

# Notable Trials

From Manitoba's Legal History

*Including*

Sedition Trials

From The Winnipeg General Strike

As Told in 400 Quotations

Compiled & Edited by **Norm Larsen**

# **NOTABLE TRIALS**

*from*

MANITOBA'S LEGAL  
HISTORY

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# **NOTABLE TRIALS**

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## **MANITOBA'S LEGAL HISTORY**

— including —

### **Sedition Trials From The Winnipeg General Strike**

★

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## Wheatfield Justice



Door handles on the old part of the Law Courts Building from 1912 show a fist holding the scales of justice, bordered by wheat.

# Acknowledgements

Since this is a book of quotations, I am of course very grateful to the many authors from whose books and articles I have drawn. I hope this book will encourage readers, especially Manitobans, to read some of the books and articles.

The works of Manitoba historians Roy St. George Stubbs, Dale Gibson, Lee Gibson and Jack Bumsted have been especially helpful.

The following have been very helpful:

- The publications and website of the Manitoba Historical Society. Much of what I consulted is noted as “prepared by Gordon Goldsborough.”
- The Winnipeg Public Library
- The *Winnipeg Free Press*, which I have read for about 70 years.

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I thank Roland Penner—my old friend and colleague, now in his 91<sup>st</sup> year—for his comments on the content, and for persuading me not to tap the delete key on this collection when it was in a random state.

# Foreword

Books of quotations are usually dated from the first edition of *Bartlett's Familiar Quotations* in 1855. There have been many such books since then, but to the best of my knowledge this one differs from all others. The conventional approach is to group quotations from various sources under subject headings like “War” and “Peace”. In this collection, the quotations are arranged to tell stories. The subject matter is 15 trials from Manitoba’s legal history.

This unique form of story telling includes an unconventional format to help the reader follow the stories: quotations are printed in boldface, and the attribution of each quotation is placed before the quotation.

As the title page indicates, the quotations are “compiled and edited”. I have made deletions without necessarily using ellipses, and I have added an occasional word or number for clarification. In so doing, I have tried not to alter a quotation’s meaning or the intent of its author.

## The Trials

Each trial says something about the legal system at the time it occurred. For example, three from before 1870 illustrate problems in law enforcement in a frontier society. Four trials from 1870 to 1874 are from the turbulent times during and after Riel’s Provisional Government of Assiniboia. The last two trials are about wrongful convictions, which justice systems across Canada have only recently admitted can happen and do happen.

## SEDITION TRIALS FROM THE WINNIPEG GENERAL STRIKE

Most of Part 1 tells the story of three sedition trials arising from the 1919 Winnipeg General Strike. I have given them some prominence for several reasons, including the fact that little is known about them in spite of their being an important part of one of the most significant events in the province's history.

The Bibliography at the end of Part 1 contains 75 items. This is proof of Professor Jack Bumsted's comment in the *Encyclopedia of Manitoba* (2007) that the strike is "...one of the most heavily researched incidents in Canadian history."

Despite all that research and writing about the strike, there is an unexplored dimension, a gap that is mentioned by Ken Kehler and Alvin Esau in *Famous Manitoba Trials: The Winnipeg General Strike Trials: Research Sources* (1990):

**The legal history of the Winnipeg General Strike has yet to be written. It would be valuable to have the trials of the leaders examined from a legal perspective.**

### Filling the Gap

An attempt to fill the gap was made by Jack Walker (c.1935–1994), my classmate for two years at law school. Jack pursued the topic as a hobby while practising law but unfortunately died before completing the book he was working on. It was published 10 years after he died as *The Great Canadian Sedition Trials: The Courts and the Winnipeg General Strike 1919–1920* (2004).

Jack's book is the first book—and so far the only book—to concentrate on the sedition trials. It is a good start on a legal history of the trials, but it is not as thorough or coherent as I am sure it would have been if he had been able to finish it.

Professor Jack Bumsted reviewed Jack's book in *Manitoba History* (2007) and repeated the earlier challenge by Kehler and Esau:

**The subject is one that cries out for documentation and a clearly stated lawyer's perspective. Only a lawyer can**

possibly make sense of the legal manoeuvring and the thicket of legal documentation to decide whether or not the trials were fair.

There were three sedition trials. Historians Reinhold Kramer and Tom Mitchell deal with the first of them—*The King v. R.B. Russell*—in impressive detail in *When the State Trembled: How A.J. Andrews and the Citizens' Committee Broke the Winnipeg General Strike* (2010). However, the book ends rather oddly with the jury's guilty verdict, and not even a mention of Russell's prison sentence. The authors dismiss the later trials of *The King v. Fred Dixon* and *The King v. The Winnipeg 7* (as I call the seven accused men) as “mopping up”, though the man in the sub-title of their book—A.J. Andrews—was the lead prosecutor in the last trial, a remarkable event that lasted more than two months.

Part 1 of this book does not meet the challenge made by Kehler, Esau and Bumsted, but I believe the unique outline of facts could help historians tell the whole story of the trials.

## Establishing a Timeline

In his book *The Peoples of Canada* (2008), Professor Bumsted states that non-professional historians tend to regard the main purpose of history as establishing “the chronological sequence of events.” I am just such a “non-professional historian”, and I prove Professor Bumsted's point in Part 1.

Establishing a “chronological sequence of events” from a lawyer's perspective seems useful and necessary for a topic that appears to have baffled historians, and for which few details are available. Historians who touch on the trials tend to make little errors relating to law and legal procedure. For example:

- The number of men charged with seditious conspiracy was eight (not seven).
- R.B. Russell was charged with, and convicted of, seditious conspiracy (not seditious libel).
- R.B. Russell and the Winnipeg 7 faced two separate charges under the *Criminal Code* (sometimes expressed too simply as “seven counts”).

- The lesser charge was “committing a common nuisance” (not being one).
- The charges against Woodsworth were dropped (he was not acquitted).
- In the last trial, E.J. McMurray acted for one of the accused (not all seven).

In a broader context, the strike was called off on June 25 and ended on June 26 (not June 25).

## The Rule of Law

When I began reading about the strike in recent years, I knew little about it. I initially resolved to be as objective as possible, but as I read and re-read the literature, I found that attitude difficult to maintain. I was surprised by what I found.

The usual narrow focus of the court process in criminal matters can ignore or distort facts and issues and remove them from their historical context. This can result in a simplistic approach to a complex situation. It happened in the sedition trials. In addition to that, the prosecutors illegally vetted the jury panel and packed the juries in order to ensure convictions, while the presiding judges—and the judges of the Court of Appeal in *The King v. Russell*—failed in their duty to be fair and impartial.

The accused men and their lawyers soon realized that their trials were “programmed for conviction.” The lawyers made mistakes, but they and their clients knew the mistakes didn’t matter because their cases were virtually hopeless from the start.

## The Lead Prosecutors

Some historians suggest that the panic exhibited by the prosecutors and judges is understandable in light of local and world events at the time, including the Russian Revolution in 1917 and “Bloody Saturday” in Winnipeg in 1919. But the lead prosecutors—A.J. Andrews and Isaac Pitblado—were then in their 50s and well experienced and respected lawyers. It is surely reasonable to expect such pillars of the legal community to proceed professionally, with due regard for the rule of law and

their duties as lawyers, even when emotions are running high in the community.

After successfully prosecuting R.B. Russell and the Winnipeg 7, Andrews and Pitblado must have been disappointed when they were not regarded as heroes for heading off a revolution. They were not thanked publicly for what they did in 1919–1920. They did not write or make speeches about it, and it isn't mentioned in their obituaries. Their biographies in *The Law Society of Manitoba 1877–1977* (1977) and the website of the Manitoba Historical Society barely mention the strike.

Mr. Andrews and Mr. Pitblado were good lawyers and I'm sure they were decent men. However, the virtual silence about their conduct of the trials allows one to speculate that they and others had a concern: scrutiny could show that the prosecutors crossed legal and ethical lines and failed to uphold the rule of law while motivated and perhaps blinded by privilege, panic, power and politics. Perhaps it was the silence of embarrassment, or even guilt.

Norm Larsen  
April 4, 2015

### 21<sup>st</sup> Century Justice

This 15-ton stainless steel sculpture, unveiled in 1985, is located beside the Law Courts Building at the corner of York Avenue and Kennedy Street in Winnipeg. It is entitled "Justice". The artist is professor Gordon Reeve of the University of Winnipeg.



PART 1

**Sedition Trials  
From  
The Winnipeg General Strike**



# OVERVIEW

## **THE WINNIPEG 10, 8 AND 7**

The following terms are used in this Part.

The Winnipeg 10 are the men who were charged with sedition.

The Winnipeg 8, part of the Winnipeg 10, were charged with seditious conspiracy. The other two (Dixon & Woodsworth) were charged with seditious libel.

R.B. Russell was one of the Winnipeg 8, but was tried first, and tried alone. The Winnipeg 8 thus became the Winnipeg 7, who were tried together.

## **THE TRIALS**

*The King v. R.B. Russell*

(tried from November 25 to December 24, 1919)

*The King v. Fred Dixon*

(tried from January 20 to February 16, 1920)

*The King v. The Winnipeg 7*

(tried from January 20 to April 6, 1920)

## **ONE CASE DROPPED**

*The King v. J.S. Woodsworth*: two charges were laid in June 1919. One was dropped in February 1920 and the other in March 1920.

## INTRODUCTION

# 43 Days in Spring: May 15 to June 26, 1919

### **An Official Summary**

The now commonly accepted view of the purpose of the strike is expressed on a plaque that was unveiled in the Legislative Building in 1994 by Progressive Conservative Premier Gary Filmon. It reads as follows:

#### **THE 1919 WINNIPEG GENERAL STRIKE**

ON MAY 15, 1919, SOME 30,000 WORKERS IN THE CITY OF WINNIPEG WENT ON STRIKE IN SUPPORT OF THE BUILDING AND METAL TRADES WORKERS, WHO HAD WALKED OUT SEEKING UNION RECOGNITION, COLLECTIVE BARGAINING, HIGHER WAGES AND A SHORTER WORKING WEEK.

THE WINNIPEG GENERAL STRIKE WAS WIDELY SUPPORTED THROUGHOUT NORTH AMERICA AND THE BRITISH EMPIRE, AND WAS A WATERSHED EVENT IN CANADIAN LABOUR HISTORY. THE STRIKE CONCLUDED AT 11:00 A.M. ON JUNE 26, 1919.

IN THE YEARS SINCE THE STRIKE, THE PROVINCE OF MANITOBA HAS ENACTED LEGISLATION WHICH RECOGNIZES WORKERS' RIGHTS TO PARTICIPATE IN FREE COLLECTIVE BARGAINING, TO ORGANIZE, AND TO HEALTHY AND SAFE WORKPLACES.

THIS PLAQUE COMMEMORATES THE 75<sup>TH</sup> ANNIVERSARY OF THE 1919 WINNIPEG GENERAL STRIKE, A LANDMARK IN CANADIAN HISTORY.



The owner of each metal working shop had traditionally negotiated only with his own employees. In 1919 the Metal Trades Council proposed collective bargaining on behalf of all metal workers in Winnipeg shops. When the owners rejected that proposal, the metal workers went on strike. Other workers walked out of their jobs in a “general sympathetic strike”.

Near the end of the strike, 10 men were arrested and charged with sedition. Prosecutors alleged that the purpose of the strike, and the common intent of the 10 men, was to overthrow the governments of Canada, Manitoba and the City of Winnipeg.

The strike was followed by trials that began on November 25, 1919 and ended on April 6, 1920.

### **Forty Year Later: “Whose Side Are You On?”**

Soon after Jack Walker (c.1935–1994) began practising law in Winnipeg in 1961, the General Strike became his hobby. He died before completing the book he was working on. It was published in 2004 as *The Great Canadian Sedition Trials: The Courts and The Winnipeg General Strike 1919–1920*.

In the book’s prologue, Walker refers to a problem he had in researching the topic:

As I approached people, many asked, “Whose side are you on?” While many were cooperative, many were reluctant and suspicious.... I asked John Allen, a Crown attorney involved in the prosecutions. if he would discuss the trials with me, but he declined. I was later told that it was he who removed the records of the trials from the Queen’s Bench and Court of Appeal.... I met with Isaac Pitblado [a prosecutor in the sedition trials]. He was in his 90s, alert and still head of a large firm of lawyers in Winnipeg. He refused to talk about the trials: “Nothing could be gained except to stir up old animosities.”

Despite the unwillingness of lawyers to discuss the strike and their role in it, Jack was able to tell at least part of the story of how much a few lawyers were able to accomplish as prosecutors with support from army and police forces and unlimited financial resources from the federal government. Unhappy with what he found, Jack asks a question:

Will the telling of this story undermine our faith in justice and make us pessimistic about the operation of the legal system?

Jack answered his question: yes.

\* \* \*

## The Citizens' Committee of 1,000

### Corporate Lawyers Lead “A Shadowy Group”

Judy Fudge and Eric Tucker, *Labour Before the Law* (2001).

**Employers insisted they would negotiate only with committees of their own employees. On May 6 the Trades and Labour Council authorized a general strike vote. One week later, the tally was 11, 112 for, 524 against.**

When the Strike began on May 15, 1919, a group of citizens quickly formed a “Citizens’ Committee” to oppose it. The Committee was lead by several prominent lawyers, of whom four later prosecuted “The Winnipeg 10”.

J.M. Bumsted, *The Winnipeg General Strike of 1919: An Illustrated History* (1994):

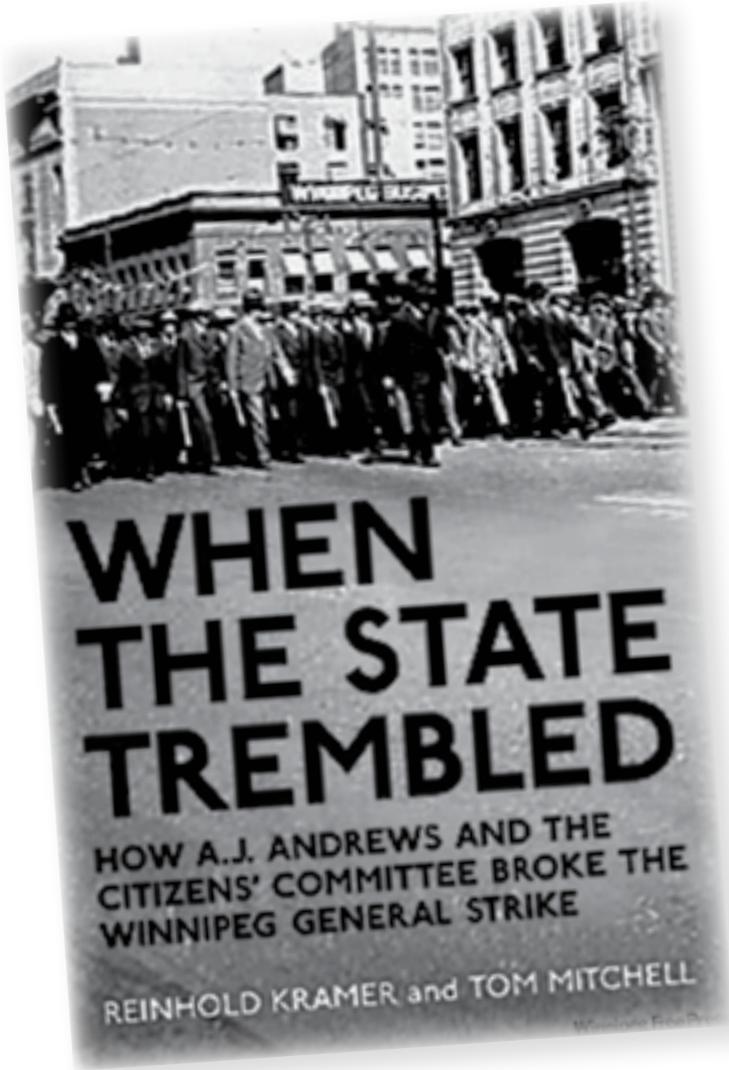
**The Committee never publicized its membership, and the names of only a few members (mainly lawyers) are known. Membership was not included in any of the obituaries of its members.**

Since 1920, biographies of the lawyers involved in the prosecution of the Winnipeg 10 barely mention it, if it is mentioned at all.

Reinhold Kramer and Tom Mitchell, *When the State Trembled: How A.J. Andrews and the Citizens’ Committee Broke the Winnipeg General Strike* (2010):

**The forgotten subjects [in the history of the strike] have been the shadowy victors, the members of the Citizens’ Committee. It is no surprise in one sense: the Citizens shrunk from adver-**

tising their individual roles, and historians followed their lead by treating the conflict as a struggle between the workers and the Canadian state.... In fact, large tracts of the “state” were either technically neutral (the provincial government) or predisposed towards a negotiated settlement (the City of Winnipeg).



Donald Masters, *The Winnipeg General Strike* (1950):

The Citizens' Committee was composed mainly of members of the managerial class and professional men. It was supported by retail merchants and professional men such as doctors, dentists, lawyers and chartered accountants. Lawyers Isaac Pitblado, A.J. Andrews, James Coyne, Travers Sweatman and E.K. Williams were extremely active.

Isaac Pitblado was President of the Law Society from 1916 to 1920.

David Bercuson, *Confrontation at Winnipeg* (1974):

The Committee of 1,000 stated that they intended to keep essential services in operation and bring about a “just and reasonable” settlement of the disputes. They pledged to do their part in ending the walkout, but in fact did just the opposite by urging [certain companies] not to negotiate.

Robert Craig Brown and Ramsay Cook, *Canada 1896:1921: A Nation Transformed* (1974):

The Committee of 1,000 constantly propagated the view that revolution was afoot. Its newspaper insisted on May 27, “No thoughtful citizen can any longer doubt that the so-called General Strike is in reality revolution—or a daring attempt to overthrow the present industrial and governmental system.”

But no real evidence was offered then or later to support the charge that the strike was either “foreign” or inspired by committed revolutionaries. Indeed, the strike leaders were virtually all good Anglo-Saxons, and the strikers' newspaper cautioned against violence and insisted that restraint and patience were the most potent weapons. The Committee of 1,000 had other weapons, which eventually lead to violence.

Ramsay Cook, *The Politics of John W. Dafoe and the Free Press* (1963):

When the first signs of disturbance arose, Clifford Sifton [publisher of the *Free Press*] advised that the paper should take no sides, but rather provide a forum where both parties could present their arguments. On May 16, the second day of

the strike, the paper carried a reasonable set of proposals.... On May 24, *Free Press* readers were told that the strike had developed into a potential social revolution whose Bolshevik leaders intended to “divide the country among themselves and their following.” Thus the paper gave up every pretence of objectivity and became the virtual mouthpiece of the Citizens’ Committee of 1,000.

Stuart Marshall Jamieson, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900–66* (1968):

There seem to be good grounds for suspecting that much of the apparently hysterical behaviour of various employer groups represented a calculated assault upon unionism as such, rather than any real fear of radicalism or revolution.... The Citizens’ Committee of 1,000 was a semi-vigilante anti-union organization on a familiar U.S. model. With the support of the leading newspapers, the *Free Press* and the *Tribune*, the Committee characterized the strike as a revolutionary conspiracy, the work of a small group of red subversives and “alien scum”, thus justifying military intervention and suppression. The Committee’s activities could be construed as a deliberate effort to provoke an outbreak of violence that would justify intervention by the growing reserves of Mounted Police and military as the strike dragged on.

Judy Fudge and Eric Tucker, *Labour Before the Law* (2001).

Once the political and legal establishments saw the conflict as a challenge to constituted authority, they worked co-operatively to repress it.... Ultimately the hardliners prevailed.

Fudge and Tucker go on to name those who “worked co-operatively”: Parliament (by quickly passing legislation), the federal government (by appointing A.J. Andrews to represent it in Winnipeg), officials of the City of Winnipeg (by dismissing the police force and calling out the militia), and the judiciary (who “pitched in” by making rulings favourable to the prosecution).

## Lawyers Take Charge

Roger Graham, *Arthur Meighen* (Volume 1, 1960):

Responsibility for administering the law and enforcing the *Criminal Code* belonged to the province, but after talking to Manitoba's Attorney General, Arthur Meighen [acting federal Minister of Justice] concluded that the provincial government was too frightened to do anything. Evidently the federal government would have to act on its own.

Morris Mott in "Tobias C. Norris, 1915–1922" in *Manitoba Premiers of the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (2010):

Premier Norris's actions during the General Strike antagonized a significant section of the population. He adopted a "neutral" attitude towards the strike. However, he dismissed provincial employees who joined the walk-out. Thereafter, labourers saw him as just another politician who identified with employers and capitalists.... Many rural voters were disturbed by radical labour and believed that if Norris erred, it was by being too soft on the strikers.

Donald Avery, "The Radical Alien and the Winnipeg General Strike of 1919" in *The West and the Nation* (1976), edited by Carl Berger and Ramsay Cook:

The many analyses of this major confrontation between capital and labour have left a number of important questions unanswered. For example, why were federal officials prepared to accept the allegation that the strike was a prelude to revolution when there was ample evidence that it was a legitimate industrial conflict?

Reinhold Kramer and Tom Mitchell, *When the State Trembled* (2010):

The federal government had to be prodded along—now willingly, now with misdirection—so that onlookers would be convinced that the state had ordered the prosecutions of the Strike leaders. Who held the prod? The shadowy Committee of 1,000 and the former boy-mayor of Winnipeg, A.J. Andrews.

## The “Architect Of Supression” Breaks the Strike

A.J. Andrews masterfully manipulated the three levels of government and eventually got everything he wanted, including hefty prison terms for six of the Winnipeg 10, and generous fees from the federal government for himself and his team of lawyers and investigators.

Norman Penner, in his Introduction to *Winnipeg 1919: The Strikers’ Own History of the Winnipeg General Strike* (1973):

**The Committee of 1,000, ostensibly organized to maintain public services (which the strikers had guaranteed to maintain), quickly became de facto an agency of the federal government.... Andrews was appointed by Arthur Meighen as a special deputy minister of Justice, with powers to carry out arrests and initiate deportation proceedings.**



Roger Bray speaks to a gathering in Victoria Park on June 13, 1919. The Park was located across from what is now the Mere Hotel on Waterfront Drive.

Meighen set out Andrews' assignment in a letter to him dated May 26, 1919:

**To represent the Department [of Justice] and examine any evidence that may be available touching on the conduct of the principal instigators of the present unfortunate industrial disturbance with a view to ascertaining whether or not the activities of these men is [sic, are] of a seditious or treasonable character and to advise as to what should be done.**

Before appointing Andrews, Meighen consulted with the Citizens' Committee and the leaders of the provincial and municipal governments—but not with any union.





A.J. Andrews

Tom Mitchell and James Naylor in “In the Eye of the Storm” in *The Workers’ Revolt in Canada 1917-1925* (1998), edited by Craig Heron:

**A.J. Andrews became the principal architect of the suppression of the Strike.... The trials were brought about by tenacious lobbying by the Committee and the willingness of the Minister of Justice to engage the resources of the Canadian state in an extraordinary assault on labour radicalism.**

### **Andrews Arrests, Then Investigates**

Andrews wrote a letter dated June 18, 1919 to Acting Minister of Justice Arthur Meighen in which he reports being with the police to make arrests after 2:00 a.m. on Tuesday, June 17. He mentions that 500 police officers surrounded the Ukrainian Labour Temple (591 Pritchard Avenue) while it was searched, and that he got home at 4:30 in the morning.

Andrews wrote to Meighen again, on June 25, 1919:

**The Government has done everything in its power consistent with the demands of justice to give these men fair treatment.**

Jack Walker (2004) disagrees with Andrews:

It was not an honest belief in a conspiracy that led to the initial arrests. The arrests were made to break the strike. Most of the evidence was gathered after the arrests were made and charges laid.... The trials stand as a testimony to Andrews' ruthless cleverness.

## Andrews Acts, Feds Tremble & Pay

Andrews was Meighen's main source of information about the strike. Some writers suggest this became a case of a tail wagging a dog.

Reinhold Kramer and Tom Mitchell, *When the State Trembled* (2010):

Arthur Meighen had expected a few quick deportations, not a whole series of criminal prosecutions.... By the end of 1921, the federal government would send an astounding \$227,000 to deal with the prosecutions, of which over \$47,000 went to Andrews. By comparison, the Prime Minister's 1920 salary was \$15,000. Apart from any ideological considerations, it made good business sense for Andrews to insist that the Strike leaders be pursued by all legal means.... The money meant that what began as a group of private businessmen reacting against labour's demands became official state policy.

Anne Tilenius, *Learned Friends: Reminiscences—Pitblado & Hoskin 1882–1974* (1974):

The press of the day was somewhat harsh with five Winnipeg lawyers who acted in the strike trials, particularly in regard to the exorbitant fees they received for their services.

There is no mention of the strike in any of Arthur Meighen's speeches collected in *Unrevised and Unrepented* (1949), including one he made on "Liberty and Law" at Gray's Inn in London in June 1921.

William Plewman in "Andrews the Brains of Strike Opponents" in the *Toronto Star* (June 27, 1919), quoted by Michael Dupuis in *Winnipeg's General Strike* (2014):

It is an open secret that the Citizens' Committee of 1,000 dictated nearly every move made by the City Council during the strike. It readily followed intimations that the police force be dismissed, pledges against sympathetic strikes be exacted from civic employees, and a monster force of special police be recruited. Probably no one person had more to do with these moves than Mr. Andrews. He certainly was responsible for the sensational round-up of the strike leaders and their imprisonment. Enlistment of a large citizen army and use of the North-west Mounted Police are moves that are supposed to have been made after Andrews voiced his approval.

## A Divided City: Luxury & Deprivation

Kenneth McNaught and David Bercuson, *The Winnipeg Strike: 1919* (1974):

With the establishment of the General Strike Committee [of about 300 delegates from various unions] and the Citizens' Committee of 1,000, the class division of Winnipeg was all too clearly revealed.

