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Exclusion by Due Process - Martin v. Law Society
of British Columbia: A Cold War Eclipse of Civil Liberties

by

Jamie Disbrow

Thesis submitted to the School of Graduate
Studies and Research in partial fulfilment
of the requirements for the M.A. degree in History

Université d'Ottawa/University of Ottawa

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ABSTRACT

Exclusion By Due Process - Martin v. Law Society of British Columbia:

A Cold War Eclipse of Civil Liberties

Jamie Disbrow
University of Ottawa, 1996

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The thesis analyzes W.J. Gordon Martin's exclusion from the practice of law by the Benchers of the Law Society of British Columbia in 1948, and the protest raised in response to this action. A conservative legal elite, closely aligned with the provincial state, rejected Martin as unfit due to his Marxian-socialist beliefs and his association with the Communist Labor-Progressive Party. Cold War fears and hostility and a larger conservative campaign against socialism and labour radicalism fuelled the Benchers' actions. Left-wing political and labour groups, students, journalists and civil libertarians protested the Benchers' decision, their conservative elitism, and the legislated discretionary powers which allowed a technically qualified candidate to be rejected for political/ideological reasons. This case occurred during the formative period of the Canadian civil liberties movement, and the protest reflected increased public concern for the fundamental freedoms of the individual. The protest composition, organization, focus, and ultimately its demise, demonstrated the juvenile status of the civil liberties movement. The legal establishment granted Martin "due process," his day in a court where he had no chance of a victory. Civil libertarians chose to grant the procedure and its outcome as conclusive in a period when few safeguards for freedoms existed outside of public vigilance and protest. In the Martin case, the process undermined the principles of civil liberties.

ACKNOWLEDGEMENTS

Although this is "just a Master's thesis," a number of people deserve mention for their part in its creation. I wish to first acknowledge the guidance and patience of my thesis supervisor, Michael D. Behiels. Steven C. High invested a great deal of time in editing the text and questioning its content. Patricia E. Roy's mentorship was invaluable, as ever, and Larry Hannant provided appreciated criticisms. The assistance of these scholars does not translate into accountability for any errors which this work may contain. Many thanks go to Lillian Martin, Tannis Warburton, Elspeth Gardner and John Stanton for sharing their personal memories, and through them, giving a voice to Gordon Martin. The Law Society of British Columbia graciously granted me access to private files, an open-minded stance aided by the efforts of LSBC archivist Bernice Chong. Kerry Badgely of the Access Division in Ottawa made acquiring needed information a painless process. In terms of moral and financial support, my parents Harry and Isabel Disbrow, my grandmother, Joyce Brown, and my sister Ina and the Anderson clan, Brock, Mark, Lindsay and Kate, came through - always.

TABLE OF CONTENTS

	Page
ABSTRACT.....	ii
ACKNOWLEDGEMENTS.....	iii
TABLE OF CONTENTS.....	iv
CHAPTER ONE: INTRODUCTION.....	1
CHAPTER TWO: ESTABLISHING THE LEGAL ORDER.....	43
CHAPTER THREE: THE ROAD LESS TRAVELLED.....	78
CHAPTER FOUR: DUE PROCESS.....	102
CHAPTER FIVE: THE CONTEXT FOR REPRESSION.....	135
CHAPTER SIX: IN PROTEST.....	174
CHAPTER SEVEN: CLOSING REMARKS.....	217
BIBLIOGRAPHY.....	231

INTRODUCTION

Upon his 1948 graduation from the new University of British Columbia law program, W.J. Gordon Martin anticipated acceptance to the Bar. The regulatory Benchers of the provincial Law Society disagreed. Charged by the Legal Professions Act to estimate each candidate's "good repute," the quasi-judicial body deemed the Marxist graduate "unfit" to practice law. Following his widely-publicized rejection, Martin unsuccessfully tried to reverse the action in the Supreme Court of British Columbia before taking his case to the highest provincial forum for justice. On 12 March 1950, five justices of the British Columbia Court of Appeal delivered their judgments on Martin v. Law Society of British Columbia.¹ After due consideration of the arguments, depositions and evidential exhibits, the bench responded unequivocally and set a precedent reportedly unique within the Commonwealth.

The Law Society committed no legal error, found Chief Justice Sloan: "I am in agreement with the reasons of the Benchers and with their conclusion."² Judge O'Halloran stressed that freedom of expression "cannot be used to destroy our free society, to destroy democracy itself."³ Should any lawyer belonging to the Liberal or Progressive Conservative Party "declare his belief in Marxist Communism," he contended, the Benchers "might well find it their duty (after a proper hearing, of course) to disbar

him from practice."⁴ The leadership potential of the lawyer's "high place in society" should be recognized.⁵ Giving weight to the letter of the law, Justice Smith contemplated the intent and substance of the Legal Professions Act.⁶ Of Benchers authority, he observed that "no section says that they must admit anyone. The whole is left to their discretion."⁷

He denied the need for evidence of Martin's subversion. By joining "a body that is in effect conspiring against the government he goes beyond mere opinion; his very joining is an overt act," argued Smith.⁸ Jurist Robertson reiterated statements published by the House Un-American Activities Committee.⁹ He surmised that "neither the Government of Canada, nor that of the United States, nor that of England knowingly would employ a Communist."¹⁰ The final adjudicator concurred with his fellows. Justice Bird evoked the Gouzenko spy revelations and the notoriety of Klaus Fuchs and Alger Hiss in alerting Canadians to danger. "Communism and all that pertains to that philosophy I think is now recognized as having a connotation equivalent to Fifth Column."¹¹

The bench unanimously dismissed the appeal.

These selectively culled judicial comments introduce the larger themes in this study of Gordon Martin's "case." They indicate the strength of the system of autonomous

legislated power within the profession, elitism, attention to the question of fundamental civil liberties in a case of professional exclusion, and a Cold War mentality. As members of a legal fraternity with a great stake in the existing order, the justices upheld the idea of law as a special occupation worthy of the administrative privileges accorded it by the provincial state. Although legally eligible for election to Parliament, Martin's right to practice law depended on the Benchers' discretion. Normally the call to the Bar constituted a formality, a final rite of passage into the profession once an aspirant met the technical requirements. In 1948, rites and rights of professional membership took on new connotations.

The Benchers' powers resided in state support and the internal structure of the Law Society of British Columbia (LSBC). The legal establishment in place at the time of the Martin case consisted of an elitist, conservative group of men. BC's historically polarized society and the challenges of postwar upheaval gave this elite's conservatism an extra potency.¹² Martin's left-wing labour roots, ideology and politics clashed with the status quo, and Cold War tensions raised the potential for conflict. A seasoned activist, Martin's actions on the UBC campus came to the attention of the Benchers who deemed the candidate, after meetings and hearings, unfit to join their fraternity.

Martin experienced state-sanctioned political

repression in a Cold War environment. Members of the legal elite exhibited fear of external and domestic Communist aggression, and they endorsed American anti-"red" rhetoric. Benchers and justices put aside Martin's character as an individual in favour of testing legal jurisdictions and judging communism. In the larger context, the case allowed the LSBC chiefs, representing the political, economic and social establishment, to send a message of power and control to socialists, organized labour, and their own order. The Cold War ideology advanced a conservative postwar agenda, and Martin's rejection complemented and illustrated that strategy.

The Martin affair occurred at a time of increased public questioning of elitist attitudes and procedures, the formative period of the Canadian civil liberties movement. Despite the overwhelming unpopularity of communism, some observers and interest groups opposed the LSBC tribunal's decision. They believed it to be a blatant violation of Martin's fundamental freedoms and an arbitrary flexing of private powers. The resulting protest represented a challenge to the autonomy of the Benchers and government inertia in defending civil liberties. Ideological schisms, fears of career consequences and the Cold War mood weakened the protest and due process delivered a resounding blow. Legal decision-makers devised a strategy to allow Martin his day in court, a venue where he had no chance of

victory. Observers granted "due process" full authority, thereby shifting their attention away from the substance of the appeal and the outcome. The legal establishment thus sustained the status quo and reaffirmed the sanctity of its autonomous internal power structure.

Martin's conclusive loss reflected the immaturity of civil liberties safeguards in this pre-federal Bill of Rights, pre-Charter era. In lieu of guarantees enshrined in law, the protection of fundamental freedoms relied on such supports as public vigilance and tenacious coordinated protest, ideological tolerance, influential liberal politicians and liberal justices in the courts. A deficiency of these elements in the Martin case caused the foundations of liberty to collapse. Civil libertarians lacked the strength, skill and will to effectively coordinate a sustained campaign against the "untouchable" legal establishment. Furthermore, the court route appealed to most observers. They understood the procedure and in this era, Canadians granted judicial rulings authority under most circumstances. Judicial "due process" provided a comforting "democratic" resolution to a complex conflict. Indeed, the liberal cry for vigilance and resolve on questions of freedom proved too-easily quieted by a legal process paraded by the state and its legal attendants as justice served.

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The definition of what constitutes a fundamental civil

liberty is in eternal flux, driven by constitutional changes and creative court interpretations, the perceived needs of new collectivities and shifting degrees of state and social tolerance for dissent. The changing relationship between the citizen and the state was a constant theme in the era of the Martin case, thus all Canadians participated in the evolutionary process. As a concept, "civil liberty" held varied meanings for people, depending on their life experience and the planes of analysis they operated on. The reactions to the 1960 proclamation of the Canadian Bill of Rights illustrated the distance between these planes. While the general public celebrated the nation's statement of liberalism, many jurists and minority groups correctly dismissed the statute as hollow rhetoric, an inadequate response to their calls for effective safeguards. These demands developed in response to cases of abuse such as Martin's; repression was the genesis of activism. In its attention to the negation of Gordon Martin's basic political liberties and civil libertarians' fight on his behalf, this study provides new insight into the postwar status of individual freedoms and the early civil liberties movement.¹³

To argue for the import of this case and to place it in an historiographical context, a survey of some of the existing works which contribute to an understanding of the early civil liberties movement is required. No single study

comprehensively explores the developments from 1930-60, the period most relevant to Martin's experience. Four distinct but complementary historiographical schools of thought exist, comprised respectively of jurists, political writers, intellectual scholars, and social historians. True to the imperfect nature of categories, there are crossovers and sub-groupings. The existence of four schools attests to the premise that the successful protection of civil liberties relies on a combination of elements; in isolation, none is adequate. Each group of scholars approaches the subject with different priorities and criteria to explain the impetus behind the movement, define its meaning, and to gauge its success.

Constitutional law theorists form the jurists' school. Naturally, they place their legal community at the fore of the early drive for freedom guarantees. Jurists view civil liberties in the context of the citizen-state relationship framed by law. They focus on the checks and balances to powers affecting individual and collective freedoms: the symmetry between Parliament, provinces and courts; judicial interpretations, legislation and international law. These writers are centralist. They blame most abuses of freedoms on provincial legislatures, and further to that, on the British North America Act's failure to recognize civil liberties or clarify jurisdiction over them. Most members of this school advocate a social charter enshrined in a

sovereign constitution, in conjunction with an astute, creative judiciary in the Supreme Court.

School founder, Frank R. Scott, framed this position from the 1930s forward in heated treatises designed to end the legal and larger community's complacency on liberties issues.¹⁴ He approached civil liberties as "part of a never ceasing constitutional evolution."¹⁵ Taking aim at provincial powers and British jurists, he campaigned for a sovereign Supreme Court (achieved in 1949) and a sovereign constitution with an enshrined bill of rights. As a Christian socialist, Scott sought guarantees extending beyond traditional freedoms to personal welfare - a "liberty through government" in economic and cultural terms.¹⁶ His arguments before the Supreme Court in the 1950s re: Switzman v. Elbling and Roncarelli v. Duplessis helped to move the balance of powers over civil liberties away from the provinces.¹⁷ Influential theorist Bora Laskin advanced this shift as an early advocate for a new legal understanding of the BNA Act's Section 92.

Writing for journals in the 1950s, Laskin argued that provincial jurisdiction over "property and civil rights" did not mean control over civil liberties, especially in light of the Saumur decision.¹⁸ He promoted civil liberties as the independent "values of a free society" that transcended provincial boundaries and merited a distinct constitutional category.¹⁹ In anticipation,

Laskin outlined practical groupings of freedoms in his landmark work, Canadian Constitutional Law (1960).²⁰ Scott and Laskin saw positive developments as dependent on an activist liberal judiciary in the Supreme Court, one willing to break from the confines of narrow legal interpretation. Thus, they acclaimed the rulings against the Quebec government through the 1950s.

