the voice of Jewish labour, the American Jewish Labor Committee was an umbrella organization for unions with a large Jewish membership, usually those in the needle trades, primarily in New York. Coming of age, as it did, at the same time as the rise of Naziism in Germany, it had been initially concerned with helping Jews to escape from Europe.[5]

The JLC began organizing in Canada in 1936, and consisted mostly of members of the Workmen's Circle and workers in Jewish-dominated trade unions such as the International Ladies' Garment Workers Union (ILGWU), the Amalgamated Clothing Workers Union, and the United Cap, Hat and Millinery Workers Union. At its peak it claimed about 50,000

members, although this was a very rough estimate, based not upon dues-paying membership but upon the total number of people in its member organizations.[6]

Unlike the bourgeois CJC, the JLC was an organization run by members of the working class.[7] Many of the leaders did not have university training, and some had very little education indeed. Kalmen Kaplansky, who played a crucial role as JLC Executive Director for ten years after the war, was a linotype operator who never had the chance to go further than high school in his native Poland.[8] A few of the JLC elite had attended university and entered the ranks of the professions, but they still considered themselves primarily working-class, committed to radical socialist ideals. Michael Rubinstein, for example, the chair of the JLC, had been a millinery worker and an organizer for his union before going to university and then obtaining a law degree.[9]

The JLC was above all social democratic rather than communist. In the early part of the century, most socialist Jews in Canada were members of the Workman's Circle, but in the wake of the Russian Revolution the "left" communists began to move away from the "right" social democrats. In 1926 the two factions split completely, with the communists leaving to create an organization called the Labour League and the social democrats remaining in the Workman's Circle. The latter continued to be the social and intellectual home of the JLC activists, while the former performed the same function for Jewish communists, even after it changed its name in 1945 to the United Jewish People's Order (UJPO). Over the years these two factions remained bitter rivals.[10]

One result of the JLC support for social democracy was the development of very close ties with the CCF. For example, the secretary of the JLC for many years, Morris Lewis, was a radical Workman's Circle socialist, as well as father of David Lewis, the CCF's first National Secretary and later the national leader of the NDP.[11] The long-term national chair of the JLC, Michael Rubinstein, also came out of the Workman's Circle tradition, and sat on the executive of the Québec branch of the CCF.[12] Bernard Shane, the treasurer of the JLC, was one of the leaders of the CCF minority within the Trade and Labor Congress (TLC),[13] and the first National Director of the organization, Kalmen Kaplansky, was a CCF activist who on several occasions ran unsuccessfully for office under the party's aegis. Moreover, after the 1948

Ontario election, no less than five CCF legislators -- Les Wismer, Charles Millard, Eamon Park, Harry Walters, and Lloyd Fell -- were either members of the JLC-connected Toronto labour committee or sponsors of the organization.[14]

It was only during the war that the JLC began to deal effectively with social problems, working to facilitate the entry of Polish Jewish refugees into Canada. After the war it continued to work on refugee resettlement, and sent relief funds to Jews still living in Europe.[15] However, the organization also began to examine the problem of anti-semitism at home. Since the American JLC headquarters had set up a Division to Combat Racial Activities, and began to set up non-sectarian labour committees in a number of American cities, it was not surprising that the Canadian branch of the JLC began to consider a parallel approach north of the border.[16]

Ironically, one of the major obstacles to the success of any JLC human rights program was the CJC. In the United States the American Jewish Congress recognized the American Jewish Labour Committee as the legitimate voice of Jews in the trade union movement, but in Canada the CJC and JLC had a less amicable relationship. For example, shortly after the CJC began supervising the United Jewish Refugee War Relief Agencies (UJRWRA) in the fall of 1939, it asked the JLC to leave because of a dispute as to how relief monies should be spent; the JLC wanted a certain degree of autonomy but the CJC was unwilling to grant it. Even after this "divorce," the CJC continued to see the JLC as a threat to its dominance as the major Canadian Jewish organization, and managed to prevent the JLC from obtaining a fund-raising licence under the War Charities Act, maintaining that this would be desirable only if the CJC retained almost complete control of any expenditures.[17]

As the war ended, members of the Jewish community realized that their short-term goals of helping refugees into Canada would ultimately give way to the longer-term goal of fighting prejudice. While anti-semitism had been a significant problem in the 1930s, the Nazi Holocaust had demonstrated that under certain circumstances it could be deadly. Both the JLC and the CJC began to consider increased pressure to make discrimination illegal.[18]

One option was a cooperative effort between the two organizations. The former suggested, as early as 1944, that they work together in "public relations" efforts with

Canadian workers. The CJC executive agreed that reaching out to the labour movement might be a good idea, but they did not immediately effect a reconciliation with the JLC. Instead, they hired a Montréal lawyer, A.H.J. Zaitlin, to do some preliminary research into "anti-defamation work" amongst organized labour. By the summer of 1946 he had finished his survey, and recommended cooperation between the two Jewish organizations.[19]

The executive directors of the CJC, however, were unwilling to enter into a partnership with the JLC. For one thing, it had already formed an alliance with B'nai B'rith in the late 1930s, to form a Joint Public Relations Committee (JPRC) for the purpose of dealing with anti-semitism.[20] It seemed logical to the CJC executive that they should continue to operate through that organization. In addition, as noted previously, there was a history of tension between the JLC and the CJC, one radically social democratic and the other increasingly conservative and bourgeois. Moreover, there was a serious problem of economic competition. The CJC was funded differently than the American Jewish Congress in the USA. The latter was one of several organizations receiving money from an umbrella group, while in Canada the CJC had to fight on its own for funding through annual campaigns in different cities across Canada; it therefore saw the JLC as a potential threat to its financial stability.[21]

The ideological tension between the two organizations had several facets. For one thing, the CJC saw the JLC as anti-Zionist, and although the latter rejected this interpretation, its emphasis on class struggle certainly attenuated any commitment to creating a Jewish homeland in Palestine.[22] In addition, the CJC executive had some doubt about the ability of the JLC to exert sufficient influence within the ranks of organized labour, especially because its social democratic ideology and roots made it anathema to communists in the labour movement. In 1946, before the Cold War had really begun, the fault lines between liberals and communists had yet to harden completely. As a result, the communist-dominated UJPO was formally affiliated with the CJC, and Ontario LPP member of the legislature, J.B. Salsberg, was an active member of the Ontario CJC, the leaders of which still saw him as a natural pipeline to organized labour. Close cooperation with the JLC might have threatened these ties.[23]

Yet the CJC might have been willing to work with the JLC if the latter had accepted the dominance of the larger organization. After all, the CJC executive worried about giving the public an impression that Canadian Jewry was divided. The JLC, however, although severely under-funded and happy to cooperate as equals, was unwilling to give up control over any labour program. It saw the CJC as attempting an unacceptable intrusion into labour areas where the largely bourgeois organization really had no business, invading the JLC's particular field of expertise, and threatening the principle of labour solidarity.[24] Moreover, it had already decided, in December 1945, to set up its own program against anti-Semitism and intolerance.[25]

This led to a temporary impasse. After some further discussion, in early 1947 the CJC proceeded on its own to develop a "Labour Service" program that would reach out to workers. Soon it obtained agreements with both the TLC and the CCL that the two union umbrella groups would fully cooperate in promoting CJC educational materials within the ranks of organized labour.[26] It also check-mated an attempt by the JLC to expand its own anti-discrimination program into Toronto. For a while it looked as if the larger organization might squeeze the JLC completely out of the field of anti-discrimination work.[27]

Fortunately for the JLC, its executive then decided to appoint Kalmen Kaplansky as their Director of Public Relations. (Within a year, the title had been changed to JLC "National Director.") Kaplansky was Polish-born, fluent in Yiddish and English, a 34 year-old war veteran (with the rank of sergeant), a member of the International Typographical Union, Montréal vice-chair of the JLC, and a social democrat with strong ties to the Workman's Circle and the CCF. He was also an excellent choice, for in the next few years he managed to outflank the CJC, win their grudging support, and set up an effective network of anti-discrimination labour committees across the country.[28]

Appointed in April of 1946, Kaplansky began by taking a three-week trip to New York, where he met with the American JLC and other national Jewish organizations to learn about their activities in the field of "public relations." When he returned to Canada, he began to strengthen his ties with the two major national trade union organizations.[29]

Had Kaplansky attempted to gain trade union support fifty years earlier, he would no doubt have failed. The early history of trade unions demonstrates that organized labour partook of the same racist values as did the majority of Canadians.[30] However, changes in the 1930s and 1940s altered the situation in several ways. First, the more conservative craft unions in Canada, largely found in the TLC, came to be augmented by more progressive "industrial" trade unions, represented in the United States by the CIO and in Canada by the CCL -- an umbrella organization with close ties to the social-democratic CCF. Several of the non-Jewish CCL unions, especially the Autoworkers and the Steelworkers, became active supporters of anti-discrimination initiatives, and were among the strongest supporters of Kaplansky and his JLC network.[31]

The second structural change was governmental protection of the unions' right to exist and engage in collective bargaining. While trade unions had been legal in Canada since the nineteenth century, it had been also legal for employers to refuse to bargain with them, and to dismiss any worker suspected of being a union organizer. During the Second World War Ottawa's order-in-council PC 1003 marked the beginning of legal recognition of the workers' right to form unions, go on strike, and bargain collectively. This, as well as the post-war adoption of the "Rand formula" for union membership, strengthened the trade union movement immeasurably. At the same time, unions increasingly became "bureaucratized," and union leaders tried to channel worker energies into the new legally-protected structures, as well as devoting more energies to "social unionism" -- education courses, social welfare work, and improving the place of trade unions within the larger community. This ultimately helped Kaplansky to persuade the trade union elites that they give some support to the struggle against prejudice and discrimination.[32]

Paradoxically, however, the first major human rights success of the JLC occurred with the more conservative TLC in 1944, several years before Kaplansky became JLC executive director. Despite the fact that the TLC retained a racist exclusionary immigration policy left over from earlier times, in that year the JLC persuaded the TLC to set up a permanent National Standing Committee on Racial Discrimination "to promote the unity of Canadians of all racial origins, and to combat and counteract any evidence of racial discrimination in

industry in particular and in life in general." This was a land-mark decision, a reflection of changing union attitudes.[33]

The committee also proved a useful point of connection for the JLC. Its first chair was Claude Jodoin, an officer of the ILGWU and a disciple of Bernard Shane, the Canadian ILGWU manager who was also the JLC treasurer. (Over time Jodoin became Kaplansky's "closest ally and collaborator" -- an especially useful ally who became President of the TLC in 1953 and the first president of the Canadian Labour Congress when, in 1956, the TLC and CCL joined together.)[34]

In the fall of 1946 Kaplansky attended the TLC annual convention as a trade union delegate. He began by putting up a display on discrimination and meeting with leaders in order to win their support for the JLC's anti-discrimination work. He then wrote the Racial Discrimination committee's report which Jodoin presented to the delegates. Not surprisingly, it was sympathetic to the aims and activities of the JLC, although it did not mention the group by name. Sensitive about sparking anti-semitism, Kaplansky chose to keep himself and the JLC in the background.[35]

The report mentioned a new TLC publication, Canadian Labour Reports, which was intended to serve as an anti-discrimination educational forum within the labour movement. For some years this was a major source of information about human rights issues in Canada, and an important platform from which Kaplansky could proselytize to both his labour committees and the broader trade union movement. Here too, Kaplansky remained in the shadows; the report did not mention it, but Canadian Labour Reports was under his direct editorial control.

This report also sheds some light upon the thinking of these early human rights activists in the labour movement. Kaplansky was always careful to appeal to union pragmatism as well as to high moral principles. As he wrote in the report,

> We feel that in order for our [trade union] movement to exist we must eliminate from our ranks any traces of racial antagonism and religious intolerance. These dangerous ideas are being used by our enemies to divide labor and to distract the attention of the working people of this country from the real issues facing them.

This argument was highly effective. When Jodoin spoke in favour of an ILGWU resolution (also written by Kaplansky) condemning discrimination and urging support for "trade unions committees for racial tolerance," the delegates voted overwhelmingly in its favour.[36]

Meanwhile, Kaplansky had begun to work with Canada's other major trade union organization, getting the Steelworkers to introduce a resolution to the annual CCL fall convention which called for "vigorous action" on the part of the CCL and its affiliated unions in "the fight for full equality for all peoples, regardless of race, colour, creed, or national origin." The resolution passed, and soon after Kaplansky began to lobby Pat Conroy, the Secretary Treasurer of the CCL, asking him to establish a "permanent committee on racial tolerance" similar to the racial discrimination committee of the TLC.[37]

The CCL set up its racial tolerance committee in March 1946, thereby giving Kaplansky yet another set of human rights supporters within the ranks of organized labour. Then, in early 1947, following the TLC report he had written and helped pass, and in accordance with the CCL resolution he had promoted, Kaplansky began to organize local standing labour committees in Toronto, Montréal, and Winnipeg. By January he had set up a provisional Labour Committee to Combat Racial Intolerance in Toronto, by March a Winnipeg committee had been formed, and he had laid the groundwork for the establishment of a Montréal organization.[38] Then, a few days later, Kaplansky's patient lobbying paid off. Both the TLC and CCL sent letters to the CJC, suggesting that it was competing against their standing committees on discrimination and ruling that any future cooperation was contingent upon the support of the two committee chairs. In the words of Aaron Mosher, president of the CCL, "in view of the circumstances neither my name nor that of the Congress should be used in publishing material except when approved of by our Committee and by the Jewish Labour Committee."[39]

It was clear that Kaplansky had out-manoeuvred the CJC.[40] Their program was stalled, while his was fully underway, and Kaplansky decided to consolidate his gains. Realizing that the moral legitimacy of his labour committees would be stronger if trade union rank-and-file members had a chance to participate in their founding, he ensured that his ad-

hoc Toronto Provisional Committee would be turned into a standing labour committee at a public meeting open to all interested union members. This was a calculated risk, for it gave the LPP supporters a chance to organize their opposition to the "anti-red" JLC. The meeting generated rancorous debate, with communist labour leaders doing their best to torpedo this JLC initiative; they raised a number of procedural issues which created interminable delays and the probability that a quorum might evaporate as the evening wore on. But Kaplansky, a veteran of political factional infighting in the 1930s, had ensured that the Chair of the meeting was a person sympathetic to his cause. At the appropriate time the Chair called a vote on the question, and declared the meeting to be in favour of the creation of a joint labour committee. Kaplansky now had a key human rights organization legitimized by grass-roots trade unionists -- the Toronto Joint Labour Committee to Combat Racial Intolerance.[41]

In addition to trade union enemies on the radical left, Kaplansky had to deal with ignorance or bigotry within the right-wing of the trade union movement. As already noted, TLC policy still called for the exclusion of immigrants who were members of "undesirable" races, and many of the rank-and-file members in both the TLC and CCL were hostile to notions of racial equality, feeling especially threatened by the "DPs" ("Displaced Persons") who were emigrating from Europe to Canada. While the national trade union leaders such as Conroy and Mosher were generally supportive, Kaplansky had to be careful to find or create allies within his local committees.

His Toronto committee, for example, began with two co-chairs, representing unions in both the TLC and CCL. The representative of the latter was Murray Cotterill, publicity director of the Steelworkers, a member of the Committee for the Repeal of the Chinese Immigration Act (CRCIA), and an enthusiastic ally from the beginning.[42] The TLC union representative was Ford Brand, business agent of the Printing Pressmen's Union in Toronto. Although Brand also was a member of the CRCIA, and maintained close ties to the CCF, he was prominent in the Orange Lodge, an organization not known for its tolerant values. Nevertheless, Kaplansky found him to be an altogether decent man despite certain initial prejudices towards minorities; in time Kaplansky opened Brand's eyes to the problems of discrimination and he became a strong advocate of the JLC program.[43]

According to Kaplansky, several other members of the Toronto labour committee executive were even less enthusiastic about the struggle against discrimination and more difficult to persuade than Brand. However, they enjoyed being members of a committee which provided some measure of public recognition, especially at annual union conventions, and usually did not sabotage Kaplansky's work. In his view, asking certain unsympathetic members of the labour elite to join his committees was a good way to "neutralize" potential opposition within the labour movement.[44]

In addition to the labour representatives, the Toronto committee employed an executive secretary, Leslie Wismer, later described by Kaplansky as "a wonderful find" -- a war veteran who had until recently been a CCF member of the Ontario legislature. Wismer possessed a wealth of political and trade union contacts, was experienced in public relations, and enjoyed good connections with the local press. He demanded a minimum of $3,000 a year, double what Kaplansky had budgeted (and the same as his own salary), but the JLC executive director realized that it would be money well spent, and managed to raise the extra funds.[45]

Within a few months Wismer was actively net-working with the Toronto human rights community, setting up a Citizens Advisory Committee which included the Steelworkers' Charles Millard as well as a number of non-union human rights activists: the Rev. James Finlay of the CCJC, George Tanaka of the JCCA, B.K. Sandwell of the CLAT, and S.K. Ngai for the CRCIA.[46]

Meanwhile, as the JLC consolidated its position within labour and the rights community, the CJC began to reconsider its approach. By November 1947 it had in effect capitulated, agreeing to work with the JLC in establishing a "public relations program in the labour field." The national executive director of this program was to be the JLC executive director (i.e. Kalmen Kaplansky), responsible to a newly-formed Joint Advisory Committee on Labour Relations (JACLR) made up of an equal number of representatives from the JLC and CJC. The annual costs would be split equally between the two organizations, and in return the JLC promised not to seek funds from certain areas of the Jewish community.[47]

The agreement was, from the CJC perspective, a second-best outcome. All of its plans for "public relations" work within the Canadian labour movement now had to be discarded, leaving the field completely in the hands of the JLC, an organization with which it traditionally had cool relations. Indeed, the CJC insisted at the time that its agreement with the JLC be kept secret.[48] On the other hand, it had only relinquished a portion of the human rights field. It continued to engage in anti-discrimination work through the JPRC, and the Ontario branch of that organization became active in a number of campaigns, working with human rights coalitions and also engaging in its traditional behind-the-scenes "quiet diplomacy" lobbying of government.[49]

For Kaplansky, the 1947 agreement gave his efforts a new impetus. While the agreement between the JLC and CJC did not clearly specify how much independence the Executive Director would enjoy, he operated on the assumption that the JLC alone was responsible for directing the program and that his relationship to JACLR was primarily one of accountability (which he satisfied by turning in detailed reports). In the next decade he operated with a minimum of outside interference, setting up what can be termed the "Kaplansky network" of labour committees.[50]

C: THE KAPLANSKY NETWORK

As noted earlier, Kaplansky established his first labour committee in Winnipeg in the spring of 1947, followed shortly by the creation of similar groups in Toronto and Montréal. In 1949 he arranged the creation of a Vancouver committee, and by 1952 he had helped set up an organization in Windsor. These formed the network which he supervised from JLC headquarters in Montréal.[51]

No doubt if Kaplansky had been able to set up human rights committees the way a modern fast-food corporation sets up franchises he would have adopted a uniform standard of names for all of the groups in his network. However, since he was working with a fragmented trade union movement at the local level, the organizations evolved with a mixture of names that was sometimes confusing even to him: the Winnipeg Labor Committee to Combat Racial Intolerance, the Toronto Joint Labour Committee to Combat Racial Intolerance, the Montréal Labor Committee Against Racial Intolerance (aka the Comité du travail contre l'intolérance raciale), the Committee to Combat Racial Discrimination of the Vancouver Labour Council, and the Windsor Joint Labour Committee for Human Rights. (In truly Canadian fashion, the organizations could not even agree on whether they should adopt the British or the American spelling of "labour.") Moreover, some of these organizations changed their titles over time, often when they realized that there was an important difference between a name that symbolized opposition (to racial intolerance or discrimination) and a name that indicated support for the increasingly popular concept of human rights. For example, by 1954 the letterhead of the Toronto organization read "Toronto Joint Labour Committee for Human Rights."

To simplify this, all these groups are here usually referred to generically as "labour committees." Descriptively, they can be also called "equality rights groups," for they were largely unconcerned with libertarian rights, even those which often affected trade unions, such as freedom of speech, freedom of association, the right to a fair trial, etc. They almost invariably focussed their attention on problems of racial and religious discrimination, leaving the broader concerns about negative liberty to the civil liberties organizations of the nation.[52]

Almost all the groups in Kaplansky's network were joint labour committees, representing the two major English-Canadian trade union organizations. This is one of the earliest examples of significant cooperation between the TLC and CCL prior to their amalgamation in 1956. In Toronto, as noted above, the joint committee represented the TLC and the CCL. In Winnipeg, David Orlikow worked with a tripartite group: the TLC, CCL, and the One Big Union (OBU). In Vancouver, Kaplansky was initially able to get support only from the local TLC, but by 1950 he brought the TLC and CCL organizations together to form the Vancouver Joint Labor Committee to Combat Racial Discrimination. Only in Québec was he unable to create an all-inclusive committee. The Canadian and Catholic Confederation of Labour (CCCL) was reluctant to become involved with the Montréal group, perhaps because of fears of being submerged in a movement dominated by Anglophone trade unionists.[53]

Another common element of Kaplansky's labour committees was that each one had a full or part-time paid worker, usually called the "Executive Secretary." Each one was formally hired by, and responsible to, the respective labour committee executive, so that Kaplansky's influence was somewhat constrained. As he wrote of the Toronto group, "the Jewish Labour Committee did not 'own' either the Committee or its Secretary." However, Kaplansky was closely involved in the selection of these people, and kept a tight rein on their activities. They answered directly to him on a day-to-day basis, and he expected regular written reports from them. He wrote to each secretary regularly, sometimes with several letters a week and on some occasions even twice in one day.[54] Most importantly, without Kaplansky and the JLC the labour committees would probably soon have ceased to exist. Although Kaplansky encouraged them to raise money on their own, well over 80% of the labour committees' income came directly from the JLC. Some of this money came from local JLC fund-raising activities, and (as noted earlier) a large part of it came from the CJC.[55]

On the other hand, one should not underestimate the valuable contributions made by organizations other than the JLC and CJC. Over time, the labour committees were successful in obtaining donations from both non-Jewish businesses and from trade unions -- at first only the Jewish-dominated unions, and later a number of other unions, especially the Steelworkers

and the Autoworkers, as well as the local TLC and CCL umbrella groups.[56] At the same time, Kaplansky was able to supplement this income with significant donations from the two TLC and CLC national human rights committees. These funds were not given directly to the JLC headquarters, but directed to the local labour committees or to the JLC human rights periodical, Canadian Labour Reports. However, in order to maintain centralized control of the JLC finances, Kaplansky engaged in a kind of "laundering" of these funds, so that the local committee secretaries endorsed the cheques and sent them on to him.[57]

No doubt the main trade union organizations could have sent their cheques to the JLC, but Kaplansky always worried about allegations of a "Jewish conspiracy," and attempted to give the JLC a low profile. Moreover, he was concerned about the funding role of the CJC. As he once wrote to his Toronto secretary, "[i]t would be harmful to our work if we encouraged people to think that the Joint Labor Committees are financed by an agency outside the trade union movement."[58] Gradually, however, Kaplansky came to believe that it was a mistake to act so covertly; by 1955 he complained to Sid Blum of the Toronto committee that the JLC was not getting enough public credit for its activities in the Dresden affair. As he said, "we have submerged our identity in the Joint Labor Committee," and many of his associates in the JLC argued that the absence of publicity made it difficult to raise funds for human rights work.[59]

Trade union locals and the larger umbrella organizations supported Kaplansky's network in ways other than through donations of money. Kaplansky later reminisced that he was grateful for "supportive delegations to governmental authorities at every level, free public relations work, free mailing lists, research facilities, purchase of pamphlets, free office and telephone facilities, inclusion in educational undertakings and the free and enthusiastic support of so many staff people and volunteers from both trade union Congresses."[60] The Steelworkers, for example, provided the Toronto committee with free telephone use and office space in their building at 11 1/2 Spadina, and purchased bulk lots of Canadian Labour Reports, which they distributed to all their key members.[61]

Money was always a problem, although Kaplansky tried to keep expenditures as low as possible. To begin with, he was hired for $60.00 a week -- the same as in his trade union

job -- and other salaries were usually less; Kaplansky knew there was never enough money to pay his committee secretaries what they deserved.[62] Many of them were able to work for him only because of other sources of income. For example, Sid Blum could work for the Toronto committee only because his pay was supplemented by a small war veteran's disability pension, and David Orlikow of the Winnipeg committee continued working for Kaplansky in the 1950s only because he was employed (after some reluctance) by the local branch of the JPRC.[63] Similarly, Knute Buttedahl, the Vancouver secretary, ended up working as executive director of a local human rights organization called the Vancouver Civic Unity Association (CUA). (Buttedahl had managed, working as the labour committee secretary, to obtain long-term funding for the CUA from the local Vancouver Community Chest, and he then began working for them; in a sense he saw his CUA work largely as an extension of his position in the Kaplansky network.) When Buttedahl resigned, his successor was Bill Giesbrecht, a blue-collar worker who only managed to operate as secretary by balancing his commitments with a full-time job and the problems of shift-work.[64]

What kind of people were these secretaries? Most had close ties to labour, as well as to the CCF, but not always. They were a mixed lot, some of them blue-collar workers, some of them university educated, and at least one of them (Sid Blum) had earned a Master's degree. However, as Kaplansky has noted, in hiring people "I never mentioned academic achievement and university degrees or even experience as prerequisites for the job. I insisted only on a 'genuine interest,' pleasant personality, willingness to get along with people and meet the public and a sincere desire to be of service to the labour movement'."[65]

At the beginning, in 1947, Kaplansky's three secretaries were all active in the CCF. As noted previously, Toronto's Les Wismer had recently been a member of the Ontario legislature, and he left the Toronto committee in 1948 when he was elected once again. In Winnipeg, David Orlikow had already embarked upon what was to be a long career as a CCF activist and politician (municipally, provincially, and federally). The Montréal secretary, Roméo Girard, was also a CCF member, and came recommended by his brother-in-law, the Québec Provincial Secretary of the party. The three were also administratively competent -- Wismer later became the Legislative Director of the TLC/CLC; in the 1960s Orlikow was the

national Director of the JLC; and Girard rose to become one of the top officials of the Québec Teamsters.[66]

Several other members of the Kaplansky network should also be mentioned. When Wismer was re-elected to the Ontario legislature, Kaplansky replaced him with Vivien Mahood. In a period when women's rights were fairly low on the political agenda, and when the JLC was concerned with racial and religious discrimination rather than gender discrimination, it is interesting to note that Kaplansky was willing to hire a woman. Nor was this a single act of tokenism, for a few years later he hired Donna Hill as Toronto secretary.[67] Kaplansky was probably impressed by Hill's professional background and her sensitivity to racial issues. An American sociologist by training, she had been active in the NAACP and in Ohio had helped lobby for fair employment practices legislation, both as a volunteer and as a paid activist for a citizen's group. She was also married to Dan Hill, the black American sociologist who later became the first director of the Ontario Human Rights Commission.[68]

Donna Hill, however, only worked as the Toronto labour secretary for a short while, for she felt unable to continue for long after she became pregnant. (Soon after she left she gave birth to Dan Hill, now a well-known Canadian musician and singer.) Her replacement was Sid Blum, who proved to be an extremely able administrator. He served as the Toronto secretary from 1953 to 1957, and then replaced Kaplansky as the Executive Director of the JLC when the latter become Director of the Department of International Affairs of the newly-formed Canadian Congress of Labour (CLC). While Kaplansky developed personal ties with many of the people working for him, he had a particularly close and trusting relationship with Blum.[69]

To summarize the activities of the labour committees over a period of time is no easy task. First of all, this was pioneering work, so that the techniques changed over time as the activists learned their trade. As Kaplansky wrote in his notes, "I had a lot to learn in 1946-47."[70] Second, each province involved a unique blend of economic background, demographic mix, and politics, so Kaplansky and his secretaries had to adjust their approach to meet local circumstances. Third, because of Kaplansky's penchant for frequent communication by mail, and his punctilious attention to record-keeping, the researcher is presented with an

embarrassment of riches. One could easily write a thesis on the activities of a single committee in any one of several provinces.

Nevertheless, there developed several major themes or common patterns. For example, initially the labour committees all engaged in extensive programs of public education, without any reference to legislative panaceas.[71] As Kaplansky soon realized, most Canadians refused to believe that the nation faced serious problems of discrimination.[72] At the same time, in many circles there were deep-seated nativist values which in the immediate post-war period were exacerbated by high levels of immigration, including a large inflow of displaced persons from Europe. As a result, the labour committees undertook major programs of public education directed at both trade unions and the general public, trying to demonstrate that racism and prejudice were indeed significant social issues.[73]

In educating the rank-and-file members of organized labour, Kaplansky began by following the patterns already set down by American human rights labour committees.[74] To begin with, the JLC began producing pamphlets on racism and discrimination, taking some created in the United States and modifying them for Canadian content.[75] JLC labour committee secretaries were supposed to distribute these to trade union members, usually in conjunction with lectures or the showing of educational films.[76] They were also expected to be present at major union conventions, in order to put on displays and distribute their literature.[77] Later, Kaplansky arranged to have them appear at union labour institutes, where they spread the message of anti-discrimination at strategic places throughout the curriculum. The secretaries also began to hold annual educational forums, usually called Race Relations Institutes, in which union members as well as the general public were educated about discrimination problems and their solutions. In addition, they began working with other educational bodies, especially the Canadian Association of Adult Education (CAAE).[78]

Reaching out to trade unionists at their educational institutes and summer schools was hard work. Kaplansky wrote that "[a]s the organizers of these institutes and seminars considered subjects such as race relations and international affairs as 'luxuries,' preferring instead to concentrate during regular day-time sessions on 'bread and butter' issues, like collective bargaining, union administration and parliamentary procedure, our subjects were

[at first] left for evening seminars" where attendance was sparse, usually confined to the converted. Education within the trade unions became easier as Kaplansky won the support of key members and refined his techniques, learning to integrate human rights issues into the unions' regular courses.[79]

Kaplansky also educated trade unionists at the national TLC and CCL conventions. Each year their human rights committees issued reports, normally written by Kaplansky but presented by the committees' chairs, and each year resolutions (again often the work of Kaplansky) were presented and came to a vote.[80] The trade union movement was therefore kept abreast of all important rights incidents and issues -- as seen through the eyes of Kaplansky and his labour committees. Just as important, the general public was kept abreast whenever the news media picked up on a particularly noteworthy resolution or element of a report. For example, the Toronto Globe gave considerable coverage to the events of the 1947 TLC Annual Convention, including Claude Jodoin's speech which decried racial intolerance and drew attention to the recent case of an Owen Sound hospital's refusal to let a black woman train as a nurse.[81]

Over time, Kaplansky changed his focus; instead of fighting prejudice he began to concentrate upon preventing discrimination. He began to realize that, even though the country had become far more tolerant of minorities than before the war, it would be difficult (if not impossible) to make all Canadians tolerant, and this meant that there remained enough cases of discrimination to make life difficult for minorities. He also began to see that in some ways changing attitudes is less important than changing behaviour. After all, a man seeking employment does not so much need "tolerance" as he needs a job. The solution, Kaplansky realized, was to pressure government into creating anti-discrimination legislation.[82]

There were several different models which he might have followed in the late 1940s and early 1950s. One approach was to lobby for provincial legislation similar to the 1947 Saskatchewan Bill of Rights.[83] However, although the idea was popular with the CCF in Ontario, and Kaplansky maintained close ties with them, it was something of a "long shot," for many people viewed it as a revolutionary deviation from the traditional constitutional principle of parliamentary supremacy. Moreover, it was clear that the Conservatives in

Ontario were opposed to the idea, and since there was little chance that the CCF would come to power in Ontario in the near future, this approach seemed to be a dead end.[84]

Another option involved lobbying for a national bill of rights. Although this was often regarded as an American-style deviation from the traditional British notion of parliamentary supremacy, several influential liberals and social democrats, notably B.K. Sandwell, A.R.M. Lower, John Diefenbaker, and Frank Scott, actively lobbied for the passage of a constitutionally-entrenched bill of rights.[85] From Kaplansky's perspective, by contrast, a national bill of rights would deal with libertarian rights, but would not necessarily prevent racist and anti-semitic discrimination. As he knew, the American Bill of Rights was not at that time very effective in protecting blacks, and the "separate but equal" interpretation of the Supreme Court still permitted extensive racial segregation.[86] Consequently, beginning in 1945 the state of New York, followed by New Jersey and Connecticut, had pioneered in the field of race relations by passing legislation which prohibited employment discrimination.[87] These innovations were extremely important, all the more so because they seemed to be effective. If American states could do this, why not Canadian provinces?

Therefore, while Kaplansky did not oppose the notion of provincial or national bills of rights, he came to favour an incremental approach involving a series of anti-discrimination measures in Ontario that would begin a kind of "domino effect," quickly spreading to other provinces and the federal government.[88] As a result, in 1949 Kaplansky's Toronto labour committee became actively involved in the ACL-led coalition which lobbied the Ontario government for FEP legislation and a prohibition against discriminatory restrictive covenants.[89] By 1951 such legislation had been passed, and Kaplansky could now see a number of simultaneous options opening up for his network. One was to use Ontario as an example to persuade recalcitrant politicians in other jurisdictions that anti-discrimination legislation was a relatively popular and not very expensive way to attack discrimination and gain some easy credit. His committees in Montréal, Winnipeg, and Vancouver therefore began to launch their own campaigns for local FEP legislation, and the JLC also became involved in the struggle for a federal statute.[90]

The other goal was an Ontario campaign for a FAP law -- a fair accommodation practices act prohibiting discrimination in the provision of public services, such as hotels, restaurants, barber shops, etc. The next section of this chapter deals with how Kaplansky and his Toronto labour committee worked with a number of other organizations to lobby for this statute and then ensure that it would be effectively implemented. It involves an issue which at one time was headlined on the front pages of national newspapers, and which produced Canada's only reported legal cases involving anti-discrimination prosecutions during the 1950s. It was, to use the title of a once widely distributed National Film Board production, "The Dresden Story."[91]

D: THE DRESDEN STORY

Dresden is a small town in south-western Ontario, not far from the American border. As Stuart McLean has pointed out, in his recent book on Canadian small towns, Dresden in the nineteenth century lay at the end of the "underground railroad" for fugitive slaves, and a substantial number of blacks settled in or near the town. (Josiah Henson, upon whom Uncle Tom's Cabin was allegedly based, is buried nearby.)[92] By the end of the Second World War as many as 300 of Dresden's approximately 1,700 inhabitants were blacks, but several restaurants and barber shops habitually denied service to anyone of black ancestry; indeed, even people who did not look like blacks often suffered racial discrimination when members of the community knew their racial heritage and acted accordingly. It was, in short, one of the most racially segregated communities in Canada.[93]

Racism in southern Ontario had deep roots, intertwined with a smug sense of moral superiority which was nourished by self-serving comparisons with the United States. As Robin Winks has noted, in the early part of this century, "Many small Ontario towns could boast of their pet blacks, who would regale youngsters with tales of slavery down on the old plantation, sing Negro spirituals and play the fiddle." In the 1920s, for a while, when the Ku Klux Klan began organizing in Ontario, crosses were burned in a number of communities, including Dresden and other nearby towns with substantial black populations. The Klan did not flourish, but not because it was too prejudiced for small-town Ontario; rather, it was unable to compete with the established and more respectable Orange Lodge, a bastion of anti-Catholic, anti-Jewish, and anti-black sentiment.[94]

As noted previously in this dissertation, the war engendered new concerns about prejudice and racism, and a number of well-publicized incidents of discrimination against blacks in Ontario were played up by the local newspapers as unfortunate exceptions to the Canadian way of tolerance and fair play. For example, in 1944, when the Toronto Granite Club refused entry to the well-known black singer, Marian Anderson, the CLAT suggested that members of such private organizations had a moral obligation to resign in protest, and

a Toronto Star editorial approved of the proposal, adding that in Russia it was "uncultured" to engage in racial discrimination.[95]

Protests against discrimination soon moved beyond the left-intellectual elite. As Chapter 4 has pointed out, a number of incidents involving racial and religious discrimination became prominent news stories in the mid to late 1940s, constituting both a reflection of, and a catalyst for, a newly-emerging public rights consciousness. It is therefore perhaps not surprising that the blacks in Canada, who had suffered discrimination for so many years, felt encouraged to fight for their rights. One day in 1946 six blacks attempted to put the Dresden version of apartheid to the test and entered one of the local restaurants which traditionally refused service to people of the "wrong" colour. When the owner ordered them out of his restaurant, they formed a committee to discuss strategies for change. After conducting an informal poll of most of the businesses of the town, they realized that those in favour of racial discrimination were actually a fairly small but vocal and intransigent minority. Accordingly, they began to plan a campaign against Dresden's "Jim Crow" discrimination.[96]

The blacks who took an active role in challenging the status quo of Dresden were relatively "respectable" members of the community, unhappy that they should be given second-rate status simply because of their racial heritage. One of the leaders was William Carter, a prosperous local farmer; another was his nephew, Hugh Burnett, a Second World War army veteran who owned his own carpentry business.[97] While many of the Dresden-area blacks were afraid to speak out or publicly support anti-discrimination activity, people like Carter and Burnett were sufficiently well-established and self-possessed to stand up for their rights.[98]

Burnett came to be the most important liaison person between the blacks of the Dresden area and the JLC labour committees in Toronto and Windsor. Originally from Dresden, at an early age he had decided to fight against the town's prejudice and discrimination. Although he lived elsewhere for a while, at one point during the war he wrote the federal Minister of Justice to complain about a refusal of service in a local restaurant, but was advised that there was nothing that Ottawa could do. A few years after the war ended, he moved back to Dresden for the express purpose of grappling with racism in the town, and

he instituted legal proceedings against the owner of a local restaurant. He did not proceed very far, however, no doubt because legal precedents suggested that he had little hope of winning a victory. As Chapter 1 has pointed out, case law favoured those taking the side of "freedom of commerce" rather than those arguing equality of human rights; racial discrimination was not considered by Canadian judges to be contrary to public policy.[99]

A better route seemed to lie through political lobbying. In 1948 Carter, Burnett and about 100 other blacks, most of whom actually lived outside Dresden, formed an organization called the National Unity Association (NUA) in order to deal with the problem of racial discrimination in Dresden and other towns in the area.[100] Just prior to the 1948 municipal election a delegation appeared before the town council and asked that local restaurants be licensed and that a non-discrimination policy be one of the conditions of licensing.[101] This as not an extreme request, even in this time period. The city of Toronto had pioneered (as a result of pressure from the Jewish community) with a bylaw prohibiting discriminatory clauses in leases on city-owned property, and in 1947 and again in 1948, in reaction to publicity about the continuing discrimination practiced by the Icelandia skating rink, it had expanded the scope of the bylaw to include certain municipally-licensed establishments. During this same period anti-discrimination by-laws were passed in Windsor (1944), Hamilton (1947), and Oshawa (1949).[102] Moreover, even the classical liberal Toronto Globe and Mail cautiously supported such bylaws, arguing in 1947 that "No democracy that hopes to survive can tolerate this vicious philosophy [of racism] which sets up differences between human beings and creates division between groups in society." Although the Globe was skeptical about the value of governmental interference in the free market, the editorial suggested that licensed businesses were an exceptional case in which some degree of state control was legitimate.[103]

In Dresden, however, the white community provided such faint support that the initiative moved forward with glacial slowness. Although the new mayor claimed to oppose discrimination, he refused to take action after the election. When the town council finally did act, after having been approached several times by the NUA, it decided to let the populace decide in a referendum, only to call it off the day before the vote, on the grounds that the

town had not met the legal requirement of providing sufficient public advertising. The referendum was finally held in December of 1949 but was defeated by a vote of 517 to 108.[104]

Dresden soon became a lightning-rod which attracted a fire-storm of attention and criticism, not only from the Toronto-based human rights community, but also from the press, including Sandwell's influential Saturday Night. As public opinion polls indicated, by 1949 a majority of Canadians were unsympathetic to racial discrimination, and as one of the few places in Canada where discrimination against blacks was the norm rather than the exception, it was natural that Dresden should draw the attention of liberals already sensitized by the Canadian press. Too often, racism in Canada was polite and almost invisible; in Dresden it was blatant, obvious, and for many Canadians quite shocking. As the editor of the Globe put it, following the referendum, "The decision brings shame to Dresden and to all Ontario."[105]

Meanwhile, Kaplansky's Toronto labour committee had joined the Toronto human rights community. In May of 1947 a Race Relations Institute was held by the radical Christian FOR, which asked the newly-created Toronto labour committee to become involved. The latter not only joined forces, but took over -- the following year it was not the FOR but the "Toronto Joint Labor Committee to Combat Racial Discrimination" which organized the Institute.[106]

Yet the labour committee, as a trade union organization, operated on the margins of bourgeois society. Consequently, it needed a public "front" organization, a group that was respectable and had already established its *bona fides* as a principled supporter of basic democratic values. The Civil Liberties Association of Toronto was an obvious choice. As Chapter 4 has explained, a rump of non-communist CLAT members regrouped in 1949 to form a new organization, the ACL, with Provost R.S.K. Seeley as president.[107] Its board, including such people as B.K. Sandwell, Charles Millard, Andrew Brewin, Maude Grant, and Rabbi Abraham Feinberg, was eminently respectable, a set of bourgeois liberals and highly-regarded social democrats with ties to the highest levels of the Canadian establishment.[108]

The ACL also needed the resources of the Kaplansky network. Drawing its membership from the ranks of the Toronto cultural-intellectual elite, the ACL never generated the membership fees that would have come from a grass-roots mass organization, and it

remained a wholly voluntary organization, precariously founded on Irving Himel's ability and willingness to run it out of his law office. By contrast, the JLC network had relatively secure funding, widespread membership, access to many volunteers, and permanent paid staff for both the Toronto and Windsor labour committees.

There was, however, one drawback to this symbiotic relationship. The very respectability of the ACL often seemed, from the perspective of the labour activists in the Kaplansky network, to produce a mealy-mouthed brand of political pressure. For people accustomed to confrontations with capitalist bosses it was not always easy to accept the ACL predilection for accommodation with the political elite, and on several occasions the labour committee executive found it difficult to work with Irving Himel.[109]

The "infiltration" of the ACL by the Toronto labour committee began shortly after the rebirth of the civil liberties group in 1949, when the ACL created a Committee on Group Relations. This brought together members of a number of important Toronto-based human rights organizations, including Ben Kayfetz of the JPRC, William White of the Home Service Association (a Toronto black people's group), and George Tanaka of the JCCA. Most importantly, the chair was Vivien Mahood, the new secretary of the Toronto Joint Labor Committee to Combat Racial Intolerance. A member of Kaplansky's network was now positioned strategically within the ACL.[110]

One of the first issues facing this new committee was the Dresden affair. NUA activist Hugh Burnett had attended the JLC-sponsored Race Relations Institute as a delegate from his carpenters' union, and impressed the others with his story of how racism in Dresden was a violation of the rights of those whose ancestors had fled to Canada via the underground railroad in the previous century. While Burnett continued (unsuccessfully) to lobby the Dresden city council, the ACL took up his case, and incorporated it into its 1949 brief to Premier Frost.[111] Because Dresden was only one of several contemporary human rights issues, the main request was for a FEP act and action on restrictive covenants. Yet the brief also reflected concerns about Dresden when it requested that municipalities be given the power to cancel the licences of any provider of public services which practiced racial or religious discrimination.[112]

By this time Vivien Mahood had made contact with a number of people in both the black and white communities of southern Ontario. In many ways the Dresden situation was a heaven-sent opportunity for her organization. In the words of Sid Blum, who later occupied her position as secretary, "Canada isn't the U.S. -- where problems are obvious, ever-present and serious. In Canada, at least one or two or even three of these conditions are usually missing. We have to dig for both the victims of discrimination and some of the problems." No such human rights excavation was necessary in this case.[113]

A few days after the meeting with Premier Frost, but before the referendum, Mahood travelled to Dresden to see the situation at first hand. (She was accompanied by Mildred Fahrni, the former VCC activist who by this time was Executive Secretary of the FOR.) Mahood did this on her own time, with the ACL paying her gas money, although she saw it as her contribution to the work of the Toronto labour committee, and reported the trip in detail to Kaplansky.[114] On the basis of this trip, she began planning a course of action, and her first step was to get in touch with Pierre Berton, the editor of Maclean's and a strong supporter of liberal causes. The subsequent "exposé" article by Sidney Katz helped turn the Dresden affair into a national story.[115]

Mahood found that not all members of the Dresden black community were solidly behind the NUA. Because only a few businesses refused to serve blacks, and because it was easy to drive to nearby towns for service, it was often fairly easy to "put up" with isolated instances of racism. It was primarily the members of the NUA, people like Carter and Burnett, who wished to pursue the issue as a matter of principle.

As Mahood noted, most of the whites in Dresden resented the newspaper stories that had been published about their community. It was not so much that they were active supporters of racism, but that they were "quiescent" supporters of the status quo. Even the clergy, she found, tended to deplore the NUA agitation, and Carter and Burnett were widely regarded as people who were simply stirring up trouble. At one point the Mayor of the town even accused Burnett, a CCF supporter, of being a communist.

Yet Mahood recognized that only a few citizens in Dresden were outspoken bigots, and she felt that restaurant owner Morley McKay was probably the "moving spirit" behind

most of the discrimination. In the Maclean's article McKay was described as "a burly, black-haired Scot, energetic and nervous, who fiercely resents interference in his business." He was also reported as saying, "Do you know that for three days after [each attempt by a black to obtain service] I get raging mad every time I see a Negro. Maybe it's like an animal who's had a smell of blood."[116]

When, in December 1949, the citizens of Dresden voted not to enact an anti-discrimination bylaw, the ACL immediately asked for another meeting with Premier Frost, arguing that Dresden clearly demonstrated the need for anti-discrimination legislation -- a FAP law as well as a FEP act. This time (January 1950) the delegation was even larger than before, consisting of several hundred people and 104 different civil libertarian, church, labour, ethnic, and social welfare organizations, including William Carter of the NUA.[117]

Frost did not seem to be very sympathetic to the human rights delegates. According to one account, "[t]he Premier loftily remarked that Canada has been built on a cornerstone of tolerance and is an example to the world. He believed it a mistake to talk about minorities in a country that has become a melting pot." Denial that racism can exist in Canada was, as the human rights activists were beginning to learn, one of the major barriers to a legislated solution.[118]

Of course, as Chapter 4 of this dissertation has suggested, there were many reasons why politicians like Frost were initially hesitant to take action against racial prejudice. Racism was denied in part because it was so institutionalized. Although members of the elite were not likely to express racist opinions in public, many of them were still strongly prejudiced, and Frost had to work with a legislature which was still largely small-town and rural based, Orange Lodge affiliated, and steeped in a culture of which approved only of blacks who acted like "Uncle Tom," the archetypical deferential second-class citizen.[119]

Yet the major obstacle to anti-discrimination legislation was not racism, which was becoming increasingly unacceptable in "respectable" discourse, but rather the values that objected to state interference in the market-place. As the Mayor of Dresden argued, "[t]his is a democratic country.... You can't force anyone to serve Negroes."[120] In short, there was a collision of freedoms, a conflict between the classical liberal right to freedom of property

and the reform liberal right to freedom from private acts of discrimination. Or, to put it another way, traditional British liberties were under attack by the emerging post-war values of human rights.[121]

It seems clear, in retrospect, that the latter was rapidly replacing the former. The contrast between the practices in Dresden and the post-war values of human rights created a serious "discrepancy effect" which resulted in increasing support in newspaper editorials for anti-discrimination legislation.[122] Moreover, the situation in Dresden undermined Canadians' smug feelings of moral superiority and anti-Americanism. As an influential Globe columnist later wrote:

> The reason that people from Toronto as well as people from Hamilton, Montréal...etc., have a right to get indignant about Dresden's record of discrimination is that Dresden is in Canada. And if there is one fact of U.S. life that we don't want to import into this country it is ... anti-Negro discrimination.[123]

As pointed out in Chapter 4 of this dissertation, by 1951 Premier Frost had moved from a conservative wait-and-see position on anti-discrimination law to one of legislative pioneering. He was responsible for the creation of Canada's first FEP law, as well as legislation dealing with equal pay for women and a statute prohibiting future discriminatory restrictive covenants. However, Ontario still had no FAP law, and the Dresden issue continued to fester.

