

## Sedition in Wartime Ontario The Trials and Imprisonment of Isaac Bainbridge, 1917-1918

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Résumé de l'article

Entre 1917 et 1929, plusieurs procès pour libelles séditieux furent intentés à Isaac Bainbridge, éditeur de *Canadian Forward*, le journal du Parti social-démocrate du Canada. Bainbridge fut à plusieurs reprises accusé, reconnu coupable, emprisonné, pour son opposition au militarisme, au capitalisme, à la conscription. Ses nombreux démêlés avec le système judiciaire montrent que si les tribunaux jouèrent le rôle d'une force coercitive, ils furent aussi un lieu de résistance. Le procès d'Isaac Bainbridge mit notamment en lumière la fragilité de l'accusation de libelle séditieux, accusation qui, de par sa nature même, ne peut être que sélective. D'où le conflit qui en résulta entre le pouvoir politique et le système judiciaire, un conflit qui a permis à Bainbridge, grâce à un détail du code, d'être libéré de prison.

# Sedition in Wartime Ontario

## The Trials and Imprisonment of Isaac Bainbridge, 1917-1918.\*

by Ian Milligan

WORK  
OF THE  
WORLD  
UNITE!  
THE WORLD  
FOR THE  
WORKERS



LABOR  
PRODUCES  
ALL WEALTH  
UNTO  
LABOR  
IT SHOULD  
BELONG

New Series, Vol. 2, No. 17

CANADA

June 1918, 1918.

TORONTO TRADES COUNCIL UNANIMOUSLY  
DEMAND BAINBRIDGE'S RELEASE.

Dissent is rarely tolerated during wartime. In Ontario, as elsewhere in Canada, the state used various means to curb and suppress dissent during the First World War. One powerful tool was the law of sedition. This article examines one particularly notable prosecution, the trials and imprisonment of Toronto socialist newspaper editor Isaac Bainbridge. Over a year before the Winnipeg General Strike of 1919, Ontario authorities had decided to crack down on political dissent, using the law of seditious libel. The enforcement of this law illustrates how both the government and the courts handled dissent during an emergency situation. Examining the use of the law also demonstrates the avenues of resistance presented by the liberal system of justice. Owing to the in-

tentional vagueness of the law, the state was able to regulate public space and discourse through the political crime of sedition. An understanding of how this regulation worked in Ontario helps us understand the role of the government and of the courts during the politically charged years of the late First World War.

Between May 1917 and November 1918, Social Democratic Party of Canada (SDPC) activist Isaac Bainbridge was arrested in Toronto on four occasions, three times on charges of seditious libel and one time on a charge of possession of seditious material. He served a little over four months in prison on two separate occasions (22 November 1917 to 1 March 1918 and 27 May 1918 to 29 June 1918). The trials and imprisonments of Isaac

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Bainbridge during the final years of the First World War present an excellent example of politically driven justice. The rule of law was subverted, through a selective application of sedition laws, to suppress peaceful dissent. Bainbridge, the Dominion Secretary of the Social Democratic Party and the editor of the SDPC's party organ *Canadian Forward*, was a public figure and well known within the Canadian socialist and labour movement. A fuller account of his story adds to the body of work on Canadian state trials as well as on the Toronto left. When Peter White, the Crown Prosecutor who successfully had Bainbridge sentenced during his November 1917 political trial, informed the jury that "when the law is on the statute book, no one has a right to advocate resistance to it,"<sup>1</sup> he provided a succinct view of how the state would no longer tolerate peaceful dissent in the polarized world of November 1917. With the Bolsheviks in control in Moscow and the Canadian forces in Western Europe finding themselves in dire need of men, both conscripts and volunteers, the political climate of the period was becoming increasingly charged. Bainbridge would learn firsthand the extent and measures the Canadian government would take to silence anti-war sentiment—a sentiment with foundations in anti-capitalist versus

## Abstract

*This article examines the trials and imprisonment of Isaac Bainbridge, publisher of the Social Democratic Party of Canada's newspaper Canadian Forward, for seditious libel between 1917 and 1919. Charged and convicted for his opposition to militarism, capitalism and conscription, Bainbridge's encounter with the legal system illustrates the degree to which the courts acted as both a coercive force and as a space for resistance. While the selective nature of seditious libel became apparent during the trial, conflict between the judiciary and the government allowed Bainbridge to obtain his release from prison on a legal technicality.*

**Résumé:** *Entre 1917 et 1929, plusieurs procès pour libelles séditionnels furent intentés à Isaac Bainbridge, éditeur de Canadian Forward, le journal du Parti social-démocrate du Canada. Bainbridge fut à plusieurs reprises accusé, reconnu coupable, emprisonné, pour son opposition au militarisme, au capitalisme, à la conscription. Ses nombreux démêlés avec le système judiciaire montrent que si les tribunaux jouèrent le rôle d'une force coercitive, ils furent aussi un lieu de résistance. Le procès d'Isaac Bainbridge mit notamment en lumière la fragilité de l'accusation de libelle séditionnel, accusation qui, de par sa nature même, ne peut être que sélective. D'où le conflit qui en résulta entre le pouvoir politique et le système judiciaire, un conflit qui a permis à Bainbridge, grâce à un détail du code, d'être libéré de prison.*

anti-militarist analysis.

However, Bainbridge's rhetoric was insufficient on its own to merit prosecution. For example, as noted later in this article, the *Mail and Empire* published Leon Trotsky's *The Bolsheviki and World Peace*—far more radical than anything Bainbridge publicly published—and other socialist newspaper editors did not face seditious libel charges. Bainbridge had two additional factors against him. The first was the large ethnic component

<sup>1</sup>*Toronto Star*, 22 November 1917, 8.



*Isaac Bainbridge, about 1910. [Lorna Milne, *Bainbridge Branches* (Brampton: Lorna Milne, 1986), 27. Provided by author. Also available at the North York Public Library Ontario Genealogical Collection.]*

of the SDPC, detailed later in this article. The second was that he lacked the political clout of an anti-militaristic figure like Henri Bourassa or of the *Mail and Empire*. Given that the state focused on both left and ethnic dissent, a nexus of these two factors presented a compelling target for the government of the day.<sup>2</sup> This, combined with the personal hostility he experienced from government and lower court officials—detailed at length in this article—and his own radical views (perhaps best expressed in a letter published in a Russian newspaper intercepted by

British Intelligence) led to Bainbridge's prosecution. Unlike the *Mail and Empire's* editors, Bainbridge was a fervent believer in what he wrote. The pressing question of why Bainbridge found himself the attention of such legal efforts will be explored through the findings of this article, and considered further in the concluding remarks.

Although the law of sedition was enforceable and enforced, it is important to recognize the limits placed by the liberal courts on the arbitrary coercion of the government. The distinction between the rule of arbitrary power and the rule of law, astutely noted by E.P. Thompson,<sup>3</sup> is borne out by the case of Isaac Bainbridge. Indeed, frustration with the courts in the last year of the war would lead to the increasing shift away from Criminal Code prosecutions to Order-in-Council legislation.<sup>4</sup> Through the Bainbridge case, this article will demonstrate the coercive aspects of the legal system and its limitations. It also demonstrates that there were dramatic confrontations in Ontario as well as ambitious working-class goals, despite perceptions to the contrary.<sup>5</sup>

<sup>2</sup> Ian Angus, *Canadian Bolsheviks: The Early Years of the Communist Party of Canada* (Montreal: Vanguard Publications, 1981), 13.

<sup>3</sup> E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon Books, 1975), 266.

<sup>4</sup> Ian Milligan, "Seemingly Onerous Restrictions': Sedition in Ontario, 1914-1919," (Unpublished MA Major Research Paper, York University, 2007), 25-28.

<sup>5</sup> For more see James Naylor, "Southern Ontario: Striking at the Ballot Box," in *The Workers Revolt in Canada: 1917-1925*, Ed. Craig Heron (Toronto: University of Toronto Press, 1998), 144.

## The State, the War and Rising Dissent, 1917-18

With Britain's declaration of war on Germany in 1914, the self-governing colony of Canada was also effectively at war. Initially, the support for the war was frenzied throughout Ontario, although this support was disproportionately urban.<sup>6</sup> Morale building became a key element of wartime policy in Ontario, and detraction from that came to be seen as a seditious act. While recruitment targets were easily met in the first year of the war, this was reflective of unemployment during this period.<sup>7</sup> Recruitment was also aided by the disproportionate enlistment rates of first generation English immigrants.<sup>8</sup> The subsequent growth of well-paying military-based industries, which drew young men away from voluntary enlistment,<sup>9</sup> coupled with the growing realization of the horror of modern warfare, led to declining recruitment num-

bers.<sup>10</sup> Morale was breaking.

This was seen in the Farmers' Revolt of Ontario, which would eventually culminate in the United Farmers of Ontario forming the provincial government in 1919.<sup>11</sup> Lack of rural support for the war was borne out by enlistment figures, and military censuses "pointed particularly to the farmers as one group with an exceptionally lower rate of enlistment."<sup>12</sup> Conscription threatened to exacerbate the pre-existing labour shortage in the province and threatened the healthy operation of farms; young farmhands were necessary for bringing in the harvest.

Urban workers also revolted. This "was a grass-roots movement that developed in working-class communities across the country in which rank-and-file workers' anger, frustration, and confidence overflowed the bounds of their employers' established workplace regimes, the mainstream political parties, and the existing craft union structures."<sup>13</sup> In do-

<sup>6</sup> Adam Crerar, "Ontario and the Great War," in *Canada and the First World War: Essays in Honour of Robert Craig Brown*, Ed. David Mackenzie (Toronto: University of Toronto Press, 2005), 237

<sup>7</sup> J.L. Granatstein and J.M. Hitsman, *Broken Promises: A History of Conscription in Canada* (Toronto: Copp Clark Pitsman, 1985), 34.

<sup>8</sup> Mary MacKinnon, "Canadian Railway Workers and World War I Military Service," *Labour/Le Travail*, 40 (Fall 1997), 225.

<sup>9</sup> Crerar, "Ontario and the Great War," 232.

<sup>10</sup> J.L. Granatstein, "Conscription in the Great War," in *Canada and the First World War*, 65.

