TOWARD THE CHARTER: CANADIANS AND THE
DEMAND FOR A NATIONAL BILL OF RIGHTS, 1929-1960

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Abstract

During the Great Depression and World War II there developed in Canada a deep concern for the safety of individual human rights. With the planned deportation of Japanese Canadians in 1944 and the events of the Gouzenko Affair in 1946, these concerns led to demands for new measures to protect Canadians individual rights. Between 1946 and 1960 a diverse group of Canadians argued that only through a national bill of rights entrenched in the constitution would Canadians' human rights be truly secure. For over ten years, the Liberal governments of Mackenzie King and Louis St. Laurent resisted these pressures in the belief that the existing system adequately guaranteed Canadians' rights. Not until the election of John Diefenbaker and the Progressive Conservatives in 1957 did the federal government move from this position. In 1960, the postwar campaign for a national rights bill ended in the qualified success of Diefenbaker's Canadian Bill of Rights.

Beginning with a survey of the events of the Depression and the Second World War, this dissertation examines the development of the campaign for a Canadian bill of rights from the end of the war to the enactment of the Diefenbaker Bill of Rights. Through an analysis of the efforts by organized labour, women's organizations, ethnic associations and individuals such as B. K. Sandwell, F. R. Scott, A. R. M. Lower and Irving Himel to secure an entrenched rights guarantee and the response of the federal government, an attempt will be made to explain the history of this campaign.

This analysis reveals that the demands for an entrenched bill of rights concerned

not only a new measure to protect human rights in Canada, these demands sought to ensure positive institutional change to the *method* of rights protection in Canada. Simply correcting the errors of the past was not enough. John Diefenbaker's 1960 Bill of Rights, as a statute affecting only federal jurisdiction, fell short of this goal. Nevertheless, the postwar campaign provided a firm foundation for Pierre Elliott Trudeau's suggestion for an entrenched Charter of Human Rights in 1968.

Keywords: human rights, Canadian Bill of Rights, Canadian Charter of Rights and Freedoms, constitution, racial discrimination, organized labour, J. G. Diefenbaker.

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List of Abbreviations

ACCL	All-Canadian Congress of Labour
ACL	Association for Civil Liberties, Toronto (1947-)
CBA	Canadian Bar Association
CCF	Co-operative Commonwealth Federation
CCL	Canadian Congress of Labour
CCLU	Canadian Civil Liberties Union, Montreal Branch
CFUW	Canadian Federation of University Women
CJC	Canadian Jewish Congress
CLA	Civil Liberties Association, Toronto (1940-1947)
CLC	Canadian Labour Congress
CLDL	Canadian Labour Defense League
CPC	Communist Party of Canada
CRU	Civil Rights Union
DOCR	Defence of Canada Regulations
ECCR	Emergency Committee on Civil Rights
ECOSOC	Economic and Social Council
ILO	International Labour Organization
JCCA	Japanese Canadian Citizens' Association, Toronto
JCCC	Japanese Canadian Co-operative Committee
JCCD	Japanese Canadian Committee for Democracy
JCPC	Judicial Committee of the Privy Council
JLCC	Jewish Labor Committee of Canada
JPRC	Joint Public Relations Committee of the Canadian Jewish Congress
LSR	League for Social Reconstruction
NCWC	National Council of Women of Canada
NUWA	National Unemployed Workers Association
OCLA	Ottawa Civil Liberties Association
TLC	Trades and Labor Congress of Canada
ULFTA	Ukrainian Labour-Farmer Temple Association
WMA	War Measures Act
WUL	Workers' Unity League

Introduction:

A “Canadian” Bill of Rights

“Rights without the sword are but mere words.” This play on the words of Thomas Hobbes serves as a fitting introduction to the postwar history of Canadian demands for a national bill of rights.¹ The international concern in the 1940s and 1950s for universal human rights invaded not only the conference rooms of the United Nations but also the newsrooms, classrooms and living rooms of Canadians. Taking their cue in part from the efforts of the U.N. and in part from a deep concern for the status of individual rights and freedoms at home, parliamentarians and professors, unionized workers and lawyers, ethnic associations and women’s organizations each challenged the governments in Canada to better ensure the human rights of their citizens. Although Canada had inherited a long tradition of common law respect for civil liberties dating back to the Magna Carta of 1215 and forward through such milestones as the 1628 Petition of Right and the 1689 Bill of Rights, these groups remained unsatisfied with the status quo in the years after World War II. They demanded fundamental changes in the way their country safeguarded the individual rights of the citizen; they demanded a constitutional bill of rights. Canadians, it seemed, were in search of a new sword.

¹ Cited in Jack Donnelly, *The Concept of Human Rights* (London: Croom Helm Ltd., 1985), 15.

Inevitably, any discussion of human rights leads to questions of their source, meaning and content. Political theorists and philosophers have offered a diverse collection of definitions ranging from rights as immutable claims derived from human nature to arguments that human needs determine human rights. Others have held that rights are “trumps” to be played against an intrusive state.² In this dissertation, a legal positivist approach will be adopted. Here, a human right is a “claim or an advantage possessed by a person or persons, *which is conferred or protected by law*, and which implies a corresponding duty on the part of another.”³ For most participants in the postwar bill of rights debate, the recognition of individual rights in the positive law was crucial to their concept of rights protection. This formed the core of their demands.

In 1945 Canada, the protection of human rights rested ultimately in the hands of Parliament and in the accepted principles of the common law. Unlike their American counterparts, the architects of Canadian confederation chose not to include a written bill of rights in the British North America Act. Instead, Canadians received a constitution “similar in principle” to that of the United Kingdom. The individual rights of the citizen were protected therefore according to the precepts of the English common law. The landmarks of English civil liberty, the Magna Carta, the Petition of Right, the Habeas Corpus Act and the Bill of Rights, and the case law which flowed from them provided the

² On these and other interpretations see Walter S. Tarnopolsky, *The Canadian Bill of Rights*, 2nd rev. ed. (Toronto: McClelland and Stewart Ltd., 1975); Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977); Donnelly, *Concept of Human Rights*; and, Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989).

³ Tarnopolsky, *The Canadian Bill of Rights*, 1. Italics added by this author.

primary source of human rights protection in Canada. Under the common law system, Canadians also received the benefit of the rule of law. According to A. V. Dicey, the recognized constitutional authority of the time, this principle held that the citizen was subject only to regular law and not the arbitrary use of power by the state or its representatives; that all were equal before the law; and that “the law of the constitution is not the source but the consequence of the rights of individuals as defined and enforced by the courts.”⁴ Together, the rule of law and the English civil liberties statutes formed the bedrock of human rights protection in Canada.

While Canada acquired this heralded tradition of English civil liberties protection, it also inherited the doctrine of parliamentary supremacy. Simply defined, this principle held that Parliament could make or unmake any law and that no body or person could set aside its legislation.⁵ Parliament, therefore, could not be bound by past legislation, nor could it bind the hands of its successors. In Canada the federal division of powers resulted in a divided supremacy with the central Parliament supreme in its jurisdiction and the provincial legislatures paramount in theirs. Therefore, while legislation could be challenged as *ultra vires* of jurisdiction, the principle itself remained. For many, the supremacy of Parliament was the greatest guarantor of individual freedom available. During both periods of crisis and peace, an ever-vigilant Parliament held the necessary power to ensure the safety of Canadians and their rights. At the same time, however,

⁴ A. V. Dicey, *Introduction to the Study of the Constitution*, 10th ed., ed. W. C. S. Wade (London: MacMillan Publishers, 1961), 202-203. Cited in Tarnopolsky, *Canadian Bill of Rights*, 120.

⁵ On parliamentary supremacy see Tarnopolsky, *Canadian Bill of Rights*, 92-112.

others recognized that abuse was possible. Parliament could suspend any safeguard offered by the statutory landmarks of English liberty and did so during the war and after. For many Canadians, the events of World War II and the Gouzenko Affair revealed the existing legal system's inability to protect fundamental human rights. After 1946 many Canadians responded with calls for change; they demanded not only an end to the curtailment of individual rights, but also sought institutional changes to protect these rights.

The wellspring for these demands was a series of civil liberties infringements between 1929 and 1946 by Ottawa and the provinces, of which Quebec was the most notable. During the Great Depression, the governments of R. B. Bennett in Ottawa and several of his provincial counterparts put the "iron heel" to communists and other attempts to protest the sorry economic condition of the country. Although the Canadian Communist Party and its various affiliates had few friends across the country, some concerned individuals pointed out that the issue was not the desirability of communists' political views but rather their right to voice these views. Canada's transition from Depression to war in 1939 heightened this budding concern for civil liberties. During the Second World War the federal government used the War Measures Act and Defence of Canada Regulations to intern suspected saboteurs and enemy aliens, on numerous occasions without trial or even charge. The internment of German Canadians, Italian Canadians and communists, along with the forced evacuation of Japanese Canadians from the Pacific coast, were but the most blatant examples of Ottawa's infringement upon human rights. Although less obvious than its treatment of enemy aliens, the federal

government also curtailed civil liberties through its control of the labour supply, its strict regulation of trade and the availability of goods and its practice of governing largely through order-in-council, thus circumventing Parliament. In each case, the government offered the efficient prosecution of the war as justification for these limitations on the freedoms of Canadians.

While most Canadians, including those who criticized the King government's actions, accepted the necessity of some loss to their basic freedoms during wartime, this goodwill ran dry through 1944-1946. First, the announcement in August 1944 that Japanese Canadians would be "patriated" to Japan despite the admission that none had been charged with a single act of sabotage struck many as nothing less than sheer racism wrapped in the cloak of national security. As well, others voiced new concerns over Ottawa's indications that it intended to extend its wartime economic controls into the postwar period to allow for the smooth transition to a peacetime economy. This alarmed many who saw a government too eager to maintain the newfound powers it gained during the war. Finally, the 1946 Gouzenko Affair lit the match of public outcry. The use of secret orders-in-council, the arrest and internment of individuals without charge, and the indefensible denial of legal counsel and access to family members seriously undermined the federal government's claim that it could be entrusted with Canadians' human rights given the extent of its new powers. With the Gouzenko Affair, the criticisms raised in the Depression and in the Second World War transformed into positive demands for institutional change. Many Canadians no longer had faith in their own government's ability to protect its citizens' human rights.

While some Canadians looked alarmingly at the erosion of their civil liberties at home, the newly-founded United Nations moved in the opposite direction internationally with its efforts to define and protect universal human rights. The evidence of the horrific results of Nazi Germany's racism with its death camps, slave labour and medical experiments shocked world leaders. For many, the Nazis' denial of universal human rights lay squarely at the roots of World War II, and the United Nations therefore sought to entrench the principles of human equality and dignity in the charter of the new international organization. This achieved, the U.N. immediately pushed further with plans to draft an International Bill of Rights. As well, U.N. efforts to help the displaced persons of Europe, represented best by the creation of the United Nations Relief and Rehabilitation Agency, highlighted its humanitarian concerns. For Canadians who criticized their government's intrusion into traditional civil liberties or who suffered from racial, religious or sexual discrimination, the activities of the U.N. offered an enlightening example of where they should focus their efforts. If the United Nations was prepared to encode human rights in an international covenant, why not a national bill of rights for Canada?

From 1946 to 1960, Canadians from all walks of society conducted a long campaign demanding positive legislative and constitutional change for the better protection of their rights. The press devoted increasing space to issues of individual rights and freedoms. New civil liberties associations emerged while others awoke after years of hibernation. Organized labour, ethnic associations and women's organizations demanded government action on trade union rights, racial discrimination and sexual equality. Throughout the entire period, Jehovah's Witnesses waged their battle with the

government of Quebec in the Canadian courts over the issue of religious freedom. For each of these groups, a national bill of rights rested at the core of their demands as an overarching panacea to protect individual rights. For committed activists such as Irving Himel, B. K. Sandwell and Frank R. Scott, the search for a new sword would only end with a constitutionally entrenched bill of rights.

From the outset, communists, conservatives, liberals and labour came together in the loose campaign for a rights guarantee. Armed with competing views of both how to achieve their goals and the form an eventual bill of rights should take, these advocates often argued more amongst themselves than with the governments they faced. Groups such as the Canadian Labor Defense League, the Civil Rights Union and the League for Democratic Rights concentrated on the federal government's treatment of communists. Activists from the liberal and social democrat ranks such as F. R. Scott, B. K. Sandwell, M. J. Coldwell and A. R. M. Lower chose specific government intrusions to buttress their case for an entrenched bill of rights, limited primarily to traditional civil liberties. Organized labour, under the direction of Kalmen Kaplansky and Claude Jodoin, argued from the same position but demanded the inclusion of social and economic rights, as defined by the United Nations. At the same time, more conservative activists, like John G. Diefenbaker and R. M. Willes Chitty, also called for greater protection of rights and offered their prescriptions to achieve it. For a federal government already sceptical of bills of rights, the diversity of both the participants and their ideas made the issue particularly difficult to handle.

Throughout these demands, the Liberal governments of Mackenzie King and Louis

St. Laurent failed to appreciate both the origins of the campaign for a national bill of rights and, as well, the principles that civil libertarians and human rights advocates pursued.

Both King and St. Laurent recognized that the federal government had taken extraordinary measures which had limited traditional civil liberties. However, these curtailments were lawful according to parliamentary tradition and, furthermore, could be justified based on the exigencies of the war emergency. With the end of the war, King and his ministers honestly believed that Canadians would come to recognize that their rights would be jealously guarded by both an ever-watchful Parliament and the trusted English common law system. They argued that Canadians already enjoyed the full measure of liberty and freedom available through their existing system of government. What these federal governments did not understand was that the severity of the Depression and wartime infringements, coupled with the activities of the U.N., led Canadians to desire more than a return to the system which had presided since Confederation. Most believed that only positive changes to the system of protection, either by statute or constitutional amendment, could effectively ensure Canadians' human rights.

As a result, the demands made by civil libertarians and human rights advocates had more to do with institutional change than with simply rectifying the pattern of past injustices. Civil libertarians were aware that they were entitled to the full range of their rights and were aware also that the existing parliamentary system had a long history of upholding these same rights and freedoms. However, by 1946 many believed that this system somehow had broken down and now revealed serious deficiencies, to the point where certain traditional rights were now in danger. This is what Jack Donnelly, in his

Concept of Human Rights, has called the “Possession Paradox.” This situation exists when individuals have the moral and legal entitlement to a certain human right or freedom but are prevented from enjoying that right. Although rights may carry the force of positive law, or be guaranteed through established legal practice, citizens are denied their enjoyment. Donnelly notes that both the former Soviet Union and the United States have provided useful examples of this argument. Under its constitution, its laws and the international treaties it signed, the Soviet Union guaranteed the whole range of political rights and freedoms to its citizens. However, when critics of the government attempted to exercise these rights, they were often met with repression. Although Soviet citizens had a right to freedom of speech, they were prevented from enjoying it: “their title [was] valid but not effective.” The same was true of the African American civil rights movement in the 1950s. Civil rights activists attempted to secure the enjoyment of rights which the American constitution purported to already guarantee. Their goal was not to create new legal entitlements but rather to enforce existing ones. African Americans had “a valid title and they...advance[d] valid rights claims. Their problems lay not so much in their rights/titles/claims as in recalcitrant political institutions.”⁶

Consequently, the fundamental impetus behind demands for human rights, whether by Russian playwrights, African American students or Canadian civil libertarians, was to change existing institutions to ensure the future enjoyment of rights. The villain in the various human rights infringements in Canada between 1929 and 1946 was not the justice minister or the RCMP. Instead, the problem was the ineffectiveness of the system

⁶ Donnelly, *Concept of Human Rights*, 17-19.

responsible for preventing such abuses. The federal government's repeated responses to the demands for a bill of rights clearly revealed its inability to appreciate this fact. From 1946 until the election of John Diefenbaker's Conservatives in 1957, the Liberal government argued that a bill of rights was unnecessary since the special circumstances which had necessitated the limitation of personal liberties no longer existed. Hence, the traditional system of rights protection could be relied upon. J. W. Pickersgill, King's principle secretary and later a member of St. Laurent's government, epitomized this sense of complacency with his 1950 observation that since the war "the whole tendency here has been to discourage hysteria and to provide not so much by formal safeguard as by really careful administration that there will not be any persecution of individuals."⁷

When Diefenbaker took over the Prime Minister's Office, the federal government finally moved from the position that "formal safeguards" were unnecessary. In John Diefenbaker, one of those civil libertarians who had so vociferously condemned the actions of the King government during World War II, Canadians had a prime minister devoted to the belief that institutional change was necessary, institutional change of a sort anyway. In 1960 the postwar search for a bill of rights ended in the qualified success of Diefenbaker's Act for the Recognition and Protection of Human Rights and Fundamental Freedoms, otherwise known as the Canadian Bill of Rights. This act "hereby recognized and declared that in Canada there have existed and shall continue to exist," amongst

⁷ Pickersgill explained the civil liberties infringements from the war on "inexperience or ineptitude," J. W. Pickersgill to A. R. M. Lower, 27 March 1950, Queen's University Archives, *Arthur Reginald Marsden Lower Papers*, Series A, Box 7, File A-141.

others, the rights to life, liberty and security of person, and the freedoms of speech, religion and assembly. These glowing sentiments and the bill which contained them were not simply the product of a single individual's dream, however. Rather, the 1960 Bill of Rights was the result of decades of debate and intense lobbying by a diverse array of Canadian men and women. Between 1929 and 1960 civil libertarians and human rights advocates assembled a wide collection of arguments and proposals for a national bill of rights. While Diefenbaker will forever be identified with the 1960 legislation, his was but one among many versions of how to protect human rights in Canada, albeit the circumstance of politics ensured that his became law.

The focus of this dissertation is not upon the particular statute which grew to be the Canadian Bill of Rights but, rather, is upon the course of the idea itself. To a large extent, this path was the product of the very human rights infringements which gave rise to the demands for a rights guarantee. Individuals such as F. R. Scott and B. K. Sandwell, who had cut their teeth on the government's suppression of communism and other groups in the 1930s and 1940s, posited a bill of rights devoted primarily to the protection of traditional civil liberties. Others, such as Kalmen Kaplansky and George Tanaka, who were concerned most by racism in Canada, shaped their conception of a bill of rights with the issue of equality rights uppermost in mind. The efforts, therefore, to secure a Canadian bill of rights arose from a combination of the traditional civil liberties issues which developed in the Depression and World War II and of the postwar international human rights agenda which highlighted the issues of racial, religious and sexual equality. Although a national bill of rights had been suggested prior to 1945, the example of the

United Nations' program to codify of universal human rights legitimated the demands for a bill of rights at home. Often in conflict, sometimes even contradictory, the ideas which so many Canadians carried into the halls of government in Ottawa between 1929 and 1960 helped to shape the Canadian conception of human rights, their implication for the state and the best method for their protection.

Perhaps most significantly, the debates on a national bill of rights in the 1940s and 1950s paved the way for the 1982 Charter of Rights and Freedoms. Historians of the charter have given limited attention to the campaign for a rights guarantee which arose at the end of the Second World War.⁸ Yet, many of the same issues which occupied the framers of the 1982 constitutional amendment also dominated the discussions leading to the 1960 Bill of Rights. How would an entrenched human rights bill affect parliamentary supremacy? Would it significantly expand the role of the judiciary? How would federal-provincial relations be affected? Clearly, the lines of this issue extend from the debates of the 1930s through to those of the 1980s. As a result, when Pierre Elliott Trudeau initiated his plans for constitutional renewal in 1968, he built upon a well-laid foundation. A better understanding of this foundation, then, offers insights into what Maxwell Cohen has called "the most far reaching change to take place in the Canadian legal-political system since Confederation itself:" the Canadian Charter of Rights and Freedoms.⁹

⁸ See R. Romanow, J. Whyte and H. Leeson, *Canada... Notwithstanding: The Making of the Constitution, 1976-1982* (Toronto: Carswell-Methuen Publications, 1984), 220-225 and Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Thompson Educational Publishing, Inc., 1989), 7-15.

⁹ Quoted in William W. Black, "The Charter of Rights and Freedoms and Positive Obligations," in *Law, Policy, and International Justice: Essays in Honour of Maxwell*

The Literature

Canadian historians have painted a somewhat uneven portrait of both the wider human rights issues of the 1940s and 1950s and of the concomitant demands for a national bill of rights. Richly detailed in bold colours and broad strokes in some areas, the canvas remains largely untouched by the brush in others. Frank R. Scott, the respected poet and constitutional professor, stated that the 1950s was the “decade of human rights.” Indeed, many historians have concurred in their examinations of the Supreme Court of Canada’s judgements and the explosion of human rights legislation, both federal and provincial. Nevertheless, our understanding of the wider context remains clouded with regard to the campaign for a Canadian bill of rights.

Most of the works which directly examine the curtailment of civil liberties in the 1930s, 1940s and 1950s have given only cursory attention to the issue of a national bill of rights. Several Canadian historians have concentrated on unearthing the human rights infringements committed by the federal government and many of the provinces. There have been numerous studies detailing the anti-Semitic and anti-ethnic sentiments in Canada. Of the plethora of studies devoted to the evacuation of Japanese Canadians from the Pacific coast during World War II, only a small number examine the widespread effects this event had on other Canadians and their views on human rights in Canada. Ann Gomer Sunahara’s “Deportation: The Final Solution to Canada’s ‘Japanese Problem’” and *The Politics of Racism* offer only small glimpses of the issue’s influence on the

Cohen, eds. William Kaplan and Don McRae (Montreal: McGill-Queen’s University Press, 1993), 298.

postwar efforts to expose all forms of racism in Canadian society or on the attempts to establish means to prevent racial discrimination. More recent efforts have done little to unearth the implications of the government's treatment of Japanese Canadians.¹⁰ The same is true of many works on Canadian Jews and the history of anti-Semitism in Canada. The seminal study by Irving Abella and Harold Troper, *None is Too Many*, outlines the disturbing history of the institutional anti-Semitism present in the Canadian government. They do not, however, move far beyond this examination to reveal the many responses in the 1940s and 1950s by the Jewish community to implement measures to curb such discrimination.¹¹

Historians' discussion of the Canadian labour movement treats the issue of human rights in the 1940s and 1950s in much the same fashion. For example, Bryan Palmer's *Working-Class Experience* carefully examines organized labour's struggle to secure state

¹⁰ On the Japanese Canadians see Ken Adachi *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart Ltd., 1976); Ann Gomer Sunahara, "Deportation: The Final Solution to Canada's 'Japanese Problem,'" in *Ethnicity, Power and Politics in Canada*, eds. Jorgen Dahlie and Tissa Fernando (Toronto: Methuen Publications, 1981), 254-278; Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: James Lorimer and Co., 1981); and Patricia Roy et. al. *Mutual Hostages: Canadians and Japanese during the Second World War* (Toronto: University of Toronto Press, 1990).

¹¹ For examples see Irving Abella and Harold Troper, *None is Too Many: Canada and the Jews of Europe* (Toronto: Lester and Orphen Dennys, 1982); Paula Jean Draper, "Fragmented Loyalties: Canadian Jewry, the King Government and the Refugee Dilemma," in *On Guard For Thee: Ethnic Minorities and the Canadian State during the Second World War*, eds. N. Hillmer, B. Kordan and L. Luciuk (Ottawa: Queen's Printer, 1989); and Stephen Speisman, "Antisemitism in Ontario: The Twentieth Century," in *Antisemitism in Canada: History and Interpretation*, ed. Allan Davies (Waterloo: Wilfred Laurier University Press, 1992). For an exception to this see Marilyn Nefsky, "The Shadow of Evil: Nazism and Canadian Protestantism," in *Antisemitism in Canada*.

recognition of workers' rights to unionize, to bargain collectively, to strike and to a list of other trade union demands. However, he pushes labour's extensive involvement with the wider human rights debate to the margins. Organized labour's efforts to secure fair practices acts to curb racial and religious discrimination and its long campaign to achieve a national bill of rights receive little mention. Even David Kwavnik, in a work devoted to labour's attempts to influence government legislation, offers only a cursory look at human rights and bills of rights.¹² Other labour historians have produced a good understanding of labour's civil liberties battles in the 1930s, but similar treatments of the 1940s and 1950s are sparse and more narrowly focused.¹³

Of the few exceptions to this concentration on the abuse rather than the remedy, most concern only the Depression and World War II. J. Petryshyn's studies of A. E. Smith and the Canadian Labour Defense League analyze the communists' attempts in the 1930s to maintain basic rights to free speech and assembly against hostile governments in Ottawa and the provinces. In his examination of civil liberties in the Second World War,

¹² Bryan D. Palmer, *Working-Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, 2nd ed. (Toronto: McClelland and Stewart Inc., 1991) and David Kwavnik, *Organized Labour and Pressure Politics: The Canadian Labour Congress, 1956-1968* (Montreal: McGill-Queen's University Press, 1972).

¹³ J. Petryshyn, "R. B. Bennett and the Communists: 1930-1935," *Journal of Canadian Studies* 9 (November 1974):43-55 and "Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labour Defense League, 1925-1940," *Labour/Le Travailleur* 10 (Autumn 1982):39-63. On the 1940s and 1950s see Shirley Tillotson, "Human Rights Law as Prism: Women's Organizations, Unions, and Ontario's Female Employees Fair Remuneration Act, 1951," *Canadian Historical Review* 72 (December 1993):532-557; and Whitaker and Marcuse, *Cold War Canada: The Making of a National Insecurity State, 1945-1957* (Toronto: University of Toronto Press, 1994), 310-363.

Ramsay Cook offers an extensive look at the efforts of labour and the growth of various organizations to prevent the wartime government's abuse of individual rights. The focus of these works is largely upon the abuses themselves, however, and the authors make only tentative conclusions on the meaning of the civil libertarian response to the issues of postwar Canada.¹⁴ Another exception is Reginald Whitaker and Gary Marcuse's *Cold War Canada*. This study picks up the thread of Canadian infringements upon the rights of communists that Petryshyn and Whitaker developed, but it is concerned mainly with cataloguing the rights infringements between 1945 and 1957 rather than examining the efforts to stop such abuses.¹⁵

Even among those works which focus explicitly on human rights in the 1940s and 1950s, the efforts to secure a bill of rights receive little note. The development of Ontario's anti-discrimination legislation has garnered the most attention from historians. Herbert Sohn, Arnold Bruner, John Bagnall and Shirley Tillotson each have examined the Ontario government's many legislative attempts to curb racial, religious and sexual discrimination in the province as well as the activities of the various groups which

¹⁴ J. Petryshyn, "A. E. Smith and the Canadian Labour Defense League" (Ph.D. diss., University of Western Ontario, 1977); Petryshyn, "R. B. Bennett and the Communists;" Petryshyn, "Class Conflict and Civil Liberties;" Ramsay Cook, "Canadian Liberalism in Wartime: A Study of the Defence of Canada Regulations and Some Canadian Attitudes to Civil Liberties in Wartime" (M.A. diss, Queen's University, 1955); and Cook, "Canadian Freedom in Wartime, 1939-1945," in *His Own Man: Essays in Honour of Arthur Reginald Lower*, eds. W. H. Heick and Roger Graham (Montreal: McGill-Queen's University Press, 1974).

¹⁵ Reg Whitaker and Gary Marcuse, *Cold War Canada* and Reg Whitaker, "Official Repression of Communism During World War II," *Labour/Le Travail* 17 (Spring 1986):135-166.

demanded such action.¹⁶ Nevertheless, these works do not attempt to explain the linkages between the Ontario experience and the demands made of the federal government for a national bill of rights. This has remained unexplored even though many of the same individuals and groups which pressured Toronto for fair practices acts and a human rights code also descended upon Ottawa with suggestions for a constitutional guarantee of human rights in hand.

This division of human rights into watertight compartments holds true for the few studies made of Canada's involvement with the United Nations' activities. Thus far only Cathal J. Nolan has offered a detailed examination of the Canadian government's role in the U.N.'s efforts to codify universal human rights from 1945 to the 1960s. His article, "Reluctant Liberal: Canada, Human Rights and the United Nations, 1944-65," gives a brief history of Ottawa's attitudes toward the U.N.'s efforts, but he does not examine the domestic context of Canada's policy. Other than constitutional constraints, Nolan implies that Canadian policy was strictly a foreign affair where the personal opinions of the country's diplomats dictated the course of Canada's involvement. Nolan does not address the influence of domestic lobbying efforts by women, labour or ethnic associations to influence Ottawa both in the international arena and at home.¹⁷

¹⁶ Herbert Sohn, "Human Rights Legislation in Ontario: A Study of Social Action" (Ph.D. Diss, University of Toronto, 1976); Arnold Bruner, "The Genesis of Ontario's Human Rights Legislation: A Study in Law Reform" *University of Toronto Faculty of Law Review* 37 (Fall 1979):236-253; John Bagnall, "The Ontario Conservatives and the Development of Anti-Discrimination Policy: 1944-1962" (Ph.D. Diss., Queen's University, 1984); and Shirley Tillotson, "Human Rights Law as Prism."

¹⁷ Cathal J. Nolan, "Reluctant Liberal: Canada, Human Rights and the United Nations, 1944-65," *Diplomacy and Statecraft* 2 (November 1991):281-305. See also his

Other examples of this cursory treatment appear in many of the histories of John Diefenbaker, the unabashed “apostle of civil liberties.” Denis Smith’s *Rogue Tory: The Life and Legend of John G. Diefenbaker* provides an excellent outline of the events which shaped Diefenbaker’s views on racial equality and the sanctity of civil liberties. However, Smith’s treatment of the prairie populist’s involvement in the 1946-1947 debates on bills of rights and his efforts as prime minister to push through his statutory bill remains limited. Smith concentrates on Diefenbaker’s actions in Parliament and on the political process which led to the adoption of the legislation. He does not examine closely Diefenbaker’s involvement with other civil libertarians in the 1940s nor does he place the 1960 Bill of Rights within the wider context of the efforts after World War II to secure a rights guarantee. In fairness, Smith’s primary concern is with Diefenbaker the politician and not with Diefenbaker the civil libertarian. This is the case as well in the studies of the prairie prime minister by Peter C. Newman and Michael Bliss.¹⁸

Among those few histories which have focused on the issue of bills of rights, most concern only the issue’s legal aspects. The initial examination of the Canadian Bill of Rights and the efforts which preceded it came from legal scholars who attempted to place

“Principled Intervention: National Security and the Ideal of Liberty in the Diplomacy of the United States and Canada” (Ph.D. diss., University of Toronto, 1989). A similarly narrow focus is found in John Wendell Holmes, *The Shaping of Peace: Canada and the Search for World Order 1943-1957*, 2 vols. (Toronto: University of Toronto Press, 1979-1982).

¹⁸ Denis Smith, *Rogue Tory: The Life and Legend of John G. Diefenbaker* (Toronto: MacFarlane, Walter and Ross Publishers, 1995); Peter C. Newman, *Renegade in Power: The Diefenbaker Years* (Toronto: McClelland and Stewart Ltd., 1963); and Michael Bliss, *Right Honourable Men: The Descent of Canadian Politics from Macdonald to Mulroney* (Toronto: HarperCollins Publishers Ltd., 1994).

these events within the framework of Canadian law. D. A. Schmeiser's *Civil Liberties in Canada*, Mark MacGuigan's "The Development of Civil Liberties in Canada," and Walter Tarnopolsky's *The Canadian Bill of Rights* each offered an analysis of Diefenbaker's bill and its implications. As well, they examined the importance of the Supreme Court's decisions on human rights in the 1950s and of other pieces of legislation designed to protect Canadians' rights and freedoms.¹⁹ However, these studies narrowly concentrated on the intricacies of human rights law. They contain only limited reference to the political, social and international pressures which gave rise to the demands for better safeguards, and as a result, they offer little context to the history of either the 1960 Bill of Rights or other efforts to protect human rights. For example, although Tarnopolsky's *The Canadian Bill of Rights* contains the most detailed examination of the statute, including a clause by clause explanation, he devotes only eleven pages to the political and social background of the legislation. The other legal works follow in a similar vein. Robert W. Gordon has likened histories of this type to the contents of a box. Concerned mostly with cases, statutes and procedure, some historians have ignored the wider human experiences which surround legal issues, the area outside the box. Canadian legal writers have done much the same thing in their efforts to explain the concern for human rights which

¹⁹ D. A. Schmeiser, *Civil Liberties in Canada* (Toronto: Oxford University Press, 1964); Mark MacGuigan, "The Development of Civil Liberties in Canada," *Queen's Quarterly* 72 (Summer 1965):270-288; and Walter S. Tarnopolsky, *The Canadian Bill of Rights*, 2nd rev. ed. (Toronto: McClelland and Stewart Ltd., 1975). Other works of this genre include Mark MacGuigan, "Civil Liberties in the Canadian Federation," *University of New Brunswick Law Journal* 16 (May 1966):1-15; F. P. Varcoe, *The Constitution of Canada* (Toronto: Carswell Publications, 1965); and Walter Tarnopolsky, "The Canadian Bill of Rights from Diefenbaker to Drybones" *McGill Law Journal* 17 (June 1971):437-475.

emerged in the 1940s and 1950s and which contributed to the Supreme Court decisions and the 1960 Bill of Rights.²⁰

Finally, there are the works which have explicitly examined the attempts in the 1940s and 1950s to better safeguard human rights and to secure a national bill of rights by looking at either a particular individual or group's role in the debate. These works rarely placed that individual or group within the context of the wider efforts to secure a rights guarantee. Not surprisingly, some historians of John Diefenbaker and his government have seen the 1960 Bill of Rights as little more than the end of a long road which originated in the peculiarities of Diefenbaker's prairie upbringing. Peter Newman's *Renegade in Power*, Jack Granatstein's *Canada 1957-1967* and the collaboration by Robert Bothwell, Ian Drummond and John English, *Canada Since 1945* each have overlooked the efforts by Diefenbaker's contemporaries in the 1940s and 1950s. In this view, the demands for a national bill of rights were Diefenbaker's alone.²¹

Historians of the Jehovah's Witnesses in the 1950s have created a similar impression of this religious group's role in the bill of rights movement. The struggle of many Witnesses to claim their rights to religious freedom against the government of

²⁰ See Robert W. Gordon, "J. Willard Hurst and the Common Law Tradition in American Legal Historiography," *Law and Society Review* 10 (Fall 1975):44-55. For a discussion of on Canadian legal history see Barry Wright, "An Introduction to Canadian Law in History," in *Canadian Perspectives on Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988).

²¹ Newman, *Renegade in Power*; Robert Bothwell, Ian Drummond and John English, *Canada Since 1945: Power, Politics, and Provincialism* (Toronto: University of Toronto Press, 1981); and J. L. Granatstein, *Canada 1957-1967: The Years of Uncertainty and Innovation* (Toronto: McClelland and Stewart Ltd., 1986).

Quebec produced some of the most important Supreme Court decisions in Canadian history. At the same time, Jehovah's Witnesses actively campaigned for a national bill of rights to guarantee these rights in the Canadian constitution. Both William Kaplan's *State and Salvation* and Gary Botting's *Fundamental Freedoms and Jehovah's Witnesses* outline the campaign without placing it in a wider context. Kaplan and Botting equate the success of the Witness's efforts at the Supreme Court with those to secure a bill of rights.²² While the Jehovah's Witnesses played an important part in the bill of rights movement, theirs was one among many.

In sum, Canadian historians have pushed the demands for a constitutional guarantee to the margins. Many have chosen to concentrate on the rights abuses perpetrated by various Canadian governments, while others have tended to view the campaign through the eyes of one individual or group. Even among those studies which have examined the 1960 Bill of Rights, almost all devote their enquiry to a narrow legal interpretation of the statute's affect upon Canadian law. As a result, they have provided a somewhat skewed version of the events. In the end, the picture of Canadians' demands for a bill of rights lacks a larger sketch. It is this wider historical context that this dissertation intends to provide.

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²² William Kaplan, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto: University of Toronto Press, 1989) and Gary Botting, *Fundamental Freedoms and Jehovah's Witnesses* (Calgary: University of Calgary Press, 1993).

A Note on Terms

For the majority of those activists who advocated a national bill of rights for Canada, the philosophical underpinnings of human rights remained of minor importance. Despite the differences in the types of rights demanded by the various groups involved in the campaign, few felt it necessary to explain their selection through arguments of the source and meaning of human rights. In fact, many groups neglected completely to define which rights should comprise a Canadian bill of rights. Instead, they concentrated their efforts on the lobbying campaign to persuade the federal government of the need for a constitutional rights guarantee. Only on the proposed inclusion of social and economic rights was there conflict as to meaning and source. Nevertheless, the emphasis still rested on political activism.

For the purposes of this dissertation, the terms involved will be followed as the participants themselves used them. Prior to 1945, the traditional English term, civil liberties, was the most common description of all rights and freedoms. With the advent of the United Nations, human rights became the universal umbrella under which all other rights huddled. As a result, the term human rights became synonymous for all manner of rights and freedoms. Only in reference to the constitution and in the courts was the usage of civil liberties continued. This nomenclature will be maintained as closely as possible.

The one exception to this rule concerns the description of the participants themselves. While most of those who advocated a bill of rights sought to enshrine the full range of human liberties and freedoms, activists tended to stress some rights over others. This division hinged most clearly on the issue of social and economic rights. As the U.N.

pushed forward with its campaign to expand the meaning of human rights, the Depression and World War II era civil libertarians in Canada counselled caution in obligating the state to guarantee such things as the right to work or the right to welfare. While they wholeheartedly supported the idea of entrenching traditional civil liberties in the constitution, they balked at social and economic demands. At the same time, the United Nations' program appealed to many others in Canada concerned with issues of racial, religious and sexual discrimination and with inequities in wealth and opportunity. These human rights advocates supported the arguments of the civil libertarians but held that they did not go far enough. The line that divided these groups was murky at best, however. Indeed, many civil libertarians supported certain claims to social and economic rights. Nevertheless, the demands put forward by human rights advocates and civil libertarians clearly revealed differing vantage points on the purposes of a national bill of rights.

Chapter One

Civil Liberties and Civil Libertarians From the Depression To World War II, 1929-1942

“Malheur à qui fait des revolutions: heureux qui en hérite.” With these words the noted poet and legal professor Frank R. Scott concluded his controversial article condemning the Canadian government’s actions against a small group of Communist Party members.¹ The arrest on 11 August 1931 of Tim Buck and seven other prominent communists raised the level of public debate in Canada over the protection of traditional civil liberties and fundamental freedoms. Throughout the Great Depression, Canadians witnessed an alarming increase in the curtailment of individual rights by both the federal and provincial governments. The police, under direction from both levels of government, used a heavy hand to break up lawful public meetings by communists and strikes by unionized workers. As well, the government used the Immigration Act to “shovel out” the foreign unemployed and radicals. The abrogation of civil liberties in the 1930s through the infamous Section 98 of the Criminal Code, the Padlock Law and the Immigration Act served only as a prelude, however, to the attack on freedom which occurred during World War II. With the powers of the War Measures Act, the Mackenzie King government orchestrated the state’s intervention into everyday Canadians’ lives on a scale never before imagined. With the growth of state control over such wartime problems as inflation,

¹ F. R. Scott, “The Trial of the Toronto Communists,” *Queen’s Quarterly* 39 (August, 1932):512-527.

industrial production and the distribution of labour also came a commensurate restriction of individual civil liberties and fundamental freedoms. Ranging from the relatively benign imposition of loitering restrictions to the more drastic use of arbitrary detention and suspension of *habeas corpus*, Canadians watched as their national government dangerously walked the hazy line which separated acceptable wartime restrictions from outright state abuse of its citizens' human rights.

For Frank Scott and a host of other outspoken individuals and groups, the events of the Second World War reinforced and intensified their belief that civil liberties in Canada rested on a precarious foundation. For them, the arbitrary nature of the government's detention policy, its war on the Communist Party of Canada and its circumvention of Parliament to implement these measures were evidence enough that civil liberties had been trampled.

"The iron heel:" Canada During the Depression

The Great Depression left many deep scars upon the Canadian nation. Mothers holding the hands of their children while waiting in line at a soup kitchen, young men lying idly in bunks in a government work camp, and dust blowing across a barren wheat field are a few of the engraved images of 1930s Canada. Few people would have predicted such scenes in the 1920s with their unbridled optimism in steady economic growth and increasing demands for the luxury items of the new era. Canada's economy had surged throughout the 1920s. Driven largely by the export market and by the growth of domestic capital formation, the country's real GNP had risen by 20% between 1926 and 1929 alone.

Although reliable statistics were not kept on unemployment, estimates placed the figure at a low of 2.6% in 1928 and only at 4.2% in 1929.² Despite this rise in the jobless rate and a sharp decline in pulp and paper and wheat prices, optimism in the economy still abounded. As late as January 1929, Canadian banking executives such as S. J. Moore of the Bank of Nova Scotia predicted that “an unprecedented period of prosperity lies ahead.”³ In 1929, few realized that disaster was just around the corner.

When the American economy foundered after the Wall Street Crash in October 1929, Canada's immediately followed. The decline in wheat and natural resource prices and the economic collapse of Canada's largest foreign market signalled the beginning of the Great Depression. For the next ten years until the declarations of war in Europe, Canada's economy struggled miserably. Steadily declining to its lowest ebb in 1933, the economy improved slowly and unevenly until another downturn in 1937-1938. Exports dropped off dramatically, new business investment constricted and price levels fell considerably. Canada's domestic manufacturing industry, while not as dependent upon foreign markets, saw production fall off as well. In 1928 Canadian manufacturers sold 17,000 tractors, but in 1932 they sold just 892. The auto industry watched its production

² For a description of the Canada during the 1920s and 1930s see Robert Bothwell, Ian Drummond and John English, *Canada 1900-1945* (Toronto: University of Toronto Press, 1987), 211-227 and 245-277; and John Herd Thompson and Allen Seager, *Canada 1922-1939: Decades of Discord* (Toronto: McClelland and Stewart Inc., 1985), 76-103 and 193-221. The value of Canada's exports grew by 67% between 1921-1922 and 1928. Shipments of non-ferrous metals and products jumped a whopping 233% during this period, Bothwell, Drummond and English, *Canada 1900-1945*, 219. For estimated figures on unemployment, see Thompson and Seager, *Canada 1922-1939*, Table XXXIa, 350.

³ Cited in Thompson and Seager, *Canada 1922-1939*, 193.

plummet from a high of 188,721 in 1929 to just 47,510 in 1933.⁴

For most Canadians, the meaning of these statistics had little impact until the day they saw their own jobs disappear. The unemployment rate grew steadily from its low in 1928 of 2.6%, to 12.9% in 1930, 17.4% in 1931, 26.0% in 1932, and finally peaked in 1933 at 26.6%.⁵ This wave of unemployment was spread unevenly across the country. Hardest hit were those workers in areas where the economy was dependent upon the export of raw materials. Low wheat prices and crop failures impoverished many Prairie farming families. For hundreds of thousands of Canadians the only choices available were private charity and state-sponsored emergency relief programs. In 1935, one study estimated that 1.9 million Canadians, or 20% of the entire population, were dependent on emergency relief programs.⁶ These programs required applicants to endure degrading means-tests to prove they had absolutely exhausted all of their resources and that family members were unable to support them. If they qualified, they then received their

⁴ Consumer prices in Canada dropped by about 18% between 1929 and 1933. Coupled with this, new business investment fell by 79% during the same period, see Bothwell, Drummond and English, *Canada 1900-1945*, 249-250. The price for a bushel of Northern No.1 wheat tumbled from \$1.03 in 1928 to 47¢ in 1930 and then to 29¢ by 1932, see Thompson and Seager, *Canada 1922-1939*, 195-196 and Appendix VIII, 345.

⁵ Thompson and Seager, *Canada 1922-1939*, Table XIIIa, 350. These figures do not include agricultural workers.

⁶ Michiel Horn, "The Great Depression: Past and Present," *Journal of Canadian Studies* 11 (February 1976):42. For an analysis on unemployment and its effects, and on systems of relief during the Depression see *ibid.*; James Struthers, *No Fault of Their Own: Unemployment and the Canadian Welfare State, 1914-1941* (Toronto: University of Toronto Press, 1983); Desmond Morton, *Working People, An Illustrated History of the Canadian Labour Movement*, 3rd. ed. (Toronto: Summerhill Press, 1990), 139-150; and Bryan D. Palmer, *Working-Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, 2nd ed. (Toronto: McClelland and Stewart Inc., 1991), 241-267.

assistance in vouchers, not cash. The entire process lessened any dignity the individual may have retained, and as James Struthers concluded, the “system for distributing direct relief deliberately fostered such humiliation.”⁷

Hamstrung by a cumbersome federal system and unimaginative leadership, Canadian governments in both Ottawa and the provinces offered only vague reassurances that things would get better. Under the Canadian federal structure, responsibility for relief of the unemployed and poverty-stricken came under provincial jurisdiction. In an economic depression that spread its misery quite unevenly, provinces such as Saskatchewan, Alberta and British Columbia soon stumbled under the burden. Unable to meet relief costs, provincial governments turned to Ottawa for assistance. In 1930, as the realities of the economic situation became apparent to most Canadians, Prime Minister Mackenzie King stubbornly vowed that he would not give “a five-cent piece” to the provinces “for alleged unemployment purposes.” The electorate subsequently removed the Liberals in July in favour of R. B. Bennett and the Conservative Party. Bennett, a millionaire lawyer from Calgary, promised to “use tariffs to blast a way into the markets” now closed to Canadian exporters. Once in office, Bennett passed a series of palliative Relief Acts in an effort to deal with the increasing numbers of the unemployed and destitute across the country. For the most part, however, Bennett’s response to the

⁷ Struthers, *No Fault of Their Own*, 71. One social worker described the effect on the average applicant: “a few told me they had to walk around the block eight or a dozen times before they had the nerve to come in and apply for relief...I’ve seen tears in men’s eyes, as though they were signing away their manhood, their right to be a husband and sit at the head of the table and carve the roast. It was a very emotional time, that first time when a man came in and went up to the counter,” *ibid.*

Depression was the same as the majority of other Western leaders: he erected higher tariff walls, raised tax levels and tightened the strings on the public purse. In response to criticism that salary cuts to civil servants in 1932 would end in hardship, the Conservative government's finance minister argued that "the preservation of our national credit is an indispensable prerequisite to the return of prosperity."⁸ Through the harshest years of the Great Depression, the provinces and more importantly, the hundreds of thousands of unemployed Canadians, received little comfort from the ineffective policies of the federal government.

With the failure of government, the unemployed, various intellectuals and eventually many Canadian voters turned to new and sometimes radical alternatives to the political orthodoxy. One of the first groups to seize the opportunities created by the Great Depression was the Communist Party of Canada (CPC) which immediately began to organize both the unemployed and those still with jobs. In 1930, the CPC formed the National Unemployed Workers Association (NUWA). This group, and others such as the East York Workers' Association, conducted both political and educational activities on behalf of the jobless.⁹ With a directive from Moscow in hand, the CPC formed the

⁸ Cited in Thompson and Seager, *Canada 1922-1939*, 216. For a description of Depression era politics in Canada see *ibid.*, 193-221 and 253-276; H. Blair Neatby, *The Politics of Chaos: Canada in the Thirties* (Toronto: Copp Clark Pitman Ltd., 1986); Bothwell, Drummond and English, *Canada 1900-1945*, 259-277; and Struthers, *No Fault of Their Own*.

⁹ Despite the origins of the NUWA, it and other unemployed workers organizations attracted members from all political shades. In the debates of Canadian labour historians, Desmond Morton has written that "a union of the unemployed is composed of members who want to get out," *Working People*, 150. In response, Bryan Palmer argues that the significance of the NUWA lies in its goals and not its membership:

Workers Unity League (WUL) in late 1929. The purpose of the WUL was to provide Canadian workers with a truly “revolutionary” union option instead of the “reformist” unions affiliated with the Trades and Labor Congress of Canada (TLC) and the All-Canadian Congress of Labour (ACCL).¹⁰ By 1931, the WUL had enticed the Lumber Workers Industrial Union, the Mine Workers Union of Canada and a number of other industrial unions to join. The communists organized a series of strikes, most notably the Estevan-Bienfait mining strikes in Saskatchewan in 1931 and the Stratford furniture workers strike in 1933. By 1933, the WUL claimed responsibility for over three quarters of all strikes in Canada.¹¹

This reinvigoration of the Communist Party quickly drew the attention of R. B. Bennett and various provincial leaders. The CPC had been an unwelcome fixture in Canadian politics since its formation in 1921, but with its agitation among both the unemployed and various industrial unions it soon became a dangerous threat in the eyes of

“In creating one of the first truly mass movements of the unemployed...workers of the 1930s raised the demand of ‘work and wages’ at a critical point in history when such a claim to essential human rights necessarily extended beyond the economic,” *Working-Class Experience*, 246.

¹⁰ For an analysis of the WUL and Canadian communists during the Depression see James D. Leatch, “The Workers Unity League and the Stratford Furniture Workers: The Anatomy of a Strike,” *Ontario History* 60 (June 1968):39-48; Desmond Morton, “Aid to the Civil Power: The Stratford Strike of 1933,” in *On Strike: Six Key Labour Struggles in Canada, 1919-1949*, ed. Irving Abella (Toronto: James, Lewis and Samuel, 1974):79-92; Morton, *Working People*, 142-150; Palmer, *Working-Class Experience*, 226-229 and 244-262; and, Thompson and Seager, *Canada 1922-1939*, 222-232.

¹¹ On the activities of the WUL and the strikes at Estevan and Stratford, see Thompson and Seager, *Canada 1922-1939*, 224-226; Palmer, *Working-Class Experience*, 253-254, and Morton, *Working People* 142-144.

the prime minister. Bennett had never been one to spare the rod of government power. The 1931 Unemployment and Farm Relief Act had given the RCMP wide powers to imprison those who failed to cooperate with relief authorities. In defence of this clause in the House of Commons, Bennett noted that although Canada was “a land of freedom...it is not right or just that now or at any other time we should permit such action by words or deeds as may tend to unsettle confidence in the institutions and customs under which we live.”¹² During the previous two years, the CPC had organized protests, circulated petitions and made demands for non-contributory unemployment insurance and a five day-work week with a minimum wage of \$25.¹³ By the summer of 1931, Bennett’s patience was at an end. With the avid support of the prime minister and the minister of justice, Ontario Attorney-General William Price sent the provincial police, with the help of the RCMP, to arrest the leadership of the CPC on 11 August. Charged under Section 98 of the Criminal Code, a jury quickly found the “Toronto Eight” guilty and each received a sentence of between three and five years imprisonment. As well, all but one were to be deported at the end of their jail term. With one quick thrust, Bennett and the Ontario government attempted to quash communist agitation.¹⁴ As Bennett later stated in defence

¹² Cited in Thompson and Seager, *Canada 1922-1939*, 214. For a discussion of the Bennett government’s policy towards communists during the Depression, see J. Petryshyn, “R. B. Bennett and the Communists: 1930-1935,” *Journal of Canadian Studies* 9 (November 1974):43-55.

¹³ Petryshyn, “Bennett and the Communists,” 44.

¹⁴ Those arrested were: Tim Buck, secretary of CPC; John Boychuk and Matthew Popovich, organizers among Ukrainian groups; Amos T. Hill, secretary of a Finnish communist organization; Sam Carr, an organizer in the Jewish community; Malcolm Bruce, editor of the *Worker*; Tom Ewen, principal figure in the WUL; and Tom Cacic, an

of his government's policies against the CPC, the time had come to "put the iron heel ruthlessly on propaganda of that kind [CPC]."¹⁵

While most quarters congratulated the government's actions in the much-publicized arrests, a few voices of denunciation broke through. Criticisms of the arrest hinged on the use of Section 98. This statute, added to the Criminal Code in 1919, was a leftover from the "Red Scare" and Winnipeg General Strike. Section 98 declared any organization or association which *advocated* or *defended* the use of violence or force to bring about "governmental, industrial or economic change" to be illegal. As a member of such a group, an accused could be jailed for up to twenty years. Most controversial was the provision which legally presumed the accused to be guilty "in the absence of proof to the contrary."¹⁶ Throughout the 1920s and 1930s, Section 98 remained the most serious target for civil libertarians, most notably J. S. Woodsworth and Frank Scott, and led others to question the safety of human rights in Canada. As historian A. R. M. Lower

unlucky Croatian immigrant caught in the raid.

¹⁵ Donald Avery, *Dangerous Foreigners: European Immigrant Workers and Labour Radicalism in Canada, 1896-1932* (Toronto: McClelland and Stewart, 1979), 133-141. Bennett quoted in Thompson and Seager, *Canada 1922-1939*, 226.

¹⁶ "The Criminal Code: 'Section 98,'" in *Historical Documents of Canada*, vol. 5: *The Arts of War and Peace 1914-1945*, ed. C. P. Stacey (Toronto: MacMillan Co., 1972), 126-127. On the events of 1919 and the creation Section 98 see Robert Craig Brown and Ramsay Cook, *Canada 1896-1921: A Nation Transformed* (Toronto: McClelland and Stewart Ltd., 1974), 311-314; Donald Avery, "The Radical Alien and the Winnipeg General Strike of 1919," in *The West and the Nation: Essays in Honour of W. L. Morton*, eds. Carl Berger and Ramsay Cook (Toronto: McClelland and Stewart Ltd., 1979), 209-231; and David Jay Bercuson, *Confrontation at Winnipeg: Labour, Industrial Relations, and the General Strike*, rev. ed. (Montreal: McGill-Queen's University Press, 1990), 163-175.

noted, Section 98 was “a demonstration to many of how feeble the English tradition of freedom was when compared with the fears of the ruling class: it weakened Canadian liberalism.” Yet, despite repeated attempts throughout the 1920s to effect its removal, the section remained on the statute books.¹⁷

Both the *Canadian Forum* and F. R. Scott immediately criticized the arrests. Scott argued that the use of Section 98 required Canadians to ask themselves “just what our British traditions of freedom of speech and association really mean, if anything.”¹⁸ The most organized criticism, however, came from Reverend A. E. Smith and his Canadian Labour Defense League (CLDL). The CLDL was established in 1925 by the CPC as a non-partisan body to raise funds for the legal defence of union members and communists arrested for their labour agitation. Smith, a former Methodist minister turned communist, immediately committed the CLDL to the release of the Toronto Eight and launched a nation-wide campaign for the repeal of Section 98.¹⁹ Over the next two years the CLDL organized conferences and pressed for an end to the Bennett government’s abuse of deportation laws. Between 1930 and 1933 the number of immigrants deported from Canada had jumped dramatically from 1,964 in 1929 to a Depression era high of

¹⁷ Arthur R. M. Lower, *Colony to Nation: A History of Canada* (Toronto: Longmans, Green and Co., 1946), 499. For agitation during the 1920s for Section 98’s removal, see Kenneth McNaught, *A Prophet in Politics: A Biography of J. S. Woodsworth* (Toronto: University of Toronto Press, 1959), 244-245.

¹⁸ Scott, “Trial of Toronto Communists,” 512.

¹⁹ On the history of the CLDL see J. Petryshyn, “Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labour Defense League, 1925-1940,” *Labour/Le Travailleur* 10 (Autumn 1982):39-63.

7,131 in 1933. Bennett had revived sections of the Immigration Act to “shovel out” criminals and “public charges,” those immigrants forced onto relief like hundreds of thousands of Canadian-born citizens. The deportation of many of these immigrants was a thinly veiled attack on the CPC since the communist movement in Canada had always been dominated by a diverse ethnic mix of Ukrainians, Finns, Poles, Russians, Jews and others, many of them foreign-born.²⁰ Deportation and Section 98 were the major weapons in Bennett’s “iron heel” attacks on communist agitation and thus became the obvious targets for Smith and the CLDL’s civil liberties campaign.

Bennett had refused to meet with Smith in January 1932, so the former minister led a delegation to Ottawa in February with a petition demanding the repeal of Section 98. Smith met with W. A. Gordon, minister of labour and immigration, and presented him with an affidavit which declared that 876 organizations representing over 171,000 members demanded the repeal of Section 98. As well, Smith submitted a 66,617 name petition which called for “Workers Rights” and an “Anti-Deportation Bill.”²¹ While the delegation received only a polite promise that the prime minister would be informed, the debate over the repeal of Section 98 reappeared in the House of Commons. Both J. S. Woodsworth, Labour M.P. from Winnipeg, and Mackenzie King attacked the government’s use of the statute and of its deportation powers. While Woodsworth

²⁰ On the use of deportation in Canada see Barbara Roberts, *Whence They Came, Deportation in Canada 1900-1935* (Ottawa: University of Ottawa Press, 1988), 1-53 and 125-194. On foreign-born radicals and the Canadian government see Avery, *Dangerous Foreigners*.

²¹ Petryshyn, “Class Conflict,” 49-51.

introduced motions to amend the Criminal Code and the Immigration Act, King denounced Bennett's attempts at "dictatorship" and, in a flourish of partisan opportunism, promised to repeal Section 98 if elected. These arguments counted for little, however, against the Conservative majority in the Commons. The government reiterated the necessity of the section and Woodsworth's motion came to naught.²²

Like Woodsworth, many other concerned political activists and intellectuals protested the excesses of the Bennett government. Throughout the Depression, one group of activists consistently voiced their concerns for civil liberties in Canada: The League for Social Reconstruction (LSR). This awkwardly named association came together over the winter of 1931-1932 in response to the government's bankrupt attempts to solve the problems created by Canada's economic crash. The core of the LSR's program was the replacement of the "capitalist" economic structure of unregulated competition with a "planned and socialized economy."²³ Spearheading the association were professors F. H. Underhill of Toronto and F. R. Scott of Montreal. Along with economist Eugene Forsey and two other Toronto professors, H. M. Cassidy and G. M. A. Grube, Underhill and Scott guided the activities of the new group. The LSR provided a necessary forum for the two activists' social and political views, but one of the paramount problems for most members remained the protection of civil liberties. For F. R. Scott, the

²² Petryshyn, "Class Conflict," 50-51. See also, McNaught, *Prophet in Politics*, 244-245.

²³ "The LSR Manifesto," Appendix I in Michiel Horn, *The League for Social Reconstruction: Intellectual Origins of the Democratic Left in Canada 1930-1942* (Toronto: University of Toronto Press, 1980), 219-220.

founding of the LSR marked a significant milestone in his long public crusade for human rights and fundamental freedoms.

Born in Quebec City on 1 August 1899, Francis Reginald Scott was the son of Reverend F. G. Scott, renowned poet and Chaplain to the Canadian First Division in France during the Great War. According to Scott's biographer, his father's fiery brand of Canadianism and Anglo-Catholicism instilled in the younger Scott "the conviction that one had a right to be angry - in fact, one must be angry about wrongdoing and injustice...[and] fight against unbridled power of any kind."²⁴ With a Bachelor's degree in history from Bishop's College, Scott received a Rhodes Scholarship and attended Oxford from 1920 to 1923. While there he studied constitutional history and more importantly, was introduced to Fabian socialism. Throughout his years in England, Scott's nascent socialist views germinated along with his poetic talents. Upon his return to Quebec, he chose law as his new profession and enrolled at McGill University in 1924 where he eventually joined the faculty in 1928. In the four years after his return from Oxford Scott's socialism took a more Canadian shape under the influence of J. S. Woodsworth, whom he met in 1927. Like Scott's father, Woodsworth was a passionate critic of injustice and thus reinforced the younger Scott's convictions. However, Woodsworth offered new and "modernist" thinking on politics and society: Christian socialism, the search for injustice and pacifism. These ideas Scott quickly gravitated towards. By 1931 F. R. Scott's grounding in the law and constitutional history coupled with his "modernist" socialism readied him to fight the

²⁴ Sandra Djwa, *The Politics of the Imagination: A Life of F. R. Scott* (Toronto: McClelland and Stewart Publishers, 1987), 31.

injustices of the 1930s.²⁵

With the creation of the LSR, Scott found his main vehicle to fight injustice during the Depression. Although the impact of this group of intellectuals is difficult to measure, two accomplishments stand out: the drafting of the Regina Manifesto of the Co-operative Commonwealth Federation (CCF) in 1933 and the publication of *Social Planning for Canada* in 1935, a multi-authored explanation of the LSR's program. In both of these documents the LSR grafted its concern for civil liberties into its concept of a "new social order." At the CCF's first national convention in Regina in July 1933, Underhill and Scott played a prominent role in the drafting of the new party's manifesto.²⁶ In its final version, the Regina Manifesto noted the "alarming growth of Fascist tendencies" among Canadian governments and therefore dedicated the CCF to the preservation of freedom of assembly and speech and to the repeal of Section 98. As well, the declaration committed the party to the creation of a national labour code which would guarantee the right to work and freedom of assembly.²⁷

Two years later, the LSR published *Social Planning for Canada*. In this

²⁵ On Scott's "modernist" thinking and the influence of Wordsworth's brand of socialism, see Djwa, *Politics of the Imagination*, 109-115.

²⁶ In 1932, Woodsworth helped to create the CCF, a loose party formed from eleven Progressive and Labour M.P.s who survived the Conservative electoral victory of 1930. See McNaught, *Prophet in Politics*, 255-277; Walter Young, *The Anatomy of a Party: The National CCF, 1932-1961* (Toronto: University of Toronto Press, 1969):13-67; and, Thompson and Seager, *Canada 1922-1939*, 230-235.

²⁷ "Co-Operative Commonwealth Federation Programme" [Regina Manifesto], Appendix, McNaught, *Prophet in Politics*, 321-330. For the role of the LSR at the Regina conference see Horn, *League for Social Reconstruction*, 42-48.

collaborative effort by the League's "Research Committee," the protection of civil liberties occupied an important part of Scott's chapter outlining the group's views on the constitution. As in the Regina Manifesto, *Social Planning* called for amendments to the BNA Act to enhance Parliament's powers to pass the social legislation to create the new Canadian state. However, Scott added a note of caution to his picture of a more centralized federalism. He reminded his readers of the recent attacks on freedom of speech, of association, of assembly and of the press, and argued that an "entrenched Bill of Rights clause in the BNA Act would do much to check the present drive against civil liberties - a drive which in Canada is promoted by men who pay lip-service to liberty at the very moment they are legislating it out of existence."²⁸ These prescriptions for the constitution in 1935 revealed the first signs of a new attitude toward the protection of civil liberties in Scott's thinking. Scott had advocated the repeal of Section 98 and of those sections of the Immigration Act used to deport radicals and the unemployed as the best policy to curb the government's abuse of civil liberties. With *Social Planning*, however, the McGill professor suggested that more powerful safeguards were necessary to protect Canadians' rights from their own government. Scott did not pursue the idea that Canada needed a bill of rights beyond this tract, however. It was a casual suggestion made without effective explanation, and it would remain so over the next decade.

The LSR's *Social Planning in Canada* arrived just one month before the 1935 federal election in which voters tossed R. B. Bennett and his conservatives out of Ottawa.

²⁸ Research Committee of the League for Social Reconstruction, *Social Planning for Canada* (Toronto: Thomas Nelson & Sons, Ltd., 1935), 508.

Prior to his electoral defeat, however, Bennett once more used his “iron heel” against a group of communist agitators. On Dominion Day in Regina, the RCMP attempted to arrest the communist leaders of the “On-to-Ottawa” trek, a group of 1,200 British Columbia relief camp workers who had planned to take their grievances directly to the federal government.²⁹ What had been a highly organized and peaceful demonstration until this point, turned into a bloody confrontation. By the end of the day, over one hundred demonstrators were in jail and one policeman was dead. This violent clash only confirmed the fears of many of the Conservative government’s harshest critics: traditional civil liberties of freedom of speech and assembly were in serious danger in Canada. As a result, the election of the Mackenzie King Liberals in October 1935 was met with quiet optimism by these same critics. King had vowed in the Commons to repeal Section 98 which he described as a “shocking” denial of free speech and association.³⁰ On 24 June 1936, the Liberal government wiped the hated statute from the Criminal Code. After years of agitation, civil libertarians struck a major victory.

The satisfaction that came with this success was short-lived, however. In August

²⁹ In 1932, the Department of National Defence organized work camps for the single unemployed men wandering the country in search of a job. The government considered these masses a threat to public safety and fertile ground for communist agitation. By 1935 there were more than two hundred camps across the country and over 170,000 men registered in them by the time they were dismantled. Conditions in the camps led to a series of serious disturbances which the government attributed to “subversive elements.” Organized into the Relief Camp Workers Union by the WUL, 1,800 British Columbia workers took their grievances first to Vancouver, and later, decided to directly confront the Prime Minister in Ottawa. See Thompson and Seager, *Canada 1922-1939*, 267-272 and Struthers, *No Fault of Their Own*, 95-103.

³⁰ Cited in Petryshyn, “Class Conflict,” 50.

1936, Quebec voters chose the conservative Maurice Duplessis and his Union Nationale. With the support of the Roman Catholic Church and rural Quebecers, Duplessis declared war on his most hated enemies: communists. In response to the King government's repeal of Section 98, the Union Nationale passed its notorious Padlock Law. Enacted in March 1937, this piece of legislation allowed the Attorney-General to padlock any house used "to propagate communism or bolshevism." As well, the act outlawed the publication and distribution of communist literature and enabled the police to seize and destroy such materials. Duplessis made no attempt to define either "communism" or "Bolshevism". According to the premier, this was not necessary since "communism can be felt."³¹ These words echoed loudly statements made by R. B. Bennett, and as with the former prime minister, Duplessis immediately came under attack for his curtailment of civil liberties. Just one month after the Padlock Act became law, F. R. Scott and a small group in Montreal formed the Canadian Civil Liberties Union. Earlier attempts in 1934 to create a national civil liberties association had not born fruit despite Underhill's efforts to draft a provisional constitution. In 1936 a renewed effort on the part of Underhill and Scott also ended without significant progress.³² But with the advice of Roger Baldwin, Director of

³¹ "Padlock Act," in *Historical Documents*, 129-130. Duplessis' definition of communism cited in Thompson and Seager, *Canada 1922-1939*, 255.

³² "Canadian Civil Liberties Union - Provisional Constitution," n.d. [1934], National Archives of Canada (hereafter NAC), *Francis Reginald Scott Papers*, Vol. 9, File 8, Microfilm Reel H-1221. In 1936, Underhill suggested to Scott that Jack King, a CCF organizer in Saskatchewan, should be put in charge of organizing a national civil rights union. King had created the Citizen's Defence Movement of Regina to help those arrested in connection with the On-to-Ottawa trek and Dominion Day riot. See Underhill to Scott, 10 March 1936 and King to Scott, 20 February 1936, *Scott Papers*, Vol. 9, File 9, Microfilm Reel H-1221.

the American Civil Liberties Union, and the impetus of the Padlock Law, the CCLU emerged in 1937. Despite its name, this association was not a national organization. The primary target of the CCLU was the Duplessis government: “[t]he Civil Liberties Union was founded...with the object of defending and maintaining the traditional rights of British citizens against the Padlock Act and other subversive and tyrannical legislation.”³³ Other attacks on Canadians’ civil liberties ranked second in importance.

For the following two years, the CCLU waged an unsuccessful campaign against both the Padlock Law and its own financial problems. The Montreal association launched an educational attack against the Duplessis legislation to warn Quebecers of the danger to their rights. Unfortunately for the CCLU, the law itself made public meetings and distribution of literature against the act illegal. As Hubert Desaulniers, the Chairman of the group, noted in a speech in Toronto: “a gathering such as this could not have been held in Montreal at the present time.”³⁴ With this avenue largely closed, the CCLU turned to lobbying the federal government to use either its power of disallowance to repeal the Quebec act or to refer the law to the Supreme Court for a ruling on its constitutionality. Despite criticism from J. S. Woodsworth, on 6 July 1938 Justice Minister Ernest Lapointe announced that they would not refer the Padlock Law to the court. The question of disallowance suffered the same fate. As King confided to his diary: “disallowance would

³³ Roger Baldwin to Scott, 23 April 1937, *Scott Papers*, Vol. 10, File 13, Microfilm Reel H-1222; and D. T. Goodwin (CCLU Secretary) to Members, 14 June 1938, *ibid.*

³⁴ Cited in Thompson and Seager, *Canada 1922-1939*, 285.

be pretty certain to bring on an election in Quebec, with a certain win for Duplessis.”³⁵

Meanwhile, Duplessis’ war on communism continued unabated. On 31 December 1938, the Quebec government released a report on its use of the Padlock Law over the previous year and a half: ten houses padlocked, and 54,369 copies of various newspapers, 39,317 books, 23,102 circulars, 15,000 pamphlets and 4,900 buttons confiscated.³⁶ During this losing battle with Duplessis, the Montreal association continually searched for new members and alternate sources of funds. Despite repeated attempts to raise money, the treasurer announced in May 1939 that the CCLU’s finances were “woefully inadequate.” With the Canadian declaration of war in September, Desaulniers informed members that the association would continue throughout the war, but only if a new campaign to raise \$3,000 was successful. With the war and the resulting threat of new and more serious dangers to civil liberties, Canada’s one organization devoted to the protection of Canadians’ individual rights and freedoms rested on a crumbling financial foundation.³⁷

If the experience of the 1930s created a heightened concern for civil liberties in Canada, it also created a misshapen foundation for their protection. Throughout the 1930s groups such as the CLDL, the CCF, and the CCLU responded to specific attacks on freedom of assembly and speech such as Bennett’s use of Section 98 and Duplessis’

³⁵ See C. P. Wright, “To Finance Padlock Appeals,” *The Canadian Forum* 19 (October 1939):215-220; King cited in Thompson and Seager, *Canada 1922-1939*, 296.

³⁶ Reported in *The Canadian Forum* 18 (March 1939):362.

³⁷ Agatha Chapman (Treasurer) to Scott, 5 May 1939, *Scott Papers*, Vol. 10, File 13, Microfilm Reel H-1222; and, Desaulniers to Scott, 20 September 1939, *ibid*.

Padlock Law. Calls of “repeal” and “disallow” rang out during the 1930s, but only a few voices talked of civil liberties in a broader sense. Scott’s musings of an entrenched bill of rights occupied a mere four lines in a work over five hundred pages in length. The goal of almost all civil libertarian groups during the Depression was to convince the government to cease its trampling of individual rights in particular circumstances only. Few suggested that perhaps positive safeguards, such as a limitation on Parliament’s power, were necessary. Not until World War II brought a much broader curtailment of civil liberties by the federal government would many Canadians begin to advocate the necessity of a more comprehensive solution.

“The fruits of victory may well turn bitter in our mouths:” World War II and the Concern for Canadian Liberty in Wartime

As the Canadian Civil Liberties Union orchestrated its campaign against the Padlock Law in 1938-1939, Nazi Germany pushed Europe closer to the edge of another war. The signing of the Nazi-Soviet Non-Aggression Pact in August 1939 led to Germany’s invasion of Poland on 1 September. In Canada, the Mackenzie King government conducted foreign policy like a circus performer walking a tightrope. Conscious of the divisive effects that the Great War had on the country, the watchword of the King policy was national unity: “[L]et us be united on a sane policy of defence - let us explain that policy to our people and let us above all strive at all times to keep Canada united.”³⁸ The cautious prime minister chose the least dangerous path through the

³⁸ King made these comments to convince the Liberal caucus to support increased defence expenditure from \$35 million in 1938-1939 to \$60 million for 1939-1940. Cited in

looming international crisis. He supported the British policy of appeasement even though after Munich he recognized its futility. He refused to pledge Canada to any defensive arrangements with Britain to avoid entangling commitments in the event of war. At the same time, he increased Canadian defence spending. Finally, he promised that if Britain entered a war on the European continent, Canada would not automatically follow behind. Parliament would decide. Despite his best efforts to soften the effects of the emerging European crises, King could not prevent the slide into war. On 10 September 1939, one week after Britain, Canada declared war on Nazi Germany.³⁹

Parliament's decision to enter another European war signalled the beginning of a period of profound change in Canada. From 1939 to 1945 little of the Canadian social order remained unaffected. The Second World War significantly altered industrial relations, the role of women in the economy, social welfare, and the general involvement of government in the lives of individual Canadians.⁴⁰ The issue of civil liberties was no

Thompson and Seager, *Canada 1922-1939*, 320.

³⁹ On Canadian foreign policy in the late 1930s see James Eayrs, *In Defence of Canada*, vol. 2: *Appeasement and Rearmament* (Toronto: University of Toronto Press, 1965); C. P. Stacey, *Canada and the Age of Conflict*, vol. 2: *1921-1948: The Mackenzie King Era*, (Toronto: Macmillan of Canada, 1981); J. L. Granatstein, *The Ottawa Men: The Civil Service Mandarins, 1935-1957* (Toronto: Oxford University Press, 1982); John English, *Shadow of Heaven: The Life of Lester Pearson*, vol. 1: *1897-1948* (Toronto: Lester and Orpen Dennys, 1989); and, Robert Bothwell and John English, "The View from Inside Out: Canadian Diplomats and Their Public," 39 (Winter 1983-4):47-67.