From Hugh Robson's *Royal Commission Report* ("The Robson Report") (1919):

There has been an increasing display of carefree, idle luxury and extravagance on the one hand, while on the other is intensified deprivation. The generally cold indifference of the one section to the condition of the other and the display of luxury aggravate this feeling of social disparity into one of active antagonism by the one class against the other.

James Gray (1906–1986), *The Boy from Winnipeg* (1970):

When I began deliveries [of newspapers, around 1915], I entered a world as magnificent as any in the Arabian Nights. There were no houses in Eastgate or Westgate or Middlegate. There were only huge castles. I rushed home to break the news of this fabulous new world. That night the family walked to Armstrong's Point. We were seeing a world we never knew existed, though it was only a block from Langside Street, where we now lived.

J.S. Woodsworth, *Strangers within Our Gates* (1909):

It is estimated that from one-quarter to one-third of the population in Winnipeg are foreigners.... Ignorance of the language, high rents, low standards of living, incompetency, drunkenness and other evils are already producing conditions as bad as are to be found in the slums of the great cities.

Donald Avery, “The Radical Alien and the Winnipeg General Strike of 1919” in *The West and the Nation* (1976), edited by Carl Berger and Ramsay Cook:

The attitudes of the more affluent members of the Anglo-Canadian community towards political and social ferment of the North End fluctuated between indifference and suspicion.... However, there was a general feeling that the “foreigners” were highly susceptible to criminal behaviour. To the English-speaking elite, the barbarism of the North End was shocking; the thought that it might spill over in the rest of the city and lead to a general attack on property produced an even deeper and more profound anxiety.

Michael Dupuis, *Winnipeg’s General Strike: Reports from the Front Lines* (2014):

It is interesting to ponder how the strike’s outcome might have been different if those who opposed it had not convinced themselves it was a plot by Bolsheviks to bring Russian-style revolution to Canada.... Life in the mansions on Wellington Crescent was worlds away from the horrific living conditions in the North End. That was what the strike was really about—a living wage, not a revolution.

Kenneth McNaught, *A Prophet in Politics: A Biography of J.S. Woodsworth* (1959):

The Strike was a most significant occurrence in Canadian history, the first and only time a major city was split clearly into two opposing classes.... The Strike produced a spasm of fear throughout the middle class of the city and yet characterized by its almost absolute lack of violence. One is tempted to conclude that the real “Story of the Strike” lies in the vigorous efforts of the Committee of 1,000 to break it.

## Sense of Class Trumps Religion & Ethnicity

Royden Loewen and Gerald Friesen, *Immigrants in Prairie Cities: Ethnic Diversity in Twentieth-Century Canada* (2009):

In 1919 the city split in two. “Class” became an inescapable force, shaping political discussions and voting patterns.... The chasm that developed between the two political communities [the North End and South End] was profound and long lasting.... A widespread consciousness of classes was expressed consistently after 1919 in national, civic and provincial elections. The class consciousness did not erase ethnic or religious differences, but did override them.

David Bercuson in “The Winnipeg General Strike” in *On Strike: Six Key Labour Struggles in Canada 1919–1949* (1974), edited by Irving Abella:

New immigrants gravitated to the area immediately north of the CPR mainline—the “north end.” This became Winnipeg’s version of “the wrong side of the tracks.” The rich and the aspiring to be rich settled along the river banks to the south, in locales such as River Heights and Wellington Crescent, where they built magnificent mansions with long, broad driveways, well-manicured lawns and large stables or garages. The “south end” became as strongly symbolic in its own right of a bastion of privilege as the “north end” was of the home of the worker and the immigrant.

Larry Zolf (1934–2011) recalls growing up in the North End in the 1940s and 1950s in *Survival of the Fattest* (1984):

Neighborhood folklore began with the General Strike of 1919. To North Winnipeg’s citizens, The Strike was a battle between US—the socialists, communists and anarchists—and THEM, the Liberals and Conservatives in the south end of the city.

## Panic of Another Kind

James Gray, *Booze* (1972), referring to the onset of Prohibition in Manitoba (1916–1923):

There was a rush by Winnipeg's leading citizens to get their cellars stocked. A.J. Andrews placed an order for seven cases of wine, six cases of brandy, five cases of scotch, 10 cases of gin, two cases of liqueurs, and a case of rum. Travers Sweatman ordered 27 cases of scotch. Such purchases serve to underline the class aspect of the Prohibition legislation. The working class was effectively cut off from access to booze.

## The Committee's View: The Bolsheviks Are Here

The Russian Revolution (a.k.a. the Bolshevik Revolution) of October 1917 toppled the government, and ended with the victory of what became the Communist Party.

James Jackson, *The Centennial History of Manitoba* (1970):

The talk of bloody revolution fell on receptive ears of those who lived in a state of almost pathological fear of a Bolshevik-style revolution. From the safe remove of 50 years, the concern manifested by responsible people like J.W. Daffoe, Arthur Meighen, Isaac Pitblado, A.J. Andrews, and a host of others appears almost ludicrous.

David Bercuson in "The Winnipeg General Strike" in *On Strike: Six Key Labour Struggles in Canada 1919–1949* (1974), edited by Irving Abella:

The rapid increase of labour's power in Winnipeg was a shock to the cosy arrangements and alliances that had existed between capital and government for at least four decades. The threat to the status quo was compounded by the belief in some quarters that the workers were embarked on a campaign to supplant the municipal and even the provincial and national governments. The charge was not true, but it reflected the unions' rapid rise to new positions of power.

The Citizens' Committee published its view of the Strike in *The Activities and Organization of The Citizens' Committee of 1,000 in connection with The Winnipeg Strike—May-June 1919* (1919):

**At least some of the leaders of the Strike were more concerned in setting up the Russian Soviet form of government in Canada than in settling any trades disputes.... When the Strike was called it was immediately perceived that the very existence of the City and the lives of the citizens were in jeopardy.**

Isaac Pitblado spoke to visitors from Moose Jaw on May 31, 1919. The speech was published by the Committee with no mention of his name. An excerpt:

**The men in control in the Labour Temple are urging Soviet government, urging Bolshevism, teaching Bolshevism, just as much as they can do it, and they have a class of people they can easily do it with. Why? Go round the Labour Temple ... and there are foreigners receiving and distributing this literature. These foreigners form a ready soil for socialistic and Bolshevik views.**

Peter Lederman, "Sedition in Winnipeg" An Examination of the Trials for Seditious Conspiracy Arising from the General Strike of 1919" (1976) 3 *Queen's Law Journal*:

**Given this extreme fear, it can be seen how it was that one of the key points put forward by the defence in the trials failed to have any impact. How could there have been a conspiracy, it was asked, when [four accused] were members of the Socialist Party and [two accused] were Social Democrats? But the government was incapable of making such fine distinctions. A socialist was a socialist, and all were tarred with the same revolutionary brush.**

### **"They Saw Evil in Any Who Did Not Think as They did"**

J.M. Bumsted, *The Winnipeg General Strike of 1919: An Illustrated History* (1994):

**The Citizens' Committee of 1,000 became little more than a caricature of unenlightened and conspiratorial plutocrats.**

J.E. Rea, *The Winnipeg General Strike* (1973):

Such apocalyptic interpretations of the events of 1919 seem incredible in retrospect. The hysteria was not all localized, for North America in 1919 was in the grip of the great “Red Scare”. So little was known of recent events in Russia that no story was too incredible for hopeful or apprehensive North Americans.... The Citizens’ Committee was convinced that Winnipeg was beset by a Bolshevik conspiracy. While one may not condone their overreaction to the strike, it is at least understandable.

Roger Graham in “Through the First World War” in *The Canadians* (1967), edited by James Careless and Craig Brown:

A case can be made for the view that a general strike, regardless of its leaders’ intentions, must in order to succeed result in a usurpation of public authority—as happened to some extent in Winnipeg—and in that sense inevitably becomes a revolutionary act. In any case, considering the widespread fears excited by the 1917 Russian Revolution and the violent language used by some of the radical figures in Western Canada, it was not surprising that many people in Winnipeg felt that they had been confronted by an overt revolutionary effort.

Kenneth McNaught and David Bercuson, *The Winnipeg Strike: 1919* (1974), commenting on previous accounts of the strike:

The last history to accept the version of the Citizens’ Committee as the foundation for its account was published in 1930.... There has emerged a compromise interpretation that tends to recognize the legitimacy of the strikers’ aims, but points out that the Committee was equally justified in its attempts to maintain a semblance of normalcy in the beleaguered city.

Tim Higgins, *Just Common Sense: The Life and Times of George Taylor Richardson* (2010):

For all its international notoriety, the strike delivered a more telling local message. Yes, labour would now be a force to be reckoned with, but in the actions of the Committee of 1,000—comprised of most of the leading citizens of the day—one

could see a group that had stopped looking forward, a group that was now far more interested in preserving the status quo than in creating a great city of a million people, the stated goal just a decade before.

## In Fiction

Ann Henry's play *Lulu Street* (1975) is set in Winnipeg in the summer of 1919:

When I came to Winnipeg, I found men like Bill Ivens and J.S. Woodsworth saying the same things as I was. Jesus spent his life ministering to the poor and outcast. He meant that his principles were the answer to the ills of the world. But you can't talk that way or people say you're a Bolshevik.

Lawyer and former prosecutor Stu Whitley wrote the novel *A Reckoning of Angels* (1999):

The so-called "Committee of 1,000" was touted as the cream of the Winnipeg business and professional community. The Committee labelled the strikers as the "alien enemy" and the "refuse of Europe" though all the strike leaders except



The General Strike Committee was composed of about 300 delegates from various labour organizations in Winnipeg. Their office was at 220 Bannatyne Avenue.

one [George Armstrong of Ontario] were British born. “Listen to me,” cried the prominent lawyer. “All this clap-trap about One Big Union will lead to anarchy. Sure as sin.”

## The Verdict of History

J.M. Bumsted in “The Winnipeg General Strike Reconsidered”, *The Beaver* 74 (1994):

By its secretive (perhaps even furtive) behaviour, the Committee brought upon itself much of the opprobrium it has received.... Such a record has seemed to validate those who suggest the Committee had nothing to be proud of and much to ashamed of in its strike performance.... If the stories are true of the refusal of members of the Committee to make public information about the organization to D.C. Masters in his research on the strike, they merely confirm the extent to which they failed to appreciate the importance of the verdict of history.



## The Robson Report (1919)

The strike ended on June 26, 1919. On July 3—after the Winnipeg 10 were charged with criminal offences, but before their trials—the provincial government established a Royal Commission headed by former judge Hugh Robson to enquire into “the causes and effects” of the strike. After 11 days of hearings in Winnipeg from July 16 to September 10, Robson submitted a Report to the province on November 6, 1919.

The 31 page Report shows that Robson managed to keep a level head while others in the legal community, including judges, did not. History has vindicated his views.

W.L. Morton, *Manitoba: A History* (1957, 2<sup>nd</sup> edition, 1967):

**Robson, to his honour, submitted a moderate and sympathetic report that laid proper stress on the legitimate grievances from which the Strike originated.**

J.M. Bumsted in “Winnipeg General Strike” in *Encyclopedia of Manitoba* (2007):

**The verdict of history has been favorable to the strikers. That approval began, perhaps, with the findings of a Royal Commission headed by H.A. Robson that acknowledged that the strike was held for traditional labour issues and not intended to foment revolution.**

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

**The Robson Report, attributing blame to both sides, is still regarded as one of the most objective assessments ever made of the Strike.**



Newton Brett's painting of Hugh Robson, at Robson Hall

Ken Kehler and Alvin Esau, *Famous Manitoba Trials: The Winnipeg General Strike Trials: Research Sources* (1990):

**The Robson Report has been widely respected as an objective and accurate assessment of the Strike, free of the rancour and extremism that marked other interpretations that appeared at the time.**

Kenneth McNaught and David Bercuson, *The Winnipeg Strike: 1919* (1974):

**Robson struck at the roots of the claims of the Citizens' Committee of 1,000 with a clear statement that the Strike had definitely not been brought about by a band of revolutionary plotters. He concluded that psychological attitudes played a key role. The mind of labour, as he put it, was in a state of discontent caused by real and imaginary grievances.**

From The Robson Report:

**It should be said that the leaders who brought about the general strike were not responsible for the parades or riots which took place and, in fact, tried to prevent them. The leaders' policy was peaceful idleness.**

Daniel Francis, *Seeing Reds* (2010):

**This conclusion [of the Report] contradicted the basic presumption behind the prosecution of the strike leaders. The province might have stepped in at this point and withdrawn the permission it had given to allow the trials to take place, but Premier Norris kept the Report secret.... The premier made himself an instrument of the anti-strike forces while appearing to maintain a public stance of impartiality.**

## **Admired & Ignored**

The provincial government did not release the Report until March 29, 1920, five months after receiving it, three months after the conviction of R.B. Russell (on December 29), and two days after the jury's verdict in the trial of the Winnipeg 7.

The Premier said he kept the Report under wraps until the trials were over so that it would not influence them.

Kenneth McNaught and David Bercuson, *The Winnipeg Strike: 1919* (1974):

**Robson's conclusion that the General Strike had deep social and economic roots and was not an attempted revolution ought to have carried a great deal of weight, yet was virtually ignored by everyone except those who had sympathized with the Strike in the first place.**

Kenneth McNaught, *A Prophet in Politics: A Biography of J.S. Woodsworth* (1959):

**A leading member of the Manitoba bench who was asked in 1957 why the Robson Report did not have more influence, replied: "Well, you know, Robson was always a socialist."**

\* \* \*

## Two Separate Criminal Charges

**The Winnipeg 8 were charged with two criminal offences: seditious conspiracy (six counts) and committing a public nuisance (one count).**

### The Main Charge: Seditious Conspiracy

The Winnipeg 8 were charged with seditious conspiracy (six counts), an offence under what was then section 132 of the *Criminal Code*:

**A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.**

Under section 134, the maximum sentence for the offence was two years in prison. In 1919 Parliament—inspired by events in Winnipeg—increased the maximum to 20 years. This amendment and others were not made retroactive (criminal laws seldom are), and therefore did not apply to the sedition trials.

The 27 page indictment is repetitive. Excerpts:

- **The accused conspired to carry into effect an unlawful general strike intended to be a step in a revolution against the constituted form of government in Canada and to introduce in Canada the Soviet form of government, similar to that in force in Russia.**
- **The accused unlawfully conspired to bring into hatred and contempt and to excite discontent and disaffection against the government, laws and constitution of Canada and Manitoba and to promote feelings of ill will and hostility between different classes of Her Majesty's**

subjects. [This wording was taken from the definition of sedition in common law.]

- In furtherance of this object, the accused convened meetings, aided and abetted the publication of seditious literature, and assisted in calling the general strike in Winnipeg in May 1919, which usurped the functions and powers of government in Winnipeg.

When defence lawyer E.J. McMurray addressed the jury on March 20, 1920 in the trial of the Winnipeg 7, he made this comment:

**Seditious conspiracy is a very rare charge. After an exhaustive search I can't find a previous case in Canada. It is a very ancient and antiquated machine, very much like an old-fashioned blunderbuss that you fill with scraps of iron, slugs, glass, bolts and anything else you can lay your hands on. The idea was that if you aimed it at someone, you would at least hit him [with something].**

## Defences

Section 133 of the *Criminal Code* in 1919 (a so-called “saving clause”) provided defenses to the charge:

**No one has a seditious intention [and is therefore not guilty of seditious conspiracy or seditious libel] only because he intends in good faith...**

**(b) to point out errors or defects in the government or constitution ... of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or,**

**(c) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.**

Donald Masters, *The Winnipeg General Strike* (1950):

**The Crown claimed that the accused participated in a seditious conspiracy of which the General Strike was a part. The defence**

**maintained that there was no conspiracy, that the accused were not in political agreement and were in fact members of different political parties, and that the Strike was what it purported to be, an attempt to secure the principle of collective bargaining.**

## **From all of Canada: 10 Men in Winnipeg**

To prove the existence of a seditious conspiracy, the prosecutors had to prove a common intention among the alleged conspirators to agree to commit the offence.

The Winnipeg 10 are often referred to as the “strike leaders”, but the term is inaccurate insofar as it suggests they were colleagues at work or in politics, or that they acted as a group or agreed on tactics relating to the strike. There were political disagreements and even conflicts among them, even before the strike. They became known as the “strike leaders” from about the time they were arrested.

Allan Levine, *The Devil in Babylon: Fear of Progress and the Birth of Modern Life* (2005):

**The strike leaders came in all varieties, from ardent Marxists, to middle-of-the road socialists, to God-fearing Utopian social gossellers. They could agree that society needed to be saved, but they could not decide among themselves how to achieve their lofty goals.**

In the later trial of *The King v. Fred Dixon* in 1920, Dixon defended himself in court. This is from his address to the jury:

**It would be practically impossible for me to conspire with George Armstrong, who ran against me in two elections, or R.B. Russell, who was engaged in knocking hell out of my party... How is it possible for these men to have a common cause?**

## **A Second (lesser) Charge**

In addition to the six counts of seditious conspiracy, the Winnipeg 8 faced a separate charge of committing a common nuisance contrary to what was then section 222 of the *Criminal Code*:

Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual.

“Common nuisance” was defined under section 221 of the *Criminal Code*:

A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects.

## Other People & Other Charges

D.C. Masters, *The Winnipeg General Strike* (1950):

A number of persons were prosecuted on such charges as unlawful assembly, disorder, riotous conduct and interference. These cases involved men arrested on June 21 [“Bloody Saturday”]. They were tried before a special court in which all were defended by T.J. Murray, solicitor for the Trades and Labor Council. The cases dragged on until December 1919. There were a number of acquittals [and] convictions. Sentences varied from five dollars to two years' imprisonment.

Masters lists 13 men convicted from June to December 1919. Just how many others were charged and convicted has not been researched by historians, but charges could have been laid under such sections of the *Criminal Code* (1906) as 87 (unlawful assembly and riots), 238 (disorderly conduct) and 501 (intimidation).

## A Preliminary Hearing for the Winnipeg 8

Magistrate R.N. Noble presided at the preliminary hearing from July 21 to August 13. His task under the law was to determine whether the evidence presented by the prosecution was sufficient to justify “committing” some or all of the eight accused men for trial in the Court of King's Bench.

Appearing for the prosecution were A.J. Andrews and James Coyne. Representing the Winnipeg 8 were E.J. McMurray, Marcus Hyman, T.J. Murray and Hugh McKenzie.

Little has been written on this aspect of the legal process in 1919, but descriptions of the hearing by Reinhold Kramer and Tom Mitchell (2010) and Jack Walker (2004) indicate that Noble consistently ruled in favor of the prosecution and against the defence. For instance, the judge overruled E.J. McMurray's attempts to show the prosecutors were in a conflict of interest by their membership in the Citizens' Committee, and by the fact that the Committee—allegedly in a conspiracy of its own—had thwarted attempts to settle the strike.

On August 13, Magistrate Noble committed the Winnipeg 8 for trial. The prosecution now had the option of trying the eight individually, or a few at a time, or all at once.





The Winnipeg 8 were held in custody from August 13 until September 10, 1919, when the Court of Appeal granted bail. This one and only picture of them as a group was taken by an unknown photographer on September 10, just after their release. The picture is often captioned as having been taken at Stony Mountain Penitentiary, but the bricks and the window sill in the background can be seen at the Vaughan Street Detention Centre (built in 1881, and still standing).

*Back row:* Roger Bray, George Armstrong, John Queen, R.B. Russell, Dick Johns and Bill Pritchard. *In front:* Bill Ivens and A.A. Heaps.

*The King*  
v.  
*R.B. Russell*  
(1919)

**He was charged under the *Criminal Code* with seditious conspiracy (six counts) and committing a common nuisance.**

Robert Boyd Russell (1888–1964) was born in Scotland. He left school at age 11, became a qualified machinist, and arrived in Winnipeg in 1911. He was one of many men arrested in the early hours of June 17, 1919 and charged. He was the only one of the 15 member Central Strike Committee to be charged.



R.B. Russell

## The Winnipeg 8 Become the Winnipeg 7

Kenneth Osborne, *R.B. Russell and the Labour Movement* (1978):

The government unexpectedly decided to try Russell separately, apparently because he was thought to be the ringleader and more dangerous than the others. His trial began November 25, 1919.

The trial of the Winnipeg 7 was put over to January 20, 1920.

### Five Prosecutors

The prosecutors were A.J. Andrews, Isaac Pitblado, Travers Sweatman, James Coyne and Sid Goldstine. They had help behind the scenes.

In Andrews' letter of June 18, 1919 to Arthur Meighen, he writes, "I have a large force of lawyers, including Mr. Pitblado, Mr. Henderson, Mr. Coyne, Mr. Sweatman, Mr. [E.K] Williams and one or two others going through the papers we took from the various places that were searched...."

According to Jack Walker (2004), Pitblado supervised "an army of researchers, made up of university students, Mounted Police and scores of lawyers." Two of the lawyers behind the scenes were E.K. Williams and Joe Thorson. Thorson, later a judge, eventually came to admire Russell, and paid tribute to him at a banquet honouring Russell 40 years later.

Descriptions of Andrews at the time indicate that he was extremely energetic, thoroughly prepared, and completely confident that he was on the side of God, Justice and the Rule of Law.

David Ricardo Williams, *Just Lawyers: Seven Portraits* (1995):

By today's rules of legal ethics, neither A.J. Andrews nor Isaac Pitblado nor Travers Sweatman could have been Crown prosecutors, for all three had been active in the Citizens' Committee of 1,000. Conflicts of interest were of much less significance in 1919 than now.



This page appeared in the *Winnipeg Free Press* on Dec. 16, 1919, the work of Ben Batsford (1893–1977), described as a “Free Press Staff Artist”. He was a witness for the prosecution in the trial. In 1927 he moved to the U.S. and became quite famous as a cartoonist.

The prosecutors—particularly Andrews—were now in the position of justifying the actions they had personally taken or authorized before the trials.

## Packing The Juries

Joe Thorson of the prosecution group was interviewed in the 1960s by Jack Walker, who was surprised at Thorson’s candid comments about the juries in the strike trials. His comments appear in Walker’s book, *The Great Canadian Sedition Trials* (2004):

**When I look back at the trial of the strike leaders of 1919, I am shocked that it is possible to pack a jury, strictly in accordance with the law, in such a way that there is no possibility of an acquittal. I believe that this was the situation in the case of the trial of the strike leaders.... Prior to the trial, every person on that jury panel list [of 250 men] was investigated. Counsel for the Crown had a dossier about every single person on that list.**

Tom Mitchell in “Legal Gentlemen Appointed by the Federal Government”: The Canadian State, the Citizens’ Committee of 1,000 and Winnipeg’s Seditious Conspiracy Trials of 1919–1920”, *Labour* 53 (Spring 2004):

**The federal Department of Justice paid \$12,332.09 to the McDonald Detective Agency for assisting the Mounted Police in the investigation of the jury panel.... The 25 questions concerned the views of potential jurors with regard to Bolshevism, the Winnipeg General Strike, the Citizens’ Committee of 1,000, trade unions and socialism. Access to the jury list was strictly prohibited under the *Criminal Code* [but] A.J. Andrews was able to select juries sympathetic to the Citizen Committee’s view of the case.**

A.J. Andrews was so convinced of the justice of his cause that he saw nothing wrong with vetting the jury panel. He wrote to Acting Minister of Justice Arthur Meighen in Ottawa on how he was arranging for an “impartial” jury:



## 25 Questions

It was not discovered until years after the trial that police and the McDonald Detective Agency vetted each member of the jury panel based on 25 questions, including these:

- Is he a Socialist? Was he ever a member of a union?
- What are his views of Bolshevism??
- What does he think of the Winnipeg General Strike?
- What does he think of the Citizens' Committee of 1,000 and their work?
- Does he blame the government for taking measures to put down the strike?
- Is he well off?
- Do you recommend him for the position [of juror]?

The full questionnaire is found in Kramer and Mitchell's *When the State Trembled* (page 414), as are the names and home towns of the jurors in the Russell trial (page 415). The full extent of the vetting was not known until the billings of the McDonald Detective Agency submitted by Andrews to the federal government were later made public.

## Four Defence Lawyers

Defence counsel were Robert Cassidy, Edward Bird and Wallace Lefeaux, who practised law together in B.C., and E.J. McMurray of Winnipeg.

J.M. Bumsted (1994):

**The choice of Cassidy to lead the defence may have been a mistake. Although he had practised in Manitoba, he was regarded as a "hotshot" outside criminal lawyer. He repeatedly annoyed Judge Metcalfe throughout the trial. Russell might well have been better advised to defend himself.**

Cassidy (1857–1947) came to Canada from Ireland in 1875. He practised law in Winnipeg from 1882 to 1892 and then moved to B.C. He and his two B.C. colleagues took part in only this first of the three strike trials. He made a surprising statement during the trial when he admitted that he had not read all the evidence from the preliminary hearing. His lack of preparation showed up again in a later hearing in the Court of Appeal. All this might be the result of his not being a criminal lawyer.

The impression that Cassidy was (as lawyers often express it) flying by the seat of his pants, together with his inability to get anywhere with the judge, no doubt influenced the decision of Fred Dixon and some of the Winnipeg 7 to defend themselves in the later trials, without a lawyer.

## The Judge

Justice Thomas Metcalfe (1870–1922) of the King’s Bench presided at Russell’s trial in late 1919 and at the trial of the Winnipeg 7 in early 1920.