In his early writings, one of Scott's protégés, Pierre E. Trudeau, also lauded this check to the powers of the Quebec state, however, he departed from the Anglophone libertarians in his love of the "French fact" and Catholicism. Trudeau was bitter that "freedom" resulted from the overruling of Quebec courts and legislators by non-Francophones rather than a concerted movement from within.²¹ Through to the mid-1960s, he used Cité libre to attack what he saw as the collective forces repressing Quebec liberals and thus civil liberty: political corruption under the Union Nationale, Quebec clericalism, and the collectivist thrust of ethnic nationalism.²² Trudeau envisioned a shift towards freedom through Quebeckers' participation in a renewed federalism and the constitutional entrenchment of the principles of liberal individualism as a check to the powers of the state.²³ He clarified the latter part of this agenda in his draft Canadian Charter of Human Rights (1968), a goal achieved in the 1982 Canadian Charter of Rights and Freedoms.²⁴

Donald A. Schmeiser judged freedoms related to religion, education, communication and racial non-discrimination as most critical, and he examined their status in the context of the jurisdictional debates. Schmeiser's Civil Liberties in Canada (1964) was notable as a first legal-historical monograph, despite his digression into Whiggish euphoria over Canadians' historic love of freedom and the potential of the Bill of Rights.²⁵ Walter S. Tarnopolsky's 1966 Canadian Bill of Rights is a seminal study of the historic legal and constitutional developments leading up to the Bill, including the disputes over jurisdiction and methods of protection.²⁶ He marked the 1940s as the apogee of provincial powers and credited Scott and Laskin with engineering the shift to the centre.²⁷ The bill of rights debates illuminated the further theoretical growing pains of the civil liberties movement. One camp sought a bill recognizing "universal and immutable" rights and freedoms, though not all of its members wanted such rights in the constitution. A second camp defended a sovereign Parliament and the powers of disallowance as a more flexible process.²⁸

Tarnopolsky noted the importance of administrative and legislative "despotism" during the "total war effort" to raising Canadians' overall awareness of freedom issues.²⁹ He identified the legal liberties violations in the Gouzenko trials and the Japanese-Canadian ordeals as the

fuel for the legal community's postwar attention to civil liberties, along with the 1941 United Nations Charter and 1948 UN Universal Declaration of Human Rights.³⁰ He built on this theme in a later study of the interrelation between domestic and international moral concerns and commitments, arguing that the counter-reaction to domestic repression brought support for the UN Treaties. In return, the UN played a role in making Canadians receptive to a bill of rights.³¹ Assessing Canada's obligation to international treaties and covenants, Human Rights, Federalism and Minorities (1970) editor Allan Gotlieb demonstrated that flexible federalism was prerequisite to full participation. In the postwar era, the UN pushed the nation states while Ottawa pressured and coaxed the provinces towards cooperation in meeting UN standards. Gotlieb proposed three participatory stages: groping/ experimentation, 1919-37; hesitancy/retrenchment, 1937-1950s; empiricism/increasing involvement, late 1950s-1970.³²

R.St.J. Macdonald and John P. Humphrey, jurists noted for their roles in the UN, gave much of the credit for Canadians' accelerated interest in liberties to the "revolution" in international law.³³ In their capacity as the editors of The Practice of Freedom (1979), they advocated an entrenched social charter by protesting the growth of state power and collective activism as a threat to individual freedoms.³⁴ This collection reflected the

explosion of new issues in the 1970s, and reconsiderations of the past. Reacting to Quebec's language laws, Ronald Cheffins and Ronald Tucker bucked centralism, stressing the importance of provincial constitutions and bills of rights. They attested to the substance and enforceability of Saskatchewan's Bill of Rights, the only legislation of its kind in the early postwar era. The Bill upheld the "right to membership in professional associations."³⁵ In his critique of the use of the War Measures Act in the October Crisis, Montreal scholar Herbert Marx drew on the Japanese-Canadian experience to convey that "the underlying rationale of an emergency situation is not necessarily discernible on its face."³⁶ Donald Smiley looked at the effect of conservatism, elitism, corporatism and interest-group liberalism on Canadians' rights, powers and values.³⁷ He exposed social upheaval and elite pluralism as factors which both promoted and jeopardized civil liberties.

The constitutional entrenchment of The Canadian Charter of Rights and Freedoms prompted a jurists' Commentary (1982), which included Irwin Cotler's analysis of changes to the status of basic liberties. He made the important argument that the historic preoccupation with the division of powers deflected concern for "limitations on the exercise of power regardless of government" at the cost of peoples' rights.³⁸ Cotler contended that this resulted

in the relegation of civil liberties to the status of "afterthought" in constitutional law. Ironically, the "playing-off" of jurisdictions allowed pre-Charter courts to use legal federalism to invalidate illiberal legislation.³⁹

Randall Balcome, Edward McBride and Dawn Russell took a methodological step forward in their look at Supreme Court of Canada Decision-Making (1990). They considered three justices and their decisions, but not to craft a "great judge" history. The work offered a Quentin Skinner-styled contextual analysis of judicial personalities, ideologies and interpretations.⁴⁰ In the segment on Ivan Rand, who is most relevant to the early civil liberties movement, the authors acknowledged his background but gave priority to analyzing his judicial approach relative to "the nature of Canadian federalism; fundamental freedoms; labour law and common law adjudication."⁴¹ This resulted in a profound study of the forces directing Rand's landmark civil liberties decisions of the 1950s, and the scrutiny of justices in different eras marked the evolving nature and role of the Supreme Court.

**

Reflecting their primary interest in political careers and party fortunes, political historians incorporate civil liberties discussions into their examinations of leading politicians and political relationships, policy, platforms and public opinion. Comprised of scholars and politicians,

this second school of thought contends that both the negation and advancement of safeguards for basic freedoms in the early period hinged on political factors. These ranged from the projection of liberalism as a means to a political end, to the vision of individuals and party idealism. Some works, such as those on the Communist Party of Canada (CPC) are more useful in their underscoring of the historic fragility of the freedoms of fringe political groups.

Organized labour groups' tolerance for Communists depended on their strength in the unions. According to Gad Horowitz, in Canadian Labour in Politics (1968), anti-CPC factions in all political parties backed the postwar union purges, a mockery of the political freedoms.⁴² In his study of labour politics, Irving Abella detailed episodes of extensive police brutality towards CPC-affiliated unionists, and the public's condemnation of the violence.⁴³ Marxist Ivan Avakumovic suggested that this public anger at anti-Communist actions augmented the party's support base.⁴⁴ Under former Methodist A.E. Smith's direction, the CPC's activism for freedom guarantees also increased in response to wartime repression.⁴⁵ Liberty and peace causes gave the CPC rare ground to find accord with otherwise hostile elements.⁴⁶

In his Marxist analysis of The Canadian Left (1977), Norman Penner credited the political campaigns of the Co-

operative Commonwealth Federation's (CCF) J.S. Woodsworth and CPC leader Tim Buck with sowing an expanded concept of rights and freedoms in Canadian minds.⁴⁷ Penner described a contest in which the left battled reactionary Conservatives, with King vacillating in the centre under pressure from liberal Liberals.⁴⁸ He noted the contradiction between the CPC's political need to espouse freedom in the Stalin years and beyond, and the party's loyalty to Moscow.⁴⁹ Joan Sangster sidestepped these issues in her history of women in the political left. Their freedom hinged on the progress of the "woman question" within CCF and CPC circles, a path to liberation from gender oppression.⁵⁰

CCF histories exalt in the party's efforts to instill a strong civil libertarian ethic into the Canadian polity. Grace MacInnis canonized her father, J.S. Woodsworth, as Parliament's Christian socialist "conscience," a radical shaped by Social Gospel thinking and clashes with authority.⁵¹ Kenneth McNaught analyzed the complex union of Christianity and socialism in the political "prophet's" world-view. He deemed Woodsworth's "battle against the demands of institutional conformity" as the basis for his defence of individuals against collectivities.⁵² McNaught depicted the MP as a tenacious vigilant who "flooded the pages of Hansard" with case studies of repression and demands for the disallowance of offensive

legislation.⁵³

Christian socialism, humanism and the desire to shape a sovereign constitution united Woodsworth with F.R. Scott and Frank Underhill, founders of the League For Social Reconstruction. Michiel Horn studied the LSR membership's influence in the CCF, evident in the drafting of the manifesto and Scott's later role as the party's national chairman.⁵⁴ By its very existence, the politico-intellectual LSR-CCF connection injected dynamism into the civil liberties movement. New Democrat Walter D. Young contended that "no party had a more enviable record in the defence of civil liberties," but he took the political view that the CCF needed causes to champion to maintain its strength as a movement and a party.⁵⁵ He argued that the postwar decline of overt domestic repression served to dilute the CCF's role as the political champion of Canadian freedoms. The 1956 CCF Manifesto reflected the search for new priorities.⁵⁶

Liberal political writers are loathe to study the illiberal King-St. Laurent era in the civil liberties context, and their comments on the Canadian Bill of Rights are curt and dismissive. They prefer to redeem the party's reputation by celebrating the liberalism of Trudeau.⁵⁷ The term "Conservative civil libertarian" is also historically an oxymoron, thus Canadian Bill of Rights architect John Diefenbaker was exceptional. In his 1963

study of the Renegade, Peter C. Newman noted that the "Chief's" liberalism cost him the support of old guard Toronto Tories.⁵⁸ Newman stressed the propaganda value, or "political saleability" of the Bill, but argued that like Diefenbaker, the well-intentioned statute was so oversold that even its "limited influence" dissipated.⁵⁹

Diefenbaker claimed more credit and glory in his two volumes of memoirs.⁶⁰ A self-styled champion of individuals against "powerful establishments," he attributed his humanitarian beliefs to his exposure to rampant discrimination against prairie immigrants and decades of defending social underdogs as a criminal lawyer.⁶¹ Diefenbaker viewed the Bill as a personal project born of his principles, crafted in his mind, fought for in Parliament, and passed as Prime Minister. He insisted that his 1957 "clarion call" for freedom safeguards was new to many people and, ignoring Saskatchewan's 1947 Bill of Rights, claimed that his work set a standard for the provinces.⁶² As a monarchist, he revelled in his maintenance of Parliamentary sovereignty, a sore point for proponents of an entrenched charter. His departure from the British-Canadian Conservative tradition, in introducing a statutory bill of rights, confirmed the ascendancy of liberalism in the Canadian polity - a change to the status quo loathed by right-wing Tories. As a politician, Diefenbaker tied the advance of the civil

liberties movement, capped by his Bill, to the overthrow of the Liberals.⁶³

**

Intellectual historians and political philosophers address the shifting trends in Canadian thought which drive the constitutional debates, judicial interpretations and political contests considered by the first schools. These writers are gripped by the concept of liberalism or liberal individualism, and they regard the early civil liberties movement as both a product of the postwar elevation of this ideology, and a reason for its dominance. Reconsidered as an early intellectual, Trudeau focused on the failure of liberalism to take hold in postwar Quebec. In philosophical sermons first printed in Vrai (1958), he censured the willing "slaves" to the Duplessis regime, and viewed this as a problem of culture, clericalism and nationalism which could not be remedied by a bill of rights or Supreme Court decisions.⁶⁴ A supporter of the democratic agenda of the Rassemblement and Union des forces democratiques, Trudeau advised readers of their right to obey an authority, but condemned conformity through a duty to "God, Providence, or Nature."⁶⁵ His just state was a "servant" helping individuals to fulfil their potential.⁶⁶

Taking a position antithetical to Trudeau's, George Grant raised an isolated conservative voice within this school. His 1965 Lament For a Nation included a condemnation of Diefenbaker's elevation of the primacy of

individual rights over French-Canadians' collective right of nation. This conformed, in his view, to a modern trend to universalism and enlightened humanism, whereas Canadian federalism hinged on a racial "particularism" alien to the Bill of Rights.⁶⁷ Associating the Bill with the American quest for social homogeneity, Grant decried it as further evidence of Canada's decline as a sovereign state. He articulated the conservatives' problem: opponents denounced their arguments as attacks on the goal of individual human excellence.

Anglophile Methodist, Arthur R.M. Lower, aimed to reinforce the values underlying his concept of democratic liberalism in This Most Famous Stream (1954). He extolled a Canadian spirit of liberty stemming from Christian values, British traditions and the "genius" of flexible federalism.⁶⁸ Lower bound the civil liberties movement to the advance of Western liberal thought and promoted "old-fashioned" political liberties as the basic freedoms which put all others within reach.⁶⁹ W.L. Morton returned to the famous stream in the 1974 Lower collection, to find it polluted.⁷⁰ He traced the mounting authoritarian strain in the liberal tradition, apparent in the government's forsaking of the rule of law and dictates of conscience during, and after the war.⁷¹ Morton believed Canadians a dispirited people in their acceptance of the state's use of extraordinary powers, but lauded Scott and

the "most hopeful development" of judicial review.⁷² He approved of Canadians' choice of a bill of rights over past safeguards - only in memory was Parliament representative and rights-conscious.⁷³

Lower protégé, Ramsay Cook, concurred with this. From his examination of the strength of World War II liberalism in the shadow of the War Measures Act, he drew the caution: beware majority opinion, public hysteria, and the "democratic faith of political leaders."⁷⁴ Cook's colleague, Michiel Horn, reached further back to a 1931 "free speech" letter to frame the early intellectual support for liberties raised in reaction to repression. Sweeping police actions made "radicals" out of sixty-eight University of Toronto academics, including Frank Underhill. Their protests sparked public discussion of freedom of speech, and, due to an angry university board, questions of academic freedom.⁷⁵ Horn believed this struggle to be the catalyst for the emancipation of the concept of academic freedom from its cloistered institutional confines, and for increased academic involvement in politics and public debate.⁷⁶

**

The first schools take the skeleton of the early civil liberties movement and clothe it. The fleshy human struggle at the base of social change is the meat of historians who are interested in, or identify with this period's unpopular, repressed minorities. Social historians survey

street fights, protest meetings, internment camps and court views from the docket, acknowledging fear, anger, racism and the illusory nature of majority tolerance. They elevate the role of Canada's persecuted peoples in driving the movement forward - their troubles and efforts made jurists, politicians, courts and society see the need for new, substantial safeguards. A sub-group of students of the state's treatment of dissent call attention to illiberal, unaccountable state mechanisms operating beyond the constitutional pale, a line of questioning which curves into the jurists' proximity. These analysts advocate greater vigilance against covert methods of repression.