Paradoxically, it was the United States which provided the model for attacking this problem. In 1952 the state of New York amended its anti-discrimination legislation so as to extend protection to public accommodation. Again human rights activists in Canada could ask: if they can prohibit racial discrimination in the United States, then why not here also?[124]

Of course, there were discrimination problems in many other parts of Ontario besides Dresden. In addition to the Icelandia incidents in Toronto in the 1940s, many Canadians had been shocked in 1951 when the press gave substantial publicity to the fact that a Hamilton barber had refused to cut the hair of Oscar Peterson, the black pianist already recognized as one of Canada's cultural stars. Perhaps most shocking of all, there were reports of the burning

of a fiery cross in North Buxton, one of the towns near Dresden where the NUA was also active.[125]

Less publicized, but just as serious, was the refusal by a number of southern Ontario licenced establishments to serve blacks. Both the Toronto and Windsor labour committees devoted considerable energy to investigating complaints (one of them involving the Mercury Club in Toronto, the other the William Pitt hotel in Chatham, not far from Dresden) and began to pressure the Ontario Liquor Board to suspend their licences. However, although the labour committees were able to obtain tribunal hearings in late 1953, and in the Mercury Club case received an apology from the proprietors, the William Pitt case ended in a defeat, for the tribunal ruled that a single act of discrimination did not constitute a pattern that warranted a licence suspension.[126]

At about the same time that the tribunal disappointed the Toronto labour committee the Ontario Attorney General informed the NUA that he could provide no legal redress in Dresden. As a result, the latter organization turned for assistance to Donna Hill, the new secretary of the Toronto labour committee, and shortly afterwards she began to create yet another ad hoc coalition to lobby the government. Working with the legal advisors of the JPRC (including both Bora Laskin and David Lewis), her efforts produced a brief calling for FAP legislation. On 24 March 1954 it was presented to Premier Frost by a delegation once again officially led by the ACL.[127]

Dresden had been mentioned in passing by the previous delegations to Frost, but this time it was a major concern. The ACL brief referred to discrimination against blacks in a number of Ontario communities but noted that "[t]he height of expression of Jim Crow in Canada is to be found in the town of Dresden, Ontario." In addition, although several people spoke, including the ACL's Himel, a spokesman for the CJC, and representatives of the Ontario branches of the TLC and CCL, Hugh Burnett got the most publicity. He said that he was ashamed to have to plead for his fundamental democratic rights, and referred to a possible connection between the rise of communism and dissatisfaction over racial discrimination. "There are no Communists among the coloured people at Dresden," he stated,

"but I don't know how long we can assure that if the discrimination practiced there is to continue."[128]

Less than a week later the Ontario government introduced Canada's first FAP legislation, An Act to promote Fair Accommodation Practices in Ontario, which the legislature passed quickly and which became law on 6 April 1954.[129] Like the earlier FEP Act, it harkened back to the ground-breaking decision of Mr. Justice Mackay almost ten years before in Drummond Wren, beginning with a preamble which stated that it was now "public policy" to provide public services free from discrimination, and acknowledging that this accorded with the UDHR. The statute went on to forbid discrimination in the provision of public services on grounds of race, creed, colour, nationality, ancestry, or place of origin.[130]

Like the province's FEP legislation, the FAP statute differed from the quasi-criminal Ontario Racial Discrimination Act (ORDA), passed in 1944. Rather than simply prohibiting certain behaviour and leaving it up to the Crown to press charges, the legislation set out a series of steps to be followed after the filing of a complaint by some member of the public. This involved first the appointment, by the Labour Minister, of an investigator supposed to attempt a conciliated settlement. If this failed, then the Minister was supposed to set up a commission with all the powers of a labour conciliation board, empowered to hear submissions from both sides.[131] After the commission had made its report, the Minister could "issue whatever order he deems necessary to carry the recommendations of the commission into effect," including a decision to prosecute. (No prosecutions under the act could take place except with the Minister's consent.) Any individual successfully prosecuted could be fined up to $50.00, and any corporation could be fined up to $100.00; the former was one-half the fine mandated by the 1944 legislation. In short, the legislation created opportunities for a "velvet glove" of conciliation and education, with resort to a fairly gentle "iron hand" of prosecution only as a last resort. As the Dresden story soon indicated, however, the legislation also provided ample opportunity for administrative recalcitrance, obfuscation, and procrastination.[132]

How influential was the ACL-led delegation in persuading the government to create Canada's first FAP Act? If they did have an impact it was no doubt because they influenced

Premier Frost rather than the Tory caucus. Some of the caucus members claimed that communists were behind the agitation in Dresden, and J.W. Murphy, the nativist Tory MPP who represented Dresden, told the House that blacks in the town were not upset about discrimination and that the problem was really caused by outside black "agitators" from Detroit. However, most Canadian Premiers dominate the legislative agendas of their respective provinces, and Frost was a particularly strong leader. This was only one of several occasions when he was able to push legislation through the House even over the objections of his small-c conservative (and often Orange) caucus.[133]

Moreover, Frost had an ally in Kelso Roberts, a prominent Conservative MPP back-bencher who later helped the JLC when he was Attorney General. Roberts had earlier been approached by Ben Kayfetz of the JPRC, practicing a little "quiet diplomacy," and Roberts had promised that he would speak to the Premier on this issue. Evidently Roberts did so, as well as calling publicly for a FAP law, for Frost then asked Roberts privately to research information about the anti-discrimination laws in the United States.[134]

One reason why the ACL-led delegation was able to persuade Frost was the constant pressure of events in Dresden.[135] However, the way in which these events were presented and interpreted was also important. Although organized labour was playing a crucial role, it took a back seat in the formal presentations. Having delegates such Himel or B.K. Sandwell indicated that "respectable" members of the public were outraged, while using Hugh Burnett transformed the problem from an abstract matter of competing values to a personal violation of fundamental human rights and common decency.[136]

Moreover, the delegation's arguments seem to have meshed nicely with Frost's own world view. The Premier was genuinely upset about racism and discrimination in his province, and believed that bigotry against Jews and blacks was incompatible with a faith in Christianity. In addition, he no doubt saw the issue of anti-discrimination legislation through the ideological lenses of a reform liberal rather than a classical liberal -- after all, he was in the process of re-creating Ontario as a modern administrative state -- and he also had the examples of American legislation to guide him.[137] Then again, Frost was probably affected by Hugh Burnett's argument that communists might take advantage of events in Dresden. As

John Bagnall has pointed out, Frost saw the immediate post-war period as the culmination of a revolution in which the world was turning to democracy rather than communism for the protection of their human rights, and he believed that this revolution was taking place in Ontario as well as abroad. Anti-discrimination legislation therefore could combine both practical politics and ideological warfare -- stealing some of the thunder of Ontario's communist MPPs as well as striking a blow for capitalist "freedom."[138]

Yet there may have been yet another compelling reason why Frost chose to introduce a FAP law. John Bagnall has noted that, beginning in 1949, the rate of immigration from Britain had dropped enormously, largely because of currency export controls imposed by the financially-strapped British government. Because of this drying up of the supply of "preferred" immigrants, it soon became necessary for Canadian officials at both the federal and provincial levels to begin thinking about ways to entice immigrants from other countries. Realizing that discrimination against new arrivals from countries such as Italy or Greece might interfere with immigration rates, as well as contribute to domestic social problems, Frost soon became convinced that anti-discrimination policy was a necessary part of his economic growth plans for Ontario.[139]

Finally, the delegation's success can in part be attributed to the fact that it demanded merely incremental change rather than a radical shift such as a provincial bill of rights. According to Allan Grossman, a Tory supporter of the Premier, Frost believed that it was better to move forward one cautious step at a time, giving people time to adjust to change.[140] The FAP Act was simply another step in the direction already pointed out by Frost's legislation against restrictive covenants and his FEP statute. In fact, from the perspective of those who had lobbied the government, it was a very small step indeed. The delegation had also called for the creation of a Citizen's Advisory Board to be composed of experts in "intergroup relations" who would advise the government on anti-discrimination educational measures. The government ignored this recommendation to expand the bureaucracy, leaving education up to the case-by-case process of administrative conciliation.[141]

It remained to be seen whether or not conciliation backed by the threat of prosecution would be effective. It is a self-evident but important truism that legislation without adequate

enforcement will have little positive effect upon behaviour.[142] While a number of establishments in Dresden ceased discriminating against blacks after the passage of the FAP Act, several restaurants and barber shops continued to flout the law. As a result, Hugh Burnett and other NUA members began to "test" these establishments, relaying information to Sid Blum, who had replaced Donna Hill as secretary of the Toronto labour committee shortly after the passage of the legislation. It was Sid Blum who filed complaints on behalf of the Dresden blacks, and from this point on, although Burnett was more often in the public eye, it was Blum who acted as his behind-the scenes mentor, with Kalmen Kaplansky standing even further in the shadows behind his labour secretary.[143]

The immediate reaction to the NUA complaints was a decision by Charles Daley, the Ontario Minister of Labour, to send one of his local factory inspectors to begin an investigation. Blum considered this to be an inadequate response, and suggested in writing to the government that a factory inspector might not be able to devote enough time to the issue. Things turned out to be even worse than Blum had anticipated, however, when he received a letter from Burnett that "it comes pretty straight from McKay that when the inspector was down that he stayed with McKay and they had a good time and that he told McKay he had nothing to worry about, he could keep on refusing if he wanted to." Whether or not this was true, the factory inspector told the government that there was no evidence of discrimination in the town and J. F. Nutland, the officer in charge of the FAP Act in the Department of Labour, then informed Blum that he should not "interfere" with the situation in Dresden, lest he "upset" the community.[144]

It was at this point that tensions in Dresden almost spun out of control. The NUA's policy of aggressively pressing their moral and legal claims had destabilized the social fabric of the town, and Burnett began receiving anonymous letters threatening his life. In addition, there was considerable talk that the upcoming celebrations for Dresden's centennial might generate mob violence. The NUA therefore sent a letter to the deputy attorney general of the province, apprising him of these developments, and complaining about the low level of police protection and cooperation they had received. At about the same time, Blum issued a press

release decrying these threats of violence, and the Toronto Telegram published a story entitled "Dresden Negro Warned, Gets Gun for Safety."[145]

Blum had no sympathy for the tender feelings of racists. He believed that "quiet persuasion will usually produce one result: quiet inaction."[146] However, he was scrupulous about relying upon facts rather than rumours, and therefore on 22 July he went on a two-day fact-finding trip to Dresden. He found that racial tensions were high, with the locals insisting that either there was no racial problem or that the problem was caused by local blacks who did not "know their place" and who also wanted to marry local white women. He concluded that the passage of the FAP legislation and the subsequent visit of the factory inspector had done little to change the attitudes of the white population. There seemed to be to be a wide-spread misconception that the FAP Act did not even exist.[147]

Blum immediately began to orchestrate a large-scale operation which involved both a maximum of publicity and further testing. He lobbied the Ministry of Labour with letters and telephone calls, asking for an inquiry commission to be appointed according to the provisions of the legislation.[148] At the same time, he constantly worked to keep the issue before trade unionists, using their responses as a way of gaining press coverage. For example, he persuaded the two Toronto trade councils to demand that the government take action, and he ensured that this was widely reported in the city press.[149] He also provided continual advice and support to Hugh Burnett, sometimes working through the secretary of the Windsor labour committee, and he arranged to have a number of black people visit the offending restaurants so that he could file complaints on their behalf. Just as important, he created an alliance with Gordon Donaldson, a Toronto Telegram newspaper reporter, who travelled to Dresden to observe the testing process and who provided extensive press coverage until the Dresden affair was finally settled. (One of Donaldson's articles, written for the now-defunct magazine Liberty, was reprinted with the logo and address of the Toronto labour committee, and widely distributed as an education and lobbying tool.)[150]

In the face of growing public pressure, and a total of eight complaints, including one filed by Burnett on behalf of a travelling black couple from Cincinnati, the Labour Minister appointed Judge William F. Schwenger to a one-man board of inquiry to determine if the

situation warranted prosecution.[151] The hearing took place in Dresden on 27 September, with at least 200 people attending, and newspaper reporters from as far away as Vancouver visited the proceedings.[152]

Judge Schwenger held hearings on two separate complaints. First, Hugh Burnett and four other members of the black community claimed that they had been denied service by Morley McKay, owner of Kay's Cafe. Second, a union activist named Lyle Talbot alleged that he and several other blacks had been turned away at Emerson's Soda Bar Restaurant.[153] These people were supported by the Toronto and Windsor labour committees, which had filed the complaints on their behalf, and were represented in court by the former CCF national secretary, David Lewis. As noted earlier, Lewis was a member of the JPRC and had close ties with Kaplansky and the JLC. As a token of his regard for their cause he appeared pro bono, thereby significantly cutting the costs to be borne by the two labour committees.[154]

At the hearing the complainants testified about the continuing pattern of racial discrimination, and explained the events which led up to their own complaints being filed under the FAP Act. The case against Emerson's restaurant was clouded by the fact that the complainants had arrived shortly before closing time, but there was no doubt that McKay had refused to serve blacks. In fact, McKay argued a kind of defense of necessity which stressed property rights -- "I have to break the law to protect my business. I have a right to.... My customers have told me if we serve Negroes, they won't come in."[155]

By October the Minister of Labour had received Schwenger's report, but refused to make it public, saying that there was no need to take action as long as there was evidence that people were being educated about their legal obligations. In actual fact, although the report recommended that no further action be taken in the case of Emerson's restaurant, Schwenger had found that there was sufficient evidence to suggest that McKay was in direct violation of the FAP Act, and he unequivocally recommended that he be prosecuted. Daley, always unsympathetic to the cause of racial equality, was clearly obstructing justice and misleading the public as well.[156]

This refusal to release the contents of the report, or to take any further action, precipitated a storm of criticism from the press.[157] At the same time, Blum decided to keep

up the pressure by arranging another test case about a week later. This time he sent two people, both of them strangers to Dresden. One of them, Bromley Armstrong, was a black trade unionist, the financial secretary of local 439 of the UAW, chair of its FEP committee, and also a member of the Toronto labour committee. The other was Ruth Lor, a Chinese-Canadian who was secretary of the University of Toronto Student Christian Movement (SCM).[158] As was expected, when they went to Kay's Cafe with Hugh Burnett they were refused service. Indeed, Morley McKay appeared to be so upset about the frequent tests that Armstrong was seriously concerned that he might be attacked by the restaurant owner, who was wielding a large meat cleaver and appeared to be having trouble controlling his notorious temper.[159]

This story received prominent coverage in the Toronto newspapers, partly because Blum had been astute enough to invite reporters to witness the test.[160] However, Daley responded angrily to the test, suggesting that it was the work of "troublemaking Communist groups." The Cold War was at its height, and such responses were common "red herrings" during this period. He made this charge several times, despite strong denials from the Toronto labour committee, the NUA, and their allies.[161] The charges, of course, were totally untrue; although at one time communists had attempted to become involved with the Dresden affair, the staunchly anti-communist JLC had managed to keep them excluded.[162] Perhaps Daley had been influenced by the Globe, which a few weeks previously had noted that "[i]t is regrettable that the Communists have taken a hand in the Dresden matter, as they have frankly revealed in their newspaper."[163]

Fortunately for the human rights community, Frost did not believe Daley's charge, although he probably still worried that communists might exploit racial tensions for propaganda purposes.[164] He therefore put pressure on Daley to take action, and in early November the government announced that it was, for the first time, proceeding with a prosecution under the new FAP Act -- against Morley McKay for his refusal to serve Bromley Armstrong. Shortly afterwards, the government announced a second prosecution, this time against the wife of the owner of Emerson's Restaurant, based on complaints by two local

blacks, Joseph Hanson and Mrs. Bernard Carter, who had tested the establishment on behalf of the NUA.[165]

In January of 1955 the restaurateurs were found guilty, but they appealed on a number of grounds which, in early September, persuaded County Court Judge Henry Grosch to overturn the magistrate's decision. He ruled that a restaurant owner could not be held responsible for a refusal of service by his waitress, and added that there had only been evidence of a "postponement" of service rather than a refusal. Moreover, he stated that there was no clear evidence that, even if there had been a refusal, it was based on discriminatory grounds.[166]

As might be expected, human rights activists reacted angrily, especially when it was pointed out that Grosch had been one of the property owners who some years earlier had argued in the Noble and Wolf case that a discriminatory restrictive covenant should not be struck down in court. The Toronto labour committee presented this information to the two Toronto labour councils, which then publicly called on the government to appeal the decision and to pass an amendment to the legislation that would make it easier to enforce.[167]

It soon became apparent that Frost too was angered by the decision; he was quoted as saying, "Surely it isn't necessary that a bank robber must announce that he is going to hold up a bank before he is convicted of bank robbery!" However, he also told the press that he was unwilling to amend the legislation, since the error lay with the judge and not the statute.[168]

Although the human rights community kept up pressure on Frost for amendments to the FAP Act that would more clearly define the nature of discrimination, and pointed out that in New York the power to prosecute had been taken out of the hands of elected politicians and given to a specialized administrative board,[169] Blum proceeded to see what he could do with the legislation as it stood. One option was to ask the Crown to appeal. Provincial legislation at that time prevented an appeal from a County Court judge's decision on a simple question of fact, but Blum's legal advisers in the JPRC argued that the Grosch decision was based in part upon a question of law -- the meaning of the term "deny" in the FAP legislation. Blum therefore ensured that the Attorney General (who by now was Kelso Roberts) received

a barrage of letters from the NUA and trade unionists urging the government to appeal the decision. Nevertheless, the Attorney General decided not to proceed, for his legal advisers maintained that the Court of Appeal might not accept this reasoning, and it would be better to have an entirely new case with irrefutable evidence of discrimination.[170]

The Attorney General, however, did hold out some hope when Blum spoke to him privately. Roberts said that he was sympathetic to the cause of fighting discrimination, and informed Blum that his department would fully cooperate if further tests were held. As a result, Sid Blum and Bromley Armstrong, along with some trade unionists from Windsor and London, made several new attempts to obtain service from Kay's Cafe. Each time, however, the restaurant closed down shortly after they entered, stayed closed for several hours, and then re-opened with a waitress stationed by the window to give warning should the test group return. As a result, McKay began to believe that he had perhaps won; he boasted to one of Blum's white "plants" that he had beaten the previous charges because "they couldn't prove anything."[171]

Because of this impasse, and because the Attorney General's office suggested that it might be better to test the Dresden restaurants with someone who was unknown to people like McKay, the Toronto labour committee changed its tactics and obtained the assistance of two black University of Toronto students, Jake Alleyne and Percy Bruce. By using complete strangers to test the Dresden restaurants, rather than Hugh Burnett or Bromley Armstrong, the Toronto labour committee hoped to get proof of refusal of service rather than simply a pattern of eccentric working hours. In addition, it would not be possible for the restaurant owners to claim that they were refusing service for personal reasons rather than reasons of race.[172]

When they went to Dresden on 12 November the testers were very careful not to give Judge Grosch, or some other appeals judge, any reason to dismiss the complaint. To begin with, the black students were dressed respectably and were very careful to be polite. In addition, they requested service several times from both the waitress and from McKay, so there could be no doubt about a refusal of service. Moreover, a white student had come down with them from Toronto, entered the Cafe after them, and then asked successfully for service.

Finally, Blum had arranged that a student activist from the University of Toronto would also be in the cafe simply to observe what had happened.[173]

The test was a success. The two black students were not served, yet the first white Toronto student received service quickly. As a result, both Bruce and Alleyne laid complaints, and early the following year McKay was charged a second time for violating the FAP law.

At about the same time that the charges were being laid, the ACL led yet another delegation to Premier Frost. In its brief, the human rights group asked for the creation of an anti-discrimination commission that would take on the responsibility of administering FEP and FAP legislation as well as running an anti-discrimination education program. In addition, the brief called for an amendment to the FAP Act which would plug the "loopholes" revealed by the Grosch decision. Once again, the Dresden affair was a primary focus for human rights lobbying, and although Hugh Burnett was not able to join the delegation, it included a number of black activists: Bromley Armstrong (representing the Toronto labour committee), Stanley Grizzle and B.A. Walker (of the Brotherhood of Sleeping Car Porters), and Donald Moore (of the Negro Citizenship Association).[174]

Premier Frost was unwilling to create either an anti-discrimination commission or amend his FAP legislation, but he did mention to Blum that he was optimistic that the law would prove effective. According to Frost, the Crown Attorney handling the first Dresden cases had been ill, and had not handled them very well. In addition, as Blum later wrote to Kalmen Kaplansky, this time the Attorney-General's department was "going all out to make this conviction stick," and the case was being directed from Toronto rather than by the Chatham Crown Attorney.[175]

Meanwhile, McKay's lawyer was arguing in court that his client was not responsible for any denial of services on the grounds of race and that the law was in any case unconstitutional criminal law legislation. He also maintained that the testing process was unfair, calling Blum's observer "a plant, a spotter, a spy." The magistrate, however, rejected these arguments, and in late February McKay was found guilty, fined, and assessed court costs. The fines were moderate -- $50 on each of two counts -- but the costs were over $600,

an extremely high figure which reflected the cost of bringing the Labour committee witnesses from Toronto to Chatham.[176]

McKay appealed once again, but this time the case went to County Court Justice Lang rather than Grosch. As far as Lang was concerned, the case for the complainants was clear -- an actual refusal of services had taken place, the owner was responsible, the reason could be nothing other than race, and the legislation was indeed constitutional. The conviction was upheld and the fine sustained. Even more serious, McKay had to bear the costs of both the convictions and the appeal. The special Crown prosecutor had offered not to press for costs if McKay would undertake to stop discriminating in the future, but McKay's defense lawyer told the court that he wished "to go down with his colors flying."[177]

The decision was widely reported in the Ontario press as well as the Canadian Press wire service, and most of the comments were favourable. Even the Globe, usually unsympathetic to legislation that limited the freedom of the market-place, grudgingly supported Lang's decision:

> In our view it will always be difficult to impose racial tolerance by law. Education is the surest means of eliminating discrimination in our society. Nevertheless, if we are going to have anti-discrimination legislation, it will have no virtue unless it is effective. Judge Lang has done a good deal to strengthen the Fair Accommodation Practices Act.[178]

McKay decided to appeal to the Ontario Supreme Court, and the court granted leave on the issue of the constitutionality of the FAP Act. Yet in October he struck his colours, probably realizing that his case was hopeless, and announced that he would not carry through with the appeal. The anti-discrimination forces then waited for a few weeks while government officials informed the Dresden community about their legal obligations and the possibility of future prosecutions. On 16 November 1956, a test group from the NUA asked for service from Kay's restaurant and the owner complied. Racial segregation in Dresden had come to an end.[179]

E: CONCLUSION

Dresden was an important step forward in the struggle against discrimination in Canada, but it was only part of a long series of incremental changes. In 1960 blacks were still having significant problems obtaining certain services, and newspapers were editorializing about the need for improved FAP enforcement.[180] From the perspective of human rights activists, after Dresden at least three tasks still remained: the continued testing and enforcement of existing FEP and FAP law in Ontario; obtaining legislation which followed the Ontario model in other provinces and at the federal level; and revision of existing provincial anti-discrimination statutes, ultimately bringing them together as human rights codes, with provision for full-time investigation, enforcement, and public education staff.

Over the next few years the JLC played a major role in the achievement of all three goals. The Toronto labour committee and Sid Blum continued to experiment with the testing procedures they had used so successfully in the Dresden affair.[181] They now realized that even a tenacious individual such as Hugh Burnett could have trouble proving that he had been the victim of racial discrimination. As a result, they adopted what can be described as a quasi-governmental role, setting up and publicizing elaborate tests to demonstrate beyond doubt the existence of continuing patterns of racial and/or religious discrimination.[182]

The JLC also exported the Ontario model to other provinces. By the time the Dresden affair was over, a pattern had been set in which JLC labour committees in Montréal, Manitoba, and Vancouver were working with local coalitions to lobby for municipal and provincial FEP and FAP laws, with Kaplansky suggesting how they could profit from the pioneering efforts of the Toronto labour committee, and the local committee secretaries making ample use of the NFB "Dresden Story" film in their educational efforts. In those provinces where the JLC had no labour committees it still had an impact through its connections with the human rights committees of the CCL and TLC (and after 1956, through the CLC National Committee on Human Rights, or NCHR).[183]

In addition, the JLC played a major role in getting the Ontario government -- and other governments -- to improve their legislative protection for human rights.[184] Sometimes

this simply involved demands that the scope of the laws be extended. For example, just as the Dresden affair ended, the Toronto labour committee began to pressure the government to extend its FEP and FAP protection to rental accommodation and job placement agencies. More importantly, the Ontario human rights community approached Frost in early 1956 to ask for an anti-discrimination commission. Relying upon labour relations investigators, who had no particular interest in or sympathy for human rights issues, had proven to be frustrating and dilatory. The delegation therefore called for an administrative body that would specialize in investigating and conciliating FEP and FAP complaints and would also take on responsibility for educating the public. In short, experience and the logic of reform liberalism increasingly suggested to the rights activists that the state rather than individuals or groups should take on more responsibility in this field.[185]

The government did not act immediately, but by 1959 Ontario had instituted a Commission with educational powers. It was not until 1962, however, that the province proceeded to incorporate all of its anti-discrimination statutes into a single Code, with a Commission that not only had educational powers, but also the ability to investigate, conciliate, and even prosecute (by sending cases to administrative tribunals rather than to the courts).[186]

This dissertation ends in 1960, a relatively arbitrary date as far as the JLC is concerned. By then the JLC human rights network was no longer headed by Kalmen Kaplansky, for he had been replaced in 1957 by Sid Blum, who took over two positions: Director of the JLC and Secretary of the NCHR (which by 1956 had replaced the JPRC as the supervisor of the labour committee network).[187] In his latter capacity, Blum presided over an organization of labour committees stretching from sea to sea, with paid staff in Montréal, Toronto, Winnipeg and Vancouver, and volunteer committees in Halifax, Amherst, Sydney, St. John, Windsor, St. Catherines, Hamilton, and Calgary.[188]

In Nova Scotia, for example, Blum had set up a Halifax human rights committee and subsidiary organizations in Amherst and Sydney; this helped to create pressure for a provincial FEP law (passed in 1959). The most urgent issue in Nova Scotia was the treatment of its black population, and by 1960 the JLC had begun to make contact with some of the black

community leaders. Its most important work, however, with Halifax committee secretary Gus Wedderburn, still lay several years in the future.[189]

In Toronto, the secretary of the labour committee by 1960 was a young law school graduate named Alan Borovoy (later to become a national figure as the General Counsel of the Canadian Civil Liberties Association). In 1960 Borovoy was working on a number of human rights cases in public services, including one filed by future MP Howard McCurdy about discrimination on a local golf course. Borovoy was also working closely with Pierre Berton of Maclean's Magazine, who not only publicized incidents of discrimination but sent Borovoy information about situations worth investigating.[190]

In 1960 the Winnipeg JLC committee secretary was still David Orlikow, who covered the other prairie provinces, but did most of his political lobbying in Winnipeg. The province passed a FEP law in 1953 and by 1960 Orlikow was trying to obtain FAP legislation. He also organized test cases, roughly following the model developed in Toronto. Although one case involved allegations of discrimination against blacks by the local Simpson's department store, his attention was more frequently drawn to issues of discrimination against native Indians. As in other provinces, it was necessary to document abuses before people would admit that there were problems with racism.[191]

Finally, the Vancouver labour committee secretary in 1960 was Bill Giesbrecht. Working with other groups, his organization had managed to get the province to pass a FEP law, and Giesbrecht was active in a number of other causes, including lobbying for a provincial FAP statute and for a Vancouver city anti-discrimination by-law.[192]

* * *

It is curious how little has been written about the contribution of organized labour to post-war developments in the field of human rights. Labour historians have published almost nothing about this, and have left the field to graduate students in social work, sociology, political science, or law. Yet these accounts have been flawed, for they have paid little or no attention to the over-abundant records of the JLC. In a way, this is understandable, for even

when the Dresden affair was a "hot" news item, the JLC usually operated behind the scenes and it was other rights groups -- the NUA, the ACL, and even the CJC -- that garnered the publicity.[193] Nevertheless, analysis which ignores the JLC files is inadequate historiography.[194]

This case study of Dresden provides not just an explanation of an important issue in Canadian race relations, but also a new appreciation of the JLC as an organization which built upon the emerging post-war human rights discourse. Yet much research needs to be done before we can understand its full contribution to the protection of human rights in all parts of Canada. The Dresden story was a small part of the JLC's human rights program, a full account of which still remains to be told.

ENDNOTES FOR CHAPTER 6

[1]As noted in Chapter 4 of this dissertation, a FAP Act forbids people who serve the public in stores, restaurants, hotels, etc. from discriminating on grounds such as race, ethnic origin, or religion. The first FAP Act in Canada was passed in Ontario in 1954, and was later incorporated into the province's all-inclusive human rights act in 1962. Today, all contemporary federal and provincial human rights codes include, among other things, prohibitions against discrimination in the provision of public services.

[2]Canadian historians have unfortunately largely ignored the role of organized labour in the post-war fight for human rights, Bryan Palmer's extensive survey text-book, which refers to most of the current labour historiography, contains no references at all to this significant contribution (Working-Class Experience: Rethinking the History of Canadian Labour, 1800-1991, 2nd. ed., [Toronto: McClelland and Stewart, 1992]). There are a few references in some published works: Arnold Bruner, "The Genesis of Ontario's Human Rights Legislation: A Study in Law Reform," University of Toronto Faculty of Law Review 37 (1979): 236-253, and "Citizen Power: The Story of Ontario Human Rights Legislation," Viewpoints: The Canadian Jewish Quarterly 3 (Summer 1981): 4-15; Daniel Hill and Marvin Schiff, Human Rights in Canada: A Focus on Racism (Ottawa: Canadian Labour Congress and the Human Rights Research and Education Centre, University of Ottawa, c. 1986; Howe, "The Evolution of Human Rights Policy in Ontario," 783-802, and "Incrementalism and Human Rights Reform," 29-44; Manzer, "Human Rights in Domestic Politics and Policy"; Walker, "Race," Rights and the Law (Chapters 4 and 6). See also Agnes Calliste, "Sleeping Car Porters in Canada: An Ethnically Submerged Split Labour Market," Canadian Ethnic Studies 19, no. 1 (1987): 1-20; this article makes use of the JLC Papers and provides both praise and criticism for the Kaplansky network's anti-discrimination activities.

There are also a number of works which mention organized labour's role in fighting for female equality in the workplace. However, as Gillian Creese has noted, "Labour's commitment to sexual equality was not unambiguous" (Gillian Creese, "Sexuality and the Minimum Wage in British Columbia," Journal of Canadian Studies 26 [Winter 1991-92]: 120-140, note 60 at 140). See also: Shirley Tillotson, "Human Rights Law as Prism"; Porter, "Women and Income Security in the Post-War Period"; Creese, "Power and Pay."

The most comprehensive discussions of the role of labour and the JLC in human rights work are found in the work of graduate students: Sohn, "Human Rights Legislation in Ontario"; Bagnall, "The Ontario Conservatives"; Howe, "Human Rights Policy in Ontario"; Christopher MacLennan, "Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960" (Ph.D. diss., University of Western Ontario, 1996). Note also the video on Kaplansky and the JLC, "Working Side By Side: The Struggle for Human Rights" (Ottawa: The Human Rights Centre and the Canadian Labour Congress, 1985).

[3]Most of the papers pertaining to the JLC were donated to the National Archives by Kalmen Kaplansky, the National Director from 1946 to 1956. Some of the records are in the JLC Papers, some in the Kaplansky Papers, and some in the Ontario Labour Committee for Human Rights (OLCHR) Papers. Within the Kaplansky Papers there is a set of his "Reports," at first written for the Joint Advisory Committee on Labour Relations (JACLR) of the Jewish Labour Committee and the Canadian Jewish Congress, and then (from 1956) for the National Standing Committee on Human Rights of the Canadian Labour Congress (NCHR). His papers also include a set of his "Notes," which are comments on these Reports, written while he was Senior Fellow of the Human Rights Research and Education Centre at the University of Ottawa. There are over 90 boxes of materials dealing with the JLC.

[4]As noted in Chapter 4, the concept of CJC "quiet diplomacy" is discussed in Sohn, "Human Right Legislation," 90-4. From 1941 until 1959, the Executive Director of the CJC was Saul Hayes, who exemplified the increasingly professional and middle-class nature of the organization. "As a native Canadian, a trained lawyer and social worker, Hayes brought novel talents to the organization, giving it new dimensions within the context of Canadian society" (Rosenberg, In the Midst of Freedom, 49.)

[5]Whenever the acronym "JLC" is mentioned in this dissertation it will refer to the Canadian branch of the JLC. For information about the American JLC, see Menahem Kaufman, An Ambiguous Partnership: Non-Zionists and Zionists in America 1939-1948 (Detroit: Wayne State University Press, 1991).

[6]A short summary of the JLC's origins may be found in a brief of the Jewish Labour Committee to the Canadian House of Commons Standing Committee on Industrial Relations, published in its minutes and proceedings, 11 April 1953, reproduced at 40 of Kalmen Kaplansky's "Notes," 1953, Kaplansky Papers, vol. 20, file 15. Much of this discussion of the early years of the JLC is taken from the first pages of Kaplansky's "Notes" for 1946-7, Kaplansky Papers, vol. 20, file 3. See also the finding aid for the JLC papers in the National Archives, Rosenberg's The Jewish Community, at 172, and (for the Workmen's Circle), Frager, Sweatshop Strife, 53-4.

[7]For more details about the groups supporting the JLC, see Kaplansky, "Notes," 1946-7, 5-6, 22-3, Kaplansky Papers, vol. 20, file 3.

[8]"Kalmen Kaplansky, born 5 January 1912 in Bialystock, Poland, immigrated to Canada in 1929. Soon after his arrival, he joined the Montréal Typographical Union No. 176 and later served on its executive. From 1936 to 1939 he was the Secretary of the Montréal District Council of the Québec Section of the Labour Party of Canada. He was President of the Workman's Circle in Montréal 1941-1943 and was appointed National Director of the Jewish Labour Committee in 1946. Kaplansky also stood as a CCF candidate in the Montréal ridings of St. Louis, for the 1944 provincial election, and Cartier, for the 1950 federal by-election. He died on 10 December, 1998 (Who's Who in Canada, 1987; NAC finding aid for Kalmen Kaplansky; "Kaplansky was a leader in labor movement" [obituary], The Canadian Jewish News, 5 February 1998; see also the short biography by Clyde Sanger, "Kalmen Kaplansky:

The Workers Lead the Way With No. 111," in Canadians and the United Nations, ed. Clyde Sanger (Ottawa: Department of External Affairs, 1988).

Kaplansky has mentioned, in his 1953 "Notes" (at 98), that he "never had the benefit of a formal university education" (Kaplansky Papers, vol. 20, file 15). One reason for this was that McGill university in the 1930s made it extremely difficult for Jews to enter (Kaplansky interview, 12 June 1996). He was better prepared, however, than Sam Herbst, one of the JLC Winnipeg labour committee executive members, who was illiterate, although Kaplansky considered him to be an excellent union organizer (Kaplansky, "Notes," 1946-7, 156, Kaplansky Papers, vol. 20, file 3).

[9]There is a brief biography of Rubinstein in a letter from Kaplansky to Dowd of the CCL, dated 18 August 1947 (JLC Papers, vol. 13, file 15).

[10]Frager, Sweatshop Strife, especially Chapter 8; Erna Paris, Jews: An Account of Their Experience in Canada (Toronto: Macmillan 1980), 134-5, 147 ff. As Frager explains, the communist Jewish trade unionists considered the different non-communist factions (including the JLC) to be "right-wing" (181).

[11]For a discussion of Morris Lewis, and his roots in the social democratic workers' movement, including the Workmen's Circle, see Chapters 10 and 11 of Cameron Smith, The Unfinished Journey.

[12]Kaplansky discusses Rubinstein in his 1946-7 "Report" at 5-6, 22, 222-3; Rubinstein's role in the Québec CCF is mentioned in Olssen, "The Canadian Left in Québec," 116.

[13]Lewis, The Good Fight, 295. There is some information about Shane in Kaplansky's "Notes," 1946-7, 73-4, Kaplansky Papers, vol. 20, file 3. It has been claimed that craft unions with closed-shop agreements were more likely to practice racial/ethnic discrimination than were industrial unions. For example, Iacovetta *et alia* have noted that TLC construction unions excluded Italian immigrants during the early 1950s (Franca Iacovetta, Michael Quinlan, and Ian Radforth, "Immigration and Labour: Australia and Canada Compared," Labour/Le Travail 38 (November 1996): 90-115, at 107; in addition, Bromley Armstrong, one of the black activists intimately connected with the Dresden issue, remembers TLC unions as far more bigoted than the CIO-connected CCL unions (interview, 26 July 1994). Despite this, however, there was support for anti-discrimination measures in the elite of the TLC as well as the CCL, although it must be stressed that the two most supportive unions, the Steelworker and the Autoworkers, were industrial unions in the CCL.

[14]See note 6, above. David Lewis remembers (in The Good Fight, at 225) his 1943 CCF federal election nomination meeting where two prominent members of the JLC were involved: Maurice Silcoff as co-chair and Kalmen Kaplansky as secretary.

The social democratic orientation of the JLC also created allies with the Canadian trade union movement. As Irving Abella and Gad Horowitz have both pointed out, the post-war period involved a series of intense and often vicious battles between communists and non-

communists in both the CCL and the TLC (Abella, Nationalism, Communism, and Canadian Labour; Horowitz, Canadian Labour in Politics). One of the most important of these allies was Charles Millard, head of the Steelworkers in Canada and (as noted in earlier chapters) an important figure within the Canadian human rights community. Not only did the Steelworkers provide considerable support to the Kaplansky's network, but Millard also made personal donations (interview with Kalmen Kaplansky, 12 June 1996).

[15]Kaplansky, "Notes," 1946-7, 5, Kaplansky Papers, vol. 20, file 3. For brief discussions of the JLC's role in sponsoring war-time and post-war refugees, see Abella, None is Too Many, 84, 116, 236, 259; Donald H. Avery, Reluctant Host, 139. See also the JLC finding aid in the National Archives.

[16]For an analysis of the American JLC, see Kaplansky, "Notes," 1946-7, 9-19, Kaplansky Papers, vol. 20, file 3; Report on Labour Relations from Fine to JPRC (Eastern Division), 7 June 1946, and memorandum from Zaitlin to Hayes, 23 September 1946, CJCA, CD vol. 2, file 28Z. A summary of the American JLC educational activities can be found in the January 1946 report of the Division to Combat Anti-Semitism, summarized in "Voice of the Unconquered," the newsletter of the American JLC, vol. IV, no. 1 and 2, January-February, 1946, CJCA, CD vol. 2, file 28z.

[17]Hayes to Stapleford [Charities Branch, Department of National Defense], 4 October 1941; Hayes to National Officers of the UJRWRA, 21 October 1941, CJCA, CA vol. 14, file 94. The JLC continued to try to work with the CJC; see, for example, the letter from Rubinstein of the JLC to CJC headquarters, 22 July 1942, about coordinating efforts to bring about mass meetings as a way of arousing world opinion and helping "to stop the complete physical extermination of Jewry in Europe" (CJCA, DA1, vol. 1, file 3).

[18]As noted in Chapter 4, the Ontario government passed the Racial Discrimination Act in 1944, but soon made it clear that it was not willing to do much more to combat discrimination.

[19]Rubinstein to Fine [JPRC Eastern Region Chair], 20 October 1944, Caiserman Papers, CJCA, vol. 2, file 3 [the offer referred to "public relations" with workers]. See also "Report on Labor Relations," A.H.J.Z. [Zaitlin] to Fine, 7 June 1946, and "Organized Labour in Canada," CJCA, CD vol. 2, file 28z.

[20]As noted in Chapter 4, the CJC remained the official voice of Canadian Jews, with the JPRC operating behind the scenes. Throughout this section, therefore, except where otherwise indicated, the terms CJC and JPRC are used almost interchangeably.

[21]Interview with Kaplansky, 12 June 1996.

[22]For a summary of CJC arguments against letting the JLC control a human rights labour program, including the charge of anti-Zionism, see Zaitlin's later lengthy memorandum to Hayes, 15 July 1947, CJCA, ZA 1947, vol. 11, file 127a. The roots of the JLC lay in the

European Bund movement, which was indeed originally anti-Zionist and in conflict with the Poale Zion, or Labour Zionist movement, but these tensions later subsided. David Lewis, for example, has noted that he began to support the State of Israel after the Nazi Holocaust and the United Nations vote to create such a political entity; see Lewis, The Good Fight, 5, 31.

[23]Cohen to Hayes, 8 July 1946, and Zaitlin to Hayes, 23 September 1946, CJCA, CD vol. 2, file 28z; Kaplansky, "Notes," 1946-7, 132-5, Kaplansky Papers, vol. 20, file 3. Although the CJC denied it, many people in the Toronto labour movement believed that Salsberg had effected an LPP domination of the Ontario CJC (Zaitlin to Hayes, 28 February 1947, CJCA, ZA 1947, vol. 10, file 127). It is clear, however, that although Salsberg was a member of the JPRC in Toronto, by 1947 the CJC was starting to worry about any association with communists: see, for example, Grand to Zaitlin, 21 March 1947 (about allegations that Drummond Wren was a "fellow traveller") and list of JPRC members, 22 July 1947, JPRC Papers, JPRC Correspondence 1947, Reel 2, file 50. The CJC increasingly disassociated itself from communists during the Cold War. According to Peter Oliver, by 1951 "[t]he more conservative Jewish leaders, many of whom were active in the Canadian Jewish Congress, were outraged that Salsberg's activities were leading Canadians to equate Communism with Jews." Then, largely as a result of revelations about anti-semitism in the USSR, the CJC actually expelled UJPO in 1953 (Oliver, Unlikely Tory, 63).

For a discussion of conflict between the social democratic JLC and the communist LPP, see Kaplansky, "Notes" for 1946-7, 10-11, 167, Kaplansky Papers, vol. 20, file 3; interview with Kalmen Kaplansky, 12 June 1996.

[24]Confidential report of luncheon meeting of representatives of the JLC and CJC on 1 October 1946, CJCA, CD vol. 2, file 28z; Zaitlin to Hayes, 23 January 1947, CJCA, ZA 1947, vol. 11, file 127a; interview with Kalmen Kaplansky, 12 June 1996.

[25]"Voice of the Unconquered," January-February, 1946; "JLC Reports" [Canada], January 1946, CJCA, DA1, vol. 2, file 3. The decision was taken at a meeting in Montréal in which the American JLC president met with the Canadian JLC elite as well as leading members of the Québec Federation of Labour and the TLC.

[26]Confidential report of luncheon meeting, 1 October 1946; Zaitlin to Hayes, 4 November 1946, CJCA, CD vol. 2, file 28z; Zaitlin to Hayes, 23 January 1947, CJCA, ZA 1947, vol. 11, file 127a; Zaitlin, "Report on Recent Activities National Joint Public Relations Committee," 21 February 1947; Zaitlin to National Public Relations Committee [JPRC], 5 May 1947, CJCA, CD vol. 2, file 28z.

[27]When the first JLC field worker, Mrs. Bea Silcoff, attempted to organize a trade union "committees for racial tolerance" in Toronto, she came up against opposition from the Toronto leaders of two predominantly Jewish unions. The JLC believed that this was the result of influence by a hostile CJC, and temporarily dropped plans for an anti-discrimination program (Kaplansky, "Notes," 1946-7, 29, 162-3, Kaplansky Papers, vol. 20, file 3). The CJC sent Zaitlin to the United States in late 1946, in order to discuss its plans with both the

American Jewish Congress and the American Jewish Labour Committee; the latter refused to cooperate, except through its Canadian branch (Zaitlin to Hayes, 14 and 15 January, 1947, JPRC Correspondence 1947, Reel 3, file 25).

[28]See note 6, above; Kaplansky, "Notes," 1946-7, 37-45, 150, Kaplansky Papers, vol. 20, file 3; interview with Kalmen Kaplansky, 12 June 1996. Kaplansky had already demonstrated his fund-raising talents to the JLC executive on a recent trip to Winnipeg; he faced some initial resistance from the local Jewish community, but returned to Montréal after having collected over $3,000, a tangible manifestation of his powers of persuasion.

[29]Kaplansky, "Notes," 1946-7, 1-2, Kaplansky Papers, vol. 20, file 3.

[30]There are many discussions of racism in the ranks of the labour movement, especially in British Columbia. Gillian Creese's writings are particularly informative; see "Class, Ethnicity, and Conflict: The Case of Chinese and Japanese Immigrants, 1880-1923," in Workers, Capital, and the State in British Columbia: Selected Papers, ed. Rennie Warburton and David Coburn (Vancouver: University of British Columbia Press, 1988); "Organizing Against Racism in the Workplace: Chinese Workers in Vancouver Before the Second World War," Canadian Ethnic Studies, 19 (1987): 35-46; "Exclusion or Solidarity?"

[31]Several of the people who came to work for Millard in the Steelworkers union, such as Eamon Park and Larry Sefton, were strong supporters of the JLC human rights network, as can be seen in several references in Kaplansky's "Reports" and "Notes." For general background about the union, see Robert McDonald Adams, "The Development of the United Steelworkers of America in Canada, 1936-1951" (M.A. thesis, Queen's University, 1952), especially 179, 211, 286-7.

There are also numerous references in Kaplansky's "Reports" and "Notes" to the Autoworkers' FEP committees in Canada, including the support of future CLC President Dennis McDermott, who at that time was the chair of the local 439 FEP committee.

[32]For a discussion of union educational programs in the early 1950s, see David Smith, "A Survey Report on Labour Education in Canada," 15 March 1951, CLC Papers, vol. 204, file 9; Friesen, "Adult Education and Union Education." For critical overviews of social unionism, see Bryan Palmer, Working-Class Experience, 280-4, 371; Leo Panitch and Donald Swartz, "Towards Permanent Exceptionalism: Coercion and Consent in Canadian Industrial Relations," Labour\Le Travail, 13 (Spring 1984): 133-157, at 145. By contrast, see Shirley Tillotson's examination of one aspect of post-war social unionism -- welfare work -- in "'When our membership awakens': Welfare work and union activism, 1950-1965," Labour/Le Travail, 40 (Fall 1997): 137-69. Tillotson argues (at 139 and 166) that union welfare work was a "democratic project" which fostered citizenship, "both in the sense of claiming rights and of shouldering responsibilities." A similar claim can be made of "human rights unionism," which struggled to achieve formal egalitarian rights and obligations within the context of the emerging welfare state.

[33]The TLC Platform demanded "[e]xclusion of all races that cannot be properly assimilated into the national life of Canada" (Kaplansky, "Notes," 1946-7, 85, 229 ff, Kaplansky Papers, vol. 20, file 3; Hawkins, Canada and Immigration, 85). The TLC deleted this platform plank the next year, approving a Cloak and Dressmaker's Union resolution drafted by Kaplansky (Kaplansky, "Notes," 1948, 90-2, Kaplansky Papers, vol. 20, file 5).