Dale Brawn, *The Court of Queen’s Bench of Manitoba 1870–1950* (2006):

**Thomas Metcalfe was appointed to the King’s Bench in 1909. His inability to control his sense of conviviality and good humour made him one of the province’s least dignified judges.... Joseph Thorson regarded Metcalfe as a renegade and a unique character, noting that although the judge drank too much and was not morally above reproach, he was also a very likeable person.**

An article in the *Winnipeg Free Press* on December 16, 1919, during the trial, suggests that Metcalfe might have felt kindly toward Russell, but not the lawyers:

**Judge Metcalfe’s kindly eyes have a smile for the prisoner in the dock, when it is necessary to ask about his welfare and direct something for his comfort [but] eyes as hard as agates when counsel for either side transgresses a ruling.**



Thomas Metcalfe

## The Trial

The trial began on November 25 and ended on **December 24, 1919.**

W.L. Morton, *Manitoba: A History* (1957, 2<sup>nd</sup> edition, 1967):

**The evidence submitted by the Crown was of a general nature, and much of doubtful validity.... Only by attributing to the accused the flamboyant statements of the extremists and by a narrow construction of the sedition laws, could seditious intent be established.**

## 703 Exhibits

During the trial, prosecutors filed 703 exhibits, including books, pamphlets and various documents seized by police in raids on homes and offices across Canada—most of it *after* the arrests of most of the Winnipeg 8 early on June 17.

The raids created some panic among people who had liberal sympathies or books on such subjects as philosophy and political science.

In 1919, Grace MacInnis, daughter of J.S. Woodsworth, was 14 years old and living in Gibson's Landing, B.C. Her father was in Winnipeg, charged with seditious libel. This is from her book *J.S. Woodsworth: A Man to Remember* (1953):

**Mother's fear was that the next boat might bring the Mounted Police to search our home for evidence to back up the charges.... Kathleen Inglis and I slipped out of school. We ran to the house. We took the tin bread box and lined it with oilcloth. Into it we put every book that, in our judgment, could be used to bolster a charge. We took the ones on socialism, those on war and peace, a few containing vigorous sermons, even some with red covers. We stole away to the woods with our burden. Under a fallen log we buried our bread box.**

The prosecution's position was that if a book is in your house, you must believe everything in it. Their favorite for comment and cross-examination was the *Communist Manifesto* (1848).

Reinhold Kramer and Tom Mitchell, *When the State Trembled* (2010):

**In the Citizens' Committee's story, all socialist-influenced workers belonged to a unified conspiracy. For much of the trial, Andrews wandered about in the statements of Russell's colleagues, attributing to labour a solidarity that labourites could only dream about.... Since Andrews had found no seditious actions and few seditious words, he had to weave a series of isolated statements from a wide variety of socialist speakers to patch together a conspiracy.**

## Russell Testifies

Russell knew little or nothing about most of the 703 exhibits, but Judge Metcalfe ruled that all of them were relevant and admissible as evidence. This meant that Russell had to answer for his own actions and for those of other people in other places, as well as for the content of the 703 exhibits.

The defence opened its case on December 17, calling Russell as its first witness.

Jack Walker (2004):

**Russell's performance on the witness stand was unimpressive. His answers were often vague and terse. This would be his only opportunity to sell himself to the jury, yet it was as though he did not realize that he alone would have to tell his story. He failed to elaborate or clarify his statements in a convincing manner.**

The judge did not allow Russell to describe his present and past work, or his attempts to settle the strike. The judge ruled that the strike was illegal in the first place, and any attempt to settle it was irrelevant.

Jack Walker (2004):

**In closing, Andrews asked Russell if he was in favour of a general strike. When Cassidy reminded the court that being in favour of a general strike is not a crime, Justice Metcalfe's response was chilling: "I think it is."**

## **The Defence Closes Its Case**

The defence lawyers had three main arguments in reply to the prosecution's case, but the judge overruled their attempts to present them.

Jack Walker (2004):

**Russell's counsel attempted to adduce evidence that the main reason for the Strike was the issue of collective bargaining. But the judge would not allow the defence to pursue this subject, ruling it to be irrelevant.... All efforts to expose the membership and activities of the Citizens' Committee of 1,000 were thwarted. And the judge ruled that because the Strike was unlawful in the first place, the attempts of the strike leaders to settle it bore no relevance.**

The defence lawyers were unable to build a case, owing at least partly to the judge's consistently ruling against them and in favour of the prosecution.

The defence suddenly made a "premature and unwise decision" (Walker, 2004) by closing its case after calling only nine of many

people available to testify (including several of the Winnipeg 7), and without dealing at all with the 703 exhibits.

On December 22, Cassidy told the judge that the defense was closing its case:

**My lord, the defence cannot proceed further without adducing evidence in this case. There are many considerations that prevent our doing so, one of which is that we [that is, he and the judge] don't get along very well with getting our evidence in.**

### **Cassidy Addresses The Jury**

Later on December 22, all of the Winnipeg 8 were in court when Robert Cassidy addressed the jury for three hours and 15 minutes. Excerpts:

- **We are assembled here on one of the gravest and most solemn occasions that has ever transpired in the legal history of this country.**
- **It was my misfortune to come into conflict with the learned and distinguished judge.**
- **I have come to the conclusion that all of this mass of documents was irrelevant, that it could not be held against the accused.**

Jack Walker (2004):

**Cassidy's sweeping emotional statements gave the illusion of great momentum, but they were too general to challenge the Crown's evidence in a meaningful way. He did not seem to appreciate that the charges against Russell were for a course of conduct that covered many years, and was an alleged nation-wide conspiracy. His colourful approach failed to subject the Crown's evidence to much needed critical analysis.**

### **Andrews Addresses The Jury**

Andrews addressed the jury from 10 a.m. to 3:45 p.m. on December 23. The transcript amounts to 145 pages. He built on the advantages he had with a packed jury and a judge determined to see Russell convicted. He made emotional

appeals based on patriotism, religion, family and fear of revolution, and attacked not just Russell but each one of the Winnipeg 7. They were in the courtroom as observers, and yet to be tried.

Andrews began by saying that Cassidy’s address was only about the law, with no analysis of the evidence:

**It will be for you to determine whether the reason he did not do so was because of the impossibility of finding even in all this mass of evidence anything that points to the innocence of the accused.**

Reinhold Kramer and Tom Mitchell, *When the State Trembled* (2010):

**Andrews preached to the jury. He knew how to clothe himself in morality and pious outrage. Though he might not bear too much scrutiny, he called down divine judgment upon the strikers.... As for the notion that Canada was a class-ridden society, he protested: “These are horrid lies. There are no classes in this country”.... He said, “There were reports [during the strike] of babies dying for want of milk.” He phrased his words so that he wasn’t technically lying: there had been reports—false reports.**

Andrews stated that Russell was not accused of attempting to overthrow the government but with intending to bring about “discontent and disaffection” for which the logical result would be an attempt to overturn the government.

Andrews said there were no classes in Canada, perhaps forgetting one of the counts in the indictment. The accused were charged with “promoting feelings of ill will and hostility between different classes of Her Majesty’s subjects.”

## **Sacred Family Values**

An excerpt from Andrews’ address:

**There is no place in society where the home is more sacred, where the family is more hallowed than in the family of the good, honest working man. His home may be humble, but it is his home.... I say to you that the home of the poor man is a sacred and even happier than the home of the rich.**

Kramer and Mitchell (2010):

Judge Metcalfe must have smiled [at those comments]. Metcalfe, a bachelor, was romantically involved with Andrews' estranged wife, and once, Andrews found his wife in bed with Metcalfe, who knocked Andrews downstairs.... Andrews could get away with his cry for family values and with many things others couldn't because he had a very colourful court manner, and because of his reputation. In this trial, it didn't hurt that all the jury members came from out of town.

Kramer and Mitchell cite Jack Walker as the source of this information, while Walker does not name his source.

## The Ailing Judge Instructs The Jury

Judge Metcalfe addressed the jury for about four hours on December 23, from 8 p.m. until after midnight. He was clearly convinced that Russell was guilty. Excerpts:

- After 23 days, sitting day and night, and after the filing of 703 exhibits and the taking of voluminous evidence, I hope you will believe me when I say that I am almost physically unfit to complete my part of this trial.
- Speaking to you as a judge, if I were on a jury, there is much that I would find no difficulty in concluding was seditious.
- If the words spoken are seditious, it is no defence that they are true, and evidence to prove their truth is inadmissible.

The judge's lengthy instructions include a number of legal definitions of "seditious conspiracy" followed by his statement to the effect that it was what the accused were alleged to have done. The charge (40 pages of small print) is in "The Winnipeg General Sympathetic Strike" (1920), published by the Labour Defense Committee.

Desmond Brown, "The Craftsmanship of Bias: Sedition and the Winnipeg General Strike Trial, 1919" (1984) *14 Manitoba Law Journal*:

**The judge encouraged the jury to help him stem the tide of red revolution which he believed was sweeping down to inundate Canada, with Russell and his co-defendants on the crest of the wave. The jury took his direction and pronounced the verdict he so obviously desired.**

In an unpublished autobiography, defence lawyer Edward Bird writes that he left the case after the jury retired and before its verdict, and went home to Vancouver disheartened because the result of the trial was “a foregone conclusion”:

**We were well paid for our work. I really felt some compunction about accepting any further money.**

## **Verdict, Sentence & Gesture**

The jury delivered its verdict at 10:30 in the morning of December 24. It found Russell guilty on all six counts of seditious conspiracy and on the charge of committing a common nuisance. Before sentencing, Russell spoke:

**I have been unduly honoured in being declared a leader... I carried out my instructions from the rank and file in the movement as a paid servant, to the best of my ability, and I feel that if the court had permitted me to demonstrate my real intentions during the Strike, I could have convinced everyone that it was free from anything criminal.**

Judge Metcalfe sentenced Russell to two years in prison on the charge of seditious conspiracy (the maximum sentence), and one year concurrent on the charge of committing a public nuisance (also the maximum sentence).

Some writers suggest the judge did not like Russell as a person (he certainly didn't like his politics), but there are indications that might not be true.

Harry Gutkin and Mildred Gutkin, *Profiles in Dissent* (1997):

**Judge Metcalfe sentenced Russell to two years in prison. Then, in a curiously revealing gesture, he sent the convicted Bolshevik home, without bond, to spend Christmas day with**

his family. On December 26, the police arrived at the house in Weston and drove him to Stony Mountain Penitentiary.

Desmond Brown, “The Craftsmanship of Bias: Sedition and the Winnipeg General Strike Trial, 1919” (1984) *14 Manitoba Law Journal*:

**If Judge Metcalfe was biased, then so was most of the Manitoba bench and the majority of the legal profession.... That his belief was wrong is beside the point. It was the view of the majority and he reflected it faithfully.**

## **Trueman Critiques Metcalfe**

Winnipeg lawyer Walter Trueman, who was later involved in the trial of the Winnipeg 7, wrote a critique of Metcalfe’s charge to the jury in a pamphlet: “Russell Trial and Labor’s Rights: Opinion” (31 pages, “Price Ten Cents”). It is dated January 17, 1920, two days before the Court of Appeal gave its decision in Russell’s appeal. An excerpt:

**I am bound to say that the charge to the jury is based upon a complete conviction of Russell’s guilt. There is not a scintilla of evidence suggested to the jury that might raise a doubt in their mind that the intention was seditious.**

## **In The Court Of Appeal: A Defence Disaster**

Russell’s appeal was heard by five judges in the Court of Appeal from January 8 to 15, 1920. The defense presented their appeal in the form of 14 questions.

Representing the prosecution were Andrews, Pitblado, Sweatman and Coyne. Representing Russell were Robert Cassidy and E.J. McMurray.

According to Jack Walker (2004), Cassidy had a self-inflicted problem:

**Cassidy began by advising the court that he was not ready. He asked for more time.... By January 9, he had reached the fifth point in the appeal. He informed the court that he was unable to argue it without a transcript of the trial evidence. He had not ordered the evidence. Chief Justice Perdue was unsympathetic.**

**“You have made a very serious oversight in not ordering the evidence. And you admit you have not prepared yourself...”**

The court reconvened on January 12 [after discussing whether to give Cassidy more time]. The Chief Justice announced the consensus of opinion: **“Either Mr. Cassidy must proceed with his argument or the court will move on....”** On January 13, Cassidy closed his argument.

The judges wanted to finish the appeal by January 20, when the same legal issues would arise in the trial of *The King v. Fred Dixon*—which was to begin that day. Russell’s appeal was dismissed on Monday, January 19.

### **The Judges’ “Rather Simplistic View”**

Russell’s lawyers apparently made a mess of the appeal but the three written decisions of the **five judges** show that it really didn’t matter. Their decisions, found at (1920) 1 *Western Weekly Reports* 624–657, show that they fully supported the arguments and views of the prosecution.

Chief Justice Perdue:

**Far from being a legitimate strike, the combination was in fact a seditious conspiracy. To aid a brother union in its strike was not the real object of the combination. What took place before the strike shows that the accused and his associate “Reds” aimed at something much more drastic. Their ultimate purpose, as declared in their public speeches, was revolution and the introduction of a form of Socialistic or Soviet rule in its place. This was to be accomplished by general strikes, force and terror and, if necessary, by bloodshed.**

Justice Cameron:

**A widespread system of espionage, intimidation and terrorism was organized and executed with relentless vigilance and activity.... It was a bold attempt to usurp the powers of the duly constituted authorities and to force the public into submission through financial loss, starvation, want and by every possible means that an autocratic junta deemed advisable.**

Justice Dennistoun:

**I am of the opinion that no evidence was admitted which had a prejudicial effect on the fair trial of the accused and that the answers to all [14] questions should be in favour of the Crown.**

Leslie Katz, “Some Legal Consequence of the Winnipeg General Strike of 1919” (1970–71) *Manitoba Law Journal* 39-52:

**It is difficult to comment on the holdings by the Court of Appeal on the law of sedition since they do not appear to have made any. They merely imputed an intention to the accused and proceeded to convict him thereon.... The Court of Appeal entertained a rather simplistic view of the motives of the strikers and especially of those of Russell and his fellow defendants.**

Katz reviews the Court’s judgments on legal issues pertaining to such topics as bail and the meaning of “seditious conspiracy”. He concludes:

**It must be said that the Bench did not perform as well as might have been hoped.**

These judgments showed that the Winnipeg 7 had no hope in the Court of Appeal. Their only hope resided in a verdict of acquittal—from a packed jury.

## **A Good Life**

Russell served about 50 weeks of the two year sentence. He was released on parole on December 11, 1920 and went on to a distinguished career in the field of labour. He was much honoured.

Mary Jordan, *Survival: Labour’s Trials and Tribulations in Canada* (1975):

**At a testimonial dinner for Russell in April 1960 at the Fort Garry Hotel, Justice Joseph Thorson came to pay tribute. He had been one of the Trial Judges [sic, he worked for the prosecution] in the 1919 trials. Thorson said: “It is not given to many to play so great a part. John L. Lewis in the U.S., J. S.**

**Woodsworth in Canada ... and not less than either of those is the part played by Bob Russell.”**

Gerald Friesen in “Bob Russell’s Political Thought” in *River Road: Essays on Manitoba and Prairie History* (1996).

**It is generally conceded today that Russell did not seek to foment a revolution by means of the General Strike. At his flamboyant best, he might have said that the workers lost the opportunity to cause a social revolution and to abolish the wage system.... In his view, revolution would occur without prompting and without violent acts when the proper historical moment arrived. His true goal from 1914 to 1919 was to reform the structure of organized labour, increase the political activity of union members, and promote socialist education. He had only these relatively modest ambitions.**

## **Political Decency**

In early September 1964, Russell lead the annual Labour Day Parade in Winnipeg in a car carrying a placard: “The Father of Labour in Western Canada”. He died on September 25, 1964. Earlier in the month, he had visitors.

Mary Jordan (1975):

**On September 7, 1964 Premier Duff Roblin and his Minister of Labour O.B. Baisley presented themselves at the Russell home, 9 Kingston Row. Their presence brought one of those days that compensate for many long years of bitter lone struggles in the labour movement.**

Premier Roblin presented a certificate to Russell with this wording:

**In recognition of the long and devoted service to the cause of the labour movement in this province, his wise and farsighted leadership and counsel, and his many and notable contributions to the general welfare of the city, a grateful Government is pleased to commend Robert Boyd Russell and to present to him this address of public appreciation.**

Russell was honoured again when the R.B. Russell Technical Vocational School opened in 1967 on Dufferin Avenue in Winnipeg's North End. A plaque in the School refers to him as "a respected labour leader, and an activist for vocational training in this province of Manitoba".

## **Metcalf Dies & Russell Regrets**

Near the end of Russell's trial, Judge Metcalfe told the jury that he was "not in very fit physical condition at the present moment", and referred to being "almost physically unfit to complete" the trial. Despite his poor health and the availability of several other K.B. judges, he presided at the trial of the Winnipeg 7, only three weeks after the Russell trial concluded.

Tom Mitchell (2004):

**It is no exaggeration to say that the stress of the sedition trials killed him. He died April 2, 1922.**

Mary Jordan (1975):

**When he was dying, Metcalfe sent for Russell. He had something to say to him. "No" said Russell. "I will not go. I think I know what he wants to say. Let him die with his guilty conscience." After the judge died, it was Russell's turn to be conscience-stricken. He never quite forgave himself that he could not make himself go, that he had refused the last request of the dying judge.**

\* \* \*

*The King*  
v.  
*Fred Dixon*  
(1920)

**He was charged under the *Criminal Code* with publishing seditious libel (three counts).**

Frederick John Dixon (1881–1931) was an MLA when he was charged in respect of three articles he wrote for the *Western Labor News* during the General Strike.



Fred Dixon

## Capable & Popular

Gerald Friesen, *The Canadian Prairies* (1984):

Dixon left school at 13, came to Canada from England at 19, and by 29 was making a living as a political organizer in Winnipeg. He was an able platform speaker, and a courageous, independent politician.

Nelson Wiseman, *Social Democracy in Manitoba: A History of the CCF-NDP* (1983):

Dixon, according to political colleague Fred Tipping, “was without doubt the most popular man in public life that Winnipeg has ever had.” He was elected to the legislature as an Independent in 1914 and 1915, and in the 1920 election he topped a list of 41 candidates in Winnipeg, almost tripling the vote of his nearest rival. He was a moderate.

Doug Smith, *Let Us Rise!* (1985):

Dixon was a tireless campaigner for a seemingly endless list of social causes [including] women’s rights, workers’ compensation, and the rights of labour.

## Seditious Libel

The charge was under section 132 of the *Criminal Code*:

A seditious libel is a libel expressive of a seditious intention.

An example of Dixon’s alleged seditious libel is quoted by Margaret Fairley in *Spirit of Canadian Democracy* (1945):

There have always been those who imagine that “a whiff of grape shot” would stop the cry of the people for justice. There are those in Winnipeg who think the shooting on Saturday [“Bloody Saturday”, June 21, 1919] taught labour a lesson. But labour did not need the lesson. Labour already knew that two dozen men on horseback, shooting to kill, could disperse a crowd of several thousand unarmed men and women.

## Preparing to Defend Himself

Dixon consulted an old friend, lawyer (and later a controversial judge) Lewis St. George Stubbs, who was then practising law in the town of Birtle. Stubbs offered to defend him, but Dixon decided to defend himself. Stubbs attended the trial, but did not sit with Dixon.

Kenneth McNaught in “Political Trials and the Canadian Political Tradition” in *Courts and Trials: A Multi-Disciplinary Approach* (1974):

**Dixon consulted E.J. McMurray, lawyer for the eight [sic, only one—George Armstrong] arrested strike leaders, who advised that it would be best for Dixon to conduct his own defence in court.**

Roy St. George Stubbs, *Prairie Portraits* (1954):

**Dixon doubted that a man could be a lawyer and intellectually honest. He regarded the lawyer as a staunch and steadfast supporter of the status quo for hire, an intellectual mercenary who sells his mind to the highest bidder. He was later to modify his opinion, and to acknowledge society’s indebtedness to the lawyers of vision and liberal instincts.**

## Prosecutors

The prosecutors in court were Hugh Phillips (1875–1963), Archie Campbell (1892–1963) and Joe Thorson (1889–1978), all from the private bar.

The prosecutors knew that one can seldom be certain of what a jury—even a packed jury—is liable to do. But when they saw the easy time the other prosecutors had in the Russell case, they might well have overestimated the strength of their case and underestimated Fred Dixon’s ability to play their game in their ballpark.

## The Judge

Dale Brawn, *The Court of Queen's Bench of Manitoba 1870–1950* (2006), referring to Alexander Galt (1853–1936):

Alexander Galt's law firm saw his appointment to the bench as the only way to get rid of him. Their prayers were answered in 1912.... He was an unrelenting stickler for detail. He once refused to sign a court order on the grounds that it was drawn improperly. The lawyer involved returned with one draft after another. Finally, he insisted on an explanation. Galt said the document contained a split infinitive.

Jack Walker (2004):

The aristocratic Justice Alexander Galt was not highly regarded by members of his profession. He lacked a rapport with ordinary men and had little sympathy for those charged with crimes. His obvious prejudices against accused persons had been known to cause juries to react by returning a verdict of acquittal.

## The Jury

It is known that the jury panels in the trials of *The King v. Russell* and *The King v. The Winnipeg 7* were vetted by police and private detectives retained by the prosecution, and it is likely that Dixon's jury also had been vetted since it was drawn from the same 250-man jury panel.

## The Trial

Dixon's trial began on January 20, 1920, his 39<sup>th</sup> birthday, and ended on February 16. The trial of the Winnipeg 7 also began on January 20, in another courtroom in the courthouse, but lasted considerably longer, ending on April 6.

As the prosecution's 38 witnesses testified, Dixon soon showed a flare for cross-examination, even with touches of humour. He was assisted on points of law by lawyer Hugh Cutler until January 31. Dixon then "dispensed with him" because prosecutor Hugh Phillips "with all his pretense at fairness was stabbing at me through Cutler."

Dixon did not testify and called no witnesses. Therefore, prosecutor Hugh Phillips addressed the jury first, on February 12.

### “Dixon’s Triumph”

On the morning of Friday, February 13, Dixon began his address to the jury.

Roy St. George Stubbs, *Prairie Portraits* (1954):

The Crown called an imposing array of witnesses. Dixon cross-examined with great shrewdness, but his address to the jury was his triumph. It was the product of painstaking preparation. He gave it three times in E.J. McMurray’s office. On the first occasion, McMurray said, “That won’t do. You must tell the jury something about Fred Dixon and what he stands for in this community.” On the second occasion he said, “You must remember you are talking to 12 men in the jury box. Talk slower, and let those 12 fellows have it straight from the shoulder.” On the third occasion, McMurray gave his approval.

Dixon spoke to the jury for a day and a half (February 13 and 14). His speech was immediately published as *Dixon’s Address to the Jury: An Argument for Liberty of Opinion* (1920, 96 pages, 25 cents). Excerpts:

- I was served with notices that some 70 or 80 witnesses would be called and then notified 30 or 40 would not be called, and then 10 others would be called, and then two more, and then I received notice there would be some 377 documents filed in the case ... 93% of them I have never seen in my life.
- The issue is what my object was in writing those articles. Was it to promote disaffection and bring about riots, or was it to procure a remedy by peaceful means?
- You have watched me for two weeks and heard some of the articles I have written and speeches I have made. Do I look like a criminal with a guilty mind? Do those articles express a guilty mind?
- The only thing that kept these men on strike was that they believed, and we all believed, it was for collective bargaining.... Labour will go on in spite of opposition.

Although we have no collective bargaining, we will have it, and no bullets or anything else can stop it. Ideas are more powerful than bullets.

- In your hands is placed the question of liberty of speech, whether a man has a right to criticize government officials or not.

## Judge Galt Charges the Jury

Judge Galt charged the jury on February 14.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Justice Galt made little attempt during the trial to disguise his belief in Dixon's guilt. Dixon persuaded the jury, by one of the most eloquent speeches ever heard in a Manitoba courtroom, that to imprison him would be to shackle freedom of speech. Galt attempted to swing the balance back in favour of the prosecution during his hostile summing-up, but it did no good. Some say it may have had the opposite effect.

Roy St. George Stubbs, *Prairie Portraits* (1954):

Justice Galt's charge to the jury was a strong plea for conviction.... He mixed his opinion with a goodly dose of his own social bias, speaking not as a judge standing impartially above the strife, but as a man badly frightened by the creaking of a social machine,

Justice Galt's blunt and biased charge to the jury begins with a compliment:

- The accused has conducted his own case, and I am sure you will agree with me in complementing him very highly on the skill he has shown in conducting it. I do not think he could have readily found a lawyer who could have done it any better than he has done it for himself.
- You must be very glad indeed, as I am, after these 15 days of trial, to at last come near the end. The evidence is uncontradicted. There is nothing against it, and it clearly shows to my mind the creation of the most infamous conspiracy I have ever heard of in Canada.

- Dixon was hand in glove with the men who were conspirators, such men as William Ivens, George Armstrong and R.B. Russell [three of the Winnipeg 8]—every one of them proved here before you to be seditious.

Galt here pronounces Ivens and Armstrong guilty of sedition—though they were being tried on that charge with the rest of the Winnipeg 7 in another courtroom just down the hall.

## Verdict

Roy St. George Stubbs, *Prairie Portraits* (1954):

The jury retired at 4:50 p.m. on Saturday, February 14. It returned with its verdict at 10 a.m. on February 16. Dixon always maintained that he had eleven men with him, and that it had taken them 40 hours to make the 12<sup>th</sup> man see the light.

The jury found Dixon not guilty on all three counts of publishing seditious libel.

## A Parting Shot

After the verdict, Justice Galt addressed Dixon:

I would like to warn you against engaging in such transactions as you have taken part in.... Whether from ignorance or not, you assisted in fomenting what I have found to be, and more than one judge has found to be, an absolutely illegal and unjustifiable strike, but in that you may simply have been mistaken in your ideas.

Dixon was re-elected to the Legislature in 1920 and 1922, but retired in 1923 owing to ill health. He died of cancer in 1931 at the age of 50. The funeral service was conducted by J.S. Woodsworth.

\* \* \*

*The King*  
v.  
*J.S. Woodsworth*  
(1919-1920)

**He was charged under the *Criminal Code* with publishing seditious libel (six counts) and speaking seditious words.**

James Shaver Woodsworth (1874–1942), a Methodist minister from B.C., was on a speaking tour of Canada when he arrived in Winnipeg on June 7, 1919 during the strike. When Bill Ivens, Editor of the *Western Daily News*, was arrested on June 17, Woodsworth took over. He was arrested on June 23 by A.J. Andrews.

