

## **“Not to Be Bought, Nor for Sale” The Trials of Joseph Edward Bird**

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## RESEARCH NOTE / NOTE DE RECHERCHE

# “Not to Be Bought, Nor for Sale”: The Trials of Joseph Edward Bird

**Janet Mary Nicol**

JOSEPH EDWARD BIRD (1868–1948) gained a reputation as a radical lawyer after he established a law practice in Vancouver in 1902. Few city lawyers of his generation maintained a 36-year practice involving significant labour, civil libertarian, and criminal cases. Bird is best known for his legal defence of 376 passengers from India aboard the *Komagata Maru*, blocked from landing in Canada on 23 May 1914, a case few other lawyers would handle because of public hostility toward Asian immigration.<sup>1</sup> Bird took the unpopular stand at the time because he was “a committed socialist and attacker of injustice,” his grandson Richard Bird told the *Vancouver Sun* newspaper many decades later.<sup>2</sup> Bird also represented several trade unions, including organized coal miners in the 1913 Vancouver Island miners’ dispute and leaders of the Winnipeg General Strike. He exposed government corruption during a trial connected to the Janet Smith murder case, and in another instance, freed a First Nations man from state execution after a successful appeal and re-trial. A founding figure among BC’s labour and human rights lawyers, Bird broke significant legal ground. Yet his work has not been fully acknowledged, unlike the subsequent generation of like-minded BC lawyers, John Stanton, Harry Rankin, and Thomas Berger, who published compelling memoirs but without detailed

1. See Hugh J.M. Johnston, *The Voyage of the Komagata Maru: The Sikh Challenge to Canada’s Colour Bar*, rev. ed. (Vancouver: University of British Columbia Press, 2014) and Ali Kazimi, *Undesirables: White Canada and the Komagata Maru – An Illustrated History* (Vancouver: Douglas and MacIntyre, 2012).

2. Kim Bolan, “Racial Injustice 75 Years Ago,” *Vancouver Sun*, 20 May 1989. Also see Bird’s great-grandson Michael Bird, “Behind the Komagata Maru’s Fight to Open Canada’s Border,” *Globe and Mail*, 24 May 2014.

historical context. This biographical account aims to enrich the generational connections in Vancouver's legal and labour communities by presenting a wider perspective of Bird's work as a progressive lawyer and examining court cases that impacted on social class and racial issues in the early 20th century.

### Launching a Law Practice in Pre-war Vancouver

BIRD BEGAN HIS LEGAL CAREER in Ontario where he worked for nine years, following legal training at Osgoode Hall Law School in Toronto. He was employed in two city law firms, eventually moving to a branch office in Rat Portage, later re-named Kenora. Bird was familiar with small town living, having been born in Barrie, Ontario on 16 July 1868, the fifth of Henry and Elizabeth Bird's seven children. While practicing law in Rat Portage, he met Caroline Irwin. He was 31 years old and she 28 when they married. They had two sons, Henry in 1900 and Edward in 1901.<sup>3</sup>

Bird's sister Elizabeth and her husband Lyman Duff succeeded in encouraging Bird and his family to move to the BC coast in 1902.<sup>4</sup> Bird's brother-in-law was practicing law in Victoria and later became Chief Justice of the Supreme Court of Canada. Bird made financial investments for Duff over the ensuing years – though not all were successful. Still the two men were always “cordial” according to Duff's biographer, who also noted Bird was “well-meaning but incurably optimistic.”<sup>5</sup>

Vancouver had a population of about 29,000 and had only been incorporated 16 years when Bird was admitted to the BC bar.<sup>6</sup> He practiced law in an era of expanding bureaucracies as capital became more concentrated. Lawyers arriving in the city before him had built secure practices by century's turn and many were financially successful with their own business investments.<sup>7</sup> Bird had always been a Liberal, but shifted his support to the Socialist Party of British Columbia (SPBC) formed in 1901. He advertised his legal services in the *Canadian Socialist* (later re-named the *Western Clarion*)

3. E.O.S. Scholefield, *British Columbia: From the Earliest Time to the Present*, vol. 3, (Vancouver: S.J. Clarke, 1914), 125–126.

4. Joseph Edward Bird, “Memoir” (Chilliwack: unpublished, 1939), 48. A copy of Bird's 167 page unpublished manuscript was donated to the libraries at the University of British Columbia and the University of Victoria by his grandson, Richard Bird. Also note: Bird had another married sister Bertha Bickell, who lived in Vancouver.

5. David Ricardo Williams, *Duff: A Life in the Law* (Vancouver: University of British Columbia Press, 1984), 82.

6. According to Statistics Canada census data, the city of Vancouver had a population of 26,133 in 1901. (South Vancouver and Point Grey were not included prior to 1931.) *Wikipedia*, s.v. “Demographics of Vancouver,” last modified 31 July 2016, [https://en.wikipedia.org/wiki/Demographics\\_of\\_Vancouver](https://en.wikipedia.org/wiki/Demographics_of_Vancouver).

7. Robert A.J. McDonald, *Making Vancouver: Class, Status and Social Boundaries, 1863–1913* (Vancouver: University of British Columbia Press, 1996), 151.



**Joseph Edward Bird practiced law in Vancouver from 1902 to 1938, gaining a reputation as a radical lawyer involved in significant labour, civil libertarian, and criminal cases.**

Courtesy of the Bird family.

in August 1902 and continued to advertise within its pages for the next six years.<sup>8</sup> The SPBC was a marginal but influential group; a precursor to left-wing parties, including the Co-operative Commonwealth Federation (CCF). In 1904, the party merged with other groups to form the Socialist Party of Canada (SPC). Bird and other members, many of them trade unionists, maintained a moderate socialist stand, despite a revolutionary mandate. SPC candidates in provincial elections garnered an impressive percentage of the popular vote. On the eve of World War I the SPC was estimated to have 3,000 members in BC.<sup>9</sup>

Christopher Foley, a long-time labour supporter played a role in connecting Bird to the trade union community, and when Foley ran as a Labour candidate in a 1903 federal by-election in Vancouver, Bird served as his political agent. Many disaffected Liberals came together for the campaign, primarily to attack

8. The advertisement appeared weekly from 2 August 1902 to 1 February 1908 in *Citizen and Country*, renamed *Canadian Socialist*, and in 1904, *Western Clarion*.