Information about the new committee can be found in the TLC Proceedings, 1944, 336-7; quoted in Kaplansky, "Notes," 1946-7, 91-92, Kaplansky Papers, vol. 20, file 3; "Notes," 1948, 22, Kaplansky Papers, vol. 20, file 5. Kaplansky says that the committee only became "activated" in 1946, after he became the Director of the JLC. It was later renamed the National Standing Committee Against Racial Intolerance.

[34]Kaplansky, "Notes," 1946-7, 68, Kaplansky Papers, vol. 20, file 3; Kaplansky, "Notes," 1954, 60-2, Kaplansky Papers, vol. 21, file 2. According to David Lewis (The Good Fight, 436) Jodoin was sympathetic to the CCF. Shane is discussed briefly in note 11, above. For information about the membership of the committee, and how Kaplansky managed to have communists excluded, see his "Notes," 1946-7, 70, 90-94, 100, 101, Kaplansky Papers, vol. 20, file 3.

[35]Kaplansky, "Notes," 1946-7, 88-90, 93-99, Kaplansky Papers, vol. 20, file 3. As noted later in this chapter, the price paid for this was a lack of recognition which, among other things, sometimes impeded fund-raising.

[36]The report is reproduced in Kaplansky's "Notes," 1946-7, at 94-8, Kaplansky Papers, vol. 20, file 3.

[37]Kaplansky, "Notes," 1946-7, 106, 108-110, Kaplansky Papers, vol. 20, file 3. The JLC was not the only group trying to push the CCL into the human rights field at this time; the convention also supported a resolution from the communist-dominated Fur and Leather Workers Union, calling for the Canadian government "to declare anti-Semitism and religious and racial discrimination a criminal offence."

[38]The Montréal labour committee was instituted on 12 April 1947, but "went public" the following month ("Labor Unions to Fight Racial Intolerance Within Ranks," Montréal Star, 13 May 1947). Technically, the Winnipeg committee was the first of Kaplansky's standing committees. He began in Winnipeg, not because the human rights situation was worse there than in other parts of the country, but because he had recently travelled there, had made political contacts, and knew that David Orlikow was available to become the first secretary (Kaplansky, "Notes," 1946-7, 155, Kaplansky Papers, vol. 20, file 3).

[39]Bengough to Zaitlin, 11 March 1947, and Mosher to Zaitlin, 12 March 1947, CJCA, ZA 1947, vol. 10, file 127. See also Zaitlin's memorandum to Hayes, 15 July 1947, CJCA, ZA 1947, vol. 11, file 127a.

[40]For a frank recognition of the changed situation, see the memoranda from Zaitlin to Hayes: 5 May 1947, CJCA, CD vol. 2, file 28z; 15 July 1947, CJCA, ZA 1947, vol. 11, file 127a.

[41]See 15 April 1947 minutes of the Toronto Provisional Committee, including a report on the first meeting, at 23 January, in the JLC papers, vol. 41, file 4; see also Kaplansky "Notes," 1946-7, 174-181, Kaplansky Papers, vol. 20, file 3; Kaplansky interview, 12 June 1996; "Charge Labor Group Aim Is Largely 'Soviet Baiting'," Toronto Star, 11 February 1947. One of the LPP trade union opponents was Sam Lapedes, mentioned briefly in Chapter 3 of this dissertation as a TLC delegate to ECCR meetings.

[42]Kaplansky, "Notes," 1946-7, 104, Kaplansky Papers, vol. 20, file 3; interview with Kaplansky, 12 June 1996. As noted in Chapter Two of this dissertation, Cotterill was President of the CCL Toronto Labour Council, which had been a member of the CCJC coalition.

[43]Brand represented the TLC Toronto District Trades and Labor Council. See Kaplansky, "Notes," 1946-7, 210-11, Kaplansky Papers, vol. 20, file 3; "Notes," 1952, 62, Kaplansky Papers, vol. 20, file 13; "Notes," 1954, 70, Kaplansky Papers, vol. 21, file 2; Blum to Kaplansky, and Kaplansky to Blum, 2 and 3 August 1954, JLC Papers, vol. 41, file 17.

[44]Kaplansky interview, 12 June 1996. Of course, Kaplansky was careful to ensure that he had a majority of supporters on the Toronto committee. Initially it consisted of five members, and in addition to the two co-chairs Kaplansky could count on strong backing from Abraham Kirzner of the ILGWU, who was also chair of the JLC in Toronto (Kaplansky "Notes," 1946-7, 87-8, 169-184, 193, Kaplansky Papers, vol. 20, file 3).

[45]Wismer had actually been appointed in February 1947 as the executive secretary of the Provisional Committee, and then continued as executive secretary of the Toronto Joint Labour Committee (Kaplansky, "Notes," 1946-7, 61-6; 167-8, Kaplansky Papers, vol. 20, file 3). According to Ontario CCF Party leader "Ted" Jolliffe, Wismer was one of the strongest members of his caucus after 1943, so Kaplansky was obviously lucky to have him, even if only for a short time (Morley, Secular Socialists, 166).

[46]For a complete list of supporters (not all of whom attended the first meeting) see Kaplansky, "Notes," 1946-7, 194-8, Kaplansky Papers, vol. 20, file 3.

[47]Kaplansky, "Notes," 1946-7, 129-143, Kaplansky Papers, vol. 20, file 3. For a summary of the meeting which reached a final agreement on 10 December 1947, see "Labour Committee Minutes," CJCA, ZA 1947, vol. 11, file 127a. Note also the letter from Nathan Nemetz, representing the CJC on the West Coast, which emphasizes his committee's opposition to the agreement with the JLC but accepts the decision of the head office (4 December 1947, CJCA, CD vol. 2, file 28z). Kaplansky began with a budget of $11,000, including his own salary of $3,000 (Kaplansky, "Notes," 1946-7, 26-7, Kaplansky Papers, vol. 20, file 3).

[48]Kaplansky, "Notes," 1946-7, 129-143, Kaplansky Papers, vol. 20, file 3; Zaitlin to Hayes, 15 July 1947, CJCA, ZA 1947, vol. 11, file 127a. One CJC JACLR representative frankly told Kaplansky that he and his group were not to be trusted (interview with Kaplansky, 12 June 1996.) Similar opinions were expressed privately about David Orlikow in Winnipeg; see Zimmerman (CJC executive director of the CJC western division) to Hayes, 17 December 1947, CJCA, CD vol. 2, file 28z. The agreement was finally announced in the CJC Congress Bulletin on 22 October 1949, 16.

[49]The JPRC also worked with the ACL (see discussion below). Herbert Sohn has suggested that the JLC, the JPRC, and the ACL formed a "triumvirate" as the three most important organizations in the Ontario human rights community in the late 1940s and early 1950s ("Human Rights Legislation in Ontario," 277). In general terms this is true, but in the case of Dresden (discussed in detail later in this chapter) the most important organization seems to have been the JLC and its Ontario labour committees. However, the OJA do contain several example of CJC "quiet diplomacy" in the Dresden affair, as members of the JPRC either wrote to, or spoke with, MPs and cabinet ministers; see, for example, Kayfetz to Feinberg, 17 October 1947; Feinberg to Daley, 24 December 1947, JPRC Correspondence 1947, Reel 2, file 10.

[50]Kaplansky's "Notes" sometimes reveal his irritation about the fact that "his" network did not always receive sufficient credit for its activities, and that the better-known CJC obtained most of the publicity. On the other hand, he also points out, from time to time, situations where CJC resentment of the JLC undermined the effective development of policy (1948 "Notes," 42, 47-8, Kaplansky Papers, vol. 20, file 5). He has also suggested that some of his successors were more willing than he was to tolerate interference from the CJC members of JACLR (Kaplansky interview, 12 June 1996).

[51]Bury [Vancouver Labour Council] to Kaplansky, 2 November and 17 December 1949, JLC Papers, vol. 45, file 17; Johnson [Windsor Joint Labour Committee for Human Rights] to Kaplansky, 30 March 1952, JLC Papers, vol. 43, file 18. Kaplansky also managed to create a Hamilton committee in 1948, but it did not last. There were also abortive attempts to set up groups in Victoria and Calgary (Report of the JLC Public Relations Committee, December 1947, JLC Papers, vol. 20, file 6; Maxwell to Blum, 13 July 1957, JLC Papers, vol. 42, file 6).

[52]Eamon Park tried to move his Toronto committee into the broader civil liberties arena, but it was decided that financial considerations precluded this (Kaplansky, "Notes," 1950, 57, Kaplansky Papers, vol. 20, file 9). It is interesting to note that Park was also active in the campaign for FEFRA legislation in the province, but his labour committee did not pay much attention to gender rights in the work place. Indeed, the Kaplansky network was not, on the whole, very concerned about gender issues. For a discussion of Park's role, and the rather lukewarm support of the Steelworkers in the struggle to make FEFRA effective, see Tillotson, "Human Rights Law."

[53]Kaplansky, "Notes," 1949, 43-4, Kaplansky Papers, vol. 20, file 7; "Notes," 1950, 102, Kaplansky Papers, vol. 20, file 9; Kaplansky to Andras [CCL National Committee on Human Rights Secretary], 6 October 1950, CLC Papers, file 18. There was a deep schism between the two labour organizations in Vancouver, and Kaplansky recalls that bringing them together was one of his most difficult undertakings in the field of human rights.

[54]Kaplansky, "Notes," 1946-7, 165, Kaplansky Papers, vol. 20, file 3. Kaplansky did not see the JACLR as a real constraint; in his eyes the CJC was primarily a provider of funds and an occasional source of irritation when its representatives disagreed with his approach. Note also that Kaplansky's successor, Sid Blum, sometimes raised the hackles of his committee members by treating them too much like rubber stamps in the hiring process (Maxwell to Blum, 21 April 1959, JLC Papers, vol. 42, file 13).

[55]The CJC was donating, at first, about $12,000 a year (Kaplansky, "Notes," 1946-7, 130, Kaplansky Papers, vol. 20, file 3).

[56]Kaplansky, "Notes," 1946-7, 188-192, Kaplansky Papers, vol. 20, file 3; "Notes," 1948, 56, Kaplansky Papers, vol. 20, file 5. For information about the heavy contribution of the Steelworkers, see (for example) the Toronto committee's "Financial Statement," for April 1954, November 1954, April 1955, and May 1955, JLC Papers, vol 41, files 16, 18, and 20. Kaplansky insisted that no firms with Jewish owners be approached, since this would upset the CJC, and several non-Jewish companies donated money to the Toronto group, often over a number of years: Loblaw's, Canadian Breweries, N. Slater, Robert Simpson Co., Ontario Automobile Co., and O'Keefe's (Hill to Kaplansky, 16 November 1953, JLC Papers, vol. 41, file 14; OLCHR Papers, vol. 2, file 1 [Donations, 1948-1955]).

[57]Kaplansky, "Notes," 1946-7, 104-5, Kaplansky Papers, vol. 20, file 3. By the early 1950s the TLC and CCL human rights committees were contributing $1,000.00 each to the JLC human rights program; see Kaplansky, "Notes," 1952, 76-7; "Notes," 1953, 119-20, Kaplansky Papers, vol. 20, file 15; Andras to Kaplansky, 18 June 1953, JLC Papers, vol. 13, file 20; Kaplansky to Milling, 25 June 1953, JLC Papers, vol. 41, file 11; Kaplansky, "Report," June 1955, Kaplansky Papers, vol. 21, file 5.

[58]Kaplansky to Milling, 15 May 1952, JLC Papers, vol. 41, file 6.

[59]Kaplansky, "Notes," 1955, 122, Kaplansky Papers, vol. 21, file 5.

[60]Kaplansky, "Notes," 1954, 3-4, Kaplansky Papers, vol. 21, file 2.

[61]Toronto Joint Labour Committee to Combat Racial Intolerance, "Report of Progress, 1951," JLC Papers, vol. 41, file 4; Milling to Kaplansky, 11 February 1952, JLC Papers, vol. 41, file 5; Kaplansky to Markle [USWA Director of Education], 23 August 1956, and Markle to Blum, 9 September 1959, JLC Papers, vol. 13, files 8 and 9; interview with Kaplansky, 12 June 1996. As another example of union support, note the Autoworkers' offer to pay the costs of reprinting an article on Dresden which Blum intended to use for publicity purposes

(Kaplansky, "Notes," 1955, 121-125, Kaplansky Papers, vol. 21, file 4).

[62]On cost-cutting, see Kaplansky, "Notes," 1948, 6, Kaplansky Papers, vol. 20, file 5. Information about his trade union salary comes from the 12 June 1996 interview with Kaplansky. On the insufficiency of the salaries, see Kaplansky, "Notes," 1950, 110, Kaplansky Papers, vol. 20, file 9.

[63]Kaplansky to Orlikow, 25 February 1954, JLC Papers, vol. 44, file 10; Kaplansky, "Notes," 1954, 64-5, 95, Kaplansky Papers, vol. 21, file 2.

[64]Kaplansky, "Notes," 1954, 66, Kaplansky Papers, vol. 21, file 2; telephone interview with Knute Buttedahl, 28 July 1997. On the connection between the Vancouver labour committee and the CUA (first called the Civic Unity "Council"), see Buttedahl's "Report" to Kaplansky, March 1954, JLC Papers, vol. 46, file 1. For Buttedahl's view of the operations of the CUA, see Buttedahl to Kaplansky, 19 December 1954, 10 January 1955, 8 February 1955, JLC Papers, vol. 46, files 3 and 4.

Note also the case of Harold Johnson, the Windsor secretary. As a blue-collar worker he was sometimes subject to employer pressure to "take it easy" on sensitive areas such as equal rights for blacks (Johnson to Kaplansky, 30 November 1953, JLC Papers, vol. 43, file 21.)

[65]Kaplansky, "Notes," 1953, 81, Kaplansky Papers, vol. 20, file 15. Blum's CV is in a letter from Blum to Campbell, 16 April 1962, JLC Papers, vol. 13, file 9. An American war veteran originally from New York, he graduated from the University of Toronto in 1953 with an MA in Sociology and Economics, worked for a while as an assistant in the Education and Welfare department of the CCL, and then was hired by Kaplansky as secretary of the Toronto labour committee. Note also Harold Johnson, the first secretary of the Windsor committee. He had a B.A. but held a blue-collar job with a brewery company; he was underemployed no doubt because he was black (Kaplansky, "Notes," 1951, 89, Kaplansky Papers, vol. 20, file 11).

[66]Kaplansky, "Notes," 1947-7, 49-51, 61-6, 151-4, 167, Kaplansky Papers, vol. 20, file 3; "Notes," 1948, 4-7, Kaplansky Papers, vol. 20, file 5; "Notes," 1949, 6, Kaplansky Papers, vol. 20, file 7.

[67]The dates of the executive secretaries of the Toronto organization are: Leslie Wismer (1947-1948); Vivien Mahood (1948-50) Gordon Milling (1950-1953); Donna Hill (1953-1954); Sid Blum (1954-1957); Alex Maxwell (1957-1959); Alan Borovoy (1959-1967). As in Canadian society generally, there probably was no real feminist consciousness in the JLC during this period. Ruth Frager's comment is pertinent: "Within Toronto's Jewish labour movement [prior to 1939], the emphasis on both class consciousness and ethnic identity inhibited the development of feminist perspectives" (Sweatshop Strife, 213).

[68]Kaplansky, "Notes, 1953, 79, Kaplansky Papers, vol. 20, file 15; interview with Donna Hill, 8 June 1996. Donna Hill also edited A Black Man's Toronto 1914-1980: The Reminiscences of Harry Gairey (Toronto: The Multicultural History Society of Ontario, 1981), and served

as an editorial consultant and researcher for her husband's pamphlet, Human Rights in Canada.

[69]Kaplansky, "Notes," 1953, 81-2, 106, Kaplansky Papers, vol. 20, file 15; "Notes," 1954, 32, 73-4, Kaplansky Papers, vol. 21, file 2; "Notes," 1955, 45, Kaplansky Papers, vol. 21, file 4; "Notes," 1956, 113, Kaplansky Papers, vol. 21, file 6. See also remarks by Blum's disciple, A. Alan Borovoy, Uncivil Obedience: The Tactics and Tales of a Democratic Agitator (Toronto: Lester Publishing, 1991), 203-4.

[70]Kaplansky, "Notes," 1946-7, 149, Kaplansky Papers, vol. 20, file 3.

[71]Kaplansky, "Notes," 1946-7, 160, Kaplansky Papers, vol. 20, file 3. See the debate "Education v. Laws -- Which Way to Tolerance," in Canadian Labour Reports (September 1949), partly reproduced in Kaplansky, "Notes," 1949, 113-5, Kaplansky Papers, vol. 20, file 7. See also Sid Blum's summary, "Human Rights in the Labour Movement," reproduced in Kaplansky, "Notes," 1956, 128-9, Kaplansky Papers, vol. 21, file 6.

[72]Kaplansky, "Notes," 1948, 13, Kaplansky Papers, vol. 20, file 5. Some Canadians recognized that prejudice existed, but they often argued that it was a problem in some other part of the country, not in their own community.

[73]Over time the trade union organizations also began to hold their own human rights conferences, in which the JLC secretaries and committee members played a prominent role. For example, see the report by Alex Maxwell (executive secretary to the Toronto labour committee) to Sid Blum (by now Kaplansky's replacement as Director of the JLC), concerning the November 1957 Ontario Federation of Labour Fair Practices and Human Rights Conference, 4 December 1957, JLC papers, vol. 42, file 7. The JLC education programs are mentioned in Smith, "A Survey Report on Labour Education in Canada," at 26; see also "Labor Education Across Canada," Food for Thought, April 1950, 31.

[74]Kaplansky, "Notes," 1946-7, 78, 161, Kaplansky Papers, vol. 20, file 3. He modelled some of his early educational activities after the Michigan Labor Committee to Combat Intolerance, and in March of 1948 he brought two of his secretaries to New York in order to meet the staff of the American JLC and learn about their activities (Kaplansky, "Report," March 1948, Kaplansky Papers, vol. 20, file 8).

[75]There were also two Canadian pamphlets, one supposedly written by Percy Bengough (head of the TLC), the other attributed formally to Aaron Mosher (head of the CCL). By the end of the summer of 1947, 15,000 copies of the Mosher pamphlet had been distributed across the country (Kaplansky, "Notes," 1946-7, 59, Kaplansky Papers, vol. 20, file 3; Kaplansky to Mosher, 29 August 1947, JLC Papers, vol. 13, file 15).

[76]One of the reasons Knute Buttedahl was hired by Kaplansky was that he had some training in film projection and the use of film as an educational tool; he was already used to showing films to labour groups (telephone interview, 28 July 1997).

[77]In the summer of 1947 Wismer tried to get across the human rights message at both a CCL Union Summer School and a CCF Summer Camp (Kaplansky, "Notes," 1946-7, 80, Kaplansky Papers, vol. 20, file 3).

[78]For a summary of the early Montréal committee activities, see Kaplansky, "Notes," 1948, 5, Kaplansky Papers, vol. 20, file 5. For a brief discussion of the CAAE, see Chapter 2 of this dissertation. For information about Kaplansky's close relationship with Roby Kidd, the CAAE, and its Committee on Group Relations, see his "Notes," 1946-7, 187, 199, Kaplansky Papers, vol. 20, file 3; "Notes," 1948, 66-72, 132-3, Kaplansky Papers, vol. 20, file 5; "Notes," 1949, 129-133, Kaplansky Papers, vol. 20, file 7. Kaplansky has written (at 133 of his 1948 "Notes") that "Roby Kidd and his colleagues gave us a much-needed intellectual boost while it also popularized our efforts in the academic community" (Kaplansky Papers, vol. 20, file 5). See also the letter from Blum to Kaplansky, 5 November 1956, about Kidd's help in planning the CLC National Human Rights Conference (JLC Papers, vol. 42, file 4).

[79]Kaplansky, "Notes," 1948, 10, 78, Kaplansky Papers, vol. 20, file 5; "Notes," 1951, 63, Kaplansky Papers, vol. 20, file 11; "Notes," 1952, 49, Kaplansky Papers, vol. 20, file 13; "Notes," 1954, 2, Kaplansky Papers, vol. 21, file 2.

[80]Later, some of this work was taken over by his local secretaries. A "confidential" summary of how to do this "top priority" work was sent by Sid Blum (by now Kaplansky's replacement) to Alex Maxwell (of the Toronto labour committee) on 9 January 1958 (JLC Papers, vol. 42, file 8). Note also that Blum would cajole sympathetic trade union locals to submit resolutions that he had first drafted (Blum to Collins [President, local 225 of the Steelworkers], JLC Papers, vol. 13, file 8).

[81]"TLC Convention Drafts Drive for 65-cent Wage," Globe, 27 September 1947. Kaplansky soon realized that, given Canadian denials of racism and prejudice in Canada, publicizing issues at trade union conventions and in newspapers had more of an effect than all his pamphlets, films, and posters (Kaplansky, "Notes," 1946-7, 149, Kaplansky Papers, vol. 20, file 3).

[82]Kaplansky developed these ideas over time; one example of their public articulation can be found in his speech to a training conference of the Brotherhood of Sleeping Car Porters, on 30 June 1955, reproduced at 52-55 in Kaplansky, "Notes," 1955, Kaplansky Papers, vol. 21, file 4. Later, looking back, he noted that "it was rather immature on our part to have hoped that with our very meagre resources we could develop an effective grass-roots educational program. We did some effective work, but did not live up to our initial promises" (Kaplansky, "Notes," 1946-7, 184, Kaplansky Papers, vol. 20, file 3). The JLC emphasis on legal equality rather than "tolerance" continued after Kaplansky had left the organization. See, for example, Blum's address to the Toronto Human Rights Conference, 7 January 1960, JLC Papers, vol. 43, file 1.

[83]Alberta had passed a Bill of Rights in 1946, but it was struck down as unconstitutional in 1947 by the Privy Council. (This is briefly discussed in Chapter 7 of this dissertation.)

[84]In 1945 the CCF was badly beaten in the Ontario provincial election, showed some recovery in 1948, but received only one-fifth of the total vote in 1951. "After that, it continued to be a factor but not a threat in provincial politics" (Caplan, The Dilemma of Canadian Socialism, 196).

[85]This also is discussed in Chapter Seven.

[86]The landmark case of Brown v. Board of Education was not handed down until 1954.

[87]This was mentioned briefly in Chapter 4.

[88]As pointed out in Chapter 4, there were a number of reasons why Ontario appeared to be the most attractive province for human rights lobbying, and the concept of "incremental" legislated reform within the province was embraced by a number of Ontario-based human rights activists, with the CJC rather than the JLC providing the initial impetus for the attack on restrictive covenants and demands for FEP legislation.

[89]This delegation is discussed in Chapter 4. It is important to note that it was only with some difficulty that the JLC labour committee became persuaded to work for a provincial FEP The CJC was committed to this option as early as the summer of 1946, but found that Les Wismer, the Toronto labour committee secretary, was not enthusiastic about the idea (JPRC Minutes, 17 June 1946, JPRC Papers, vol. 3, file 1, JPRC "Minutes, 1946"; Grand to Kaplansky, 14 September 1947, JPRC Papers, JPRC Correspondence 1947, Reel 3, file 21; Kaplansky, "Notes," 1946-7, 190, Kaplansky Papers, vol. 20, file 3).

[90]Information about JLC labour committees lobbying for provincial and federal FEP laws may be found throughout the JLC and Kaplansky Papers. The Kaplansky network was also partly responsible for increasing FEP awareness within organized labour. For example, in 1953 the Ontario Federation of Labour (CCL) formed a FEP committee, and began holding a series of annual FEP conferences involving both the Toronto and Windsor labour committees (Milling to Kaplansky, 30 January 1953, and transcript of talk by Milling [on CBC "Canadian Chronicle"], 25 May 1953, JLC Papers, vol. 34, file 9 and vol. 41, file 11.

[91]These cases, which are discussed below, are: Regina v. McKay [1955], 113 CCC 56; Regina v. Emerson [1955], 113 CCC 69; Regina Ex Rel. Nutland v. McKay [1956], 115 CCC 104. According to Schmeiser, by 1964 the only other anti-discrimination prosecution in Canada seemed to be a 1961 Saskatchewan case which had been mentioned in the Saskatoon Star-Phoenix on 14 November 1961 (Civil Liberties in Canada, 281).

The NFB shot The Dresden Story in 1954. For a short critical discussion of this film (which is now available in video from the NFB), see Gary Evans, In the National Interest: A Chronicle of the National Film Board of Canada from 1949 to 1989 (Toronto: University of Toronto Press, 1991), 40. Kaplansky's network continued to use The Dresden Story as an educational tool after the issue was resolved, showing it as often as possible to unions, youth groups, church meetings, etc.

[92]Stuart McLean, Welcome Home: Travels in Smalltown Canada (Toronto: Viking Penguin, 1992). McLean not only gives an overview of contemporary Dresden, but also provides (at 80-9) an excellent short summary of the events surrounding the struggle to eliminate "Jim Crow" during the late 1940s and the 1950s.

[93]Sidney Katz, "Jim Crow Lives in Dresden," Maclean's, 1 November 1949; observations of Vivien Mahood in Kaplansky's "Report," July-August 1949, Kaplansky Papers, vol. 20, file 7; "Hugh Burnette's remarks on Dresden," 18 January 1954, unsigned report (probably by Sid Blum), OLCHR Papers, vol. 12, file 2; Sid Blum, "Report on Visit to Dresden," 22, 23 July 1954, OLCHR Papers, vol. 12, file 2; "The Dresden Story." These first-hand reports make it clear that the town was not entirely segregated. For example, the children went to school together, and mixed in the Boy Scouts and Girl Guides, while both blacks and whites were welcome at the Legion. However, except for the Catholic Church, blacks were not welcome at any of the "white" churches.

For a discussion of Uncle Tom's Cabin and its impact on Canadian attitudes, see Winks, The Blacks in Canada, 182-195; his rather sketchy discussion of the Dresden affair is at 457-8. Other discussions of Dresden can be found in Sohn, "Human Rights Legislation," 149; Bagnall, "The Ontario Conservatives," 108-110, 114-7, 132, 281-5, 311-334; Howe, "Human Rights Policy," 126, 135. For discussions of racial segregation of blacks in Ontario and other parts of Canada, especially Nova Scotia, see Winks, The Blacks in Canada, and "The Negro in the Maritimes: An Introductory Survey," Dalhousie Review (Winter, 1968-9): 453-471; see also Donald H. Clairmont and Dennis Magill, Nova Scotian Blacks: An Historical and Structural Overview (Halifax: Institute of Public Affairs, Dalhousie University, 1970); Frances Henry, Forgotten Canadians: The Blacks of Nova Scotia (Don Mills: Longmans Canada, 1973); Donald H. Clairmont, and Dennis Magill, "The Changing Political Consciousness of Nova Scotia Blacks and the Influence of Africville," in Ethnicity in the Americas, ed. Frances Henry (The Hague: Mouton 1976); James W. St. G. Walker, A History of Blacks in Canada: A Study Guide for Teachers and Students (Ottawa: Minister of State for Multiculturalism, 1980).

[94]Winks, The Blacks in Canada, 294; Alan Bartley, "A Public Nuisance: The Ku Klux Klan in Ontario, 1923-27," Journal of Canadian Studies 30 (Fall 1995): 156-174, especially 164. Bartley note that Dresden was one of the towns near which the KKK burned a cross in 1925. He suggests that the Orange Lodge was entrenched in a political culture which prized law and order, and was therefore inhospitable to an organization which was frequently led by "unsavoury individuals with criminal proclivities" (170).

[95]"A Matter of Personal Culture," Toronto Star, 26 April 1944. See also the critical response of the Toronto Centre Presbytery of the United Church -- "Club Held Unchristian for Ban on Negro Singer," Globe, 29 April 1944.

[96]Katz, "Jim Crow." Another example of this post-war resistance to segregation occurred in November 1946, when Viola Desmond refused to sit in the "negro" seating section of a Nova Scotia theatre. For a discussion of the ensuing legal case, which did not go in favour of Mrs.

Desmond, see J.B. Milner, "Case and Comment," Canadian Bar Review XXV (October 1947): 915-24.

[97]The author is indebted to James Walker for several pieces of background information about Burnett; the two became good friends as a result of Walker's historical research. In the documents examined for this chapter, Burnett signed his name "Burnette." According to James Walker (personal communication to the author, 30 July 1998), he sometimes spelled it "Burnett," and later in life found that this was the spelling on the tomb of his grandfather or great-grandfather; from that time on he used only that spelling, and asked that Walker also use it. This is the spelling that Walker used in "Race," Rights and the Law and Stuart McLean followed Walker's advice in Welcome Home.

[98]Katz, "Jim Crow" (the article includes pictures of both Carter and Burnett). See also Gordon Donaldson, "I Saw Race Hatred in a Canadian Town," Liberty magazine, December 1955. According to Toronto labour committee secretary Vivien Mahood, who travelled to Dresden in the summer of 1949, "In fact, Burnett and Carter are white, with a slight Negro ancestry. Meeting them for the first time, one would assume they were white" (letter reproduced in Kaplansky's "Notes," 1949, 86, Kaplansky Papers, vol. 20, file 7). See also Sid Blum's "Report on visit to Dresden," 22, 23 July, OLCHR Papers, vol. 12, file 2, in which he refers to the local black leaders as "strictly middle-class or farming class."

[99]Telephone interview with James Walker, 24 May 1998; Walker, "Race," Rights and the Law, 176. The exact date of Burnett's law-suit is not clear, although it took place in 1948 or 1949. It is referred to in passing in a later reported case involving Burnett, Regina v. McKay [1955], 113 CCC 56, at 63. The restaurant was Emerson's, one of the businesses later charged with violating Ontario's FAP law.

[100]"Hugh Burnette's remarks on Dresden," 18 January 1954, OLCHR Papers, vol. 12, file 2. The letterhead of the NUA indicated that its members came from Chatham, Dresden, and North Buxton, and that it was "Organized in the interests of better race and group relations."

[101]Katz, "Jim Crow," 51-2; testimony of Lyle E. Talbot of the Windsor Council on Group Relations in Minutes of Proceedings and Evidence of the Special Committee on Human Rights and Fundamental Freedoms, (Ottawa: Queen's Printer, 1960), 256.

[102]A summary of such bylaws can be found in Sohn, "Human Rights Legislation," 73-74.

[103]"Blow to Discrimination," Globe, 18 February 1947. For later examples of the Globe's classical liberal antipathy to most human rights law, see the following editorials: "Overcoming Discrimination," 14 December 1953; "A Matter of Education," 15 September 1955; and "Matter of Human Relations," 18 September 1955 (responding to a letter from Sid Blum, on the same page).

[104]Katz, "Jim Crow"; Burnett to Kayfetz, 9 April 1949, JPRC Papers, JPRC Correspondence 1947, Reel 6, file 12; "Dresden Puts Off Race Referendum on Technicality," Globe, 19 April

1949; "Dresden Voters Reject Equality for Negroes," Globe, 6 December 1949.

[105]"Wide Criticism Follows Plebiscite in Dresden," Globe, 7 December 1949; "Dresden Draws the Color Line" [editorial], Globe, 8 December 1949; "Dresden Is Sensitive," Saturday Night, 21 February 1950. For a discussion of the Gallup polls, see Chapter 4 of this dissertation.

[106]These Race Relations Institutes are discussed briefly in Chapter 4 of this dissertation.

[107]Seeley remained President of the ACL until about 1954 (there are no complete files available). He was replaced in 1954 by Dr. E.A. Elliot, who was soon replaced by Dr. E.A. Corbett. From this point on the ACL involvement in Dresden was the responsibility of Corbett and the Secretary, Irving Himel.

[108]Feinberg in particular appears to have played an important role in the Dresden affair. He was an important link with the Jewish community, and as the chair of the JPRC in Ontario he spoke out against the 1949 plebiscite result and participated in the delegations to Frost ("Wide Criticism Follows Plebiscite in Dresden," and "Brief From 70 Groups Asks Wider Legislation to Fight Discrimination," Toronto Star, 7 December 1949 and 25 January 1950). In addition, as noted in Chapter 2, Feinberg often used his position as a rabbi to educate his people about social justice issues. The Dresden affair was no exception; he had William Carter address the congregation, and then Feinberg went to Dresden himself, where he stayed with the Carters and spoke at a local Baptist hall (Dorothy Sangster, "The Impulsive Crusader of Holy Blossom," Maclean's, 1 October 1950). Feinberg also wrote a number of articles on the subject: "Uncle Tom's Tomb Is Jim Crow's Cradle," Negro Digest May 1950; "From a Rabbi's Watch-Tower," The Jewish Standard, 1 January, 1954).

[109]See, for example, the references in notes 127 and 129, below.

[110]Kaplansky, "Notes," 1949, 39, Kaplansky Papers, vol. 20, file 7; "Committee on Group Relations of the Association For Civil Liberties," OLCHR Papers, vol. 9, file 1. Note that at least two members of the Kaplansky network (Murray Cotterill and Eamon Park) were also members of the ACL Council (list attached to letter from Himel to Tanaka, 9 May 1949, JCCA Papers, vol. 15, file 23). Note also that Mahood was replaced as Toronto committee secretary, and chair of the Committee on Group Relations, by Gordon Milling, who in turn was replaced by Donna Hill (Kaplansky, "Notes," 1950, 109-110, Kaplansky Papers, vol. 20, file 9).

[111]See Chapter Four of this dissertation for a more detailed discussion of the 1949 delegation and brief. For Burnett's efforts, see the NUA brief, "To Mayor Walter S. Weese and Council," 5 February 1951, and Burnett to Frost, 6 February 1951, Frost Papers, General Correspondence, vol. 48, file 87-G. Note that at the same time, ACL-connected groups were dealing with Dresden in a variety of ways. For example, following the town referendum, the JCCA president wrote a letter to Premier Frost which called for anti-discrimination legislation that would reflect the principles of the UDHR (Tanaka to Frost, 6 January 1950, JCCA

Papers, vol. 14, file 17).

[112]The Toronto labour committee became connected to the NUA through a complex chain of contacts -- Burnett asked Ben Kayfetz of the JPRC for help, and Kayfetz began to discuss the matter with Vivien Mahood, who brought it before the ACL committee (interview with Kalmen Kaplansky, 12 June 1996; Burnett to Kayfetz, 22 April 1949; Kayfetz to Burnett, 29 April 1949; Kayfetz to Mahood, 25 May 1949, JPRC Correspondence 1947, Reel 6, file 12). There is a reference to Irving Himmel [sic] and the "Canadian Association of Civil Liberties" at 52 of Sidney Katz' article on Dresden ("Jim Crow").

[113]Kaplansky, "Notes," 1949, 54, Kaplansky Papers, vol. 20, file 7; Blum to Maxwell, 13 May 1958, JLC Papers, vol. 42, file 19.

[114]Information about Mahood's trip is found in Kaplansky's "Report," July-August 1949, and his "Notes," 1949, 85-88, both in Kaplansky Papers, vol. 20, file 7.

[115]Kaplansky "Notes," 1948, 44, Kaplansky Papers, vol. 20, file 5; Katz, "Jim Crow." For a brief discussion of Berton's stories about human rights, and his support for human rights groups, see Chapter 4 of this dissertation.

Dresden continued to be a national story. For example, the CBC radio program, "Cross Section," looked at the Dresden story on 21 October 1954, using material supplied by Blum. In addition, on 12 November of the same year Hugh Burnett appeared on a Toronto CBC television station which was scheduled to be broadcast across the country within two weeks (Kaplansky, "Report," September 1954, November 1954, Kaplansky Papers, vol. 21, file 3; Kaplansky "Notes," 1954, 79, Kaplansky Papers, vol. 21, file 2).

[116]Katz, "Jim Crow." Note that it was MacKay who had refused service to Burnett about 1943, thereby precipitating his unsuccessful complaint to Ottawa (Walker, "Race," Rights and the Law, 176). Note also that a petition circulated in Dresden indicated that a substantial majority of the Dresden population was opposed to racial discrimination (Mahood to McLean, 28 April 1949, OLCHR Papers, vol. 9, file 1). See also the letter by Blum, written on 11 March, 1954, to the Rev. Grant Mills of Dresden United Church, suggesting that "a few strong personalities" were keeping discrimination alive in the town (OLC papers, vol, 12, file 2).

[117]"Brief From 70 Groups Asks Wider Legislation to Fight Discrimination," Globe, 25 January 1940; "A Brief to the Premier of Ontario (24 January 1950)," CCL Papers, vol. 335, file "Civil Rights - Association for Civil Liberties." This extensive and well-documented brief referred to Dresden, American examples of anti-discrimination legislation, a CAAE pamphlet called "Group Relations in Canada," a number of press references (including Katz' article in Maclean's) and the recent Gallup polls on attitudes towards discrimination in Canada. Supporting groups are listed in its appendix "B" and also in appendix "H" of Herbert Sohn, "Human Rights Legislation."

[118]"Brief From 70 Groups"; "Ontario's Minority Grievances," Ottawa Citizen, 27 January 1950.

[119]Bagnall points out that the Orange Lodge was strongly represented in Frost's caucus, and Premier Frost therefore preferred to move incrementally. According to Conservative MPP Allan Grossman, Frost often said that his job was like feeding a young child -- he could no more obtain immediate acceptance of minority rights than a parent could cajole a child into eating a large meal (John Bagnall, "The Ontario Conservatives," 200, 338 [note 114]).

[120]Katz, "Jim Crow," 9.

[121]As the Dresden Affair heated up, some people argued strongly that admitting blacks into public facilities would hurt business, especially those tourist businesses which received much of their income from (presumably prejudiced) white Americans. See the letter quoted by Frank Tumpane in his article "Senseless Arguments, Shrill Talk," Globe, 29 June 1954. The Toronto newspaper The Canadian Negro argued that discrimination in Dresden was caused by "the desire of a few business men to lure American Tourist Trade their way" (quoted in Winks, The Blacks in Canada, 406).

[122]The term "discrepancy effect" is defined in Chapter 1 of this dissertation, at note 13. For examples of newspapers supporting anti-discrimination law, see: "Legislation Could Help," Brantford Expositor, 27 January 1950; "Human Rights Statute Sought," Star, 27 January 1950; "Racial Tolerance Act Could Be Strengthened," Telegram, 30 January 1950; "To Stop Discrimination," Napanee Express, 2 February 1950; "La Discrimination Raciale Décidement en Recul," Le Canada (Montréal), 15 February 1950.

[123]Frank Tumpane, "Private Prejudice," Globe, 22 June 1954. See also his opinion piece, "It Isn't a Popularity Contest," 1 September 1954, and Sandwell's remarks about Dresden and the United States in "Our Better Way," Saturday Night, 15 October 1955.

[124]The American legislation is discussed briefly in Chapter 4 of this dissertation. Note also that, as the Dresden affair progressed, events in the United States in the early 1950s onwards probably helped make Canadians more aware of racial problems, for the American civil rights movement was challenging perceptions about race and justice.

[125]Kaplansky, "Report," May 1951, April and May 1953, Kaplansky Papers, vol. 20, file 12, and vol. 21, file 1; "Now," Windsor Daily Star, 9 May 1951. On the other hand, the focus on Dresden may have blinded many Canadians to the existence of prejudice elsewhere. For example, an editorialist in the Kitchener-Waterloo Record wrote in 1956 that "with the exception of the small town of Dresden in Kent county, Canada is without a race-prejudice problem" (quoted in Henry, Black Politics in Toronto, note 41 at 42).

[126]Kaplansky, "Report," June 1953 and November 1953, Kaplansky Papers, vol. 21, file 1; Kaplansky "Notes," 1953, 98-104, Kaplansky Papers, vol. 20, file 15; "Notes," 1954, 15-6, Kaplansky Papers, vol. 21, file 2; report of Donna Hill to Kaplansky, 5 January 1954, JLC

Papers, vol. 41, file 15. For a discussion of the events, see "Report to Labor Councils and Liquor Licence Board Cases" [probably written by Gordon Milling], OLCHR Papers, vol. 1, file 2. The ACL was also involved in the Mercury Club issue, but the position taken by Irving Himel generated strong divisive friction among the human rights representatives ("Liquor Licence Board's Hearing on Mercury Athletic Club -- Confidential Report," n.d. [1953], JLC Papers, vol. 41, file 14; interview with Dennis McDermott, 24 July 1994).

[127]Hill to Burnett, 16 December 1953, and Burnett to Hill, 24 December 1953, OLCHR Papers, vol. 12, file 1; "Discrimination 'Not Illegal' in Ontario," and "No Ontario Law Against 'Jim Crow' Negro Group Told," Telegram, 11 December 1953; Kaplansky, "Report," January 1954, and February 1954, Kaplansky Papers, vol. 21, file 3; Kaplansky "Notes," 1954, 6-7, Kaplansky Papers, vol. 21, file 2. (Note that from 1954 onwards the formal name of Kaplansky's Toronto committee was the "Toronto Joint Labour Committee for Human Rights.")

The ACL submission was prepared by a Brief Committee, with Donna Hill coordinating input from different groups, including the NUA, and Ben Kayfetz of the JPRC writing the final draft (Hill to Burnett and Kayfetz, 2 February 1954, OLCHR Papers, vol. 12, file 1; "Anti-Discrimination Material, 1954," JPRC Papers, vol. 5, file 3). The organizations represented in the delegation, and the main speakers, are listed in Appendix I of Sohn's, "Human Rights Legislation."

[128]"Discrimination Protest Heard By Frost, Cabinet," Star, 24 March 1954; Himel to "Dear Friends" [including a copy of the proposed brief], 5 February 1954, JLC Papers, vol. 19, file 6. Apparently the tone of the brief, largely written by Irving Himel of the ACL, was unacceptable to some members of the labour community; see Eamon Park to Himel, 24 March 1954, and Hill to Kaplansky, 28 March 1954, JLC Papers, vol. 41, file 15.

[129]SO 1954, c. 28.

[130]An Act to promote Fair Accommodation Practices in Ontario, SO 1954, c. 28. Deputation members realized that they probably had asked too late for a FAP and were willing to wait for the next session of the legislature. Much to their surprise, it was accepted very quickly; Kayfetz suspects that Frost probably intervened behind the scenes (interview with Ben Kayfetz, 7 June 1996).

[131]Providing for the chance of conciliation before prosecution made the legislation more acceptable to those opposed to state intervention. As Kaplansky stressed, "[i]t is characteristic of our defensive and cautious attitude during these days that [in publicizing the need for a FEP act] Wismer underlined the word 'conciliation,' totally ignoring the punitive aspects of the proposed legislation" (Kaplansky "Notes," 1948, 45-46, Kaplansky Papers, vol. 20, file 5).

[132]For a discussion of the shift from quasi-criminal human rights legislation to this early form of anti-discrimination law, and then the shift to modern human rights codes, see Walter S.

Tarnopolsky, "The Iron Hand in the Velvet Glove: Administration and Enforcement of Human Rights Legislation in Canada," Canadian Bar Review XLVI (1968): 564-590; Discrimination and the Law, Chapter II, "The Rise and Spread of Anti-Discrimination Legislation."

[133]"Outsiders Stir Trouble at Dresden, MPP Claims," Star, 2 April 1954. (It was Murphy who, during this period, achieved some notoriety for a restrictive covenant attached to his own property; see Chapter 4.) According to Ben Kayfetz, "Once you got the ear of Frost, you were in" (Bruner, "The Genesis of Ontario's Human Rights Legislation," 249); see also Bruner's less academic discussion in his "Citizen Power." For a general discussion of the quasi-autocratic way in which Frost ran his government, see Graham, Old Man Ontario, 172-4. For a brief explanation of how some Detroit blacks had been persuaded by the NUA not to respond violently to Dresden discrimination, see "Hugh Burnette's remarks on Dresden," 18 January 1954, OLCHR Papers, vol. 12, file 2.

[134]Sohn, "Human Rights Legislation," 137; Roberts to Frost, 5 March 1954, Frost Papers, vol. 162, file: "Racial Discrimination, Letters re."

[135]This is the explanation of Allan Grossman, the Toronto alderman who worked closely with the CJC and who was elected as a Conservative member of the provincial legislature in the 1955 election, defeating LPP stalwart Joe Salsberg (Oliver, Unlikely Tory, 108-9). In September 1955 Grossman was asked by Bora Laskin, chair of the JPRC legal committee, to serve on a special CJC body dealing with anti-discrimination legislation, and he became a member of the delegation to Frost in early 1956.

[136]Most of the editorial response supported Frost's decision; he clearly was attuned to "respectable" public opinion. See, for example, "Racial Prejudice and the Law," Maclean's Magazine editorial, 1 Sept 1954.

[137]Roger Graham, Old Man Ontario, 177. Supporters of the Ontario law often referred to the American legislation. See, for example, the Star editorial, "Education Also Needed," 25 August 1954. Note also that Frost's brand of reform liberalism was tentative and essentially individualistic when it came to human rights protection; this is discussed in Chapter 4 of this dissertation.

[138]Bagnall, "The Ontario Conservatives," Chapter 4, especially 229, 262-270. Frost was not alone in seeing racial equality as a prophylactic against communism. Sandwell had raised this point in "Dresden Is Sensitive," Saturday Night, 21 February 1950. Similarly, Rabbi Feinberg, in discussing Dresden, referred to race prejudice as "the 'soft-spot' in the spiritual armour of Western civilization," and suggested that both domestically and internationally the conflict with communism could only be won by demonstrating the moral superiority of our democracy ("From a Rabbi's Watch-Tower," The Jewish Standard, 1 January 1954). Note, however, that fear of communism could easily be translated into an argument for legislative inaction; the Victoria Daily Colonist, for example, argued that a British Columbia FEP act was "injudicious

... in view of the persistent efforts of Communist elements to play up and exaggerate the question of discrimination on this continent" ("Unnecessary 'Protection'," 1 March 1956).

[139]Bagnall, "The Ontario Conservatives," Chapter 4, especially 202-228. In other words, despite the fact that Frost was a thoroughly decent man when it came to race relations, he was also a very astute politician working within a capitalist framework. Note also the suggestion by Shirley Tillotson that Frost may have agreed to FEFRA legislation at least in part because of a fear that the Korean War might create a labour shortage in "defence" industries ("Human Rights Law," 544).

[140]Oliver, Unlikely Tory, 111.

[141]"Discrimination and the Law" [letter from Blum], Globe, 18 September 1955.

[142]In her discussion of Ontario's FEFRA legislation, passed in 1951, Shirley Tillotson has demonstrated that bureaucratic obstructionism combined with ineffective interest groups created a situation which in some ways was regressive for the province's female labour force. Rather than eliminating gender inequality in the work-place, the legislation was interpreted in ways that actually managed to legitimize techniques used by employers to depress women's wages (Tillotson, "Human Rights Law," 545). As Tillotson also notes, Agnes Calliste's article, "Sleeping Car Porters," deals with problems in obtaining effective implementation of anti-discrimination law. See also Creese, "Power and Pay," which mentions how the passage of equal pay law in British Columbia failed to help women in their struggle for equal pay for work of equal value.

[143]Leaflet for NUA Sixth Annual Banquet, OLCHR Papers, vol. 12, file 2; notarized statement by Hugh Burnett, 17 June 1954, and Blum to Burnett, 21 June 1954, OLCHR Papers, vol. 12, file 1. The OLCHR files contain papers dealing with a number of complaints filed by Blum on behalf of NUA members from June to September, 1954. By August, Blum calculated that the number of FAP complaints from Dresden was at least four times that of complaints from the rest of the province (Blum to Toronto labour committee members, 1 August 1954, OLCHR Papers, vol. 12, file 1).