**Prosecutors' Panic: *The King v. Isaiah***

Frank Underhill, *In Search of Canadian Liberalism* (1960):

If you want to appreciate the atmosphere of panic in which the authorities in Winnipeg were working, read the items in the indictment against Woodsworth.

One of the six counts of “publishing seditious libel” actually quotes passages from the *Bible* (Isaiah 10:1-2 and 65:21-22), which Woodsworth did indeed publish.

Kenneth McNaught, *A Prophet in Politics: A Biography of J.S. Woodsworth* (1959):

It was painfully apparent that the inclusion of the two verses from Isaiah prejudiced the Crown's case. People in Winnipeg were quoting the *London Daily Herald*, which said that Isaiah [740-701 B.C.] was lucky to be dead.

## Bad Words

The charge of “speaking seditious words” quotes from Woodsworth’s speech to thousands of people in Victoria Park on November 16, 1919. An excerpt:

If we get a penitentiary sentence we will carry with us the picture of this gathering of 5,000 people who are behind us. Indeed, a sentence for us might cause a great triumph on the part of the people. I cannot conceive of this 5,000 people having me or the others there for very long. They say we are trying to stir up revolution. If there are any government officials here, I want to say that if they wish to stir up revolution, let them go on as they are doing.

## Libel Charge Dropped

In 1919 a Labour Defense Committee was formed to raise funds to assist men facing charges arising from the General Strike. The Committee’s publications included a pamphlet, “*The King v. J.S. Woodsworth: Indictment for Publishing Seditious Libels (Six Counts) and Speaking Seditious Words*” (1920, 14 pages).

The pamphlet begins with a “Note by Defense Committee”:

J.S. Woodsworth of Vancouver arrived in Winnipeg on June 7. When Wm. Ivens, Editor of *Western Labor News*, was arrested, Woodsworth, acting as Editor, and F.J. Dixon, MLA, carried on the “Strike Bulletin.” On June 23 it was suppressed and Woodsworth arrested.... On November 17 the Grand Jury charged him with speaking seditious words. When Dixon was acquitted of publishing seditious libel on February 16, the Crown withdrew the “publishing seditious libel” charge and postponed the “speaking seditious words” charge till the Spring Assizes.

## The Other Charge Dropped

Kenneth McNaught, *A Prophet in Politics: A Biography of J.S. Woodsworth* (1959):

The charge of “speaking seditious words” remained until March 7, 1920, when the Crown entered a stay of proceedings.... There are several reasons why the case was not

pressed. R.B. Russell had stood trial on the seditious conspiracy charge and was convicted in December 1919. Then came the acquittal of Fred Dixon on February 16, 1920, which left the score even. It is likely that the government lawyers wished to avoid the strong possibility of two successive acquittals before the remaining seven men came up for trial.

## From Outcast to M.P.

Donald Masters, *The Winnipeg General Strike* (1950):

It was ironic that the real heir to the Winnipeg General Strike was Woodsworth, who played a comparatively minor part.... He inherited the martyrology of the Strike. Almost forgotten after 1919 was the important part played by the other leaders. This should not be taken as implying any discredit to Woodsworth.

Frank Underhill, *In Search of Canadian Liberalism* (1960):

The General Strike left Woodsworth a complete outcast from the respectable part of society. But identifying himself with the labour cause was to give him a seat in Parliament for the next 20 years [from 1921].... He made himself the interpreter of the working classes to the more comfortable and successful groups of our Canadian community.

\* \* \*

*The King*  
v.  
*The Winnipeg 7*  
(1920)

**They were charged under the *Criminal Code* with seditious conspiracy (six counts) and committing a common nuisance.**

These are the Winnipeg 7, as listed in court documents:

1. George Armstrong, 49, carpenter, Edmonton St.
2. Roger Bray, about 35, butcher, 187 Eugenie St.
3. A.A. (Abe) Heaps, 33, upholsterer, 562 Burrows Ave.
4. Bill Ivens, 41, church minister, 309 Inkster Blvd.
5. Dick Johns, 30, machinist, 256 Isabel St.
6. Bill Pritchard, 31, longshoreman, Vancouver.
7. John Queen, 37, barrel maker, city alderman, 317 Alfred Ave.

## **The Prosecutors**

The prosecutors could have proceeded against the Winnipeg 7 individually, as they did with Russell, but their success in that trial apparently gave them confidence to proceed against all seven in one trial.

The five prosecutors who appeared in court were the same as in the Russell trial: Andrews, Pitblado, Sweatman, Coyne and Goldstine.

Before the trial began, Judge Metcalfe dismissed several defence motions, including one stating that four of the five prosecutors (except Goldstine) were in a conflict of interest as members of the Citizens' Committee of 1,000 and their activities with the Committee.

## The Defense

Bill Ivens and Bill Pritchard represented themselves throughout the trial. A.A. Heaps and John Queen represented themselves, except from March 2 to 16.

On January 20, the first day of the trial, these were the defence lawyers:

- E.J. McMurray, representing George Armstrong
- Robert Bonnar, representing Roger Bray
- Ward Hollands, representing Dick Johns

Walter Trueman represented A.A. Heaps and John Queen from March 2 until March 16, when he abruptly quit in the middle of addressing the jury.

In 1920, Bonnar Trueman & Hollands were practising law together under that name.

## The Judge

Despite Judge Metcalfe's comments on his ill health during Russell's trial, just three weeks earlier, he presided at the opening of this trial on January 20. This must have been disheartening to the accused men and their lawyers, given Metcalfe's obvious bias against Russell in that trial.

One of the defense motions that Judge Metcalfe dismissed called for him to disqualify himself because of his involvement in the Russell trial. He did not share the attitude expressed by Magistrate Hugh John Macdonald in his letter dated July 16, 1919 to Arthur Meighen:

**I have had so much to do with the leaders of the strike that I fear it would be most unjust for me to attempt to try them.... The very fact that I should dearly love to try them is proof positive that I ought not to do so.**

While hearing defence motions, Metcalfe declared, "It's like a nightmare to me to have to take this case." He said he had no choice, but he surely had one, given that there were six other judges of the King's Bench.

Tom Mitchell, “‘Repressive Measures’: A.J. Andrews, the Committee of 1,000 and the Campaign Against Radicalism After the Winnipeg General Strike”, *Left History* (1996):

Access to apparently unlimited financial resources was only one advantage in the prosecution of the cases. The prosecution had the advantage of a sympathetic judge, which was no accident.

## A Presumption of Guilt

Daniel Francis, *Seeing Reds* (2010):

The defendants found themselves pitted against the full force of the Winnipeg country-club set. Judges and prosecutors belonged to the elite that ran the city. They lived with a few blocks of one another in the upscale Crescentwood neighbourhood. They dined together, partied together, curled, played golf and rode horses together.... The members of the Winnipeg legal establishment clearly saw their role as providing punishment, not justice.

## North & South Winnipeg

Some historians contrast the splendid homes of members of the Citizens’ Committee of 1,000 (most of them located south of the CPR tracks and the Assiniboine River) with the modest homes of the strikers (most of them located north of the tracks).

Robert Craig Brown and Ramsay Cook, *Canada 1896:1921: A Nation Transformed* (1974):

Winnipeg was, perhaps, a perfect Canadian setting for a social and political confrontation in 1919. It had grown rapidly to a city of some 200,000 people. But that growth brought with it profound tensions between the rich of Wellington Crescent and the poor of North Main, and between the dominant Anglo-Saxons and the polyglot population of recent immigrants.

The *Winnipeg Directory* for 1919 shows the prosecutors lived at 749 Wellington Crescent (Andrews), 523 Wellington Crescent (Pitblado), 266 Kingsway (Sweatman), 220 Yale (Coyne) and 728 Dorchester (Williams).

The defence lawyers lived at 206 Langside St. (Bonnar), 400 St. Johns Ave. (Hollands), 167 Polson Ave. (McMurray) and 238 Wellington Crescent (Trueman).

The judge lived in the Cornwall Apartments at 265 River Ave.

Andrews Street was named for A.J. Andrews around 1908 in recognition of his terms as an alderman and as the so-called “boy mayor” of Winnipeg (1898–99). The street runs north from the CPR tracks, and is still lined with modest homes. In 1919 it was likely populated by strikers and their families.

## Jury Selection

The jury panel was vetted by police and a detective agency, as in the Russell case.

In the course of arguments about jury selection, statements made by E.J. McMurray and a Deputy Sheriff were contradictory. When Judge Metcalfe said he believed the Deputy’s version, McMurray took offense and left the courtroom. The next morning, the judge ordered him to return. An exchange with the judge included this from McMurray:

**I owe a duty to my client, but in interpreting your remarks, I felt they were an injustice to my client and myself. I interpreted your remarks as an insult to my honour.... I will return, your lordship, on the explanation that you did not attack my honour.**

During jury selection, Abe Heaps expressed apprehension:

**Judge:** In olden times, they threw an accused man in the river. If he sank, he was guilty. If innocent, he floated.

**A.A. Heaps:** I think we’d stand more of a chance that way.

Andrews got the jury he wanted: 12 older male farmers from outside Winnipeg, screened and found acceptable by police and the McDonald Detective Agency. Their names and home towns are listed on page 416 of *When the State Trembled* (2010). Though juries can be unpredictable, convictions were virtually guaranteed.

Roy St. George Stubbs, *Prairie Portraits* (1954):

When the court recessed during the trial, Metcalfe made a habit of coming down from the bench, taking E.J. McMurray by the arm and strolling with him up and down the corridors of the court house. McMurray thought the judge was trying to show the public that he was on agreeable terms with defence counsel.... Later, McMurray saw a letter in which the writer threatened the judge's life. McMurray wondered if the judge had been using him as a shield.

## The Trial

The jury was sequestered (that is, isolated and not allowed to go home) from January 28 to March 27. The trial began on Thursday, January 29.

The evidence presented by the prosecution was “substantially similar” (Walker, 2004) to what was submitted in Russell’s trial. According to Walker, the Crown called 135 witnesses and filed 1,050 exhibits.

A.A. Heaps kept track of the witnesses and gave a summary of their background when he addressed the jury on March 25. He counted a total of 128:

We had roughly 35,000 men on strike and only two of them were called as witnesses. Six witnesses were newspaper reporters, four were city officials, three were photographers, one a millionaire, 35 employers of labour, 53 police, government officials, detectives and spies, and 26 I have classified as miscellaneous.

Bill Pritchard wrote the Preface to *Winnipeg 1919: The Strikers’ Own History of the Winnipeg General Strike* (1973):

It is a significant fact, chiefly ignored by writers on this episode, that the vast majority of the 1,001 exhibits placed in evidence consisted of the books, leaflets and journals of the Socialist Party of Canada, together with all those socialist “classics” recognized throughout the world.



Known among older lawyers as “Courtroom No. 1” (now known as simply Room 210), this has been the site of hundreds of trials since the courthouse was completed in 1916.

## Bonnar’s Frustration

Robert Bonnar, acting for Roger Bray, registered objections throughout the trial. For example:

**To think of getting a fair trial in Winnipeg is an absurdity. It would be a farce to hold the trial here. If the case is tried here, I have no more hope of justice than I have of becoming a millionaire.... My lord, I am not a thief, and I can not stay and take my client’s money feeling under the circumstances that I can be of no further use. I ask your lordship to permit me to withdraw.**

Bonnar did not withdraw, but clearly felt his case was hopeless:

**Judge:** I am getting sick and tired of hearing reference [by defence lawyers] to time and fairness.

**Bonnar:** So am I getting sick and tired.

According to Walker (2004), Bonnar said this to the accused men around this time:

**Boys, there is no hope of a fair trial or an acquittal. The plank is greased for you to go to prison.**

Bonnar's sense of hopelessness appears again later, when he addresses the jury on behalf of Roger Bray. Andrews then comments to the jury that Bonnar—whom he referred to as “perhaps the greatest criminal lawyer in Canada”—gave a weak address because he knew there was no defence to the charges.

## A Fair Trial?

Jack Walker (2004) asks, “Were the men given a fair trial?” He answers, “No, they were not,” and lists a number of reasons—including these:

- The judge should have disqualified himself. He decided before or during Russell's trial that all the accused men were guilty.
- The judge bullied defence counsel throughout the proceedings. He kept pressure on them to expedite the trial. The prosecution was not rushed.
- The judge might have had some sympathy for the defendants, but he had none for their counsel, with whom he was rude, overbearing and biased.
- The judge allowed extraordinary leeway to the prosecution and little to the defence in admitting evidence. Why were the accused prevented from calling evidence to show that collective bargaining was the real issue in the strike? Why was the composition and role of the Citizens' Committee of 1,000 kept from the jury?
- The conduct of the prosecutors fell short of the expected standard. Andrews' bias and misconduct were never fully revealed to the juries.

## The Defence Rests before the Prosecution Rests

On February 24, a week before the prosecution closed its case, Robert Bonnar announced that the defence would not be calling any witnesses. The decision might have been based on the theory that the prosecution had gone too far with its 135 witnesses and 1,050 exhibits.

The eventual results suggest that the defence misjudged such matters as the fear of revolution—inside and outside the courtroom—and what the jury would think about none of the seven accused men testifying. They had a right not to testify but, as is often said, juries like to hear from the accused.

The Winnipeg 7 must surely have thought in retrospect that at least some of them should have testified.

The decision not to call witnesses was probably influenced by the length of the trial and the level of exhaustion among all the participants, including the jury.

After the trials, A.J. Andrews wrote to Justice Minister Arthur Meighen:

For about five months we were at the Court House every morning at 9:00 and rarely left before midnight, sometimes even later, and were also there almost every Sunday. The court sat a large portion of the time from 10:00 o'clock in the morning until 10:00 at night, and on several occasions until 11:00, 12:00 and 1:00 o'clock [but never on Sunday].

On March 2, the prosecution closed its case.

## The Prosecution Addresses the Jury

The prosecution spoke first because the defence called no witnesses.

On Friday, March 5, prosecutor A.J. Andrews addressed the jury. Excerpts:

- I am very proud to say that there is no country in the world where the workmen get better treatment than they do in this Canada of ours.

- There is no greater or sweeter thing than work, honest work, which is done cheerfully.... These men say that it is a vice. They would induce a community of workmen to work three hours a day.
- I am stating the truth as God tells me.... The flag means nothing to these men. We love that flag.
- Some of the accused say the *Communist Manifesto* [1848] is a historical book and can be found in every library. But remember this: a druggist and a doctor sell poison but you don't want it in your coffee.
- For the good of this country the Crown succeeded in seizing this literature ... in the dead of night, but such things have to be done in the interests of society and the welfare of the country.
- Instead of preaching contentment, [the accused] are always pointing to someone who has a little more. What is the secret of contentment? It is not looking at my more fortunate neighbour and envying him his better motor car and better house. It is being satisfied with what I have and being thankful God had given me as much as He has given me.
- The aim of the accused is to remove the word "duty" from the dictionary and substitute pleasure and vice.
- It is a good thing for Canada and the future that there has been laid bare this poisonous system of propaganda that has been going on in our midst.

Owing to the sickness of a juror, the court adjourned from Tuesday, March 9 until Monday, March 15, when Andrews completed his address.

## The Winnipeg 7 Address the Jury

In criminal trials in which accused people act as their own lawyers, it is usual for them to address the jury after all the defence lawyers. But at this trial, for reasons unknown, the lawyers spoke first (Trueman for Heaps), third (Hollands for Johns), fifth (McMurray for Armstrong) and seventh (Bonnar for Bray).

In the following pages, the Winnipeg 7 appear in the order in which they or their lawyers addressed the jury.

**The 1<sup>st</sup> of the Winnipeg 7**  
**Walter Trueman, representing A.A. Heaps**

On March 2, 1920, the day the prosecution rested its case, lawyer Walter Trueman announced in court that he was representing Abe Heaps and John Queen. On March 16, 1920, Trueman addressed the jury on behalf of Heaps. Excerpts:

- **Mr. Andrews has referred to well-clothed and well-paid working men as evidence that their lot is satisfactory. It was the language of the Dark Ages. It did not belong to the conversation of thoughtful men alive to the trying nature of the problems that confront our times.**
- **It is true to say now and here that the happiness of the few depends upon the helplessness of the many. A few rise up to the heights and have everything, while the many step out into the darkness of defeat, empty-handed.... The socialist today is only against this evil condition. Capital and labour are engaged in a world struggle that cannot be ended until social justice has been obtained for labour.**

Judge Metcalfe interrupted, saying that he did not think it was his duty to listen to an apology for socialism. Trueman continued:

- **All I am trying to do is to establish that these things are not criminal or seditious. If the Crown Prosecutor understood history he would know that you cannot indict ideas. You cannot take away from labour the right to organize.**
- **I venture the prediction that the day is not far off, if it is not already at hand, when this prosecution will be a source of wonderment to men.**
- **Some lawyers have as good a share of the good things of life as the capitalist, and they are as much interested as is the capitalist in holding the lid tight on existing conditions.... Roads of ambition and success are open to him. He can take his part in important cases and he can be leading counsel for the Crown in a galaxy of brilliant lawyers. He can look forward**

to the quiet dignity of a position on the bench.... A reconstruction and readjustment of society is not needed by him, for he has no grievance of any kind. He would not desire even to have the judges different from what they are. He cannot, therefore, understand why anyone is discontented.

Walker (2004) states that Trueman spoke for less than an hour. But a “Note” by “W.W.L.” at the end of “W. Pritchard’s Address to the Jury in *The Crown v. Armstrong* [and others]” (1919) says otherwise:

After speaking for about nine hours and interrupted by the court some 30 times, Mr. Trueman finally sat down and refused to proceed with his speech.

Trueman walked out and quit the case after this exchange with Judge Metcalfe:

**Trueman:** I am being denied the inalienable rights of counsel for the defence.

**Judge:** Will you withdraw that statement? You have made a statement amounting to this: “You are an unjust judge”. Will you withdraw it?

**Trueman:** I made no such charge. It is simply a clash between your lordship and me, and under the circumstances I cannot continue.

**Judge:** That is your privilege. If you intend that as an apology, I will accept it. I might say that this is the third time counsel has withdrawn in this case.

Trueman returned on April 6, for the sentencing of those who were convicted, but sat in the gallery with the general public.

Heaps and Queen were left to represent themselves.

\* \* \* \*

## The 2<sup>nd</sup> of the Winnipeg 7 John Queen, representing himself



John Queen

Queen (1882–1946) was born in Scotland and came to Winnipeg in 1906. He was elected to the Winnipeg City Council from 1916 to 1919. In the 1930s, he was elected mayor of Winnipeg seven times.

Queen was unexpectedly abandoned by lawyer Trueman on March 16, but he addressed the jury on March 17 until 10 p.m. and March 18 until 3 p.m. A newspaper headline on March 19: “Queen Electrifies Court with Eloquent Address”. Excerpts:

- Mr. Andrews said work is one of the sweetest things in life. It is all right for a lawyer to talk of sweet work. True, they get the sweets, we get the work. Work to the lawyer is words. No wonder it is sweet.
- Mr. Andrews said there are books that you would not like your children to see. What is the inference? Is it that the people of Canada are all children and cannot be trusted? I say it is.
- Mr. Andrews asks why we didn't use constitutional means to change things. We have. I was elected to City Council to give expression to the aspirations of the workers. I did this in the Council during the strike.... I find myself here as a result of representing the workers by constitutional means. My actions were entirely in the open.
- Not one piece of all this literature was found in my home, yet they bring me into court and say I must defend myself against it.

★ ★ ★ ★

### **The 3<sup>rd</sup> of the Winnipeg 7 Wade Hollands, representing Dick Johns**

Richard (“Dickie”) Johns (1889–1970) was born in England and came to Canada in 1912. He worked as a machinist for the CPR. In the years following the trial, he taught industrial arts and in 1951 became the founder and first principal of Technical Vocational High School (known as “Tec Voc”), a public school in Winnipeg.

Ward Hollands spoke on behalf of Johns for only an hour, possibly believing there was so little evidence against Johns that the jury was certain to acquit. Excerpts:

- **Labour organizes for the same reason capital does, to become more efficient, to get higher wages and to improve its conditions.**
- **I know you will find Dick Johns not guilty on the seventh count [the charge of committing a common nuisance]**



**This photo of Dick Johns is the first in a line of photographs of principals of Tec Voc since 1951. They are located just inside the entrance of the school at 1555 Wall Street.**

**\* \* \* \***

because he wasn't even in Winnipeg during the strike.

**The 4<sup>th</sup> of the Winnipeg 7  
Bill Ivens, representing himself**

William Ivens (1878–1958) was born in England and came to Canada in 1896. He attended the University of Manitoba and became a Methodist minister. He founded the Labour Church and in 1918 became editor of the *Western Daily News*, a labour newspaper. After the trial, he was elected to the legislature three times.

Ivens spoke for 14 hours on March 18 and 19, 1920. Excerpts:

- There is a big difference in saying “if Bolshevism stands for a certain thing, then I am a Bolshevik” [as he had said in a speech] and saying “I am a Bolshevik.” That is the trouble with putting in a sentence here and a sentence there.
- I was asked to take over the editorship of the newspaper, and I did it to make a living. I had to do this because I preach to the working people at the Labour Church without taking any salary from them.
- I never threw myself into anything so fully convinced that Christ was on our side as I did with that strike.
- They raided my home in the dead of night [when he was in custody], but all they produced were a few cards which they said were notes of my speeches. Would not you feel that an injustice had been done to you if spies had come into your wife's bedroom in the middle of the night, if they picked up your sick babies from their warm beds and laid them on the floor while they searched under the mattresses?

On Saturday, March 20 Judge Metcalfe granted Ivens' request that he be allowed to complete his address at a later date. He was exhausted from speaking for two days and caring for his sick wife and children at home.

\* \* \* \*

The 5<sup>th</sup> of the Winnipeg 7  
**E.J. McMurray, representing George Armstrong**

Armstrong (1870–1956) was born in Ontario and came to Winnipeg in 1905. He was politically active as a Socialist. He had a reputation as an excellent “soap-box” speaker, but said little during the trial. He was elected to the legislature in 1920.

On Saturday, March 20 and the following Monday morning, E.J. McMurray addressed the jury. Excerpts:

- The Crown has committed a deliberate assault on freedom of speech and liberty of opinion.
- True, some of the accused men are Socialists, but it is too late in the day to charge a man with sedition because he is a Socialist.
- The intention is the whole thing. These men had no intention to overthrow the government, except by constitutional means. Would it be fair to charge political leaders with sedition for opposing the government?

\* \* \* \*

The 4<sup>th</sup> of the Winnipeg 7  
**Bill Ivens returns, representing himself**

In the afternoon of March 22, Bill Ivens completed his address to the jury.

- Mr. Andrews told you I was “the worst of all the accused” for my actions during the strike. If that is so, your duties will be very light. I had no part in running the strike.
- My first words when I came into this court were “not guilty”. The last thing I am going to say to you tonight is that I am not guilty. I ask you to come back and let me hear you say my last words, not guilty, so that we may

stand for justice and liberty.

Jack Walker (2004) quotes a comment by Bill Pritchard, years after the trial:

Bill Ivens could get a little carried away. He made a bombastic speech to the jury, with considerable religious overtones. To Ivens these proceedings resembled Christ's trial before Pontius Pilot.

\* \* \* \*

### The 6<sup>th</sup> of the Winnipeg 7 **Bill Pritchard, representing himself**

J.M. Bumsted, *The Winnipeg General Strike of 1919: An Illustrated History* (1994):

**William John Pritchard [1888–1975]:** Born in England.... Athletic and musical, he was extremely well-read and a brilliant orator. He first spoke in Winnipeg on June 12, 1919. On a Victoria Park platform, he warned the crowd (to much laughter), “Beware of lawyers without briefs and parsons without pulpits.”

Pritchard, a resident of Vancouver, addressed the jury for 16 hours on March 23 and 24. His speech was published (216 pages) soon after by the Labour Defense Committee.

*The Winnipeg Tribune* of March 23, 1920 called Pritchard “the most brilliant of the galaxy of star orators who have so far addressed the jury”.

Part of a statement made by Pritchard in a public speech at Victoria Park in 1919 is used by Doug Smith in the title of his book, *Let Us Rise! An Illustrated History of the Manitoba Labour*

Bill Pritchard



*Movement* (1985):

The great appear great to us because we are on our knees. Let us rise!

These excerpts from Bill Pritchard's 16 hour address to the jury are drawn mostly from *Winnipeg 1919: The Strikers' Own History of The Winnipeg General Strike* (1973, 2<sup>nd</sup> edition, 1975), edited by Norman Penner:

- Mr. Andrews drew a picture of sweet, beautiful, enjoyable work. Let us listen to the psalm of praise to work, as it comes tripping from the lips of a corporation lawyer. Did he ever work in a coal mine?
- Mr. Andrews said "Any man can become what he likes, anything at all." Just let that sink in. You [Andrews] point to the initiative of the millionaire who became great by this own integrity and brains. A millionaire in what? [Let us say] in copper. How many toiling slaves in the hills of British Columbia and Montana are necessary to make a copper king? How many farmers with mortgages on their farms does it take to make a wheat king?
- I didn't know there was so much literature in the world [referring to the 1,050 exhibits filed by the prosecution].... I want to deal with the Communist Manifesto. You will remember the outburst of righteous indignation from the lips of Mr. Andrews: "Would you like your children to read that?" Who was it, gentlemen, who said, "When I was a child, I spoke as a child, but when I became a man I put away childish things"? Some people, evidently, long after they become men, do not put away childish things.
- The prosecutors have collected a mass of correspondence. and out of that mass of documents have gone with the microscope and surgical knife and carved out terms: "red", "Bolshevik", "socialism", "evolution", "revolution", "proletarian", "bourgeoisie", etc ..., little pieces of poison [to use out of context].
- Whether or not we be vindicated in this court, we shall be vindicated in process of time by history.
- I had never hoped that my poor modest name could be linked with the name of Milton, with the name of Galileo,

with the names of all those illustrious men of the past who took the broom of scientific investigation and swept up the cobwebs of superstition and darkness.

