

## Canada's Foreign Enlistment Act and the Spanish Civil War

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## ARTICLE

# Canada's *Foreign Enlistment Act* and the Spanish Civil War

**Tyler Wentzell**

A thousand is a lot. In a small country like Canada it is a lot more than in a big country. Especially when a thousand Canucks ignore the warnings of their own government, and surmount decrees and difficulties and an ocean and mountains and several thousand miles to say nothing of red tape and hostile officials, and finally land in Spain to fight a war.<sup>1</sup>

Edward Cecil-Smith, Commander of the Mackenzie Papineau  
Battalion and Member of the Communist Party of Canada

We are getting rid of a lot of undesirables who may never return, but laws should be enforced if possible.<sup>2</sup>

James Howden MacBrien, Commissioner  
of the Royal Canadian Mounted Police

THE CANADIAN GOVERNMENT PASSED the *Foreign Enlistment Act* in 1937 to prohibit the recruiting of Canadians to fight in the Spanish Civil War, and later issued an order-in-council to outlaw the act of volunteering to fight in Spain.<sup>3</sup> In spite of the law, almost 1700 Canadians are believed to have fought for the Spanish Republic, the vast majority of whom were recruited and organized by the Communist Party of Canada (CPC), and three quarters of whom

1. History of Mac-Paps – A Draft by Edward Cecil-Smith, c. 1939, RG 146, Vol. 4183 Vol. 1, File 14-2, Library and Archives Canada (hereafter LAC).

2. Handwritten note by MacBrien on memorandum, 26 August 1937, RG146, Volume 58, File 95-A-00088, Recruiting for Spanish Army (hereafter RSA File), LAC.

3. *Foreign Enlistment Act*, 1 Geo. 6 c. 32 (hereafter FEA) and Exercising authority granted under s.19 of the Foreign Enlistment Act, Friday July 30, 1936, Orders-in-Council, Reel 5106, LAC.

were either members of the CPC or the Young Communist League.<sup>4</sup> Although the CPC and these volunteers were investigated for their violations, no charges were ever laid.

The story of Canada's *Foreign Enlistment Act* provides insight into the conditions of the late 1930s. Outwardly, the law was a foreign policy document designed to ensure the appearance of Canadian neutrality in another European war. But it was also designed for a domestic audience: the voting public. Only six years after the *Statute of Westminster*,<sup>5</sup> the law was an exercise of Canadian legislative independence. It also stood to reduce tensions between English and French Canada. Although the law failed to stop the recruiting, it was probably successful in keeping the recruiting effort reasonably quiet, thereby reducing these tensions.

In telling the story of the *Foreign Enlistment Act*, this article will first briefly outline the circumstances that gave rise to the Canadian requirement for such a law and review the existing scholarship. Second, it will describe the British statute on which the Canadian law was based. Third, it will explain how the Canadian statute was drafted and modified to meet with the circumstances of the Spanish Civil War. Fourth, it will describe the recruiting process itself and the RCMP's initial investigations and enforcement efforts. Finally, it will examine what effects the *Foreign Enlistment Act* had on recruiting and enlistment. Although it should be noted that the Act remains in effect to this day, an examination of its application and utility in the intervening years is beyond the scope of this article.<sup>6</sup>

## The Spanish Civil War and the International Brigades

THE SPANISH CIVIL WAR erupted in July 1936. General Francisco Franco led the Nationalists in opposition to Spain's elected Republican government. The Nationalists were supported by an estimated 75,000 Italian and 16,000 German soldiers, airmen and advisors, as well as large quantities of assorted military equipment.<sup>7</sup> In spite of this obvious intervention, the international community, eager to avoid another European war, pursued a policy of strict neutrality. The result was the Non-Intervention Agreement in late August 1936. The signatories affirmed their commitment to containing the conflict by enforcing an arms quarantine against Spain. Republican Spain was politically and militarily isolated, while German, Italian, and Portuguese aid

4. See Michael Petrou, *Renegades: Canadians in the Spanish Civil War* (Vancouver: University of British Columbia Press, 2008), 24, 190–241.

5. 22 & 23 Geo. 5 c. 4.

6. See Tyler Wentzell, "Canada's Foreign Fighters: The Foreign Enlistment Act and Related Provisions in the Criminal Code," *Criminal Law Quarterly* 63, 102 (Winter 2016): 102–123.

7. Hugh Thomas, *The Spanish Civil War* (London: Harper, 1961), 634, 985.

continued to flow to the Nationalists unabated.<sup>8</sup> The neutrality affirmed by the Non-Intervention Committee, and supported by Canada, can also be construed as a policy of appeasement towards the fascist powers in Europe that ultimately led to World War II.

The Soviet Union supported the Republican government, although to a lesser extent than their Fascist enemies. They sent aircraft, tanks, trucks and weapons, as well as up to 3,000 members of the Red Army and Air Force.<sup>9</sup> But its largest contribution was employing the Communist International (Comintern) connection to communist parties around the world to organize the dispatch of as many of 35,000 volunteers to fight for the Republic in the International Brigades.<sup>10</sup> The result was a vicious civil war exacerbated by foreign aid from countries with diametrically opposed ideologies. As the *Globe and Mail* observed, "the fight has turned into a general war, fought on Spanish territory, over the fundamental issues of fascism versus communism."<sup>11</sup>

Canada had no obvious interest in the outcome of the Spanish Civil War. There was no international pressure to intervene. Prime Minister Mackenzie King wrote in his diary that he prayed that the "British peoples" would keep out of the conflict.<sup>12</sup> As King explained in a speech before the League of Nations, "Canada does not propose to be dragged into a war in which she has no interest, and over the origin of which she has no responsibility or control through any automatic obligation."<sup>13</sup> Nonetheless, many Canadians were interested in the conflict in Spain. For many, the idea of supporting a state actively engaged in a fight against fascism was extremely appealing.

Support for the Spanish Republic was widespread amongst the Canadian left. The Co-operative Commonwealth Federation (CCF) and the CPC had finally found an issue on which they could collaborate; it was now possible to do more than just criticize government policy.<sup>14</sup> For instance, both Graham Spry, leader of the Ontario CCF, and Tim Buck, general secretary of the CPC, were directors of the Committee to Aid Spanish Democracy (CASD). The CASD organized rallies and fundraisers for the Republic, and hosted their delegations. Norman

8. For a general description of this stage of the Spanish Civil War, see Paul Preston, *The Spanish Civil War, 1936–39* (London: Weidenfeld and Nicolson, 1986), 51–84.

9. Stanley G. Payne, *The Spanish Civil War, the Soviet Union and Communism* (New Haven: Yale University Press, 2004), 153, 161.

10. Thomas, *The Spanish Civil War*, 941.

11. "Thousands Pouring Through France – Thousands Rush to Aid of Loyalists," *Globe & Mail*, 7 January 1937.

12. Diary entry, 20 August 1936, 527, Diaries of Prime Minister William Lyon Mackenzie King, MG26-J13 (hereafter Mackenzie King's Diary), LAC.

13. Speech delivered on 26 September 1936, re-printed in *The Ottawa Journal*, 30 September 1936.

14. James Naylor, *The Fate of Labour Socialism: The Co-operative Commonwealth Federation and the Dream of a Working-Class Future* (Toronto: University of Toronto Press, 2016), 258.

Bethune's medical mission (although he was a member of the CPC and the CCF initially organized the mission) was funded by the CASD.<sup>15</sup> However, the CPC stood alone on the issue of recruiting volunteers to fight in Spain.<sup>16</sup> Buck went to Spain in October 1936 where he committed to organizing a Canadian contingent of 250 volunteers to serve in the Spanish Republican Army.<sup>17</sup> The first Canadian volunteers were fighting in Spain by February 1937.<sup>18</sup>

The participation of some Canadians in a foreign war might not have mattered. As RCMP Commissioner James Howden MacBrien commented, was it so bad if some "undesirables" ran off to Spain and possibly did not return?<sup>19</sup> King, however, could not afford to be so dismissive. Support for the two camps was roughly divided between English and French Canada and potentially threatened Canadian unity. In general terms, French Canada was supportive of Franco's rebels in their fight against the Spanish Republic, a popular front government that included communists. Québec Premier Maurice Duplessis, Cardinal Jean-Marie-Rodrigue Villeneuve, Pope Pius XI, and the majority of French-Canadian newspapers characterized the Nationalist rebellion against the Republic as a just war.<sup>20</sup> English Canada, on the other hand, was more widely supportive of the elected Republican government.<sup>21</sup>

Tensions between the Nationalist and Republican supporters ran high. An illustrative example was the very different reactions received by Bethune when

15. See Graham Spry, "Spanish Hospital and Medical Aid Committee," *New Commonwealth*, 26 September 1936 and Larry Hannant, *The Politics of Passion: Norman Bethune's Writing and Art* (Toronto: University of Toronto Press, 1998), 119.

16. Although the idea of volunteering for Spain was appealing to individual members of the CCF, the party's official stance was against the recruiting of Canadian volunteers to fight in Spain. Interview with Graham Spry, cited in Victor Hoar, *The Mackenzie-Papineau Battalion: Canadian Participation in the Spanish Civil War* (Toronto: Copp Clark Publishing Company, 1969), 100. Michael Petrou identified at least seven members of the CCF who fought in Spain, and there was some coverage of their exploits in the CCF press. See Petrou, *Renegades*, 24 and "Canadians Fighting in Spain," *New Commonwealth*, 15 May 1937, which identified two members of the CCF Youth League fighting in Spain.

17. Tim Buck, *Yours in the Struggle: Reminiscences of Tim Buck* (Toronto: NC Press Limited, 1977), 266.

18. Hoar, *The Mackenzie-Papineau Battalion*, 39.

19. Handwritten note by MacBrien on memorandum, 26 August 1937, RSA File, LAC.

20. Caroline Desy, *Si Loin, si proche: La Guerre civile espagnole et le Québec des années trente* (Québec: Les Presses de l'Université Laval, 2004), 36.

21. A survey of newspapers and magazines showed that anti-Republican sentiment pervaded Québec newspapers *La Patrie*, *Le Devoir*, and the *Montreal Gazette*. Outside of Québec, *Le Droit* out of Ottawa, and the following Toronto publications – the *Globe and Mail*, the *Gazette*, *Maclean's Magazine*, and *Saturday Night* – were all generally anti-Republican. Conversely, the *Toronto Star*, the *Winnipeg Free Press*, and the *Vancouver Province* were pro-Republican. See Mary Biggar Peck, *Red Moon over Spain: Canadian Media Reaction to the Spanish Civil War 1936–1939* (Ottawa: Steel Rail Publishing, 1988), 10.

he toured with a Republican delegation before his medical mission departed for Spain. The delegation was greeted by cheering crowds in Toronto. In Montréal, newspapers refused to run their advertisements, hundreds of university students protested, the police barred the doors of the Mount Royal Arena, and when the speakers relocated to the Mount Royal Hotel, the hotel manager shut off their electricity.<sup>22</sup> Ernest Lapointe, the Minister of Justice and King's lieutenant in Québec, advised King to ban any future visits.<sup>23</sup> King refused, offended by the idea of such censorship, although subsequent delegations were advised to stay away from Québec.