⁴⁰ For general works on Canada during World War II see Bothwell, Drummond and English, *Canada 1900-1945*, 317-387; J. L. Granatstein, *Canada's War: The Politics of the Mackenzie King Government, 1939-1945* (Toronto: Oxford University Press, 1975); and, Donald Creighton, *The Forked Road, Canada 1939-1957* (Toronto: McClelland and Stewart, 1976), 1-115. On industrial relations see Palmer, *Working-Class*

exception. The experiences of the first years of the conflict acted as a catalyst for those concerned with the state of individual rights and freedoms in Canada. The King government's use of emergency wartime powers to limit traditional civil liberties for "the efficient prosecution of the war" produced new and often competing arguments for the protection of Canadians' individual rights and freedoms. From 1939 to 1942, Depression era civil libertarians launched a vigorous campaign against the government's abrogation of freedom of speech, habeas corpus, freedom of the press and its use of arbitrary detention. At the same time, better organized groups emerged and joined these efforts to safeguard individual rights.

Canadian concern for civil liberties in wartime surfaced early in the conflict. With the German invasion of Poland, Prime Minister King invoked the War Measures Act, a piece of legislation originally enacted in 1914, which gave the government almost limitless powers to deal with the war emergency. This act enabled the Governor-in-Council to "do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and

Experience, 278-290; Morton, *Working People*, 165-186; and Laurel Sefton MacDowell, "The Formation of the Canadian Industrial Relations System During World War Two," *Labour/Le Travailleur* 3 (1978):175-196. On women see Ruth Roach Pierson, "Women's Emancipation and the Recruitment of Women into the Labour Force in World War II," in *The Neglected Majority: Essays in Canadian Women's History*, eds. Susan Mann Trofimenkoff and Allison Prentice (Toronto: McClelland and Stewart, 1977), 125-145; Pierson, *"They're Still Women After All": The Second World War and Canadian Womanhood* (Toronto: McClelland and Stewart, 1986); and, Veronica Strong Boag, "Working Women and the State: The Case of Canada, 1899-1945," *Atlantis* 6 (Spring, 1981):1-9.

welfare of Canada.”⁴¹ This spurred B. K. Sandwell, editor of *Saturday Night*, to sound the first note of warning to the Liberal government in an article on the dangers this act posed to traditional rights and freedoms.⁴² The next day Sandwell’s concerns were confirmed. On 3 September 1939, a week before Parliament received its chance to “decide”, the government announced the imposition of the Defence of Canada Regulations (DOCR). Passed under the War Measures Act, the DOCR allowed the government greater power to deal with suspected threats to the Canadian war effort at home. For the previous eighteen months an interdepartmental committee had drafted these regulations so that immediate measures were available in the event of war.⁴³ In general, the DOCR better enabled the government to prevent sabotage, and other acts deemed detrimental to the war effort, and to control the large numbers of enemy aliens in the country. For the

⁴¹ On the enactment of the War Measures Act and its significance see F. Murray Greenwood, “The Drafting and Passage of the War Measures Act in 1914 and 1927: Object Lessons in the Need for Vigilance,” in *Canadian Perspectives on Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), 291-327. For the text of the act see Appendix 5 in *ibid*.

⁴² B. K. Sandwell, “Canada’s Emergency Powers,” *Saturday Night* 53 (2 September 1939).

⁴³ On 14 March 1938, under order-in-council, the federal government established six standing interdepartmental committees “to inquire into and report upon the practical problems concerning Canada which might arise in time of war or emergency, real or apprehended.” The Committee on Emergency Legislation, chaired by the deputy minister of justice, C. P. Plaxton, was responsible for drafting legislation necessary for the prosecution of the war. Also included on the committee were L. C. Christie, J. E. Read, and M. H. Wershof (External Affairs); A. K. Eaton and W. C. Clark (Finance); M. A. Pope (Defence); J. F. MacNeil (Justice); and, C. Rivett-Carnac (RCMP). See Daniel Robinson, “Planning for the ‘Most Serious Contingency’: Alien Internment, Arbitrary Detention, and the Canadian State 1938-39,” *Journal of Canadian Studies* 28 (Summer 1993):5-20.

most part, the regulations were defensible given the exigencies of war. However, a minority of these restrictions seriously threatened some of the most fundamental of individual rights and freedoms.

Four individual sections of the DOCR stood out. The first concerned press censorship. Section 15 empowered the justice minister to restrict the publication of materials deemed “prejudicial to the safety of the state.” Section 21 proved to be the most controversial of the orders. This regulation allowed the justice minister to detain without charge any person believed a danger to the state. More importantly, this section suspended habeas corpus: “any person shall, while detained by virtue of an order made under this paragraph, be deemed to be in legal custody.” To mitigate this drastic measure, Section 22 allowed detainees an appeal to an “Advisory Committee” appointed by the same minister responsible for the original detention order. The irony here was obvious. Finally, the DOCR significantly limited freedom of speech. Section 39 prohibited any actions, reports, statements or utterances “intended or likely to be prejudicial to the safety of the State or the efficient prosecution of the war.” On 27 September the government added printed materials to this list with Section 39A.⁴⁴ These regulations, together with Sections 24 and 25 on enemy aliens, provided not only the backbone of the DOCR; they coloured the entire perception of the regulations as a unwarranted attack on the rights of Canadians. Indeed, as one historian has argued, the DOCR “represented the most serious

⁴⁴ P.C. 2891, 27 September 1939, *Proclamations and Orders-in-Council Passed Under the Authority of the War Measures Act*, (hereafter *Wartime Orders-in-Council*) vol. 1 (Ottawa: King’s Printer, 1940).

restrictions upon the civil liberties of Canadians since Confederation.”⁴⁵

Despite these “serious restrictions” contained in the DOCR, the government did not table the regulations in Parliament for approval. The House of Commons sat for only six days in September 1939 and no time was set aside for the defence regulations passed under the War Measures Act. However, King promised that due time would be given to Parliament at its next session to scrutinize the government’s emergency legislation passed by order-in-council.⁴⁶ By the beginning of 1940, however, the House of Commons was still yet to reconvene. Meanwhile, criticism mounted of King’s circumvention of Parliament as the government instead ruled by order-in-council. In November 1939 and January 1940, F. R. Scott wrote two blistering attacks in the *Canadian Forum* on King’s dictum that Parliament would decide when and if Canada entered the European war. More specifically, Scott argued that the abuses of civil liberties contained in the DOCR necessitated a review by Parliament. Also in January, John Baldwin, in a *Saturday Night* article, bluntly demanded a special parliamentary committee devoted strictly to the defence regulations.⁴⁷ Finally, on 25 January 1940, King recalled Parliament and subsequently

⁴⁵ Ramsay Cook, “Canadian Freedom in Wartime, 1939-1945,” in *His Own Man: Essays in Honour of Arthur Reginald Lower*, eds. W. H. Heick and Roger Graham (Montreal: McGill-Queen’s University Press, 1974), 38. See also Cook, “Canadian Liberalism in Wartime: A Study of the Defence of Canada Regulations and Some Canadian Attitudes to Civil Liberties in Wartime.” (M.A. diss., Queen’s University, 1955).

⁴⁶ For King’s address to Parliament see *Debates*, 8 September 1939, 18-41.

⁴⁷ F. R. Scott, “The Constitution and the War,” *Canadian Forum* 19 (November 1939):243-244; Scott, “Parliament Should Decide,” *Canadian Forum* 19 (January 1940):311-313; and, John R. Baldwin, “Parliament and Liberty,” *Saturday Night* 55 (20 January 1940):3. In yet another article, Scott argued that the “famous phrase ‘Parliament will decide,’ put to the acid test of reality, appears in its true light as a vote-catching and

dissolved it the same day, marking the shortest session in Canadian history. Once again, the DOCR escaped the scrutiny of Parliament.⁴⁸

Notwithstanding Scott's criticism in the *Canadian Forum*, the regulations generated little immediate attention in the press in 1939. News reports on the invasion of Poland and the host of war preparations set in motion by Ottawa and London dominated the country's papers. For the most part, the little response that appeared was favourable. Both the *Toronto Globe and Mail* and the *Montreal Gazette* supported the government's actions. When Ontario Attorney-General Gordon D. Conant appealed for even stronger powers to intern, the *Gazette* heartily agreed and suggested the re-enactment of Section 98 of the Criminal Code.⁴⁹

Obviously, neither the Attorney-General nor the Montreal newspaper truly appreciated the sweeping powers granted by the DOCR. With these new regulations in hand and these vocal indications of public support, the Liberal government moved swiftly against enemy aliens. King appointed Norman Robertson, a prominent officer in the Department of External Affairs, to head an internment committee. On 4 September the RCMP interned 303 German Canadians suspected of pro-Nazi sympathies. Acceding to public demands for action against potential Nazi saboteurs, the government had used the

demagogic slogan." See F. R. Scott, "How Canada Entered the War," *Canadian Forum* 19 (January 1940):344-346.

⁴⁸ *Debates*, 25 January 1940, 3-20 In his criticism of King's dissolution of Parliament, J. S. Woodsworth attacked the government for setting up a "virtual dictatorship" with the DOCR. *Ibid.*, 19-20.

⁴⁹ *Globe and Mail*, 13 September 1939; and, *Montreal Gazette*, 12 September 1939.

DOCR to intern over 400 enemy aliens by June 1940. With the German invasions of Norway, the Low Countries and ultimately France, calls for more drastic moves against potential fifth columnists in Canada reached a fevered pitch. Widespread stories circulated of how Nazi-planted spies and native-born Quislings helped the Germans to overwhelm the Norwegians and the Dutch. The government met these demands with increased round-ups of potential Nazi collaborators in Canada. As one historian concluded, "the main purpose of moves against German Canadians was less to turn up dangerous agents than to calm the public and make it appear that the government was in control of the Nazi threat at home."⁵⁰ With Italy's entry into the war in June 1940, the internment net widened to include Italian Canadians. During the war, 847 German Canadians and 632 Italian Canadians passed through the gates of Canada's internment camps under the auspices of the DOCR.

Although the largest group of detainees throughout the war was German Canadians, the announcement of the Nazi-Soviet Non-Aggression Pact in August 1939 gave the RCMP and the government new ammunition against an old foe: Canadian communists. In an article entitled "Internal Security," the *Montreal Gazette* proclaimed that fascism and communism were "now sleeping in the same bed," and therefore, should

⁵⁰ Robert H. Keyserlingk, "Breaking the Nazi Plot: Canadian Government Attitudes Towards German Canadians, 1939-1945," in *On Guard For Thee: Ethnic Minorities and the Canadian State during the Second World War*, eds. N. Hillmer, B. Kordan and L. Luciuk (Ottawa: Queen's Printer, 1989), 61. See also, Keyserlingk, "The Canadian Government's Attitude Toward Germans and German Canadians in World War II," *Canadian Ethnic Studies* 16 (No. 1 1984):16-27 and Jonathan Wagner, "The Deutscher Bund Canada, 1934-9," *Canadian Historical Review* 58 (June 1977):176-200. On the treatment of Italian Canadians see Bruno Ramirez, "Ethnicity on Trial: The Italians of Montreal and the Second World War," in *On Guard for Thee*, 53-70.

be treated as such.⁵¹ The Mounties were in complete agreement. In the late 1930s, Robertson made repeated attempts to convince the RCMP to focus its efforts on pro-fascist organizations in Canada rather than communists, but he accomplished little. In response, Charles Rivett-Carnac, head of the RCMP's Intelligence Section and member of the committee responsible for the DOCR, argued that communism posed a greater threat to Canadian security because it, unlike fascism, advocated the "overthrow of the present economic order." Even after the war began, the RCMP maintained its attitude: "we are of the opinion that there is more to fear from acts of espionage and sabotage on the part of the Communist Party than from Nazi or Fascist organizations and adherents." Comments such as these led one historian to conclude that World War II, far from being a period of popular front union against Nazism, was an "episode in a continuity" of repression against Canadian communists from the 1930s to the Cold War of the late 1940s.⁵²

Similar to its treatment of enemy aliens, the King government moved swiftly against Canada's communists. In November 1939, the government banned the CPC's official newspaper, *The Clarion*. As well, police seized large quantities of communist and left-leaning foreign publications at the border. Finally, in May 1940 the gavel fell on Canadian communists. An Ontario court judge ruled that the CPC was an illegal organization under the DOCR. In response, on 4 June 1940, the government added

⁵¹ *Montreal Gazette*, 12 September 1939.

⁵² Cited in Reg Whitaker, "Official Repression of Communism During World War II," *Labour/Le Travail* 17 (Spring 1986):137. See also Donald Avery, "Canada's Response to European Refugees, 1939-1945: The Security Dimension," in *On Guard for Thee*, 179-216 and John Stanton, "Government Internment Policy, 1939-1945," *Labour/Le Travail* 31 (Spring 1993):203-241.

Section 39C to the DOCR which declared the CPC and fifteen other organizations illegal. Unfortunately caught in this collection were the Jehovah's Witnesses, and more significantly for the government, many ethnic organizations deemed to be communist fronts.⁵³ Foremost among them was the Ukrainian Labour-Farmer Temple Association (ULFTA). Many of the communist movement's most vocal members throughout the 1920s and 1930s emerged from the Ukrainian community, and as a result, the RCMP had long targeted Ukrainian Canadian organizations as potential communist threats. As the internment of Canadian communists began after 4 June 1940, members of the ULFTA bore the brunt of the government roundup. Of the 133 communists eventually interned under Section 21 of the DOCR, fully one third were Ukrainian Canadians. Mixed with the government's attack on the CPC, then, was a strong dose of xenophobia as it used the DOCR to rid the country of potential saboteurs and fifth columnists.⁵⁴

In addition to the internment of enemy aliens and communists to prevent actions likely "prejudicial to the safety of the State or the efficient prosecution of the war," the government frequently wielded the DOCR, especially Section 39, against an increasing

⁵³ On the Jehovah's Witnesses see M. James Penton, *Jehovah's Witnesses in Canada: Champions of Freedom of Speech and Worship* (Toronto: MacMillan of Canada, 1976), 129-155 and William Kaplan, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto: University of Toronto Press, 1989), 52-122.

⁵⁴ P.C. 2363, 4 June 1940, *Wartime Orders-in-Council*, vol. 1. For the government's treatment of Ukrainian communists see Whitaker, "Official Repression," 156-159; Stanton, "Government Internment Policy," 229-231; and B. Kordon and L. Luciuk, "A Prescription for Nationbuilding: Ukrainian Canadians and the Canadian State, 1939-1945," in *On Guard for Thee*, 85-100. According to Kordon and Luciuk, the confrontational attitude taken by the Canadian government with the Ukrainian community was unwarranted and instead represented a squandered opportunity at nation-building.

number of unsuspecting Canadians. In an almost comic attempt to head off what the *Canadian Forum* dubbed “cocktail club conspiracies,” the RCMP arrested and charged various individuals for uttering the wrong phrase at the wrong time. Any disparaging remarks made against the Canadian or British governments’ prosecution of the war could be interpreted as seditious under Section 39. The validity of the comment was inconsequential. In December 1939, *Canadian Forum* began a regular column entitled “Civil Liberties” which listed prosecutions made under Section 39 and statements made by politicians in favour of the section. In one case, a Saskatchewan man received a fifty dollar fine and one month in jail when he “grossly insulted” a soldier during a bar room brawl. In another example, a judge sentenced a Kirkland Lake miner to three months in jail for “statements at work and outside likely to prejudice recruiting.”⁵⁵ Other such stories were plentiful as the government sought to crack down on internal dissent that it believed detrimental to Canada’s war effort.

By 1940 abuses such as these, coupled with the more controversial aspects of Section 21, led to increasing criticisms of the government’s attempts to eliminate dissent. The first indication that problems for the government were imminent came from the British House of Commons. In 1938-1939, the authors of the DOCR had relied heavily

⁵⁵ In Brantford a magistrate charged that under Section 39 “[a]nyone overhearing another offering insults to our volunteers and to the King’s uniform and failing to lay a charge is himself an accessory to a breach of the regulations.” In the same breath, he concluded that “Hitlerism must be banished from the earth.” Civil Liberties, *Canadian Forum* 19 (December 1939):269. See also Civil Liberties, *Canadian Forum* 19 (February 1940):343.

on a series of British regulations drafted by the Committee of Imperial Defence.⁵⁶ When introduced into the British House of Commons, however, the Defence of the Realm Regulations created a storm of criticism which forced the government to withdraw the regulations on 31 October 1939. On 26 November the British regulations were re-issued with better safeguards for traditional civil liberties.⁵⁷ As a result of this re-drafting, the Canadian government found itself with a harsher set of orders to deal with the wartime emergency than Britain, which was much closer to the theatre of fighting.

The significance of this development resounded loudly for the critics of the Canadian government's attitude toward civil liberties in the first months of the war. The *Winnipeg Free Press* noted the actions of the British Parliament in a December article and called on the Canadian government to follow the British lead. "There has been some very unwise repression of opinion in this country since war broke out," the article stated, "and we must hope that those responsible for it were at the time too rushed and overworked to appreciate the damage they were doing to our traditional framework of freedom."⁵⁸ Other

⁵⁶ Robinson, "Planning for 'Most Serious Contingency,'" 12-13.

⁵⁷ In Britain, the Defence of the Realm Regulations Section 18 received the harshest criticism. This regulation, like Canada's Section 21, allowed the government to intern without trial those individuals deemed a hazard to the safety of the state. The revised section, however, required the government to present to Parliament the names of those detained once a month as a safeguard to their liberty. See the *Winnipeg Free Press*, 10 January 1940. On internment and civil liberties in Britain during the war see Peter and Leni Gillman, *"Collar the Lot!"* (London: Quartet Books, 1980); Neil Stammers, *Civil Liberties in Britain During the 2nd World War: A Political Study* (London: Croom Helm Ltd., 1983); and, François Lafitte, *The Internment of Aliens* (London: Libris, 1988).

⁵⁸ *Winnipeg Free Press*, 27 December 1939.

members of the press concurred as they tossed criticism at the King government's use of the DOCR. In the *Canadian Forum* G. M. A. Grube, a Toronto professor and past president of the LSR, launched a bitter attack on the Liberal government for its "star-chamber methods of arrest and detention" which he argued constituted a genuine threat "to the very existence of Canadian democracy." *Saturday Night*, another consistent defender of civil liberties, noted the discrepancies between the DOCR and the British regulations when it called for a parliamentary committee to review the controversial Canadian measures. Even the *Globe and Mail* wondered at the irony of the Canadian government's two year preparation for the internment of its own citizens while little else received the same advanced attention.⁵⁹

While pressure mounted in the press, concerned individuals banded together to throw their weight behind the effort to influence the King government. At the beginning of the war, there existed only two organizations in Canada devoted exclusively to the protection of civil liberties. Two "branches" of the Canadian Civil Liberties Union operated in Montreal and Vancouver in 1939. Despite the common name, however, there was no national organization in Canada comparable to the Civil Rights Union in Britain or the American Civil Liberties Union. Connections between the groups in Montreal and Vancouver and with other individuals active across the country were strictly on an ad hoc

⁵⁹ G. M. A. Grube, "Freedom and the War," *The Canadian Forum* 19 (November 1939):304; John R. Baldwin, "Parliament and Liberty," *Saturday Night* 55 (20 January 1940):3; and, *Globe and Mail*, 4 January 1940.

basis.⁶⁰

Of the two Canadian associations, the Montreal group was first to launch a campaign against the new wartime restrictions enforced by the federal government. Throughout the winter of 1939-1940, the CCLU sent a barrage of letters to federal politicians criticizing the government's lack of regard for individual rights. More significantly, the group authored "The War and Civil Liberties," the first published commentary on the DOCR. In this strongly worded pamphlet the CCLU accepted the necessity of measures to protect the country from sabotage and espionage; nevertheless, it condemned certain regulations which "authorize flagrant invasion of the basic constitutional rights and liberties of the citizen."⁶¹ The pamphlet attacked the curtailment of freedom of expression contained in Sections 15, 39 and 39A. In the CCLU's opinion these regulations were unnecessary since existing laws dealt amply with treason and sedition: "[i]f anything further is desired, let it be proposed to Parliament in the form of a bill and duly scrutinized." As well, Section 21 received harsh criticism for its gross interference with traditional civil liberties through arbitrary detention and the suspension of habeas corpus. In what would become a favourite argument of civil liberties associations, the pamphlet also pointed out the relative severity of the DOCR when compared to the British regulations. The pamphlet demanded rhetorically, "[c]an Canada afford to be less democratic than Great Britain?" In conclusion, the CCLU served notice

⁶⁰ The Vancouver Branch of the Canadian Civil Liberties Union was established in May 1938. See Cook, "Canadian Liberalism in Wartime," 140.

⁶¹ CCLU, Montreal Branch, "War and Civil Liberties," *Scott Papers*, Vol. 30, File 2, Microfilm Reel H-1291.

that it intended to challenge the DOCR in the courts as well as continue its campaign to “acquaint the people of Canada with the danger to their liberties represented by the Regulations.”⁶²

The key component in this educational campaign was the “National Conference for Civil Liberty in Wartime,” held 18-19 May 1940 in Montreal. Throughout the winter, Raymond Boyer, vice-chairman of the CCLU, conscripted the support of a broad collection of organizations as well as a number of influential individuals.⁶³ Unfortunately for the civil liberties cause, the attendance by a large number of communists marred the eventual conference at the Mount Royal Hotel. The conference attracted approximately 400 participants of whom some sources estimated one quarter was communist.⁶⁴ Led by

⁶² CCLU, Montreal Branch, “War and Civil Liberties,” *Scott Papers*, Vol. 30, File 2, Microfilm Reel H-1291. The RCMP closely monitored the activities of the CCLU, Montreal Branch and commented extensively on “The War and Civil Liberties” in its *Intelligence Bulletin*. Throughout the war the Intelligence Section of the RCMP catalogued the activities of suspected communist and fascist organizations in this weekly secret report seen by Cabinet and senior civil servants. For an analysis of the *Intelligence Bulletin* see “Introduction” to *RCMP Security Bulletins: The War Series, 1939-1941*, eds. Gregory Kealey and Reginald Whitaker (St. John’s: Committee on Labour History, 1989). On the RCMP’s response to the CCLU’s “The War and Civil Liberties,” see “Attacking Defence of Canada Regulations (Montreal),” *Intelligence Bulletin*, War Series No. 14, 22 January 1940 in Kealey and Whitaker, *RCMP Security Bulletins*, 126-128.

⁶³ The membership of the Convening Committee for the conference included: the All-Canadian Congress of Labour (ACCL), the CCLU, the Canadian Committee of Industrial Organizations (CIO), the Canadian Youth Congress, the Christian Social Council of Canada, the Fellowship for a Christian Social Order, and the LSR, “National Conference for Civil Liberty in Wartime,” *Scott Papers*, Vol. 10, File 13, Microfilm Reel H-1222.

⁶⁴ *Montreal Gazette*, 20 May 1940 and 23 May 1940; B. K. Sandwell, “Saviours of Liberty,” *Saturday Night* 55 (25 May 1940). The RCMP estimated that communist delegates numbered “at least 85%.” “Civil Liberties Union Ruin Their Cause (Montreal),” *Intelligence Bulletin*, War Series, No. 33, 10 June 1940 in Kealey and Whitaker, *RCMP*

A. E. Smith, communist delegates put forward several controversial resolutions which deeply divided the proceedings and led to shouting matches concerning the outlawing of the CPC. In the end, the delegates managed to pass a series of resolutions which demanded more frequent sittings of the House of Commons, parliamentary consideration of the DOCR and the removal of Sections 15, 21, 39 and 39A. The reaction to this “stormy meeting,” as the *Montreal Gazette* referred to it, was quick. The Montreal paper strongly condemned the conference and stated blankly that the “Government ought not to tolerate associations of this character.” Even Sandwell ran a long story in *Saturday Night* attacking A. E. Smith’s attempt to steer the meeting towards the communists’ agenda.⁶⁵ In a secret report, the RCMP concluded that the conference was a “colossal blunder.” More significantly, the report held that within the CCLU “reaction from the loyal elements has all but wrecked the Union.” Indeed, after the conference the CCLU quickly faded, surpassed by the emergence of less controversial organizations seeking to protect civil liberties.⁶⁶

Security Bulletins, 266-267.

⁶⁵ *Montreal Gazette*, 20 May 1940 and 23 May 1940; *Saturday Night* 55 (25 May 1940).

⁶⁶ “Civil Liberties Union Ruin Their Cause (Montreal),” *Intelligence Bulletin*, War Series, No. 33, 10 June 1940 in Kealey and Whitaker, *RCMP Security Bulletins*, 266. The RCMP kept up their surveillance of the CCLU and even concluded in 1941 that the “Canadian Civil Liberties Union is the most effective weapon of the Communist Party of Canada.” While the RCMP exaggerated the influence of the communist members of the union, the CCLU definitely lost much of its original membership due to the growth of the communists, and hence lost most of its respectability. “What is the Civil Liberty Union?” *Intelligence Bulletin*, War Series, No. 45, 19 July 1941 in *ibid.*, 380-381. See also Cook, “Canadian Liberalism in Wartime,” 168.

While the Montreal association prepared its pamphlet and made arrangements for the May conference over the winter of 1939-1940, two new groups had organized in response to the Liberal government's use of the War Measures Act and the DOCR. The first of these was led by B. K. Sandwell of Toronto. The outspoken editor of *Saturday Night*, Sandwell was a noted defender of civil liberties. Born in 1876, Sandwell was a former classmate of Mackenzie King at the University of Toronto. After graduation, Sandwell immediately went into the newspaper business with jobs as associate editor at both the Montreal *Herald* and the Montreal *Financial Times*. After short stints in the Department of Economics at McGill University and in the English Department at Queen's, Sandwell accepted the position of editor of *Saturday Night* magazine in 1932. Under his leadership, the magazine often championed the protection of civil liberties in Canada, and this only intensified with the outbreak of the war.

In connection with the forthcoming federal election in March, Sandwell organized a group of concerned citizens and wrote a letter in February 1940 to the prime minister and the leaders of the other federal parties. The letter recognized that war demanded certain restrictions on Canadians' civil liberties; however, these "regulations should not, by vagueness of expression and unwise application, become a means to the unnecessary curtailment of democratic rights." The authors went on to note the changes made in Britain to its emergency defence regulations and cautioned the government on the effects the DOCR may have on relations with the United States. Finally, the letter called on each of the leaders to commit to the creation of a parliamentary committee to review the

defence regulations.⁶⁷

Never one to miss an opportunity during an election campaign, King recognized that the list of signatures contained “persons in positions of authority in Ontario,” and he thus acceded to Sandwell’s request.⁶⁸ In a letter of 8 February 1940, King stated that his intention had always been to submit the DOCR to a parliamentary committee and stressed that “so long as this administration holds office, every precaution will be taken to ensure that the greatest degree of freedom, consonant with our belligerent status, will be preserved.”⁶⁹ Over the next few months, this ad hoc group of concerned citizens organized themselves into the Civil Liberties Association of Toronto with B. K. Sandwell appointed as president. This group maintained its pressure on the government and expanded on its criticisms of the DOCR in a memorandum sent to each of the members of the Commons.

While Sandwell orchestrated the Toronto group’s criticism of the government,

⁶⁷ Letter reprinted in “Defence of Liberty,” *Saturday Night* 55 (10 February 1940):12. Included among the letter’s signatures were Morley Callaghan, C. A. Corbett, G. M. A. Grube, J. C. McRuer and Judith Robinson. King and Sandwell first met at the University of Toronto in the late 1890s, see R. MacGregor Dawson, *William Lyon Mackenzie King: A Political Biography*, vol. 1: 1874-1923 (Toronto: University of Toronto Press, 1958), 37.

⁶⁸ King noted the membership of the group when he introduced the letter in Parliament four months later, see *Debates*, 11 June 1940, 600. As well, he confided to his diary his respect for the Sandwell-led lobby. See J. W. Pickersgill, ed., *The Mackenzie King Record*, vol. 1: 1939-1944 (Toronto: University of Toronto Press, 1960), 354-355. On McRuer’s role in the formation of this group see Patrick Boyer, *A Passion for Justice: The Legacy of James Chalmers McRuer* (Toronto: University of Toronto Press, 1994), 164-165.

⁶⁹ King to William C. Grant (secretary to the Toronto group), 8 February 1940, reprinted in *Debates*, 11 June 1940, 601.

another new organization formed in Winnipeg. Prior to 1939, there did not exist any group devoted strictly to the preservation of civil liberties in Manitoba. However, with the announcement of the DOCR and the failure to submit these new measures for parliamentary approval a small group of concerned citizens decided to act. In November 1939, A. R. M. Lower and David Owens, both university professors, Reverend L. C. Stinson and Alistair Stewart, an accountant, drafted a letter to the prime minister in protest of the unnecessary curtailment of civil liberties contained in the DOCR.⁷⁰ The four authors warned of the dangers which the defence regulations posed to individual Canadians and to the entire country during a war ostensibly fought for freedom: "one of the main results of the war, whatever may happen abroad, is going to be such a reduction in our traditional liberties here at home that the fruits of victory may well turn bitter in our mouths." More specifically, the authors highlighted the abuse capable under both the censorship regulations and Section 21, which they termed "a revival of the *Lettres de cachet*." In conclusion, the letter contended that the DOCR were "a Damocles' sword hanging over all vitality of thought" and called on King, whom they referred to quite unashamedly as "a great Liberal prime minister," to return to Canadians their traditional civil liberties.⁷¹ Over the next few months, the four authors, newly named the "Provisional

⁷⁰ Lower, Stinson, Stewart and Owens to King, 25 November 1939, Queen's University Archives, *Arthur Reginald Marsden Lower Papers*, Box 46, Folder C-34. See also, Arthur R. M. Lower, *My First Seventy-five Years* (Toronto: MacMillan Co., 1967), 236-238; and, Cook, "Canadian Liberalism in Wartime," 144-155.

⁷¹ Lower et al., to King, 25 November 1939, *Lower Papers*, Box 46, Folder C-34. The authors pointedly cautioned King: "You cannot, therefore, escape a grave personal responsibility: it would be a sorry epitaph for a great Liberal prime minister, that he was the man who opened the way for the extinction of Canadian liberty."

Committee for Canadian Civil Liberties,” widely circulated this letter along with King’s reply that “careful consideration” would be given to the group’s views in an attempt to further promote their concerns. By April 1940 the provisional committee gave way to a permanent “Civil Liberties Association of Winnipeg” with Lower as the chairman.⁷²

Born in 1889, Arthur Reginald Marsden Lower was the son of English immigrants who had abandoned the Anglican Church in favour of Methodism upon their arrival in the Dominion. As one of his colleagues later noted: “Methodism made him a reformer for life. It left him permanently dissatisfied with things merely as they are, and it constantly impelled him to do something about them.”⁷³ In 1916, a graduate of the University of Toronto, Lower joined the Royal Naval Volunteer Reserve and went overseas. The experience in Europe during the Great War served to reinforce Lower’s native Canadianism: “it had...shown me how completely indifferent was the centre of the imperial faith, England, to my native land...I came back from the war much more of a Canadian than I went to it.”⁷⁴

Like many young intellectuals in the 1920s, nationalism and Canadianism became

⁷² In another letter, dated 6 February 1940, the provisional committee outlined the purposes of the association in an attempt to attract supporters. New members by this time included Mitchell Sharp and W. L. Morton, *Lower Papers*, Box 46, Folder C-17. See also Cook, “Canadian Liberalism in Wartime,” 152.

⁷³ Frederick W. Gibson, “Arthur Lower: Always the Same and Always His Own Man,” in *His Own Man*, 8. See also, Lower, *My First Seventy-five Years*, 8-9 and 24-27.

⁷⁴ Lower, *My First Seventy-five Years*, 139.

a passion for Lower.⁷⁵ However, unlike Frank Scott and others during this same period, he did not gravitate toward another source of intense thought: the Christian socialism represented by J. S. Woodsworth. Indeed, the historian believed these ideas “woolly-minded” and “impracticable.” Instead, Lower’s views were much more conservative.⁷⁶ In his words, “a stubborn realism” governed his political outlook and he, therefore, disparaged utopian ideas of the “cure-all for social difficulties.” For him, the “general law, stripped down to the barest essentials, is simply that international situations and domestic situations alike are problems in the mathematics of power.”⁷⁷

As these ideas fermented, Lower’s formal studies in history continued at Harvard University where he received his Ph.D. in 1929. Immediately afterward, he accepted a position at Wesley College in Winnipeg. While in Manitoba, the fierce political debates on civil liberties and freedom of the 1930s affected the historian. A deeply-rooted concern

⁷⁵ For the growth of English Canadian nationalism in the 1920s see Mary Vipond, “The Nationalist Network: English Canada’s Intellectuals and Artists in the 1920s,” *Canadian Review of Studies in Nationalism* 5 (Spring 1980):32-52.

⁷⁶ According to one writer, Lower’s fierce belief in individual action to achieve ideals “combined with a respect for order and a certain asceticism reflecting the Puritan influence so pervasive in Canadian society, constituted the basic social values of the liberal society he came to believe was the destiny of Canada,” W. H. Heick, “The Character and Spirit of an Age: A Study of the Thought of Arthur R. M. Lower,” in *His Own Man*, 20.

⁷⁷ Lower believed that J. W. Dafoe of the *Winnipeg Free Press* better represented his thinking: “Dafoe and his group represented a middle way. They had come down heavily on the side of ‘collective security’ as the practical way out between Conservative traditionalism, ‘power politics’, and Woodsworthian idealism. They were by no means as sentimental as either of the other two, and they managed well enough with minor infusion of dedication. On the surface they were much more tolerant than the right wing, but they had about them little of the Christian kindness that marked the Wordsworths,” Lower, *My First Seventy-five Years*, 177-179.

for freedom pervaded Lower's political thought. "The enemies of freedom have been his enemies," a friend noted. For Lower, the best route to protect freedom was through Canada's traditional institutions: Parliament, the courts and the rule of law.⁷⁸ In 1937 under the name "The Native Sons of Canada," Lower, J. B. Coyne and R. O. MacFarlane presented a brief to the Rowell-Sirois Commission on the constitution. This brief argued that civil liberties deserved a wider base of protection and should be brought under the guardianship of the federal government and even proposed a national bill of rights.⁷⁹ By 1939 then, the 50 year-old Lower had melded an increasing concern with civil liberties to his already intense nationalism and "stubborn realism." The introduction of the DOCR provided the necessary spark to convert this concern into political agitation.

Over the spring of 1940, the newly formed Civil Liberties Association of Winnipeg prepared a more detailed memorandum for the government outlining the potential dangers of the DOCR to individual rights and freedoms. By May the organization completed its "Memorandum on Canadian Freedom in Wartime" and sent the brief to King. This memo was a greatly expanded version of the group's original letter from November 1939 without the noticeable kowtowing to the Liberal prime minister. The memorandum began with a quote by King which characterized the war in Europe as a "supreme effort" to

⁷⁸ In Gibson's opinion: "The freedom which Dr. Lower exalts is an ordered freedom," Gibson, "Arthur Lower," 9. According to Heick, Lower believed that in "order to secure justice, freedom must be firmly grounded in tradition as expressed in institutions," Heick, "Character and Spirit," 29.

⁷⁹ Native Sons of Canada, "Brief for Submission to the Royal Commission on Dominion-Provincial Relations," 8 December 1937, *Submissions to the Royal Commission on Dominion-Provincial Relations*, vol. 2 (Ottawa: King's Printer, 1939).

preserve and defend liberty both at home and for all humanity.⁸⁰ In response, the association noted the War Measures Act and the DOCR, especially Section 21, and mused that “[s]trange irony it is that a war for freedom should bring to Canada as one of its first results the negation of freedom and the introduction of the favourite device of tyrannical governments, arbitrary arrest without cause shown and without the safeguard of the law.” The memorandum viciously attacked the use of the War Measures Act, the censorship regulations, Sections 39 and 39A and, most vehemently, Section 21. The memo insisted that the defence regulations were too vague, too severe and too open to abuse. Laced throughout the group’s argument was a comparison to the British defence regulations which had been “framed with a view to dealing with actual war emergencies, for Great Britain is in reality a battlefield.” Canada failed considerably by this comparison to a British government which had shown restraint and respect for civil liberties when it modified offending regulations in November 1939. In conclusion, the memorandum echoed the concerns of the Toronto letter in February regarding relations with the United States and it then called on the government to greatly alter or abolish Section 21, reduce the powers of censorship, tighten Sections 39 and 39A and limit the penalties imposed.⁸¹

By June the agitation by the civil liberties associations and the end of the Phoney War in Europe convinced the King government that revisions to the DOCR were necessary. On 11 June 1940, the government created a parliamentary committee to

⁸⁰ *Debates*, 8 September 1939, 24. Cited in Civil Liberties Association of Winnipeg, “Memorandum on Canadian Freedom in Wartime,” 8 May 1940, *Lower Papers*, Box 46, Folder C-18.

⁸¹ CLA of Winnipeg, “Memorandum on Canadian Freedom in Wartime,” 6.

review Canada's defence regulations. In his speech before the Commons, the prime minister explicitly recognized the memos and letters sent by the Toronto and Winnipeg groups. At the same time, however, he noted that new demands for stricter provisions in the DOCR had arisen since the Nazi invasions of Norway, Denmark, the Low Countries and France.⁸² The quick German victories in the west raised cries of alarm in both Canada and Britain. Stories of fifth column treachery in Europe spread rapidly which led to increasingly vocal demands for harsher measures at home to deal with suspected saboteurs. The addition of Section 39C on 4 June 1940 was the most obvious government response to the growing public belief that fifth columnists freely walked the streets of Canada. However, this was not enough for many. In May, Ontario Attorney-General Gordon Conant, hardly a friend to civil libertarians, suggested that the traditional precept of innocence until proven guilty be discarded to better enable the prosecution of those accused under the defence regulations.⁸³ As a result of such demands, the government gave the parliamentary committee the conflicting mandate to make recommendations not only to safeguard individual rights but to enhance the emergency powers of the state.

From June to August, the House of Commons Special Committee on the Defence

⁸² King, *Debates*, 11 June 1940, 659.

⁸³ Conant made this statement on 7 May 1940 and afterward sent copies to the press. This remark immediately drew criticism from both Sandwell and George Drew, the Conservative leader of the Ontario opposition. See B. K. Sandwell, "Do We Need Martial Law?" *Saturday Night* 55 (18 May 1940):4, and George Drew, "We Must Fight at Home For Freedom as Well as Abroad," *ibid.*, 3. In July, Conant sent a memo to the parliamentary committee reiterating his position. See G. D. Conant, "Memorandum from the Attorney-General of Ontario, Re: Defence of Canada Regulations," 2 July 1940, The Rt. Honourable John G. Diefenbaker Centre, *The Rt. Honourable John G. Diefenbaker Papers*, 1940-1956 Series, Vol. 89, Microfilm Reel M-7454, 72025.

of Canada Regulations held twenty-five meetings and submitted four reports to Parliament. The members accepted submissions from numerous organizations, individuals and other parliamentarians. Chief among these representations were briefs from both the Winnipeg and Toronto civil liberties associations. In a memorandum presented by Lower, the Winnipeg group made a spirited plea for an end to arbitrary detention. Adopting a new tact, Lower argued that Section 21 actually bound the hands of government since it may hesitate to use such a drastic power against an individual if doubts existed. However, if the DOCR provided for a trial, then there was little need to fear the mistaken detention of an innocent individual.⁸⁴ In the end, however, these suggestions had little effect on the committee's final report. Amongst suggestions that further restrictions be placed on the use of firearms by enemy aliens, the committee recommended only minor revisions to Section 21. Members called for an amendment requiring the minister of justice to report every four weeks to Parliament on actions taken under the section.⁸⁵ While the committee's recommendations did not go as far as civil libertarians had hoped, they took comfort in the achievement of their primary goal: Parliament finally received an opportunity to review the DOCR.

Over the next two years and two more parliamentary committees, the DOCR

⁸⁴ Civil Liberties Association of Winnipeg, "Submission to the Parliamentary Committee on the Defence of Canada Regulations," [1940] *Lower Papers*, Box 46, Folder C-34. For other briefs received by the committee see *Diefenbaker Papers*, 1940-1956 Series, Vol. 89, Microfilm Reel M-7454.

⁸⁵ House of Commons Special Committee on the Defence of Canada Regulations, "Final Report," *Journals of the House of Commons of Canada* 55 (1 August 1940), Microfilm Reel 324, Canadian Parliamentary Proceedings, Set II-B, 310-313.

continued through the revision process. Throughout, the civil liberties associations kept up their efforts to influence the government. In May 1941 both the Civil Liberties Association of Toronto and the Canadian Civil Liberties Union, Vancouver Branch organized conferences in their respective cities. As well, Lower's group in Winnipeg penned another long memorandum to the government outlining its concerns with the revised regulations.⁸⁶ In March 1942, Sandwell led a Toronto delegation to Ottawa to submit another round of proposals on the DOCR to which Prime Minister King voiced his sympathies. As well during this period, the *Canadian Forum* maintained its vigilant editorial criticisms of the defence regulations and on civil liberties in general.⁸⁷ Finally, 1940-1942 saw the addition of another strong voice of criticism: organized labour.

Although the labour congresses had seen the danger inherent in the DOCR as early as December 1939, the Trades and Labor Congress and the recently formed Canadian Congress of Labour (CCL) made no serious effort to protest the defence regulations prior to the banning of the CPC and the subsequent internment of trade unionists for their

⁸⁶ On the Toronto meeting, one editor noted the response in the Canadian press: "[t]he number of unfavourable editorials, written about a meeting to discuss press freedom, indicates fairly accurately the widespread complacency which is found in all sections of the press," *Canadian Forum* 21 (June 1941):73. On the Vancouver meeting see Cook, "Canadian Liberalism in Wartime," 164. On the Winnipeg memorandum see CLA of Winnipeg, "Submission to the Parliamentary Committee on the Defence of Canada Regulations," [1941] *Lower Papers*, Box 46, Folder C-34.

⁸⁷ "Mr. King is Sympathetic," *Canadian Forum* 22 (April 1942):7. Other articles by the journal included "The Need for Parliament," *ibid.* 20 (November 1940); G. M. A. Grube, "Those Defence Regulations," *ibid.* 20 (January 1941):304-306; and, "Civil Liberties--1942," *ibid.* 22 (June 1942):69-70.

communist activities.⁸⁸ Both the TLC and the All-Canadian Congress of Labour had pledged their support for the country's war effort in 1939, yet conflict wracked the government's relationship with organized labour for the better part of the war.⁸⁹ Central to this conflict was labour's call for union recognition and collective bargaining rights. The government refused to acquiesce to these demands. As one historian concluded: "the Canadian labour policy throughout the war was concerned only with eliminating industrial unrest. The government continued to believe that legislative recognition of collective bargaining would only promote an 'adversary relationship.'"⁹⁰ As unions gained strength with the wartime economy's increased demand for industrial labour, there developed a corresponding increase in the number of disputes.

During 1939-1940, the DOCR provided a further source of conflict between the federal government and organized labour. Suspicions arose quickly that the government intended to use the regulations against union members. On 6 December 1939 police arrested Charles Millard of the United Auto Workers Union under Section 39 for a speech he gave to steel workers in Timmins, Ontario. Millard criticized the King government

⁸⁸ See *Canadian Unionist* 13 (December 1939):174, cited in Cook, "Canadian Liberalism in Wartime," 180.

⁸⁹ By order-in-council in 1939, the federal government extended its wartime jurisdiction over the majority of industrial relations in the economy. This placed labour bargaining under the Industrial Disputes Investigation Act. This act did not provide for union recognition, but instead created compulsory conciliation boards to investigate disputes before a strike could be deemed legal. See MacDowell, "Canadian Industrial Relations," 175-196; Morton, *Working People*, 165-186; and Palmer, *Working-Class Experience*, 278-284.

⁹⁰ MacDowell, "Canadian Industrial Relations," 186.

when he reportedly stated that “we should have democracy in Canada before we go to Europe to fight for it.”⁹¹ Although the government released the union organizer a few months later, for many workers this confirmed their fears about the DOCR. With the banning of the CPC in June 1940, the government had an added weapon to use against certain trade unionists. On 18 June the police interned Pat Sullivan, president of the Canadian Seamen’s Union, and two other unionists under Section 21, supposedly for their communist affiliations. The government denied that it made the arrests because of the unionists’ labour activities despite the fact that Sullivan was in the midst of contract negotiations. Other arrests included J. A. Murphy of the Associated Technical Employees during contract talks with the Canadian Broadcasting Corporation and Charles Murray of the Canadian Fisherman and Food Handlers Union of Nova Scotia.⁹²

Not surprisingly, many trade unionists reacted angrily to the government’s use of the DOCR against labour. At the 1940 annual meeting of the TLC, a long discussion ensued in the wake of the Sullivan case. The fractious debate revolved around twelve strongly worded resolutions put forward by individual unions. Despite many delegates’ arguments that the government used the DOCR to disrupt trade union activities, the congress balked. It refused to endorse the twelve resolutions and instead adopted the Executive Council’s position that “everything that could be done with a view to avoiding any misuse of the Regulations for the purpose of suppressing or hindering lawful trade

⁹¹ Quoted in *Canadian Forum* 19 (February 1940):343.

⁹² Whitaker, “Official Repression,” 152-156.

union activities has been done and will continue to be done.”⁹³ This soft position on the DOCR lost its credibility two months later, however. In November 1940 the United Automobile Workers Union picketed the Chrysler plant in Windsor, Ontario. In response, Ontario police arrested forty-six strikers for “loitering” under the DOCR. Both the TLC and CCL immediately launched protests that this was an abuse of the defence regulations. Support came from G. M. A. Grube of the *Canadian Forum* who argued that along with the inherent dangers of Sections 21 and 39, “the illegitimate use of the regulations to embarrass the labor movement” constituted one of the greatest threats to Canadian democracy under the DOCR.⁹⁴ The TLC’s pious belief that the government had done everything that could be done rang a hollow note.

Over the next year government and organized labour waged a seesaw battle over the defence regulations. On 7 February 1941 the government passed an order-in-council which exempted peaceful picketing from the regulation on loitering.⁹⁵ This victory was offset, however, in June with the arrest of C. S. Jackson under Section 21. Jackson had helped to organize a strike by the United Electrical Workers against Canadian Electric in Toronto. Charged with leading an illegal strike, associating with known communists,

⁹³ *Report of the Proceedings of the 56th Annual Convention of the Trades and Labor Congress of Canada, 1940* (hereafter *TLC Proceedings*), 136. At its annual meeting, the Canadian Congress of Labour adopted a much stronger statement demanding a review of interned trade unionists’ cases where they could “put up a proper defence”, cited in Cook, “Canadian Liberalism in Wartime,” 184.

⁹⁴ *TLC Proceedings, 1941*, 48-50 and G. M. A. Grube, “Those Defence Regulations,” *Canadian Forum* 20 (January 1941):304.

⁹⁵ P.C. 892, 7 February 1941, *Wartime Orders-in-Council*, vol. 4.

attending the 1940 Montreal conference on civil liberties and with criticizing the government's labour policy, Jackson's case created a stream of condemnation in the press and from the labour congresses.⁹⁶ This clamour eventually paid dividends. On 14 April 1942 the government backed down and passed PC 3016 which amended Section 21 to prohibit the use of the regulation against individuals involved in, or who persuaded others to take part in, a strike. Thus, despite continuing conflict in industrial relations, organized labour achieved some small successes in its efforts to change those defence regulations it found most offensive.

By the end of 1942 the debate concerning the Defence of Canada Regulations slowly lowered to a whisper. With the notable exception of the Pacific coast, the hysteria over fifth columnists had ceased almost completely. As well, with the Nazi invasion of the Soviet Union in June 1941 the CPC had become a staunch supporter of the Canadian war effort. This fact, coupled with lobbying efforts by various civil liberties groups, led the 1942 parliamentary committee on the DOCR to recommend that the government lift the ban on the Communist party.⁹⁷ Ever conscious of Quebec, however, King paid little heed to the suggestion. Indeed, at the beginning of 1943 the King government could congratulate itself on a well-navigated course. Despite continuing criticisms, it had managed to assuage many of the demands voiced by civil libertarians and organized

⁹⁶ For a summary of the press response see Whitaker, "Official Repression," 154-155. See also *TLC Proceedings, 1942*, 68.

⁹⁷ In July 1942, the Civil Liberties Association of Toronto held a rally at Maple Leaf Gardens to protest the ban on the CPC, see "Repeal the Ban," *Canadian Forum* 22 (August 1942):132. See also, Whitaker, "Official Repression," 150-151.

labour. Even the forced evacuation of the entire Japanese Canadian population from the Pacific coast generated much less criticism from civil libertarians than expected. Under pressure from white British Columbians that Japanese Canadians posed a military threat to the country, the King government had ordered their evacuation to the B. C. interior and east of the Rockies in February 1942. Despite this drastic reaction, few voices raised in condemnation.⁹⁸ At the same time, for those who saw fascist and communist saboteurs behind every light standard in 1939 and 1940, King pointed to the over 2,400 internees sitting in Canadian detention camps.

If King and his Liberals believed the worst was over as the tide began to change on the battlefields of Europe, they were mistaken. In the remaining three years of war, there would develop a greatly expanded debate on the protection of civil liberties and freedoms. After 1942, voices began to mutter that perhaps positive safeguards to curb the government's power were necessary. Throughout the Depression, individuals concerned with the Canadian government's abuse of individual rights and freedoms had focused their efforts on the repeal of the offending legislation. Section 98, the deportation powers in the Immigration Act, and the Padlock Law each had provided easy targets for civil libertarians such as F. R. Scott and F. H. Underhill. Their goal had been to convince government that it had erred. Civil libertarians had called on Ottawa to voluntarily limit its own power. This foundation quickly began to crumble during the first years of the

⁹⁸ Many civil libertarians, such as J. C. McRuer, felt the actions were harsh but warranted given the emergency, Boyer, *A Passion for Justice*, 165.

Second World War. The DOCR provided not one target, but sixty-four. As well, the government, without notice and by order-in-council, altered the defence regulations throughout the war. While new civil liberties groups and the press concentrated on certain sections, the DOCR taken as a whole had more significant implications. As Ramsay Cook concluded, “the drastic curtailment of civil liberties set in motion in September 1939, by the King Government, was made possible by indifference or lack of faith and understanding of liberal institutions on the part of the majority of the Canadian people.”⁹⁹ If this statement was correct, it was equally true of those Canadians sitting on the government benches in the Commons. As the war progressed, and the extension of the federal government’s infringement on civil liberties became more apparent with the forced evacuation of Japanese Canadians from the British Columbia coast in 1942, expanded and sometime competing views on the protection of civil liberties would emerge. Some concluded something more was needed to check the apparent zeal that the government showed in its willingness to curtail individual rights and freedoms. The experience of the war gradually proved that simply convincing the government to voluntarily limit itself was not enough.

⁹⁹ Cook, “Canadian Liberalism in Wartime,” 277.

Chapter Two

Japanese Canadians, Russian Spies and Canadian Civil Libertarians: The Demand for a National Bill of Rights, 1943-1947

After 1942, while civil libertarians and organized labour continued to criticize the King government's treatment of human rights, new voices joined the chorus. Charges that Ottawa had gone too far in its wartime control of the economy and that its handling of Japanese Canadians was racist gradually increased. Groups such as the Canadian Bar Association and the business press, best represented by the *Financial Post*, now criticized the federal government's curtailment of human rights. These critics saw the continuance of Ottawa's intrusion into the economy and the advent of the welfare state as the greatest threats to individual liberty. As one writer in 1944 concluded, the government's plans and liberty were a trade-off: in exchange for the welfare state, Canadians would be forced to accept more government involvement in their lives and fewer personal liberties.¹

Sentiments like this led many to espouse positive measures to curb the actions of what they believed to be a government too eager to extend its newfound power over the economy and society into the postwar period. At the same time, the continuing ordeal of Japanese Canadians at the hands of Ottawa led to new arguments couched in the language of human rights calling for legislative measures to prevent the scourge of racial

¹ Claris Edwin Silcox, "Look Out! Leviathan's on the Horizon Again," *Saturday Night* 59 (30 September 1944):16.

discrimination. B. K. Sandwell, F. R. Scott and others joined with emerging Japanese Canadian associations to demand that the government retreat from its planned deportations.

By 1946, the charges that the federal government leaned towards totalitarianism with its continued use of wartime controls and that it was blatantly racist in its treatment of Japanese Canadians made the protection of human rights in Canada a national issue. Although not at complete odds, these differing criticisms offered competing views of not only how to best protect Canadians' rights, but indeed what rights should be protected at all. With the eruption of the Gouzenko Affair in February 1946, this diffuse array of critics advocating competing visions of the measures necessary to safeguard human rights had replaced the ad hoc, and often limited, attempts to protect civil liberties in the Depression.

The weight of these criticisms forced the King Liberals to publicly defend their record on human rights. However, those pulling the levers of Canada's wartime government could not be blamed for their failure to recognize the importance of these developments. For the six years of war, critics of Ottawa's civil liberties record, like many others who disagreed with the course of government action, had softened their warnings in the name of wartime unity against Nazi Germany. This stifled criticism of the Liberal government burst open in 1945. The federal-provincial alliance of wartime quickly unravelled. At the same time, the temporary industrial peace secured with P.C. 1003 ended as strikes racked Canada's labour front. In the area of civil liberties, the first indication that these concerned voices were no longer willing to mute their criticisms came

with the debate over the deportation of Japanese Canadians. This was followed in the fall of 1945 with an attack on the proposed National Emergency Transitional Powers Act, which extended the government's powers under the War Measures Act into peacetime. The match that lit the fuse, however, was the Gouzenko spy scandal. The actions of the government and the 1946 Royal Commission on Espionage led to vehement denunciations in the press, Parliament and the public. For the next two years the Liberal government retreated before the charges that it had flagrantly trampled Canadians' human rights. Throughout 1946-1947 Ottawa retreated before the arguments of those who claimed the federal government could no longer be trusted with the powers it held and that constitutional limitations were therefore necessary.

"An act of indefensible tyranny and folly:" The Deportation of Japanese Canadians

By the end of 1942-1943 the Defence of Canada Regulations had slowly faded from public attention. The government had responded with a series of revisions to the orders intended to soften their blow and had released many of those interned without charge or trial. As well, the ban on the Jehovah's Witnesses which had drawn a stream of criticism from the vocal religious group was lifted on 14 October 1943.² While the Witnesses continued to suffer from religious discrimination throughout the remainder of

² On the wartime ban of Jehovah's Witnesses see M. James Penton, *Jehovah's Witnesses in Canada: Champions of Freedom of Speech and Worship* (Toronto: MacMillan Publishers, 1976), 129-155; William Kaplan, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto: University of Toronto Press, 1989), 52-122; and Gary Botting, *Fundamental Freedoms and Jehovah's Witnesses* (Calgary: University of Calgary Press, 1993), 25-34.

the war, it was the plight of the Japanese Canadians which garnered the most serious attention from civil libertarians.³ Canadians of Japanese ancestry, both native-born and naturalized, had suffered a multitude of injustices based on race since the nineteenth century. Despite the drastic decision to evacuate all Japanese Canadians from the Pacific coast however, demands persisted that they not be allowed to concentrate in British Columbia after the war.⁴ In response King introduced a two-fold policy of dispersal and deportation in Parliament on 4 August 1944. Although he noted that not a single Japanese Canadian had been charged for any act of sabotage, the prime minister announced that loyal Japanese Canadians would be resettled across the country while those deemed disloyal would be deported to Japan. To expedite matters, in February 1945 the government invited Japanese Canadians to volunteer for repatriation to Japan. By September 1945, 10,397 Canadians, including 3,484 dependent children, agreed to repatriation to Japan, a country many had never seen.⁵

³ In 1944 the Civil Liberties Association of Toronto published a pamphlet entitled *An Appeal For Justice* which described the injustices suffered by Ukrainian Canadians at the hands of the federal government. See Reginald Whitaker, "Official Repression of Communism During World War II," *Labour/Le Travail* 31 (Spring 1986):159.

⁴ On the continuing demands concerning Japanese Canadians see Patricia Roy, et al., *Mutual Hostages: Canadians and Japanese during the Second World War* (Toronto: University of Toronto Press, 1990), 139-192.

⁵ The reasons for the government's decision is one of the most hotly debated issues in Canadian historiography. Early studies centered on the racism prevalent in British Columbia and among government officials, see W. Peter Ward, "British Columbia and the Japanese Evacuation," *Canadian Historical Review* 62 (September 1976):289-308; Ken Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart, Ltd., 1976); and Ann Gomer Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: James Lorimer and Co., 1981). More recently, historians have dismissed the

Protests against the government's decision to evacuate Japanese Canadians in 1942 were few.⁶ However, over the next two years new groups emerged, many of them among the Japanese Canadian community, which increasingly challenged the federal government's actions. In 1944 the Vancouver Consultative Council for Co-operation in Wartime Problems of Citizenship and members of the United, Anglican, Roman Catholic and Baptist churches warned the prime minister that any plan to deport the Japanese Canadians would be "an act of indefensible tyranny and folly" and the adoption of the "racial attitudes of Nazism."⁷ Between June and August 1944 in the Commons, the CCF attacked the government's Bill 135 which effectively disenfranchised all Japanese Canadians. Much of the press joined in the condemnation. The *Toronto Star* took heart however in the challenge issued by Canadians: "[t]he campaign which was carried on against it [Bill 135]...was one of the most encouraging evidences of the survival of a

importance of racism and have pointed to military concerns and misunderstanding, see J. L. Granatstein and Gregory Johnson, "The Evacuation of the Japanese Canadians, 1942: A Realist Critique of the Received Version," in *On Guard For Thee: Ethnic Minorities and the Canadian State during the Second World War*, eds. N. Hillmer, B. Kordan and L. Luciuk (Ottawa: Queen's Printer, 1989), 101-130 and, Roy et al., *Mutual Hostages*. The number of repatriates cited in Roy et al., *Mutual Hostages*, 166.

⁶ Presumably, many civil libertarians felt the measures necessary, either for the protection of the Pacific coast or for the Japanese Canadians themselves. For an example of this view see Patrick Boyer, *A Passion for Justice: The Legacy of James Chalmers McRuer* (Toronto: University of Toronto Press, 1994), 165.

⁷ Cited in Roy, et al., *Mutual Hostages*, 158. Included among the groups who lobbied the federal government on the Japanese Canadians were the Vancouver Consultative Council for Cooperation in Wartime Problems in Citizenship, the Japanese Canadian Committee for Democracy and the Co-operative Committee for Japanese Canadians. On their organization and activities see Sunahara, *Politics of Racism*, 131-135.

liberal spirit that the country has presented in a long time.”⁸

Pressure on the government to reconsider its plans only increased with the announcement of voluntary repatriation in February 1945. Stories circulated of coercion by the RCMP in their search for volunteers. In response, the Japanese Canadian Co-operative Committee (JCCC) organized a number of groups and together petitioned King to recognize the citizenship of Canadians of Japanese ancestry and grant them full rights. Other demands included the lifting of all restrictions on Japanese Canadians based on race; compensation for lost property; aid for those wanting to resettle east of the Rockies; and, that the federal government inform those Japanese Canadians who had signed the repatriation application that they were free to reverse their decision.⁹ As well, beginning in May 1945, the Japanese Canadian Committee for Democracy (JCCD) joined the JCCC in an educational campaign which argued that the Canadian government’s deportation policy contravened the human rights provisions contained in the newly drafted United Nations Charter.¹⁰

Despite the rising public outcry, the King government forged ahead. Many Japanese Canadians attempted to withdraw their applications for repatriation with the end of the Pacific war. In September 1945, the government responded with Bill 15, the National Emergency Transitional Powers Act, which extended the powers given under the

⁸ *Toronto Daily Star*, 15 June 1944. See also, L. Mal. Atkinson, “The Japanese Controversy is Reviving Liberalism,” *Saturday Night* 59 (15 July 1944):6-7.

⁹ Edith Fowke and A. G. Watson, “Democracy and the Japanese Canadian,” *Canadian Forum* 25 (July 1945):87-89.

¹⁰ Roy et al., *Mutual Hostages*, 168.

War Measures Act until the end of year. In order to avoid Parliament on the issue of the Japanese Canadians, Section 3 (g) gave the Governor-in-Council the power over entry into the country, exclusion and deportation, and “revocation of nationality.” This far-reaching move immediately gave rise to public outcry and a vocal return of the civil liberties groups who fought the DOCR. Critics such as Lower and Sandwell attacked the section as a danger to all Canadians, not just those of Japanese descent. In a strongly worded letter, the Winnipeg Civil Liberties Association stated that the section was a “grave” menace to Canadian freedom and citizenship. As well, the association deplored “the curse of racialism, of distinctions in kind between man and man, distinctions that would no doubt have been applied to us if our young men had not responded to the call and won. The simple question is, Are our legislators to betray the principles for which the men of Canada have fought and died.”¹¹

On 7 December 1945 the government succumbed to the pressure and withdrew Section 3 (g). This small victory was of little comfort to Japanese Canadians, however. Before the expiration of the War Measures Act at the end of the year, King tabled three orders-in-council on 15 December 1945 to put through the deportation policy. The first stripped naturalized deportees of their citizenship while the second created a Loyalty Commission to determine who among naturalized citizens should be forcibly deported. Finally, the third empowered the government to deport interned Japanese nationals, naturalized citizens and Canadian-born Japanese who had requested repatriation. This

¹¹ Civil Liberties Association of Winnipeg to the Senators and Members from Manitoba in the Parliament of Canada, n.d. [November 1945], Queen’s University Archives, *Arthur Marsden Lower Papers*, Box 46, Folder C-34.

order included dependents.¹² As 1945 drew to a close and despite months of intense public outcry against the policy, the government remained determined to expel Canadian citizens based on their racial origin.

Not surprisingly, the continuing tragedy of Japanese Canadians helped to raise the public's awareness to the question of racial discrimination in general. Coupled with the growing international attention given to the dangers of racial and religious discrimination, the policies directed at Japanese Canadians led to greater attention to the issue at home.¹³ The first stirrings of this growing concern emerged in the fall of 1943. Pressures in the press and from the Canadian Jewish Congress (CJC) effected two significant legislative changes on racial and religious discrimination. In September, the National Selective Service, a federal body regulating the labour force, announced that discrimination on the basis of race or religion in the recruitment of workers for the war effort would be strictly rooted out.¹⁴ Immediately after this decision the newly elected Ontario government of George Drew moved into the field of human rights legislation. In a speech in Guelph on 14 October 1943, Premier Drew pointed out the dangers which racism posed for society. In particular, Drew alluded to the importance of anti-discrimination legislation and

¹² P.C. 7355, P.C. 7356 and P.C. 7357, 15 December 1945, *Statutory Orders and Regulations, 1945*, vol. 4.

¹³ Paul Gordon Lauren, "First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter," *Human Rights Quarterly* 5 (February 1983):1-26.

¹⁴ On the pressures brought against the government and the announcement by the National Selective Service see Douglas MacLennan, "Racial Discrimination in Canada," *Canadian Forum* 23 (October 1943):164-165.

defended the passing of such laws against those who would challenge their worthiness: “[s]ome nations have on their statute books laws which make it an offence to arouse racial prejudice...That is merely a statutory recognition by decent people everywhere that the stirring up of such prejudices not only injure those against whom they are directed but in the end the whole social structure.” In March 1944, Drew’s government passed the Racial Discrimination Act.¹⁵ This law made the posting of signs restricting certain ethnic and religious groups from public establishments illegal. However, it did not make the actual denial of services illegal, only the posting of discriminatory signs. Despite its limitations, this act revealed a new willingness by Canadian legislators to enact positive safeguards against the abuse of rights. At the same time, these developments heightened public concern over racial discrimination and much of this concern was aimed at the policies of the federal government.

The Canadian Bar Association and the Advent of the Welfare State

While the Mackenzie King government absorbed the ongoing charges from university professors, labour and ethnic associations, a new stream of criticism sprung from an unexpected source. Throughout 1943-1945, postwar planning or ‘reconstruction’ became a frequent addition to newspaper headlines. Questions about foreign markets for Canadian goods, the conversion of war industries, and levels of unemployment hung in the

¹⁵ An Act to prevent Publication of Discriminatory Matter Referring to Race or Creed, *Statutes of the Province of Ontario*, [1944] George VI, Chapter 51, 231-232. For a discussion on the development of the act see John C. Bagnall, “The Ontario Conservatives and the Development of Anti-Discrimination Policy: 1944-1962” (Ph.D. diss., Queen’s University, 1984). Drew quoted in the *Globe and Mail*, 15 October 1943.

air of Bay Street conference rooms and Yonge Street diners alike. Perhaps most contentious was the issue of government-sponsored social security. In February 1943 Ottawa released the Marsh Report. This program, written by a member of the League for Social Reconstruction, Leonard Marsh, outlined a detailed social welfare policy for Canada. Most notably, in September 1943 a Gallup poll placed the Liberals and Conservatives tied behind the national CCF in popular support.¹⁶ Long a platform of the CCF, public demands for the welfare state boosted the popularity of the party. On 4 August 1943, Ontario voters turned out the reigning Liberal government and elected the Conservatives by a narrow margin over the CCF. Ironically, the war which Wordsworth so opposed brought with it unexpected support for his most cherished of dreams.

These developments were not lost on Mackenzie King. Through the fall and spring of 1943-1944, the Liberal Party revamped its program to closer echo the mood of the electorate. Despite resistance from the Department of Finance, King promised a greatly expanded social welfare policy. The Liberals proposed family allowances, better old-age pensions, increased spending to maintain employment in peacetime and revision of the national housing policy. By October 1944 the government created three new departments to undertake these tasks: Veterans' Affairs, National Health and Welfare and Reconstruction. To vindicate the new policy six months later, the Liberal Party swept to a majority victory in the federal election under the banner "Liberal Policies Create Jobs."¹⁷

¹⁶ Cited in Robert Bothwell, Ian Drummond and John English, *Canada 1900-1945* (Toronto: University of Toronto Press, 1987), 329.

¹⁷ On the Liberal Party and the development of its wartime social welfare policies see Bothwell, Drummond and English, *Canada 1900-1945*, 326-335 and J. L. Granatstein,

Not everyone shared the belief that state-sponsored social security and a continuation of the planned economy was in the best interests of Canadians. Resentment grew over the increasingly ponderous restrictions placed upon business by the government's wartime regulations. Over the six years of war, Ottawa had built up a complex system of controls and regulations introduced through a staggering 6,414 orders-in-council issued under the powers of the War Measures Act. A firm lid had been placed on inflation through wage and price controls and both the supply of labour and profits of industry had been closely controlled. The government had strictly rationed butter, sugar, meat, and clothing while it also had regulated raw materials to ensure a steady supply to Canada's hungry war factories. Where provincial jurisdiction interfered, the federal government simply usurped.¹⁸

Nevertheless, most business elites accepted these restrictions in the name of the efficient prosecution of the war. What troubled them, however, was the prospect that these restrictions would continue in peacetime. Over the next two years as support increased for both a social welfare program and the maintenance of these very controls, voices in opposition arose from various quarters. One of the main tenets of these new arguments was the defence of traditional civil liberties and freedoms. While acceptable during wartime, the federal government's regulations over the economy and business

Canada's War: The Politics of the Mackenzie King Government, 1939-1945 (Toronto: Oxford University Press, 1975), 249-293.

¹⁸ On Canada's wartime controls see J. L. Granatstein, *Canada's War*, 174-195 and Robert Bothwell, Ian Drummond and John English, *Canada Since 1945: Power, Politics and Provincialism* (Toronto: University of Toronto Press, 1981), 70-77.

constituted an unwarranted invasion of Canadians' inherent rights under normal circumstances. As early as 2 January 1943, the *Financial Post* issued a warning to Ottawa. While it noted that wartime regulation of the economy could not be lifted immediately upon the defeat of the Axis powers, it stated bluntly that "we must never lose sight of the fact that we must get rid of these controls as soon as wisdom permits."¹⁹

As proposals for social welfare and a planned economy gained new ground throughout 1943-1944, these new opposing arguments matured along side. The policies of the CCF provided the most obvious target. In a strongly worded attack on M. J. Coldwell, leader of the CCF, the *Financial Post* stated that "Canadians are fighting Hitler and Co. to maintain [the Canadian] way of life; to avoid the slavery of being told by a government official when to do this and not to do that; to avoid entrusting their own future and the future of their children to the decisions of a government board. Yet Mr. Coldwell continues to preach totalitarian methods of government for Canada." Another writer glumly argued that neither "right" nor "left" offered satisfactory solutions to curb government intrusion into Canadians' everyday lives. "The plain truth," he stated, "is that there is no known democratic technique by which the citizen can control the acts of government in its presently expanded sphere."²⁰ Specific policy suggestions also drew

¹⁹ *Financial Post*, 2 January 1943. In the following issue, the paper began a regular column entitled "Your Wartime Business" to aid individual businesses comply with the government's complicated regulations, *ibid.*, 9 January 1943.

²⁰ *Financial Post*, 30 January 1943; Stanley McConnell, "Is Man Ready for the New Age of Power?" *Saturday Night* 59 (4 November 1944):14. See also McConnell, "The State: In Theory and Practice," *ibid.* 59 (11 November 1944):20-21; McConnell, "Directive and Democratic in Conflict," *ibid.*, 59 (16 December 1944):16; and, W. J. Brown, "We Must Also Protect Freedom at Home," *ibid.* 59 (9 December 1944):22-23.

fire. In a 1943 report prepared for the Canadian Medical Association, A. H. Wolfenden, a consulting actuary, offered a comparative list between the “pros” and “cons” of voluntary (private) versus involuntary (state) health insurance plans. The first “pro” of the voluntary scheme was the belief that it preserved individual liberties; correspondingly, the first “con” of the involuntary plan was that “governmental regimentations inherent in any compulsory plan is often felt to be an unwanted interference with personal liberties.”²¹ The message was clear: any increase in the number of state-run social security programs brought with it a commensurate decrease in freedom.

While papers such as the *Financial Post* and *Saturday Night* provided outlets for these views, the most clearly developed example of this argument came from the Canadian Bar Association (CBA). Members of the legal community had voiced their concerns over the government’s infringement of civil liberties from the beginning of the war. In 1942 in a case involving Section 39C of the DOCR, a Saskatchewan district court judge foreshadowed subsequent arguments by the CBA:

the power to control and suppress freedom of speech and freedom of assembly...is an extremely dangerous power to exercise in a democratic country. Carried to its logical conclusion it would justify the administration in control of the machinery of government in suppressing all criticism of, or opposition to, its authority and policies, and thus convert the principles of government from the democratic to the totalitarian form. History affords more than one interesting parallel for the plight of a nation under such a form of government.²²

At the 26 February 1943 mid-winter meeting of its executive, the CBA created a

²¹ *Financial Post*, 9 January 1943.

²² *Rex v. Demorest*, [1941] *W.W.R.*, 229.

national committee to investigate the encroachment by the federal government on Canadians' civil liberties. This body joined others already organized by provincial bar associations. In August 1943 at the CBA's annual conference, the Committee on Civil Liberties presented its first report.²³ The mood of the conference was set early with the Presidential Address by G. H. Aikens. Entitled "The War - And After," Aikens' speech was a summary of some of the challenges facing the legal profession as the war concluded. Paramount was the protection of civil liberties and freedoms both during the remainder of the war and after. For special consideration, Aikens' warned of the dangers presented by proposals for a planned economy or "blueprint," as he called it. He stated eloquently that a "confidence comes to man from freedom and self-rule and his dignity as a thinking human demands that he have a reasonable right and opportunity to choose his occupation, to further his ambitions, to embark on his chosen enterprise or adventure and to retain the reasonable rewards which his ability, industry and initiative justify...These cannot be blueprinted."²⁴

Discussion of the committee's first report followed much in this same vein. W. P.

²³ The members of the committee included Gustave Monette (chairman), Walter S. Johnson and Ariste Brossard. Immediately following the annual meeting, the CBA created the Special Committee on Legislation Affecting Civil Liberties with R. M. Willes Chitty as chairman. The purpose of this body was "to scrutinize legislation, orders-in-council, regulations and orders made under the authority of an Act of Parliament where such appear to encroach upon the field of Civil Liberties," see *Minutes of Proceedings of the Twenty-Seventh Annual Meeting of the Canadian Bar Association, 1944* (hereafter *CBA Proceedings*), 40.

²⁴ *CBA Proceedings, 1943*, 83. To further emphasize the president's address, the Right Honourable Lord Wright's guest address also discussed the importance of civil liberties, *ibid.*, 86-95.