- I have gone at some length, and possibly even to the point of exhausting your patience.... I have tried to give you, in a more or less haphazard fashion, some of my views.
- What I have done, I have done in good faith, in sincerity and, from my own standpoint, from the purest of motives. Thank you for the patience you have shown in listening to me for these last two days.

Pritchard's long address shows his intellectual brilliance and speaking skills, but he might have had a better result from the jury if he had done as Fred Dixon did in his address. Following E.J. McMurray's advice, Dixon had talked more about who he was than about politics.

At the age of 81, Pritchard wrote "The Winnipeg General Strike" for *The Western Socialist Volume 36* (1969). He said he had been besieged for years to write about the strike and felt obliged to do so on its 50<sup>th</sup> anniversary:

**Contrary to general opinion, I had little or almost nothing to do with the strike personally. That fact is not altered by the panic stricken authorities having pounced on me in their blind fury and successfully had me jailed. I went to Winnipeg as a spectator, and in the week was there sat once by invitation with the Strike Committee and addressed a few open-air meetings. This gave the authorities their chance and they took it.**

Pritchard mentions that he generally agreed with Donald Masters' view of the strike in his book *The Winnipeg General Strike* (1950).

Mr. Pritchard died in the U.S. in 1975 at age 87, the last surviving member of the Winnipeg 7 and his five prosecutors.

\* \* \* \*

## The 1<sup>st</sup> of the Winnipeg 7 A.A. Heaps returns, representing himself

Abraham Albert Heaps (1885–1954) was born in England and came to Winnipeg in 1911. After the trial, he worked for Great-West Life until 1925, when he was elected MP for Winnipeg North (defeating E.J. McMurray). He was an MP until 1939 as a member of the Labour party and then the CCF.

Walter Trueman abandoned Heaps on March 16, without finishing his address to the jury. Heaps now addressed the jury for about six hours on March 25.

Jack Walker (2004):

**Heaps began by paying tribute to Walter Trueman. Heaps' case was not injured by Trueman's withdrawal as counsel. In fact, it probably helped.**

Leo Heaps, *The Rebel in the House* (1970)—a biography of Abe Heaps by his son:

**Heaps' experience with lawyers taught him that they generally knew little about the law. After witnessing the behaviour of lawyers [in hearings relating to the strike], he came to the conclusion that it would be preferable to plead his own case.... He found to his amazement that he had a naturally engaging manner that seemed to please the jury. His sharp wit and retort mocked the prosecution and, on occasion, brought laughter to the jurymen.**

Excerpts from Heaps' address:

- **Do you know that some of the returned soldiers were working on the building of the Somerset Block [at 294 Portage Avenue] for \$12 a week? When they asked for more money they were dismissed.**
- **Lieutenant Governor James Aikins recently went to Ottawa to get higher wages for the judges of this city. This is the kind of collective bargaining we want.**

- Did you see with what glee the 88 employers of labour, and the police and spies testified against us?
- I don't mind being called a nuisance, but to be called a common nuisance is one too much.

The charge was committing, not being, a common nuisance.

Harry Gutkin and Mildred Gutkin, *Profiles in Dissent* (1997), referring to Heaps' address to the jury:

He said that not only was the notion of an intended Bolshevik revolution a preposterous fiction, but—together with other trade unionists—he had steadfastly fought against Communist influence in the unions. Now to be lumped together with his opponents, and to be called the worst of the lot, boggled the mind.

\* \* \* \*

### The 7<sup>th</sup> of the Winnipeg 7 **Robert Bonnar, representing Roger Bray**

Roger Bray (c.1884–1950) was born in England. He immigrated to Winnipeg in 1903 and joined the army in 1916 while unemployed. He was posted to England, and returned to Winnipeg on December 31, 1918.

Donald Avery, "The Radical Alien and the Winnipeg General Strike of 1919" (1976):

On June 14, 1919, a secret agent of the Mounted Police informed the Superintendent of the Winnipeg District that Bray was "at the present time the most dangerous person in the city, in view of the fact that he is a Returned Soldier and is using that to influence other returned men." The agent also alleged that Bray had organized alien "shock" troops that could be used when the Bolsheviks seized control of Winnipeg.

In the evening of March 25, 1919, Robert Bonnar spoke for two hours on behalf of Bray. Excerpts:

- We find four of the five Crown counsel are members of the Citizens' Committee. The men who said to the strikers, "You'll surrender" are prosecuting this case. Do you think that is fair? Do you think that is what should occur in a British court of justice?
- You must believe that these men [the Winnipeg 7] are the craziest beings on earth if you believe they planned to seize the country.

In a 25 page tribute to Bonnar in *Lawyers and Laymen of Western Canada* (1939), published five years after Bonnar's death, Roy St. George Stubbs briefly mentions this trial:

Bonnar was counsel for the defence, but not being in harmony with the social issues involved in the trials, he was not seen at his best. He was in his real element in a murder or manslaughter case.

## 72 Hours of Speeches

Over nine straight days (excluding Sunday), from Tuesday March 16 to Thursday March 25, the jury heard about 72 hours of speeches from the Winnipeg 7 and their lawyers. They thought that left only the judge's charge to the jury.

## Speaking Last

Jack Walker (2004):

Bonnar spoke for only two hours, knowing [that is, expecting] that his words would be the last heard by the jury before the judge's charge. The plan of the defence had been to call no evidence and to derive the maximum benefit from speaking last. But when Bonnar finished, Andrews—to the dismay of the defendants and defence counsel—sought permission from the court to speak to the jury in rebuttal.... Over the objections of defence counsel, Andrews was allowed by Judge Metcalfe to address the jury the next morning.

There is a notion among prosecutors and defence lawyers that

there is an advantage in speaking last to the jury. It is based partly on the assumption that the judge—who really does speak last to the jury—will give a fair and impartial charge. In this case the defence knew about Judge Metcalfe, and what to expect from him, before the trial began. They should not have been surprised that he would exercise the discretion he had under the *Criminal Code* (in a provision since repealed) to allow the prosecution to speak in rebuttal. They also knew that his charge to the jury was certain to be hostile to them.

## Andrews Rebuts

On March 26, Andrews attacked the speeches made by the accused men and their lawyers. He said Bonnar's address was weak, and it was weak for a reason:

- **Mr. Bonnar is perhaps the greatest criminal lawyer in Canada. You have no doubt after his speech that he acted for all the accused [his only client was Roger Bray]. If he had thought anything could be gained by analyzing the evidence, he assuredly would have done so. His address was the kind that years of experience have taught is the best to make when there is no defence.**
- **The speeches of the accused were the sort you would expect to hear in a debating society or legislative hall. But there wasn't a note of regret for what they had done. Throughout, it was an attempt to justify their actions.**
- **What wondrous powers these men have to move the masses. What a dangerous element to have abroad if they are seditious.**

In *The Law Society of Manitoba 1877–1977* (1977), a three page biography of Andrews has just one reference to 1919. It refers to one strike trial without stating which one (Russell or the Winnipeg 7?), and is overly favourable to him:

**Throughout the General Strike trial, he kept the Crown's prosecution on a commendably fair, dispassionate basis.**

## Judge Metcalfe's Charge

On March 26, Judge Metcalfe instructed the jury on the law for six hours, until after midnight. The first of the following excerpts is similar to his charge to the jury in the Russell case, which had included this: “If I were on a jury, there is much that I would find no difficulty in concluding was seditious”:

- I think that after considering the speeches throughout and the literature circulated, you will have little doubt of there having been a seditious conspiracy to educate the so-called proletariat to assume the reins of government and subvert the existing constitution.
- Your difficulty will be to decide who were the members of that conspiracy. Russell, one of those charged [and, as everyone knew, already convicted] you may believe to be one, but your question is which if any of the accused is guilty.
- When we consider the benefits conferred upon our people by the British Constitution, the crowning effort of centuries of bloodshed and strife, it should fill the heart of every British subject with gratitude that God has seen fit to place him within the jurisdiction of that Constitution, and we should righteously guard it and prevent its destruction by unlawful means.

Roy St. George Stubbs, *Prairie Portraits* (1954):

On the night the jury returned its last verdict in the strike trials, Andrews was playing poker. Asked why one trial [in which he was defence counsel] exhausted him, while the strike trials left him with energy to burn in a poker game, he said, “A man is not under the same intense nervous strain when he prosecutes as when he defends. Nothing steals a man’s energy like

defending a prisoner on a serious charge, particularly a charge of murder.”

## Verdicts

On the morning of March 27, the defence did not object when Judge Metcalfe permitted the jury to have the 1,050 exhibits and the indictment in the jury room.

It is not clear whether the jury deliberated through the night, but at 2 p.m. on March 28, it delivered these verdicts:

- **A.A. Heaps: acquitted.**
- **Roger Bray: convicted on the charge of committing a common nuisance.**
- **The remaining five: convicted on all six counts of seditious conspiracy and on the charge of committing a common nuisance.**

The jury recommended mercy. The convicted men were immediately taken into custody, pending sentence.

Jack Walker (2004):

**The verdict made no sense to the defendants. How could Bray be innocent of seditious conspiracy and Johns guilty? Why was Queen guilty and Heaps acquitted?**

Harry Gutkin and Mildred Gutkin (1997):

**On April 5, Heaps told an audience in Calgary that the labour martyrs were victims of a monstrous oppression: “If I have done nothing wrong, these men have not. If they are guilty, I am guilty. If I am innocent, they are innocent.”**

Roy St. George Stubbs (1954):

**Heaps has been heard to say that he was acquitted because he did not have a lawyer defending him. Robert Bonnar maintained that he was acquitted because the jury concluded that he was harmless.**

## Sentencing

The maximum sentence for seditious conspiracy was two years in prison. For committing a common nuisance, it was one year in prison.

According to Walker (2004), the only prosecutors in court on April 6 to hear the judge sentence the convicted men were A.J. Andrews and Sid Goldstine. Only one defence lawyer attended. It was E.J. McMurray, who told the judge he had nothing to say. Perhaps these are more signs of a sense of hopelessness among the defence lawyers and their clients.

Bill Ivens, first up, said nothing.

Judge Metcalfe said that if the jury had not recommended mercy, he would have given the same sentence as in the Russell case (two years in prison). Ivens' sentence was one year in prison on the conspiracy charge, plus six months concurrent on the nuisance charge.

Judge Metcalfe:

**So that there be no suspense, I will say that the sentence will be the same in all the other cases.**

### **“What’s the use?”**

All of the other five convicted men addressed the judge. John Queen said he hadn't had a fair trial. For one thing, he had never been a union member, yet the prosecution kept referring to him as a member of the General Strike Committee. The judge asked why he hadn't mentioned it before. Queen's reply includes this:

**My lord, there are times when a man simply throws up his hands and says, “What’s the use?”**

### **“They Beat Us”**

Dick Johns, who had been represented by Ward Hollands, expressed regrets for not having testified:

**I do not say now that had I defended myself I would have been a free man today, not at all. But I do say this, that I had a number of things on my mind that I would like to have given here.... There was a conspiracy precipitated by the Citizens'**

Committee and they certainly beat us. That is, temporarily, they beat us. I am going to give them credit for that.

Roger Bray, convicted only of committing a common nuisance, was sentenced to six months in prison. He spoke:

Whatever my comrades are guilty of, I am guilty of also, as I endorse everything they have said and done. I have no apologies to make nor any regrets... I cannot help but think that I have not had a fair trial. I think this whole trial has been a travesty of British justice.

## Political Aftermath

The prosecutors, having allegedly saved Canada from a revolution, might well have expected a vote of confidence from the general electorate in the 1920 provincial election.

Martin Robin, *Radical Politics and Canadian Labour (1880–1930)* (1968):

The Manitoba election of June 29, 1920 was a minor revolution.... The election of 11 labour MLAs was a real index of the height of class feeling engendered by the General Strike and post-war conditions. "Never in Canada," reported the *Canadian Forum* "have the devotees of law and order received a ruder shock."

Kenneth McNaught in "Political Trials and the Canadian Political Tradition" in *Courts and Trials: A Multi-Disciplinary Approach* (1974):

In the Manitoba election of 1920, Armstrong, Ivens and Queen won election to the legislature although they were still in jail and stood on socialist platforms. Dixon topped the polls in Winnipeg while, in 1921, J.S. Woodsworth became the first federal MP to be elected by a social-democratic party.

Ed Rae, "Prairie Metropolis: A Personal View", in *Prairie Metropolis: New Essays on Winnipeg's Social History* (2009), edited by Sýllt Jones and Gerald Friesen:

After 1920, the labour movement shifted its attention to control of city council. Political action meant challenging the very “citizens” group that had opposed the strike. Thus, one important aftermath of the strike was the creation of two political forces, one official under the banner of labour, and the other unofficial and known by a variety of names but commonly called the Citizens’ League. Until at least the 1980s, they contended for control of council.... The League dominated council and devoted itself to keeping taxes down and convincing the electorate that they were not a political party. Despite the hypocrisy, they were remarkably successful.

## From Prison to Public Office

Jack Walker (2004):

A few minutes after midnight on February 28, 1921, the five men were released from prison.... History is full of examples of men who served in public office after serving time in prison. But seldom, if ever, have men gone from prison to public office on the same day. That afternoon the clerk of the legislature swore in Armstrong, Ivens and Queen. That evening, the three calmly took their seats as members of the legislature. The galleries were filled with spectators who flocked to see the celebrities.

## A Last Word

Leo Heaps mentions *In The Rebel in the House* (1970) that Abe Heaps bumped into Judge Metcalfe some time after the trial.

The judge had an interesting comment:

The luckiest thing in the world ~~was~~ that you had no lawyer defending you. Otherwise you would have gone to jail with the rest.

## Some Conclusions

W.L. Morton, *Manitoba: A History* (1957, 2<sup>nd</sup> edition, 1967):

**Thus shamefacedly closed a shameful episode. The trials and the sentences were an abuse of the processes of justice by class fear and class rancour.**

Stuart Marshall Jamieson, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900–66* (1968):

**All the convictions were based on the dubious assumption that the strike was the result of a conspiracy to overthrow the government.**

In 1973, Donald Masters wrote a brief Preface for a new edition of his influential book, *The Winnipeg General Strike* (1950). An excerpt:

**Since the publication of this book in 1950, a considerable literature has appeared on the Winnipeg Strike. Without exception, all the writers have accepted my view that the strike was not an attempt to seize the government by force, but rather a struggle over wages and hours and collective bargaining.**

Ramsay Cook, *The Politics of John W. Dafoe and the Free Press* (1963):

**Dafoe's lack of sympathy for the strike leaders was based upon the unfounded assumption that the strike was the first step in a planned social revolution. He never gave up this view. Of course, it is possible to argue that a general strike is revolutionary by definition. But for such an argument to be valid, "general strike" has to be defined in such a way as to**

**exclude the Winnipeg affair, about which a careful historian [D.C. Masters, 1950] has concluded that “the strike was what it purported to be, an effort to secure the principle of collective bargaining.” Dafoe refused to accept this conclusion.**

Arthur Lower, *Colony to Nation* (1977):

**It is difficult to believe that [the strike leaders] were possessed of serious revolutionary intentions.... [A law rushed through Parliament in 1919] was a demonstration of how feeble the English tradition of freedom was when compared with the fears of the ruling classes. The legislation and the travesty of justice constituted by the trial of the strike leaders had a good deal to do with the subsequent emergence of radical movements.**

It did not take everyone decades to reach the now common view of the strike. This is from Hugh Robson’s *Royal Commission Report* (“The Robson Report”, 1919):

**The strike was the result of the determination to support by mass action the demand for collective bargaining.**

Daniel Francis, *Seeing Reds* (2010):

**The convictions of the strike leaders marked the winding down of the Red Scare. The court cases were anticlimactic for Canadian public opinion. By early 1920, not many people still believed that the country was poised on the brink of revolution.**

J.M. Bumsted, *The Winnipeg General Strike of 1919: An Illustrated History* (1994):

**Although the strikers may have lost the battle in 1919, they won the verdict of subsequent historical study. Increasingly, the leaders of the Strike became accepted as moderate gradualists, victimized by their opposition through the law and the courts.**

Bruce Hutchison, *Mr. Prime Minister 1867–1964* (1964):

**Labour was not going Communist, or even socialist. It was determined only to win a better place in the society of the brave new world.**

Irving Abella in his Introduction to *On Strike: Six Key Labour Struggles in Canada 1919–1949* (1974), edited by him:

In each of the six strikes discussed in this book, the heavy hand of government—in the guise of the Royal Canadian Mounted Police in the Winnipeg General Strike—grinds down upon labour. In each conflict, the state comes down forcefully and aggressively on the side of capital. Labour was left to fend for itself against both business and government. Workers were to be crushed and unions destroyed whenever they posed a serious threat to industry. To support business, the full resources of the state were always available. The army, police and legislation were at the disposal of industry in its efforts to keep labour weak and divided.

## The Bercuson Version

David Bercuson (born in 1945) is an historian at the University of Calgary.

David Bercuson, *Confrontation at Winnipeg* (1974):

Was the strike fought for the purposes so often repeated by the General Strike Committee and historians sympathetic to it—collective bargaining and the right to organize industrial unions? The evidence suggests these issues may have been oversimplified.

David Bercuson in “The Winnipeg General Strike” in *On Strike: Six Key Labour Struggles in Canada 1919–1949* (1974), edited by Irving Abella:

By launching a general strike, the workers embarked on a radical course, but they were not radical enough to escape the consequences of their action. Once the unions decided to shut down the city until they won, they ran into the power of three levels of government. And when the federal government decided to involve itself in countering a revolution that never existed, the workers were lost. Their only choice was between unacceptable compromise, complete defeat, or direct resistance.

David Bercuson, *Confrontation at Winnipeg* (revised edition, 1990):

The craft unionists who called the Strike betrayed the trust of their followers with an ill-conceived, poorly executed action.... There was justice in their demands to have the metal trades council recognized, but no truth to their claim to be fighting for collective bargaining.... They gave the federal government the excuse it wanted to crush the Strike. Their defeat was as complete a defeat as ever there was.

### “The Establishment Always Wins”

Eugene Forsey's letter dated September 27, 1966 to A. Balawyder is quoted by Balawyder in *The Winnipeg General Strike* (1967):

Though the strike was declared, and run, purely to establish the right of collective bargaining, the heady talk of some of its leaders (who later seemed surprised to have been taken literally) gave the respectable classes a dreadful fright.

Frank Underhill, *In Search of Canadian Liberalism* (1960):

The General Strike remains a landmark in our Canadian social and political history. For the first time we had clearly aligned against each other the two major classes into which modern industrialism has divided our society.... It showed how strongly entrenched are the established ruling groups in our society, how bitterly and unscrupulously they will fight for their privileged position, how prone is the government to take the side of the powerful, and how difficult it is for the other side to get its case before public opinion.

\* \* \*

## The Trials: By the Numbers

**The following numbers are drawn mostly from secondary sources.**

**1,000** The alleged number of members in the Citizens' Committee of 1,000. The actual number is unknown. Some say as few as 50. Police officer George Lovatt, a prosecution witness in the Russell case, refers to having met with the Committee, which he estimated at "75 gentlemen".

**10** The number of men charged with seditious conspiracy or seditious libel under the *Criminal Code*: the Winnipeg 10.

### Seditious Conspiracy & Committing a Common Nuisance

**8** The number charged with seditious conspiracy and nuisance: Russell *and* the Winnipeg 7.

**6** The number convicted of both charges: Russell and five of the Winnipeg 7.

**1** The number convicted only of committing a common nuisance: Bray.

**1** The number acquitted of both charges: Heaps.

## Seditious Libel

**2** The number charged with seditious libel: Dixon and Woodsworth.

**1** The number acquitted: Dixon.

**1** The number whose charges were dropped: Woodsworth.

## Prosecutors

**8** The number of prosecutors who appeared in court in the three trials, including the same five in *The King v. Russell* and *The King v. The Winnipeg* 7. The other three appeared only in *The King v. Dixon*.

**4** The known number of lawyers helping behind the scenes. Walker (2004) says there were “scores”, but names only four: E.K. Williams, Ed Anderson, John Allen (Deputy Attorney General at the time of the strike) and Joe Thorson (who was in court only for the Dixon trial).

## Defence Lawyers

**7** The number of defence lawyers who appeared in court on behalf of the accused, including four for Russell, and four for some of the Winnipeg 7. Only one lawyer appeared in both trials: E.J. McMurray. Dixon had lawyer Hugh Cutler sit with him in court to help with points of law from January 20 to 31.

**2** The known number of lawyers behind the scenes: Lewis St. George Stubbs and E.J. McMurray were consulted by Dixon.

## Prosecution Witnesses

**10** The number of prosecution witnesses in *The King v. Russell*, according to Jack Walker.

**38** Prosecution witnesses (from 65 subpoenaed) in *The King v. Dixon*.

**135** According to Jack Walker, prosecution witnesses in *The King v. The Winnipeg 7*. Abe Heaps kept track; his total was 128.

## Defence Witnesses

**9** The number of defence witnesses in *The King v. Russell*, according to Jack Walker.

**0** Defence witnesses in *The King v. Dixon* and *The King v. The Winnipeg 7*.

## Exhibits

**703** The number of exhibits filed by the prosecution in *The King v. Russell*, according to Judge Metcalfe in his charge to the jury.

**377** Exhibits filed by the prosecution in *The King v. Dixon*, according to Dixon in his address to the jury.

**1,050** The number of exhibits filed by the prosecution in *The King v. The Winnipeg 7*, according to Jack Walker.

**0** The number of exhibits filed by the defence in all three trials.

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*The Crown v. R.B. Russell*."

A Comparison, Judge's charge to jury: [Mr. Justice]  
*Metcalfe in The King v. R.B. Russell, seditious conspiracy*  
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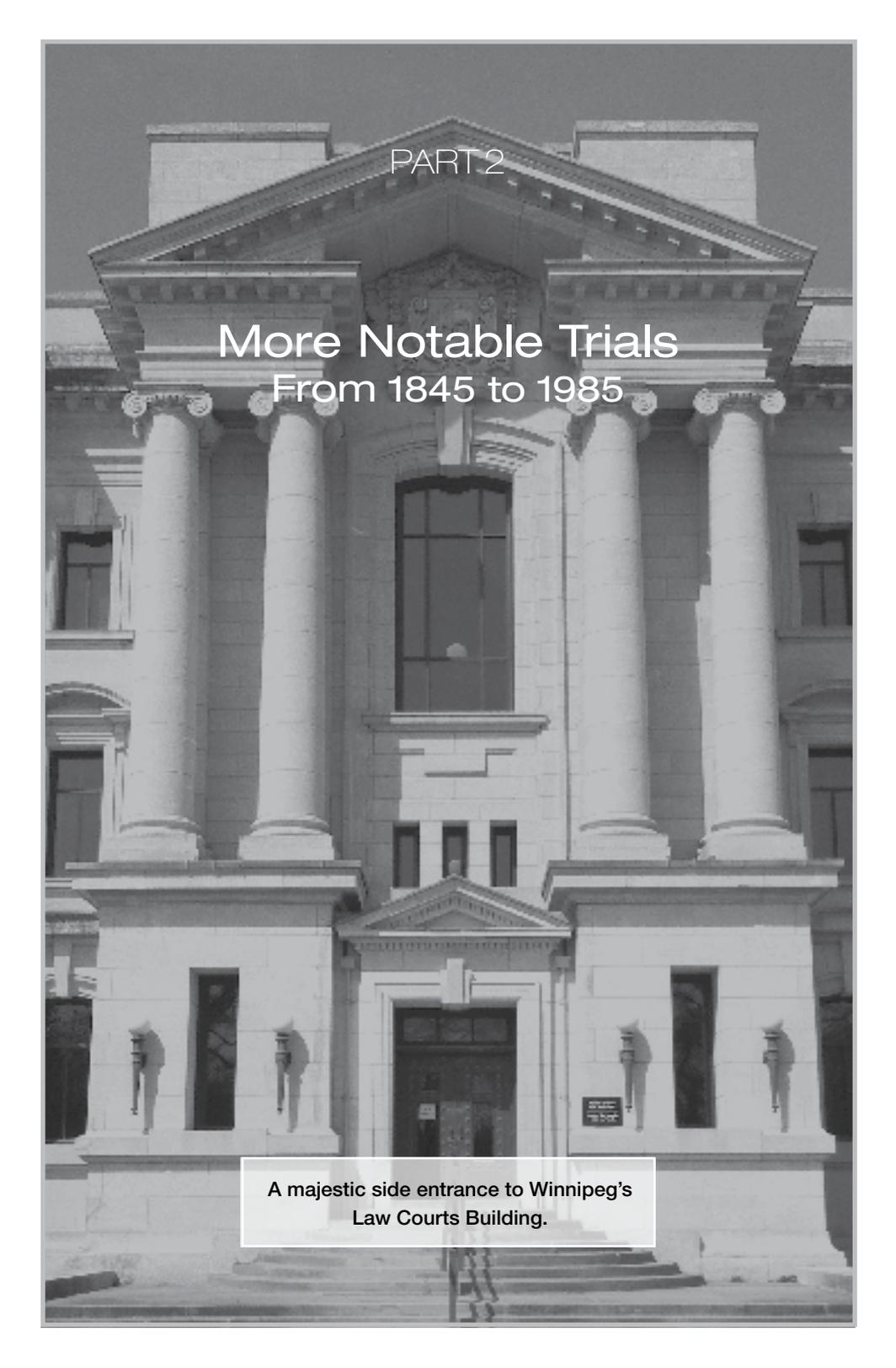
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PART 2

# More Notable Trials

## From 1845 to 1985

A majestic side entrance to Winnipeg's  
Law Courts Building.

*The Public Interest*  
v.  
*Capennesseweet*  
(1845)

**He was charged with two simultaneous murders at the Red River Settlement.**

Roy St. George Stubbs, *Four Recorders of Rupert's Land* (1967):

Recorder [Judge] Adam Thom presided at the trial of a Saulteaux Indian, Capennesseweet, charged with the murder of a Sioux and a fellow Saulteaux on August 31, 1845. The trial took place four days later.