9. See Peter Campbell, *Canadian Marxists and the Search for a Third Way* (Montréal: McGill-Queen's University Press, 1999), 102. For anecdotal accounts of pre-war socialists in Vancouver, see Dorothy G. Steeves, *The Compassionate Rebel: Ernest E. Winch and His Times* (Vancouver: Boag Foundation, 1960), 13–14.

Liberal party patronage and corruption, Bird recounted in an unpublished memoir written after he retired in 1938. The Liberal opponent won the riding by a small majority, Bird remembered, but the Liberals “got a real scare.”<sup>10</sup>

Bird steadily gained trade union clients, as organized workers engaged in frequent and long strikes, primarily to achieve legal recognition. He worked with the moderate leaders of the Vancouver Trades and Labour Council (VTLC) but also the militant American-based Industrial Workers of the World (IWW), whose leaders organized among unskilled, transient, and immigrant workers around the province.<sup>11</sup>

Bird envisioned a future where working people gained political power peacefully, as revealed in his talk on “Social Evolution” at a Sunday evening SPC event in March 1903. Referring to the writing of Benjamin Kidd, Bird proposed that when socialism arrived, opposition by the middle and ruling classes “would not be strong or persistent.” Propaganda should be diligent, Bird advised, and contain “a wise tolerance” to enlist the co-operation of the “most thoughtful minds.”<sup>12</sup> Bird spoke again at a public gathering in April to protest the murder of Frank Rogers, a socialist and union organizer, shot on a United Brotherhood of Railway Employees’ (UBRE) picket line. Bird and his associate, Foley, were among those condemning the Canadian Pacific Railway (CPR) and calling on the government to forbid employers from arming “special” police.<sup>13</sup>

The UBRE hired Bird soon after to represent their members at a Royal Commission headed by BC Supreme Court Justice Gordon Hunter to investigate labour disputes in the province. Foley was at Bird’s side as an advisor when the inquiry arrived in Vancouver on 3 June 1903. Bird argued for workers’ rights and criticized employers’ tactics to defeat unions. He accused the CPR of circulating a blacklist of employees involved in the UBRE strike, an allegation denied by the CPR’s lawyer, Edward P. Davis. When the Royal Commission delivered its final report, few workers’ concerns were acknowledged. Socialism and American-based unions – and specifically the UBRE – were condemned.<sup>14</sup>

10. Bird, “Memoir,” 66.

11. See Mark Leier, “Solidarity on Occasion: The Vancouver Free Speech Fights of 1909 and 1912,” *Labour/Le Travail* 23 (Spring 1989): 39–66. Also see Mark Leier, *Where the Fraser River Flows: The Industrial Workers of the World in BC* (Vancouver: New Star Books, 1990). Bird was legal counsel for SPC and IWW members arrested for speech-making on street corners in 1909.

12. *Western Socialist*, 20 March 1903.

13. *Western Socialist*, 24 April 1903.

14. Canada, Sessional Papers, 1904, no. 36a, *Royal Commission on Industrial Disputes in British Columbia: Canada*, Department of Labour (Ottawa: King’s Printer, 1904), Minutes of Evidence, 513–755. For more details on the commission’s role in breaking the UBRE see J.H. Tuck, “The United Brotherhood of Railway Employees of Western Canada, 1898–1905,” *Labour/Le Travail* 11 (Spring 1983): 63–88.

"I did what I could for the cause," Bird wrote in his memoir, "but it was a fore-gone conclusion that Labor would be set back in its place."<sup>15</sup>

Bird, however, persisted in his support of labour. "I have myself the honour of belonging to the Canadian Socialist Party for years," Bird told a gathering in the weeks before World War I, "and I have never seen a Socialist yet who was not a decent man."<sup>16</sup> He acknowledged his liberal influences in the same speech: "I was born to a good faith as a Methodist and as a Liberal. I am not sure that I have got away from it because I associated in BC with Socialists but I got thinking for myself instead of taking things second hand."<sup>17</sup> Bird described SPC members more radical than him, in his memoir. They would "... study the writings of Karl Marks [sic] the German propagandist of Socialism which was then being discussed freely among all classes and particularly the Laborites." By 1911 the party had a good library, Bird also recalled, "with all the socialist classics and many other books on various subjects."<sup>18</sup> Walter Wallis Lefeaux, a long-time friend to Bird and 13 years his junior, was among these more committed SPC members. Lefeaux visited Russia twice after the Bolshevik revolution in 1917, "to see for himself" a country then regarded as a workers' paradise, Bird recalled in his memoir. "I could not follow him in his close association with the Socialist Party," Bird wrote, "but Lefeaux was both sincere and active in this work."<sup>19</sup>

Other progressive lawyers practiced in the city during the pre-war years, though few were socialists. Wallace de Beque Farris, a Liberal party supporter, moved to Vancouver from New Brunswick a year after Bird and began advertising his legal services in the *BC Federationist*. Farris "was considered to be quite radical," according to a biographer.<sup>20</sup> Israel Rubinowitz, a lawyer of Jewish heritage and British Columbia's second Rhodes Scholar, established an independent firm in the city in 1912. His labour and immigration cases were periodically reported in the socialist and labour press.<sup>21</sup>

Vancouver's majority population was of British heritage. Widespread opposition existed among the mainstream population toward immigrants from China, Japan, and India, partly because employers paid lower wages to these

15. Bird, "Memoir," 67.

16. Minutes of Hindu Mass Meeting Held in Dominion Hall, Vancouver, British Columbia, 21 June 1914, pp. 12, H.H. Stevens Papers, Box 505-C-6, folder 350, City of Vancouver Archives.