Fillmore, a member from Manitoba, supplied a list put together by an ad hoc group in Winnipeg of thirteen specific liberties trampled upon by the federal government. No less than ten of these liberties concerned government regulation of the economy and the work force. Included under the heading "Restrictions on Freedom of Trade," were encroachments on such liberties as the right to buy and sell available goods in open market; the right to fix or bargain for price; the right to produce and manufacture goods; and, the right to import and export.²⁵ While Fillmore added that these freedoms were "gladly" surrendered during wartime, he cautioned those advocating the welfare state: "[t]here is danger that the desire for social security may result in the surrender of personal liberty without securing anything in return except the privilege of working and doing business in a straight jacket...People will be asked to trade personal and civil liberties and a democratic way of living for freedom from the struggle for existence." Others echoed these sentiments.²⁶ When finally tabled, the actual report consisted of a resolution committing the CBA to "follow closely all legislation" of Parliament to ensure against any unnecessary encroachments upon civil liberties, and to affirm its demand that all "liberties

²⁵ Also included in this list were the right to choose employment and bargain for wages; the right to employ and discharge; censorship of the press and radio; the right of appeal; the right to expand business or enter into new business; control of profits through taxation; price control; right to build and repair; and, the right to lease and terminate leases, *CBA Proceedings, 1943*, 32.

²⁶ The Honourable J. W. de B. Farris argued that there "are those today expressing political and economic beliefs which, if they are given effect to, can never be carried out to a success but by the maintenance of bureaucracy. It is one of the peculiar things of the existing conditions that those who complain most about regimentation as it is today seem to be at the same time building up the greatest prospects on that in the future," *CBA Proceedings, 1943*, 32-35.

and property rights” be restored at the end of the war.²⁷

With this resolution in hand the CBA’s Committee on Civil Liberties, led by Montreal lawyer Gustave Monette, began a detailed study of individual rights and freedoms in Canada under the King government. At the association’s next annual meeting in Toronto on 30 August 1944, Monette delivered an extensive report which not only criticized the government’s wartime restrictions on business, but went well beyond. The committee picked up many of arguments levelled at the DOCR in 1939-1940 and melded them with its attack on the federal government’s intrusion into business. The report heaped heavy criticism on the government’s circumvention of Parliament through its use of orders-in-council: “[g]overnments 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.”²⁸ Somewhat belatedly, the committee attacked the government’s use of Section 21 and the increasing practice of placing the onus of proof upon the accused and added that judicial power should not be performed by the executive but be left exclusively to independent courts.²⁹ In response, the report offered some specific suggestions for the CBA to consider. The report argued that the association should not interfere with the government’s paramount task of winning

²⁷ Passed unanimously, J. G. Diefenbaker chaired the meeting on the resolution which he described as “a declaration of rights on the part of the Bar Association of Canada that will have far-reaching results,” *CBA Proceedings, 1943*, 54.

²⁸ “Report of the Committee on Civil Liberties,” *CBA Proceedings, 1944*, 196.

²⁹ “Report of the Committee on Civil Liberties,” *CBA Proceedings, 1944*, 184-210. Due to its important nature, the committee’s report was also published in the *Canadian Bar Review* 27 (September 1944):598.

the war. However, the committee called on the CBA to insist that the Governor-in-Council immediately proclaim an end to the war in order to negate the War Measures Act once hostilities ended. In conclusion, the committee listed the major accomplishments in the history of civil liberties from the Magna Carta to the American Bill of Rights. Considering these documents and the history of Canadian civil liberties since the beginning of the war, the committee ended on a rhetorical note: “[w]e wonder if, for Canada, we had not better follow the American procedure, and incorporate these rights and liberties of the subject in our own constitution, for greater guarantee that our democrats will not forget Democracy.”³⁰

Despite this suggestion that Canada needed a constitutional rights guarantee to protect its citizens from their own government, the debate on the report centered instead on the question of timing. Should the CBA criticize Ottawa while the country was still at war? In the end, the members accepted the report and also decided to circulate it more widely among the entire association for reconsideration at the next annual meeting in 1945.³¹ Ironically, the 1945 meeting had to be cancelled due to government restrictions on the number of participants who could use public transportation to travel to conventions. However, although the entire association could not assemble, the Executive Council met and heard each of the CBA’s committee reports, including the Committee on

³⁰ *CBA Proceedings, 1944*, 210.

³¹ At least one member bemoaned this soft stance: “[s]urely it is the duty of lawyers, if we have any duty, beyond that of any other citizens, to protect the liberties of the people against the infringements of the laws -- under the laws. I don’t think anything has come before us in years that is of such importance to us,” *CBA Proceedings, 1944*, 52.

Civil Liberties. Similar to that of 1944, the report was held over until 1946 when the entire association could give consideration.³² By the end of the war, the CBA had mapped out a murky position on the issue of civil liberties. Although broached in the 1944 committee report, the suggestion that Canadians needed a bill of rights in their constitution did not elicit popular support or even discussion. As well, the committee felt that other questions such as Section 21 and the circumvention of Parliament were better left until the war was over. Although the association produced the most detailed private study of the federal government's abuse of Canadians' civil liberties, it chose to pursue a conservative policy. However, on the issue of wartime regulations on the economy, the association made its position quite clear. Through the president's 1943 address, their committee's recommendations and their own comments, the members of the CBA effectively voiced their concerns for civil liberties in Canada once the war ended.

This concern expanded and became increasingly more vocal after the Japanese surrender as new voices of criticism emerged in autumn 1945. At the core of the complaints was Ottawa's determination to maintain those wartime controls which infringed upon individual liberties. At the end of the war, the dismantling of these controls proved a difficult task for the federal government, despite the demands from the provinces. Many justifiably argued that the continuation of wartime controls was necessary to facilitate the reconversion of the Canadian economy from war to peace. The government adopted this position as a justification for its National Emergency Transitional

³² By September 1945, the war was over and all available transportation was needed for the return of Canadian troops. See *Proceedings of the Council of the Canadian Bar Association, 1945*, 153-169.

Powers Act introduced into Parliament in October 1945. In December 1945 the powers granted under the War Measures Act were due to expire. So in anticipation, the federal government groped for new means to maintain its wartime controls. In Parliament, Louis St. Laurent defended the act in the name of fighting inflation through the existing wartime controls: "it is necessary that those controls which were established during the war period should not be abrogated at one fell swoop...The whole of these controls are integrated, and each part is necessary to the harmonious functioning of the whole system." St. Laurent even warned that violence could be expected if Parliament did not see fit to pass the legislation and thus enable the government to better fight the demons of price growth.³³

Others, however, took a rather dim view of these arguments and the proposed legislation. Critics charged that the federal government flirted with totalitarianism through its use of order-in-council and the maintenance of wartime controls after all semblance of emergency had passed. One of the harshest denunciations came from R. M. Willes Chitty, Chairman of the Canadian Bar Association's Special Committee on Legislation Affecting Civil Liberties and editor of *The Fortnightly Law Journal*. In a series of editorials Willes Chitty attacked the "cabalistic and Star Chamber nature of the dictatorship that infiltrated the defences of our democratic institutions in the past six years." As well he added that

³³ *Debates*, 23 November 1945, 2452-2453. The National Emergency Powers Transitional Act, although justified by the government as a measure to fight inflation, granted to the Governor-in-Council a wide ranging set of powers similar to the War Measures Act. The proposed legislation allowed the government to make orders affecting such things as trade, industrial production, the fixing of prices, labour, wages and salaries, property, and rents. As well, the act continued any orders made during the war under the War Measures Act.

“the price of loss of liberty such as we have suffered at the hands of bureaucracy in the last six years, was too high a price to pay even for the avoidance of inflation.”³⁴

In Parliament, the reception of the proposed extension of emergency powers was also less than cordial. John G. Diefenbaker, a Conservative member from Saskatchewan and former member of the Commons committee on the Defense of Canada Regulations in 1940, headed the pack which criticized the government’s plans. Diefenbaker let loose a verbal tirade against the wide-ranging powers granted under what he also called “star chamber legislation.” While he supported the need to control inflation, he wondered aloud why the government would need the types of powers contained in the National Emergency Transitional Powers Act. Diefenbaker attacked the government on its own grounds. “If, as the minister says, all the government is asking for is the power to impose certain controls, “ he demanded rhetorically, “bring in a measure to that effect and tell us how they are going to operate.” To this, the Conservative M.P. added that the abridgement of democratic rights under these wartime controls must end with the return of peace. Recriminations of secret orders-in-council flew across the floor, but in the end the King government, with its large majority, eventually pushed the legislation through the House.³⁵ Nevertheless, convincing Parliament that Ottawa required similar powers in the postwar

³⁴ *Inter Alia*, *The Fortnightly Law Journal* 15 (15 December 1945):146. See also, *ibid.* 15 (15 October 1945):81-82 and 92.

³⁵ *Debates*, 7 December 1945, 3099. In a more caustic flourish, Diefenbaker quipped: “Is this emergency such that there is no power under the sun which the government will not need?” *Debates*, 23 November 1945, 2454-2457.

“emergency” as those wielded during the war proved a difficult task.³⁶ For Diefenbaker, the revelations about the treatment of suspected Soviet spies in the ensuing months seemed to vindicate the prairie lawyer’s charges that the Liberal government paid little heed to either Parliament or civil liberties.

“The whole proceedings are far too much like Russia itself:” Igor Gouzenko and Canada’s Cold War

On 5 September 1945, Igor Gouzenko, a cypher clerk from the Soviet Embassy in Ottawa, bundled a sheaf of documents under his arm and made his decision to defect. After a failed attempt to convince the Department of Justice and the *Ottawa Journal* that he had vital information concerning the safety of the Canadian state, the RCMP finally took the twenty-six year old Russian, his wife and son into protective custody the following day. Together, Gouzenko’s story and his cache of papers documented an elaborate Soviet espionage ring which reached from Ottawa to Washington and across the Atlantic to London. The Russian cypher clerk implicated civil servants at External Affairs, the Wartime Information Board and in the Department of Munitions and Supply. The suspects even included a Canadian M.P. from the Labour Progressive Party, Fred Rose. Most disturbing, Gouzenko’s documents showed that the Soviets had informants within

³⁶ For those parts of the legislation specifically designed to facilitate the deportation of the Japanese Canadians, the Liberal government decided against their inclusion in the act and instead passed them by order-in-council to circumvent Parliament. See Ann Gomer Sunahara, “Deportation: The Final Solution to Canada’s ‘Japanese Problem,’” in *Ethnicity, Power and Politics in Canada*, eds. Jorgen Dahlie and Tissa Fernando (Toronto: Methuen Publications, 1981), 255-256 and Roy et. al. *Mutual Hostages*, 172-177.

the Canadian research laboratories working on the atomic bomb. For many in the RCMP and the Justice Department, the celebrations of victory over Japan were short-lived that September in Ottawa.³⁷

With the revelations of Igor Gouzenko, Canadian officials received a cold splash of the new international political water. While the wartime alliance between the Allies and the Soviet Union was a trying one at the best of times, the existence of such a spy ring still came as a shock to the Canadian government. A few months after Gouzenko's defection, Escott Reid, an officer in External Affairs, described the situation as "an ideological conflict without parallel since Elizabethan times...The Communists today are the papists of the last half of the seventeenth century." For King, the Gouzenko Affair was a "situation of world significance."³⁸ Indeed it was. King met with President Harry Truman and Prime Minister Clement Attlee in October and November and together the three governments decided that an assessment of the damage and extent of the Soviet espionage system was top priority. In the meantime all agreed to not announce the situation to the public and to

³⁷ On the Gouzenko Affair see *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* (hereafter *Royal Commission on Espionage*) (Ottawa: King's Printer, 1946); Donald Creighton, *The Forked Road: Canada 1939-1957* (Toronto: McClelland and Stewart, Ltd., 1976), 109-113; Denis Smith, *Diplomacy of Fear: Canada and the Cold War, 1941-1948* (Toronto: University of Toronto Press, 1988), 94-109; J. L. Granatstein and David Stafford, *Spy Wars: Espionage and Canada from Gouzenko to Glasnost* (Toronto: Key Porter Books, Ltd., 1990), 47-75; and Reg Whitaker and Gary Marcuse, *Cold War Canada: The Making of a National Insecurity State, 1945-1957* (Toronto: University of Toronto Press, 1995), 27-110.

³⁸ Reid cited in Granatstein and Stafford, *Spy Wars*, 69. King cited in Creighton, *Forked Road*, 112.

not move against the Soviet spy ring in Ottawa prior to the planned meeting of the Council of Foreign Ministers in Moscow in December. King did not even inform his cabinet of the affair. Prosecutions would follow later.

With the assistance of E. K. Williams, president of the CBA, King and Louis St. Laurent, justice minister, reasoned that an *in camera* royal commission would probably be necessary at some point. In the interim, the government passed a secret order-in-council under the War Measures Act on 6 October 1945, P.C. 6444. This order was basically a reproduction of Regulation 21 of the Defence of Canada Regulations. It enabled the minister of justice or acting prime minister to detain and interrogate any person suspected of “acting in any manner prejudicial to the public safety or the safety of the State.” Those detained were deemed in legal custody which allowed the government to circumvent habeas corpus.³⁹ Despite the extraordinary powers contained in this order, however, the government waited four and a half months before rounding up those implicated by Gouzenko. On 4 February 1946 a Washington radio news broadcaster told his audience of the Soviet spy ring uncovered in Ottawa the previous fall. This public announcement forced King’s hand. The next day, King informed his cabinet of the Russian cypher clerk’s defection and the subsequent exposure of Soviet espionage. As well, the prime minister announced the creation of a royal commission under P.C. 411 to investigate the entire

³⁹ P.C. 6444, 6 October 1945, reprinted in Section XI, *Royal Commission on Espionage*, 649-650. On the creation of the commission see Whitaker and Marcuse, *Cold War Canada*, 56-66.

scandal and report to Parliament.⁴⁰

Due to the gravity of the situation, the royal commission began its work immediately on 6 February 1946. The commissioners appointed under the order were both Supreme Court of Canada justices: the Honourable Robert Taschereau and the Honourable R. L. Kellock.⁴¹ On 13 February they heard testimony from Gouzenko and the following day recommended to King that the detention of a number of people named in the Soviet documents was necessary. After consultation with his cabinet, King ordered the RCMP to make the requested arrests under P.C. 6444. The police spirited the detainees to the RCMP barracks in Rockcliffe where they were held incommunicado and without charge. On 15 February, the same day that police rounded up the espionage suspects, the prime minister formally announced to Canadians the details of the spy scandal and the royal commission.⁴² For the next five months, the public remained captivated as the press and Parliament debated the findings of the royal commission. Taschereau and Kellock heard the testimony of 116 witnesses from 13 February to 27

⁴⁰ P.C. 411, 5 February 1946, reprinted in Section I, *Royal Commission on Espionage*, 7-8. According to Granatstein and Stafford, the leak of information probably came from J. Edgar Hoover, director of the American Federal Bureau of Investigation, who believed that the Canadian government was hesitant to expose Soviet espionage publicly, *Spy Wars*, 60.

⁴¹ Kellock and Taschereau subsequently appointed E. K. Williams (President of the Canadian Bar Association), Gerald Fauteux and D. W. Mundell, all eminent lawyers, as counsel. *Royal Commission on Espionage*, 9.

⁴² King's statement reprinted in J. W. Pickersgill and D. F. Forster, *The Mackenzie King Record*, vol. 3: 1945-1946 (Toronto: University of Toronto, 1970), 141-142. For press comment see *Globe and Mail*, 16 February 1946; *Toronto Daily Star*, 16 February 1946; and *Ottawa Citizen*, 16 February 1946.

June 1946 and released three interim reports over the course of their hearings. At last, in July the commissioners released their final report on spies and informers, nuclear secrets and encoded messages.⁴³ However, if King and his ministers thought they could avoid criticism on the touchy affair by handing the ball to an impartial and non-partisan commission, they soon found otherwise.

Immediately after the prime minister's 15 February 1946 press release, questions arose concerning the procedures of the royal commission. These questions focused upon the implications that these measures had for Canadians' traditional civil liberties. Under the powers of P.C. 6444, the Inquiries Act and the Official Secrets Act, the commission compelled the isolated and uncharged "witnesses" to give testimony on their involvement in the Soviet spy ring. The commission denied the detainees access to both legal counsel and family members. The powers of preventative detention allowed the commission to circumvent habeas corpus. As well, the witnesses were not informed of their rights under the Evidence Act which would have protected them from self-incrimination. Throughout, rumours circulated that the RCMP used questionable tactics to elicit information from the detainees.⁴⁴ As these facts became more widely known, critics of the government and the commission began to question seriously the safety of civil liberties in Canada.

Thus was the mood of the Commons when it reconvened in March 1946 to debate the handling of the Gouzenko spy scandal. Even before M.P.s received their chance in question period the press had begun to criticize the actions of the King government.

⁴³ *Royal Commission on Espionage*, 9-10.

⁴⁴ Whitaker and Marcuse, *Cold War Canada*, 64-66.

Initially, editorial comment in the nation's newspapers voiced shock at the espionage revelations and support for the government's response. However, these comments quickly shifted to an increasingly critical examination of the procedures of the royal commission concerning traditional civil liberties. As early as 20 February, the *Globe and Mail* noted that although the investigation was "contrary to the Canadian way of doing things," it still supported the government's actions. A few days later, it warned that the activities of the commission were "suggestive of a totalitarian state," but nevertheless still accepted the necessity of extraordinary measures. With the submission of the royal commission's first interim report, however, the *Globe* responded with a bitter attack on the government's abuse of civil liberties: "[t]here must be extremely grave reasons for denying to any[one]...the fundamental right which independent justice should guarantee. The interim report does not show those reasons to exist. So the Canadian people must ask from the completed investigation not only the proof to convict the Soviet agents, but the evidence to vindicate their government."⁴⁵ The *Toronto Daily Star* echoed these words when it voiced concern over the damage done to all Canadians' civil liberties by an investigation which "savours too much of totalitarianism."⁴⁶

In addition to the country's large dailies, various periodicals threw their lot against

⁴⁵ *Globe and Mail*, 20 February 1946, 25 February 1946 and 6 March 1946. The royal commission released the first interim report on 2 March 1946. See 'Appendix A', "First Interim Report," in *Royal Commission on Espionage*, 693-696.

⁴⁶ *Toronto Daily Star*, 28 February 1946. In another editorial on the espionage case, the newspaper linked the affair to the deportation of Japanese Canadians on which the Supreme Court delivered its ruling on 21 February 1946: "a thing may be legally right but morally wrong, a fact which is to be remembered also with respect to the proposed deportation of Japanese," *ibid.*, 26 February 1946.

the government's handling of the affair. In the *Fortnightly Law Journal*, Willes Chitty issued a vicious attack on the royal commission. For Willes Chitty, the actions adopted by the government in the spy scandal were proof that after six years of building bureaucracy, it finally had taken the last step towards dictatorship. He condemned the use of Supreme Court justices as commissioners and the detention of witnesses without charge or access to legal council. Most importantly, he charged that the government had "destroyed" the independence of the judiciary: "[t]hey have slain democracy, they have murdered freedom."⁴⁷ While not quite so melodramatic, other journals offered similar comments. The *Canadian Unionist* denounced the detention without charge of witnesses and their denial of legal counsel, and stuck in a barb that "the whole proceeding is something which one might have expected under the German Gestapo." Not surprisingly, the *Canadian Forum* also criticized the King government but at least found some solace in the widespread concern for civil liberties generated by the affair.⁴⁸ In general, the response of the press did not augur well for the prime minister as the opening of Parliament loomed in March.

In a radio broadcast on 3 March 1946, M. J. Coldwell offered a preview of this upcoming parliamentary session. After a brief reminder of Bennett's "iron heel" and the DOCR, the leader of the CCF charged that the government endangered the rights of all

⁴⁷ Inter Alia, *The Fortnightly Law Journal* 15 (15 March 1946):241-242 and 256.

⁴⁸ "The Espionage Plot," *Canadian Unionist* 20 (March 1946):53 and Lester H. Phillips, "'Preventive Detention' in Canada," *Canadian Forum* 26 (June 1946):56-57.

Canadians when it chose to “emulate” authoritarian methods.⁴⁹ With the beginning of the new session of Parliament, it became readily apparent that, like the press, most of the debate on the Gouzenko Affair would centre upon the procedures of the royal commission and the state of civil liberties in Canada. John Bracken, leader of the opposition, while generally supportive of the government, noted the valid criticism in the press of the “star chamber methods” adopted in the scandal. Coldwell reiterated his views from two weeks before and expressed “grave doubts” over the actions of the royal commission.⁵⁰ Others followed with their criticisms and continued demands for an explanation for the extraordinary actions taken by the royal commission.

In private throughout February and March, Prime Minister King had fretted over the mounting criticism levelled at his government. The comments in the press and a stream of letters from the wives of some of the detainees heightened his anxiety. He made repeated attempts to persuade the commissioners to speed up their investigation, but this met with little success. He confided to his diary on 27 February 1946 that he had brought in Norman Robertson, Secretary of the Privy Council Office, and told him that: “unless this part [the treatment of witnesses] was carefully handled we would create a worse situation than the one we were trying to remedy. People will not stand for individual liberty being curtailed or men being detained and denied counsel and fair trial before being

⁴⁹ Cited in the *Toronto Daily Star*, 4 March 1946.

⁵⁰ *Debates*, 19 March 1946, 37 and 56.

kept in prison...The whole proceedings are far too much like Russia itself.”⁵¹

Despite this backroom hand-wringing, the government unequivocally defended its actions in Parliament. While the prime minister made only a brief reference to civil liberties in his Commons statement, St. Laurent bore the brunt of justifying the position of the government.⁵² First, he vehemently defended the decision to appoint two Supreme Court Justices to the royal commission as a “proper” choice under the circumstances. On the issue of the procedures adopted by that commission, however, St. Laurent appeared perplexed by the public criticisms made against the government. Although he expressed disappointment over the necessity to detain without charge various suspects, his concern was not due to the curtailment of civil liberties but to the effect it had on public opinion. “It [the detention of suspects] has made it appear,” he noted, “that the important question before the country at the present time was not whether the security of the state was being undermined...but whether there had been anything done which might be prejudicial to an accused person when he came before the court of justice.”⁵³ In conclusion, he stated that

⁵¹ Pickersgill and Forster, *King Record*, 148. Later, King admitted that he thought that “the ends of justice would have been better served by risking more in the way of possible loss of conviction,” (7 April 1946), *ibid.*, 158.

⁵² In his statement, King argued that the government took every precaution possible to “protect persons, or the liberty of persons, to protect the names of persons until the very last moment at which some disclosure would have to be made,” *Debates*, 19 March 1946, 52.

⁵³ Interestingly, in this speech, St. Laurent distanced himself from the DOCR which he referred to as “quite drastic.” As well, he made his famous apology that the secret order-in-council from 6 October 1945 had “slipped” his memory. In the debate on the National Emergency Transitional Powers Act on 6 December 1945, the Minister of Justice had denied that any such orders existed in his response to a question from Diefenbaker, *Debates*, 19 March 1946, 90-91.

neither the government, nor its commission, had abrogated any rights of those implicated in the espionage scandal.⁵⁴ Plainly, King had no intention of publicly admitting any wrongdoing during the affair, despite the increasingly harsh criticism levelled at his government. Indeed, even though the press and Parliament persisted in their barrage throughout the spring, the royal commission continued unabated until June when Kellock and Taschereau delivered their final report.⁵⁵

For King and his cabinet, the Gouzenko spy scandal truly was a nightmare. For a prime minister who loathed controversy, nothing good could come of Canada's brief part at centre stage in the new international theatre. When placed under the scrutiny of these stage lights, Canada's internal security was found sorely lacking. Revelations that civil servants, and even an M.P., were in league with communist Russia astounded both Ottawa and most Canadians. But equally surprising was the shock and outrage Canadians showed at the methods the federal government chose to deal with those suspected of involvement

⁵⁴ In his words, "there has been nothing shown anywhere which constitutes any violation of any right which any individual may have when he comes to answer for any charge brought against him." *Debates*, 19 March 1946, 90. To further his case, St. Laurent later introduced a report by Stuart T. Wood, Commissioner of the RCMP, which testified to the good treatment afforded those under detention, *ibid.*, 21 March 1946, 130.

⁵⁵ While the government publicly defended the extraordinary procedures of the royal commission as being necessary under the circumstances and denied that there was a serious abuse of civil liberties, privately King and his colleagues revealed serious doubts about the affair. Jack W. Pickersgill, head of the Prime Minister's Office and author of King's original statement in the Commons on the spy scandal, noted in his memoirs that "the lengthy period of detention...embarrass[ed] the government, as did other aspects of the whole affair. Mackenzie King complained several times to me about the delay in prosecuting or releasing those detained. He felt some impatience that he had no power to do anything about it. I was glad I had no part in the whole affair," J. W. Pickersgill, *Seeing Canada Whole: A Memoir* (Markham: Fitzhenry and Whiteside Publishers, 1994), 284.

in the scandal. While very few revealed sympathy for the alleged actions of those detained, a chorus of denunciation met the government's determination to circumvent the traditional civil liberties guaranteed by the British justice system.

From the beginning, it became apparent that this chorus would not be appeased simply with the end of the royal commission's hearings and submission of a final report. Both in the press and in Parliament, critics spoke of the Gouzenko Affair as only the most recent in a long list of civil liberties abuses by the Mackenzie King government which included the DOCR, the growth of wartime controls, the use of orders-in-council to circumvent Parliament and the treatment of Japanese Canadians. In this attack on the federal government, John Diefenbaker went to the quick of the debate in his speech to the Commons: "I believe the time has come for a declaration of liberties to be made by this parliament...I think out of the events of the last few years a responsibility falls upon parliament to assure that Canadians...should have established by their legislature 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 law, should be made part and parcel of the law of the country."⁵⁶ Canadians' well of forgiveness for its government had finally run dry.

The Emergence of John G. Diefenbaker and the Awakening of Civil Libertarians

Over the next year concern for civil liberties in Canada grew to an unprecedented level. In the House of Commons, opposition members called for a parliamentary

⁵⁶ *Debates*, 21 March 1946, 137-138.

committee to investigate human rights in Canada; editorial comments on the government's abuse of civil liberties continued in the press; and, national organizations such as the Canadian Bar Association and the country's two major labour congresses debated the ramifications of the government's actions in the spy scandal at their annual conventions. At the United Nations, plans to draft the International Bill of Rights were announced on 16 February 1946. Most significantly, concerned individuals organized new civil liberties associations and revived old ones which had lapsed during the war. As the year progressed, the civil liberties issue intensified. Eventually this heightened attention shifted from the simple discussion of the government's misdeeds to a detailed inquiry into the best measures to prevent similar abuses of Canadians' rights in the future. By the end of the year, the feasibility of a national bill of rights entrenched in the constitution became the centrepiece in this new discussion. While the suggestion that Canada needed such a constitutional safeguard had been broached by F. R. Scott in the 1930s and by the CBA during the war, the proposal took on new meaning in the wake of the Gouzenko Affair and the human rights initiatives by the United Nations. The suggestion that Canada needed a national bill of rights now became a political demand rather than simply an intellectual argument. As the fallout from the royal commission continued, a new champion for this cause emerged: John George Diefenbaker.

As his name clearly indicated, Diefenbaker was partially of German background.⁵⁷

⁵⁷ Born 18 September 1895 to an Ontario teacher and his wife, John George Diefenbaker was the eldest of two sons. For works on John Diefenbaker see Denis Smith, *Rogue Tory: The Life and Legend of John G. Diefenbaker* (Toronto: MacFarlane, Walter and Ross Publishers, 1995); Peter C. Newman, *Renegade in Power: The Diefenbaker Years* (Toronto: McClelland and Stewart, 1963); Peter Stursberg, *Diefenbaker:*

Growing up in the newly created province of Saskatchewan, the Diefenbaker name fit quite easily with the multitude of others. At this time, immigrants from the Ukraine, Germany, Lithuania, Poland, and other countries flooded the Canadian West. This multicultural environment had a lasting effect on the young Diefenbaker, which he later noted in his memoirs: “the newly opened land [of the West] tended to be a great social leveller, where each helped anyone in need, regardless of racial origin.”⁵⁸ Nevertheless, in a century in which Canada twice went to war with Germany, Diefenbaker often felt discriminated against because of his name and this had a lasting effect on his views of Canada and Canadians. For Diefenbaker, all Canadians were equal regardless of national or racial origin. As Diefenbaker’s political views matured, he held that only “unhyphenated” Canadians existed in his “One Canada.” The seeds for these ideas lay in the multicultural soil of the Northwest.⁵⁹

Diefenbaker had a strict and bookish upbringing. His mother, a devout Baptist, placed heavy expectations on her eldest son, and to her Diefenbaker attributed his “drive”

Leadership Gained, 1956-1962 (Toronto: University of Toronto Press, 1975); Garrett Wilson and Kevin Wilson, *Diefenbaker for the Defence* (Toronto: James Lorimer and Co., 1988); H. Basil Robinson, *Diefenbaker's World: A Populist in Foreign Affairs* (Toronto: University of Toronto Press, 1989); and, Michael Bliss, *Right Honourable Men: The Descent of Canadian Politics from Macdonald to Mulroney* (Toronto: HarperCollins Publishers Ltd., 1994).

⁵⁸ John Diefenbaker, *One Canada: Memoirs of the Right Honourable John G. Diefenbaker*, vol 1: *The Crusading Years, 1895-1956* (Toronto: MacMillan of Canada, 1975), 43-44.

⁵⁹ Smith, *Rogue Tory*, 45-46.

in later life.⁶⁰ From his father, Diefenbaker acquired early an interest in the parliamentary system of government and in those individuals who shaped the meaning of British freedom such as Sir Edward Coke, John Hampden and John Lilburne. Diefenbaker's heroes were these parliamentary agitators, and from them he developed his views on civil liberties and the role of Parliament. According to Diefenbaker's biographer, "he absorbed a thoroughly whiggish sense of history as the progressive expansion of freedom, developing benevolently and inevitably under British law."⁶¹ He continued this interest in his studies at the University of Saskatchewan in Saskatoon in 1912 where he studied politics, economics and law. In 1919 he completed his LL.B. and received his call to the bar. Over the following twenty years Diefenbaker's criminal law practice gained for him a reputation as a tenacious defender of the individual and minorities against the powers of the state and as a gifted courtroom orator. His name became best known for his roles in a number of murder trials which received widespread publicity.⁶²

Unfortunately for the young lawyer, this reputation did not translate into political success. Diefenbaker had thinly veiled ambitions to hold public office.⁶³ Between 1925 and 1938, he contested two federal and two provincial seats for the Conservative Party

⁶⁰ Diefenbaker, *One Canada: 1895-1956*, 9.

⁶¹ Smith, *Rogue Tory*, 4.

⁶² On Diefenbaker's legal career and reputation see Smith, *Rogue Tory*, 40 and 84-93 and Wilson and Wilson, *Diefenbaker for the Defence*.

⁶³ In his memoirs, Diefenbaker claimed that at age eight he told his mother he intended to be prime minister. As well he claimed that a University of Saskatchewan magazine predicted in 1915 that he would be leader of the opposition in the House of Commons by 1955, Diefenbaker, *One Canada: 1895-1956*, 66 and 83.

and the mayoralty of Prince Albert. Each of these elections ended in his defeat, even in 1938 as leader of the provincial conservatives. Not until the 1940 wartime election did the ambitious prairie lawyer finally achieve victory as the new Tory M.P. for Lake Centre. Diefenbaker now was a member of that parliamentary system he revered so much as a boy. Throughout his first term as a member of the House of Commons this love of Parliament and his experiences as a trial lawyer in Saskatchewan defending the individual against the crown converged. He attacked the growth of bureaucracy and the King government's penchant for rule by order-in-council as attempts to avoid Parliament. Likewise, he defended the traditional civil liberties secured by people such as Lilburne and Hampden against the infringements of the Liberal government and its many boards, commissions and tribunals established during the war.⁶⁴ By the time of the Gouzenko Affair, Diefenbaker was already a noted critic of government infringement upon individual rights. The fallout from the spy scandal, however, gave the ambitious prairie lawyer a new pulpit from which to preach.

Diefenbaker's March 1946 speech in the Commons with its call for a Canadian bill of rights garnered a good deal of support both from the press and from the public at

⁶⁴ In his memoirs, Diefenbaker argued that bureaucracy, such as that created by the King government, was "[o]ne of the greatest offenders in its lack of regard for individual rights." As well, on the topic of King's use of order-in-council during the Second World War, Diefenbaker claimed that it had become a "way of life" for the Liberal government and "Parliament was demeaned in the process." See Diefenbaker, *One Canada: 1895-1956*, 108 and 224. On Diefenbaker's reputation in Parliament see Bliss, *Right Honourable Men*, 194-195.

large.⁶⁵ The following month the government gave Diefenbaker another opportunity to voice his position with its proposed Citizenship Act. Prior to 1946, the Immigration Act was the only source containing a definition of citizenship. Despite the efforts of the Canadian Citizenship Branch, problems with the identification of citizens, naturalized citizens, and enemy aliens during the war made further clarification necessary. As a result, the government introduced legislation in Parliament on 2 April 1946 which defined the meaning and method of obtaining Canadian citizenship. Paul Martin, secretary of state, described the bill as a recognition “of the right to full partnership in the fortunes and in the future of the nation.”⁶⁶

This was not the only right which citizenship conferred, however, according to Diefenbaker. With this legislation, Diefenbaker saw an opening to further press the government on the Gouzenko Affair and the resulting question of civil liberties. During the Commons debate on the citizenship bill in committee, Diefenbaker moved an amendment to the act to include a bill of rights. Diefenbaker charged that the government’s handling of the spy scandal had created a new “liberty-conscious” public

⁶⁵ Noting the threats to civil liberties in Canada posed by the deportation of Japanese Canadians and from PC 6444, historian Donald C. Masters offered Diefenbaker his suggestions with a draft bill of rights, Masters to Diefenbaker, 9 April 1946, John G. Diefenbaker Centre, *Rt. Hon. John G. Diefenbaker Papers*, 1940-1956 Series, Vol. 2, Microfilm Reel M-7414, 001200-001201. For further responses to Diefenbaker’s Commons speech, see *Montreal Daily Star*, 22 March 1946 and Masters to Diefenbaker, 22 March 1946, *Diefenbaker Papers*, 1940-1956 Series, Vol. 2, Microfilm Reel M-7414, 001198.

⁶⁶ *Debates*, 2 April 1946, 502-510. For a good description of the act by the minister, see Martin’s address to the Granby Chamber of Congress, 17 October 1946, in *The Canadian Unionist* 20 (November, 1946):267-269 and Paul Martin, *A Very Public Life*, vol. 1: *Far From Home* (Ottawa: Deneau Publishers, 1983), 445-453.

and that it was now necessary “to declare once and for all the rights that are incident to citizenship in this country.” He attacked the government’s suspension of habeas corpus by order-in-council and warned that the press had given “almost” universal support to the need for such a bill of rights. As well, Diefenbaker suggested the creation of a committee of the House of Commons to determine the status of human rights in Canada and to discuss the question of a national bill of rights.⁶⁷

Diefenbaker’s proposed bill of rights drew directly from the criticism he levelled at the King government’s royal commission. The amendment contained only three clauses: the first guaranteed freedom of speech, religion and the right to peaceable assembly; the second held that habeas corpus could only be suspended by act of Parliament; and the third insured the right to legal counsel when giving evidence. Quite limited in scope, the Diefenbaker bill revealed the prairie lawyer’s thinking on the subject at the time.⁶⁸ To him, a bill of rights should protect those traditional civil liberties

⁶⁷ *Debates*, 7 May 1946, 1300-1303. On habeas corpus Diefenbaker argued that “parliament should determine once and for all that never again will that right, without which there can be no freedom or liberty under law, be denied except in cases of emergency and by parliament itself,” *ibid.*, 1302.

⁶⁸ Diefenbaker wrote in his memoirs that he first began to draft a Canadian Bill of Rights during his practice in Wakaw, however, there is no evidence to support this claim. See Diefenbaker, *One Canada: 1895-1956*, 252. More likely, the events of the previous few years introduced Diefenbaker, as with others during that time, to the idea that a Bill of Rights was necessary. To support this contention, immediately after the defeat of his amendment and the subsequent attention given to him in the press, Diefenbaker requested information on human rights and bills of rights from various institutes in the United States. See letters from Diefenbaker to International Conciliation; the Carnegie Endowment for Internal Peace; International Safeguard of Human Rights; and, Americans United for International Organization, Inc., 20 May 1946, *Diefenbaker Papers*, 1940-1956 Series, Vol. 2, Microfilm Reel M-7414, 001220-001222.

developed over the centuries of British jurisprudence. Most importantly, the bill should reaffirm the paramount place of Parliament in the protection of individual freedoms. The rights of all Canadians were vested in Parliament; and therefore, only Parliament could suspend those rights, not the Governor-in-Council.

Despite Diefenbaker's commitment to the protection of civil liberties, undoubtedly the chief purpose of his amendment was the embarrassment of the government. By linking the proposal for a bill of rights with King's own legislation on the meaning and benefits of citizenship, Diefenbaker hoped to once again stress the government's abrogation of civil liberties during the Gouzenko Affair. The press reported favourably on his amendment and over the next year he received a steady delivery of letters of support from the general public.⁶⁹ In Parliament, however, the Liberals gave the bill of rights amendment a less than friendly reception. In response, Jean Lesage, a Quebec Liberal, called Diefenbaker's motion a "political move" to embarrass the government and challenged the prairie Tory to move for an amendment to the constitution for such a bill.⁷⁰ Martin gave a more prepared critique of the proposed bill of rights in which he listed various specific objections. He refused to be drawn into a discussion on the Gouzenko Affair and plainly stated that Canadian law already contained the necessary safeguards to individual rights. Martin

⁶⁹ *Globe and Mail*, 8 May 1946 and *Toronto Daily Star*, 8 May 1946. For letters of support see *Diefenbaker Papers*, 1940-1956 Series, Vol. 2, Microfilm Reel M-7414.

⁷⁰ In his speech Jean Lesage also clearly indicated provincial interests in the debate: "Unity in Canada is much more important than the manner in which some of the rights of citizens were mentioned by the hon. member for Lake Centre in a political speech...I ask the members of the majority to understand the feelings and convictions of the minority." *Debates*, 7 May 1946, 1308-1309.

asserted that Canadians' traditional civil liberties were amply protected through both the common law and the supremacy of Parliament. As well, he argued that the amendment would not strengthen existing rights; that it was a fundamental departure from the British system; and, that it encroached upon provincial jurisdiction. Finally, Martin stated his citizenship bill was not the appropriate place for a bill of rights if it indeed was as important as Diefenbaker claimed.⁷¹ Although both Alistair Stewart and M. J. Coldwell of the CCF supported the adoption of a Canadian bill of rights, they refused to endorse Diefenbaker's limited amendment. In his speech Coldwell noted that the party had met before Easter to consider moving a similar amendment to the preamble of the government's citizenship act. Finally, he too called for a committee to investigate human rights in Canada. In the end, the government defeated the proposed bill of rights amendment to the citizenship act. Unfortunately for Prime Minister King, however, this was not before his government's record on civil liberties was once again held up to the light of parliamentary scrutiny.⁷²

In his press statement following the defeat of his motion, John Diefenbaker vowed that the "fight will be carried on...I intend to introduce a Bill of Rights more comprehensive in its terms than could be included in the Citizenship Bill."⁷³ Although his bill of rights suggestion was limited as an instrument to protect human rights, the

⁷¹ *Debates*, 7 May 1946, 1310-1314.

⁷² *Debates*, 8 May 1946, 1339-1340 and 16 May 1946, 1584-1585.

⁷³ Diefenbaker, "Press Statement," 18 May 1946, *Diefenbaker Papers*, 1940-1956 Series, Vol. 2, Microfilm Reel M-7414, 001215.

parliamentary debate on his motion captured the public's imagination and gave direction to the new civil liberties crusade birthed by the Gouzenko Affair. The limited scope and partisan nature of the amendment, its invasion of provincial jurisdiction, and its exclusion of other fundamental rights failed to deter those civil libertarians who searched for an objective goal for their lobbying efforts. The suggestion had been made in 1935 by F. R. Scott, in 1944 by the CBA's Committee on Civil Liberties and had even been introduced into Parliament in 1945 by the CCF, but the debate on this idea in the wake of the spy scandal produced a much greater impression on the public at large and upon the new wave of civil libertarians.⁷⁴ The government's determination to deport Japanese Canadians and revelations of civil liberties infringements during the Gouzenko Affair proved that the past efforts to voice concerns were inadequate. It would not be enough to simply repeat the slogans and goals of the Depression era civil libertarians. New and more radical goals were necessary. A Canadian bill of rights provided such a goal and the new civil liberties associations quickly jumped on this bandwagon.

In the latter stages of the war, the civil liberties organizations which had lobbied the government so actively over the DOCR in 1939-1940 quietly dissipated. Some groups like the Civil Liberties Association of Toronto technically existed but basically remained

⁷⁴ In October 1945, Alistair Stewart introduced a motion in the House of Commons for a bill of rights, but his suggestion generated little interest either in Parliament or in the press. Ironically, Stewart agreed to let the motion drop in response to Martin's promise to address the same issue in his upcoming citizenship act. See *Debates*, 10 October 1945, 900.

moribund while others disappeared altogether.⁷⁵ Throughout 1946, however, three new associations sprung up in Montreal, Toronto and Ottawa while former organizations in Winnipeg and Toronto re-emerged with new names. These new groups contained members from labour, professional occupations, politics, churches and the arts. Very quickly, these associations forged links with like-minded politicians and with influential professors and members of the press. One of the keystones of each of these new groups was agitation for a national bill of rights and in December contact among these various organizations led to a joint meeting in Ottawa to discuss plans for a national civil liberties association and methods to achieve a bill of rights. Within the space of just eight months, Canada's civil liberties movement outdistanced all previous successes by the Depression era civil libertarians.

The first evidence of this revival occurred in Toronto. In response to the announced arrests of thirteen espionage suspects on 15 February 1946, forty members of the B. K. Sandwell's Civil Liberties Association met to re-activate the organization and launch a major campaign against the government including public meetings, advertisements and pamphlets. The majority of the executive balked, however, and agreed only to a letter of protest. Led by Margaret Spaulding, vice-president of the CLA, a predominantly communist group of members split from the association and met on 6 April

⁷⁵ For evidence of the decline of Canadian civil liberties associations during the Second World War see Elizabeth Allen (General Secretary of the National Council of Civil Liberties, England) to Alexander A. MacLeod, 13 September 1944, Archives of Ontario, *A. A. MacLeod Papers*, F 126, Series A, MU 7592, File 1 and Roger Baldwin (Director of American Civil Liberties Union) to F. R. Scott, 4 April 1945, National Archives of Canada (hereafter NAC), *Francis Reginald Scott Papers*, MG 30, D211, Vol. 10, File 7, Microfilm Reel H-1222.

1945 to form the Emergency Committee on Civil Rights (ECCR).⁷⁶ Over the next six months, the ECCR published four large advertisements in the Toronto press, prepared a detailed study of the civil liberties abuses in the spy scandal and launched a monthly newspaper, *Civil Rights*. Its goals were threefold: to highlight the infringements on human rights by the royal commission; to set forth and protect the basic civil rights of Canadians; and, to raise an "Emergency Civil Rights Fund" to pay for legal services.⁷⁷ By October, the members of this ad hoc group decided to break completely from the CLA and form their own organization, the Civil Rights Union (CRU). While this new association maintained the goals of the ECCR, it announced that it intended to push for a "Charter of Rights" in the next session of Parliament. According to the union, "the basic civil rights of Canadians must be made law and not left to the conveniences and prejudices of cabinet ministers, police officials, or even two justices of the Supreme Court."⁷⁸

⁷⁶ See *Civil Rights* 1 (15 August 1946), *MacLeod Papers*, Series B, MU 7596, File 12; "Conference of the Committee for the Defence of Trade Union Rights," 13 April 1947, NAC, *Canadian Labour Congress Papers* (hereafter *CLC Papers*), MG 28 I 103, Vol. 210, File 11; and, Margaret Spaulding to C. H. Millard, 30 May 1946, *CLC Papers*, Vol. 210, File 13.

⁷⁷ *Civil Rights* 1 (15 August 1946), *MacLeod Papers*, Series B, MU 7596, File 12. For the ECCR's study of the royal commission see, ECCR, "Justice and Justice Only, draft memorandum on the 4th report of the Kellock-Taschereau Commission," *MacLeod Papers*, Series A, MU 7591, File 25.

⁷⁸ At a meeting on 22 October 1946, the ECCR officially changed its name and adopted a constitution for the organization. Some well-known members included C. B. MacPherson, C. S. Jackson and A. Y. Jackson. See "Brief submitted by the Civil Rights Union of Toronto, showing the need for a Bill of Rights in Canada," to the *Special Joint Committee of the Senate and the House of Commons of Canada on Human Rights and Fundamental Freedoms*, 4 June 1948, *Diefenbaker Papers*, 1940-1956 Series, Vol. 4, Microfilm Reel M-7415, 002960-A; and, *Civil Rights* 1 (20 December 1946), *MacLeod Papers*, Series B, MU 7596, File 13.

Despite this maelstrom of activity during 1946, the CRU suffered from its communist affiliations and had difficulty gaining support for its campaign. Other organizations in Ottawa and Montreal, which avoided too close an association with communists, found greater success. On 15 May 1946, John Diefenbaker, Arthur Roebuck, M. J. Coldwell and Blair Fraser presided over the organizational meeting of the Ottawa Civil Liberties Association (OCLA). Sponsored by A. R. Mosher, president of the Canadian Congress of Labour (CCL) and by H. S. Southam, publisher of the *Ottawa Citizen*, the group prepared a constitution in which one of the primary tasks of the association was to “work for the establishment of a Bill of Rights, as part of the written Canadian law.”⁷⁹ Over the next six months the Ottawa group devoted most of its energies to the Gouzenko Affair and Japanese Canadians but also set up standing committees to investigate labour rights, civil service rights and related legislation. On 24 July 1946, the OCLA passed a resolution condemning the actions of the government in the Gouzenko Affair and called for a parliamentary committee to investigate the powers of royal commissions. By the end of the year, the Ottawa association had grown to about 200 members.⁸⁰

⁷⁹ “Organizational Meeting of the Ottawa Civil Liberties Association,” 15 May 1946, *CLC Papers*, Vol. 210, File 13. Blair Fraser was the editor of *Maclean's* magazine. Roebuck, a strong supporter of civil liberties, was a Liberal senator and former member of the Ontario legislature. He had protested vehemently the suggestion in 1939 to strip F. H. Underhill and G. M. A. Grube of their positions at the University of Toronto for statements made concerning the British Empire, see “Free Speech in Ontario,” *Canadian Forum* 19 (June 1939):72.

⁸⁰ “Minutes of Exploratory Conference Between The Montreal, Ottawa and Toronto Civil Liberties Associations and the Civil Rights Union (formerly The Emergency Committee for Civil Rights),” 28-29 December 1946, *Scott Papers*, Vol. 3, File 13,

In Montreal, the Canadian Civil Liberties Union had fallen apart early in the war largely because of a split between communist and non-communist members. By 1946 though, Maurice Duplessis' use of the Padlock Law against Jehovah's Witnesses, the deportation of the Japanese Canadians and the Gouzenko Affair combined to re-awaken interest in civil liberties in the city.⁸¹ Early in the year B. K. Sandwell helped to organize the Montreal Committee for Canadian Japanese while at the same time, Frank Scott spearheaded efforts to create a new civil liberties group. In November, the Montreal Civil Liberties Association announced its formation with a large advertisement in the press. Like the old Montreal CCLU, the group intended to concentrate on court challenges to offending legislation such as the Padlock Law. The return of a civil liberties association in Canada's largest city boosted the prospects of the nascent rights groups as they then turned to the question of a national organization.⁸²

In November 1946 the Montreal Civil Liberties Association noted the emergence of new rights organizations and took the lead in proposing the creation of a national

Microfilm H-1214. For the 24 July resolution see "Ottawa Civil Liberties Association Meeting," 24 July 1946, *CLC Papers*, Vol. 210, File 12. The following year, the OCLA sent the government a list of statutes which violated various human rights, M. H. Fyfe (President) to Louis St. Laurent, 9 May 1946, NAC, *Louis St. Laurent Papers*, MG 26 L, Vol. 15, File 83.

⁸¹ Scott to A. R. M. Lower, 3 April 1946, *Scott Papers*, Vol. 10, File 7, Microfilm Reel H-1222. On the use of the Padlock Law against Jehovah's Witnesses see, Penton, *Jehovah's Witnesses in Canada*, 182-201; Sandra Djwa, *The Politics of the Imagination: A Life of F. R. Scott* (Toronto: McClelland and Stewart, 1987), 297-317; and William Kaplan, *State and Salvation*, 230-253.

⁸² "Minutes of Exploratory Conference," 28-29 December 1946, *Scott Papers*, Vol. 3, File 13, Microfilm Reel H-1214; and, *Montreal Gazette*, 12 November 1946.

association. The response to this suggestion was immediate and positive. The Civil Rights Union of Toronto stated plainly that "the time has come for all civil liberties organizations...to co-ordinate their work and so strengthen the fight for civil rights." The group added explicitly that one item of discussion had to be a bill of rights for presentation to Parliament.⁸³ With F. R. Scott as chairman, the Toronto, Montreal and Ottawa Civil Liberties Associations and the Civil Rights Union convened an "exploratory conference" on 28 December 1946.⁸⁴ The conference members largely concurred as to the best measures to combat civil liberties abuses in their discussion of each of the major rights issues of the day including the deportation of Japanese Canadians, the Padlock Law, the Gouzenko Affair, and racial discrimination. On the question of a bill of rights, however, the representatives revealed marked differences of opinion. Both J. P. Erichsen-Brown and Wilfred Eggleston of the Ottawa CLA questioned the necessity of such a bill since guarantees for civil liberties already existed in Canadian law and argued that it involved a reversal of Canadian constitutional theory. Others suggested that a parliamentary committee was necessary prior to the introduction of any draft bill of rights. F. W. Park of

⁸³ The original suggestion for a national conference came from J. P. Erichsen-Brown of the Ottawa Civil Liberties Association, see Scott to Erichsen-Brown, 2 November 1946, *Scott Papers*, Vol. 10, File 7, Microfilm H-1222. See also, *Montreal Gazette*, 12 November 1946 and *Civil Rights* 1 (20 December 1946), *MacLeod Papers*, Series B, MU 7596, File 13.

⁸⁴ In attendance were J. P. Erichsen-Brown, Wilfred Eggleston, Morris Fyfe, and Donald MacDonald from the Ottawa CLA; George Tatham and Andrew Brewin from the Toronto CLA; Frank Scott from the Montreal CLA; and from the Civil Rights Union, M. H. Spaulding and C. S. Jackson, along with C. B. MacPherson and F. W. Park, both of whom were known Marxists, "Minutes of Exploratory Conference," 28-29 December 1946, *Scott Papers*, Vol. 3, File 13, Microfilm Reel H-1214.

the CRU noted that such proposals from both Diefenbaker and Roebuck were likely at the next session of Parliament. He was reluctant, however, to commit himself to “some particular bill of rights.” Others argued strenuously that such a measure was absolutely necessary, and Scott stated clearly that it should be an amendment to the constitution. In the end, the representatives could only reach a “general agreement on the desirability of a Canadian Bill of Rights.”⁸⁵

On the issue of a national organization there were even wider differences. At one point, a heated debate erupted after the suggestion that communists should be barred from any national civil liberties organization since they did not put “democracy first.” By the conclusion of the meeting the representatives made a few tentative agreements to meet again and to hold a national conference within two months, but little else.⁸⁶ Overall the meeting was a dismal failure. Deep divisions among the various groups emerged concerning the structure of a national organization, its goals, and its membership. As well, the meeting showed a variety of opinions on the proposals for a bill of rights. Questions regarding the bill’s form, which rights it should include, and even its desirability exposed important differences among those people most committed to the protection of civil liberties. In the end, nothing became of the hopeful suggestions of a national conference

⁸⁵ “Minutes of Exploratory Conference,” 28-29 December 1946, *Scott Papers*, Vol. 3, File 13, Microfilm Reel H-1214.

⁸⁶ The delegates also made the innocuous agreement to “recommend to their own associations that a committee consisting of representatives of the general civil liberties associations work towards the formation of a national civil liberties organization, particularly by drafting a constitution, toward calling a national conference.” This committee never materialized, see “Minutes of Exploratory Conference,” 28-29 December 1946, *Scott Papers*, Vol. 3, File 13, Microfilm Reel H-1214.

on civil liberties or a nation-wide organization. Despite another meeting of the various groups on 26-27 April 1947, arguments over membership, both on an individual and organizational basis, and over the inclusion of communists from the CRU continued to hamper efforts to create a national organization. As an epitaph to these attempts, Erichsen-Brown commented: "I am absolutely convinced 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."⁸⁷ Despite the explosion of civil liberties organizations then, it soon became apparent that the efforts to protect individual rights were anything but uniform. These differences of opinion foreshadowed continuing discord among the goals of the many civil liberties groups. This lack of cohesion would eventually hamper their relations with the federal government, especially when more organizations, not specifically devoted to civil liberties, decided to wade into the question of human rights protection. Nowhere was this disunity of purpose more apparent than in the efforts to convince the government of the need for a Canadian bill of rights.

"The government's hand:" The King Government and the 1947 Special Joint Committee on Human Rights

Despite public endorsement for its decisive action in response to Soviet espionage, the King government had been embarrassed deeply by the violation of human rights on the part of the royal commission. Designed to deflect criticism away from the government,

⁸⁷ On the 26-27 April meeting see Fyfe to Scott, 21 June 1947, *Scott Papers*, Vol. 10, File 8, Microfilm Reel H-1222 and Erichsen-Brown to Scott, 7 February 1947, *Scott Papers*, Vol. 10, File 7, Microfilm Reel H-1222.

the appointment of the commission had engendered a continuous stream of condemnation of the King Liberals' circumvention of traditional civil liberties. In Parliament, in the press and in a slew of resolutions and statements from various organizations, almost every rights infringement during the entire enquiry received close examination. Even with the final report of the commission, the public scrutiny continued. In September 1946, both the Canadian Congress of Labour and the Trades and Labor Congress of Canada (TLC) passed resolutions at their annual conventions which condemned the government's actions. Drawing on Diefenbaker's motion during the citizenship debate, the TLC resolution even made the "demand of the Government that a Bill of Rights be established which would assure that the basic rights of democracy...be removed from the whims and prejudices of the particular government of the day."⁸⁸

The most damaging criticism, however, came at the annual meeting of the CBA in Winnipeg. Prior to the convention, expectations in the press demanded a public response to the actions of the royal commission from the lawyers' association. An editorial in the *Winnipeg Free Press* entitled "Lawyers and Liberty," noted that "this is a problem which touches the lawyers of Canada more urgently than any other part of the community. What will their answer be?"⁸⁹ Despite the hesitancy of some members, the CBA responded with a harsh attack through the report of its Committee on Civil Liberties. In the report, the

⁸⁸ *Proceedings of the Sixth Annual Convention of the Canadian Congress of Labour, 1946*, (hereafter *CCL Proceedings*), 96; and, *Report of the Proceedings of the Sixty-First Annual Convention of the Trades and Labor Congress of Canada, 1946* (hereafter *TLC Proceedings*).

⁸⁹ *Winnipeg Free Press*, 29 August 1946.

committee detailed the various infringements upon traditional rights perpetrated by the royal commission and denounced the justification of state security after the war emergency: "once it is established that in time of peace the normal safeguards which protect the subject against the arbitrary will of the executive can be set aside at the will of the executive, we are, indeed in grave danger of having substituted for the rule of law under which we, and our ancestors, have lived for centuries, the alien principles of the totalitarian state. We must face that fact squarely." In conclusion, the report called for changes to the Evidence Act to protect those compelled to give testimony which may later incriminate them. It also suggested that judges not be appointed as commissioners in inquiries to determine criminal wrongdoing and that commission reports which may prejudice the fair trial of a defendant not be published until after a verdict had been reached.⁹⁰ The response in the press was immediately supportive as one of the most respected associations in the country had joined the ranks of those who denounced the infringement of civil liberties during the spy scandal.⁹¹

Equally disconcerting for the prime minister were the charges of racial

⁹⁰ "Report of the Committee on Civil Liberties," in *CBA Proceedings, 1946*, 28-30 August 1946, 141-156. An acrimonious debate followed the reading of the report where many members disagreed with the harsh tone. In the end, the association voted to adopt officially only the final recommendations of the report, *ibid.*, 145-156.

⁹¹ B. K. Sandwell stated plainly that "[n]o public document issued in Canada in the last twenty years has given me more satisfaction than the [CBA's] report on civil liberties," B. K. Sandwell, "Bar Association Utters Clarion Call for Renewal of Liberties," *Saturday Night* 62 (14 September 1946):17. See also "Bar Association Defends Civil Liberties," *Canadian Unionist* 20 (September 1946):200-201 and *Toronto Daily Star*, 3 September 1946. The *Globe and Mail* criticized the CBA for adopting only part of the report, 2 September 1946.

discrimination concerning the deportation of Japanese Canadians. Ironically, the Supreme Court handed down its decision on the constitutionality of the deportation orders on 20 February 1946 in the midst of the first days of the Gouzenko Affair. Although ruled *intra vires*, the eastern press called on the government to reconsider the entire policy: "the ill-conceived orders should be revoked forthwith," read one editorial in the *Globe and Mail*, while others repeated the same sentiment.⁹² While this decision proceeded to the Judicial Committee of the Privy Council in Britain, the lobbying efforts to have the orders repealed continued. Church groups, the new civil liberties associations and other organizations devoted strictly to the plight of Japanese Canadians wrote letters, passed resolutions and held meetings.⁹³ Despite these efforts however, the JCPC deemed the government's deportation orders constitutionally valid in its decision of 2 December 1946. Once again, the press called on the government to ignore the court's ruling and to respect the rights of Canadians, especially given the enactment of the Citizenship bill.⁹⁴ Finally, King relented and announced on 24 January 1947 the revocation of the deportation orders, although restrictions on movement within the country remained. Fortunately for Prime Minister King, by this time British Columbia's storm of racial hysteria had blown itself out.⁹⁵

⁹² *Globe and Mail*, 21 February 1946 and *Toronto Daily Star*, 23 February 1946.

⁹³ See Patricia Roy et.al., *Mutual Hostages*, 177-180.

⁹⁴ See *Ottawa Citizen*, 3 December 1946; *Globe and Mail*, 4 December 1946; *Toronto Daily Star*, 3 December 1946; and, Edith Fowke, "Justice and Japanese Canadians," *Canadian Forum* 26 (January 1947):225-226.

⁹⁵ Roy et.al., *Mutual Hostages*, 180-182. As well, on 23 January 1946, the Liberal cabinet bowed to both international and domestic pressure on the issue of racial discrimination with its decision to repeal the Chinese Immigration Act, "Cabinet

As King made this reversal on the deportation of the Japanese Canadians, the Gouzenko Affair continued to hound his government. Demands for a committee to investigate human rights in Canada and the suggestion of a bill of rights gained momentum as the opening of the 1947 session of Parliament approached. While the emergence of the new civil liberties associations served notice to Ottawa that public concerns remained despite the final report of the royal commission, John Diefenbaker pressed the government throughout the fall of 1946. On 13 November 1946, Diefenbaker followed his citizenship amendment with a promise to continue the fight in his famous "Restore the Flag of Freedom" speech. According to Diefenbaker, "[t]he Crusade for a Bill of Rights must and will go on and I intend to bring up the question by way of a resolution at the next session [of Parliament]." As well, he reiterated his request for a parliamentary committee on human rights.⁹⁶ These demands, together with the public debate in the press and by the civil liberties associations, put sufficient pressure on King and his cabinet to force a serious consideration of the issue. On 21 January 1947, cabinet met to discuss the issue and King noted his decision to "consider the question of a Bill of Rights." Immediately after in the Speech from the Throne, the government acquiesced and announced its intention to create a special joint parliamentary committee to investigate human rights and fundamental

Conclusions," 23 January 1946, NAC, *Records of the Privy Council*, RG 2 A5a, Vol. 2639, No. 317, Microfilm Reel 2365.

⁹⁶ John Diefenbaker, "Restore the Flag of Freedom to Parliament Hill," speech prepared for CBC Radio, 13 November 1946, *Diefenbaker Papers*, Speech Series, Vol. 6, No. 198.

freedoms in Canada.⁹⁷

For King and his cabinet, the decision to establish a parliamentary committee on human rights drew naturally from the government's experience with the DOCR during the early years of the war. For the most part, the successive committees of 1940-1942 had assuaged the concerns of civil liberties associations and the press without demanding serious revisions to the defence regulations. By steering the new committee's agenda away from a serious examination of the Liberals' record on civil liberties, though still allowing for a discussion of human rights, the government hoped to repeat its wartime success. The first indication of this strategy came in the Speech from the Throne when the announcement of the creation of the committee cited obligations under the United Nations Charter, rather than the domestic outcry over the Gouzenko Affair or the deportation of Japanese Canadians, as the reason for this decision.⁹⁸ As preparations for the committee proceeded in February-May 1947, however, the government's apparent hope that issues such as the bill of rights and the spy scandal could be avoided quickly proved unrealistic.

With the announcement of a parliamentary committee, the press renewed its interest in the proposals for a bill of rights while the civil liberties associations redoubled their efforts. From February to June 1947, newspapers across the country voiced their

⁹⁷ "Excerpt from Cabinet Conclusions, January 21, 1947," NAC, *William Lyon Mackenzie King Papers*, MG 26, J4 Series, Vol. 245, File 2500, C164690 and *Debates*, 30 January 1947, 2.

⁹⁸ In the Speech from the Throne, the government noted that it followed "with interest the activities of the United Nations with regard to 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," *Debates*, 30 January 1947, 2.

thoughts on the rights infringements of the past and on the best safeguards for the future. At the forefront was the *Winnipeg Free Press*. In a series of articles in February, it firmly supported the adoption of a Canadian bill of rights: “after our experience in the spy trials, after the recent treatment of Canadian-Japanese, after the discrimination against racial minorities in B.C., after the persecution of a religious group in Quebec, who can deny that a Canadian Bill of Rights is needed today?” Again in May-June, the newspaper’s much respected associate editor, Bruce Hutchison, penned another series of editorials which advocated a rights guarantee.⁹⁹ Other newspapers such as the *Globe and Mail* and the *Ottawa Citizen*, while reluctant to commit themselves completely to a bill of rights, increased their criticism of the government’s record on civil liberties. The *Ottawa paper*, in particular, chastised the purposes of the committee as stated in the speech from the throne: “[i]t is farcical for Parliament to trouble itself about ‘human rights and freedoms’ abroad while neglecting them at home...’The eyes of a fool are in the ends of the earth.”¹⁰⁰

As the press spilled its ink, the civil liberties associations and others continued their efforts in the rights debate. On 27 February 1947, John Diefenbaker, B. K. Sandwell and Stanley Knowles, a CCF M.P., shared the same stage in Winnipeg to argue the civil liberties cause and the suggestions for a bill of rights. The following month A. R. M.

⁹⁹ *Winnipeg Free Press*, 14 February 1947. This was a concluding editorial after a series of articles written by J. H. Gray, *ibid.*, 7-8 February and 10-13 February 1947; Bruce Hutchison, “Bill of Rights For Canada,” *Winnipeg Free Press*, 30 May - 3 June 1947.

¹⁰⁰ *Ottawa Citizen*, 20 February 1947. See also, *Ottawa Citizen*, 12 March 1947, 1 April 1947, and 1 May 1947; and, *Globe and Mail*, 9 June 1947.

Lower published an influential article entitled “Some Reflections on a Bill of Rights.”¹⁰¹

This work immediately garnered widespread attention as one of the first reasoned discussions on a Canadian bill of rights by a respected academic. In it, Lower noted various topics which should be discussed during the parliamentary committee’s upcoming hearings and made a tentative list of provisions which should be included in any Canadian bill of rights. Most importantly, the historian argued that a bill of rights need not be an amendment to the constitution. Instead, Lower suggested that a rights declaration passed by statute was an acceptable alternative whereby “it would form one additional hurdle for parliament to take when it next consented to abrogation of civil liberties, and would make that abrogation a much more solemn thing than it has hitherto been.” This was not a novel suggestion; Diefenbaker’s original amendment to the Citizenship Act would have been a statutory bill of rights. However, its advocacy by such a respected professor in a well-argued, scholarly article helped to give the option more credibility. In addition, this proposal widened the appeal of a bill of rights for some who had been reluctant to endorse the idea.¹⁰²

As Lower’s article circulated, groups concerned with civil liberties stepped up their activities. One of the most widely publicized efforts was that of the Jehovah’s Witnesses.

¹⁰¹ *Winnipeg Free Press*, 28 February 1947 and A. R. M. Lower, “Some Reflections on a Bill of Rights,” *The Fortnightly Law Journal* 16 (15 February 1947):216-218 and continued in *ibid.*, 16 (1 March 1947):234-237.

¹⁰² Lower, “Some Reflections,” 216. In its consideration of this option, one editor noted the wide differences between those who argued in favour of a bill of rights by constitutional amendment and those who advocated the status quo: “Conceivably, a declaration by Parliament reaffirming in the widest terms the established British freedoms might prove an acceptable middle way,” *Ottawa Citizen*, 22 May 1947.

This religious sect of just a few thousand in Canada continued to be the object of frequent harassment for their often aggressively espoused beliefs, most notably by the provincial government of Maurice Duplessis and the Roman Catholic church in Quebec. The group fought frequent and public battles in the courts against the Quebec government's attempts to stifle their proselytizing. Most recently on 4 December 1946, Quebec's treatment of the Jehovah's Witnesses drew condemnation when Duplessis, as Attorney-General, repealed the liquor license of Montreal café owner Frank Roncarelli for continually posting bail for arrested members. This direct attack on Roncarelli was a blatant use of state power to curtail democratic rights. In March 1947 the various Witness congregations responded with a door to door campaign to petition the government for a bill of rights. Led by J. Glen How, a prominent civil rights lawyer, the Witnesses sought to "strike while the iron of public opinion is hot," and by June they had collected over five hundred thousand signatures.¹⁰³ Ironically, the civil liberties abuses of Quebec spilled over into the federal government's own problems at a time when Ottawa claimed jurisdictional constraints prevented it from acting on rights issues.

During the spring of 1947, civil liberties associations across the country intensified their efforts. In Winnipeg, the Civil Liberties Association of Manitoba sent a harsh letter to J. L. Ilsley, the minister of justice, in response to the publication of the final report of

¹⁰³ How to Diefenbaker, 29 April 1947, *Diefenbaker Papers*, 1940-1956 Series, Vol. 3, Microfilm Reel M-7414, 001433. On the Jehovah's Witnesses during the Second World War and in Quebec see Penton, *Jehovah's Witnesses* and Kaplan, *State and Salvation*. Kaplan mistakenly suggests that this petition contributed to the government's intention to create a parliamentary committee on human rights even though this decision had preceded the Witnesses' campaign, *State and Salvation*, 254-255.

the royal commission on espionage. In their memo, the group included a draft bill of rights which Stanley Knowles later introduced in Parliament on 16 May 1947.¹⁰⁴

Meanwhile in Toronto, as the old Civil Liberties Association sputtered, a new group began to take shape. Throughout the spring Irving Himel organized the Committee for a Bill of Rights in consultation with the Toronto CLA and the Civil Rights Union. Himel was a “very energetic” labour lawyer who had been a counsel to Drummond Wren in his court battle to overturn the practice of restrictive covenants which allowed property owners to exclude prospective buyers on the basis of race or religion in private land sales. The main purpose of Himel’s new group was to present a request for a constitutional amendment incorporating a bill of rights to the upcoming parliamentary committee. By May, Himel actively solicited various individuals for permission to attach their names to the group’s planned memorandum to the government.¹⁰⁵

¹⁰⁴ The Civil Liberties Association of Manitoba was largely a revived version of the wartime Civil Liberties Association of Winnipeg, see Waines to Diefenbaker, 20 March 1947 *Diefenbaker Papers*, 1940-1956 Series, Vol. 3, Microfilm Reel M-7414, 001398. For the proposed bill of rights see *Debates*, 16 May 1946, 3182-3183. The reason for the group’s letter was a government addendum to the royal commission’s final report added on 30 January 1947 which, in their opinion, undermined the authority of the Canadian judicial system. This statement noted that although six people charged after the hearings of the commission had been acquitted, “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,” see *Royal Commission on Espionage*.

¹⁰⁵ On restrictive covenants see Stephen Speisman, “Antisemitism in Ontario: The Twentieth Century,” in *Antisemitism in Canada: History and Interpretation*, ed. Alan Davies (Waterloo: Wilfrid Laurier University Press, 1992), 113-134 and *Re Drummond Wren* [1945] 2 DLR 244 (Ont. HC). As well, Himel originally intended for justice Keiller Mackay, the judge in this case, to be chairman of his Committee for a Bill of Rights. F. A. Brewin to F. R. Scott, 24 March 1947, *Scott Papers*, Vol. 10, File 8, Microfilm Reel H-1222; Himel to Scott, 15 May 1947, *ibid.*; Himel to Diefenbaker, 15 May 1947, *Diefenbaker Papers*, 1940-1956 Series, Vol. 3, Microfilm Reel M-7414, 001438; and,

Ironically, King's attempt to deflect criticism away from his government by referring the question of human rights protection to a parliamentary committee with the innocuous purpose of investigating Canada's obligations under the U.N. Charter actually gave rise to increased interest in the subject. Unlike 1940, there was neither a fear of "fifth column" attacks in Canada nor of jeopardizing the security of the state during an emergency to mitigate the criticisms of the government. Many members of the press, opposition politicians and other civil libertarians saw the promised committee as a vindication of the past year's agitation and an admission by the government that change was necessary.

In view of this public outpouring of support for a bill of rights, the government attempted to design its policy response. Already by early March, King and his advisors realized that the stated goals of the parliamentary committee needed rethinking. Plainly, with the public attention generated in 1947, any attempt by the committee to exclude discussion of a bill of rights would undermine its credibility and lead to further charges that the government cared little for civil liberties.¹⁰⁶ However, in the opinion of King's advisors, little damage was likely from an investigation of constitutional guarantees of rights. At worst, the committee would recommend that Ottawa discuss the issue with the

Irving Himel, interview with author, Toronto, Ontario, 4 May 1995.

¹⁰⁶ In a memorandum prepared during the preparations of the committee, one advisor noted that the "idea of a 'Bill of Rights' and of guarantees of liberty is so attractive as a general proposition, that, whatever the problems connected with such a 'Bill,' opposition to inclusion of it is one of the points for study by the Committee would probably be misunderstood and would certainly be misinterpreted," R. G. Robertson to J. W. Pickersgill, 3 March 1947, NAC, *King Papers*, MG 26, J4 Series, Vol. 245, File 2500, C164698-C164706.

provinces or that a reference be made to the Supreme Court on the question of legislative jurisdiction.¹⁰⁷ It appears, therefore, that as long as the government maintained its objection to bills of rights, the committee could do little other than make nebulous recommendations.

By the end of the year, the prime minister and his justice minister were aware that a more thoroughly designed policy response was necessary. The first indication of government activity came in January 1947 when the Department of Justice prepared a detailed study on the arguments made for a Canadian bill of rights. Over the next few months F. P. Varcoe, the deputy minister, and his assistants developed the government's position on bills of rights and other forms of rights guarantees for the upcoming committee hearings. Indeed, the basic policy mapped out over the winter of 1947 would continue in roughly the same form over the next decade as successive Liberal governments dealt with the issue.¹⁰⁸

At the core of this policy was the complete rejection that Canada needed a bill of rights. Drawing largely on the work of A. V. Dicey and I. W. Jennings, the department offered a number of criticisms but noted in particular three broad objections.¹⁰⁹ First, the

¹⁰⁷ R. G. Robertson to J. W. Pickersgill, 3 March 1947, *King Papers*, J4 Series, Vol. 245, File 2500, C164698-C164706.

¹⁰⁸ In December, Varcoe had requested a detailed study on bills of rights in general and on the citizenship debates of May in particular, see Varcoe to A. J. MacLeod, 21 December 1946, NAC, *Records of the Department of Justice*, RG 13, Vol. 2643, File 151913 and MacLeod to Varcoe, 13 January 1947, *ibid*.