Shifts in the minority group-state relations which frame civil liberties issues are highlighted in works on pacifist or controversial religious sects. Quaker Arthur Dorland attested to the increased politicization of his group in its assumed role in securing wartime safeguards for freedom of conscience. Through their organization of a World War II alternative service program, the Quakers gained qualified state and social acceptance, whereas some sects considered the scheme a new form of repression.⁷⁷ George Woodcock and Ivan Avakumovic studied the Doukhobors, who gained their basic freedoms only after conforming to state norms in education, marriage and other practices. The violent protests of the anti-state, anti-material "Sons of Freedom" faction tested the definition of acceptable

dissent, and splintered the Doukhobor community.⁷⁸

Studies of the Jehovah's Witnesses reveal the prominent role of religious "rebels" in the early movement. Riled at Schmeiser's view of Canada as an historically freedom-loving nation, Witness scholar James Penton argued that his community forced changes to the status of liberties, and he recounted a history of cracked heads, jail terms and legal warfare as evidence.⁷⁹ To forward Jehovah's law, the Witnesses worked the courts to end their repression under Duplessis, the Catholic hierarchy and wartime alternative service; the blood transfusion fight continues. It is ironic that so anti-institutional a sect emerged a strong crafter of constitutional guarantees for freedom of worship and speech. While not disputing the worth of these freedoms, Québécois historian Michel Sarra-Bournet contended that Quebec's homogeneous society feared the proselytizing strangers in its midst. The Church reacted, the public backed the Church and Duplessis took the shrewd politician's course.⁸⁰ Sarra-Bournet detailed the camps which formed around L'Affaire Roncarelli (1986) to make it a contest between Catholics and Protestants, Francophones and Anglophones, Quebec nationalists and federalists.⁸¹

Legal scholar and historian William Kaplan reinforced Penton's contention that there was "absolutely no question" that the Witnesses' faith and life work would continue

despite Quebec's hostility; repression acted as a yeast to their activities.⁸² The state ultimately lost the contest and with it, a larger jurisdictional power struggle.⁸³ In State and Salvation (1989), Kaplan dissected the interlocked forces of hysteria, intolerance, personality, "practical" federal politics, and "political cowardice" directing the Witness experience.⁸⁴ He placed their struggle within the greater framework of legal, constitutional, and social developments. Kaplan raised the vital point that causes do not change, only perceptions of rights and right causes as a condition of social cost, or the "degree of freedom society felt it could afford."⁸⁵ He warned against trusting in limited statutes and public tolerance to safeguard freedoms - a caveat germane to the Japanese-Canadian and Communist experiences. The upholding of civil liberties depended on constitutional law and the continued activism of people.⁸⁶

Canadians now condemn the wartime evacuation, internment and subsequent deportation of west coast-concentrated Japanese Canadians as a repellent mistake.⁸⁷ Patricia E. Roy, Ann Sunahara, Ken Adachi and Peter Ward established that these measures derived largely from white British Columbians' nativist racism, the complex psychological and socioeconomic fears of Asians as competitors and an alien "other" within the community.⁸⁸ Local politics, propaganda, and the workings of federal-

provincial relations translated intolerance into legal repression. The severity of this repression, Adachi argued, inspired the postwar public to question the use of "naked executive powers."⁸⁹ Once aware of Hitler's "final solution," the holocaust, Canadians felt shame at their treatment of a community guilty only by race.

In The Enemy That Never Was (1976), Adachi conveyed the vital strength of the ethnic community's internal organizations which, with the steadfast support of mainstream liberals, made a success of the campaigns to halt the deportation scheme and win some compensation.⁹⁰ These same voices called for a bill of rights. According to Ward, idealism and "liberal internationalist rhetoric" silenced the nativist cry, White Canada Forever (1978).⁹¹ He gave most of the credit for the postwar easing of tensions to the efforts of white civil liberties organizations aligned with protestant churches and a vote-hungry CCF. In terms of social costs, white union and business leaders could afford a more liberal outlook as the threat of competition receded.⁹²

Analyses of the experiences of rank-and-file Canadian Communists belong to a nascent historical genre propelled, for the most part, by an intellectual backlash at closed processes perceived as repressive, or potentially abusive. These writers scrutinize the broad implications of ideology-based legislation and police action, state

surveillance, and covert tactics of intimidation. Lita-Rose Betcherman is one such scholar and she gave a scathing critique of the politico-legal elite's interwar treatment of "Reds" in The Little Band (1982). She argued that the CPC shook the establishment, and "the lion responded with a roar" of conservative hostility manifested in the Criminal Code's Section 98.⁹³ Greg Kealey's work on the RCMP Special Branch revealed that body's early obsession with communism. Moreover, his documentary evidence outlined the role of inside agents and the British-Canadian intelligence system in frustrating dissent, and with it, political freedom.⁹⁴

According to Larry Hannant, an anti-Communist mindset in several state quarters hastened the construction of an "infernal" security screening machine. By 1945 the operators of this system had the methodology, technology and power to regulate the actions (and politics) of countless Canadians, a process defended as necessary to determining loyalty.⁹⁵ Reg Whitaker was critical of the King administration's designation of Canadian Communists as disloyal following Stalin's pact with Hitler. This resulted in a CPC ban and internments carried out under the Defence of Canada Regulations.⁹⁶ Collectively, these works establish the base of anti-"red" hostility and persecution which influenced the complex postwar curtailment of their political and career freedoms.

With the Cold War's apparent abatement, new researchers, many working in the media, entered formerly taboo areas. Merrily Weisbord and CBC radio producer Len Scher used oral interviews to give a voice to left-wing Canadians acquainted with Cold War intimidation and the loss of liberties, often by secretive means. In The Strangest Dream (1983), Weisbord paid close attention to the Gouzenko episode, or series of incidents which gave the state an excuse to expand its screening services and, Hannant suggested, forced a first official acknowledgement of the system in place.⁹⁷ The conduct of the spy trials, in which habeas corpus and other legal guarantees were denied, provoked the legal community to take a hard look at civil liberties issues.⁹⁸ Scher's Un-Canadians (1992) provided a medium for the anger of people whose Cold War memories include blacklisting, loyalty checks and "unofficial" RCMP visits.⁹⁹

Reporter John Sawatsky exposed the extent and nature of the RCMP's regulation of society in the Men in the Shadows (1980). He demonstrated that Cold War surveillance and screening processes affected more than the freedoms of civil servants and government applicants. Suspected Communists, homosexuals, alcoholics and others not conforming to the state ideal risked arbitrary job dismissals without recourse.¹⁰⁰ Reacting to the 1984 Canadian Security Intelligence Act, Michael Mandel

confirmed the RCMP security force as reactionary to any left-wing protest or dissent, and suggested that in no period of social upheaval does the law offer protection for freedom of expression.¹⁰¹ Scher's colleague, James Littleton, linked the RCMP surveillance mentality to the stance and actions of U.S. institutions. In Target Nation (1986) he detailed this association and its implications for the sovereignty and freedom of Canadians living under a U.S.-dominated security network.¹⁰²

Contributors to Dissent and the State (1989) reworked some of these themes. Examining the interplay between dissent and national security, legal scholars John Whyte and Allan Macdonald argued that dissent is fundamental to a democracy, and designated the categorizing of protest as automatic "subversion" the real menace.¹⁰³ They concluded that in the interests of Cold War national security, state institutions became "inaccessible structures" divorced from the legal fold of constitutional law, and questioned whether there is a remedy.¹⁰⁴ Elizabeth Grace and Colin Leys explored "subversion," and found it a concept and term valuable to any state wishing to render the ideas and actions of dissenters illegitimate.¹⁰⁵ Reg Whitaker looked at the consequences of Cold War surveillance to the political and social left. He condemned the CCF/NDP for damaging the left's potential by cooperating with the state in defining acceptable limits to dissent.¹⁰⁶

Michiel Horn's 1989 study of "Academic Freedom and the Dismissal of George Hunter" was important in its attention to the negation of civil liberties in the private sphere.¹⁰⁷ Personal and Cold War animosity prompted a university board, armed with legislated discretionary powers, to fire the Communist-associated Hunter with little debate and no right of appeal.¹⁰⁸ Pulled from "near-total obscurity," this episode opens up discussion on the curtailment of individual freedoms by virtually autonomous self-governing bodies whose legislated powers place them beyond public accountability.¹⁰⁹ Horn used the firing, and the inability of Hunter's supporters to halt it, to stress the precarious position of individuals lacking support from a competent, empowered watchdog organization. Academic freedom did not benefit from the minimal civil liberties organizations in 1948.¹¹⁰ Experiences such as Hunter's beg further research, and analyses of the safety of individual freedoms within the realm of private powers must be established as vital field within the historiography.

That challenge is taken up in this case study of the LSBC's exclusion of Gordon Martin from the profession of law, a clear negation of his civil liberties by a private body autonomously exercising legal discretionary powers. Jurist Thomas Berger touted it as "perhaps the best known"

example of a Communist Canadian being denied access to a profession.¹¹¹ Until now, however, scholars chose either to ignore, or give only minor consideration to the case and its implications. For example, F.R. Scott and Donald Schmeiser made brief references to the BC Court of Appeal's decision on Martin, but their interest resided elsewhere. The jurists wanted to celebrate the comparative fairness in the judicial attitude and approach of the Supreme Court in Smith & Rhuland Limited v.R.(1953).¹¹² In that case a majority (including Rand) ruled that the Labour Relations Board of Nova Scotia exceeded the limits of its discretion in refusing to certify a union with a Communist secretary-treasurer.¹¹³

Jurist Irwin Cotler examined Martin's LSBC exclusion, but only as an example of the state's interference with associational freedoms, his main concern. Gordon Martin received personal attention in the memoirs of his contemporary, Harry Rankin.¹¹⁴ Despite the value of the insider memories and opinions, however, Rankin offered more judgment than critical review, and his priority was to tell his own story. Reg Whitaker and Gary Marcuse dedicated roughly two pages of their 1994 overview of Cold War Canada to Martin's ordeal, approaching it as a prime example of victimization - a man lost his fundamental rights because of his politics.¹¹⁵ These reflections on Gordon Martin and his case are noteworthy, but they are not enough.

There is much more to the history, and it is too important to write off in a few paragraphs or pages.

This work is a legal history in its attention to the internal structure of the profession and its relations with the state which sanctions its self-government. The case raises questions about jurisdiction over civil liberties, not in federal-provincial terms, but in relation to the authority of a professional government forming a state within a state, one which precedent placed beyond review by the courts or the public. The twist to the Martin affair is that it concerned the professional community committed to justice, accenting the double-edged nature of law: it is fundamental to the security of basic freedoms, but evolves from, and protects, established interests.

As an intellectual history, Martin's case demonstrates the interplay between three competing ideologies. This study's close look at the protest on behalf of civil liberties reveals some interesting components to Canadians' postwar liberalism, and allows a practical assessment of the strength of this ideology when put to a Cold War test. The Marxian-socialism of Martin and his peers is juxtaposed with the liberalism of civil libertarians and the conservatism and elitism of the legal establishment. The dialogue between these groups emphasizes the difference in their social ideals and contemporary perceptions of the meaning of civil liberty and democracy.

Martin's exclusion stemmed from a clash of both ideologies and politics in that he was damned as much by his LPP membership as his Marxist beliefs. Therefore, this examination retains some qualities of a political history by outlining the provincial politics of the era, exploring the party affiliation of the legal elite, and assessing the use of professional powers in political warfare. The LSBC governors' condemnation of the legal LPP as illegitimate, and the reaction of political elements to that pronouncement, conveys the practical status of the LPP. Martin's ordeal is also contemplated as an act of political repression against a member of a unpopular minority. The intent in incorporating a social historical approach is to open up new avenues for discussion on the treatment of internal dissent and external challengers by a private body allied with the state.

Thus, in recognition of the complexity underlying this case, the search for understanding takes priority over placing the study in one historical category or making it conform to a single method of inquiry. This work draws on the approaches to the early civil liberties movement advanced by each of the four historiographical schools. If this is an innovative approach, it is a necessary innovation as evidenced by the limitations of the existing, albeit cursory, analyses of the meaning of the Martin case and its implications. Furthermore, the creative, multi-

faceted nature of this study allows it to be of use to a wide range of scholars; it is liberated from the constraints of narrow historical interpretation.

What follows, therefore, is more than an account of Gordon Martin's experience, although his story is significant. In Chapter Two, the channels of authority within the Law Society of British Columbia and the legislative foundations of its powers of self-government are established. A profile of the key decision-makers in the case puts this power structure into perspective. Chapter Three charts Martin's path towards a legal career and the ideological and political circumstances which caught the Benchers' attention. To set a foundation for analysis, Chapter Four is a narrative overview of the 1948-50 developments. The fifth chapter focuses on the case as an act of political repression, and tracks down the impetus for this action in Cold War-specific influences and the larger volatility of BC's polarized society. Chapter Six is a micro-historical dissection of the protest raised on behalf of Martin's civil liberties, with close attention paid to the factors behind its disintegration. The history closes with an epilogue tracing precedents, professional powers, and people.