[144]"Official Sent to Dresden in Racial Fuss," Telegram, 25 June 1954; Blum to Mills [Dresden United Church], 11 August 1954, OLCHR Papers, vol. 12, file 2; Burnett to Blum, n.d. [1954], OLCHR Papers, vol. 12, file 1; "One-Man Board to Investigate Dresden Charge," Star, 31 August 1954; Blum, report of "telephone conversation with Mr. Nutland," 13 July [1954], OLCHR Papers, vol. 12, file 22.

[145]As noted in McLean, Welcome Home (82-3), Burnett had been threatened on several earlier occasions, beginning about 1948. Burnett to Magone [Deputy Attorney General], 28 June 1954 (c.c. to Blum), OLCHR Papers, vol. 12, file 1; Blum's press release (sent to both the Globe and the Telegram), 30 June 1954, and Blum to Nutland, 29 June 1954, OLCHR Papers, vol. 12, file 2. The NUA did decide to refrain from activity during the week of the

centennial celebrations, but only as a temporary concession.

In addition to receiving threats of violence, Burnett also suffered economically. After his complaints, some whites in Dresden no longer would do business with him, and he went bankrupt. By 1955 he had relocated to the nearby town of Chatham, was paying off his debts, and welcoming "a chance for my ulcers to heal" (Blum, "Report on visit to Dresden," 22, 23 July 1954 and Burnett to Blum, 28 August 1955, OLCHR Papers, vol. 12, file 2, and vol. 6, file 10; see also McLean, Welcome Home, 89).

[146]From the dedication of Borovoy's Uncivil Obedience.

[147]Blum, "Report on Visit to Dresden," 22, 23 July 1954, OLCHR Papers, vol. 12, file 2; Blum, "Dresden, The Fair Accommodation Practices Act, and the Frost Government," 26 July 1954, JLC Papers, vol. 41, file 17. Blum pointed out that one of the segregationist restaurants in the town had changed its policy after the FAP act was passed. The connection between sex and racism was clear in Dresden. Hugh Burnett noted that a white woman who had married a black man could not obtain service in either of the two restaurants owned by Emerson and McKay ("Hugh Burnette's remarks on Dresden," 18 January 1954, OLCHR Papers, vol. 12, file 2; see also comments about inter-marriage by residents in the CBC video, "The Dresden Story").

[148]See, for example, Blum to Daley, 3 September 1954, OLCHR Papers, vol. 12, file 2. Copies of government acknowledgments of Blum's complaints, laid on behalf of NUA activists, are in the OLC Papers, vol. 12, file 1. Blum was very good at obtaining maximum publicity. See, for example, the October 1954 CBC broadcast (note 116, above). In addition, in the Spring of 1955 Blum and the NUA arranged for a public screening in Dresden of the NFB "Dresden Story" film and used the opportunity for a public denunciation of Minister of Labour Daley (Kaplansky, "Report," May 1955, JLC Papers, vol. 21, file 5; "Daley Words Despicable Dresden Groups Charge," Star, 24 May 1955).

It should be noted that Blum was at this time involved in other issues besides Dresden. For example, his Toronto committee took the Narine-Singh case to the Supreme Court, challenging (unsuccessfully) Canada's racist immigration law. This case is discussed in some detail in Chapter 5 of Walker's "Race," Rights and the Law.

[149]"Ontario Govt. Ignores Own Law, Labor Charges," Star, 6 August 1954; "Dresden -- Labour Jim Crow Still Stalks," Telegram, 6 August 1954; Blum to Toronto labour committee members, 1 August 1954, OLCHR Papers, vol. 12, file 1; Blum to Burnett, 5 January 1955, OLCHR Papers, vol, 6, file 10.

[150]Blum to Burnett, 14 October 1954, OLCHR Papers, vol. 12, file 2; Kaplansky, "Notes," 1954 and 1955, 76 and 122, Kaplansky Papers, vol. 21, files 2 and 4; Gordon Donaldson, "Race Law Fails, Negroes Insulted," Telegram, 2 September 1954, and "Fear 'Martyr' Atmosphere if Prosecutions in Dresden," 3 September 1954; "I Saw Race Hatred in a Canadian Town," Liberty, December 1955 [explaining how Donaldson went to Dresden in August for the Telegram, with two black volunteers, Gladys Grizzle and Julian Brooks, to test

the legislation].

The Secretary of the Windsor Labour Committee, Harold Johnson, was also working hard behind the scenes, meeting frequently with members of the NUA to discuss strategy, and attempting to "dramatize" the Dresden story for the public. For example, on 12 August he met with William C. MacDonald of the UAW and a representative of the NUA, where they decided, among other things, that an advertisement about the FAP law would be placed in Dresden newspapers, that a resolution protesting the inadequacies of the FAP act would be presented by Local 200 to the next meeting of the District Council of the UAW in September, and that Sid Blum and Hugh Burnett would be asked to appear and speak to the resolution (Johnson's report for August, 1954, JLC Papers, vol. 43, file 23.)

[151]"Negro Tourists Refused Meal, Is Dresden Charge," Star, 28 August 1954; "Commissioner to Probe Cases of Discrimination," Globe, 31 August 1954; "Judge to Investigate Dresden `Jim Crow'," Telegram, 4 September 1954. No other inquiries under the FAP Act were held until the Dresden situation had settled certain legal questions (Toronto labour committee report for June 1956, JLC Papers, vol. 42, file 5).

[152]Bagnall, "The Ontario Conservatives," 299-302; Kaplansky "Report," July, August, and September 1954, Kaplansky Papers, vol. 21, file 3; "Admit Refusing Food To Colored Customers to `Protect Business'," Star, 28 September 1954; Racial Bar Test Could Set Canadian Precedent," and "Negroes Barred to Protect Business," Vancouver Sun, 27 and 28 September 1954.

[153]Blum to Daley, 3 September 1954, OLCHR Papers, vol. 12, file 2; "Report of His Honour Judge W.F. Schwenger In the Matter of the Fair Accommodation Practices Act, 1954, and in the Matter of a complaint of Hugh R. Burnette; Report of His Honour Judge W.F. Schwenger In the Matter of the Fair Accommodation Practices Act, 1954, Re: Complaint of Lyle Emerson Talbot," Ontario Legal Rulings, 1954-1958, Fair Accommodation Practices Act [henceforth both of these documents will be referred to simply as the "Schwenger Report"].

Lyle Emerson Talbot was a member of Ford Motor Co. Local 200 UAW, and volunteered in the Windsor Interracial Council (later the Windsor Council on Group Relations), from which position he had been in contact with the Toronto labour committee concerning Dresden since 1948. Later he worked in the Federal Department of Labour's Anti-Discrimination Branch. He is mentioned briefly as a human rights activist in his daughter's autobiography (Talbot, Growing Up Black in Canada). See also: his testimony (for the Windsor Council on Group Relations) to the 1950 special Senate committee on human rights, at 256; Kalmen Kaplansky, "Notes," 1950, 27, Kaplansky Papers, vol. 20, file 9; Talbot to Mahood, 12 April 1948, JLC Papers, vol. 9, file 1.

[154]Kaplansky "Report," September 1954, Kaplansky Papers, vol. 21, file 3. Lewis had previously acted *pro bono* in the William Pitt Hotel case. In 1950 he had gone into private practice with the Toronto law firm of Jolliffe, Lewis, and Osler, but he retained his ties with the CCF and was elected a national vice-chair of the party (The Good Fight, 388-9).

[155]Schwenger Report; "Admit Refusing Food."

[156]"Decide Against Prosecution," Globe, 21 October 1954; Schwenger Report. The report is dated 13 October 1954; evidently Daley had it for a week before making his decision public.

[157]"Slap on the Wrist" [editorial], Globe, 21 October 1954; "Fetters on Law" [editorial], Telegram, 22 October 1954; Frank Tumpane, "Daley's Cream Puff," Globe, 23 October 1954. (For a more complete summary of press criticism, including Globe diffidence, see Bagnall, "The Ontario Conservatives," 322-324.)

Although most of the evidence suggests that Frost was more willing than Daley to support government intervention, on 19 October 1954 he wrote to Bishop Cody of London: "Concerning the Dresden situation, we are hopeful of resolving this situation by common sense rather than by legal action which sometimes has a tendency to harm" (Frost Papers: General Correspondence, vol. 28, File Code 55, "Coa-Cof 55," 1950-61); see also his public remarks in "Anxious to Avoid Prosecutions on Discrimination," Globe, 22 October 1954.

[158]The Toronto black community during this period was small and generally apolitical, except for a few recent arrivals, usually people born in the West Indies such as Bromley Armstrong; see Keith Henry, Black Politics in Toronto Since World War I (Toronto: The Multicultural History Society of Ontario, 1981), especially 20-1. Armstrong had been involved in the 1953 Liquor Board cases before Armstrong began testing the restaurants in Dresden. Years later Armstrong was later given the Order of Ontario for his human rights work. He now works for the Ontario Labour Relations Board, but still identifies himself as a trade unionist (interview with Armstrong, 26 July 1994; Toronto labour committee "Report," 29 June 1953, JLC Papers, vol. 41, file 11; report on Mercury Club hearing, 26 November 1953, JLC Papers, vol. 41, file 14; transcript of remarks by Armstrong, "Racial Equality in the Workplace: Retrospect and Prospect," in Equality for All, ed. Harish Jain, Barbara M. Pitts, and Gloria DeSantis [Hamilton: McMaster University, 1991]).

[159]Blum to Burnett (including a summary of Armstrong's complaint), 6 December 1954, OLCHR Papers, vol. 6, file 10; interview with Bromley Armstrong, 26 July 1994.

[160]Gordon Donaldson, "Daley Backs Faith," Telegram, 30 October 1954; "Dresden's Color Bar," Star, 30 October 1954; "How Armstrong Challenged Dresden," The Canadian Negro, January 1955.

[161]"Daley Backs Faith," Telegram, 30 October 1954; Kaplansky to Blum, 2 November 1954, JLC Papers, vol. 41, file 18; "Daley Words Despicable Dresden Groups Charge," Star, 24 May 1955; "Let's face our own color problems first," Maclean's Magazine, 12 May 1956; Blum to Kaplansky, 31 March 1956; Report of the Joint Labour Committee, 31 March and 14 May 1956, JLC Papers, vol. 42, file 2; report of the Windsor labour committee for March, 1956, JLC Papers, vol. 43, file 26.

[162]Blum to Giesbrecht [Vancouver Labour Committee for Human Rights], 24 December 1957, JLC Papers, vol. 46, file 14. In the NFB film, "The Dresden Story," Burnett deals

forthrightly with allegations of communist influence, saying that communists had made some overtures to the NUA, but that they had been rebuffed.

[163]"Discrimination and the Law," Globe, 4 December 1954. There is no evidence that the CRU was ever involved in Dresden. The leaders raised the issue (along with other concerns) in their pamphlet, "Conference Call for an All-Canadian Civil Rights Organization," 21-22 April 1950, and it was listed again in Mrs. Spaulding's 21 April 1950 "Statement of Purpose," but there do not seem to be any other references in the CRU literature (Park Papers, vol. 9, files 154 and 155). Moreover, although the LDR bulletin "Civil Rights" carried a major story on Dresden in its October 1955 issue (vol. 1, no. 2), there was no indication that the LDR was involved directly in the issue (Park Papers, vol. 9, file 161).

[164]Frost privately expressed concerns about the damage that Dresden had done to Ontario's image, but did not attribute any of this directly to communism (Frost to Harshaw, 10 November 1954, Frost Papers, General Correspondence, vol. 61, file Code 119, "Hara-Hars 1950-1961."

[165]"Action on Race Issue Possible, Daley Says," Globe, 2 November 1954; "Daley Consents to Charge Dresden Restaurant Man," Star, 3 November 1954; "Contend Cafe in Dresden Refused to Serve Negroes," Globe, 8 November 1954; Regina v. Emerson (1955), 113 CCC 69. In a later interview Frost mentioned to Blum that he had put pressure on Daley (Blum to Kaplansky, 10 February 1956, JLC Papers, vol. 42, file 1); JLC "Report," October 1954 and November 1954, JLC Papers, vol. 21, file 3.

[166]Regina v. Emerson; Regina v. McKay [1955], 113 CCC 56. For a discussion of the trial, including the defense arguments, see Kaplansky's "Report," December 1954, Kaplansky Papers, vol. 21, file 3. According to Blum, the costs of the restaurateurs' appeals were probably paid for out of a secret fund set up by some of the local Dresden whites (Blum to Kayfetz, 13 December 1954, OLCHR Papers, vol. 10, file 1).

[167]Kaplansky, "Report," September 1955, Kaplansky Papers, vol. 21, file 5; Kaplansky, "Notes," 1955, 92, Kaplansky Papers, vol. 21, file 4. An analysis of the Grosch decisions, written from the perspective of an avowed civil libertarian, was published shortly afterwards by third-year law student A. Alan Borovoy, "The Fair Accommodation Practices Act: The 'Dresden' Affair," Faculty of Law Review (University of Toronto) 14 (January, 1956): 13-23. In 1959 Borovoy became the secretary of the Toronto labour committee and for a short while, beginning in 1967, he was the national executive secretary of the JLC. In 1968 he moved to the Canadian Civil Liberties Association (Borovoy, Uncivil Obedience, 73, 185; Borovoy to Rubinstein, 28 October 1966; Borovoy to Hayes, 21 December 1966, JLC Papers, vol. 43, file 13).

[168]Kaplansky, "Notes," 1955, 99, Kaplansky Papers, vol. 21, file 4. By this time a number of other complaints had been laid under the FAP Act. In March 1956 a bureaucrat reported that 33 complaints had been laid, but that only the Dresden cases had so far gone to court

(Kaplansky, "Report," March 1954, Kaplansky Papers, vol. 21, file 7).

[169]Irving Himel, "Dresden," Canadian Forum, October 1955.

[170]Kaplansky, "Report," October 1955, Kaplansky Papers, vol. 21, file 5; Kaplansky, "Notes," 1955, 89-99, Kaplansky Papers, vol. 21, file 4. The legal advisers included Irving Himel of the ACL, law professors Bora Laskin and Jacob Finkelman, and lawyers Norman Borins and Sidney Midanik. See also: Burnett to Roberts, 12 September 1955; Grizzle [Brotherhood of Sleeping Car Porters] to Roberts, 15 September 1955; Kearns [Toronto District Trades and Labor Council] to Roberts, 21 September 1955; Young [Essex & Kent Counties Trades and Labor Council] to Roberts, 3 October 1955; Montgomery [The Toronto and Lakeshore Labour Council] to Roberts, 12 October 1955, Attorney General's Records (Ontario), vol. 86, file 15.

[171]Kaplansky, "Notes," 1955, 94-7, 114, Kaplansky Papers, vol. 21, file 4; Minutes of JPRC, 19 September 1955, JPRC Papers, vol. 6, file 2; Kaplansky, "Report," September 1955 and October 1955, Kaplansky Papers, vol. 21, file 5; "Cafe Man Fined; Denied Service to Two Negroes," Globe, 29 February 1956.

[172]Kaplansky, "Notes," 1955, 113-5, Kaplansky Papers, vol. 21, file 4; Blum to Burnett, 3 November 1955, OLCHR Papers, vol. 6, file 10.

[173]"The Apple Pie Case Starts Color Row," Telegram, 18 January 1956; "Draw Blind, Lock Door MacKay's System of 'No Service' - Crown," Star, 18 January 1956; "Cafe Man Fined; Denied Service to Two Negroes," Globe, 29 February 1956. There is a full account of the events by Blum in "Summary of Evidence Re: Complaints of Denial of Service" in OLCHR Papers, vol. 12, file 2. See also the report of the appeal: Regina Ex Rel. Nutland v. McKay [1956], 115 CCC 104. During this period, Blum was also advising Burnett to meet with the "leading citizens of the town" to defuse racial tensions (Blum to Burnett, 21 December 1955, OLCHR Papers, vol. 6, file 10).

[174]"Fair Practices New Deal Sought by 11 Groups," Globe, 10 February 1956; Blum to Kaplansky, 5 January, 1955 [sic; obviously Blum meant to write 1956], and Blum to Kaplansky, 10 February 1956, JLC Papers, vol. 42, file 1; "To the Prime Minister of the Province of Ontario" [copy of the brief], Frost Papers, vol. 26, file: "Civil Liberties; Fair Accommodation Practices Act 1953." See also the somewhat inaccurate but useful discussion in Oliver, Unlikely Tory, 108-9. A complete list of the delegation's groups and individuals can be found in Appendix "J" of Sohn, "Human Rights Legislation," at 390. Note that the idea of a commission had earlier been given some public support by Himel's article on "Dresden" in Canadian Forum, October 1955.

[175]Blum to Kaplansky, 10 February 1956, JLC Papers, vol. 42, file 1. Later, Blum wrote to Kelso Roberts on behalf of the Toronto labour committee, praising his department's "vigorous and able handling of the issues," especially the work of the special prosecutor, George Walsh

(20 August 1956, Attorney General's Records [Ontario], vol. 86, file 15).

[176]"Draw Blind, Lock Door MacKay's System of 'No Service' - Crown," Star, 18 January 1956; "Cafe Man Fined; Denied Service to Two Negroes," Globe, 29 February 1956; Kaplansky, "Report," January 1956, February 1956, Kaplansky Papers, vol. 21, file 7.

[177]R. ex rel. Nutland v. McKay [1956], 5 DLR (2d) 403, 105 CCC 56; Kaplansky "Report," May 1956, Kaplansky Papers, vol. 21, file 7; Kaplansky, "Notes," 1956, 26, 71, Kaplansky Papers, vol. 21, file 6; Ronald Collister, "Guilty in Color Case -- Won't Change Stand," Telegram, 23 May 1956; "Dresden Verdict in Race Bias Case Upheld in Court," Globe, 24 May 1956.

[178]"Actions Speak Louder" [editorial], Globe, 28 May 1956. For stories on the Lang decision, see "Guilty in Color Case, Won't Change Stand," Telegram, 23 May 1956; "Dresden Cafe Owner's Appeal is Dismissed," Star, 23 May 1956; "Dresden Verdict in Race Bias Case Upheld in Court," Globe, 24 May 1956.

[179]See Blum's report for November, JLC Papers, vol. 42, file 4; see also Kaplansky, "Notes," 1956, 119, Kaplansky Papers, vol. 21, file 6; Kaplansky, "Report," June 1956 and November 1956, Kaplansky Papers, vol. 21, file 7. The NUA, working as usual with Blum as adviser, engaged in several later tests, none of which resulted in any evidence of racial discrimination; see Blum to Janson [NUA Secretary], 29 October 1956, OLCHR Papers, vol. 6, file 10.

[180]"Claim Lake Cottage Refused U.S. Negroes," and "Reputations in Danger" [editorial], Globe, 4 July 1960. Coincidentally, on the same day that this story appeared, the Globe also carried a story "Universities Alleged to Restrict Chinese," about a student who claimed that there was a quota on Chinese medical students in Canadian universities. See also the critical article in the Star on 1 September 1960: "Discrimination Here: Far from Licked." This article lamented the face that Ontario's anti-discrimination program was "weak, and in many instances, ineffectual."

[181]It was important that the courts had rejected the defence that testing was a kind of unfair entrapment. Kaplansky believed that testing was "one of the most important tools in enforcing human rights legislation. It is almost impossible to prove 'intent' to discriminate on the part of offending parties" (Kaplansky, "Notes," 1954, Kaplansky Papers, vol. 21, file 2, 95). Blum's pioneering work in testing for discrimination was followed by Alan Borovoy when he became secretary of the Toronto labour committee.

[182]This comes close to what has been called "clientèle pluralism," where "state officials are unable to differentiate themselves from organized interests. They become dependent on interest associations to supply information and expertise..." (Coleman and Skogstad, "Policy Communities and Policy Networks," 27). An Ontario Fair Accommodation Officer noted in 1956 that the Toronto labour committee was doing a "swell job" and had saved his department a lot of work. At the same time the Federal government had received 17

complaints, most of which had been filed by the JLC labour committees in Montréal, Toronto, Windsor, Winnipeg, and Vancouver (Kaplansky, "Report," March 1954, Kaplansky Papers, vol. 21, file 7).

[183]For information about the Montréal labour committee and local anti-discrimination legislation, see the JLC papers, vol. 34; for the Winnipeg (later Manitoba) committee and local anti-discrimination legislation, see the JLC papers, vol. 44; for the Vancouver committee, see the JLC papers, vol. 45. These files also contain occasional information about the JLC lobbying for federal anti-discrimination legislation, and there is information about all of these issues in Kaplansky's "Reports" and "Notes." For information about the formation and status of the CLC NCHR in 1956, see Kaplansky "Notes," 1956, 48, 90, 98, 122, Kaplansky Papers, vol. 21, file 6.

[184]For a brief discussion of some of the problems of Ontario's FAP legislation, including the reluctance of the government to prosecute, and unsympathetic interpretations by judges, see P.V. MacDonald, "Race Relations and Canadian Law," Faculty of Law Review (University of Toronto) 18 (April 1960): 115-127, at 126-7.

[185]Tarnopolsky, Discrimination and the Law, 29-30. Tarnopolsky also says that "very few complaints were made, and very little enforcement was achieved." This was not for want of trying on the part of the Ontario Kaplansky network. The first major FAP case after Dresden (laid in December of 1957) showed the need to change from a conciliation/prosecution model to an administrative law model. It involved three complaints of racial discrimination against a tavern in Chatham. Much to the chagrin of human rights activists, the Attorney General's office decided in the summer of 1958 not to prosecute, even though the Ministry of Labour had investigated the case and recommended court proceedings (Maxwell to Blum, reports for May, 1958 and June, 2 July 1958, JLC Papers, vol. 42, files 10 and 9).

[186]Kaplansky, "Notes," 1956, 28, Kaplansky Papers, vol. 21, file 6; Kaplansky, "Report," October 1956, Kaplansky Papers, vol. 21, file 7. Bagnall, "The Ontario Conservatives," 356-66, demonstrates the importance of a number of factors, including the commitment of Ontario bureaucrat Thomas Eberlee, to the development of the Ontario Human Rights Code.

[187]Beginning in 1948 Kaplansky sent his reports to the "Joint Advisory Committee on Labour Relations of the Jewish Labour Committee and the Canadian Jewish Congress," or JACLR. Then, in 1956, his reports were addressed to the "National Standing Committee on Human Rights of the Canadian Labour Congress," or NCHR.

[188]M. Rubinstein, "Address," 29 October 1959, JLC Papers, vol. 9, file 22. In 1957 Kaplansky was appointed Director of the Department of International Affairs of the CCL, which led in 1960 to his parallel appointment to the governing body of the International Labour Organization (ILO). In 1966 he stepped down from both these positions, and the following year became Director of the Canadian Branch of the International Labour Office, and then Special Advisor to the Director General. He retired in 1980 (Kaplansky Papers Finding Aid).

At national director of the JLC from 1957 to 1962, Blum supervised a number of human rights campaigns across the country. In addition, he served as the executive secretary of the multi-group Human Rights Anniversary Committee for the tenth anniversary of the Universal Declaration of Human Rights in 1958 (JLC Papers, vol. 21, file 13, and vol. 34, file 18, etc.).

[189]The group was initially called the Human Rights Committee of the Halifax-Dartmouth & District Labour Council. See generally the JLC Papers, vol. 40.

[190]In 1960 the group was officially called the Toronto and District Labour Committee for Human rights. See generally the JLC Papers, vol. 42. The McCurdy correspondence is in file 19. For information about Berton, see Borovoy to Blum, 21 October 1960, file 20, and also "Charge Muskoka Hotel Turned Negroes Away," Star, 24 August 1960. Borovoy has dedicated Uncivil Obedience to Blum, and discusses him briefly at 203-4.

[191]The Winnipeg group was officially called the Manitoba Labour Committee for Human Rights. See generally the JLC Papers, vol. 45. Information about Simpson's and aboriginal peoples is found in Orlikow's report for September 1959 (file 2) and January 1960 report (file 4). Orlikow was not secretary for all of this period; he left in 1949 and returned in 1954. In 1962 he became the National Director of the JLC, and remained in that post until replaced by Alan Borovoy in 1967.

[192]The official name of the organization in 1960 was the Vancouver and District Labour Council Labour Committee for Human Rights; see generally JLC Papers, vol. 46. Giesbrecht was not university educated, and did not enjoy secure well-paid employment. This limited his effectiveness as a part-time Vancouver labour committee secretary, but his reports and letters indicate an impressive commitment and dedication to the cause. He did very little in the second half of 1960, however, because he was badly hurt in an automobile accident.

[193]Some reasons for the back-seat role of the JLC are discussed earlier in this chapter. For an example, see the article by Gordon Donaldson, Telegram reporter, in the December 1955 issue Liberty magazine ("I Saw Race Hatred in a Canadian Town"). Kaplansky was upset that the article made no mention of the JLC, and gave considerable credit to the CJC. This is discussed in his "Notes," 1955, 121-4, Kaplansky Papers, vol. 21, file 4. Note also the article "Dresden Case Won by Policing" in the 25 October 1956 issue of the Telegram, in which the Toronto Joint Labour Committee is praised for its role in pursuing the case; there is no mention of the contribution of the JLC. In addition, Bromley Armstrong, one of the major figures in the Dresden affair, maintains that it is unfortunate that Canadian blacks are not aware of how much Canadian Jews (through the JLC human rights program) promoted the interests of the black community (interview with Bromley Armstrong, 26 July 1994).

[194]See notes 2 and 3, above, for a brief discussion of the written accounts. Some of them, especially Herbert's Sohn's dissertation, make limited use of the JLC records but none of them have examined Kaplansky's "Notes."

CHAPTER 7 - THE HUMAN RIGHTS COMMUNITY AND THE BILL OF RIGHTS

A: INTRODUCTION

In previous chapters this dissertation has shown that although a new human rights discourse began to emerge during the Second World War, subsequent events in Canada demonstrated that the rights of the individual citizen were not always adequately protected. As a result, a few committed citizens established or reactivated a number of human rights organizations and lobbied both provincial and federal governments to make policy changes that would improve respect for certain fundamental human rights. In some cases they called for governmental restraint, a return to the classical liberal reverence for "precious British liberties." In other instances they demanded governmental activism, a move forward to the reform liberal principle of anti-discrimination legislation.

The human rights policy community was moderately successful in obtaining such policy changes, although the Cold War undermined progress in the field of libertarian rights. Many of the human rights activists, however, were alarmed about the fragility of human rights in Canadian society, and advocated the creation of stronger guarantees than were traditionally available. The most secure protection appeared to be a bill of rights.

Earlier chapters in this dissertation have mentioned in passing that certain key groups and individuals in the post-war Canadian human rights community became converted to the idea that the nation needed a bill of rights. This chapter examines this intellectual sea-change in more detail, and explains how these people formed a policy network to attain their goal. The concept of a Canadian bill of rights, however, was not an entirely new idea in 1945, and as the first section of this chapter indicates, calls for a bill of rights go back at least as far as the 1930s.

The second (and main) section of this chapter explains how the notion of a bill of rights attained a progressively greater measure of respectability after the war, culminating in the passage of John Diefenbaker's Bill of Rights in 1960. As will become clear, however, the

phrase "bill of rights" could mean many things to many different people, and the Canadian human rights community engaged in an extended dialectical conversation about its nature and desirability. By 1960 the concept was no longer supported only by those on the margins of respectable society, but there still existed considerable controversy about what constituted the best form of a bill of rights.

Why did Canada develop this constitutional innovation in 1960? What were the political forces that struggled to achieve it, and why was it not created earlier? Why was it a flawed document and not a more powerful bulwark against governmental violations of citizens' rights? A number of published works have looked at these questions, primarily from the legal perspective, but none has examined the topic sufficiently broadly, paying attention to the role of individuals and interest groups that interacted in the post-war period with first the Liberal governments of King and St. Laurent and then with Diefenbaker's Conservatives. Politics has been defined as the study of who gets what, when, where, and how; this chapter is an examination of the politics of the bill of rights up to 1960.[1]

B: PRIOR TO 1945

The first public demand for an American-style bill of rights was put forth in 1935. When the League for Social Reconstruction (LSR) brought out its first book, Social Planning for Canada, Frank Scott was responsible for the section on the constitution, in which he took a highly centralist stand, arguing that Ottawa should be able to take over many of the areas previously allocated to the provinces. He decried the tradition of provincial rights and argued in favour of a flexible constitutional amending formula, but one that would entrench the rights of racial minorities as well as Protestants in Québec and Catholics in Ontario. He added that civil liberties should also be protected by "an entrenched Bill of Rights clause in the B.N.A. Act."[2]

Scott's suggestion did not spark much interest at either the governmental level or in the press.[3] There were probably several reasons for this. First, there were ideological barriers to accepting a scheme which was intended to limit government's ability to deal with threats to the political establishment, especially threats from the left. The "tory-touched" classical liberals who dominated the Canadian socio-political elite had little inclination to curb the powers of the state, and they were hardly likely to look with any favour at a suggestion coming from the social-democrats.

A second reason why Scott's suggestion fell on deaf ears was that it proposed a radical break from the British tradition of parliamentary supremacy. Scott clearly wanted entrenchment so that legislatures, both federal and provincial, would have their sovereignty curtailed.[4] However, as noted in Chapter 1, the influential British legal scholar, A.V. Dicey, lauded the principle of parliamentary sovereignty, and taught that the British system adequately protected civil liberties through common law principles such as the rule of law and certain statutes such as Magna Carta and the Habeas Corpus Acts. In the face of Dicey's arguments, a bill of rights appeared to be a deviation not only from the principles of classical liberalism, but from British liberal principles. It would be hard for most Canadians to embrace such an innovation unless they were either persuaded that it was not particularly un-British, or that moving away from British traditions was not necessarily bad.[5]

The move from British traditions was to some degree tied up with the move "from colony to nation." Yet Scott's proposal meant that Canadians would have to ask the British Parliament to take away certain powers from their legislatures, a partial reversal of the normal evolution of Canadian independence. In 1931 the Statute of Westminster had make Canada legally sovereign, but there still remained a number of "loose ends" to tie up, including ending appeals to the Privy Council and handing over the constitution-amending power to Canadians. Given this pattern of constitutional evolution, a bill of rights could be seen as a retrograde step. This obstacle was raised, in December of 1937, in a governmental memo by Loring Christie, a senior Canadian diplomat, and it resurfaced again in the years to come.[6]

Another problem with Scott's idea was its "nation-building" bias. In a book entitled Small Worlds: Provinces and Parties in Canadian Political Life, political scientist David Elkins and his colleagues have argued that there are three constitutional models from which Canadians can choose: the country-building, province-building, and Québec nation-building models. Elkins has noted that with the first-mentioned approach there is a stress on the national interest and the obligation of Ottawa to promote this interest. He points out, following Alan Cairns, that the entrenchment of the Charter of Rights in 1982 was an attempt "to construct by constitutional engineering a national community defined by the rights the citizenry possessed."[7] Scott's proposal was an early forerunner of this approach, entirely consistent with his other suggestions for the building of a strongly centralized Canada.[8]

The "nation building" effect of an entrenched bill of rights clashed with the other two models of provincial rights and Québec nationalism. Setting up a charter of national standards, even in the abstract, has a centralizing effect, but in Canada at this time it threatened a common belief that "civil liberties" were almost entirely provincial, since s. 92-13 of the BNA Act had given the provinces jurisdiction over "property and civil rights." Moreover, the general thrust of decisions by the Judicial Committee of the Privy Council had been to decentralize Canada, and suggestions for a bill of rights therefore ran counter to this "province building" tradition.

At the same time, the Québec government of Premier Duplessis viewed decentralism as a *sine qua non* of French-Canadian national survival. Dependent as he was upon the

support of Québec voters, and unwilling to alienate Duplessis any more than could be helped, Prime Minister King normally refrained from taking steps that would protect civil liberties at the expense of "Canadian unity." As a result, much of what then passed for country building was primarily an evolutionary disengagement from colonial subordination.

Of course Scott and the social-democratic left were not the only ones promoting a stronger nation-building approach, and an entrenched bill of rights was not the only possible weapon in the federal government's arsenal. In 1937 the federal government established a Royal Commission on Dominion-Provincial Relations which became known as the Rowell-Sirois Commission. Although this was set up primarily to deal with federal-provincial fiscal relations and the government financing problems arising from the Great Depression, a brief submitted to this body by J.B. Coyne,[9] R.O. MacFarlane,[10] and A.R.M. Lower argued that "a superior plane of civil rights must be recognized above the jurisdiction of the provinces and especially dedicated to guardianship of the civil rights of the citizen as a CITIZEN OF CANADA." They argued that such rights (including interprovincial trade, mobility rights, the franchise, and freedom of religion) should be either be handed over to the federal government through a constitutional amendment, or protected by means of a bill of rights. Meanwhile, they suggested, the federal power of disallowance should be used more frequently to protect these fundamental freedoms.[11]

The disallowance power had become a heated topic of discussion in 1937. In that year the Québec Duplessis government created the infamous Padlock Act and the Alberta Social Credit government produced a number of laws dealing with banking as well as public and private debt. While Ottawa was willing to disallow eleven of the Alberta laws, between 1937 and 1941, on the grounds that they appeared to infringe on the federal power over banking, it chose not to disallow the Quebec statute, even though it appeared to trench upon the field of criminal law, and certainly violated free speech rights within the province. Ottawa's reluctance to violate the "provincial rights" of Québec in order to promote the individual rights of political radicals revealed (for many people) a fundamental flaw in the Canadian constitutional system.[12]

One of the critics, despite his Liberal leanings, was J.W. Dafoe, editor of the Winnipeg Free Press and one of the Royal Commissioners. Although Dafoe was unable to persuade his colleagues to support Lower's approach, even when he set down his ideas in a memorandum called "The Rights of Citizenship," he was able to promote the idea in the editorial pages of his newspaper, frequently suggesting that Ottawa should declare the impairment of certain rights beyond the constitutional powers of any province and back this up by disallowing the Québec Padlock Act.[13]

Shortly afterwards, in the Alberta Press case, the Supreme Court of Canada suggested an alternative to both a legislated bill of rights and the application of the disallowance power. This too may have had its roots in the Lower brief. According to Lower, the lawyer J.L. Ralston adopted some of its ideas when arguing before the Supreme Court of Canada that a Social Credit bill interfering with the freedom of the press should be declared unconstitutional.[14] The result, as mentioned briefly in Chapter 1, was that justices Duff and Cannon (but not a majority of the court) developed this idea into an argument that at least provincial governments are prohibited by the preamble of the BNA Act from infringing on freedom of expression. This was the so-called "implied bill of rights" argument.

However, the Alberta Press case did not close off the alternative of a legislated solution.[15] In addition to his suggestion that there might be an implied bill of rights in the constitution, Chief Justice Duff also argued that Ottawa might have the constitutional power to protect the right of "free public discussion of affairs." As he wrote, "We do not doubt that (in addition to the power of disallowance vested in the Governor General) the Parliament of Canada possesses authority to legislate for the protection of this right" by virtue of its general power to protect the constitution itself.[16]

Did this indicate that Ottawa could pass a bill of rights? The passage was not entirely clear, but the members of the MCCLU seized upon it as proffering a solution to their problems with Maurice Duplessis and his Padlock Act. In March of 1939 the executive began to raise this issue with the public in the hope that some support could be generated for the idea, arguing that the disappointing decision of Justice Greenshields in the padlock law decision of Muni Taub made a bill of rights even more imperative than before. However,

when war broke out in the fall the issue was quickly put aside as the organization was faced with the more pressing problem of war-time emergency violations of civil liberties.[17]

Although the war-time experience generated a number of basic rights violations and a concomitant interest in human rights activism, the notion of a bill of rights remained something of a novelty. The Defence of Canada Regulations (DOCR) were seen as temporary deviations from the norm, and it was widely assumed that after the war traditional "precious British liberties" would be restored. Even a close reading of the letters, speeches, and briefs dealing with the treatment of Japanese Canadians in 1945 does not reveal any demand for a bill of rights as a long-term solution to the problem of human rights violations.

On the other hand, Frank Scott continued to advocate a bill of rights, and the CCF adopted his proposal. In 1943 Scott proposed a constitutionally entrenched bill of rights that would include not just traditional civil liberties but also "minority rights" for francophones.[18] In the same year, Scott (who was national chair of the CCF) and David Lewis (the CCF secretary) called for a new constitution "guaranteeing full protection to minorities and embodying the democratic civil liberties,"[19] and by late 1944 the federal CCF election manifesto reflected this approach. It contained a pledge to protect "the existing minority rights set out in the BNA Act" as well as a call for a bill of rights entrenched by a constitutional amendment.[20]

However, this notion did not have the unambiguous support of the party elite. It is true that George Grube supported the idea in an article written for the 1944 Ontario CCF book Planning for Freedom, although he mentioned it only in passing as a way of defending citizens against employers as well as the state. Frank Underhill, by contrast, was prescient enough (or familiar enough with American precedents) to worry about corporations taking advantage of constitutional protections.[21]

A few liberals also began to accept the desirability of a bill of rights. The CLAT seems to have mentioned this to the federal government in one of their briefs in 1942, and in 1944 Bruce Hutchison wrote a Winnipeg Free Press editorial which suggested that, given Canada's experience with the Alberta press bill, section 98 of the Criminal Code, the padlock law in Québec, and the deportation of certain Canadians during the depression of the 1930s,

common law protections of civil liberties were inadequate and those liberties needed constitutional protection. This was the opening salvo in a barrage of articles and pamphlets from the Free Press, dealing with civil liberties in Canada and arguing that their frequent violation made a constitutional bill of rights a necessity.[22]

Finally, even the Canadian Bar Association (CBA) put out tentative feelers. The Report of the CBA Committee on Civil Liberties, presented to the annual general meeting in August 1944, called for the end of war-time emergency controls, and warned particularly about the danger of what this dissertation has called "executive despotism." The report ended with the words: "We wonder if, for Canada, we had not better follow the American procedure, and incorporate ... [certain traditional liberal] rights and liberties of the subject in our own Constitution, for greater guarantee that our democrats will not forget Democracy."[23]

Meanwhile, at the end of the Second World War, Canadians found themselves about to move back from the cabinet dictatorship mandated by the War Measures Act to the traditional situation of "a constitution similar in principle to that of the United Kingdom," which meant faith in parliamentary supremacy, the sporadic use of the disallowance power, and a rudimentary bill of rights protecting religious and linguistic minorities. The alternatives seemed to be either a judicially-developed "implied bill of rights," as suggested by Justices Duff and Cannon, or a constitutionally entrenched American-style bill of rights, as suggested by F.R. Scott, the MCCLU, and Bruce Hutchison of the Winnipeg Free Press. Some very significant changes in the thinking of Canadians would have to take place before the latter idea would come into its own.[24]

C: AFTER THE SECOND WORLD WAR

It has always been part of the "conventional wisdom" that after the war John Diefenbaker was the political knight in shining armour who searched for years in the wilderness for the elusive holy grail called the bill of rights.[25] Diefenbaker himself did little to dispel this idea, and much to encourage it.[26] This, however, is a caricature of reality. Diefenbaker was certainly one of the main characters in the post-war struggle for a bill of rights, but there were a number of other people, politicians as well as ordinary citizens, who worked assiduously in making the idea of a bill of rights acceptable.

One of the groups which has been given some recognition is the Jehovah's Witnesses. In both Canada and the United States they came under attack for their aggressive proselytizing and refusal to conform to certain school practices which they saw as paying homage to the state. Having won a number of battles in the United States during the late 1930s and early 1940s, using as their shield the American Bill of Rights, they then began a campaign of lobbying and litigation in Canada.[27] As a result of their many successes legal scholars have long been aware of the role the Jehovah's Witnesses played in the struggle to respect human rights. The following comment, by legal scholar Edward McWhinney, is not atypical:

> There is great truth in the statement, made only half in jest, by Glen How, who has been counsel for Jehovah's Witnesses in their main contests before the Supreme Court of Canada, that Jehovah's Witnesses, and not Mr. Diefenbaker, have given Canada her Bill of Rights.[28]

Such an evaluation is misleading, however, and is based more upon a reading of law reports than historical documents. Although one cannot deny the importance of the Jehovah's Witnesses in bringing civil liberties issues to the attention of the Supreme Court during the 1950s, they were a marginal group that could not do very much to persuade the majority of Canadians that minority rights were entitled to better protection.[29] The revolutionary development of a "rights consciousness" in Canada did not take place because an unpopular religious sect demanded better treatment, nor because the Supreme Court supported most of

their demands, but rather because a number of more "respectable" individuals and groups took advantage of changes in the *Zeitgeist* and lobbied hard to educate their fellow Canadians.

One of these eminent citizens was the liberal Canadian historian A.R.M. Lower.[30] As noted earlier, in 1937 Lower and two colleagues had proposed the creation of a bill of rights to the Rowell-Sirois Commission. This, however, was bound up in their desire to strengthen the powers of Ottawa; the brief shows that Lower (like many of his contemporaries) saw the provinces as the major threat to libertarian rights. Faced with the examples of the Padlock Act in Québec and the press bill in Alberta, such a conclusion was understandable, however misguided. By 1946, however, Lower's faith in the liberal beneficence of the Dominion government had been shaken by the DOCR, the Japanese Canadian deportation policy, and the Gouzenko Affair. As a member of the CLAW, he began to see that liberal rights in Canada were weakly rooted indeed.

At the same time, Lower had also come to worry about egalitarian rights. Like many of his generation, in the pre-war period his attitudes towards racial equality were more defensive than liberal. As Carl Berger has noted, his earlier writings, with references to blood, stock, and fatherland, had definite "racist overtones." He was concerned with the dislocations of immigration and low English-Canadian birth rates; he worried that these tendencies were endangering the status of Canada as a British country -- "dominated by British ideals, with British institutions, and predominantly British in population." Moreover, in 1944 he had written about the perverse nature of Japanese Canadians, and suggested that Ottawa should perhaps deport them after the war.[31]

For Lower, like many other Canadians, the Nazis had served to make racism unpalatable. After the war, although Lower continued to favour a homogeneous society, he was sympathetic to the minority groups who had already come to Canada. As he wrote in 1947, "Every state naturally has the right to scrutinize the qualifications of those seeking to become its citizens. But to discriminate between its native-born citizens, awarding degrees of excellence (or privilege) should be anathema."[32] Holding such opinions, it was possible for him to argue in favour of a constitutional document that guaranteed not only the traditional "British liberties," but also the principle of the equal treatment of all citizens. Lower was a

firm believer that academics should put their scholarship to some useful social purpose, and from 1946 onwards, at first as the President of the CLAW, and then as a professor of History at Queen's University in Kingston, he actively campaigned for the adoption of a Canadian bill of rights.[33]

The real "pioneers" of the post-war struggle for a bill of rights, however, were not Diefenbaker, the Witnesses, or Lower, but the social democrats of the CCF. No doubt following in the civil libertarian tradition of the Regina Manifesto, and the writings of Frank Scott and others, "Tommy" Douglas, the CCF Premier of Saskatchewan put the matter firmly on the national political agenda in August of 1945, shortly before the surrender of Japan and the end of all wartime hostilities. At that time, the Prime Minister and the nine Premiers were gathered in Ottawa for what was called the Dominion-Provincial Conference on Reconstruction. Most of the discussion revolved around Ottawa's plans to take the initiative in a number of economic and social welfare policy areas, but when Douglas made his government's presentation he recommended "[t]hat the British North America Act should be revised placing certain fundamental religious, racial and civil liberties in a Bill of Rights, amendable only by the unanimous consent of the provincial legislatures concurrently with the dominion parliament."[34]

The proposal was not met with any degree of enthusiasm, but about a month later Alistair Stewart, a close friend of Lower, and the CCF MP from Winnipeg North, asked the federal government to introduce a bill of rights into the House of Commons. Referring to the preamble of the United Nations, with its affirmation of fundamental rights and freedoms, he argued that such a bill might go far in eliminating racial and religious discrimination. Soon after this, he proposed that:

> in the opinion of this house, there should be incorporated in the constitution a bill of rights protecting minority rights, civil and religious liberties, freedom of speech and freedom of assembly; establishing equal treatment before the law of all citizens, irrespective of race, nationality or religious or political beliefs; and providing the necessary democratic powers to eliminate racial discrimination in all its forms.[35]

It is interesting to speculate as to why Stewart introduced this resolution.[36] As a member of the CCF he was, of course, carrying on a tradition of support for a constitutional amendment supporting fundamental rights and liberties. However, Stewart also had a personal history of support for human rights. He was one of the early activists of the CLAW who publicly criticized, in the fall of 1939, the "totalitarianism" of the War Measures Act and the "un-British" excesses of the DOCR, and after the war he sat on the organization's advisory council. He was also, towards the end of the war, one of those who took an active part in forcing the University of Manitoba to repeal its anti-semitic entry requirements for medical school. Of course, as a representative of Winnipeg North, he also spoke for a constituency which included a great many minority ethnic groups, especially Jews.[37]

Stewart's resolution was never discussed in the House, for he withdrew it when he heard that the government planned to amend the Citizenship Act, believing that he would be able to raise the matter again in the ensuing debate. However, some time later, before the act was introduced, John Diefenbaker made his own bid, in the debate on the Throne Speech during the height of the Gouzenko Affair in March 1946.[38]

This speech marked the first time that Diefenbaker called for a legally-binding bill of rights,[39] but it contained some ambiguity about what exactly he wanted. At first he referred to "a declaration of liberties," suggesting that what he had in mind was less than a constitutional amendment. Then, however, he spoke of the American Bill of Rights, arguing that Canadians should have something similar -- "a bill of rights under which freedom of religion, of speech, of association and of speech [sic], freedom from capricious arrest, and freedom under the rule of the law, should be made part and parcel of the law of the country."[40]

In actual fact, Diefenbaker and other Canadians had far more than two options from which to choose. In the years between 1946 and 1960 different lawyers, scholars, and academics slowly evolved a number of different approaches, although there was considerable disagreement, uncertainty, and confusion about them. In retrospect, it appears that Canadians had several major options: a declaratory bill of rights, a statutory bill of rights (which in turn

had two different variations), and either an unentrenched or an entrenched amendment to the BNA Act.[41]

The first option, of course, would have been the least radical, a simple declaration of rights that was not legally binding. As Walter Tarnopolsky has pointed out in his exegesis of the legislation which Diefenbaker finally achieved in 1960, a declaratory statute is "one which declares or formally states what the existing law is on a given subject, so as to remove any doubts which may have been raised."[42] It therefore assists the judges in the performance of their customary task of interpreting the law, but it does not give them any additional power, unlike legislation which prohibits either the executive branch or the legislature from certain types of behaviour. Such a bill of rights would have been important only in symbolic and educational terms, a drawing together of all the common law rights and constitutional statutes which were part of Canada's British heritage.