17. Minutes of Hindu Mass Meeting, 12.

18. Bird, "Memoir," 65.

19. Bird, "Memoir," 141.

20. David Ricardo Williams, *Just Lawyers, Seven Portraits* (Toronto: University of Toronto Press, 1995), 161.

21. See for example, "Lively Clashes at Perjury Trial: Mr. Rubinowitz Has to Fight to Get His Evidence," *BC Federationist*, 28 November 1919. Also note: Rubinowitz died of a heart condition, aged 41. "Young Vancouver Lawyer Buried," *Vancouver Sun*, 16 August 1923.

“alien” workers, undermining wages of “white” workers.<sup>22</sup> Tensions between racial groups were brought to the fore during Bird’s one-year term as an alderman on Vancouver city council that began in January 1907.<sup>23</sup> The mayor, Alexander Bethune, was among the many city residents who were members of the Asiatic Exclusion League (AEL), an organization opposing Asian immigration. When an AEL-organized rally occurred at City Hall on 7 September 1907, some participants broke from the overflow crowd and raced through the streets, smashing windows of shops and homes in nearby Chinese and Japanese communities. A volatile atmosphere persisted for several days. The federal government sent Deputy Minister of Labour William Lyon Mackenzie King to investigate, despite the mayor’s assurance that all was under control.<sup>24</sup> At an emergency meeting, city councillors, with the exception of Bird, voted to hire additional police.<sup>25</sup> Bird may have believed this action would increase tensions, as he knew what happened when “special” police were hired during labour disputes. Bird concluded his term in December and did not seek re-election. His foray into politics was over, but he would continue to confront tensions between race and social class in the courts.

Bird moved offices several times as he built his practice. He partnered with conservative lawyers, broadening the firm’s clientele and allowing him to pursue less lucrative but important cases. These politically diverse partners also indicate a certain degree of tolerance among the city’s lawyers. As the practice grew, students-at-law joined the firm and Bird supported and influenced many of them, including criminal lawyer Thomas Francis Hurley.<sup>26</sup>

Despite his SPC affiliation, Bird also engaged in corporate law, investing in capitalist ventures and holding positions on the boards of private companies. Lawyers were part of an expanding middle class as the city’s population

22. See Patricia Roy, *A White Man’s Province: British Columbia Politicians and Chinese and Japanese Immigrants 1858–1914* (Vancouver: University of British Columbia Press, 1989).

The SPC was involved in organizing workers of Japanese and Chinese heritage, despite racial tensions, during World War I. See Peter Campbell, “Making Socialists: Bill Pritchard, the Socialist Party of Canada, and the Third International,” *Labour/Le Travail* 30 (Fall 1992): 54.

23. The SPC discussed running Bird as a candidate for mayor but later decided against fielding candidates in favour of mustering their resources for the provincial election. See “Bird May Run as Socialist,” *The Vancouver Daily Province*, 6 November 1906 and “Socialists Drop out of Municipal Fight,” *The Vancouver Daily Province*, 26 December 1906.

24. Julie F. Gilmour, *Trouble on Main Street: Mackenzie King, Reason, Race and the 1907 Vancouver Riots* (Toronto: Allan Lane Canada, 2014).

25. Vancouver City Council Minutes, 10 September 1907, Box 23-B, vol. 14, MCR-1-14, City of Vancouver Archives.

26. Hurley, an immigrant from Wales of Irish origin was employed as a student-at-law in Bird’s firm the year he arrived to the city in 1911. Hurley went on to have a fifty-year career in Vancouver. See Janet Mary Nicol, “Longevity in the Courts,” *British Columbia History* 46, 2 (Summer 2014): 29–36.

reached 100,000 in 1911. Bird's family lived in a middle-class neighbourhood on the city's west side and he employed a live-in servant.<sup>27</sup>

In 1912 Bird and his partners moved offices for the final time to the Metropolitan Building, a nine-storey Edwardian structure at 837 West Hastings, which still stands. Bird's office gave him a view of the CPR railway station and Burrard Inlet. A member of the Terminal City Club, he had only to descend to the main floor, to enjoy the club's amenities. Bird was also a member of the Freemason's Club and, later, the Vancouver Yacht Club.<sup>28</sup>

Bird set up a second law firm for a short time in Nanaimo on Vancouver Island in 1912, along with Clarence Darling (a former articling student) and Arthur Leighton. He made the move after winning a litigation case for an injured miner who was denied financial compensation because he was unable to prove the company was negligent.<sup>29</sup> In that same year on 16 September, Vancouver Island coal miners, members of the United Mine Workers Union of America (UMWA), were locked out by Canadian Collieries Limited.<sup>30</sup> As the dispute continued to August 1913, riots broke out, culminating in a call-out of the militia by the Premier of British Columbia. More than 200 union miners were arrested for assaulting strike-breakers and special police, as well as damaging and looting homes. The *BC Federationist* ran a photograph of Bird and Farris on the newspaper's front page, announcing the two lawyers would be defending the arrested miners. Rubinowitz was hired by a few of the miners' families, to Bird and Farris' disapproval.<sup>31</sup>

Bird and his legal team advised the 166 miners held over for trial to enter a guilty plea, hoping "speedy" trials would appease the court and lighten punishment. Some of the accused agreed, while others opted for trials by jury. The defence team assumed presiding Judge Charles Howard Barker would listen to their cases and became worried when he secured Judge Frederick William Howay, who travelled from New Westminster on the British Columbia mainland, to take his place.<sup>32</sup> Despite a strenuous legal defence beginning 9 October,

27. Henderson's Greater Vancouver Directory, 1912 indicates the Bird family lived at 375 12th Avenue West. *Henderson's Greater Vancouver, New Westminster and Fraser Valley Directory Part 1* (Vancouver: Henderson Publishing, 1912), 568. Canada's 1911 Census lists a servant residing at the Bird household. "1911 Census of Canada," Vancouver City, Vancouver, British Columbia, Enumeration District 6, Page 24, Lines 24–28, *Automated Genealogy, Library and Archives Canada*, [automatedgenealogy.com](http://automatedgenealogy.com).