¹⁰⁹ A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (London: MacMillan and Co., Ltd, 1915) and Ivor W. Jennings, *The Law and the Constitution*, 3rd ed. (London: University of London Press, 1943).

adoption of a bill of rights would be a complete break with the British parliamentary system. In Britain, Parliament was completely sovereign in all legislative fields. Thus, there existed no constitutional constraints or limitations on the power to enact laws. Since the BNA Act was based on this system, any attempt to place a bill of rights in the constitution would effectively abrogate the sovereignty of the Canadian Parliament. According to Varcoe, “restrictions on the legislature destroy the fundamental concept of government by means of a sovereign Parliament. It is this sovereignty that is the basis of responsibility. The whole unrestricted power of the people is vested in Parliament.”¹¹⁰ Furthermore, justice officials argued that placing limitations on Parliament could actually endanger the state since an emergency situation may require the curtailment of individual rights. This would not be possible with a constitutional limitation upon Parliament. Finally, in response to Lower’s arguments that Canada already had constitutional restraints with the federal division of powers between Ottawa and the provinces, Varcoe stated unequivocally that the BNA Act simply divided sovereignty along federal lines; it did not impose restrictions on that sovereignty. Betraying the strong viewpoint held in the department, one justice official concluded that the “absurdity of the suggestion that Parliament or the legislatures surrender their sovereignty makes further discussion of the matter fruitless.”¹¹¹

The second major objection also concerned the constitution. Under Section 92 of

¹¹⁰ F. P. Varcoe, “Memorandum Re: Canadian Bill of Rights,” RG 13, Vol. 2646, File 151913.

¹¹¹ F. P. Varcoe, “Re: Bill of Rights,” 2 June 1947, RG 13, Vol. 2643, File 151913; Lower, 216 and MacLeod to Varcoe, 13 January 1947, *ibid.*

the BNA Act, the general power to legislate in the matter of “property and civil rights” belonged to the provinces. According to the constitution then, the federal government could only legislate on civil rights matters related to its list of powers under Section 91. An exception to these legislative compartments, however, was Ottawa’s power to enact laws for the “Peace, Order and Good Government of Canada.” To do this, legislation had to be of such national concern or importance that the prerogatives of the provinces under Section 92 could be overridden. In the case of civil liberties, a recent Supreme Court decision added weight to the argument that Ottawa could use this power to legislate for a bill of rights. In the *Alberta Press Act Case*, Justice C. Duff held that the right to “free public discussion of public affairs...is the breath of life for parliamentary institutions;” therefore, the federal Parliament could legislate for the protection of this right.¹¹² Despite this decision, however, the justice department argued that the situation in Canada did not necessitate the extraordinary use of ‘peace, order and good government’ to push through rights guarantees: “it does not appear that the field of civil liberties, which in 1867 was considered to be the domain of the provinces, has attained such dimensions in 1947 as to affect the body politic of the Dominion, with the result that Parliament may legislate in that regard.” In addition, any attempt to circumvent provincial powers through this route

¹¹² R. G. Robertson to Pickersgill, 3 March 1947, *King Papers*, J4 Series, Vol. 245, File 2500, C164699. Alberta’s Accurate News and Information Act required newspapers to reveal their sources for articles and to print official revisions when demanded by the provincial government. The Supreme Court held the legislation *ultra vires*, see *Re: Alberta Statutes* [1938] S.C.R., 100.

would lead to interminable arguments with the provinces.¹¹³

Finally, the justice department argued that the existing judicial system in Canada already guaranteed the civil liberties of Canadians and that a bill of rights would add little to that protection. Each of the hallmarks of English liberty, the Magna Carta, the Petition of Right, the Bill of Rights and the Act of Settlement, was part of the Canadian system based upon the rule of law. Under the rule of law, no individual could be imprisoned without trial; everyone was subject to the law in court; and, the general laws of the constitution, such as the guarantee of civil liberties, were the result of such judicial decisions made on particular cases before the courts.¹¹⁴ Therefore, those liberties enunciated in the various draft bills of rights already had judicial guarantees based in the common law. Furthermore, there was no reason to assume that an entrenched bill of rights would necessarily better protect civil liberties. A. J. MacLeod, assistant to Varcoe, pointed at the United States and France as examples where constitutional safeguards had fallen short in comparison to the British experience. As well, quoting from Jennings, he noted that with an entrenched bill of rights liberties became rigid; what are considered fundamental rights by one generation may be deemed inconvenient limitations on Parliament by another. In conclusion, one advisor noted that “[e]xperience has not

¹¹³ MacLeod to Varcoe, 13 January 1947, RG 13, Vol. 2643, File 151913. See also, R. G. Robertson to Pickersgill, 3 March 1947, *King Papers*, J4 Series, Vol. 245, File 2500, C164699-C164700 and Varcoe, “Memorandum Re: Canadian Bill of Rights,” 12 June 1947, RG 13, Vol.2643, File 151913.

¹¹⁴ Dicey, *Law of the Constitution*, 183-191; MacLeod to Varcoe, 13 January 1947, RG 13, Vol. 2643, File 151913; and, “The Effectiveness of Constitutional Rights and Liberties in Canada,” n.a., n.d., *ibid*.

indicated that 'Bill of Rights' protection is any more effective than that of traditional liberty, legal remedies and vigilant electorate."¹¹⁵

In May, the government's response was given a trial run with its House of Commons motion to create the parliamentary committee on human rights. Ian MacKenzie, Jean Lesage and J. L. Ilsley each stated explicitly the government's position and their objections to the inclusion of a bill of rights in the Canadian constitution. Ilsley, the new minister of justice, even made a point by point refutation of many of the charges made against the Liberal government's record on civil liberties over the previous year.¹¹⁶ Although well-argued, this explanation did not convince his audience. In response, Diefenbaker gave another passionate speech which once again centred upon the rights curtailments of the Gouzenko Affair. The "parliamentary apostle of civil liberties," as one reporter called him, demanded that the government enact a bill of rights and repeal the War Measures Act.¹¹⁷ The response in the press was familiar. An editorial in the *Globe and Mail* wondered at the continuing denial by the government of its infringement of rights and concluded that the "case for a Canadian Bill of Rights grows steadily stronger." While the debate in the Commons received wide press coverage, it was basically a precursor, however, to the proceedings of the Special Joint Committee on Human Rights

¹¹⁵ MacLeod to Varcoe, 13 January 1947, RG 13, Vol. 2643, File 151913; and, Robertson to Pickersgill, 3 March 1947, *King Papers*, J4 Series, Vol. 245, File 2500, C164702.

¹¹⁶ *Debates*, 16 May 1947, 3145-3146 and 19 May 1947, 3212-3221.

¹¹⁷ *Debates*, 16 May 1947, 3149-3159.

and Fundamental Freedoms.¹¹⁸

On 17 June the committee formally began its hearings. The terms of reference, agreed to by a steering committee, included the investigation of Canada's constitutional situation regarding human rights and what steps, "if any," were required to maintain these rights.¹¹⁹ The question of the United Nations activities and Canada's concomitant responsibilities dominated the committee's short existence, however. Three of the five sessions of the committee and the majority of the witnesses concentrated on the international question. Only F. P. Varcoe spoke specifically to Canada's domestic situation and to the proposals for a bill of rights. In the frequent debates between the deputy minister and Diefenbaker, Varcoe reiterated much of the arguments put forth by the Liberal M.P.s in May. In particular, he concentrated on the problems of constitutional jurisdiction. As well he added the argument that the entrenchment of a bill of rights in the BNA Act would be a "retrograde step." Since the Canadian constitution was an act of the British Parliament, the entrenchment of a bill of rights would be in effect a surrender of sovereignty back to Westminster.¹²⁰ With Ilsley chairing the session, Varcoe succinctly cast the government line.

¹¹⁸ *Globe and Mail*, 17 May 1947 and 9 June 1947; *Ottawa Citizen*, 22 May 1947; *Montreal Gazette*, 11 June 1947; and, *Winnipeg Free Press*, 16 June 1947, 19 June 1947 and 24 June 1947.

¹¹⁹ *Minutes of Proceedings and Evidence of the Special Joint Committee of the House of Commons and the Senate on Human Rights and Fundamental Freedoms* (hereafter *Proceedings 1947*) (Ottawa: King's Printer, 1947), vii. The terms of reference of the committee contained no direct discussion of bills of rights. Diefenbaker, a member of the steering committee, was absent when the committee agreed to the terms.

¹²⁰ *Proceedings 1947*, 63-85 and *Ottawa Citizen*, 27 June 1947.

With its position clearly stated, the government moved to escape any further damage. The following week, Ilsley announced the steering committee's decision to terminate proceedings and its recommendation that the government consider the appointment of a similar committee during the next parliamentary session. At this suggestion, Diefenbaker immediately pressed Ilsley on the true intentions of the government:

I am trying to look at this dispassionately. The promise of this committee was made in the speech from the Throne in January. The introduction of the committee was delayed for months and months. Now, we are either playing with this problem or we are facing up to it. I suggest that all we are doing is playing with it unless we do something to be of assistance in arriving at a conclusion.¹²¹

To force the continued consideration of a bill of rights, Diefenbaker proposed the solicitation of opinions from the deans of Canadian law schools and the provincial attorneys-general on the powers of Parliament to enact such a bill and the terms which should be included. Despite Ilsley's attempts to derail the motion, Diefenbaker's proposal appealed to the majority of members and eventually carried.¹²² Nevertheless, the justice minister effectively quashed the committee. The King government escaped before any prolonged discussion of either a Canadian bill of rights or the government's record on civil liberties unfolded and before any serious recommendations developed.¹²³

¹²¹ Diefenbaker was absent from the deliberations of the steering committee on 2 July 1947, see *Proceedings 1947*, 114-120.

¹²² *Proceedings 1947*, 120.

¹²³ In his arguments against Diefenbaker's motion, Ilsley noted that the committee had not agreed that a bill of rights was necessary, and therefore doubted the efficacy of seeking out opinions on the subject, *Proceedings 1947*, 118-120.

Despite this successful manipulation of the parliamentary committee, the government's belief that civil libertarians and the press would be assuaged and that the bill of rights question would be put to rest gradually dissipated. The success of the 1940 committee on the DOCR had depended in large part on the general support given to the government's efforts by those who offered criticism. Between 1939 and 1942 civil libertarians had accepted the special circumstances of wartime and the necessity of certain curtailments of individual rights. More importantly, they had trusted in the government's desire to maintain as many traditional civil liberties as possible. They believed that Ottawa simply had erred.

By 1947, this situation had changed dramatically. The mere airing of opinion through a parliamentary committee devoted mainly to the innocuous question of U.N. obligations served only to outrage those civil libertarians who demanded positive guarantees for human rights. The *Winnipeg Free Press* called the delay "frustrating" while Diefenbaker lamented that as "far as the Bill of Rights is concerned there is no possibility of it being enacted so long as the present Government is in power. Of that I have no doubt as...J. L. Ilsley has shown the Government's hand."¹²⁴

Over the next year, as new participants waded into the debate, the King government soon realized that a reconsideration of its policy was in order. To further complicate this task, throughout 1947-1948 the U.N.'s steady march to codify human rights into an international convention promised to turn those innocuous obligations into

¹²⁴ *Winnipeg Free Press*, 13 September 1947 and Diefenbaker to H. V. Harrison, 5 August 1947, *Diefenbaker Papers*, 1940-1956 Series, Vol. 3, Microfilm Reel M-7414, 001556.

well-defined commitments. For Ottawa, the spectre of an international bill of rights dominated its concern with the human rights issue, and it threatened to undermine the Liberal government's position that a rights guarantee at home was unnecessary.

Chapter Three

Canada and the United Nations: The Universal Declaration of Human Rights, 1944-1948

As criticism of the King government's record on civil liberties mounted in the last months of the war, the issue of human rights protection appeared on another stage. The previous fall at Dumbarton Oaks, representatives of the United States, China, Britain and the USSR negotiated a set of proposals for a new international organization to replace the failed League of Nations. Nestled deep in the proposals from this conference was the suggestion that the new organization "promote" respect for human rights and fundamental freedoms.¹ At the San Francisco Conference in the spring of 1945, this small reference to human rights grew into one of the stated principles upon which the United Nations rested. For the Canadian delegation, however, this development was of minor importance. While the Canadians showed little interest in the formulation of these references to human rights, they raised little fuss about their inclusion. However, as the United Nations sought to act upon this principle in the years that followed, the Canadian government found itself in an increasingly difficult position. Between 1945 and 1948 Ottawa attempted to reconcile its public support for the U.N.'s efforts to promote international human rights with a rather

¹ Chapter IX A(1) of "Proposals for the Establishment of a General International Organization" in *Documents of the United Nations Conference on International Organization* (hereafter *UNCIO*), vol. 3: *Dumbarton Oaks Proposals: Comments and Proposed Amendments*, (New York: United Nations Publications, 1945), 690.

determined policy to avoid any commitment to their protection. Despite Canada's desire to strengthen its position within the United Nations through participation in the organization's economic and social initiatives, the government was unprepared for the U.N.'s determined attempts to define and protect human rights.

Perhaps most disconcerting for the federal government was the popular response to the U.N.'s human rights program in Canada. Civil libertarians and human rights advocates welcomed the international organization's efforts and, increasingly, used them to justify their demands for a national bill of rights at home. This development made a difficult situation worse for the King government. Between 1944 and 1948 Canada moved from a position of indifferent acceptance of the human rights provisions in the Charter to an overt attempt in 1948 to avoid any commitment to one of the U.N.'s most noted undertakings: the Universal Declaration of Human Rights. This avoidance culminated with a Canadian abstention on the declaration in the General Assembly's Third Committee. At the heart of the government's hesitation was the Canadian constitution and the complications of federalism. In response to demands at home, this argument was augmented, however, with the outspoken belief that human rights were already secure in Canada. Few heard the explanation of these objections, however, over the din of international and domestic disapproval.

Canada and International Human Rights Before the United Nations

Canada had been involved previously with the international protection of human rights in the interwar years through its membership in the League of Nations and the

closely related International Labour Organization (ILO). The bulk of this activity stemmed from both the League's efforts regarding ethnic minority populations and the ILO's attempts to address the rights of workers through various international conventions.² Within both of these issues Canadian participation was limited. Canadian initiatives at the League involving minorities were largely the product of a single person, Raoul Dandurand, and did not signify a concerted effort by the government.³ At the ILO, Canada had ratified only nine of the sixty-seven draft conventions agreed to between 1920 and 1939.⁴ At the root of this policy was the ambiguity of Ottawa's treaty making power under the Canadian constitution. The majority of the ILO's conventions dealt with matters under provincial jurisdiction, and thus questions arose as to the ability of the federal Parliament to commit Canada to these agreements. While other participating

² For a discussion of the League of Nations and the International Labour Organization see F. P. Walters, *A History of the League of Nations* (London: Oxford University Press, 1960); C. A. Macartney, "League of Nations' Protection of Minorities," in *The International Protection of Human Rights*, ed. Evan Luard (London: Thames and Hudson Publishers, 1967), 22-38; L. C. Green, "Protection of Minorities in the League of Nations and the United Nations," in *Human Rights, Federalism, and Minorities*, ed. Allan Gotlieb (Toronto: Canadian Institute of International Affairs, 1970), 180-210; and, James T. Shotwell, ed., *The Origins of the International Labour Organization* (New York: Columbia University Press, 1934).

³ After the Paris Peace Conference many of the newly created states of Eastern Europe signed the "Minority Treaties" whereby they agreed to respect the civil and political rights of the ethnic minorities within their borders. Complaints were heard by the Minorities Section of the League of Nations. In 1928-1929 Raoul Dandurand, Canada's regular representative on the League Council, energetically tried to improve these procedures in an effort to meet criticisms that the League was unfair. See Richard Veatch, *Canada and the League of Nations* (Toronto: University of Toronto Press, 1975), 104-114.

⁴ Hume Wrong, Canada's Permanent Delegate to the League of Nations, noted this fact in 1939. Quoted in S. Mack Eastman, *Canada at Geneva: An Historical Survey and Its Lessons* (Toronto: Ryerson Press, 1946), 15.

nations were less than impressive in their own attempts to pass the ILO's conventions, Canada's inability to ratify these agreements forced the government to seriously reevaluate its participation in the ever-increasing number of international discussions of human rights.⁵

Prime Minister Sir Robert Borden's initial response in 1919, upon the recommendation of his justice minister C. J. Doherty, was that Section 132 of the British North America Act conferred on Parliament the necessary power to meet all of its treaty obligations. Under Section 132, the federal government held the power to implement any international treaties signed "between the Empire and such foreign countries." If this was not enough, Doherty believed that the power to legislate for the "Peace, Order, and good Government of Canada" under Section 91 (1) provided adequate means for Parliament to implement international treaties.⁶ However, the precedent of consulting the provinces when subjects under their constitutional jurisdiction were included in international treaties had been set prior to 1919.⁷ To settle this jurisdictional question, the matter was referred

⁵ In the same speech, Wrong revealed that the United States ratified only five conventions, Australia eleven, and Switzerland nine, *Proceedings of the International Labour Conference, 1939*, 356. For a discussion of Canadian treaty making powers and the ILO conventions see Allan Gotlieb, *Canadian Treaty Making* (Toronto: Butterworth and Co. Ltd, 1968); Gotlieb, "The Changing Canadian Attitude to the United Nations Role in Protecting and Developing Human Rights," in *Human Rights, Federalism and Minorities*, 18-34; and Peter W. Hogg, *Constitutional Law of Canada*, 3rd ed. (Scarborough: Thomson Canada Limited, 1992), 290-297.

⁶ Gotlieb, "Changing Canadian Attitude," 22.

⁷ Ottawa consulted the provinces in 1899 on the Convention on Real Property between Britain and the United States, in 1911 on the proposed Reciprocity Treaty and in 1907 on the Berne Convention on night work for women. Cited in Gotlieb, *Canadian Treaty Making*, 77, n.23.

to the Supreme Court of Canada regarding an ILO convention limiting hours of work on industrial sites. In a decision handed down in 1925, the court ruled unanimously that the federal government should bring before the provincial legislatures those matters within the convention concerning areas under their jurisdiction.⁸ Ottawa, therefore, could not expand its legislative powers by signing an international treaty.

For the next ten years the federal government avoided those ILO conventions which dealt with matters under provincial jurisdiction. The few conventions which Parliament ratified fell exclusively within federal power. In 1935, however, Prime Minister R. B. Bennett challenged the status quo with his effort to pass three ILO conventions as part of his “New Deal” package. After Parliament enacted legislation to fulfil these conventions, the courts once again struck down the federal government’s attempt to invade the provincial sphere. In the historic *Labour Conventions Case* of 1937, the Privy Council decided that Section 132 did not confer on Parliament all the powers necessary to implement international treaties; it only gave that power under treaties between the British Empire and foreign countries. The court deemed that under the distribution of legislative powers, there existed no treaty legislation as such. The distribution was based on classes of subjects: “and as a treaty deals with a particular class of subjects, so will the legislative power of performing it be ascertained.”⁹

⁸ *In the matter of Legislative Jurisdiction over Hours of Labour*, [1925], S.C.R., 505.

⁹ *Attorney-General of Canada v. Attorney-General of Ontario*, [1937] A.C. 326, 351 (P.C.). The Supreme Court of Canada attempted to reach a decision in this case, however, the six judges’ deliberation ended in a stalemate. Therefore, the Privy Council heard the case.

In effect, this meant that Parliament could not expand its legislative authority under the pretext of meeting international agreements. In arriving at this conclusion Lord Atkin, author of the Privy Council decision, made the analogy that “while the ship of state now sails on larger ventures and into foreign waters, she still retains the watertight compartments which are an essential part of her original structure.”¹⁰ To take this analogy one step further, in future international discussions on such matters as human rights the federal government had two options: it could either sail with ten captains or would have to avoid those seas altogether.

Over the next few years Ottawa attempted to persuade the ILO to include provisions in the body’s constitution for a “federal state clause” or “partial” or “fractional” ratification for states like Canada which suffered from jurisdictional difficulties. These efforts met with little success. The Royal Commission on Dominion-Provincial Relations received various suggestions to settle the problem of international treaty implementation and in its final report in 1940 it recommended an amendment to the BNA Act to allow the federal government to ratify the ILO conventions. The federal government did not act upon this recommendation, however. As a result, by the end of the Second World War, Canada’s constitutional difficulties remained largely unresolved.¹¹ These same eight years saw a flowering of the international concern for the promotion and protection of human

¹⁰ Cited in Hogg, *Constitutional Law*, 292.

¹¹ See Gotlieb, “Changing Canadian Attitude,” 28-33. In his study of Canada’s ability to deal with the problems of the postwar world, one author asked rhetorically, “In a word, is Canada, from a constitutional standpoint, ready for peace?” R. M. Fowler, “The B.N.A. Act and Nationhood,” *Behind the Headlines* 4 (No. 3 1944):3.

rights. In January 1941 President Franklin D. Roosevelt made his famous Four Freedoms speech to Congress. Roosevelt announced that everyone was entitled to freedom from want, freedom from fear, freedom of worship and freedom of speech and expression. Later that year, Roosevelt and British Prime Minister Winston Churchill included freedom from want and freedom from fear in their Atlantic Charter of August 1941. On 1 January 1942 twenty-six nations announced the Declaration of the United Nations in which they recognized the need to preserve human rights and the rules of justice.¹² With the efforts of the United States at the Dumbarton Oaks meetings in 1944 to include references to human rights in the proposed organization's constitution, the federal government realized that if Canada wanted to participate in the postwar arrangements at San Francisco it could not avoid human rights.

From 21 August to 7 October 1944, representatives of the United States, the Soviet Union, Britain and China met to discuss the creation of a new organization to preserve international peace.¹³ Although Canada sent no representatives to these

¹² For a discussion of the rise of the international concern for human rights after 1919, see Nwachukwu S. S. Iwe, *The History and Contents of Human Rights: A Study of the History and Interpretation of Human Rights* (New York: Lang Publishers Ltd., 1986), 117-136; Paul Gordon Lauren, "First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter," *Human Rights Quarterly* 5 (February 1983):1-26; M. Glen Johnson, "The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights," *Human Rights Quarterly* 9 (February 1987):19-48; and, Jan Herman Burgess, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century," *Human Rights Quarterly* 14 (November 1992):447-477.

¹³ For a discussion of the Dumbarton Oaks Conference see Ruth B. Russell, *A History of the United Nations Charter: The Role of the United States 1940-1945* (Washington D.C.: The Brookings Institute, 1958), 166-477. Robert C. Hilderbrand, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (Chapel

meetings, the Department of External Affairs kept abreast of developments through contact with the British government. Throughout the conference the delegates juggled the issue of human rights. Despite the objections of both the British and the Soviets, the American delegation persisted in its attempts to include a provision for the protection of individual rights. When the conference finally ended in October, the proposals agreed to by the four great powers contained one small reference to human rights. Within Chapter IX on international cooperation on social and economic issues, the member states agreed to “promote respect for human rights and fundamental freedoms.”¹⁴

Canada’s response to the Dumbarton Oaks Proposals as a whole was essentially positive despite certain reservations. On 12 January 1945 the government forwarded a memo to the four participating powers of the conference and to France to highlight the “special difficulties” that Canada had with the proposals.¹⁵ Ottawa steeped these reservations in the language of the functional principle enunciated eighteen months previously by Prime Minister King. As King told the House of Commons: “effective representations on these bodies [organs of the proposed United Nations] should neither be restricted to the largest states nor necessarily extended to all states. Representation

Hill: University of North Carolina Press, 1990).

¹⁴ For a good discussion of the background to the United States’ determination to include human rights in the new world organization see Russell, *History of the U. N. Charter*, 323-329 and 423-424 and Cathal J. Nolan, *Principled Diplomacy: Security and Rights in U.S. Foreign Policy* (Westport: Greenwood Press, 1993), 181-191.

¹⁵ Secretary of State for External Affairs (hereafter SSEA) to High Commissioner in Great Britain, 12 January 1945, in *Documents on Canadian External Relations* (hereafter *DCER*), vol. 11, 1944-1945, part 2, ed. John Hilliker (Ottawa: Department of External Affairs, 1990), 682-684.

should be determined on a functional basis which will admit to full membership those countries, large or small, which have the greatest contribution to make to the particular object in question.”¹⁶ As a consequence, the government staked out its concerns regarding the elections to the Security Council and the role of the General Assembly in decisions made by the Security Council. Because this memo dealt only with Ottawa’s major concerns, no mention was made of the provisions for human rights.¹⁷

In fact, the Canadian government rarely offered comment on the American desire to place the international protection of human rights within the planned world organization. An opportunity to offer an opinion had presented itself in July 1944 with a draft constitution for the United Nations prepared by a committee within the State Department. Among the many provisions, this draft gave the General Assembly the power to “make recommendations” concerning the promotion of human rights. Lester B. Pearson, Canada’s Charge d’Affaires in Washington, sent a long memo to Ottawa commenting on this proposal. In his memo however, Pearson made no mention of human rights and simply stated that the United States proposals on the powers of the Assembly were “satisfactory”. On this occasion, Pearson revealed no interest in human rights, or the constitutional difficulties for Canada of including them in the draft treaty. Instead, he chose to discuss the role of the Security Council and the obligations of member states to

¹⁶ *House of Commons Debates* (hereafter *Debates*), 9 July 1943, 4558.

¹⁷ SSEA to High Commissioner in Great Britain, 12 January 1945, *DCER*, vol. 11, 1944-1945, part 2, 682-684.

abide by Council decisions.¹⁸ In fact, the closest the Department of External Affairs came to commenting on human rights within the proposed international organization prior to 1945 was to note the difficulty that the U.S. was having at Dumbarton Oaks to include them in the proposals.¹⁹ In early October, just after the official release of the proposals, Pearson suggested a meeting with members of the State Department.²⁰ On 11 January 1945 Pearson and Escott Reid met with State Department officials. Part of their discussion concerned the inclusion of human rights provisions in the U.N. constitution. As Pearson noted, despite the reluctance of the other great powers at Dumbarton Oaks, the United States continued to advocate inclusion of human rights protection.²¹ Pearson offered no comment, however, and simply related this information.

Since the publication of the Dumbarton Oaks Proposals, the Canadian government had emphasized its concerns with the Security Council and the position of the “middle powers” in both its internal memoranda and its discussions with London, Moscow and

¹⁸ Lester B. Pearson to Norman Robertson (under-secretary of state for external affairs, hereafter USSEA), 27 July 1944, *DCER*, vol. 11, 1944-1945, part 2, 625. For the draft constitution by the State Department see Harley Notter, ed., *Postwar Foreign Policy Preparation, 1939-1945* (1949; reprint, Westport: Greenwood Press, Publishers, 1975), 595-606. On the American desire to include human rights in the mandate of the new organization, see Russell, *History of the U.N. Charter*, 323-329 and Nolan, *Principled Diplomacy*, 181-205.

¹⁹ USSEA to King, 26 September 1944, *DCER*, vol. 11, 1944-1945, part 2, 659.

²⁰ Pearson to USSEA, 12 October 1944, *DCER*, vol. 11, 1944-1945, part 2, 666-668. At this time, Pearson thought it possible that the conference on the organization of the United Nations might be scheduled for December 1944.

²¹ Memorandum by Pearson, “Points Raised by the State Department Concerning the Dumbarton Oaks Proposals,” 29 January 1945, Canadian Institute of International Affairs *Papers of John Wendell Holmes*, Series D, Box 1, File 6/a.

Washington. In contrast, little consideration had been given to the issue of human rights except by Escott Reid, an assistant at the Canadian embassy in Washington. In January 1945 Reid had written a draft constitution for the United Nations to serve as a reference for Canadian diplomats which contained a chapter on human rights.²² This draft was rejected out of hand by Hume Wrong who noted “the ardent support given by Mr. Escott Reid” to a bill of rights. Despite Reid’s opinions then, the discussion within the government on this matter was brief and carried a tone of indifference.

It was not until March 1945 that anyone in the Department of External Affairs offered a detailed look at human rights as a part of the United Nations Charter. Hume Wrong, the author of this analysis, was perhaps the most gifted mind in the department. As associate under-secretary of state his opinions held great sway with both Norman Robertson, the under-secretary, and Mackenzie King.²³ The primary issue of this memo concerned provincial jurisdiction and the human rights proposals for the United Nations Charter. According to Wrong, there was nothing in the Dumbarton Oaks suggestions which constituted an invasion of provincial powers. In his words, the agreement to “promote human rights and fundamental freedoms...could hardly be regarded as a violation of the B.N.A. Act!” Only a substantial addition such as a “statement of the

²² Escott Reid, *Radical Mandarin: The Memoirs of Escott Reid* (Toronto: University of Toronto Press, 1989), 192-193. For Wrong’s opinions see Hume Wrong, “Memorandum for the Legal Advisor,” 22 March 1945, *Holmes Papers*, Series D, Box 1, File 6/a.

²³ See J. L. Granatstein, *The Ottawa Men: The Civil Service Mandarins, 1935-1957* (Toronto: Oxford University Press, 1982), 110-133.

rights of man.” would cause constitutional problems for Ottawa.²⁴ Therefore, as long as the proposed provisions did not interfere with other interests regarding the draft Charter, or create undue obligations for Canada at home, the policy planners in Ottawa would resign themselves to the inclusion of human rights at San Francisco.

The United Nations Charter and the Road to the Universal Declaration

In April 1945 Prime Minister Mackenzie King headed an impressive entourage to the organizing assembly. This group included Louis St. Laurent, minister of justice; Norman Robertson, under-secretary of state for external affairs; Hume Wrong, associate under-secretary for external affairs; and Lester Pearson, ambassador to the United States.²⁵ The tenor of the delegation’s objectives was one of mediation and the avoidance of confrontation. Canada was to play the role of conciliator while it sought to amend those points of the Dumbarton Oaks Proposals to which it objected. Escott Reid, now special advisor to the delegation, noted the restraints imposed by the prime minister: “[King] would never have said that he had gagged the delegation. His line...was ‘that the

²⁴ Hume Wrong, “Memorandum for the Legal Advisor,” 22 March 1945, *Holmes Papers*, Series D, Box 1, File 6/a. This is likely a reference to the Inter-American Conference on Problems of War and Peace held in March 1945. At this conference, the delegates passed a resolution calling on the Inter-American Juridical Committee to draft a Declaration of the International Rights and Duties of Man.” See James Frederick Green, *The United Nations and Human Rights* (Washington: The Brookings Institution, 1956), 655.

²⁵ Also of note were Dana Wilgress, ambassador to the U.S.S.R.; Louis Rasminsky, assistant to the governor of the Bank of Canada; Escott Reid, special advisor at the Canadian Embassy in Washington; and, Charles Ritchie, foreign service officer in Ottawa, SSEA to United States Ambassador to Canada, 12 April 1945, *DCER*, vol. 11, 1944-1945, part 2, 749.

Canadian delegation is to be helpful and not commit itself to rigid positions.”²⁶

At San Francisco the single reference to human rights of Dumbarton Oaks blossomed into seven specific provisions in the final United Nations Charter. Throughout the conference a number of official delegations and non-governmental organizations pushed for the inclusion of individual rights protection. For some delegations, most notably the United States, the promotion and protection human rights was an integral part of any attempt to secure a lasting peace in the postwar era.²⁷ As a result of this lobbying, the United Nations agreed in the Preamble of the Charter “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”²⁸ Canada’s public position was also one of

²⁶ Reid, *Radical Mandarin*, 194. This quote contains sections from letters Reid wrote to his wife during the conference.

²⁷ Ironically, several Latin American nations shared this belief. At one point, the Panamanian delegation even proposed that a “Declaration of Essential Human Rights” be written into the Charter. Prior to this, Chile suggested that a short list of rights be included in Chapter I, while Cuba recommended that Chapter II contain a clause obligating all signatories to abide by a declaration of rights drafted by the General Assembly in the near future. See Green, *U.N. and Human Rights*, 655-658; and Jacob Robinson, *Human Rights and Fundamental Freedoms in the Charter of the United Nations: A Commentary* (New York: Institute of Jewish Affairs of the American Jewish Congress and World Jewish Congress, 1946).

²⁸ Some writers argue that the U.S. opposed the attempts to put human rights in the Charter. They state that private lobby efforts finally dissuaded the State Department from resisting their inclusion. See John P. Humphrey *Human Rights and the United Nations: A Great Adventure* (New York: Transnational, 1984), 13 and Tom Farer, “The United Nations and Human Rights: More Than a Whimper Less Than a Roar,” *Human Rights Quarterly* 9 (November 1987):554. Cathal J. Nolan, however, argues effectively that the United States maintained its ardent support shown at Dumbarton Oaks for the inclusion of human rights provisions at San Francisco. He states that the non-governmental organizations which met with the State Department simply reinforced previously held intentions. See Nolan, *Principled Diplomacy*, 189-202; and, Nolan, “Road to the Charter:

support. In his opening words King stated that it was the purpose of the organization to secure "human welfare."²⁹ Nevertheless, the few statements the delegation made on matters concerning human rights tended to be brief and non-committal. Of the various debates on those sections in the Charter containing human rights provisions, two in particular garnered the interest of the Canadian delegation: the general purposes of the United Nations and the function of the Economic and Social Council (ECOSOC).

In the technical committee assigned to draft the preamble, purposes and principles of the United Nations, disagreement arose on the issue of domestic jurisdiction. Both Australia and New Zealand raised their concerns that the inclusion of a human rights provision as one of the U.N.'s stated purposes would allow it to interfere in the domestic jurisdiction of member-states. The reason for the two Dominions' apprehension lay in the restrictive covenants contained in their respective immigration policies regarding race.³⁰ In response, the U.S., Britain, China and the USSR agreed to a proposed clause which precluded the organization from intervening in matters essentially within the domestic jurisdiction of a member-state.³¹ This satisfied neither New Zealand nor Australia, however, and both pushed for further clarification of the draft clause. The Canadian

America, Liberty and the Founding of the United Nations," *Paradigms* 3 (Autumn, 1989):30-31.

²⁹ Statement by the Prime Minister, 27 April 1945, *Report on the United Nations Conference on International Organization*, vol. 2 (Ottawa: Department of External Affairs Conference Series, 1945), 10.

³⁰ Wrong to King, 11 May 1945, *Holmes Papers*, Series D, Box 1, File 6/b.

³¹ "Summary Report of the Seventh Meeting of Committee I/1," 16 May 1945, *UNCIO*, vol. 6: *Commission I, General Provisions*, 303-305.

members of the committee relayed this debate to King in Ottawa. In addition, they noted that opposition existed to the non-intervention clause since it threatened to weaken, or even nullify the proposals on human rights.³² The instructions from Ottawa, authored by R. G. Robertson, directed the delegation to support the two proposals of the great powers. As well, the memorandum from Ottawa outlined King's general attitude towards human rights. Not surprisingly, the prime minister viewed the developments at San Francisco through the prism of federal-provincial relations: "the Provinces would be very anxious to be sure that there would be no possibility of intervention in matters...which fell within their jurisdiction."³³ The Canadian policy, then, was to follow the lead of the great powers with the understanding that the domestic jurisdiction clause solved Canada's problems concerning the human rights provisions. Since human rights was an issue of relatively minor concern in Ottawa, there was nothing to be gained from challenging those powers determined to see their inclusion in the Charter. Presumably, Canada's problems with the ILO conventions slipped the minds of the policy makers.

Of all the organs of the new international organization, ECOSOC offered the best testing-ground for Canada's functional principle. Consequently, at San Francisco the Canadian delegation devoted a great deal of its efforts to the clarification of ECOSOC's

³² Ritchie to King, 13 May 1945, *DCER*, vol. 11, 1944-1945, part 2, 768. Cathal J. Nolan mistakenly attributes this memo to Hume Wrong, see his "Reluctant Liberal: Canada, Human Rights and the United Nations, 1944-65," *Diplomacy and Statecraft* 2 (November 1991):281-305.

³³ R. G. Robertson to U.N. Delegation to San Francisco, *DCER*, vol. 11, 1944-1945, part 2, 767. This memorandum consisted of the minutes of a meeting to discuss the 13 May 1945 memorandum.

duties and powers. According to one assessment, the “main purposes of the proposed revision [of the Dumbarton Oaks Proposals] was to increase the authority and position of the Economic and Social Council without, however, attempting to extend its functions beyond the scope of studies, reports and recommendations.”³⁴ In line with this goal, the Canadians proposed a detailed amendment to the Dumbarton Oaks proposals for social and economic issues, part of which concerned human rights. Throughout the discussion on the ECOSOC various delegations suggested a number of amendments to promote or protect human rights through the council. The Canadian proposal called on members to cooperate fully with each other and the U.N. in order to promote respect for human rights. This rather weak suggestion was rejected and led one commentator to note that the proposal broadened the organization’s range of activities, but not the scope of the subject.³⁵ In fact, this was most likely the Canadian intention.

The United Nations Charter was a landmark in the recognition that human rights were the concern of the international community. The way in which a state treated its citizens, and any other persons within its borders, was no longer a strictly domestic matter; in the interests of peace, the United Nations declared human rights an international issue. At the same time at San Francisco, no attempt was made to define legally the meaning or scope of human rights. The wording of the Charter avoided such controversial phrases as

³⁴ Robert A. Mackay, ed., *Canadian Foreign Policy, 1945-1954: Selected Speeches and Documents* (Toronto: McClelland and Stewart Ltd., 1971), 15.

³⁵ “Amendments to Dumbarton Oaks Proposals. Suggestions by the Canadian Delegation,” 6 May 1945, *UNCIO*, vol. 3, 591. See also Robinson, *Human Rights and Fundamental Freedoms*, 28.

“protecting,” “safeguarding” or “guaranteeing” in favour of the more benign “promoting” and “encouraging.”³⁶ To correct this obvious omission, Article 68 instructed the ECOSOC to design economic and social commissions for the promotion of human rights. In response on 16 February 1946, at its first session, ECOSOC created the Commission on Human Rights and defined its functions. The Council charged the commission with the formulation of an international bill of rights and of recommendations to address such matters as civil liberties, the status of women and freedom of information.³⁷

With this resolution the United Nations set out on just the type of journey that Ottawa wanted to avoid. For Canada, the provisions on human rights had been a sideshow. There were larger technical concerns present in San Francisco affecting the status which Canada carried into the postwar world. These were Ottawa’s primary concern. Agreeing to the inclusion of human rights provisions was a minor concession in the interests of cooperation. However, the subsequent decision to design an international bill of rights threatened to reveal this indifference. This fact was immediately apparent to one scholar. In an article published in May 1946, H. F. Angus questioned the sincerity of the Canadian participation in the newly created U.N. given Canada’s unresolved constitutional difficulties: “[o]ne wonders if the government of Canada would have

³⁶ See Robinson, *Human Rights and Fundamental Freedoms*, 17-50.

³⁷ Throughout the summer and fall of 1946 the Preparatory Commission of the United Nations made provisional arrangements for the first regular session of the General Assembly and for the creation of the U.N.’s principal organs. This body recommended that the ECOSOC create the Commission of Human Rights at the council’s first session and also suggested the functions of the commission later adopted on 16 February 1946. See *Yearbook on Human Rights for 1947* (New York: United Nations Publications, 1949), 420-421.

agreed at San Francisco to 'promote universal respect for and observance of human rights and fundamental freedoms...if it had thereby incurred an obligation to define and protect these rights and freedoms by appropriate legislation.'³⁸ Angus accurately described the attitude of the government. However, with the government's signature of the United Nations treaty, his question was moot. Whether it supported the idea or not, Canada was a travelling companion on the U.N.'s human rights pilgrimage.

Throughout 1946 and 1947 the Commission on Human Rights moved steadily forward in its attempt to draft a bill of rights. Upon the recommendation of Eleanor Roosevelt, the Chairman of the Commission on Human Rights, ECOSOC passed a resolution which created a Drafting Committee responsible for the formulation of a preliminary bill of rights.³⁹ At its first session from 9 to 25 June 1947, the committee debated a draft bill known as the "Secretariat Outline" but decided against approving any of the suggestions put forth and instead forwarded its proposals to the full commission for its upcoming meeting.⁴⁰

At the second session of the Commission on Human Rights from 2 to 17

³⁸ H. F. Angus, "The Canadian Constitution and the United Nations Charter," *The Canadian Journal of Economics and Political Science* 12 (May 1946):134.

³⁹ ECOSOC created the nuclear commission in its resolution of 16 February 1946 to define the workings and agenda of the full commission. The nuclear commission met from 29 April to 20 May 1946, see *Yearbook for Human Rights, 1947*, 431. The members of the Drafting Committee included: Australia, Chile, China, France, Lebanon, the Soviet Union, Britain and the United States, see ECOSOC Resolution 46 (IV), 28 March 1947, *Yearbook for Human Rights, 1947*, 432-433.

⁴⁰ *Yearbook on Human Rights, 1947*, 433-434. This draft bill of rights was written in large part by John Humphrey, a Canadian. Humphrey was the Director of the Human Rights Division of the United Nations Secretariat.

December 1947, the commission made an important revision to the international bill. The members decided that in the interests of getting the bill passed as smoothly as possible, it should be separated into three distinct documents: a declaration of human rights; a covenant on human rights; and the measures of implementation of these rights. Together, these three parts would comprise the International Bill of Rights.⁴¹ Of these three sections, the declaration received first consideration since it was deemed persuasive in character and, therefore, not legally binding. The commission's members felt that a declaration provided the most likely avenue for success. Because a declaration of human rights provided goals rather than obligations, the commission believed that there was a good chance of quickly reaching accommodation among the member-states. According to Eleanor Roosevelt, "[the declaration] is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms...to serve as a common standard of achievement for all peoples of all nations."⁴² At the end of the session, the commission decided to forward the draft declaration to the members of ECOSOC for their input prior to the next meeting of the Drafting Committee. At this point, Canada received its first opportunity to comment on the United Nations' draft international bill of rights. Unfortunately, the federal government was woefully unprepared.

⁴¹ *Yearbook on Human Rights, 1947*, 434-435. The commission set up three working groups to draft each document. The members of the group charged with drafting the declaration included: the Byelorussian SSR, France, Panama, the Philippines, the Soviet Union and the United States. Roosevelt was the Chairman and René Cassin (France) was the Rapporteur.

⁴² Quoted in Green, *U.N. and Human Rights*, 670-671.

Prior to the commission's decision to circulate the draft declaration, Canadian delegates to the U.N. had no avenue of input into the activities of the Commission on Human Rights. Canada was neither a member of the commission, nor of any of its sub-commissions.⁴³ During 1946 and 1947 the few public statements from Ottawa seemed to indicate a newfound support for the U.N.'s efforts to promote and protect human rights. However in reality, the Canadian government maintained its basic attitude of indifference shown at San Francisco. Ottawa easily followed this contradictory policy because the initiatives of the United Nations exacted little or no legal obligations from its member-states. At the same time, Canada was not a member of the Commission on Human Rights. Therefore, it could take its seat along side those who vociferously advocated strong human rights measures without incurring any unwanted responsibilities, or even without clarifying its views.

On 30 September 1946, the federal government received its first official communication concerning human rights. The secretary-general relayed a resolution of ECOSOC which suggested that member-states create local human rights commissions. R. G. Riddell, head of the Political Division in External Affairs, Escott Reid and Lester Pearson bantered about various ideas to implement the suggestion. Riddell even suggested that the government enlist the various private civil liberties organizations across

⁴³ In 1946 ECOSOC empowered the Commission on Human Rights to create the sub-commission on Freedom of Information and the Press and the sub-commission on the Protection of Minorities and the Prevention of Discrimination. Originally, the Commission on the Status of Women was a sub-commission of the Commission on Human Rights. However, by a resolution of 21 June 1946, ECOSOC raised the sub-commission to full commission status.

the country.⁴⁴ After consultation with the Department of Justice, however, Pearson decided to await further progress in the United Nations' human rights efforts before committing Canada to any of its suggestions.⁴⁵ Although the government seriously considered the suggestion of ECOSOC, it plainly did not want to commit the country to any policy on human rights.

This clear attempt to avoid commitment was contradicted by Ottawa's vocal encouragement of U.N. activities concerning human rights. On 25 February 1947 Louis St. Laurent, secretary of state for external affairs, delivered a speech on human rights to the Montreal Branch of the United Nations Association. To heighten the importance of the occasion, Eleanor Roosevelt sat in attendance. St. Laurent extolled the pre-eminence of individual rights in the practice of statecraft in a speech liberally peppered with words such as "freedom," "respect" and "liberty." On the question of international human rights, he argued that each "nation associated with the United Nations, in signing the Charter which contains these declarations, has contracted by solemn treaty an obligation to develop and encourage respect for the rights of man and fundamental liberties for all."⁴⁶ With this address, St. Laurent clearly and publicly raised the level of Canada's support for

⁴⁴ R. G. Riddell (Head, Political Division of DEA) to Pearson, 3 February 1947, in *DCER*, vol. 13, 1947, eds. Norman Hillmer and Donald Page (Ottawa: Department of External Affairs, 1993), 722.

⁴⁵ Pearson to St. Laurent, 18 June 1947, *DCER*, vol. 13, 1947, 724. In this memo, Pearson noted the decidedly cold response of the Deputy Minister of Justice, F. P. Varcoe, to the U.N. proposal: "I have difficulty in conceiving just how the proposed groups or committees would be set up nor am I able to see any legal aspects of this suggestion on which you might desire the comments of this Department."

⁴⁶ DEA, *Statements and Speeches*, 25 February 1947, No. 47/6.

the U.N.'s human rights measures. The extent to which this represented the genuine position of the government, however, is less clear. Escott Reid, the department's ardent human rights advocate, wrote this speech upon the request of Pearson. According to Reid, Pearson instructed him to write the speech as if Reid were the principal speaker: "I took advantage of this opportunity to include in St. Laurent's speech my formulation of the basic principles of human rights."⁴⁷ Seven months later Paul Martin, Minister of National Health and Welfare, made a similar speech at the General Assembly. Martin reiterated Canada's interest in the activities of the United Nations concerning human rights. More specifically, he declared Canada's support for the efforts to draft the international bill of rights.⁴⁸ Significantly, there was no mention of the constitutional difficulties entailed in any international human rights agreement. As well, Ottawa questioned neither the necessity of a bill of rights nor Canada's reservations toward a declaratory approach to the protection of civil liberties. Nevertheless, despite these public voices of support, the government proved reluctant when asked to commit to the draft declaration in 1948.

Ottawa Responds to the U.N. Draft Declaration

On 9 January 1948, the draft declaration reached Ottawa with an attached request that the federal government relay its comments before 3 April. Three months prior to this

⁴⁷ Reid, *Radical Mandarin*, 193.

⁴⁸ "Statement to the Third Committee of the General Assembly," 29 September 1947, *DCER*, vol. 13, 1947, 712.

communication Ottawa had received a warning from Eleanor Roosevelt of this impending development.⁴⁹ Nevertheless, the draft declaration caught the government completely unprepared. Despite three years of involvement in the United Nations, the warnings of scholars such as H. F. Angus, and Canada's own public endorsement of the U.N.'s efforts, the Canadian government was still without a viable policy in 1948. For the government, the request for Canada's opinion on the draft declaration was the first step towards commitment to the U.N.'s efforts to define human rights. If Canada's comments on the proposed articles influenced the Drafting Committee in June, then Ottawa might incur an obligation to ratify the future declaration. As a result, for the first time the government had to make a serious effort to clarify its position beyond the vague endorsements of the previous three years.

As pressure mounted for a response, the government decided to reconvene the 1947 Special Joint Committee on Human Rights and Fundamental Freedoms. On 12 February 1948, Ottawa announced that the committee would again hold meetings. In addition to its previous mandate, however, the committee was responsible for the formulation of comments on the draft declaration.⁵⁰ The government's belated decision in January to reconvene the committee meant that Canada could not meet the 3 April deadline requested by the United Nations. On 1 April 1948, St. Laurent issued the federal

⁴⁹ Secretary-General to SSEA, 6 October 1947, National Archives of Canada (NAC), *Records of the Privy Council*, RG 2, Box 206, File U-41-H (Vol. 1).

⁵⁰ On 23 January, St. Laurent asked the minister of justice to reconvene the Special Committee. St. Laurent to Ilsley, 23 January 1948, NAC, *Records of the Department of External Affairs*, RG 25, Vol. 20, File 5475-W-2-4, Pt. 1.

government's official statement on the draft declaration of human rights. The foreign minister raised the issue of Canada's constitutional situation and the lack of parliamentary debate on the subject to explain the government's delay. To secure more time, St. Laurent suggested that the U.N. postpone approval of the bill until the 1949 session.⁵¹ Despite its previous encouragement of the U.N., the government now attempted to apply the brakes to the process.

From 23 April to 17 June 1948, the Special Joint Committee on Human Rights and Fundamental Freedoms held ten meetings. J. L. Ilsley, the minister of justice and Attorney-General, chaired the committee which contained such influential members as John G. Diefenbaker and L. M. Gouin, the outspoken Liberal senator. As well, over its ten sessions, the committee heard reports from R. G. Riddell from the U.N. division of External Affairs and E. R. Hopkins, legal advisor to the same department. The proceedings of this committee shed an interesting light not only on the issue of treaty-making and the Canadian constitution, but also on the more general philosophical stance prevalent amongst the members concerning social and economic rights and their implications for the state.

Overall, the tone of the proceedings was cautious as many members were unfamiliar both with the issues involved in defining human rights and with Canada's status and responsibilities at the United Nations. One member hesitantly remarked: "according to my understanding, the United Nations formed some kind of committee which was

⁵¹ St. Laurent to Secretary-General, 1 April 1948, RG 25, Vol. 20, File 5475-W-2-4, Pt. 1.

called the Economic and Social Council which, within itself, has formed another committee on human rights.” Another member mistakenly thought that Canada had a seat on the Commission on Human Rights.⁵² In the end, two general conclusions emerged from the proceedings and final report of the committee: the members did not endorse any rights which implied social or economic obligations on the state, nor did they support any measures which interfered with parliamentary sovereignty.⁵³

This cautious outlook was most prevalent in discussions of social and economic rights. These types of rights had gained increasing attention from the Commission on Human Rights as it struggled with the draft declaration. Social and economic rights recognized entitlements to basic human needs such as adequate food, shelter and clothing. However, they also included the more controversial claims to social security, education, medical care and employment. Throughout the meetings, various members repeated a deep concern that these rights were both unnecessary and unwanted. Some noted that, if included in Canadian law, these articles would severely limit the sovereignty of Parliament. One critic asked: “[i]f they [Canadian laws and the declaration] are in conflict and if this declaration is finally adopted, is it going to overrule our laws? That is what is confusing

⁵² These statements were made despite a report from the DEA which clearly outlined the organs of the U.N. relating to human rights. See *Proceedings of the Special Joint Committee on Human Rights and Fundamental Freedoms 1948*, (hereafter *Proceedings*), 31 and 34. For the DEA report see RG 25, Vol. 20, File 5475-W-2-40, Pt. 1.

⁵³ Another problem that some members had with the draft declaration was its length and lack of clarity. According to many members, the declaration was vague in places and too long overall to provide a useful set of standards for the member-states of the United Nations. Statements by David Henry, a witness from the Department of Justice, that the declaration would inevitably lead to dissension because of this ambiguity met with wide approval from the committee members, see *Proceedings*, 44-47.

me. As a Canadian, I do not want to see the United Nations making laws for our country. I want us to have the right to make our own laws; that is what is beclouding me at every meeting.” In reference to Articles 22 and 23 which stated that everyone had the right to work and the right to social security, another member remarked: “we are set up here as a committee of Parliament to discuss the question of human rights and fundamental freedoms; but we are fast coming into a discussion of economic conditions...rather than the other.”⁵⁴

Statements such as these revealed that most of the committee members were unwilling to accept social and economic rights as legitimate articles in the U.N.’s declaration on the grounds that they put undue responsibilities on the shoulders of the state. In any case, many argued, human rights obviously resided in the constitutional domain of the provinces.⁵⁵ Also present was a strong aversion to anything which might interfere with the powers or sovereignty of the Canadian state. During an intense debate over the right of the state to suppress civil liberties in times of national emergency, many members expressed the view that the wholesale curtailment of human rights should remain a prerogative of the government. One member even commented that a case where this worked to the benefit of everyone was the internment of the Japanese Canadians in 1942.⁵⁶

⁵⁴ C. C. Miller, M.P. (Portage la Prairie), *Proceedings*, 104 and Senator J. G. Turgeon (Vancouver), *ibid.*, 150.

⁵⁵ Both Ilsley and F. P. Varcoe, deputy minister of justice, supported this position. For the committee’s discussion of constitutional jurisdiction see *Proceedings*, 173-178.

⁵⁶ *Proceedings*, 75. Senator Gouin bluntly stated during another debate on civil liberties that “this contemplated bill of rights would to a very large degree abolish the sovereignty of a parliament here in Canada,” *ibid.*, 180.

While the report seriously questioned the federal government's ability to ratify the declaration, it provided no definitive options for Ottawa to follow. Suggestions that the federal government seek a constitutional amendment cut little ice. It was simply unrealistic to expect the federal government to amend the constitution in order to pass an international instrument of the United Nations. As a result, the government was in the same position with the committee's report in hand as it had been in January; it was still without a viable policy. Ironically, while this committee deliberated in Ottawa, the Commission on Human Rights conducted its third session in Paris and on 18 June 1948 adopted the draft declaration.⁵⁷ As the Canadian government waited for a report which provided few answers to its policy questions, the United Nations marched on toward the ratification of the first part of its international bill of rights.

Despite the rather thin suggestions contained in the committee's proceedings and report, the government attempted to formulate a policy. One strategy Ottawa adopted from the committee's conclusions was to challenge the validity of economic and social rights. The reaction to these types of rights apparent throughout the committee's proceedings clearly struck a chord with the Department of External Affairs. This became evident at the next session of ECOSOC in July-August when the members engaged in a short debate of the Drafting Committee's recently passed declaration. In a memorandum to the head of the Canadian delegation, Pearson noted the problems which the parliamentary committee members had with the inclusion of social welfare and similar benefits. Pearson held that these types of rights "alter[ed] the character of the declaration,

⁵⁷ *Yearbook on Human Rights*, 1948, 462.

which was originally intended to be merely a summary of the liberties of the individual.” As a result, he instructed the delegation to question the inclusion of these rights in the document.⁵⁸ This statement by Pearson clearly encapsulated the basic attitude of the Canadian government towards human rights. As long as the United Nations confined its efforts to writing documents which were merely a summary of the liberties of the individual then Canada was a willing participant. However, when the U.N. turned to the elaboration of the responsibilities of states in the form of “social welfare” then Canada had to reevaluate its position.

Discussion of the draft declaration in ECOSOC was short. After debate, the council sent the declaration to the General Assembly on 26 August 1948 without comment.⁵⁹ The concluding stage of the drafting process of the human rights declaration began on 24 September 1948. Between 30 September and 6 December, the General Assembly’s Third Committee devoted eighty-one meetings to the articles of the draft declaration and dealt with 168 resolutions of proposed amendments. Despite increasing tensions between East-bloc members and the Western representatives, the committee finished its discussion of the draft declaration on 6 December 1948. Early in the discussions on the draft declaration the Canadian delegation, headed by Ralph Maybank, M.P., received strict instructions from Lester Pearson. In a memo of 8 October, Pearson spelled out in plain language the position the delegation was to take: “we would not,

⁵⁸ Pearson to Dana Wilgress (Canadian Delegation to ECOSOC), 20 July 1948, RG 25, Vol. 20, File 5475-W-2-4, Pt. 1.

⁵⁹ Due to time constraints, ECOSOC forwarded the draft declaration to the General Assembly without voting on its contents. See *Yearbook on Human Rights, 1948*, 464.

repeat not, wish to be responsible in any way for its [declaration of human rights] adoption in its present form at this session of the General Assembly.” Pearson believed that the declaration was inadequate both as a common understanding of human rights and as an “instrument of propaganda” against the Soviets in the Cold War. As a result, the Canadian delegation was to push for a complete revision of the declaration. Failing this, the delegation should suggest that the draft be sent to the International Law Commission for further study.⁶⁰ If the delegation was unsuccessful in both of these efforts, Pearson instructed them to abstain in the vote on the draft declaration. In explanation of this decision, the secretary of state for external affairs directed the delegation to assert that the declaration’s ambiguity raised genuine doubts as to the meaning and effect of its provisions. In a rather curt addition, Pearson mentioned that the delegation “might indicate” Canada’s constitutional difficulties.⁶¹

To further accent Canada’s concern regarding the draft declaration of human rights, St. Laurent also sent a memo to the U.N. which acknowledged that the instructions from Pearson put the delegation in a difficult position. As well, he noted that the Canadian government did not want to be on record as opposed to a declaration of human rights. However, St. Laurent made the Canadian position clear:

⁶⁰ Pearson to U.N. Delegation, 8 October 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1951. The International Law Commission was a U.N. body created in November 1947 to assist in the development and codification of international law, see *Yearbook of the United Nations, 1947-48* (New York: U.N. Publications, 1949), 206-214.

⁶¹ Pearson to U.N. Delegation, 8 October 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1951.

the adoption of the Declaration in its present form...might prove to be a source of embarrassment to the Government, particularly if the Canadian delegation were to take an active part in its adoption. It might, indeed, merely serve to provoke contentious even if unfair criticism of the Government...[we] have real apprehensions concerning the adoption of a declaration in terms that may be open to criticism on juridical and political grounds and which might serve to provoke contention in the domestic as well as international field.⁶²

St. Laurent did not clarify what he meant by domestic “contention,” but if he referred to Canada’s constitutional constraints he did not deem it necessary to explain them. The Canadian government, constitutional difficulties aside, did not want the declaration of human rights.

With their shackles firmly in place from these two memos, the Canadian delegation adopted a low profile on the human rights declaration as it meandered through the U.N.’s ratification process in autumn 1948. The few statements the representatives made tended to be vague and non-committal. As well, the Canadians made no formal requests for amendments to the draft declaration’s articles, even those with which they disagreed. Instead, the delegation simply emphasized two basic arguments: the draft declaration was too vague and too long to be effective, and the nature of Canada’s constitutional arrangements prevented the federal government from ratifying the declaration unilaterally. Throughout the debate, the Canadian representatives voiced the opinion that the language of the declaration should be simply stated and the topics covered should be of a general

⁶² St. Laurent to Chevrier, 14 October 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1951. St. Laurent sent this memo upon the suggestion of Jack Pickersgill, the Clerk of the Privy Council. Pickersgill felt that the nature of the issue and Canada’s contentious policy required a clear explanation from the Prime Minister, 8 October 1948, “Memorandum for the SSEA”, *ibid.*

nature.⁶³ By advocating this type of declaration, Ottawa hoped to maintain and enhance the document as one with persuasive character only, and one solely intended to be a goal for member states rather than a binding contract.

On substantive matters, the articles on social and economic rights prompted the most concerted response from the Canadians. Before the debate began on the first of these articles, the delegation announced that Canada would abstain on each of the articles referring to these rights. Maybank stated that whatever the obligations incurred under the declaration, the federal government could not invade provincial jurisdiction. Despite this decision, Maybank stated clearly that “the Canadian people had shown its support of the principles stated in the articles mentioned above [Articles 20-24] and would continue to respect them in the future as it had respected them in the past.”⁶⁴ With this pronouncement the Canadian delegation bluntly reiterated Lord Atkin’s metaphor of the ship of state: the Canadian government could not invade provincial jurisdiction even to meet international obligations. As well, this statement contained a hint of self-righteousness. As with traditional civil liberties, the government felt that Canadians already enjoyed the full benefit of social and economic rights. Therefore, the inclusion of

⁶³ *Official Records of the Third Session of the General Assembly* (New York: United Nations Publications, 1949), 309 and 632.

⁶⁴ *Official Records*, 501. The Canadian delegation stated, however, that these abstentions should not be interpreted as opposition to the principles of these rights. Articles 20 to 24 of the draft declaration contained rights which were social and economic in nature.

these articles was of little value to Canadian citizens anyway.⁶⁵

As the debate on the draft declaration wound to a close, it became increasingly apparent that the Third Committee was unwilling to make serious changes to the draft document.⁶⁶ As a result, on 18 November Pearson instructed the delegation to abstain on the vote in plenary session, but he also told them to make clear Ottawa's reservations and its position constitutionally.⁶⁷ This placed the delegation in Paris under tremendous pressure to explain the Canadian decision to its closest allies. Despite the public support given to the United Nations by St. Laurent in his speech in 1947 and by Martin at ECOSOC, the federal government decided to withdraw from the first major achievement of the organization to promote human rights. At the same time, both the United States and Britain were ardent supporters of the U.N.'s efforts. On 23 November, Maybank suggested an alternate course of action to Ottawa. He recognized the government's reasons for abstaining but wondered if the Canadian position "would not be equally clear if we voted in favour of the Declaration as a whole, while making the reservations referred to in your [telegram of 18 November 1948]." According to Maybank, this route allowed

⁶⁵ This attitude that Canada already effectively guaranteed fundamental human rights was evident throughout the federal government's participation in the United Nations efforts to promote and protect human rights. In the discussion on the rights of minorities in the Third Commission, the Canadian delegation stated that minority problems did not exist in Canada, *Official Records*, 729.

⁶⁶ In early November the Canadian delegation informed Ottawa that it would not suggest sending the draft declaration to the International Law Commission since it was certain to be defeated. Canadian Delegation to Pearson, 9 November 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1948.

⁶⁷ Pearson to Canadian Delegation, 18 November 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1948.

Canada to clearly state its position without suffering the embarrassment of joining South Africa and the Soviet Bloc in abstention.⁶⁸ The cabinet met the following day to discuss the issue. After considerable debate, they finally agreed to vote in favour of the U.N. declaration. In coming to this decision, the cabinet noted explicitly that despite its support for the resolution, the government would rely upon the provisions of Article 28 as a safeguard against “unacceptable interpretations” given to other articles in the declaration which may intrude upon parliamentary sovereignty.⁶⁹ This article stated that nothing in the declaration sanctioned activity designed to destroy the other rights listed. While Ottawa aimed this reasoning directly at communist activity, it also revealed the government’s intention to protect parliamentary sovereignty.⁷⁰ On 25 November, Pearson relayed the new policy to the U.N. delegation. In the memo, he advised the representatives to stress Canada’s constitutional difficulties to the Third Committee.⁷¹

Despite this change in policy in late November, the Canadian delegation still abstained when the issue was put to a vote in Third Committee on 6 December 1948. The committee overwhelmingly passed the draft declaration with 29 votes in favour, none

⁶⁸ Canadian Delegation to SSEA, 23 November 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1948.

⁶⁹ “Cabinet Conclusions,” 24 November 1948, RG 2, A5a, Vol. 2642, No. 552, Microfilm Reel 2365.

⁷⁰ In St. Laurent’s memo to Chevrier, he stated: “I am particularly concerned about the use which could be made of text of articles 17, 18, 19 and 22 as an undertaking not to discriminate against communists because of their political views.” St. Laurent to Chevrier, 14 October 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1951.

⁷¹ Pearson to U.N. Delegation, 25 November 1948, RG 2, Vol. 206, File U-41-H (Vol. 1) 1947-1951.

against and only seven in abstention. This vote created a mild stir as Canada's decision placed it in the ranks of the communist countries, but Maybank and the other delegates made few comments concerning the decision. Instead, they simply announced that the Canadian government would clarify its position at the General Assembly.⁷² The government obviously felt that a simple explanation of its reservations was not enough. By abstaining in the relatively unimportant vote in Third Committee, the government called greater attention to its position without having to abstain on the final vote in the General Assembly.

Just four days passed between the final decision in Third Committee and the General Assembly's vote on the draft declaration. On 10 December 1948, the General Assembly unanimously endorsed the declaration of human rights with 48 votes in favour, none against and eight abstentions. On this occasion, the Canadian delegation, chaired by Lester Pearson, reversed course and supported the draft. To qualify this decision, Pearson delivered a statement which reiterated the government's misgivings about the declaration.⁷³ He then proceeded to explain the reasons for the Canadian abstention in the Third Committee:

I wish to make it clear that, in regard to any rights which are defined in this document, the federal government of Canada does not intend to invade other rights which are also important to the people of Canada, by this I mean the rights of the provinces under our federal constitution. The

⁷² *Official Records*, 886.

⁷³ Pearson once again voiced the opinion that the wording was imprecise and even suggested that the document should have been reviewed by a panel of international jurists before it was submitted to the United Nations. See DEA, *Statements and Speeches*, 10 December 1948, No. 48/63.

Canadian Delegation, however, approves and supports the general principles contained in the Declaration...[and] will, in accordance with the understanding I have expressed, now vote in favour of the resolution.⁷⁴

Pearson did not explain how this mere explanation of Canada's constitutional constraints enabled the government to now adopt the Universal Declaration. Simply informing the United Nations of the nature of Canada's federal system solved none of Ottawa's jurisdictional problems.⁷⁵

From 1944 to 1948 the Canadian government paid scant attention to the the U.N.'s efforts to promote international human rights. At San Francisco the delegation was indifferent to the various attempts to include individual rights provisions in the Charter of the United Nations. Since these provisions were primarily declaratory in nature with no explicit legal obligations, the Canadian government easily supported their inclusion. In the ensuing years, it even encouraged the U.N.'s efforts. However, once these efforts turned to the codification of rights and a commensurate responsibility to respect them, Canada balked. The Canadian government opposed the U.N.'s attempt to draft the Universal Declaration of Human Rights but could do little to stop its ratification.

⁷⁴ DEA, *Statements and Speeches*, 10 December 1948, No. 48/63.

⁷⁵ The Canadian delegation initiated this practice in 1947 on a resolution concerning domestic education. Canada abstained in committee, but later voted in favour of the resolution at the General Assembly after it gave an explanation of Canada's constitutional limitations. At the vote in the General Assembly, the delegation stated: "by our abstention in Third Committee we have drawn our constitutional position to the attention of other delegations, the Canadian delegation wishes to give its support now in plenary session," *Canada and the United Nations, 1947* (Ottawa: Department of External Affairs, 1949), 235-237. For a critical assessment of the Canadian policy on this incident and the Universal Declaration of Human Rights see James Eayrs, "Canadian Federalism and the United Nations," *The Canadian Journal of Economics and Political Science* 16 (May 1950):172-183.

In the end, Canada endorsed the declaration in the interests of the country's international image.

Canada's opposition toward the codification of rights remained. The federal government wanted to avoid a commitment to any form of international bill of rights. For Ottawa, efforts such as these offered nothing but problems. The most obvious issue was the constitution, but the dangers that Ottawa perceived went beyond the problem of federal-provincial jurisdiction. For the government, the U.N.'s attempts to define human rights posed a political threat at home. As Pearson noted to the Canadian delegation: "If we vote for the declaration, some private member might introduce a resolution incorporating the text or expressing approval of the declaration which might put every Member of Parliament in the position of having to take a stand on every Article in the declaration. Many of us think that such resolutions are contrary to the whole spirit of British institutions."⁷⁶ In the years following the Universal Declaration's adoption however, there was little Ottawa could do to contain the appeal the document had to Canadians.

Just as the government feared, many Canadians hailed the Universal Declaration of Human Rights as not only an international symbol of human betterment, but also as an instrument to promote greater respect in Canada for human rights. Organizations across the country studied the document and passed resolutions demanding various responses from the government. Most groups simply asked that Ottawa make a symbolic gesture in

⁷⁶ Pearson to U.N. Delegation, 25 November 1948, RG 2, Vol. 206, File U-41-H (Vol.1) 1947-1951.

support of the U.N. initiative. The United Church of Canada, for example, called on the government to meet its “obligations” on international human rights, while the National Council of Women of Canada argued that greater protection of civil liberties at home would strengthen the efforts of the U.N. internationally.⁷⁷ For the Canadian Federation of University Women (CFUW), its interest in the United Nations human rights program provided a framework for increased activities on the issue at home. The CFUW completed a detailed study of human rights in Canada based on the articles of the Universal Declaration and, as well, lobbied Ottawa to seek membership on the U.N.’s Commission on the Status of Women.⁷⁸

While the St. Laurent government easily tolerated the domestic enthusiasm for the United Nations’ efforts, it struggled to fend off those who used the Universal Declaration as a club in their demands for a domestic bill of rights. The Liberal government was keenly aware of the apparent hypocrisy of signing an international instrument designed to protect human rights while maintaining that Canada did not need one at home. Civil libertarians were quick to recognize this as well. Citing Canada’s support for the Universal Declaration became a common preamble to most arguments submitted to Ottawa which demanded a national bill of rights. Newspapers, organized labour, civil

⁷⁷ For the United Church resolution see “Civil Rights Union Information Bulletin,” 11 November 1949, Archives of Ontario, *A. A. MacLeod Papers*, F 126, Series A., M.U. 7592, File 3. For the National Council of Women’s report see *Yearbook of the National Council of Women*, 1949, 98.

⁷⁸ Constance Hayward, “Human Rights in Canada,” memorandum prepared for the 1950 triennial meeting of the IFUW, NAC, MG 28, I196, *Papers of the Canadian Federation of University Women*, Vol. 11, File “Human Rights, n.d.” See also, Dorothy Flaherty to L. B. Pearson, 31 July 1956, *ibid.*, Vol. 19, File “Status of Women, 1952-58.”

liberties associations, women's groups and ethnic organizations all pressured the government to explain why the federal government balked at suggestions for a national bill of rights in light of its apparent support for the U.N. program. To this, St. Laurent and his ministers had few answers. As the United Nations marched forward with its agenda, they struggled to design a policy which reduced this type of international commitment without seeming to oppose human rights protection. This would be the task for the Liberal government in the ensuing years as the United Nations moved on to the next phase of the International Bill of Rights: the Covenant of Human Rights.

Chapter Four

Expansion and Contraction: The Frustration of the Bill of Rights Movement, 1948-1952

After 1947 the various efforts to promote both civil liberties generally and a Canadian bill of rights in particular expanded despite Ottawa's initial attempt to derail the movement in 1947 with the parliamentary committee. Between 1948 and the collapse of the Liberal dynasty in 1957, a variety of organizations added their voices to the choir of calls for improved protection of individual human rights. More importantly, these new voices did not simply mouth the complaints and demands made by previous civil libertarians; they widened the debate to include other controversial issues. Foremost among these concerns was discrimination based on race, sex and religion. In the late 1940s, both the Trades and Labor Congress (TLC) and the Canadian Congress of Labour (CCL) launched vigorous educational campaigns on the evils of racial and religious discrimination in an attempt to effect government legislation on the issue. Meanwhile in the wake of Maurice Duplessis' use of the Padlock Law against Frank Roncarelli, Jehovah's Witnesses headed a number of associations which demanded better guarantees for religious freedom. As well, women's organizations such as the National Council of Women insisted that laws were needed to stem sexual discrimination. In each of these cases, these groups tied the question of a national bill of rights to their broader goals. So, while the civil liberties stalwarts such as John Diefenbaker, Alistair Stewart, A. R. M.

Lower and F. R. Scott continued to argue the need for positive guarantees for individual rights, new organizations threw their weight behind these demands. At the same time, they added new items to the list.

In the end the expansion of the human rights lobby did little to dislodge Ottawa from its position that a bill of rights was unnecessary. In fact, the increased agitation for improved protection of civil liberties, including a national bill of rights, eventually stalled under the weight of its own success. The call for a constitutional guarantee for civil liberties became one among many such requests. In response, Ottawa pointed to the list of fair practices legislation passed both federally and provincially as proof that rights could be amply protected through other measures. At the same time, it honed its previous arguments against a Canadian bill of rights under the tutelage of two new members. In 1948, with Louis St. Laurent's move to the Prime Minister's Office, Lester Pearson and Stuart Garson joined the government. Pearson's experience with the United Nations' efforts added weight to the government's arguments on human rights. More significant though was Garson's contribution to the debate. One of his main concerns throughout his tenure as justice minister was the pressure for a domestic bill of rights for Canada. On repeated occasions, Garson explained his opposition to any form of a rights guarantee. In his view, a bill of rights would not only interfere with the sovereignty of Parliament, but would not safeguard Canadians' civil liberties any better than the existing system. By 1952, after another parliamentary committee, a senate committee, constitutional conferences, the Universal Declaration of Human Rights and the continued pleas by civil libertarians, Canada was no closer to a national bill of rights than it had been in 1946 at the

height of the Gouzenko Affair which had inaugurated the movement.

“A firm public opinion:” The Liberal Government, Civil Libertarians and the 1948 Special Joint Committee on Human Rights

Less than one year after the adjournment of the 1947 parliamentary committee on human rights, the government announced the establishment of yet another body to investigate the same issue. Despite Ottawa's reluctant discussion of human rights in 1947, the government remained on the defensive over the winter of 1947-1948. While critics continued to harangue the King Liberals, the United Nations' efforts to draft the Universal Declaration captured the attention of many concerned with civil liberties. The King government simply could not escape the charge that it could no longer be entrusted with Canadians' human rights.