Slightly more daring would have been the passage of a federal statute that not only declared certain rights to be in existence but actually prohibited their breach. There were two possible forms such a bill of rights could have taken. One version could have been a statute written in such a way that it clearly permitted the courts to nullify executive decisions that violated the declared rights. The more extreme version would have also mandated judicial review of legislative decisions. In other words, it would have permitted the courts to strike down any statutes which were inconsistent with these declared rights. However, although the statute would have been binding on future parliaments, it would not have been an absolute prohibition, for it would have left the principle of parliamentary supremacy intact. Any future parliament could have passed a statute either repealing or partially nullifying the effect of this bill of rights.[43]

A slightly different option became available only in 1949 when the BNA Act was amended so as to give the Parliament of Canada a limited power to amend the BNA Act (excluding the power to affect provincial rights). From that point on the federal Parliament could have created a bill of rights by passing an amendment to the BNA Act which would have been binding only on the federal government. Such an amendment would not have been entrenched, and therefore could have been altered by a subsequent act of Parliament, but as

a formal addition to the BNA Act it might have been regarded with more respect than a simple statute.[44]

A considerably more adventurous approach would have been a constitutionally entrenched bill of rights that undermined the principle of parliamentary supremacy. This also involved two alternatives. First, Ottawa might have entrenched a provision that prohibited only the federal legislature from violating certain rights. According to one theory, this would have necessitated the federal government handing back to the British Parliament some of its recently-acquired powers of amending the constitution within the Dominion's field of jurisdiction,[45] but Walter Tarnopolsky has suggested an alternative -- the Canadian Parliament could have entrenched an amendment to s. 91 by creating a "manner and form" requirement for future changes.[46]

Second, Ottawa might have attempted a constitutionally entrenched bill of rights that limited the powers of both Ottawa and the provinces. This would have been possible only by asking the British Parliament to pass the appropriate amendment or by first achieving the patriation of the BNA Act and then using the newly-acquired power to entrench the bill of rights through an autochthonous amendment. However, because of tradition, as well as respect for the constitutional rights of the provincial premiers, either British or Canadian entrenchment would have necessitated first the approval of most or all of the provinces.[47]

In 1946 Diefenbaker seems to have been undecided at the most basic level -- did he advocate a declaratory or prohibitory bill of rights? There were several good reasons for him to advocate a "mere" declaratory bill of rights. To begin with, it was the least radical proposal possible. Even so, it was reported that Diefenbaker's speech alarmed other members of the Tory caucus, and over the next few years almost none of them supported his frequent proposals for a bill of rights. Above all, most of the Conservative MPs from the West Coast were not favourably disposed towards a bill of rights which might impede discrimination against Japanese Canadians.[48]

Diefenbaker also could see a declaratory bill of rights as a nation-building tool that could avoid certain constitutional ambiguities. (The issue of constitutional jurisdiction over

civil liberties had still not been settled by the courts.) As he noted in Parliament, about a year after he first called for a bill of rights:

> [a] declaration of a bill of rights in this country would be a positive declaration on the part of men and women of all political faiths in their belief in civil liberties. Whether the federal authority has the power or not to pass legislation respecting civil liberties, its passage would strengthen the hand of the Minister of Justice in the matter of the disallowance of any statute which would deny freedom anywhere in our country.[49]

Another reason why Diefenbaker may have favoured a declaratory bill of rights was that it left intact the fundamental British tradition of parliamentary supremacy. As a Tory conservative, committed to Canada's British connection and the monarchy, it is surprising that he ever mentioned an American-style prohibitory bill of rights.[50] Such an innovation would have constituted a radical break with the past, while a declaratory bill would simply have clarified some of "those things we treasure"[51] in the British constitutional tradition, such as Magna Carta, the principle of habeas corpus, and the 1689 Bill of Rights.[52]

Yet Diefenbaker was strongly drawn to the notion of a prohibitory bill of rights, at least one that would have curtailed the powers of the executive rather than the legislature. When he defended his proposal in the House for the first time, he pointed out, in a peroration heavily laden with "precious British liberties" discourse, that the Gouzenko crisis was part of a trend which earlier chapters of this dissertation have called "executive despotism." In his words, "From 1939 on, the government has arrogated to itself powers which ordinarily reside with parliament and the people." This had begun, he said, with the passage of the DOCR, continued after the war when Ottawa in effect by-passed Parliament by creating orders-in-council that were intended to deport Japanese Canadians, and reached its nadir when Ottawa used other orders-in-council during the Gouzenko Affair to "sweep aside Magna Charta, habeas corpus and the bill of rights." For Diefenbaker, the great defender of the traditional powers of Parliament, the rot within the Canadian political system lay within the executive branch, which of course was dominated by Liberals rather than Tories.[53]

Diefenbaker was not, in fact, very much of a civil libertarian. For example, as Chapter 2 has pointed out, in the Japanese deportation issue he was not opposed to the substance of the government's policy, but to the process, the fact that the deportation policy had been

mandated through orders-in-council, and even worse, through orders-in-council which had been created in such a way that the cabinet appeared to be evading the clearly-expressed will of Parliament. Had the deportation taken place according to legislation explicitly provided by Parliament, he might have had no objection.[54] As Denis Smith has put it in his biography of Diefenbaker, "rights were only what parliament declared them to be."[55]

At about the same time that Diefenbaker was raising the idea of a bill of rights, the Alberta Social Credit government of William Aberhart was pursuing a somewhat similar goal. On 27 March the Lieutenant Governor of Alberta granted Royal Assent to An Act Respecting the Rights of Alberta Citizens, the short title of which was "The Alberta Bill of Rights Act." This largely declaratory bill of rights contained a rather odd mixture of points which could only have been produced by a Social Credit government. It began with a list of the "Rights of Citizenship" of the province. Each one began with a statement that "It is hereby declared," but there was no way of enforcing these rights in the courts. They included traditional liberal individual rights such as freedom of worship, expression and assembly, along with some clearly anti-socialist prophylactics such as the "freedom to engage in work of choice," and the "freedom to acquire property and enjoy home and property," but the legislation also contained a populist guarantee of the right either to gainful employment or to social security pensions, education benefits, and medical benefits. Finally, a large section of the statute dealt with the implementation of Social Credit financial theories, creating a "Board of Credit Commissioners" and a "Consolidated Credit Adjustment Fund."[56]

The Alberta legislation, however, was a constitutional flash in the pan. The legislation contained a stipulation that it would not come into force until the courts had pronounced it constitutionally valid. Since the entire law was declared *ultra vires* by the Supreme Court in 1947, the law never came into effect.[57]

Meanwhile, shortly after the debate on the Throne Speech in the House of Commons, federal cabinet minister Paul Martin moved second reading on the government's proposed Citizenship Act.[58] At that time the law concerning Canadian citizenship was a confusing amalgam of three different pieces of legislation, and the government intended to consolidate the law into one statute. The Citizenship Act had an important symbolic effect, since it created

a new status of "Canadian citizen" which supplemented the old status of "British subject." This was widely seen as an appropriate step for a country which had been legally sovereign since 1931.

Although in retrospect the passage of this statute has been seen as an important step in the development of Canadian democracy, and a major step forward in "nation-building" of the civic nationalist variety, at the time the legislation was a significant disappointment for those who were committed to enhanced protection for human rights, for the law did nothing to improve the second-class citizenship of Asian-Canadians in British Columbia, and Martin even moved an amendment to ensure that the Japanese deportation orders-in-council would not be inadvertently cancelled by the legislation.[59] The "country building" impulses of the federal government were half-hearted measures when it came to human rights.[60]

Diefenbaker's response to the Citizenship Bill was a request that every certificate of citizenship given to new Canadians include a short bill of rights. His argument in favour of this, however, once again indicated his uncertainty about what exactly he wanted. On the one hand, he seemed at times to be arguing that the state itself should be prohibited from violating certain fundamental human rights. As he said, "if citizenship is to mean anything it must mean the equality of all." However, other passages once again indicate that his chief goal was the curbing of executive despotism. For example, he proclaimed that "I am unalterably opposed to any alteration or diminution of the rights of Canadian citizens by order-in-council independently of parliament." Moreover, one of the rights included in his proposed bill of rights -- habeas corpus -- explicitly permitted suspension by act of parliament.[61]

Diefenbaker was unable to gain support from the House even for this version of a bill of rights.[62] Yet, by raising the issue in the House (along with Alistair Stewart, who suggested as an alternative that a statement of human rights be included as a preamble to the Citizenship Act),[63] he helped to pique the interest of some influential Canadians. For example, the Ottawa Journal responded with an editorial entitled "We Need a Bill of Rights," and the Globe implicitly supported the proposal by quoting approvingly and at length from Diefenbaker's speeches in the House.[64]

Arthur Lower also did his best to support Diefenbaker's idea, sending the Prime Minister, on behalf of the CLAW, a telegram which suggested that this was a chance to prevent a repetition of past excesses, as well as "your opportunity to recover for true liberalism its traditional position and for yourself the favourable verdict of history."[65] Perhaps more importantly, the following month Lower travelled to Ottawa, where he met not only with Diefenbaker, but also with Senator Arthur Roebuck, B.K. Sandwell, and Eric Morse (of the newly-formed Ottawa Civil Liberties Association).[66]

It was not a simple matter for these liberals to embrace the idea of a bill of rights. At one point in these discussions Roebuck suggested to Lower that they form a committee to promote the idea of a Canadian bill of rights, arguing that Diefenbaker would be more likely to succeed if there were a such a body to "feed" him information. Sandwell was at first rather skeptical. Appalled by the manner in which Ottawa planned to exile Japanese Canadians, he had written an editorial in early 1946 in which he admitted that it might be necessary to create a bill of rights that would protect citizens from executive despotism, but when John Diefenbaker suggested a bill of rights a few months later, Sandwell rejected the idea. It would be, he concluded, a departure from the traditional parliamentary system, and also unenforceable. He was no doubt thinking along these same lines when approached by Roebuck.[67]

Arthur Lower, himself, despite his proposal in his 1937 brief to the Rowell-Sirois Commission, had some doubts about the desirability of such an innovation. However, while agreeing with Sandwell about the unenforceable nature of a bill of rights, he maintained that a declaratory version would be better than nothing. As he wrote to one of his civil libertarian friends, "One cannot enforce the Sermon on the Mount in a court of law, but it has not been without its influence." Believing that part of the problem was the apathy of the Canadian people, Lower thought that a document which educated them about their rights would perhaps in the long run have some effect in curtailing the authoritarian tendencies of Canadian governments.[68]

Meanwhile, Lower was also in touch with the Emergency Committee on Civil Rights (ECCR), the radical-left civil liberties group which had recently broken with Sandwell over

the Gouzenko Affair. A series of letters passed between the ECCR executive and Lower, and in early August the Winnipeg group was visited by one of the Toronto civil libertarians, C.B. Macpherson. Up to this point, none of the ECCR letters to government or their newspaper advertisements had made any reference to a bill of rights as a long-term solution to civil liberties violations, but soon after Macpherson's trip the ECCR newsletter stated that "We shall be pleased to print discussions on the question of a Bill of Rights for Canada." Quite possibly Lower had helped to convert the ECCR to his way of thinking.[69]

In Lower's eyes, support from the ECCR was a mixed blessing. He believed that many of the executive were either members of the LPP or sympathetic to its aims, but he felt that they were more likely to get things done than the CLAT organization of B.K. Sandwell (which he referred to as "inert"), and concluded that a limited and temporary connection might be desirable. As he put it, in a passage which reflects the emerging new reality of the Cold War:

> I myself think that there is room for a good deal of tactical manoeuvring in such situations. It is best to keep completely clear of them [i.e. the communists]. But as second best, it may pay to work with one of their 'front' organizations until just before the point at which it is due to be 'ticketed.' Once the label is put on an organization, its usefulness is ended, insofar as political circles, and the general public too, are concerned.[70]

Lower also had access to a more "respectable" ally in the form of the Winnipeg Free Press and Grant Dexter, the newspaper's general editor. As noted in Chapter 1, Dexter was an influential member of what Owram calls the "new reform elite," and also sat on the CLAM advisory council. It was therefore perhaps no coincidence that, as noted earlier, the associate editor of the newspaper, Bruce Hutchison, had called for a bill of rights as early as 1944, and a Free Press editorial in the spring of 1946 also supported Diefenbaker's call for a bill of rights. Then, in August of that year, when the CBA was meeting in Winnipeg for its annual general meeting, the newspaper produced a lengthy editorial on the Gouzenko Affair, arguing that the CBA should defend civil liberties and discuss the possibility of Canada adopting a bill of rights.[71]

Another of Lower's allies was R.M.W. Chitty, the classical liberal editor of the influential Fortnightly Law Journal who had taken such a strong stand in the summer of 1946 against the government's handling of the Gouzenko Affair and who frequently sounded the alarm against not only rule by orders-in-council but also the "new despotism" of the welfare state bureaucracy.[72] Initially, like that other classical civil libertarian, B.K. Sandwell, Chitty was skeptical about the utility of a bill of rights,[73] but by September his journal reprinted in full the above-mentioned Free Press editorial on the CBA and civil liberties.[74]

By this time Sandwell and the CLAT had also become converts to Lower's cause. In the fall of 1946 Sandwell made favourable mention of an anonymous Fortnightly Law Journal article on "Constitutionalism," and added that Canadians should think seriously about creating "some kind of guarantee against serious curtailments of individual freedom."[75] Over the next few years Sandwell was one of the strongest supporters of a bill of rights, especially because he saw it as an effective barrier to the violation of fundamental property rights.[76]

Chapter 5 of this dissertation has discussed in some detail how representatives of different Eastern Canadian civil liberties groups convened in late 1946 and early 1947 in order to discuss the formation of a national organization and to lobby for political changes. At the first meeting in December of 1946 a number of issues were discussed in detail, including the possibility of a bill of rights that was not just declaratory but actually prohibited the state from violating certain rights.[77] It was clear, however, that not all civil libertarians had yet been convinced of the value of a bill of rights. Wilfrid Eggleston, one of the founders of the Ottawa civil liberties group, argued that such an idea constituted a reversal of the basis of the Canadian constitution -- the principle of parliamentary supremacy. He was contradicted by several other speakers, including C.B. Macpherson and Frank Park of the CRU, as well as Frank Scott of the Montréal organization. As a professor of constitutional law, Scott's approach probably carried the most weight. Using an argument which he later enlarged upon in an influential Canadian Bar Review article, he undermined the position that a bill of rights would be a violation of the traditional British principle of parliamentary supremacy. As he pointed out, the Canadian constitution already contained certain limitations on this principle,

for the BNA Act protected certain minority language and separate school rights. These, as he argued, constituted "the beginnings of a Bill of Rights."[78]

In January 1947, the Privy Council decision on the Japanese Canadian deportation issue demonstrated that there were almost no constitutional fetters upon an illiberal government. For many members of the human rights policy community, this demonstrated as never before the importance of a prohibitory bill of rights.[79] Shortly afterwards, the CLAT and the CRU together held a public meeting featuring as keynote speakers Andrew Brewin, Rabbi Feinberg, George Burt of the UAW, Leslie Roberts of the MCLA, and Senator Roebuck. Referring to the deportation case, as well as the Gouzenko trials and the Chinese Exclusion Act, the speakers had no trouble persuading the audience to adopt a resolution which demanded a parliamentary committee "to investigate violations of civil rights in Canada, to hear representations from individuals and organizations on means of preventing future violations, and to make recommendations for a Canadian Bill of Rights." A telegram was immediately dispatched to the Minister of Justice.[80]

Shortly afterwards, some of the ideas expressed in these two civil liberties meetings were reworked into a persuasive argument by Arthur Lower, who had recently left Winnipeg in order to live and teach in the East.[81] In a lengthy essay entitled "Some Reflections on a Bill of Rights," Lower called for the establishment of a parliamentary committee to consider the repeal of a number of authoritarian statutes such as the War Measures Act, as well as the creation of a constitutional amendment that would better protect fundamental liberties.[82] In addition, Lower now argued in favour of a prohibitory bill of rights in the constitution, pointing out that the very nature of federalism imposes limits on parliamentary supremacy. (He warned, however, that a declaration of principle in a statute might be the most attainable goal in the short run.) Civil liberties infringements during World War II as well as the more recent disturbing violations in the Gouzenko Affair and the Japanese deportation case clearly indicated to him that "We can no longer depend solely on the omnicompetent parliament. It has shown heretofore only slightly more sense of liberty than have the masses. We cannot easily rest on the doctrine of parliamentary supremacy. We must return to older doctrines.... We must get back to the principles of common law." Rather than seeing a bill of rights as an

Americanization of the Canadian constitutional system, Lower preferred to see it as a return to the earlier English natural rights tradition.[83]

Lower distributed his essay to a number of contacts, and was gratified to see it receive considerable public exposure. Chitty, who by now had become converted to the cause, recommended it to the civil liberties committee of the CBA, and published it in his Fortnightly Law Journal.[84] Meanwhile, Diefenbaker used it in the House of Commons as partisan ammunition to bolster his arguments in favour of a bill of rights.[85]

By this time the government had announced in the Throne Speech that it would set up a select committee on human rights. Although Ottawa may have been in part responding to pressures from the Canadian human rights community, it was primarily reacting to developments within the United Nations. As noted earlier in this dissertation, the Charter of the United Nations contains an affirmation of the central importance of human rights and fundamental freedoms. When the Charter was being drafted at the 1945 San Francisco Conference, a proposal for a declaration of rights was discussed, but the project was deferred for lack of time. By early 1946 the General Assembly had considered a draft "Declaration of Fundamental Human Rights and Freedoms," and this had been sent to the newly-formed United Nations Commission on Human Rights. By early 1947 the Commission was still developing its formal proposals, and it seemed clear that the result would be a formal statement of the obligations of nations (including Canada) to respect certain basic human rights. As a result, the Throne Speech promised the creation of a special joint parliamentary committee to examine "the question of human rights and fundamental freedoms and the manner in which those obligations accepted by all members of the United Nations may best be implemented."[86]

This proposal galvanized members of the bill of rights policy community into activity. The Toronto Star immediately supported the move, recommending that the committee concentrate on the bill of rights issue, and the CRU sent the Minister of Justice a lengthy letter (with copies sent to members of Parliament), requesting that the committee be mandated to investigate a number of issues surrounding the Gouzenko Affair, as well as consideration of a Canadian bill of rights.[87] Shortly afterwards, in February, the Winnipeg

Free Press published the first of two sets of lengthy editorials on the need for a Canadian bill of rights,[88] and the CLAM sponsored a public meeting (featuring John Diefenbaker, B.K. Sandwell and Stanley Knowles) which called for all MPs to support a so-called "Declaration of Rights."[89] Then, in March, the CLAT began to consider lobbying for a bill of rights,[90] and the Jehovah's Witnesses, under serious attack in Québec, began their own campaign for a bill of rights, creating a petition which collected half a million signatures and was presented to Parliament on 9 June.[91]

Meanwhile, another province created its own bill of rights. On 1 April the Saskatchewan Lieutenant Governor gave Royal Assent to the Saskatchewan Bill of Rights.[92] This legislation, created by Douglas' CCF government, attempted to protect not only traditional civil liberties such as freedom of conscience, association, and the right to freedom from arbitrary imprisonment, but also guaranteed certain egalitarian rights, including the right not to suffer racial or religious discrimination in the fields of employment and the provision of services to the public. However, although the legislation included penalties which could be employed whenever a "person" violated these rights, it said nothing about what would happen if the violation was the result of a governmental decision. To this extent it was purely declaratory.[93]

In May the federal government set up its promised joint committee on human rights, with the mandate of determining what steps, if any, should be taken "for the purpose of preserving in Canada respect for and observance of human rights and fundamental freedoms."[94] However, the policy network members were not encouraged to see that the resolution was introduced by Ian Mackenzie, the Minister of Veterans Affairs. Mackenzie was a British Columbia Liberal, one of the politicians who had been the most vocal in his racist comments about Japanese Canadians, and Diefenbaker's main opponent in the House when he had proposed an bill of rights amendment to the Citizenship Act in the spring of 1946. Opening the human rights committee process with Mackenzie looked something like a joke in very bad taste, and it became clear from Mackenzie's introduction of the motion that he was certainly not in favour of a bill of rights. In a long-winded and meandering speech, he noted

that "[i]n my view it is more important that we should think and talk about freedom than that we should pass legislation in regard to it."[95]

Mackenzie, in fact, was totally opposed to creating a bill of rights. In the fall of 1946 he had written to King about this matter, and proposed that a "delaying tactics Committee" be set up.[96] There are probably several reasons why he took this position, and why King also seemed to be unsympathetic to calls for a bill of rights. Some reasons were technical. According to the government's legal advisors in the Department of Justice, who were in the process of examining the issue, there were three arguments against this innovation: it would deviate from the time-honoured British principle of parliamentary supremacy; it might be seen as invading provincial jurisdiction over the field of property and civil rights; and, as A.V. Dicey had suggested, with an independent judiciary and traditional British liberties there was no need for any additional protection.[97]

Other objections were no doubt politically based. Mackenzie represented a major body of opinion in British Columbia that King had so far not been able to ignore, and a bill of rights would threaten the government's plan for continued federal limitations on the right of Japanese Canadians to vote and to move back to British Columbia. At the same time, the Liberals needed to look to the Québec voters. As will be demonstrated later in this chapter, a number of French-Canadian members of the Liberal caucus were extremely conservative supporters of state authoritarianism, especially where dealing with unpopular minorities such as communists or Jehovah's Witnesses. While there were also authoritarian anglophone Liberals, the strong Québec representation within the caucus no doubt undermined arguments for a bill of rights.

At the same time, the possibility that a bill of rights might trench on provincial rights was a political problem as well as a technical point. As noted earlier, there was some disagreement as to whether or not the phrase "property and civil rights" in section 92 of the BNA Act confined jurisdiction over fundamental civil liberties to the provinces. Any attempt to create a bill of rights, even a declaratory one that purported to apply only to Ottawa, might be seen as unacceptable to certain provincial premiers, especially the guardian of "fortress Québec," Maurice Duplessis.[98] This argument against a bill of rights was all the stronger when

people like Diefenbaker suggested that a declaratory bill would make it easier for Ottawa to utilize its power of disallowance against certain unjust provincial laws. As the treatment of the padlock law indicated, when it came to the protection of basic rights through the disallowance power, the federal Liberals were rather unwilling to step on the tender constitutional toes of Québec.

Finally, demands for a bill of rights constituted at least symbolically a massive motion of want of confidence in the government. To admit that Canada needed a bill of rights was to agree that the government had gone too far in violating civil liberties during and immediately after the war.[99] From the perspective of most cabinet ministers and back-benchers the Liberals had acted appropriately; a bill of rights would only have impeded them from doing what they believed had been completely necessary.[100]

The 1947 parliamentary committee first met in June. A number of the members were human rights advocates: Liberal Senator Arthur Roebuck, Liberal MP David Croll, CCF MP Alistair Stewart, and Progressive Conservative MP John Diefenbaker.[101] However, most of the members, the majority of which were of course Liberal, and especially the chair, Minister of Justice J.L. Ilsley, and the vice-chair, Senator L.M. Gouin, were probably either neutral or opposed to the idea of a bill of rights.[102]

The committee spent some time listening to testimony from representatives of External Affairs and the Department of Justice, who explained Canadian obligations under the United Nations (including the forthcoming Universal Declaration of Human Rights), and the fine points of the Canadian constitution. It became clear that Canada was not under any international legal obligation to create a bill of rights, but it also was suggested that if Canadians wished to do so, certain legal complications arose. As Deputy Minister of Justice F.P. Varcoe pointed out, a declaratory bill of rights would have "no legal consequences," but if a prohibitory bill of rights were passed by Parliament the principle of parliamentary supremacy would ensure that the limitations on government could continue in existence only as long as they were not repealed by a subsequent amendment. Of course, he added, a prohibitory bill of rights could be entrenched into the constitution, and therefore protected against future statutory amendments, but this could be done only by asking Britain to pass a

constitutional amendment. Unfortunately, he suggested, this would be a "retrograde step" in terms of the evolving sovereignty of Canada. By implication, Canada would be better to wait until the constitution had been patriated; then Canadians could, if they so chose, amend the constitution themselves so as to entrench a bill of rights.[103]

No interest groups appeared before the parliamentary committee, because of a lack of time. However, several groups made application to appear, including the Jehovah's Witnesses, Irving Himel (writing for a number of Chinese organizations), the Canadian Daily Newspaper Organization, and the CRU. In addition, the committee received written submissions from the National Council of Women, the Alberta conference of the United Church, and the CLAM.[104]

One group that should have applied but did not was the Committee For a Bill of Rights (CFBR).[105] In the fall of 1946, the ubiquitous Irving Himel had written to Roger Baldwin of the ACLU, asking him for information that Himel might utilize in preparing a draft bill of rights. Shortly after the Throne Speech announcement of a human rights committee he had approached the CLAT with a proposal that an ad hoc committee be formed for the purpose of making a presentation. The executive saw that this was an excellent idea (perhaps influenced by the meetings between Sandwell, Lower, Roebuck, and Diefenbaker), and agreed to temporarily set aside their plans for creating a national group. Irving Himel became the secretary, running the organization out of his law office, and the "usual" CLAT members made up the Toronto core of the group: Malcolm Wallace, B.K. Sandwell, E.A. Corbett, Andrew Brewin, and Mrs. W.L. Grant.[106] The CFBR was unable to muster its resources in time to make a presentation, but in August it presented the chair of the committee, as well as the Minister of Justice, with a petition for a bill of rights signed by more than 200 influential citizens.[107]

The parliamentary committee made its final report in mid-July. Stressing that they had only begun to investigate the issue of a bill of rights, the committee members noted that they had invited all provincial attorneys-general and the heads of all Canadian law schools to provide their views as to whether Ottawa had sufficient constitutional jurisdiction over civil

liberties to pass a national bill of rights. They also recommended that early in the next session of parliament the government appoint another joint committee to continue their work.

The government may have been satisfied at the committee's lack of progress, but the members of the policy community were not. Although the Winnipeg Free Press called the process "frustrating," momentum for a Canadian bill of rights slowly continued to build.[108] At the Twenty-Ninth annual meeting of the CBA the classical liberal opponent of "the new despotism," R.M.W. Chitty, led an assault upon the bastions of legal conservatism.[109] As chair of its civil liberties section, he presided over a debate as to whether or not the CBA should favour the adoption of a bill of rights (as recommended in a set of civil libertarian proposals made by the British Columbia section). However, the legal profession was split on this issue and the matter was deferred. When the Civil Liberties Section met twelve months later it opted for a declaratory rather than a prohibitory bill of rights, saying (somewhat confusingly) that "[s]uch a declaration would have the dual effect of putting a measure of moral restraint on the legislature itself, and at the same time assuring the Courts with a measure of enforcing that restraint should the legislature refuse to honour its moral obligation."[110]

Calls for a bill of rights were also hindered by the fact that frequently they came from communists. In September, for example, a TLC convention was split by the introduction of a resolution calling for a bill of rights. The resolution, which was opposed by a majority of the delegates, was supported by a number of communist-dominated unions. The most vocal proponents of the proposal, Madeleine Parent of the United Textile Workers and Sam Lapedes of the United Garment Workers, argued that a bill of rights was necessary to protect trade unionists from police harassment. By now, however, the Cold War had begun to split the trade union movement, and labour solidarity was crumbling; the issue was the source rather than the substance of the proposal, and at least one trade unionist argued that he would have supported the motion had it not come from the communists. Moreover, it was clear that some delegates were also worried that a bill of rights might prevent a government from taking the kind of anti-communist measures that Ottawa had recently pursued in the Gouzenko Affair.[111]

Yet as long as the idea of a bill of rights was not identified too closely with the LPP it was acceptable to members of the "respectable" non-communist labour movement. For example, in 1947 the executive of the CCL adopted a resolution condemning the methods used by the government during the Gouzenko Affair, as well as certain anti-labour practices such as the use of excessive bail charges, and called on Ottawa to legislate a bill of rights. The resolution was adopted by the national convention without any difficulty.[112]

Meanwhile, Lower and Diefenbaker began corresponding about the struggle for a bill of rights. In November 1947 the historian had congratulated Diefenbaker for his May speech, noting that "we evidently think upon very similar lines in these matters." He also criticized the "hypocrisy" of Ian Mackenzie, and the "arbitrary nature" of Ilsley, the Minister of Justice and committee chair, whom he characterized as "a Star-Chamber man." Lower confided that he was disturbed by the way the anti-communism of the Cold War was developing in the United States, but he was even more worried about Canada, for "with so many obvious witches to hunt, we in this country could very easily go a long way in the direction of some kind of tyranny." He added that he saw his main contribution to the struggle as the writing of articles, but he assured Diefenbaker that he would give him whatever support he could.[113]

Early the next year Diefenbaker responded with a rather pessimistic letter. He was aware that the government had no desire to create a bill of rights, and believed that the parliamentary committee "will be set up but only as a screen to protect the Government against criticism for its inaction in this regard." He also agreed with Lower's evaluation of Ilsley, saying that he "is entirely opposed to a Bill of Rights and does not endeavour to conceal his contempt for those who believe in the need." Moreover, Diefenbaker felt that among the Liberals in both the House and the Senate, only David Croll appeared to be supportive. Finally, he added that the Jehovah's Witnesses, who had taken up a letter-writing campaign, might actually be harming the cause (presumably because they were unpopular and unable to present their case as disinterested and principled lobbyists).[114]

Nevertheless, the issue continued to attract the attention of newspaper editorialists,[115] and by the spring of 1948 the attention of Canadians was focussed as never before upon the idea of constitutionally limiting the power of government.[116] For one thing, the Ontario CCF

was attempting to obtain legislation along the lines of the Saskatchewan Bill of Rights, notwithstanding the provincial government's argument that such legislation could only be effective if it impaired the sovereignty of the legislature, and was therefore an unacceptable deviation from constitutional principle. A similar campaign was also taking place in British Columbia, where the JCCA, later supported by the CCF, demanded a provincial bill of rights that would guarantee minorities full citizenship status, including the right to vote.[117]

Moreover, the United Nations was moving closer to the establishment of what became, on 10 December 1948, the Universal Declaration of Human Rights (UDHR). Articles in the Winnipeg Free Press, Toronto Star, Canadian Forum, and Saturday Night kept people informed about its gestation and spoke approvingly of it after its adoption.[118] In 1948 and 1949 The Canadian Bar Review kept the legal community abreast of these developments by publishing a series of reports written by McGill law school professor John Humphrey, who was at that time Director of the UN Human Rights Division.[119] At the same time, John Diefenbaker drew the attention of the House to the proposed UDHR while it was being prepared in New York, and after it was created he argued that a domestic bill of rights would symbolize Canadian commitment to the principles of the UDHR.[120]

Meanwhile, in April, Minister of Justice Ilsley moved to set up a second parliamentary joint committee on human rights and fundamental freedoms. The resolution made no explicit mention of a bill of rights, but the idea was implied by the terms of reference, which involved an examination of the best means of implementing Canada's obligations in the light of the United Nations Charter and recent developments at the Human Rights Commission. Yet as Diefenbaker had predicted, the newly-formed committee was not likely to advocate any radical changes; it included the traditional Parliamentary human rights supporters such as Diefenbaker, Fulton, Croll, Alistair Stewart, and Roebuck, (as well as former CLAT member J.M. Macdonnell), but there were also a number of members who were by no means likely to support the notion of a bill of rights. Ilsley and Gouin once again served as joint chairs, and this time Wilfrid LaCroix, the well-known proponent of anti-communist censorship, was also a committee member.[121]

Along with the motion to set up this committee, Ilsley reported to the House the results of the government's survey (initiated by the 1947 parliamentary committee) of attorneys general and law school deans, asking whether Ottawa had the power under the constitution to enact a "comprehensive bill of rights applicable to all of Canada." The majority of respondents were either opposed to the idea, or did not provide a response; only the CCF government of Saskatchewan favoured a federal bill of rights. On the whole, the legal experts were concerned that a "comprehensive" bill of rights would necessarily infringe on matters within provincial jurisdiction. They voiced no opinion (having not been asked) on the constitutionality of a bill of rights that would deal only with civil liberties within federal jurisdiction.[122]

John Diefenbaker then criticized the government for not having responded earlier to the creation of the UDHR. He accused the Liberals of showing a lack of interest in both the national and international bill of rights, and suggested that the newly-formed committee was a dilatory ploy: "[t]he committee, if it is to meet as it did last year, will merely be shadow-boxing, going through motions, postponing and procrastinating, with the government forever hiding behind the constitutional position." He therefore gave notice of his intention to move that the government submit the entire question of the constitutionality of a bill of rights to the Supreme Court as a reference case. The government demurred, and over the next few years Diefenbaker continued to demand, always unsuccessfully, that the Court be used to resolve this issue.[123]

When the 1948 committee was set up, the members were provided with information about human rights developments in both the United States and the United Nations, as well as the legal opinions of a number of federal civil servants. Perhaps the most important function of the committee, however, was the way in which it served as a lightning rod which drew and focussed much of the support for a bill of rights which had been slowly building over the last two years. A number of groups, including the CJC, the Jehovah's Witnesses, the CRU, the Canadian Daily Newspapers Association, an ad hoc coalition of Chinese Canadian associations, and the CFBR all presented the committee with written briefs.[124]

The CFBR had come a long way since its creation the previous year as an ad hoc committee of the almost defunct CLAT. It developed into a national committee, creating a brief that would be endorsed by prominent Canadians from sea to sea.[125] Although one perennially red-baiting Social Credit MP claimed in the House that the organization was a communist front, nothing could have been further from the truth.[126] There were a few names sometimes associated with the radical left, such as Vancouver art teacher John Goss, the writer Dorothy Livesay, Drummond Wren of the WEA, and University of Alberta professor George Hunter, as well as several people from the ECCR/CRU -- Prof. C.A. Ashley, Prof. Leopold Infeld, Prof. J.D. Ketchum, and Margaret Spaulding. However, the vast majority of the CFBR supporters were "respectable" non-communists. For example, the liberal/social democratic civil liberties organizations were well represented, with Hunter Lewis from the VCCLU; Samuel Freedman, David Owens, and W.J. Waines from the CLAM; Andrew Brewin, E.A. Corbett, Mrs. W.L. Grant, the Rev. W.P. Jenkins, Irving Himel, B.K. Sandwell, R.S.K. Seeley, George Tatham and Malcolm Wallace from the CLAT; Morris Fyfe from the OCLA; and the Rev. Angus Cameron, Thérèse Casgrain, Constance Garneau, Gwethalyn Graham, the Rev. Claude de Mestral, Roger Ouimet, Leslie Roberts, and Frank Scott from the MCLA.[127]

The CFBR supporters were predominantly WASPish in their background, but there were signs that a bill of rights was seen as not just necessary to secure libertarian rights, but also to protect the egalitarian rights of racial and religious minorities.[128] For example, the Rev. Gordon Domm and S.K. Ngai informally represented the CRCIA, the Reverend James Finlay and Edith Fowke came from the CCJC, while Sol Grand, Rabbi Abraham Feinberg, Prof. Jacob Finkelman, and J.S. Midanik were influentials within the JPRC. In addition, Murray Cotterill had strong ties to the Toronto labour committee for human rights.

The CFBR also attracted support from prominent members of a number of professions. The arts representatives included Earle Birney, Lorne Greene, Lawren Harris, Arthur Lismer, Hugh MacLennan, Sir Ernest Macmillan, and E.J. Pratt. Academia included (in addition to the many professors formally associated with civil liberties groups): law school Dean F.C. Cronkite of Saskatchewan, George Grube, Charles Hendrie, Harold Innis, Arthur

Lower, Norman Mackenzie (president of UBC), Dr. Wilder Penfield, Sidney Smith (president of the University of Toronto), Gregory Vlastos, and George Wasteneys. Organized labour was represented by George Burt, Pat Conroy, Charles Millard, Murray Cotterill, and A.R. Mosher of the CCL, and the press was represented by Vancouver Sun columnist Elmore Philpott, Victor Sifton[129] and Grant Dexter of the Winnipeg Free Press, George McCullagh and Oakley Dalgliesh of the Globe, Margaret Gould and guest editorialist Rev. C.E. Huestis of the Toronto Star, and George V. Ferguson of the Montréal Star. In addition to the ministers mentioned above, Christian churches were represented by Canon W.W. Judd (formerly associated with the NIAC and now President of the Christian Social Council of Canada), while the politicians included Dorothy Steeves of the British Columbia CCF, Elmer Roper of the Alberta CCF, T.C. Douglas the CCF Premier of Saskatchewan, Tory member of Parliament (and former CLAT member) J.M. MacDonnell, Senator Arthur Roebuck, as well as the CCF-millionaire Lloyd Shaw from Nova Scotia.

These and many other Canadian citizens -- 173 in total, representing all the provinces except PEI -- had signed a statement prepared by the CFBR calling for a prohibitory bill of rights entrenched into the BNA Act.[130] The organization's submission to the 1948 parliamentary committee consisted of a copy of this statement with all of the signatories' names appended, a thirteen page brief explaining why Canada needed such a bill of rights, and a draft bill to serve as a working model. This latter would have added a section on "Civil Rights" to the BNA Act to prohibit both the federal and provincial legislatures from passing laws which abridged the traditional freedoms of speech, religion, and assembly, or violated a number of legal rights, such as the right to reasonable bail, the right to be free from unreasonable search and seizure, freedom from arbitrary arrest, the right to habeas corpus, and the right to a fair trial. All of these rights, as well as the right to vote, were to be enjoyed "without distinction on account of race, sex, religion or language."[131]

The brief is an interesting document, because it sums up most of the contemporary arguments in favour of a bill of rights. The brief began by explaining the constitutional justifications for a bill of rights. It pointed out that Canada already had certain constitutional rights protections for linguistic and religious minorities, and it relied upon the ideas of Justices

Duff and Cannon in the Alberta Press case to argue that the right of public discussion falls within federal jurisdiction. The brief therefore maintained that a bill of rights would involve "No interference with provincial rights ... because the right to limit freedom of expression or of religion and other freedoms protected by a Bill of Rights can hardly be claimed to be a provincial right." At the same time, however, in a later passage the brief tacitly admitted that constitutional law on this matter was actually unclear and that the CFBR was engaged in a centralist nation-building project -- it noted that "a constitutional amendment would by-pass the controversy as to what part of the protection of civil rights falls within the provincial sphere and what part falls within the sphere of Parliament."[132]

After having explained why a bill of rights is possible, the brief then went on to demonstrate why it was necessary. It first pointed out that since the war a number of problems had arisen which demonstrated the willingness of both provincial and federal governments to breach traditional civil liberties. The most important examples were the deportation of Japanese Canadians, the federal government's reaction in the Gouzenko Affair, and the continued application of the Padlock Act, but the brief also mentioned the recently-passed Prince Edward Island Trade Union Act,[133] Quebec's licensing and other restrictions against the Jehovah's Witnesses, as well as certain past and recent censorship policies.

The CFBR brief also contained a second set of arguments in favour of a bill of rights. For example, it maintained that such a bill would be an effective weapon in the cold war struggle for the hearts and minds of citizens. Pointing to Britain as a society which traditionally showed more tolerance for unpopular opinion than Canada, the brief argued that "[i]t is when efforts are made to make society static by repressing unpopular opinion that we invite sabotage and distrust of the democratic state." Moreover, the brief continued, the United Nations Charter also states that respect for human rights is one of the foundations of world peace; by creating a domestic bill of rights Canadians would be demonstrating that they take such pronouncements seriously. In addition, the brief referred obliquely to the recently-passed Citizenship Act, suggesting that a bill of rights "would be valuable in teaching the implications of Canadian citizenship. An explanation of the Bill of Rights would give a sense of security to our many minorities and an understanding pride in our free institutions."

Finally, the brief contained a set of counter-arguments against those who (like the federal government) were skeptical about the desirability of a rights bill. It pointed out that during the war the American Supreme Court had managed to provide better protection for civil rights than had been available in Canada, and that this had been done without hampering the authorities' pursuit of the war effort. It also claimed that Canadians should not be swayed by the British example of a country flourishing without a bill of rights; Britain, it pointed out, was quite different from Canada -- a unitary state with a largely homogeneous population and a long tradition of respect for civil liberty.

One other aspect of the CFBR brief is worth emphasizing -- its inclusion of a protection against discrimination on the basis of sex. Previous suggestions for a bill of rights, whether by F.R. Scott, Arthur Lower, Alistair Stewart, John Diefenbaker, B.K. Sandwell, Arthur Roebuck, or the CCF, as well as the legislation passed in Alberta and Saskatchewan, had never mentioned this possibility. However, while Canada's "second wave" of feminism was still in the future, people were beginning to realize that human rights should include women's rights. (One reason for this was the UDHR; it contained a prohibition against sex discrimination).[134]

The other major civil libertarian submission to the committee came from the CRU.[135] This echoed many of the CFBR concerns, but it also focussed on some other issues which reflected its radical left-wing perspective.[136] For example, it mentioned the anti-communist LaCroix Bill, raised concerns about security screening in the public service, and called for a bill of rights that would include the rights of labour -- the right to organize and join a union, the right to bargain collectively, and the right to strike and picket.[137]

The CRU brief was not formally discussed by the parliamentary committee. In the Cold War climate of 1948 there was little support for the rights of trade unionists who in many cases were openly connected to the LPP. As noted in earlier chapters, even liberal civil libertarians distanced themselves from radical or communist-tainted proposals. It is not hard to imagine that the conservative committee members such as LaCroix, Ilsley, or Gouin gave short shrift to the CRU proposals.[138]

The liberal CFBR brief was far more palatable to the committee, which at least deigned to consider its recommendations. However, on receiving this brief, the parliamentary committee decided to seek the opinion of F.P. Varcoe, the Deputy Minister of Justice. His assessment, which echoed his remarks given to the 1947 parliamentary committee, can be described as one of cautious pessimism,[139] and seems to have touched a chord in the hearts of the majority of the committee members. When they made their final report in June they refused to endorse the idea of a constitutional amendment, arguing that the proposal needed more study. They also maintained that it would be "unwise" for Ottawa to adopt the alternative strategy of passing a rights bill in the form of a federal statute. This, they noted, might be seen as infringing on provincial jurisdiction, and in any case such protections could always be overridden by a later statute. The committee did recommend that Ottawa give serious consideration to enlarging the jurisdiction of the Supreme Court, so that it might hear appeals in a broader range of cases, but further than this technical recommendation they were not willing to move. Choosing the path of caution, they noted that Canadians already possessed "a large measure of civil rights and liberties," and concluded that

> [t]here is much to be said for the view that it would be undesirable to undertake to define them before a firm public opinion has been formed as to their nature. It is not evident to your Committee that such an opinion has reached an advanced stage in Canada. There is need for more public discussion before the task of defining the rights and freedoms to be safeguarded is undertaken.[140]

The 1948 committee was a disappointment to the human rights community, but it had been more than an exercise in governmental obfuscation and intransigence; publicity had nourished the concept of a bill of rights rather than smothering it, and for the next two years the issue was raised through a number of editorials in the liberal and communist press.[141] In addition, the Jehovah's Witnesses created a second petition, this time obtaining over 600,000 signatures,[142] and the major trade union organizations also began to lobby governments to create both national and provincial bills of rights.[143]

One of the most influential articles published during this period was written by Frank Scott in The Canadian Bar Review.[144] Scott suggested that one legal change Canada should consider as a result of its recent adherence to the UDHR was the creation of a bill of rights.

This was legally possible, he argued, because there was a significant difference between "property and civil rights" (given to the provinces under s. 92 of the BNA Act) and civil liberties, and the federal government had extensive (but not sole) responsibility for the latter. Something like this had been intimated in the pre-war brief to the Rowell-Sirois Commission presented by Lower and his colleagues, but it was not yet established law, for no Supreme Court decision had yet grappled with the details of this distinction.[145]

Scott, however, maintained that these jurisdictional details were an inadequate excuse for the "dilatory and hesitant" approach of Ottawa to the protection of human rights and fundamental freedoms. According to him, Ottawa had more than enough jurisdiction in this field to warrant the creation of a bill of rights. He then developed at some length an argument in favour of a prohibitory bill of rights entrenched into the constitution, pointing out that the constitution already limited the parliamentary supremacy of our legislatures in a number of ways. He added, however, that as an alternative the government could create a prohibitory bill of rights in the form of a federal statute. This would at least exert a moral force on Parliament and a legal curb on the executive.

Meanwhile, in August 1948 St. Laurent had been chosen by the Liberals to replace King. This and certain other changes, such as the appointment of Lester Pearson as Secretary of State for External Affairs, and the replacement of Ilsley by Stuart Garson as Minister of Justice, may have encouraged the human rights community.[146] However, Garson was also a believer in parliamentary supremacy, and when St. Laurent fought his first election as Prime Minister in the summer of 1949, although both the CCF and the LPP called for a bill of rights in their election platforms, the government party ignored these demands, choosing to run its campaign on other issues. Public support for a bill of rights was clearly not crucial, for the Liberals won the election with the largest majority ever gained by a political party since Confederation.[147]

Shortly afterwards, John Diefenbaker resumed his by now annual ritual of moving that the issue of a bill of rights be sent to the Supreme Court as a reference case. As always, he was unsuccessful, but a few days later Arthur Roebuck introduced his own "Canadian Bill of Human Rights and Fundamental Freedoms" into the Senate. Ottawa was about to attend a

Dominion-Provincial conference on amending the constitution, and Senator Roebuck, at the instigation of the newly-formed Toronto ACL, asked that this bill be presented to the premiers. This in turn led the JLC to begin a lobbying campaign in support of the proposal, but the federal government asked Roebuck to withdraw his motion, on the understanding that it could be presented again at the next session of parliament and referred to a Senate Committee. Roebuck complied, and the Federal-Provincial conference was therefore unburdened with this particular problem.[148]

Roebuck's proposal that a Senate committee study the issue of a rights bill was kept alive by his allies in the human rights community. The CFBR, now a committee of the ACL,[149] issued a pamphlet endorsing his suggestion, and B.K. Sandwell wrote several Saturday Night editorials which supported the efforts of Roebuck and the human rights groups.[150]

Then, in March of 1950, Roebuck moved once more that a committee be set up to consider and report on human rights and fundamental freedoms, including their protection in Canada. By April the Senate Committee on Human Rights and Fundamental Freedoms was holding its first hearings.[151] It began by considering a draft bill of rights created by Roebuck, lifted from the UDHR, which had been adopted in December of 1948. Except for a few minor changes making the articles applicable directly to Canada, Roebuck's list of points recapitulated the UDHR (including its prohibition against discrimination on the basis of sex) -- with two major exceptions. First, he inserted a reference to habeas corpus, that jewel of the British constitutional tradition. Second, he omitted articles 22 to 29 of the UDHR which refer to what are usually called "social rights," such as the right to social security, work, rest and leisure, an adequate standard of living, etc. In other words, he wisely focussed on the liberal elements of the UDHR and left out those which would no doubt have been seen as dangerously "socialist."[152]

The Senate has never been known as a hot-bed of radicalism, and the members of the committee, with the exception of Roebuck himself, were not known for their human rights sympathies.[153] Nevertheless, unlike the previous two joint committees on human rights, the Roebuck Committee permitted a wide variety of groups not only to send in written submissions, but also to attend hearings and engage in debate with the committee members.

As a result, Arthur Lower sent in a lengthy brief,[154] and the Senators met not just with government officials (such as the eternally skeptical F.P Varcoe), but also with F.R. Scott and representatives of a number of the major actors in the human rights community: the CFBR coalition, as well as groups representing civil libertarians, organized labour, ethnic minorities, churches, women, and other interests.[155] All this resulted in more publicity for the idea of a national bill of rights.[156]

Yet the Senate committee in many ways simply reiterated the points looked at by the previous two committees. The different groups raised the same sorts of issues as before -- the treatment of the Japanese, Ottawa's violation of civil liberties in the Gouzenko Affair, the Padlock Act, discrimination against trade unions, etc. -- although there were also a few issues which had emerged in the last several years, such as the Dresden story, mob treatment of Plymouth Brethren in Shawinigan Falls, censorship in Québec, and the Alberta government's discrimination against Hutterites. (Both the TLC and the CCL also drew attention to the plight of aboriginal peoples, no doubt in part because some consciences had been stimulated as a result of the imminent revision of the Indian Act.)[157]

The committee's final report, adopted in June, was given top marks by B.K. Sandwell, writing in Saturday Night:

> [i]t constitutes the first serious move for protection against wrongs and evils which in the nineteenth century seemed almost on the point of disappearing, but which in the twentieth have again arisen to plague mankind in many countries, and are not unknown in Canada. We believe this Report to be a historical document, and we think that Senator Roebuck, who presided over the Committee and was largely responsible for the very considerable success of its work, is entitled to the gratitude of all friends of liberty and justice.[158]

The report, however, fell far short of the demands that had been made by Sandwell's CFBR and ACL groups. It agreed that the Canadian nation was "deeply interested" in rights and freedoms, and noted (in a passage of unusual Senatorial hyperbole) that for the "free self-respecting, manly nation" of Canada, "this is the time to nail the emblems of law, liberty and human rights to our mast-head." On the other hand, it drew back with a shudder at the thought of violating the even more sacred field of provincial rights -- "No informed person

with any sense of responsibility would suggest that the Dominion Parliament forcibly invade Provincial jurisdiction."[159]

The obvious solution was a constitutional amendment. Yet here the concerns raised by Deputy Minister Varcoe prevailed over the arguments of F.R. Scott and Sandwell's pressure groups. The committee report noted that an amendment could only be done through a request to the British Parliament, and that this "would have the appearance at least of a surrender of sovereignty." The Canadian evolution from colony to nation would brook no back-sliding, and no constitutional amendment should take place until the BNA Act was patriated.