28. *Who's Who in Western Canada: A Biographical Dictionary of Notable Living Men and Women of Western Canada*, vol. 1 (Vancouver: Canadian Press Association, 1911), 110.

29. Bird, "Memoir," 165.

30. John Norris, "Vancouver Island Coal Miners, 1912–1914: A Study of an Organizational Strike," *BC Studies* 45 (Spring 1980): 56–72.

31. *BC Federationist*, 3 October, 1913. Bird and Farris considered Rubinowitz inexperienced as he was in the first year of practising law in British Columbia.

32. *BC Federationist*, 3 October, 1913. The reason for this is not explicitly given in the



Judge Howay meted out severe sentences within the tense atmosphere of the Nanaimo courtroom. More trials were held at New Westminster, with Justice Aulay Morrison presiding, this time, with a jury. When trials closed on 23 March 1914, some of the accused had been pardoned while others were found guilty, the longest sentenced to four years. An agreement between the UMWA and the employer was finally reached in August, but many strikers were black-listed and the union ultimately broken. About eight weeks after war broke out in Europe, the last miner was released from Oakalla Prison Farm, concluding a bitter struggle. Bird gained valuable experience and recognized once again, the limitations of the court to protect working people against the punitive power of the state.

### The Komagata Maru Case

BIRD HAD BEEN REPRESENTING the Khalsa Diwan Society, a non-profit organization advocating on behalf of Indo-Canadians of the Sikh faith, for several years.<sup>33</sup> Because Indo-Canadians were among the disenfranchised, they could not become lawyers. In accordance with a British Columbia Law Society regulation, they were dependent on “white” lawyers such as Bird.<sup>34</sup> Rahim, an executive member of the Khalsa Diwan Society, was also on the executive of the Sikh chapter of the SPC and he played an important role as a broker when a lawyer was required.<sup>35</sup>

Bird worked on behalf of these clients to win a legal victory in the case of *Rex vs. Thirty Nine Hindus*, challenging Canada’s continuous passage law and shaking the legislatures of British Columbia and Canada. As a result, 35 passengers arriving on the ship *Panama Maru* were permitted to enter Canada in 1913. Parliament knew it was impossible for Hindus to come to a Canadian port by a continuous journey, Bird had argued before Chief Justice Gordon Hunter. He accused the federal government of employing a “subterfuge” in order to ban “Hindus as a race” from entering Canada. Bird asserted “the court ought to be astute, if possible, to defeat the alleged injustice.”<sup>36</sup> In his ruling

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newspaper report. The defence team may have believed a judge with a stake in the small community would be less punitive in sentencing.

33. Bird, “Mémorial,” 88.

34. Lisa Rose Mar, *Brokering Belonging: Chinese in Canada’s Exclusion Era, 1885–1945* (Toronto: University of Toronto Press, 2010), 49–68.

35. Rahim is listed in SPC Minutes published regularly in the *Western Clarion* in 1913. Also see Peter Campbell, “East Meets Left: South Asian Militants and the Socialist Party of Canada in British Columbia, 1904–1914,” *International Journal of Canadian Studies/Revue internationale d’études canadiennes* 20 (Fall/Automne 1999), 46–50.

36. Reference to Canada, *Immigration Act 1913*, Carswell BC 273, BC Supreme Court, Chambers, 1913 5W.W.R. 686, 26 W.L.R. 319. Harain Singh, one of the *Panama Maru* passengers, was selected to test the immigration law.

Chief Justice Hunter agreed, concluding the continuous passage act went beyond the Immigration Act and was therefore invalid.

Given this legal victory, when the *Komagata Maru* carrying 376 passengers arrived in Vancouver harbour in the spring of 1914, few suspected the steamship would become a floating detention centre for 61 days. Passengers were forbidden to disembark and Bird, working on behalf of Rahim and a shore committee of fifteen Indo-Canadian residents, was blocked from boarding the ship. Officials offered instead to deliver correspondence on Bird's behalf to his clients.<sup>37</sup> Bird appealed to officials in Ottawa, but was told he would have to accept whatever arrangement the local immigration agent, William C. Hopkinson, deemed appropriate.<sup>38</sup>

Bird spoke at a fundraising meeting for the passengers on 21 June, organized by the Khalsa Diwan Society and United India League at the Dominion Hall in downtown Vancouver. More than 400 Indo-Canadians and 125 of their socialist allies attended. In his address, Bird compared the struggles of his Irish ancestors who emigrated to Canada because of poverty and oppression, to those of the passengers from India aboard the *Komagata Maru*. "Now gentlemen," he told the audience, "they are coming out here and knocking politely at the door of Canada and asking for the privilege of coming in and of coming in lawfully."<sup>39</sup> Audience members stomped their feet when Bird said the Immigration Department was "the most autocratic of our institutions." "They talk about socialist and anarchists," Bird also said. "There is no set of anarchists in Canada like the Immigration Officials who defy all law and order..."<sup>40</sup>

Leading the charge against Bird's case was federal Member of Parliament Herbert Stevens, Conservative representative for Vancouver Centre for several years. About 1,000 people attended a meeting he helped to organize, to oppose the passengers' entry in to Canada. Stevens spoke in favour of a "white Canada" and when he mentioned Bird, there were "hisses and prolonged jeers" from the audience, according to the *Vancouver Sun*.<sup>41</sup>

When Bird was finally able to appear before the BC Court of Appeal in Victoria on behalf of the *Komagata Maru* passengers, he was accompanied by Robert Cassidy, who had been appointed King's Counsel (KC) and was a Conservative Party supporter.<sup>42</sup> Munsha Singh, one of the passengers, was permitted ashore for the test case. Among his arguments, Bird emphasized that

37. Johnston, *The Voyage of the Komagata Maru*, 48.

38. For more on Hopkinson's role, see Reg Whitaker, Gregory S. Kealey, and Andrew Parnaby, *Secret Service: Political Policing in Canada: From the Fenians to Fortress America* (Toronto: University of Toronto Press, 2012), 53.