<sup>11</sup> See Peter Oliver, "Sir William Hearst and the Collapse of the Ontario Conservative Party," *Canadian Historical Review*, 53:1 (March 1972), W.R. Young, "Conscription, Rural Depopulation, and the Farmers of Ontario, 1917-19," *Canadian Historical Review* 53:3 (September 1972) and Brian D. Tenynson, "The Ontario General Election of 1919: The Beginnings of Agrarian Revolt," *Journal of Canadian Studies*, 4:1 (February 1969). The farmers' revolt has been extensively documented in the historiography. See W.L. Morton, *The Progressive Party in Canada* (Toronto: University of Toronto Press, 1950), 70-77, Charles M. Johnston, *E.C. Drury: Agrarian Idealist* (Toronto: University of Toronto Press, 1986) and Louis Aubrey Wood, *A History of Farmers' Movements in Canada* (Toronto: University of Toronto Press, 1975).

<sup>12</sup> Young, "Conscription, Rural Depopulation, and the Farmers of Ontario," 299.

<sup>13</sup> Craig Heron, "Conclusion," in *The Workers Revolt in Canada*, 306.



ing so, workers involved were challenging “the structures of bourgeois power and the forms of workers’ subordination.”<sup>14</sup> Labour’s discontent with the conduct of the war and managerial decision-making boiled over a few times during the war. The most visible expression of this was a massive 1916 strike in Hamilton in which workers were defeated, and labour was unsuccessful in gaining recognition and influence with the federal government.<sup>15</sup> With real wages rapidly eroding after 1917, workers saw their buying power diminish.<sup>16</sup> A myopic government focus on financing and supplying the war effort allowed inflation to skyrocket during this period, and munitions production industries were not brought under federal fair-wage policies.<sup>17</sup>

The war also saw the spectre of a Red Scare as the November 1917 Russian Revolution set off panic in Canada, fueled by newspapers which almost unanimously condemned Russia and introduced the epithet of “bolsheviki” to denounce left-

ists and labour.<sup>18</sup> This scare had the effect of escalating fears of socialist radicalism, influencing the climate for Bainbridge’s 1917 and 1918 trials for seditious libel. Following the end of the war, worker anger exploded in the spring and summer of 1919 as labour finally confronted the looming spectre of post-war reconstitution of civil society.<sup>19</sup> Partly in response to the harsh Orders-in-Council, including those that saw men detained for simple possession of socialist material (including Bainbridge’s *Canadian Forward*), a Toronto General Strike erupted in 1919.<sup>20</sup> It is notable that the law of sedition was not used against these labour agitators in Ontario, in contrast to its use in suppressing the Winnipeg General Strike.<sup>21</sup>

Reacting to discontent and waning support for the war, there was a marked transition away from voluntarism and towards “state compulsion and authoritarian restriction of civil liberties,”<sup>22</sup> exemplified by the shift from voluntar-

<sup>14</sup> *Ibid.*, 307.

<sup>15</sup> James Naylor, *The New Democracy: Challenging the Social Order in Industrial Ontario, 1914-1925* (Toronto: University of Toronto Press, 1991), 28-30, 38. This is also discussed at length in Craig Heron, “The Crisis of the Craftsman: Hamilton’s Metal Workers in the Early Twentieth Century,” *Labour/Le Travailleur* 6 (Autumn 1980): 7-48, specifically 37-46.

<sup>16</sup> Craig Heron and Myer Siemiatycki, “The Great War, the State, and Working-Class Canada,” in *The Workers Revolt in Canada*, 21.

<sup>17</sup> Gregory S. Kealey, “State Repression of Labour and the Left in Canada, 1914-1920: The Impact of the First World War,” *Canadian Historical Review*, 73:3 (September 1992), 290.

<sup>18</sup> Theresa Baxter, “Selected Aspects of Canadian National Opinion on the Russian Revolution and on its Impact in Canada, 1917-18,” (Master’s Thesis, University of Western Ontario, 1972), 16, 21-22.

<sup>19</sup> Naylor, *The New Democracy*, 42.

<sup>20</sup> *Ibid.*, 46-47.

<sup>21</sup> Tom Mitchell, ““Legal Gentlemen Appointed by the Federal Government”: the Canadian State, the Citizens’ Committee of 1000, and Winnipeg’s Seditious Conspiracy Trials of 1919-1920,” *Labour/Le Travail*, 53 (Spring 2004).

<sup>22</sup> Heron and Siemiatycki, “The Great War, the State, and Working-Class Canada,” 13.

ism to conscription.<sup>23</sup> Conscription was coercive in that it physically removed individuals from their civilian lives and inducted them into the military with or without their consent. The wartime shift from voluntary practices to coercive measures was made possible by the 1914 invocation of the *War Measures Act*, which allowed the circumvention of normal democratic channels.<sup>24</sup> Press censorship began at the start of the war and was formalized in July 1915 with the creation of the office of the Chief Press Censor under the determined Major (later Lieutenant-Colonel) Ernest J. Chambers.<sup>25</sup>

The federal election of December 1917 saw Sir Robert Borden re-elected as part of a new Unionist government, allowing it to push ahead with conscription and implement further and increasingly coercive Order-in-Council governance under the *War Measures Act*. The government could finally institute a “campaign of repression.”<sup>26</sup> Notable examples included PC 815, the *Anti-Loafing Act*, which made it mandatory for adult males

to be available for work under penalty of criminal prosecutions.<sup>27</sup> The list of other Orders-in-Council is exhaustive. Among others, PC 915 restricted criticism of the war effort, PC 1743 recognized labour organizing rights in return for numerous concessions, and PC 1768 implemented controlled wage rates.<sup>28</sup> Increasingly, the federal government was exercising a model of managerial government.

In October 1918, the government stepped up its efforts to fight what it perceived to be internal subversion. The new backbone of the government can be seen in the passage of Order-in-Council PC 2384, which banned fourteen political groups, including the SDPC.<sup>29</sup> Shortly after the passage of PC 2384, the state began a marked campaign of repression, separate from Criminal Code sedition prosecutions, marked by raids.<sup>30</sup> In a coordinated effort during the night of 20 October 1918, the Dominion Police launched a series of coordinated raids across Ontario, from Sault Ste. Marie to Ottawa.<sup>31</sup> This was made possible by new

<sup>23</sup> Robert Rutherford, *Hometown Horizons: Local Responses to Canada's Great War* (Vancouver: UBC Press, 2004), 114.

<sup>24</sup> Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948* (Don Mills: Oxford University Press, 2001), 89.

<sup>25</sup> Kealey, “State Repression of Labour,” 388. See also Jeffrey Keshen, *Propaganda and Censorship During Canada's Great War* (Edmonton: University of Alberta Press, 1996) for an extensive discussion of press censorship in Canada and overseas during the First World War.

<sup>26</sup> A. Ross McCormack, *Reformers, Rebels, and Revolutionaries: The Western Canadian Radical Movement, 1899-1919* (Toronto: University of Toronto Press, 1977), 131.

<sup>27</sup> Heron and Siemiatycki, “The Great War, the State, and Working-Class Canada,” 14. Also discussed in Fudge and Tucker, *Labour Under the Law*, 97.

<sup>28</sup> Fudge and Tucker, *Labour Under the Law*, 97-100.

<sup>29</sup> Martin Robin, *Radical Politics and Canadian Labour, 1880—1930* (Kingston: Industrial Relations Centre, 1968), 166.

<sup>30</sup> Angus, *Canadian Bolsheviks*, 29.

<sup>31</sup> *Ibid.*

rules, under the “Consolidated Orders Respecting Censorship,” which made simple possession of objectionable material a criminal offence. Socialist historian Ian Angus has described PC 2384 as “one of the most determined and conscious assaults on civil rights ever seen in Canada.”<sup>32</sup>

### The Law of Seditious Libel in Theory and Practice

The existence of the law of sedition, still in the Criminal Code of Canada today, could be and was used to silence dissent, particularly in politically sensitive times. The enforcement of these sedition laws reveals tensions inherent in the liberal legal system: on one hand, the law supported dominant social relations, yet on the other hand also opened up possibilities for reducing or deflecting the impact of sedition laws. Those opposed to the established political order could draw upon such liberal conventions as “innocent before proven guilty” and “the

rule of law.”

Little has been written specifically about sedition in Canada, let alone Ontario. Law professor Peter MacKinnon has argued the law was left deliberately vague and open-ended so that sedition could be defined “in light of facts peculiar to different cases and historical circumstances.”<sup>33</sup> Arguing that the laws were used to go after leaders of movements as a means to discredit the idea of a spontaneous grassroots protest, MacKinnon focused mainly on the 1930s and the legal history aspects. Other works have incidentally touched upon the trials and imprisonment of Isaac Bainbridge.<sup>34</sup> Cases outside of Ontario, specifically that of J.B. McLachlan in New Brunswick and the sedition convictions of the Winnipeg General Strike leaders, have also been studied.<sup>35</sup>

The laws of sedition and seditious libel come from Britain, where they appeared after the Glorious Revolution to silence criticism, but by the nineteenth

<sup>32</sup> *Ibid.*

<sup>33</sup> Peter MacKinnon, “Conspiracy and Sedition as Canadian Political Crimes,” *McGill Law Journal*, 23 (1977), 625.

<sup>34</sup> The Bainbridge case is incorrectly depicted as being an example of Ontario leniency in Desmond Morton, *Working People: An Illustrated History of the Canadian Labour Movement*, 4th Ed., (Montreal & Kingston: McGill-Queen’s University Press, 1998), 112. Morton neglects the multiple cases of Bainbridge, focusing on a singular 1917 arraignment in the Toronto Police court. It is also discussed in passing in Barbara Roberts, *A Reconstructed World: A Feminist Biography of Gertrude Richardson* (Montreal & Kingston: McGill-Queen’s University Press, 1996) and Keshen’s *Propaganda and Censorship*.

