prison term makes a considerable change in a man," Ivens continued. "We are not the same men mentally or physically that went to jail."

When Queen's turn to speak came, he poked fun at the prison and government. Then becoming serious, he spoke of the principles of socialism: "The workers are haunted by the spectre of unemployment. It is time that we stopped to inquire into our conditions. While we produce the wealth of the world, the worker continues to live in poverty. It is power that we want, and I am glad to be out of jail and to know that I will be able to take my share of the work of the movement."

When the speeches and celebration were over, the men, their families, and their supporters filed out into a changed city. The citizens of Winnipeg did their best to pick up the pieces after the strike and the trials, but there was much human wreckage. Wilfred Queen-Hughes, son-in-law of John Queen and an associate editor of the *Winnipeg Tribune*, provided a grave description of the wounds:

> It did more damage, in my view, than any other happening since the time of the Red River settlement. It was very divisive and it lingered so long. It labelled people. Employers would look carefully at employees. Those who were prominent in the events almost walked about as if they had a brand — 1919 — on their forehead. There was a sense of outrage about the strike, how it was settled and on the way the trials prosecuted. There were guilty feelings on the part of the establishment.

The people had to learn to live with the ramifications of the Winnipeg General Strike, incorporating the damage done into the fabric that forms the city's soul.

*****

CHAPTER TWENTY-SEVEN

The name — The Great Canadian Sedition Trials — is appropriate because it carries with it the embellishment and aggrandisement of the events themselves. With all its distortion, exaggeration, and commotion, this story has the makings of a tragi-comedy. But many innocent people suffered, and some lost their lives in the hysteria surrounding the Winnipeg General Strike. The lasting impact precludes historians from casting anything but a sombre light on the summer of 1919 and the ensuing legal machinations.

To many individuals, these events were a nightmare. No wonder some did not want to talk about it. Should we let bygones be bygones as many of

the participants advised? What is the point of recalling it now? How do these trials reflect on our courts? Will the telling of this story undermine our faith in justice and make us pessimistic about the operation of the legal system?

Perhaps, it would be easier to allow these events to fade away. There are certainly enough other pressing matters with which to attend. But history offers its lessons, and those who do not learn from past mistakes are bound to repeat them.

It must be remembered that there will always be failures and shortcomings in any legal system, no matter how great its traditions and institutions become. We must always be on guard to see that injustices are kept to a minimum and when they do occur, we must study them and learn what we can. If our society is open and receptive to scrutiny and criticism, we can be confident that the pursuit of justice will always be in the public interest, and the courts will remain shielded from political manipulation.

According to the verdicts of the two juries, the strike leaders were guilty of a number of crimes. Their crimes included the attempt to overthrow the Canadian government to establish a Soviet form of government in Canada. Was that their intention? There is a difference of opinion as to whether the men were guilty according to the law.

Some historians argue that most of the strike leaders were not Russian revolutionaries. Instead, they were British socialists, whose conduct was not an attempt to overthrow the constituted authority. To these historians, the facts indicate the men were wrongly convicted. Numerous articles and books carry the conclusion that the juries convicted the men in error. Regardless, the strike leaders have since been vindicated by time.

Perhaps, it is unfair to lay the blame at the feet of the now voiceless juries. In their defence, it must be remembered that the conspiracy for which the men were charged, and some convicted, was a nation-wide conspiracy during the years 1917, 1918, and 1919, and the Winnipeg General Strike was merely one manifestation of that alleged conspiracy. The juries were not concerned with determining whether the strike itself was a seditious conspiracy, or if its cause was seditious. Their duty was to decide if "there was a nation-wide conspiracy centred in the Socialist Party of Canada that was dedicated to stirring up hatred and contempt for the Canadian government?" This conspiracy could have existed with or without the Winnipeg General Strike. There was ample evidence against the men, including evidence about the OBU, the Calgary Conference, and many political meetings. And the juries found enough in this mass of material to convict. Although the trials may have started with the arrests of the men at the height of the Winnipeg General Strike, Crown counsel used great skill to direct the juries' attention to a broader, nation-wide conspiracy.

As a consequence of the tactics employed by the Crown counsel and the authorities throughout the strike and the trials, an important question arises — were the men given a fair trial? No, they were not. Another question is more difficult to answer — why did the system allow the trials to be unfair?

Certainly, Justice Metcalfe played a role in the injustice. As shown, Justice Metcalfe bullied the defence counsel throughout the proceedings. He may have had some sympathy for the defendants, but he clearly had none for their counsel. He showed himself to be rude, overbearing, and biased. At one point during the proceedings, while trying to intimidate defence counsel, he raised the question, "Either I am unfair or incompetent." At times, he showed himself to be guilty of both.