King was acutely aware of the interaction between foreign and domestic policy, and his role as the prime minister in balancing the two.<sup>24</sup> Concern for national unity necessarily coloured his foreign policy.<sup>25</sup> Regarding the delegations, King recorded in his diary,

Lapointe seemed to think that if they were allowed to come into Canada at all, it might only lead to secession of the Province of Quebec from the rest of the Dominion.... Lapointe's fear of the Cardinal and Duplessis amounts to absolute terror.<sup>26</sup>

King may have believed that Lapointe's response was a touch alarmist, but he had to take the advice of his Québec adviser into account. If mere visits from delegations could elicit such reactions, then what of a public recruiting drive and the dispatch of Canada's sons to fight in Spain?

## Historiography of Canada's Foreign Enlistment Act

CANADA'S *FOREIGN ENLISTMENT ACT* has not been the subject of much scholarship. Only one thesis has dealt with the Act directly. Thor Frohn-Nielsen's 1979 MA thesis, *Canada's Foreign Enlistment Act: Mackenzie King's Expedient Response to the Spanish Civil War*, postulated that the Act was a calculated move to reduce the tension between English and French Canada caused by

22. Roderick Stewart and Sharon Stewart, *Phoenix: The Life of Norman Bethune* (Montréal: McGill-Queen's University Press, 2011), 144–145. See also Diary entry, 18 December 1936, 1062, Mackenzie King's Diary, LAC.

23. John Macfarlane, *Ernest Lapointe and Québec's Influence on Canadian Foreign Policy* (Toronto: University of Toronto Press, 1999), 106.

24. As recorded by his biographer, when discussing the German occupation of the Rhineland, "Mackenzie King realized more clearly than many of his contemporaries that foreign policy was an aspect of domestic policy and that the government's attitude to events in the Rhineland must be largely determined by the situation at home," H. Blair Neatby, *William Lyon Mackenzie King: 1932–1939, The Prism of Unity* (Toronto: University of Toronto Press, 1976), 172.

25. In response to Germany's reoccupation of the Rhineland in 1936, King wrote, "I believe that Canada's first duty to the league [of Nations] and to the British empire, with respect to all the great issues that come up, is, as possible, to keep this country united," Diary entry, 18 March 1936, 168, Mackenzie King's Diary, LAC.

26. Diary entry, 18 December 1936, 1062, Mackenzie King's Diary, LAC.

illegal enlistment during the Spanish Civil War. Frohn-Nielsen made good use of correspondence among King and the Departments of External Affairs and Justice, as well as contemporary newspaper accounts. However, he provided little analysis of the law itself, and the narrative ends before the Canadian law is passed.<sup>27</sup>

The leading text of Canadian newspaper coverage of the Spanish Civil War, *Red Moon Over Spain*, provides a section on the Act.<sup>28</sup> However, for some reason, the author did not actually study the media reaction to the statute. Diverging from the style in the rest of the book, the author does not reference a single newspaper article about the Act and instead draws exclusively upon the transcripts of the debates in the House of Commons.

The recruiting process itself is perhaps the best documented aspect of the law. Tim Buck's memoir, which consists of a compilation of interviews, gives his account of the recruiting process and the Act's effect on recruiting.<sup>29</sup> Peter Hunter, a key member of the team that dispatched the volunteers from Toronto, also wrote a useful memoir.<sup>30</sup> Both gave lengthy interviews to "Mac" Reynolds of the Canadian Broadcasting Corporation (CBC) as part of an oral history project. This same series of interviews, held by the CBC Radio Archives in Toronto, forms the backbone of another thread of research on the subject: the reminiscences of the Canadian volunteers.

The reminiscences of the Canadian volunteers for Spain have been discussed principally in four books and two memoirs. Victor Hoar wrote *The Mackenzie-Papineau Battalion*, the first book on the Canadian volunteers thirty years after the war. Hoar's book was followed by Bill Beeching's *Canadian Volunteers* in 1989, Mark Zuehlke's *The Gallant Cause* in 1996, and Michael Petrou's *Renegades* in 2008. Volunteers Ronald Liversedge and Pat Stephens wrote instructive memoirs.<sup>31</sup> These documents provide glimpses into the recruiting process and tell the stories of individuals who made their way to Spain, but they make scant reference to the *Foreign Enlistment Act*. Hoar provides some discussion of the law, but primarily in its role as one obstacle among many for the volunteers.<sup>32</sup> He includes a copy of the Act as an annex but offers little analysis. Beeching does not discuss the law at all. Zuehlke makes some general

27. Thor Frohn-Nielsen, "Canada's Foreign Enlistment Act: Mackenzie King's Expedient Response to the Spanish Civil War," MA Thesis, University of British Columbia, 1979, 6, 87.

28. Peck, *Red Moon over Spain*, 86–89.

29. Buck, *Yours in the Struggle*, 271–277.

30. Peter Hunter, *Which Side are You on Boys? Canadian Life on the Left* (Toronto: Lugs Publishing, 1988).

31. Ronald Liversedge, *Mac-Pap: Memoir of a Canadian in the Spanish Civil War*, edited and with an introduction by David Yorke (Vancouver: New Star Books, 2013); D.P. ("Pat") Stephens, *A Memoir of the Spanish Civil War: An Armenian-Canadian in the Lincoln Battalion* (St. John's: Canadian Committee on Labour History, 2000).

32. Hoar, *The Mackenzie-Papineau Battalion*, 103–105.



statements about the law, but many are incorrect or misleading. For example, he states that the law was adopted by order-in-council on 10 April 1938, that it was based on an American law, and that recruiting for Spain was terminated by "vigorous enforcement" of the statute in early 1938.<sup>33</sup> In fact, the law was passed on 10 April and not applied to Spain by order-in-council until July; the law was based on a British statute with some consideration of American law, and recruiting was halted due to circumstances in Spain, not Canada. None of these details are essential to the story these authors tell, but highlight the absence of a serious look at the *Foreign Enlistment Act* in their work.

Petrou's book was the first to make extensive use of declassified RCMP documents which illuminate the Mounties' perception of the law and their investigation of the recruiting process. These same RCMP documents were also used in Martin Lobigs' 1992 MA thesis, *Canadian Responses to the Mackenzie-Papineau Battalion*,<sup>34</sup> which provides an excellent analysis of the RCMP investigation and public reaction to the recruiting effort. Michael Butt's 2003 PhD thesis, *Surveillance of Canadian Communists: A Case Study of Toronto RCMP Intelligence Networks, 1920–1939*, also made extensive use of RCMP records to illustrate the RCMP investigation of, among many other things, violators of the Act in Toronto as part of the larger enforcement effort.<sup>35</sup> Finally, Gregory S. Kealey and Reg Whitaker's *RCMP Security Bulletins* remain an essential source for understanding the RCMP's monitoring and investigation of the CPC and its activities.<sup>36</sup>

### **The British Foreign Enlistment Act**

BRITISH SUBJECTS HAD A LONG HISTORY of participating in foreign conflicts. Parliament passed the first *Foreign Enlistment Act* in 1819 in response to British soldiers departing for the Spanish colonies to fight as mercenaries under Simon Bolivar. Parliament updated the law again in 1870 out of concern that British soldiers of fortune might threaten British neutrality in the Franco-Prussian War.<sup>37</sup> The Act of 1870 was still in effect throughout the British Empire at the outbreak of the Spanish Civil War.

33. Mark Zuehlke, *The Gallant Cause: Canadians in the Spanish Civil War, 1936–1939* (Toronto: Whitecap Books, 1996), 121, 219.

34. Martin Lobigs, "Canadian Responses to the Mackenzie-Papineau Battalion," MA thesis, University of New Brunswick, 1992.

35. Michael Butt, "Surveillance of Canadian Communists: A Case Study of Toronto RCMP Intelligence Networks, 1920–1939," PhD thesis, Memorial University, 2003.

36. In particular, see Gregory S. Kealey and Reg Whitaker, eds., *RCMP Security Bulletins: The Depression Years, Part IV, 1937* (St. John's: Canadian Committee on Labour History, 1997); and *RCMP Security Bulletins: The Depression Years, Part V, 1938–39* (St. John's: Canadian Committee on Labour History, 1997).

37. See Tyler Wentzell, "Mercenaries and Adventurers: Canada and the Foreign Enlistment Act



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Men are allowed to bring their own **Horses**. They will be paid 40 cents per day for the use of the **Horse**, and \$8.00 per month for **forage**. **Horses** furnished to those who prefer it.

This Regiment is to be **Officered** by experienced **Officers**, and is to be ready for service at the earliest possible date.

*Edward Hill* **Recruiting Officer.**

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**Recruiting Rendezvous,**  
**HEAD-QUARTERS, No. 42 Griswold Street, Detroit.**

TRIBUNE PRINT, DETROIT

A recruiting poster displayed in Toronto for the Michigan Lancers, targeting Canadian volunteers to fight for the Union in the American Civil War. Canadians had a long history of serving in foreign militaries, a practice which many feared could drag Canada into wars in which they would otherwise be neutral.

The British *Foreign Enlistment Act* of 1870 prohibited conduct that would detrimentally affect British neutrality. The preamble stated that the Act was meant to “regulate the conduct of Her Majesty’s Subjects during the existence of hostilities between foreign states with which Her Majesty is at peace.”<sup>38</sup> To that end, the statute prohibited activities that would assist or harm states with which Britain was at peace. British subjects were not permitted to outfit or build ships intended for use in military operations, fit out naval or military expeditions against any such state, or to aid or abet anyone in committing these offences.<sup>39</sup> The Act also barred what the statute described as “illegal enlistment.”

“Illegal enlistment” referred to the act of accepting or agreeing to accept a “commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty”<sup>40</sup> or inducing someone to do the same. Departing Her Majesty’s dominions with the intent to enlist was also prohibited. A foreign state was broadly defined. It included any group “presuming to exercise the authority of a state.”<sup>41</sup> It was unclear if the prohibition applied to civil wars versus a conflict involving a state fighting another state. Furthermore, was the application of the Act to a civil war tantamount to recognizing a rebel group as a state? It was therefore unclear if the Act applied to circumstances in Spain.