Notes to Introduction

1. Martin v. Law Society of British Columbia [1950], 3 D.L.R. 173 (BCCA).
2. Ibid., at 175.
3. Ibid., at 183.
4. Ibid., at 187.
5. Ibid., at 188-9.
6. Legal Professions Act, R.S.B.C. 1948, c.180, ss.36, 39 and 41A.
7. Martin v. Law Society, 3 D.L.R., at 193.
8. Ibid., at 195.
9. Ibid., at 191-2. He cited pamphlets released by the Committee in 1948, which were located at the Provincial Library.
10. Ibid., at 192.
11. Ibid., at 197-9.
12. The term "elite" is not meant to be a pejorative or negative label, although the decisions of the elite are critically evaluated. This study employs a synthesis of the definition offered by T.B. Bottomore in Elites and Society (Middlesex, Penguin Books, 1964), 14-15. He uses the term 'elite'(s)' to mean "functional, mainly occupational, groups which have high status (for whatever reason) in society." A "political elite" refers to "those individuals who actually exercise political power in a society," or the elite within the political class. For the purpose of this study, the "legal elite" is the inner circle of Benchers and jurists who lead in decision-making and hold special powers pertinent to Martin's case. The terms "legal order," "legal establishment" and "legal elite" are interchangeable in this context.
13. In this study, the terms "liberties," "freedoms," and "civil liberties" are interchangeable. Walter S. Tarnopolsky outlines the legal use of the terms. "Liberty" is the freedom to act "without being prevented from doing so by law," although freedoms often demand legal

guarantees. "Civil liberty" is a traditional English term used in the context of basic rights and freedoms. Since World War II, the phrase "human rights and fundamental freedoms" is used synonymously with "civil liberties." Some historians use the term "civil rights," which has different constitutional and political meanings, as in the American usage. Tarnopolsky's list of political liberties includes the freedoms of association, assembly, utterance, press or other communications media, conscience and religion. See The Canadian Bill of Rights (Toronto: Carswell, 1966), Chapter One.

14. Frank R. Scott's approach to civil liberties is effectively outlined in his works: Civil Liberties and Canadian Federalism (Toronto: University of Toronto Press, 1959); The Canadian Constitution and Human Rights: Four Talks for CBC Radio (Toronto: Hunter Rose Co., 1959); Essays on the Constitution (Toronto: University of Toronto Press, 1977). For details on Scott's life, see Sandra Djwa and R. St. J. Macdonald, eds., On F. R. Scott: Essays on His Contributions to Law, Literature, and Politics (Kingston and Montreal: McGill-Queen's University Press, 1983).

15. Scott, Federalism, 5; Essays, 213.

16. See especially Scott, "Dominion Jurisdiction over Human Rights and Fundamental Freedoms," chap. in Essays, 209-241.

17. In 1957, in Switzman v. Elbling, the Supreme Court declared the Padlock Act (Quebec Communistic Propaganda Act) ultra vires of the Quebec Legislature. Duplessis had the liquor license of restaurateur Frank Roncarelli, a Jehovah's Witness, arbitrarily revoked in 1946. After a series of court hearings and appeals, Roncarelli won in the Supreme Court in 1956. See William Kaplan, State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights (Toronto: University of Toronto Press, 1989), 236-253.

18. See, especially, Bora Laskin, "Our Civil Liberties - The Role of the Supreme Court," Queen's Quarterly 41, no. 4 (Winter 1955): 455-471. The case is Saumur v. City of Quebec and Attorney-General (1953) in which a Jehovah's Witness challenged a Quebec City by-law, forcing a first Supreme Court decision on jurisdictional issues related to the freedoms of speech, assembly and religion. For insight into Laskin's background, see C. Ian Kyer and Jerome E. Bickenbach, The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923-1957 (Toronto: The Osgoode Society, 1987), 115, 140, 212, 221, 269, 309, n.15.

19. Ibid., 471.

20. See Bora Laskin, "An Inquiry into the Diefenbaker Bill of Rights," Canadian Bar Review 37 (1959): 77-134; "Note on Civil Liberties and Legislative Power," chap. in Canadian Constitutional Law, 2d ed., (Toronto: Carswell, 1960), 938, cited in Tarnopolsky, Bill of Rights, 3, n.5.

21. An individualist and internationalist, his views on civil liberties cemented with exposure to the state-citizen battles in the 1949 Asbestos Strike and Premier Maurice Duplessis' denial of his right to teach in Quebec. For an overview of his life experiences, see Pierre Elliott Trudeau, Memoirs (Toronto: McClelland & Stewart Inc., 1993).

22. Pierre Elliott Trudeau, "Separatist Counter-Revolutionaries," in Federalism and the French Canadians (Toronto: Macmillan of Canada, 1968), 204-6. Originally published in Cité libre, 1964.

23. Ibid., 209-11. See also "Some Obstacles to Democracy in Quebec," in Trudeau, Federalism, 103-123.

24. Pierre Elliott Trudeau, A Canadian Charter of Human Rights (Ottawa: Queen's Printer, 1968).

25. Donald A. Schmeiser, Civil Liberties in Canada (London: Oxford University Press, 1964), especially Preface, 1-7, 19 and Conclusion.

26. Walter Surma Tarnopolsky, The Canadian Bill of Rights (Toronto: Carswell, 1966).

27. Ibid., 11-12.

28. Ibid., 12-13.

29. Ibid., 3-4.

30. Ibid., 4, 5-8.

31. Walter S. Tarnopolsky, "The Impact of United Nations Achievements on Canadian Laws and Practices," in Human Rights, Federalism and Minorities, ed. Allan Gotlieb (Toronto: Canadian Institute of International Affairs, 1970), 55-62.

32. Allan Gotlieb, "The Changing Canadian Attitude to the United Nations Role in Protecting and Developing Human Rights," in Human Rights, 18, 38-42, 53.

33. Macdonald served as Rapporteur and Vice-Chairman of the Third Committee of the General Assembly of the United Nations, Vice-Chairman of the Committee on the Elimination of Racial Discrimination, and as a representative of Canada to the Sixth Committee. John P. Humphrey was the 1946-66 Director of the Division of Human Rights in the United Nations Secretariat. He was a member of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, and worked on the drafting of the human rights declaration and covenants.

34. See R. St. J. Macdonald and John P. Humphrey, eds., The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms (Toronto: Butterworths, 1979), Preface and Introduction.

35. Ronald I. Cheffins and Ronald N. Tucker, "Provincial Constitutions and Civil Liberties," chap. in Practice, 39-52, especially 46. Alberta constructed a Bill of Rights in 1972.

36. Herbert Marx, "Human Rights and Emergency Powers," chap. in Practice, 457.

37. Donald V. Smiley, "Rights, Power, and Values in Canadian Society," chap. in Practice, 1-24.

38. Irwin Cotler, "Freedom of Assembly, Association, Conscience and Religion," chap. in The Canadian Charter of Rights and Freedoms: Commentary, eds. Walter S. Tarnopolsky and Gerald-A. Beaudoin (Toronto: Carswell Co. Ltd., 1982), 124-7.

39. Ibid., 124-128.

40. Randall P.H. Balcome, Edward J. McBride, and Dawn A. Russell, Supreme Court of Canada Decision-Making: The Benchmarks of Rand, Kerwin and Martland (Toronto: Carswell, 1990), 24. Two of the authors are lawyers, and one is a political scientist.

41. Ibid., 25-6.

42. Gad Horowitz, Canadian Labour in Politics (Toronto: University of Toronto Press, 1968), Preface, 88-9, 157.

43. Irving Abella, Nationalism, Communism, and Canadian Labour: The CIO, the Communist Party, and the Canadian Congress of Labour 1935-1956 (Toronto: University of Toronto Press, 1973), 7, 13-15, 89.

44. Ivan Avakumovic, The Communist Party in Canada: A History (Toronto: McClelland and Stewart, 1975), 113-4.
45. Ibid., 142-5, 151. See also J. Petryshyn, "Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labour Defense League, 1935-1940," Labour/Le Travail 10 (Autumn 1982): 39-63.
46. Ibid., 107, 127.
47. Norman Penner, The Canadian Left: A Critical Analysis (Scarborough: Prentice-Hall of Canada Ltd., 1977), 184, 203-4.
48. Ibid., 164.
49. Norman Penner, Canadian Communism: The Stalin Years and Beyond (Toronto: Methuen, 1988), 233.
50. Joan Sangster, Dreams of Equality: Women on the Canadian Left, 1920-1950 (Toronto: McClelland and Stewart, 1989), 214-17.
51. Grace MacInnis, J.S. Woodsworth: A Man to Remember (Toronto: Macmillan Co. of Canada Ltd., 1953), 144-5, 201, 210-11.
52. Kenneth McNaught, A Prophet in Politics: A Biography of J.S. Woodsworth (Toronto: University of Toronto Press, 1959), Preface, 63.
53. Ibid., 242-5.
54. See F.R. Scott, A New Endeavour: Selected Political Essays, Letters, and Addresses, ed. Michiel Horn (Toronto: University of Toronto Press, 1986), xvi, xxvi, 30; Michiel Horn, The League For Social Reconstruction: Intellectual Origins of the Democratic Left in Canada 1930-1942 (Toronto: University of Toronto Press, 1980. For background on Frank Underhill, see Norman Pennington's preface to On Canada: Essays in Honour of Frank H. Underhill (Toronto: University of Toronto Press, 1971).
55. Walter D. Young, The Anatomy of a Party: The National CCF 1932-1961 (Toronto: University of Toronto Press, 1969), Preface, 8.
56. Ibid., 97, 129, 316.
57. See, for example, J.W. Pickersgill, The Road Back: By a Liberal in Opposition (Toronto: University of Toronto Press, 1986), 85-6, 95; Robert Bothwell, Ian Drummond, and

John English, Canada Since 1945: Power, Politics, and Provincialism, rev. ed. (Toronto: University of Toronto Press, 1989), 188-9.

58. Peter C. Newman, Renegade in Power: The Diefenbaker Years (Toronto and Montreal: McClelland and Stewart Ltd., 1963), 24-5.

59. Ibid., 224-231.

60. John G. Diefenbaker, One Canada: The Crusading Years 1895-1956 (Toronto: MacMillan of Canada, 1975); The Years of Achievement 1957-1962 (Toronto: MacMillan of Canada, 1976). His legal career is the focus of Garrett Wilson and Kevin Wilson's Diefenbaker for the Defence (Toronto: James Lorimer & Co., 1988).

61. Diefenbaker, Crusading, 108, 140.

62. Diefenbaker, Achievement, 32-3, 251-2, 264.

63. Ibid., 31, 253-264.

64. Pierre Elliott Trudeau, Approaches to Politics (Toronto: Oxford University Press, 1970), 70, 79-81.

65. Ibid., 31.

66. Ibid., 34, 44, 50.

67. George Grant, Lament for a Nation: The Defeat of Canadian Nationalism (Toronto and Montreal: McClelland and Stewart Ltd., 1965), 21-2, 84, 89.

68. Arthur R.M. Lower, This Most Famous Stream: The Liberal Democratic Way of Life (Toronto: Ryerson Press, 1954), Preface, 2-4, 31, 49, 87, 155-9, 160-4. For background information on this civil libertarian, see His Own Man: Essays in Honour of Arthur Reginald Marsden Lower, eds. W.H. Heick and Roger Graham (Montreal and London: McGill - Queen's University Press, 1974).

69. Ibid., 192-3.

70. W.L. Morton, "Further Reflections on the 'Most Famous Stream'," in His Own Man, 55.

71. Ibid., 56-64.

72. Ibid., 65-7.

73. Ibid., 68.

74. Ramsay Cook, "Canadian Freedom in Wartime, 1939-1945," in His Own Man, 51.
75. Michiel Horn, "Free Speech Within the Law: the Letter of the Sixty-eight Toronto Professors, 1931," Ontario History 72, no.1 (March 1980): 30-4.
76. Ibid., 42-5.
77. Arthur Garratt Dorland, The Quakers in Canada, A History (Toronto: Ryerson Press, 1968), 335, 340-1.
78. George Woodcock and Ivan Avakumovic, The Doukhobors (Toronto: Oxford University Press, 1968), 319-343.
79. M. James Penton, Jehovah's Witnesses in Canada: Champions of Freedom of Speech and Worship (Toronto: Macmillan of Canada, 1976), 1-2, 21, 180-5, 194-5, 198, 223.
80. Michel Sarra-Bournet, L'Affaire Roncarelli: Duplessis Contre les Temoins de Jehovah (Quebec: Institut Quebecois de Recherche Sur La Culture, 1986), 144-5.
81. Ibid., 140-1.
82. William Kaplan, State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights (Toronto: University of Toronto Press, 1989), 66.
83. Ibid., 252-5. Kaplan put the Witnesses at the fore of the drive for a bill of rights, which they fought for via petitions, lectures and the general education of Canadians on the subject.
84. Ibid., Preface xi. See for example, 22, 45, 66, 203, 260-271.
85. Ibid., 203.
86. Ibid., 270-1.
87. This does not mean that scholars are united in believing that the measures were unnecessary or arbitrary in the wartime context. See, for example, J.L. Granatstein, "The Enemy Within?" in Readings in the History of British Columbia, eds. Jean Barman and Robert A.J. McDonald (Vancouver: Open Learning Agency, 1989), 461-69 (reproduced from Saturday Night (November 1986)).