The second man's death was not intentional. A single bullet killed both men.

From the commission of the offence to the execution of the accused took six days.

## Frontier Justice

Donald Gunn and Charles Tuttle, *History of Manitoba* (1880):

The culprit Capennesseweet coolly said, "The Sioux killed my brother and wounded myself last year, and I vowed revenge. That revenge I am now taking, but I am satisfied. Let the whites now do with me as they like." He was committed to prison, and four days after he was tried in a regular way by a jury, found guilty, and sentenced to be hung.

Kwesi Baffoe reviewed records of the trial, at which there were four witnesses. In "Cultural Eclipse: The Effect of the Aboriginal People in Manitoba" (2007) *5 Tribal Law Journal* (New Mexico), he suggests that the offence might have been committed by Capennesseweet's brother.

## The First Execution at Red River

Donald Gunn and Charles Tuttle (1880):

Capennesseweet was executed on September 5, 1845. This being the first case of executing the death sentence, it was thought an attempt at rescue might be made, but the execution passed off quietly, and the punishment seemed in the eyes of the people to be but right.

Alexander Ross, *The Red River Settlement: Its Rise, Progress and Present State* (1856):

The universal voice called out for justice. Capennesseweet was executed on September 6, 1845. Although more than 1,000 spectators were on the spot, a voice was scarcely heard. Whatever the world may think or say of this act, any doubt or dissatisfaction at the time arose from mere pity. The punishment was deemed just in the eyes of all present.

## Jurisdiction

J.M. Bumsted, *Trials & Tribulations: The Red River Settlement and the Emergence of Manitoba 1811–1870* (2003):

Thom knew that imperial law called for him as judge to send such cases to Canada for trial, but he insisted that would cause nothing but trouble for the witnesses.... Thom was nothing if not courageous, however much Red River found the execution excessive and distasteful.

## Murder without Consequence

The case of Capennesseweet suggests that some kind of rough and ready due process was given to someone accused of murder. But the following quotations indicate that some murders were committed without legal consequence.

## 1830s: Brutal Enforcement

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Where Indian violence was directed against the white population, retribution was swift and merciless, usually without any pretense of legality. After the massacre of a trader and his family [in or around 1832], HBC officers hunted down the band thought to be responsible, and shot all the males without even the semblance of a trial. An eyewitness report of the incident concluded, “Thus happily ended the expedition ... making complete and effective the vindication of law and order.”

This is from a speech by Governor George Simpson in 1835 at Fort Garry, as quoted by Murray Donnelly in *The Government of Manitoba* (1963):

Although rights of property have of late been frequently invaded and other serious offences committed, we are under the necessity of allowing them to pass unnoticed because we have not the means at command of enforcing obedience and due respect to the law.

Roy St. George Stubbs, *Four Recorders of Rupert’s Land* (1967):

Though some aspects of life in the Red River Settlement were less than admirable, the community was, by and large, law-abiding. George Simpson reported in 1857 that during his 37 years as Governor of Rupert’s Land [around 1820-1860] there were only 19 cases of major crime.

Walter Stewart, *But Not in Canada!* (1976):

In 1857 a Select Committee on the HBC took the testimony of John McLaughlin, who said he saw an Indian hanged by the Company at Pembina. He was asked if he knew that the Company was prevented by law from such an act, and he replied that he did. How is it that the colonists did not remonstrate against this execution? It was impossible for them to remonstrate. They were too much under the control of the HBC. It would stop supplies.

## After 1870

A report from Portage la Prairie is quoted in the *Free Press* (January 7, 1876):

Yesterday a barbarous murder was committed and the sheriff was forced to call upon almost every able-bodied man to aid him in the arrest of seven Indians. The sheriff had no place to secure them, not even handcuffs. The guards were so few that the prisoners escaped and cannot be found.

Robert B. Hill, *Manitoba: History of Its Early Settlement, Development and Resources* (1890):

Up to this time [1876] murders were frequent among the Indians, and they wielded the arm of retributive justice in a manner that pleased themselves, without hindrance from the settlers who, feeling the inferiority of their numbers, were well content to leave the Indians alone.

## 1890s: Peacefully Armed to the Teeth

Louis Goulet (1859–1936) was Metis. His memoirs were recorded by lawyer Guillaume Charette (1884–1952) in *Vanishing Spaces: Memoirs of Louis Goulet* (1976). Goulet describes life on the plains in the 1890s:

The Indians were not a threat anymore, at least not to the Metis whom they had first learned to fear, then respect. All the same, no amount of outward peace could lead us to relax our policy of constant vigilance. We weren't at war anymore. We lived in peace, but always armed to the teeth.

## Neighbours

According to Mark Curriden and Leroy Phillips in *Contempt of Court: The Turn-of-the-Century Lynching that Launched 100 Years of Federalism* (1999), there were 4,743 lynchings in the U.S. from 1882 to 1968, of which nine were in Minnesota and 16 in North Dakota.

\* \* \*

*Hudson's Bay Company*  
v.  
*Pierre-Guillaume Sayer*  
(1849)

**The HBC simultaneously wins a court case and loses a trade war.**

The agreement that Thomas Douglas (Lord Selkirk) made with the HBC in 1811 prohibited anyone in Assiniboia trading furs with anyone but the HBC. But when Norman Kittson established a trading post at Pembina in American territory (70 miles south of the Red River Colony) in 1844, people like Sayer soon were on the road to Pembina (later named Pembina Highway) with furs to trade.

### Trying to Enforce the Monopoly

Margaret Arnett MacLeod and W.L. Morton, *Cuthbert Grant of Grantown* (1963):

Cuthbert Grant was the HBC's man. He was on the side of the law and against the free traders. As Warden of the Plains, as Sheriff and Magistrate, he was bound to try to suppress free trade. But his own people were tempted by the profits. Furs were concealed in their houses, in stables, on the prairies. Some ran their furs to Pembina. Houses and premises were searched. When furs were found, they were confiscated.

In *The Correction Line* (1933), A.C. Garrioch comments on the HBC's attempt to enforce its monopoly:

To lovers of sport on both sides of the 49<sup>th</sup> parallel, the HBC attempt to suppress free trade provided a game more worthy of their skill and courage than formerly, and their sense of humour must have been tickled by the duty charged upon exports and imports.

## The HBC Goes to Court

James Raffan, *Emperor of the North: Sir George Simpson and the Remarkable Story of the Hudson's Bay Company* (2007):

By the spring of 1849, Chief Factor John Ballenden at Fort Garry had decided enough was enough and charged four Metis men [including Pierre Sayer] with illicit trafficking in furs, based on an exchange of fur for liquor with Norman Kittson at Pembina. The trial would be the first legal test of the HBC monopoly on trade in North America. For the Metis, the trial put their emerging independence as a nation on the line.

Auguste Henri de Tremaudan, *History of the Metis Nation in Western Canada* (1936):

The HBC enacted and enforced rigorous statutes concerning the fur trade, forbidding the trappers to traffic even among themselves. The Metis rose in exasperation over the four arrests.



The man on the right is Louis Riel, Sr.  
The other man could be Pierre Sayer.

Don Purich, *The Metis* (1988):

By 1845 Metis leaders were asking the HBC to relax its strict trading policies.... The Company decided to take legal proceedings against the Metis. The most famous of the trials took place on May 17, 1849 at Fort Garry.

## 500 Men Surround the Courthouse

Alexander Ross, *The Red River Settlement: Its Rise, Progress and Present State* (1856):

About 9 o'clock in the morning, the French Canadians, as well as the half breeds, began to move from all quarters, so that the banks of the Red River were crowded with armed men.... The crowd drew together about Fort Garry and the court house. At 11 o'clock, the authorities entered the court. At this time 377 guns were counted. An accidental shot or a fist raised in anger might have set these inflammable elements in a blaze.

Joseph Kinsey Howard, *Strange Empire: The Story of Louis Riel* (1952):

Five hundred armed Metis surrounded the courthouse. Their leader told the magistrates that if the men were sentenced, they would be forcibly freed.

## A Packing Jury

The case was tried before a jury, with members of the General Court presiding: William Caldwell (Governor of Assiniboia), Alexander Ross, John Bunn, Cuthbert Grant and Recorder Adam Thom. The prosecutor was Chief Factor John Ballenden.

W.L. Morton, in his Introduction to *London Correspondence Inward from Eden Colvile 1849-1852* (1956):

James Sinclair appeared with Sayer and proceeded to act as his counsel.... When the jury was empanelled, there were seven English names and five French. They sat in the box with their powder horns and shot pouches still at their belts. If the procedure was unorthodox, the result was a fair compromise, creditable to both sides.

## Guilt without a penalty is seen as an acquittal

F.H. Schofield, *The Story of Manitoba* (1913):

When the charge was read, Sayer pleaded guilty and even urged his son to tell the facts that proved the purchase of furs from an Indian. The jury could do nothing but bring in a verdict of guilty.... The magistrates discharged Sayer without pronouncing any sentence. The other three cases were dropped, and the four men left the courtroom, believing that they had been acquitted.

E.E. Rich, *Hudson's Bay Company 1670–1870: Volume 3: 1821–1870* (1960):

John Ballenden, as representative of the HBC, said he was content with the verdict and recommendation for mercy, and would drop his case against the three other accused.... In accepting the recommendation, the HBC (through Ballenden) was virtually accepting the right of the half-breeds to trade in furs and accepting them as competitors in pursuit of furs.... Sayer came out to the crowd, convicted but free. The subtleties were too much for the assembled Metis [who cried] “Vive la liberte! La commerce est libre”.

## Weakness Revealed

F.H. Schofield (1913):

The result of the trial showed the HBC that the people would no longer submit to its monopoly of the fur trade. The courts, even if they gave decisions in favor of the HBC, had no means of enforcing them against adverse popular opinion. From that time forward, although the Company did not formally renounce any of its special privileges, trade was practically free.

This is one of several cases that showed the inability of the courts and the HBC to enforce the fur monopoly, which was one of the factors contributing to the collapse of the HBC's regime (1670–1870) and the creation of the Province of Manitoba in 1870.

\* \* \*

*Foss*  
v.  
*Pelly and Three Others*  
(1850)

**A slander trial rocks and divides the Red River Settlement.**

**Sarah Ballenden** (1818–1853) was the wife of John Ballenden (1812–1856), the HBC’s Chief Factor at Fort Garry, and the mother of their seven children. In 1850, she was rumoured to be having an affair with Captain Christopher Foss (c.1814–c.1852), whose wife and children were in England during his posting at Red River.

On the recommendation of Recorder (Judge) Adam Thom, Foss sued Augustus Pelly, John Davidson and their wives for slander, alleging that they had spread the rumour.

Joseph James Hargrave, *Red River* (1871):

In 1850 a case arose involving a multitude of complications, all of a very painful and scandalous nature. Probably no case ever brought before the Recorder’s court, before or since, has given rise to so much bad feeling, and such deplorable sequences, as did this cause célèbre.

**On A Slippery Pyramid**

Sylvia Van Kirk, *“Many Tender Ties”: Women in Fur-Trade Society, 1670–1870* (1980):

Sarah Ballenden was a mixed-blood woman who found herself virtually at the top of the social pyramid of Rupert’s Land. She organized dinner parties and balls and regularly presided at the officers’ mess at Upper Fort Garry.... Suggestive hints about Sarah’s relationship with Captain Foss were magnified

until it was rumoured that the Captain's attentions to Sarah were "of such a character as to entitle Mr. B. to a divorce." Foss was so outraged that he brought suit against Mr. Pelly and Mr. Davidson and their wives for defamatory conspiracy.

## The Trial

Sylvia Van Kirk (1980):

The three day trial began on July 16, 1850. Although numerous witnesses were called, the evidence proved to be vague and circumstantial.... The real significance of the event lies in the racial animosities that it engendered. Sides were drawn along racial lines.

The 33 witnesses included Sarah and John Ballenden and Captain Foss, who testified that he brought the action "to clear the reputation of a lady."

Roy St. George Stubbs, *Four Recorders of Rupert's Land* (1967):

Pelly objected to the formation of the court, "as Adam Thom was allowed to sit as a judge in a case in which he had acted as attorney to the plaintiff." The court of seven members overruled this objection. Thom [one of the seven] gave sworn evidence for the plaintiff.... The proceedings were a sorry business, from beginning to end. Governor Colville wrote, "Thom's conduct of the trial seems to have been as unlike a judge as anything could be."

J.M. Bumsted, *Trials & Tribulations: The Red River Settlement and the Emergence of Manitoba 1811–1870* (2003):

The Foss-Pelly affair was one of those cases that could erupt only in an isolated location where everybody knew everybody else's business. At the same time, it should not be regarded as a tempest in a teapot. There were some real issues at stake, although they surfaced infrequently in the courtroom.... The evidence was inconclusive.

## The Decision

Frits Pannekoek, *A Snug Little Flock: The Social Origins of the Riel Resistance* (1991):

Thom, the Recorder as well as prosecutor and principal advocate for Sarah, conducted the trial in an exceedingly arbitrary manner. He accused two of Sarah's most socially prominent enemies of perjury. He ignored substantial evidence that pointed to the defendants' innocence.... Damages of 300 pounds were imposed on Pelly and his wife, and 100 pounds on Davidson and his wife.

J.M. Bumsted (2003):

Very little happened [as a result of the trial] except that Adam Thom was told to stay away from court, and would ultimately have his appointment as recorder revoked by the HBC in 1851.

## An Incriminating Letter

Governor Eden Colville's letter of January 4, 1851 to George Simpson is in *London Correspondence Inward from Eden Colville 1849–1852* (1956):

About a month ago, Thom with much caution placed in my hands a copy of a letter written by Mrs. Ballenden to Captain Foss, commencing, "My own darling Christopher" and requesting him to pay her a visit.... The said darling Christopher remained closeted in her rooms for two days and nights. Poor Thom does not like it much, after all his exertions in her cause.

Sylvia Van Kirk (1980):

When John Ballenden went to Britain for medical treatment in the fall of 1850, Sarah remained at the Fort.... In December the scandal blew up again when an unsigned letter, reputedly from Sarah to Foss, was intercepted.... Foss allegedly managed a discreet two day visit with Sarah.

Governor Colvile, in a letter dated February 7, 1851 to George Simpson:

Mrs. Ballenden left Fort Garry on January 11, and is living about a couple of miles from Captain Foss' quarters. He does not visit her openly though I have no doubt he does so under cloud of night. He must be exceedingly wretched, as I believe not a soul in the settlement will associate with him.

## Broken Hearts

Sylvia Van Kirk (1980):

In 1852 Sarah, unable to bear the situation in Red River any longer, moved to Norway House. There is evidence of a poignant reunion between husband and wife in Edinburgh before Sarah died of consumption [tuberculosis] there in 1853 at age 35. Her fate was surely a sad indictment of the operation of the double standard against women. The Foss-Pelly scandal also provides insights into the way society operated to pit women against each other.

John Ballenden died in Edinburgh in 1856. When Captain Foss was last heard of in 1852, he was in Australia.

\* \* \*

*The Queen*  
v.  
*Griffith Owen Corbett*  
(1863)

**He was charged at the Red River Settlement with five counts of attempting to procure an abortion.**

Reverend Corbett (1823–1909) was born in England. He arrived at Rupert's Land in 1851 and in 1854 founded the Holy Trinity Church (Church of England) in Headingley.

### **A Capable & Difficult Man**

Frits Pannekoek, *A Snug Little Flock: The Social Origins of the Riel Resistance* (1991):

Corbett was never much more than a contentious and difficult individual, spending much of his life quarrelling with bishops, the HBC and his fellow clergymen. He was a gadfly with strong convictions about the parliamentary rights of Englishmen, and even stronger convictions that these rights were being denied to the Halfbreeds by the tyranny of the HBC and the Church of Rome. He was a popular and effective speaker.

Roy St. George Stubbs, *Four Recorders of Rupert's Land* (1967):

In 1862, Corbett was charged with having made five attempts to procure an abortion on the person of Maria Thomas [1846-1867] who had been his domestic servant and whom he was alleged to have seduced.

## Abortion Law

Frits Pannekoek (1991):

The new concern with abortion swept America and Great Britain in the 1850s to the 1880s. Prior to the 1850s, life was construed to begin with “quickening” or “stirring in the womb”, and abortion before that was not a felony. Abortion before “quickening” may have been a normal form of birth control at Red River as it was elsewhere in America in the 1840s.

## The Trial

The trial began on February 19, 1863 before Recorder John Black, some magistrates, and a jury. It was the longest trial in the 58 year history of Assiniboia (1812–1870).

Roy St. George Stubbs (1967):

The trial lasted nine days; 61 witnesses were called. The burden of the defence was carried by James Ross.... The trial was the first occasion on which a qualified attorney [Frank Larned Hunt] held a brief in the courts of Red River. At the trial, Hunt merely sat taking notes. As it progressed, he removed his seat from within the bar to a stove at the other side of the room. Such behaviour suggests that he had no great enthusiasm for his brief.

J.M. Bumsted, *Trials & Tribulations: The Red River Settlement and the Emergence of Manitoba 1811–1870* (2003):

Ross attempted to convince the jury that Maria Thomas was a flighty young girl, and a member of a distinctly lower- class mixed-blood family whose evidence was not to be taken seriously [but] the defence was unable to shake her on the witness stand.

## Dividing Lines

Jack Bumsted in “*The Queen v. G.O. Corbett, 1863*” in *Thomas Scott’s Body and Other Essays on Early Manitoba History* (2000):

The trial exposed the underlying tensions of Red River society, most of which would emerge again in the insurgency led by

Louis Riel in 1869-1870. The lines dividing the races, genders, and social classes were clearly revealed for those who sought them out.

## Verdict & Sentence

Mr. Corbett did not testify. The jury found him guilty and recommended mercy. Recorder John Black sentenced him to six months in prison.

Alvin Gluek, *Minnesota and the Manifest Destiny of the Canadian Northwest* (1965):

Governor Alexander Dallas of Rupert's Land was surprised that so mild a sentence was imposed for a crime that in England would have consigned Corbett to penal servitude for life. He believed that the judge had been unduly influenced by "a small but loud talking mob". He was right about the mob but wrong about the sentence, for justice in Red River had never been harsh.

Gerald Jewers, *Manitoba Justice* (2013):

There was no right of appeal. This was a Company [HBC] court whose decisions were not open to review, but neither were they easily enforced.

## Might Was Right: Law without Order

Auguste Henri de Tremaudan, *History of the Metis Nation in Western Canada* (1936):

A petition [for Corbett's release] bearing 530 names was presented at the meeting of the Council of Assiniboia on April 9, 1863. The Council refused to consider it.... On April 20 a number of petitioners chose as their leader James Stewart. They surrounded the prison, overcame the jailer and freed Corbett.... Stewart was arrested. Thirty men forced open the prison doors and set Stewart free.

## Aftermath

Joseph James Hargrave, *Red River* (1871):

**Corbett's wife and family remain in the settlement supporting themselves amid much privation, but kindly regarded by the people among whom Corbett formerly acted as minister.... Maria Thomas died in 1867. Her daughter lives with her mother's family.**

In 1863, Corbett returned to England where he was reinstated in the church. He died in 1909. Mrs. Corbett moved to Swan River where she lived until her death in 1918.

J.M. Bumsted (2003):

**The system of justice was revealed to be haphazard and unable to enforce its decisions.**

\* \* \*

*The Provisional Government  
of Assiniboia*  
v.  
*Major Charles Boulton*  
(1870)

**He was charged at Upper Fort Garry with taking up arms against the Provisional Government.**

Louis Riel and his Metis forces were in control of Upper Fort Garry from November 2, 1869, the day they seized it, until the arrival of the military force lead by General Garnet Wolseley on August 24, 1870.

On February 18, 1870 Major Charles Boulton (1841–1899) lead a group of about 48 men from Portage la Prairie to Upper Fort Garry with the intention of seizing the Fort from the Metis. The group was easily captured and imprisoned in the Fort.

Boulton's account of his captivity does not mention his being formally charged.

Historians describe Boulton's offence in different ways, if they mention it at all. For example, W.L. Morton (1957) says it was "defying the Council", George Stanley (1989) says it was "levying war against the Provisional Government", and Louis Knafla (2009) says it was "armed resistance to the Provisional Government of Assiniboia" (the region then defined as within a radius of 50 miles from Upper Fort Garry in what is now downtown Winnipeg).

### **The Boulton Version**

There is one eye-witness report of these events: *Boulton's Reminiscences of the North-West Rebellion* was published in 1886 and again in 1985 as a "shortened version" with the title, *I Fought Riel*. An excerpt:

Entering the gates of Fort Garry, which were closed behind us, we were surrounded by about 400 men.... I was placed in a room by myself, and the rest of the prisoners, about 40 in number, were placed in rooms adjoining. In the hall was placed a strong guard of about 20 men, armed with British rifles and fixed bayonets. A guard put handcuffs and chains on my legs. Shortly after this I heard the door open and Riel looked in. He said, "Major Boulton, you prepare to die tomorrow at 12 o'clock." I answered, "Very well," and he retired.

Boulton does not mention—as some historians do—his being tried, convicted and sentenced to death by a tribunal.

## Riel's Role

The role of Louis Riel in Boulton's case is not at all clear. Some accounts are vague.

James Jackson, *The Centennial History of Manitoba* (1970):

**Boulton was charged with treason against the provisional government, tried and condemned to be shot.**

Jennifer Reid, *Louis Riel and the Creation of Modern Canada* (2012):

**Boulton was tried and received a death sentence that was subsequently commuted.**

## One Version: Riel Was Not in Charge

In *Louis Riel* (1969), George Stanley draws from Boulton's *Reminiscences* (1915), but refers to a "Metis court martial," which Boulton does not mention. Stanley limits Riel's role to delivering news to Boulton (as in Boulton's version):

**On the day of his capture, Boulton was condemned to death by a Metis court martial. It took only a matter of minutes, and Riel went to the door of Boulton's room, opened it, and said: "Major Boulton, you prepare to die tomorrow at 12 o'clock." Boulton replied, "Very well." Riel withdrew, leaving the soldier alone.**

Sam Steele's account in *Forty Years in Canada: Reminiscences of the Great North-West* (1915), mentions Riel only briefly:

Major Boulton was tried by court-martial on the 18<sup>th</sup> and sentenced to be shot at noon on the same day, but, on the petition of some friends, the execution was postponed until the 19<sup>th</sup>.... Riel pardoned him.

### Another Version: Riel Was Completely in Charge

Thomas Flanagan, *Louis 'David' Riel: 'Prophet of the New World'* (1996):

When a column of men led by Major Charles Boulton arrived from Portage la Prairie, Riel arrested them and sentenced Boulton to death.

Maggie Siggins, *Riel: A Life of Revolution* (1994):

Riel and his military council had run out of patience. Five of the ringleaders were sentenced by tribunal to be shot at midnight: Major Boulton, Thomas Scott, Murdoch McLeod, George Parker and John Taylor.

Siggins refers to five named men. Most historians count four, and name only Boulton.

The Association of Metis and Non-Status Indians of Saskatchewan, *Louis Riel: Justice Must Be Done* (1979):

Boulton and three of his lieutenants were tried in military court and were condemned to death. Riel then pardoned the three lieutenants but announced that Boulton was to be executed.

Auguste Henri de Tremaudan, in his *History of the Metis Nation in Western Canada* (1936):

Riel and his advisors felt that an example had to be made. They tried Boulton and three of his lieutenants in a military court. They were condemned to death.... Riel pardoned the lieutenants, saying that only Boulton, as their leader, would pay for the treason of the 48 prisoners. Boulton made no complaints and very calmly put his affairs in order. At the last minute Riel announced that Boulton's life would be spared.

Boulton was released on March 16, 1870, a month after his arrest. He returned to Ontario.



This photo of Louis Riel and other members of the Provisional Government was taken in 1869 or 1870 at a tavern operated by Bob and Hugh O'Loone.

From left to right, standing: Francois Guillemette (or possibly Charles Larocque or Bonnet Tromage), Pierre Delorme (age 39), Thomas Bunn (age 40), Xavier Page (age 37), Andre Beauchemin (age 48), Baptiste Tourond (age 30), Thomas Spence (age 38). Seated: Pierre Poitras (age 60), John Bruce (age 39), Louis Riel (age 25), William O'Donoghue



(age 29), Francois Dauphinais (age 54). In front: Hugh O'Lone (age unknown), Paul Proulx (age 21).

The photo is usually attributed to Ryder Larsen. According to the Manitoba Historical Society's website, he was born in Norway around 1830, came to the Red River Settlement in 1866 and worked as a photographer. In 1871, under suspicion of theft, he left the Settlement, abandoning wife and child, and was not seen again.

*The Provisional Government  
of Assiniboia*  
v.  
*Thomas Scott*  
(1870)

**He was tried at Upper Fort Garry for taking up arms against the Provisional Government, and for insubordination and assault while in custody.**

Thomas Scott (c.1842–March 4, 1870) was one of the 48 men lead by Major Boulton from Portage la Prairie in February 1870 for the purpose of taking Fort Garry from the Provisional Government. Like Major Boulton, Scott was not formally charged, but the offences considered by a military tribunal related to his armed opposition to the government and, as a prisoner in the Fort, insubordination and assaulting guards and—some accounts say—Louis Riel.

### **Villain or Scapegoat, or Both?**

R.G. MacBeth, *The Making of the Canadian West: Reminiscences of an Eyewitness* (1898):

So far as we can gather from those who knew Scott well, he was a young man of rather quiet habits, indisposed to be trodden upon, **but not given** to aggressive and unprovoked offending.

Louis Knafla in “Treasonous Murder: The Trial of Amboise Lepine, 1874” in *Canadian State Trials* (Volume 3, 2009):

It was well known that Scott was a violent man who threatened to kill Riel and others.