The Canadian Department of External Affairs contacted authorities in Great Britain to determine their position on the Spanish question. On 18 August 1937, O.D. Skelton, the Undersecretary of State for External Affairs, requested that Vincent Massey, Canada’s High Commissioner in London, make inquiries. Specifically, Skelton wanted to know British policy regarding propaganda, the transmission of funds, weapons shipments, and the enlistment of foreign volunteers.<sup>42</sup> The British Foreign Office reported that they were unsure if the Act of 1870 applied to circumstances in Spain, but they had decided to take a calculated risk. Britons could reach Spain quickly and easily (they did not even need a passport to get to France, from which they could illegally cross into Spain), and the Communist Party of Great Britain (CPGB) was publicly recruiting. Between November 1936 and January 1939, volunteers lined up in the street in front of the CPGB’s office on King Street in London.<sup>43</sup> Even if a

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in the Nineteenth Century,” *Canadian Military History* 23, 2 (Spring 2014): 57–77.

38. *Foreign Enlistment Act*, 1870 c. 90 (hereafter FEA 1870), from the preamble.

39. FEA 1870, s.8.; FEA 1870, s.11.; FEA 1870, s.12.

40. FEA 1870, s.4.

41. FEA 1870, s.30.

42. Letter Skelton to Massey, from *Documents on Canadian External Relations, 1936–1939*, John A. Munro, ed. (Ottawa: Queen’s Printer, 1972), 970.

43. Hywel Francis, *Miners against Fascism: Wales and the Spanish Civil War* (London: Lawrence and Wishart, 2012), 157.

charge was unlikely to stand up in court, they hoped that simply announcing the prohibition might have a deterrent effect on recruiting and illegal enlistment.<sup>44</sup> On 26 December, the British Secretary of State for Colonial Affairs wrote to King and encouraged him to take steps to stem the flow of foreign nationals to Spain.<sup>45</sup> On 11 January 1937, the British Foreign Office made its announcement: the *Foreign Enlistment Act* of 1870 applied in the case of the Spanish Civil War. Recruiting did not stop, but it was driven underground.

Otto Buchanan Elliott, the Social Credit Member of Parliament for Kindersley, asked King if it was his intention to follow the British lead.<sup>46</sup> King was non-committal: he reminded everyone that Canada was not a member of the Non-Intervention Committee and therefore not implicated in the conflict in any way, and stated that the question was being considered, and would continue to receive consideration.<sup>47</sup>

Meanwhile, Canada's Department of External Affairs also sought to determine the legal position of the United States. Skelton contacted Herbert Meredith Marler, Canada's ambassador in Washington, on 22 January 1938, *after* the British had already announced their decision. Marler provided a synopsis of the material American laws.<sup>48</sup> Under the American system, it was a crime to enlist in foreign militaries, but only if that enlistment occurred on American territory. It was not an offence to travel to Spain and join the military once there. Marler also highlighted the administrative process the United States had recently imposed. Passport applicants had to provide an undertaking that they would not fight in the Spanish Civil War on either side.<sup>49</sup>

### **The British *Foreign Enlistment Act* in Canada**

THE BRITISH *FOREIGN ENLISTMENT ACT* was one of many British statutes still in effect in Canada in 1937. Although the *British North America Act* of 1867 carved out some autonomy for the provinces and the federal government, Parliament in London retained the ability to legislate on matters affecting the Dominions. In general, laws passed by Parliament in Ottawa or the provincial legislatures dealt with local matters. Laws passed in Westminster

44. S.P. MacKenzie, "The Foreign Enlistment Act and the Spanish Civil War, 1936–1939," *Twentieth Century British History* 10, 1 (Winter 1999): 61.

45. Frohn-Nielsen, "Canada's Foreign Enlistment Act," 83.

46. Canada, *House of Commons Debates*, 19 January 1937, (Ottawa: Queen's Printer, 1937), 64–65.

47. Canada, *House of Commons Debates*, 19 January 1937, (Ottawa: Queen's Printer, 1937), 65.

48. Marler's letter included a detailed description of the provisions contained in Sections 21, 22, and 30 of Title 1S of the United States *Code of Laws*. See Letter from Marler to Skelton, 23 January 1938, G13-A-8, Foreign Enlistment Act 1937 Memos (hereafter FEA File), LAC.

49. Letter from Marler to Skelton, 23 January 1938, FEA File, LAC.

governed anything to do with how Canada interacted with other states or even other Dominions. Even local matters could be subject to laws passed in Westminster, and a colonial statute was rendered void if it conflicted with an imperial statute.<sup>50</sup> Canada did not gain legislative independence until the *Statute of Westminster* in 1931. Only then did the Dominion gain total control of laws affecting its foreign affairs.

The effect of the *Statute of Westminster* was not well understood. The *Hamilton Spectator*, for instance, incorrectly claimed that the *Statute of Westminster* had invalidated laws such as the *Foreign Enlistment Act*.<sup>51</sup> Other newspapers correctly realized that the *Statute of Westminster* merely gave Canada the autonomy to create new laws and repeal old ones.<sup>52</sup> British statutes affecting Canada remained in force until such time as the Canadian government repealed them. The Act of 1870 was one such statute. In 1937, it was still good law in Canada.

The British Act of 1870 had already been examined in some detail by the Departments of External Affairs and Justice. They had looked at the Act of 1870 in 1935 as a mechanism for preventing Canadians from joining the conflict in Manchuria as military pilots.<sup>53</sup> Over the winter of 1936–37, Skelton had struck an interdepartmental committee from External Affairs and Justice to examine the law. The committee tabled their report to Skelton and Lapointe the same day the British Foreign Office made their announcement. They highlighted two key concerns.<sup>54</sup>

First, the committee took the position that the law was not applicable to civil wars and insurgencies. The law had been written to address situations involving interstate conflict, not intrastate conflict. But the committee noted that the issue of intrastate conflicts, “is nowadays assuming a greater and greater significance.”<sup>55</sup> Canada should have a law that applied to the Spanish Civil War and future conflicts of a similar character. The committee formally expressed this concern to Vincent Massey in London as early as the autumn of 1936.<sup>56</sup>

Second, Canada should have a law of its own. The Act of 1870 was designed to enforce neutrality, an element of foreign affairs. Now that Canada was legislatively independent, it should exercise its rights, especially when the British law in question was inadequate.

50. *Colonial Laws Validity Act*, 28 & 29 Vict. c. 63.

51. “Foreign Enlistment,” *Hamilton Spectator*, 13 January 1937.

52. “British Ban on Volunteers likely to Apply in Canada,” *Globe and Mail*, 11 January 1937.

53. See interview with former Prime Minister R.B. Bennett in “British Ban on Volunteers likely to Apply in Canada,” *Globe and Mail*, 11 January 1937.

54. Memo on Foreign Enlistment by Interdepartmental Committee, 11 January 1937, FEA File, LAC.

55. Memo on Foreign Enlistment, 11 January 1937, FEA File, LAC.

56. Memo on Foreign Enlistment, 11 January 1937, FEA File, LAC.

## Creating the Canadian *Foreign Enlistment Act*

KING WAS GENERALLY HAPPY to mirror British foreign policy. However, he had learned through Lapointe that the British legal position was likely incorrect. The Act of 1870 was unlikely to lead to any convictions, and not taking any action against the CPC-recruited volunteers might be viewed as King and Lapointe being “soft” on communism. Such a perception was a political liability, especially in Québec.<sup>57</sup> Updating the *Foreign Enlistment Act* was a low cost, low risk approach through which King and Lapointe could show their constituents that they were doing “something” to counter the communist threat.<sup>58</sup> This was especially important given that King had recently repealed Section 98 of the *Criminal Code of Canada*, the section that had been used to outlaw the CPC.

Québec Premier Maurice Duplessis highlighted the danger of this communist threat in late January. In front of 1,600 supporters at a banquet in Trois-Rivières to celebrate the end of his first year as premier, he stated that religion must be the cornerstone of all governments. He warned that all religious and moral traditions would come to an end if communists ever came to power. The Soviet Union, he explained, was paying agents in Québec to foment revolution and rally the people against the Catholic faith. The coverage in the *Montreal Star* continued,

More than that, he said, recruiting had been carried on for the Loyalist [i.e. Republican] forces in Spain.... He appealed to the Federal Government to take measures to bring about the disappearance of Communism. Otherwise, he said, the reign of peace and order would soon be a thing of the past.<sup>59</sup>

Duplessis claimed that the CPC had recruited and paid the first five volunteers, all of whom had acquired their passports by fraud. Wilfrid Gariépy, the Liberal Member of Parliament for Trois-Rivières, resolved to bring up the matter in the House of Commons.<sup>60</sup>

Lapointe was prepared for questions regarding recruitment. The Government of Canada, he explained, was aware of these events in Québec and elsewhere. They were in the process of drafting a law that would specifically apply to the circumstances of the Spanish Civil War.<sup>61</sup> Lapointe explained to the newspapers that the Canadian government had been looking

57. King and Lapointe had been widely accused of being “soft” on communism. For instance, shortly after the repeal of Section 98, a citizen wrote to Lapointe to tell him that the blood of innocents would be his responsibility when the “Reds” attacked Québec City. See Lita-Rose Betcherman, *Ernest Lapointe: Mackenzie King’s Great Quebec Lieutenant* (Toronto: University of Toronto Press, 2002), 225.

58. Frohn-Nielsen, “Canada’s Foreign Enlistment Act,” 6, 87.

59. “Duplessis Pledges War on Radicals in Province,” *Montreal Star*, 26 January 1937.

60. “Recruits Secured Papers by Fraud,” *Montreal Star*, 28 January 1937.

61. Canada, *House of Commons Debates*, 29 January 1937 (Ottawa: Queen’s Printer, 1937), 387.

into legislation to protect Canadian neutrality in Spain even before the British Foreign Office's announcement.<sup>62</sup> The Canadian law would apply to civil wars (unlike the British law),<sup>63</sup> and would address the issue of the sale of Canadian-manufactured munitions to the belligerents in addition to the issue of illegal enlistment.<sup>64</sup>

The proposed statute was a tool of foreign affairs and more directly fell within the purview of King himself (as both Prime Minister and Secretary of State for External Affairs) or Skelton (the undersecretary). However, as the *Globe and Mail* remarked, "politically minded members of the House were inclined to attach significance to the fact that the Government had delegated the task of announcing a policy of determined neutrality to the senior Minister from Quebec province."<sup>65</sup> Lapointe, and only Lapointe, would shepherd the Bill to completion. He would be the public face of Canadian neutrality in Spain and anti-communism at home.

## Drafting the Bill

BILL 23 WAS ORIGINALLY TITLED *An Act respecting Participation in certain Foreign Wars by Canadian Nationals*.<sup>66</sup> While accurate, this title was personally changed by King, likely to reduce any impression that Canadian policy was out of step with the British. King scratched out the original title and changed it to *An Act respecting Foreign Enlistment*.<sup>67</sup>

Bill 23 was nearly identical to the British *Act*. Many of the changes were simple reflections of new technology and the Canadian legal system. The procedural apparatus of the Act was modified to make express reference to the processes in the *Criminal Code*. Also, the definition of "military forces" was expanded to include air forces, "expeditions" now included air expeditions, and travelling abroad by ship to commit offences now occurred by means of a "conveyance," its definition expanded to include air travel. Other changes seemed simple enough on their face, but engaged with issues of practical and

62. "Strict Canadian Neutrality is object of New Measure to be Introduced by Lapointe," *Globe and Mail*, 30 January 1937.