88. Patricia E. Roy, "British Columbia's Fear of Asians, 1900-1950," Histoire Sociale/Social History 13 no.25 (May 1980):161-172; Ann Gomer Sunahara, The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War (Toronto: James Lorimer & Co., 1981); Ken Adachi, The Enemy That Never Was: A History of Japanese Canadians (Toronto: McClelland and Stewart, 1976); W. Peter Ward, White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia (Montreal: McGill - Queen's University Press, 1978).
89. Adachi, Enemy, 146.
90. Ibid., 157-163, 291, 311-17, 336, 344.
91. Ward, White, 163-6.
92. Ibid., 368-9.
93. Lita-Rose Betcherman, The Little Band: The Clashes Between the Communists and the Political and Legal Establishment in Canada, 1928-1932 (Ottawa: Deneau, 1982), Preface, 212.
94. Gregory S. Kealey, "The RCMP, The Special Branch, and the Early Days of the Communist Party of Canada: A Documentary Article," Labour/Le Travail 17 (1992): 169-204.
95. Larry Hannant, The Infernal Machine: Investigating the Loyalty of Canada's Citizens (Toronto: University of Toronto Press, 1995), 6-9.
96. Reg Whitaker, "Official Repression of Communism During World War II," Labour/Le Travail 17 (1986): 160-2.
97. Merrily Weisbord, The Strangest Dream: Canadian Communists, The Spy Trials, and the Cold War (Toronto: Lester & Orpen Dennys Publishers, 1983), Introduction, 4, 151; Hannant, Infernal, 253.
98. For an overview of the spy trials, see Robert Bothwell and J.L. Granatstein, eds., The Gouzenko Transcripts: The Evidence Presented to the Kellock-Taschereau Royal Commission of 1946 (Ottawa: Deneau Publishers & Co. Ltd., 1982).
99. Len Scher, The Un-Canadians: True Stories of the Blacklist Era (Toronto: Lester Publishing Ltd., 1992), 12.

100. John Sawatsky, Men in the Shadows: the RCMP Security Service (Toronto: Doubleday Canada Ltd., 1980), Chapters Nine and Ten.
101. Michael Mandel, "Freedom of Expression and National Security," University of Western Ontario Law Review 23, no.2 (1985): 205-9.
102. James Littleton, Target Nation: Canada and the Western Intelligence Network (Toronto: Lester & Orpen Dennys Ltd., 1986), especially Chapters One and Two.
103. John D. Whyte and Allan Macdonald, "Dissent and National Security and Dissent Some More," in Dissent and the State, ed. C.E.S. Franks (Toronto: Oxford University Press, 1989): 21-39.
104. *Ibid.*, 25-30.
105. Elizabeth Grace and Colin Leys, "The Concept of Subversion and its Implications," in Dissent, 62-3.
106. Reg Whitaker, "Left-wing Dissent and the State: Canada in the Cold War Era," in Dissent, 191-210.
107. Michiel Horn, "Academic Freedom and the Dismissal of George Hunter," Dalhousie Review 69, no.3 (Fall 1989): 415-38.
108. *Ibid.*, 427.
109. *Ibid.*, 417.
110. *Ibid.*, 427-33.
111. Thomas R. Berger, Fragile Freedoms: Human Rights and Dissent in Canada (Toronto & Vancouver: Clark, Irwin & Co. Ltd., 1981), 155. Berger relays some basic "facts" of Martin's case, with an emphasis on the statement by the Benchers and the appeal court decision. His book is an outline of civil liberties struggles ranging from the Acadians to the Jehovah's Witnesses. Too often, it becomes a morality play of villains and heroes.
112. Scott, Federalism, 40; Schmeiser, Liberties, 220.
113. Smith & Rhuland Limited v.R. [1953] 2 S.C.R. 95, at 98, cited in Schmeiser, Liberties, 220. Justice Ivan Rand submitted that "there is no law in this country against holding such views nor of being a member of a group or party supporting them."

114. Harry Rankin, Rankin's Law: Recollections of a Radical (Vancouver: November House, 1973), especially 62-65.

115. Reg Whitaker and Gary Marcuse, Cold War Canada: The Making of a National Insecurity State, 1945-1957 (Toronto: University of Toronto Press, 1994), 288-90.

CHAPTER TWO - ESTABLISHING THE LEGAL ORDER

An appreciation of the significance of the Martin case depends on an understanding of the foundations of the Law Society of British Columbia (LSBC). What power structure supported the legal establishment, and who formed it?¹ This study responds to legal historian David Flaherty's call for a pursuit of "both the broad and narrow dimensions" of research topics to "illuminate the interaction between law and society."² Historical detail is incorporated into a framework of practical and conceptual relationships. The LSBC's achievement of a self-governing corporate structure is considered in terms of the evolving relations between individual law students/practitioners, the legal elite and the state. Flesh is added to the corporate silhouette by profiling the Benchers, the Attorney General (AG) and pertinent justices in place from 1948 to 1950. This profile outlines the source and strength of the fraternal professional ethos and conservative ideology met by ideological outsider Gordon Martin and his supporters. The chapter closes on legal education and the realization of a UBC law program.

Legal history is a neglected branch of Canadian social history, according to Greg Marquis. Historians fear to trespass without legal training and "purists" applaud their hesitation.³ Economist David Stager notes a similar

avoidance by social scientists with the observance that existing works are overwhelmingly 'by lawyers, about lawyers, for lawyers.'⁴ The historiography pertaining to both the federal and provincial legal realms supports this comment. Academics are starting to re-evaluate legal history in a broader social context, but few look at the 1930 to 1960 period.⁵ Joan Brockman outlines the historic struggle of women and visible minorities to enter the provincial field of law, and Wesley Pue follows the course of legal education in the province.⁶ However Alfred Watts, Q.C., M.C. remains the principal chronicler of the evolution of the profession in BC. His approach is largely commemorative.⁷ By assessing the nature and role of the provincial legal order, therefore, this study stakes a small claim in the legal history frontier.

In 1950, Dean MacDonald of Dalhousie University's Faculty of Law promoted the exceptionality of the vocation:

Law is a profession in the sense of being a body with a special status before the law, an exclusive function in the administration of justice, and a corporate responsibility to see that the conduct of its members is consistent with the monopoly of work and autonomy of action given it by law.⁸

The precision of this statement as applied to the contemporary BC profession reflected the culmination of close to a century of political and social manoeuvring by members of the legal order.

Sociologists have long tied occupational groups' campaigns for professional status to aims of social elevation, the word "profession" symbolizing to many people "high ranking among occupations."⁹ Legal "professionalism" took hold in the emerging Canadian nation throughout the nineteenth century. Success varied according to provincial government responses to barristers organized to secure increased, exclusive status and the right of self-governance.¹⁰ The legal order of the western colony formalized ambitions to collective mobility by launching the LSBC in 1869.¹¹ These jurists, or those with a recorded voice, willingly exchanged personal liberty for anticipated benefits under elite direction. In effect, the small group of founding members comprised this elite - an order united by internally-recognized training, citizenship, conduct and connections. Proposed by "Members," new Society candidates faced a vote; two "black balls" meant rejection.¹²

The LSBC sought a mandate to regulate the "call to the Bar" and admission of "persons desirous of practising in the Supreme Courts of the Colony."¹³ Historians of professions submit that unique training confers a degree of occupational autonomy to such practitioners as lawyers and doctors. Dr. C. David Naylor stresses, however, that state regulation or "legalization" is central to a "monopoly of expertise."¹⁴ The elite barristers realized the potential

rewards in cultivating state approval of their ambitions. Pressure exerted on governments through the LSBC wrought the statutory developments to support a later observer's allusion to the Society as the legislature's "creature."¹⁵ Elected LSBC "Councillors" became "Benchers," an English Inns of Court term and concept translating into governors.¹⁶ The LSBC forged Society-state links by designating the provincial AG and his federal counterpart ex-officio Benchers.¹⁷

In 1874, the Legal Professions Act (LPA) recognized the "incorporated" Law Society as a legal entity. An 1884 revision decreed the Benchers "a body politic and corporate."¹⁸ The Act proclaimed the Treasurer as the chief Bencher and head of the LSBC, a position deferring only to the AG representing the state.¹⁹ The LSBC membership reportedly viewed the Benchers as stewards who would adhere to the majority will on policy, barring exceptional circumstances.²⁰ These stewards gained effective control of such core processes as education, the call and admittance of applicants, and internal discipline.²¹ The 1895 LPA cemented this control, deeming anyone "called, admitted, and in good standing" with the Bar an automatic, versus voluntary, Society member. The Benchers struck a Credentials Committee to direct the admission and enrolment of students.²² A law career subsequently depended on their approval of the individual

as fit to practice under the LSBC standard Lex Liberorum Rex: "Law is the king of free men."²³

Mutual service and interests defined the LSBC-state relationship. The state endorsed the power structure of this corporate body and expected it to respect and strengthen status quo values and principles.²⁴ The LSBC worked to ensure that the profession met public expectations of performance standards in return for a monopoly, status, and the right to control its membership.²⁵ The Society drafted and proposed LPA amendments to the AG who reviewed and then presented the product to the Legislature.²⁶ The achilles heel of the LSBC's autonomy existed in its ongoing reliance on the "pleasure" of legislatures ostensibly acting in the public interest.²⁷ If the mutual service formula failed, the state retained the power to change the rules, a factor of which the LSBC remained uncomfortably aware. The history of state intervention in the medical arena reinforces the potential for, and consequences of, schisms between state and professional interests. LSBC lobbying and campaign forces held no guarantee against public challenges to its private powers.²⁸

In the absence of conflict, however, the LSBC decided who entered the profession. By what criteria would the Benchers gauge a candidate's fitness? In his study of the early Barristers' Society of Nova Scotia, Philip Girard

uncovered an "old boys' club."²⁹ Members weighed the name, "quality and residence" of the applicant's father along with his education and moral character.³⁰ The LSBC bypassed the blatant old boys' technique but held fast to "moral character." In 1890, a barrister applying from out-of-province needed "a certificate from the Secretary of the Society or Judge of the Supreme Court in his former place of residence to the effect that he is in good standing and repute and of good character."³¹ Although the LPA's scope and complexity increased dramatically by 1948, the use of technical criteria and subjective character screening measures endured.³² Neophytes guilty of conduct unbecoming a student or articled clerk risked erasure from the Society books and a denial of exams or certificates. As discipline, the elite might disbar, disqualify, suspend from practice, or strike off the rolls any barrister or solicitor for good cause shown. These sanctions could be temporary, or indefinite.³³

BC legislation resembled most provincial measures. The Benchers of Ontario's Society held the right and duty to examine the "fitness" of the members of its legal community and react to "unbecoming" conduct.³⁴ Alberta's legal order acted "in the best interests of the public or the profession."³⁵ Deviating from the norm, Saskatchewan's 1940 statutory provisions bypassed conditions of repute, character, or morals in any context other than

professional, with clear lines of appeal established.³⁶ The powers of Quebec's Conseil General corresponded more closely to the BC example with "des moeurs" central to candidate acceptability. "Toutes leurs decisions sont finales et sans appel," resting beyond scrutiny even by certiorari, a superior court's request for review.³⁷

Lacking clear definitions, "good character, repute and conduct" remained open to interpretation. Ideally the terms met the aim of self-governing professions, outlined by Commissioner McRuer in 1968, to ensure technical competence and public confidence "in the integrity and ethical conduct of the profession as a whole."³⁸ Certainly the BC Benchers perceived their role as that of guardians of the profession, public confidence, and the status quo - the LPA charged them with that empowering duty. Maintenance of the standing of the profession also served to avert legislative assaults on LSBC autonomy. Aside from the basic criteria of honesty, competence and citizenship, the content of integrity and repute historically reflected conservative social norms or prevailing prejudices. In certain eras, gender and race factored into the LSBC standards.³⁹ Martin constituted the first recorded case of applied political and ideological criteria. The degree to which that call reflected the social will is debated throughout this study.

It should be noted that the professional voice extended beyond the LSBC. "Unofficial organizations" such

as the Vancouver Bar Association (VBA) provided a forum for local concerns and "grass roots" movements effecting change at several levels.⁴⁰ The federally-incorporated Canadian Bar Association (CBA) gave its members national support on matters of professional and public interest such as judicial appointments, legislation and law reform at both levels of government.⁴¹ Watts deemed it the "keeper of the profession's philosophical conscience" and the CBA did initiate studies and direction in areas such as legal aid and education.⁴² The CBA's "Canons of Legal Ethics," adopted by the LSBC in 1921, exhibited the construction of professional "honour." Naylor submits that codes of ethics foster an image of professional altruism useful in deflecting threats of external regulation.⁴³ These Canons outlined the lawyer's duties to the state, the court, the client, the fellow lawyer, "himself," and the need for "gentlemen" to guard the Bar from candidates of "unfit" education and moral character.⁴⁴

Historian E.P. Thompson contended that "the law" could be considered an institution with courts and procedures, its own construction, an ideology, or personnel.⁴⁵ To bring the context of the Martin case into focus, it is necessary to examine the personnel, or individuals administering the powers within the legal establishment. Who held Bencher status from 1948 to 1950 and who were the

relevant justices? This profile considers thirteen Benchers, one ex-officio.⁴⁶ These men all attained the honour of King's Counsel and, it should be stressed, were elected by the LSBC membership. As the state link to the LSBC, the Attorney General is also studied. The six justices who heard Martin are of central concern.⁴⁷ Peter Russell rightly contends that "judges exercise political power," work to uphold "prevailing norms" and their "courts are part of the machinery of government."⁴⁸ Thus, the judiciary held a unique position within the legal community.⁴⁹ Other jurists attained elite professional status, however these twenty men were the principal actors in the Martin affair.