39. Minutes of Hindu Mass Meeting, 6–7.

40. Minutes of Hindu Mass Meeting, 9.

41. *Vancouver Sun*, 24 June 1914.

42. "R. Cassidy, KC, 90, Dies at Victoria," *Vancouver Sun*, 20 May 1947.

the passengers were British subjects. Nevertheless, the judges ruled against the applicants, asserting the government had the constitutional right to deny them entry to Canada.

During the proceeding, Bird received anonymous death threats by telephone and letter, the incidents followed by the cancellation notice on two accident insurance policies.<sup>43</sup> At the urging of his law partner, Albert MacNeill, Bird and his family travelled out of the city temporarily. MacNeill ensured that the welfare of the *Komagata Maru* passengers was considered in preparation for their return journey. As the *Komagata Maru* sailed out of the harbour under military escort, a large gathering of unsympathetic city residents lined the shore and cheered.<sup>44</sup>

### The War Years and Aftermath

BIRD CONTINUED TO MENTOR young lawyers, among them his nephew, Henry Irvine Bird. He was already a student-at-law in Bird's firm when World War I began in August 1914. The young Bird left his position to enlist that September, his uncle promising him a position when he returned. Henry Bird survived a severe injury on the western front to return and complete his training. He would become Chief Justice of the British Columbia Court of Appeal.<sup>45</sup>

In 1916, Bird's eldest son Henry, aged sixteen, enlisted against his father's wishes as a private in the University Company, later joining the Air Force. After his discharge, Henry returned to the city and worked as an investment dealer. Henry would marry and have two sons.<sup>46</sup> Bird's younger son, Edward, would follow his father's passion for justice, joining his law firm a decade later. He also married, but had no children. Also during the war years, Bird's associate in the labour field, Farris, was appointed Attorney General in 1917 and honoured with a KC. Soon after his admission to the BC Liberal cabinet, Farris

43. Bird, "Memoir," 93–94.

44. Bird was contacted by Gurdit Singh, who survived the return journey. He requested the case file and Bird obliged. Singh subsequently wrote a book about the ordeal. See: Baba Gurdit Sing, *Voyage of Komagata Maru or India's Slavery Abroad* (1928; New Delhi: Unistar and Punjab Centre for Migration Studies, 2007). Simon Fraser University has a collection of materials related to the incident and is in the process of translating a diary kept by passenger on board the *Komagata Maru*.

45. Terry French, "City Visit, Talk Began Appeal Court journey," *Vancouver Sun*, 8 September 1964.

46. Bird, "Memoir," 104. Bird's son Edward trained at Osgoode Hall, articulated with his father, and was called to the British Columbia bar in 1925. He died while still practising law in 1955, aged 54. See *Vancouver Sun*, 11 August 1955. According to Bird's grandson Richard Bird, Edward was a "dedicated CCFer" (Telephone interview, 1 April 2016). Now retired, Richard Bird was a full-time labour arbitrator for the last 19 years of his career and is past-president of the Arbitrators' Association of British Columbia.

joined the exclusive Vancouver Club. His days as a radical lawyer were clearly over.<sup>47</sup>

In the final year of the war, Bird's long-time socialist friend Lefeaux became a student-at-law in his firm.<sup>48</sup> Also training with Bird in 1918 was Gordon Cumyow, son of Canadian-born Won Alexander Cumyow, a prominent court translator and legal broker in the Chinese-Canadian community. Bird inquired to the law society about Gordon Cumyow writing the bar examination, to no avail. This restriction was due to the stipulation that applicants must be on the voters list – and residents of Chinese (and Japanese) heritage were not.<sup>49</sup> Systemic discrimination among visible minorities was especially severe for Chinese newcomers, the only immigrants to Canada required to pay a head tax from 1885 to 1924, followed by total exclusion until 1947. Women were denied the right to vote in British Columbia until 1917, although in 1912, Farris' wife Evelyn was instrumental in convincing the provincial government to exempt women from the law society's rule. Bird was among the few to defy prevailing prejudices, which included his assistance to Cumyow and employment of Edith Patterson, the second woman in the province called to the bar in 1918.<sup>50</sup>

During the war years, the federal government conducted surveillance activities against "enemy aliens" but also kept watch on socialists and trade unionists, some of them war resisters protesting conscription in 1917. As noted by labour historians, it was "in the crucible of world war and class war" that the Canadian secret service was born.<sup>51</sup> Postwar Vancouver had the greatest number of political "agitators" among Canadian cities, according to the RCMP documents compiled between 1919 and 1924.<sup>52</sup> Bird, Lefeaux, and Rubinowitz were among those under police surveillance – the only British Columbia lawyers on this RCMP watch list. In one report, an undercover agent observed

47. Williams, *Just Lawyers, Seven Portraits*, 162. Farris concluded his career with an appointment to the Canadian Senate. Bird's law partner MacNeill, a Conservative, was also a member of the Vancouver Club, which as of 1911, required a "careful investigation" of potential members' social and business position – undoubtedly excluding socialists. See Reginald H. Roy, *The Vancouver Club: First Century 1889–1989* (Cloverdale: Friesen & Sons, 1989), 84.

48. *Henderson's Greater Vancouver City Directory* (Vancouver: Henderson Publishing, 1918), 637. Bird also mentions, with fondness, his friendship with Lefeaux in his memoir, 141.

49. Joan Brockman, "Exclusionary Tactics: The History of Women and Visible Minorities in the Legal Profession," in John McLaren, Hamar Foster, David H. Flaherty, eds., *Essays in the History of Canadian Law*, vol. 6 (Toronto: University of Toronto Press, 1995), 521.

50. Patterson went on to become a judge in juvenile court.

51. Whitaker, Kealey, Parnaby, *Secret Service*, 61.

52. Gregory S. Kealey and Reginald Whitaker, eds., *R.C.M.P. Security Bulletins: The Early Years, 1919–1929* (St. John's: Canadian Committee on Labour History, 1993), 17.