Justice Metcalfe should have disqualified himself from sitting on the trial of the seven strike leaders. Before the trial began, he expressed his personal opinions about the remaining defendants. He had decided their guilt during the Russell trial, and this was prejudicial to the waiting defendants.

In addition, Justice Metcalfe allowed extraordinary leeway to the Crown and little to the defence counsel in admitting evidence. The application of the "wide-net theory" to the Crown's case, and the application of stringent relevance to the defence's case was unfair.

Another area of concern was Justice Metcalfe's constant pressure on the defence to expedite the trial. There is no principle of law that requires a judge to conduct a trial with expediency. The defendants were entitled to the necessary time to properly present their arguments. The long days and late evening sittings were self-defeating and exhausting. Likely, this was a calculated decision in order to give the defendants the "short end of the stick." Counsel required several hours of preparation for every hour spent in court, and the constant pressure of time was one-sided. The Crown was not rushed, yet Justice Metcalfe constantly reminded the defendants to hurry. Certainly, this affected the entire defence presentation, causing omissions and mistakes that might have been avoided. Furthermore, the marathon speeches to the jury would not have been necessary if due time had been given to organise, arrange, and condense. For example, Ivens spoke for seventeen hours during his closing address to the jury. With more time to prepare, he could have reduced this to half the time.

Most importantly, the judge did not allow the defendants to properly develop their arguments or to adequately deal with even the most basic of issues. Instead, necessary facts were deemed irrelevant. Why was the role and composition of the Citizens' Committee kept from the juries? Why were the accused prevented from calling evidence to show that collective bargaining was the real cause of the strike? Why were the defendants' efforts to settle the strike not considered relevant? Justice Metcalfe limited the areas of defence to

issues as framed by the Crown. This placed the defence at a huge disadvantage.

In keeping with legal tradition, Crown counsel is a minister of justice, not an adversary; his duty is to see that justice is done, not to sacrifice justice in an effort to obtain a conviction. Crown counsel should call all credible witnesses, whether favourable or not to the prosecution, and he must not hold back unfavourable evidence. In these trials, the prosecution's case was a compelling package, but the juries heard only what Andrews chose to reveal. The integrity of Crown counsel is a pillar of our legal system. The conduct of the Crown and of Alfred Andrews, in particular, fell short of the expected standard.

Andrews paid "lip service" to the concept of the impartiality. It must be remembered how Andrews came to be involved as a Crown attorney in the trials. He was not a public servant before the trials, but a member of the private bar. Initially, the Minister of Justice hired him while he was a leading member of the Citizens' Committee. And the Citizens' Committee advocated crushing the strike and encouraged the use of force to do so. At all costs, they insisted that the labour movement must be defeated. Andrews did not magically shed this bias when he assumed the mantle of the Crown. He simply added the power of the state to his already impressive arsenal. Andrews' involvement in the strike was such that he should have been disqualified from acting as a prosecutor. Personally, he had a great deal to hide and, with Justice Metcalfe's assistance, his bias and misconduct were never fully revealed to the juries.

The method of selecting a jury under the rules of the time, gave a clear advantage to the Crown. The Crown was given an unlimited number of stand asides and relied on the defence's limited number of challenges. Justice Metcalfe was correct in ruling that the Crown had the right to an unlimited number of stand asides. This advantage in favour of the Crown still exists in our procedure for selecting a jury. However, the Great Canadian Sedition Trials demonstrated that the jury system fundamental to our liberty is subject to manipulation.

When the defence is limited in the number of peremptory challenges and the Crown is able to recycle jurors that it has stood aside, there is no need for a large jury panel. Yet, there were two hundred fifty potential jurors on the panel for the trial of the seven strike leaders. The Crown deliberately manipulated the juries by arranging for large panels. Furthermore, Andrews contained a shocking dossier on each juror. It was unethical for the Crown lawyers to have presided over, or have been party to, an interrogation of each of the members of the jury panel. It is improper to question jurors, except in

the presence of the court. The defence knew jury tampering had occurred, but their attempts to have the matter remedied were unsuccessful.

Although the defence was often hamstrung by the judge's rulings, the counsel and defendants remained courteous and respectful throughout the trials. Although it is possible that the men were intimidated by the court, one must remember that this was an age of innocence and idealism — and a time when respect for the court was unquestioned. This is evident in how quickly and harshly the courts acted regarding matters resembling disrespect for the courts.

Were these men guilty of seditious conspiracy according to the law on the facts that were presented to the juries? George Armstrong accepted there was enough evidence to find the defendants guilty according to the law: "We got justice, pure and simple." Although he disagreed with the law, he was prepared to recognise the law for what it was. But even if the law was properly applied, a more serious concern arises — why were these men chosen for prosecution, while many others active in the labour movement remained untouched?