Jack Bumsted in “Thomas Scott and the Daughter of Time (1998)” in *The Western Metis: Profile of a People* (2007):

Characteristic of much of the writing about Scott and Riel is overstatement passing well beyond the limits of the evidence.... The testimony of Scott's colleagues is that he was a gentle, well-mannered and personable individual. As the years went by [after Scott's death], the charges became more detailed, and Scott became an increasingly nastier character.

In *The Metis* (1988), Don Purich refers to the case of *John Snow v. Thomas Scott*, decided on November 19, 1869 by Judge John Black—the last act of the court of Assiniboia:

Scott was a bit of a thug. In 1869, while working on a road gang, he was convicted of assault on the government official supervising the construction.



Thomas Scott

## Scott in Custody

J.M. Bumsted, *Louis Riel v. Canada: The Making of a Rebel* (2001):

It is difficult to use the evidence of the trial to ascertain exactly what Scott had done or why the Metis took it so seriously. The records of the trial were destroyed at the time, and there is only one eye-witness account.

Major Charles Boulton, *Reminiscences of the North-West Rebellion* (1886), recalling his time in custody with Scott:

I told Scott to be very careful what he said. I told him that my life had been spared only in consequence of the exertions that had been made on my behalf.

Reverend George Young, *Manitoba Memories: Leaves from My Life in the Prairie Province 1868–1884* (1897):

I was pained to learn that Scott had been sent into solitary confinement, and found him in a most pitiable condition—a dirty and fireless room, a single blanket, with manacles on wrists and ankles. On my asking if he knew the reason of this severity, he assured me that he did not, and promised to avoid, in action and utterance, whatever might be offensive to the guards.

Auguste Henri de Tremaudan, *History of the Metis Nation in Western Canada* (1936):

Scott appeared before the military court charged with armed revolt and repeated insubordination in prison. Instead of trying to excuse his conduct or express regret in an effort to win over these judges, he maintained his provocative and violent attitude right from the start. He tried to hurl himself on Riel. “You’re nothing but a pack of cowards...” taunted Scott. “Sentence me to death, if you dare, cowards that you are.”

E.B. Osler, *The Man Who Had to Hang* (1961):

Scott came to the door of his cell. He was as impenitent, as hot-headed, as he had been yesterday. Even when the guards began calling out that he must be shot, he maintained utter

contempt for them. Riel warned him that they meant what they said. But Scott replied: “You Metis are a pack of cowards. You would not dare to shoot me.” Quite evidently he believed this from the bottom of his narrow, fiery heart.

Norman Shrive, *Charles Mair: Literary Nationalist* (1965):

Not only did Scott use defiant and abusive language to the guards, he probably also struck them on more than one occasion.

W.L. Morton, in his Introduction to Alexander Begg’s *Red River Journal* (1956):

Scott was tried by “court-martial” on the charge of insubordination and striking his guards. The evidence to support this charge is scanty.... He was warned by Riel to moderate his conduct. His insubordination continued. Things came to such a head that the guards threatened retaliation and even that they would shoot the angry prisoner.

## A Seven Man Tribunal

To preside over Scott’s trial, a tribunal was established, some say by Riel alone. The number of judges reported to be on the panel varies. For example, Morton (1939) says five, Morice (1935) says six, Purich (1988) says seven. These are the seven:

1. Ambroise Lepine, head of the tribunal
2. Joseph Delorme
3. Elzear Goulet
4. Jean Baptiste Lepine (brother of Ambroise)
5. Janvier Ritchot
6. Elzear Lagimodiere
7. Andre Nault

Joseph Nolin was present as secretary to the tribunal, but his record of the event has not survived. In 1874, he testified for the prosecution in *The Queen v. Ambroise Lepine*.

## Riel's Role: The Fog of History

Riel's role in the trial is not clear. Historians provide a range of possibilities, from his being prosecutor, witness and judge, to being only a witness or an interpreter, to having no role at all:

- Dale and Lee Gibson (1972) describe the trial with no mention of Riel.
- Auguste Henri de Tremaudan (1936): Riel took no part in the trial except to plead in favour of the prisoner.
- J.M. Bumsted, "The Trial of Ambroise Lepine", *The Beaver* 77 (1997): The chief witnesses against Scott were Riel and Joseph Delorme.
- Don Purich, *The Metis* (1988): Riel did not sit on the panel of judges. While he testified, according to several historical reports he also "pleaded that leniency be shown to the accused."
- Hartwell Bowsfield, *Louis Riel: The Rebel and The Hero* (1971): The hastily organized court of Metis examined several witnesses, including Riel. When Scott was brought in, Riel had to read the charges, explain the evidence and translate the court's decision, since no one spoke English as well as he did.
- Robert B. Hill (1890) and George Young (1897): Riel was prosecutor, witness and judge.

## The Trial

The trial started around 7:00 p.m. on March 3, 1870. It lasted about three hours.

The testimony of Luc Lestang, who was apparently one of Scott's guards, is quoted by J.E. Collins in *The Story of Louis Riel The Rebel Chief* (1885):

I have frequently heard Scott describe the Provisional Government and its supporters as a band of mongrel rough-scruffs, a greasy, insolent, nest of traitors, and a lot of looting, riotous, unwashed savages. He has used language of this sort ever since his entry into the Fort.... He has been guilty of acts of

violence. When he became unbearably insubordinate, I found it my duty to put irons upon him. As I approached him with the handcuffs, he smote me twice in the face, and I yet carry the mark that he gave me.

J.M. Bumsted, *Louis Riel v. Canada: The Making of a Rebel* (2001):

The chief witnesses were Louis Riel and Joseph Delorme [one of the seven judges]. No witnesses were called on Scott's behalf, and he was not heard in his own defence. He was accused of having rebelled against the Provisional Government and striking his guards and the president of the Government [Riel].

J.M. Bumsted in "The Trial of Ambroise Lepine", *The Beaver* 77 (1997) and *Louis Riel v. Canada: The Making of a Rebel* (2001):

By Anglo-Canadian standards, Scott was condemned by a kangaroo court without due process.

## Joseph Nolin's Testimony

The testimony of Joseph Nolin, secretary to the tribunal, at the trial of Ambroise Lepine in 1874 is quoted by Donald Gunn and Charles Tuttle in *History of Manitoba* (1880) and by J.M. Bumsted (2001):

On the evening of March 3, 1870 the meeting was for the purpose of trying Scott. Scott was not present. There were some witnesses examined. Riel was one, Ed Turner was another, Joseph Delorme was another. I think there were others.... The witnesses were sworn by me. I do not remember what evidence was given.... There was only one who made a speech, Riel. I remember he spoke against Scott. After the evidence Scott was brought before the Council. Riel told Scott that he must die. Riel did not ask him if he had any witnesses. No written accusation or charge was given to Scott. [The proceedings] were all done within two or three hours.

Nolin's evidence is peppered with comments like "I don't recall the nature of the evidence. Scott said something, but I forget

what Riel asked me to read to Scott [from his notes], but I had written nothing.... I don't think Scott asked to examine witnesses; I do not know what he said....”

## Conviction and Sentence

The seven members of the tribunal voted unanimously to convict Scott, but disagreed on what the sentence should be. The vote was 5 to 2 in favour of the death penalty:

- In favour: Delorme, Goulet, Nault, Ritchot.
- Against: Lagimodiere, Jean Baptiste Lepine.
- Not voting, but accepting the decision of the majority: Ambroise Lepine.

W.L. Morton, in his Introduction to Alexander Begg's *Red River Journal* (1956):

**The punishment was terribly disproportionate. Riel refused to alter the sentence.**

## Execution

Some accounts say that the firing squad of six men stood about 60 to 70 feet from Scott, with 150 to 200 people watching. The execution is thought to have taken place near what is now Union Station on Main Street at Broadway.

Auguste Henri de Tremaudan (1936):

**On March 4 at two p.m. a squad commanded by Andre Nault [one of the seven judges] shot the condemned man. Scott died bravely, after a man named Francois Guillemette, one of the firing squad, administered the coup de grace with a shot in the ear. Elzear Goulet and Elzear Lagimodiere were given the task of disposing of Scott's body. No one ever knew what happened to the body.**

Relying at least partly on an unnamed “authority that there is little room to question”, J.E. Collins is passionately favourable to Scott and unfavourable to Riel in his unique account in *The Story of Louis Riel The Rebel Chief* (1885):

Riel rushed at the chained prisoner [Scott] and dealt him a kick in the side, after which he spat upon his face.... There were several rifle reports, and this high-spirited, sunny-hearted young fellow fell into his coffin, pierced by three bullets. It is said, and upon authority that there is little room to question, that Scott was heard to groan and even to cry [from inside the coffin].

Louis Knafla (2009) refers to the lack of reliable evidence:

Some said that Scott did not die until evening. Others said he lived one to two hours after the first shot. Some say the shot went into an ear. Others, into an eye.

Sam Steele gives his eye witness account in *Forty Years in Canada: Reminiscences of the Great North-West* (1915):

It was supposed that the body of Scott was buried within Fort Garry, but this was disproved one morning. I was present when the grave was opened.... A pine box was found, but the box was empty. There was a strong impression that the body had been taken during the night, weighted with chains and forced through a hole in the ice of the Red River, but the mystery has never been cleared up.

## The Reasons Why

W.L. Morton, in his Introduction to Alexander Begg’s *Red River Journal* (1956):

Why was Scott executed? One reason is that Scott had so exasperated his guards that they had threatened to shoot him. This they would almost certainly have done.... The second reason is the one later urged by Riel. At the beginning of March 1870 he was faced with contemptuous defiance amongst the [48] prisoners taken on February 17, with rumours and fears of an Indian attack, [and] with the determination of the people of Portage la Prairie, as he believed, to repudiate the Provisional

Government.... Riel's justification was that he saw a connection between the defiance within Fort Garry and the unrest outside, and he resolved to still both with one decisive act.

## The Immediate Aftermath

Alexander Begg, *The Creation of Manitoba or A History of the Red River Troubles* (1871):

The deed struck horror into the minds of all classes in the Red River Settlement—and one that suddenly plunged the whole community into mourning.

W.L. Morton in his Introduction in *Manitoba: The Birth of a Province* (1965):

The execution had no apparent effect in the Settlement. It was either accepted as a necessity, or resented in shocked silence.

## A Blunder & A Blot

W.L. Morton, *Manitoba: A History* (1957, 2<sup>nd</sup> edition, 1967):

The shooting of Scott was so much a blunder that it is difficult to believe a man of Riel's quality could have committed it.... It was worse than a blunder—it was unnecessary.

Thomas Flanagan, *Louis 'David' Riel: 'Prophet of the New World'* (1979):

The execution was a ghastly mistake. For one thing it was morally repugnant because of the procedures followed. Scott was hastily tried for an unclear offence; he had no legal assistance nor did he enjoy any other benefits of fair play. He could not even understand the proceedings, which were conducted in French. The alleged legal deficiencies of Riel's trial in 1885 pale by comparison.

George Stanley, *Louis Riel* (1969):

In the years to come, both Scott and Riel ceased to be men, human beings with human frailties. They became political symbols, political slogans, around which men rallied and for

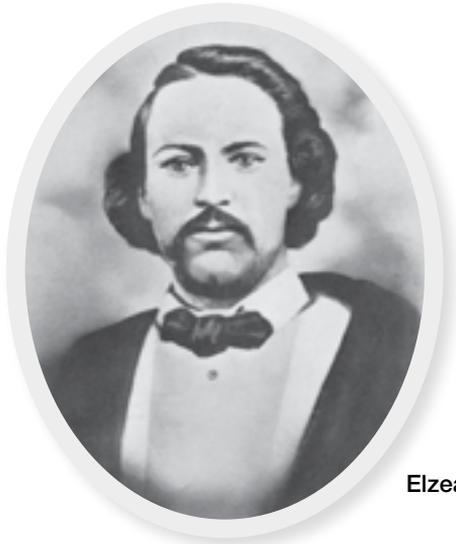
which they argued and fought with little knowledge of the real strengths and weaknesses of the men whose names they banded to and fro.

James Jackson, *The Centennial History of Manitoba* (1970):

The murder put a blot on Riel's achievements, and deprived him, for the better part of a century, of his proper place and title as "the father of Manitoba."

## The Fate of the Tribunal

1. Ambroise Lepine (1840–1923): in 1874 he was put on trial on a charge of murdering Thomas Scott. See *The Queen v. Ambroise Lepine*, in this Part.
2. Joseph Delorme (1848–?) was charged with Scott's murder but never tried.
3. Elzear Goulet: The Elzear Goulet Memorial Park was officially opened on September 13, 2008. It is located on Tache Avenue in St. Boniface, on the banks of the Red River near where Goulet died on September 13, 1870. A tablet states that he was "chased by an angry mob and pelted by rocks, subsequently drowning."



Elzear Goulet

4. Jean Baptiste Lepine (1824–1879, brother of Ambroise) is said to have disappeared in 1871.
5. Janvier Ritchot (1823–1899) was charged with Scott's murder but never tried.
6. Elzear Lagimodiere (1838–1916)  
and
7. Andre Nault (1829–1924): They were tried from October 27 to 31, 1874, after the trial of Ambrose Lepine, but before he was sentenced. There was a hung jury, and no retrial.

\* \* \*

*The Queen*  
v.  
*Louis Riel*  
(1873)

**He was charged that he “feloniously, wilfully, and of his own malice aforethought, did kill and murder one Thomas Scott” on March 4, 1870.**

Riel’s role in the trial and execution of Thomas Scott is not clear, but he was at least nearby during the trial and, as President of the Provisional Government, probably could have intervened at any time.

### **Amnesty Raised in 1870 Negotiations**

Before and after the murder charge was laid in 1873, there was a debate about whether a general amnesty should be granted by the federal government in respect of the Red River Resistance of 1869–1870.

Auguste Henri de Tremaudan, *Hold High Your Head: History of the Metis Nation in Western Canada* (1936):

**The Canadian Government, by its *Manitoba Act* of 1870, consented to all the demands included in the list of rights of the Metis, except for the amnesty that was many times promised but never accorded as was understood [in the negotiations for provincial status].**

The fourth version of the “List of Rights’ used in the negotiations includes this:

**That none of the members of the Provisional Government, or any of those acting under them, be in any way held liable, or responsible, with regard to the movement, or any of the actions which led to the present negotiations.**

George Stanley, *Louis Riel* (1969):

Riel had been certain that the federal government would never let matters go as far as to permit his arrest and trial. There had been too many promises, assurances, and indications of a positive nature to believe Prime Minister Macdonald would condone or encourage such an act.

## Cash Instead of Amnesty

From the pamphlet “Ambroise-Dydyme Lepine” (1985) by the Culture, Heritage and Recreation Department of the Government of Manitoba:

Although Archbishop Tache brought assurances that Ottawa would grant a general amnesty to those involved in the Resistance, Lepine and Riel fled to the U.S. [late in 1870]. They narrowly escaped capture by the Wolseley military expedition.... Prime Minister Macdonald made them an offer of \$1,600 apiece to quit the country. They were wise to accept. Scott's would-be avengers in Ontario had set a \$5,000 price on their heads.

Macdonald provided \$2,000. The HBC provided \$1,200.

## A Reluctance to Arrest

Lieutenant-Governor Archibald of Manitoba, in a letter dated February 24, 1872 to George Etienne Cartier in Ottawa:

Happily the feelings of the great body of the English people have so changed that it is difficult to find a magistrate who does not hesitate to issue warrants that may lead to fatal consequences. Several Justices, who were themselves sufferers at the time of the troubles, and who a year ago were urging all kinds of vindictive proceedings, have refused to issue warrants.

## Arrest Warrants Issued

The Manitoba Court of Queen's Bench issued a document dated February 10, 1875 outlining court proceedings taken against Riel since November 1873. The report is found at (1875) *11 Canada Law Journal* 105. An excerpt:

**On November 15, 1873, upon the oath of 12 jurors, good and lawful men of our province of Manitoba, it was presented as follows: That Louis Riel, on March 4, 1870, at Upper Fort Garry, a place then known as in the district of Assiniboia, in the Red River Settlement in Rupert's Land, and now known as Winnipeg in the Province of Manitoba, feloniously, wilfully, and of his own malice aforethought, did kill and murder one Thomas Scott.... Wherefore, the Sheriff by our writ bearing date November 19, 1873, was commanded that he should take Riel and him cause to be safely kept.**

## **Riel & Clarke at the House of Commons**

Riel was elected an MP in the constituency of Provencher in Manitoba in June 1873 and re-elected in the election of January 1874. Despite fears of arrest or assassination, he went to the House of Commons on March 30, 1874 and quietly took the oath of allegiance for new MPs, without attracting attention.

On the following day, Henry Clarke, Manitoba's Attorney General (from January 3, 1871 to July 4, 1874) testified in the House of Commons:

**A Bench Warrant was issued on November 19, 1873 by this Court of Queen's Bench for Manitoba, on an indictment against Riel. I have the Warrant referred to, and I now produce it.... I brought it here in case Riel presented himself, to have him arrested.**

Also on March 31, the House of Commons passed a resolution requiring Riel, as an elected MP, to appear at the House on the following day. When he did not appear, a motion was passed to expel him.

## **Regrets**

Prime Minister Alexander Mackenzie, in a letter dated April 16, 1874 to Alexander Morris, Lieutenant Governor of Manitoba:

**It was a mistake that Manitoba should ever have been made a province and that Riel should ever have become a Member of Parliament.**

## Riel Convicted of Murder

Five writs were issued by the Queen's Bench, each one demanding that Riel surrender to face the murder charge. The last writ was issued on October 10, 1874, calling on him to appear for trial by February 10, 1875. He did not appear.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

**On February 10, 1875 the Court of Queen's Bench pronounced the rare sentence of "outlawry" against Riel. Outlawry, virtually obsolete in English law but never formally abolished, amounted to a finding of guilt in absentia.**

Chief Justice Edmund Burke Wood sent Queen's Bench the report of February 10 to Ottawa with a covering letter in which he explained outlawry:

**Judgment of outlawry on an indictment for the murder of Thomas Scott was this day pronounced in open Court at Winnipeg against Louis Riel.... The judgment in capital cases amounts to a conviction of the crime as much as if he had been actually tried and found guilty by the verdict of a jury.**

Outlawry was abolished in Canada in 1892.

While the Queen's Bench was issuing writs for Riel in 1873 and 1874, the House of Commons was considering granting a general amnesty in respect of the events of 1869–1870.

## Amnesty for Riel—with a Condition

Prime Minister Alexander Mackenzie was anxious "to put an end to this vexed controversy [about whether to grant amnesty] now and forever." On February 11, 1875, he introduced a motion in the House of Commons. It passed the following day by a vote of 126 to 50. The motion refers to matters favourable to Riel and Lepine, and to promises and assurances of amnesty since 1870. This is from the end of it:

**In the opinion of this House, it is not for the honor or interest of Canada that the Question of amnesty should remain longer in its present shape....**

**It would be proper, considering the facts, that a full amnesty should be granted to all persons concerned in the North-West troubles for all acts committed by them during said troubles, saving only L. Riel, A.D. Lepine and W.B. O'Donohue.**

**It would be proper, considering the said facts, that a like amnesty should be granted to L. Riel and A.D. Lepine, conditional on five years banishment from Her Majesty's Dominions.**

Riel fulfilled the condition, ending up in Montana until 1885.

## **Scott Not Forgotten, Riel Not Forgiven**

Wilfred Laurier, in a letter dated December 31, 1885 to Edward Blake:

**It cannot be said that Riel was hanged in 1885 on account of his opinions. It is equally true that he was not executed for the rebellion of 1885. He was hanged for Scott's murder in 1870. That is the simple truth of it.**

Peter C. Newman in "Rewriting history: Louis Riel as a hero" in *Maclean's* (April 12, 1999):

**Had it not been for Scott's execution, Riel would have been elected Manitoba's first premier and could have claimed to be a Father of Confederation.... He was one of our genuine frontier heroes. It's high time we gave him his due.**

From Riel's address to the jury in Regina in 1885:

**I know that through the grace of God I am the founder of Manitoba.**



Images of Riel are appearing on a variety of objects.  
This image is from a T-shirt (artist unknown).

*The Queen*  
v.  
*Ambroise Lepine*  
(1874)

**He was charged (like Riel) that he “feloniously, wilfully, and of his own malice aforethought, did kill and murder one Thomas Scott” on March 4, 1870.**

The following is from a plaque of the Historic Sites Advisory Board of Manitoba, located near the corner of Broadway and Main Street in downtown Winnipeg:

Born in the Red River Settlement, Lepine engaged in river- lot agriculture combining this with hunting and trading. In the autumn of 1869 he became Adjutant General to Louis Riel and played a prominent role in the Red River Resistance. He was a member of Riel’s Provisional Government, and presided over the court martial that condemned prisoner Thomas Scott to be shot on 4 March 1870. Here, before the wall of Fort Garry, Scott was executed. Lepine was arrested, tried, and was to be hanged on 29 January 1875. The sentence was commuted.

### **A Striking Figure**

Lepine (1840–1923) is described by R.G. MacBeth in *The Making of the Canadian West* (1905):

**A striking figure, a man of magnificent physique, standing fully six feet three and built in splendid proportion, straight as an arrow, with hair of raven blackness, large aquiline nose and eyes of piercing brilliance; a man of prodigious strength, a skilled rough rider and a dangerous subject to meet in conflict.**



Ambroise Lepine

## Riel's Loyal Lieutenant

Maggie Siggins, *Riel: A Life of Revolution* (1994):

Lepine was the one man who might have challenged Riel for the leadership of the Metis, but was content to serve under the younger man, whom he admired beyond question for his entire life.

## Exile in Minnesota

From the pamphlet "Ambroise-Dydyme Lepine" (1985) by the Culture, Heritage and Recreation Department of the Government of Manitoba:

Lepine went home [after Scott's death in March 1870]. With Louis Riel, he would be held culpable for Scott's execution.

**He fled with Riel, in fear for their lives, toward the U.S. They narrowly escaped capture by the Wolseley Expedition.**

Lepine, fearing bounty hunters and assassination in the U.S., returned home in 1873. On September 17 he was arrested without incident at his farm and brought before Judge Louis Betournay on September 23. A preliminary hearing was held from Friday, September 26 until October 14, when the judge committed Lepine for trial.

Lepine's release on bail of \$8,000 in December 1873 was a shock to many in the community. The trial did not begin until October 1874.

## **Judge & Prosecutors**

The judge at Lepine's trial was Chief Justice Edmund Burke Wood. The prosecutors were Francis Evans Cornish and W.B. Thibeau.

## **Defence Lawyers**

Lepine was represented by local lawyers Joseph Royal, Joseph Dubuc and Marc Girard, and by an imported "hot shot" (the name local lawyers often give to imports), Joseph-Adolphe Chapleau.

J.M. Bumsted, *Louis Riel v. Canada: The Making of a Rebel* (2001):

**The defence team was augmented by the arrival from Montreal in September of Joseph Chapleau, French Canada's most celebrated trial lawyer. Over the years he would win 21 of 22 murder trials, losing only the Lepine case. The defence team was not enthusiastic about the hot-shot lawyer taking over the case. His courtroom style was overblown and very rhetorical.**

An article by Guy Fregault in a Quebec publication in 1945 is quoted by Hartwell Bowsfield in *Louis Riel: Rebel of the Western Frontier or Victim of Politics and Prejudice?* (1969):

**Chapleau was begged to go to Manitoba to defend Lepine. He left without asking a fee, without even asking to be paid**

expenses. He placed at the service of the Metis his talents as a writer on criminal law, his loud and metallic voice, his captivating gestures and his brilliant rhetoric. When he returned to Montreal, he received gifts and ovations.

## The Trial

The trial began on October 13. There is some discrepancy among historians on its length, from 10 days (Roy Stubbs, 1958) to 11 days (Knafla, 2009), to 13 days (Dale and Lee Gibson, 1972, and Bumsted, 1997).

Court stenographers Elliott and Brokovsky of the Canadian Press attended the trial and wrote *Preliminary Investigation and Trial of Ambroise Lepine for the Murder of Thomas Scott* (1874, 127 pages, available online). According to them, the trial began on Tuesday October 13 and ended on Monday October 26, a total of 12 days (14 days less two Sundays).

## The Trial: “Programmed for Conviction”

The jury consisted of six anglophones and six francophones. The jury heard 17 witnesses for the Crown and 12 for the defence.

J.M. Bumsted in “The Trial of Ambroise Lepine” in *The Beaver* (1997–1998):

It was a showpiece trial in which the very legitimacy of the governments of Canada and Manitoba, and the behaviour of their officials, had to be protected as much as Lepine had to be convicted. Given this reality, there could be no fair or just outcome through the judicial process. The ultimate decision was determined well in advance.

Louis Knafla, “Treasonous Murder: The Trial of Amboise Lepine, 1874” in *Canadian State Trials* (Volume 3, 2009):

The government’s failure to get Riel in 1873 led to a stand-in for his trial. Lieutenant Lepine. The Lepine trial can be seen as a microcosm of Riel’s trial in 1885: a state trial programmed for conviction.

## The Prosecution's Case

George Young, *Manitoba Memories: Leaves from My Life in the Prairie Province 1868–1884* (1897):

Two ex-insurrectionists testified. John Bruce testified that Lepine told him about 20 days before Scott's death that "the prisoner would be let out soon, but that one or two would be shot first." Michel Dumas swore that "for about a week before, it was talked about among the guards that Scott would be shot."

George Stanley, *Louis Riel* (1969):

The strength of the prosecution rested on the evidence of three Metis, John Bruce, Joseph Nolin and Francois Charette. ... Nolin identified Lepine as the president of Scott's court martial. Charette claimed that Lepine gave Francois Guillemette the revolver that delivered the coup de grace to Scott. In reply, the defence pointed out that the bulk of the Crown's witnesses could not say positively that Lepine was present at the shooting.

## No Body

Jack Bumsted in "Thomas Scott's Body" in *Thomas Scott's Body and Other Essays on Early Manitoba History* (2000):

The defence did its best to cast doubt on whether Scott was actually dead. Joseph Royal insisted to the jury in his summation: "Facts have been told of men being found guilty of murder by a jury and the person said to be murdered turning up living after many years. I might recite three or four examples where innocent persons have been sent to the gallows for crimes that were never committed."