To what extent did the members of this group share or conform to a particular ideology and ethos?⁵⁰ Granted, the concept of a shared world-view is problematic as groups are composed of individuals arriving at opinions and positions by varied routes. Labels need careful handling.⁵¹ This group, however, shared characteristics, circumstances and ambitions. The two bonding elements which emerge from this profile are "fraternity" and "conservatism." The latter blended the British-Canadian tradition with a strong strain of Anglo-American identification. In political terms, several of these men drove the province's Conservative and Liberal party machines.⁵² In this study, conservative does not mean

ideologically opposed to change, but it implies a belief in a top-down social order and that to meet approval, changes could not threaten the establishment. As prime investors in the existing economic, political and social systems, the unity of this elite in conservatism strengthened in the midst of BC's volatile social and political milieu.

Profile data is culled from the Canadian Who's Who, The Advocate, Canadian Law List, telephone listings, and secondary works.⁵³ The resulting portrait considers: age; family connections; political affiliations; business/firm attachments; religion; social club membership and place of residence. In 1948 the median age of the Benchers rested at sixty years, Arthur D. Crease being the eldest at seventy-six and William H. Haldane the junior at forty-nine. The judges' median sat lower at fifty-nine.⁵⁴ These men entered the world in the nineteenth century, with eight native to BC, ten from other provinces and one Scottish-born.⁵⁵ Age is no guarantee of a conservative mindset but it indicates established careers. Each man claimed more than twenty years in practice as all received their call to the BC Bar between 1898 and 1922, following training at various venues.

Some men inherited conservatism and a legal tradition. Reginald H. Tupper came from high profile stock as the son of BC Bar member and federal politician Sir Charles H. Tupper, and as the grandson of Conservative Sir Charles

Tupper. Sir Charles gained renown chiefly for his role in Confederation, his 1 May-8 July 1896 stint as Prime Minister, and his leadership of the Conservative Opposition through to 1900. In Nova Scotia, the name Tupper embodied the professional "office-holding-mercantile elite."⁵⁶ Arthur Crease descended from Sir Henry P.P. Crease, former Barrister of the Middle Temple, first provincial AG and a justice of the BC Supreme Court.⁵⁷ He partnered with brother Lindley, and married the daughter of LSBC founding member Justice Montague Tyrwhitt-Drake. The Robertson legal lineage began with Alexander Robertson's career move from editor of a Victoria newspaper to mayor and then first post-Confederation Provincial Secretary. Harold followed his father to the bench of the Supreme Court of BC. Brother Herbert wielded a county court gavel.

John W. deBecque Farris's grandfather sat in Canada's first post-Confederation Parliament; his father held the post of New Brunswick Minister of Agriculture. UBC honoured his wife, Evelyn (Keirstead) Farris, as its first woman senator and governor. The 1942 appointment of his brother and former partner Wendell as Chief Justice of the Supreme Court of BC reinforced the Farris presence. Family ties extended into the boardroom of Bloedel, Stewart & Welch Ltd.⁵⁸ Henry I. Bird had Sir Lyman Duff, Chief Justice of Canada, as an uncle, while William C. Moresby's father headed the provincial penitentiary.⁵⁹ Gordon M. Sloan was

the progeny of the Hon. William Sloan, MP for Comox-Atlin (1904-1911) and after 1916, BC's (Liberal) Minister of Mines.⁶⁰

If others in the order sported a less renowned legal genealogy, they either proffered conservative blue-blood versus "blue-collar" roots, or left their pasts behind upon entering the guild. G. Roy Long, Thomas G. Norris and Brigadier Sherwood Lett looked to fathers in medicine, the newspaper business and the Methodist Church. Gordon S. Wismer reportedly came from a "long line of Grits," and left Ontario for the west and law by way of a CPR "bridge-building gang."⁶¹ The records of Clarence M. O'Brian, Thomas R. Selkirk and Elmore Meredith are less public, however they joined seven of their elite peers in passing on the legal tradition to their sons.⁶² Excepting Evelyn Farris, sources make no reference to the occupations of their wives, and no member of the group reported seeing a daughter to the Bar.⁶³

Politically, at least twelve men declared their affiliation or aspiration to office.⁶⁴ In the Liberal camp, Farris entered the BC arena in 1916 to become AG and the first Minister of Labour. A central power and "tough boss" of the Vancouver Party machine, Farris unsuccessfully challenged "honest" John Oliver for the premiership in 1918.⁶⁵ Indifferent to his policy initiatives, public and political opponents condemned his AG department's alleged

maladministration, patronage and non-enforcement of prohibition measures.⁶⁶ Farris resigned in 1921, but remained a powerful presence in Liberal circles. Prime Minister Mackenzie King made him Senator Farris in 1937. A Cold War political strategist, the senator advised the 1947 BC Liberal executive to close ranks and 'above all we must make sure that the socialists. . .shall not rule in this nation.'⁶⁷

Political historian Martin Robin described acclaimed trial lawyer Gordon Wismer as a Farris man, "rough, blunt and ruthless; an excellent machine man and an indelicate brawler."⁶⁸ Entering the Legislature in 1933 and the AG post in 1937, Wismer dispensed patronage in such a reportedly "grand and embarrassing style" as to attract caustic attention from Blair Fraser at Maclean's.⁶⁹ Wismer's controlling methods alienated federal, BC Interior and Young Liberals who succeeded in blocking his 1947 leadership bid.⁷⁰ He continued as AG and concurrently acted as Minister of Labour from 1947 to 1949. By granting sweeping powers with guarantees against socialist intervention to corporations such as Alcan, and leading attacks against the socialist "red menace," Wismer courted no favour from the labour or political left.⁷¹

G. Roy Long was an active Liberal and Sherwood Lett gained repute as a King follower and fund raiser.⁷² In 1933, Duff Pattullo brought Gordon Sloan into his new

cabinet as Attorney General. Prior to calls to the bench, Cornelius H. O'Halloran ran in federal elections and Bird appeared to be an "influential young Liberal."⁷³ This data highlights the inter-connection between legal and political elites and raises the issue of judicial appointments. The federal executive selected and paid "high" provincial court judges, those on the benches of the Supreme and Appeal Courts. With the exception of Robertson, all received appointments from Liberal regimes in accord with the party's relative dominance after 1921.⁷⁴ A study of BC high justices in the early 1950s revealed that 85 per cent identified with Liberal Ottawa.⁷⁵

T.G. Norris dominated the Tory roster. W.A.C. Bennett considered him "an establishment figure" in the BC Conservative Party - one representing traditional Vancouver-based powers.⁷⁶ Bennett loathed the party machine and Norris, who defeated his 1937 bid for the Conservative nomination in the South Okanagan constituency.⁷⁷ The Bencher positioned himself as a right-hand man to aggressive old-liner Herbert Anscomb, with whom he shared the same right-wing views. When nominating Anscomb for the 1946 party leadership, Norris announced that 'Communism can succeed only by putting all opposition in a concentration camp.'⁷⁸

Alexander C. DesBrisay presided over the Vancouver Conservative Association in the mid-twenties and continued

to support the party; Haldane directed the Victoria chapter from 1938 to 1940. Tupper and Selkirk unsuccessfully stood for Parliament but Moresby and Crease succeeded as municipal councillors. The formal politics of the others are yet to be researched, but the left labour press labelled the entire group Conservative, Farris excepted.⁷⁹ Divisions along major party lines made no difference to the left. The legal establishment existed as one unit firmly distanced from either the CCF or LPP ideologies in aims, methods and world-view.

Firm and business attachments are practical indicators of a lawyer's investment in capitalism. Prior to 1950, most firms involved one or two lawyers in a modest office staffed with one support worker and maybe a student or clerk. Six Vancouver firms and one Victorian listed at least ten legal minds on their 1956 rosters, reaping intraprofessional status and considerable income growth which fell largely to the partners.⁸⁰ Out of the private competition, the justices had status and incomes ranging from \$12,000 to \$13,333 per annum.⁸¹ Senator Farris headed the twelve-strong firm which employed Sloan prior to his judgeship. Tupper partnered in what became BC's largest firm in 1961 with twenty lawyers.⁸² Lett named in a third substantial establishment and Wismer followed up his AG term as Associate Counsel for a fourth renowned interest. Crease headed Victoria's senior and largest firm and

DesBrisay and Meredith held partnerships in mid-sized enterprises. No member of this legal order worked alone, including the judges before their call.

Clientele listings of the firms of five or more lawyers were inventories of the existing banks, insurance companies, resource and other private corporations of the day.⁸³ Some Benchers positioned themselves within the economic elite via additional activities. The Chairman of Charter Oil, Farris also directed the Famous Players Canadian Corp. Tupper acted as Director for firm clients British Columbia Sugar Refinery Ltd. and Buckerfields. DesBrisay sat on hotel, resource and advertising company executives. Crease took the chair in Victoria corporate and financial boardrooms. Norris presided over the Vancouver Board of Trade in 1949, and was Vice-President of the Pacific Northwest Trade Association in 1950-51. This list is partial but makes the point. The strong ties or mergers between the legal and economic elites fortified the ideological conservatism of the Benchers.

Predominantly Protestant in faith, the group included two Roman Catholics on the bench, one being James Moses Coady, a Knight of Columbus and recipient of the Knighthood of St. Gregory from Pope Pius XI.⁸⁴ Members of the Jewish and less mainstream faiths are not in evidence. In social circles, the jurists functioned as expected given their resources and backgrounds. Most of the set held golf club

memberships and circulated at the fashionable Jericho, Union, and Pacific Clubs, and they were not unknown at the select Vancouver Club.⁸⁵ In terms of residency, a united world-view extended to some porches. Crease and Haldane were neighbours on a Victoria street and Sloan and O'Halloran lived doors apart.⁸⁶ Six families of the Vancouver oligarchy clustered within roughly one square mile in the exclusive Shaughnessy Heights area.⁸⁷

This profile supports the assessment of the legal order as a fraternal body ideologically united by conservatism. This elite group of men desired to preserve and uphold the existing order, not in a state of equilibrium, but in the interests of a self-directed, possibly hegemonic evolution. The position of the LSBC and select Benchers within the larger network of influence is also notable. O'Brian, Sidney A. Smith, DesBrisay and Lett held earlier VBA presidencies with Norris the head from 1947-48.⁸⁸ Tupper and Meredith sat on the executive under him, and the influence of Meredith and Norris as the committee for The Advocate is important, as the journal delivered VBA and LSBC news and views province-wide.⁸⁹

Turning to LSBC concerns, the status of legal education received attention, particularly in the twentieth century. For BC barristers seeking intraprofessional and public respect, the merit of where they received legal

training and the contents of that education came under scrutiny. Prior to 1914, local training consisted of student placement with practitioners who directed articles and prepared them for Society exams. Discontented neophytes and some distinguished individuals agitated for law schools, winning their case with the 1914 establishment of institutions in Victoria and Vancouver. These schools followed a standard CBA common-law curriculum.⁹⁰ In practical terms, this meant attendance at courthouse lectures, stints in legal offices and exams; at least half the men profiled had this education.⁹¹

Plans for combining legal and university training existed as early as 1890, when the Act Respecting the University of British Columbia gave the anticipated institution the power to grant degrees in Law.⁹² The Act, however, preceded UBC's founding by twenty-five years, and the establishment of a Law Faculty by over half a century.⁹³ Timing, the intervention of world wars, a slow start to a permanent campus, elements of complacency and personality clashes stalled the process.⁹⁴ Undergraduates could take law courses offered by such UBC departments as economics and sociology. Within the Canadian framework, however, after 1914 two provinces lacked University-associated law programs: BC and Prince Edward Island. LSBC sensitivity to this no doubt escalated as inter-provincial rivalry over legal education heightened.⁹⁵

LSBC-UBC talks progressed to the point that a Law Faculty seemed assured in 1938. Money problems fuelled by personal conflicts and a crisis of leadership, withdrawals of support, and the Second World War soured plans.⁹⁶ Justice Denis Murphy of the UBC Board of Governors headed a wartime committee charged with procuring a UBC president agreeable to all powers concerned and capable of taking the institution forward.⁹⁷ He found a jurist. Trained at Dalhousie and Harvard, Norman A. ("Larry") MacKenzie gained repute as an "innovator" and specialist in international law.⁹⁸ A devout Liberal and political player with high-placed friends, MacKenzie sported a personality and drive amenable to the government and the LSBC.⁹⁹