Bird's presence at a SPC meeting, noting he was a legal advisor to the One Big Union, the Industrial Workers of the World, and a garment union.<sup>53</sup>

## The Russell Case

WHEN THE WINNIPEG GENERAL STRIKE occurred in May 1919, Bird travelled to the prairie city to assist with strike leader Robert Boyd Russell's defence, along with Lefeaux, still a law student in his firm, and Robert Cassidy, lead counsel, who had joined Bird's firm after MacNeill retired.

"The seven men who were indicted never had a chance of success," Bird recalled in his memoir.<sup>54</sup> "The trial of Russell was a test case," Bird also recounted, "made and prepared with the greatest care."<sup>55</sup> The defence planned to argue that the leaders were not conspiring to violently overthrow the state and that Russell, as a paid union representative, was "doing his job" taking directions from the rank and file. Bird cautioned the court "the revolutionists of today would be the prophets of tomorrow," in a fiery and lengthy opening defence of his client – and of all working people.<sup>56</sup> He also argued that union organizing and socialist activities were legal and accused the Crown of becoming "panic stricken" in their reaction to the strike.

The defence was frustrated at every turn as the trial progressed. The Crown lawyer consumed a great deal of time reading left-wing literature to the court, for instance. "Mr. Bird also read the constitution of the SPC to show that the party was opposed to violence and bloodshed," according to a *BC Federationist* article.<sup>57</sup> Bird had gathered evidence about Harry Daskaluk, an undercover agent, who had been offered \$500 by the Crown to give false evidence against his client. As proof, he had letters by other witnesses (published in the *BC Federationist*), but the court ruled against admittance of Daskaluk's testimony and related evidence.<sup>58</sup> Franco Zaneth, hired by the Royal North-West Mounted Police (RNWMP) and operating under the assumed name Harry Blask, was also an undercover agent and a star Crown witness. Blask had attended the Western Labour Conference that launched the One Big Union, posing as a socialist. The RNWMP did not want to expose the cover of their valuable labour spy by

53. Kealey and Whitaker, *R.C.M.P. Security Bulletins*, 227. The RCMP File 330 on Bird, J. Edward (p. 227) and Lefeaux, W.W., File 63 (p. 384).

54. Bird, "Memoir," 105. Also see Reinhold Kramer and Tom Mitchell, *When the State Trembled: How A.J. Andrews and the Citizens' Committee Broke the Winnipeg General Strike* (Toronto: University of Toronto Press, 2010).

55. Bird, "Memoir," 106.

56. *BC Federationist*, 19 December 1919.

57. *BC Federationist*, 26 December 1919.

58. *BC Federationist*, 19 December 1919. Also see *The Indicator*, (formerly *The Western Clarion*) 20 December 1919.

putting him on the stand, but Andrews was able to override their objection. Blask's testimony secured Russell's conviction.<sup>59</sup> Russell was sentenced to two years in Stony Mountain Penitentiary. Returning to Vancouver, Bird reported on the Russell trial to a keenly interested audience at the VTLC Labor Temple. He criticized the Crown's tactics and the judge's final charge to the jury.<sup>60</sup>

"Mr. Cassidy carried the burden of the defence and did it as well as anyone could," Bird recalled in his memoir.<sup>61</sup> "These men on trial were all men of some education, men read in their subject, best beloved – socialism, from which they saw in the future the bettering of the condition of the worker and in this they were most sincere."<sup>62</sup> "I never went back to finish the trial of the balance of the prisoners," Bird also wrote. "I had no heart, as the result was a foregone conclusion."<sup>63</sup>

In the same summer of the Winnipeg General Strike, 27 members of the Russian Workers' Union in BC were arrested and threatened with deportation, allegedly for subversive activities. Bird's son, Henry acted for the local defence committee and Rubinowitz defended several workers in court. Thirteen of the twenty-seven men were found guilty but eventually released in December 1920 and not deported – an important victory for the left, considering the intensity of the 1919–1920 "red scare" period.<sup>64</sup>

There is less evidence of Bird's public profile as an active socialist after 1920. Lefeaux, in contrast, continued his participation and joined the Independent Labour Party in 1925, when the SPC folded. After completing his articles at Bird's firm in 1925, Lefeaux became a partner with Bird and his son. Three years later Lefeaux opened his own legal practice, remaining in the same building to 1951. Lefeaux had been running in British Columbia elections starting in 1907 and was finally elected as a CCF candidate in 1941–1945 in Vancouver Centre.<sup>65</sup> Given the workplace proximity of Lefeaux and Bird, it can be assumed Bird was informed about socialist activities. Bird's memoir suggests, that he turned most of his attention toward securing his investments and courtroom work, still defending marginalized and disempowered clients. In an interview with this author, Bird's grandson, Richard Bird, speculates his grandfather may have become "disenchanted" by the excesses created by

59. Blask's background and role as a labour spy is detailed in Whitaker, Kealey, and Parnaby, *Secret Service*, 60–61 and 84–86. He changed his name from Franco Zanetti to Frank Zaneth when he immigrated to Canada from Italy.

60. *BC Federationist*, 9 January 1920.

61. Bird, "Memoir," 105.

62. Bird, "Memoir," 107.

63. Bird, "Memoir," 107.

64. See Janet Mary Nicol, "Like a Bolt from the Blue," *The Jewish Independent*, Vancouver, July 2015 for a detailed account of Rubinowitz's defence of the Russian workers.