In the interim, suggested the committee, Parliament should adopt a "Declaration of Rights" that would apply only to federal jurisdiction and would not be legally binding. This would be a domestic equivalent of the UDHR, not only educating the public and strengthening national pride, but also standing as a guide-post for future legislators and a statement of public policy which might affect future judicial decisions. Such a Canadian declaration would constitute "one grand and comprehensive affirmation" of human rights, and "[t]hus will Canadians know of their freedom, exercise it in manly confidence, and be proud of their country."[160]

The notion of a declaration rather than a constitutional amendment conformed nicely with the *Realpolitik* of contemporary Dominion-provincial relations. Patriating the constitution had always been seen as an important next step in the evolution of Canada as a wholly sovereign nation, but in the immediate-post war period this issue had been pushed aside in favour of other constitutional matters such as tax sharing. When, in 1950, Ottawa and the provinces began meeting to discuss a formula for future amendments of the constitution, Maurice Duplessis had been adamant that the so-called "compact theory" of Confederation gave Québec the right to a veto on all formal constitutional changes that might affect its rights as a province. Since it was still not clear as to how far civil liberties fell under provincial jurisdiction over "property and civil rights," and since Duplessis was unlikely to look favourably upon any bill of rights that limited his freedom to deal with communists and

Jehovah's Witnesses, it was becoming evident that the chances of him agreeing to the entrenchment of a bill of rights were non-existent.[161]

The bill of rights policy network responded to the Roebuck committee recommendations with a counter-proposal. Acting on behalf of the CFBR, B.K. Sandwell and Irving Himel cobbled together a large delegation of over 200 people and 50 organizations which the following year (8 May 1951) met with Prime Minister St. Laurent.[162] This was a typical ploy of the organization at the heart of the CFBR, the Toronto ACL. As previous chapters have pointed out, that group had organized a large delegation to Queen's Park in 1949, in order to present its demands for anti-discrimination legislation, had repeated the exercise in 1950, and later organized similar deputations in 1954, 1956, and 1958.

In retrospect, this 1951 delegation was the culmination of the struggle to convince Ottawa that Canada needed a bill of rights. Most of the major figures attended: B.K. Sandwell, A.R.M. Lower,[163] and Frank Scott were there, as well as Claude Jodoin of the TLC, Eugene Forsey of the CCL, and Archdeacon C.G. Hepburn of Ottawa, representing the Canadian Council of Churches. Kalmen Kaplansky was present, as usual more in the background than as a prominent figure, and Hugh Burnett was also there, representing the NUA in Dresden, a town which by this time had received considerable notoriety.[164]

The proposal of the CFBR was ingenious.[165] The delegates asked for a joint resolution of the federal Parliament "approving the inclusion in the Canadian constitution of a declaration of human rights and liberties."[166] It fell short of a demand for a constitutional amendment, and therefore avoiding the problem of asking Britain to take the necessary step. Yet it asked for more than a simple declaration in Parliament (as the Roebuck Committee had recommended), demanding that the federal Parliament commit itself to the principle of a declaration that would someday be entrenched into the constitution and binding on both Ottawa and the provinces.[167]

After hearing their representations, Prime Minister St. Laurent appeared unsupportive -- although he did promise to discuss the matter with his cabinet. On 14 May the leader of the CCF, M.J. Coldwell, raised the issue in the House, asking the Prime Minister if he would

comply with the delegation's requests. St. Laurent replied that he had "reported to our colleagues," and that a statement of government policy would soon be forthcoming.[168]

The following day the Toronto Globe lent its support to the idea of a bill of rights. This was an important endorsement, for the Globe represented a more classical liberal perspective than some "progressive" newspapers, such as the Winnipeg Free Press. The Globe editorial writer noted that "surely it is axiomatic that the basic freedoms should be accorded in equal measure to all Canadians across the country," and added that "it would also provide a powerful antidote to the Communist propaganda that is being assiduously preached to Canadians both 'new' and established."[169]

The Globe editorial, however, acknowledged that because of provincial jurisdiction over property and civil rights no further steps could probably be taken until the issue of patriation had been settled. This was also the position taken by the government when, a few days later, it responded to Coldwell's request for a policy decision. According to St. Laurent, any attempt to obtain a bill of rights through constitutional amendment might jeopardize on-going discussions with the provinces about the adoption of an amending formula.[170]

As Sandwell soon pointed out in a Saturday Night editorial, St. Laurent's statement of policy missed the point. The CFBR delegation had of course not asked for an amendment; it had simply asked for a resolution approving the inclusion of a declaration in the constitution.[171] However, as Sandwell acknowledged, the CFBR request would ultimately have resulted in a constitutionally entrenched bill of rights, binding on the provinces and unamendable by a single legislature. As he was no doubt also aware, bringing the premiers, especially Premier Duplessis, into an agreement about future constitutional amendments was difficult enough without suggesting that in the very near future they might be asked to agree to a limitation on their sovereign powers. It was, in short, another example in Canadian history of provincial rights trumping individual rights.[172]

On the other hand, St. Laurent may have been using the problems of constitutional reform as an excuse to dodge the bill of rights issue. Almost a month before the Prime Minister made his speech in the House, F.R. Scott had written to B.K. Sandwell, saying that "We shall not get far in urging a Bill of Rights in the Constitution, since I am convinced this

Government considers it impossible to do anything about amending the Constitution in a general way. The Constitutional Conference has in effect been broken up by Duplessis, and I do not suppose it will meet again in years. I therefore, do not see much action in regard to a formal Bill of Rights."[173]

There were probably other reasons why the St. Laurent government was so intransigent. Some of these have been mentioned earlier, such as adherence to the principle of parliamentary supremacy, or the burden of history (agreement that Canada needed a federal bill of rights was tantamount to an acknowledgement that the Liberal government had made serious errors).[174] In addition, the same kind of conservative caution that justified the excesses of the DOCR no doubt worried the government about emergencies in the future.[175] With the outbreak of hostilities in Korea the Cold War was now at its height, and a bill of rights looked like a shield that might protect communists from "reasonable" limitations on their fundamental freedoms.[176]

Over the next few years the pressure for a national bill of rights weakened. The LDR created a series of small but vocal national bill of rights campaigns which were intimately connected to the fight against certain changes in the Criminal Code and opposition to the Padlock Act.[177] However, as an earlier chapter has pointed out, the Cold War tensions which had split the civil liberties movement into communist and anti-communist camps also served to weaken the force of any organization, such as the LDR, which the politicians and public viewed as no more than an LPP front.

In addition, it was tempting for some of the organizations brought together in Himel's 1951 delegation to ignore the bill of rights issue and make incremental progress in obtaining effective anti-discrimination legislation. As previous chapters have pointed out, groups like the JLC were not really interested in promoting libertarian values, and they could see immediate benefits in pursuing the goals of FEP and FAP legislation. Coalitions are often easier to create than to keep together.

Nevertheless, even egalitarian rights groups maintained some pressure. Organized labour continued to call for both federal and provincial bills of rights, especially with Kalmen Kaplansky working through the separate TLC and CCL human rights committees. When the

two organizations melded, in 1956, a clause in the "Platform of Principles" included a demand for a constitutionally entrenched bill of rights.[178]

In Parliament, John Diefenbaker almost routinely kept up demands for a bill of rights and efforts to send the matter to the Supreme Court as a reference case.[179] He was joined from time to time by Alistair Stewart, Stanley Knowles, and David Croll.[180] In addition, some pressure for a constitutional amendment built up in 1953 and 1954 as a result of certain Supreme Court decisions.[181] As noted earlier in this chapter, the 1937 Alberta Press case had held out some hope that judicial interpretation could provide adequate protection for fundamental civil liberties by relying upon an "implied" bill of rights. Then, in 1951, a decision by Mr. Justice Rand of the Supreme Court of Canada in the Winner case indicated a willingness to add to this concept. In striking down provincial legislation which hampered inter-provincial bus service, Rand argued that there were certain rights, such as the right to work in a particular province, which were essential to the nature of Canadian citizenship (despite the fact that they had not been itemized in the recently-passed Canadian Citizenship Act).[182]

In the fall of 1953, however, the Supreme Court demonstrated that this approach was not an option, at least in the short run, when in the Jehovah's Witness case of Saumur v. Québec the Supreme Court struck down a municipal bylaw severely limiting the right to distribute religious literature.[183] Although five of the nine judges ruled that the by-law fell under provincial jurisdiction, one of them (Kerwin) held that it violated the Québec Freedom of Worship Act and was therefore *ultra vires* that statute.[184] Since three of the other four judges (Rand, Locke, and Kellock), relied upon the Alberta Press bill implied bill of rights argument to maintain that religious freedom was "a principle of fundamental character" which lay outside provincial jurisdiction, and the fourth judge (Estey) argued that the bylaw trenched upon federal jurisdiction over the criminal law, Mr. Justice Kerwin found himself part of a heterogeneous majority in favour of striking down the legislation.[185]

The Saumur case was a victory for the Jehovah's Witnesses, but it was also a "win" for the human rights community, in part because it was the first time that some members of the Supreme Court accepted the argument that there was a difference between civil liberties

and "property and civil rights." In other words, notwithstanding provincial jurisdiction over the latter, it might be possible to consider religious freedom (and other civil liberties) as coming within federal jurisdiction.[186] The decision therefore provided some support for the proposition that Ottawa could enact a bill of rights which would at least protect some major aspects of civil liberties.[187]

However, as the Winnipeg Free Press acknowledged, the case was also a "defeat" for the rights community, for it was clear that there were not enough liberal judicial activists on the bench to make the "implied bill of rights" concept legally binding.[188] Moreover, the weakness of civil liberties within the constitutional status quo was soon emphasized when, on 12 January 1954, Premier Duplessis introduced an amendment to the Québec Freedom of Worship Act which satisfied Mr. Justice Kerwin's objection to the by-law and therefore nullified the decision of the Supreme Court in Saumur.[189]

These developments, in conjunction with the fear that the court might divide the same way on the Padlock Act case now wending its way slowly upwards through the court hierarchy, persuaded Victor Sifton, the Free Press publisher and supporter of the CFBR, to forget about the elusive protections of a judicially-created "implied bill of rights" and to launch his own campaign in favour of a legislated bill of rights. Both his own speeches and the editorials of his newspaper began to call out insistently for a constitutional amendment which would "strengthen the preamble to the British North America Act, leaving no doubt about the Alberta Press case obiter that the freedom of a Canadian citizen is beyond the reach of a provincial legislature."[190]

As a result of this campaign, Arthur Lower wrote Sifton, whom he knew very well, offering to provide some support. The Free Press publisher responded favourably, whereupon Lower wrote to Irving Himel of the ACL, suggesting that the organization once again take up the struggle for a bill of rights. Lower also offered to lobby Minister of Justice Stuart Garson, another close acquaintance. He noted that both Alistair Stewart and John Diefenbaker could be relied upon, but concluded that as opposition members they would have little impact.[191]

Irving Himel replied, but noted that his organization was committed to implementing the report of the Roebuck Committee rather than the approach of Victor Sifton. He said that the ACL was preparing a pamphlet on the bill of rights issue, and hoped to engage in "a concerted effort ... to develop a strong public opinion for such action when this subject is raised in the House of Commons by Diefenbaker and Stewart et al at the next session." He added that he hoped Lower would, as part of such a program, write a short essay which Himel and Sandwell would attempt to get published either in Maclean's or Saturday Night.[192]

There is no evidence that the ACL did much more on this until 1959. The pamphlet does not seem to have been published, nor did Lower write his article. The CFBR was by now no more than a minor committee of the ACL; by the spring of 1954 B.K. Sandwell was ill and by the end of the year he was dead. The ACL seems to have become more involved in obtaining anti-discrimination legislation than in the protection of civil liberties through a bill of rights, and in 1954 it began to be heavily involved in the Dresden issue. Moreover, as noted in Chapter 5, it was to some degree somewhat of a "letterhead organization" without any grass-roots foundation or professional staff. As a result, it lacked the personnel to deal with several major projects at once.[193]

In some ways 1954 was not a good year to demand that Ottawa pass a bill of rights. As noted in Chapter 6, the government was completely revising the Criminal Code, with certain changes aimed directly as the suppression of the "communist menace." Although this encouraged radical groups like the LDR -- and even the occasional liberal -- to demand a bill of rights, there was not much chance that Ottawa would listen.[194] To introduce a bill of rights at that time might have jeopardized some of these restrictions and provided even more ammunition for some of the quasi-McCarthyite members, such as Conservative leader George Drew, most members of the Social Credit party, and some of the ultra-conservative Liberals from Québec.[195]

Yet, beginning in 1954, a number of other developments had a positive effect upon the chances of a national bill of rights. Outside of the country, the land-mark case of Brown v. Board of Education gave new life to the American civil rights movement when the U.S. Supreme Court struck down school segregation as a violation of the constitution. This helped

to stimulate Canadian interest in "civil rights" generally and in the American bill of rights in particular.[196]

In addition, the threat of communism had diminished considerably; the Korean War was over, Joe McCarthy had been discredited in the United States, Soviet Premier Khrushchev had launched his anti-Stalinist campaign, and by 1956 the suppression of the Hungarian uprising had also helped demonstrate the moral bankruptcy of the USSR. On the domestic scene, the LPP had begun to lose many of its supporters, and the campaigns of the LDR had almost completely withered away.[197] Those who opposed a bill of rights on the grounds that it would ham-string government and prevent it from dealing with the Cold War menace, now had increasingly weaker arguments, and the stronger argument was that the protection of individual rights demonstrated the moral superiority of the "free world" over communism.[198]

More importantly, John Diefenbaker replaced George Drew as leader of the Conservatives in December of 1956 and made a bill of rights one of his election promises.[199] In retrospect, it now seems clear that Diefenbaker was at this stage the only short-term hope for a national bill of rights. Although the NDP had kept the notion alive in their Winnipeg Declaration, there was no chance that they would come to power in the near future.[200] Nor had the Liberals budged in their opposition. Indeed, one of the most powerful arguments in favour of a bill of rights, the Padlock Act, had been eliminated by the Supreme Court in the Switzman case. In 1955 Bruce Hutchison, a long-term liberal critic of the padlock law, had predicted that if the Supreme Court struck down the statute the Liberal government would unfortunately see this as an affirmation that the courts were adequately defending civil liberties and did not need the additional help of a bill of rights.[201] As noted in Chapter 5 of this dissertation, the Supreme Court did indeed declare the Padlock Act *ultra vires* in 1957, thereby probably causing Mr. Hutchison simultaneous joy and despair.[202]

That same year John Diefenbaker slipped into power with a minority government.[203] Faced with a tenuous hold over the House, as well as serious economic issues, Diefenbaker deferred action on a bill of rights until the next election,[204] but by September 1958 he had a

majority government and time to move on his pet project. He therefore introduced Bill C-60, An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms.[205]

This proposed legislation, as might have been expected in the light of Diefenbaker's past proposals, was more than a simple declaration of rights but less than an amendment of the BNA Act. It began with the words "It is hereby recognized and declared that in Canada there have always existed and shall continue to exist the following human rights and fundamental freedoms," and then listed a number of basic liberal political and egalitarian rights. It went on to say that these and certain legal rights should be "construed and applied" (presumably by the courts and administrators) in such a way that they would not be abrogated, abridged, or infringed. This seemed to be a way of curtailing the executive without violating the principle of parliamentary supremacy.[206]

In introducing the bill, Diefenbaker alluded to a number of civil liberties abuses which had taken place over approximately the last fifteen years, all of them (as when he had first called for a bill of rights in 1946) involving orders-in-council rather than statutory infringements. Some of them were well known, such as the federal government's attempt to deport Japanese Canadians or its undermining of habeas corpus as a result of the Gouzenko revelations. Others were relatively obscure, involving administrative law issues which would appeal to members of the legal profession, especially those who were worried about the increasing power of civil servants within the welfare state.[207] In short, although Diefenbaker acknowledged that the Bill of Rights would make parliament "more cautious" about passing laws that violated fundamental freedoms, his major emphasis was upon buttressing parliament against cabinet and bureaucratic excesses.[208] As MacLennan has argued, "The 1960 Bill of Rights was grounded firmly in Diefenbaker's 1940s battles with the government of Mackenzie King."[209]

This concern about executive despotism also explains the section of the Bill of Rights dealing with the War Measures Act. During the war, Diefenbaker had accepted in principle the limitations imposed by the War Measures Act, telling the House that "national safety is of paramount importance over private rights."[210] It was therefore not so surprising that his legislation contained a section which permitted the government, if operating in an emergency

which justified the use of the War Measures Act, to temporarily suspend the civil liberties normally protected in the Bill of Rights. At the same time, however, this was to be done only with the approval of Parliament.[211] This approach remained in the bill when it became law, for as Diefenbaker later wrote in his memoirs, "in principle it preserved the rights of Parliament and was a defence against the government's using the War Measures Act under circumstances where it really was not justified."[212] From the perspective that the real danger to civil liberties was cabinet despotism, and not legislative or state despotism, this was a sensible argument. The premise, however, was questionable.[213]

In addition, Diefenbaker argued that there were obstacles to constitutional prohibitions. He recognized that an amendment which only limited Ottawa could at any time be repealed by a subsequent act of parliament, while an amendment which limited both Ottawa and the provinces would be opposed by the Premiers, jealous of preserving their provincial rights.[214] He did not say so, but the major obstacle was still Maurice Duplessis, although within the Conservative caucus there was also considerable support for Duplessis's position on provincial rights. As Diefenbaker's Solicitor General, Léon Balcer, pointed out at a press conference, a bill of rights binding on the provinces would threaten Duplessis' war against the Jehovah's Witnesses, a group that was "really embarrassing people" in the province.[215] As a result, the Prime Minister admitted that a binding constitutional amendment would be preferable but argued that it was impossible in the short run.[216]

Nothing more was done with this bill in the House, for the government had made clear that it was simply an affirmation of its commitment to proceed in the next session of parliament. As it turned out, the government received so many comments and briefs during the 1959 session that Diefenbaker decided to introduce a new draft in the following (1960) session of Parliament, in order that it be sent to a special committee which would hear further representations from interested groups and individuals.[217]

Because it took such a long time for the gestation of this bill -- almost two years from the fall of 1958 to August of 1960 -- the bill of rights policy network had ample time to speak out and lobby. They also had time to celebrate the idea that a bill of rights would be one way that Canada would live up to its commitment to the principles enshrined in the UDHR. (The

year 1958 saw the tenth anniversary of this document, and considerable energy was expended in celebrating this event and using it as a focal point for human rights "consciousness raising.")[218] Yet, in a commemorative conference held in December, law professor Bora Laskin presented a compelling analysis of the Diefenbaker bill that portrayed it as a "timid" step that was worse than doing nothing.[219]

During this period Irving Himel and the ACL once again brought together an ad hoc coalition.[220] On 29 April 1959 a delegation presented Diefenbaker with a brief which argued in principle for a constitutional amendment, but accepted a prohibitory statute as an interim second-best alternative. It also included an alternative draft bill, somewhat broader than the government's, which would have protected citizens' rights from abrogation under the War Measures Act.[221]

Over 30 organizations participated in this process, representing the usual members of a human rights coalition: churches (including the Canadian Council of Churches); trade unions (including the CLC and the Steelworkers); women's groups (such as the WIL and the NCW), and ethnic bodies (representing Chinese, Japanese, Poles, and blacks.) In addition, the coalition including some familiar human rights bodies (the WEA, the CJC, and the JLC), as well as some relative newcomers (such as the Canadian Federation of Agriculture).

As usual, the CBA was not an integral part of the human rights community. Himel had invited the organization to participate, but its president had declined, for the CBA executive had decided that a bill of rights was "neither required nor advisable." Following the introduction of Bill C-60 into Parliament, the Civil Liberties Section of the CBA had again taken up the matter for consideration, and at the Association's annual general meeting in Toronto it was decided to appoint an Advisory Committee to whom the Civil Liberties Section might submit its findings for consideration. This committee had national representation, but this made it difficult to develop an immediate response, especially because of the diversity of opinions expressed by the members; by March its only recommendation had been that the bill should be postponed until the following parliamentary session.[222]

The CBA, however, did take part in the fairly extensive public debate about the bill of rights in the learned journals and (to a lesser extent) newspapers of Canada. One of the first

articles was a critical analysis in Canadian Forum, followed by articles in Maclean's and Saturday Night. In March of 1959 the CBA's Canadian Bar Journal devoted an entire issue to Diefenbaker's proposal, with articles by eminent legal scholars such as W.R. Lederman, Edward McWhinney, Bora Laskin, and F.R. Scott. Arthur Lower once again turned his attention to the topic, but this time, in a CBC broadcast and in an article in Canadian Commentator, he was attacking Diefenbaker rather than supporting him (especially because the legislation provided no protection against the War Measures Act).[223] In addition, critical articles appeared in the Dalhousie Review and Queen's Quarterly,[224] and both F.R. Scott and Senator Roebuck made public speeches opposing the bill.[225]

The debate continued in the House, and spilled over into the parliamentary committee set up in the summer of 1960 when the Prime Minister reintroduced his bill, with hardly any alterations, now renamed C-79, An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms.[226] Diefenbaker made what the Globe called "an emotional and personal address" to the Canadian people on the eve of Dominion Day, just before the bill was to be debated for second reading in the House. The following day he spoke in the House for over two hours in support of the legislation. The response, from both the opposition and the press, for the most part supported the legislation in principle but criticized of some of its details.[227]

Debate over the principle and details of the bill continued for the rest of the summer. For the last time the traditional activists within the human rights community, as well as a number of tangentially interested people and organizations, were able to state their cases through the House of Commons, before a special House Committee on Human Rights and Fundamental Freedoms, and in the stories and editorials of the Canadian press.[228]

It is not easy to summarize reaction to this new draft bill of rights, but several points clearly stand out. First, there was now virtually unanimous support for "human rights and fundamental freedoms," and for the most part there was remarkably little disagreement about what those rights should involve; most of the commentators were committed to a liberal individualistic model of human rights.[229]

This consensus was the product of an incremental revolution in thinking. While the earlier debates in the late 1940s and 1950s had engendered some opposition from those who wished to defend anti-Asian discrimination or draconian anti-communist legislation, attitudes of this nature were singularly absent in 1960. Even the Liberal party, which had been responsible for most of the federal civil liberties violations of the last two decades, was finally willing to admit that "we do not believe that certain of those actions [dealing with the Japanese Canadians] were really necessary, or that they should be repeated in any similar situation in the future." After the purging of the ranks of the Liberals in the 1957 and 1958 elections it was now possible for a new leadership to admit what had previously been taboo.[230]

In addition, most human rights interest groups, newspapers, and politicians seemed to agree that a bill of rights was in principle a desirable way to promote basic Canadian rights and freedoms, at least the traditional liberal ones.[231] A bill of rights was no longer an idea supported primarily by prairie populists, left-liberals, democratic socialists, and communists. Groups like the LDR and CRU were no longer even in existence, and the organizations which appeared before the parliamentary committee to support the principle of a bill of rights were all moderate and "respectable." In addition, eighty-six out of eighty-nine English-speaking newspapers supported the measure, and even the Chamber of Commerce (usually a bastion of conservatism) approved the bill as a commitment to the principle of freedom.[232] What opposition did arise came primarily from certain members of the legal profession who saw this as a deviation from the traditional British reliance upon common law and ordinary statutes and a break with the teachings of A.V. Dicey,[233] or from Québec's Union Nationale government and a few francophones in Parliament.[234]

Among those who were in agreement about the desirability of a bill of rights, however, there was little agreement about the most desirable form. Part of this division arose from the natural tendency of people to disagree on ideological issues as well as pragmatic concerns about the best means to an agreed-upon end. However, one cannot help but feel that part of the problem was a certain confusion. As this chapter has noted, Diefenbaker himself did not always seem to grasp the different options available to him, and many of his

supporters (and critics) seem to have become victims of the semantic morass surrounding the problem of grafting an American concept onto a British parliamentary structure.

In 1960 Diefenbaker's speeches usually suggested that the government had to choose between either a statute or an entrenched constitutional amendment binding on the provinces as well as Ottawa; there was no acknowledgment that between these two options there stood several alternatives -- two different types of statutory protection, or an entrenched bill of rights binding only on Ottawa.[235] As a result, the essence of the legislation remained unchanged.[236] Bill C-79, like C-60, was more than a simple declaration of rights but less than an amendment of the BNA Act, empowering the courts only to "construe and apply" federal laws in such a way that certain declared rights were not violated.[237] Although it seemed to give the judiciary the power to strike down executive acts, it did not clearly mandate the nullification of statutes.[238]

Whether or not Diefenbaker could have entrenched a bill of rights into the constitution must remain one of the more interesting questions of Canadian legal history. In early 1959 Premier Douglas of Saskatchewan had urged him to call a federal-provincial conference that would discuss entrenching a bill of rights into the constitution.[239] Diefenbaker chose not to submit his proposal, no doubt largely because it was clear that Premier Duplessis would not be sympathetic.[240] However, the Québec premier died in September 1959 and his party was defeated by Jean Lesage and the Québec Liberals on 22 June of the following year. Then, even while the parliamentary committee on C-79 was sitting in July, the new premier issued a statement at a concurrent federal-provincial conference:

> [t]he experience of the past few years has convinced the government of Québec that human rights are not sufficiently protected in the sphere of provincial jurisdiction. We, therefore, believe that it is now necessary for us to have a bill of human rights. We are also of the opinion that such a bill would have a much greater actual and symbolic value if it were part of the constitution .... It seems to us that we have here a magnificent opportunity to discuss this problem and to see if we cannot agree on a joint declaration of human rights that could be embedded in our constitution.[241]

This "quiet revolution" in the position of the Québec government was immediately discussed by the members of the committee studying the legislation. The opposition members were in agreement that this was a break-through which altered the entire situation, and some members

suggested that provincial representatives be asked to appear before the committee. The CCF leader, Hazen Argue, maintained that since (according to his information) the premiers of Saskatchewan, Québec, New Brunswick, Alberta, and British Columbia were also in favour of a constitutional entrenchment of a bill of rights, further discussion of the bill should be postponed, in order that the government discuss the matter with the other provinces.[242]

This postponement did not take place, and the government proceeded to move its bill through Parliament. The reasons for this refusal to grasp the constitutional olive branch are not clear. Perhaps Diefenbaker believed that Lesage was calling for a "mere" declaration, and since his proposed statute went somewhat further, albeit only within federal jurisdiction, there was no point in calling a halt to the process underway. On the other hand, Diefenbaker may have believed that Lesage's proposal might lead to the creation of a constitutionally entrenched bill of rights that would radically change the Canadian political system by undermining the principle of parliamentary supremacy. Perhaps he also agreed with the Roebuck Committee report that a request by Canadians to have the British parliament pass a bill of rights on their behalf "would have the appearance at least of a surrender of sovereignty."[243] The most likely explanation, however, is that the legislation in process was Diefenbaker's own pet project, and he had no desire to share it with ten premiers or postpone it perhaps indefinitely. He had waited a long time to create "the Diefenbaker Bill of Rights" and no Québec politician was going to get in the way.

To be sure, the committee hearings were not a complete waste of time. Although Diefenbaker was intransigent on the overall structure of the bill, a few additions were made, including a preamble which was intended to make it more suitable for hanging in school rooms and government offices.[244] After the committee made its report, the bill moved swiftly through the House and the Senate.[245] On 10 August 1960 the Diefenbaker Bill of Rights was given Royal Assent and became law.

In the face of his critics, Prime Minister John Diefenbaker defended his legislation as "a major step forward."[246] Later, in the hands of a Supreme Court unwilling to take an activist role, it proved to be more of a disappointment than a triumph, simply a way-station on the road to the Charter of 1982. At the time, however, the passage of the legislation marked the

closure of a major struggle within the Canadian political system. For better or for worse, Canadians in 1960 had been given new legislation, and the human rights community now waited to see how effective it would become. In the next few years the success or failure of "the Diefenbaker Bill of Rights" would be determined by the judiciary; litigation rather than lobbying seemed to be the way to achieve effective limits on rights violations by the federal government.

D: CONCLUSION

One of the most interesting analyses of the struggle for a bill of rights was presented to the 1960 Parliamentary Committee by Maxwell Cohen, Acting Dean of the Faculty of Law at McGill University.[247] Cohen pointed out a number of reasons why there had been, in the last two years, an unusually high level of interest in a Canadian bill of rights. Some of his reasons, such as the impact of the Second World War, opposition to Hitler and to the gulags of Stalin, the influence of the United Nations and the International Labour Organization, and the rise of the welfare state, were arguments that could be applied in general to what this dissertation has called Canada's move into the "age of rights." However, he also pointed out that interest in human rights, both in Canada and in other countries, was taking a particular form, which he identified as a revival of the notion of natural law. In Canada, he noted, the six "great" civil liberties cases of the Supreme Court in the 1950s, and the writings of Mr. Justice Rand especially, had demonstrated "the emergence in Canada, if not of a frank natural law, of at least a kind of secular natural law by which even the parliament of Canada should be bound."[248]

The Supreme Court, however, was to some degree only a conduit (and perhaps amplifier) of a discourse (to use a term not then in vogue) which Cohen correctly identified as foreign to Canada. As he noted,

> ... the bill before us, as a matter of legal technique, tends to reflect two traditions -- one the classic Anglo-Canadian tradition ... but the other is a modern international tradition because ... it has terminology that is quite alien, until recently, to our tradition. The words 'human rights," for example, are a creature of the United Nations Charter; the words "fundamental freedoms" are a creature, partly, of the Atlantic Charter, and partly of the United Nations Charter.[249]

In other words, before Canadians would accept a bill of rights it was necessary to move from the "precious British liberties" discourse, with its connotations of Diceyan rule of law, common law protection, and parliamentary supremacy, to the post-war discourse of "human rights and fundamental freedoms."[250]

Cohen also might have mentioned that this change was intertwined with other shifts in the Canadian political culture, as the nation moved from tory-touched classical liberalism

to a less authoritarian and less British reform liberalism. When Canada moved towards a fully-developed welfare state, people increasingly agreed about the need to restrain the emerging Leviathan. Moreover, as Canadians became less attached to their British traditions, it became more acceptable to consider deviations from the inherited constitutional pattern.

In addition, Cohen paid far too much attention to the judges and the law, while ignoring the efforts of the Canadian human rights community. This chapter has demonstrated that such changes in attitudes were in part the product of the efforts of a large number of activists. Some of them, such as John Diefenbaker, Alistair Stewart, M.J. Coldwell, David Croll, or Arthur Roebuck, were members of Parliament. Others, such as Arthur Lower, B.K. Sandwell, and Frank Scott, were well-known members of the Canadian socio-political elite, and there were also people like Irving Himel, Kalmen Kaplansky, or Glen How who were less well known but highly important lieutenants in the struggle. Yet there were also thousands of foot-soldiers who worked with, and supported, the many interest groups which throughout the late 1940s and the 1950s educated the public and politicians about human rights and the necessity of better protection.

Unfortunately, in the end the Bill of Rights was Diefenbaker's rather than the Canadian people's. Had he paid more attention to their demands for a constitutionally-entrenched bill, or even a more explicitly prohibitory statute, Canadians might have achieved something more than a document which in the long run limited just the executive. Diefenbaker, in other words, had been an impediment rather than a pioneer in the human rights struggle. Frank Scott was prescient when he testified before the 1960 parliamentary committee that he would rather have no bill at all than Diefenbaker's version.[251]

Yet even Scott admitted that the Bill of Rights might have educational value, and it did ultimately hang on thousands of school class-room walls -- although usually in a shortened form which said nothing about the War Measures Act. It provided a focal point, even if a flawed one, for future discussion of Canada's continuing journey into "the age of rights."

ENDNOTES FOR CHAPTER 7

[1]The best short legalistic discussion of the achievement of a bill of rights is Tarnopolsky, The Canadian Bill of Rights. There is a very good and less legalistic discussion in the "Epilogue" of Kaplan, State and Salvation. See also Chapter 4 of Botting, Fundamental Freedoms and Jehovah's Witnesses. In addition, two graduate students have recently produced studies to this struggle: Robert M. Belliveau, "Mr. Diefenbaker, Parliamentary Democracy, and the Canadian Bill of Rights," (M.A. thesis, University of Saskatchewan, 1992); MacLennan, "Toward the Charter." The bulk of this chapter was written without the benefit of MacLennan's dissertation, which only recently became available; any changes to this chapter that have benefitted from his work are noted.

[2]League for Social Reconstruction, Research Committee, Social Planning for Canada (Toronto 1935), 503-508. See also Michiel Horn's introduction to Frank Scott's collection, A New Endeavour, xix-xx. Scott's interest in a bill of rights for Canada is discussed in some detail in Allen Mills, "Of Charters and Justice: The Social Thought of F.R. Scott, 1930-1985," Journal of Canadian Studies 32, (Spring, 1997).

[3]The first parliamentary demand for an American-style bill of rights seems to have taken place on 4 February 1938 when Independent Manitoba MLA Lewis St. George Stubbs (who was discussed briefly in Chapter 3) moved a resolution calling for the incorporation in the constitution of a guarantee of freedom of speech, assembly, press and religion. His resolution passed, but it does not seem to have had any effect on the federal government (Stubbs, A Majority of One, 162).

[4]Scott did not explicitly say that his proposed entrenched bill of rights would be binding on the provinces as well as Ottawa, but given his bias towards centralization it is safe to assume that he intended this. Note also, as pointed out by Mills ("Of Charters and Justice," 53), that in 1932 Scott still believed in the system of parliamentary supremacy.

[5]Walter Tarnopolsky has argued that "[t]he view of Canadian lawyers that the Canadian Parliament, within the terms of the BNA Act, is supreme, can only be the result of the training they received in the gospel according to Dicey and Blackstone. Another reason is that in the past the Judicial Committee was unable to adjust itself to a federal system, and the supremacy of a unitary Parliament dominated their thoughts. In applying Dicey these people have overlooked his own admission that federalism is necessarily based on the supremacy of law, not of Parliament" (The Canadian Bill of Rights, 111).

[6]Department of External Affairs Papers, vol. 722, file 60, "Notes on the Question of a Canadian Bill of Rights," 31 December 1937, Loring C. Christie. This memo is discussed

briefly by Kaplan in State and Salvation, at 20-1. Christie raised a number of other issues, such as the problematic nature of a bill of rights limiting the power of parliaments and augmenting the power of judges.

[7]The term "state building" (as opposed to "province building") was first used by Edwin R. Black and Alan Cairns in "A Different Perspective on Canadian Federalism," Canadian Public Administration IX (March 1966): 27-45, and adopted by Elkins in Small Worlds, at 298. The quotation from Cairns comes from his "Recent Federalist Constitutional Proposals: A Review Essay," Canadian Public Policy, 3 (Summer 1979): 348-365.

[8]Of course, Trudeau, the architect of the Charter, was also a close friend and disciple of Scott.

[9]As noted in Chapter 2, Coyne was a leading member of the Canadian bar with close ties to the CIIA and an outspoken critic of the federal government's Japanese deportation policy.

[10]R.O. MacFarlane was assistant-professor of History at the University of Manitoba.

[11]J.B. Coyne, A.R.M. Lower, and R.O. MacFarlane, "Brief Submitted to Royal Commission on Dominion-Provincial Relations by the Native Sons of Canada," 8 December 1937, 17, 20, 26. The authors suggested an innovation that would actually extend the disallowance power -- no provincial law would be valid without explicit federal approval.

Part of this brief was reprinted in "Protecting our Birthrights: Disallowance or Bill of Rights?" Winnipeg Free Press pamphlet no. 51, May 1954, at 19. Lower discusses the brief in his memoirs, My First Seventy-Five Years, 211-212; see also his brief to Prime Minister St. Laurent, 8 May 1951 (Lower Papers, vol. 46, file 22). It is not surprising that Lower should have contributed to a brief which was an intellectual forerunner of Trudeau's "country building" Charter. In The Writing of Canadian History, Carl Berger entitled a chapter "Arthur Lower and a National Community," and called him "the most nationalistic of English-Canadian historians" (112).

[12]For a detailed discussion of disallowance during this period, see J.R. Mallory, Social Credit and the Federal Power in Canada (Toronto: University of Toronto Press, 1954). As Mallory notes, "the Padlock Act failed signally to arouse the Department of Justice to the pitch of indignation it might have reached if the property padlocked had been a branch of a chartered bank" (176).

[13]This point was first made in an editorial on 28 October 1937. As early as 1 April of that year, however, Dafoe was already fulminating against the Padlock law and suggesting that it violated the rights of "Dominion citizens." See editorials of 18 August and 22 December 1937, as well 8 February and 8 July 1938, and 8 June and 15 August 1939. All of these were quoted extensively in a series of editorials in May 1954, which were reprinted as a pamphlet called "Protecting Our Birthrights: Disallowance or Bill of Rights?" (Ramsay Cook Papers, "Civil Liberties Documents," vol. 2153, vol. 1).

[14]Lower, My First Seventy-Five Years, 212. Lower's grasp of the constitutional details of the case appear to be a little fuzzy. He was more precise in his brief to the Prime Minister, 8 May 1951, where he said that Mr. Justice Cannon seemed to base his reasoning on their brief (Lower Papers, vol. 46, file 22). Note, however, that according to David Williams, the idea of the implied bill of rights came from Aimé Geoffrion, acting as legal counsel for Ottawa (David Ricardo Williams, Just Lawyers: Seven Portraits [Toronto: Osgoode Society, 1995], 119).

[15]Re Alberta Statutes, [1938] SCR 100.

[16]Alberta Press case, 107.

[17]Ballantyne to Lewis, 2 March 1939 [Ballantyne refers directly to Duff's argument]; Lewis to Ballantyne, 18 March 1939; and "Bulletin of the Canadian Civil Liberties Union," vol. 1, no. 8, April 1939 (CCF Papers, vol. 146, file "Civil liberties union"); "Bulletin," vol. 1, no. 9, June 1939 (Park Papers, vol. 7, file 133). The Taub case is discussed briefly in Chapter 5.

[18]Scott, "The Constitution," in Scott and Brady, Canada After the War, 81-2.

[19]David Lewis and Frank Scott, Make This Your Canada: A Review of C.C.F. History and Policy (Toronto: Central Canada Publishing, 1943), 184.

[20]M.J. Coldwell, Left Turn, Canada (New York: Duell, Sloan and Pearce, 1945), Appendix B, 236-7. This call for a bill of rights is not included in D. Owen Carrigan's otherwise useful Canadian Party Platforms 1867-1968 (Toronto: Copp Clark, 1968).

[21]G.M. Grube, "Freedom and the CCF," in Planning for Freedom: 16 Lectures on the CCF -- Its Policies and Program, ed. Ontario CCF, (Toronto? 1944), 14; Frank H. Underhill, "Dominion-Provincial Relations," in Planning for Freedom, 156. Grube's mention of a bill of rights is presented in the context of freedom of speech for employees, including civil servants.

[22]J.W. Pickersgill, The Mackenzie King Record, vol. 1, 1939-1944 (Toronto: University of Toronto Press, 1960), 354-5; Bruce Hutchison, "We Need a Bill of Rights," Winnipeg Free Press, 29 February 1944. See also Free Press editorial, "Lawyers and Liberty," 29 August 1946. Admittedly, it took about three years for Hutchison to look at the topic again in detail. As noted below, he wrote a series of articles from May to June 1947, later published as a pamphlet called "Bill of Rights for Canada."

[23]"Report of Committee on Civil Liberties," The Canadian Bar Review XXII (1944): 598-617, at 617. This suggestion for a bill of rights does not seem to have generated any enthusiasm in the ranks of the CBA.

[24]The notion of a bill of rights was a very minor topic in political science at this time. There are only two references to the idea, and no analysis, in H. M. Clokie, Canadian Government

and Politics (Toronto: Longmans, Green, 1944).

[25]D.J. Walker, parliamentary assistant to the Minister of Justice in the Diefenbaker government, said that Diefenbaker was "the father of the bill of rights" and that M.J. Coldwell (leader of the NDP) was one of its uncles (Hansard, House of Commons, 6 January 1958, 2891).

[26]John G. Diefenbaker, One Canada: Memoirs of the Right Honourable John G. Diefenbaker, vol. I: The Crusading Years 1895-1956 (Toronto: Macmillan 1975); vol. II: The Years of Achievement 1957-1962 (Toronto: Macmillan 1976). However, when the Diefenbaker government was developing its bill of rights the discussion in the House of Commons frequently alluded to the role played by parliamentarians other than the Prime Minister. Diefenbaker himself paid tribute to the efforts of M.J. Coldwell and David Croll when he introduced Bill C-60, as well as the early arguments of Bruce Hutchison and Arthur Lower (Hansard, House of Commons, 5 September 1958, 4639).

[27]See especially Kaplan, State and Salvation.

[28]Edward McWhinney, "The Bill of Rights, The Supreme Court, and Civil Liberties in Canada," The Canadian Annual Review for 1960 (Toronto: University of Toronto Press, 1961), 271. This was quoted approvingly in M. James Penton, Jehovah's Witnesses in Canada (Toronto: Macmillan 1976), 200. A more balanced assessment of the contribution of the Witnesses is given in Kaplan, State and Salvation (see especially his "Epilogue") but in Fundamental Freedoms and Jehovah's Witnesses Botting tends to accept the earlier view, pointing out uncritically that "[t]o this day, Jehovah's Witnesses in Canada consider the adoption of the Canadian Bill of Rights as one of their major triumphs" (80).

[29]It is true, of course, that most of the important civil liberties cases before the Supreme Court in the 1950s were the result of litigation pursued by the Witnesses. However, as this chapter will argue, the Supreme Court decisions had an ambiguous effect upon the struggle for a legislated bill of rights.

[30]Lower's role in the CLAW and (after 1946) the CLAM is mentioned briefly in Chapters 1 and 3 of this dissertation. Colony to Nation stressed a shared commitment to principles as one of the bases of English Canadian national solidarity and was sometimes quoted approvingly by CCF members of Parliament when demanding the principled treatment of minorities. See, for example, Stanley Knowles' speech on Japanese Canadians, 24 April 1947 (Hansard, House of Commons, 2366).

[31]Berger, The Writing of Canadian History, 131; William R. Young, "Chauvinism and Canadianism: Canadian Ethnic Groups and the Failure of Wartime Information," in On Guard for Thee: War, Ethnicity, and the Canadian State, 1939-1945, ed. Norman Hillmer, Bohdan Kordan, and Lubomyr Luciuk (Kingston: Canadian Committee for the History of the Second World War, 1988), 45-6. Lower's 1937 brief to the Royal Commission did call (at 26) for

"tolerance of minorities," but it was tolerance for "especially religious and linguistic minorities of either of the two chief racial component of the Dominion."

[32]A.R.M. Lower, "Some Reflections on a Bill of Rights," Fortnightly Law Journal, 1 March 1947, 235.

[33]The earliest example of the CLAW supporting a bill of rights is a telegram from Lower to King (6 May 1946) supporting Diefenbaker's 1946 motion in the House of Commons (King Papers, 1946, Reel C-9172, document 367910).

[34]Dominion-Provincial Conference (1945): Dominion and Provincial Submissions and Plenary Conference Discussions (Ottawa: King's Printer, 1946), 180.

[35]Hansard, House of Commons, 13 September 1945, 135-138, at 138; 10 October 1945, 900.

[36]Stewart later noted that "I had been in the house for only two weeks, and I was optimistic. I thought the Liberal government might possibly see some reason in a bill of rights" (Hansard, House of Commons, 8 May 1946, 1340).

[37]A copy of the letter sent to King, and an exhortation to others to support their cause, signed by Stewart and other founders of the CLAW are in the CCF Papers, vol. 146, file "Civil liberties union." Stewart's reminiscences about the University of Manitoba medical school can be found in his House speech of 13 September 1945, at 136 of Hansard. For the Manitoba medical school issue, see Barsky, "How 'Numerus Clausus' Was Ended."

[38]Hansard, House of Commons, 21 March 1946, 137.

[39]According to one analysis of Diefenbaker and the Bill of Rights, the future prime minister's first public reference to a bill of rights (notwithstanding his claims in his memoirs) seems to have been a radio address in 1943 in which he referred to the right of Canadian soldiers to be supported through conscription. A year later he made another broadcast in which he referred to a bill of rights that would consist of such things as the right to work, the right to fair pay, the right to security, and the right to education (Belliveau, "Mr. Diefenbaker," 43).

[40]Hansard, House of Commons, 21 March 1946, 137-8. About a year later Diefenbaker made it clear that his proposal would enshrine egalitarian as well as legal and political rights (Hansard, House of Commons, 16 May 1947, 3158).

[41] Note that there were at least three major details to be dealt with. First, if a bill of rights was to be prohibitory, then how far should it go in limiting the power of the War Measures Act in emergency situations? Second, exactly what kinds of rights should be protected against governmental interference? Third, should a bill of rights also include protection against rights violations by citizens as well as the state?

[42]Tarnopolsky, The Canadian Bill of Rights, 92. As Tarnopolsky points out, s. 1 of the Diefenbaker Bill of Rights seemed to make the bill a declaratory statute.

[43]Technically, such a statute becomes a constitutional amendment, not in the sense of altering the BNA Act, but by creating an "organic law." This, however, is a technical point likely to be overlooked except by constitutional lawyers and political scientists. For a discussion of this by Minister of Justice Fulton, see Hansard, House of Commons, 7 July 1960, 5886. There was also some question as to whether such a statute might violate the division of powers of the BNA Act, for some people argued that it would trench on provincial jurisdiction over property and civil rights. Initially Diefenbaker had promised to send this matter to the Supreme Court as a reference case, but by 1960 he had changed his mind. For a discussion of this, see Lester Pearson in the House on 4 July (Hansard, 5658).

[44]This was proposed by Liberal J.W. Pickersgill in the House of Commons (Hansard, 7 July 1960, 5909).

[45]Frank Scott suggested this, as did the CLC. Minister of Justice Davie Fulton rejected it, arguing that it would necessitate an amendment to the Statute of Westminster, 1931. Fulton pointed out that under the Statute of Westminster the Canadian parliament was given the power to amend any British law applicable to Canada except for the BNA Acts 1867 to 1930. A British statute placing a Canadian bill of rights in the constitution would have been an amendment to the BNA Act after 1930 and therefore subject to repeal by the Canadian parliament. Fulton clearly saw this a backwards step in Canada's evolution to full independence. His testimony is in the Minutes of Proceedings and Evidence of the Special Committee on Human Rights and Fundamental Freedoms, (Ottawa: Queen's Printer, 1960), 24, 193, 408. For the advice of Fulton's legal advisors in the Department of Justice on this matter, see "Memorandum from E.A.D[riedger] for Deputy Minister re Bill of Rights," 7 January 1960, and "Memorandum from W.R.J[ackett] for Minister of Justice re Bill of Rights," 11 January 1960, Department of Justice files, vol. 146, file 18600-8, pt. 1.