Released service-men and women catalyzed positive action for a law program. The new Department of Veterans Affairs offered the payment of tuition fees and a living allowance for qualified veterans seeking education.¹⁰⁰ Faced with the prospect of missing out on the students these benefits promised, the Benchers acted promptly. Farris, Tupper, MacKenzie and barrister Arthur Lord struck a committee for action.¹⁰¹ In 1945, Farris initiated new talks and an LSBC committee under Tupper tackled obstacles to veteran needs in the LPA and Society Rules.¹⁰² The successful proposal allowed veterans to start their studies without delay or penalty.¹⁰³ Strong support followed: Premier Hart assured a \$10,000 grant, the Board and Senate

gave approval by late August and the Law Faculty enrolled its first students in September 1945.¹⁰⁴

A good LSBC-UBC working relationship bolstered the new law program, in contrast to the bitter contemporary struggle between Ontario Benchers and educators.¹⁰⁵ UBC granted law degrees and the LSBC polished the practical side of the students' education. George F. Curtis of Dalhousie became Dean, assisted by Frederick Read from the University of Manitoba. The staff soon expanded to include Associate Professors George A. McAllister and Gilbert D. Kennedy.¹⁰⁶ Lectures extended from UBC to the Court House where practicing experts shared their skills.¹⁰⁷

The legal order viewed the establishment of a UBC Faculty of Law as a sign of the progress of the profession and the province. A number of Bar members also had a personal interest in the new road to legal training. The parentage of a portion of the enrolled students supports the concept of the profession as a guild fostering occupational patrimony. Of the eighty-eight scholars in the class of '48, at least twenty had fathers associated with the legal profession; another two previously practised outside the province.¹⁰⁸ The twenty included D.W.H. Tupper and W.J. Moresby, sons of two key men on the Credentials Committee charged with screening applicants for call and admission.¹⁰⁹

The LSBC formed in response to law practitioners'

desire for professional status and the powers of self-governance, powers awarded by the state with the proviso that mutual interests be served. Thereafter, no individual could practice law without the Benchers' approval, a screening based on both technical criteria and subjective conditions of moral character. Candidates lacking the personal qualities and a world-view acceptable to the LSBC governors faced rejection. Conservatism united the legal elite of the early postwar period: members of this fraternity invested heavily in the status quo economic, political and social establishments. They approved of change if self-directed, as evidenced in the drive for professional progress through the opening of the UBC Law program. This program, however, contained an unanticipated element. Gordon Martin numbered among the students without personal ties to the legal guild, those aligned with an ideology lacking champions within the elite.

Notes to Chapter Two

1. "Power" connotes autonomy in deciding which candidates practice or administer law as an aid to the maintenance of performance standards and the exertion of socio-professional control. See Dietrich Rueschemeyer, "Professional Autonomy and the Social Control of Expertise," chap. in The Sociology of the Professions: Lawyers, Doctors and Others, Robert Dingwall and Philip Lewis, eds., (London: Macmillan Press, 1983), 41. I use the term socio-professional control; the social control aspect comes from the reality that most people outside of the profession lack the knowledge to deal with legal situations without a lawyer, nor can they evaluate the lawyer's performance. The self-evaluating profession controls access to its ranks. "Power" also refers to the conceptual and concrete means mustered by any group to defend itself or win support for its position on issues.

2. David H. Flaherty, "Writing Canadian Legal History: An Introduction," in Essays in the History of Canadian Law, ed. David H. Flaherty, Vol. 1 (Toronto: Osgoode Society, 1981), 3. Flaherty is Professor of History and Law at the University of Western Ontario.

3. Greg Marquis, "Law, Society and History: Whose Frontier?" Acadiensis 21 (Spring 1992): 162.

4. D. Podmore, "Lawyers and Politics," British Journal of Law and Society 4 (1977): xiii, cited in David A.A. Stager, Lawyers in Canada, with Harry W. Arthurs (Toronto: University of Toronto Press, 1990), 9. Stager is Professor of Economics at Toronto. The use of the term lawyer instead of barrister and solicitor was common in the era of the Martin case. As advertised by the Law Society, a lawyer might be both a Barrister and a Solicitor, the Solicitor differing by not presenting cases in Court. All lawyers were authorized to act as Notaries Public and Commissioners of Oaths. See "Law Society, Publicity," Advocate 5, pt.5 (Sep.-Oct. 1947): 172.

5. See, for example, Glimpses of Canadian Legal History, Dale Gibson & W. Wesley Pue, eds. (Winnipeg: Legal Research Institute, University of Manitoba, 1991). Of the eleven articles, only Pue's work on legal ethics extends beyond the 1920s. Stager focuses on the 1970 to 1985 period. The contents of the valuable Osgoode Society volumes are, with some exceptions, confined to the pre-1930 period.

6. See Joan Brockman, "Exclusionary Tactics: The History of Women and Visible Minorities in the Legal Profession in British Columbia," in Essays in the History of Canadian Law Volume VI: British Columbia and the Yukon, eds. Hamar Foster and John McLaren (Toronto: Osgoode Society, 1995), 508-561; W. Wesley Pue, Law School: The Story of Legal Education in British Columbia (Vancouver: University of British Columbia Faculty of Law, 1995).

7. Alfred Watts briefly summarizes the evolution of the LSBC in two books: History of the Law Society of British Columbia, 1869-1973, (Vancouver: Privately Printed, 1973); History of the Legal Profession in British Columbia, 1869-1984, (Vancouver: Privately Published, 1984). His 1973 work is basically a compilation of historical segments first published in the Advocate. Watts was the Secretary of the Law Society from 1947 to 1967.

8. Vincent C. MacDonald, "The Professional Aspects of Legal Education," Canadian Bar Review 28 (1950): 161.

9. Everett C. Hughes, "The Professions in Society," Canadian Journal of Economics and Political Society 26 (Feb. 1960): 56.

10. The Law Society of Upper Canada is the oldest body, dating to 1797. No comprehensive work on the evolution of the law societies exists. Peter Russell points out the less self-serving component of the rationale behind self-governance in the value of citizens having access to counsel free of government control. See Peter H. Russell, The Judiciary in Canada: The Third Branch of Government (Toronto: McGraw-Hill Ryerson Ltd., 1987), 38.

11. Watts, Society, 3, 28. He sets the number of barristers at twenty-two. An 1856 imperial order-in-council established a supreme court for the Vancouver's Island colony with jurisdiction over the admission to legal practice which was confined to candidates admitted in the British Isles or those apprenticed to the colony's barristers and solicitors. The colonies of Vancouver Island and New Caledonia united as the colony of British Columbia in 1858. An initial Legal Professions Act (1863) and a Legal Profession Ordinance (1867) served as precursors for legislative recognition of the profession. See Stager, Lawyers, 38.

12. LSBC, Rules of the Law Society of British Columbia [Victoria, 1869] (Canadian Institute for Historical Microfiches, (hereafter CIHM), 15445, text-fiche), 6. The internal "rules" set out by the LSBC corresponded to measures in the LPA and vice versa.

13. Ibid., 5; "Rules," Advocate 6, pt.3 (May-June 1948): 96-110. In the BC example, to enter the profession a candidate is "called to the degree of Barrister-at-Law and admitted as a Solicitor" by which means the candidate is called to the Bar of the Supreme Court of BC and admitted as a Solicitor of that court. The ritual allows the candidate to practise and argue cases in all courts.

14. C. David Naylor, Private Practice, Public Payment: Canadian Medicine and the Politics of Health Insurance 1911-1966, (Kingston and Montreal: McGill-Queen's University Press, 1986), 15.

15. Erwin Kreutzweiser, "Should Politics Prevent Admission To the Bar?" Saturday Night 64, no.9 (4 Dec. 1948): 18.

16. The democratic aspect of the election of Benchers and the extent to which their views are representative should be studied. As Stager notes in the 1980s context, a good portion of the profession appears indifferent to law societies, if the lack of interest in elections is indicative. See Stager, Lawyers, 39.

17. The number of Benchers and the conditions for ex-officio status, meaning status by virtue of office, changed through the years. In 1936 there were twelve Benchers plus the ex-officio AG of Canada and AG of BC. Any retired Chief Justice of BC, retired Chief Justice of the Supreme Court of BC, retired Justice of the Court of Appeal, and anyone who had served as a Bencher for twenty cumulative years earned ex-officio status. See Legal Professions Act, R.S.B.C. 1936, c.149, ss.4 and 5. In 1955, the number of Benchers changed to twenty, and the provincial AG and any barrister serving twenty cumulative years as a Bencher achieved ex-officio status. See Legal Professions Act, S.B.C. 1955, c.40, ss.4 and 5. Stager lists the current count at twenty-five Benchers. See Lawyers, 39.

18. Watts, Society, 6, 10. A 1920 LPA amendment provided that any Bencher serving for twenty years earned ex-officio status. See also LSBC, Law society of British Columbia: acts relating Thereto: rules...Victoria, 1892, (CIHM15428, text-fiche), 3.

19. Watts, Society, 9-11. The Benchers generally attained the position of Master Treasurer by virtue of their seniority within the executive.

20. Ibid., 10.

21. Ibid., 28-9. Prior to 1874, the Courts had complete control over call, admission and discipline. The Benchers gained these powers in 1877, however prior to 1884, three applicants for admission persuaded the Legislature to amend the Act to allow them to bypass the Bencher regulations. The Benchers protested, and the 1884 Act entrenched their control over admission and other elements of professional autonomy not discussed here, including control of fee structures, advertising and competition.

22. LSBC, "Acts and Rules...1892," (CIHM15428, text-fiche), 12. The basis for control was in place in 1884. Every practising Barrister or Solicitor had to pay a fee to the Society and obtain its certificate of qualifications. However, the 1895 Rules and LPA Amendment clearly stated that all persons called to the Bar would be automatic Society members of the Society. LSBC, Rules...1897 and LPA, 1895 (CIHM15446, text-fiche). C. David Naylor notes that BC's dominant medical community attained self-government in 1886. He outlines the development of provincial Colleges of Physicians and Surgeons, incorporated bodies headed by "councillors" loosely paralleling the Benchers in their professional function. See Naylor, Private Practice, 20.

23. Watts, Society, Foreward, 6.

24. I stress the interests of the state as an institution with a stake in a cooperative legal profession, versus other scholars, such as Stager's emphasis on the "public interest" aspect to the conferment of powers of self-government to the professions. He argues that this privilege is granted "only in exchange for, and to assist in, protecting the public interest with respect to the services concerned." I would comment that this focus on services is more applicable to the post-1960 heightened expectations of, and criticism of, the profession. See Stager, Lawyers, 31.

25. Rueschemeyer, "Autonomy," 41, 44. In his sociological view, Rueschemeyer notes that the professions exchange competence and integrity against client and community trust, relative freedom from lay supervision and interference, protection against unqualified competition as well as substantial remuneration and social status. He notes that this social bargain "obscures that special institutions and groups and, underlying them, particular structured interests are the parties in this bargaining process and in the subsequent arrangements of social control.

26. "Amendments," Advocate 6, pt.1 (Jan.-Feb. 1948): 20.

27. In 1968, Commissioner McRuer stated that "the granting of self-government is a delegation of legislation and judicial functions and can only be justified as a safeguard to the public interest." This is a valid statement, but it reflects the language and sentiment of 1968, an era of mounting public concern about the ability of the state and existing structures to represent public interests as indicated by the need for a Royal Commission. See Ontario, Royal Commission, "Inquiry into Civil Rights" (McRuer Report) 3, no.1 (1968), c.79.

28. See Naylor, Private Practice for an excellent account of the acrimonious debates over the socialization of medicine, and the organized action taken by the provincial organizations and the Canadian Medical Association; P.J.Giffen, "Social Control and Professional Self-Government: A Study in the Legal Profession in Canada," chap. in Urbanism and the Changing Canada Society, S.D. Clark ed. (Toronto: University of Toronto Press, 1961), 118. Giffen noted that law societies directed collective professional action at the provincial level.

29. Philip Girard, "The Roots of a Professional Renaissance: Lawyers in Nova Scotia 1850-1910," in Glimpses of Canadian Legal History, Gibson and Pue, eds., (Manitoba: Legal Research Institute, University of Manitoba, 1991), 161.

30. Rules of the Society of Nova Scotia Barristers (Halifax: Edmund Ward, 1825), Public Archives of Nova Scotia V/F vol. 16, no. 14; Bye-laws of the Nova Scotia Barristers Society (Halifax: James Bowes, 1861), Public Archives of Nova Scotia V.F. vol. 131 no. 21, cited in Girard, "Roots," 162. 1860 revisions liberalized the criteria but the Society could still veto candidates.

31. Watts, Society, 41. The excerpt cited is noted by Watts.

32. Legal Professions Act, R.S.B.C. 1948, c.180. ss.36, 39.

33. Ibid., s.42.

34. See Law Society Act, R.S.O. 1937, c.221, ss.41-45.

35. See Legal Profession Act, R.S.A. 1942, c.294, s.34, s.52.

36. Legal Profession Act, R.S.S. 1940, c.208 ss.32-4, 55, 59-60.

37. See Bar Act, R.S.Q. 1941, c.262, s. 60-1.

38. Ontario, McRuer, 1161.

39. Brockman, "Exclusionary Tactics," 515-518, 521. Through the efforts of Mabel French, Evelyn Farris and other women and men, women achieved the legal right to be called to the Bar in 1912, despite the BC Court of Appeal's earlier ruling against their entry to the profession. In accord with the anti-Asian bias of the period and long-standing prejudice against BC's aboriginal population, the Benchers used these citizens' exclusion from the franchise via the Provincial Elections Act to ban them from the profession. The official block went into force in 1919 and endured until the 1949 amendment of the Act. Attitudes took longer to change.