<sup>35</sup> J.B. McLachlan, a Cape Breton mining labour leader, was found guilty and sentenced to two years for seditious libel after publishing a letter in the *Halifax Morning Chronicle* promoting a sympathy strike. He was released under political pressure after serving slightly over four months of his sentence. For more, see David Frank, *J.B. McLachlan: A Biography* (Toronto: James Lorimer & Co., 1999), 5, 325. The Winnipeg cases are documented in detail in Tom Mitchell, “‘Legal Gentlemen Appointed by the Federal Government’: the Canadian State, the Citizens’ Committee of 1000, and Winnipeg’s Seditious Conspiracy Trials of 1919-1920,” *Labour/Le Travail*, 53 (Spring 2004) and Jack S. Walker, *The Great Canadian Sedition Trials: The Courts and the Winnipeg General Strike 1919-1920* (Winnipeg: Legal Research Institute of the University of Manitoba, 2004).



century were being used far more repressively in Upper Canada than in Britain.<sup>36</sup> Indeed, Barry Wright has concluded that sedition laws were used more frequently during that period than during the French revolutionary scares of 1790s Britain.<sup>37</sup> This continued into twentieth-century Ontario. While a 1909 case in Britain changed the seditious precedents in the British common law to require “an incitement to violence,” Canada did not follow suit and the “older open-ended definition” remained the norm.<sup>38</sup> This led to a continued use of draconian sedition prosecutions in Ontario, which would affect Bainbridge.

The older definition of seditious intention, in place in 1917 and 1918, came from the English jurist Sir James Stephen, who established it in 1877 (later expanded in 1883).<sup>39</sup> This definition revolved around the intention of the allegedly seditious act:

[(1)] [T]o bring into hatred or contempt or to excite disaffection against the person or Her Majesty, her heirs and successors, or the

Government and constitution of the United Kingdom, as by law established, or either House of Parliament or the administration of justice; or (2) to excite Her Majesty’s subjects to attempt otherwise than by lawful means, the alteration of any matter in church or state by law established; or (3) to incite any person to commit a crime in disturbance of the peace; or (4) to raise discontent or disaffection amongst Her Majesty’s subjects’ or (5) to promote feelings of ill-will and hostility between different classes of such subjects.<sup>40</sup>

This was the test in effect during the period in question, which incidentally remained in effect until *Rex v. Boucher* in 1951.<sup>41</sup> Also note the highly subjective interpretation of sedition provided by Stephen. The criteria for determining “what might excite disaffection against the Government or raise discontent among the population” were assumed to be understood and, in practice, open to broad interpretation.<sup>42</sup> This subjectivity has been noted in the secondary literature, with historians claiming that this was essential to the power of seditious libel.<sup>43</sup>

<sup>36</sup> Barry Wright, “Sedition in Upper Canada: Contested Legality,” *Labour/LeTravail*, 29 (Spring 1992), 8, 13.

<sup>37</sup> *Ibid.*, 9.

<sup>38</sup> F. Murray Greenwood, “The Drafting and Passage of the War Measures Act in 1914 and 1927: Object Lessons in the Need for Vigilance,” in *Canadian Perspectives on Law & Society: Issues in Legal History*, Eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), 296.

<sup>39</sup> Archives of Ontario (hereafter cited as AO), RG 4-32, Attorney General of Ontario Files, Creator Ref. Code 2121, Position Paper on Seditious Libel, Memorandum for the Deputy Minister of Justice, Ottawa, 10 February 1919.

<sup>40</sup> AO, RG 4-32, Creator Ref. Code 2121, Position Paper on Seditious Libel.

<sup>41</sup> *Boucher v. R.*, (Supreme Court of Canada) [1951] S.C.R. 265, *Human Rights in Canada: A Historical Perspective*. Available online. <<http://www.chrc-ccdp.ca/en/browseSubjects/boucher.asp>>, Accessed 17 May 2007.

<sup>42</sup> MacKinnon, “Conspiracy and Sedition,” 626.

<sup>43</sup> MacKinnon, “Conspiracy and Sedition,” 625 and Leonard W. Levy, *Emergence of a Free Press* (New York: Oxford University Press, 1985), 8.

When the defendants in Ontario were charged with sedition offences, the charge was either sedition or seditious libel. Seditious libel is sedition in written form. Seditious libel is still found in the Criminal Code of Canada today, and applies when anyone “(a) teaches or advocates, or (b) publishes or circulates any writing that advocates the use, without the authority of law, of force as a means of



Isaac Bainbridge and Family, 1913. [Milne, *Bainbridge Branches*, 29.]

ward, was being prosecuted for content found in mainstream media. For example, the *Toronto Daily Star* or Henri Bourassa's *Le Devoir* (published in Montreal) were not subjected to sedition prosecutions. When a complaint was levied with the Department of Justice concerning the alleged sedition of the *Toronto Daily Star*, no action was taken.<sup>46</sup>

accomplishing a governmental change within Canada.”<sup>44</sup> Note again that the Code does not detail what specifically constitutes sedition. Unlike the vague criteria, the punishments for the offences are clearly laid out in the Criminal Code: up to two years imprisonment.<sup>45</sup>

During the trials of Isaac Bainbridge for publishing anti-conscription and anti-war works, observers of the trial noted that his newspaper, the *Canadian For-*

Even the conservative Toronto daily *Mail and Empire*, as mentioned before, published Leon Trotsky's “The Bolsheviki and World Peace” between 12 January 1918 and 28 January 1918 without any comment from the authorities. This is rather ironic as Trotsky's writings were strongly anti-capitalist and contained arguments against the war that were akin to or even more incriminating in socialist newspapers such as Bainbridge's *Canadian Forward*.<sup>47</sup>

<sup>44</sup> MacKinnon, “Conspiracy and Sedition,” 622.

<sup>45</sup> *Ibid.*, 132.

<sup>46</sup> Library and Archives Canada (hereafter cited as LAC), RG 13, Department of Justice records, Series A-2, Volume 239, File 1918-1765, Letter from Frederick Burnett to Minister of Justice, 13 June 1919. While the reply to Burnett's allegation is not preserved in the Library and Archives Canada, no action was taken against the *Toronto Daily Star* as no files are found in the Criminal Assize Clerk criminal indictment files at the Archives of Ontario.

<sup>47</sup> For example, on the front page of the 12 January 1918 issue of the *Mail and Empire*, Trotsky's article referred to the First World War as “the most colossal breakdown in the history of an economic system destroyed by its own inherent contradictions” and argued that the nation-state “had outlived itself, and is now an intolerable hindrance to economic development.”

Perhaps the reluctance to prosecute was a result of the December 1917 federal election. The election was a hotly contested one between the Unionist party of Prime Minister Sir Robert Borden—a largely Anglophone union of Tories and pro-conscription Liberals—and Sir Wilfrid Laurier’s anti-conscription (and largely Francophone) Liberal party. Conscription was meeting with strong and vocal opposition from farmers and the labour movement. Even a plan for voluntary National Service, adopted by the Trades and Labour Congress of Canada, caused intense debate within the labour movement as many members firmly supported an anti-conscription mandate.<sup>48</sup> The federal government held back from overt repression to avoid charges of electoral manipulation, as the Undersecretary of State argued that they had to hold off on censorship and seditious libel prosecutions until after the December 1917 election.<sup>49</sup>

Finally, given the sweeping regulations restricting free speech in Canada by the end of the First World War, an explicit exemption was made in Order-in-Council PC 915 ensuring the traditional parliamentary free speech privileges of members of parliament and senators.<sup>50</sup> That the time-honoured privilege of par-

liamentarians had to be explicitly noted demonstrates the wide-ranging measures against of sedition by war’s end.

### Isaac Bainbridge and the Social Democratic Party of Canada

Little has been written about Isaac Bainbridge.<sup>51</sup> In 1907, responding to an economic downturn, Bainbridge, who trained as a stonemason, and his older brother immigrated to Winnipeg where, afflicted with dysentery and trouble finding employment, Bainbridge traveled throughout the west of Canada until moving to Wisconsin and finding work in a quarry. Lonely, as his wife had remained behind in England, Bainbridge returned to England—fathering another child—before employment trouble in England hastened his return to Toronto. This time, his wife and two children joined him in Canada in May 1911. By virtue of his immigration to Canada, Bainbridge shared an experience common to many North American socialists such as Tim Buck, who would become General Secretary of the Communist Party of Canada after immigrating to Canada from England in 1910.<sup>52</sup>

In an obituary that appeared on the front page of the *Toronto Star* (reproduced nearly verbatim in the obituary sec-

<sup>48</sup> Kealey, “State Repression of Labour,” 291-292.

<sup>49</sup> LAC, RG 6, Secretary of State files, Series E, Vol. 604, Reel T-91, File 279-7, Mulvey, Undersecretary of State to Col. Chambers, Chief Press Censor, 4 December 1917.

<sup>50</sup> LAC, RG 2, Privy Council files, Reel T-5034, Order-in-Council PC 915, 16 April 1918.

<sup>51</sup> Bainbridge was born on 6 July 1880 in Heronsyke, Burton, Westmoreland County, England, and died on 30 June 1932 in Toronto.

<sup>52</sup> Tim Buck, *Yours in the Struggle: Reminiscences of Tim Buck*, Eds. William Beeching and Phyllis Clarke (Toronto: NC Press, 1977), 33-35.

tions of the *Globe* and *Toronto Telegram*) on the occasion of his death in early July 1932, Bainbridge was described as an agnostic (seemingly at odds with his earlier 1911 census declaration of ‘Baptist’) as well as an “untiring worker in labor circles two decades ago.”<sup>53</sup> He was also described as being well known, and the fact that his obituary appeared on the *Star’s* front page lends support to this. However, the obituary certainly downplayed his radicalism—no mention was made of his previous convictions, and Bainbridge was described as a member of the Fabian Society and the Fellowship of Reconciliation. Given that the Fabians represented the epitome of reform (rather than revolutionary) socialism and that the Fellowship of Reconciliation was a pacifist movement—based upon religious rather than socialist principles—it is apparent that Bainbridge was being remembered as a moderate. The Bainbridge that was portrayed in his 1932 obituary bears little resemblance to the committed radical who edited the *Canadian Forward* from 1916 to 1918.

Bainbridge was the first and only editor of the *Canadian Forward*, as well as

the Dominion Secretary for the SDPC. He saw the *Canadian Forward* as a key part of the party’s efforts. In order to understand Isaac Bainbridge, we must understand the SDPC.