65. Lefeaux was married with no children and died in 1972 in West Vancouver, aged 91.

the Russian revolution, explaining an apparent “retreat” from political life in the 1920s and 1930s. Bird cautions his speculation derives from second-hand information, as his grandfather, whom he recalls as “kind and loving,” died when he was only eleven years old.<sup>66</sup>

Bird remained disaffected with mainstream political parties as is exemplified in his attack on political corruption within the provincial Liberal Party, while defending two clients, Oscar Robinson, a private detective, and his son William. The Robinsons were connected to the 1924 murder of Scottish nanny Janet Smith and were charged with their role in the abductions of Wong Foon Sing, a servant working alongside the nanny in the wealthy Vancouver neighbourhood of Shaughnessy. Wong Foon Sing had discovered Janet Smith’s body and became a suspect. Vigilantes kidnapped and tortured him on two separate occasions, though he insisted he was innocent. After Wong Foon Sing’s release following the second kidnapping, he was arrested by the police, tried for murder and acquitted.<sup>67</sup>

The Robinsons were subsequently detained for their role in the vigilante actions and with Bird as counsel, Oscar Robinson testified in court that British Columbia Attorney General Alexander Manson approved the kidnappings and assured him immunity, as conveyed by government staff assistant, Malcolm Jackson. Robinson’s wife affirmed this testimony. When Manson took the stand, he denied having any prior knowledge of the abductions. In his summation to the jury, Bird accused others of whitewashing the case to protect the Attorney General. “One or other of these is an awful liar,” Bird said, “Robinson and his wife or the Attorney General and Jackson. It is for you to determine.”<sup>68</sup> Bird told the jury the verdict would have a major impact on the administration of justice in British Columbia. He attacked the government and police for not investigating the kidnappings from the outset.<sup>69</sup> “Before the Attorney General was put into the box,” Bird wrote in his memoir, “I was approached by a prominent KC of Vancouver and urged to go easy with the Attorney General, and if I did, there was a KC in it for me. I told him I was not to be bought nor for sale and would do my best for my client.”<sup>70</sup>

Robinson was found guilty and given one year in jail, though his son was released. Manson’s reputation was damaged and his ambition to become premier was no longer feasible, although he would later be appointed a Justice of the British Columbia Supreme Court.

66. Richard Bird, telephone interview with author, 1 April 2016.

67. Ian MacDonald and Betty O’Keefe, *Canadian Holy War: A Story of Clans, Tongs, Murder and Bigotry* (Victoria: Heritage House, 2011); Edward Starkins, *Who Killed Janet Smith?* (Toronto: Macmillan, 1984).

68. MacDonald and O’Keefe, *Canadian Holy War*, 173.

69. MacDonald and O’Keefe, *Canadian Holy War*, 173.

70. Bird, “Memoir,” 134.

Bird's legal career culminated in his tenacious work on the appeal and re-trial of Joseph Sankey. The 1926 murder case was brought to Bird's attention by the Chief of the Tsimshian First Nation at Fort Simpson, British Columbia. Bird had assisted the Chief with a legal matter in 1905, as he recounted in his memoir.<sup>71</sup> Now the Chief was asking Bird to take on the case of Sankey, a 25-year-old resident of the reserve in northern British Columbia, found guilty of murder at Port Essington and sentenced to hang 16 February 1927.<sup>72</sup>

The victim in the murder case was Loretta Chisholm, a 23-year-old teacher originally from Vancouver, who had set out for a walk in the northern British Columbia village before breakfast. She never returned. The next day her body was found a short distance off a popular walking trail. Sankey, living temporarily in Port Essington while employed in seasonal work at the cannery, was suspected by police. Based on circumstantial evidence, the young First Nations man was arrested. After several hours of intense questions, he made a "voluntary" confession, followed by jury trial and a conviction. He was sentenced to hang at Oakalla Prison Farm in Burnaby.

Bird took up the case, advocating within a criminal justice system prejudicial toward aboriginal people.<sup>73</sup> Among the few sympathetic lawyers working on behalf of First Nations people in early BC were Arthur O'Meara (1859–1929) and Henry Castillou (1896–1967). More exceptional was Andrew Paull (1892–1959), of the Squamish Nation in North Vancouver, who articulated under Vancouver lawyer Hugh St. Quentin Cayley in 1907 for four years but did not qualify for the bar exam as an on-reserve First Nations resident. Still Paull was a highly effective legal broker and advocate for First Nations people.<sup>74</sup>

Bird visited Sankey at Oakalla Prison Farm to prepare the appeal process, observing his grim conditions on death row. "Before the case was ended I thought he would surely die," Bird wrote. "He had broken out in sores and I thought them tubercular."<sup>75</sup> Sankey could not read so Bird read the evidence to him. "He discussed the whole evidence most intelligently," Bird wrote, "and

71. Bird, "Memoir," 126.

72. Christopher Harvey, Q.C., "Rex v. Joseph Sankey: Guilty without a shadow of a doubt – Part 1 and 2," *The Advocate* 69 (September 2011 and November 2011).

73. Diane Newell, "Belonging-Out of Place: Women's Travelling Stories" in Myra Rutherdale and Katie Pickles, eds., *Contact Zones: Aboriginal and Settler Women in Canada's Colonial Past* (Vancouver: University of British Columbia Press, 2005), 261; Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999).

74. See Mary Haig-Brown's article, "Arthur Eugene O'Meara: Servant, Advocate, Seeker of Justice" in Celia Haig-Brown and David A. Nock, eds., *With Good Intentions: Euro-Canadian and Aboriginal Relations in Colonial Canada* (Vancouver: University of British Columbia Press, 2006); Janet Mary Nicol, "The Serpent Slayer," *Canada's History* (Feb–March 2015).

75. Bird, "Memoir," 127.



explained the circumstances under which the Chief of the Provincial Police got these statements and gave me much assistance.”<sup>76</sup>

The British Columbia Court of Appeal ruled against Bird’s application for a re-trial, though two of the five judges saw merit. Bird lodged his next appeal to the Supreme Court of Canada and this time, the majority of judges ruled in favour. Bird then succeeded in having the trial moved to New Westminster in British Columbia’s lower mainland, in a less prejudicial climate toward Sankey. At the opening of the trial, Bird made an unusual request to have the entire court of 42 people, travel north to Port Essington to view the crime scene, which Bird had previously researched. Justice Aulay Morrison agreed. Following the trip which benefited Sankey’s defence, Bird concluded in court that the accusation against his client was “built on moonshine.”<sup>77</sup> The jury agreed and Sankey was acquitted followed by an outburst of applause “chiefly from women.”<sup>78</sup> The judge stepped down from the bench and shook Bird’s hand.<sup>79</sup>