[46]Tarnopolsky, The Canadian Bill of Rights, 65-6, 89. A "manner and form" requirement within a statute stipulates that a later Parliament can change the statute only by following a prescribed procedure such as (perhaps) a requirement that two-thirds of the MPs must vote for change. Tarnopolsky's suggestion, which was jurisprudentially contentious, was actually suggested to Diefenbaker by political science Professor Kenneth McRae in 1959, but senior ministers in the Department of Justice, however, dismissed this as imposing undesirable fetters on the power of parliament (Belliveau, "Mr. Diefenbaker, 96-7).

[47]For a discussion of how and why a federal bill of rights could have been entrenched in the BNA Act, see Tarnopolsky, The Canadian Bill of Rights, 65.

[48]Lower to Henderson [describing the Tory reaction to Diefenbaker's proposal], 24 July 1946 (Lower Papers, vol. 46, file 21). The press noted the tensions within the Conservative Party caucus. See, for example, Warren Baldwin, "Ottawa Repeals Orders Held Valid in Courts For

Deportation of Japs," Globe, 25 January 1947. The major supporter of Diefenbaker's proposal in the early years, however, was a British Columbia colleague, Davie Fulton.

[49]Hansard, House of Commons, 16 May 1947, 3158. This argument is reminiscent of that made by Lower and his colleagues to the Rowell-Sirois Commission. By 1947 Diefenbaker and Lower had often corresponded on the bill of rights issue, so Lower may well have suggested this point. Note also that Diefenbaker stressed the country-building implications of his bill of rights proposal a year later when he asked the federal government to send the jurisdictional question to the Supreme Court as a reference case: "To say that in one part of Canada a Canadian may enjoy freedom of religion and of speech and of association, all those great and abiding freedoms, and that in another province a Canadian may not enjoy them, is a denial of the possibility that we shall ever build a United Canada on the basis of equality of the individual before the law in all parts of the country" (Hansard, House of Commons, 12 April 1948, 2856).

[50]Of course, as Campbell and Christian note, Diefenbaker was something of "an ideological vacuum cleaner," and one should not expect to find much consistency underlying his many apparent contradictions (Colin Campbell and William Christian, Parties, Leaders, and Ideologies in Canada [Toronto: McGraw-Hill Ryerson, 1996], 203; see also 38-43).

[51]Diefenbaker used this phrase as the title of a collection of his later speeches about, among other things, the "creeping republicanism" of the Trudeau government (Those Things We Treasure: A Selection of Speeches on Freedom and in Defence of Our Parliamentary Heritage [Toronto: Macmillan, 1972]).

[52]For a discussion of Diefenbaker's support for parliamentary supremacy, see Belliveau, "Mr. Diefenbaker."

[53]Hansard, House of Commons, 21 March 1946, 137. Diefenbaker also referred (at 140) to the fact that some Jehovah's Witness conscientious objectors had still not been released from work camps. Years later, Diefenbaker was still fulminating about the Liberal penchant for rule by executive decree; see One Canada, vol. 2, 224.

[54]See also Belliveau, "Mr. Diefenbaker," 37, 46.

[55]Denis Smith, Rogue Tory: The Life and Legend of John G. Diefenbaker (Toronto: Macfarlane, Walter & Ross, 1995), 347. Other examples can be cited of Diefenbaker's lukewarm commitment to civil liberties. As Whitaker and Marcuse point out, Diefenbaker recommended that the government strip peace activist James Endicott of his passport (Cold War Canada, 370). In addition, as Denis Smith notes, "[a]t the very time that he was enshrining his declaration of rights in law, his own government was acting, with his knowledge, to deprive [allegedly homosexual] Canadian civil servants of employment through Star Chamber proceedings on grounds of 'defects' of 'weaknesses' of character" (Smith, Rogue Tory, 348).

[56]The bill was entitled An Act Respecting the Rights of Alberta Citizens, SA 1946, c. 11. A brief discussion of this bill and its history can be found in both Schmeiser, Civil Liberties in Canada, 72-3, and C.B. Macpherson, Democracy in Alberta: Social Credit and the Party System (Toronto: University of Toronto Press 1953), 208-9.

[57]AG for Alta v. AG for Canada [1947] AC 503.

[58]Hansard, House of Commons, 2 April 1946, 494.

[59]Hansard, House of Commons, 3 May 1946, 1208.

[60]For example, David J. Bercuson and Barry Cooper have looked back and declared the Citizenship Act an important milestone in "Canada's evolution from colonial to fully independent status paralleled Canada's evolution from constitutional monarchy with full parliamentary supremacy to democracy with sovereignty exercised by the people." See their article, "From Constitutional Monarchy to Quasi Republic: The Evolution of Liberal Democracy in Canada," in Canadian Constitutionalism: 1791-1991, ed. Janet Azjenstat (Ottawa: Canadian Study of Parliament Group, c. 1992). By contrast, see the critical analysis of CLAM member, and professor of History, W.J. Morton, "A Study of the Citizenship Act," transcript of radio broadcast, 17 January, 1947 (Park Papers, vol. 9, file 152).

[61]Hansard, House of Commons, 2 April 1946, 513; 2 May 1946, 1145, 1214. Conservative MP Davie Fulton, supporting the proposal, referred to some of the other "executive despotism" issues of the time, such as the infamous Eldorado affair (discussed briefly in Chapter 3 of this dissertation). He also went on to quote approvingly Thomas Jefferson's warnings about "the tyranny of the executive" (1303-9).

[62]Initially, Diefenbaker's proposal referred only to traditional legal and political rights, without any reference to egalitarian rights, but on third reading of the Citizenship Act, he attempted to have the bill amended so that Parliament would consider a bill of rights for "all Canadian citizens without regard to race, creed or colour" (Hansard, House of Commons, 7 May 1946, 1300; 16 May 1946, 1576).

[63]Hansard, House of Commons, 8 May 1946, 1340.

[64]"We Need a Bill of Rights," Ottawa Journal, 15 May 1946; "Mr. Diefenbaker's Fine Service," Globe, 10 May 1946. Soon after, Diefenbaker noted that he had been encouraged by the "widespread interest" in his proposal, and promised to try again, with a more comprehensive version, in the next session of parliament ("Diefenbaker Seeking Larger Bill of Rights," Winnipeg Free Press, 20 May 1946).

[65]Lower to King, 6 May 1946, King Papers (1946), Reel C-9172, document 367910.

[66]Lower to Owens, 17 June 1946 (Lower Papers, vol. 46, file 21). For Morse's role in the OCLA, see the minutes for 1946, in the Park Papers, vol. 9, file 151, and the Eggleston

Papers, vol. 14, files 14, 18; Morse was at that time national secretary of the United Nations Association in Canada and a member of the CIIA (Who's Who in Canada).

[67]"Bill of Rights," and "Bill of Rights Idea," Saturday Night, 2 February 1946, and 18 May 1946. Lower had noted, in a letter to Henderson of the ECCR (24 July 1946), that Sandwell was "one of the chief opponents, among people who think with us, of the bill of rights" (Lower Papers, vol. 46, file 21).

[68]Lower to Owens, 17 June 1946; Lower to Henderson [ECCR], 24 July 1946, Lower Papers, vol. 46, file 21. See also Lower's later letter to his friend Stuart Garson, formerly Premier of Manitoba and recently-appointed federal Minister of Justice, suggesting that Garson consider the desirability of a rights bill: "As you know, I am not particularly wedded to the Bill of Rights, because I quite recognize that the preservation of civil liberties depends on a vigilant public opinion." He added that at least such a law would provide "public education" (25 November 1948, Lower Papers, vol. 2, file A-31).

[69]See the correspondence between Lower and the ECCR on 18, 20, and 24 July 1946, Lower Papers, vol. 46, file 21. The first ECCR call for a bill of rights appears in vol. 1, no. 1 of its newsletter, "Civil Rights," 15 August 1946, Eggleston Papers, vol. 14, file 15.

[70]Lower to Owens, 23 February 1947, Lower Papers, vol. 2, file A-28.

[71]"Diefenbaker Seeking Larger Bill of Rights," and "Lawyers and Liberty," Free Press, 20 May and 29 August 1946.

[72]For a brief discussion of Chitty's role as a member of the CBA civil liberties committee and its report on the Gouzenko Affair, see Chapter 3 of this dissertation.

[73]See "The Proposal of a Bill of Rights," The Fortnightly Law Journal, vol. 16, 2 July 1946.

[74]"Lawyers and Liberty," reprinted in The Fortnightly Law Journal, 16 September 1946. Civil libertarian editorials from the Fortnightly Law Journal were sometimes printed in the radical CRU newsletter, Civil Rights; see, for example, the issue of 20 December 1946: "The Bar Association and Civil Liberties," and "P.C. 6444" (Park Papers, vol. 9, file 155).

[75]"Constitutionalism," The Fortnightly Law Journal 16 (1 October 1946); "Freedom, Security," Saturday Night, 26 October 1946. The "Constitutionalism" article dealt primarily with the perils of state control over private property, but also referred obliquely to the Gouzenko Affair, and suggested "that certain fundamental rights ... be written into the constitution and be beyond the reach of any passing majority."

[76]See, for example, Sandwell's editorials and reportings in Saturday Night: "Bill of Rights" (15 February 1947), "Against U.N. Principles" (21 June 1947), "Communists and Rights" (24 April 1948), "Basis of Liberty" (8 June 1948), "Civil Rights Union," (26 June 1948), "P.E.I. Labor Law" (3 July 1948), "Where is Sovereignty?" (10 July 1948), "Progress on Rights" (31

July 1948), "A Stroke for Liberty" (17 May 1949), "Fundamental Freedoms" (29 November 1949), "Anti-Bill of Rights Case" (31 January 1950), "Human Rights and Hasty Words" (7 March 1950), "For a Bill of Rights" (11 April 1950), "The Bill of Rights" (16 May 1950), "In Time of Emergency" (23 May 1950), "Guarantees for Liberty" (30 May 1950), "Hospitals and Negroes" (20 June 1950), "Bill of Rights Report" (18 July 1950), "In the Absence of a Bill of Rights" (25 July 1950), "That 'Supreme' Parliament" (27 February 1951), "Keeping Discussion Calm" (5 June 1951), and "PC Party and Bill of Rights" (10 July 1951). See also the articles written by Irving Himel during this period: "Civil Liberties Must be Protected by Vigilance of Every Citizen" (10 December 1948), "New Legal Charter" (5 April 1949), as well as some of the articles by civil libertarian columnist Wilfrid Eggleston, especially "The Sharp Debate on Civil Liberties" (24 April 1948).

[77]"Minutes of Exploratory Conference Between the Montréal, Ottawa and Toronto Civil Liberties Associations and The Civil Rights Union (formerly the Emergency Committee for Civil Rights)," 28-29 December 1946, Park Papers, vol. 9, file 156.

[78]On the attempt to create a national civil liberties group, see Chapter 5 of this dissertation. Scott's article was "Dominion Jurisdiction Over Human Rights and Fundamental Freedoms," The Canadian Bar Review XXVII (1949): 497-536.

[79]For a brief discussion of this decision see Chapter 2 of this dissertation, including John Brewin's suggestion at a public meeting that the Privy Council decision clearly indicated the need for a bill of rights. Note, however, that the U.S. Bill of Rights had not done much to protect Japanese Americans; government policy was upheld by the Supreme Court in the case of Korematsu v. United States 323 U.S. 214 (1944).

[80]"Dick Ruling on Civil Rights Held Example for Ottawa," Toronto Star, 28 January 1947. The decision to request a parliamentary committee had already been taken at the December 1946 exploratory conference of civil liberties groups (discussed in Chapter 5).

[81]As noted in Chapter 2, at this time Lower was living in Toronto, although in the fall of 1947 he began teaching at Queen's University. He did not attend the Ottawa civil liberties meeting, but he remained fully informed through letters from one of the Ottawa group's members, and he did attend the Toronto meeting, as well as a party afterwards, where he noted that "it was rather amusing to see good communists drinking a good deal of very bourgeois whiskey afterwards in a big house in Rosedale" (J.P. Erichsen-Brown to Lower, 20 December 1946 and 9 January 1947, Lower Papers, vol. 2, files A-27 and A-28; Lower to David [Owens], 28 February 1947, Lower Papers, vol. 2, file A-28).

[82]The essay is available to contemporary readers in Heick, History and Myth, 238-250.

[83]The first part of Lower's article was printed in The Fortnightly Law Journal 16 (15 February 1947): 216-8, and the second part was printed in the 1 March 1947 issue (234-7). His references to common law and natural rights are at 237 of the March issue. In terms of

legal/political philosophy, Lower was calling for a dismissal of Benthamite positivism and a return to the era of Coke. This was (as he clearly intimated) an argument for the renewed supremacy of the judiciary over parliament, which has always appealed to elitist lawyers. See, for example, the comments on the article made by R.W.M. Chitty, who referred to the "obnoxious doctrine of legislative sovereignty," suggested that "the lawyer alone ... understands the real meaning of Civil Liberty," and concluded that "only the Courts can put upon this overweening menace of legislative sovereignty the limitations that must be put upon it, if freedom is to survive and true democracy be saved" ("Inter Alia," The Fortnightly Law Journal, 15 February 1947, 210.)

[84]Chitty to Lower, 30 January 1947, Lower Papers, vol. 2, file A-28. Chitty was actively working to resuscitate the Civil Liberties Section of the Canadian Bar Association, arguing that it should look favourably at the idea of a bill of rights. See Chitty's "Inter Alia" comments in The Fortnightly Law Journal, vol. 16 (15 February 1947). See also "A Bill of Rights for Canadians" [about Lower's address to the CLAM, 31 March 1947], New Canadian, 12 April 1947.

[85]Lower to Diefenbaker, 28 January 1947, Diefenbaker Papers, 1940-1956 series, vol. 10, file "Civil Liberties - Manitoba, 1946-1948." Diefenbaker wrote a letter of thanks to Lower on 7 February 1947, saying that the "brief" was "the most helpful that I have seen," and suggesting that he would call on Lower for help the next time he came to Toronto (Lower Papers, vol. 2, file A-28). Diefenbaker's reference to the article is in Hansard, House of Commons, 16 May 1947, 3156. Diefenbaker was during this period also in close touch with the CLAM, attending one of their meetings in February, and later importuning them to send him a copy of their draft bill of rights before he raised the issue in the House (Waines to Diefenbaker, 7 March 1947, and Diefenbaker to Waines, 13 March 1947, Diefenbaker Papers, 1940-1956 series, vol. 10, file "Civil Liberties - Manitoba, 1946-1948").

[86]Hansard, House of Commons, 30 January 1947, 1; The United Nations and Human Rights, 24; John P. Humphrey, "The Draft International Declaration and Covenant on Human Rights" [introduction to transcript], The Canadian Bar Review XXVI (March 1948): 549-551.

The United Nations example also affected the British at about this time; in February a private member's bill calling for a bill of rights was introduced into the House of Lords, and passed, although it was not successful in the lower house. See the reference by John Diefenbaker, at 2861 of Hansard, House of Commons, 12 April 1948.

[87]"A Bill of Rights for Canada," Toronto Star, 31 January 1947 [citing recent remarks by Senator C.G. Power at an MCLA meeting, and an editorial in Chitty's Fortnightly Review]; Spaulding to Ilsley [Minister of Justice], 5 February 1947, Park Papers, vol. 9, file 155. It is not clear how many people received copies of the Spaulding letter; however, at least one MP, H. W. Herridge, wrote to C.B. Macpherson, thanking him for having sent a copy (Herridge Papers, vol. 22, file 12.)

[88]The first set was written by J.H. Gray, and appeared on 7, 8, 10, 11, 12, and 13 February 1947 (followed by an editorial on 14 February on the proposed UDHR). The second set was written by Bruce Hutchison, and appeared from 30 May to 3 June, while the committee was sitting; it was later published as a pamphlet entitled "Bill of Rights For Canada," a copy of which may be found in the Eggleston Papers, vol. 14, file 19.

[89]"Public Opinion and Civil Liberty," Winnipeg Free Press, 28 February 1947; Hansard, House of Commons, 24 April 1947, 2366. On 16 May of the same year Knowles also read into Hansard a resolution of the CLAM calling for a bill of rights (3182). It may be that this "declaration" was intended to have some prohibitory effect; part of it referred to the ability of writs of habeas corpus to override administrative orders. Note also that after the Citizenship Act came into force on 1 January 1947 several members of the CLAW used the occasion to give radio broadcasts on "The Meaning of Canadian Citizenship," in which they argued that Canadian citizenship should be based upon the principle of equality before the law, and that this should be set out in a new Canadian bill of rights (Park Papers, vol. 9, file 152).

[90]John Brewin of the CLAT wrote to the ACLU asking for information about the impact of the Bill of Rights on the American system (Brewin to Baldwin, 5 March 1947, ACLU papers, vol. A, file 7). It is clear from Brewin's questions that he had very little background in the history and application of the American Bill of Rights, although he did know enough to worry about a due process clause preventing socialist or reform liberal legislation.

[91]Kaplan, State and Salvation, 254-5; Hansard, House of Commons, 18 June 1947, 4278. Kaplan suggests, incorrectly, that the Witness campaign contributed to the government's decision to set up a special joint committee. This is unlikely, since the government had already promised such a committee in the Throne Speech. Penton (Jehovah's Witnesses in Canada, at 196) is equally unreliable.

The Witnesses' academic campaign for legal change in Canada opened in July 1947, when their lawyer, W. Glen How, wrote "The Too Limited Jurisdiction of the Supreme Court of Canada," in The Canadian Bar Review, XXV (June-July 1947): 573-586. How dealt directly with the bill of rights issue in two subsequent articles: "The Case for a Canadian Bill of Rights," The Canadian Bar Review, XXVI (May 1948): 759-796; "Civil Liberties -- Distribution of Handbills and Pamphlets -- Witnesses of Jehovah -- Constitutional Power to Regulate," The Canadian Bar Review, XXVII (1949): 1248-1253. The Witnesses also submitted an article by Hayden C. Covington, their American counsel, called "The Dynamic American Bill of Rights," The Canadian Bar Review XXXVI (1948): 638-670. Most of these articles were reproduced and distributed by Witnesses, as was also the 8 January 1948 issue of Awake!, which contained an article, "Magna Carta Myth," in favour of a bill of rights (Penton, Jehovah's Witnesses, 198).

[92]The full title of the legislation was An Act to protect Certain Civil Rights, SS 1947, c. 35.

[93]Section 10 of the act guaranteed the right to own and occupy property, which no doubt helped allay the fears of some citizens that "socialism" in Saskatchewan might mean

confiscation of property. On the other hand, the bill certainly did not go far enough for a classical liberal like B.K. Sandwell, who wanted protection for the right of abstention from associations such at trade unions. See "The Right Not to," Saturday Night, 19 April 1947. Note that the legislation said nothing about the rights of women; discrimination on the basis of sex was not prohibited.

In theory a major step forward in the protection of human rights, the law proved in practice to be of little utility, for over the next few years it engendered only one court ruling, striking down a municipal by-law which restricted Jehovah's Witnesses from distributing their literature (O.E. Laing, "Human Rights -- Provincial Legislation -- The Saskatchewan Bill of Rights," The Canadian Bar Review, XXVII [1959]: 233-236). The case involving the Jehovah's Witnesses was Rex v. Naish [1950] 1 WWR, 987. See also the report of the Bill's drafter, Morris Shumiatcher, to the Canadian Bar Association Civil Liberties Section, based on a survey of Saskatchewan lawyers ("Extract from Mid-Winter Meeting Transcript," 14-5, 3 March 1959, CBA Papers, vol. 13, file 200).

The Saskatchewan Bill of Rights was copied unsuccessfully by CCF MLAs in Ontario, Manitoba, and British Columbia. In Manitoba the government opposed the idea on several grounds: certain sections seemed unenforceable, others were *ultra vires* (intruding on the federal criminal law power), and the Alberta Bill of Rights was being appealed to the Privy Council. Arthur Lower was on close terms with Stuart Garson, the Liberal Premier of Manitoba, and wrote him on 22 April 1947, asking about developments in that province. Garson wrote back a long letter on 6 May 1947, explaining the above (Lower Papers, vol. 2, file A-28). See also references to the Ontario CCF "civil rights" bills in Chapters 4 and 6 of this dissertation.

[94]Hansard, House of Commons, 16 May 1947, 3140 ff. The original terms of reference are reproduced also in Minutes of Proceedings and Evidence of the Special Joint Committee on Human Rights and Fundamental Freedoms, (Ottawa: King's Printer, 1947).

[95]Hansard, House of Commons, 16 May 1947, 3146.

[96]Mackenzie to King, 18 November 1946, King Papers, vol. 401, Reel 9173, document 368906. Although MacLennan does not allude to this letter, he also suggests that the government was using the committee to defuse the issue of a bill of rights. According to MacLennan, the Liberals were following the same pattern that they had successfully followed during the war, when a series of committees "had assuaged the concerns of civil liberties associations and the press without demanding serious revisions to the defence regulations" ("Toward the Charter," 126).

[97]The evolution of these ideas has been researched and traced out by MacLennan in "Toward the Charter," 132-6. Of course, the Justice Department was simply reflecting the conventional wisdom of the times. See, for example, the argument of H.M. Clokie that a bill of rights would be a substitute for a "vigilant constitutional spirit," and would indicate "a distrust of Parliament" ("The Preservation of Civil Liberties," Canadian Journal of Economics and Political Science XIII [1947]: 208-232). For a list of arguments pro and con, see W.F.

Bowker, "Protection of Basic Rights and Liberties," UBC Legal Notes II (March 1956): 281-320, and a summary of similar arguments in Tarnopolsky, The Canadian Bill of Rights, 12-3.

[98]When it looked as if Diefenbaker was about to obtain his bill of rights, the Canadian Bar Journal published a list of provincial laws which might be in violation of the rights enshrined in that bill. Some of the laws in effect in the 1940s included the British Columbia and Alberta sexual sterilization acts, various Married Women's Property Acts, and British Columbia legislation on the education of Doukhobours (L.J. Ryan, "More About a Bill of Rights, Canadian Bar Journal 1 [November 1958]: 748). In the 1940s and early 1950's, however, the padlock law and Duplessis' campaign against Jehovah's Witnesses were the most obvious potential victims of constitutional bill of rights.

[99]For a particularly strong statement of this, note the remarks of the 1948 parliamentary committee members, especially those defending the wartime treatment of the Japanese (Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms, 1948, Minutes of Proceedings and Evidence, [Ottawa, King's Printer], 75).

[100]As noted in Chapter 3, among the Liberals only former cabinet minister C.G. Power raised a spirited objection to the government's handling of the Gouzenko Affair. Note also the argument by King's assistant, Jack Pickersgill, who argued that most civil liberties issues had been the result of "inexperience or ineptitude," and that the government was attempting to avoid, by "really careful administration," any further problems (quoted in MacLennan, "Toward the Charter," 183).

[101]Indeed, Roebuck and Stewart were listed as members of the Committee For a Bill of Rights (CFBR) in its submission made the following year ("Submission of Committee for a Bill of Rights in Support of Statement for a Bill of Rights to the Special Joint Committee of the Senate and House of Commons on Human Rights and Fundamental Freedoms," JCCA Papers, vol. 13, file 2).

[102]As noted later, the Liberals who had been in power during the Second World War, as well as most French-Canadian MPs, generally viewed with scepticism a bill of rights that would tie the hands of the government in dealing with threats to peace, order, and good government. Note also the perception of Diefenbaker about Ilsley, and Gouin's reaction (somewhat later) to critics of the padlock law, both mentioned below.

[103]The testimony of J.P. Varcoe, the Deputy Minister of Justice, begins at page 67 of the 1947 committee "Minutes of Proceedings," and he was brought back a second time, to give a prepared statement (132-4). His argument about the "retrograde step" was no doubt taken from the 1937 Loring Christie memorandum (see note 6 of this chapter).

[104]"Minutes of Proceedings," 1947 committee, 113, 115, and viii of the final report.

[105]Another conspicuous absence was the JLC and its local labour committees. When the secretary of the Toronto group, Les Wismer, wrote Kalmen Kaplansky about this issue in the summer of 1947, Kaplansky replied that "We must [w]e very careful not to antagonize the trade union Congresses and usurp their legislative functions. Our job should be to ask the Provincial Federations of Labour to sponsor such Bills, but I don't think the Joint Labour Committee should do this on its own" (Kaplansky, "Notes" for 1946-7, 50, Kaplansky Papers, vol. 20, file 3).

[106]Himel to Baldwin, 21 September 1946, ACLU papers, vol. 2732; Brewin to Scott, 24 March 1947, Scott Papers, vol. 10, file: "Civil Liberties, National Council 1946-1951," Reel H-1222; Maude Grant, for the "Citizens' National Committee for a Bill of Rights" [form letter], March 1947 (Grant Papers, vol. 47, file "Notes and Memoranda Civil Liberties Association"); CFBR to Lorne Pierce, 15 May 1947, Lorne Pierce Papers, vol. 19, file 5, item 4). Another member of the CFBR was Dr. Charles E. Phillips of the Ontario College of Education, who served on the advisory board of the ACL from its inception until well into the late 1950s.

[107]"A Written Constitution for Canada," Toronto Star, 2 August 1947. The CFBR petition was based upon a statement prepared by F.R. Scott for the CCF National Council (Brewin to Scott, 23 May 1947, Scott Papers, vol. 10, file 8, Reel H-1222).

[108]Winnipeg Free Press, 13 September 1947.

[109]Chitty had an ally in the form of Justice C.H. O'Halleran of the Supreme Court of British Columbia. In 1947 O'Halleran wrote a series of articles on "Inherent Rights" in the Toronto law review Obiter Dicta arguing in favour of a bill of rights on a number of grounds: the "new despotism" argument, dangers of foreign and communist ideas, and approval of the American political system. For an analysis, see Michael Mandel, The Charter of Rights and the Legalization of Politics in Canada (Toronto: Wall and Thompson, 1989), 10-11.

[110]"The Twenty-Ninth Annual Meeting of the Canadian Bar Association," The Canadian Bar Review XXV (1947): 743-754, at 751; "The Thirtieth Annual Meeting of the Canadian Bar Association," The Canadian Bar Review XXVI (1948): 1097-1103.

[111]"TLC Convention Drafts Drive for 65-cent Wage," and "Left-Wing Union Move on Bill of Rights Issue Splits TLC Convention," Globe, 27 September 1947. For a brief discussion of this debate, by one of the delegates who supported the idea of a bill of rights, although not the LPP, see Kaplansky's "Notes" for 1946-7, 238-43, including the Proceedings of the Convention, from which Kaplansky quotes extensively (Kaplansky Papers, vol. 20, file 3). Lapedes was discussed briefly in Chapters 3 and 6 of this dissertation.

[112]Kaplansky, "Notes" for 1946-7, 253-4, Kaplansky Papers, vol. 20, file 3.

[113]Lower to Diefenbaker, 12 November 1947, Lower Papers, vol. 2, file A-29. It is important to note, however, that Diefenbaker was influenced by other academics besides Lower. The

historian Donald C. Masters gave Diefenbaker some important advice when the latter was considering his first parliamentary demand for a bill of rights; see letters 22 March and 9 April 1946, Diefenbaker Papers, Series III, vol. 2, file "Bill of Rights, 1946," at document 001198.

[114]Diefenbaker to Lower, 13 January 1948, Lower Papers, vol. 2, file 30; Diefenbaker had earlier suggested, in a letter to Hershell Harrison, 27 December 1947, that the Witnesses "have little influence" on the parliamentary committee (Diefenbaker Papers, 1940-1956 series, vol. 9, file "Jehovah's Witnesses, 1947-1956").

[115]See, for example, the editorials in the Winnipeg Free Press, 26 February 1948, and the Family Herald and Weekly Star, 10 March 1948, later quoted in the House by Diefenbaker (Hansard, House of Commons, 12 April 1948, 2861, 2863).

[116]One can see this process taking place, in microcosm, within the United Church. Even before the war ended, the annual reports of its Board of Evangelism and Social Services indicated considerable concern for human rights, including penal reform, minority rights (especially the deportation of Japanese Canadians), violations of civil liberties, and the treatment of Jehovah's Witnesses in Québec. The issue of a bill of rights first came up in the spring of 1948 (because of a letter from the CFBR), although the board postponed its decision pending a study of human rights to be made by the Rev. Hugh Dobson. By the following year the Board report called upon Ottawa to "take the necessary steps to establish further constitutional guarantees of human rights for the Canadian people" (Twenty-Fourth Annual Report of the United Church Board of Evangelism and Social Services, 27, UCC Board of Evangelism Files, United Church Archives).

[117]This was actually the second attempt by the CCF in Ontario (discussed briefly in Chapter 4 of this dissertation). For a brief discussion of the demand for a bill of rights in British Columbia, see Lee, "The Road to Enfranchisement."

[118]"A World Bill of Rights," and "Toward a Bill of Rights," Winnipeg Free Press, 14 February 1947, and June 1947 [reprinted in WFP pamphlet, "Bill of Rights for Canada"]; "A Bill of Human Rights," Toronto Star, 25 January 1947; "Second Class Citizens," and "Human Rights," Canadian Forum, April 1948 and January 1949; "The New Declaration," Saturday Night, 15 March 1949. For a discussion of the Canadian government's luke-warm support for the UDHR, based in part upon fears that it would encourage the bill of rights movement in Canada, see MacLennan, "Toward the Charter," 167-78.

[119]Humphrey, "The Draft International Declaration," and "The Universal Declaration of Human Rights" [introduction to transcript], The Canadian Bar Review XXVII (February 1949): 203. As head of the UN Human Rights Division, Humphrey was responsible for writing the first draft of the UDHR. While in New York, he also informed the ACLU about the growth of new civil liberties organizations in Canada, in order that the American organization might provide information and encouragement (John Humphrey, Human Rights and the United Nation: A Great Adventure (Dobbs Ferry: Transnational Publishers, 1984);

Clyde Sanger, "John Humphrey: The Magna Carta of the World," in Canadians and the United Nations, ed. Clyde Sanger (Ottawa: Department of External Affairs, 1988); Humphrey to Baldwin [ACLU], and Baldwin to Cameron [MCLA], 6 September and 16 November, 1946, ACLU Papers vol. 2732).

[120]Hansard, House of Commons: 12 April 1948, 2856; 14 March 1950, 726; 24 March 1952, 721. See also the speech in the House by Alistair Stewart (Hansard, 7 December 1953, 656).

[121]Hansard, House of Commons, 9 April 1948, 2842. At least one of the members of the committee, Mr. Hansell, had been on the Select Committee reviewing the DOCR during the war, and was rather defensive about the alleged human rights violations of that period. Similarly, Ilsley (who had served as the chair of the Select Committee), was also defensive about the government's response to the Gouzenko crisis. LaCroix (along with Hansell) was hostile to the idea of adopting any legislation that would make it more difficult to fight communists (one of his *bêtes noires*, as noted in Chapter 5), and Ilsley declared that he was entirely opposed to the idea of a bill of rights (1948 Committee Minutes, 91, 112, 183, 197, 202.)

[122]Hansard, House of Commons, 9 April 1948, 2845. For a discussion of the 1947 committee, and the responses of the legal experts, see "The Joint Committee on Human Rights and Fundamental Freedoms," The Canadian Bar Review XXVI (1948): 706-714.

[123]Hansard, House of Commons: 9 April 1948, 2846-7; 12 April 1948, 2863 [ruled out of order by the Speaker at 2871]; 22 September 1949, 148; 25 October 1949, 1173 [ruled out of order]; 4 December 1951, 1561; 24 March 1952, 714; 21 January 1953, 1191; 7 February 1955, 894. Diefenbaker also attempted to persuade the 1948 joint committee on this (1948 Committee Minutes, 12, 184).

[124]These are listed at 210 of the committee report. As with the 1947 committee, there were no in-person presentations.

[125]The executive of the CFBR, who formally submitted the brief on behalf of all the people who had signed it, were the original members who had come together in 1947. The brief is called "Submission of Committee for a Bill of Rights in Support of Statement for a Bill of Rights to the Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms." A copy can be found in the JCCA Papers, vol. 13, file 22, and government files also contain a copy sent in by the VCCLU (Special Joint Committee on Human Rights and Fundamental Freedoms Papers [1947 and 1948], vol. 51).

[126]"Claims Many Canadians Are Being 'Duped'," Ottawa Citizen, 13 April 1948.

[127]CFBR "Submission." Note that none of the people were identified specifically as members of organizations; this was a national committee of individuals, not a coalition of groups. All of these people (and the others mentioned below) have been discussed in earlier chapters.

[128]Although the name of George Tanaka (head of the JCCA) does not appear in the brief, he had already begun to support the campaign for a bill of rights, mentioning it in his public speeches and in conversation with the Minister of Justice (Tanaka to Himel, 27 July 1948, JCCA Papers, vol. 15, file 23); see also "Japanese Seek End to Poll Barriers," Vancouver Province, 6 April 1948.

[129]Sifton was at this time also chair of the Canadian Press Association's Committee on Freedom of the Press. According to one source, he began a campaign on behalf of a bill of rights soon after Diefenbaker raised the issue in the House (Belliveau, "Mr. Diefenbaker," 48). This seems to have been channelled into support for the CFBR, and his later campaign for a bill of rights is discussed below.

[130]The brief also recommended an amendment to the Supreme Court Act that would enlarge that institution's jurisdiction by removing the clause that restricted it only to matters of significant financial importance. This change had already been recommended by Glen How, the counsel for the Jehovah's Witnesses, in his 1947 Canadian Bar Review article.

[131]One of the clauses contained a prohibition against exiling Canadian citizens, clearly a reaction to the recent struggle of Japanese Canadians. The brief explicitly excluded from the draft bill any reference to "economic" rights or freedoms, such as the right of employment or freedom from want. As the authors of the brief noted, "Positive action is required for these ends, not the type of negative restriction on the power of governments or legislatures to interfere with traditional liberty which is properly the scope of a Bill of Rights."

[132]CFBR "Submission," 5, 17. This was not an unusual interpretation of the constitution. As noted earlier, the Alberta Press Bill case implied that Ottawa had the right to invade areas normally falling within provincial jurisdiction; in 1947 passages from this decision were quoted approvingly by J.H. Gray in series advocating a national bill of rights ("Freedom of the Press," Winnipeg Free Press, 13 February 1947). John Diefenbaker made a similar point soon after in a public speech ("Public Opinion and Civil Liberty," Winnipeg Free Press, 28 February 1947), and in a much later editorial B.K. Sandwell said that the constitution needed to be amended "to make it clear that civil rights are a national heritage, not the private property of provincial politicians" ("The Front Page," Saturday Night, 21 August 1954).

[133]The Prince Edward Island Trade Union Act, passed in 1948, stated that all local trade union members must be employees, provincial residents, and unaffiliated with any unions outside the province. This was, as Eugene Forsey put it, "one of the most extraordinary statutes ever passed by a Canadian legislature," for it severely limited the right of free association, making it impossible to have an effective trade union movement in the province (Eugene A. Forsey, "The Prince Edward Island Trade Union Act, 1948," Canadian Bar Review XXVI [October]: 1159-1181, at 1181, 1165); see also Mallory, Social Credit and the Federal Power, 179. As Forsey points out (at 1161) the trade union movement lobbied Ottawa to disallow this legislation. It was, however, withdrawn by the government, rendering such a decision unnecessary. Forsey's article used the PEI Act to illustrate the need for a bill of rights "on the American pattern" (1181). Later, the 3 July 1958 Saturday Night editorial, "P.E.I. Labor

Law," argued that the law should have been disallowed or reserved and that it illustrated the need of a national bill of rights: "A Bill of Rights would protect the Dominion government from the embarrassment of having to put itself in conflict with the legislature of a province whenever that legislature uses its constitutional powers ... to oppress its own citizens or those of other provinces."

[134]There were other manifestations of this new concern; as Tillotson has pointed out, the Ontario CCF began to look at women's issues in the late 1940s ("Human Rights Law as Prism," 537-8). Note also that the CCF Winnipeg Declaration of 1956 (mentioned below) explicitly opposed sex discrimination, unlike the Regina Manifesto in 1933. (A copy of the Winnipeg Declaration is in Appendix A of Young, Anatomy of a Party, at 316).

[135]Special Joint Committee Papers (1947 and 1948), vol. 51. This file also contains communications from the Manitoba, UBC, and Vancouver civil liberties organizations. The Vancouver group's submission is simply a resolution endorsing the submission of the CFBR. The files also contain a letter from Local Aux. 133 of the Mine-Mill union, joining the BC District Executive in support of the CRU and a bill of rights.

[136]At about the same time, the LPP was also pressing for a bill of rights. On 26 June the Canadian Tribune devoted a page to civil liberties violations such as the padlock law, deportation of communist trade union leaders, the "grilling" of civil servants as to their loyalty, the anti-communist (and anti-union) tactics of Great Lakes ship owners, police support for strike breakers, and an allegation that the King government was "reported to be planning to introduce a Police State law at the next session of parliament." This issue also noted that the minister of Justice was opposed to a bill of rights, and contained a reference to twelve "authors" (including Margaret Fairley) who had recently written the Prime Minister, calling for a bill of rights.

[137]The CRU noted that organized labour had recently been the victim of one-sided enforcement of the law; the organization cited the examples of the seditious conspiracy charges resulting from the Valleyfield and Lachute textile strikes, the charges of conspiracy to watch and beset which were laid against the director of the UAW in the 1946 Chrysler strike, the problems faced by the Canadian Seamen's Union, and the discriminatory enforcement of local bylaws against the UE workers in a strike against Rogers Majestic Ltd.

[138]An interesting Cold Warrior critique of the CRU proposals was published in a Saturday Night article, "Civil Rights Union," 26 June, 1948. Giving no indication that he was involved in the rival CFBR, Sandwell argued in favour of loyalty tests for civil servants and against the inclusion of labour rights in a bill of rights. He concluded that "The whole project of a Bill of Rights can be set back twenty years by any too vigorous demand that it set up 'rights' which the majority of the Canadian people have not been induced to recognize, or which are so badly defined that they would be the cause of instant dispute. And it does not help at all that some of the advocates of these novel or indefinite rights are people who also advocate an economic system which, as practiced in other countries, does not grant anybody any rights

at all."

[139]Varcoe's testimony to the 1948 committee is reported at 188, 202. In addition to the fact that the BNA Act had not yet been "patriated," appeals to the Privy Council had still not been abolished. Note that Varcoe did offer (at 174) a possible amendment to the Criminal Code which would protect certain libertarian rights from infringement by private individuals. The Justice Department had been working on this since the winter of 1947-8. For an analysis of this process, see MacLennan, "Toward the Charter," 183-4.

[140]1948 committee report, 209.

[141]This chapter has referred earlier to editorials in Saturday Night and the Canadian Tribune. One can also find references to the bill of rights idea in the JLC publication, Canadian Labour Reports; see, for example, the January 1950 issue. There was also an article in the December 1948 issue of Food For Thought: Manfred Saalheimer [secretary to the Committee on Social and Economic Studies of the CJC], "A Bill of Rights for Canada." This journal was put out by the CAAE, the organization formerly headed by CLAT executive member E.A. Corbett and now by Robie Kidd, a wholehearted supporter of Kalmen Kaplansky and his human rights network.

Of course, not all journals wanted a bill of rights. For example, the 14 October 1948 issue of L'Action Catholique opposed the Jehovah's Witnesses' campaign, in particular the idea of a bill of rights, and on 31 January 1950, Saturday Night published an attack on a recent Ottawa Journal article which had argued against the passage of a bill of rights.

[142]This was introduced by Alistair Stewart into the House; he carefully noted that he supported the principle, not the religious sect (Hansard, House of Commons, 9 February 1949, 317). See also Kaplan, State and Salvation, 258-9, and Penton, Jehovah's Witnesses, 199 (Penton is inaccurate about the date).

[143]Kalmen Kaplansky of the JLC has provided considerable information about his role in nudging the TLC and CCL into requesting a national bill of right. See Kaplansky's "Notes," 1946-7, at 240, Kaplansky Papers, vol. 20, file 3; "Notes," 1949, 33-35, 44-5, 109-112, Kaplansky Papers, vol. 20, file 7; "Notes," 1950, 37, 60, Kaplansky Papers, vol. 20, file 9; Kaplansky to Conroy, 4 January 1949, CCL papers, vol. 230, file 19.

Organized labour also continued to lobby for provincial bills of rights. According to Kaplansky, the Manitoba CCL demanded in January of 1949 that the province pass a bill of rights, and the TLC Ontario Federation of Labour demanded a provincial bill of rights for Ontario. In 1950 the CCL for the first time asked the Premier of Québec to consider a provincial bill of rights (Kaplansky "Notes," 1949, 2-3, and 1950, 1, Kaplansky Papers, vol. 20, files 7 and 9).

[144]Scott, "Dominion Jurisdiction Over Human Rights."

[145]The first judicial decision was Saumur, discussed below. As noted earlier, Diefenbaker had already called for this matter to be sent to the Supreme Court as a reference case. He continued to raise the issue in the House on an almost yearly basis.

[146]This is the argument of MacLennan, in "Toward the Charter," 192-5.

[147]Carrigan, Canadian Party Platforms, 175, 180. The Liberals gained a 124 seat majority. For an analysis of the role of Garson in opposing a bill of rights, see MacLennan, "Toward the Charter," 200

[148]Hansard, House of Commons, 26 October 1949, 1173; Hansard, Senate, 27 October 1949. The influence of the ACL is claimed in a letter dated 2 November 1949, from Himel to Baldwin (ACLU papers, vol. C, file 14). According to Senator Roebuck, his motion arose from a meeting "on a street corner in Toronto" with Irving Himel (1950 Senate Committee, Minutes, 33). Since the ACL was essentially the CFBR in a different form, the CFBR also claimed to have encouraged the debate in the Senate; see letter to Lorne Pierce from Sandwell, seeking financial and other support for the CFBR, 12 April 1950 (Pierce Papers, vol. 19, file 5). The lobbying of the JLC is discussed in Kaplansky's "Notes" on his "Report" for 1949, at 117-8, Kaplansky Papers, vol. 20, file 7; at his urging the Ontario Federation of Labour sent a letter to the Prime Minister.

[149]See the letter to Prime Minister St. Laurent, 28 March 1949, from members of the CLAT who describe themselves as part of that group's Committee for a Bill of Rights (ACLU Papers, vol. C, file 14).

[150]Saturday Night: "For a Bill of Rights," 7 March 1950; "The Bill of Rights," 16 May 1950; "In Time of Emergency," 23 May 1950; "Guarantees for Liberty, 30 May 1950.

[151]1950 Senate Committee, Minutes, i, 33. It is ironic that, at about the same time, the federal cabinet was debating how best to oppose the draft covenant on human rights being prepared by the United Nations as the next step after the adoption of the UDHR. As Minister of Justice Garson pointed out, the success of a covenant restricting Canadian sovereignty would make it much more difficult to oppose domestic demands for a bill of rights (MacLennan, "Toward the Charter," 200, 208).

[152]The UDHR rights are listed in a variety of sources, including the pamphlet Human Rights: The International Bill of Human Rights (New York: United Nations, 1988).

[153]The Senators were: Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt, and Wood. Only Gouin and Turgeon had been on the previous two human rights committees; Gouin had been co-chair of both committees. Roebuck himself used the committee as a forum to espouse his arguments in favour of a bill of rights (1950 Senate Committee, Minutes, 18).

[154]The brief has been reprinted in Heick, History and Myth, 216-34.

[155]These groups are listed at pp. 301-2 of the committee's Minutes. The civil liberties groups included the LDR, the MCLU, the ACL, and the VCCLU (represented indirectly by R. Grantham, Associate Editor of the Ottawa Citizen; see 151), while David Owens of the CLAM sent a letter. The labour groups included the CCL and the TLC; Kalmen Kaplansky of the JLC regretted that he could not appear, but promised (at 214) to send his brief by mail. The ethnic groups consisted of the CJC, the UJPO, the CRCIA, the JCCA and the Windsor Council on Group Relations (which had a strong interest in the rights of the black community). The only church that made its own presentation was the Church of England (although other churches sent in written submissions). The women's groups consisted of the NCW and the National Council of Jewish Women of Canada. Other groups included the YMCA, the CAAE (represented unofficially by E.A. Corbett), the World Federalists, the Save the Children Fund, and Canadian Youth Groups. In addition, King Gordon appeared, representing the United Nations Human Rights Division.

[156]Roebuck referred, at 69 of the Minutes, to the excellent press coverage given to the committee hearings.

[157]The two most extensive lists of past and present rights violations are those of the Toronto ACL, at 41 ff., and the CCL at 81 ff. of the Minutes. The references to "Indians" are at 84, and 165. For some time the VCCLU had been virtually the only human rights group to show an interest in the problems of Canada's aboriginal peoples. In June 1947 the group submitted a brief to the Special Joint Committee on the Indian Act, calling for extensive reforms which would bring native people to the level of "responsible citizenship." The government's reform of the Indian Act was introduced as Bill 267 in 1950, and on 13 June the association decried this response as inadequate (Lewis to different MPs, Herridge Papers, vol. 22, file 10-1).

[158]Saturday Night, 18 July 1950.

[159]All quotations taken from the Minutes, at 304-7.

[160]As Walter Tarnopolsky has noted, the UDHR had virtually no direct influence upon the bill of rights finally passed by the Diefenbaker government. However, he acknowledges that it did have an indirect effect, by helping to inspire the two parliamentary committees of 1947/8 and 1950 (Walter S. Tarnopolsky, "The Impact of United Nations Achievements on Canadian Laws and Practices," in Human Rights, Federalism and Minorities / Les droits de l'homme, le fédéralisme, et les minorités, ed. Allan Gotlieb [Toronto: Canadian Institute of International Affairs, 1970], 57, 61.)

[161]Proceedings of the Constitutional Conference of Federal and Provincial Governments, 10-12 January 1950 (Ottawa: King's Printer, 1950). A number of groups, including the CCL and TLC, urged that a bill of rights be written into the constitution during the fall 1950 meetings of the Dominion-Provincial Conference. None of the governments, except Saskatchewan, supported this idea (joint letter from the TLC and CCL calling for a constitutionally entrenched bill of rights, quoted in the November 1950 issue of Canadian Labour Reports;

1950 Proceedings, 36). The 1950 meetings, in any case, were a failure. This was the last Dominion-Provincial conference on constitutional reform until 1960, after the death of Duplessis and the coming to power of the Québec Liberals under Lesage.

[162]"Fight for Freedom' Empty -- Group Asks 'Bill of Rights'," Toronto Star, 8 May 1951. The meeting was also attended by the Secretary of State for External Affairs, the Minister of Justice, and the Minister of Citizenship and Immigration. The request was later read into the House record by CCF leader M.J. Coldwell (Hansard, House of Commons, 14 May 1951, at 2980). A good account of the meeting can be found in the CCL monthly, The Canadian Unionist, vol. XXV, no. 8, June 1951, and also in the 1951 Report of Proceedings of the TLC annual convention. In addition, a brief report on the delegation can be found in Kalmen Kaplansky's "Report" for May 1951, as well as his "Notes" for that year (Kaplansky Papers, vol. 20, files 11 and 12).

[163]Lower was still educating the public in the popular press. See, for example, his two guest editorials, "What is Democracy?" and "How to Maintain Democracy," Winnipeg Free Press, 7 and 13 November 1950. See also his article, "Whence Cometh Our Freedom," in Food For Thought, February 1951, which was taken from his brief to the 1950 Senate Committee on human rights.