The SDPC was formed in 1911 from the schism of the Socialist Party of Canada (SPC) in the early twentieth century. As declared in the SDPC’s platform, which recognized the control that the capitalists had over the state and stated the objective of educating and organizing the working-class, the party’s ultimate goal was to prepare “the minds of the working class for the inauguration of the Co-operative commonwealth.”<sup>54</sup> Splitting from the SPC, the SDPC was an attempt to generate constructive policy and fight the domination of the English leadership;<sup>55</sup> this “allowed the minority language groups such ample scope for self-determination that they were rather more prominent, at least to the increasingly anxious police authorities, than was the overarching party to which they were affiliated.”<sup>56</sup> The importance of ethnic groups to the Canadian left is, of course, not just limited to the SDPC as has been documented elsewhere.<sup>57</sup>

<sup>53</sup> *Canadian Forward*, 10 October 1917, 7.

<sup>54</sup> *Canadian Forward*, 28 October 1916, 2.

<sup>55</sup> Martin Robin, *Radical Politics and Canadian Labour*, 110-113.

<sup>56</sup> Ian McKay, *Rebels, Reds, Radicals* (Toronto: Between the Lines, 2005), 152.

<sup>57</sup> Many historians have demonstrated the interconnections between ethnicity and socialist movements. Ian McKay posits ethnicity as among eight distinct “paths to socialism,” in McKay, *Rebels, Reds, Radicals*, 39-40. See also Donald Avery, *Dangerous Foreigners: European Immigrant Workers and Labour Radicalism in Canada, 1896-1932* (Toronto: McClelland & Stewart, 1979). Specific studies include Ian Radforth, *Bushworkers and Bosses: Logging in Northern Ontario, 1900-1980* (Toronto: University of Toronto Press, 1987), Varpu Lindström-Best, *Defiant Sisters: A Social History of Finnish Immigrant Women in Canada* (Toronto: Multicultural History Society of Ontario, 1988), John Kolasky, *The Shattered Illusion: The History of Ukrainian Pro-Communist Organizations in Canada* (Toronto: Peter Martin Associates, 1979) and lengthy discussions in Orest T. Martynowych, *Ukrainians in Canada: The Formative Period, 1891-1924* (Edmonton: Canadian Institute of Ukrainian Studies Press, 1991).

The large ethnic component of the SDPC is central to both understanding the party itself and the attention paid to it by the authorities. In 1914, for example, “Finns made up 55 per cent of its membership and had 64 locals across Canada with 3,047 registered members.”<sup>58</sup> Along with the large Finnish component were the Ukrainians, who had 1,500 members by 1918 and its own organ, *Robochy Narod*.<sup>59</sup> Indeed, the Finnish chapter of the SDPC—the Finnish Socialist Organization—was quite independent and ran its own newspapers, beginning with *Työkansa*. However, this newspaper collapsed in mid-1915 due to financial difficulties.<sup>60</sup> A successor newspaper, *Vapaus*, began publication out of Sudbury in late November 1917 as the organ of the Finnish-Canadian SDPC, but was shut down by a late September 1918 Order-in-Council which banned foreign-language papers (also including *Robochy Narod*) “as ‘enemy language’ publications . . . authorities wished to prevent the spread of socialist propaganda, especially among the immigrants.”<sup>61</sup> Just like the *Canadian*

*Forward*, *Vapaus* was the victim of radicalized and politicized public opinion and growing government concern.<sup>62</sup> However, *Vapaus*’ editor was not singled out for prosecution by the courts; repression took the approach of Order-in-Council censorship and suppression rather than Criminal Code prosecution.

The perception of the SDPC by federal authorities, as a whole rather than the ethnic community parts, is important. C.H. Cahan, a Tory advisor and corporate lawyer who researched the radical leftist movements in 1918 and was later appointed Director of Public Safety in October 1918,<sup>63</sup> argued that the party was the most pernicious of them all and responsible for the distribution of ethnic propaganda, hiding behind a benign platform.<sup>64</sup> In Cahan’s eyes, the SDPC had produced the largest amount of anti-war propaganda during the First World War. This conception of the SDPC gave the government added impetus to deal with Bainbridge.

Although the official SDP platform seems far from revolutionary,<sup>65</sup> as even

<sup>58</sup> J. Donald Wilson, “The police beat them up just to keep warm’: A Finnish-Canadian Communist Comments on Environmental Depredation and Capitalist Exploitation in Early 20<sup>th</sup>-Century British Columbia,” *Labour/Le Travail*, 44 (Fall 1999), 192.

<sup>59</sup> Kolasky, *Shattered Illusion*, 2-3. Also mentioned in Michael H. Marunchak, *The Ukrainian Canadians: A History* (Ottawa: UVAN, 1982), 225.

<sup>60</sup> Arja Pilli, *The Finnish-Language Press in Canada, 1901-1939: A Study in the History of Ethnic Journalism* (Turku, Finland: Migration Institute, 1982), 65, 77-81.

<sup>61</sup> Pilli, *The Finnish-Language Press*, 122, 127. See also Kolasky, *Shattered Illusion*, 3. A discussion of this is also found in Martynowych, *Ukrainians in Canada*, 436-437.

<sup>62</sup> Pilli, *The Finnish-Language Press*, 90, 126.

<sup>63</sup> Keshen, *Propaganda and Censorship During Canada’s Great War*, 67.

<sup>64</sup> C.H. Cahan, *Socialistic Propaganda in Canada: Its Purposes, Results and Remedies* (Montreal, 1918), 7-8.

<sup>65</sup> The platform of the SDPC called for the (1) reduction of work hours, (2) elimination of child labour, (3) universal adult suffrage, and (4) the initiative, referendum, and right of recall. This would prepare the working class for the “inauguration of the Co-operative commonwealth.” [*Canadian Forward*, 28 October 1916, 2]



Cahan had to admit, it did not reflect the party's ultimate goal in the same way that contemporary political party platforms do. The radicalism of the SDPC is an important concept to grasp, as it is substantially different than that espoused by the 'social democrats' of the early twenty-first century. For instance, the word 'democracy' had disparate meanings when used by the workers than when used by the establishment. For the workers, democracy was a cry of freedom for more power and a general wish "to live a life of independence, dignity, and relative freedom."<sup>66</sup> This was a call for an alternative way of life. Bainbridge himself was certainly not a moderate. In a letter to a Russian newspaper, he praised the Russian revolution as having "heartened and strengthened the socialists of our blessed capitalistic country" and wrote that he was envious of the newfound Russian freedom.<sup>67</sup>

Bainbridge's political sentiments are discernible from his writings. In his only attributed full-length article in the *Canadian Forward*, he gave his views on the racial problems of Canada, calling for racial integration and giving the socialist view on the issue. By race, Bainbridge referred to groups such as Teutons, Sax-

ons, Anglo-Saxons, Mongolians and Africans: "each of which contributes to this complex society their quota of human evolution tinged with divergent traditions, histories, and religions."<sup>68</sup> He had an interesting viewpoint, arguing against the then-hegemonic theory that national animosities and characteristics were deep-rooted and intrinsic.<sup>69</sup> Instead, Bainbridge felt that these attitudes were found in the "economic interests of the rulers" rather than the "racial antagonisms of the different peoples," and drew on historical example to show how "racial antagonisms can change within a generation."<sup>70</sup> He ultimately argued that the "present day system of competition . . . serves only to accentuate racial animosity, to breed ill will and envy amongst workers—brothers of one class and caste."<sup>71</sup> Although in the article he conceded that there were localized racial differences that were the product of unique local requirements, his argument was ultimately very progressive especially when weighed against contemporary views. That Bainbridge held these views helps support the sense that the SDPC was part of this general reshaping of the Canadian Left by ethnic minorities such

<sup>66</sup> Heron, "Conclusion" in *The Workers Revolt in Canada*, 307.

<sup>67</sup> LAC, RG 6, Series E, Vol. 604, Reel T-91, File 279-7, Bainbridge's Letter, 6 July 1917, in *Krassnoya Znamys*.

<sup>68</sup> *Canadian Forward*, 28 October 1916, 3.

<sup>69</sup> An excellent example of commonly held views in the labour movement can be seen in Ruth A. Frager, "Labour History and the Interlocking Hierarchies of Class, Ethnicity, and Gender: A Canadian Perspective," *International Review of Social History*, 44 (1999): 197-215. Frager argues that *Cotton's Weekly*—the *Canadian Forward's* SDPC predecessor—drew on myths concerning white supremacy to bolster the morale of strikebreakers.

<sup>70</sup> *Canadian Forward*, 28 October 1916, 3.

<sup>71</sup> *Ibid.*

as the Jews, Finns, and Ukrainians.<sup>72</sup>

It is also important to emphasize that Bainbridge was a strong believer in socialism, as well as peace. Naylor argued in *The New Democracy* that the *Canadian Forward* expressed Bainbridge's sentiments.<sup>73</sup> During the war, Bainbridge took strong exception to suggestions that activists should "lay aside their socialism in the interests of a broader unity."<sup>74</sup> He was also involved in the Canadian Workers Council, which aimed at "peace with justice at home and a negotiated settlement of the war," similar to the American People's Council for Democracy and Terms of Peace.<sup>75</sup>

During the First World War, Bainbridge was also instrumental in expanding the Socialist movement within Canada. Bainbridge's pamphleteering, which would land him in trouble with the authorities, had an impact on Maurice Spector. Spector, who would later become Chairman of the Communist Party in the 1920s and an early follower of Trotsky after the split between Stalin and Trotsky, was given Lenin's pamphlet 'The Soviets at Work' by Isaac Bainbridge.<sup>76</sup> In a 1960s CBC Radio interview, Spector explained that the pamphlet "made an enormous impression" on him, and he joined the Social Democratic Party on Bainbridge's

request. Shortly thereafter, Spector began to agitate for the SDPC's affiliation with the Communist International.<sup>77</sup>

### Politically Driven Justice: Isaac Bainbridge in Court

The trials of Isaac Bainbridge present an excellent example of politically driven justice. Bainbridge received the harshest penalties of any man charged with seditious libel—nine months imprisonment, of which a little over four months were served—and the largest degree of attention from both the mainstream press and the authorities.<sup>78</sup> This exceptional case illustrates the degree to which the government would go in order to silence anti-war rhetoric that not only had its foundations in anti-capitalist, rather than just anti-militaristic, rhetoric, but came from the partially ethnically-based SDPC. Bainbridge had caught the eye of not only the provincial authorities, but also the federal authorities.