## The Legitimacy of the Provisional Government

The date on which Riel's Provisional Government became the government of Assiniboia can be set at any one of several events after November 2, 1869—the day the Metis seized Fort Garry—but well before March 4, 1870, when Thomas Scott was

executed. The Provisional Government lasted until August 24, 1870, the day the Wolseley Expedition arrived at Fort Garry.

J.M. Bumsted, *Louis Riel v. Canada: The Making of a Rebel* (2001):

Legal historians have been unable to come to a consensus on the question of whose law applied to Red River in March 1870. In some senses, the decision was determined well in advance by the Canadian government's persistent refusal to admit publicly any legitimacy to the Provisional Government. The courts went through a charade of procedural fairness.... They stripped the killing of Scott of all its historical context and mitigation. The defence was left with little to argue.

George Stanley (1969):

The proceeding seems to have been conducted with remarkably little care for the normal rules of evidence. It also seems clear that Royal and Chapleau neglected to make the most of their opportunities during the periods of cross-examination.... Chapleau's main argument was that the Provisional Government had been a de facto government, and that the Metis court martial [of Thomas Scott] derived its authority from this fact.

Bruce Sealey and Antoine Lussier, *The Metis: Canada's Forgotten People* (1975):

Riel's government cannot be termed a rebel government, since there was no legal government against which to rebel. The HBC had signed away its authority and Canada had not yet taken responsibility.... Technically, Riel's government was legal, as it filled a vacuum.

## Addressing the Jury

Louis Knafla (2009):

Lepine had outstanding defence counsel, whose tactics and political savvy enabled him to escape execution.... Most modern writers have been quite critical of Lepine's defence.

J.M. Bumsted (2001):

Lepine's defence appeared curiously weak. Why this should be the case is not entirely clear. We know that Joseph Royal was not happy with Chapleau's arrival [and] that Royal managed to sabotage the defence through his summation to the jury, which was supposed to be in English and a preparation for Chapleau's major effort. Instead, Royal spoke in English for four hours, not ending until 11:00 p.m. Chapleau had to follow with another two and one half hours in French, in the early hours of the morning.

Knafla (2009) states that on Friday, October 23, Joseph Royal spoke in English from 3:00 p.m. for four hours (Bumsted, 1997, says four hours, until 9:30), and Chapleau spoke in French from 9:30 to midnight.

On Saturday, prosecutor Francis Cornish spoke in English and junior counsel Stewart Macdonald spoke in French: "The day of retribution has come at last."

## Judge Wood Charges the Jury

Roy St. George Stubbs in "Hon. Edmund Burke Wood" in (1958) *Papers Read before the Historical and Scientific Society of Manitoba*:

On Monday, October 26 Chief Justice Wood charged the jury in English. His charge was translated into French by the Clerk. It was a strong charge, leaning heavily against the defence and leaving the jury no doubt as to what verdict Wood expected it to bring in.

**Wood spoke** from 10:00 a.m. to 4:00 p.m., with a one hour break. Excerpts:

- Gentlemen, if you call it [the Provisional Government] by courtesy a government, do you mean that they can put to death one solitary individual without cause or trial? If you can justify one bloody deed, if they had taken out [that is, shot] the whole 48 of their prisoners, would you have justified the slaughter?

- I tell you that no organization can be set up as a justification for an act not sanctioned by British law. Besides being a *de facto* government, it must be a government *de jure*, that has a legal basis. The Governor General could not do it. The House of Commons could not do it. It could be done only by the Queen herself, and therefore this organization [the Provisional Government] cannot set itself up as a British court of justice.
- I will now speak on whether or not there was a homicide.... From the fourth of March, 1870 down to today, poor Scott has never been heard of. The prisoner and his confederates had the body in their charge after it was shot. If the body is now missing, who in all the world is better informed than the prisoner [as to where it is]?
- The evidence of Joseph Nolin lays the most complete foundation for this prosecution. If you believe what he says is substantially true, I tell you as a matter of law that the prisoner is guilty of the murder of Scott. Whatever may have been Scott's offence, they had no right to put him to death. If the evidence is to be believed, he was one of the most innocent men in the world.

## Verdict and Sentence

The jury retired at 4:30 and delivered its verdict two and one-half (some say three and a half) hours later.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

There was speculation that a jury with six French-speaking members would never convict Lepine, but the verdict confounded the cynics: after only three and one-half hours deliberation, he was found guilty of murder. The jury recommended mercy, probably because he had voted against executing Scott.

J.M. Bumsted (2001):

The jury returned just two and one half hours later. The verdict was guilty, but with a recommendation for mercy. Wood allowed the verdict to be delivered without the defence lawyers in attendance, which showed an absence of

**judicial courtesy to the francophone team.... Wood rejected the recommendation for mercy because “You did not spare poor Scott.”**

Dale and Lee Gibson appear to be the only historians to state that Lepine voted against the death penalty. Others say he voted for it, or didn't vote, or just went along with the majority. With the vote at 4 to 2 for execution, his vote could not have changed the result.

This is from the testimony of Joseph Nolin, the only eye witness, on cross-examination by Chapleau:

**By the words Lepine used and his demeanor during the whole trial, I understood him to be against the death of Scott, but his words were “the majority being for his death, he must die.”**

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### **Interlude: *The Queen v. Lagimodiere & Nault***

Immediately after the Lepine verdict was announced, the joint trial of Elzear Lagimodiere and Andre Nault took place from October 27 to 31, 1874. They were two of the seven members of the tribunal that tried Thomas Scott, and were charged with his murder.

Louis Knafla (2009):

**The jury could reach no verdict. Disgruntled, the Chief Justice sent them back, saying they must agree! They returned with the foreman saying they had only a 7-5 vote for conviction [and] that not only were they not in agreement but they would never be. They were dismissed.**

There was no second trial. The accused benefited from the general amnesty granted in February 1875 in respect of the events of 1869–1870.

## Lepine's Death Sentence

On November 4, 1874, Judge Wood sentenced Lepine to hang on January 29, 1875.

George Stanley, *Louis Riel* (1969):

Prime Minister Alexander Mackenzie felt he was caught in a cleft stick. It mattered little how he wriggled. If he granted the amnesty, he must offend the province he relied on for support [Ontario]; if he did not grant it, he would alienate Quebec.... Governor General Dufferin appreciated the nature of Mackenzie's problem. On January 15, 1875, Lepine received the news that Dufferin had reduced his sentence to two years' imprisonment and permanent deprivation of his political rights [to vote, to run for office].

Thomas Berger, *Fragile Freedoms: Human Rights and Dissent in Canada* (1982):

Governor General Lord Dufferin, influenced by the fact that Riel and Lepine had come to the aid of the Crown in the Fenian crisis of 1871, commuted Lepine's sentence.

## Lepine Refuses Amnesty

Major Charles Boulton, *Reminiscences of the North-West Rebellion* (1886):

Parliament granted an amnesty to Riel and Lepine [by a motion passed on Feb. 12, 1875] on condition of five years' banishment and forfeiture of their political rights. Lepine, however, having already served a portion of his prison sentence, preferred to complete his term in lieu of banishment.

Maggie Siggins, *Riel: A Life of Revolution* (1994):

Lepine was offered release from prison on condition that he spend five years in exile and not engage in political activity during that time. He refused to sign the release form and served his full penitentiary term, to October 26, 1876.

## No Hard Feelings

John Kerr (1850–1940) and Constables Dupont and John Ingram (Winnipeg's first Chief of Police in 1874) arrested Lepine in 1873. Kerr is quoted by Constance Kerr Sissons in her book *John Kerr* (1946):

After Lepine's release, I frequently met him on the streets of Winnipeg. Riel's right-hand man was no teetotaler, and I was still resolutely sober, so that he was sometimes hilarious at my expense. "Jack, you rascal!" he would exclaim, "How much did you get for arresting me? Enough to buy a drink, eh boy?" As a matter of fact, the Government divided \$1,000 between the three of us.

## Two Gravesites, Once Removed

An upright tombstone marking a gravesite for Riel's "right-hand man" is located along the north boundary of the cemetery in front of St. Boniface Cathedral, about 15 metres to the right (east) of Riel's gravesite. Another gravesite for Lepine is marked with a flat, engraved stone and located almost directly opposite, along the south boundary.

Lepine might not be under either marker. From *The Greatest Manitobans* (2008), published by the *Winnipeg Free Press*:

When Winnipeg was battling the flood of 1950, the dike on Tache Avenue was within moments of collapsing when the priest at St. Boniface Cathedral agreed to allow flood-fighters to bulldoze a half-metre of mud off the top of the cemetery where Riel's body lies. Through the night, the headstones were moved to one side, to be replaced when the mud was returned.



Markers on the two gravesites for Amboise Lepine in the cemetery in front of the St. Boniface Cathedral.

*Re*  
*Saava Federenko*  
(1910)

**The government of Czarist Russia applied for his extradition to Russia on a charge of murder.**

In 1908, Saava Federenko (a.k.a. Savoia or Savvo Fedorenko), a man in his twenties, fled Russia and ended up in Winnipeg. His case put an international spotlight on Winnipeg and made it one of the province's most celebrated cases.

### **Facts Alleged by Russia**

Chief Justice Mathers of the Court of King's Bench set out the facts, as alleged by the Russian Government, in *Re Federenko* (1910–11) 17 C.C.C. 268-271:

The accused belonged to the social democratic party, whose object was to do away with private ownership of property. On January 5, 1908 at the village of Leokooka in Russia, Federenko shot and killed Samson Osadchuk, a watchman in circumstances which, according to the law of Canada, make the offence murder.... The village constable, hearing that two strange men were in the house of one Volkodar went with Osadchuk and others to investigate. A watchmen expressed his belief that they were bad men, because one of them had a watch, and they were well dressed. It was decided to take them to the village office. When they got outside, the accused shot Osadchuk and ran.

Another version of the facts appears in the *Manitoba Free Press* (November 14, 1910):

A revolutionary who arrived in Winnipeg stated that Federenko, a revolutionary activist wanted by the police, arrived at the village in Russia and was recognized by a villager who notified the police. Two police officers arrived to arrest Federenko and while escorting him were surrounded by 60 villagers and it was then that the shooting took place.

## No Extradition for A Political Action

Chief Justice Mathers:

The principal ground on which extradition is resisted is that the offence is of a political character for which, under the 1886 Extradition Treaty with Russia, a fugitive shall not be surrendered.... Can it be said that this killing was in furtherance of a political object? I think not. The accused will be remanded to the provincial gaol until surrendered to the foreign State. I have informed him that he has a right to apply for a writ of habeas corpus.

Mathers granted extradition on October 18, 1910.

Federenko's defenders argued that if his alleged offense was "merely" criminal and not political, why did the Russian government pursue him to South America and then to Winnipeg?

## A Defence Committee

A group of social democrats from several ethnic communities in Winnipeg, including people who had fled the brutal regime in Russia, came to Federenko's defense.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

As the defence evidence revealed more and more examples of Czarist brutality and oppression, public sympathy for Federenko mounted. The Russian government persisted in attempts to extradite Federenko, but the effort was futile.... The case placed Winnipeg briefly in the international limelight.

Roland Penner, *A Glowing Dream* (2007):

The Winnipeg Federenko Defence Committee was organized by my father Jacob Penner, and Chaim Saltzman. It raised money locally, nationally and internationally. There were even defence committees in New York and Chicago. In Winnipeg, the highlight of the campaign was a meeting on November 20, 1910 at the Walker Theatre. A crowd of 1,600 heard such speakers as Mayor Sanford Evans and the immensely popular novelist, Ralph Conner.

### “The Slightest Shadow of a Doubt”

From Ralph Connor’s speech, as reported in the *Manitoba Free Press*:

It would be a shame if a man like Federenko were sent back to such a country. He is not like a man who kills another with malice. He has a great purpose in his heart. The whole purpose of his life is political and therefore his crime is a political crime. If there is the slightest shadow of a doubt that this man is not a murderer as we understand the term, and that he has come to this country seeking our protection, we shall give him the benefit of the doubt.

### Habeas Corpus

On December 17, 1910, Federenko’s lawyers, Nathaniel Hagel and Max Finkelstein, applied to Justice Hugh Robson of the King’s Bench for a writ of habeas corpus, alleging that Federenko was being unlawfully held in custody.

Robson agreed with Justice Mathers that the alleged crime was not of a political nature, but his decision—found at (1910–11) *Canadian Criminal Cases* 271-278—was based on a new argument:

The 1886 Treaty requires that the proceedings be founded upon a requisition [a form], which is absent here. I consider the proceedings under which the prisoner is detained to be lacking in an essential feature and therefore of no effect. I discussed

the point with Chief Justice Mathers and he agrees with the view above set forth.... Federenko must be discharged.

Roland Penner (2007):

The lawyer for the Russian government quickly left the courtroom to obtain a fresh warrant [to arrest Federenko and] to hold him until the czarist government could comply with the formalities. ... Federenko was surrounded by members of the Defence Committee. taken away to a home in the North End of Winnipeg and, the following night, in disguise, taken to safety. He escaped to either California or England (the record is unclear).

## Hearts & Minds

This is from an editorial in the *Manitoba Free Press* (December 30, 1910):

There is deep-felt satisfaction that Saava Fedorenko is a free man. This feeling of the Canadian people has made itself manifest in an unmistakable manner. His case makes an irresistible appeal to the heart of the people of this country as a humane and justice-loving people, and to their minds as a freedom-loving people.

### The Privy Council Is Too Late

The case would ordinarily have been appealed to the Court of Appeal and then to the Supreme Court of Canada, but the Privy Council in England (then the court of last resort for Canadian cases) allowed a direct appeal from Robson's decision. On July 13, 1911, the Council decided that a requisition form was not a crucial part of the process, which meant that Federenko could now be extradited to Russia. But he was long gone.

Frank (Feivel) Simkin was a member of the Defence Committee. In an interview with Roz Usiskin around 1978, he said that when Federenko was released, the Committee bought him a first class ticket to England.

See Rosaline Usiskin's M.A. Thesis, "Toward A Theoretical Reformulation ... A Case Study of the Winnipeg Jewish Radical Community, 1905-1920" (1978).

\* \* \*

*The Queen*  
v.  
*David Milgaard*  
(1970)

**He spent 23 years in prison for a murder he did not commit.**

In 1970, 17 year old David Milgaard of Winnipeg was convicted of murdering 20 year old Gail Miller in Saskatoon in 1969. He was sentenced to life in prison, and served 23 years.

Mr. Milgaard, his family, and his lawyers in the latter part of his case are all from Winnipeg.

## Two Tragic Cases

Carl Karp and Cecil Rosner, *When Justice Fails: The David Milgaard Story* (1991):

In the Milgaard story are echoes of the Nova Scotia case of Donald Marshall. Both were sentenced to life imprisonment at the age of 17 for murders they did not commit. Both were victims of overzealous police departments that pressured young and impressionable witnesses into changing their original stories. Both were deemed troublemakers and dangerous characters by investigating officers. Both were kept incarcerated even when convincing evidence of another suspect surfaced.

## A Mother's Faith

Peter Carlyle-Gordge in "Two Kinds of Liberty: Joyce Milgaard" in *Winnipeg 8: The Ice-cold Hothouse* (1982):

Without a shred of physical evidence, David was convicted of murder in 1969. He has consistently maintained his innocence and has escaped three times. He was transferred to a

maximum security prison in Ontario, away from easy family access.... Joyce then began a fight to show that the judicial system is far from what armchair idealists might say it is.

Mrs. Milgaard worked on her son's case for almost 20 years.

Jim McCloskey is with Centurion Ministries in New Jersey, a non-profit organization that investigates possible wrongful convictions. He is quoted by Carl Karp and Cecil Rosner (1991):

Thank God for the mothers of the world. They hang in there with their sons and daughters much longer than the fathers, husbands, siblings or anyone else. It's the mothers of the world who stay with their unjustly convicted offspring.

### Older Skeptic v. Younger Idealist

In the movie *Milgaard* (1999), written by Keith Ross Leckie and Alan Difiore, veteran lawyer Hersh Wolch greets Joyce Milgaard for the first time, in 1986:

I don't mean to sound callous, but "My son is innocent" has become a cliché.



Joyce Milgaard and David Milgaard

Wolch handed the case to a new lawyer in his firm, a 27 year old man with a law degree from California.

Joyce Milgaard, with Peter Edwards, *A Mother's Story: My Fight to Free My Son David* (1999):

David Asper was my knight in shining armor. He was full of idealism and a deep belief that people need to be protected from the bullying tactics of a sometimes overreaching state. He spent countless hours reviewing transcripts of the trial and soon became an expert on minute details of the case. He not only believed in David's innocence, he convinced all the others in the law firm.

Kim Campbell, federal Minister of Justice from 1990 to 1993, in *Time and Change: The Political Memoirs of Canada's First Woman Prime Minister* (1996):

Milgaard applied for a review of his conviction under section 690 of the *Criminal Code*, which allows a convicted person to ask the Minister of Justice to determine whether the conviction constitutes a miscarriage of justice.... I referred the matter to the Supreme Court of Canada. It held 15 days of hearings in 1992, before a panel of five justices.... The court advised me to quash the conviction and order a new trial, and I did. The government of Saskatchewan chose not to go ahead with a new trial. It seemed clear to me that the Supreme Court found the case as difficult as I had. They had been unconvinced of Milgaard's innocence.

Campbell was still not convinced of Milgaard's innocence when her book was published, which was before the trial and conviction of the real killer in 1999.

The Supreme Court's hearings ended on April 6, 1992. David Milgaard was released from prison a short time later in the month.

## The Many Costs

Joyce Milgaard (1999):

The Supreme Court exonerated everyone who put David behind bars. No mention was made that the case cost us all the family

assets, that our lawyers worked years for free, that David lost almost 23 years of his life behind bars, that we had to deny our other children so that we could channel more money and time towards freeing David, that the real killer was allowed to roam free while David rotted at taxpayers' expense. No mention was made of the memory of the murder victim, Gail Miller.



Hersh Wolch and David Milgaard

## The Milgaard Inquiry

Edward McCallum, an Alberta judge, was appointed by the Saskatchewan government in 2004 to conduct a Commission of Inquiry into the Wrongful Conviction of David Milgaard. His Report (2008) concludes that “the criminal justice system failed David Milgaard” and is critical of an aspect of Milgaard’s trial:

**The defence was prejudiced by excessive intervention by the trial judge when witnesses were testifying. Displays of impatience can have profound consequences.**

The Report states that Joyce Milgaard’s use of the media had a negative affect on her credibility with the officials she was trying to influence:

**The “media circus” was counter-productive to the reopening effort in the long term, although it can be credited with getting David Milgaard out of prison and with the quashing of his conviction.**

## A Kind of Justice

Larry Fisher was arrested for the murder in 1997 and convicted in 1999.

Gordon Sinclair in the *Winnipeg Free Press* (October 18, 1999):

**What do you call it when Larry Fisher is led in handcuffs from his jail cell to the opening of his trial in Yorkton on the same day David Milgaard reads his poetry at the Winnipeg International Writers Festival? Poetic justice.**

\* \* \*

*The Queen*  
v.  
*Thomas Sophonow*  
(1982, 1983 & 1985)

**Many people contributed to his wrongful convictions for murder.**

Thomas Sophonow (born in 1953) was tried three times for the murder of 16 year old Barbara Stoppel in a doughnut shop in a shopping centre in St. Boniface on December 23, 1981.

The first trial (1982) ended in a mistrial (a hung jury). The second trial (1983) resulted in a conviction, but the Supreme Court of Canada ordered a new trial. The third trial (1985) resulted in a guilty verdict, but in 1986 the Court of Appeal acquitted Sophonow. The Supreme Court declined to hear the Crown's appeal.

In 2000, Jack Ewatski, Chief of the Winnipeg Police Department, announced that a review of the case and some new evidence proved beyond any doubt that Sophonow was innocent of the crime. He apologized to Sophonow on behalf of the Department.

### **A Perfect Storm for a Wrongful Conviction**

Ronald Alexander Malloy, *Guilty Till Proven Innocent: The Thomas Sophonow Story* (1987):

**The bizarre case is one that might surpass the imagination of an Agatha Christie or even an Erle Stanley Gardner. Its unusual twists seem more aligned with the hand of a Stephen King.**

Richard Wolson was counsel to an inquiry into the case. In "A Perfect Storm for a Wrongful Conviction" in *Tough Crimes* (2014) he refers to factors that contributed to Sophonow's wrongful convictions, which include these:

- eye-witnesses who were mistaken.
- prosecutors who failed to disclose evidence favourable to Sophonow.
- jailhouse informants who gave false testimony.
- police and judges who had “tunnel vision.”

## Police Tunnel Vision

Peter Cory, *The Inquiry Regarding Thomas Sophonow* (2001):

**The manner in which the interview of Sophonow by the police was conducted was such that it was not unlikely that he would make errors and untruthful statements. The interview was traumatic for him. At one stage, he believed that he really had murdered Barbara Stoppel.**



Aaron-Harris/CP

Thomas Sophonow

## Judicial Tunnel Vision

Four eye-witnesses who were absolutely sure of their identification of Sophonow were wrong, while one witness whose evidence exonerated him—and who testified she was “dead sure” of her evidence—was right.

Gerald Jewers, *Manitoba Justice* (2013):

The conduct of the judiciary was mixed. The Court of Appeal criticized the Q.B. judge on the second and third trials for failing to put the defence case fully and fairly to the jury, and for being insufficiently critical of the eye witness identification evidence. For example, the trial judge on the second trial did not analyze the alibi evidence in any detail and tended to denigrate it. One of the alibi witnesses said she was “dead sure” that the person she saw delivering stockings to the hospitals was Mr. Sophonow. The trial judge somewhat ridiculed her by referring to her as the “dead sure” lady.

## The Frailty of Identification Evidence

David Deutscher and Heather Leonoff comment on the photographs presented to witnesses by the police in *Identification Evidence* (1991):

The photo array contained one candid shot of the accused and seven photographs that were clearly police “mug shots”.... What if the witness sees the suspect, either in person or by photograph, but fails to recognize the person? Is the subsequent lineup identification tainted? Psychologists would say that the face is now familiar because it has been seen recently .... A witness in this case failed to make an identification at a lineup but made an identification two days later.

## Fooled by Jailhouse Informants

Peter Cory (2001):

Before the third trial, no less than 11 jailhouse informants volunteered their services. The police and Crown took pride in narrowing it down to the three who were called on the basis of their “credibility and reliability.” Yet how untruthful and

**unreliable they were. One of them has testified as a jailhouse informant in at least nine cases. He has a significant record including a conviction for perjury.... The case demonstrates the ease with which experienced officers and Crown Counsel can be fooled by jailhouse informants.**

A prosecutor's advice in *Just Us* (Volume 3, Number 4, 1999), a newsletter for the staff of the *Department of Justice* (Manitoba):

**Be wary of the jailhouse informant. He can haunt or even ruin a career in the blink of an eye. Many of these individuals have the conscience of a viper and the moral scruples of an Ebola virus, so it should not come as any great surprise that many of them ultimately turn on those who assist them.**

## **Enough Is Enough**

From the judgment of the Court of Appeal in *The Queen v. Sophonow* (1985):

**The accused has already been tried three times and has served three years and nine months in custody without bail. We allow the appeal, set aside the verdict of guilty and direct an acquittal.**

Peter Cory (2001):

**A significant feature of wrongful conviction and imprisonment is the inevitable damage to the reputation of the individual. The damage brought to Thomas Sophonow continues despite a generous public acknowledgement of his innocence and an apology.**

## **The system is not perfect**

Dan Lett in "Authorities admit to injustices" in the *Winnipeg Free Press* (January 26, 2005):

**After decades of denying the existence of wrongful convictions, prosecutors and police from across Canada admitted yesterday the justice system sometimes entraps the innocent. A report by the heads of provincial prosecution services and major police organizations touches on systemic**

causes, including junk forensic science, unreliable eyewitness testimony, jailhouse informants, false confessions, and the failure of police and prosecutors to disclose all evidence.

## Multiple Trials

Mr. Sophonow's three trials on one charge is unusual, but in *Prairie Portraits* (1954), Roy St. George Stubbs refers to five trials on one charge:

In 1917, E.J. McMurray defended a young man charged with murder. The accused was tried five times. In the last trial, the jury found him guilty with a strong recommendation for mercy on the ground that they were not sure of his sanity.

According to Stubbs, the death sentence was commuted to life imprisonment.

\* \* \*



Norm Larsen's 30 years in law practice included private practice (Zuken, Penner & Larsen), Legal Aid Manitoba, and Legislative Counsel (Manitoba Justice). He retired in 2000 and lives in Winnipeg.

The picture was taken in the early morning of September 11, 2001 (since known as "9/11") in Committee Room 255 in the Legislative Building. Norm is holding a representative sample of legislation he wrote in his 13 years as a legislative drafter.



# A COLLECTION OF 15 FASCINATING TRIALS

Strikes, sedition, libel, the fur trade, murders,  
abortion, wrongful convictions!

The earliest of the 15 trials is from 1845. Within six days after a murder, the accused man was convicted and executed in front of 1,000 witnesses.

In the most recent case, from the 1980s, a man was tried for murder three times and convicted twice before the police declared him innocent – almost 20 years after the murder.

The 1919 Winnipeg General Strike is one of the most written-about events in Canada's history, but very little of it is about the trials that followed the Strike. Six men were sent to prison for conspiring to overthrow the governments of Canada, Manitoba and Winnipeg. Their convictions were set up by prosecutors who crossed legal and ethical lines to pack the juries, and by a presiding judge who was openly biased against the accused men throughout the trials (much to his later regret).

All but one of the 15 trials took place in what is now downtown Winnipeg.

**Norm Larsen** is a retired lawyer. He lives in Winnipeg.

The cover image of Lady Justice and two litigants is from the east side of the Law Courts Building on Kennedy Street in Winnipeg.

Cover design by Caroline Traweger.