63. Until Lapointe's statement on 29 January, representatives of the Department of Justice had avoided public statements about the applicability of the British Act to circumstances in Spain. Canadian legal officers were initially described as "reluctant" to provide their legal opinion on the British position. See "British Ban on Volunteers likely to Apply in Canada," *Globe and Mail*, 11 January 1937.

64. "Ottawa Ban Seen on All War Help," *Montreal Star*, 30 January 1937. The *Foreign Enlistment Act* did not contain restrictions on arms sales. This embargo would eventually be introduced separately.

65. "Strict Canadian Neutrality," *Globe and Mail*, 30 January 1937.

66. Draft Bill 23, FEA File.

67. Draft Bill 23, FEA File.





**Canadian and American volunteers, although travelling in secret, gather for a group photo on the deck of *The President Roosevelt* during their transatlantic crossing in February 1937.**

Library and Archives Canada, MG30 E173, Mackenzie-Papineau Battalion Collection Victor Hoar Papers, Vol. 1, File 3.

symbolic importance such as the use of the term “Canadian national” in the place of “British subject.”

The Act of 1870 applied to the illegal enlistment of any British subject, and recruiting within the British Empire by anyone, regardless of nationality, during times of war.<sup>68</sup> However, Canadian citizenship was not distinguished from British nationality until 1946.<sup>69</sup> Until then, a Canadian national was still a British subject, although a British subject was not necessarily a Canadian national.<sup>70</sup> When the Canadian statute replaced the words “British subject” with “Canadian national,” there were a few unusual results.<sup>71</sup> Even though Canada had repealed the British Act, the British Act still applied to British subjects which included Canadian nationals. A Canadian national could

68. FEA 1870, s.4.

69. *Canadian Citizenship Act*, S.C. 1946, c. 15.

70. A Canadian national was defined in the *Canadian Nationals Act* of 1921 as a British subject who was a Canadian citizen, their wife, or a person who was born outside of Canada whose father was a Canadian national. A Canadian citizen was defined in the *Immigration Act* of 1910 as an individual born in Canada, a British subject with a Canadian domicile, or a person who has been naturalized who has not become an alien or lost their Canadian domicile for more than a year.

71. A Canadian national was defined under the *Canadian Nationals Act* of 1921, S.C. 1921, c. 4.



therefore still be tried for illegal enlistment under the British Act in Great Britain or anywhere else in the British Empire where the Act of 1870 had not been repealed.

Secondly, the vast majority of the volunteers departing from Canada were not Canadian nationals or British subjects. Fewer than one in five of the volunteers departing from Canada were born in Canada.<sup>72</sup> Those who were born in Canada were automatically deemed to be Canadian nationals; the remainder had to be naturalized. A British subject automatically became a naturalized Canadian after maintaining a domicile in Canada for five years.<sup>73</sup> A non-British subject, however, had to maintain a Canadian domicile for five years, and then apply to a court that would forward the request on to the Secretary of State. The Secretary of State was not obligated to give reasons for his decision, nor was the decision reviewable in court.<sup>74</sup> It is not known how many of the volunteers were not naturalized, but given the high number of non-British sounding names among the volunteers, it seems likely that many of them were not Canadian nationals.<sup>75</sup> These individuals could not be guilty of illegal enlistment under the Act.

The Canadian bill also included two completely new provisions. First, recruiting for the armed forces of a foreign state, even in peacetime, was prohibited. There was an exemption: recruiting through consular or diplomatic offices where the recruiter was a citizen of the country they represented.<sup>76</sup> Consequently the Spanish Republic could have conducted recruiting through a consular office, but any CPC-directed recruiting was outlawed.

Second, the new statute permitted the Governor in Council to modify the Act through orders and regulations.<sup>77</sup> Orders and regulations were created without a vote in Parliament. Specifically, the Governor in Council could extend the provisions of the Act to cases of civil conflict, and to circumstances where armed conflict occurred and "there may be some doubt as to whether such armed conflict constituted war in the technical sense."<sup>78</sup> Under normal circumstances, the Act only applied to conflicts between foreign states, but the law could be expressly extended to civil wars by an order-in-council.

Lapointe moved for leave to introduce Bill 23 on 18 February 1937. One month later, he moved for its second reading. He optimistically stated that,

72. Petrou, *Renegades*, 36.

73. Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 2000), 229.

74. Kelley and Trebilcock, *The Making of a Mosaic*, 229.

75. See Annex in Petrou, *Renegades*, 190–241 for the most complete nominal roll of Canadian volunteers.

76. FEA, s.11.

77. FEA, s.19.

78. FEA, s. 19.

“the bill does not call for any discussion because the principle of the measure is already the law of Canada.”<sup>79</sup> The other Members of Parliament did not seem to agree.

## The Debates

CHARLES CAHAN, THE CONSERVATIVE Member of Parliament for St. Lawrence-St. George, began the debate. The former corporate lawyer from Montréal had strong opinions on the matter, informed by his knowledge of the foreign affairs aspect of the Bill, having previously served as a delegate to the League of Nations, and his deeply rooted concerns over the dangers of communism. In 1918, following a mandate to look into the dangers of subversion by Prime Minister Robert Borden, Cahan submitted a report which highlighted the dangers of Bolshevism to Canada.<sup>80</sup>

Cahan began the debate by discussing the relationship between Bill 23 and the *Statute of Westminster*. Cahan stated that the principle of the *Foreign Enlistment Act* was not accepted in Canada; the Act of 1870 had been, “imposed upon Canada by imperial statute without any reference whatever to the will or opinion of Canada.”<sup>81</sup> Cahan did not object to Bill 23 in principle, but thought it was important to emphasize the need for Canada to exercise its legislative independence in the wake of the *Statute of Westminster*.<sup>82</sup>

Cahan’s speech echoed the concerns of the interdepartmental committee’s report on the *Act*. Cahan wanted a Canadian law to address the issue of foreign enlistment, but he also wanted a broader investigation of the state of “old” British laws. He recommended that the Department of External Affairs or the Department of Justice, or both, produce a comprehensive survey of all remaining imperial statutes for easy reference.<sup>83</sup> Lapointe explained that 150 such laws remained. Cahan continued,

In my opinion, this parliament should again and again, at every opportunity, assert its sovereignty in regard to matters affecting the peace, order and good government of Canada which are within its legislative jurisdiction. We have emerged from the colonial status.<sup>84</sup>

Since these points were brought up by the official opposition without proposing any amendments, and they were the only issues mentioned in the newspaper coverage the next day, it appears that Cahan and the journalists of

79. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1939.

80. Gregory S. Kealey, Reg Whitaker, and Andrew Parnaby, *Secret Service: Political Policing in Canada from the Fenians to Fortress America* (Toronto: University of Toronto Press, 2012), 72–75.

81. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1939.

82. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1939.

83. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1940.

84. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1941.

the day assessed these issues to be of some significance to Canadian readers and voters.<sup>85</sup>

Much of the remaining debate centered on the applicability of Bill 23 to the situation in Spain. Bill 23 prohibited enlistment in the military forces of a foreign state. An insurgency could achieve the status of a foreign state if it exercised or presumed to exercise powers of government. However, until that point Bill 23 did not prohibit enlisting in military forces involved in a civil war unless prohibited by an order-in-council.

Charles Grant MacNeil, the CCF Member of Parliament for Vancouver North, insisted that Bill 23 should be amended to prohibit the enlistment of Canadians in insurgent forces acting against a friendly state.<sup>86</sup> Such a change would have prohibited Canadian enlistment in the Nationalist army, but not the Spanish Republican Army. This proposal was in line with the pro-Republican politics of the CCF. However, such a change would have defeated one of the Liberal government's ulterior purposes of the bill: pacifying the anti-Republican lobby in Québec. Although it is not mentioned in the debates, the members from Québec (especially Lapointe), were surely aware of the debates occurring in the Québec National Assembly at the same time. *La Loi protégeant la province contre la propagande communiste* (better known as the Padlock Law) effectively outlawed the CPC, a provincial response to King's legalization of the CPC through the repeal of Section 98 of the *Criminal Code*. The Padlock Law was passed on 24 March.<sup>87</sup>

Cognizant of the debate in Québec, Lapointe insisted that Bill 23 had nothing to do with "loyal" or "rebel" forces. It should not be extended to create a standing prohibition on enlistment in insurgent forces. Bill 23, without an order-in-council, only applied to conflicts between states. He argued that a prohibition as proposed by MacNeil would "only cause confusion."<sup>88</sup> Furthermore, the government required the flexibility to apply the bill in conditions where war was not declared such as Japanese intervention in Manchuria or Italian aggression in Ethiopia. Maintaining this flexibility would permit the government to make decisions on a case-by-case basis.<sup>89</sup> Cahan echoed Lapointe's point of view, invoking his experience at the League of Nations. He stated that the decision to recognize one group as the government and another group as the insurgency, "can change in the twinkle of an eye; it is a matter within the discretion of the government of the United Kingdom in any case."<sup>90</sup>

85. "Cahan Urges New Statutes," *Globe and Mail*, 20 March 1937.

86. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen's Printer, 1937), 1950.

87. 1 George VI Ch. 11.

88. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen's Printer, 1937), 1950.

89. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen's Printer, 1937), 1950.

90. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen's Printer, 1937), 1951.

An additional point of debate concerned the definition of armed forces. The draft bill defined “armed forces” as including, “military, naval and air forces or services, combatant or non-combatant.”<sup>91</sup> When Cahan mentioned that, “medical officers from Montreal are at present enlisted with and engaged as part of the loyalist service in Madrid,”<sup>92</sup> he was clearly asking about Bethune’s CASD-funded blood transfusion unit. Lapointe had anticipated this question, and responded with a prepared provision that specifically removed humanitarian workers under the control or supervision of the Red Cross or other recognized Canadian humanitarian society from the definition of an armed force.<sup>93</sup> Lapointe’s provision was adopted and became s.2(b) of the Act.<sup>94</sup> It was the only amendment to Bill 23.

Elements of the Canadian left were vocally opposed to Bill 23. When Lapointe introduced Bill 23, the CPC’s newspaper, *The Daily Clarion*, carried a statement by Sam Carr. He wrote, “Our party will fight with all its might against any legislation which places obstacles in the road to Canadians giving every type of assistance to fighters for democracy in Spain.”<sup>95</sup> A Canadian League Against War and Fascism meeting of 900 people in Vancouver in February 1937 unanimously passed a resolution saying that the Act did not apply in Spain (a legally correct position at the time) and condemned the government’s efforts.<sup>96</sup> At a similar meeting in Winnipeg, a speaker proposed that the working class should “make things so busy for the Provincial and Federal Governments that King won’t have any time to bother with the Spanish

91. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1946.

92. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1946.

93. Canada, *House of Commons Debates*, 18 March 1937 (Ottawa: Queen’s Printer, 1937), 1946.

94. Although Lapointe’s definition was adopted, in the author’s opinion, its application is questionable. Bethune’s blood transfusion service was providing aid to Republican soldiers and was not a true humanitarian organization. Setting that issue aside, were humanitarian organizations not operating under the auspices of the Red Cross or a recognized Canadian humanitarian organization covered by this exception? A reasonable defence could have been levelled based on the interpretation of the word “supervised.” If the Red Cross or a recognized Canadian humanitarian organization was aware of and generally supported Bethune, it could be argued that this constituted a loose form of supervision.

95. “Will Fight Ban on Aid to Spain,” *The Daily Clarion*, 19 February 1937.

96. Kealey and Whitaker, eds., *RCMP Security Bulletins, 1937*, Bulletin no. 844, 17 February 1937, 93–94. The Canadian League Against War and Fascism, renamed the Canadian League for Peace and Democracy in 1937, was a popular front organization that was controlled by the CPC but whose membership included members and non-members alike.

Affair.”<sup>97</sup> Another said, “we must flood the office of Mr. Lapointe with resolutions condemning this proposed legislation and to send delegations wherever possible.”<sup>98</sup>

### The Order-in-Council

THE CANADIAN *FOREIGN ENLISTMENT ACT* was passed on 10 April 1937. However, the federal government took no further action with regard to Spain until July and August when Cabinet enacted a series of orders-in-council to give weight to Canada's statements of neutrality. Cabinet passed regulations to the *Customs Act* that forbade Canadian arms manufacturers from exporting to Spain either directly or indirectly. Canadian businesses could no longer export *any* weapons, munitions, or other military equipment without a permit from the Department of National Revenue. Finally, the *Foreign Enlistment Act*, having lain dormant for months, was applied to the Spanish Civil War by order-in-council on 30 July 1937.

Under the order, the prohibitions under the statute applied to individuals recruiting for, enlisting in, or departing to enlist “for any purpose of taking part in the civil conflict in Spain.”<sup>99</sup> The prohibition applied to the Republican and Nationalist forces alike. The delay between the repeal of the British Act of 1870 and the application of the Canadian Act to the Spanish Civil War was the cause of much ambiguity. A Canadian court could not convict someone for violations of the British *Foreign Enlistment Act* once it was repealed in April 1937. Afterwards, the Canadian Act was in force but not applied until July to the Spanish Civil War. Recruiting for the Spanish Civil War was a criminal offence after April, but enlisting for the Spanish Civil War was not until after July.

When the Act was formally applied to the Spanish Civil War in July 1937, *The Daily Clarion* stated,

Canada demands that Ottawa take action on the Spanish situation. The preliminary step must be to wipe out this shameful order-in-council, dictated by Downing Street, Canada's 50 multi-millionaires and the reactionary circles around Cardinal Villeneuve. This order-in-council is contrary to Canadian public opinion, contrary to the pledges given our people by Mackenzie King and the Liberal party. It must go!<sup>100</sup>

97. Kealey and Whitaker, eds., *RCMP Security Bulletins, 1937*, Bulletin no. 844, 17 February 1937, 93–94.

98. Kealey and Whitaker, eds., *RCMP Security Bulletins, 1937*, Bulletin no. 844, 17 February 1937, 93–94.

99. Exercising authority granted under s.19 of the Foreign Enlistment Act, Friday July 30, 1936, Orders-in-Council, Reel 5106, LAC.

100. Kealey and Whitaker, eds., *RCMP Security Bulletins, 1937*, Bulletin no. 866, 5 August 1937, 318.

The article went on to encourage its readership to write more letters to the Prime Minister and their respective Members of Parliament.<sup>101</sup> Opposition to the law went no further than the letter-writing campaign.

The CPC had previously shown itself adept at attacking laws that stood in its way. In response to Section 98, the law that imprisoned the CPC's leadership and outlawed its existence, the CPC had pursued a gigantic public awareness campaign, fundraised extensively, and fought the law in court through the Canadian Labor Defense League.<sup>102</sup> There would be no such efforts with the *Foreign Enlistment Act*. The CPC followed the Popular Front doctrine issued by the Seventh World Congress of the Comintern in 1935. The doctrine called for collaboration with anti-fascist governments, meaning that the CPC would work with the once demonized CCF and even Mackenzie King and the Liberal Party. King had repealed Section 98 and gotten rid of the workers' camps, and had shown support for "New Deal"-type arrangements to alleviate poverty. The CPC directed that criticism of King should "not be overdone" lest it strengthen Canada's "reaction."<sup>103</sup>

## Recruiting

MANY PEOPLE FELT A STRONG URGE to go to Spain even before the CPC began recruiting. When the Spanish Civil War broke out in July 1936, some of the volunteers were already in Spain. Athletes competing in the People's Olympiad, a competition designed to rival the Olympics held in Berlin, provided the nucleus of the first cadre of volunteers.<sup>104</sup> Other foreigners just happened to be passing through. Bill Williamson, for instance, the first Canadian to fight in Spain, was in Spain when the revolution broke out while he was on his way to Moscow.<sup>105</sup> These volunteers coalesced into *centuria*, groups of foreign volunteers fighting on the Republican side early in the war. But back in Canada, there was a desire to send Canadians to fight for the Republic. As early as August 1936, CPC member Edo Jardas approached Sam Carr with the idea

101. Kealey and Whitaker, eds., *RCMP Security Bulletins, 1937*, Bulletin no. 866, 5 August 1937, 318.

102. See Dennis G. Molinaro, "Section 98: The Trial of *Rex v. Buck et al* and the 'State of Exception' in Canada, 1919–1936," in Barry Wright, Eric Tucker, and Susan Binnie, eds., *Canadian State Trials Volume IV: Security, Dissent, and the Limits of State Toleration in War and Peace, 1914–1939* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2015).

103. John Manley, "'Audacity, Audacity, Still More Audacity,' Tim Buck, the CPC and the People, 1932–1939," *Labour/Le Travail*, 49 (Spring 2002), 38.

104. See Guy Walter, *Berlin Games: How Hitler Stole the Olympic Dream* (London: John Murray, 2007). The Canadian team consisted of six athletes. See "Spain Team is Enroute," *The Daily Clarion*, 19 July 1936.

105. See Petrou, *Renegades*, 140–147.

of organizing and dispatching a group of South Slavs to fight in Spain.<sup>106</sup> In October, one thousand unemployed men in Winnipeg requested that King send them to Spain to fight for the Republic. "Today we are idle men," they wrote, "We yearn to carry through the worthy mission of helping to defend a world's people from impending destruction."<sup>107</sup> The interest was already there; the CPC's primary role would be facilitating transportation and ensuring continued support for the war effort.

The CPC employed recruiters and there is indication that some individuals were forced, or at least pressured, to go. Recruiting committees were given quotas to fill and some volunteers were "nominated" by supportive working-class organizations.<sup>108</sup> The CPC's representative in Spain, Bob Kerr, did not volunteer; he was ordered to go to Spain.<sup>109</sup> Once there, he was thrown into battle as a reinforcement.<sup>110</sup> There may have been other members of the CPC who served under similar circumstances. Meanwhile, the CPC and the Friends of the Mackenzie Papineau Battalion (FMPB) organized public speaking tours for returned volunteers, as well, a tactic that Peter Hunter described not as recruiting, but as "creating an environment conducive for volunteering."<sup>111</sup>

Although there were variations, a volunteer's journey to Spain generally followed a prescribed formula. First, a volunteer self-identified to the local committee of the CPC. This was simple enough for most of the volunteers; an estimated 76 per cent of whom were members of either the CPC or the Young Communist League.<sup>112</sup> Individuals without such connections had to go to greater lengths. For instance, volunteer and future author Hugh Garner in Toronto took out an advertisement in the newspaper to announce his interest in going to Spain. When that did not work, he approached a barber who had a picture of Joseph Stalin on the wall of his shop. Garner correctly assumed that the barber had some connection to the CPC.<sup>113</sup> Once the volunteers

106. At the time, Carr criticized the idea as being "abstract and adventuristic" and "anarcho-syndicalist in substance." See Edo Jarda, "Djelatnost jugoslavenskih iseljenika," in *Radnicki pokret*, 262, translated and cited in John Peter Kraljic, "The Croatian Community in North America and the Spanish Civil War," MA thesis, Hunter College, 2002, 62; Petrou, *Renegades*, 39.

107. "Winnipeg Youth Form Battalion for Spain," *The Daily Clarion*, 10 October 1936.

108. Kraljic, "The Croatian Community in North America and the Spanish Civil War," 63.

109. Letter from Jack Taylor to Frank Rogers, 11 June 1938, International Brigade Service File of Cecil-Smith, misfiled under Smith, Fond 545, Opus 6, Delo 569, 064-069, Russian State Archive of Socio-Political History (hereafter Cecil-Smith File).

110. Precis of Statement Made by Myself During a Meeting with Comrade Lewis and Elliott of the Central Committee by Edward Cecil-Smith, c. December 1938, Cecil-Smith File.

111. Peter Hunter, interview by Mac Reynolds, 1964, CBC Radio Archives.

112. Petrou, *Renegades*, 24.

113. Hugh Garner, interview by Mac Reynolds, 1964, CBC Radio Archives. Garner went on to write a partially biographical novel of his experiences in Toronto in the 1930s and Spain during



self-identified, they were discreetly interviewed to determine eligibility. In Winnipeg, for instance, the interviews were conducted on two adjacent toilets in Manor Hall, a place that would ensure a degree of privacy.<sup>114</sup>

Volunteers were provided with train tickets to Toronto, the hub of the recruiting effort. They were only moved as individuals or in pairs in order to avoid detection.<sup>115</sup> They were received by “the Toronto station” run by Paul Phillips, a polyglot who was able to coordinate with the wide variety of non-English speaking volunteers, and Peter Hunter, recently returned from the Lenin School in Moscow.<sup>116</sup> Hunter recalled that his primary job was to weed out the adventurers, potential RCMP agents, and Trotskyites.<sup>117</sup> While passports and tickets were acquired, he arranged for medical inspections from sympathetic doctors, procured accommodations in the Spadina and Queen Street area, and took the volunteers to the second-hand stores on Queen Street where they would buy any required clothing and luggage.<sup>118</sup> Hunter and Buck recalled that they never asked questions about where the money came from. Hunter took it for granted that it either came from the Republican government or the Comintern.<sup>119</sup> Buck claimed that the CPC never accepted money from outside the country except from the Communist Party of the United States of America (CPUSA).<sup>120</sup>

Hunter and Phillips ensured that the volunteers made their way to Toronto’s Union Station. The volunteers were given train tickets either to New York or Montréal, and third-class tickets for a Cunard-White Star Line ship for their Atlantic crossing.<sup>121</sup> These tickets were initially acquired through the Royal Ticket Office (located in the same building as the CPC headquarters) until the CPC established their own company, Overseas Travel Ltd, in May 1937.<sup>122</sup>

The departure of the volunteers from Toronto was generally quiet, but there were exceptions. Occasionally the crowds of family and friends swelled to

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the Civil War in *Cabbagetown: A Novel* (Toronto: Ryerson Press, 1968).