Bainbridge's case was exceptional for a number of reasons. First, the interest went right up to the highest offices in Canada. Not only did the Minister of Justice, the Honourable Charles Doherty, take an active interest in the case, but so too did the Secretary of State, the Chief Press Censor, and the Prime Minister's Office.

<sup>72</sup> This argument is also held by McKay, *Rebels, Reds, Radicals*, 152.

<sup>73</sup> Naylor, *The New Democracy*, 92.

<sup>74</sup> *Ibid.*

<sup>75</sup> Roberts, *A Reconstructed World*, 192.

<sup>76</sup> CBC Radio Interview with Maurice Spector, c. 1962. This interview was obtained from Ian McKay, Queen's University.

<sup>77</sup> *Ibid.*

<sup>78</sup> This can be seen when compared to other sedition cases in Ontario during the First World War period. For more, please consult Milligan, "Sedition in Ontario, 1914-1919."

Even after judicial oversight freed Isaac Bainbridge in early 1918, he was again imprisoned two more times through federal intervention. Bainbridge's case offers important lessons concerning freedom of speech and helps illustrate the extent to which the government of Canada would go to suppress political dissent.

The legal adventures of Bainbridge began on 18 April 1917 when the Toronto police investigated the *Canadian Forward* offices and charged Bainbridge with seditious libel.<sup>79</sup> The charge was in response to the 27 January 1917 issue of *Canadian Forward*, which reprinted *Brockway's Defence*, an impassioned speech by Fenner Brockway, leader of the British No-Conscription Fellowship, given during his trial in Britain for criticizing conscription. Dissecting the reasons for British intervention throughout the world, Brockway argued that the British had entered the war not for the liberty of Belgium and France but to secure further territorial gains. The conclusion of the speech indicted the Allied powers and was found seditious by the authorities:

I believe the ruling classes of all the powers are responsible for the war. I believe the working classes are mere pawns in their hands. I believe the time will come when the workers will consent to be pawns no longer, and I hope that the action I am taking now will do a little, at least, to hasten the committing of that time.<sup>80</sup>

Writing six decades later in his autobiography, Brockway noted "his defence statement was the Socialist case against the war, afterwards printed as a leaflet with wide distribution in Britain, Canada, Australia, and New Zealand."<sup>81</sup> Bainbridge was the distributor of the speech in Canada, printing it not only in the *Canadian Forward* but also in the form of five thousand pamphlets.<sup>82</sup>

On 19 April 1917, Bainbridge arrived to answer the charge at the Toronto Police Court before the infamous Magistrate Colonel George T. Denison.<sup>83</sup> The Police Court would decide whether the charges were valid, whether Bainbridge should receive a trial and, if so, detail the conditions of bail. Denison declared that *Brockway's Defence* was "certainly against the interests of the country, and its circulation is calculated to do harm."<sup>84</sup> Com-

<sup>79</sup> *Canadian Forward*, 24 April 1917, 1.

<sup>80</sup> *Canadian Forward*, 27 January 1917, 1.

<sup>81</sup> Fenner Brockway, *Towards Tomorrow: The Autobiography of Fenner Brockway* (London ON: Hart-Davis, MacGibbon, 1977), 49-50.

<sup>82</sup> *Canadian Forward*, 24 April 1917, 1.

<sup>83</sup> Denison is famous in the legal historiography, as he held the position of Police Magistrate in the City of Toronto between 1877 and 1921. For more on Denison, see Gene Howard Homel, "Denison's law: Criminal justice and the police court in Toronto, 1877- 1921," *Ontario History*, LXXXIII (1981).

<sup>84</sup> *Canadian Forward*, 24 April 1917, 1. The term 'reception hospital' referred to psychiatric institutions at the time. See Paul H. Stuart, PhD, "Community Care and the Origins of Psychiatric Social Work," in *Social Work in Mental Health: Trends and Issues*, ed. Uri Aviram (Binghamton: The Haworth Press, 1997), 30. See also Chris Dooley, "'They Gave Their Care, but We Gave Loving Care': Defining and Defending Boundaries of Skill and Craft in the Nursing Service of a Manitoba Mental Hospital during the Great Depression," *Canadian Bulletin for Medical History*, 21:2 (2004), 234, 245.

mitting Bainbridge to trial, Denison declared dismissively that he thought Bainbridge “should be sent to a Reception [psychiatric] Hospital for a month.” Bainbridge was released on a \$1,000 bail, partially covered by the SDPC Bainbridge defence fund, which had been hastily convened.<sup>85</sup>

While press coverage was scant for this case,<sup>86</sup> word spread widely throughout the socialist community. A union local in Montreal sent a petition to Ottawa, arguing that some politicians had expressed opinions similar to Bainbridge’s and that “[i]t is apparent that the application of the antiquated and obsolete charge is invoked merely as a subterfuge to the prosecution of those who voice the opinions of Labour.”<sup>87</sup> The response from the Minister of Justice argued that the administration of the law was the responsibility of the Provincial government,<sup>88</sup> although later federal activities would show this to be not entirely true.

On 1 May 1917, Bainbridge appeared before Justice Latchford to face the charge of seditious libel, to which he pleaded not guilty. The crown’s exhibits were the aforementioned printed pam-

phlets of *Brockway’s Defence*, as well as a copy of the objectionable newspaper issue.<sup>89</sup> Bainbridge responded that he was the editor of the *Canadian Forward* and secretary of the SDPC, and further noted that *Brockway’s Defence* had appeared in an edition of the *Labor Leader* that had been circulated throughout Europe and Canada without incident.<sup>90</sup> Although Bainbridge rose and emphatically declared that he did not endorse all of *Brockway’s Defence*, his case must have been unconvincing as he thereafter abandoned his defence and asked for a “reserved case not [an] absence of innocence.”<sup>91</sup> The exact reasons for this reversal are unknown, not being mentioned in the *Canadian Forward* coverage or in Latchford’s benchbook, but it may be that the prosecutorial evidence seemed insurmountable. Indeed, the prosecutor’s first exhibit was the multiple copies of the pamphlet, apparently received from Bainbridge himself.<sup>92</sup> Latchford found him guilty but gave him a suspended sentence. In their coverage of Bainbridge’s first case, the *Toronto Daily Star* recounted that Justice Latchford “recognized that five years hence, under the changing

<sup>85</sup> *Canadian Forward*, 24 April 1917, 1.

<sup>86</sup> Covered extensively in the *Canadian Forward*, the trial was also mentioned in the Winnipeg-based labour newspaper *The Voice*, 4 May 1917, 8.

<sup>87</sup> LAC, RG 13, Series A-2, Volume 212, File 1917-766, Resolution Protesting Arrest of I. Bainbridge by J. Hooper, Recording Secretary of the International Association of Machinists, Victoria Lodge No. 111, Montreal PQ, 23 April 1917.

<sup>88</sup> LAC, RG 13, Series A-2, Volume 212, File 1917-766, Letter from Minister of Justice to J. Hooper, 21 May 1917.

<sup>89</sup> AO, RG 22-461-1-15, Benchbooks of Justice Latchford, 1 May 1917, Benchbook #15, 1 May 1917.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

**LABOR PRODUCES ALL WEALTH UNTO LABOR IT SHOULD BELONG**

# THE CANADIAN FORWARD

**WORKERS OF WORLD UNITE! YOU HAVE NOTHING TO LOOSE BUT CHAINS, AND A WORLD TO GAIN.**

OFFICIAL ORGAN OF THE SOCIAL-DEMOCRATIC PARTY

New Series, Vol. 1, No. 22      TORONTO, CANADA      September 24, 1917

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**"IT IS A RIGHT TO BE MAINTAINED IN PEACE OR WAR. IT IS A RIGHT THAT CANNOT BE INVADDED WITHOUT DESTROYING CONSTITUTIONAL LIBERTY. HENCE THIS RIGHT SHOULD BE GUARDED AND PROTECTED BY THE FREE MEN OF THIS COUNTRY WITH A ZEALOUS CARE. UNLESS THEY ARE PREPARED FOR CHAINS OR ANARCHY."—Daniel Webster or Free Speech.**

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**I. BAINBRIDGE INCARCERATED**

Our National Secretary, Mr. Isaac Bainbridge, is in prison awaiting trial, charged with issuing a pamphlet entitled, "The Price We Pay." In a letter to me dated September 14th, he states as follows:

I am taking this opportunity of advising you that the crown attorney of Toronto has laid a charge against me for circulating a leaflet entitled, "The Price We Pay," which is considered by the "Magister of Justice," requesting consideration in this case, and I may say that a Defence Fund has been formed to meet the expenses of the case.

The following report regarding Mr. Bainbridge appeared in the Toronto News (Conservative), Sept. 21:

Isaac Bainbridge, editor of "Canadian Forward," a Socialist organ published in Toronto, was taken into custody to-day when he appeared in the Police Court on a charge of a

Bainbridge will come up again next week.

The Toronto Star (Liberal), Sept. 15th, published an editorial on the trial, headed, "Should Have a Fair Trial".

If any man is guilty of an offence against the Military Service Act he must accept punishment. But he ought to be fairly tried, and the offence proved in the regular way. The law does not say that it is an offence to oppose conscription as a principle, but it is an offence to counsel resistance to

**GEN. LORD ROBERTS ON CONSCRIPTION**

Mr. Ramsay MacDonald's phrase, used in his speech at the Labor Party Conference about "Our German Friends" has, of course, provided an alluring red herring by the dexterous use of which Mr. MacDonald's political enemies can distract attention, from the substance of his argument. But the phrase seemed uncannily familiar and re-reading the other night the late Lord Roberts' "Message to the Nation" (published 1912, John Murray, 6d. net)

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S. D. P. QF C. NOTICE

Canadian Forward *Announcing Bainbridge's Arrest, with quotation about Free Speech.* [24 September 1917, 1.]

the Prime Minister's Office, would follow Bainbridge's legal travails in late 1917 and offer assistance to the Toronto authorities in the second prosecution.