Any number of men could have sat in the prisoner's dock. It did not have to be Russell, Pritchard, Johns, Armstrong, Queen, Ivens, and Bray. It might as easily have been Stephenson, Midgely, Knight, Robinson, Veitch, Blumenberg, or countless others who participated in the events or applauded in the audiences. The Crown chose who to prosecute and, although this is not an unusual feature of our legal system, one cannot help but question the motives behind their selection.

With the powers of prosecutorial discretion come reciprocal duties. There should have been far more care taken by the Crown when deciding who should be prosecuted. The most distressing element is that the Crown made their choices by default rather than design. It was not an honest belief in a conspiracy that led to the initial arrests. Instead, the arrests were made to break the strike. These men were selected for arrest at the height of the strike because it was thought that they were in the category of those who could be summarily deported under the new amendments to the *Immigration Act*. The state's heavy hand of justice descended upon these select men — the so-called strike leaders — in order to demoralise the strikers and encourage the collapse of the strike. It was expected that their rapid deportations would put fear into the heart of the average striker.

Armstrong's arrest was almost certainly a mistake; born in Canada, he could not be deported. It is likely that if the government had known his birthplace, he would not have been arrested with the others. Once arrested, the Crown opted to carry on their prosecution against him as well.

In addition to their foreign birth, the other defendants had another common characteristic that was an important factor used to decide their arrests. Each man had regularly and publicly voiced resistance to conscription during the war. Thus, by 1919, they had gained the reputation as unpatriotic troublemakers and were an irritation to the political powers. Not only were they vulnerable to easy deportation, it was believed that public antipathy toward these men would be high due to their outspoken resistance to conscription and the war effort. Ironically, it was the public outcry from labour groups across Canada, the United States, and England, that gave the men trial by jury. The criminal charges were merely a pretext to justify the selective arrests and quick deportation hearings.

Neither the *Criminal Code* nor the *Immigration Act* is a legitimate tool for strike breaking. But neither the provincial nor the federal government had been willing to make concessions to settle the strike, and the political pressure had become too great to allow the strike to continue. The labour movement had successfully threatened the establishment and was causing hardship in Winnipeg, mostly among the middle and upper classes. The state's response was aggressive and intended to intimidate. It was the modern equivalent of a public execution.

At the beginning, Andrews, Pitblado, the Citizens' Committee, and the government did not envision state trials. Once the men were arrested, however, public pressure prevented the government from executing their plan, and rapid deportation gave way to prosecution. When things did not go as planned, it was Isaac Pitblado who cleverly devised the seditious conspiracy charges. The trials would give credibility to otherwise indefensible acts. And the Crown amassed the bulk of the socialist literature that became evidence in the trials. Most of this evidence was gathered after the arrests were made and charges were already laid.

It was the masterly legalistic eloquence of Alfred Andrews that persuaded the juries. Despite the defendants' gallant struggle, Andrews made the most of every opportunity, misunderstanding, and bias. Andrews and his colleagues were being paid to salvage victory from the jaws of political disaster, and to temporarily save face for the government of the day. The trials stand as a testimony to his ruthless cleverness.

There is a fine line between sedition and treason, and they stand side by side in the legal arsenal of the state. In English legal history, the sentence that followed a conviction for treason was always terrifying in the extreme. The sentence passed on Sir Walter Raleigh by Chief Justice Popham in London in 1603 is a disturbing example:

> Since you have been found guilty of these horrible Treasons, the judgment of this court is, that you shall be had from hence to the place whence you came, there to

> remain until the day of execution. And from thence you shall be drawn upon a hurdle through the open streets to the place of execution, there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out and your privy members cut off and thrown into the fire before your eyes. Then your head to be stricken off from your body, and your body shall be divided into four quarters, to be disposed of at the King's pleasure, and God have mercy upon your soul.

History possesses numerous examples of grave injustice with terrifying consequences. Galileo, Serveto, and Bruno were burned at the stake. Likewise, Socrates was condemned to die by drinking hemlock. The Great Canadian Sedition Trials are a part of our history and, all things considered, history has been kind.

Fortunately, the method used by the government to break the Winnipeg General Strike has gone the way of the dinosaur. In Canada today, a widespread strike would be dealt with by calling Parliament into session and passing a bill outlawing the strike.

Because the charge of sedition involves basic freedoms, it will always attract wide public interest. The trials vividly illustrate a truth about these basic freedoms. Our liberties expand and contract according to the times. In the end, it is often a jury that determines their elasticity. Accordingly, freedom of speech appears to shrink in times of national turmoil and expand in times of tranquillity.

Today the extent of our freedom remains in the hands of the court. And we still rely on those like Fred Dixon, John Woodsworth, John Queen, Abe Heaps, George Armstrong, Roger Bray, Bill Pritchard, Dick Johns, and Bob Russell to have the courage and ability to protect and expand them. Taking their place in history, we must acknowledge that the cause for which these men fought was great. It has been called the most important cause of all — the freedom of speech.