As early as September 1947 it had become apparent that Ottawa's bid to quell the agitation by civil libertarians had been unsuccessful. In fact, the events of the next year seemed to offer a repeat performance of the previous year. In September the country's major labour organizations along with the Canadian Bar Association (CBA) once again chastised the federal government's record at their annual conventions. After a heated discussion on Ottawa's responsibility for past infringements of civil liberties, the CBA agreed that the situation warranted the creation of a permanent Section on Civil Liberties. The CCL went the furthest with its Executive Council statement that infringements upon individual rights were tied to a “simultaneous attack” on labour. In response, the council called on Ottawa to enact an “adequate” bill of rights. The most raucous affair occurred

at the TLC convention where delegates rejected a proposed resolution which both condemned the government and demanded a national bill of rights. This rejection, however, owed more to the resolution's communist origins than to a concerted opposition to a constitutional rights guarantee.¹ While these organizations debated the issue, both John Diefenbaker and B. K. Sandwell continued their public promotion of a national bill of rights in the press. In the provinces, human rights also gained prominence. In 1947 both Alberta and Saskatchewan enacted provincial bills of rights. In Ontario, W. J. Grummett, a CCF member of the Ontario legislature, introduced a motion for a provincial bill of rights in the Ontario Legislature in October. Although, the bill failed, Grummett forced a debate on the issue from the premier, George Drew, and his Attorney-General.²

In each case the message to Ottawa was clear: human rights had not been talked out by the 1947 committee. As preparations moved forward in the fall for the opening of the new parliamentary session, the King government realized that it once again had to deal with the civil liberties question. In capitulation, the speech from the throne on 5

¹ *Report of the Proceedings of the 56th Annual Convention of the Trades and Labor Congress of Canada, 1947* (hereafter *TLC Proceedings*), 148-154. As one TLC member argued, the resolution was a "subtle approach by a group within our numbers here who are exponents of a political philosophy that causes the conditions of which they complain," cited in *Globe and Mail*, 27 September 1947. See also *The [1947] Yearbook of the Canadian Bar Association and the Minutes and Proceedings of the Twenty-Ninth Annual Meeting* (hereafter, *CBA Proceedings*), 143-144 and 50-61; *Proceedings of the Seventh Annual Convention of the Canadian Congress of Labour, 1947* (hereafter *CCL Proceedings*), 29.

² B. K. Sandwell, "Peace and Order," *Saturday Night* 63 (18 October 1947). On Diefenbaker, see *Globe and Mail*, 1 December 1947 and on the Grummett bill see *Legislature of Ontario Debates*, 28 October 1947, 1066-1074; *Toronto Evening Telegram*, 29 October 1947; and, *Ottawa Citizen*, 17 November 1947.

December 1947 announced Ottawa's intention to reappoint the special joint committee.³ Nonetheless, with the six month hiatus between parliamentary sessions and the responses from the law school deans and provincial Attorneys-General outstanding, the King government received some much needed time to regroup. Firstly, the reprieve allowed Ottawa to put greater distance between it and the Gouzenko Affair which continued to draw much of the criticism from civil libertarians. In a letter outlining his opposition to a bill of rights, Jack Pickersgill, assistant to the prime minister, admitted that "the 1946 business...is not easy to defend, [however]...since 1946 the whole tendency here has been to discourage hysteria and to provide not so much by formal safeguard as by really careful administration that there will not be any persecution of individuals."⁴ Part of Ottawa's plan, then, was to allow time to whittle down the public memory of past civil liberties infringements while it avoided future abuses.

More importantly, the break gave the government an opportunity to review its policy options for the upcoming parliamentary session and the promised reappointment of the special joint committee. Throughout the winter of 1947-1948 the Department of Justice, under the guidance of F. P. Varcoe, reconsidered its arguments from the previous year. Foremost among its activities was the drafting of a civil liberties act as an amendment to the criminal code, an area completely within federal jurisdiction. The

³ *House of Commons Debates* (hereafter *Debates*), 5 December 1947, 2.

⁴ Pickersgill also included the Defence of Canada Regulations among those issues not easily defended; however, he blamed the civil liberties infringements on "inexperience or ineptitude," Pickersgill to Lower, 27 March 1950, Queen's University Archives, *Arthur Reginald Marsden Lower Papers*, Box 8, File A-141.

proposal outlawed any act which prevented freedom of religion, peaceable assembly, freedom of the press or freedom of speech. As well, it provided for prosecution of those individuals who contravened the act.⁵ Despite this bow to the demands of civil libertarians, this tentative draft belied the government's persistent attitude toward bills of rights. At its root, the act was limited both in scope and application. It referred to only four individual rights or freedoms and hence avoided many of the demands made by Diefenbaker and the civil liberties associations. More importantly, as an amendment to the criminal code the act would apply only to individuals who abridged human rights and not to governments. In fact, the act contained a clause which explicitly exempted Parliament and the provincial legislatures: "Nothing in this section shall be construed as limiting or affecting the legislative jurisdiction of any authority." In the end, this draft act was little more than a hollow gesture to assuage the public outcry for a bill of rights. As Driedger concluded, the act "does not result in any change of the present law so far as I can see. At best it would merely be a declaration of what the law is."⁶

Despite this apparent crack in the government's edifice, its attitude remained largely the same. In fact, this position hardened from December 1947 to February 1948 as

⁵ This rough legislation was largely the work of the deputy minister and E. A. Driedger, another officer in the department. E. A. Driedger to Varcoe, 16 February 1948, National Archives of Canada (NAC), *Records of the Department of Justice*, RG 13, Vol. 2643, File 151913. At this time, the draft act did not specify the penalties for an infringement against the legislation.

⁶ Driedger to Varcoe, 16 February 1948, RG 13, Vol. 2643, File 151913. In comparison to Diefenbaker's own limited bill of rights proposal from 1946, the act notably omitted the two main issues of his long agitation: the suspension of habeas corpus and the right to legal counsel. See *Debates*, 7 May 1946, 1300.

the responses from the law school deans and provincial Attorneys-General arrived in Ottawa. The majority of these written replies supported the government's argument that civil liberties and the enactment of a comprehensive bill of rights were beyond the jurisdiction of the federal Parliament. Some, like Vincent C. MacDonald, Dean of the Dalhousie Law School, stated bluntly that "Parliament has no such power." The most influential and best argued reply came from the Dean of the University of Toronto's Faculty of Law, W. P. M. Kennedy, who upheld the government's reasoning that a bill of rights was a departure from the British tradition of parliamentary supremacy and beyond federal jurisdiction. The Toronto dean also contended that a bill of rights was not necessary and that the current system offered adequate protection of civil liberties. Most of the other replies were made from the same cloth, a point which J. L. Ilsley, the justice minister, made certain to announce when he tabled the written responses in the Commons.⁷

As the country's deans and Attorneys-General buoyed the government's position and as civil libertarians continued to organize for the promised parliamentary committee, the United Nations' attempts to draft an international bill of rights intruded onto Canada's domestic stage. On 9 January 1948, the Secretary-General's request for comments on the

⁷ As Ilsley noted in the Commons, only the deans from Dalhousie, Toronto and Laval University along with the attorneys-general for British Columbia, Nova Scotia, Prince Edward Island and Saskatchewan sent official responses to the parliamentary committee's request. Others sent only an acknowledgement or no reply at all. Only J. W. Corman, attorney-general for Saskatchewan, offered a positive opinion on a federal bill of rights. See *Debates*, 17 February 1948, 1284. For copies of the various replies, see RG 13, Vol. 2646, File 151913, FP #3. For press comment see *Globe and Mail*, 17 December 1947 and 18 February 1948.

draft declaration of human rights arrived in Ottawa. To prepare Canada's official response, Louis St. Laurent, the secretary of state for external affairs, decided that the best method to shield Ottawa from criticism on this heavily scrutinized issue was to submit the question to the promised special joint parliamentary committee.⁸ On 9 April 1948, Ilsley put forth the motion in the Commons to reconvene the parliamentary committee. Despite the heated debates concerning constitutional jurisdiction and domestic guarantees for rights during the 1947 proceedings, the new committee would devote its hearings once again to the question of U.N. obligations and how best to meet them. The justice minister made no reference to the previous year's debate on a Canadian bill of rights.⁹

Opposition members responded immediately to the justice minister's attempts to push through the motion for the committee. For Diefenbaker, the debate afforded yet another opportunity to criticize the government's record on civil liberties. In his speech, he challenged the Liberal government to make the committee a standing body of Parliament and to create a civil liberties section within the Department of Justice. As well, he moved an amendment to the motion which suggested that the matter of constitutional jurisdiction on civil liberties be referred to the Supreme Court of Canada for a ruling, a

⁸ St. Laurent to Ilsley, 23 January 1948, NAC, *Records of the Department of External Affairs*, RG 25, Vol. 20, File 5475-W-2-4, Pt. 1. The government had received warning of this request in October from Eleanor Roosevelt, chairman of the U.N. Commission on Human Rights, see Secretary-General to St. Laurent, 6 October 1947, NAC, *Records of the Privy Council*, RG 2, Box 206, File U-41-H (Vol. 1).

⁹ The motion contained only one reference to the constitution: "in the light of the provisions contained in the charter of the united nations, and the establishment of the economic and social council thereof of a commission on human rights, what is the legal and constitutional situation in Canada with respect to rights," *Debates*, 9 April 1948, 2842.

proposal which he offered repeatedly over the next few years.¹⁰ As with his suggested requests to the country's law school deans and Attorneys-General, the Conservative civil libertarian sought to circumvent the government's arguments against a bill of rights. Stanley Knowles, the CCF luminary, augmented this strategy with another amendment to Ilsley's motion: he proposed that the committee be given the power to submit a draft bill of rights to the Supreme Court for its opinion.¹¹ Together, these two amendments once again forced the government to return to the question of a national bill of rights despite its best efforts to keep the debate, and the committee, focused on the international arena.

For the government the first problem was Diefenbaker's call for a reference to the Supreme Court for a decision on civil liberties jurisdiction. After a discussion of this issue in cabinet, Ilsley announced in the Commons on 12 April that the government would not send the question to the high court. To support this decision, the justice minister argued that it would be improper to ask the Supreme Court to render an opinion on the same issue that a parliamentary committee was then also deliberating. The press responded negatively to the government's attitude. For example, the *Globe and Mail* chastised this rather clouded reasoning as another example of Ottawa's "shilly-shallying attitude" toward

¹⁰ In his speech, Diefenbaker attempted to embarrass Mackenzie King with a reference to the prime minister's grandfather, William Lyon Mackenzie, who had made a journey to the British House of Commons in the 1830s to question the Imperial Parliament on civil liberties protection in Canada, see *Debates*, 12 April 1948, 2855-2864.

¹¹ According to the amendment, the committee would have the power to refer "to the Supreme Court of Canada a draft bill of rights, containing such provisions as in the opinion of the committee should be included therein, to determine whether or not it is within the powers of the federal Parliament to enact such a bill of rights for the Canadian people." The amendment also allowed the committee to submit other jurisdictional questions to the high court, see *Debates*, 12 April 1948, 2887.

civil liberties. The paper complained that “[o]n the question of civil rights, it [the federal government] has no policy but to temporize and procrastinate. It has not even any definite opinions one way or the other, though the need for a Bill of Rights in Canada becomes steadily clearer.”¹² Comments such as these, coupled with Diefenbaker’s continual shots at the government in the Commons, finally pushed J. L. Ilsley into a heated retort on the final day of debate. He attacked Diefenbaker’s charge that the Liberals were a pack of “little tyrants” lusting for more power. He then lashed out at the prairie lawyer: “do not become inebriated with the exuberance of your own verbosity. Get away from this sophomoric invective. Get away from this adolescent abuse.” Ilsley continued his rebuke with a repetition of the government’s arguments against bills of rights but softened his emotional speech slightly with the announcement that the government accepted Knowles’ proposal since it was “merely an empowering amendment.”¹³ Despite the government’s best efforts, then, the question of a national bill of rights once again clawed its way onto the parliamentary committee’s agenda.

Clearly, the members of the King government, and the justice minister particularly, had lost much of their patience for those who continued to bang the drum of past civil liberties abuses. As they continued to point out, the 1940 Defence of Canada

¹² “Cabinet Conclusions,” 12 April 1948, RG 2, A5a, Vol. 2641, No. 479, Microfilm Reel 2365. In the Commons, the Speaker ruled Diefenbaker’s amendment out of order *Debates*, 12 April 1948, 2871. For press comment on the debate see, *Globe and Mail*, 14 April 1948.

¹³ In accepting the Knowles amendment, Ilsley stated emphatically that “[i]t is understood of course that it is not in any sense a direction to the committee,” see *Debates*, 16 April 1948, 3029 and 3039-3041.

Regulations, the continuation of wartime controls after 1945 and the actions taken during the Gouzenko Affair had all been accomplished legally under the constitutional powers of Parliament. More importantly, in each of these issues King and his ministers had considered carefully the implications of their decisions and had acted, in their opinion, in the best interests of the country. Finally, the calls for a national bill of rights were most likely beyond Ottawa's constitutional powers. Nevertheless, they were forced to deal with the continued criticism of the government's record on civil liberties.¹⁴ To complicate matters further, the U.N.'s determination to draft the universal declaration of human rights now forced the Canadian government to map out its position internationally. Once again, the government braced itself for another run through the civil liberties gauntlet.

On 4 May 1948 the second parliamentary committee on human rights in less than a year heard its first witnesses. Over the course of its ten meetings, the majority of the discussion concerned an article by article examination of the draft universal declaration. Chaired by J. L. Ilsley, the committee members repeatedly questioned the constitutional powers of the federal government to ratify the international document and the effects the declaration would have on Canada's parliamentary system. Although Canada's U.N. obligations on human rights clearly took precedence for the committee, Ilsley bowed to pressure and agreed to consider the question of a national bill of rights during the

¹⁴ See *Winnipeg Free Press*, 2 February 1948 and 13 May 1948; *Ottawa Citizen*, 15 March 1948 and 14 April 1948; *Globe and Mail*, 18 February 1948 and 16 March 1948; W. Glen How, "The Case for a Canadian Bill of Rights," *Canadian Bar Review* 26 (May, 1948):759-796; and, G. V. Ferguson, "Freedom and the News," *Behind the Headlines* 8 (1948):1-17.

committee's last two hearings.¹⁵ On 15 and 17 June, F. P. Varcoe once again made an appearance to defend the government's position. The deputy minister outlined first his arguments against a bill of rights enacted by statute and then criticized suggestions for constitutional guarantees for civil liberties. While Varcoe's testimony differed slightly from the previous year's, the message was the same: a bill of rights was unnecessary; it would infringe upon the supremacy of Parliament; and it was beyond the jurisdiction of the federal government. Although he floated the justice department's draft civil liberties act during the hearing, Varcoe clearly confirmed that no change had taken place in the government's attitude toward human rights.¹⁶

In the committee's final report Ilsley, relying heavily on the arguments of his deputy minister, recommended against a Canadian bill of rights. In his summary the justice minister insisted that:

Canadians enjoy a large measure of civil rights and liberties. That they must be maintained is beyond question. But to attempt to define these rights and liberties in statutory language is a task not to be undertaken lightly...Respect for and observance of these rights and freedoms depends

¹⁵ The report of the parliamentary committee's Steering Committee on 28 April allowed for discussion of Canada's international obligations only. The submission of numerous briefs from the public and the efforts of committee members Alistair Stewart and Arthur Roebuck, however, convinced the Steering Committee to devote two meetings to a national bill of rights. See *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and House of Commons on Human Rights and Fundamental Freedoms* (hereafter *Proceedings*, 1948) (Ottawa: King's Printer, 1948), 17-19 and 171-173. See also, Alistair Stewart to F. R. Scott, 22 June 1948, NAC, *Francis Reginald Scott Papers*, MG 30 D211, Vol. 3, File 13, Microfilm Reel H-1214.

¹⁶ When introducing his civil liberties act, Varcoe exaggerated that it had been "scribbled...out rather hurriedly," *Proceedings*, 1948, 173-180 and 188-204. See also, Varcoe, "Memorandum: Re: Proposed Amendment to B.N.A. Act," RG 13, Vol. 2646, File 151913.

in the last analysis upon the convictions, character and spirit of the people. There 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.¹⁷

With Ilsley as joint chairman, his deputy minister as the sole witness on a national bill of rights and with a preponderance of Liberal members, the government line dominated the debate of the committee. Obviously, the dice had been loaded. Although there had been submissions from a number of non-government organizations, including the Committee for a Bill of Rights, which revealed significant public support for a bill of rights, Ilsley nevertheless dismissed such views. Instead, he slammed shut the door which had cracked open the previous fall with the justice department's draft civil liberties act and, thus, effectively countered any future charges of "shilly-shallying."¹⁸

While civil libertarians regrouped in the wake of this report, a political era ended in Ottawa with the resignation of Mackenzie King. On 15 November 1948 the venerable Liberal leader stepped down and his replacement, Louis St. Laurent, donned Mackenzie King's long-held political mantle. St. Laurent, a Quebec City lawyer, had entered King's cabinet as justice minister in 1941 after the death of Ernest Lapointe. A gifted administrator and conservative in temperament, St. Laurent's prime ministership promised the same stable government laid down by King. But, as one Canadian historian noted, if

¹⁷ "Final Report," *Proceedings, 1948*, 210-212.

¹⁸ The committee also received submissions from the Canadian Jewish Congress, the Congregations of Jehovah's Witnesses, the Civil Rights Union, the Canadian Daily Newspapers Association, and from Organizations representing the Chinese people of Canada, see "Final Report," *Proceedings, 1948*, 210.

the new political era was remarkably unchanged in some ways, in others it was significantly different.¹⁹ In world affairs for example, St. Laurent was a greater fan of the United Nations and less cautious of international obligations and agreements. For civil libertarians who anxiously followed Canada's participation in the Universal Declaration of Human Rights in 1948, then, the rise of St. Laurent to prime minister was a welcome development. As well, the appointment of Mike Pearson, the country's most popular diplomat, as the new secretary of state for external affairs heightened many hopes that Canada would finally move more forcefully at the United Nations.

Another new appointment also gave those who advocated a Canadian bill of rights new hope for the cause. In 1948 the intransigent minister of justice, J. L. Ilsley, retired from politics. In his place stepped Stuart Garson, the former Liberal premier of Manitoba. Born on 1 December 1898, Garson spent most of his career in public office. He had graduated from the University of Manitoba Law School in 1918 but by 1927 was elected to the Manitoba legislature. During the 1930s, Garson quickly moved up the political ladder, and in 1943 he became premier. As the Manitoba leader, he was a noted ally of the federal government during the 1945 dominion-provincial conference and, therefore, surprised few with his move to Ottawa. Garson was a skilled politician with a piercing intellect and knowledge of constitutional law. Moreover, coming from one of the hardest

¹⁹ Donald Creighton, *The Forked Road: Canada 1939-1957* (Toronto: McClelland and Stewart Ltd., 1976), 158. On Louis St. Laurent also see Dale Thomson, *Louis St. Laurent: Canadian* (Toronto: MacMillan Publishing, 1967); Jack Pickersgill, *My Years With Louis St. Laurent* (Toronto: University of Toronto Press, 1975); Pickersgill, *Seeing Canada Whole: A Memoir* (Markham: Fitzhenry and Whiteside Publishers, 1994); and, Robert Bothwell, Ian Drummond and John English, *Canada Since 1945: Power, Politics and Provincialism* (Toronto: University of Toronto Press, 1981), 131-133.

hit provinces by the Depression, he was a strong advocate of the centralization of powers in the hands of the federal government.²⁰ By all indications, this was precisely the attitude most likely to favour a federal initiative to protect human rights. Even before Garson had packed his suitcases, Arthur Lower, an old friend, wrote a congratulatory letter to the new justice minister and broached the subject of a Canadian bill of rights. The historian quipped, "I would like to put in a little plug for future consideration of the question of the Bill of Rights...I think it is something which should constantly be kept under review as constitutions do not stand still." Although Garson offered vague assurances in return and continued his correspondence on the subject with Lower during his tenure as justice minister, his attitude toward an entrenched bill of rights was not what civil libertarians had hoped.²¹

For the Manitoba lawyer, the crux of the matter rested on the simple determination of what was the best manner to protect Canadians' human rights. As he stated, "[w]ith me it is a purely pragmatic question, which method works better to achieve the closer approximation to the objectives which we are seeking?"²² In his analysis, the answer to this question was clear: parliamentary sovereignty. Like Ilsley and Varcoe before him, Garson held that the adoption of a bill of rights represented a fundamental departure from

²⁰ Little historical research has been completed on Garson, however, see Bothwell, Drummond and English, *Canada Since 1945*, 92-96.

²¹ Lower to Garson, 25 November 1948 and Garson to Lower, 3 December 1948, Provincial Archives of Manitoba, *Stuart Sinclair Garson Papers*, Vol. P4949, File 9.

²² Garson to Lower, 12 November 1949, *Lower Papers*, Box 7, File A-120. The majority of their correspondence occurred in 1949-1950 as preparations continued for the planned dominion-provincial conference.

Canada's constitutional traditions. However, he took this argument one step further. Garson believed that in itself, parliamentary sovereignty provided the best guarantee of protection to Canadians' rights. He argued that a simple comparison with the United States provided clear proof of his position. He pointed to the lynchings in the southern states and the "wholesale denial" of the franchise to American Blacks in these same jurisdictions despite the protections found in the American Bill of Rights. In response, he wondered "[h]ow, in the face of these happenings,...it can be argued that constitutional guarantees in the United States or in any other country have been a greater guarantee of freedom than the sovereignty of Parliament in Canada...is something that I do not understand."²³ For the Manitoba lawyer, then, one worked, the other did not.

Canada and the Drafting of the International Covenants

With the leadership of the Liberal government significantly revamped, Ottawa turned to the U.N.'s attempts to draft the international declaration, confident that after two parliamentary committees the fuel in the bill of rights lobby had run out. Throughout the early 1950s the United Nations human rights activities flowered. Through the U.N. and its agencies, members developed technical assistance programs to foster human rights, ratified conventions on such things as genocide, the political rights of women and the

²³ Garson to Lower, 31 October 1949, *Lower Papers*, Box 7, File A-120. In one letter, Garson argued that the agitation for a Canadian bill of rights stemmed from the Progressive Conservatives' inability to mount an effective opposition in Parliament. He believed that once the Conservatives regained their strength, "the main reason for a Bill of Rights will, in my judgement, disappear," Garson to Lower, 23 February 1950, *Lower Papers*, Box 7, File A-120.

rights of the child, and most importantly, drafted the International Covenants on Human Rights.²⁴ These achievements were arduous undertakings, however, as the gulf between the West and the Soviet Bloc widened. In addition, as the decade of the 1950s wore on, the emergence of the African-Asian majority in the General Assembly, most of whom were former colonies of the West, added another dimension to the situation. The result was three distinct agendas which led to increasingly bitter arguments at ECOSOC and in the General Assembly as to the proper route to promote and protect human rights.²⁵

Nowhere was this struggle more evident than in the drafting of the International Covenant on Human Rights.²⁶ At the second session of the Commission on Human Rights from 2 to 17 December 1947 the members had decided to divide the International Bill of

²⁴ For a discussion of the United Nations human rights activities in the 1950s and 1960s see James Frederick Green, *The United Nations and Human Rights* (Washington: The Brookings Institute, 1956); L. B. Sohn, "A Short History of the United Nations Documents on Human Rights," in *The United Nations and Human Rights*, Eighteenth Report of the Commission to Study the Organization of Peace (New York: United Nations Publications, 1968), 39-186; John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (New York: Transnational Publishers, Inc., 1984); A. H. Robertson and J. G. Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* 3rd ed. (Manchester: Manchester University Press, 1989); and, Antonio Cassese, "The General Assembly: Historical Perspective 1945-1989," in *The United Nations and Human Rights: A Critical Appraisal*, ed. Philip Alston (Oxford: Clarendon Press, 1992), 25-54.

²⁵ Cassese argues that between 1946 and 1955 the West dominated the human rights activities of the U.N. However after 1955, with the addition of new socialist members to the organization as well as new Third World states, the Soviet Bloc with the support of the African-Asian countries controlled the direction of the U.N.'s human rights initiatives, "General Assembly," 35-40.

²⁶ The Commission on Human Rights originally intended to draft a single covenant, but in 1952, the General Assembly decided that the commission should draft two covenants, one comprising civil and political rights, and the other, social, economic and cultural rights. See Sohn, "Short History," 104-106.

Rights into three parts: a declaration, a covenant and measures of implementation. With the ratification of the Universal Declaration of Human Rights on 10 December 1948, the Commission on Human Rights shifted its focus to the drafting of the international covenant, a much more involved task than that of the declaration. The drafting process went through three stages prior to the final adoption of the covenants in 1966. Between 1947 and 1950, the Commission on Human Rights devoted its efforts to the preparation of a single draft covenant comprised mainly of the traditional civil liberties and fundamental freedoms found in Western legal systems. From 1951 to 1954 the Commission turned its attention to the drafting of social, economic and cultural rights because of increasing pressures from the Soviet Bloc and Asian and African countries. Eventually in 1952, the General Assembly decided that two covenants were necessary, one for each category of rights. When completed in 1954, the draft covenants entered the third stage of drafting when they moved to the General Assembly's Third Committee. They remained at this body for the next twelve years where they endured lengthy debate and proposed amendments.

For Canada, the inclusion of social, cultural and economic rights made a difficult situation worse. The Drafting Committee of the Commission on Human Rights initially attempted to produce a single covenant in 1947. The committee revised this draft at its second session in December 1947 and then again in May 1948. At this time the committee shelved the draft in order to devote its efforts to the universal declaration.²⁷ With the

²⁷ The International Covenant on Human Rights was originally called the "Convention on Human Rights," but was changed at the second session of the Drafting Committee. *Yearbook on Human Rights for 1947* (New York: United Nations

declaration completed in December 1948, the commission once again turned its attention to the covenant. In 1949, the Commission on Human Rights revised the covenant and transmitted the new text to the various member-states of the U.N. General Assembly for their comments or suggestions. At this point the covenant ran into difficulties.

At the Commission on Human Rights in 1950 the debate over the inclusion of social, economic and cultural rights began. Australia, the Soviet Union and Yugoslavia each proposed the addition of these types of rights in the draft covenant.²⁸ The commission, though, reaffirmed that the covenant should be devoted to “the fundamental rights of the individual and to certain civil freedoms.” As a form of compensation, the commission promised to proceed at its next session to draft further covenants to deal with “other categories of rights.”²⁹ When the General Assembly met to consider the report of the commission, however, social, economic and cultural rights gained prominence. The assembly decided that the list of rights found in the proposed covenant was incomplete and therefore requested that the commission revise its draft to include “a clear expression” of economic, social and cultural rights.³⁰ With this one sweeping decision, the Assembly

Publications, 1949), 431.

²⁸ Sohn, “Short History,” 104.

²⁹ *Yearbook on Human Rights, 1950*, 454.

³⁰ *Yearbook on Human Rights, 1950*, 457-458. ECOSOC had felt that the draft covenant was inadequate but also believed that the Commission on Human Rights had reached an impasse. As a result, ECOSOC requested the General Assembly to give policy guidance to the commission through consideration of four basic issues: the adequacy of the draft covenant’s first eighteen articles; the inclusion of social, economic and cultural rights; the inclusion of federal state and colonial clauses; and, the current measures of implementation. See Sohn, “Short History,” 104 and *Canada at the United Nations, 1950*

completely altered the texture of the international covenant and introduced serious problems for Canadian policy makers.

Throughout this first stage of drafting the covenant, the Canadian attitude toward the United Nations human rights activities mirrored the stance adopted in 1945. The Department of External Affairs and most members of the Liberal government continued to doubt the efficacy of codifying human rights in an international covenant. They sided with most other Western nations in their opposition to the inclusion of social, economic and cultural rights. In a speech prepared for the 1949 Lake Couchiching Conference, John Wendell Holmes, the assistant under-secretary of state for external affairs, cast doubt not only on the United Nations ability to protect human rights, but also on the desirability of the effort itself. According to Holmes: "no country in the world is yet prepared to let outsiders interfere with their own delicate provisions for civil rights. I agree that it is unfortunate that every citizen in the world cannot be guaranteed civil rights, but let us not forget that what seems like legitimate civil rights sometimes conflict with each other."³¹ Furthermore, he held that the most the U.N. could reasonably attempt was to identify rights abuses in the hope that greater respect may ensue. For Holmes, the primary job of the United Nations was to prevent war; economic and social issues were of secondary concern only. As well, Holmes believed that the combination of Canadian "nature" and constitutional traditions led the country toward "practical resolutions [rather] than

(Ottawa: Department of External Affairs, 1951), 71.

³¹ John Wendell Holmes, "Canadian Policy at the U.N.," draft speech for Lake Couchiching Conference, 1949, Canadian Institute of International Affairs, *John Wendell Holmes Papers*, Series D, Box 2, File 1/a.

declarations.”³² As the initial stage of the drafting process trudged along in the Commission on Human Rights, this negative attitude towards the United Nations efforts eventually wound itself into official Canadian policy.³³

Two ministers dominated the government’s strategy on human rights: Lester B. Pearson, secretary of state for external affairs, and Stuart Garson, justice minister. As a member of the 1948 delegation to the U.N. General Assembly, Pearson had a keen understanding of the organization’s efforts in this area. However, it was Garson who set the tone for the debate in cabinet on the draft international covenant. Garson outlined his opposition to the draft covenant on human rights in a detailed memorandum. First, he argued that the draft was an “unsatisfactory” hybrid between the American Bill of Rights as a statement of general principles on the one hand and a “detailed statutory enactment on the other.”³⁴ Second, the minister questioned the usefulness of the covenant to Canadians since, as he concluded, the purpose of the draft covenant “cannot be to improve

³² John Wendell Holmes, “Relations Between Canada and the United States in the United Nations,” internal memorandum, 26 March 1951, *Holmes Papers*, Series D, Box 2, File 2/b.

³³ Canada’s term on ECOSOC ended in 1948 and so throughout 1949 the government had no avenue along which to comment officially on the draft anyway. Developing a position on the draft covenant, therefore, was not even considered before 1950. As a result, Ottawa’s first opportunity to either explain its views on the draft covenant or make suggestions did not arise until 1950 when ECOSOC circulated the draft to each of the U.N. members. For Canada’s terms of membership at ECOSOC and its agencies see Appendix II.

³⁴ Stuart Garson to Norman Robertson (Secretary to the Cabinet), 6 July 1950, RG 2, Box 253, File U-41-H (Vol.2) 1950-1951.

conditions in Canada, but presumably to improve conditions in other countries.”³⁵ Besides this questioning of the covenant’s worth, however, Garson’s criticisms extended to the draft’s potential influence on Canada’s domestic politics. Garson concluded that if the government signed the present draft covenant, it would be more difficult to resist the demands within Canada for a domestic bill of rights:

I should think...that if we agree by an international Covenant to submit to restrictions upon our Parliamentary sovereignty upon the assumption that in so doing we are protecting the citizens of other less advanced countries by getting their governments to agree to respect their civil liberties, we will have a rather difficult time arguing within Canada that we are not warranted in submitting to the restrictions upon our Parliamentary sovereignty which a bill of rights would involve, for the protection of the civil liberties of our Canadian citizens.³⁶

Garson’s position set the tone for the government’s future grapplings with the human rights issue. On 5 July 1950 the Cabinet met to discuss Canadian policy on the draft covenant, and it was decided that the delegation should avoid any statements which may indicate Canadian support for the document.³⁷ Immediately after this decision by cabinet, Pearson called on A. D. P. Heeney, his under-secretary, to set up an interdepartmental committee to study the draft covenant in case it was sent to the General

³⁵ Garson also noted that the covenant could be used as a piece of propaganda against the Soviet Bloc to emphasize the abuse of civil liberties under communism, see Stuart Garson to Norman Robertson (Secretary to the Cabinet), 6 July 1950, RG 2, Box 253, File U-41-H (Vol.2) 1950-1951.

³⁶ Stuart Garson to Norman Robertson (Secretary to the Cabinet), 6 July 1950, RG 2, Box 253, File U-41-H (Vol.2) 1950-1951.

³⁷ “Cabinet Conclusions,” 5 July 1950, RG 2, A5a, Vol. 2645, No. 755, Microfilm Reel 2365.

Assembly in September 1950.³⁸ In its first meeting this committee identified the two most important questions Canada faced regarding the draft covenant: would a federal state clause meet Canada's constitutional needs; and, would the covenant restrict parliamentary sovereignty and "in effect, come close to adopting a domestic Bill of Rights?"³⁹ The committee stopped short, however, of proposing comprehensive guidelines for the Canadian delegation to the General Assembly.

Escott Reid chaired the proceedings of the committee's second meeting.⁴⁰ Reid was one of the few noted advocates of the United Nations' efforts to promote international human rights within the Department of External Affairs. Under his guidance the committee concluded that Canada needed a federal state clause included in the draft covenant in order to become a signatory.⁴¹ With this second report in hand, the U.N. Division of External Affairs submitted a comprehensive memorandum to cabinet suggesting possible policy options at the upcoming session of the General Assembly. The

³⁸ A. D. P. Heeney (under-secretary of state for external affairs (USSEA)) to Robertson, 13 July 1950, RG 2, Box 206, File U-41-H (Vol. 2).

³⁹ "Minutes of the First Meeting of the Interdepartmental Committee on the Covenant on Human Rights," 21 July 1950, RG 2, Box 206, File U-41-H (Vol. 2). L. Mayrand (assistant under-secretary of state for external affairs) chaired the meeting. The other members included D. W. Mundell from Justice, Gordon Robertson from the Privy Council, A. J. Pick from the Legal Division of External Affairs, and H. T. W. Blockley from the U.N. Division of External Affairs.

⁴⁰ Pearson had originally requested that Reid chair the committee when he first suggested its creation, Heeney to Robertson, 13 July 1950, RG 2, Box 206, File U-41-H (Vol. 2).

⁴¹ "Minutes of the Second Meeting of the Interdepartmental Committee on the Covenant on Human Rights," 22 August 1950, RG 2, Box 206, File U-41-H (Vol. 2).

memo argued that Canada could not take a “completely negative attitude” towards the covenant due to its responsibilities under the Charter and the Universal Declaration. Concerning the pressure for a domestic bill of rights, the memo suggested that the covenant may “give the Government the opportunity to explain the differences between obligations which it has assumed in an international treaty as a matter of public policy and its policy in respect to domestic legislation for promoting the observance of human rights.”⁴² Finally, the U.N. Division suggested that the delegation criticize the ambiguity of the drafted articles, support the inclusion of either a federal state clause or a general reservations’ clause and vote against any attempt to include social rights in the covenant.⁴³ The committee, and Reid particularly, pushed for a change in attitude while at the same time maintaining the core of the government’s reservations.

At the General Assembly in autumn 1950, the Canadian delegation followed closely the guidelines set out in the 7 September memo to cabinet. Despite considerable opposition, the Third Committee requested that the Commission on Human Rights draft a federal state clause.⁴⁴ The most important issue debated at this session, however, was the inclusion of social, economic and cultural rights in the draft covenant. As with the

⁴² “Memorandum for Cabinet on the Draft First Covenant on Human Rights: Instructions to Canadian Delegation to the Fifth Session of the General Assembly,” 7 September 1950, RG 2, Box 206, File U-41-H (Vol. 2).

⁴³ “Memorandum for Cabinet on the Draft First Covenant on Human Rights: Instructions to Canadian Delegation to the Fifth Session of the General Assembly,” 7 September 1950, RG 2, Box 206, File U-41-H (Vol. 2).

⁴⁴ “Cabinet Conclusions,” 15 November 1950, RG 2, A5a, Vol. 2646, No. 796, Microfilm Reel 2365.

drafting of the universal declaration in the 1940s, the Canadian delegation once again fell behind the pace of the United Nations. Neither the interdepartmental committee nor the Cabinet had prepared a detailed position for the Canadian delegation regarding these types of rights other than to oppose their inclusion in the covenant. On the assembly's final resolution to include social, economic and cultural rights, however, the Canadian delegation abstained so as not to "oppose any resolution which might assist in the furthering of promotion of human rights."⁴⁵ Immediately after, on 4 December 1950, the General Assembly passed a resolution calling on member-states to submit their comments on the draft covenant by 15 February 1951. With these decisions, the covenant moved in a direction that posed even greater difficulties for Ottawa.

In the wake of these developments, the Department of External Affairs formulated a detailed position for the Canadian government on the U.N.'s human rights initiatives. Escott Reid suggested a meeting of the Interdepartmental Committee on Human Rights for 4 January 1951 to draft the Canadian reply.⁴⁶ The same arguments from the previous fall emerged and A. J. Pick, the secretary, prepared a memo for cabinet and a tentative draft of the Canadian response to the U.N. This memo was similar in tone and content to that of 7 September 1950. Pick noted Canada's obligations under the U.N. Charter and suggested a more active role in the drafting of the covenant to avoid a repeat of the 1948

⁴⁵ *Canada at the United Nations, 1950*, 72. At the vote in the plenary session of the assembly, the Canadian delegation cast its vote in a losing effort against the inclusion of social, economic and cultural rights. The final vote was 35 in favour, 9 against (including Canada) with 7 abstentions. See Green, *The U.N. and Human Rights*, 680.

⁴⁶ Reid to Norman Robertson (Secretary to the Cabinet), 16 December 1950, RG 2, Box 206, File U-41-H (Vol. 2) 1950-51.

abstention on the Universal Declaration.⁴⁷ Again, the committee attempted to soften the approach adopted by Ottawa thus far. To win approval for the committee's suggestions, Reid suggested a reworking of the memo to bring Garson onside: "[i]f we convert him, there will not, I think, be any difficulty in Cabinet; so we might therefore think of the memorandum to Cabinet rather as an argument to convert Mr. Garson than as an argument to convert cabinet."⁴⁸

At the same time, the U.N. Division began a reassessment of Canada's entire policy at the Economic and Social Council. In contrast to the interdepartmental committee, the U.N. Division's assessment of both Canada's policy at ECOSOC, in general, and on human rights, in particular, was decidedly less diplomatic. The report concluded that the Canadian attitude was dictated largely by financial and technical considerations advanced on an ad hoc basis by government departments which gave little thought to political interests. According to the U.N. Division, Canada needed to abandon its short term considerations in favour of the long term political advantages of increased cooperation.⁴⁹ Its harshest opinion was reserved for Canada's human rights policy, however. The report argued that international human rights was an issue in which Canadian objectives should not be shaped by narrow domestic parameters. Nevertheless, given the "attitude" taken by Garson and Pearson, the report concluded that "it is difficult

⁴⁷ A. J. Pick, "Memorandum to the Cabinet on Draft Covenant on Human Rights," 26 January 1951, RG 2, Box 206, File U-41-H (Vol. 2) 1950-51.

⁴⁸ Reid to Pick, 30 January 1951, RG 2, Box 206, File U-41-H (Vol. 2) 1950-51.

⁴⁹ "Survey of Canadian Policy Towards the ECOSOC," 11 March 1951, RG 25, Vol. 46, File 5475-B-40, Pt. 3.

to see how Canadian policy in this field can be directed towards promoting the international observance of human rights.”⁵⁰

Despite the blunt judgment from the U.N. Division and the more subtle prodding from Reid and Pick, Canada’s human rights policy at the United Nations continued on the same course. Cabinet accepted the draft statement prepared by the Interdepartmental Committee on Human Rights and submitted it to the U.N. This statement repeated and elaborated on many of the reservations which the government had with the U.N.’s human rights endeavours. While it noted that the first eighteen articles were generally satisfactory in scope, the Canadian statement warned that they were “unevenly formed.” To rectify this problem, the statement made the somewhat contradictory suggestion that the “definition of rights in the covenant should be expressed in general terms, while at the same time avoiding ambiguity or vagueness.” As well, it argued that the inclusion of social, economic and cultural rights in the covenant was wrongheaded since these were not legitimate rights. Instead, Ottawa considered them “responsibilities” and they therefore could not be protected in the same manner as civil and political rights.⁵¹

While each of these criticisms cast serious doubts on Ottawa’s desire to ratify the covenant in the future, the government left no doubt concerning the country’s continuing constitutional quandary. The government’s statement declared unequivocally that Canada, because of its constitution, could not become a party to the covenant without a suitable

⁵⁰ “Survey of Canadian Policy Towards the ECOSOC,” 11 March 1951, RG 25, Vol. 46, File 5475-B-40, Pt. 3.

⁵¹ United Nations Document No. E/CN.4/515/Addendum 13, 14 March 1951.

federal state clause.⁵² The Canadian government thus gave notice that unlike 1948, it had no intention of ratifying another United Nations human rights document without first securing international recognition of its particular constitutional requirements. With this statement delivered, the Canadian government returned to the passive role it had occupied since 1947 as it waited for the U.N. to take the next initiative.

For the next two years, the Canadian delegation remained on the sidelines of the United Nations' human rights debate, venturing out only to repeat those criticisms outlined in the 14 March 1951 statement made to the United Nations. At the same time however, the U.N. made its most important advances in the drafting of the Covenant on Human Rights. Under the General Assembly's resolution of 4 December 1950, the Commission on Human Rights set itself to the task of drafting social, economic and cultural rights for the covenant. Despite opposition among some members, the commission completed its draft of the covenant in time for submission to the 1951 session of ECOSOC.⁵³ At ECOSOC, however, the argument over the inclusion of these rights came to a head. Along with other members, the United States representative objected to the inclusion of social, economic and cultural rights in the same covenant as traditional

⁵² United Nations Document No. E/CN.4/515/Addendum 13, 14 March 1951. In its resolution of 4 December 1950, the General Assembly called upon the Commission on Human Rights to consider a federal state clause to ensure "the securing of the maximum extension of the Covenant of the the [sic] constituent units of federal states, and the meeting of the constitutional problems of federal states," *Yearbook on Human Rights*, 1950, 457.

⁵³ At the end of the session a proposal from the Indian representative that the commission request the General Assembly to reconsider its decision to include social, economic and cultural rights in the covenant was defeated by a vote of 5 in favour, 12 against, with one abstention. Green, *U.N. and Human Rights*, 681.

civil liberties. He argued that these rights were not actually rights at all; instead, they were objectives for a state to achieve. Under American influence, the council passed a resolution calling on the General Assembly to reconsider its 1950 decision.⁵⁴ With this resolution in hand, the General Assembly attempted to map out a solution. In February 1952, after a long and contentious debate, the assembly requested the Commission on Human Rights to draft two covenants: one covenant to contain civil and political rights and the other to contain social, economic and cultural rights. With this issue finally resolved, the commission completed the two drafts over its next two sessions and in September 1954 the Third Committee of the General Assembly began the final stage.

Throughout these developments, the Canadian government retreated as far as possible from the field of debate. At the 1951-1952 session of the General Assembly, the Canadian delegation purposely avoided involvement in the discussion on social, economic and cultural rights. In a note to the delegation, Pearson made his instructions clear: "I think you will agree that the Delegation should, as a general rule, take as small a part as possible in the discussions and abstain on as many controversial votes as possible."⁵⁵ The few statements made by Canadian representatives simply repeated the problems listed in the Canadian submission of March 1951.⁵⁶ The only indication that the delegation was

⁵⁴ The resolution was passed 11 in favour and 7 against, see Green, *U.N. and Human Rights*, 681.

⁵⁵ SSEA to Canadian Delegation to U.N. Assembly, 10 January 1952, RG 2, Box 239, File U-40-9 (B).

⁵⁶ In her statement to the assembly's Third Committee, Canadian representative R. G. Marshall explained that: "[t]hese [social, economic and cultural rights] are, perhaps, less properly described as individual rights than as high objectives to be attained by the

prepared to deviate from the course Pearson outlined occurred when Canada's image was at stake. Although instructed to vote against the drafting of social, economic and cultural rights as a separate covenant, the delegation chose to abstain. In its final report to the government, the delegation explained that "after discussions with other delegations, particularly those of the United Kingdom and the United States, the Canadian delegation came to the conclusion that to follow strictly...its instructions would...place the delegation in the embarrassing position of being a minority of one among the sixty nations represented."⁵⁷ Despite its ardent objections to social, economic and cultural rights, Canada was still conscious of the implications of appearing to impede the progress of the U.N.'s human rights activities.

The Expansion of the Bill of Rights Movement: Organized Labour, Women's Groups and Ethnic Associations

After 1948 the Liberal government fought determinedly at the United Nations to avoid entangling itself in a commitment which could have serious domestic repercussions. Above all, the federal government did not want to give ammunition to an already well-organized human rights lobby at home. Together with the hard line shown by J. L. Ilsley in the 1948 committee's report, Ottawa hoped its stance at the U.N. would lay the issue of a Canadian bill of rights to rest. These hopes were premature. First, few civil libertarians

community, progressively and over a considerable space of time," Report to Ottawa from Canadian Delegation, n.d., RG 25 Box 46 File 5475-B-40, Pt. 3.

⁵⁷ Report to Ottawa from Canadian Delegation, n.d., RG 25 Box 46 File 5475-B-40, Pt. 3.

had placed much faith in the government's 1948 committee even before it began proceedings. In a January letter to A. R. M. Lower, Diefenbaker confided his opinion on the government's intentions: "I am not very hopeful that the Committee will go very far towards recommending the Bill of Rights. It will be set up but only as a screen to protect the Government against criticism for its inaction in this regard." Meanwhile, Alistair Stewart and Glen How expressed similar sentiments.⁵⁸ As a result, Ilsley's final report held few surprises. Unaware of the serious consideration given to a civil liberties act in early 1948, most saw the parliamentary committee as completely in line with the government's previous position.

Second, and more important, was the expansion of the civil liberties movement. Due largely to the publicity given the U.N.'s efforts to guarantee human rights and to end discrimination with the Universal Declaration, the covenants and other conventions, new groups in Canada added their voices to the demands that the federal government better protect the rights of Canadians. Organized labour, women's organizations and ethnic minority groups, each of which had been active to varying degrees in the past, seized upon the issue of human rights. However, they did not simply mouth the arguments made by the bill of rights champions in Parliament, by university professors or by the civil liberties associations. Labour, women and minority groups expanded the discourse to include alternate forms of protection, especially concerning discrimination on the basis of race, sex

⁵⁸ Diefenbaker to Lower, 13 January 1948, Rt. Honourable John G. Diefenbaker Centre, *Rt. Hon. John George Diefenbaker Papers*, 1940-1956 Series, Vol. 3, Microfilm Reel M-7414, 001562-E; Stewart to Scott, 22 June 1948, *Scott Papers*, Vol. 3, File 13, Microfilm Reel H-1214; and, How to Scott, 22 April 1948, *Scott Papers*, *ibid.*

or religion. By the end of 1948 then, the bill of rights movement had attracted more soldiers to the cause.

For the next four years the demands for better protection of human rights, including a national bill of rights, grew steadily. Following the example of New York State, calls went out to provincial capitals and to Ottawa for fair practices legislation to curb racial and sexual discrimination in employment, housing and wages. Suggestions also arose for the creation of human rights commissions to act as clearing houses for rights complaints. At the same time, B. K. Sandwell and Irving Himel of the Association for Civil Liberties harnessed this expanding interest in individual rights to continually press for a rights guarantee in the constitution. Where once Ottawa had to deal only with demands for a limited bill of rights which addressed specific domestic abuses, it now had a burgeoning movement which looked to the U.N. and the United States for inspiration and made ever increasing demands based on an expanding definition of human rights.

Foremost among those joining the charge for greater protection of individual rights was organized labour. In 1945-1947, the fight to consolidate the gains made during the war led to bitter confrontations across the country over collective bargaining rights, union recognition and wages.⁵⁹ By 1949-1950, however, most of this militancy had drained out of the labour movement. The gradual reduction of wartime controls, the continuing strength of the economy and the very success of union attempts to organize various

⁵⁹ For a description of the labour battles following the end of the war see Desmond Morton, *Working People: An Illustrated History of the Canadian Labour Movement*, 3rd ed. (Toronto: Summerhill Press, 1990), 187-200; and, Bryan D. Palmer, *Working-Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, 2nd ed. (Toronto: McClelland and Stewart, Ltd., 1992), 285-290.

sectors of industry all contributed to a relative calm in employer-employee relations. At the same time, union leadership had little time for labour strife as they concentrated much of their efforts on internal struggles to oust communist members. As one historian noted, by 1950 the working class had reached a “plateau of authority and power.”⁶⁰

Fresh from their battle for collective bargaining rights, both the CCL and the TLC prepared for new challenges. They had become involved increasingly with political and social issues. Workers and their unions not only saw their interests in much broader terms, they argued that a relationship existed between socio-political questions and the well-being of the working class. As a result, unions in the postwar era extended their mandate. As an example of this sentiment, the president of the CCL, A. R. Mosher, noted in a 1948 address that workers were no longer content to confine their concerns to economic affairs. He argued instead that labour “is taking a far greater interest and displaying greater activity in the fields of economic research, of education and of politics, than ever before, with the result that the organized workers are becoming a more vital and effective factor in bringing out social changes and transforming the nature of modern society.”⁶¹ While this increased activity involved many issues, by the 1950s fighting racial

⁶⁰ Palmer, *Working-Class Experience*, 298-299. For a description of organized labour’s cold war with communism see *ibid.*, 290-298; Morton, *Working People*, 202-212; 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), 86-232; and Reg Whitaker and Gary Marcuse, *Cold War Canada: The Making of a National Insecurity State, 1945-1957* (Toronto: University of Toronto Press, 1994), 310-363.

⁶¹ *TLC Proceedings, 1948*, 16. On labour’s racial discrimination campaigns in the 1950s, see Frank Hall, “Labour’s Concern for Human Rights,” *Canadian Labour* 7 (January 1962):5-7 and Arnold Bruner, “The Genesis of Ontario’s Human Rights

discrimination had become one of organized labour's most publicized and most successful campaigns.

Most of the initiative for the congresses' racial discrimination campaigns came from a small Montreal group called the Jewish Labor Committee of Canada (JLCC) and its director, Kalmen Kaplansky. Kaplansky, a Jewish immigrant from Poland, grew up in Montreal with its stratified ethnic structure and pervasive anti-Semitism.⁶² In the 1930s he became involved with both the CCF and the Jewish labour movement. In 1936, members of the Montreal and Toronto Workman's Circles, Jewish fraternal organizations with a labour orientation, had formed the JLCC, largely in response to Nazism in Germany and right-wing agitation at home.⁶³ Throughout its early years and during the war, the JLCC organized educational campaigns and worked with other Jewish groups to assist European Jews fleeing Hitler. As the war drew to a close in 1945, however, the group shifted its focus to anti-Semitism and racial discrimination at home. The most obvious allies for the JLCC were the national labour congresses. One of the JLCC's main arguments was that

Legislation: A Study in Law Reform," *University of Toronto Faculty of Law Review* 37 (Fall 1979):236.

⁶² On anti-Semitism in Canada, and Quebec in particular, during the interwar period see Lita-Rose Betcherman, *The Swastika and the Maple Leaf: Fascist Movements in Canada in the Thirties* (Toronto: Fitzhenry and Whiteside Publishers, 1975) and Michael Brown, "From Stereotype to Scapegoat: Anti-Jewish Sentiment in French Canada from Confederation to World War I," in *Antisemitism in Canada: History and Interpretation*, ed. Alan Davies (Waterloo: Wilfred Laurier University Press, 1992), 39-66.

⁶³ The Jewish Labor Committee in the United States was formed in 1933, Kalmen Kaplansky, "K. Kaplansky Notes on Reports of Activities for Improved Human Relations 1946-1947. Introduction" (hereinafter "Notes"), NAC, *Kalmen Kaplansky Papers*, MG 30 A 53, Vol. 20, File 1, 3-4.

the history of Nazi Germany proved that attacks against racial and religious minorities were often in collusion with attempts to disrupt the union movement. To effectively counter this threat, the group believed that its interests must be linked to the activities of a larger organization. In their minds, success in curbing racial discrimination depended on the TLC and CCL joining the fight: "it [this approach] identified the problem of 'human rights' with the day-to-day task of survival for trade unions. It also firmly proclaimed the belief that trade unions as free institutions can only prosper in an environment of freedom and democracy."⁶⁴

In response to the joint suggestion from the American Jewish Labor Committee in New York and Bernard Shane, the JLCC chairman of public relations, the TLC announced at its 1944 convention the formation of a standing committee on racial discrimination. Despite this promise, however, by 1946 the congress had made limited progress. With the end of the war, there was little time or money for such a program given the challenges labour faced as the economy returned to a peacetime footing. As 1946 progressed, though, the Gouzenko Affair and the deportation of the Japanese Canadians raised the issue of civil liberties and racial discrimination to new heights. In response, the JLCC stepped up its pressure on the labour congresses. In May, the committee sent letters to both bodies to request help in their educational efforts to counter racial discrimination and, particularly, to remind the TLC of its pledge. More importantly, in August 1946 Kalmen Kaplansky joined the group as Director and immediately took over the JLCC's racial discrimination campaign. Kaplansky brought a passionate determination to the role of

⁶⁴ Kaplansky, "Notes, 1946-1947," *Kaplansky Papers*, Vol. 20, File 2, 46-47.

director which, along with his keen intellect and organizational ability, would guide the committee for the next ten years.⁶⁵

During 1947-1949 Kaplansky worked continually with the TLC and CCL leadership and with various district labour councils to establish human rights programs. At the core of the JLCC agenda was a three point plan borrowed from the American JLC and the American Jewish Congress:

1. Identification of the basic needs of the trade union movement in the area of human civil rights with those of minority groups;
2. The use of social action to promote human rights objectives;
3. The promotion of laws as the best tool to achieve human rights goals.⁶⁶

To implement this strategy and solidify its relationship with the larger labour movement, the majority of the JLCC's efforts concerned the creation of human rights committees within the two national congresses. This proved a lengthy and difficult task. As Kaplansky later remarked: "[i]t is difficult to convey the sense of loneliness and bewilderment which I experienced in 1946 when I began to develop our program. The

⁶⁵ Kaplansky, "Notes, 1946-1947," 91. Bernard Shane was a union organizer from New York who emigrated to Montreal in the 1930s and became the vice-president of the Quebec Federation of Labour in 1938, see *ibid.*, 73-75. On background of Kaplansky, see Kaplansky, interview with author, 8 November 1994, Ottawa, Ontario.

⁶⁶ In the fall of 1946, Kaplansky visited New York to study the programs of the American JLC and American Jewish Congress. According to Kaplansky, the main difference between his intended program and the American ones was to convince Canadians that a problem even existed. See Kaplansky, "Notes, 1946-1947," 1-4 and Kaplansky, interview with author, 8 November 1994, Ottawa, Ontario.

search for 'allies and friends' became a real priority."⁶⁷ Nevertheless, the JLCC director pressed forward. Under intense lobbying throughout 1947-1948, the CCL finally announced on 16 April 1948 the creation of its National Committee on Racial Tolerance. The new body promised to act as a clearing house for racial discrimination complaints. With the JLCC acting as linchpin, then, Canada's labour congresses vowed to work together to promote human rights which, as Kaplansky noted, was one of the few areas where the two bodies cooperated extensively prior to their merger in 1956.⁶⁸

By 1950, the basic structure of organized labour's human rights program was in place. Under the guidance of the JLCC, the two congresses concentrated their efforts on the establishment of district human rights committees, the development of an educational campaign and the lobbying of different levels of government to enact specific legislation to curb racial discrimination. The JLCC also had assisted local unions to establish joint labour committees against racial intolerance in Montreal, Toronto, Winnipeg and Vancouver. These bodies carried on activities similar to those of the national committees. In particular, they lobbied provincial governments, frequently organized conferences on

⁶⁷ By September 1946, the TLC Committee on Racial Discrimination had done little more than hold organizational meetings. In fact, Claude Jodoin, the chairman of the TLC Committee on Racial Discrimination, asked Kaplansky to write the body's first report within a month of taking over as director, even though nothing had been truly accomplished. See Kaplansky, "Notes, 1946-1947," 93 and 112.

⁶⁸ On Kaplansky's efforts with the CCL, see Kaplansky to Pat Conroy (CCL Secretary-Treasurer), 15 October 1946; Conroy to Kaplansky, 20 March 1947; and, Kaplansky to Conroy, 23 February 1948, NAC, *Records of the Jewish Labor Committee of Canada*, MG 28 V 75, Vol. 13, File 15. See also, Kaplansky to Andrew Andras (CCL Assistant Research Director), 11 March 1948 and "CCL News Release," 16 April 1948, NAC, MG 28 I 103, *Records of the Canadian Labour Congress* (hereafter *CLC Papers*), Vol. 230, File 19.

human rights and the working class, and assisted the national committees in the creation of educational programs.⁶⁹ The most ambitious undertaking in this campaign was the JLCC's publication of two monthlies. First, the *Canadian Labor Reports*, modelled on a similar effort in the United States, was a bulletin circulated widely to various unions and their members which castigated the evils of racial discrimination and praised the work of organized labour on the human rights front. In addition, the major news organs of the congresses, *The Unionist* and the *Trades and Labor Journal*, reproduced much of this material and accompanying political cartoons. Second, the "Reports of Activities for Improved Human Relations" covered a similar territory but circulated more widely to include various other organizations concerned with the protection of human rights. Penned largely by Kaplansky, these reports were quite informal, yet they provided detailed summaries of individual instances of racism, especially in Ontario. Together with several pamphlets, radio broadcasts, and the published reports of the two committees on racial tolerance, by 1950 these monthly newsletters confirmed the national congresses interest in human rights and established labour's place among civil libertarians.⁷⁰

While this educational campaign and the organization of the local city committees firmly placed organized labour in the centre of the civil liberties agitation, its continued

⁶⁹ Kaplansky, "Notes, 1946-1947," 55-59 and Kaplansky, "Notes, 1947-1948," *Kaplansky Papers*, Vol. 20, File 3, 170-184 and 213-221. See also, "Montreal Labor Committee Against Racial Intolerance: organizational meeting," 12 May 1947 and J. James (Winnipeg Joint Labor Committee to Combat Racial Intolerance) to R. J. Lamoureux, 9 June 1948, *CLC Papers*, Vol. 230, File 19.

⁷⁰ "TLC Proceedings, 1948," 229; Kaplansky, "Notes, Introduction;" and, Kaplansky, "A Survey of Group Relations in Canada," *Trades and Labor Congress Journal* 33 (July 1954):28-32.

efforts to influence government policy during this period garnered the most recognition. For years, each congress traditionally met with the federal government to present an annual memorandum on labour's concerns and calls for legislative action.⁷¹ Beginning in 1945 the CCL, and later the TLC, included demands for measures to curb racial, religious and sexual discrimination. Chief among these requests was the call for federal and provincial Fair Employment Practices Acts, similar to that of New York State. This form of legislation outlawed discrimination on the basis of race, creed, sex or religion in employment. Acting in conjunction with other interested organizations, both the CCL and TLC national committees pressured Ottawa and the provinces to enact such legislation. In January 1950, labour leaders joined a delegation of over three hundred to meet with Ontario Premier Leslie Frost. Organized largely by Irving Himel and the Association for Civil Liberties, this group presented a brief requesting provincial legislation to end racial discrimination in employment and in the sale of property.⁷² On the federal front, the congresses spearheaded the charge. Once again, Canada's obligations under the U.N. Charter buttressed these groups' arguments. In a 1952 memorandum submitted to the federal minister of labour, Milton F. Gregg, the CCL National Committee on Racial Discrimination stated plainly that the "federal Government has already recognized the position of the Congress in principle by its acceptance of the United Nations' Universal

⁷¹ On the functions of the annual congress memorandum see David Kwavnik, *Organized Labour and Pressure Politics: The Canadian Labour Congress, 1956-1968* (Montreal: McGill-Queen's Press, 1972), 172-173.

⁷² "A Brief to the Premier of Ontario," 24 January 1950, Ontario Jewish Archives, MG 8/S, *Records of the Joint Community Relations Committee* (hereafter *JCRC Papers*), Box 72, File "1950."

Declaration of Human Rights. Thus the Congress' proposed legislation would be merely a matter of implementation. The basic principle has been recognized."⁷³ In both campaigns, the cooperative effort to obtain "fair employment practices" legislation ended in success. In 1951 Ontario passed legislation banning racial discrimination in employment and the federal government followed with a similar act two years later.⁷⁴

Buried among organized labour's increasing demands for government action to end racial discrimination was the question of a national bill of rights. By 1948 both congresses had endorsed the basic principle that Canada required a national bill of rights in its constitution. At its 1947 convention the CCL protested recent civil liberties abuses and called for a bill of rights. The following year, the CCL's National Committee for Racial Tolerance passed a resolution at its inaugural meeting which demanded immediate action by the government on a bill of rights. As well, the TLC, which at its 1947 convention had agonized over the issue, agreed that such a measure was now necessary.⁷⁵ Despite the

⁷³ "A Fair Employment Practices Act and Policy," 27 May 1952, *CLC Papers*, Vol. 230, File 17. This paper followed similar efforts by the Canadian Jewish Congress, "Submission to the Honourable Milton F. Gregg, Minister of Labour, on Fair Employment Practice Legislation," *CLC Papers*, Vol. 230, File 17, and by the Canadian Association for Adult Education, *Should We Have Fair Employment Practices in Canada?* (1948).

⁷⁴ In addition to its Fair Employment Practices Act, the Ontario government also passed the Female Employees Fair Remuneration Act to enforce equal pay for equal work, see *Statutes of the Province of Ontario, 1951*, XV George VI, Chapter 26, 5 April 1951. On the federal legislation see *Acts of the Parliament of Canada, 1952-1953*, vol. 1, 1-2 Elizabeth II, Chapter 19, 14 May 1953 and *No Discrimination in Employment Because of Race, Colour, Religion, National Origin* (Department of Labour Pamphlet, 1954).

⁷⁵ *CCL Proceedings, 1947*, 29; "Resolutions of the National Committee for Racial Tolerance first meeting on 15 June 1948," *CLC Papers*, Vol. 231, File 1; and, *TLC Proceedings, 1948*, 375-376.

recalcitrance of the federal government shown through two parliamentary committees, the labour congresses joined the fray and added the voices of over 800,000 workers to the movement for a national bill of rights.

Nevertheless, the purposes of a national bill of rights in the minds of labour leaders differed considerably from those of other civil libertarian organizations. Influenced greatly by the activities of the U.N., organized labour closely linked its call for a bill of rights with its overall campaign against racial discrimination. Where Diefenbaker, Lower and Scott argued that the Defence of Canada Regulations, the Padlock Law and the Gouzenko Affair were ample evidence that a bill of rights was necessary, Kaplansky and Jodoin pointed to restrictive covenants, discrimination against blacks in Windsor and Dresden and the government's treatment of foreign-born union leaders. For labour, the primary purpose of any bill of rights was to end discrimination: "[i]n view of the desirability of promoting national unity in Canada, the Congress [CCL] urges the Government to do everything within its power to promote tolerance and understanding among all Canadian citizens, irrespective of race, creed, or colour. We believe that, among the practical steps which might be taken is the adoption of a Bill of Rights."⁷⁶ For labour leaders, then, a constitutional rights guarantee remained an overall objective. Kaplansky and others never viewed a bill of rights with the singlemindedness shown by Diefenbaker or Sandwell. If the government remained unwilling to move on this suggestion, labour leaders had other

⁷⁶ Among the other measures proposed to end discrimination was "greater emphasis" on the duties of citizenship and the education of the public as to the contributions made to Canada by minority groups, see "The Congress Memorandum," 25 March 1949, *The Unionist* 23 (April 1949):89.

ideas to accomplish similar goals.⁷⁷

In fact, this more pragmatic and flexible approach was embraced by other organizations. Women's groups such as the National Council of Women of Canada (NCWC) and the Canadian Federation of University Women (CFUW) and ethnic associations such as the Canadian Jewish Congress (CJC) and the Japanese Canadian Citizens Association (JCCA) supported the calls for a national bill of rights to varying degrees and for widely different reasons. Each of these bodies saw the question of human rights through the prisms of their own particular interests. For the women's organizations, sexual discrimination and the status of women in general influenced their attitude toward a proposed Canadian bill of rights. For the ethnic associations, the fight against anti-Semitism and racism lay at the core of their outlook. Like the efforts of the national labour congresses, these organizations represented hundreds of thousands of Canadians and thus added substantial pressure on the federal government. At the same time, however, the diversity of their ideas on rights diluted the previous arguments made by the Depression era civil libertarians.

Many of the Canadian women's organizations which devoted their energies to human rights in the wake of the U.N.'s international program drew on their experiences during the war. Women activists in various organizations, such as Constance Hayward and Senator Cairine Wilson of the Canadian National Committee on Refugees, worked

⁷⁷ Kaplansky argued that labour advocated a national bill of rights because of the "historical significance of the term." As well, by 1948 the Universal Declaration provided an example for Canada, Kaplansky, interview with author, 8 November 1994, Ottawa, Ontario.

with both government and other likeminded groups to facilitate refugee relief throughout the war. Not surprisingly, women quickly gave support to the U.N.'s postwar humanitarian efforts, including its attempts to better protect human rights.⁷⁸ Both the CFUW and the National Council of Jewish Women applauded the U.N.'s efforts to draft an international bill of rights.⁷⁹ Also banging the drum of human rights, particularly as they affected women, was the NCWC. Among the Canadian women's organizations, the National Council was the largest and arguably most conservative. Formed in 1893 and comprised of local councils across the country, the NCWC had established its interest in human rights issues during the Second World War with its "Program for Post-War Planning." This report, drawing largely on the Atlantic Charter and the Declaration of the United Nations, highlighted the need for vigilance on civil liberties and various women's

⁷⁸ On the activities of the Canadian National Committee on Human Rights see Gerald E. Dirks, *Canada's Refugee Policy: Indifference or Opportunism?* (Montreal: McGill-Queen's Press, 1977), 61-68; Donald Avery, "Canada's Response to European Refugees, 1939-1945: The Security Dimension," in *On Guard For Thee: Ethnic Minorities and the Canadian State during the Second World War*, eds. N. Hillmer, B. Kordan and L. Luciuk (Ottawa: Queen's Printer, 1989), 179-216.

⁷⁹ Throughout 1949-1950, the National Council of Jewish Women studied human rights in Canada in preparation for the proposed Senate committee, see National Council of Jewish Women, "To the Senate Committee on Human Rights and Fundamental Freedoms," *Diefenbaker Papers*, 1940-1956 Series, Vol. 4, Microfilm Reel M-7415, 002691-002693. The Canadian Federation of University Women formed in 1919 to promote women's opportunities in education. In the 1940s and 1950s, it devoted most of its efforts on human rights to Canada's role in the U.N.'s efforts. However, in 1950 the federation prepared a stinging report on the state of human rights in Canada for the triennial meeting of the International Federation of University Women, see Constance Hayward, "Human Rights in Canada," NAC, *Records of the Canadian Federation of University Women*, MG 28 I 196, Vol. 11, File "Human Rights."

rights issues.⁸⁰ With the end of the war and the new efforts of the U.N. in the field of human rights, the National Council's interest grew. In 1945 it convened two large conferences to discuss the question of women's rights and how best to safeguard them. In 1947 the Council sent a letter to the special joint committee which noted Canadian obligations under the U.N. Charter and requested the creation of a sub-committee on the status of women. Throughout their agitation for such goals as equal pay for equal work and an end to discriminatory hiring practices, the NCWC denounced racial discrimination and made admirable efforts to aid new immigrants to the country.⁸¹

Finally, at the instigation of the National Council of Jewish Women, the NCWC turned its attention toward a bill of rights. Affiliated with the NCWC and numbering about 5,000 members by 1950, this Jewish organization fully endorsed the various efforts to secure a constitutional rights guarantee. Its arguments were a melange of U.N. statements and evidence of racial, religious and sexual discrimination in Canada. In 1949, it pressured the NCWC to act.⁸² Throughout 1949-1950, local NCWC councils studied

⁸⁰ For a mediocre summary of the National Council's history, see Naomi Griffiths, *The Splendid Vision: Centennial History of the National Council of Women of Canada, 1893-1993* (Ottawa: Carleton University Press, 1993). For the organization's wartime report, see "National Council of Women of Canada Program for Post-War Planning," *Yearbook of the National Council of Women of Canada, 1943* (hereafter, *NCWC Yearbook*) (Sanford, N.C.: Gerritson Women's History Collection, 1982), 78-84.

⁸¹ *Minutes of Proceedings and Evidence of the Senate Committee on Human Rights and Fundamental Freedoms* (hereafter *Proceedings, 1950*) (Ottawa: King's Printer, 1950), 53 and Mrs. R. J. Marshall (President of National Council) to Mackenzie King, n.d. [1947], *Diefenbaker Papers, 1940-1956 Series, Vol. 4, Microfilm Reel M-7415, 002836*.

⁸² National Council of Jewish Women, "To the Senate Committee on Human Rights and Fundamental Freedoms," 26 April 1950, *Diefenbaker Papers, 1940-1956*

human rights and constitutional guarantees, and after much debate, the National Council settled on a qualified endorsement for a Canadian bill of rights. It favoured a limited bill with an explicit statement that human rights were the “equal possession of every citizen without discrimination because of race, religion, language or sex.” Highlighted with particular instances of sexual discrimination, a prepared brief supported constitutional safeguards for traditional civil liberties, but oddly, balked at the inclusion of social and economic rights. Although it supported the goals of these rights, the NCWC took the conservative position that they were beyond the scope of a constitutional guarantee. Instead, the council advocated specific changes to legislation affecting women and the maintenance of a “vigilant public opinion.”⁸³ While it adopted a conservative view of rights and their protection, the National Council, along with other concerned women’s organizations, clearly placed the status of women in the middle of any consideration of a Canadian bill of rights.

While the NCWC and other groups worked to instill the issue of women’s rights in the bill of rights debate, Canada’s ethnic associations mirrored these efforts on the matter of racial and religious discrimination. Not surprisingly, at the head of these groups was the Canadian Jewish Congress. Canadian Jews had established an organized fight against religious discrimination since the first large arrivals of Jewish immigrants in the nineteenth

Series, Vol. 4, Microfilm Reel M-7415, 002691-002693 and *NCWC Yearbook, 1949*, 24-25.

⁸³ The National Council called for changes to the Income Tax Acts, the Succession Duty Act and the Devolution of Estates Act, and for more female appointments to federal boards and commissions, *Proceedings, 1950*, 53-56.

century.⁸⁴ With the rise of the Nazis, however, Canadian Jewish associations realized that their past responses to racial and religious discrimination were no longer adequate. In the 1930s new organizations, such as the JLCC and the CJC's Joint Public Relations Committees in several cities, emerged and devoted the majority of their efforts to combatting racism in general and anti-Semitism in particular.⁸⁵ The CJC spearheaded the lobbying efforts to abolish anti-Semitic signs, to pass fair employment practices acts, and to nullify restrictive covenants. With the emergence of the U.N., the CJC pressed the Canadian government to contribute to the organization's international human rights activities. The Congress also waged its own educational campaign with the publication of pamphlets and radio broadcasts on the evils of racism. In each of these efforts, the CJC frequently attempted to forge links with other groups and individuals concerned with racial and religious discrimination.⁸⁶

⁸⁴ On the efforts of Canada's Jewish community in the area of civil liberties see Herbert Sohn, "Human Rights Legislation in Ontario: A Study of Social Action" (Ph.D. diss., University of Toronto, 1976) and Yaacov Glickman, "Political Socialization and the Social Protest of Canadian Jewry: Some Historical and Contemporary Perspectives," in *Ethnicity, Power and Politics in Canada*, eds. Jorgen Dahlie and Tissa Fernando (Toronto: Methuen Publications, 1981), 123-150.

⁸⁵ In spring 1938, the Public Relations Committee of the CJC merged with the Anti-Defamation Committee of B'nai Brith to form the Joint Public Relations Committee, see *JCRC Papers*, Box 72, File "Pre-1943." The JLCC was an independent organization and in 1945-1947 frequently conflicted with the leadership of the CJC. Kaplansky believed the CJC to be jealous of his organization's successes with the labour congresses, interview with author, 8 November 1994, Ottawa, Ontario.

⁸⁶ JPRC, "Activity Report," n.d. [April 1949], *JCRC Papers*, Box 72, File "1949." Examples of the CJC's educational campaign included *Discrimination Costs You Money* (CJC Pamphlet, 1950) and "Must I Change My Name to Get a Job?" CBC Radio broadcast, 17 March 1949.