On 12 September 1917, the Toronto

Police once again arrested Bainbridge. He was brought before Magistrate Denison on 21 September 1917, where he was taken into custody after being harangued by the Crown Prosecutor:

I feel very strongly in this matter, and I don't think this man should be allowed to write the things he has written against the King and country. We are in a crisis at present and a man of this description should not be allowed to go about and sow sedition. Why in Germany, he would lose his life if he committed the offence with which he is charged here.<sup>95</sup>

This time, Bainbridge had offended the authorities with another anti-conscription document. The pamphlet *The Price We Pay* by the Reverend St. John Tucker of Chicago, republished in the 24 July 1917 *Canadian Forward*, argued against conscription on the basis that the war was being fought for the profit

conditions, a case such as he had been in principle in would not be brought before the court as sedition.<sup>93</sup>

Thus ended Bainbridge's first brief encounter with the legal system. A perfunctory trial, Bainbridge could have been comforted by Latchford's dismissive statement. The first trial of Isaac Bainbridge had been a local prosecution influenced primarily by a local and particular reading of the law of sedition and was different in character from his subsequent legal battles.

## A Second, Most Political, Trial of Isaac Bainbridge

**A**fter the first trial, Bainbridge's actions were under close scrutiny by the authorities. Beginning in June 1917 and continuing to October 1917, Chief Press Censor Chambers tried to suppress the *Canadian Forward*.<sup>94</sup> Chambers, and

<sup>93</sup> *Toronto Daily Star*, 2 May 1917, 15.

<sup>94</sup> LAC, RG 13, Series A-2, Volume 216, File 1917-1724, Chambers to the Secretary of State, 29 October 1917.

<sup>95</sup> *Toronto News*, 21 September 1917 in *Canadian Forward*, 24 September 1917, 1.



*'The Price We Pay,' evidence against Bainbridge. [Irwin St. John Tucker, "The Price We Pay." Obtained from the Thomas Fisher Rare Books Library, Toronto, Ontario.]*

of bankers and investors. The following quotations formed the basis of the Crown's charge under the law of sedition, as excerpted from the longer pamphlet:

Conscription is upon us; the draft law is a fact! Into your homes the recruiting officers are coming. They will take your sons of military age and impress them into the army. . . Agonies of torture will rend [your sons'] flesh from their sinews . . . And still the recruiting officers will come, seizing age after age, mounting up to the elder ones and taking the younger ones as they grow to soldier size . . . those who are sent out to maim and murder one another for the profit of bankers and investors [Crown highlighting]<sup>96</sup>

The *Price We Pay* was interpreted as an incitement to oppose conscription, and it was aimed beyond simple anti-conscription arguments towards an indictment of the entire capitalist order.<sup>97</sup>

After the arraignment, the *Toronto Daily Star* published a leading editorial on the case on 24 September 1917 entitled "Should Have a Fair Trial." While conceding that, although not an offence to "oppose conscription as a principle," it was "an offence to counsel resistance to the law," the *Star* made the point that the



case had to be tried in a manner consistent with procedures in other common law cases.<sup>98</sup> In an eloquent defence of Bainbridge's rights, the *Star* referred to the late eighteenth century case of Thomas Paine and his lawyer's eloquent defence of his right to defend and present the case of any man.

Concern was not confined to the

<sup>96</sup> 'Price We Pay' presented as Exhibit A in AO, RG 22-392, Container 276, *Rex v. Bainbridge*, 12 October 1917.

<sup>97</sup> In a 1920 United States Supreme Court ruling, *Pierce v. U.S.*, the Supreme Court of the United States upheld the conviction of a group of socialists in part for distributing this pamphlet. The pamphlet was seen to be causing insubordination, disloyalty and refusal of duty in the armed forces. For more, see *Pierce v. United States*, 8 March 1920, Supreme Court of the United States, Available online, <<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=252&invol=239>>, Accessed 22 December 2005.

<sup>98</sup> "Should Have a Fair Trial," *Toronto Star*, 24 September 1917, 10.

left end of the political spectrum. It is clear that the charges against Bainbridge alarmed many Canadians across the political spectrum. The conservative<sup>99</sup> *Toronto Telegram* editorialized on the case on 5 October 1917:

Isaac Bainbridge, circulator of a Socialistic argument against conscription, should be released on bail. Or the *Toronto Star*, circulator of a Sir Allen Aylesworth [a Laurier Liberal] argument against conscription, should be in jail . . . The Isaac Bainbridge type of anti-conscription agitator is not half as dangerous as the Sir Allen Aylesworth type of anti-conscription advocate.<sup>100</sup>

The *Telegram* noted the subjectivity of the law. Despite the reality that the paper was using the case for partisan purposes—using Bainbridge to attack the Liberals—this was still a powerful editorial from what the *Canadian Forward* dubbed the “Bitterest Opponent of Socialism and Socialists.”<sup>101</sup>

Beyond the press, the case piqued the interests of other individuals, including the influential Toronto labour journalist Phillips Thompson. Author of the influential 1887 theoretical work *The Politics of Labour*, which has been identified as “a

historical signpost of a new phase in the thinking and direction of part of the labor leadership in Canada,”<sup>102</sup> Thompson was following the case closely and wrote to the Minister of Justice about Bainbridge being remanded to custody without bail. He argued that the “abuse of authority is more in accordance with Prussian than British ideals,” noting that Bainbridge’s remand “nationally aroused strong and deep feelings of resentment among Mr. Bainbridge’s friends and comrades.”<sup>103</sup>

Labour groups across the country protested the trial to the Attorney-General of Canada. The Winnipeg Trades and Labour Council urged that the Attorney General “arrest this effort to unduly interfere with the liberty of the press.”<sup>104</sup> The International Association of Machinists argued that the anti-conscription material had been presented during the arguments for the 1917 *Military Service Act* and thus it was within Bainbridge’s rights to speak against the law.<sup>105</sup> The Brantford Trades and Labour Council also sent in a list of resolutions, arguing that bail had been initially denied due to political leanings. They further noted that history

<sup>99</sup> The conservatism of this paper is apparent throughout. A 16 November 1917 article was entitled ‘Women Will Thus Bring About Disenfranchisement of All Mankind’, repeatedly claimed that ‘A VOTE FOR BORDEN IS A VOTE FOR THE SOLDIERS. A VOTE FOR LAURIER IS A VOTE AGAINST THE SOLDIERS’ (as in a 22 November 1917 editorial) and supported First World War veterans who broke up Toronto socialist gatherings in the spring of 1917.

<sup>100</sup> *Toronto Telegram*, 5 October 1917, 10.

<sup>101</sup> *Canadian Forward*, 19 October 1917, 7.

<sup>102</sup> Norman Penner, *The Canadian Left: A Critical Analysis* (Scarborough: Prentice-Hall, 1977), 31.

<sup>103</sup> LAC, RG 13, Series A-2, Volume 216, File 1917-1724, Phillips Thompson to Minister of Justice, 5 October 1917.

<sup>104</sup> AO, RG 4-32, Creator Ref. Code 901, Protest from Winnipeg Trades and Labor Council, 18 October 1917.

<sup>105</sup> AO, RG 4-32, Creator Ref. Code 901, Protest from International Association of Machinists, 14 October 1917.

had shown that those punished for expressing political views had been deemed innocent in hindsight. Once taboo views were now being fully accepted in the present day.<sup>106</sup> The Toronto District Labour Council also unanimously came to Bainbridge's defence.<sup>107</sup>

Predictably, the *Canadian Forward* itself editorialized on the case, questioning why other papers in Toronto and Quebec could print similar arguments but not get charged by the subjective law of seditious libel. The *Forward* answered its own question, arguing that while "Bourassa and Aylesworth are mighty opponents of militarism, but they are at the same time staunch upholders of capitalism with the profit system . . . Bainbridge's presence among the workers and at his desk in the Canadian Forward's office is a menace to the profit system."<sup>108</sup> While, as noted before, this was perhaps too simplistic a reason for Bainbridge's prosecution, the statement captured the indignity felt by the *Forward* towards the imprisonment of Bainbridge.

The federal government, already interested in Bainbridge, was also an interested participant and correspondent in the matter. As Chambers had been trying to suppress Bainbridge's paper, the Un-

dersecretary of State wrote him encouragingly as the trial loomed: "it would be far easier to impose the Press Censorship [sic] if the editor had been convicted by a Magistrate for publishing objectionable matter."<sup>109</sup> Given his interest, Chambers received a fascinating letter on 14 November 1917, only a week before Bainbridge's trial date. The letter, from Loring Christie of the Prime Minister's Office, passed along communication he had received from an officer with British Intelligence in Vladivostok. Bainbridge had evidently written a letter to the local Bolshevik paper *Krassnoya Znamys* (in English, *Red Flag*), which wrote about conscription in Canada and declared that by the time the letter was received in Russia "many of our comrades will be in prison, because we as a party have decided to refuse to kill our brothers and comrades, we [a]wait a universal strike in the near future, so as to abolish the law of 'CONSCRIPTION'."<sup>110</sup> It was immediately forwarded from Chambers to the Secretary of the State and the Toronto police, with Chambers expressing hope that the police could use it as evidence in the upcoming case. However, it came too late and Bainbridge would be nonetheless convicted.<sup>111</sup>

<sup>106</sup> AO, RG 4-32, Creator Ref. Code 901, Protest from Brantford Trades and Labour Council, 12 November 1917.

<sup>107</sup> Naylor, *The New Democracy*, 44.

<sup>108</sup> *Canadian Forward*, 10 October 1917, 7.

<sup>109</sup> LAC, RG 6, Series E, Vol. 604, Reel T-91, File 279-7, Under-Secretary of State Mulvey to Chambers, 30 October 1917.

<sup>110</sup> LAC, RG 6, Series E, Vol. 604, Reel T-91, File 279-7, Bainbridge's Letter, 6 July 1917, in *Krassnoya Znamys*.