114. Communist Party of Canada – Volunteers for Spanish Loyalist Forces – Winnipeg, Report by T. Dann, Acting Commissioner D Division to MacBrien, 15 January 1937, RSA File, LAC.

115. Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives.

116. Peter Hunter, interview by Mac Reynolds, 1964, CBC Radio Archives; Hoar, *The Mackenzie-Papineau Battalion*, 40.

117. Hunter, *Which Side are You on Boys?*, 111.

118. Peter Hunter, interview by Mac Reynolds, 1964, CBC Radio Archives.

119. Peter Hunter, interview by Mac Reynolds, 1964, CBC Radio Archives; Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives.

120. Buck, *Yours in the Struggle*, 275–276.

121. Peter Hunter, interview by Mac Reynolds, 1964, CBC Radio Archives and Hoar, *The Mackenzie-Papineau Battalion*, 41.

122. Peter Hunter, interview by Mac Reynolds, 1964, CBC Radio Archives and Hoar, *The Mackenzie-Papineau Battalion*, 41.

the hundreds. Sometimes, when the volunteers had a bit too much to drink, there was raucous singing of Republican songs, the clenched fist salute of the Spanish Republic, and the shouting of their motto, *No Pasaran! They shall not pass!*<sup>123</sup> From New York or Montréal, the recruits travelled in groups larger than twenty (so as to get a cheaper price on tickets), but less than fifty (to avoid attracting attention).<sup>124</sup> Most arrived in Le Havre, after which they were shuttled from representative to representative, until they finally crossed the French-Spanish border. Guides led them through their climb through the Pyrenees on foot, eventually arriving at the International Brigade headquarters in Albacete.

Although the recruiting process was done in secret, support for the volunteers was quite public. On 28 January, *The Daily Clarion* announced that they were in contact with the first five Canadian volunteers and that they were almost in Spain.<sup>125</sup> The next day, the paper carried their photographs and names on the front page, although this was the only time they published the names of volunteers *before* they arrived in Spain.<sup>126</sup> The newspaper regularly carried the names and details of the volunteers in Spain or after they had returned to Canada. It made it quite easy for the authorities to create a reasonable directory of the volunteers without any detective work at all.

The FMPB provided the public face of the volunteers. Buck described the creation of the FMPB in May 1937 as a necessity arising from the fact that demand for volunteering outstripped the CPC's resources in dispatching the volunteers.<sup>127</sup> The organization doubled as a front for the recruiting effort as it raised funds for the volunteers and sent them care packages.<sup>128</sup> The FMPB held rallies and fundraising drives. Joseph Salsberg recalled that in his 45 years with the CPC, he had never seen greater public support for a Party initiative than the outpouring of donations for the volunteers in Spain.<sup>129</sup> The FMPB hosted events with returned veterans as guest speakers, including cross-country tours and rallies in forums as large as Massey Hall. They printed promotional material that provided the names and photographs of volunteers in Spain, again providing easy fodder for the police to create a directory of the volunteers.

123. Peter Hunter, interview by Mac Reynolds, 1964, CBC Radio Archives.

124. Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives.

125. "First Canadian Volunteers Nearing Spain," *The Daily Clarion*, 28 January 1937.

126. Front page of *The Daily Clarion*, 29 January 1937.

127. Buck, *Yours in the Struggle*, 275.

128. Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives.

129. Joseph Salsberg, interview by Mac Reynolds, 1965, CBC Radio Archives.

## The Investigation

THE RCMP WAS ON THE LOOKOUT for recruiting for the Spanish Civil War even before it had begun in Canada. Although King had repealed Section 98, the provision in the *Criminal Code* that prohibited the CPC, the RCMP had maintained an active interest in the CPC and its activities.

RCMP officers and informers regularly attended public meetings and read the announcements made in the press. When foreign volunteers from other countries began fighting in Spain and it appeared that the CPC might play a role in recruiting in October 1936, they opened the operational file, "Recruiting for Spanish Army." The file predated their first observations of the CPC's recruiting drive.<sup>130</sup> They kept records of their observations of the recruiting process in general, the numbers of volunteers recruited and dispatched, and often the names of these individuals.

The RCMP and local police forces occasionally launched small investigations of the recruiting effort. For example, the *Kingston Whig Standard* reported in January 1937 that individuals with military experience were being approached by recruiters. The volunteers were offered \$25 a week to fight in Spain, an impressive sum of money in the 1930s.<sup>131</sup> The article also mentioned that such incidents had occurred "in all major cities" between Toronto and Montréal.<sup>132</sup> The RCMP sent Sergeant T.S. Moore to Kingston to investigate. He questioned witnesses but was unable to find anyone who could provide an accurate description of the recruiters.<sup>133</sup>

Within the RCMP, there was considerable concern that the *Foreign Enlistment Act* would not stand up in court. In August 1937, Inspector Charles Rivett-Carnac, the RCMP's Liaison and Intelligence Officer, directed Sergeant John Leopold to look into the Act and determine the likelihood of successful prosecutions. Leopold's report was pessimistic. Leaving the country was legal, and it would be hard to prove beyond a reasonable doubt that someone had actually gone to Spain and joined their military.<sup>134</sup> The only way to get such evidence appeared to be through the use of informants or undercover police officers who could provide sworn testimony.

Rivett-Carnac proposed that a number of constables should pose as transients and attempt to volunteer for Spain. Such agents had been particularly effective in infiltrating communist and labour groups in the past. Constable Frank Zaneth had been instrumental in convicting labour leaders following

130. The RCMP first began to observe recruiting in December 1936. See Hoar, *The Mackenzie-Papineau Battalion*, 39.

131. "Seeking Recruits in Kingston for the Spanish Civil War," *Kingston Whig Standard*, 11 January 1937.

132. "Seeking Recruits," *Kingston Whig Standard*, 11 January 1937.

133. Communistic Organizations in Kingston, Ont, 12 January 1937, RSA File, LAC.

134. Report to Rivett-Carnac by Leopold, 16 August 1937, RSA File, LAC.



Detective Inspector Frank Zaneth of the Royal Canadian Mounted Police. Zaneth had famously worked as an undercover agent during the Winnipeg General Strike. He directed the Canada-wide investigation of the CPC recruiting program.

Library and Archives  
Canada, PA-882602.

the Winnipeg General Strike in 1919.<sup>135</sup> Leopold, the officer asked to examine the viability of prosecutions under the Act, had been instrumental in the prosecution of the CPC's leadership under Section 98 in 1931.<sup>136</sup> He had spent years infiltrating the CPC as an undercover agent under the name of "Jack Esselwein." The Assistant Commissioner of the RCMP and Director of Criminal Investigations, Stuart Taylor Wood, reviewed Rivett-Carnac's proposal. Wood concluded that although he did not like the idea, it would be very difficult to secure convictions through any other means.<sup>137</sup>

Commissioner MacBrien was cognizant of the challenges in enforcing the Act, but a proper investigation of the matter would tax his scarce resources. He was not willing to pursue such an investigation if the government lacked

135. Kealey, Whitaker, and Parnaby, *Secret Service*, 60–61.

136. See Molinaro, "Section 98," in *Canadian State Trials Volume 1v*.

137. See marginal note in Report to Rivett-Carnac by Leopold, 16 August 1937, RSA File, LAC.

the political will to pursue the convictions. MacBrien wrote to Lapointe in September 1937, two months after the order-in-council, to seek instructions. MacBrien asked Lapointe if he intended to strictly enforce the Act, cautioning that, “the whole question of recruitment of volunteers for the Spanish Civil War is one which is cloaked with secrecy and unless secret informers are employed who can be used to give evidence in Court it will undoubtedly be very difficult – if not impossible – matter to secure convictions.”<sup>138</sup> Lapointe replied two weeks later. He stated that although the matter had been the subject of much conversation at the Departments of Justice and External Affairs, no decision had yet been reached.<sup>139</sup> In the meantime, the RCMP could do little more than continue their standing investigation of the CPC.

Monitoring of the CPC and the recruiting effort varied considerably from city to city. In Winnipeg, Corporal Robert L. Trolove worked undercover as “Benson”; he infiltrated the CPC and the Single Unemployed Men’s Association and gathered useful information about the recruiting effort in Winnipeg.<sup>140</sup> In Toronto, Detective Corporal Robert W. Irvine monitored the recruiting process without the benefit of any informers or undercover agents. Irvine gathered a great deal of information this way, correctly identifying Phillips and Hunter as the key recruiters, and determining that the CPC had transitioned from purchasing tickets through the Royal Ticket Office to their own Overseas Travel Ltd.<sup>141</sup> Meanwhile, in Montréal in October, the RCMP tracked an individual who was distributing money to the volunteers departing from Montréal.<sup>142</sup> In November, they had developed an informant, J.K. Berube, who had volunteered for Spain.<sup>143</sup> Corporal Lamothe and Corporal Lewis followed Berube to a meeting with a CPC representative. Along the way, they discovered ten men who they believed to be departing for Spain and followed them to the wharf as they boarded the *Ascania*, a transatlantic steamer. Lamothe and Lewis also noted that two individuals had tickets waiting for them at the ticket office, accompanied by letters on Overseas Ticket Office letterhead. In early December, they again followed some volunteers as they boarded their ships for Spain. Determining their names, Lamothe and Lewis procured photos of

138. Letter MacBrien to Lapointe, 1 September 1937, RSA File, LAC.

139. Letter Lapointe to MacBrien, 16 September 1937, RSA File, LAC.

140. Trolove submitted reports through “D” Division to Commissioner MacBrien on 15 January 1937; 18 January 1937; 20 January 1937; 10 February 1937; and 13 February 1937. Trolove was transferred to Toronto in 1938 where he maintained his cover.