On the issue of a Canadian bill of rights, however, some members of the CJC voiced their doubts that a rights guarantee was necessary. M. H. Myerson, a member of the Montreal Joint Committee and of the Quebec Bar, prepared a report for the CJC in anticipation of the 1948 parliamentary committee. "The whole battle for a written Bill of Rights has been started in our country by the Prog-Cons. as a protest against rule by Order-in-Council...It is simply a non paying proposition," he argued. Instead, Myerson suggested that the Congress concentrate its lobbying efforts on the U.N.'s international bill of rights.⁸⁷ The Congress followed this advice, but as the agitation continued for a Canadian rights guarantee and with the appeal of the U.N.'s Universal Declaration, the CJC gradually altered its position. By 1950, the Jewish association supported the principle of a bill of rights entrenched in the BNA Act. However, like the JLCC and the national labour congresses, the CJC made it clear that this was simply one among numerous options in the fight to protect individual rights and to end racial discrimination. The Jewish organization also suggested the creation of a standing parliamentary committee on human rights, a civil rights section in the Department of Justice and the use of the power of disallowance to curb rights abuses in the provinces. As well, drawing heavily from the U.N.'s Universal Declaration, the Jewish association argued for the inclusion of social and economic rights in any Canadian bill of rights. Although a bill of rights was just one tool in the protection of freedom, the CJC envisaged a much more

⁸⁷ M. H. Myerson, "Congress Attitude Towards Bill of Rights Issue Before the Joint Committee of the Commons and Senate," n.d. *JCRC Papers*, Box 72, File "1948." The CJC eventually submitted a brief to the committee devoted to the U.N.'s activities, see *Proceedings*, 1948, 146.

extensive document then had previously been suggested.⁸⁸

At the same time other associations, representing Canadian Blacks and Japanese Canadians, lent their support for a bill of rights as part of their larger program to end racism in Canada. In southwestern Ontario the National Unity Association, headed by Hugh Burnette, called for positive legislation to curb the blatant racial discrimination in Dresden. This small Ontario town first made headlines in 1950 when voters rejected a proposal requiring local restaurants to serve Black customers. In a letter to Prime Minister St. Laurent, Burnette held that Canada had a duty incurred with its signature of the U.N. Charter to end this form of discrimination and suggested a bill of rights as one option.⁸⁹ Japanese Canadians shared this argument. Understandably, Japanese Canadians were keenly aware of the tenuous ground upon which civil liberties in Canada rested. Their most vocal advocate was George Tanaka, National Executive Secretary of the Japanese Canadian Citizens Association of Toronto. Tanaka was much sought after by other civil libertarians to lend his group's support to the lobbying effort to secure a bill of rights. In a speaking tour of the country in 1948, the association leader argued the case for a Canadian bill of rights. He had made the point in a meeting with Justice Minister Ilsley when he stated that "as a racial minority group" Japanese Canadians needed the

⁸⁸ *Senate Proceedings, 1950*, 69-74.

⁸⁹ On the Dresden Affair, as it became known, see A. Alan Borovoy, "The Fair Accommodation Practices Act: The 'Dresden Affair,'" *University of Toronto Faculty of Law Review* 14 (January 1956):13-23. See also, Burnette to Louis St. Laurent, 7 May 1951, RG 2, Vol. 2, File H-11-1.

protection of a national bill of rights.⁹⁰ Like organized labour, the NCWC and the Canadian Jewish Congress, Tanaka linked his support for a Canadian bill of rights to his organization's overarching goal to end racial discrimination.

The Government, the Senate and the Apex of the Bill of Rights Campaign

Between 1948 and 1952 then, the crusade to obtain an entrenched bill of rights in the Canadian constitution continued to attract followers. These demands persisted and even expanded despite the reasoned arguments by the federal government that a rights guarantee was unnecessary. Indeed, Ilsley's comment in the 1948 committee's final report that a "firm public opinion" in favour of a bill of rights did not exist only intensified the determination of many lobbyists.⁹¹ Civil libertarians such as Lower, How, Scott and Sandwell redoubled their efforts to promote the cause. While Lower wrote the first of his many letters to Stuart Garson, Glen How and the Jehovah's Witnesses began another petition-signing campaign which highlighted their treatment in Quebec and again called for a national bill of rights. With the support of the Toronto Association for Civil Liberties, they eventually gathered over six hundred thousand signatures, and on 9 February 1949

⁹⁰ George Tanaka to Himel, 27 July 1948, NAC, *Records of the Japanese Canadian Citizens Association (Toronto)* (hereafter *JCCA Papers*) MG 28 V7, Vol. 14, File 16, Microfilm C-12831. For efforts of other civil libertarians to gain the support of Tanaka and his association see B. K. Sandwell to Tanaka, 4 April 1950 and 23 April 1951, *JCCA Papers*, Vol. 13, File 18, Microfilm C-12830.

⁹¹ In a letter to solicit the support of George Tanaka, B. K. Sandwell noted that "[b]y making your organization's views known...not only will you be fostering public education in the field of fundamental human rights, but equally important you will be impressing upon those in government, the fact that such a firm public opinion does exist," Sandwell to Tanaka, 4 April 1950, *JCCA Papers*, Vol. 13, File 18, Microfilm C-12830.

Alistair Stewart presented the eleven-foot-high stack of names in the House of Commons.⁹²

For his part, F. R. Scott penned one of his most influential articles, “Dominion Jurisdiction over Human Rights and Fundamental Freedoms” in the *Canadian Bar Review* in May 1949. In it, Scott systematically countered the arguments made by Ilsley and Varcoe at the 1948 committee hearings that a bill of rights would be a “retrograde” step and was beyond federal jurisdiction in any case. His first point stressed that the BNA Act already contained the “beginnings of a bill of rights” with its guarantees of the French and English languages in Section 133, separate schools in Section 93 and of an annual session of Parliament in Section 20.⁹³ Hence, far from a break with Canadian constitutional tradition, any additional guarantees would simply be an extension of the existing system. Secondly, Scott argued that the Fathers of Confederation never intended “Property and Civil Rights” as contained in Section 92, to encompass all manner of human rights. Rather, “Civil Rights” concerned only the private law related to the ownership of property. The larger issues of civil liberties and human rights, as examples of public law, were thus part of the federal division of powers. Scott then listed the various areas in which Parliament could legislate for the protection of human rights and in conclusion noted that, “[t]here is no constitutional difficulty in Canada to a comprehensive and

⁹² *Debates*, 9 February 1949, 371. Kaplan erroneously states that Stewart submitted this petition in 1948.

⁹³ F. R. Scott, “Dominion Jurisdiction Over Human Rights and Fundamental Freedoms,” *Canadian Bar Review* 27 (May 1949):500. See also, “No Sovereign Parliament,” *Saturday Night* 65 (8 November 1949).

positive programme of action by the federal Parliament and government in defence of our fundamental freedoms. Indeed, the difficulty is not that there is too little ground for Dominion jurisdiction, but that there is so much.”⁹⁴

Buoyed by Scott’s spirited arguments and How’s new campaign, B. K. Sandwell and Irving Himel of the Association for Civil Liberties of Toronto intensified their efforts. As chairman of the Committee for a Bill of Rights, Sandwell maintained a direct pressure on the federal government throughout 1948-1949 with repeated requests for legislative action on human rights and for the reconstitution of the parliamentary committee. Yet, despite the much publicized Universal Declaration and the new efforts to draft the covenants, St. Laurent dismissed Sandwell’s requests and held firm that a bill of rights was an unwarranted invasion of provincial jurisdiction.⁹⁵ Nevertheless, the Toronto association continued to push the government on human rights throughout 1949-1951 with Irving Himel leading the charge. A Jewish labour lawyer from Toronto, by 1948 Himel had quickly become the ACL’s most aggressive member. For Himel, the key to success lay in the expansion of the movement. Throughout 1948-1952, he actively canvassed the support of like-minded organizations in an ACL-directed campaign to

⁹⁴ Scott, “Dominion Jurisdiction,” 530.

⁹⁵ Sandwell to St. Laurent, 17 December 1948 and Sandwell to St. Laurent, 8 March 1949, RG 2, Box 162, File H-11 (Vol. 1) 1948-1951; Sandwell to St. Laurent, 9 August 1949 and Gouin to St. Laurent, 6 September 1949, NAC, *Rt. Honourable Louis St. Laurent Papers*, MG 26 L, Vol. 86, File C-19-1. With Gouin’s recommendation and St. Laurent’s concurrence, cabinet formally rejected Sandwell’s request, “Cabinet Conclusions,” 22 September 1949, RG 2 A5a, Vol. 2644, No. 640, Microfilm Reel 2365.

obtain provincial human rights legislation in Ontario and a bill of rights federally.⁹⁶ As well, in late 1949 Himel revived the 1946 plans to create a national civil liberties organization modelled on the American Civil Liberties Union. Himel's goal was simply to extend the Toronto ACL's organization and maintain a permanent office and executive director. Although it garnered some support, his suggestion, like previous efforts, never developed beyond the planning stage.⁹⁷

Undoubtedly, one of the main reasons for this failure was neglect. Over the winter of 1949-1950, Himel and most other civil libertarians devoted the majority of their energies to both the fair practices campaign in Ontario and to two new initiatives from Ottawa: the 1950 Dominion-Provincial Conference and the 1950 Senate Committee on Human Rights and Fundamental Freedoms. During the spring 1949 federal election campaign, St. Laurent promised to convene a constitutional conference with the provinces to negotiate a new amending formula and to entrench language and educational guarantees. This, he remarked, would eliminate the "last legal vestiges of colonial status from the constitution of Canada." In September, the prime minister sent invitations to

⁹⁶ Himel spearheaded the drive to gain support from other organizations: "that's where I think we excelled...we had a formula which I developed and that was that we wanted [-] other groups to join with us to get legislation...for human rights," Irving Himel, interview with author, 4 May 1995, Toronto, Ontario. See also, Himel to Scott, 11 November 1949, *Scott Papers*, Vol. 9, File 10, Microfilm Reel H-1221.

⁹⁷ In 1949, the ACL was a strictly volunteer organization without a permanent office. The organization operated out of Himel's legal office and used his staff. Himel, interview with author, 4 May 1995, Toronto, Ontario. As a preliminary to a national civil liberties association, Himel asked various organizations to join the ACL in an attempt to expand both its financial base and its influence, see Himel to Tanaka, 15 December 1949 and 12 January 1950, *JCCA Papers*, Vol. 13, File 18, Microfilm Reel C-12830.

each of the premiers for a new dominion-provincial conference slated for 10 January 1950.⁹⁸ This decision opened a new door for the civil libertarians who demanded better rights protection. Since the government's stated reason for balking at the proposals for a bill of rights was the problem of constitutional jurisdiction, what better time to settle the matter than at a dominion-provincial conference designed to secure a new amending procedure? Even before the announcement of the conference, Sandwell suggested that proposals for a bill of rights be included in any amendment to the BNA Act. At the same time, Frank Scott, now political advisor to the Saskatchewan CCF government, mapped out a preliminary agenda in the fall which, not surprisingly, contained a discussion of an entrenched bill of rights.⁹⁹ The most influential call for the consideration of a constitutional rights guarantee, however, came from Senator Arthur Roebuck. On 3 November 1949, Roebuck tabled a draft bill of rights and challenged the St. Laurent government to discuss the matter at the upcoming conference in January. In his opinion,

⁹⁸ St. Laurent began his constitutional reforms in September with the Supreme Court Bill which abolished appeals to the Judicial Committee of the Privy Council. This was followed in October with a Parliamentary address to the King which requested the British Parliament to pass an amendment to the BNA Act enabling the federal Parliament of Canada to unilaterally amend the constitution in matters strictly within its jurisdiction. Creighton, *Forked Road*, 176-180; Pickersgill, *My Years With Louis St. Laurent*, 111; and, Richard Simeon and Ian Robinson, *State, Society, and the Development of Canadian Federalism* (Toronto: University of Toronto Press, 1990), 140-142. For the letters of invitation to the provinces see *Proceedings of the Constitutional Conference of Federal and Provincial Governments*, 10-12 January 1950 (Ottawa: King's Printer, 1950), 6-7.

⁹⁹ Sandwell to St. Laurent, 9 August 1949, *St. Laurent Papers*, Vol. 86, File C-19-1; "Suggested Agenda [Dominion-Provincial Conference]," n.d., and "Memorandum Re: Amendment to BNA Act," n.d., *Scott Papers*, Vol. 5, File 3, Microfilm Reel H-1215; and, Sandra Djwa, *The Politics of the Imagination: A Life of F. R. Scott* (Toronto: McClelland and Stewart, 1987), 264-267.

the argument “[t]hat a bill of rights in Canada is desirable, goes almost without saying.”¹⁰⁰

As the delicate preparations for the conference continued, the government could ill-afford a situation which might upset the constitutional applecart. The goal of the St. Laurent government was to secure an amending formula. This alone was a difficult task; it would be made worse by introducing the controversial issue of an entrenched bill of rights. To support this belief, Ottawa had the example of Maurice Duplessis who had made his views on human rights clear the previous fall at the annual meeting of the Canadian Bar Association. In a spirited defence of his Padlock Law, the Quebec Premier had stated unequivocally that civil rights were exclusively a matter of provincial concern. On another occasion, Duplessis had called bills of rights, “meaningless big words” which mirrored similar sentiments heard in Ottawa.¹⁰¹ It seemed that opposition to bills of rights made strange bedfellows.

Ottawa immediately sought to curtail the persistent demands for the inclusion of the issue at the January conference. The responsibility for explaining the government’s position fell to Stuart Garson. The justice minister announced that the question of human rights and fundamental freedoms would not be on the agenda of the first ministers conference. In direct reference to a bill of rights, Garson stated that “[w]e think we shall

¹⁰⁰ *Senate Debates*, 3 November 1949, 217. Roebuck agreed to withdraw the motion for a constitutional amendment in exchange for a promised committee of the senate on human rights in the next session, see *ibid.*, 9 December 1949, 467. For his proposed bill of rights amendment, see Appendix III.

¹⁰¹ *Proceedings of the Annual Convention of the Canadian Bar Association*, 1948, 48. For the CCL brief to Premier Duplessis (2 February 1950), see Joint Advisory Committee on Labour Relations, “Report of Activities on Improved Human Relations in the Labour Field,” January 1950, *JCRC Papers*, Box 72, File “1950.”

make more satisfactory progress in the achievement of our Constitutional reforms if we do not complicate matters by giving consideration to another matter of constitutional complexity.” He expressed his government’s concern for the protection of civil liberties; however, he then argued at length the reasons for his opposition to an entrenched bill of rights. In a rehashing of previous arguments of parliamentary sovereignty and constitutional jurisdiction, Garson asserted that the entire question was badly in need of “a little realism.”¹⁰²

Rebuffed yet again, civil libertarians watched the 1950 dominion-provincial conference from the sidelines. The conference delegates assembled on three separate occasions throughout the year in an attempt to reach an agreement on a domestic amending formula. The meetings ended in failure. The focus of the debate was the federal government’s constitutional reforms from the previous fall. For most of the premiers, these unilateral actions not only revealed Ottawa’s appetite for more power, they mocked the traditional consultation between both levels of government on the constitution. As Duplessis charged, “[n]ous considérons que ceci est absolument opposé au ‘fair play’ britannique et au fondement même du régime fédératif.” In the end, the 1950 Dominion-Provincial Conference revealed the “political limits of constitutional reform.”¹⁰³ This result dashed any lingering hopes among civil libertarians that a successful constitutional reform would be a first step on the road to a Canadian bill of rights. Only the

¹⁰² Stuart Garson, “Hon. S. C. Garson; prepared speech 2 November 1949,” *Lower Papers*, Box 46, C-27.

¹⁰³ Cited in Simeon and Robinson, *Development of Canadian Federalism*, 140-141; and, Creighton, *Forked Road*, 178-180.

Saskatchewan government of Tommy Douglas supported the idea of entrenched rights guarantees. This suggestion, prodded by Scott, drew little response, however.

With this route to a bill of rights effectively barred, civil libertarians focused their efforts on the promised senate committee on human rights. Senator Roebuck's draft bill of rights acted as a lightning rod for Canadian human rights advocates and there seemed good reason to be optimistic. Roebuck was not only a noted civil libertarian; he was a Liberal. He responded immediately to the failure of the dominion-provincial conference with a motion on 20 March 1950 to create the Senate Committee on Human Rights and Fundamental Freedoms. In his eloquent introduction to the motion, the senator stated: "[i]f we can make vivid in the minds of Canadian people that every individual...has rights which cannot and must not be violated by others, even though the others be all of us, we would have triumphed over our would-be oppressors...I am convinced that the good society is the just society. The essential of justice is knowledge of and respect for the rights of all mankind."¹⁰⁴

Unlike the previous efforts, the 1950 committee reviewed a specific draft bill of rights; moreover, it heard testimony from the various individuals and organizations which had advocated greater protection for civil liberties since the Second World War. Civil libertarians finally received an opportunity to directly challenge the federal government's position on bills of rights and to explain their views before Parliament. Together, Roebuck, Sandwell and Himel approached many influential individuals to testify at the

¹⁰⁴ *Senate Debates*, 20 March 1950, 98. Roebuck introduced this motion for a senate committee at the suggestion of Irving Himel, see *Proceedings*, 1950, 33.

committee hearings in an attempt to bolster the support for a Canadian bill of rights. In a form letter sent by Sandwell, the *Saturday Night* editor noted again Ilsley's comment about "firm public opinion" and stated bluntly that by "making your organization's views known to this Senate committee not only will you be fostering public education in the field of fundamental human rights, but equally important you will be impressing upon those in government, the fact that such a firm public opinion does exist, and that it is time we provided in Canada proper safeguards for the individual against their infringement." In keeping with Himel's belief that success depended upon numbers, then, the ACL naively sought to overwhelm the government with support for a bill of rights.¹⁰⁵

Between 25 April and 10 May, the sixteen member committee heard thirty-six witnesses over eight meetings. A broad spectrum of civil libertarians appeared before the body ranging from the stalwarts such as Scott, Sandwell and the communist M. H. Spaulding to the new human rights advocates represented by labour, women's groups and ethnic associations. On 21 June, Roebuck released the final report of the committee. In direct opposition to the 1948 committee report written by Ilsley, the Senate committee concluded that there was indeed a large number of Canadians devoted to greater protection of human rights. More importantly, on the question of rights guarantees, the committee recommended an entrenched bill of rights within the constitution. However, given the failure of the recent dominion-provincial conference, the report noted the

¹⁰⁵ Sandwell to Tanaka, 4 April 1950, *JCCA Papers*, Vol. 13, File 18, Microfilm Reel C-12830. Sandwell also made a plea in *Saturday Night* for those who supported a Canadian bill of rights to take part in the Senate committee's proceedings, "The Senate Committee," *Saturday Night* 65 (11 April 1950).

difficulty of achieving this goal. As an interim measure, then, Roebuck suggested instead a declaration of rights based largely on the U.N.'s Universal Declaration of Human Rights. This Canadian declaration would be enacted by Parliament and "strictly limited to its own legislative jurisdiction."¹⁰⁶ In a verbose flourish, Roebuck's report pronounced that "this is the time to nail the emblems of law, liberty and human rights to our mast-head...Let the Canadian Ship of State embark on her glorious voyage into the future with the rule of law at the helm, liberty at the mast-head, and beauty, culture and happiness on the prow."¹⁰⁷

The release of the Senate committee's final report, this "historic document" as Sandwell referred to it, represented the most significant victory for civil libertarians since the repeal of Section 98 in 1936.¹⁰⁸ The report refuted J. L. Ilsley's contention that Canadians had not formed strong opinions on the issue and recognized the efforts of many individuals to secure greater protection for human rights over the previous five years. More importantly, while it endorsed a Canadian bill of rights, the Senate committee recognized Ottawa's arguments concerning constitutional jurisdiction and countered with a new proposal: a federal declaration of rights. Inspired by this success, Himel and Sandwell sought to press this victory further with a direct appeal to the St. Laurent government to implement the recommendations of the Senate committee. Over the winter of 1950-1951 they gathered support for a mass delegation to meet with the prime minister

¹⁰⁶ "Final Report," 21 June 1950, *Proceedings, 1950*, 299-307. For a list of witnesses who appeared before the committee, see *ibid.*, 301-302.

¹⁰⁷ "Final Report," 21 June 1950, *Proceedings, 1950*, 304-305.

¹⁰⁸ "Bill of Rights Report," *Saturday Night* 65 (18 July 1950).

and to present him with a brief demanding a Canadian bill of rights. Adding momentum to these preparations, Himel continued to press for a national civil liberties organization.¹⁰⁹

On 8 May 1951, over 300 activists representing organized labour, women's groups, various churches, ethnic associations, civil liberties groups and others met with St. Laurent, Garson and Lester Pearson in the Railway Committee Room of the House of Commons. Led by Sandwell, the delegation called on the government to recognize the wishes of Canadians and implement the Senate committee's report: "[w]hat is required in Canada is one grand and comprehensive affirmation, or reaffirmation, of human rights, equality before the law and of security, as the philosophical foundation of our nationhood, that will assure continually to each Canadian that he is born free and equal in rights and dignity with all other Canadians."¹¹⁰

Written largely by Scott, Himel and Sandwell, the brief presented to the prime minister summarized the arguments in favour of a national bill of rights made not only in the Senate committee's report, but indeed those made by various groups and individuals during the previous six years. As Garson had forewarned of the possibility in his 1950

¹⁰⁹ Himel's original plan to convince an influential M.P. to introduce a statutory declaration of rights in the Commons came to naught. After an unsuccessful approach to F. R. Scott, the idea to draft such a bill languished, Himel to Scott, 8 January 1951 and Scott to Himel, 23 February 1951, *Scott Papers*, Vol. 9, File 11, Microfilm Reel H-1221. In this same correspondence, Himel noted that both the Ottawa and Vancouver Civil Liberties Associations supported his idea of a national organization, but Scott replied that he did not have the time to become involved, *ibid.*

¹¹⁰ "TO: The Rt. Hon. Louis St. Laurent and Members of the Government of Canada," 8 May 1951, *Scott Papers*, Vol. 9, File 11, Microfilm Reel H-1221. For press comment see, "Human Rights and Freedoms," *Canadian Unionist* 25 (June 1951):163-164.

memo on the U.N.'s human rights program, the brief called on Ottawa to "adopt" the Universal Declaration as an "interim measure." Overall, the delegation of 8 May was an impassioned plea from a mass delegation representing millions of individual Canadians.¹¹¹ St. Laurent's response was remarkably swift. On 21 May the prime minister announced that his government would not implement either the suggestion for a constitutional bill of rights or a declaration. According to St. Laurent, pursuing such a course would only "retard" the more important search for an amending procedure which his government considered to be of higher priority. With this statement, the prime minister apparently shut the door completely to the demands for a constitutional rights guarantee.¹¹²

Although the immediate reaction of St. Laurent and his ministers was negative, the 1950 Senate report and the 1951 ACL-led delegation forced a serious reconsideration of the government's position. As early as the fall of 1949, influential members of the Liberal government had begun to question the desirability of maintaining its hard stance on a bill of rights in light of the growing public demands. One example of this transformation was Lionel Gouin, a Liberal Senator from Quebec. As co-chair of the 1947 and 1948 parliamentary committees he had staunchly opposed the suggestions for a bill of rights and counselled St. Laurent throughout 1949 to refuse Sandwell's requests for the reconstitution of the committee on human rights. However, with Roebuck's introduction of a draft bill of rights, Gouin changed his position. In a letter to St. Laurent on 30

¹¹¹ On the organization of the delegation see Irving Himel, interview with author, 4 May 1995, Toronto, Ontario.

¹¹² *Debates*, 21 May 1951, 3209. See also, "Cabinet Conclusions," 14 May 1951, RG 2, A5a, Vol. 2648, No. 867, Microfilm Reel 2365.

November 1949, he argued that “il est évident que les ‘défenseurs’ des droits de l’homme reviendront à la charge en 1950. En prévision de cette nouvelle offensive, je me suis prononcé au Sénat en faveur d’une simple ‘Déclaration des Droits de l’homme,’ limitée aux matières purement fédérales.”¹¹³ Although not a full endorsement of a bill of rights, this represented a noticeable softening in attitude. This change in outlook was also evident in the Department of Justice. In early 1950 at the request of Garson, Deputy Minister F. P. Varcoe began a new study of the most recent proposals for a Canadian bill of rights.¹¹⁴

Between 1950 and 1952 this study concentrated on Varcoe’s draft civil liberties bill of 1947-1948. Designed as an amendment to the criminal code, this bill had been largely forgotten since the 1948 parliamentary committee hearings. With the Senate committee’s final report and the pressure from lobbying groups, this act, which E. A. Driedger had called “merely...a declaration,” provided the government with a possible option to assuage the increasing demands for legislative action. Under Garson and Varcoe’s guidance, the department extensively revised the draft’s language and added a lengthy preamble. As well, it added a new section which outlawed discrimination on the basis of race, creed, religion or colour.¹¹⁵ Clearly, this was evidence that the Justice

¹¹³ Gouin to St. Laurent, 30 November 1949, *St. Laurent Papers*, Vol. 86, File C-19-1.

¹¹⁴ Garson to Varcoe, 23 February 1950, RG 13, Vol. 2844, File 157988. See Appendix III.

¹¹⁵ For the preamble, see D. W. Mundell to Varcoe, 19 September 1952, RG 13, Vol. 2844, File 157988. For the revised edition of the act see Appendix IV.

Department had heard the vocal demands from organized labour and the country's ethnic and women's associations. By the fall of 1952, the government hoped that this draft piece of legislation, entitled "An Act for the Protection of Civil Rights," would not only satisfy the requirements of Roebuck's "interim measure" but also the myriad of human rights advocates.

Despite this effort to revamp the four year old draft, however, Varcoe's 1952 civil liberties bill was a disappointment. While it meandered through the drafting process in 1951-1952, the demands for a bill of rights had become less acute since much of the fire among civil libertarians dissipated after the 1950 Senate committee and the 1951 march on Parliament Hill. Therefore, by the end of 1952, the introduction of this half-hearted legislation threatened to breathe new vigour into the lobbying efforts of civil libertarians. As R. G. Robertson noted in a memorandum on the draft bill, "[m]y own impression had been that pressure on the civil rights front had diminished very considerably...I should think that legislation along the lines suggested would revive all the old pressure and leave the government with no adequate reason for not giving way to them."¹¹⁶ More importantly, however, under Garson's urging the Liberal government refused to embrace the proposed civil liberties bill. From the beginning, the justice department designed this bill as a political shield against the insistent demands for a bill of rights. Garson never put aside his belief that the best method to ensure the rights of Canadians was through the

¹¹⁶ Robertson also noted that arguments existed in "favour of the government's abandoning its old line on civil rights. I think the case would, however, have to be on the basis of doing a full-scale effort that could reasonably be presented as a statement of the rights we believe in. The suggested legislation certainly could not qualify in that respect," Robertson to Pickersgill, 2 October 1952, *St. Laurent Papers*, Vol. 86, File C-19-1-A.

supremacy of Parliament. In a letter to the prime minister, J. W. Pickersgill related Garson's attitude toward the draft bill: "he is completely ready to drop the whole thing if you or his Colleagues generally think the balance of advantage is against any kind of action. He emphasized, three or four times in our conversation, that, in his view, the paramount consideration was simply political advantage, and that it was certainly no pet project of his."¹¹⁷ Indeed, with no support from the minister and with public demand receding, the bill returned to the shelf permanently.

Of course civil libertarians knew nothing of these developments in the justice building on Wellington Street. For them, their attempts in 1951 and 1952 to convince the government of the necessity of a bill of rights ended in failure just as all previous efforts had since 1947. Almost as an epitaph to these efforts, John Diefenbaker, who had played a relatively minor role in the human rights discussion after 1948, repeated his belief that a bill of rights would never be passed "as long as the present Government is in power."¹¹⁸ Indeed, this was the case. From 1952 until the demise of the St. Laurent government in 1957, the demands for a Canadian bill of rights never again achieved the pitch they had

¹¹⁷ Pickersgill to St. Laurent, 7 October 1952, *St. Laurent Papers*, Vol. 86, File C-19-1-A.

¹¹⁸ "P. C. Party and Bill of Rights," *Saturday Night* 66 (10 July 1951). Diefenbaker had considered leaving politics after his failed bid for the Tory leadership in 1948 and as a result had retreated to the background of the bill of rights movement, see John Diefenbaker, *One Canada: Memoirs of the Right Honourable John G. Diefenbaker*, vol. 1, *The Crusading Years, 1895-1956* (Toronto: MacMillan Publishers, 1975), 271 and Denis Smith, *Rogue Tory: The Life and Legend of John G. Diefenbaker* (Toronto: MacFarlane, Walter and Ross Publishers, 1995), 189-191.

between 1947-1951, nor did they receive the same consideration. Although the national labour congresses diligently included a reference to a constitutional rights guarantee in each of their yearly memoranda to government and Diefenbaker continued his regular motions in Parliament, the issue garnered little attention among either politicians or the media. Between 1952 and 1957 the bill of rights question, which had dogged the Liberal government since 1946, receded gradually from the political stage.

Ironically, this withering of the bill of rights movement occurred immediately after what was arguably its greatest triumph: the 8 May 1951 delegation to Ottawa. This meeting with the prime minister was the high water mark in Himel's grand scheme. For the ACL secretary the expansion of the lobbying effort to include as many organizations as possible would be the key to its success. However, therein lay one of the movement's main weaknesses. While it spoke with one voice on 8 May 1951, during the remainder of the year, the various individuals and their organizations had different priorities. The traditional civil libertarians, such as Scott, Lower and Diefenbaker, continued to view bills of rights in terms of Section 98, the DOCR and the Gouzenko Affair, while labour, women's organizations and ethnic associations focused on racial, sexual and religious discrimination. The National Unity Association fought racism in Dresden, Ontario; the TLC and CCL lobbied for fair practices acts; and the Jehovah's Witnesses continued their fight against Duplessis' hated Padlock Law. Therefore, when Ottawa proved intransigent on the issue of a national bill of rights, these organizations simply shifted their emphasis to other goals. As the 1950s progressed, human rights advocates would find new outlets for their energy, the Supreme Court would hand down its famous civil liberties decisions and

Ontario would forge its human rights legislation. Consequently, the suggestions for a national bill of rights diminished. For its part the Liberal government relaxed in vindication. The common law had upheld the freedom of the individual and the provinces had responded on the legislative front. Not until the election of John G. Diefenbaker in 1957 would the issue re-emerge with the same vigour.

Chapter Five

“On the Side of the Angels:” Fair Practices, Jehovah’s Witnesses and Bills of Rights 1952-1958

In 1952, after yet another refusal to enact a Canadian bill of rights by the St. Laurent government, the country’s various civil libertarians and human rights advocates retreated and focused their energies elsewhere. The demands for federal and provincial fair practices acts and the court battles between Quebec and the Jehovah’s Witnesses monopolized the time of activists and captured the country’s newspaper headlines. Other than a brief mention in the Canadian labour congresses’ annual memoranda to government and the odd article in the diehard *Winnipeg Free Press*, the suggestion that Canada needed a bill of rights all but disappeared from the national stage.¹ However, just a few years later, the movement regained its momentum. In 1956-1957 an unexpected sequence of events converged to make John G. Diefenbaker, one of the most outspoken advocates of a Canadian bill of rights, prime minister of Canada, and thus, the issue returned to the national agenda overnight. While few knew what to expect from the first Conservative government in twenty-two years, Diefenbaker’s frequent and impassioned pleas for greater protection for civil liberties during his seventeen years as an opposition member gave those who had lobbied for a national bill of rights good reason to be confident.

¹ See “The Congress Memorandum,” *The Canadian Unionist* 29 (December 1955) and “Congress Presents Brief to Government,” *The Trades and Labor Congress Journal* 33 (1954). See also “Protecting Our Birthright: Disallowance or Bill of Rights?” *Winnipeg Free Press* Pamphlet, No. 51 (May 1954).

Expectations of a more active government policy on human rights, both at home and at the United Nations, abounded in the heady days following Diefenbaker's 1957 election victory.

The 1950s and Canadian Human Rights: Fair Practices and Jehovah's Witnesses

True to Diefenbaker's early prediction in 1947, the Liberal government made clear on numerous occasions in the 1950s that it would not pass a rights guarantee during its tenure. Three parliamentary committees, petitions with hundreds of thousands of signatures and numerous public arguments in favour of a national bill of rights failed to dislodge Prime Minister Louis St. Laurent or his ministers from their position. In fact, after 1952, the federal government, which had always entertained the demands for better rights protection, showed little patience with the continued calls for a rights guarantee. This was best demonstrated during the February 1955 Commons debate on Diefenbaker's regular motion for a bill of rights. When the Tory gadfly presented a brief list of rights along with a request for a reference to the Supreme Court to determine constitutional jurisdiction over civil liberties, Stuart Garson repeated his contention that Canadians' rights were already in safe hands and argued that a bill of rights was a retrograde step. Moreover, the justice minister lashed out against those who advocated a national bill of rights. In an outburst which betrayed his impatience with the entire debate, he charged that "[t]hey [bill of rights advocates] seem to have reached the conclusion that a bill of rights is so obviously a good thing that those who in the slightest degree question its efficacy, or even concern themselves as to the practical methods by which it may be

brought about, are hardly on the side of the angels.”² Obviously, the Liberal government had grown weary of repeating its position on the question.

Indeed, by 1957 most Canadians had come to agree with the St. Laurent government’s viewpoint. According to a 1957 Gallup poll, 63 per cent of Canadians felt that their rights were fully protected compared to only 35 per cent just ten years earlier. Only 19 per cent believed there to be any cause for concern. By this point, the advocates of a national bill of rights, who had gathered converts so quickly in 1946-1947, found the audience for their message quickly shrinking. A variety of factors contributed to this decline in interest. According to the survey’s authors, the fear of international communism had eased considerably which resulted in this lessening of concern for civil liberties.³ However, the stumbling of the bill of rights movement was probably due more to the successes of various individuals and groups to put human rights in Canada on a steadier footing than to the Cold War. By the end of the 1950s, new provincial programs developed to eliminate racial, religious and sexual discrimination through the enactment of fair practices legislation and the landmark decisions on human rights of the Supreme Court vindicated the federal government’s argument that progress could be achieved within the existing system.

² *Debates of the House of Commons* (hereafter *Debates*), 7 February 1955, 905. For Diefenbaker’s bill of rights motion, see *ibid.*, 894-895.

³ Canadian Institute of Public Opinion Gallup Poll, 2 February 1957, Rt. Honourable John G. Diefenbaker Centre, *Rt. Hon. John G. Diefenbaker Papers*, Leader of the Opposition Series, Vol. 22, File 413.1, Microfilm Reel M-5557, 15380-15381. In the 1947 poll, 43% of Canadians felt their civil liberties at risk, of whom a quarter cited international communism as the primary threat.

In the 1950s Canada saw a flowering of provincial and federal legislation designed to end racial, religious and sexual discrimination. The first attempts to curtail discrimination through fair practices legislation began in the United States in the 1940s. Human rights advocates in Canada, most notably organized labour, quickly seized upon these efforts as models for their demands at home. Campaigns began in the late 1940s for similar legislation, the majority of which centred on Ontario's Conservative government.⁴ Between 1944 and 1958 the governments of George Drew and Leslie Frost passed six pieces of legislation designed to curb racial, religious and sexual discrimination. These included the Fair Employment Practices Act, 1951 which prohibited hiring practices based upon race, ethnicity, sex or religion and the Conveyancing and Law of Property Amendment Act, 1950, which banned the well-known restrictive covenants. Ontario also became the first jurisdiction in Canada to enact equal pay legislation with its Female Employees Fair Remuneration Act in 1951.⁵ As with civil liberties in the 1930s and 1940s, these efforts by the Ontario government were driven largely by public demands orchestrated by various lobbying efforts. The Association for Civil Liberties, organized

⁴ For a discussion of anti-discrimination measures and fair practice legislation in Ontario see John C. Bagnall, "The Ontario Conservatives and the Development of Anti-Discrimination Policy: 1944-1962" (Ph.D. diss., Queen's University, 1984); Herbert Sohn, "Human Rights Legislation in Ontario: A Study of Social Action" (Ph.D. diss., University of Toronto, 1976); Tom Eberlee, "Ontario's Program for Human Rights," *Canadian Labour* 7 (January 1962):8-10; Daniel Hill and E. Marshall Pollock, "Human Rights Legislation in Ontario," *Race* 9 (1967):193-203; and, D. A. Schmeiser, *Civil Liberties in Canada* (Oxford: Oxford University Press, 1964).

⁵ On the limitations of this legislation, see Shirley Tillotson, "Human Rights Law as Prism: Women's Organizations, Unions, and Ontario's Female Employees Fair Remuneration Act, 1951," *Canadian Historical Review* 72 (December 1991):532-557.

labour, women's groups and the Canadian Jewish Congress prodded the Ontario government continually throughout this period to pass more legislation. For example, on 24 January 1950 Irving Himel led a large delegation to Premier Frost's office to request the first of the province's fair practices acts.⁶ Such measures meant that by the mid-1950s Ontario had the most far-ranging human rights program in the country, either provincial or federal, and soon became the model for the other provinces. Following Ontario's lead, fair employment practices acts were passed by the federal government (1953), Manitoba (1953), Nova Scotia (1955), New Brunswick (1956), British Columbia (1956) and Saskatchewan (1956). Fair accommodation practices acts also were passed in Saskatchewan (1956), New Brunswick (1959) and Nova Scotia (1959).⁷

Despite the apparent success of human rights advocates in convincing Canada's most populous province to act against unfair discrimination, many were disappointed with the enforcement of these various pieces of legislation.⁸ Critics of the acts questioned the labour minister's predominant role in settling disputes and claimed that it would lead to an

⁶ "A Brief to the Premier of Ontario," 24 January 1950, Ontario Jewish Archives, MG 8/S, *Records of the Joint Community Relations Committee* (hereafter *JCRC Papers*), Box 72, File "1950;" *Globe and Mail*, 25 January 1950; and Irving Himel, interview with author, 4 May 1995, Toronto, Ontario.

⁷ See Walter Tarnopolsky, *The Canadian Bill of Rights*, 2nd rev. ed. (Toronto: McClelland and Stewart Ltd., 1975), 67-71. See also James Leavy, "The Structure of the Law of Human Rights," in *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms*, eds. R. St.J. Macdonald and John P. Humphrey (Toronto: Butterworths and Co. Ltd., 1979), 53-75 and Ian A. Hunter, "The Origin, Development and Interpretation of Human Rights Legislation," in *Practice of Freedom*, 77-109.

⁸ For a more detailed explanation of the Department of Labour's grievances practice see Charles Daley (minister of labour), *Legislature of Ontario Debates*, 22 March 1956.

uneven enforcement of the fair practices acts. While Frost's government originally dismissed these complaints, the 1954 Dresden Affair soon forced a serious reconsideration. Dresden, the terminus of the famed Underground Railroad for runaway slaves from the American South, first grabbed headlines in 1950. In a municipal referendum, the small town voted against a proposed by-law to force shopkeepers to serve all customers regardless of race or ethnicity. This blatant example of discrimination drew criticism from across the country and even garnered comment from Prime Minister St. Laurent in the House of Commons.⁹ Four years later the town once again drew national attention and subsequent condemnation. Within weeks of the enactment of Ontario's Fair Accommodation Practices Act in 1954, two Dresden restaurant owners challenged the new law by refusing to serve Black customers. After six weeks of hearings by a one-member commission, Charles Daley, the labour minister, announced that no prosecutions would take place and that "discrimination in Ontario is at a minimum...[and that the] good sense and judgement of the people of Ontario can be relied upon to curb further discriminatory practices."¹⁰

This pronouncement outraged human rights advocates. On 29 October, the Joint Labour Committee for Human Rights of the Toronto and Lakeshore District Council

⁹ See *Saturday Night* 65 (21 February 1950):6 and *Globe and Mail*, 18 September 1954.

¹⁰ Quoted in the *Toronto Telegram*, 20 October 1954. The one-member commission under Judge William Schwenger of Hamilton was the first appointed by Daley under any of the fair practices acts. Between 1951 and 1954, the minister appointed neither commissions nor instituted any prosecutions. See *Annual Report of the Department of Labour*, 1952-1954, Nos. 34-36 (Toronto: Queen's Printer, 1952-1954).

challenged the labour minister's assertion that "good sense" would prevail. To test the minister's contention, they sent two Canadian Blacks and a Chinese Canadian to one of the offending Dresden restaurants. When the restaurant owner refused service to the three customers the committee released this fact to the press. This development forced the government's hand and charges were finally brought against the two restaurant owners.¹¹ The controversy continued, however. Although a magistrate found both restaurant owners in violation of the act, upon appeal to the county court the convictions were overturned. Shocked, Premier Frost called the ruling "faulty judging" and "ridiculous," and although this decision too was eventually overturned by a higher court, the value of the Conservative government's human rights program fell into serious doubt.¹²

Despite this apparent failure of Ontario's human rights agenda, provincial lobbyists doggedly pursued improvements to the legislation and called for a commission to administer the fair practices acts. However, none appear to have suggested that a national bill of rights was the best method to protect Canadian Blacks from discrimination. Nor did civil libertarians seriously pressure Frost as to his position on a possible constitutional

¹¹ At first, Daley held to his original decision not to prosecute and angrily blamed the entire affair on "communist" troublemakers from Toronto. However, Premier Frost later announced that the government would indeed bring charges against both restaurant owners, see the *Toronto Telegram*, 30 October 1954 and 1 November 1954.

¹² Frost's comments quoted in *Globe and Mail*, 16 September 1955. In his judgement, Judge Henry Grosch held that the customers were not "denied" service by one restaurant owner, there was only a "postponement." In the other appeal, he ruled that since a waitress refused to serve the three, the owner of the establishment was innocent of wrongdoing, see *R. v. MacKay* (1955), 113 C.C.C. 56 and *R. v. Emerson* (1955), 113 C.C.C. 69. For a discussion of the case see A. Alan Borovoy, "The Fair Accommodation Practices Act: The 'Dresden Affair,'" *University of Toronto Faculty of Law Review* 14 (January 1956):13-23.

amendment to guarantee individual rights. Ontario's fair practices legislation, like that of the federal government, remained in a separate compartment, undisturbed by the failure of the bill of rights movement. Indeed, like running water, the human rights advocates chose the path of least resistance in their efforts. As Premier Frost proved receptive in the 1950s, many groups and individuals devoted themselves to the provincial agenda, at the expense of a national bill of rights.

In Quebec, civil libertarians fought a different kind of battle with their provincial government. In the 1950s the treatment of Jehovah's Witnesses at the hands of Maurice Duplessis' Union Nationale produced the first definitive decisions by the Canadian court system on the matter of civil liberties.¹³ Since the 1940s, Quebec's Jehovah's Witnesses had endured numerous confrontations with the Quebec government because of the group's aggressive proselytizing efforts. The Witnesses' religion required spreading the word of Jehovah, which in Quebec included vicious attacks on the Roman Catholic Church. In response, the government attempted to stifle the group's activities through a host of measures including the controversial Padlock Law. Under the guidance of lawyers such as Glen How and McGill's F. R. Scott, the Witnesses fought back through the courts in defence of their religious freedom and right to free speech. By the 1950s, several of these cases finally had reached the Supreme Court. The rulings in these cases, *Saumur*

¹³ On the Jehovah's Witnesses in Canada see M. James Penton, *Jehovah's Witnesses in Canada: Champions of Freedom of Speech and Worship* (Toronto: MacMillan Publishers, 1976); William Kaplan, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto: University of Toronto Press, 1989); and, Sandra Djwa, *The Politics of the Imagination: A Life of F. R. Scott* (McClelland and Stewart Publishers, 1987), 297-317.

v. City of Quebec and Attorney-General of Quebec, Switzman v. Elbling and Roncarelli v. Duplessis, formed the most important decisions on civil liberties in Canada by the Supreme Court since the *Alberta Press Law Case* in 1938.¹⁴

In the *Saumur* case, the Jehovah's Witnesses challenged the conviction of a local business operator under a Quebec City by-law which outlawed the distribution of pamphlets and other reading materials without the permission of the Chief of Police. Laurier *Saumur* claimed that the by-law was an unwarranted interference with his right to religious freedom since spreading the word of Jehovah was an intrinsic part of his faith. In 1953, the Supreme Court decided five to four in favour of *Saumur* and his conviction was overturned. In rendering their judgements, four of the five supreme justices who held in *Saumur's* favour argued that limitations upon the freedom of religious expression were beyond the jurisdiction of the provinces. However, three of the dissenting justices, led by Robert Taschereau, stated that the freedom of religion was a "civil right" according to the BNA Act and thus was properly under provincial power to regulate. The remaining two justices were less clear in their opinion as to jurisdiction.¹⁵ As a result, while this ruling added new protection to religious freedom, it did little to determine which level of government had jurisdiction over civil liberties. On this point the justices varied widely in opinion leading legal scholar Bora Laskin to conclude that the "*Saumur* case makes it

¹⁴ *Saumur v. City of Quebec and Attorney-General of Quebec*, [1953] S.C.R. 299; *Switzman v. Elbling*, [1957] S.C.R. 285; and, *Roncarelli v. Duplessis*, [1959] S.C.R. 121.

¹⁵ *Saumur v. Quebec and Attorney-General of Quebec*, [1953] S.C.R. 299. For commentary see Peter H. Russell, ed., *Leading Constitutional Decisions*, 4th ed. (Ottawa: Carleton University Press, 1987), 318-320.

impossible to give a definite answer to the question [of constitutional jurisdiction].”¹⁶

In *Switzman v. Elbling* the Supreme Court received its first opportunity to deal directly with Duplessis’ notorious Padlock Law. In this case, police had padlocked John Switzman’s apartment in 1948. The following year his landlady, Freda Elbling, sued for lost rent and deterioration of property. In his defence, Switzman’s lawyers, who included F. R. Scott and two of his former students, challenged the constitutionality of the Padlock Law itself on the grounds that it was *ultra vires* of provincial jurisdiction. After two unsuccessful bids in the Quebec Superior Court and the Quebec Court of Appeal, the case finally went before the Supreme Court in November 1956. In a passionate statement before the court, Scott argued that the Padlock Law endangered the rights of freedom speech, of the press and of assembly in Quebec. In effect, he said, the law was a *lettre de cachet* turned inside out; instead of being locked up, the accused was locked out, without a means for appeal.¹⁷ In their decision, handed down in March 1957, eight justices agreed with Scott’s argument and the Padlock Act was ruled *ultra vires*. Five of the majority eight justices held that the Padlock Act was in fact criminal law and hence beyond the powers of the province. Only three justices found the act *ultra vires* because of its inherent infringement of traditional civil liberties.¹⁸ Justice Ivan Rand held that by virtue

¹⁶ Bora Laskin, “Our Civil Liberties: The Rôle of the Supreme Court,” *Queen’s Quarterly* 61 (Winter 1954-1955):471.

¹⁷ Djwa, *Politics of the Imagination*, 300; and *The Montreal Star*, 10 November 1956.

¹⁸ *Switzman v. Elbling and Attorney-General of Quebec*, [1957] S.C.R. 285. For comment see Russell, *Leading Constitutional Decisions*, 343-344.

of the preamble to the BNA Act the parliamentary system depended upon the free circulation of ideas: “Liberty in this [free expression] is little less vital to man’s mind and spirit than breathing is to his physical existence.”¹⁹ Rand’s opinion was just one of three, however. Here again, the issue of constitutional jurisdiction over civil liberties remained cloudy.

While both the *Saumur* and *Switzman* decisions attracted attention for their effect on civil liberties, the case of *Roncarelli v. Duplessis* captivated the entire country. During the 1958 trial, the premier gave testimony in defence of his decision to withdraw the liquor license from Frank Roncarelli’s Montreal restaurant in December 1946. Duplessis had permanently suspended the license in an attempt to punish the Jehovah’s Witness who had repeatedly provided bail to other Witnesses who ran afoul of the Quebec police. In response, Roncarelli retained Scott and brought a suit for damages directly against the premier, the government official ultimately responsible for the decision to withdraw the license. After twelve years and numerous court appearances, the Supreme Court decided six to three in favour of Roncarelli’s appeal. The justices held that Duplessis had exceeded his authority and had flaunted the rule of law.²⁰ This decision seemed to vindicate A. V. Dicey’s argument that the rights of the individual rested safely in part on the rule of law, which guaranteed “the supremacy of regular law as opposed to the influence of arbitrary power, excluding the existence of arbitrariness, prerogative, or even

¹⁹ *Switzman v. Elbling and Attorney-General of Quebec*, [1957] S.C.R. 285.

²⁰ *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at 141.

of wide discretionary authority on the part of the government.”²¹

A number of conclusions can be drawn from the Supreme Court decisions of the 1950s on the status of human rights in Canada. For some, these cases vindicated the arguments made since the 1940s that the British common law system with its rule of law best protected the rights and freedoms of Canadians. Despite the remaining uncertainty in the jurisdictional dispute over civil liberties, the court system had safeguarded the religious freedom of Jehovah’s Witnesses, a decidedly unpopular group.²² Because of the *Switzman* decision, the Padlock Law could no longer be used as a club to silence unpopular expression. For others, these decisions were proof that a bill of rights was necessary. First, Justice Ivan Rand’s judgements gave credence to the arguments of A. R. M. Lower and F. R. Scott that the BNA Act already contained an implied bill of rights. Therefore, an explicit constitutional rights guarantee simply would not be a deviation from the Canadian system of protecting human rights but rather another step in its development. More importantly, because of the diversity of the Supreme Court’s opinions, the civil liberties cases of the 1950s did not solve the issue of jurisdiction. This led some to argue that only through a bill of rights by constitutional amendment could the problem finally be resolved.²³ In the end, the famed 1950s decisions by the Supreme Court raised more questions than they answered concerning the suggestions for a bill of rights.

²¹ A. V. Dicey, *Introduction to the Study of the Constitution*, 10th ed., ed. W. C. S. Wade (London: MacMillan Publishers, 1961), 202-203.

²² See *The Globe Magazine*, (21 February 1959):5, 26.

²³ See Andy Brewin, Case and Comment, *Canadian Bar Review* 35 (May 1957):554-558 and Russell, *Leading Constitutional Decisions*, 344.

“Less Legalistic:” Canada Softens Its Approach at the United Nations

While the Supreme Court attempted to define civil liberties and their protection in Canada, the United Nations pressed forward with its international human rights program. These activities continued to shape the efforts within Canada to design measures to curb racial, religious and sexual discrimination which, in turn, forced Ottawa to tread softly in New York. The 1950s witnessed a proliferation of rights conventions and agreements orchestrated by the U.N.’s various agencies and bodies. Between 1948 and 1960, while it continued to refine the covenants on human rights, the U.N. drafted numerous conventions and treaties on topics ranging from genocide to the rights of children. After 1952 the federal government groped for a response to the proliferation of U.N. human rights instruments. Yet again, the government strategy aimed to avoid entangling Canada in the new treaties while not giving the appearance that Canada opposed the better recognition and protection of human rights.

During the 1950s the situation at the United Nations had changed markedly. The organization had become a surrogate battlefield for the Cold War, and cooperation between the West and the Soviet Bloc had deteriorated. The Cold War created ideological arguments over the meaning and determination of which rights deserved entrenchment into the organization’s many conventions and treaties. As well, a steady stream of former colonies joined the U.N. as newly independent states, and these new members demanded greater recognition of social and economic rights and of collective rights to such things as self-determination and control of natural resources. Each of these developments caused alarm among the Western members. Both the United States and

Britain revealed their concerns that the direction of the U.N.'s human rights agenda had been hi-jacked from its original destination to enshrine traditional political rights. As a result, the policies of Canada's two most important allies moved closer to that followed by Ottawa. Although not free from criticism, by either international observers or its own diplomats, the federal government received some much needed room to manoeuvre with the new caution shown by the U.S. and Britain.

Throughout 1952-1953 the Commission on Human Rights worked on the draft covenants in hopes of presenting them to the 1953 General Assembly for ratification. Without a seat on the commission, Canada sat on the margins of the discussion. When the 1953 session began, however, the covenants were still incomplete. Nevertheless, a number of related issues dominated the debates. Most important for Canada was the question of the proposed federal state clause. This type of clause recognized the jurisdictional limitations which national governments of federal states faced. As well, it allowed signing governments of federal states to implement only those parts of an agreement which fell within their sphere of power. Canada had made clear in its 1951 statement that without such a clause, the government would be unable to ratify either of the covenants. By 1953 little progress had been made. At the commission's 1952 session, the U.S., India and Australia had jointly proposed a clause for inclusion in the covenants. In an attempt to embarrass the West, the Soviets countered at the following session with a clause that stated: "The provisions of the Covenant shall extend to all parts of federal

States without any limitations or exceptions.”²⁴

In response, the Canadian delegation repeated to the General Assembly the position of its government: “in the absence of a federal state clause in the Human Rights covenants, it would be *absolutely impossible*, short of a drastic overhaul of its basic constitutional arrangements, for Canada to ratify the covenants.”²⁵ Over the next few months, as the covenants edged closer to completion in the Commission on Human Rights, the controversy over the federal state clause intensified. At the 1954 session, the commission voted down an Australian proposal for a federal state clause and instead adopted the Soviet article by the narrow margin of 8 to 7.²⁶ This debate forced the Canadian government to prepare more clearly its position on the significance of the clause to its participation on the covenants. In its response to a request from the Secretary-General for comments on the draft covenants, the St. Laurent government reiterated the necessity of the clause to Canada’s ratification of the instruments.²⁷ However, quite

²⁴ James Frederick Green, *The United Nations and Human Rights* (Washington D.C.: The Brookings Institution, 1956), 693-695 and Louis B. Sohn, “A Short History of United Nations Documents on Human Rights,” in *The United Nations and Human Rights*, Eighteenth Report of the Commission to Study the Organization of Peace (New York: Oceana Publications, 1968), 101-107.

²⁵ Caldwell made this statement in response to an Egyptian resolution (U.N. Document A/C.3/L.366) similar in wording to the Soviet clause, see Caldwell, “Statement,” n.d., National Archives of Canada (NAC), RG 25, *Records of the Department of External Affairs*, Box 54, File 5475-W-15-40, Pt.1. Emphasis added in original.

²⁶ Green, *United Nations and Human Rights*, 695. The commission passed the Soviet sponsored clause by a vote of 8 to 7.

²⁷ “Canadian Statement on the Draft Covenants on Human Rights,” 10 March 1954, RG 25, Box 54, File 5475-W-15-40, Pt. 2, (U.N. Document

quickly, Pearson realized the danger of too strenuously advocating the federal state article. In a message to the Canadian Permanent Mission in New York on 2 March 1954, Pearson's office related the minister's views: "[h]e feels that we should be careful not to be manoeuvred into a position where we could not avoid signing the covenants without embarrassment. He thinks, therefore, that we should not press too strongly for the Federal State clause." The message here was clear: although the proposed new statement of the Canadian position called for the inclusion for a federal state clause, the government still would not commit itself.²⁸ Pearson was keenly aware that the constitutional mask placed over Canada's wider reservations was in danger of being torn away.

By this time though, Ottawa's approach to the U.N.'s human rights program had been sharply altered thanks to developments in the United States. On 8 April 1953 the American representative to the United Nations announced that the United States would not ratify either of the international human rights covenants. The United States was unhappy with the direction the covenants had taken since 1951 given the inclusion of social, economic and cultural rights and also had concerns for national sovereignty and states' rights.²⁹ However, the U.S. delegation did not want this decision misinterpreted as

E/CN.4/694/Addendum 6). The request from the Secretary-General was dated 19 August 1953.

²⁸ SSEA to Canadian Permanent Mission, 2 March 1954, RG 25, Box 54, File 5475-W-15-40, Pt. 2.

²⁹ According to Cathal J. Nolan, *Principled Diplomacy: Security and Rights in U.S. Foreign Policy* (Westport: Greenwood Press, 1993) the American decision to reverse course on the draft covenants had little to do with the documents themselves. Instead, the U.S. announcement was intended to counter the Bricker Amendment, a Republican attempt to reduce the power of the President in foreign policy: "[i]n sum, the

a signal that its government was no longer interested in the international promotion and protection of human rights. So, at the same time as the above announcement, the delegation introduced its “Human Rights Action Programme.” This three-point plan requested that member-states submit biennial reports on domestic human rights conditions and help in the creation of “technical assistance” programs for those governments requiring aid in the protection of human rights. Finally, the program suggested that the Commission on Human Rights initiate “worldwide” studies on specific aspects of human rights.³⁰ With one stroke, the leading advocate for the inclusion of human rights in the United Nations Charter and one of the strongest supporters of the International Bill of Rights threw the entire issue into doubt and left the U.N. with the rather impromptu “action programme” in its stead.

For the Canadian government, this development raised some serious policy questions concerning its own human rights policy. On one hand, Ottawa looked unfavourably at the withdrawal of the United States from any U.N. undertaking because it jeopardized the integrity of the international organization, even though human rights was an issue on which Canada placed little value.³¹ On the other hand, the American announcement took a great weight from the shoulders of the Canadian policy planners.

administration’s shrewd response was to undercut wider isolationist implications of the Bricker Amendment by appealing more narrow demands for rejection of U.N. human rights treaties,” 215-223.

³⁰ On the U.S. proposal see Nolan, *Principled Diplomacy*, 227-228.

³¹ Despite Canada’s continuing frustrations with the U.N., Lester Pearson still considered it the “best hope for peace,” *Debates*, 22 October 1951, 247-259.

Since 1948 Ottawa had worried continually over the possibility of once again sitting with the Soviet Bloc when the draft covenants came to a final vote. With the American decision, Canada now had greater freedom to vote as it pleased without risking another diplomatic embarrassment.

Since Canada was neither a member of the Commission on Human Rights, nor of ECOSOC at this time, Ottawa had a few months to decide how to respond officially to the American withdrawal. An External Affairs memorandum noted that the U.S. proposed Action Programme presented as many difficulties for Canada as the covenants and was “unlikely to yield tangible results.”³² This was not the crux of the issue for Canada, though. According to the memo, Canadian reaction to the proposal must be dictated by the government’s policy towards the covenants: “the fact that we may at some not too distant date have to follow the course already taken by the United States should...make it necessary for us to give our attention to other avenues of approach which would satisfy to some extent at least those elements of the population which feel strongly on this subject both internationally and in the domestic field.”³³ While External Affairs believed the Action Programme was flawed, it also realized that Canada, like the United States, could not abandon the international covenants without first adopting another initiative in their place. Therefore, Ottawa could not afford to discredit an instrument that in the future might provide the government with an escape route from the covenants. These arguments

³² B.A. Keith (U.N. Division) to John W. Holmes, 17 September 1953, RG 25, Box 54, File 5475-W-15-40, Pt. 1.

³³ B.A. Keith (U.N. Division) to John W. Holmes, 17 September 1953, RG 25, Box 54, File 5475-W-15-40, Pt. 1.

eventually shaped the Canadian response at the U.N.³⁴ To avoid commenting on the U.S. proposals, the Canadian delegation announced in the Third Committee that it preferred to concentrate on the draft covenants and not encumber the Commission on Human Rights with other suggestions. With this statement, Canada successfully avoided making commitments to either of the two human rights initiatives.³⁵

In April 1954 the draft international covenants left the Commission on Human Rights for the last time. With the Soviet article firmly attached, both covenants travelled first to ECOSOC and then to the Third Committee of the General Assembly by autumn 1954. Thus began the third and final stage of ratification of the covenants. For Canada, the submission of the two covenants meant that a serious re-examination of Canada's policy was necessary.³⁶ Until this point, the Liberal government simply had submitted its comments and had made only vague statements without truly contributing to the complicated task of drafting a legally binding document. However, the results of this

³⁴ In Pearson's instructions to the Canadian delegation, he noted that "we do not wish to send a substantive reply to the Secretary-General in regard to the above criticisms, we have considered making either a non-committal reply or no reply at all at this time...We wonder whether a lack of response from member governments might cause them [United States] to let the proposals die a natural death." Pearson to Chairman of Canadian Delegation, 28 September 1953, RG 25, Box 54, File 5475-W-15-40, Pt. 1.

³⁵ Statement by Mrs. A.V. Caldwell to Third Committee, 30 October 1953, RG 25, Box 54, File 5475-W-15-40, Pt. 1. Nevertheless, the Canadian delegation voted in favour of a resolution sponsored by the Philippines and Egypt to send the U.S. proposals to the Commission on Human Rights for study at its upcoming tenth session in February. See Pearson, "Memorandum on Human Rights," 31 December 1953, RG 25, Box 54, File 5475-W-15-40, Pt. 2.

³⁶ In 1954 Canada was neither a member of the Commission on Human Rights nor ECOSOC. Therefore, the government had to wait until this final stage before it could influence the shape of the covenants. See Appendix II.

policy review deviated little from the noncommittal stand the government had taken since 1948. In response to a request from Pearson, Stuart Garson lent his support to the approach adopted thus far.³⁷ More importantly, Garson mapped out what he thought should be Canada's general approach towards the covenants as they went through the ratification process in the Third Committee. Despite his opposition to codifying human rights, Garson appreciated the diplomatic importance of supporting this United Nations goal.³⁸ His suggestions, therefore, hinged upon the attitudes of the other Western members of the assembly. In his opinion, unless both the United States and Britain showed a marked change in their attitudes towards the covenants, there was little value in Canada grappling for some method to adopt the instruments. In contrast, the government also should not take any steps which would preclude a later endorsement of the human rights documents if that best served Canada's interests.³⁹

The government's attitude as the covenants entered the Third Committee was to await further developments and to consider ratification only if the other major Western member-states signed the documents. For both constitutional and philosophical reasons,

³⁷ This was most evident in Garson's comments on the federal state clause: "[s]ince Canada...may not desire to sign the covenants even if a Federal State Clause is included, it might be most unwise for the Canadian delegation to take...an active interest as to suggest that the Canadian objections have been abandoned. If a Federal State Clause were included largely because of Canadian influence, it might be difficult for Canada later to decline signature of either of the draft covenants containing such a clause." Garson to Pearson, 14 July 1954, RG 25, Box 54, File 5475-W-15-40, Pt. 3.

³⁸ For Garson's previous opinions see Garson, "Observations by Mr. Garson on First Draft of International Covenant on Human Rights," 6 July 1950, NAC, RG 2, *Records of the Office of the Privy Council*, Box 253, File U-41-H (Vol.2), 1950-1951.

³⁹ Garson to Pearson, 14 July 1954, RG 25, Box 54, File 5475-W-15-40, Pt. 3.

the cabinet, whose decisions were shaped largely by the views of the justice minister, decided that Canada should not ratify the covenants. In spite of this, the government was willing to swallow its reservations if its refusal to sign meant that Canada would have to sacrifice the more important goal of Western solidarity at the U.N. For Canada then, human rights were little more than a playing piece in the larger game of international politics.

While the Canadian government continued its hesitant policy, the United Nations pushed forward with its human rights agenda. Quite early in the U.N.'s attempts to promote and protect international human rights, the members had argued that the components of the International Bill of Rights were insufficient. The Universal Declaration and the Covenants covered general principles adequately, but specific obligations required more detailed and precise conventions.⁴⁰ As a result, various bodies of the U.N. drafted a multitude of international conventions which comprised subjects ranging from genocide to discrimination in education. One Canadian official noted that declarations on particular human rights were "in fashion" at the United Nations and seriously doubted their efficacy.⁴¹ For Canada, these undertakings presented serious difficulties. Most importantly, many of these conventions and declarations dealt exclusively with matters which fell within provincial jurisdiction. Consequently, on agreements such as the Convention on Discrimination in Education, the federal

⁴⁰ See Sohn, "A Short History," 169-174.

⁴¹ Permanent Mission to U.N. Delegation, 20 April 1959, RG 25, Box 128, File 5475-W-19-40, Pt. 1.

government completely withdrew.⁴² However, a shift in Canadian attitudes became evident in those conventions which came within the federal sphere of powers. On these subjects the government could not raise the spectre of the constitution to explain its reticence towards the U.N.'s human rights activities. Instead, Ottawa put forth an array of other reservations: intrusion upon parliamentary sovereignty; objection that social, economic and cultural rights were actually goals, not rights; and, the general belief that listing and explaining rights served little purpose.⁴³ Nevertheless, as the 1950s progressed the Canadian government felt increasing pressure to soften its approach.

Despite Ottawa's best efforts to avoid entanglement, the U.N.'s steady march to the human rights drum continued to draw the attention of Canadians. Canada's newspapers, ethnic associations, labour congresses and women's organizations pointed to such achievements as the Convention on the Political Rights of Women and the Declaration of the Rights of the Child as examples of what was possible at home, and they encouraged the federal government to play a greater international role. The Canadian Jewish Congress and the Canadian Federation of University Women (CFUW) in particular pressured Ottawa to take a more active stance at the U.N. in support of human rights. They suggested that Canada seek membership on the Commission on Human Rights or the

⁴² In the debate at UNESCO on this convention the delegation's instructions read: "[s]ince Canada will not be able to be a party to the Convention...the Canadian Delegation will not find it necessary to take a prominent part in the debates." See "Instructions to the Canadian Delegation to UNESCO concerning Education Drafts," 14 November 1960, RG 25, Vol. 90, File 5475-W-9-A-40, Pt. 2.

⁴³ The best summary of the Canadian arguments remains Stuart Garson, "Observations by Mr. Garson on First Draft of International Covenant on Human Rights," 6 July 1950, RG 2, Box 253, File U-41-H (Vol. 2) 1950-1951.

Commission on the Status of Women.⁴⁴ Meanwhile, as the Canadian delegation did its best to operate within the ambiguous boundaries set by the federal government for the debate on the draft covenants, a gradual shift occurred among members of the Department of External Affairs in their attitude toward the U.N.'s human rights activities. Between 1955 and 1960 pressure arose for the Canadian government to soften its approach slightly. Some members of External Affairs suggested a "less legalistic" interpretation of the United Nations human rights documents. They wanted the government to retreat from its position of a strict legal interpretation of the human rights documents, and they advocated instead that Ottawa view the U.N.'s program as educational or as a goal.

As early as 1955, discussions within the Department of External Affairs revealed this first serious questioning of the government's approach to international human rights. In a February 1956 note to John W. Holmes, the U.N. Division suggested the advantages of Canadian membership on the Commission on Human Rights and the Commission on the Status of Women. Canada had never sought membership before despite its reputation as an ardent supporter of the council's various commissions.⁴⁵ With a seat on these bodies, the memo noted, Canada could deal with issues at the drafting stage rather than in

⁴⁴ See Dorothy Flaherty to Pearson, 31 July 1956, NAC, *Records of the Canadian Federation of Women*, MG 28 I 196, Vol. 19, File "Status of Women, 1952-58" and U.N. Division, "Minutes of an Interdepartmental Meeting to discuss Canadian policy at the 21st Session of ECOSOC," 27 February 1956, *Records of the the Department of Citizenship and Immigration*, RG 26, Vol. 81, Series A-i-a, File 1-24-25, Pt. 1.

⁴⁵ See Appendix II.

Committee or Plenary.⁴⁶

Later that month, an interdepartmental committee to plan Canadian policy at ECOSOC supported this suggestion. In its report, although the committee noted little benefit to Canada of joining the Commission on the Status of Women, it recognized the value of appeasing Canadian women's organizations. Previously, the U.N. Division had informed Holmes in November 1955 of continuing pressure from "women's organizations" for Canada to join the Commission on the Status of Women.⁴⁷ Membership on this commission, therefore, might appease the vocal demands of groups such as the National Council of Women of Canada and the Canadian Federation of University Women. Joining the Commission on Human Rights, however, offered greater rewards. As well as repeating the arguments of the February memorandum, the committee stated that a seat on this body "would do something to dispel the impression that we are not interested in the field of Human Rights...we have never been represented on this Commission and...both domestically and abroad our reserve is likely to be misunderstood and potentially it may be as embarrassing as participation itself."⁴⁸

External Affairs had realized that many states were quite sceptical of Canadian

⁴⁶ U.N. Division, "Re: Setting up of Interdepartmental Committee to deal with Canada's return to the ECOSOC in 1956," 3 February 1956, RG 25, Box 46, File 5475-B-40, Pt. 4.

⁴⁷ U.N. Division to USSEA, 28 February 1956, "Re: Interdepartmental Meeting held 27 February 1956," RG 25, Box 46, File 5475-B-40, Pt. 4. For the memo to Holmes, see U.N. Division, to J. W. Holmes, 30 November 1955, *ibid*.

⁴⁸ U.N. Division to USSEA, 28 February 1956, "Re: Interdepartmental Meeting held 27 February 1956," RG 25, Box 46, File 5475-B-40, Pt. 4.

policy on the U.N.'s human rights agenda. For example, in 1954 the British delegation interpreted the Canadian reaction to the Soviet federal state article as "pleased at this absolution from further concern with the covenants."⁴⁹ Statements such as these provided the foundation for the committee's goal of improving Canada's international reputation on human rights through membership on the commission. Nevertheless, although Ottawa announced its intention to seek election to the Commission on the Status of Women, Pearson chose the Social Commission over the Commission on Human Rights, but he gave no explanation for his choice.⁵⁰

Decisions such as these led to increasing frustration within the U.N. Division and among the delegates sent to New York. During the Third Committee's discussion of the articles of the draft covenants in 1956, Marcel Cadieux of the U.N. Division aired his dissatisfaction with Ottawa's guidance in a long internal memorandum. He stated bluntly that if the delegation was to participate in the discussion of the remaining articles, and to vote on them, then they required clear instructions.⁵¹ He went on to reveal that the only detailed instructions the delegation had received from Ottawa were the 1951 and 1954 statements to the Secretary-General. And these, he noted, offered many criticisms but

⁴⁹ S. F. Rae (Permanent Mission to U.N.) to SSEA, 24 May 1954, RG 25, Box 54, File 5475-W-15-40, Pt. 3. Eventually, Ottawa decided not to discuss this statement with the British authorities, 14 June 1954, USSEA to Permanent Delegation, RG 25, Box 54, File 5475-W-15-40, Pt. 3.

⁵⁰ USSEA to Members of the Interdepartmental Committee, 9 March 1956, "Re: SSEA Final Decision," RG 25, Box 46, File 5475-B-40, Pt. 4.

⁵¹ M. Cadieux (U.N. Division) to Legal Division, 17 October 1956, "Memorandum re: draft covenants," RG 25, Box 127, 5475-W-16-40, Pt. 1.

little indication of what was acceptable to Canada. This Canadian approach led Cadieux to conclude that the “fundamental question which does not appear to have been answered definitively is whether the Canadian Government is really interested in the Covenants being drafted in a form which will facilitate signature and ratification by Canada.”⁵²

Armed with these criticisms, members of External Affairs continued to rumble about a change in policy. A key factor in this increasingly vocal argument was the desire to strengthen the Western presence at the United Nations. Ottawa was keenly aware of the international organization’s cleavages between East and West, developed and underdeveloped, and imperial and anti-colonial states.⁵³ This situation resulted, External Affairs believed, in a lack of leadership by the most important Western powers. At the end of the 1956 session of ECOSOC there was growing evidence of Canadian frustration with the council. In November Jules Leger, the acting under-secretary for external affairs, circulated a memorandum which identified his three main concerns with ECOSOC: modest progress made by council; increasing intervention in the council’s activities by the Soviet Union; and, lack of leadership from the United States, Britain and France.⁵⁴ On 23 January 1957 the interdepartmental committee met again, ostensibly to assess Canadian policy at ECOSOC, but instead formulated suggestions to promote Western leadership.

⁵² M. Cadieux (U.N. Division) to Legal Division, 17 October 1956, “Memorandum re: draft covenants,” RG 25, Box 127, 5475-W-16-40, Pt. 1.

⁵³ Dana Wilgress, USSEA, identified these three “cleavages” in a speech to the Canadian Club, see Wilgress, “Canada and External Affairs,” *Statements and Speeches*, No. 52/45.

⁵⁴ Jules Leger (USSEA), internal memorandum, 21 November 1956, RG 25, Box 118, File 5475-B-40, Pt. 6.

Among its various recommendations the committee again proposed Canadian membership on the Commission on Human Rights.⁵⁵

This suggestion received added support from John W. Holmes. By 1957, this senior member of External Affairs, who had been sceptical of the United Nations human rights programs in the 1940s, now acknowledged the possible benefits of supporting the organization's initiatives. In a draft paper entitled "The Role of the United Nations," Holmes took up the problem of Western leadership at the international organization. He argued that the Canadian position could be better explained if the government exhibited more understanding of the problems faced by countries struggling with difficult economic problems. More specifically, Holmes singled out the relationship between human rights and the cold war:

In the field of human rights, furthermore, our somewhat superior and legalistic attitude might be modified. Whereas most Western countries are concerned with the serious constitutional problems to be considered in subscribing to human rights, we should not assume that the efforts to produce a covenant have the same position in the eyes of all countries...Although purposeless to us, it is for many enthusiasts in the newly self-governing countries the most important work of the United Nations. Cynicism on our part will serve only to drive them towards the Russians.⁵⁶

Holmes' comments were indicative of the pressure placed upon the Canadian government

⁵⁵ Interdepartmental Committee, "Re: Assessment of Canadian Attitude ECOSOC," RG 25, Box 118, File 5475-B-40, Pt. 6.