<sup>111</sup> LAC, RG 6, Series E, Vol. 604, Reel T-91, File 279-7, Letter from Chief of Police Grassett to Chambers, 4 December 1917.

The second trial of Isaac Bainbridge, held in November 1917, is another example of a political trial that demonstrates the lengths to which the government of Canada would go in order to silence a perceived threat. Overt suppression of the media under Order-in-Council was seen politically inadvisable, so the common-law charge of seditious libel would have to suffice. Although the public position was that the federal government was not involved, the trial involved active federal participation and further reveals the true intentions of the Canadian government as it attempted to fight the labour revolt.

Bainbridge was finally called to trial on 22 November 1917 at the Toronto Spring Assizes. The climate was more politically charged as a result of the fallout from the Bolshevik revolution in Russia, with stirrings of connections between socialists and the foreign Bolshevik menace beginning to appear—a precursor to the Canadian red scare that would begin in earnest after the First World War.<sup>112</sup> Given this political situation as well as the issue of the freedom of the press, the case was widely covered in the media, including *Le Devoir*, the *Montreal Gazette*, the *Ottawa Citizen*, the *Toronto Daily Star*, the *Globe*, and the *Toronto Telegram*.

Although Bainbridge had already been arraigned on the single charge re-

lated to *The Price We Pay*, the Toronto police presented more information at the trial, which would eventually prove to be more hindrance than help for the authorities. When the indictment was altered, Bainbridge's lawyer immediately raised an objection. The original indictment simply stated that Bainbridge "did publish a seditious libel contrary to the Criminal Code, Section 184." However, the presiding judge, Hodgins, changed the nature of the indictment by correcting the Section 184 typo to 134 but more importantly, added "to wit the matters contained in the annexed particulars."<sup>113</sup> Hodgins had unwittingly given Bainbridge means for an appeal even before the opening arguments.

The amended charge was critical. The original indictment had been produced by the grand jury on 6 November 1917 without specifying the exact charges other than an unspecified blanket charge of seditious libel. The new charges expanded to include eight objectionable seditious libels. Seven pamphlets were presented as evidence: the aforementioned *The Price We Pay* and *Brockway's Defence*, the World Peace Foundation Pamphlet Series, *The Peril of Conscription*, *The Call*, *The Social Revolution* and an additional unnamed pamphlet. The *Canadian Forward* issue of 10 September 1917 was also deemed seditious.

<sup>112</sup> Elliot Samuels, "The Red Scare in Ontario: The Reaction of the Ontario Press to the Internal and External Threat of Bolshevism," (Unpublished MA Thesis, Queen's University, 1971), 96. See also Donald Avery, "Dangerous Foreigners": *European Immigrant Workers and Labour Radicalism in Canada, 1896-1932* (Toronto: McClelland & Stewart, 1979).

<sup>113</sup> AO, RG 22-392, Container 276, Indictment of Isaac Bainbridge; Charged with Seditious Libel, York County, 22 November 1917.

The World Peace Foundation Pamphlet was authored by Phillip Snowden, a British Labour MP, in August 1914. It alleged that a British firm was “making torpedoes for the British Navy at Weymouth, and torpedoes with British capital in Hungary in order to destroy ships” and denounced a high-level profiteering conspiracy.<sup>114</sup> Perhaps because of the aforementioned allegations of profiteering in the Ontario nickel industry,<sup>115</sup> the pamphlet may have struck a sensitive nerve with the authorities. *The Peril of Conscription* was authored by J. Bruce Glasier, a British labourist leader, and argued that the purpose of the war was “conquest abroad and the subjection of working class democracy at home.”<sup>116</sup> *The Call* allegedly incited revolt “to aid and assist persons carrying on war” against the government, while *The Social Revolution* contained “statements that the present war is conducted by His Majesty’s Government for purposes opposed to the interests of His Majesty’s subjects in general and for the benefit of certain classes.”<sup>117</sup> Finally, the seventh document was an unnamed pamphlet “published for the purposes of organizing His Majesty’s subjects in societies for the purpose of resisting the enforcement of the law.”<sup>118</sup>

The *Canadian Forward* issue of 10 September 1917 was cited for Bainbridge’s publication of two received letters. Hazel Halliwell wrote that she was “absolutely opposed to conscription and heartily endorse[d] the efforts put forth against it.” The second, from Rebecca Buhay, was slightly more zealous: “If ever there was an earnest time in Canada that time is now! If ever the chances of propagating our principles were good, it is now . . . We must battle the enemy now in our midst! The enemy that wishes to steal the lives of our children from us.”<sup>119</sup> It is notable that Bainbridge was prosecuted for these letters, while evidently no attempt was made to pursue the two correspondents.

The trial lasted only one day. After receiving evidence from Toronto police detectives who testified that they had seized the objectionable materials from the *Canadian Forward* offices on Toronto’s Spadina Avenue, two *Canadian Forward* clerical employees testified that they had been involved in the publication of the documents. Following testimony, Judge Hodgins ruled that the witnesses could only prove the publication of *The Price We Pay* and the *Canadian Forward* issue of 10 September 1917.<sup>120</sup> Bainbridge

<sup>114</sup> AO, RG 22-392, Container 276, Exhibit C: ‘World Peace Foundation’, 22 November 1917.

<sup>115</sup> H.V. Nelles, *The Politics of Development: Forests, Mines & Hydro-electric Power in Ontario, 1849-1941* (Kingston & Montreal: McGill-Queen’s University Press, 1974), 349.

<sup>116</sup> AO, RG 4-32, Creator Ref. Code 901, Particulars in the Indictment of Bainbridge, 29 October 1917.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> AO, RG 22-392, Container 276, Exhibit D: ‘*Canadian Forward*’, 22 November 1917. The underlining was done by the Crown as part of the presentation of evidence.

<sup>120</sup> *Toronto Evening Telegram*, 22 November 1917, 15.



Canadian Forward - Toronto Trades Council Demanding Bainbridge's Release [10 June 1918, 1.]

admitted publication of these two objectionable publications.<sup>121</sup>

Crown Prosecutor Peter White then gave his exposition of his case and explained the charge to the jury. In doing so, he gave perhaps the most succinct definition of seditious libel given during the First World War: “[u]nder British law, any person has the right to oppose the passage of any bill, or to use any measure in his power to have any law repealed. But when the law is on the statute book no one has a right to advocate resistance to it.”<sup>122</sup>

The Jury adjourned and returned with a guilty verdict, but with the familiar “very strong recommendation to mercy” seen in many of the Ontario sedition cases.<sup>123</sup> While Bainbridge’s lawyer immediately moved for a reserved case on the grounds that the indictment had been amended after being approved by the grand jury,<sup>124</sup> Hodgins refused and sentenced Bainbridge to nine months imprisonment at the Burwash Prison



Farm on 28 November 1917.<sup>125</sup> In his sentencing, Hodgins presented a detailed rationale for the harsh sentence and why he, unlike other justices, had rejected the jury’s plea for clemency. “To incite resistance of law is a serious offence at any time, but doubly so at this time in Canada, when every citizen should do everything in his power to uphold the laws of the country,” Hodgins declared. Then, speaking directly to Bainbridge, “The disrespect you have shown for the leniency the court showed in allowing you to go on suspended sentence, when you were convicted on a similar charge, shows that a fine would not be adequate punishment in your case.”<sup>126</sup>

While Bainbridge’s lawyer appealed

<sup>121</sup> “Rex v. Bainbridge,” *Ontario Law Reports*, Vol. 42, Pt. 1, 208.

<sup>122</sup> *Toronto Daily Star*, 22 November 1917, 8.

<sup>123</sup> AO, RG 22-392, Container 276, Foreman’s Report, 22 November 1917.

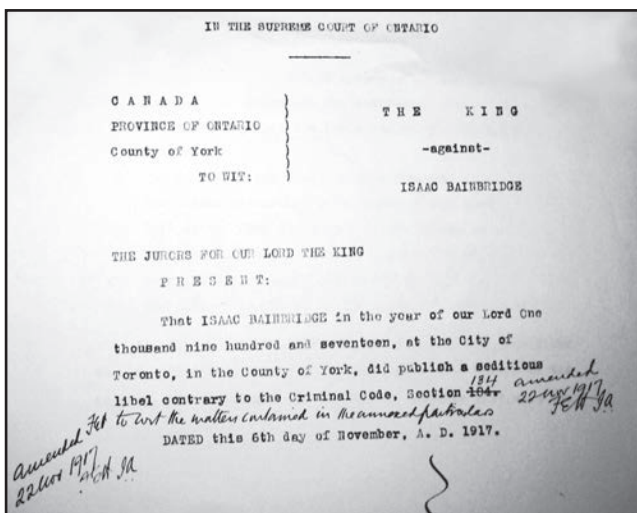
<sup>124</sup> AO, RG 22-392, Container 276, Justice Hodgins, Judgment Concerning a Reserve Case, 28 November 1917.

<sup>125</sup> Naylor, *The New Democracy*, 44.

<sup>126</sup> *Toronto Evening Telegram*, 28 November 1917, 25.

*The Amended Indictment of Bainbridge's Second Trial [AO, RG 22-392, Container 276, Indictment of Isaac Bainbridge; Charged with Seditious Libel, York County, 22 November 1917.]*

the case on the grounds of the faulty indictment, he began to serve his time at the prison farm. Socialist observers were upset. Gertrude Richardson, an influential leader in the Canadian women's and peace movements as well as a contributor to the *Canadian Forward*, was astounded that Bainbridge had been convicted "by a jury of working men,"<sup>127</sup> especially as she reviewed the letters and found nothing seditious, only that they were "full of a very beautiful, very ardent faith in Social Democracy."<sup>128</sup> The appeal proved successful, focusing on the indictment rather than the issue of Bainbridge's guilt or innocence. On 28 December 1917, the Supreme Court of Ontario convened and decided that leave to appeal should be granted as the indictment was improperly modified by the judge before the trial but after the grand jury had issued the initial indictment.<sup>129</sup> Although Bainbridge had admitted his guilt, the Supreme Court of Ontario remained focused on the legality of the trial. While as a whole the legal system was being used to suppress freedom of speech, it also ironically offered an element of freedom in that Bainbridge and



his legal team could use the mechanisms to secure his release.