[164]This meeting was also the catalyst for what almost became the Kingston Civil Liberties Association. Lower attempted to bring together a number of Queen's University academics, including the Principal, J.A. Corry, as well as Martyn Estall and Glen Shortliffe, in order to form an organization which could send a representative to the meeting. In the end, however, although he obtained support from most of his colleagues, he presented a brief on his own. (See Lower to the Queen's University Principal, 30 April 1951, and brief to the Prime Minister, 8 May 1951, Lower Papers, vol. 46, file 22.)

The CCL supported the recommendations of the Roebuck committee in its annual memorandum submitted to the Prime Minister on 11 April 1951 (National Committee for Racial Tolerance "Report" to the eleventh regular convention of CCL, 17 September 1951, CJA, ZA 1950, vol. 3, file 17). Kaplansky's Canadian Labour Reports also played an educative role; see, for example, "The Missing Amendment" editorial in the January 1950 issue (reproduced in Kaplansky's "Notes" for 1950, 20, Kaplansky Papers, vol. 20, file 9).

[165]According to MacLennan, relying apparently upon an interview with Irving Himel, the brief was written by Himel, Sandwell, and F.R. Scott ("Toward the Charter," 237).

[166]The resolution added: "... and that pending appropriate legislation such approval should affirm parliament's acceptance on behalf of Canada of the United Nations' declaration of human rights."

[167]The exact wording of the request did not explicitly mention entrenchment binding both Ottawa and the provinces, but Sandwell certainly understood it to mean this. See his editorial, "Keeping Discussion Calm," Saturday Night, 5 June 1951.

[168]Hansard, House of Commons, 14 May 1951, 2980.

[169]"Reminder to Ottawa," Globe, 15 May 1951.

[170]As Prime Minister St. Laurent put it, a constitutional amendment entrenching a bill of rights "would make it more difficult to proceed in the calm attitude which has been maintained up to the present time in our own efforts to secure agreement on a proper form to amend our own constitution in Canada" (Hansard, House of Commons, 21 May 1951, 3209). St. Laurent added, in response to the other part of the CFBR request, that there was no need for even a formal affirmation of support for the UDHR, since the United Nations was in the process of drafting a convention on this subject which would ultimately come before the Canadian government. Note that the Justice Department was, during this period, revising its draft human rights amendment to the Criminal Code as a way of forestalling demands for "the real thing," but it dropped the project by 1952 when public pressure for a bill of rights subsided (MacLennan, "Toward the Charter," 238-41).

[171]"Keeping Discussion Calm," Saturday Night, 5 June 1951.

[172]Premier Douglas, at least, was willing to support the CFBR proposal. See "Saskatchewan Urges Immediate Bill of Rights," Canadian Labour Reports, June 1951. However, it was obvious that Duplessis and his supporters in Québec were not likely to agree to any constitutional amendment that hampered their ability to deal with communists or Jehovah's Witnesses. One or two of the Québec Senators on the Roebuck committee found it necessary even to defend the padlock law.

[173]Scott to Sandwell, 25 April 1951, Scott Papers, vol. 9, file 11, Reel H-1221.

[174]For example, in the Senate committee discussions some of the Senators were unwilling to admit that the Japanese Canadians had been badly treated, and when George Tanaka of the JCCA made critical comments about government policy during the war, he encountered some rather defensive reactions (1950 Senate Committee, Minutes, 269).

[175]The conservative Toronto Telegram, for example, had criticized the notion of an entrenched bill of rights on the grounds that it might unduly limit the powers of government in times of emergency. This editorial, with Sandwell's rebuttal, is discussed in "In Time of Emergency," Saturday Night, 23 May 1950.

[176]For a suggestion in the House of Commons that a bill of rights was either a communist plot or tailor-made to protect them, see the speech by Hansell, 2 May 1950, 2104.

The chilly treatment meted out to the LDR by some members of the Roebuck committee clearly demonstrated that there was little to be gained by suggesting that a bill of rights would secure freedom of speech and assembly for political radicals. It is true that long-time civil libertarian E.A. Corbett of the CAAE noted that "[m]any of the objections to a constitutional Bill of Rights are based on the fear that it might provide opportunities for dissemination of communist propaganda by depriving the state of the weapons it needs to protect itself against

communist activities. These arguments overlook the fact that the most effective weapon against communism is understanding of, and pride in the things which distinguish a free society from a communist society (142)." This approach was later endorsed by Senator Roebuck (at 211), but it did not persuade all of the Senators. Senator David, for example, maintained that communists could not possibly be loyal to Canada (164), and his cross-examination of the Church of England representatives clearly revealed an outlook which was "hard" on communism and "soft" on civil liberties (253). In addition, Senator Doone expressed fear of "militant communism," while Senator Gouin said that the remarks made by the UJPO delegates about the padlock law were an "insult" to his province (211, 229).

The CCL, in the middle of a Cold War struggle with communist union members, was hardly more liberal than the conservative Senators. The organization admitted that it was worried about bill of rights protections against discrimination on the basis of political belief, and noted that "Communists or Fascists might use the section to force themselves into positions from which, in the interests of public safety, they should be debarred (82)."

[177]For a discussion of the LDR Criminal Code campaign, see Chapter 6 of this dissertation. The LDR began its national campaign for a bill of rights in June 1951, and one of the first steps was a conference held by its Toronto affiliate, the CRU (see CRU Informational Bulletin, June 1951, Park Papers, vol. 9, file 155; see also the December 1951 issue, MacLeod Papers, MU 7596, file 13.) The LDR launched a second campaign on "Magna Carta day," 15 June 1953 (LDR newsletter, 28 May 1953, and LDR special bulletin, 23 October 1953, Endicott Papers, vol. 63, file 1317). See also the LDR pamphlet, "Our Heritage of Liberty," by Roscoe S. Rodd, Q.C., which calls for a national bill of rights in 1954 (Park Papers, vol. 8, file 143).

Beginning in 1954 the British Columbia wing of the LDR also attempted to lobby the provincial government for a local bill of rights, drafted by the radical left-wing lawyer, John Stanton. (See "League for Democratic Rights" broadsheet, JLC Papers, vol. 46, file 9. See also: "An Act to Declare and Enforce Certain Civil Rights," as well as a letter from LDR Executive Secretary Tilley Collins to BC government Provincial Secretary Wesley Black, 1 February 1955, response on 4 February (Briefs to the Executive Council of British Columbia, file 171, UBC Special Collections).

[178]See the Sixth annual report of the Standing Committee on Racial Discrimination of the TLC, September 1951 (CJC archives, ZA 1950, vol. 3, file 17). See also the annual reports of the National Committee for Racial Tolerance of the CCL for 1951-55 (CJC Archives, ZA 1950, vol. 3, file 17; JLC Papers, vol. 34, files 8, 12, 13), and Kaplansky's "Notes" for 1952 (at 4, 25, 87-92), 1953 (26), 1955 (129-30), and 1956 (48), in Kaplansky Papers, vol. 20, files 13 and 15, and vol. 21, files 4 and 6.

[179]Diefenbaker's calls for a bill of rights in the House are listed above. He also made speeches outside of the House; see, for example, "Do We Need a Bill of Rights?" [CBC "Citizen's Forum" Broadcast], 18 March 1947, mentioned in letter from Tannis Murray of CBC to Diefenbaker, 28 March 1947, Diefenbaker Papers, Series III, vol. 3, file: "Bill of Rights, "Jan 1947-June 1947," Reel M-7414, document 001401. In a 1951 CBC broadcast Diefenbaker

indicated that it was now Conservative policy to demand a bill of rights; this is discussed in "PC Party and Bill of Rights," Saturday Night, 10 July 1951. See also the published version of an address given on 5 June 1952 to the CAAE: "Freedom and Responsibility," Food For Thought 13 (October 1952), 15-18. Note, however, that during the 1950s some of the fire had gone out of Diefenbaker's demands for a bill of rights (MacLennan, "Toward the Charter," 277-8).

[180]Alistair Stewart called for a bill of rights on 16 October 1951 (at 87 of Hansard, House of Commons) and 24 March 1952 (at 730). Stanley Knowles referred to the need for a rights bill on 6 April 1954 (at 3714), and so did George Castledon on 14 April 1954 (at 4087); on 7 February 1955 (at 894-5) both David Croll and M.J. Coldwell withdrew bill of rights resolutions in favour of John Diefenbaker's, and Coldwell moved another resolution on 30 January 1956 (at 690).

[181] For a brief discussion of the Supreme Court's civil liberties cases in the 1950s, see Chapter 4 of this dissertation. One of them, Switzman, is dealt with in some detail in Chapter 5.

[182]Winner v. S.M.T. Eastern Ltd. and A.-G. Can. [1951] SCR 887. For a brief discussion, see Schmeiser, Civil Liberties in Canada, 261-2. According to Peter Russell, this was the opening of Rand's "Crusade to establish constitutional protection for the enjoyment of civil liberties in the provinces" (Russell, The Supreme Court of Canada, 192.) The decision is also a good example how the judicial protection of civil liberties could be combined with a "nation building" approach.

[183]Saumur v. Québec [1953] 2 SCR 299.

[184]Three of the five judges (Kerwin and Rinfret, Taschereau concurring with Rinfret) held that the law affected religious freedom, and that this was an area within provincial jurisdiction. The other two judges (Cartwright and Fauteux) concluded that the pith and substance of the law was the regulation of streets, also something clearly within provincial jurisdiction.

[185]The phrase "principle of fundamental character" comes from Mr. Justice Rand, at 327 of Saumur. This case has been called "the high-water mark of judicial support for Rand's civil libertarian position" (Randall P.H. Balcome, E.J. McBride, and Dawn A. Russell, Supreme Court of Canada Decision-Making: The Benchmarks of Rand, Kerwin and Martland [Toronto: Carswell 1990], 206).

[186]The Supreme Court made it clearer, a few years later in the Birks decision, that freedom of religion fell within federal jurisdiction, although it was only in 1963, with Robertson and Rosetanni, that all doubts about this were removed (Tarnopolsky, The Canadian bill of Rights, 33).

[187]See, for example, the article by F.A.Brewin, long-time civil libertarian and counsel in the CCJC deportation case, that Saumur and other Supreme Court decisions in the 1950s supported the notion of a legislated bill of rights ("Case and Comment," The Canadian Bar

Review XXXV [1957]: 554-8).

[188]Winnipeg Free Press: "Needed -- A Reference to Supreme Court," 21 January 1954, and "Constitutional Freedom in Peril; The Jehovah Witnesses' Case" [Free Press Pamphlet no. 48], 3, 5. For a brief discussion of the connection between the Supreme Court civil liberties cases of the 1950s and the demand for a statutory bill of rights, see Snell and Vaughan, The Supreme Court of Canada, 207-8.

[189]"A Dangerous Amendment," Saturday Night, 3 February 1954.

[190]Winnipeg Free Press, "Protecting Our Birthrights: Disallowance or Bill of Rights?" [Free Press pamphlet no. 51, May 1954], 20. See also the pamphlet of editorial reprints from January 1954, "Constitutional Freedom in Peril," as well as "Rights and Citizenship: The Threat to Our Freedom" [no. 49], originally a speech by Sifton, 1 April 1954. Sifton later wrote to A.R.M. Lower, on 22 June 1954, saying "I have some little apprehension with respect to a full-fledged Bill of Rights because I fear it would open the door to every crack-pot in Canada to demand every possible clause. What we had in mind was a very simple and brief expansion preamble of the British North America Act" (Lower Papers, vol. 46, file C-22).

[191]Sifton to Lower, 22 June 1954; Lower to Himel, 6 July and 23 August 1954. Lower was aware of other aspects of Québec's treatment of religious minorities; in late 1953 he received a letter from Professor D.C. Master of Bishop's University, noting that the province had banned the film "Martin Luther," and asking him for suggestions (Lower Papers, vol. 46, file 22.)

[192]Himel to Lower, 22 July 1954, Lower Papers, vol. 46, file 22.

[193]Hill to Kaplansky, 28 March 1954, JLC Papers, vol. 41, file 15.

[194]"Revised Laws on Treason," Ottawa Citizen, 8 April 1954. This editorial approved of Stanley Knowles' remark in the House that the proposed amendments of the sedition and treason clauses of the Criminal Code demonstrated the need for a bill of rights.

[195]The Minister of Justice, Stuart Garson, while careful to point out that many supporters of a bill of rights were "estimable citizens," nevertheless argued that "there is no political party or organization in Canada today which is more active than the communist party in its support of a bill of rights. Why? Because I would suggest that a Canadian bill of rights would suit the interests and plans of that party" (Hansard, House of Commons, 7 February 1955, 906).

[196]Another external development involved two draft UN international covenants (later to become the Civil and Political Covenant and the Economic, Social and Cultural Covenant). As MacLennan has noted in some detail ("Toward the Charter," 262-71), this necessitated a rethinking of Ottawa's position on human rights, accepting their international importance as a means to secure anti-communist solidarity. However, there is no evidence that this

immediately aided the domestic struggle for a bill of rights.

[197]Khrushchev's speech and its impact on Canadian communists has been discussed briefly in Chapter 5. As noted in that chapter, groups like the CRU and LDR probably withered away soon after. In 1955 and 1956 the Vancouver branch of the LDR was actively lobbying the Victoria government for a provincial bill of rights, but there appears to be no archival materials later than this; see the Briefs to Executive Council of British Columbia, files 171, 186.

[198]According to the Gallup Poll of Canada, by 1957 about 60% of Canadians thought that their civil liberties were fully protected, as opposed to 40% just after the Gouzenko Affair. The reason given for this was that there was "a lessening fear of communism, socialism, and left-wing political movements in Canada," for while in 1947 the left was seen as a threat by 11% of the population, by 1957 only 1% agreed with this attitude (CIPO [Gallup] press release, 2 February 1947, Diefenbaker Papers, series IV, vol. 22, file 4131, Reel M-5557, document 1380-1). Note, however, that Wilfrid LaCroix was still trying to outlaw communism in 1957 (Hansard, House of Commons, 17 December 1957, 2492). For an example of Diefenbaker viewing human rights protection as a bulwark against international communism, see his speech of 12 January 1959 (cited in MacLennan, "Toward the Charter," 272). For a defense of Diefenbaker's bill of rights that used the "free world" argument, see the testimony of Minister of Justice Davie Fulton (Minutes of Proceedings and Evidence of the Special Committee on Human Rights and Fundamental Freedoms (Ottawa: Queen's Printer, 1960), 458; see also Hansard, House of Commons, 4 July 1960, 5718 [Robert MacLellan], and 1 August 1960, 7382 [James Macdonell].

[199]Corrigan, Canadian Party Platforms, 221, 239.

[200]Young, Anatomy of a Party, Appendix A (Winnipeg Declaration), 316. Organized labour had continued to call for a bill of rights, and even inserted a demand into the constitution of the newly-formed Canadian Labour Congress in 1956. This was matched later by the Winnipeg Declaration, in which the platform of the nascent New Democratic Party included a reference to a bill of rights (Kaplansky "Notes" for 1955, 128-9, Kaplansky Papers, vol. 21, file 4; Kaplansky "Report" for December 1955, Kaplansky Papers, vol. 21, file 5; Kaplansky "Notes" for 1956, 48, Kaplansky Papers, vol. 21, file 6; Carrigan, Canadian Party Platforms, 221).

[201]Bruce Hutchison, "Hard Money and Soft Heads," Financial Post, 19 March 1955.

[202]Shortly after the Supreme Court decision, a Globe editorialist wrote, "[o]nce again, the judicial side of Government has shown a keener appreciation of basic rights and liberties than is to be found in the executive one" ("After Twenty Years," 11 March 1957). Later, when debating the merits of Diefenbaker's proposed bill of rights, at least one MP (Alexis Caron). argued that the Supreme Court civil liberties cases demonstrated that the judiciary provided sufficient protection for basic rights (Hansard, House of Commons, 4 July 1960, 5675). On

the other hand, the Switzman case was also seen as a defeat for the supporters of a judicially-developed bill of rights, for only three of the judges went beyond the concept of *vires* and developed the "implied bill of rights" argument. (Kellock and Rand mentioned the Duff Doctrine and said that the law was unconstitutional on the grounds that it interfered with freedom of opinion, and Mr. Justice Abbott went even further, arguing that limiting public debate was beyond the power of both the provinces and Ottawa.) For this reason Andrew Brewin suggested that it was time for Parliament to build on the judicial tradition and create a constitutionally entrenched bill of rights ("Case and Comment" [on Switzman], The Canadian Bar Review XXXV [1957]: 554-558, at 558). In retrospect, Switzman marked the high-water point for the "implied bill of rights." Mr. Justice Abbott later preached it in Oil, Chemical and Atomic Workers International Union v. Imperial Oil [1963] SCR 584, but he never persuaded a majority of the court to adopt this line of argument.

[203]The Conservatives said almost nothing about a bill of rights in the 1957 election campaign, but instead stressed the rights of Parliament (in the wake of the Pipeline debate). For a discussion, see Belliveau, "Mr. Diefenbaker," 73-9.

[204]The CCF MPs made it clear that they wanted Diefenbaker to take immediate action; see the questions by Alistair Stewart in the House of Commons, Hansard, 11 October and 1 November 1957, 18, 648, and the resolution by M.J. Coldwell, 6 January 1958, 2887. Meanwhile, Minister of Justice Fulton was proceeding on the matter with his officials (Belliveau, "Mr. Diefenbaker," 80-3). Diefenbaker first mentioned a bill of rights in his 1958 election campaign in Vancouver; he promised that the bill would be sent first to the Supreme Court for a ruling on its constitutionality ("10,000 Turn Out For PM," Winnipeg Free Press, 14 March 1958).

[205]Hansard, House of Commons, 5 September 1958, 4638 ff.; a copy of the original bill was published in The Canadian Bar Review XXXVII (March 1959): 1-3.

[206]This also meant that the bill was not intended to protect citizens from rights violations by other citizens (which was covered to some degree by Ottawa's FEP legislation although for the most part such matters fell within provincial jurisdiction).

[207]Hansard, House of Commons, 5 September 1958, 4641 ff. Diefenbaker referred to the Foreign Exchange Control Act (which, for a while, barred access to the courts in cases where an official had decided that the law had been broken), the Eldorado affair (briefly mentioned in Chapter 3, involving an investigatory committee which denied the right to counsel or appeal), and the Oatman case (where an order-in-council prohibited an appeal to the Supreme Court in an action originally launched against the Wheat Board).

[208]When Diefenbaker wrote his memoirs, he praised the Bill of Rights by noting that "Sixteen years have now passed and we have yet to see a piece of legislation passed by Parliament 'notwithstanding' the Bill of Rights" (John G. Diefenbaker, One Canada: Memoirs of the Right Honourable John G. Diefenbaker, vol. II: The Years of Achievement 1957-1962 (Toronto:

Macmillan 1976), 258).

[209]MacLennan, "Toward the Charter, 337.

[210]Hansard, House of Commons, 1940, 748.

[211]The last section of the bill said that anything done by government under the authority of the War Measures act "shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the Canadian Bill of Rights." This form of executive (and legislative) *carte blanche* was incorporated into s. 5 of the final draft.

[212]Diefenbaker, The Years of Achievement 1957-1962, 262-3.

[213]By the time that the legislation was almost passed, even the Liberals were calling for stronger limits on what could be done by government under the War Measures Act (Hansard, House of Commons, 1 July 1960, 5651 [Lester Pearson]).

[214]In the years following the Second World War, in reaction to the centralizing policies of the Liberals, the Conservative Party had increasingly identified itself as the party of provincial rights (Belliveau, "Mr. Diefenbaker, 67).

[215]Quoted by MP Alexis Caron (Hansard, House of Commons, 6 January 1958, 2917-8).

[216]Hansard, House of Commons, 5 September 1958, 4642-4. The opposition pointed out that Diefenbaker was not following his own earlier recommendation that the issue of constitutionality be sent to the Supreme Court in a reference case. Nor was he following through on his other recommendations that there should be a standing House committee on civil rights and a civil liberties division in the Department of Justice (see Pearson in Hansard, House of Commons, 5 September 1958, 4648).

[217]Hansard, House of Commons, 18 July 1959, 6293.

[218]When the newly-formed CCL created a National Committee on Human Rights (NCHR) in 1956, Kalmen Kaplansky was appointed Associate-Secretary. Responding to a decision by the Human Rights Commission of the United Nations to arrange a National Conference on Human Rights in commemoration of the tenth anniversary of the UDHR, the NCHR agreed to join forces with the Canadian Citizenship Council to sponsor this conference; soon these groups were joined by the CAAE and the United Nations Association in Canada; a number of other national groups joined later. This led to the creation of a Human Rights Anniversary Committee as a coordinating body, with Sid Blum (of the JLC) as the executive secretary. The committee decided to hold the national human rights conference in Ottawa (including a Citizens' Commission on Human Rights), as well as similar celebrations across the country; this provided considerable publicity for human rights issues, including the recently-introduced Diefenbaker Bill of Rights. For information, see Kaplansky's "Notes" for 1956, 48, Kaplansky Papers, vol. 21, file 6; Minutes of NCHR meeting, 17 December 1956, JLC papers, vol. 13,

file 2; see also JLC papers, vol. 21, files 13, 16, 17 and vol. 34, files 18-19. This is also discussed briefly in MacLennan, "Toward the Charter," 291-5, 305.

[219]Laskin had earlier prepared a memorandum for the Prime Minister which was sympathetic. This memorandum, and Laskin's presentation to the National Conference, are discussed in Belliveau, "Mr. Diefenbaker, 91-2." Laskin's position, which called for a constitutional amendment that limited both Ottawa and the provinces, was later expanded into his article, "An Inquiry Into the Diefenbaker Bill of Rights" in The Canadian Bar Review XXXVII (1959): 77-134.

[220]As noted earlier, large coalition delegations were a favourite device of Himel and the ACL.

[221]"P.M. Raps Critics Of His Bill of Rights," Ottawa Journal, 30 April 1959. A copy of a letter from Irving Himel to prospective members of the ad hoc coalition, including the proposed submission to Prime Minister Diefenbaker, can be found in the CBA Papers, vol. 9, file 128. A partial list of the members of the 1959 delegation can be found in Himel's testimony to the 1960 parliamentary committee (Minutes, 19 July, at 169).

Diefenbaker referred favourably to this delegation in the House (Hansard, 7 July 1960, 5945). It evidently persuaded the government to make some minor additions to the protections of the bill (memo from Fulton to Diefenbaker, 11 May 1960, Department of Justice files, vol. 146, file 18600-8, pt. 1).

[222]W.S. Owen [CBA president] to Himel, 17 April 1959; Owen to Senator J.W. deB. Farris [concerning the history and composition of the Advisory Committee], 28 October 1958; "Extract from Mid-Winter [Civil Liberties Section] Meeting Transcript," 3 March 1959 (CBA Papers, vol. 9, files 123 and 128, and vol. 13, file 200). Christopher MacLennan intimates that CBA resistance to the bill of rights may also have stemmed from David W. Mundell, the chair of the Civil Liberties Section in the late 1950s. He had worked on human rights issues as a lawyer for the Justice Department in the 1940s and 1950s, and had been counsel for the Kellock-Taschereau Royal Commission ("Toward the Charter," 313-4).

[223]A.R.M. Lower, "The Bill of Rights," Canadian Commentator 3 (March 1959): 2-3; "The Bill of Rights and Its Sleeping Partner" [CBC radio broadcast], 13 March 1959, cited in MacLennan, "Toward the Charter," 309, note 34.

[224]J.M. Beck, "One Bill of Rights or Two," Dalhousie Review 39 (1959-60): 31-42; Stuart Ryan, "Charting Our Liberties -- The Proposed Canadian Bill of Rights," Queen's Quarterly 66 (1959-60): 389-404.

[225]F.R. Scott delivered a critique of Diefenbaker's proposal in a speech to the Canadian Club (Montréal Star, 11 November 1958), and in the Alan B. Plaunt Memorial Lectures, at Carleton University, in March 1959 (reprinted as Civil Liberties and Canadian Federalism). This was later used as ammunition in the House by H.W. Herridge to attack Diefenbaker's proposed legislation (Hansard, House of Commons, 7 July 1960, 5912). Roebuck argued

later, in the Senate, that the bill should have been a declaration, as suggested by his 1950 Special Committee, but in the end he supported it "enthusiastically" (Hansard, Senate, 4 August 1959, 1219-1223).

[226]The details of Bill C-60 differed from Bill C-79 and from the final product (the 1960 Bill of Rights) in a few ways. The latter included explicit protection for an expanded list of legal rights, as well as a "notwithstanding" clause that explicitly guaranteed parliamentary supremacy. Moreover, the 1960 legislation contained a preamble with a reference to God and spiritual values; explicit protection against arbitrary detention, imprisonment or exile; protection against self-incrimination; a presumption of innocence until proven guilty; guarantee of a right to a fair hearing in other than criminal cases; and a mention of the right to an interpreter. (For a discussion of how the government was "largely indifferent" to its critics, see MacLennan, "Toward the Charter," 318-327).

[227]"PM Links Rights Bill, Constitution," and "PM Describes Rights Bill As Conscience of Canada" [including the text of the bill], Globe, 1 and 2 July 1960; Hansard, House of Commons, 1 July 1960, 5642 [Diefenbaker], 5650 [Pearson], and 4 July 1960, 5657 [Pearson], 5666 [Argue], etc.; "Teeth for the Bill of Rights" [editorial], Globe, 6 July 1960.

[228]In addition to the Minister of Justice Davie Fulton, a number of prominent individuals appeared on their own before this committee, including F.R. Scott, C.P. Wright, Dean W.F. Bowker (Dean of Law at the University of Alberta), Arthur Lower, Otto Lang (professor of law at the University of Saskatchewan), Maxwell Cohen (Acting Dean, Faculty of Law, McGill University), and F.D. Varcoe (now the former Deputy Minister of Justice). In addition, there appeared representatives of the Seventh-Day Adventist Church, the CJC, CBA, ACL, CLC (including Eugene Forsey the Research Director, and Kalmen Kaplansky, now director of its Department of International Affairs), the Canadian Chamber of Commerce, the Canadian Daily Newspaper Association, and the Christian Scientist Church.

[229]Given the tenor of the times, it is not surprising that were no demands for protection of such Charter-era "modern" rights as the rights of the physically or mentally disabled, or the rights of gays and lesbians. Indeed, it is perhaps remarkable that, early on in the process, the son of a friend of Diefenbaker suggested in a letter that "freedom of morality" be included as a way of protecting homosexuals (mentioned by MacLennan, "Toward the Charter," 303, note 24).

[230]Liberal leader Lester Pearson [responding to Diefenbaker's introduction of C-79], Hansard, House of Commons, 1 July 1960, 5651. See also the criticism of past Liberal human rights violations by Liberal MP J.W. Pickersgill (Hansard, House of Commons, 7 July 1960, 5908). The Ottawa Journal referred sarcastically to the "spectacle of 'my-party-right-or-wrong' Liberals suddenly aflame for liberty," in "Belated 'Liberal' Concern For Our Freedoms," 1 May 1959.

[231]In Civil Liberties and Canadian Federalism F.R. Scott criticized the bill for protecting only political and legal freedoms and not mentioning cultural and economic rights or the right not to suffer discrimination in employment.

[232]Hansard, House of Commons, 4 July 1960, 5709 [Ernest Broome]; letter from the Canadian Chamber of Commerce, 14 July 1960, to the 1960 Committee (Minutes, 232). The CCC did, however, ask for a clause protecting the right of a person "to choose and follow the vocation of his choice regardless of the membership or non-membership in a labour union or employer's organization." Similar letters came from the Waterloo Chamber of Commerce and the Canadian Construction Association.

[233]The members of the CBA could not reach a consensus other than to say that "there is unanimity among us that human rights and fundamental freedoms must be preserved and protected for everyone in Canada" (1960 Committee, Minutes, 105). For a brief summary of the arguments against a bill of rights, including scepticism about handing over more power to judges, see Tarnopolsky, The Canadian Bill of Rights, 12. Of course, not all lawyers took this position. F.R. Scott admitted that "[m]ost of us in the law schools are reared in the Diceyan gospel," but he argued that Canada in the mid twentieth-century was rather different than late nineteenth-century Britain (Civil Liberties and Canadian Federalism, 12).

[234]See, for example, the speech by Alexis Caron in the House of Commons on 6 January 1958 (Hansard, 2915). However, Caron's later speech, on 4 July 1960 (Hansard, 5675) was critical largely because the legislation was uninspiring, and also unnecessary given the recent civil libertarian decisions of the Supreme Court. See also the speech by Romuald Bourque, who worried that the bill would somehow constitute an infringement of Québec's civil code (Hansard, House of Commons, 4 July 1960, 5703), and a similar complaint by Senator Jean-Francois Pouliot (Hansard, Senate, 4 August 1960, 1206). Finally, note that, according to Lester Pearson, no Francophones at all testified before the 1960 parliamentary committee dealing with Bill C-79 (Hansard, House of Commons, 1 August 1960, 7378).

[235]For example, when Diefenbaker informed the House that a constitutional amendment at that time was impossible to attain, he really meant that it was impossible to achieve an amendment that would be binding on all of the provinces as well as Ottawa; he was ignoring the possibility of an amendment, entrenched or not, which only bound the federal government (1 July 1960, 5648). On the other hand, the opposition views were also simplistic; Lester Pearson maintained that Bill C-79 was only a declaratory statute (Hansard, House of Commons, 1 August 1960, 7375).

[236]The government did make some minor changes to its proposed draft in the period between the introduction of Bill C-60 in 1958 and the passage of Bill C-79 in August 1960. Some of these are mentioned later in this chapter, and others included the addition of certain other freedoms, such as the right not to be arbitrarily detained, imprisoned or exiled, a protection against self-incrimination, the right to be considered innocent until proven guilty, and the right to an interpreter.

[237]Note, however, that there was still confusion in the public mind about the exact nature of the bill. The Ottawa Journal, for example, supported it as a "declaration" ("That Bill of Rights," 4 July 1960).

[238]The final version of the law included an important qualification not in the original -- that every law of Canada can "operate notwithstanding the Canadian Bill of Rights" if it is so mandated by an express declaration in an act of Parliament. This no doubt was intended to encourage the judiciary to strike down legislation, but it failed to do so. As is well known, without more explicit encouragement the Canadian Supreme Court was unwilling to undermine the sovereignty of Parliament.

[239]Speech by Hazen Argue, Hansard, House of Commons, 4 July 1960, 5671.

[240]Diefenbaker encountered opposition on the bill of rights issue from the Union Nationale even after the death of Duplessis. See Belliveau, "Mr. Diefenbaker, 105-7.

[241]Globe, 26 July 1960; also quoted by Paul Liberal MP Martin in the Minutes of the 1960 Committee, 545. This proposal did not come as a complete surprise. As Lester Pearson had earlier noted in the House, during the recent Québec election Lesage several times promised to create a provincial bill of rights (Hansard, House of Commons, 4 July 1960, 5660). According to Belliveau, the statement by Lesage was probably engineered by the federal Liberals, especially Lester Pearson and Paul Martin (Belliveau, "Mr. Diefenbaker, 111).

[242]The matter was first raised by committee member Jean Paul Deschatelets on July 25, and the following day the issue was raised again by Paul Martin (1960 Committee Minutes, 521, 545 ff.). A few days later, on 1 August, both Lester Pearson and Hazen Argue suggested in the House that events at the federal-provincial conference the previous week indicated that Ottawa should have been attempting a constitutional amendment during the previous two years, and that even now this would be the wiser course (Hansard, House of Commons, 7376, 7378).

[243]1950 Committee, Minutes, 305. Diefenbaker told the Canadian people, in his speech on the eve of Dominion Day, that his bill was a "first step," and that he would be happy to entrench it into the constitution if at any point he could reach an agreement with all the provinces ("PM Links Rights Bill, Constitution," Globe, 1 July 1960). See also the discussion of MacLennan, "Toward the Charter," 331-2.

[244]For more details, see MacLennan, "Toward the Charter," 333-4.

[245]Debate in the Senate, including a perfunctory examination by the Standing Committee on Banking and Commerce (in which the Minister of Justice appeared, but no other people were called to testify), took place on 4 and 5 August. Several Senators were unhappy that the bill was given to them "in the dying days of the session," so that they had little time to debate the matter. No amendments were made by the Senate.

[246]Hansard, House of Commons, 5 September 1958, 4644.

[247]1960 Committee, Minutes, 360-397.

[248]1960 Committee, Minutes, 369. Frank Scott had made a similar point much earlier; see his article, "Dominion Jurisdiction Over Human Rights and Fundamental Freedoms," The Canadian Bar Review XXVII (1949): 497-536, at 497-8.

[249]1960 Committee, Minutes, 370.

[250] As Cohen points out, the Bill of Rights is an uneasy mixture of the "classic" British and "modern" international approaches. Diefenbaker, as a Tory conservative wedded to the preservation of British traditions, must have been reluctant to jettison the older discourse completely.

[251]Scott, Civil Liberties, 56.

CONCLUSION

This dissertation has explained a number of changes that took place in Canada between 1945 and 1960, as Canada began to move into the modern "age of rights." It has stressed the role of the Canadian "human rights policy community," identifying its key members, tracing its roots back to before 1945, and showing how different individuals and interest groups joined together in a number of "policy networks" for a variety of rights issues.

This dissertation has also examined in detail a number of successes, as well as a few failures, of this human rights community. Among the failures was an inability to create a national civil liberties organization, impotence about David Shugar's persecution, the marginalizing of the radical left civil liberties groups, and the passage of a bill of rights that was neither constitutionally entrenched nor applicable to the provinces. The successes, on the other hand, included a campaign against the deportation of Japanese Canadians, litigation in two cases involving discriminatory restrictive covenants and one involving the padlock law, opposition to certain amendments to the Criminal Code, the passage of a number of anti-discrimination statutes as well as pressure to ensure that they were adequately enforced, and the creation of a political climate that made it possible to achieve at least the second-best Diefenbaker version of a bill of rights.

A fundamental thesis of this dissertation has been that the history of human rights in the immediate post-war era was made by activists in the human rights community, operating within a set of conditions over which they had little control. Chapter 1 of this dissertation identified a number of early barriers to the evolution of Canada into the age of rights, and subsequent chapters noted the attenuation of many of these inhibiting factors. For example, while before the Second World War Canada suffered from a relatively undeveloped economy devastated by the Great Depression, after the war the country went through an unparalleled era of economic prosperity and the growth of the modern welfare state.[1] This made it possible to enjoy relative peace in the area of labour-management relations (including the rise of social unionism), more benign economic competition between members of different ethnic groups,

and a high level of performance legitimacy for the political system. As a result, except for the problems of the Cold War, which had diminished considerably by 1960,[2] people in general felt less threatened, and therefore more tolerant of the rights of others.[3]

The human rights community also benefitted from a shift in values and discourses. As Chapter 1 has suggested, in the pre-war period a "modern" perception of human rights was impeded by the dominance of classical liberalism, libertarian and majoritarian conceptions of democracy, and the influence of the "tory touch." In the late 1940s and the 1950s much of this changed. Classical liberalism gave way to reform liberalism, worries about "executive despotism" diminished, faith in the Diceyan gospel of parliamentary supremacy was shaken, and the discourse of "British liberties" gave way to a new language of human rights. At the same time, the notion of democracy was increasingly seen as embracing minority rights, and the old tory preoccupation with the British connection gave way to a more inclusive conception of Canadian citizenship.[4] Perhaps Canadians still remained authoritarian. (Later, the events of the October Crisis of 1970 suggested to some that this was indeed the case.) In the late 1950s, however, this authoritarianism was not widely evident.[5]

Finally, the institutional/legal heritage had not remained an insuperable barrier to progress. Blocked by judicial conservatism in the area of discrimination, the human rights community had found that lobbying the federal and provincial legislatures could produce satisfactory results, especially with a political system that made it relatively easy for the executive to make significant changes.[6] In addition, an activist and liberal Supreme Court had developed some important safeguards for traditional civil liberties, and John Diefenbaker had created a Bill of Rights that might possibly, in the hands of equally activist and liberal judges, provide significantly better protection for the rights of minorities.[7]

Admitting that the circumstances after the War were generally favourable for a "rights revolution" in Canada, what can we say about the role of the human rights community? First, it is clear that their policy successes did not occur automatically. This was a period of planning, organization, struggle, and perseverance. History was made by individuals, sometimes acting alone, but more often working with others in groups and coalitions.

But why did some campaigns succeed and others fail? As this dissertation has suggested, it was not always easy to bridge the divisions between equality rights groups and civil liberties groups, communists and non-communists, and activists living in different regions. In addition, much of the impact of these organizations came from reasoned argument and moral suasion, rather than from brute political power; for the most part they did not represent many votes or sources of campaign funds.

There were, however, some important sources of power. For one thing, the non-communist rights community attracted influential "respectable" members of the universities, major churches, trade unions, artistic community, social service organizations, ethnic groups, and the press.[8] It is true that many of these people leaned towards the left, but this was not always a disadvantage in post-war Canada where social democracy was relatively acceptable and its welfare state ideas were being coopted by the centre-right. Moreover, most of these groups were careful to tap into support from not just the CCF/NDP, but also from the Liberals and (to a lesser extent) the Progressive Conservatives.

Of course the human rights community, including even groups such as the CRU, were not asking for anything very radical.[9] On the whole, its members were simply demanding that the law (and social behaviour) be brought into greater harmony with certain fundamental values of reform liberalism. Moreover, this was usually done in an incremental fashion, so that society could become accustomed to each particular forward step before proceeding to consider the next request from the rights community.

The most successful of the rights groups were those with access to funds and the creation of professional staffs. The CCJC was effective in large part because it was able to reach the consciences and pocket books of so many Canadians, and able to hire a full-time organizer as well as pay for legal help. Similarly, the success of the JLC can in large part be attributed to its financial ability to pay for a first-class executive secretary, as well as for full and part-time secretaries in its local human rights committees. By contrast, the great weakness of the ACL was that it was run "out of Irving Himel's desk drawer." Had the ACL been able to succeed in the elusive goal of creating a truly national civil liberties organization, it might have had the funding to hire a permanent director who could have worked on issues

full time. Unfortunately, the organization remained voluntary and weaker than it should have been.

This is not to say that the ACL was ineffective. It accomplished much, partly because it relied heavily upon organizations with full-time paid staff members. The large delegations that lobbied the Ontario government for FEP and FAP legislation were to a large degree cobbled together by the paid secretaries of the JPRC and the Toronto labour committee. This, in turn, was only possible because these groups had fairly secure sources of funds. Because the Jewish community was by now relatively prosperous and well-organized, the CJC could help fund the JLC human rights program. Because the JLC had established close ties with organized labour, it was able to force a funding agreement with the CJC, and also to solicit more funds from trade unions.[10]

The radical left CRU, LDR, and MCLU also had access to money, which gave them the ability to hire full-time staff. To some extent they solicited money by placing newspaper advertisements and holding public meetings. However, they also received funding from a number of radical or communist trade unions. Yet as support for communism dwindled in the late 1950s these organizations found themselves unable to survive.

More than funding and staff was necessary, however. In an era when "networking" was not yet a cliche, the activists of the human rights community were effective coalition builders. The story of the human rights struggle includes more than just the civil liberties and human rights groups. These organizations also fostered contact with a variety of tangential human rights groups -- ethnic, religious, professional, press, and others.

In the final analysis, however, it was individuals who made the difference. While their freedom of choice was circumscribed by background factors, failure or success was dependent upon how well they played the cards that fate dealt them. Too often our memories of Canadian human rights history has obscured their contributions, or even forgotten them. To some degree (but perhaps not enough) academics are aware of the roles played by B.K. Sandwell, A.R.M. Lower, F.R. Scott, Eugene Forsey, David Lewis, or Bora Laskin. But when law students examine the Drummond Wren or Noble and Wolf cases, they ought to know something about Irving Himel, Edward Richmond, or Ben Kayfetz. When sociology

students learn about changing patterns of racial discrimination, they should realize that they were affected by people like Kalmen Kaplansky, Sid Blum, or Hugh Burnett. And all citizens who value their human rights should be aware that people have always had to fight for them; we owe a debt of gratitude to a large number of relatively unknown Canadians: Hugh MacMillan, E.A. Corbett, Margaret Spaulding, Roscoe Rodd, David Owens, Hunter Lewis, Paul Normandin, and many others.

ENDNOTES FOR "CONCLUSION"

[1]A well-known textbook on Canadian history refers to 1945-1960 as the "Boom Years" (Chapter 15 of R. Douglas Francis, Richard Jones, Donald B. Smith, Destinies: Canadian History Since Confederation [Toronto: Holt, Rinehart and Winston, 1988]). For a more detailed analysis, see Bothwell, Drummond, and English, Canada Since 1945.

[2]As noted in earlier chapters, although the Cold War may have put a temporary chill on libertarian rights, it also at times promoted egalitarian rights; politicians sometimes wanted to steal the thunder of the communists by demonstrating that racial justice and capitalism were not incompatible.

[3]The "threat" of Japanese Canadians on the West Coast had also evaporated because of their relocation to several other parties of the country and their resulting high levels of assimilation. In addition, racially-based immigration policy continued to exclude most peoples with non-European ethnic backgrounds. This is discussed, with reference to levels of tolerance in British Columbia for both Asians and native Indians, in La Violette, The Struggle for Survival, 178.

[4]Again, see La Violette, The Struggle for Survival, 178. Canadians continued, however, to define themselves as something other than Americans. As noted in earlier chapters, a good way to undermine nativism was to suggest that Canadians might fall into the patterns of racial conflict that plagued the United States. It was also hard for conservative Canadians to resist arguments in favour of FAP and FEP legislation when they heard that similar statutes were already in place in the supposedly less-enlightened United States.

[5]For a discussion of public support for the government's handling of the October Crisis, see Manzer, Canada: A Socio-Political Report, 285-6. Note also that the authoritarian treatment of the Doukhobours in British Columbia was still a problem in 1960, and continued for some time. By 1962 some concerned academics in that province decided to set up a Doukhobor defense fund because of the arrest of sixty Doukhobor leaders on the charge of conspiring to intimidate the Government of Canada and the BC legislature. By the end of the year this had produced a civil liberties conference out of which was created the B.C. Civil Liberties Association ("Canadian Calendar," Canadian Forum, August 1962; "Conference on the State of Civil Liberties in B.C" [brochure], JLC Papers, vol. 47, file 4).

[6]The parliamentary nature of the Canadian system is designed to focus power and give the executive the ability to make significant policy changes. As previous chapters have noted, once Leslie Frost was convinced of the need for anti-discrimination legislation, obstructionist interest groups (such as the Orange Lodge) or members of the legislature had little chance of stopping him. Similarly, once John Diefenbaker became Prime Minister, it was a foregone conclusion that Canada would have a bill of rights.

[7]Of course, as noted in the last chapter, the Bill of Rights turned out to be somewhat of a disappointment in the hands of an increasingly conservative and restrained judiciary. However, in 1960 all this lay in the future. On the other hand, although Ottawa still had no ethnically-neutral immigration policy in 1960, this was about to change, in large part because of the symbolism of the Bill of Rights. New regulations were brought in by Conservative Minister of Immigration Ellen Fairclough in January 1962 (Avery, Reluctant Hosts, 176).

[8]Initially the radical left civil liberties groups were able to attract some important names, such as C.B. Macpherson or A.Y. Jackson. As the Cold War developed, however, it became increasingly difficult for "respectable" Canadians to associate themselves with these groups.

[9]This dissertation has been written on the assumption that political freedom in a pluralist society is limited by the interests and power of Capital, but that within these limits individuals and groups can certainly make a difference. Progress in human rights was possible, first of all, because it never threatened the core interests of Capital, and in some cases even improved its interests by helping to create a harmonious society.

[10]Voluntary labour was of course still essential for these organizations. Members of the boards were not paid, and in many cases legal advice came *pro bono*, as was the case with Edward Richmond in the Noble and Wolf case, or David Lewis in a number of JLC cases.

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Nemetz, Nathan - 12 April 1995
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Stevenson, Marnie - 14 August 1996 (telephone)
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D - Archives and Manuscripts

CJCA	- Canadian Jewish Congress Archives
DC	- Diefenbaker Centre, University of Saskatchewan, Saskatoon
MA	- Manitoba Archives
ML	- Mudd Library, Princeton University, USA.
MUA	- McMaster University Archives
NAC	- National Archives of Canada
OA	- Ontario Archives
OJA	- Ontario Jewish Archives
QUA	- Queen's University Archives
TCA	- Trinity College Archives
UCA	- United Church Archives
UBC	- University of British Columbia special collections
VCA	- Vancouver City Archives
VUA	- Victoria University Archives,
VST	- Vancouver School of Theology archives

Akrigg Papers (G.V.P. Akrigg) - UBC
American Civil Liberties Union Papers (ACLU) - ML
Arnold Papers (Abraham [Abe] Arnold) - MA
Bennett Collection (William Bennett Memorial Collection) - UBC
Bunt Papers (W.P. Bunt) - VST
Callwood Papers (June Callwood) - NAC
Canadian Labour Congress (including the papers of both the Canadian Congress of Labour and the Trades and Labor Congress) - NAC
Canadian Bar Association Papers (CBA) - NAC
Canadian Security Intelligence Service Files (CSIS - including RCMP records) - NAC
Canadian Citizenship Council Papers - NAC
Cohen Papers (J.L. Cohen) - NAC
Cook Papers (Ramsay Cook) - QUA
Cooperative Committee on Japanese Canadians Papers (CCJC) - NAC and MUA
Cooperative Commonwealth Committee Papers (CCF) - NAC
Diefenbaker Papers, (John G. Diefenbaker) - NAC and DC
Dobson Papers (Hugh Dobson) - VST
Eggleston Papers (Wilfrid Eggleston) - NAC
Endicott Papers (James Endicott) - NAC
Fahrni Papers (Mildred Fahrni) - UBC
Fellowship for a Christian Social Order Papers (FCSO) - UCA
Frost Papers (Leslie Frost) - OA
Grant Papers (Mrs. W.L. Maude Grant) - NAC
Herridge Papers (Herbert W. [Bert] Herridge) - NAC
Holtom Papers (Edith E. Holtom) - NAC

Japanese Canadians Citizens Association Papers (JCCA) - NAC
Jewish Labour Committee Papers (JLC) - NAC
Joint Public Relations Committee Papers (JPRC) - OJA
Kaplansky Papers (Kalmen Kaplansky) - NAC
King Papers (Mackenzie King) - NAC
Lewis Papers (Hunter Lewis Family) - UBC
Lower Papers (Arthur Lower) - QUA
MacInnis Papers (Angus MacInnis) - UBC
MacLeod Papers (Angus MacLeod) - OA
McCurdy Papers (Alvin D. McCurdy) - OA
Ontario Labour Committee for Human Rights Papers (OLCHR) - NAC
Park Papers (Frank and Libby Park) - NAC
Parkin Papers (G.R. Parkin) - NAC
Parkin Papers (G.R. Parkin) - NAC
Partridge Papers (Glendon Partridge) - NAC
Pierce Papers (Lorne Pierce) - QUA
Richmond Papers (Edward Richmond) - NAC
Robertson Papers (R.G. Robertson) - NAC
Roebuck Papers (Arthur Roebuck) - OA
Scott Papers (F.R. [Frank] Scott) - NAC
Seeley Papers (Reginald Sidney Kingsley Seeley) - TCA
Silcox Papers (Claris Silcox) - UCA
Steeves Papers (Dorothy Steeves) - UBC
Student Christian Movement Papers (SCM) - VUA
Vancouver City Mayor's Papers - VCA
Wolf Papers (Bernard Wolf) - NAC
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