141. Report by Irvine, forwarded to MacBrien, 26 November 1937, RSA File, LAC.

142. Edward Cecil-SMITH- COMMUNIST, c. 1931–1963, RSA File, LAC.

143. See Statement of Mr. Joseph Robert Berube, Montreal, 19 November 1937, LAC RG25, Volume 1802, File 631-D-Part 1, LAC and Report by A. Lamothe, 21 November 1938, RSA File, LAC. There is no indication of what came of Berube. There is no record of anyone with this name actually serving with the Canadian volunteers in Spain.

the volunteers from their passport applications and arrested some would-be volunteers, although there is no record of them being formally charged.<sup>144</sup>

Lapointe finally made the decision to prosecute the recruiters in December 1937 following the arrests in Montréal. The national investigation of the communist recruiting apparatus and the future trial was based in Montréal, part of "C" Division under the command of Assistant Commissioner Frederick J. Mead. Mead stated that it would be "very desirable" if the investigation could be structured to allow for the RCMP to move against the higher functionaries of the CPC in addition to the low level recruiters.<sup>145</sup> Zaneth, the undercover officer whose testimony had been instrumental following the Winnipeg General Strike, was appointed to head the investigation. François-Phillippe Brais, a Montréal lawyer and future president of the Canadian Bar Association, was selected as the prosecutor.<sup>146</sup>

Brais drafted an initial opinion for the Department of Justice. He informed Deputy Minister of Justice W. Stuart Edwards on 25 January 1938 that the best option was to charge the offenders under Section 573 of the *Criminal Code*: conspiracy to commit an indictable offence, to wit the *Foreign Enlistment Act*.<sup>147</sup> A fringe benefit to this course of action was likely that while the *Foreign Enlistment Act* had a maximum sentence of two years imprisonment, the charge of conspiracy under the *Criminal Code* had a maximum sentence of seven years. Brais described the actions of the CPC as "a vast and cunning conspiracy to violate the laws of Canada," the participants being "idle and highly trained individuals vowed [*sic*] to the Communist cause to whom wars, disorders and revolutions will have become a play and a byword."<sup>148</sup> While Brais prepared the legal opinion, Zaneth travelled across Canada and to New York City to identify suspects for prosecution.

Zaneth went to New York, the primary port of departure for the volunteers, in late January 1938. He had acquired copies of passport applications and hoped to cross reference the names with the shipping lists held by ocean liner companies.<sup>149</sup> He visited the offices of seven such companies to determine if

144. Letter Brais to Edwards, 25 January 1938, RSA File, LAC. See also Kealey, Whitaker, and Parnaby, *Secret Service*, 140.

145. Letter Wood to Mead, 20 December 1937, RSA File, LAC.

146. Report Re: Recruitment of Volunteers for the Civil War in Spain from Edwards to MacBrien, 16 December 1937, RSA File, LAC. At the time, hiring private lawyers to act as prosecutors was a common practice due to the small number of lawyers who worked for the Department of Justice on a fulltime basis.

147. Letter Brais to Edwards, 25 January 1938, RSA File, LAC.

148. Letter Brais to Edwards, 25 January 1938, RSA File, LAC.

149. Zaneth's investigation in this regard was supported by Deputy Commissioner George L. Jennings who coordinated with the passport office to get names and photos of all passport applicants for the applicable timeframe. See Letter Deputy Commissioner Jennings to Skelton, 21 January 1938, FEA File, LAC.



passengers with Canadian passports had travelled on their ships for Europe in the past six months.<sup>150</sup> Zaneth correctly determined that a large number of Canadians had used the Cunard-White Star Lines to travel to Europe in third class. Once he had a more complete list of the volunteers, he hoped to use the shipping lists to determine precisely who had paid for these tickets.<sup>151</sup>

Zaneth continued across Canada to coordinate with existing investigations. Lamothe and Lewis, who had worked for him in Montréal, continued to develop their understanding of the recruiting infrastructure in Montréal. In Toronto, Irvine had developed an informant in January 1938 who had greatly assisted him in developing a picture of the recruiting system in Toronto.<sup>152</sup> Looking at the system as a whole, Zaneth concluded that the money was coming from Moscow by way of the CPUSA. "There is no doubt whatever," he wrote, "but that a gigantic conspiracy does exist in Canada, the prime movers being members of the Communist Party of Canada working in co-operation with members of the Communist Party of the United States, France, of the Third International, Russia [i.e. the Comintern]."<sup>153</sup>

Zaneth encountered bureaucratic resistance over the course of his investigation. Although copies of the *Foreign Enlistment Act* had been distributed to all of the divisions in June 1937,<sup>154</sup> and the order-in-council applying the *Foreign Enlistment Act* to the Spanish Civil War was public knowledge, Zaneth found that the RCMP Officers Commanding in British Columbia, Alberta, Saskatchewan, and Manitoba<sup>155</sup> were all under the impression that the *Foreign Enlistment Act* was not in force.<sup>156</sup> It appears that investigations of the recruiting process as reported in the weekly bulletins and other sources were merely *incidental* to their broader monitoring of the CPC. Officers in Ontario and Québec were actively launching investigations pertaining to the offence of recruiting under the *Act*. Senior officers in Ottawa were corresponding about the issue regularly. Elsewhere, there was little intention of pursuing convictions. Zaneth

150. Re Recruiting for Spain by the Communist Party of Canada, report by Zaneth, 22 January 1938, RSA File, LAC.

151. Report by Zaneth, forwarded to Commissioner MacBrien, 22 January 1938, RSA File, LAC.

152. Report by Irvine, 19 March 1938, RSA File, LAC. Paul Phillips is mentioned by name, but the name of his assistant has been redacted. This was presumably Peter Hunter. His name was likely redacted because no warrant was ever issued for Hunter's arrest.

153. Recruiting of Volunteers for Spain by the Communist Party, Report by Zaneth to Commissioner MacBrien, 4 April 1938, RSA File, LAC.

154. Memorandum from Superintendent Mellor to all Divisions, 5 June 1937, RSA File, LAC.

155. The RCMP organizational system designates each of these provinces "D," "K," "F," and "E" Divisions, respectively.

156. Letter Mead to Wood, Director Criminal Investigations, 21 March 1938, RSA File, LAC.



requested Wood inform the Officers Commanding in British Columbia, Alberta, Saskatchewan and Manitoba that the Act was in force.<sup>157</sup>

Senior RCMP officers protested the enforcement of the Act. The Officer Commanding in British Columbia wrote to Wood.<sup>158</sup> He explained that the Act should not be enforced as it would rouse the CPC into action.<sup>159</sup> The Officer Commanding in Alberta similarly stated that the CPC and the CCF were such a potent influence on the government that enforcing the law would drive a wedge between the RCMP and the government.<sup>160</sup> These senior RCMP officers were clearly unsupportive of the law, or at least concerned that enforcing it might do more harm than good. It seems likely that their ignorance was feigned and they were, in fact, acting with a degree of political shrewdness.

By the time Edwards informed Brais and Zaneth on 24 February 1938 that prosecutions under Section 573 were authorized, the investigation was nearly complete.<sup>161</sup> Zaneth submitted a lengthy report to Rivett-Carnac in early April.<sup>162</sup> Zaneth had left written instructions in detachments from coast to coast so the various raids could be launched simultaneously. In British Columbia, he proposed raiding the offices of the FMPB, *The Daily Clarion*, and the CPC. He indicated similar locations across Alberta, Saskatchewan and Manitoba, along with known fronts for recruiting such as a watch shop in Calgary. In Ontario, he selected the offices of both the Royal Ticket Office and Overseas Travel Limited; as well as the home of Paul Phillips, the head recruiter; and a book shop in Hamilton that served as a recruiting office. Similar offices were targeted in Québec, along with the Modern Book Shop and Jack's Delicatessen in Montréal. Union organizer, future Member of Parliament, and later a spy for the Soviet Union, Fred Rose, was specifically identified for arrest.<sup>163</sup>

There is no record of any intention to lay charges against the volunteers themselves. No warrants were issued for the volunteers, and the correspondence between MacBrien, Woods, Brais, Rivett-Carnac and Zaneth focused on the broader goal of disrupting the CPC conspiracy. Additionally, Zaneth's directory of volunteers explicitly stated that he was only concerned with volunteers *after* 10 April.<sup>164</sup> The *Foreign Enlistment Act* became law on 10 April,

157. Letter Mead to Wood, 21 March 1938, RSA File, LAC.

158. The RCMP organization system designates British Columbia as "E" Division.

159. Letter Cadiz to Wood, Director Criminal Investigations, 26 March 1938, RSA File, LAC.

160. Letter Hancock to Wood, Director Criminal Investigations, 22 March 1938, RSA File, LAC.

161. Letter Edwards to Brais and Zaneth, 24 February 1938, RSA File, LAC.

162. Recruiting of Volunteers for Spain by the Communist Party, Report by Zaneth to MacBrien, 4 April 1938, RSA File, LAC.

163. Recruiting of Volunteers for Spain, RSA File, LAC.

164. Recruiting of Volunteers for Spain, RSA File, LAC.

making it an offence to recruit, but it was not an offence to enlist until the order-in-council in July. This suggests that he was only interested in the names of the volunteers as a means of identifying their recruiters. When he determined that the Cunard-White Star Line was the primary means of getting the volunteers to Europe, he expressed his intention to cross reference the names of the volunteers with the shipping list and determine who had purchased the tickets. This again suggests that he was focused on the recruiters and not the recruits.

The focus on the recruiters, and not the recruits, was a rational position to take. First, prosecuting the recruiters would be easier. Proving that someone had fought in Spain would be difficult, whereas proving that someone else had recruited them for Spain (whether or not they actually enlisted or got to Spain at all) would be much simpler. Second, the recruiting had been run by the CPC, and, as Mead stated, it would be "very desirable" if the RCMP could arrest CPC higher functionaries.<sup>165</sup> The Act merely provided a mechanism for this disruption. Third, moving against the volunteers themselves might be politically dangerous. The Canadian volunteers had become folk heroes and were the subjects of a considerable outpouring of public sympathy.

Brais and Lapointe prepared for the raids. Brais prepared warrants, and at the request of the new RCMP Commissioner Wood (MacBrien died on 5 March 1938) Lapointe appointed special counsel to the RCMP in each of the divisions to deal with the anticipated legal issues arising from the impending arrests.<sup>166</sup> Zaneth was confident in the results of the investigation and stated, "There is no doubt but that we will be able to establish beyond a shadow of doubt that the C[ommunist]P[arty] is solely responsible for the breach of the Act in question".<sup>167</sup>

Circumstances in Spain soon undermined Zaneth's efforts. The raids would have likely been launched in April due to delays in getting warrants in Montréal. However, by then the situation in Spain had changed. The Republicans were losing. By 7 March 1938, volunteers who had made it as far as Toronto were being sent home by the CPC recruiters.<sup>168</sup> Recruiting had stopped, making the likelihood of finding good evidence of recruiting less likely. Furthermore, there was little deterrent value in making arrests for an activity that had stopped on its own. Wood voiced these concerns in a letter to Lapointe on 29 March. Wood believed that pursuing the matter further would only, "arous[e] antipathy in the public mind," and gain sympathy for the communists; the same outcome had followed the enforcement of Section

165. Letter Wood to Mead, 20 December 1937, RSA File, LAC.

166. Letter Wood to Lapointe, 29 March 1938, RSA File, LAC.

167. Letter Zaneth to Rivett-Carnac, 18 March 1938, RSA File, LAC.

168. Untitled report from "O" Division, 7 March 1938, RSA File, LAC.

98 in 1931.<sup>169</sup> Lapointe needed little convincing. The investigation was terminated.<sup>170</sup> On 8 April, Brais received a letter from Edwards that directed him to discontinue legal action.<sup>171</sup> Ultimately, no one was ever charged or prosecuted under the *Foreign Enlistment Act*.