The appeal itself was heard on 21 January 1918 in front of five justices of the Supreme Court of Ontario. Solicitor to the Attorney General Edward Bayly represented the Crown. Bayly argued that the evidence was all so connected that the singular charge of seditious libel was sufficient. This argument was rejected by the Supreme Court, in a long decision authored by Justice Magee, which felt it was "unfortunate that the prosecution did not adopt the course of going back to the grand jury and having the indictment put in proper shape."<sup>130</sup> Bainbridge was ordered immediately released from custody and the charges dismissed. This was announced in the *Canadian Forward*, the *Telegram* and the *Globe*, followed by a score of congratulatory letters in the 10 March 1918 *Canadian Forward*.

<sup>127</sup> It was impossible to determine the jury's socio-economic makeup in order to verify this statement.

<sup>128</sup> Roberts, *A Reconstructed World*, 207.

<sup>129</sup> "Rex v. Bainbridge," *Ontario Law Reports*, 207.

<sup>130</sup> *Ibid.*

## Continued Legal Prosecutions of Isaac Bainbridge

Despite the ruling of the Supreme Court, Bainbridge continued to face legal difficulties. Summoned to appear before the assizes of 27 May 1918, Bainbridge was sentenced to three months imprisonment for breaching the terms of his suspended sentence of 1 May 1918.<sup>131</sup> Judge Latchford declared to Bainbridge, “Your conduct has not been as good as it ought since I last let you go on suspended sentence” and sent him to serve his sentence at the Toronto Municipal Jail in Langstaff, Ontario.<sup>132</sup>

Once again the case brought protests from across Ontario. James (Jimmy) Simpson, secretary of the Canadian Labour Party and former SDPC member,<sup>133</sup> petitioned the Solicitor-General of Canada to release and pardon Bainbridge. Simpson drew great applause before the Toronto District Trades and Labour Council when he thundered that:

Bainbridge merely published what has been published in British papers and papers in Canada, but only against him has a conviction been registered. What Bainbridge published is not to be compared with the sayings

and publications of [Henri] Bourassa and others. If Bainbridge is in prison, then Bourassa should be in prison.<sup>134</sup>

Simpson’s motion was passed unanimously, with every delegate to the council signing the petition as they left the hall.<sup>135</sup> The United Farmers of Ontario and the Mount Hamilton branch of the Independent Labor Party passed similar motions.<sup>136</sup> In the Montreal labour paper *Labour World/Le Monde Ouvrier*, Michael Buhay wrote on behalf of the Montreal SDPC. Buhay declared that Bainbridge was arrested for his inviolable dedication towards the cause of labour and that “[j]e vous prie de ne pas rester indifférents quand des membres actifs de notre classe sont emprisonnés, pour la défense de la démocratie, de la classe ouvrière, de la liberté de la parole et de la presse.”<sup>137</sup>

The legal argument presented to the Solicitor-General by Bainbridge’s lawyer was that Bainbridge had already served three months imprisonment when he was falsely imprisoned in the November 1917 trial and should thus be released. After a month of deliberation, the Minister of Justice ordered Bainbridge released from custody on 29 June 1918, after a month and two days imprisonment.<sup>138</sup> Indeed, Bainbridge’s release even waived

<sup>131</sup> AO, RG 22-461-1-17, Benchbooks of Justice Latchford, Benchbook #17, 27 May 1918.

<sup>132</sup> *Toronto Daily Star*, 27 May 1918, 8.

<sup>133</sup> James Simpson would later become the first socialist mayor of Toronto in 1935. His role in the early SDPC is detailed in Gene Howard Homel, “James Simpson and the Origins of Canadian Social Democracy,” (Ph.D. diss., University of Toronto, 1978).

<sup>134</sup> *Toronto Daily Star*, 7 June 1918, 5.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Canadian Forward*, 10 June 1918, 1.

<sup>137</sup> *Labour World/Le Monde Ouvrier*, 8 June 1918, 2.

<sup>138</sup> James Naylor, *The New Democracy*, 44.

the “usual parole requirement” necessitating frequent appointments with the police.<sup>139</sup> However, Bainbridge would later be briefly arrested during the PC 2384 raids across the province due to the banning of the SDPC, receiving only a suspended sentence;<sup>140</sup> historian Ian Angus’ work on the period suggests that this leniency was because of Bainbridge’s Anglo-Saxon ethnicity.<sup>141</sup>

### Conclusion

The trials and imprisonments of Isaac Bainbridge, occurring between May 1917 and November 1918, serve as an excellent case study of how the state used sedition proceedings to prevent and limit legal freedom of expression. The selective nature of seditious libel became evident during these trials, as Bainbridge was repeatedly imprisoned for protesting the war. The law was used to suppress legal dissent. However, the institution of the law did not allow unfettered, unchecked repression. Bainbridge was able to escape lengthy imprisonment through legal technicalities and convincing arguments. Conflict between the judiciary, the police and the federal government allowed Bainbridge to obtain his release from prison, with the Ontario Supreme Court emerging as a counterweight to the profoundly illiberal prosecution. It is important, however, to remember that

Bainbridge was released on a technicality.

Justice Latchford’s admission to Bainbridge in May 1917 that in five years, his crime would no longer be considered a crime, seemed like the voice of a man who is all too aware of the risks of a seditious libel prosecution. Nonetheless, the law was on the statute book, and until the Stephens test was erased in 1951, justices had to uphold the law to which they had been sworn. This made them agents of the repressive federal government, as later events in the 1930s—especially the persecution of the Communist Party of Canada’s leadership—would show.

Ultimately, the Bainbridge case shows the wisdom of the separation of powers. Other scholars studying Canadian state trials have noted how the power of the executive had been expanded “at the expense, often, of access to the criminal courts.”<sup>142</sup> This is borne out in this case. Freedoms had decayed during the First World War, as Canada was ruled by executive fiat through cabinet Orders-in-Councils. Despite the politicization of the law book and the role of justices, they provided the one counterweight to the overwhelming executive power exemplified by Lieutenant Colonel Ernest Chambers.

The Bainbridge case provides important lessons for the contemporary situ-

<sup>139</sup> *Toronto Daily Star*, 29 June 1918, 5.

<sup>140</sup> *Montreal Gazette*, 21 October 1918, clipping in LAC, RG 6, Series E, Vol. 604, Reel T-91, File 279-7. Also in *Globe*, 21 October 1918, 6.

<sup>141</sup> Ian Angus, *Canadian Bolsheviks*, 32.

<sup>142</sup> Barry Wright and F. Murray Greenwood, “Introduction: State Trials, the Rule of Law, and Executive Powers in Early Canada” in *Canadian State Trials: Law, Politics, and Security Measures, 1608-1837* (Toronto: University of Toronto Press, 1996), 8.



ation. When the Brantford Trades and Labour Council protested Bainbridge's imprisonment in November 1917, they noted that the

history of the evolution of democracy demonstrates that men imprisoned for political offences have really been punished for opinions expressed and acts committed in advance of their time; acts and opinions which to-day are universally regarded as natural, reasonable, and normal.<sup>143</sup>

This was a very prescient statement. Seditious libel lingers in the *Criminal Code of Canada* yet it does not seem likely that it will ever regain the status it enjoyed as a political crime. However, there are troubling indications that political crimes akin to seditious libel are still being tried. Modern actions such as the current case of Muslim permanent residents being held on 'security certificates', demonstrate that the use of law to punish 'mere' thought continues.

This article has explored Bainbridge's trials and imprisonments between May 1917 and the end of 1918. It was a momentary action during the much larger Workers' Revolt of 1917-1925. Closer attention to this event puts an end to claims advanced by historians such as Desmond Morton that Anglo-Saxon socialists were necessarily treated fairly by the state. It also helps examine the problems of First World War censorship, insofar as Bainbridge was prosecuted for publishing many of the same things as the editors of *Le Devoir*, the *Toronto Star* and even the editors who reprinted Trot-

sky in the *Mail and Empire*.

This raises the most pressing, and in some ways baffling, question. Why did the heel of the government come down so harshly on Bainbridge in particular? The sources do not directly speak to this question, but a combination of factors seemingly led him to the seditious libel charges against him. Bainbridge was a prominent figure in the left movement, who had attracted a considerable amount of negative attention from well-placed members in government. From Magistrate Denison at the Toronto Police Court, to Justice Latchford (who chastised Bainbridge's behaviour as he re-sentenced him during his third trial), to Chief Press Censor Chambers and Christie in the PMO, Bainbridge prompted hostile reactions ranging from indignity to outright scheming. Bainbridge was the secretary of an ethnically-based socialist party, a double offence in the context of a Red Scare and concern over enemy aliens, and editor of a newspaper which was questioning the underpinning of the war. Furthermore, there was no doubt that Bainbridge supported the radical views expressed in *Canadian Forward*—unlike the conservative editors of the *Mail and Empire* who published Trotsky. The elements were all there to identify a dangerous and subversive individual, and once the wheels of justice began to turn, the authorities seemed determined not to let Bainbridge slip away. The state can be

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<sup>143</sup> AO, RG 4-32, Creator Ref. Code 901, Protest from Brantford Trades and Labour council, 12 November 1917.



quite harsh on those who challenge the very assumptions of liberal capitalist society, as Bainbridge discovered.

However, it must also be conceded that the courts did release Bainbridge and government intervention did reduce his May 1918 sentence from three months to one month. With nearly 60,000 men (and a few women) of the Canadian Expeditionary Force dead in France, public sentiment made it easy to suppress the freedom of speech in the interests of national security. That there was a mainstream defence of Bainbridge is extremely noteworthy. The fact that the *Star* and

*Evening Telegram* came to his defence (albeit mildly) is telling of how Canada's remnants of legal restrictions kept the state from exercising its complete power. Without the courts as a check on the powerful federal government, public sentiment and wartime fears would have allowed further authoritarian actions by the government. The courts had taken away freedoms, but they had also allowed space for resistance. Bainbridge, one of the Great War's most significant left-wing dissidents, had found many enemies, but also some friends, within the courts of liberal order.

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