⁵⁶ John W. Holmes, "The Role of the United Nations," 22 March 1957, Canadian Institute of International Affairs, *John Wendell Holmes Papers*, Series D, Box 2, File 1/c. A previous version of this paper, dated 16 March 1957, contained no references to human rights. However, Holmes revised the paper extensively after H. Basil Robinson, another senior member of the Department of External Affairs, offered his comments, see 20 March 1957, H. B. Robinson to Holmes, *Holmes Papers*, Series D, Box 2, File 2/a.

by the late 1950s. Although his comments did not endorse human rights for their own sake, he now accepted the argument that support for human rights served a wider purpose in the Cold War at the United Nations.

In 1957 a change in governmental attitude towards international human rights appeared likely with the election of John G. Diefenbaker and the Progressive Conservatives. With the Liberals out of power, the voices of Stuart Garson and Lester Pearson no longer held sway over Canadian human rights policy. Instead, the vocal defender of civil liberties and advocate of a Canadian bill of rights took over the reins of Canada's foreign policy. At the 1957 session of the General Assembly, Diefenbaker headed the delegation and announced that the United Nations was the cornerstone of Canadian foreign policy.⁵⁷ Nevertheless, throughout Diefenbaker's tenure as prime minister Canada's human rights policy at the U.N. stayed the course set by his Liberal predecessors. In fact, Diefenbaker followed the example of both Mackenzie King and Louis St. Laurent and offered few comments on the U.N.'s human rights programs.

One exception to this silence, however, occurred on 12 January 1959 with a convocation speech given to a group of new graduates at the University of Toronto. Diefenbaker challenged the university students to convince the unaligned nations of the Third World to choose democracy and the West over communism. According to the prime minister, "[c]riticizing communism is not enough. A knowledge of freedom's aims is necessary so that uncommitted peoples can understand the worth and superiority of

⁵⁷ John G. Diefenbaker, "Canada and the United Nations," Speech to the United Nations General Assembly, *Statements and Speeches*, 23 September 1957, No. 57/33.

freedom.”⁵⁸ As a result, Diefenbaker announced his Declaration of Freedom’s Creed. This new proclamation “would give to the uncommitted world a solemn pledge of willingness to work with them for better economic conditions in which human dignity, equality and tolerance will be recognized and personal liberty, freedom of thought, expression, association and religion pledged to those who will join in freedom and for freedom in the struggle for men’s hearts and minds.”⁵⁹ The prime minister’s proposal was similar in form to the Universal Declaration; however, this declaration would be used much more overtly as a tool in the Cold War. With this line of thought, Diefenbaker unwittingly revived similar arguments made by Pearson and Mackenzie King in 1948 regarding the Universal Declaration.⁶⁰

Diefenbaker’s statements in Toronto immediately led to a flurry of assessments in the Department of External Affairs. This was the signal for which many in the department waited. One member of the Legal Division noted that if Canada adopted the policy outlined in the prime minister’s speech, then a change in course was necessary on the draft covenants. According to J. O. Parry, the government could no longer procrastinate on the human rights instruments, but instead, would have to “actively push consideration” of the

⁵⁸ John G. Diefenbaker, “The Need for a Declaration of Freedom’s Creed, Notes of a speech by Mr. John G. Diefenbaker, Prime Minister of Canada, to the Convocation of the University of Toronto, on January 12, 1959,” 12 January 1959, *Statements and Speeches*, No.59/5, 5.

⁵⁹ Diefenbaker, “Declaration of Freedom’s Creed,” 5.

⁶⁰ Both Pearson and King had criticized the Universal Declaration of Human Rights in 1948 because they believed this document had little value as propaganda in the emerging cold war with the Soviet Union.

covenants.⁶¹ Although the U.N. Division was unwilling to give a clear endorsement to this proposal, it did recognize that Diefenbaker's suggestion offered a new direction for Canadian human rights policy. In an internal memorandum, P. D. Scott of the U.N. Division noted that "while we have misgivings about the Covenants, we like the present alternatives before the Assembly even less...Meanwhile our policy of seeking delays and re-examination was shown at the last session of the Assembly to be no longer workable. It is generally recognized that something new is needed."⁶² In conclusion, Scott conceded that Canada should shift its attention from legally-binding conventions and treaties to more general declarations of principle.⁶³ While the U.N. Division, which was the most vocal critic within the government of Canadian human rights policy since 1955, saw the need for a new policy direction, it balked at the suggestion that Canada make a formal commitment to the draft covenants.

Despite the interest that Diefenbaker's speech generated within External Affairs, the Declaration of Freedom's Creed was soon a dead letter. Neither the U.N. nor other Western nations showed any interest in the prime minister's proposal. Like other suggestions, the Declaration of Freedom's Creed was little more than rhetoric. According to one Liberal M.P. this was typical of how Diefenbaker conducted Canada's international

⁶¹ J. O. Parry (Legal Division) to USSEA, 19 February 1959, RG 25, Box 169, File 5475-GU-40, Pt. 1.

⁶² P. D. Scott (U.N. Division) to Legal Division, 2 March 1959, RG 25, Box 169, File 5475-GU-40, Pt. 1.

⁶³ P. D. Scott (U.N. Division) to Legal Division, 2 March 1959, RG 25, Box 169, File 5475-GU-40, Pt. 1.

affairs: the prime minister was a silent film hero “blasting his way through paper walls and open doorways, and then waiting for applause.”⁶⁴

From 1948 to 1960 the Canadian policy on the international protection of human rights remained virtually unchanged. In fact, this policy was little different from that devised by Hume Wrong and Mackenzie King for the San Francisco Conference of 1945. The Canadian government had grave reservations about the codification of rights. Parliamentary sovereignty, objections to social and economic rights, and the belief that Canadians' civil liberties were adequately protected already combined to create a negative attitude towards the United Nations' attempts to design international instruments. As well, the Liberal government, especially under the influence of Stuart Garson, felt that pursuing an active policy at the U.N. would only encourage those at home who advocated a domestic bill of rights. And this, of course, was something that Garson absolutely did not want. Ironically, given Ottawa's concerns for Canada's international reputation, only when the federal government believed that the policies of the United States and Britain threatened to undermine the United Nations did it consider ratification of the human rights treaties. This was not a newfound belief in the value of the U.N.'s human rights measures, however. Only the diverse array groups interested in rights protection at home and the policy planners in External Affairs called for substantial change. Nevertheless, the federal governments of the 1950s persistently opposed adopting a more active stance on the

⁶⁴ This comparison was made by Lucien Cardin, M.P. for Richelieu-Verchères. Cited in Peter C. Newman, *Renegade in Power: The Diefenbaker Years* (Toronto: McClelland and Stewart Ltd., 1973), 252. See also Robinson, *Diefenbaker's World: A Populist in Foreign Affairs* (Toronto: University of Toronto Press, 1989), 104-105.

U.N.'s human rights activities, despite the election of John Diefenbaker, civil libertarian.

John G. Diefenbaker's "Vision"

According to one observer, "astonishment" best described the feeling of Canadians when John George Diefenbaker became Canada's thirteenth prime minister. Few had given the Conservatives much chance of forming the next government in the June 1957 election. Diefenbaker had become leader of the Conservatives only six months earlier and had long been an outsider in the Ontario-dominated party. Opinion polls consistently showed the Tories trailing the Grits, and although the Liberal machine crafted by Mackenzie King and Louis St. Laurent had a few more knocks and dents since the previous election, the "Government Party" entered the race with an impressive, if ageing, slate of candidates. Nevertheless, the small town prairie lawyer surprised everyone, including many in his own party.⁶⁵ In a masterful campaign which focused almost completely on the new leader, the Tories climbed to power through a combination of attacking apparent Liberal arrogance in government and stressing that it was time for a change. "It's Time For a Diefenbaker Government" was the party's main slogan, and on 10 June 1957 Canadians voted themselves one.⁶⁶

⁶⁵ J. L. Granatstein, *Canada 1957-1967: The Years of Uncertainty and Innovation* (Toronto: McClelland and Stewart Ltd., 1986), 1. One Conservative analyst foresaw substantial gains for the party, but yet still predicted 150 seats for the Liberals to the P.C.'s 82. For comments on the 1957 election see *ibid.*, 15-27.

⁶⁶ On the 1957 election, see John Meisel, *The Canadian General Election of 1957* (Toronto: University of Toronto Press, 1962); Peter Stursberg, *Diefenbaker: Leadership gained 1956-62* (Toronto: University of Toronto Press, 1975), 35-59; Reg Whitaker, *The Government Party: Organizing and Financing the Liberal Party of Canada 1930-58*

Despite the surprise shown by editors, analysts and the public in general, John Diefenbaker's path to the Prime Minister's Office was a politically arduous one. Diefenbaker first sought the leadership of the Conservative Party in 1942 but ran third to Manitoba premier, John Bracken. Although equipped with a new name, Bracken's Progressive Conservatives failed to reverse their sad electoral fortunes, and so in 1948 he too stepped down as leader. At the convention to choose Bracken's replacement, Diefenbaker challenged the party leadership and again lost. George Drew, the Ontario Conservative who had led the provincial Tories to a narrow victory in 1943, was the party's overwhelming choice on the first ballot. While Diefenbaker's reason for contesting the leadership in 1942 was to, in his words, "plant at least the seed of my ideal," his second failed bid led the prairie lawyer to seriously reconsider his life in politics. Diefenbaker blamed his defeat on his prairie roots, the Conservative power brokers from Bay Street and James Street and, most importantly, his German name.⁶⁷ As Victor Mackie, a journalist for the *Winnipeg Free Press* and friend to the small town

(Toronto: University of Toronto Press, 1977), 208-215; Granatstein, *Canada 1957-1967*, 20-27; and, Denis Smith, *Rogue Tory: The Life and Legend of John G. Diefenbaker* (Toronto: MacFarlane, Walter and Ross Publishers, 1995), 227-241.

⁶⁷ On the leadership of John Bracken see J. L. Granatstein, *The Politics of Survival: The Conservative Party of Canada, 1939-1945* (Toronto: University of Toronto Press, 1967), 138-197. In his memoirs, Diefenbaker claimed that he knew then that he had little chance to win the leadership in both 1942 and 1948, John G. Diefenbaker, *One Canada: Memoirs of the Right Honourable John G. Diefenbaker: The Crusading Years, 1895-1956* (Toronto: MacMillan Publishers, 1975), 251-255 and 266-271. For a brief description of the 1948 convention in the larger historical context of the Progressive Conservative Party, see George C. Perlin, *The Tory Syndrome: Leadership Politics in the Progressive Conservative Party* (Montreal: McGill-Queen's University Press, 1980), 52-54.

Saskatchewan lawyer, recalled: “[Diefenbaker] gave Drew a good run, but he lost. He was broken hearted about that. And he blamed it on his name. He said if his name had been Anderson or Mackie, or something like that, he would have won.” Diefenbaker left the convention an outsider in his own party, treated by the Toronto Conservatives, according to his recollection, as “an animal not customarily admitted to homes.”⁶⁸

After the 1949 federal election, Diefenbaker seriously considered leaving politics. The party was squarely behind Drew despite another poor showing at the polls and there was thus little reason to expect another opportunity at the leadership for the fifty-four year old politician. In February 1951 his wife Edna died after a prolonged illness. This weighed heavily on him. Although he ultimately decided to remain on Parliament Hill, Diefenbaker retreated from his usual animated attacks from the opposition benches and more significantly, from his lifelong passion: civil liberties. After his boisterous condemnation of the King government’s treatment of human rights in the Gouzenko Affair and his demands for a Canadian bill of rights throughout 1946-1948, he distanced himself from the then growing movement. Between 1948 and 1955, Diefenbaker corresponded less and less with civil libertarians and although he continued to make his almost annual motion for a bill of rights, they lacked the fiery emotion of his early speeches. As one Liberal strategist noted of Diefenbaker’s 1952 motion, “his was a carelessly done ‘scissors

⁶⁸ Diefenbaker, *One Canada: 1896-1956*, 268. Mackie agreed with Diefenbaker’s assessment of the leadership race and noted that “the name Diefenbaker was high around his neck and he couldn’t get rid of it,” quoted in Stursburg, *Diefenbaker*, 33.

and paste' operation" of the 1950 Senate Committee recommendations.⁶⁹ By the time of his 1955 motion, Diefenbaker barely resembled the indignant M.P. who in 1946, with one hand on his hip and the other pointed accusingly at the government benches, had thrust the demands for a Canadian bill of rights onto the national stage.

Nevertheless, in 1956 the political winds shifted dramatically for Diefenbaker. Seriously ill, Drew announced in October his resignation as leader of the Conservatives just as the party's popularity began to rise in the aftermath of the infamous pipeline debate. In the December leadership convention, Diefenbaker soundly defeated two other contenders and finally achieved the mantle which had eluded him since 1942. For the next six months, the party reorganized under its new leader in preparation for the expected election. In June 1957 the prairie lawyer, who needed three attempts to become head of the P.C. Party, became the first Conservative prime minister in over twenty years in just his first election as leader.⁷⁰

Diefenbaker became prime minister in the midst of the national faith in economic growth which marked the 1950s. Despite this relative optimism, however, doubts had emerged in early 1957 as the economy slowed and unemployment increased. As a result, Diefenbaker's minority government stuck close to its campaign promises and concentrated on remedying the worst features of the economic slowdown. In the Speech from the

⁶⁹ George Marler, "Bill of Rights," 2 June 1958, NAC, MG 26 N2, *Lester B. Pearson Papers*, Vol. 160, File "Bill of Rights - 1947-1957, 1958-1959."

⁷⁰ Ironically, Diefenbaker played little part in the pipeline debate in Parliament in the belief that voters would not support a campaign of obstruction to the government's plans. On this and the Conservative leadership convention see Smith, *Rogue Tory*, 202-211.

Throne to open the new parliamentary session, read by Queen Elizabeth II, the government announced its legislative plans to increase the old age pension, to implement the “national development policy” and to supply assistance to the Atlantic provinces and to prairie grain farmers.⁷¹ The goals of the government were to act quickly and decisively on the economy so as to provide a springboard for the next election. At no point in the Speech from the Throne was the question of a Canadian bill of rights mentioned.

Within weeks of Diefenbaker’s success at the polls, civil libertarians and human rights advocates raised the issue of a national bill of rights again. Letters streamed into Ottawa asking the new prime minister to enact better protection for human rights. Some of these requests, like that of Irving Himel, came from Diefenbaker’s old colleagues from the 1940s who had scrutinized the attitudes of the King government toward civil liberties. In his letter, Himel argued that the election of a Conservative government offered the best opportunity to implement the first phase of the 1950 Senate Committee’s recommendations: a declaratory charter of human rights. “Such an announcement in the Speech from the Throne made by Her Majesty when she comes to open up Parliament...,” he charged, “would not only be most fitting and welcome, but would add much strength to our common cause.”⁷² Other requests came from less than friendly quarters. In a

⁷¹ *Debates*, 14 October 1957, 5-6. On the Diefenbaker government’s first term in office see Granatstein, *Canada 1957-1967*, 31-32 and 43-138 and Stursburg, *Diefenbaker*, 61-77.

⁷² Himel to Diefenbaker, 27 August 1957, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 365, Microfilm Reel M-7949, 285205-285206. Rumours held that Himel was quite sympathetic to the P.C. Party and to Diefenbaker personally, see Kalmen Kaplansky, “K. Kaplansky Notes on Reports of Activities for Improved Human Relations 1954,” NAC, MG 30 A53, *Kalmen Kaplansky Papers*, Vol. 21, File 2, 16-17.

pamphlet published by the National Committee of the Labor-Progressive Party, "How About It, Mr. Diefenbaker?," leader Tim Buck challenged the prime minister to enact a bill of rights in the current session. A similar letter arrived also from the communist League for Democratic Rights.⁷³

In response to these requests Diefenbaker maintained that economic concerns held priority and that he had "to face realities and deal with the immediate and urgent problems before having Parliament debate the matter of a Bill of Rights."⁷⁴ The government never intended to introduce a comprehensive list of legislation in the 1957-1958 parliamentary session. Instead, their goal was to prepare for another election. Nevertheless, pressure continued on Diefenbaker because of his past arguments on the subject of human rights. On 6 January 1958, the CCF's M. J. Coldwell introduced a private member's bill which included an entrenched bill of rights through constitutional amendment. This was the same proposal which he had introduced in 1955, and he clearly designed the bill to embarrass Diefenbaker, his old parliamentary compatriate on past civil liberties debates. In an attempt to "talk out" the bill, the minister of justice, E. Davie Fulton, announced that

⁷³ "How About It, Mr. Diefenbaker?" Labor-Progressive Party Pamphlet, n.d. [August 1957], *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 365, Microfilm Reel M-7949, 285183-285184; T. Collins (executive secretary of the League of Democratic Rights, Vancouver Branch) to Diefenbaker, 17 September 1957, *ibid.*, 285202. Other requests included the U.A.W.A., Ladies Auxiliary (Oshawa), Hazel Farrow (recording secretary) to Diefenbaker, n.d., *ibid.*, 285171; and Harold L. Dean to Diefenbaker, 9 October 1957, *ibid.*, 285177-285179.

⁷⁴ Diefenbaker to Darren L. Michael (Dept. of Public Affairs, Canadian Union Conference), *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 365, Microfilm Reel M-7949, 285210. This letter was in response to Michael's request of 15 August 1957, *ibid.*, 285211.

his department was currently studying various proposals for a bill of rights and that it was indeed the government's intention to eventually introduce a draft. Diefenbaker was not present for the debate which ended without a vote.⁷⁵

In fact, the prime minister did not speak of civil liberties again in the 1957-1958 session. On 20 January 1958, Lester B. Pearson, the new leader of the Liberal Party, made his inaugural speech as Leader of the Opposition and promptly served Diefenbaker an opportunity to prorogue Parliament and call a federal election.⁷⁶ The question of when Diefenbaker would introduce a bill of rights or any of his other promises was set aside as the Conservative electoral machine prepared for its second campaign within a year. From his first speech on his "Vision" for Canada, John Diefenbaker captured the imagination of the Canadian electorate. Diefenbaker's patriotic ramblings on Canada's future and his promises to develop the resources of the far north, to rehabilitate the Canadian farming industry and to initiate new government megaprojects played well to voters. On 31 March 1958, the prairie populist again was confirmed as prime minister, this time with the largest majority government in Canadian history. The Conservatives won 208 of the Commons' 265 seats while Pearson's Liberals fell to only forty-nine. Few could disagree that

⁷⁵ *Debates*, 6 January 1958, 2887-2889 and 2926-2928. For Coldwell's 1955 motion, see *ibid.*, 7 February 1955, 914-918.

⁷⁶ In his speech, Pearson criticized the record of the government and called on Diefenbaker and his ministers to resign. This gaffe by the new Liberal leader provided Diefenbaker with an excuse to call a quick election, something which he had sought at least since November of 1957, see *Debates*, 20 January 1958, 3514-3520; Smith, *Rogue Tory*, 274-278; and, John English, *The Worldly Years: The Life of Lester Pearson*, vol. 2: 1949-1972 (Toronto: Alfred A. Knopf Canada, 1992), 199-201.

Diefenbaker was now truly the Chief.⁷⁷

While civil libertarians had greeted Diefenbaker's 1957 election victory with patience regarding a national bill of rights, in 1958 they felt confident in their demands for better human rights protection from the new government. They wholeheartedly believed that the Conservatives' huge parliamentary majority guaranteed immediate legislative action creating a national bill of rights. Unlike the previous campaign in which he gave no clear indication of his plans for human rights, during the 1958 campaign Diefenbaker precisely explained his intentions if elected. In what the *Winnipeg Free Press* described as a "Billy Graham evangelical style" speech on 13 March, Diefenbaker promised to enact a Canadian bill of rights. In fact, he announced, the Department of Justice already had a draft of the bill and the government planned to refer it to the Supreme Court for a definitive opinion on constitutional jurisdiction over civil liberties.⁷⁸ Clearly, Diefenbaker had gained newfound confidence from the voters' response to his election campaign rhetoric. His promised action on an issue that the Liberals had resisted for twelve years and that the justice department had rejected outright was one of the first indicators that the agenda of the new Conservative government would be John Diefenbaker's.

Again, within weeks of the election victory, letters of support and suggestions for the promised bill of rights filled the prime minister's mailbox. Both Himel and W. R. Harrison, another of Diefenbaker's old civil liberties friends from the 1940s, offered their encouragement and assistance with any human rights matters. As well, over the summer,

⁷⁷ On the 1958 election see Smith, *Rogue Tory*, 279-283.

⁷⁸ *Winnipeg Free Press*, 14 March 1958.

other writers began to make their pitch for the inclusion of certain rights and freedoms in the upcoming bill. John Fenston, a Toronto lawyer, even suggested the government drop the whole exercise and instead appoint a "Constituent Assembly" to redraft the entire constitution.⁷⁹ In the press, editors summarized Diefenbaker's past statements on human rights and mused about the form and content of the prime minister's eventual bill. The Saskatoon *Star-Phoenix* expressed its doubts about both the likelihood of the promised bill reaching fruition and how clear the concept was in Diefenbaker's own mind: "[i]n general...Mr. Diefenbaker dwelt more on examples of infringements of rights than on the nature of the bill he was proposing."⁸⁰ Despite the criticism, Diefenbaker clearly had reawakened the nation's interest not only in human rights but in a national bill of rights as well.

While each of these letters received a polite response, the Department of Justice which was solely responsible for the draft bill, paid scant attention to outside suggestions. Under the direction of Justice Minister E. Davie Fulton, the department had a draft completed and detailed memoranda for Diefenbaker just three weeks after the election. Born 10 March 1916 in Kamloops, British Columbia, Fulton had attended St. John's

⁷⁹ Himel to Diefenbaker, 20 May 1958, *Diefenbaker Papers*, Prime Minister Series, Vol. 365, Microfilm Reel M-7948, 285084; Harrison to Diefenbaker, 20 May 1958, *ibid.*, 285096. R. E. Wemp, Dominion Commissioner of the "British-Israel-World Federation (Canada)" requested that special protection be given to religious freedoms, Wemp to Diefenbaker, 28 July 1958, *ibid.*, 285037; and, Katherine Rinning, a private citizen, demanded the inclusion of sexual equality in the bill of rights, Rinning to Diefenbaker, 21 May 1958, *ibid.*, 285063. For John Fenston's suggestion of a constituent assembly see, Fenston to Diefenbaker, 8 August 1958, *ibid.*, 284993-284994.

⁸⁰ Robert Moon, "Freedom's Advocate," Saskatoon *Star-Phoenix*, 24 May 1958. See also, the Regina *Leader-Post*, 23 May 1958.

College at Oxford in 1936 as a Rhodes Scholar. During World War II, he achieved the rank of major, but left the service at the end of the war to pursue politics. Fulton entered Parliament in the 1945 election and was one of Diefenbaker's closer friends in the Conservative caucus. In 1956 he contested the Tory leadership, but this apparently did not harm his relationship with the soon-to-be prime minister.⁸¹ As justice minister, Fulton would play a central role in Diefenbaker's dream to enact a Canadian bill of rights.

Under Fulton's direction, Wilbur R. Jackett and E. A. Driedger, the deputy minister and his assistant, modified the original draft throughout May in preparation for its presentation before cabinet on 27 May 1958.⁸² In his memo to Diefenbaker, Fulton noted that the department's draft bill of rights rested on three basic assumptions: the bill was a statute of Parliament; it was not an amendment of the constitution; and, it affected federal jurisdiction only. The government's decision, then, was to take the low road and avoid both negotiations with the provinces over jurisdiction and the political wrangling associated with amending the BNA Act. To justify this position, Fulton ironically noted that in the absence of a rights bill, the Canadian judicial system already provided "appropriate" protection of citizens' rights and freedoms. In the justice department's view, the purpose of a national bill of rights lay in the dangers of an increasingly complex set of statutory rules and regulations and the administration designed to oversee them.

⁸¹ On Diefenbaker's relationship with Fulton, see Smith, *Rogue Tory*, 174-175.

⁸² Jackett, "Memorandum for the Minister of Justice," 21 April 1958, NAC, RG 13, *Records of the Department of Justice*, Vol. 2795, File 182000-29; Fulton, "Memorandum for the Prime Minister," 29 April 1958, *ibid.* (this was a revised version of the 21 April Jackett memo); and, Jackett, "Memorandum for the Minister of Justice," 1 May 1958, RG 13, Vol. 2800, File 184000-27.

The bureaucracy born from the postwar social and economic system required “a formal recognition by Parliament of the human rights and fundamental freedoms of the individual.” Canadians did not need protection from an overzealous Parliament determined to curtail individual freedom; the courts existed for this purpose. Instead, the bill of rights would be a watchdog over a soulless bureaucracy which often, albeit inadvertently, “sacrificed [freedom] in favour of administrative or other advantages.” Diefenbaker’s bill of rights would protect Canadians, not from offending legislation, but from the implementation of that legislation.⁸³

Although this explanation cut a fine line, it neatly provided an escape from dealing with the provinces. As a result, both Fulton and Jakkett held that a reference to the Supreme Court was thus unnecessary since the government explicitly intended the bill of rights to cover federal jurisdiction only. The draft bill itself clearly flowed from these presumptions. The draft legislation contained three main clauses.⁸⁴ The first was a simple declaration of rights which “prevailed” in Canada. These included the right to life, liberty, security, enjoyment of property and to freedom from discrimination based on race, colour, religion or sex. Also included were freedom of religion, speech, assembly and of the press. This declaration had no operative effect and therefore was merely a statement. The second clause contained the substance of the bill. It prohibited the application of any statute which abrogated not only the rights listed in the first clause but also another series

⁸³ Jakkett, “Memorandum for the Minister of Justice,” 21 April 1958, RG 13, Vol. 2795, File 182000-29 and Fulton, “Memorandum for the Prime Minister,” 29 April 1958, *ibid.*

⁸⁴ See Appendix III.

of legal entitlements such as the right to counsel, to habeas corpus, and to trial. This special reference to legal rights obviously revealed Diefenbaker's mark. Finally, the bill contained one more clause which authorized the justice minister to scrutinize each piece of proposed legislation to ensure that it abided with the rights outlined in the first two clauses.⁸⁵ This draft bill of rights, devoid of the ringing statements contained in the American Bill of Rights or the Universal Declaration, was a workmanlike effort completely linked to the powers of Canada's federal Parliament.

While the draft bill of rights presented to Cabinet in late May underwent only minor changes throughout the summer, Fulton, Driedger and R. B. Bryce, secretary to the Cabinet, decided that a new addition to the legislation was necessary.⁸⁶ This revision to the draft bill concerned the War Measures Act (WMA). Passed in 1914, the WMA gave the Governor-in-Council almost unlimited powers upon the declaration that a state of "war, invasion, or insurrection, real or apprehended" existed in Canada. A vote in Parliament was unnecessary. With such sweeping powers, the WMA was an easy target for civil libertarians, including John Diefenbaker. With the decision to enact a Canadian bill of rights, an opportunity existed to curtail the sweeping powers of the 1914 act. However, the Justice Department viewed this development as a dangerous reduction in

⁸⁵ In their memos, Fulton and Jackett explicitly rejected the suggestions for a "Human Rights Bureau" to oversee the implementation of the bill of rights and other human rights legislation. See Jackett, "Memorandum for the Minister of Justice," 21 April 1958, RG 13, Vol. 2795, File 182000-29 and Fulton, "Memorandum for the Prime Minister," 29 April 1958, *ibid*.

⁸⁶ See "Cabinet Minutes," 27 May 1958, NAC, RG 2, *Records of the Privy Council Office*, Vol. 1898, File 28 April 1958-6 June 1958.

government power in the case of war. Fulton moved to offset this potential emasculation of the WMA by inserting a new provision into the proposed bill of rights. Together with Driedger, the justice minister formulated two options. First, he suggested an addition which stated that the bill “cannot in general override the necessities of war.”⁸⁷ While the simplicity of this suggestion offered an uncomplicated route around the impasse, it did little to protect the rights of Parliament which lay at the heart of much of Diefenbaker’s political arguments. As a result, Fulton and Driedger drafted an amendment to the War Measures Act for inclusion in the bill of rights legislation. This proposal gave to Parliament the right to repeal any proclamation made by the Governor-in-Council that a state of war existed in Canada which thus invoked the WMA. The amendment also included a statement that any orders passed under the act would not be considered an infringement of the bill of rights.⁸⁸ Bryce favoured this suggestion and recommended it to Diefenbaker with the comment that “this Bill of Rights affords us an opportunity to carve out a useful and practical role for Parliament in the next war.”⁸⁹ As the draft legislation

⁸⁷ As Bryce noted, this suggestion had “great administrative advantages,” R. B. Bryce, “Memorandum for the Prime Minister,” 4 June 1958, RG 13, Vol. 2795, File 182000-29.

⁸⁸ For the suggested amendment, see Driedger to Fulton, 8 May 1958, RG 13, Vol. 2795, File 182000-29. See also, Driedger to Fulton, 13 May 1958, *ibid.* Fulton and Driedger also sought to limit the bill of rights application to the Defence Production Act. This act authorized the minister of defence to take over control and direct private industry in case of national emergency. However, Fulton dismissed the issue when informed that the Department of National Defence intended to allow the legislation to lapse, see Jackett to Fulton, 25 July 1958, *ibid.*

⁸⁹ Bryce, “Memorandum for the Prime Minister,” 4 June 1958, RG 13, Vol. 2795, File 182000-29.

neared completion in August 1958, Fulton attached this amendment to the bill of rights.

On 27 August 1958, the draft bill cleared its last Cabinet hurdle and was now ready for first reading in the House of Commons. However, by September 1958, the parliamentary session was close to its end and there was insufficient time to adequately debate the legislation promised in the Speech from the Throne. As a compromise, the government decided to introduce the draft bill of rights in 1958 but give it only first reading with the promise of re-introduction in the 1959 session. As stated by the prime minister, this would ensure a full discussion by both Parliament and by those organizations and individuals concerned with the question.⁹⁰

After one year as prime minister and twelve years of agitation, John Diefenbaker prepared to introduce his bill of rights. Between 1952 and 1958, the protection of human rights in Canada had advanced in various forums. The efforts of activists such as Kalmen Kaplansky and Irving Himel to convince provincial governments to enact fair practices acts to prevent unwarranted discrimination and the tireless defence of individual rights by Jehovah's Witnesses in the Supreme Court stand as perhaps the most significant accomplishments of Canada's "decade of human rights."⁹¹ At the same time, the United Nations continued its steady march toward ratifying the International Covenants and other

⁹⁰ Fulton, "Memorandum to Cabinet: re: Bill of Rights," 27 August 1958, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 365, Microfilm Reel 162, 284985 and *Debates*, 5 September 1958, 4639.

⁹¹ F. R. Scott referred to the 1950s as Canada's "decade of human rights." See Douglas Saunders, "Law and Social Change: The Experience of F. R. Scott," in *On F. R. Scott: Essays on His Contributions to Law, Literature and Politics*, eds. Sandra Djwa and R. St J. Macdonald (Montreal: McGill-Queen's University Press, 1983), 121-132.

instruments to better safeguard universal human rights. Yet, for the majority of this period, demands for a national bill of rights were few. The St. Laurent government's determined resistance to all arguments for a rights guarantee stymied the movement. Only with Diefenbaker's election was the issue returned to the same level of national attention it had received during the Gouzenko Affair. However, by 1957 the arguments by civil libertarians and human rights advocates had changed markedly from the late 1940s. While Diefenbaker basked in the adulation he received for his promises to enact a national rights bill, he had little inkling of the battle that awaited his vision of a Canadian bill of rights.

Chapter Six

The Diefenbaker Bill of Rights, 1958-1960

John Diefenbaker proudly unveiled An Act for the Recognition and Preservation of Human Rights and Fundamental Freedoms to Parliament on 5 September 1958. In a passionate speech, he vowed that the bill of rights “would make Parliament freedom-conscious...It would act as a landmark by means of which Canadians, through Parliament, would have redeclared those things which have made Canada great...It would give to Canadians the realization that wherever a Canadian may live, whatever his race, his religion or his colour, the Parliament of Canada would be jealous of his rights.”¹ After eighteen years as an M.P. and countless speeches from the opposition benches on the need for better safeguards for both Canadians’ individual rights and the rights of Parliament, the prairie lawyer finally had the political power to see his convictions acted upon. With this speech John Diefenbaker offered his vision of a bill of rights.

As promised, the Commons gave only first reading to the Bill of Rights (Bill C-60) before withdrawing the bill from the 1958 parliamentary session. Ostensibly, this was to allow for discussion of the government’s proposed legislation. For the next two years the draft bill came under a steady stream of criticism. It became immediately apparent that Diefenbaker’s vision was not shared by most of his civil liberties colleagues from the 1940s.

¹ *House of Commons Debates* (hereinafter *Debates*), 6 September 1958, 4644.

Between 1958 and 1960, the Diefenbaker government struggled to defend its draft bill against an onslaught of criticism. As complaints flooded into Ottawa, a pattern soon emerged to show that four main issues concerned the majority of critics. First, they argued that because Bill C-60 was not designed as an amendment to the BNA Act, the legislation would be of little value. It was a parliamentary statute which affected federal jurisdiction only. Second, some held that the contents of the bill were incomplete, especially in the field of social and economic rights. Third, others stated that the inclusion of the War Measures Act in a bill created to protect human rights made a complete mockery of the entire endeavour. Fourth, almost all complained of the lack of public participation in the process to draft and pass the proposed legislation. Through published articles, direct correspondence, public lecture and radio broadcasts, respected individuals gave voice to these challenges, voices which the Diefenbaker government could not ignore. Eventually, this political pressure forced a reconsideration of the draft bill and some of the precepts upon which it rested. However, the limb only bent; it did not break.

“Disappointing...limited...and ineffective:” The Critics and Bill C-60

If John Diefenbaker had expected a blaring of trumpets and endless accolades in response to his bill of rights, then the tenor of the criticisms toward his proposal must have been a cold splash of political water. The breadth of the opposition to his bill became clearly evident in December 1958 at the National Conference on Human Rights to commemorate the tenth anniversary of the Universal Declaration. Although first suggested by Kalmen Kaplansky in 1956 to celebrate the founding of the Canadian Labour

Congress (CLC), the organization cancelled its plans in 1957 when the U.N. formally requested a conference for the anniversary of the Universal Declaration.² Together with the introduction of the Diefenbaker Bill of Rights in September 1958, this national symposium of some of Canada's legal, academic and political elite awakened a renewed interest in the individual rights of Canadians. Members of the news media, the civil service, academia and the wider public walked through the doors of the Château Laurier to hear the impressive list of speakers. The chairman of the conference was the well-respected Hugh Keenleyside of the Department of External Affairs and then director-general of the U.N.'s Technical Assistance Administration. The conference delegates, who included Justice J. T. Thorson, John Humphrey, Claude Jodoin, Bora Laskin, Frank Scott, Gérard Pelletier and Pierre Elliot Trudeau, presented discussions on topics ranging from the validity of individual types of rights to the influence of the Universal Declaration upon Canada and the world. However, it was clear that the most hotly debated issue was the proposed Canadian Bill of Rights. The news media concentrated on it and the government even sent M.P. David Walker, parliamentary assistant to the justice minister, to defend it. By the end of the conference, the Universal Declaration, which had contributed immeasurably to the discussion of human rights in Canada in the late 1940s,

² "Minutes of the Meeting of the National Committee on Human Rights," 19 September 1956, National Archives of Canada (NAC), MG 28 V 75, *Records of the Jewish Labor Committee of Canada*, (hereafter *JLCC Papers*) Vol. 14, File 3 and "Minutes of the Meeting of the National Committee on Human Rights," 1 May 1957, *ibid.* At the 1 May 1957 meeting, Max Swerdlow noted that U.N. representatives had contacted a number of national organizations in Canada to suggest a conference for December 1958. The original intention of the U.N. was to avoid controversial issues "such as a Canadian Bill of Rights."

provided the first public occasion for a studied response to the recently proposed Canadian Bill of Rights.³

In effect, this conference offered a preview of what the Diefenbaker government could expect from the country's human rights advocates, legal and constitutional experts and the general public regarding his proposed bill. While they praised the measure's broad goals, speaker after speaker criticized the specific provisions of Bill C-60 as ineffective and incomplete. Most doubted the value of a bill of rights passed as a statute and not as an amendment to the constitution. Others questioned the inclusion of the War Measures Act in a piece of legislation designed to protect rights.⁴ The government's representative offered little in return. Complaining that all comments on the bill had been negative, David Walker feebly challenged his critics to give "concrete suggestions in writing."⁵

Throughout 1958-1959, bill of rights advocates responded to this challenge. The first and most significant criticism to the Diefenbaker Bill of Rights concerned the draft

³ Other conference delegates included Pierre Dansereau, Bernard Mailhiot, Roby Kidd, W. Preston Gillbride, Saul Hayes, Wm. P. Jenkins, Andrew Brewin, Jean Louis Gagnon, George Mooney, H. Woods, William Mahoney, Donald MacDonald, Frank Vallee, Agnes E. Roy, Mrs. John D. Taylor, R. O. MacFarlane, Eamon Park and Mrs. Robert Paradis, see "Programme: The National Human Rights Conference," 8-10 December 1958, *JLCC Papers*, Vol. 22, File 2.

⁴ See *Montreal Gazette*, 8 December 1958 for a preliminary description of the conference.

⁵ "Report on the General Session held Wednesday, December 10th, 1958," 10 December 1958, *JLCC Papers*, Vol. 21 File 18. One member of the audience, John Fenston, characterized Walker's response as "very feeble" and "wishy-washy," Fenston to Diefenbaker, 20 December 1958, Rt. Hon. John G. Diefenbaker Centre, *The Rt. Hon. John G. Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 366, Microfilm Reel M-7949, 285586.

legislation's statutory form. Critics such as Toronto constitutional scholar Bora Laskin concluded that the proposed bill was little more than a "pious declaration." These were the exact words which Diefenbaker had used in 1947 to warn against measures which simply listed rights without the benefit of legal remedy.⁶ Laskin's arguments were grounded in the debates of the 1940s and the prime minister's past words on the subject became easy fodder against Bill C-60. Lester Pearson, now Leader of the Opposition, had taken swift advantage of this political opportunity when Diefenbaker introduced the legislation in September 1958. With the Liberals' past arguments on bills of rights seemingly forgotten, Pearson delivered the first public response to the government's proposal and quoted directly from the prime minister's many speeches in the Commons on bills of rights when the prairie Conservative sat to the left of the Speaker.⁷ Pearson underscored the distance between the prime minister's past comments and the eventual bill he introduced. His most trenchant reference concerned Diefenbaker's own 1947 argument that any proposed bill of rights must include the participation of the provinces to be effective. In response, Pearson challenged the prime minister to submit Bill C-60 to the provinces for their opinion and invite them to join Ottawa in a "truly national declaration

⁶ Bora Laskin, "The Proposed Bill of Rights," speech presented at the National Human Rights Conference, 10 December 1958, *JLCC Papers*, Vol. 22, File 2. Diefenbaker made a similar comment during the Commons debate on the resolution to establish the 1947 Special Parliamentary Committee on Human Rights: "Declarations regarding freedom do not assure the practice of freedom; unless the right remains for the individual or the nation to have his or its rights established under law, they are but pious declarations." *House of Commons Debates* (hereafter *Debates*), 16 May 1947, 3150.

⁷ *Debates*, 5 September 1958, 4647.

on human rights and fundamental freedoms.”⁸

In the months following this parliamentary debate, other critics focused on this argument as well. In a speech before the 1958 Ottawa conference, Mrs. Saul Hayes of The National Council of Women of Canada (NCWC) held that Bill C-60 was acceptable as a declaration, but “the catalogue of individual liberties should be enshrined” as a constitutional amendment. It should not be vulnerable to the whims of any future Parliament.⁹ Other women’s associations, organized labour, business groups and even the premier of Ontario made similar arguments. Why pass the bill of rights as a statute without even an attempt at reaching an agreement with the provinces for a constitutional amendment?¹⁰ The basic form of the proposed bill of rights offered Canadians little more than they already had in the protection of individual rights and freedoms. While human rights advocates recognized the difficulties in reaching an agreement with the provinces to

⁸ *Debates*, 5 September 1958, 4647 and 4652. For Diefenbaker’s speech see *Debates*, 16 May 1947, 3152.

⁹ The NCWC noted the difficulty of reaching an agreement with the provinces to amend the constitution. Therefore, they argued instead for a clear “declaration of rights” until such constitutional change was possible. “Why, In Our Opinion, A Declaration of Rights is Preferable to a Bill of Rights at This Time,” NCWC brief to the National Conference on Human Rights, 8 December 1958, *CLC Papers*, Vol. 326, File 26.

¹⁰ For other comments see Eamon Park (assistant to national director, United Steelworkers of America), brief to National Conference on Human Rights, 10 December 1958, *JLCC Papers*, Vol. 21, File 18; Evan McCormick (executive director of the Winnipeg Chamber of Commerce) to Diefenbaker, 23 December 1958, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 365, Microfilm Reel M-7949, 285232; T. C. Douglas (premier of Saskatchewan) to Diefenbaker, 19 January 1959, *ibid.*, Vol. 366, Microfilm Reel M-7949, 285555; A. N. Fraser (chairman of the Women’s International League for Peace and Freedom, Toronto Branch) to Diefenbaker, 9 February 1959, *ibid.*, 285500-285501; and, Margaret G. Smith (national president of the YWCA) to Diefenbaker, 14 April 1959, *ibid.*, 285836-285837.

place a rights guarantee within the constitution, they nonetheless held that anything short of this would be ineffective. The government's decision to proceed with the statute option rekindled the fierce debate from the 1940s as to the best method to protect individual rights and freedoms.

A number of objections stemmed from this main argument against a bill of rights passed as a parliamentary statute. First, according to the precepts of parliamentary sovereignty, no piece of legislation could bind the actions of future parliamentarians. Since the Canadian Parliament was supreme within the boundaries of its jurisdiction, a bill of rights by statute placed no restrictions upon the body's conduct. As a result, the proposed Canadian Bill of Rights rested on no firmer ground than did any other act of the federal government. At any time, the Diefenbaker bill could be amended, bypassed or withdrawn completely by a simple majority in Parliament. This hardly served, then, as the "landmark" in human rights protection that the prime minister envisaged.¹¹ The second objection concerned the scope of the proposed bill. As a statute of Parliament, and as explicitly stated in the text of the legislation, the Diefenbaker Bill of Rights affected matters within the federal government's jurisdiction only. As long as an individual's rights were trampled by a federal authority, he or she could seek redress under the new bill. If, however, the unlucky person found a provincial culprit behind the infringement, which according to human rights advocates was often the case, Bill C-60 offered no protection. The Diefenbaker Bill of Rights would be inoperable against either another Padlock Act or

¹¹ For press criticism of Bill C-60, see *Ottawa Citizen*, 6 September 1958; *Globe and Mail*, 11 September 1958 and 23 March 1959.

Alberta Press Act. The new Canadian Bill of Rights was, therefore, “national” only by the most narrow of definitions.

In addition to these criticisms of the bill’s form, many opponents argued that the statute was not even truly a bill of rights; it was a declaration of rights. Bill C-60 contained only minor operative components to enforce human rights protection despite its recognition that certain rights and freedoms “have always existed and shall continue to exist.” The measures in Clause 3 and Clause 4 to scrutinize government legislation and orders were thin and of questionable value given the sheer volume of activity in a modern state. The suggestion that the minister of justice examine “every proposed regulation...and every Bill introduced in the House of Commons” to ensure their accordance with the Bill of Rights would be a daunting job for the most hardworking individual. Together with its statutory form, this lack of effective enforcement relegated Bill C-60 to a declaratory statement of the human rights Canadians already enjoyed. Indeed, as Frank Scott concluded, “I honestly do not think it [the proposed Bill of Rights] is going to make the slightest difference to anybody if it is passed...the Bill is almost meaningless.”¹² This was his initial reaction to Bill C-60 and it rang true for most critics of the new proposal. While many outspoken human rights advocates bemoaned the declaratory form of the proposed bill of rights and the government’s intention to pass the measure as a simple statute, the arguments of Bora Laskin and F. R. Scott provided the most detailed examination of these objections.

¹² F. R. Scott to Stanley Knowles, 13 November 1958, NAC, MG 28 I 103, *Records of the Canadian Labour Congress* (hereafter *CLC Papers*), Vol. 322, File 1.

By 1958 Laskin, a professor in the University of Toronto Faculty of Law, was regarded as one of Canada's premier scholars on civil liberties and the constitution. Laskin had been involved in the fight against racial and religious discrimination since the 1940s in his work with the Joint Public Relations Committee of the Canadian Jewish Congress. More importantly, his many writings on the Canadian constitution and civil liberties gained for him a reputation as one of the country's leading experts on the subject, and accordingly, his opinions garnered immediate attention.¹³ His first major commentary on Diefenbaker's proposed bill of rights came at the Ottawa conference on human rights in December 1958. He later refined these arguments in a March 1959 *Canadian Bar Review* article entitled "An Inquiry Into the Diefenbaker Bill of Rights." The Toronto professor found little of value in the federal government's initiative and minced few words in his discussion of the proposed bill. As Laskin argued, "the document is disappointing in its approach, unnecessarily limited in its application and ineffective in its substance...I say categorically that this is not enough at this point in our history."¹⁴

Laskin completely rejected the implicit statement in the draft bill of rights that civil

¹³ For an example of Laskin's previous writings see his "'Peace, Order and Good Government' Re-examined," *Canadian Bar Review* 25 (December 1947):1054-1087; Laskin, *Canadian Constitutional Law: Cases, Text and Notes on Distribution of Legislative Power* (Toronto: Carswell Co. Ltd., 1951); and Laskin, "Our Civil Liberties: The Rôle of the Supreme Court," *Queen's Quarterly* 61 (Winter 1954-1955):455-471.

¹⁴ Laskin, "The Proposed Bill of Rights" and Bora Laskin, "An Inquiry Into the Diefenbaker Bill of Rights," *The Canadian Bar Review* 37 (March 1959):77-134. With Professor Maxwell Cohen, Laskin gave a similar, yet abbreviated, version of these arguments in a submission to the Human Rights Conference on behalf of the Canadian Jewish Congress, see "Submission presented to the Citizens' Commission on Human Rights by the Canadian Jewish Congress," 8 December 1958, Ontario Jewish Archives, MG 8/S, *Records of the Joint Community Relations Committee*, Box 72, File "1958."

liberties could be divided between federal and provincial jurisdictions. For Laskin, to have both a provincial and a federal freedom of religion or association was nonsensical. Either Canadians possessed basic civil liberties or they did not. There could be no provincial variations on the degree of freedom in the country. Citing the decision of Supreme Court Justice Ivan Rand in *Murphy v. C.P.R.*, the Toronto professor held that the BNA Act distributed the totality of legislative power between both levels of government. This division, he claimed, was an exclusive one. Only in certain, well-defined areas did both the federal Parliament and provincial legislatures hold joint jurisdiction.¹⁵ If, then, jurisdiction over civil liberties was not jointly held, which government controlled civil liberties?

Laskin disagreed with the “loose talk - most of it in the daily press” which contended that the power to legislate for these rights rested in the hands of provincial legislators. Again, drawing heavily on the decisions of Justice Rand in his decisions in *Winner v. S.M.T. (Eastern) Ltd.*, and *A.-G. of Canada, Switzman v. Elbling* and *Roncarelli v. Duplessis*, Laskin held that fundamental political freedoms were beyond the reach of the provincial legislatures.¹⁶ Like others before him, he argued that provincial jurisdiction over “civil

¹⁵ Laskin, “The Proposed Bill of Rights” and Laskin, “An Inquiry Into the Diefenbaker Bill of Rights,” 99-100. For Justice Rand’s decision see, *Murphy v. C.P.R. and Attorney General of Canada*, [1958] S.C.R. 626, at 634.

¹⁶ In both papers, Laskin argued that there existed four categories of rights: political, legal, economic and egalitarian (non-discrimination). On the last three he conceded that the provinces had some competence to legislate; however, on political rights (freedom of the press, association, thought, religion) he denied any role to the provincial level. Laskin, “The Proposed Bill of Rights” and Laskin, “An Inquiry Into the Diefenbaker Bill of Rights,” 78 and 109-113. For the decisions of Rand see *Winner v. S.M.T. (Eastern) Ltd. and A.-G. of Canada*, [1951] S.C.R. 887, at 918; *Switzman v. Elbling and A.-G. of Quebec*, [1957] S.C.R. 285, at 305; and *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at 130.

rights,” as enunciated in the BNA Act, was distinct from legislative power over civil liberties. According to constitutional tradition, the power over “civil rights” concerned matters of private law only. Civil liberties, however, encompassed public order and the individual’s relationship with the state and thus was a matter of public law. Although there was as yet no judicial decision to delineate precisely the constitutional responsibility for civil liberties, Laskin contended that “enough has come from the Courts to suggest that if there is any dominating authority in the area of civil liberties it is that of the Parliament of Canada and not of the legislatures of the Provinces.”¹⁷

From this perspective, Laskin argued that the Diefenbaker Bill of Rights was needlessly weak. Enacted as a statute, Bill C-60 was merely a declaration, a political charter of good intentions. The most effective safeguard to individual liberties in Canada remained an amendment to the constitution which would limit the power of Parliament and the provinces to curtail certain fundamental human rights. He argued that since civil liberties lay within the purview of federal power, Parliament could simply submit a bill of rights to Westminster as an amendment to the BNA Act. Under the changes made by the St. Laurent government in 1949, Ottawa did not require provincial agreement to any constitutional amendment which affected federal powers only.¹⁸ Therefore, drafting a bill of rights as a statute which affected federal jurisdiction only was unnecessary. However, if the Diefenbaker government refused to acknowledge Parliament’s jurisdiction over civil

¹⁷ Laskin, “The Proposed Bill of Rights.”

¹⁸ On the 1949 constitutional amendment see Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism* (Toronto: University of Toronto Press, 1990), 140-142.

liberties, then the exclusivity of legislative power as found in the Rand decision in *Murphy v. C.P.R.* meant that they must therefore be a provincial concern alone. Bill C-60, then, was *ultra vires*.¹⁹ In either case, the limited nature of the Diefenbaker Bill of Rights offered little protection to the rights of Canadians. If this was the intention of the Conservative government, then Laskin concluded that “[i]t would be better that no Bill be proposed so that the common-law tradition be maintained through the unifying force and position of the Supreme Court of Canada.”²⁰

In his analysis of Bill C-60, F. R. Scott came to a similar conclusion to that of Laskin. Scott, who had made a vague suggestion for a Canadian bill of rights as early as 1935, immediately condemned Diefenbaker’s proposal as an ineffective “declaration” rather than a true rights guarantee. In an address to the Canadian Club of Montreal on 10 November 1958, he foreshadowed many of the arguments of later critics, including Bora Laskin.²¹ Scott too argued that Bill C-60 would have no limiting effects upon the actions of future Parliaments and that only through an amendment to the BNA Act could this truly be achieved. While the McGill professor asserted that civil liberties were not the same as “civil rights,” he conceded that jurisdiction over human rights was divided between

¹⁹ Laskin showed that the judgements given by Supreme Court Justices Rinfret, Taschereau and Kerwin in the *Saumur* case whereby freedom of religion was defined as a “civil right” under the BNA Act could be used to render Bill C-60 *ultra vires*. See Laskin, “An Inquiry Into the Diefenbaker Bill of Rights,” 118-120.

²⁰ Laskin, “An Inquiry Into the Diefenbaker Bill of Rights,” 78.

²¹ F. R. Scott, “A Bill of Rights For All Canadians,” address to the Canadian Club, Montreal, 10 November 1958, NAC, MG 30, D 211, *Francis Reginald Scott Papers*, Vol. 35, File 6, Microfilm Reel H-1296. The arguments Scott developed for this speech formed the core of his many subsequent criticisms of the Diefenbaker Bill of Rights.

Ottawa and the provinces. This was not the main impediment to the entrenchment of a bill of rights in the Canadian constitution, however. For Scott, despite its pronouncements, the Diefenbaker government did not seek an amendment because of its attachment to the supremacy of Parliament. To counter this position, he dredged up an argument he had first developed in the 1940s. According to Scott, the BNA Act already contained an implied bill of rights in the guarantees to the use of language and to the rights of minority education. Therefore, the supremacy of Parliament did not truly exist anyway in Canada and an entrenched bill of rights would simply carry on with past practice.²²

Throughout 1959 Scott strenuously repeated this argument in an attempt to convince the government that a constitutional bill of rights was possible. He questioned Diefenbaker's assertion that the provinces were jealous of their jurisdiction and that the probability of an agreement to limit legislative power was remote. Scott proposed as an interim measure the inclusion of a rule of statutory interpretation in Bill C-60: "This Act shall not be amended by any future statute except by express mention." Indeed, as he confided to his friend David Lewis of the CCF, he preferred to have no bill of rights to one not appended to the constitution.²³

In addition to the attack on the draft bill's form, many critics challenged the

²² Scott, "A Bill of Rights For All Canadians." See also his revised version, "A Bill of Rights For All Canadians," 8 May 1958, CBC Radio Broadcast, "University of the Air," NAC, *Lester Bowles Pearson Papers*, MG 26 N 2, Vol. 36, File 413.1, Pt. 2. For his argument that the BNA Act already contained a bill of rights, see his "Dominion Jurisdiction Over Human Rights and Fundamental Freedoms," *Canadian Bar Review* 27 (May 1949):500.

²³ Scott to David Lewis, 5 February 1959, *Scott Papers*, Vol. 43, File 13, Microfilm Reel H-1231. See also, Scott to Himel, 26 June 1959, *ibid*.

substance of the legislation. This criticism centred on the government's choice of which rights merited inclusion in the statute. During the 1950s, the debates at the United Nations concerning the Covenant on Social, Economic and Cultural Rights, the passing of numerous fair practices acts in the provinces and the efforts by organized labour, women's organizations and ethnic associations all heightened the relative importance of social and economic rights. Bill C-60 did not reflect these developments, and immediately after its introduction, various interests challenged the collection of rights and freedoms enumerated in the bill and suggested others not present in the draft. The Diefenbaker Bill of Rights had a preponderance of traditional political freedoms and legal entitlements which clearly mirrored the interests of the prime minister. However, what dismayed many observers was the almost complete disregard for social and economic rights. Only Clause 2(b) which declared protection of the law without discrimination on the basis of race, national origin, colour, religion or sex, ventured into the area of equality rights. This narrow definition of human rights in a national bill of rights led to vociferous calls for a reconsideration of Bill C-60.²⁴

The Canadian Labour Congress provided the most detailed response to the government's exclusion of social and economic rights. Under the direction of the Jewish Labour Committee of Canada (JLCC) and Kalmen Kaplansky, organized labour had

²⁴ One early suggestion came from Victor Harrison, the son of Diefenbaker's old civil liberties friend from the 1940s, H. R. Harrison. Noting the recent Kinsey Report on human sexuality, the younger Harrison suggested that "freedom of morality" be included in the Bill of Rights to protect the homosexual lifestyle, Harrison to Diefenbaker, 20 October 1958, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 365, Microfilm Reel M-7949, 285285-285290.

developed a respected program to fight racial and religious discrimination alongside its traditional efforts to protect trade union rights. In fact, the old labour congresses had continued to pressure the Liberal government of Louis St. Laurent for a national bill of rights after many others had given up. These activities intensified with the merger of the Trades and Labor Congress and Canadian Congress of Labour in 1956. At its founding convention, the new labour congress renewed its pledge to press for a national bill of rights.²⁵ Consequently, through the membership of its National Committee on Human Rights and the congress president, the CLC immediately seized upon what it considered the grave omissions of the Diefenbaker Bill of Rights.

The first official response from the CLC came from the Congress president, Claude Jodoin, a veteran of the human rights movement. Jodoin was a union organizer from Montreal's textile industry. During the Second World War and its aftermath, he moved quickly up the TLC leadership ladder and was elected president in 1954.²⁶ During the 1940s and 1950s, Jodoin headed the TLC's Committee to Combat Racial Discrimination and thus had an intimate knowledge of civil liberties in Canada and the question of a

²⁵ At its founding convention, the CLC passed a resolution which pledged its efforts to protect civil liberties, endorsed the Universal Declaration and committed the congress "to press for an amendment to the Constitution to provide for a Bill of Rights guaranteeing to the Canadian people those rights and freedoms which are essential to a free society," see CLC, "Resolution on Bill of Rights and UDHR," in the *Report of Proceedings of the Canadian Labour Congress, First Convention, Toronto, Ontario, April 23-27, 1956*, 90. For evidence of labour's continued efforts in the mid-1950s see "Canadian Congress of Labour Memorandum to Government," 15 December 1955, *JLCC Papers*, Vol. 14, File 2.

²⁶ David Kwavnik, *Organized Labour and Pressure Politics: The Canadian Labour Congress, 1956-1968* (Montreal: McGill-Queen's University Press, 1972), 49.

national bill of rights. In his submission to the 1958 National Conference on Human Rights on behalf of the CLC, he praised the initiative of the Diefenbaker government. Nevertheless, he bluntly stated that “Bill C-60 falls short of being what the Congress and others have been seeking over a number of years.” Like Scott and Laskin, the labour leader condemned the form of the bill as ineffective and called instead for an amendment to the constitution. However, the core of Jodoin’s criticism concerned a detailed analysis of the rights contained in the government’s draft bill. Repeating arguments made by numerous delegates to the United Nations during the debates on the covenants, Jodoin asserted that the protection of civil liberties was valueless to an individual without a concurrent guarantee of economic security. The right to “retain and instruct counsel without delay” meant little to a man or woman forced to beg for food or sleep under a bridge. According to Jodoin, Canada’s economic shift from a largely agricultural society to a complex industrial one necessitated the expansion of human rights to include such entitlements as the right to employment without discrimination and to a “measure” of the social and economic necessities. “What we are saying,” Jodoin concluded, “is that human rights must include economic security to be fully effective.”²⁷ Clearly, the CLC would not be satisfied with a bill of rights designed only to address the issues of 1946-1947.

Two days after this submission, Eamon Park of the CLC’s National Committee on Human Rights continued labour’s criticism of the Diefenbaker Bill of Rights. Where

²⁷ “Submission by the Canadian Labour Congress to the Canadian Conference on the Universal Declaration of Human Rights, December 8-10, 1958,” *CLC Papers*, Vol. 270, File 13.

Jodoin remained diplomatic, Park unleashed a heated attack on the Ottawa's draft bill.²⁸ First, Park questioned the value to trade unionists of the bill's declaration of freedom of association since most infringements upon union rights came at the hands of provincial legislators, and thus were outside the jurisdiction of Bill C-60. Second, and more important, he condemned the almost complete omission of social and economic rights and, reminiscent of the events in the U.N., even suggested the enactment of a separate bill to enshrine only these types of rights and freedoms. He pointed to Clause 2(a), the "enjoyment of property," to support his argument. Park saw this as a blatant appeasement of business interests at the expense of labour. Drawing on the arguments of Jodoin, Park insisted that the right to private acquisition of public resources could potentially undermine traditional civil liberties if it resulted in the economic domination of one class. In conclusion he posited that "the inclusion of this 'right' in the Bill of Rights and the exclusion of other economic rights reflects the minds of the authors. Not a word in the Bill about the right to employment for the individual citizen but the 'property right' of business safely spelled out. Undoubtedly it reveals a point of view."²⁹

These two speeches fully laid bare organized labour's commitment to the protection of human rights in its broadest scope. However, while the CLC undoubtedly wanted full protection of traditional civil liberties "for their own sake," labour's primary

²⁸ Park was a former executive member of the CCL's National Committee on Racial Tolerance throughout its eight years of operation. See Kalmen Kaplansky, "Notes on Reports of Activities for Improved Human Relations, 1946-1947. Introduction," (hereafter "Notes") NAC, MG 30, A53, *Kalmen Kaplansky Papers*, Vol. 20, File 1.

²⁹ Eamon Park, Brief to National Conference on Human Rights, 10 December 1958, *JLCC Papers*, Vol. 21, File 18.

concerns were collective bargaining rights, the right to strike and non-discrimination in employment. Despite the strong statements by their president, most influential members directly involved in the congress' human rights activities appraised the likelihood of influencing the Diefenbaker Conservatives as very slim. The CLC executive characterized the labour-government relationship in Canada as the "poorest" among Western industrialized countries.³⁰ As well, many CLC members shared a rather dim opinion of John Diefenbaker and doubted that labour could persuade the prime minister to revise Bill C-60 in the direction they would like. Revealing his frustration, Stanley Knowles stated bluntly that "John D. is being most arrogant in his attitude toward those who think his Bill of Rights should be looked at very carefully." At the same time, Kalmen Kaplansky even counselled against agitating too vigorously since it may endanger the future of the bill.³¹ While organized labour was highly critical, then, of the proposed bill of rights, especially concerning the question of economic and social rights, it remained sceptical of its ability to alter the draft's course.

The third major criticism also concerned the substance of Diefenbaker's proposed

³⁰ Kwavnik, *Organized Labour and Pressure Politics*, 20. According to Kwavnik, "Diefenbaker's government accorded to the Congress so little recognition on such matters as health, taxation, broadcasting, and labour representation on the Canada Council that in 1962 the Congress leadership felt compelled to devote approximately one-sixth of its Memorandum to the 'regrettable fact that so far as your government is concerned, the Canadian Labour Congress and organized labour in general are institutions frequently to be ignored when you are considering issues of national importance,'" p. 68.

³¹ Stanley Knowles to Jodoin, 13 February 1959, *CLC Papers*, Vol. 322, File 1; and Kalmen Kaplansky to Sid Blum (Director of the JLCC), 12 February 1959, *JLCC Papers*, Vol. 14, File 20. This comment was in response to the suggestion that Diefenbaker be urged to create a parliamentary committee to examine Bill C-60.

statute. Although intended to better safeguard civil liberties, the inclusion of an amendment to the War Measures Act (WMA) in the bill of rights legislation immediately struck critics as somewhat ridiculous. Under the powers of the WMA, the Canadian government had passed the Defence of Canada Regulations (DOCR), had issued the orders-in-council to deport Canadian citizens of Japanese descent and had arrested and interrogated the suspects in the Gouzenko Affair without charge.³² Indeed, these actions had given birth to the movement that demanded a Canadian bill of rights. Therefore, to include the offending act in a draft bill designed to “make Parliament freedom-conscious” struck many as somewhat hypocritical.³³ Not surprisingly, the best articulated argument came from A. R. M. Lower. The Queen’s historian attacked what he called the “Sleeping Partner” of the Diefenbaker Bill of Rights. In a CBC radio broadcast reminiscent of his many submissions to the Mackenzie King government during the war, Lower highlighted the abuses to civil liberties perpetrated under the WMA. He considered the modifications to the WMA contained in Part II of Bill C-60 “meaningless” and charged that they would not offer Canadians any protection during a future war. In an appeal to Diefenbaker’s “place in Canadian history,” Lower called on the prime minister to thoroughly amend “the most dangerous measure ever placed on a British statute book” in a manner guaranteeing

³² On the powers of the War Measures Act see F. Murray Greenwood, “The Drafting and Passage of the War Measures Act in 1914 and 1927: Object Lessons in the Need for Vigilance,” in *Canadian Perspectives on Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), 291-328.

³³ On Diefenbaker’s conflicting pronouncements on the War Measures Act see Denis Smith, *Rogue Tory: The Life and Legend of John G. Diefenbaker* (Toronto: Macfarlane Walter and Ross, 1995), 162-163 and 347.

human rights in wartime.³⁴ Others, however, went beyond Lower's arguments.

According to A. N. Fraser, chairman of the Women's International League for Peace and Freedom (Toronto Branch), the best solution was to repeal the War Measures Act altogether. At the least, the "dangerous" act should not be included in the Bill of Rights. As one Ontario M.P.P. concluded in a curt letter to Diefenbaker: "I think I am safe in saying that in no other jurisdiction in the world has there ever been a Bill of Rights declared or passed which contains in the same instrument the method by which they may be wiped out."³⁵

The final major criticism hurled at the Diefenbaker Bill of Rights concerned the lack of consultation. The pattern had been set in the 1940s that when the government debated a human rights issue, it would create a parliamentary committee to allow for public participation. Ironically, Diefenbaker had been one of the first to suggest the creation of a parliamentary committee to investigate human rights and one of the few M.P.s on the 1947 body to actively promote a national bill of rights.³⁶ With the introduction of the Diefenbaker Bill of Rights in September 1958, many human rights advocates simply assumed that the tradition would continue. However, as prime minister,

³⁴ A. R. M. Lower, "The Bill of Rights and Its Sleeping Partner," 13 March 1959, CBC Radio broadcast, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 366, Microfilm Reel M-7949, 285464-285468. See also his "The Bill of Rights, The War Measures Act, 'An Iniquitous Piece of Legislation,'" *Canadian Commentator* (March 1959):2-3.

³⁵ Elmer W. Sopha to Diefenbaker, 12 July 1960, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 366, Microfilm Reel M-7949, 285920.

³⁶ *Debates*, 7 May 1946, 1300-1303.

he made no allowance for a similar body to discuss his proposed legislation. His only compromise was to allow for the private submission to Parliament of “suggestions and ideas” from those with an interest in human rights.³⁷

This frustrated many longtime advocates of a bill of rights who, while supportive of Diefenbaker’s initiative, nevertheless sought a public forum to voice their opinions. Chief among those critical of the government’s attitude was the CLC. The Congress believed that its mandate extended beyond labour matters to include topics of concern to all Canadians such as immigration, international affairs and civil liberties. Therefore, any refusal by the government to entertain the CLC’s opinions on these issues was seen as an affront to the Congress’ position and importance.³⁸ In its presentation to the Ottawa conference on human rights, in its annual memorandum to the government on 22 January 1959 and again in a direct request to the prime minister, the Congress pressured Diefenbaker to allow for the creation of a parliamentary committee. According to Jodoin, the doubts already expressed concerning the bill’s effectiveness necessitated the “formal scrutiny” of such a committee. Diefenbaker, however, stubbornly refused and simply

³⁷ *Debates*, 5 September 1958, 4644. In his response to Diefenbaker’s introduction of Bill C-60, Lester Pearson was the first to publicly suggest that a parliamentary committee be established to investigate the proposed Canadian Bill of Rights, *ibid.*, 4652.

³⁸ Kwavnik maintains that the CLC sought the federal government’s acknowledgement of organized labour’s right to represent legitimate interests outside the traditional labour realm in an attempt to gain access to the wider political process, see Kwavnik, *Organized Labour and Pressure Politics*, 5-45.

reiterated on 10 February in Parliament that one was not necessary.³⁹

Another Delegation and the Concern of the Canadian Bar Association

While frustration grew at the Diefenbaker government's unwillingness to establish a parliamentary committee, some critics decided to take their objections to Bill C-60 directly to the prime minister. Throughout the spring of 1959, Irving Himel of the Toronto Association for Civil Liberties (ACL) organized a large delegation of various groups and interests to express their "suggestions and ideas" in a public meeting with Diefenbaker. Like most activists after the 1951 trek to Ottawa, Himel and the ACL receded from the bill of rights movement to concentrate on other goals. The 1957 election of John Diefenbaker, however, reinvigorated the ACL's interest in a national bill of rights. Himel immediately sent a letter to his civil liberties ally from the 1940s congratulating him on his victory and requesting consideration of a constitutional rights guarantee.⁴⁰ With the introduction of Bill C-60, he began preparations for his favourite tactic: a delegation to the government. On 29 April 1959 Himel led his entourage to Parliament Hill and presented Diefenbaker with a short brief outlining the group's position

³⁹ "Congress Memorandum to Government," 22 January 1959, *Canadian Labour* 3, (February 1959):16; Jodoin to Diefenbaker, 19 February 1959, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol. 366, Microfilm Reel M-7949, 285492-285493; Diefenbaker to Jodoin, 26 February 1959, *ibid.*, 285491.

⁴⁰ Himel to Diefenbaker, 27 August 1957, *Diefenbaker Papers*, Prime Minister Series, 1957-1963, Vol.365, Microfilm Reel M-7949, 285205-285206. Kalmen Kaplansky held that Himel claimed personal friendship with Diefenbaker and had "close links" with the Progressive Conservative Party. See Kaplansky, "Notes, 1954," *Kaplansky Papers*, Vol. 21, File 2, 16-17; and, Kaplansky to Stanley Knowles and Donald MacDonald, 17 April 1959, *CLC Papers*, Vol. 322, File 1.

on the proposed bill of rights. Applauding the bill as “highly desirable,” the ACL brief repeated many of the recommendations of the 1950 Senate Committee. While it stated that an amendment to the constitution was preferable, Himel’s brief recognized that this “was easier said than done.” Therefore, unlike Scott and Laskin, the delegation accepted a bill of rights by statute. However, the ACL brief still suggested an alternate list of rights, but it closely resembled the ones already contained in Bill C-60. For his part, Diefenbaker remained unconvinced and simply replied that his draft needed no improvements.⁴¹

In his preparations for the trek to Ottawa, Himel solicited the support of a diverse array of individuals and organizations. However, not all were receptive to the ACL’s plan. A number of influential members of the Canadian Bar Association (CBA) had deep reservations about the suggestion that Canada even needed a national bill of rights.⁴² Although in 1944 the CBA’s Civil Liberties Committee had been one of the first groups to imply that a rights guarantee may be necessary, the association still had difficulty with the question by the late 1950s. Most CBA members remained dubious of the benefits of a constitutional bill of rights and maintained that the British common law system adequately

⁴¹ Himel’s brief also suggested that the bill allow individuals whose rights were infringed to seek redress to the Supreme Courts of the provinces, Himel, “To: The Right Honourable John D. [sic] Diefenbaker,” 29 April 1959, *JPRC Papers*, Box 10, File 9; and, Interview with the author, 4 May 1995, Toronto, Ontario. For Diefenbaker’s response see *JCRC Papers*, Box 10, File 9.

⁴² For the CBA’s correspondence with Himel concerning the ACL’s Ottawa delegation see, Himel to CBA, 9 April 1959, NAC, *Papers of the Canadian Bar Association* (hereinafter *CBA Papers*), MG 28 I 169, Vol. 9, File 128 and Walter S. Owen (CBA President) to Himel, 17 April 1959, *ibid.*

protected Canadians' civil liberties. They had supported the King and St. Laurent governments' refusal to enact a positive safeguard to human rights, despite the increasingly loud demands heard across the country.⁴³ At the same time, other CBA members such as R. M. Willes Chitty and Morris Shumiatcher supported the calls for a national bill of rights. This divergence of opinion in the association had little significance while St. Laurent's Liberals continued in office. The election of Diefenbaker's Conservatives in 1957 and the subsequent introduction of Bill C-60 forced a reconsideration of this situation though. What was once conjecture now was government policy.

The responsibility for mapping out the association's official position on the Diefenbaker Bill of Rights fell to David W. Mundell, the chairman of the association's Civil Liberties Section.⁴⁴ Mundell had an intimate knowledge of Canada's human rights questions in general and of the difficulties in drafting bills of rights in particular. He had been a senior counsel in the Justice Department for fourteen years in the 1940s and 1950s

⁴³ Under the direction of R. M. Willes Chitty, editor of the *Fortnightly Law Journal*, the CBA's Civil Liberties Section continued to suggest that rights were in danger in Canada and that perhaps a declaration similar to the U.N.'s was necessary. The members of the association, however, refused to endorse the idea. For the CBA's discussion of civil liberties and bills of rights in the 1940s see *Minutes of Proceedings of the Annual Meeting of the Canadian Bar Association, 1943-1948, 1950*, Vols. 26-30 and 32; and *Proceedings of the Council of the Canadian Bar Association, 28-30 August 1945*.

⁴⁴ One of the first responses of the CBA came from the editors of the *Canadian Bar Review*. They devoted the March issue of the legal journal to a discussion of the federal government's proposal which included articles by constitutional scholars Bora Laskin, Frank Scott and Edward McWhinney, see *Canadian Bar Review* 37 (March 1959).

and had been one of the department's chief advisors on human rights issues. In 1946 he sat as an assistant to Justices Kellock and Taschereau on the Royal Commission on Espionage and in 1950 was the Justice representative on Escott's Reid's Interdepartmental Committee on Human Rights. In 1952 Mundell drafted the preamble to St. Laurent's Act for the Protection of Civil Liberties. By 1959, he had left the civil service to pursue teaching at Osgoode Hall Law School as a professor of constitutional law.⁴⁵ He first suggested an "advisory committee" of bar members to examine the bill and to prepare a report for the association's annual mid-winter meeting of the executive in March 1959. As with all other groups and individuals concerned with Diefenbaker's proposed bill of rights, Mundell expected the government to re-introduce the bill early in the 1959 parliamentary session as promised on 5 September 1958. The amount of time to determine the association's response, therefore, was limited.⁴⁶

As the mid-winter meeting approached, however, the members of the suggested advisory committee failed to meet because of these time constraints.⁴⁷ Instead, Mundell alone drafted a long and rather impartial memo for discussion by the executive. Beginning

⁴⁵ For Mundell's background see *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms, 1960* (hereafter *Proceedings 1960*) (Ottawa: Queen's Printer, 1960), 470-471. For the preamble, see D. W. Mundell to F. P. Varcoe, 19 September 1952, NAC, RG 13, *Records of the Department of Justice*, Vol. 2844, File 157988.