## Effects on Recruiting

THE *FOREIGN ENLISTMENT ACT* did not stop the CPC from recruiting, but it appears to have had a direct effect on *how* they conducted the recruiting. The RCMP Security Bulletins tracked the recruiting efforts closely, and noted when recruiting efforts intensified, waned, or stopped. Recruiting was first observed in December 1936. It was suspended from 11–15 January 1937 in response to the declaration of the British Foreign Office that the Act of 1870 applied to the Spanish Civil War.<sup>172</sup> Recruiting quickly, but quietly, resumed shortly thereafter. By March 1938, recruiting was at “a complete standstill” due to instructions from New York.<sup>173</sup> Finally, in October 1938, the CPC announced that the International Brigades were to be demobilized and repatriated.<sup>174</sup> The weekly summaries only indicate one correlation between the *Foreign Enlistment Act* and the recruiting effort: the brief suspension following the British Foreign Office’s decision to apply the Act of 1870 to Spain. Otherwise, there does not appear to have been any correlation between the law and the conduct of recruiting based on the RCMP observations.<sup>175</sup>

The fact that the CPC did not stop recruiting in response to the law may have been, in part, due to a general doubt in the efficacy of the law and the government’s resolve in enforcing it. After the British Foreign Office declared that the 1870 Act applied to the situation in Spain, *The Daily Clarion* announced, “Spanish Enlistment Legal.” They consulted an “eminent barrister,” who correctly informed them that the Act did not apply since Franco’s Nationalists were rebels and not recognized as a state.<sup>176</sup> Even after the Canadian law was drafted to specifically address this shortcoming and then applied to the

169. Letter from Wood to Lapointe, 29 March 1938, RSA File, LAC.

170. Petrou, *Renegades*, 171–172.

171. Invoice by Brais to the Department of Justice for Legal Services, 8 April 1938, RSA File, LAC.

172. Whitaker and Kealey, eds., *RCMP Security Bulletins, 1937*, Bulletin no. 841, 27 January 1937, 54.

173. Whitaker and Kealey, eds., *RCMP Security Bulletins: The Depression Years, 1938–39*, Bulletin no. 886, 15 March 1938, 54.

174. Whitaker and Kealey, eds., *RCMP Security Bulletins: The Depression Years, 1938–39*, Bulletin no. 902, 11 October 1938, 301.

175. See also Petrou, *Renegades*, 93.

176. “First Canadian Volunteers Nearing Spain,” *The Daily Clarion*, 28 January 1937.

situation in Spain, an RCMP report noted that, “the reaction of the CPC to this [Act] was that the only way this could be proven was to actually catch a Canadian citizen bearing arms in Spain, as any person was entitled to a passport.”<sup>177</sup> This was a legally reasonable position. A subsequent RCMP investigation also found that the CPC thought prosecutions under the Act were unlikely: “they have adopted a policy of being ‘discrete’ but feel assured that the Government will not take legal action and that the Act was only brought into being for the purpose of pacifying the Province of Quebec and that, all in all, was only a gesture.”<sup>178</sup>

Despite these doubts in the effectiveness of the law, the CPC did consider the law when deciding *how* to conduct their recruiting. Buck recalled that the *Foreign Enlistment Act* forced the CPC to make a conscious decision: to accept the prohibitions created by the law and lobby against it (as they had with Section 98), or to quietly act in defiance.<sup>179</sup> The CPC leadership decided on the second option, although this position was not entirely popular. When confronted on the matter at a meeting in Montréal, Buck told the crowd, “Any man who went to Spain to fight on the side of the government knew that he must expect no assistance from the Government of Canada. In fact, he would be going to Spain in spite of the fact that the government was advising him not to.”<sup>180</sup> Buck recalled that “there was a great deal of dissatisfaction with my answer....”<sup>181</sup> Many supporters wanted the CPC to take a bolder stance on the law.

The CPC continued to recruit but took basic countermeasures in order to keep the process quiet. Buck recalled that once identified, the volunteers were sent on to the ports of Montréal or New York, one at a time, “even though it meant that people coming from Toronto and Vancouver, which were big centers of recruitment, that we would get one every day. We tried to avoid any big demonstration. We avoided anything that looked like confrontation or public defiance. We tried to get around the act.”<sup>182</sup> The volunteers consequently had to leave Canada quietly, although Hunter recalled that they were not always successful in preventing crowds from forming. It is not hard to

177. Report re Communist Party – Winnipeg, Report by from T. Dann to MacBrien, 2 March 1937, RSA File, LAC.

178. Re Recruiting for the Civil War in Spain by the C.P., Letter Zaneth to MacBrien, 11 March 1938, RSA File, LAC.

179. Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives, and Buck, *Yours in the Struggle*, 268.

180. Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives, and Buck, *Yours in the Struggle*, 268.

181. Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives, and Buck, *Yours in the Struggle*, 268.

182. Tim Buck, interview by Mac Reynolds, 1964, CBC Radio Archives, and Buck, *Yours in the Struggle*, 268.

imagine, absent the restriction of the *Foreign Enlistment Act*, greater public demonstrations in support of the volunteers and more public efforts to recruit. The resources of the CPC were limited – it is unclear if they could have sent more volunteers if they had so desired<sup>183</sup> – but there was a real risk that the CPC would have more publicly capitalized on public interest in the volunteers. When the Canadian volunteers returned in February 1939, for instance, the CPC staged a massive rally to meet them at Union Station, organized a church parade at St. Mary Magdalene, and filled Massey Hall for a rally.<sup>184</sup> Similar events were certainly possible to support the recruiting effort for the volunteers when they departed for Spain. A persistent and public recruiting campaign could have been extremely detrimental to Canadian unity.

It is difficult to assess the effect of the Act on the recruits themselves. Certainly, many of the volunteers were aware of the law. One study of Ukrainian Canadian volunteers even suggests that the law may have *encouraged* enlistment, noting that most of the 76 volunteers sampled departed for Spain between April (the passing of the Act) and July (the order-in-council) 1936. This suggests that some of these volunteers were not only aware of the law, but that they sought to depart for Spain before it was applied by an order-in-council.<sup>185</sup> Otherwise, the author has found no cases where an individual seemed particularly concerned with the legal ramifications of their actions, or where an individual took measures to hide their identity from police once they had left Canada.<sup>186</sup>

183. Volunteers noted that their travel expenses were poorly financed. They travelled in third class and were given the bare minimum in pocket change to get by. See Liversedge, 35–36.

184. See R.F. MacLean, "Ten Thousand Cheers Rise as Army of 120 Canadians Arrives Home from Spain," *Toronto Evening Telegram*, 6 February 1939; Oscar Ryan, "Thousands Jam Railway Depots to Cheer Returning Mac-Paps," *The Daily Clarion*, 6 February 1939; Report re: Return of Spanish Civil War Veterans by H.C. McGuire to F.J. Mead, Officer Commanding "H" Division, forwarded to Commissioner S.T. Wood, 4 February 1939, RSA File, LAC; "Made Stronger our Fight for Freedom," *The Daily Clarion*, 9 February 1939; Report by S.O.F. Evans, "Friends of Mackenzie-Papineau Battalion, Toronto, Ont. – Mass Meeting of welcome to returned members 'Mac-Pap' Battn. held in Massey Hall," 7 February 1939, RSA File, LAC. See also David Greig, *In the Fullness of Time: A History of the Church of Saint Mary Magdalene, Toronto* (Toronto: The Church of Saint Mary Magdalene, 1990), 129.

185. Myron Momryk, "Ukrainian Volunteers from Canada in the International Brigades, 1936–1939: A Profile," *Journal of Ukrainian Studies* 16, 1–2 (Winter 1991), 185.

186. See MG 30 E173, Volume 1, File 1, Correspondence to Victor Hoar; MG 30 E173, Volume 1, File 3, Correspondence Lawrence Cane, LAC; MG 30 E173, Volume 1, File 16, Memoirs and Accounts of Service in Spain by twenty-seven of the men, LAC; Hoar, *The Mackenzie-Papineau Battalion*; Zuehlke, *The Gallant Cause*; Petrou, *Renegades*; William Beeching, *Canadian Volunteers: Spain 1936–1939* (Regina: Canadian Plains Research Center, 1989); Stephens, *A Memoir of the Spanish Civil War*; Liversedge, *Mac-Pap*; and the audio recordings of more than 50 interviews with Mac-Paps held by the CBC Radio Archives.

## Conclusion: Lessons and Implications

IF ANY OF THE RETURNED VOLUNTEERS cast their mind to the legal consequences to their actions, they could rest easy. In Canada, neither the new RCMP Commissioner, the Officers Commanding in several divisions, the Minister of Justice, the Undersecretary of External Affairs, nor the Prime Minister had any intention of prosecuting the volunteers under the *Act*. This policy was not unique to Canada. As Skelton indicated in a memorandum to King, "it may be noted that no other country, so far as we are aware, which has a Foreign Enlistment Act, is taking steps to apply penalties."<sup>187</sup>

Not everyone was so forgiving. Sam Gobeil, previously the Conservative Member of Parliament from La Patrie, Québec, publicly called for prosecution of the violators.<sup>188</sup> Shortly after the return of the members of the Mackenzie Papineau Battalion, an editorial in the *Globe and Mail* stated,

The men returning from Spain are acclaimed as heroes. Many of them deliberately defied the law. We are not aware that the Government is even taking the trouble to learn how they were induced to do this. Is the situation simplified by the fact that they fought in a lost cause? At any rate, what is a law for?<sup>189</sup>

More pressingly, what was *this* law for, and was it successful?

The *Foreign Enlistment Act* is an example of a law with distinct goals: maintaining neutrality (or reinforcing appeasement, depending on your point of view), avoiding friction between English and French Canada, and strengthening Canada's legislative independence by replacing and improving a British law. The law was a step forward in Canada's incremental move towards true legislative independence. Regarding the goal of eliminating illegal enlistment, it could be characterized as ineffective simply because recruiting and enlisting continued in spite of the statutory prohibition, and the known violators were not subject to prosecution. However, criminal laws rarely eliminate the behaviours they seek to prevent, and this is probably an unfair standard. The law may have deterred *some* volunteers, as the British Foreign Office had hoped, and it may have prevented the CPC from staging a more public recruiting program. This, in turn, may have kept the issue from growing any greater as a source of friction between English and French Canada and creating a full-fledged unity crisis in the days leading up to World War II.

187. Spanish Volunteers, Memorandum Skelton to King, 1 February 1939, FEA File, LAC.

188. Sam Gobeil, "Letter to the Editor," *Montreal Star*, 2 November 1939.

189. "What is a law for?" *Globe and Mail*, 13 February 1939.