## Conclusion

THE TRIALS OF JOSEPH EDWARD BIRD illuminate the career of a man of integrity and independent-thinking. He practised law under the constraints of the early British Columbia legal system and took several exceptional stances. Most notably, Bird confronted a wide-spread prejudice against political radicals, trade unionists and visible minorities. As legal historian Wesley Pue has observed, courtroom barristers dating back to 18th century England have held a valuable societal role in the engagement of counter-hegemonic struggle. Bird is among these lawyers who have “constantly redefined, debated and contested the meanings of citizenship, rights and the rule of law in innumerable large and small courtroom battles.”<sup>80</sup>

The *Komagata Maru* case was one such challenge to the state made possible because Bird and other members of the SPC formed a critical alliance with activists in the South East Asian community. Bird’s views and actions on race and immigration were unusual and courageous for the period. Even when some labour leaders abandoned him, as affirmed by their silence in leftist newspapers at the time of the *Komagata Maru* case, he was unwavering in his own belief. Bird had established a genuine association with the Vancouver

76. Bird, “Memoir,” 127.

77. Harvey, *Rex v. Joseph Sankey*, Part 2, 861.

78. *Vancouver Sun*, 9 June 1928.

79. Bird, “Memoir,” 130. Bird’s grandson Richard Bird, studied *Rex v. Sankey* in his first year criminal law course at University of BC law school. (Telephone interview, 1 April 2016).

80. Wesley Pue, “Lawyers and Political Liberalism in 18th and 19th Century England,” in Lucien Karpik and Terrence Halliday, eds., *Legal Professions and Political Liberalism* (New York: Oxford University Press, 1997), 183.

Sikh community, underscored by his passing the legal brief of the Khalsa Diwan Society to his son Edward Bird, when he joined the firm in 1925.<sup>81</sup>

Bird was among the few progressive city lawyers of his era, yet his legacy is not well-known. John Stanton, a subsequent progressive lawyer who began practising in Vancouver in 1936, remembered there were few labour lawyers. "Labour law, as it is now called, was not a respectable field," Stanton wrote in his memoir. "George Grant, Garfield King and Nathan Nemetz are the only BC names I recall."<sup>82</sup> Bird's earlier contributions are not remembered, his work in this field at one time undervalued. Yet Bird's legal representation for working people in British Columbia between 1902 and 1919 was particularly challenging and by appreciating his contributions, an important aspect of labour history is illuminated. As labour historians have concluded, from 1900 to 1914 the working class was "a community under siege" and their struggles were marked with "harsh defeats."<sup>83</sup> Despite defending clients in this highly prejudicial atmosphere, starting with the 1903 Royal Commission hearing and later in Nanaimo at the coal miners' trials and again in Winnipeg at the Russell trial, Bird took the long view, maintaining a positive outlook, fuelled by an idealism embedded in socialism and a belief in the "decency" of its adherents.

Thomas Berger and Harry Rankin both began their legal careers after World War II, and were influenced by Thomas Hurley, long-ago a student of Bird's work. Besides defending working people and unions, Berger and Rankin advocated for First Nations people. In his memoir, Berger described Hurley as a mentor. Rankin also credits Hurley for encouraging him to defend First Nations clients.<sup>84</sup> Yet earlier advocates, such as Bird, played an essential role too. Bird appears to have withdrawn from political involvement and labour advocacy beginning in the 1920s, though his ensuing courtroom successes, such as the Sankey case, illustrate a compassion and resolve he undoubtedly acquired in his legal work within the trade union movement.

Bird had to be "dragged out" of his law firm in 1938, according to his grandson, Richard Bird. "He didn't retire with grace," he says. "He loved the practice." In the years following retirement Bird would experience progressive dementia, spending the final year and a half of his life in a care home. "It was

81. "Bird, J.E. (1868–1948)," *Komagata Maru: Continuing the Journey*, accessed 10 November 2015, <http://komagatamarujourney.ca/node/4359>. Bird's son represented the Khalsa Diwan Society and its petition against conscripting Indo-Canadians for military service in World War II when they were still denied the vote.

82. John Stanton, *Never Say Die: The Life and Times of a Pioneer Labour Lawyer* (Ottawa: Steel Rail Publisher, 1987), viii.

83. Bryan D. Palmer, *Working-Class Experience: The Rise and Reconstruction of Canadian Labour, 1800–1980* (Toronto: Butterworth, 1983), 144, 157.

84. Thomas Berger, *One Man's Justice: A Life in the Law* (Vancouver: Douglas & McIntyre, 2002), 7 and 11–13 and Harry Rankin, *Rankin's Law: Recollections of a Radical Lawyer* (Vancouver: November House, 1975), 153–154.

a sad ending,” his grandson says. “He was a very fine man.” Richard Bird also says of his grandfather, “He made enemies as well as friends. He had a lot of charm and was thoughtful and kind. He seemed to be able to associate with left-wing people and conservatives. He was an extraordinary man.”<sup>85</sup>

Bird’s wife Caroline died in 1940 and Bird re-married to Mabel (nee Ross), who had been employed as the family housekeeper. While this marriage was viewed skeptically by some family members, Mabel Bird was able to care for Bird as his dementia progressed.<sup>86</sup>

When Bird died 1 October 1948, he left behind his second wife, two sons and two grandsons. *The Advocate*, published by the Vancouver Bar Association, described Bird as “energetic, capable and forceful and exemplified that success follows persevering work and service.”<sup>87</sup> In his memoir, Bird revealed his name was put forward to receive a King’s Counsel designation in recognition of his legal work. However, the provincial government declined.<sup>88</sup> This rejection could be interpreted as a snub but also a badge of honour for as Bird stated in connection to his work on the Robinson case, he was “not to be bought, nor for sale.”

85. Telephone interview, 1 April 2016.

86. Telephone interview, 1 April 2016.

87. “Obituary,” *The Advocate* (1948): 181–182.

88. Bird, “Memoir,” 134.