⁴⁶ Walter Owen, "Memorandum to the Executive and Secretary, CBA," 22 September 1958, *CBA Papers*, Vol. 9, File 128.

⁴⁷ Mundell and a few other CBA members met in Toronto to discuss the bill and hammer out a response. Nevertheless, he was responsible for the resulting memorandum to the executive. "Extract from Mid-Winter Meeting Transcript," 3 March 1959, *CBA Papers*, Vol. 13, File 200.

with the statement that the enactment of a bill of rights was now government policy, the CBA's Civil Liberties chairman discussed first the various forms of rights bills available and the main arguments presented both for and against such instruments. He then examined Bill C-60 and suggested a number of criticisms regarding the bill's wording and form. More specifically, he suggested the reconsideration of Clause 2 which he argued was nebulous and possibly extended into provincial jurisdiction. As well, he supported the plea for the submission of the draft legislation to the Supreme Court for a ruling on human rights jurisdiction.⁴⁸

On 3 March 1959, Mundell presented his memo to the CBA executive for discussion. Despite his detailed analysis of the draft bill, however, the executive members debated instead whether Canada truly needed a bill of rights. Most disagreed that Canadians' human rights were in jeopardy and argued that even if they were, the existing judicial system provided adequate protection. As well, some raised the traditional issue of parliamentary sovereignty. Insinuating that perhaps the CBA should simply lobby against the bill's enactment, one speaker even questioned Mundell's statement that the government had committed itself to the bill of rights.⁴⁹ Others were not prepared to follow this course. One member counselled caution to those who believed that a bill of

⁴⁸ "Extract from Mid-Winter Meeting Transcript," 3 March 1959, *CBA Papers*, Vol. 13, File 200 and Mundell, "Memorandum: Re Bill C-60, 'The Canadian Bill of Rights,'" n.d., *CBA Papers*, Vol. 9, File 135.

⁴⁹ According to A. N. Carter, Q. C., of Saint John, "[i]t will be a sorry day for Canada when Parliament is so distrustful of itself and its successors that it surrenders its power to change the law," "Extract from Mid-Winter Meeting Transcript," 3 March 1959, *CBA Papers*, Vol. 13, File 200.

rights was unnecessary. He noted the possibility of negative public opinion against the association if it opposed a rights guarantee: “[o]ur objections, technically sound as they may be...may be construed throughout the country as an expression of our objection to the protection of our basic freedoms; and do not for a moment think they will not be.” As well, he agreed with Mundell that the enactment of a bill of rights was indeed government policy.⁵⁰

In the end, the March meeting adjourned with little accomplished. The executive members had traded heated remarks on the nature of civil liberties and their protection but could not reach agreement on an association position on the Diefenbaker proposal. The only tangible result was a weak resolution which called for a request to the federal government to postpone the re-introduction of the bill of rights until the following session of Parliament. In his conclusion on the meeting, Mundell found that this “question of a Bill of Rights is like fighting with a feather tick: there is nothing you can get your teeth into, it is largely an emotional matter which takes a long time to consider.”⁵¹

Nevertheless, the CBA dutifully sent the Civil Liberties Section’s resolution as well as Mundell’s detailed memorandum on bills of rights and criticisms of Bill C-60 to Ottawa. The meeting had not been fruitful, yet the association hoped that perhaps some influence on the federal government’s plans could be effected.

⁵⁰ T. G. Norris also moved a motion that the CBA establish a committee to draft a new bill of rights as an alternative to Bill C-60 which most members disliked, “Extract from Mid-Winter Meeting Transcript,” 3 March 1959, *CBA Papers*, Vol. 13, File 200.

⁵¹ “Extract from Mid-Winter Meeting Transcript,” 3 March 1959, *CBA Papers*, Vol. 13, File 200. For the CBA resolution see, “Resolution of CBA at a meeting on 3 March 1959, Quebec,” *CBA Papers*, Vol. 9, File 135.

E. D. Fulton, the Diefenbaker Bill of Rights and the Constitution

Throughout 1958-1959 under the guidance of Davie Fulton, the Justice Department prepared reasoned responses to critics such as Scott, Laskin and Jodoin in defence of Bill C-60. Together with his assistants, W. R. Jackett and E. A. Driedger, the justice minister resurrected the arguments made by F. P. Varcoe thirteen years previously to counter the demands for a constitutional amendment. At the same time, they simply dismissed the calls for the inclusion of social and economic rights and the concerns voiced about the War Measures Act. Only on the issue of consultation did the Diefenbaker government relent. In Parliament, the Liberal opposition had continued to press for a joint parliamentary committee to investigate the bill and to allow for public input. However, Diefenbaker steadfastly rejected the idea and repeated as late as 25 June 1959 that the government intended to pass its draft bill before the Commons adjourned for the summer recess.⁵² Unfortunately for civil libertarians and human rights advocates who had pressed for a bill of rights since the 1940s, they seemed destined to remain outside the process. Nevertheless, as the session neared its end, the bill still rested on the shelf. On 18 July 1959 the Conservative government finally yielded. The prime minister noted in a speech delivered to the Commons the representations made by various individuals and organizations and mentioned the CBA submission written by David Mundell specifically. In response, he announced that he had “altered” his position on the demands for a parliamentary committee and would therefore delay the re-introduction of his draft bill to

⁵² *Debates*, 15 January 1959 and 25 June 1959, 5135. For the Liberals’ continued calls for a special committee and Diefenbaker’s response see *Debates*, 9 February 1959, 811-812 and 10 February 1959, 856-858.

allow for such a body. For the fourth time in fourteen years, Canadians would have an opportunity to express their views before a parliamentary committee on the protection of their human rights.⁵³

Despite this concession, to most critics Ottawa appeared aloof to the steady stream of complaints levelled at the draft bill of rights in 1958-1959. At best, the Diefenbaker government was dismissive of suggestions that Bill C-60 required fundamental change. This attitude was most evident in the response to the formidable arguments made by Bora Laskin. W. R. Jackett, the deputy minister of justice, completely rejected as nonsensical the Toronto professor's arguments: "I do not know Professor Laskin so there is nothing personal intended when I say that I find the views [in Laskin's speech]...as difficult to get hold of as those put forward by other academic lawyers." The deputy minister maintained that no judicial decisions existed which clearly gave Parliament the power to enact legislation for the protection of human rights and fundamental freedoms and disagreed that the provinces had nothing to "properly object to" with federal action in this field.⁵⁴ The conclusions in David Mundell's memorandum received similar treatment. Davie Fulton dismissed the CBA lawyer's argument that Clause 2 may be misconstrued as infringing upon provincial jurisdiction, and he therefore held that a reference to the Supreme Court

⁵³ *Debates*, 18 July 1959, 6293. On 26 May 1959, Diefenbaker had informed the cabinet of his decision to create a parliamentary committee, see "Cabinet Conclusions," 26 May 1959, NAC, RG 2, A5a, *Records of the Office of the Privy Council*, Vol. 2744, No. 74-59.

⁵⁴ W. R. Jackett to David Walker, 1 December 1958, RG 13, Vol. 2804, File 186000-8, Pt. 2. This letter was in response to Walker's request for information on bills of rights to counter the arguments of Laskin. Walker had an advance copy of Laskin's speech.

was unnecessary. Oddly, in response to Mundell's suggestion that the language in Bill C-60 required improvement, the justice minister stated that "further refinement would not be advisable."⁵⁵ For a government which claimed it wanted input from those concerned with the proposed bill of rights, it remained largely indifferent to any suggestions.

Not surprisingly, then, the Justice Department made few modifications to Bill C-60 before the end of the 1959 parliamentary session. Fulton informed Diefenbaker that only one suggestion merited consideration in the aftermath of the 1958 Ottawa human rights conference. In response to the arguments of F. R. Scott, Fulton attempted to assuage fears that future Parliaments could easily override the draft bill of rights. Through an addition to Clause 3, Fulton obliged all government bills which purposely abrogated any rights or freedoms included in Bill C-60 to state this intention in the proposed statute. The justice minister argued that this requirement noticeably strengthened the bill since future governments would be hesitant to announce their infringement of human rights.⁵⁶ Four months later, Fulton made other minor changes to the draft legislation. He added freedom from arbitrary detention or imprisonment and protection from self-crimination to Clause 3 and strengthened the language in Clause 4. Fulton based these modifications in part on the brief submitted by the ACL delegation in April and on a memorandum

⁵⁵ Fulton to Diefenbaker, 24 April 1959, RG 13, Vol. 2800, File 184000-27. Jackett wrote this letter for the justice minister.

⁵⁶ Scott to Jackett, 26 January 1959, *Scott Papers*, Vol. 43, File 13, Microfilm Reel H-1231. According to Fulton, "[a]n amendment in these terms would, I think, strengthen the Bill to the point where an express reference to the Bill of Rights would virtually be necessary in order to overcome or in any way vary the rule of interpretation laid down in that provision [clause 3]." See Fulton to Diefenbaker, 27 January 1959, RG 13, Vol. 46, File 184000-27.

prepared by Morris C. Shumiatcher, the Chairman of the Saskatchewan Sub-Section on Civil Liberties (CBA). Despite more substantive suggestions in each of these papers and in the plethora of other submissions, the justice minister considered Bill C-60 ready to go forward.⁵⁷

Since the introduction of Diefenbaker's bill of rights in 1958, this general reluctance to make any significant alterations to the draft bill's form dominated the government's attitude toward the numerous criticisms it received. The responsibility for digesting and responding to these criticisms fell once again to the justice minister and his two senior assistants: Jackett and Driedger. Their arguments against the suggestions posed by the country's legal and constitutional experts, by labour, and by various ethnic and women's associations revealed much about the government's intentions. The Diefenbaker Bill of Rights was grounded firmly in the civil liberties battles of the Second World War and the Gouzenko Affair. The rights listed in Clause 3 which dealt almost exclusively with legal entitlements and the amendment to the WMA clearly indicated the stamp of Diefenbaker's years in opposition. As well, the constitutional questions raised in the 1947 and 1948 parliamentary committees together with the failed 1950 dominion-provincial conference guided the hands of Bill C-60's authors. The statute form of the bill and its direct statement that it affected only the federal sphere clearly revealed the

⁵⁷ Fulton to Diefenbaker, 11 May 1959, RG 13, Vol.46, File 184000-27. For the ACL brief see Himel, "To: The Right Honourable John D. [sic] Diefenbaker," 29 April 1959, *JCRC Papers*, Box 10, File 9. For the Shumiatcher memorandum see "Report of the Saskatchewan Sub-Section of the Civil Liberties Section of the Canadian Bar Association, Concerning Bill C-60, Being 'The Canadian Bill of Rights,'" 24 February 1959, RG 13, Vol. 2804, File 186000-8, Pt. 2.

government's determination to avoid any jurisdictional entanglement which could have jeopardized the draft bill. As a result, the unwillingness to reconsider these two principles, along with an obstinate attachment to the basic layout of the proposed bill, steered Ottawa's response to its critics.

Perhaps the most poignant example of this attitude was Fulton's arguments in response to the calls for the inclusion of social and economic rights. The CLC's efforts to convince the Diefenbaker government to make concessions on this question resulted only in frustration for labour leaders. The justice minister simply argued that "no changes in the Bill need be made." The government even rejected subtle suggestions which would have done little to alter the bill.⁵⁸ In his memorandum, Shumiatcher suggested an addition to the clause guaranteeing protection against racial, religious or sexual discrimination in the application of the law. The Saskatchewan lawyer believed that the current draft was restrictive and so he sought to expand the wording to include a reference to the "benefits" of non-discrimination.⁵⁹ Driedger completely rejected Shumiatcher's minor alteration. In a memo to the minister, Driedger argued that an amendment of this sort "would point inevitably to an entirely different type of Bill of Rights to that which the present one purports to be...there was no intention [when the bill was first drafted] to get into the

⁵⁸ Fulton to Diefenbaker, 27 January 1959, RG 13, Vol. 46, File 184000-27.

⁵⁹ "Report of the Saskatchewan Sub-Section of the Civil Liberties Section of the Canadian Bar Association, Concerning Bill C-60, Being 'The Canadian Bill of Rights,'" 24 February 1959, RG 13, Vol. 2804, File 186000-8, Pt. 2.

social welfare aspect of the modern concept of Bill of Rights.”⁶⁰ Although this represented a relatively benign suggestion, the government clearly was sensitive to any alterations that it believed would affect the basic foundation of the bill. As the criticisms and suggestions piled on the prime minister’s desk, the country’s human rights advocates realized that the Diefenbaker government would only consider changes to the bill’s wording and not substantive amendments which affected form or scope. Diefenbaker made this position clear in his announcement that the government had reconsidered the suggestions for a parliamentary committee. In his words, the body would “consider no other question than the terminology of the bill. As I see it, the question as to the need of a bill of rights would not be a subject for consideration.”⁶¹

Despite this stance, the government could not easily dismiss the numerous arguments for a constitutional amendment. Almost every submission on the Diefenbaker Bill of Rights contained some reference to the desirability of grafting human rights and fundamental freedoms onto the BNA Act.⁶² At the least, Fulton and his department officials recognized that they must give special attention to these arguments to justify the government’s decision to proceed with the bill in statute form. In early 1959, Jackett and

⁶⁰ Driedger, “Memorandum for the Minister of Justice: Re: Bill of Rights,” 23 March 1959, RG 13, Vol. 2800, File 184000-27.

⁶¹ *Debates*, 18 July 1959, 6293.

⁶² Even Shumiatcher’s memorandum which accepted the proposal as a statute and offered improvements to the bill in that form argued that a constitutional amendment was preferable, see “Report of the Saskatchewan Sub-Section of the Civil Liberties Section of the Canadian Bar Association, Concerning Bill C-60, Being ‘The Canadian Bill of Rights,’” 24 February 1959, RG 13, Vol. 2804, File 186000-8, Pt. 2.

Driedger studied the possibility of enacting Bill C-60 as an amendment to the constitution under the procedure adopted in 1949 and the changes to the bill that would be required, if any. In a memo to Fulton outlining their findings, Jakkett concluded that the government could proceed with this suggestion, but he counselled against the idea. Jakkett argued that the proposed bill of rights would accomplish nothing more as an amendment than it would as a statute. It would not truly limit parliamentary power since future governments could also unilaterally change the constitution to suit their needs: “[i]t will invite the criticism that the whole thing is really a sham and will obscure the very important accomplishment of the Bill in the present form.”⁶³

At the request of the justice minister in autumn 1959, Jakkett and Driedger developed a series of arguments against a bill of rights passed as an amendment to the BNA Act. Ironically, they rehashed many of the same arguments which the King and St. Laurent governments had used against Diefenbaker’s insistent proposals from the opposition ranks. Drawing heavily on Varcoe’s testimony given before the 1947 and 1948 parliamentary committees, the two justice officials blended the former deputy minister’s examination of parliamentary sovereignty with a new argument which doubted the efficacy of constitutional entrenchment.⁶⁴ First, both Jakkett and Driedger adopted the traditional

⁶³ By the 1949 amendment to the constitution, Ottawa gained the power to amend those sections of the BNA Act which affected federal jurisdiction only. Therefore, as long as the proposed bill of rights explicitly affected only parliamentary legislation, it could be passed without the agreement of the provinces. See Simeon and Robinson, *Development of Canadian Federalism*, 140-141. For Jakkett and Driedger’s arguments see, Jakkett to Fulton, 26 February 1959, RG 13, Vol. 2804, File 186000-8, Pt. 1.

⁶⁴ In addition to Varcoe’s testimony, Jakkett and Driedger consulted Edward S. Corwin, *Court Over Constitution: A Study of Judicial Review as an Instrument of*

position that limiting Parliament simply transferred legislative powers from the representatives of the people to the judiciary. As Jakkett noted, “no matter how you look at it, entrenchment is abandoning, or transferring to some outside agency, some part of Canadian sovereignty.” Jakkett countered with the argument that a Parliament, free from constitutional limitations, was a necessary safeguard to Canadians’ individual rights and freedoms. As well, he noted that a fully sovereign Parliament could “correct” any “injurious” decisions by the courts based on the proposed bill of rights. Once again, the spectre of parliamentary sovereignty entered the debate on a Canadian bill of rights.⁶⁵

Despite the force of this position, Jakkett and Driedger recognized the political difficulties of resurrecting the Liberals’ main argument which they had used against not only entrenchment, but bills of rights in general. As a result, they focused on the value of placing a rights guarantee within the BNA Act and questioned whether this would accomplish the goals critics claimed it would. In their discussion of entrenchment, both Jakkett and Driedger assumed that federal-provincial agreement would be impossible to achieve. Therefore, like Bill C-60, even an entrenched bill of rights would affect Ottawa’s

Popular Government (Gloucester: Peter Smith Publishers, 1957); Corwin, *The Constitution and What It Means Today*, 12 ed. (Princeton: Princeton University Press, 1958); Edward McWhinney, *Judicial Review in the English Speaking World* (Toronto: University of Toronto Press, 1956); McWhinney, “The Union Parliament, the Supreme Court and the ‘Entrenched Clauses’ of the South Africa Act.” *Canadian Bar Review*, 30 (August-September 1952):692-722; McWhinney, “Court v. Legislature in the Union of South Africa: The Assertion of a Right of Judicial Review,” *Canadian Bar Review*, 31 (January 1953):52-64; and, W. Friedman, “Judges, Politics and the Law,” *Canadian Bar Review*, 29 (October 1951):811-837. See M. E. Ritchie to Jakkett, 16 October 1959, RG 13, Vol. 2804, File 186000-8, Pt. 1.

⁶⁵ Jakkett, “Re: Bill of Rights - Amendment to Constitution,” 2 November 1959, RG 13, Vol. 2800, File 18400-27.

power only. The Diefenbaker government could effect such a change to its own powers through a parliamentary appeal to Westminster or unilaterally through Section 91(1) of the BNA Act. This allowed Parliament to alter those sections of the constitution which affected federal jurisdiction. However, as Jakkett and Driedger pointed out, these options offered little more protection from future Parliaments than did a bill of rights as a statute. If the government of the day could entrench the bill of rights through a simple majority under Section 91(1), then a future government could alter or even repeal the rights bill in the same manner. As Driedger noted, “even the strongest constitutional provision could be changed... [by] the Parliament of Canada. It therefore seems impossible to have an absolutely entrenched provision - that is to say, a provision beyond the reach of the Parliament of Canada.”⁶⁶ As well, Jakkett argued that a constitutional amendment made through a request to Westminster gave no better protection: “just as the original amendment can be obtained with less fuss and debate in the Canadian Parliament [by appealing to Westminster],...any subsequent change could be obtained with less trouble than would be involved in amending the proposed Bill of Rights.”⁶⁷

Despite their belief that agreement with the provinces was unlikely, Jakkett and Driedger also considered a constitutional amendment which limited the powers of both

⁶⁶ Driedger, “Memorandum: Re: Bill of Rights by Constitutional Amendment,” 28 October 1959, RG 13, Vol. 2800, File 184000-27.

⁶⁷ Jakkett, “Re: Bill of Rights - Amendment to Constitution,” 2 November 1959, RG 13, Vol. 2800, File 184000-27. Section 91(1) gave the federal government the power to amend the constitution in those areas designated a federal jurisdiction with the exception of matters relating to the use of the French and English languages, schools and the session and duration of Parliament. Section 92(1) bestowed the similar power upon the provinces regarding those areas under provincial jurisdiction.

levels of government, but they arrived at a similar conclusion. Even with an entrenched bill of rights covering all legislative jurisdiction, the provinces maintained the power to amend the constitution in those areas which affected their jurisdiction. So, like the federal government, individual provinces could simply step out from under the bill of rights umbrella under Section 92(1). As Jackett wrote Fulton, this hardly guaranteed greater protection to human rights than the government's current proposal.⁶⁸ This left only one option for entrenchment according to Driedger: "there is no way in which we can have an entrenched provision unless we cut ourselves adrift from the United Kingdom Parliament." Only through an agreement between Ottawa and the provinces on an acceptable amending process could the proposed bill of rights offer anything beyond simple statutory protections. The 1950 attempt to secure such an accord, of course, had ended in failure, and as a result, Department of Justice officials felt that little chance existed for success ten years later.⁶⁹

By the beginning of the 1960 parliamentary session, the Diefenbaker government was confident that its slight modifications to Bill C-60 would ensure parliamentary and public support. As well, Fulton and his assistants clearly were satisfied with their arguments against enacting the draft bill of rights as a constitutional amendment. This was apparent in their response to another plea from F. R. Scott for entrenchment. On 21

⁶⁸ Jackett to Fulton, 3 November 1959, RG 13, Vol. 2804, File 186000-8, Pt. 1.

⁶⁹ Driedger, "Memorandum for the Deputy Minister: Re: Bill of Rights by Constitutional Amendment," 29 October 1959 and Driedger, "Memorandum: Re: Bill of Rights by Constitutional Amendment," 28 October 1959, RG 13, Vol. 2800, File 184000-27.

December 1959, the McGill professor had put forth two novel approaches to securing a rights guarantee within the BNA Act. First, he suggested an amendment to Section 91(1) which would exempt the Canadian Bill of Rights from parliamentary power to change the constitution within federal jurisdiction. Second, he proposed an addition to the bill which would allow individual provinces to “adopt” the limitations imposed by an entrenched bill of rights. The provinces would therefore maintain their right to decide: “[i]f some come in and others do not, we shall have rights differently protected in different parts of the country, but that is not unusual for Canada.”⁷⁰ The response of Jakkett and Driedger was unequivocally negative. Based on their studies from October-November, Driedger held that the suggested change to Section 91(1) offered no more protection from future Parliaments since a joint address to Westminster was still available to government decision makers. In fact, he noted, obtaining a resolution for constitutional change was probably easier than passing an act of Parliament. As to Scott’s second proposal, Jakkett dismissed it as unworkable.⁷¹ With this response, the Diefenbaker government gave notice that they had closed firmly the door to criticism.

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⁷⁰ Scott noted that a constitutional amending formula was necessary before a “revised” bill of rights containing social and economic rights could be entrenched. See, Scott to Diefenbaker, 21 December 1959, *Scott Papers*, Vol. 43, File 13, Microfilm H-1231.

⁷¹ According to Driedger: “I should think that a province could object to being placed, without its consent, in the position where it has to make a political decision as to the adoption of the amendment.” Quoted in Jakkett, “Memorandum for the Minister of Justice: Re: Bill of Rights,” 11 January 1960, RG 13, Vol. 2800, File 184000-27.

The Final Stage: Passing the Canadian Bill of Rights

On 14 January 1960, the Speech from the Throne once again announced the federal government's intention to enact a Canadian bill of rights. For the previous eighteen months, Diefenbaker had withstood the constant stream of criticism toward his draft bill. Only on the demand for a parliamentary committee did he succumb to pressure. Other than a few minor changes and additions, the proposed bill of rights which awaited first reading in the 1960 session differed little from that introduced in 1958. The Diefenbaker government had cast aside calls for the inclusion of social and economic rights, and it had developed strong arguments against constitutional entrenchment by Parliament alone.

The only issue on which they stood vulnerable was the opposition's insistent calls for a dominion-provincial conference to discuss a bill of rights extending to all legislative bodies in Canada. During 1958-1959, both Lester Pearson and Paul Martin of the Liberal opposition had pressured the prime minister to discuss the bill of rights with the provinces. Various groups and newspapers had adopted a similar position. Most significantly, the premier of Ontario, Leslie Frost, had announced his willingness to discuss the issue.⁷² Nevertheless, Diefenbaker maintained that the provincial legislatures were "jealous" of their powers; any discussion of the matter, therefore, was fruitless. Without an approach to the provinces though, this claim rang somewhat hollow. However, in February 1960

⁷² See *Debates*, 5 September 1958, 4652 and 9 February 1959, 811-812. For similar arguments in the press and Leslie Frost's statements, see *The Globe and Mail*, 11 September 1959. As well see, "A Statement Concerning A Canadian Bill of Rights," submission to Diefenbaker from the Women's International League for Peace and Freedom, Vancouver Branch, n.d., *Pearson Papers*, Vol. 36, File 413.1, Pt. 1.

the prime minister received proof that agreement with the provinces was indeed unlikely. In an obvious reference to the draft bill, the Quebec Legislative Assembly passed a resolution which asserted “that the rights of the province must not be restricted, diminished, amended or altered by an Act of the Parliament of Canada.”⁷³ The message to Ottawa was clear: do not step on provincial jurisdiction. While the abruptness of the warning disturbed the prime minister, this declaration from Quebec City completely vindicated his government’s stance that the provinces would not tolerate any incursion into their jurisdiction. Nevertheless, Diefenbaker decided to delay introduction of his bill to allow the political waters to cool.⁷⁴

The session progressed into summer, however, without any indication from Diefenbaker as to when he would re-introduce the legislation. In anticipation, the usual bill of rights advocates prepared themselves for the parliamentary committee, promised in July 1959. Donald McInnes, vice president of the CBA, guided the association’s deliberations on the bill and, with the help of Dalhousie law professor Andrew MacKay, drafted a submission for presentation to the government. At the same time, both the CLC and Himel’s ACL worked out their organizations’ positions.⁷⁵ Finally, on 27 June 1960 the government gave first reading to Bill C-79, An Act for the Recognition and Protection

⁷³ See *Montreal Gazette* 18 February 1960.

⁷⁴ In Cabinet, Diefenbaker admitted that the Quebec resolution “disturbed” him, see “Cabinet Conclusions,” 9 February 1960, RG 2, A5a, Vol. 2746, No. 23-60.

⁷⁵ Walter Owen (Pres. CBA) to McInnes, 12 January 1960, and McInnes to Renault St. Laurent, 23 February 1960, *CBA Papers*, Vol. 9, File 128; “Minutes of the [CLC] Standing Committee on Human Rights,” 8 January 1960, *JLCC Papers*, Vol. 13, File 12; and, Irving Himel, interview with the author, 4 May 1995, Toronto, Ontario.

of Human Rights and Fundamental Freedoms. The differences in the new bill from that offered in 1958 were slight. Containing only those recommendations made by Fulton in May 1959, Bill C-79 provided the same targets as the old Bill C-60.⁷⁶ Almost two years after its initial introduction, Diefenbaker's cherished bill of rights entered the fray of parliamentary scrutiny.

Fittingly, debate on the government's proposed bill of rights opened on Dominion Day. Diefenbaker stood before the Commons and gave one of the most emotional speeches of his political career. The prime minister reviewed the history of demands in Canada to secure a national bill of rights and his personal role in the movement. He noted the activities of the United Nations and quoted extensively from the Universal Declaration. As well, he drew attention to various human rights infringements in Canada as proof for the need of the government's proposed legislation. Not surprisingly, he saved his more biting flourishes for his listing of civil liberties abuses at the hands of the Mackenzie King governments during and after the war. Citing examples from the 1940s, including the Gouzenko Affair, Diefenbaker argued that abuses such as the suspension of habeas corpus by order-in-council would no longer be possible because of his bill of rights. In his conclusion, the prime minister proclaimed: "I am a Canadian, a free Canadian, free to speak without fear, free to worship God in my own way, free to stand for what I think right, free to oppose what I believe wrong, free to choose those who shall govern my country. This heritage of freedom I pledge to uphold for myself and all mankind."⁷⁷

⁷⁶ Bill C-79, 3rd Session, 24th Parliament, 8-9 Elizabeth II.

⁷⁷ *Debates*, 1 July 1960, 5643-5650.

Despite the passion of his speech, Diefenbaker revealed that he still had lingering doubts on the issue of a constitutional amendment. In both his Commons address and in a television broadcast the previous night, the prime minister defended his government's decision to proceed with the bill in statute form. He repeated Jakkett and Driedger's arguments developed in autumn 1959 that an entrenched bill would accomplish nothing more than one passed as a statute. The discussion was moot, though, since the prime minister stated bluntly that "there is no chance of securing the consent of all the provinces." Despite these contentions, however, Diefenbaker made the curious offer of his government's willingness to consider a constitutional amendment in both his parliamentary speech and on CBC Television's "The Nation's Business." "I want to make it clear," he proffered, "that we would favor any measure that would increase or extend the effectiveness of a Canadian Bill of Rights when and if agreement can be reached with all the provinces. We would certainly sympathetically consider the suggestion of making it part of the constitution when the provinces agree, and will at all times welcome any representations from the provinces in this regard."⁷⁸ Even with his government's adamant arguments against constitutional entrenchment during the previous two years, Diefenbaker could not resist cracking the door open slightly.⁷⁹

⁷⁸ *Debates*, 1 July 1960, 5648-5649; "Notes for an Address by the Prime Minister, The Right Honourable John G. Diefenbaker, P.C., Q.C., M.P., on the 'Nation's Business,' June 30, 1960," *Pearson Papers*, Vol. 160, File "Bill of Rights, 1960-1962," and, *Globe and Mail*, 1 July 1960.

⁷⁹ This statement casts doubt on the arguments of Robert Belliveau in his "Mr. Diefenbaker, Parliamentary Democracy, and The Canadian Bill of Rights" (M.A. diss, University of Saskatchewan, 1992). Belliveau argued that Diefenbaker adamantly opposed entrenchment and "deliberately avoided" any discussions of a constitutional

Nevertheless, given the prime minister's two previous statements on entrenchment, few took this gesture seriously. For their part, Pearson and the Liberal opposition ridiculed Diefenbaker's belated suggestion and began a detailed criticism of the government, not only on the question of a constitutional amendment but also concerning the specific terminology contained in the proposed bill. The Liberals intended to continue their push for consultation with the provinces while aggressively pointing out the bill's deficiencies even as a statute.⁸⁰ By 1960 the Liberals had seriously reconsidered the party's past position on bills of rights. In a detailed study prepared in May 1958, D. G. Blair and A. M. Laidlaw, two Liberal advisors appointed to study the issue, held that past Liberal policy had "not been handled shrewdly." According to their assessment, the party had been inflexible in its views, had considered the issue to be of minor importance and, most importantly, had failed completely to recognize the "emotional appeal" of such a measure to the electorate. As a result, the two officials counselled a cautious approach to criticizing the Conservatives on this issue. Laidlaw and Blair believed that too rigorous an attack would possibly lead to charges of "obstructionism," particularly from past critics of the former Liberal governments.⁸¹ Instead, Pearson and the Liberal opposition settled on a

amendment because of his belief that parliamentary supremacy was the true "custodian of the nation's freedom."

⁸⁰ *Debates*, 1 July 1960 5650-5652 and *Debates*, 4 July 1960, 5657-5666.

⁸¹ A. M. Laidlaw and D. G. Blair, "Preliminary Memorandum to Mr. Pearson, Re: Expected Debate on the Subject of a Bill of Rights," 10 May 1958, *Pearson Papers*, Vol. 36, File 413.1, Pt. 1. See also, D. G. Blair, "Confidential Memorandum for Honourable L. B. Pearson, Re: Bill of Rights," 2 September 1958, *Pearson Papers*, Vol. 36, File 413.1, Pt. 1.

policy of criticism through improvement. They planned to attack the bill's shortcomings, namely its statutory form, and to demand changes to strengthen its effect. No longer sceptical of bills of rights, the Liberals now wanted nothing less than a constitutionally entrenched rights guarantee.

On 7 July, the government finally appointed the promised investigative body to hear testimony from the public and to debate the terminology of the bill. The Special House of Commons Committee on Human Rights and Fundamental Freedoms held twelve sessions between 12 July and 29 July 1960. Significantly, many of the same individuals who had attended the proceedings of the 1950 Senate committee once again attended to voice their demands. F. R. Scott, Irving Himel, Claude Jodoin, Kalmen Kaplansky, David Mundell, Saul Hayes and Donald McInness all reiterated their criticisms of the government's proposed bill of rights. Even F. P. Varcoe, the former deputy minister of justice, appeared before the committee to offer his insights on the issue of entrenchment.⁸²

The most significant work of the committee concerned the testimony of E. D. Fulton. The committee devoted half of its sessions to an article by article examination of the bill with the justice minister. Led by Paul Martin, the opposition members of the committee suggested numerous amendments to the bill in an attempt to highlight the proposed legislation's deficiencies. However, the Conservative majority turned aside almost all amendments. In the end, the committee's twelve sessions led only to minor alterations in the wording of the bill, with two notable exceptions. First, the protection from discrimination on the basis of race, colour, sex, or nationality was strengthened by

⁸² See *Proceedings 1960* for a list of witnesses to the committee hearings.

inserting the provision into the main body of the first clause. Second, the committee members, along with others, bemoaned the “stodgy” language of the bill, and therefore, from a draft provided by professor Maxwell Cohen of McGill Law School, they added a preamble to the legislation.⁸³ On 29 July, the committee returned Bill C-79 to the Commons with these small adjustments. Two years of public criticism and the scrutiny of a parliamentary committee had little effect on the shape of the bill originally drafted in April 1958.

While Bill C-79 proceeded through the committee relatively unscathed, events outside the debate threatened to upset Diefenbaker’s plans. On 26 July, the ten provincial premiers arrived in Ottawa for the 1960 Dominion-Provincial Conference agreed to the previous October. The focus of the meeting was the taxation agreements between the federal government and the provinces. However, the recently-elected government of Jean Lesage in Quebec widened the agenda. In September 1959, Maurice Duplessis had died in office, and the grip of the Union Nationale finally loosened from Quebec’s political levers. During the June 1960 election, the resurgent Liberals swept to power under their newly chosen leader. Lesage, a former member of the King and St. Laurent governments, became premier only three weeks prior to the conference in Ottawa, but already the press

⁸³ “Final Report,” *Proceedings, 1960*, 669-670. For criticisms of the bill’s language, see *Ottawa Citizen*, 2 July 1960 and Himel, “To: The Right Honourable John D. [sic] Diefenbaker,” 29 April 1959, *JCRC Papers*, Box 10, File 9. For Cohen’s suggestion, see *Proceedings, 1960*, 375. On Maxwell Cohen and bills of rights see Annemieke Holthuis, “Maxwell Cohen’s Perspective on Human Rights in Canada: The Entrenchment of the Charter and the Enactment of the Emergencies Act,” in *Law, Policy, and International Justice: Essays in Honour of Maxwell Cohen*, eds. William Kaplan (Montreal: McGill-Queen’s University Press, 1993), 207-242.

and political pundits expected drastic changes in Quebec.⁸⁴ One change concerned the province's attitude toward human rights. In his opening address to the conference, Lesage gave notice of Quebec's new attitude towards an entrenched bill of rights: "L'expérience des dernières années a convaincu le gouvernement du Québec que les droits de l'homme n'étaient pas suffisamment protégés sur le plan de la juridiction provinciale. Nous croyons donc qu'il est maintenant nécessaire pour nous d'avoir un Bill des Droits de l'homme. Nous sommes aussi d'avis qu'un tel bill aurait une bien plus grande valeur réelle et symbolique s'il faisait partie de notre constitution."⁸⁵ With this statement Lesage turned the constitutional debate on its head. Instead of Quebec being the unspoken impediment to entrenchment, it now was at the forefront of those who advocated the measure.

Other premiers at the conference welcomed the new position of the Quebec government and attention turned to Diefenbaker. Both Hazen Argue, the interim leader of the CCF, and Pearson suggested that perhaps Ottawa should postpone consideration of Bill C-79 in anticipation of a constitutional agreement at the next scheduled dominion-provincial conference. As Pearson charged, "the government has now been prodded by the provinces themselves to do what this government should have been doing during the last two years and that is to discuss together the possibility of a national bill of rights made possible through constitutional amendments."⁸⁶ For the prime minister, there was little he

⁸⁴ *Ottawa Citizen*, 27 July 1960.

⁸⁵ *Report of Proceedings of the Dominion-Provincial Conference, 1960*, 25-27 July 1960, (hereinafter *Dominion-Provincial Conference, 1960*) (Ottawa: Queen's Printer, 1960), 28-29.

⁸⁶ *Debates*, 1 August 1960, 7376.

could do other than respond favourably to the Lesage suggestion. Nevertheless, Diefenbaker would not be bullied by Pearson or Lesage, both past members of Mackenzie King's governments, and he refused to alter course on the passing of his bill of rights. He argued that before entrenching a rights guarantee in the constitution, the two levels of government should concentrate their efforts on securing an amending formula to precipitate the patriation of the BNA Act.⁸⁷ In response to opposition calls for postponement, Diefenbaker charged that whether the bill was eventually placed in the constitution or not, passing Bill C-79 in statute form was still a beneficial first step.

With the opposition's calls for further discussion on entrenchment pushed to the margins, the Commons returned to debate of the Diefenbaker Bill of Rights on 1 August. For one last week before third reading, the Liberal opposition continued their strategy of criticism by re-introducing many of the amendments rejected by the Special Committee. Diefenbaker's Conservative majority easily defeated all suggestions, however, and within four days Bill C-79 was brought to final reading. On 4 August 1960, Parliament unanimously passed the government's proposed legislation. One week later, on 10 August, it received royal assent, and the Canadian Bill of Rights, which John Diefenbaker had sought determinedly since the Gouzenko Affair, became law.⁸⁸

For Diefenbaker, the proclaimed "apostle of civil liberties," the 1960 Canadian Bill of Rights was the crowning achievement of his government. His name had become

⁸⁷ *Dominion-Provincial Conference, 1960*, 107-108.

⁸⁸ For the 1960 Canadian Bill of Rights see Appendix VI.

synonymous with the many efforts to better safeguard human rights which followed World War II, and his rudimentary bill of rights introduced during the parliamentary debate on the spy scandal in 1946 was one of the first attempts to draft such a measure. For years, Diefenbaker was one of only a handful of voices in Parliament who had supported the calls for a rights guarantee. When the prairie lawyer assumed the mantle of prime minister in 1957, few were surprised by his stated intentions to finally act upon his ideas for a bill of rights. The 1960 Bill of Rights was grounded firmly in Diefenbaker's 1940s battles with the government of Mackenzie King. His impassioned criticism of such things as the suspension of habeas corpus, the denial of legal counsel to suspects held before the Royal Commission on Espionage and the circumvention of Parliament through order-in-council found political expression in his bill of rights. On the debates of the 1940s, it seemed the prairie gadfly had the last word.

For the many critics who lined up to cast stones at the Diefenbaker Bill of Rights, however, these narrow goals were precisely the problem. By 1960, civil libertarians and human rights advocates were no longer willing to simply right the wrongs of past governments. They demanded measures which not only included a greatly expanded list of human rights, but which also would have brought a substantive change to the method of protecting those rights in Canada. To accomplish this, most advocates for a national bill of rights argued for the inclusion of both social and economic rights, as well as measures to curb racial, religious and sexual discrimination. More importantly, most believed that to be effective, a bill of rights had to be passed as an amendment to the constitution, thus beyond the reach of Parliament and the legislatures. As a statute, the Diefenbaker Bill of

Rights fell short of this type of change. Critics argued that the 1960 Bill of Rights would do little, if anything, to alter the existing system of rights protection in Canada. Still, Diefenbaker remained unmoved. Although he hesitated on the issue of entrenchment, the prime minister was wed to the form and basic goals of his bill. The question of entrenchment for Diefenbaker was a purely political one. He realized the unlikelihood of reaching an agreement with the provinces and therefore opted for a statute. According to Diefenbaker's reasoning, a bill by statute was better than no bill whatsoever. But as a result, the prime minister walked on the margins of the path most bill of rights advocates chose. Those who demanded a constitutional amendment were in search of institutional change; anything less was a failure.

Conclusion:

“A Mere Scrap of Paper?” The Legacy of the 1960 Canadian Bill of Rights

Between 1929 and 1960, the efforts to secure better protection for human rights in Canada passed through three distinct stages. During the Great Depression and World War II, civil libertarians concentrated on a series of easily identified legislation which both levels of government used to curtail individual rights. Political activists such as F. R. Scott, F. H. Underhill and J. S. Woodsworth mounted a relentless attack on Section 98, Duplessis' Padlock Law and the use of deportation to rid the country of the foreign unemployed. Through a public campaign in Parliament and the press and through the creation of the Canadian Civil Liberties Union and the League for Social Reconstruction, civil libertarians attempted to convince Ottawa and Quebec of the dangers to individual rights that these acts posed. With the outbreak of World War II and the subsequent introduction of the Defence of Canada Regulations, these same individuals intensified their efforts while new voices joined the chorus of complaint. However, the goals of civil libertarians remained the same; they sought the simple repeal of the offending legislation. The system of protecting rights was not challenged.

This changed radically by the end of the war. Despite the wartime efforts of civil libertarians, Mackenzie King's Liberal government had continued in its curtailment of civil liberties. The web of wartime economic and social controls had grown steadily, and this

raised concerns that Ottawa intended to maintain them in the postwar period. More significantly, the planned deportation of Japanese Canadians and the extraordinary infringements upon basic civil liberties in the Gouzenko Affair convinced many Canadians that human rights truly were under attack and that simply lobbying the government to restrain itself was no longer an adequate response.

To heighten this growing concern for civil liberties, Canadians watched the American civil rights movement unfold throughout the 1940s and 1950s. After World War II American Blacks increased their efforts to achieve recognition of their rights to equality. During the 1950s, Canadian newspapers, and especially the new medium of television, reported the sometimes violent clashes between Southern Whites and Black activists intent on securing their rights to vote and to integrated public education, particularly after the 1954 U.S. Supreme Court decision in *Brown v. Board of Education*.¹ Confrontations, like that at Little Rock, Arkansas in 1955, were widely reported and commented upon in the Canadian press. Although it is difficult to assess the exact impact these events had on Canadians, the civil rights movement focused a sharp light on the problem of racism in American society, and this scrutiny served to highlight similar issues in Canada. As well, while Canadian human rights advocates noted the differences between the two countries, they nonetheless looked south for possible solutions to the problems

¹ In 1954, the U.S. Supreme Court declared that the Fourteenth Amendment to the constitution required equal admission, regardless of colour, to public schools in *Brown v. Board of Education*. In response, groups of Southern Whites initiated an often violent resistance to the supreme court's orders. For a general survey of the American civil rights movement and its wider implications, see William H. Chafe, *The Unfinished Journey: America since World War II*, 2nd ed. (New York: Oxford University Press, 1991), 86-91 and 148-168.

they saw at home. Together, the popular movement by Blacks in the United States and the various measures adopted by American legislators to fight racism had a clear influence on many Canadians.

As civil libertarians watched the American civil rights movement and searched for a response to the distressing curtailments of human rights in Canada, they found a shining example in the United Nations. The U.N.'s attempts in the late 1940s to enshrine universal human rights in the organization's charter and in numerous conventions vindicated the concerns of Canadian civil libertarians. More importantly, the U.N.'s determined attempt to codify human rights into an International Bill of Rights provided Canadian activists with a model for their own efforts. With this international example, civil libertarians now demanded positive restraints on governmental power in Canada.

Between 1946 and 1957, Canadians lobbied intensely for positive measures to better protect individual rights in Canada. Unwilling to trust the federal government or the provinces to respect human rights, civil libertarians argued that only through a constitutional limitation on all legislative power in Canada would individual rights truly be secure. Those concerned with human rights not only proposed numerous pieces of legislation to curtail racial, religious and sexual discrimination, they now demanded the overarching panacea of a bill of rights. Those who argued for a bill of rights searched for an institutional change in the manner of protecting rights in Canada. Although they recognized the extraordinary circumstances that the war and the spy scandal presented, they also witnessed how quickly the government's respect for traditional civil liberties broke down. By advocating a national bill of rights, civil libertarians did not merely seek

to restore Parliament's respect for individual rights and freedoms; they wanted to establish a new system of human rights protection in Canada, one which would not allow a repeat of the World War II experience.

The appeal of this goal became readily apparent. From 1944 to 1957 there was an incredible growth in the number of organizations and individuals concerned with the better protection of human rights. While Jehovah's Witnesses battled Quebec in the courts, the labour congresses pressured both Ontario and Ottawa for fair practices legislation. Influenced greatly by the United Nations, organized labour, ethnic associations and women's groups joined the human rights lobby, and their involvement greatly expanded both the range of the debate and the ideas on how to secure better rights protection. Along side these efforts, the demands for a national bill of rights flourished. In Parliament, John Diefenbaker, Alistair Stewart and Arthur Roebuck challenged the Liberal government's record on civil liberties and agitated for a response to suggestions of a rights guarantee. New civil liberties organizations emerged, and old ones reappeared. By the 1950s the few voices which had spoken in defence of civil liberties in the Depression had grown to a chorus.

Together, the combined efforts of the civil libertarians of the Depression and World War II and the human rights advocates inspired by the United Nations forced the federal government to deal with the demands for a national bill of rights. Despite three parliamentary committees, numerous delegations and countless written submissions however, the Liberal governments of Mackenzie King and Louis St. Laurent refused to support the calls for a rights guarantee. The Liberals, who repeatedly pleaded their

respect for human rights, maintained that problems of constitutional jurisdiction and the interests of the provinces blocked the government's ability to implement the proposal.

Perhaps the most important factor in the federal government's constitutional reasoning was Quebec. Throughout the entire period in which advocates demanded a national bill of rights, the Quebec government under Maurice Duplessis and his Union Nationale served as a brake on any positive discussions of an entrenched rights guarantee. Beginning in the 1930s, Duplessis made known his position that civil rights were a provincial matter, including the power to abridge those same rights. For the Quebec premier, the protection of Quebec against communism and the religious proselytizing of the Jehovah's Witnesses necessitated the curtailment of certain rights, and this was the prerogative of the province. In an address before the Canadian Bar Association in 1948, Duplessis defended the Padlock Law and, at the same time served a warning to anyone who wanted to interfere: "[i]n the province of Quebec you will find law-abiding citizens. We may have some legislation which you do not like. We respect your opinion, but we like the legislation we have...A law such as this may not suit some of the other provinces; that is a matter for the provinces themselves to decide."² Obviously, then, Duplessis had moved little since the 1937 enactment of the Padlock Act. As well, during the following eleven years he continued his stand that civil liberties rested within provincial jurisdiction and that he would use his political power to ensure this primacy.

On the particular issue of a national bill of rights, Duplessis' stance offered little

² Address by Maurice Duplessis, 31 August 1948, *The 1948 Yearbook of the Canadian Bar Association and the Minutes and Proceedings of the Thirtieth Annual Meeting*, 19-20.

room for negotiation. According to the premier, bills of rights were “meaningless big words” and, in any case, human rights were outlined already in the Bible and there “will never be another charter that is as perfect.”³ Sentiments such as these appear to have mirrored the general attitude within Quebec as well. Throughout the 1940s and 1950s, there was a notable absence of francophone Quebecers among those who demanded the better protection of human rights. Other than a few worthy exceptions, such as Claude Jodoin and Pierre Elliott Trudeau, Canadian activists who demanded a national bill of rights were most often anglophones. Thus, with little or no evidence of popular support among francophone Quebecers and with a provincial government openly hostile to any limitations placed on its power to deal with civil rights, policy makers in Ottawa had few options concerning constitutional safeguards. Furthermore, Quebec’s determined struggle against the Jehovah’s Witnesses in the courts throughout the 1940s and 1950s, and the failure of the Dominion-Provincial Conference in 1950, provided the Liberal government in Ottawa with clear evidence that if it wanted to meet the demands made by civil libertarians, it would surely lead to confrontation with Quebec City.

In any event, Ottawa firmly believed that the demands for a national bill of rights were unwarranted anyway. The Liberal governments argued that Canadians could rely upon the English common law system with its long tradition of safeguarding civil liberties through such landmarks as the Magna Carta, the Bill of Rights and the accepted principles

³ Report on meeting between Maurice Duplessis and the Canadian Congress of Labour, 2 February 1950, Joint Advisory Committee on Labour Relations, “Report of Activities on Improved Human Relations in the Labour Field,” January 1950, Ontario Jewish Archives, *Records of the Joint Community Relations Committee*, Box 72, File “1950.”

of the rule of law. Even if these failed, Ottawa held that the supremacy of Parliament offered a better guarantee to Canadians than any constitutional list of rights. As Jack Pickersgill stated, good government was the best answer to those demanding a bill of rights.

Clearly, the Liberal governments of the 1940s and 1950s did not believe that the desire for positive change to the Canadian system of rights protection had garnered sufficient public support. Despite the parade of delegations, written demands and two petitions containing hundreds of thousands of signatures, Mackenzie King's government refused to accept that the majority of Canadians no longer trusted Parliament and that they now wanted a constitutional bill of rights. As J. L. Ilsley concluded at the 1948 parliamentary committee, he saw no evidence of a "firm public opinion" in favour of a bill of rights. In fairness, the views of Canadians were difficult to assess. Activists such as Irving Himel, Glen How and Claude Jodoin argued that these petitions and the number and size of the organizations that had endorsed these measures were obvious proof of widespread support for their cause. Nevertheless, the Liberal governments of King and Louis St. Laurent pointed to three straight election victories in 1945, 1949 and 1953 where, despite the contentions of civil libertarians, their records on human rights played no part. Thus, although many Canadians questioned the safety of individual rights in Canada and while many supported calls for a constitutional guarantee, after 1946 these concerns rarely held the political centre stage. By the beginning of the 1950s, while the movement itself expanded, the issues which gave rise to the calls for a national bill of rights slowly faded from the public memory and appeared to vindicate the Liberal position that a broad

support simply did not exist.

Between 1957 and 1960, however, the Conservative government led by John Diefenbaker altered this situation significantly. Diefenbaker, the “apostle of civil liberties,” proudly announced his intention to enact a national bill of rights and within a year of taking office introduced a draft of the promised legislation. For those who had championed the cause since the 1940s, this development heralded a new stage in the bill of rights movement. After nearly fifteen years of trying to convince Ottawa of the need for a rights guarantee, from 1958 to 1960 civil libertarians and human rights advocates focused their efforts on redesigning the form and scope of Diefenbaker’s proposed legislation.

Central to these efforts was the issue of entrenchment in the constitution. In the search for measures which would substantially transform the Canadian system of rights protection, most advocates agreed that only through constitutional amendment would a bill of rights truly be effective. Since the Gouzenko Affair civil libertarians and human rights advocates had demanded not only better respect for Canadians’ individual rights but also a significant shift in the system of protecting those rights. While those who pushed for a bill of rights encouraged the development of other measures, quite early in the debate a loose consensus held that only an entrenched bill of rights would achieve the kind of institutional change they desired. Indeed, the 1950s marked some of the most important advancements in human rights protection in Canada after the war. With Ontario’s lead, various other provinces and the federal government took their first steps in the field of fair practices legislation. At the same time, the Supreme Court handed down decisions on a series of civil liberties cases which added greatly to the protection of human rights in

Canada. Nevertheless, this did not satisfy those who demanded a national bill of rights. Each of these developments, while helping to secure individual rights, had little effect on the *method* of human rights protection. For bill of rights advocates, this could only be achieved through a constitutionally entrenched limitation upon all legislative power in the country.

With the 1960 Act for the Recognition and Protection of Human Rights and Fundamental Freedoms the long postwar campaign for a national bill of rights ended in partial success. After over thirty years of agitation on civil liberties issues and fifteen years of direct lobbying for a bill of rights, civil libertarians and human rights advocates scored a pyrrhic victory: they had achieved a major piece of legislation on human rights but one which did not contain some of the basic tenets of their argument. Worse yet, the existence of the new measure undermined any continued efforts to secure these ignored demands. As Bora Laskin succinctly concluded, “we would be as well off without a Bill of Rights as to have one so limited in its reach, so limited in its effect.”⁴ By 1960 the campaign for a national bill of rights, although hardly monolithic, had reached the unwritten conclusion that any rights guarantee must extend to all legislative jurisdictions in Canada and must be made part the constitution to be truly effective. John Diefenbaker’s Canadian Bill of Rights accomplished neither.

For John Diefenbaker, the 1960 Canadian Bill of Rights was undoubtedly the crowning achievement of his troubled government. From his days as a criminal lawyer in

⁴ Bora Laskin, “The Proposed Bill of Rights,” Speech given to the National Human Rights Conference, 10 December 1958, National Archives of Canada, MG 28 V75, *Records of the Jewish Labor Committee of Canada*, Vol. 22, File 2, 2.

Saskatchewan through his many years in Parliament, Diefenbaker loudly defended the rights of the individual against intrusions by the state. Even closer to his heart were his efforts to secure equality for those Canadians who, like himself, were not solely of British or French ancestry. As he wrote years later, “[m]y advocacy of a Bill of Rights was to assure Canadians, whatever their racial origins or surnames, the right to full citizenship and an end to discrimination. This was basic to my philosophy of ‘One Canada, One Nation.’”⁵

While Diefenbaker clearly advocated a Canadian bill of rights, what was less clear was the form that bill should take. At times in the 1940s, he seemed to indicate that only through constitutional entrenchment would the measure truly achieve its stated purposes. Yet, more often he stressed the importance of parliamentary supremacy and, thus, gave tacit support to a statutory bill. While sitting in the opposition benches, Diefenbaker had the luxury of remaining ambiguous. He avoided detailed explanations of his designs in favour of listing the civil liberties abuses of the Mackenzie King government. For Diefenbaker, the main goal was the bill itself; the form could be determined later.

Once he was prime minister, the realities of federal-provincial relations seem to have convinced him to choose the statute option. Throughout the drafting process, the newly-elected Conservative government firmly held that a statutory bill of rights limited strictly to federal jurisdiction was the better course. Diefenbaker staunchly defended this choice by stating that accommodation with the provinces was unlikely. Yet, he could not

⁵ John G. Diefenbaker, *One Canada: The Memoirs of the Right Honourable John G. Diefenbaker*, vol. 2: *The Years of Achievement, 1957-1962* (Toronto: Macmillan of Canada Publishers, 1976), 255.

bring himself to completely discard the possibility of a constitutional amendment. As late as July 1960, Diefenbaker still indicated that if an agreement could be reached with the provinces, he was willing to entrench a bill of rights and thus, limit the powers of Parliament. Hence, Diefenbaker managed to maintain his ambiguity; he opened the door to a constitutional bill and exhorted the virtues of his statute at the same time. Clearly, he remained unsure, even with a draft bill resting in his hands.

Despite Diefenbaker's exhortations on the statute's importance, however, Canadian legal scholars such as Bora Laskin and Walter Tarnopolsky questioned its significance.⁶ More importantly, the courts chose to ignore the Bill of Rights. Although the statute clearly instructed Canadian courts to "construe and apply" all federal laws in accordance with the rights listed therein, judges proved reluctant to make so bold a step as to render legislation which contravened the Bill of Rights inoperative. Instead, in a series of human rights cases, including *Louis Yuet Sun v. The Queen* and *Robertson and Rosetanni v. The Queen*, the Supreme Court avoided the issue by concentrating on other points of law. In one of the few instances where the Bill of Rights was discussed at length, Justice Davey of the British Columbia Court of Appeal noted the problems presented by the act: "The difficulty in interpreting and applying the very general language of the Canadian Bill of Rights has not been exaggerated. It is, in my opinion,

⁶ On the Bill of Rights in the courts and for legal scholars' opinions see E. A. Tollefson, "Canadian Bill of Rights and the Canadian Courts," *Saskatchewan Bar Review* 26 (1961):106-111; Bora Laskin, "Canada's Bill of Rights: A Dilemma for the Courts?" *International and Comparative Law Quarterly* 11 (April 1962):519-536; E. McWhinney, "A New Base for Civil Liberties," *Canadian Bar Journal* 8 (February 1965):28-36, 43; and W. S. Tarnopolsky, "The Canadian Bill of Rights From Diefenbaker to Drybones," *McGill Law Journal* 17 (1971):437-475.

impossible at this early date, to fully grasp all the implications of the Act, or to determine its application in circumstances that cannot be foreseen.”⁷ Obviously, the courts stepped lightly in their interpretation of the rights bill.

Not until the 1970 *Drybones Case* did the Supreme Court offer a comprehensive decision on the bill’s power to suspend offending legislation. On 8 April 1967 Yellowknife police charged Joseph Drybones, a Dogrib native, under Section 94 of the Indian Act for being intoxicated off an Indian reserve. Drybones appealed his conviction to the Supreme Court on the grounds that the Indian Act imposed harsher penalties for public intoxication than did liquor laws for non-natives. This, he argued, infringed upon the “equality before the law” provisions of the Canadian Bill of Rights. In a majority decision the court held that Section 94 of the Indian Act contravened the Bill of Rights, which rendered the section inoperative.⁸ Diefenbaker argued from his memoirs that this judgement finally vindicated his belief in the statute’s importance and quieted those who claimed it was little more than a “pious and ineffectual declaration.”⁹ Indeed, the *Drybones Case* led to renewed discussion of the Canadian Bill of Rights and its legal

⁷ *R. v. Gonzales* (1962), 32 D.L.R. (2d) 290. Cited in Tarnopolsky, “The Canadian Bill of Rights,” 446. See also *Louis Yuet Sun v. The Queen* [1961], S.C.R. 70 and *Robertson and Rosetanni v. The Queen* [1963] S.C.R. 651.

⁸ *R. v. Drybones*, [1970] S.C.R. 282. For a discussion on the significance of the case see Tarnopolsky, “The Canadian Bill of Rights,” 443-457; J. G. Sinclair, “The Queen v. Drybones: The Supreme Court of Canada and the Canadian Bill of Rights,” *Osgoode Hall Law Journal* 8 (December 1970):599-619; P. Cavalluzzo, “Judicial Review and the Bill of Rights: Drybones and its Aftermath,” *Osgoode Hall Law Journal* 9 (December 1971):511-551; and Peter Hogg, *Constitutional Law of Canada*, 3rd ed. (Scarborough: Thomson Publishers Ltd., 1992), 781-791.

⁹ Diefenbaker, *Years of Achievement*, 264-265.

implications for the protection of human rights in Canada. By 1970, however, political events already had conspired to shift the focus of the human rights discourse away from the controversial rights statute and threatened to eventually make Diefenbaker's beloved bill redundant.

On 4 September 1967 the new federal justice minister, Pierre Elliott Trudeau, appeared before the Canadian Bar Association's annual meeting and announced the Liberal government's intention to draft a new bill of rights to be entrenched in the constitution. According to Trudeau, "the adoption of a constitutional bill of rights is intimately related to the whole question of constitutional reform. Essentially we will be testing --- and hopefully establishing --- the unity of Canada. If we reach agreement on the fundamental rights of the citizen, on their definition and protection in all parts of Canada, we shall have taken a major first step toward basic constitutional reform." Like the host of critics who chastised the Diefenbaker proposals in 1958-1960, Trudeau argued that the Canadian Bill of Rights was too narrow in scope and offered little protection against parliamentary supremacy. With this speech, and in his *A Canadian Charter of Human Rights* published six months later, the new justice minister dismissed Diefenbaker's cherished statute as "useful work" from the past.¹⁰

If *Drybones* had vindicated Diefenbaker's opinion of his 1960 Bill of Rights, then Trudeau's pronouncements confirmed the arguments of those activists who had called for

¹⁰ Pierre Elliott Trudeau, "A Constitutional Declaration of Rights," in *Federalism and the French Canadians* (Toronto: Macmillan of Canada, 1968), 54-55 and Trudeau, *A Canadian Charter of Human Rights* (Ottawa: Queen's Printer, 1968). For background on Trudeau see Stephen Clarkson and Christina McCall, *Trudeau and Our Times*, 2 vols. (Toronto: McClelland and Stewart Ltd., 1990-1994).

a constitutional amendment since the mid-1940s. In the 1940s and 1950s, opponents of those who demanded a national bill of rights argued that the constitution was an impediment to achieving an entrenched rights guarantee. Even Diefenbaker, who claimed on occasion to support the suggestion of entrenchment, held that the jurisdictional jealousies of the provinces precluded any agreement on the matter. Trudeau turned these arguments on their head. Instead of seeing an entrenched bill of rights strictly as a goal, he saw it as a tool to solve Canada's constitutional impasse and establish a new national unity. With these proposals firmly in hand and his election as prime minister in 1968, Trudeau set the country on the long road to the 1982 Charter of Rights and Freedoms, a road that originated in the human rights debates of the previous forty years.

Trudeau's Charter of Rights was the type of substantial, institutional change which bill of rights advocates had demanded since the 1940s. Enshrined in the constitution, the charter placed human rights beyond the normal reach of Parliament and the provincial legislatures. More significantly, the rash of Supreme Court decisions based on the Charter has revealed a marked shift in the *method* of rights protection in Canada. These types of changes did not occur under the Diefenbaker Bill of Rights. By the late 1960s, the negative response of the courts to the legislation had confirmed the arguments of civil libertarians that a statutory bill was inadequate. Many critics pointed to this development and concluded that only through entrenchment in the constitution would human rights truly be protected. Simply correcting the errors of the past or adding to the existing machinery was not enough.

Despite the shortcomings which critics saw in the Diefenbaker statute, the true

importance of the bill of rights movement lies not in the eventual act of 1960. Instead, it rests in the awareness generated on human rights issues in Canada. In a pioneer analysis, Ramsay Cook concluded that the drastic curtailment of civil liberties during the Second World War under the Defence of Canada Regulations “was made possible by indifference or lack of faith and understanding of liberal institutions on the part of the majority of the Canadian people...the roots of liberalism have not grown deep in the arid soil of Canada’s heterogeneous community.”¹¹ If this statement is correct, then the efforts of bill of rights advocates in the postwar years would seem to indicate that by 1960 this situation had changed markedly.

In postwar Canada a genuine concern for the safety of individual rights and fundamental freedoms produced a dynamic exchange of ideas across the country. In part, this represented a remarkable thread of continuity as many key civil libertarians from the 1930s renewed their efforts to safeguard human rights with an emerging number of organizations: trade unions, women’s groups and ethnic associations. These advocates focused on a number of problems, on both federal and provincial fronts, and through their efforts raised the issue of human rights protection in Canada to new heights. At the core of many of the arguments for better measures was the demand for a national bill of rights. More than any another other vehicle, activists in Canada sought to enshrine the Canadian meaning of liberty as a symbol of the nation’s respect for human rights. As a result, the enactment of the 1960 Bill of Rights coupled with the arguments developed by human

¹¹ Ramsay Cook, “Canadian Liberalism in Wartime: A Study of the Defence of Canada Regulations and Some Canadian Attitudes to Civil Liberties in Wartime” (M.A. diss, Queen’s University, 1955), 277-278.

rights advocates throughout 1929 to 1960 provided fertile ground for the ideas of Pierre Elliott Trudeau. For good or ill, this ground eventually bore the 1982 Charter of Rights and Freedoms.

Appendix I

An Act to Amend the British North America Act, 1867 **Drafted by the Committee for a Bill of Rights, 1947-1948**

Whereas the Senate and the Commons of Canada in Parliament assembled have submitted an address to His Majesty praying that His Majesty may graciously be pleased to cause a Bill to be laid before Parliament of the United Kingdom for the enactment of the provisions hereinafter set forth;

Now, therefore, be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The British North America Act 1867 is hereby amended by adding thereto the following sections:

XII. Civil Rights

148. Notwithstanding anything in this Act, it shall not be lawful for the Parliament of Canada or the Legislature of any province to make laws:

- (a) Abridging freedom of speech and expression, or of the press or other means of communication, or freedom of religion, or the right of lawful assembly, association or organizations.
- (b) Requiring or imposing excessive bail or cruel or unusual punishment or exiling Canadian citizens.
- (c) Subjecting any person to unreasonable interference with his or her privacy, family, home or correspondence.
- (d) Subjecting any person to arbitrary arrest or detention or denying to any person the right after arrest to be promptly informed of the charges against such person and to trial within a reasonable time or to be released.
- (e) Suspending the right to Habeas Corpus or depriving any person of a fair trial or the right to be represented by counsel.

149. The rights provided in Section 148 shall be enjoyed without distinction on account of race, sex, religion or language and the right to be a member of or to vote for the election of members of the Parliament of Canada or the Legislature of any province shall not be abridged on account of race, religion, language or sex.

150. The rights conferred by Sections 148 and 149 of this Act shall not be deemed to abridge any existing right of any person.

2. This Act may be cited as the British North America Act 1948, and the British North America Acts 1867 to 1946, and this Act, may be cited together as the British North America Acts, 1867 to 1948.

Source: “Submission of the 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,” n.d. [May-June 1948], National Archives of Canada, *Rt. Hon. Louis St. Laurent Papers*, MG 26 L, Vol. 15, File 86-1.

Appendix II

Canadian Membership on the Economic and Social Council and its Commissions, 1945-1960

Economic and Social Council:	1946-1948, 1950-1952, 1956-1958
United Nations International Children's Emergency Fund:	1946-1958
International Commodity Trade Commission (est. 1954):	1955-1959
Commission on Narcotic Drugs:	1946-1960
Population Commission:	1947-1949, 1954-1960
Social Commission:	1947-1953
Statistical Commission:	1947-1949, 1951-1959
Commission on the Status of Women:	1958-1960
Commission on Human Rights:	Never Sought Election
Sub-Commission on Prevention of Discrimination and Protection of Minorities:	Never Sought Election

Source: National Archives of Canada, RG 25, *Records of the Department of External Affairs*, Vol. 118, File 5475-B-40, Pt. 7.

Appendix III

Arthur Roebuck's *Canadian Bill of Human Rights and Fundamental Freedoms* Introduced in the Senate 3 November 1949

1. The British North America Act, 1867, is hereby amended by adding thereto the following part, which shall be known as "The Canadian Bill of Human Rights and Fundamental Freedoms":

XII

148. Every person is entitled to the human rights and fundamental freedoms herein set forth, and notwithstanding anything in the British North America Act, 1867, or in any Act amending the same, it shall not be lawful for the Parliament of Canada or legislature of any province to make laws violating these rights and freedoms.

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 7

1. No person shall be subjected to arbitrary arrest, detention or exile.
2. Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

3. No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriages shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 18

1. Everyone has the right to take part in the government of the country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in the country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedom herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. This Part shall not be deemed to abridge or exclude any rights or freedom to which any person is otherwise entitled.

2. This Act may be cited as the British North America Act 1949, and the British North America Acts 1867 to 1946, and this Act, may be cited together as the British North America Acts 1867 to 1949.

Source: *Senate Debates*, 3 November 1949, 215-216.

Appendix IV

An Act for the Protection of Civil Rights Prepared by the Department of Justice, 1947 (Revised 1951-1952)

WHEREAS recognition and protection of civil rights and liberties of persons are inherent in and fundamental to the political and legal institutions of Canada;

AND WHEREAS the Charter of the United Nations of which Canada is a Member, reaffirms faith in fundamental human rights and in the dignity and worth of the human person;

AND WHEREAS the Universal Declaration of Human Rights approved by the General Assembly of the United Nations on the tenth day of December, nineteen hundred and forty-eight, at Paris recognizes that equal and inalienable rights of all members of the human society are the foundation of freedom, justice and peace in the world and that such rights should be secured and protected by law;

AND WHEREAS the protection of human rights and liberties in Canada by law is best afforded by defining legal rights enforceable by process of law in the courts, and by creating criminal offences punishable by process of law in the courts for violations thereof;

AND WHEREAS under our federal constitution as defined by the British North America Act legislative jurisdiction is divided between Parliament and the Legislative Assemblies of the provinces and the subject matter of criminal law is within the exclusive legislative authority of Parliament;

AND WHEREAS it is desirable that the Parliament of Canada reaffirm, clarify and extend the protection afforded by the criminal law of Canada to certain fundamental rights and liberties of persons:

NOW THEREFORE Her Majesty, by and with the advice and consent of the Senate and the House of Commons of Canada enacts as follows:

SHORT TITLE

1. This Act may be cited as The Canadian Bill of Rights Act.
2. Every one commits an offence who wilfully does an act that obstructs, prevents or restricts
 - (a) the free exercise of religious worship (religion) by any person,

- (b) the lawful assembly of persons,
- (c) the lawful association of persons,
- (d) the lawful communication in speech or writing between persons,
- (e) the lawful printing or lawful distribution by a person or any writing, or
- (f) the lawful exercise or lawful enjoyment by any person, by reason of the race, creed, religion or colour of that person, of any right or privilege exercised or enjoyed by persons generally.

3. Every one who commits an offence under this Act is guilty of

- (a) an indictable offence and is liable to imprisonment for one year, or
- (b) an offence punishable on summary conviction and is liable to imprisonment for six months or to a fine of five hundred dollars, or both.

4. No accused person shall be convicted of an offence under this Act where he establishes that the act complained of was lawfully done in the exercise of a right or the performance of a duty pursuant to a valid law in that behalf.

5. No proceedings shall be instituted under this Act without the consent in writing of the Attorney General of Canada or of the Attorney General of the Province within which the offence is alleged to have been committed.

Appendix V

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms **Bill C-60 (5 September 1958)**

Part I

1. This Part may be cited as the *Canadian Bill of Rights*.
2. It is hereby recognised and declared that in Canada there have always existed and shall continue to exist the following human rights and fundamental freedoms, namely,
 - (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
 - (b) the right of the individual to protection of the law without discrimination by reason of race, national origin, colour, religion or sex;
 - (c) freedom of religion;
 - (d) freedom of speech;
 - (e) freedom of assembly and association; and
 - (f) freedom of the press.
3. All the Acts of the Parliament of Canada enacted before or after the commencement of this Part, all orders, rules and regulations thereunder, and all laws in force in Canada or in any part of Canada at the commencement of this Part are subject to be repealed, abolished or altered by the Parliament of Canada, shall be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms, recognized by this Part, and, without limiting the generality of the foregoing, no such Act, order, rule, regulation or law shall be construed or applied so as to
 - (a) impose or authorize the imposition of torture, or cruel, inhuman or degrading treatment or punishment;
 - (b) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention,
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;
 - (c) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel or other constitutional safeguards;

- (d) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; or
- (e) deprive a person of the right to a fair and public hearing by an independent and impartial tribunal for the determination of any criminal charge against him.

4. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft from to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in the House of Commons, to ensure that the purposes and provisions of this Part in relation thereto are fully carried out.

Part II

5. Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

6. Sections 6 of the War Measures Act is repealed and the following substituted therefor:

“6. (1) Sections 3, 4 and 5 shall come into force only upon the issue of a proclamation of the Governor in Council declaring that war, invasion or insurrection, real or apprehended, exists.

(2) A proclamation declaring that war, invasion or insurrection, real or apprehended, exists shall be laid before Parliament forthwith after its issue, or, if Parliament is then not sitting, within the first fifteen days next thereafter that Parliament is sitting.

(3) Where a proclamation has been laid before Parliament pursuant to subsection (2), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within ten days of the day the proclamation was laid before Parliament, praying that the proclamation be revoked, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.

(4) If both Houses of Parliament resolve that the proclamation be revoked, it shall cease to have effect, and sections 3, 4 and 5 shall cease to be in force until those sections are again brought into force by a further proclamation but without prejudice to the previous operation of those sections or anything duly done or suffered thereunder or any offence committed or any penalty or forfeiture or punishment incurred.

(5) Any act or thing done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the *Canadian Bill of Rights*.”

Source: Bill C-60, House of Commons Bills, 9 Elizabeth II.

Appendix VI

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms, 1960

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

THEREFORE Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I Bill of Rights

1. It is hereby recognised and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied as to

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;

- (b) impose or authorize the imposition of torture, or cruel, inhuman or degrading treatment or punishment;
- (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention,
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;
- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self incrimination or other constitutional safeguards;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; or
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or
- (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft from to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.

PART II

5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.

6. Sections 6 of the War Measures Act is repealed and the following substituted therefor:

“6. (1) Sections 3, 4 and 5 shall come into force only upon the issue of a proclamation of the Governor in Council declaring that war, invasion or insurrection, real or apprehended, exists.

(2) A proclamation declaring that war, invasion or insurrection, real or apprehended, exists shall be laid before Parliament forthwith after its issue, or, if Parliament is then not sitting, within the first fifteen days next thereafter that Parliament is sitting.

(3) Where a proclamation has been laid before Parliament pursuant to subsection (2), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within ten days of the day the proclamation was laid before Parliament, praying that the proclamation be revoked, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.

(4) If both Houses of Parliament resolve that the proclamation be revoked, it shall cease to have effect, and sections 3, 4 and 5 shall cease to be in force until those sections are again brought into force by a further proclamation but without prejudice to the previous operation of those sections or anything duly done or suffered thereunder or any offence committed or any penalty or forfeiture or punishment incurred.

(5) Any act or thing done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the *Canadian Bill of Rights*.”

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