40. Watts, Society, 105. The VBA was founded in 1892.

41. Stager, Lawyers, 41-2. According to Stager, an organization founded in 1896 lasted only three years. The current CBA formed in 1914 and was incorporated in 1921; Pue, "'Ethical," 245.

42. Watts, Society, 105.

43. Naylor, Private Practice, 9.

44. "Canons," Advocate 6, pt.5 (Sep.-Oct. 1948): 164, 173.

45. E.P. Thompson, Whigs and Hunters: The Origin of the Black Act (New York: Pantheon, 1975), 260. Thompson writes: "analysis of the eighteenth century (and perhaps of other centuries) calls into question the validity of separating off the law as a whole and placing it in some typological superstructure. The law when considered as institution (the courts, with their class theatre and class procedures) or as personnel (the judges, the lawyers, the Justices of the Peace) may very easily be assimilated to those of the ruling class. But all that is entailed in the "law" is not subsumed in these institutions. The law may also be seen as ideology, or as particular rules and sanctions which stand in a definite and active relationship (often in a field of conflict) to social norms; and, finally, it may be seen simply in terms of its own logic, rules and procedures—that is, simply as law." I have lifted the quote out of the context of his complex Marxist-based analysis, however, the breakdown remains relevant.

46. The Benchers were: Arthur D. Crease, Alexander C. DesBrisay, John W. deBecque Farris, C.B. Garland, William H.M. Haldane, Brigadier Sherwood Lett, G. Roy Long, Elmore Meredith, William C. Moresby, Thomas G. Norris, Clarence M. O'Brian, Thomas R. Selkirk and Reginald H. Tupper. Garland was the lone lawyer from outside of the Victoria and Vancouver areas, hailing from Nelson, and data on him in

the principal sources is sparse. For details on these individuals' terms as LSBC officers, see Watts, Society, 120-5. The Bencher election process is outlined in the Legal Professions Act S.B.C. 1948, c.180, ss.8-20. Society elections occurred every second (odd) year with each candidate nominated by two or more members. Lawyers received a list of nominees and a voting-paper to be returned to the LSBC Secretary. Voters remained anonymous.

47. The honourable justices were James M. Coady (Supreme Court) and in the Court of Appeal: Chief Justice Gordon M. Sloan, Cornelius H. O'Halloran, Harold B. Robertson, Sidney A. Smith and Henry I. Bird.

48. Russell, The Judiciary, 3. Judges were chosen from successful or prominent Bar members; Robertson was one of several Benchers-turned-judges.

49. Gordon S. Wismer took over for Royal L. Maitland as Attorney General in 1946. "Officers," Advocate 6, pt.3 (May-June 1948): 78; Watts, Society, 122. Many members of the legal order held additional degrees or titles.

50. See Lord Lloyd of Hampstead, Q.C. and M.D.A. Freeman, Lloyd's Introduction to Jurisprudence, 5th ed., (London: Stevens & Sons, 1985), 966. He offers three basic meanings for "ideology": "a system of beliefs characteristic of a class or group; a system of illusory beliefs, false ideas, false consciousness (that is, as opposed to true or scientific knowledge); the general process of the production of meanings and ideas." Each meaning complies with my approach to "ideology." "Ethos" is "the fundamental" character of a culture; "the underlying sentiment that informs the beliefs, customs, or practices of a group or society as per Random House College Dictionary, rev. ed. (1984), s.v. "ethos."

51. See Carol Wilton, ed., Essays in the History of Canadian Law, Vol. 4, Beyond the Law: Lawyers and Business in Canada 1830 to 1930 (Toronto: The Osgoode Society, 1990). As an example of the problem of labels, this volume highlights the "progressive" entrepreneurial spirit of a segment of the legal community.

52. This "conservatism" corresponds to what before World War II was predominantly a British-Canadian conservatism. This shifted with war and postwar realignments in power to emerge as Anglo-American conservatism. A majority of the group served in one and sometimes both world wars, and figured prominently in community and social "good works" projects. In specific political terms, most of these men either drove the conservative provincial Liberal party

machine or Conservative fortunes. In ideological terms, "conservatism" pertains to a belief in free enterprise, private ownership, and a top-down society. Further to this, a hierarchical society is considered to be in the best interests of the whole of society in terms of social welfare. Conservatism honours established traditions and institutions. This contrasts with postwar "(welfare) liberalism," "socialism," "communism" or "radicalism." These terms indicate an ideological belief in the need to change the social system to give priority to the welfare and self-determination of the many versus the few. These beliefs fuel social criticism and result in varied programmes for change.

53. See Tunnell, A.L. ed. Canadian Who's Who: A Biographical Dictionary of Notable Living Men and Women (Toronto: Trans-Canada Press), [Vol. IV, 1948], 803; [Vol. V, 1949-1951], 228, 322; [Vol.VII, 1955-1957], 87, 208, 350, 631, 787, 789, 825, 828, 999, 1082, 1152; "Law Society" Advocate 8, pt.4 (July-Aug. 1950): 157; "Nos Disparus," Advocate Vols: 8, 10, 17-19, 21, 27-30, 35, 40, 42; "An Historic Trial," Ibid., 9, pt.2 (Mar.-Apr. 1951): 45; "Letter," Ibid., 9, pt. 3 (May-June 1951): 88; "First Fifty Years," Ibid., 11, pt.5 (Sep.-Oct. 1953): 183 and pt.6 (Nov.-Dec. 1953): 233; "Mr. Justice Robertson," Ibid., 13, pt.6 (Nov.-Dec. 1955): 217; "Entre Nous," Ibid., 23, pt.5 (Sep.-Oct. 1965): 169; Judges of British Columbia to 1957 - A Sourcebook, Joan N. Fraser, ed. (Victoria: University of Victoria Law Library, 1984), Segments 4, 17, 77, 79, 87-8; Henry Cartwright, ed., The Canadian Law List 1956, (Toronto: Cartwright & Sons, 1956), 53-9, 62, 64, 67, 369-380; "Victoria and Vancouver Island Telephone Directory" (June 1949); "Vancouver Telephone Directory" (Nov. 6 1949).

54. Year of birth: Bird 1892; Coady 1886; Crease 1872; DesBrisay 1888; Farris 1878; Haldane 1899; Lett 1895; Long 1884; Meredith 1888; Moresby 1876; Norris 1893; O'Brian 1880; O'Halloran 1890; Robertson 1875; Sloan 1898; Smith 1888; Tupper 1893; Wismer 1888. The exact date on Selkirk is unknown, however it was prior to 1905. Data on Garland is yet to be located.

55. Born: in BC 8; Manitoba 2; Ontario 5; New Brunswick 1; Nova Scotia 1; PEI 1; Scotland 1.

56. Girard, "Roots," 174.

57. Watts, Society, 27.

58. This is in reference to brother Bruce Mackenzie Farris.

59. Watts, Society, 27.

60. Martin Robin, The Rush for Spoils: The Company Province 1871-1933 (Toronto: McClelland and Stewart Ltd., 1972), 166. According to Robin, William Sloan had "won a lucky stake in the Eldorado Days of the Yukon."

61. Martin Robin, Pillars of Profit: The Company Province 1934-1972 (Toronto: McClelland and Stewart, Ltd. 1973), 94.

62. I have no parental data on Haldane, DesBrisay, Garland, Coady, O'Halloran or Smith.

63. Evelyn Farris is the exception in that several sources mention her political campaigning for her husband, her feminist activities and as previously mentioned, her UBC engagements.

64. This supports sociological findings that lawyers outnumber members of other occupations as political actors. See John Porter, The Vertical Mosaic: An Analysis of Social Class and Power in Canada, (Toronto: University of Toronto Press, 1965), 392-3. Porter surmised that the jurist's professional skills and strategic socio-economic position, the purported bonds between law and the democratic state, and the practical harmony between a legal and political career, supported this political condition.

65. Robin, Rush For Spoils, 167, 178. The premiership became vacant following the death of Harlan C. Brewster.

66. Ibid., 180-1, 188-9. The alleged abuses included bootlegging, medical prescriptions for alcohol, special corporate privileges and club licenses channelled to prominent Vancouver Liberal lawyers, including Gordon Wismer. According to the Advocate, Farris introduced the first Testators Family Maintenance, the Mothers' Pension and the Hours of Work Acts. See "Nos Disparus," Advocate 28, pt.3 (April-May 1950): 168.

67. Vancouver Province, 3 Oct. 1947, cited in Robin, Pillars, 323, n.22.

68. Robin, Pillars, 94.

69. See Blair Fraser, "British Columbia Coalition Commits Suicide," Maclean's, 15 Feb. 1952, cited in Robin, Pillars, 94. Fraser credited Wismer's Vancouver organization with having one of the "gamiest" reputations in Canada; Mitchell, Bennett, 85.

70. Robin, Pillars, 94; Mitchell, Bennett, 89. These groups gave their support to (Bjorn) Byron "Boss" Johnson.
71. Robin, Pillars, 100, 103.
72. Reginald H. Roy, Sherwood Lett: His Life and Times (Vancouver: UBC Alumni Association, 1991.): 65-6.
73. John Stanton, Never Say Die! The Life and Times of John Stanton, a Pioneer Labour Lawyer (Ottawa: Steel Rail, 1987), 19.
74. Robertson received his appointment in 1933: Sloan..1937; O'Halloran..1938; Coady..1942 and Bird..1942.
75. See Russell, Judiciary, 115. The degree of the support of these justices for federal Liberal-initiated policies is unknown. It took a political turnover to inspire active NDP member Thomas R. Berger's 1972 appointment to a high bench. See "Berger," Advocate 30, Pt.1 (Dec.-Jan.1972): 13.
76. David J. Mitchell, W.A.C. Bennett and the Rise of British Columbia (Vancouver/Toronto: Douglas & McIntyre, 1983), 54.
77. Ibid., 54-56. Norris did not, however, win the seat in the provincial election held on 1 June, 1937.
78. Victoria Daily Colonist, 15 June 1946, cited in Robin, Pillars, 92. In the style of George Drew, Anscomb was famed for his fiery anti-Communist, anti-socialist rhetoric.
79. See "Their Names," B.C. Union District News, 19 Nov. 1948. Data confirming the politics of O'Brian, Meredith, Garland, Long, Coady, Robertson and Smith is yet to be located.
80. Stager, Lawyers, 175-7. Firm size and the lawyer's place in it symbolize intraprofessional status of "success" according to dominant values, financial gains, and professional freedom. See Hughes, "Professions," 60. He argues that lone practitioners are "choreboys" with no freedom to choose and develop specialized expertise; Dominion Bureau of Statistics, "Survey of Incomes In The Legal Profession in Canada, 1946, 1947 and 1948," (Ottawa: Central Research and Development Division, 1950), 9-12 (Table 12). In 1948, a lone practitioner grossed an average income of \$6,342. A two-lawyer firm took in \$18,322 and a firm of six plus averaged \$122,825; See Howard S. Erlanger, "The Allocation of Status Within Occupations: The Case of the Legal Profession," Social Forces 58 (March 1980): 884. He notes that small business and the modest-incomed go to

small firms and individuals. Wealthy clients and corporations choose large firms, which achieve the highest standing within the practicing legal community.

81. See Judges Act, Statutes of Canada 1946, c.56, s.3.

Salary range per annum:

- (a) The Chief Justice of British Columbia....\$13,333.33
- (b) Four Justices of Appeal, each.....\$12,000.00
- (c) The Chief Justice of the Supreme Court...\$13,333.33
- (d) Five Judges of the Supreme Court, each \$12,000.00

82. Stager, Lawyers, 176.

83. The study concentrates on each lawyer's business ties, not their legal area. Long, for example, specialized in criminal law.

84. Available data reveals six Anglicans, four "Protestants," one Baptist and two Roman Catholic judges. Lett became involved with the Salvation Army. Information is yet to be collected on Garland, Long, Selkirk, Haldane, Wismer, Meredith, and O'Brian.

85. The Vancouver Club is recently termed as "a bastion of upper-class pretension." See James Fleming, Circles of Power: The Most Influential People in Canada, (Toronto: Doubleday Canada, 1991), 220; Roy, Lett, 69. Brigadier Lett gained a "prized" membership at this club in 1929, paying an entrance fee of \$300 and \$550 in membership dues.

86. Crease lived at 1075 St. David and Haldane at 1218. Sloan resided at 1029 "scenic" Beach Drive, with O'Halloran at 999.

87. The families were those of: J.W.deB. Farris (3351 Granville); DesBrisay (1316 Connaught); O'Brian (1595 Marpole); Lett (1728 W. 20th Ave); Bird (1003 Wolfe) and Meredith (3490 Pine Cres.). Meredith lived on the same street as Wendell and Bruce Farris (at 3638 and 3676 Pine Cres.) Closer to the water were Tupper (Marine Drive), Norris (Cornwall by Kitsilano Beach) and Robertson on Beach Avenue. Long and Smith lived near Burnaby Lake, and Selkirk was isolated in New Westminster. Coady chose Courtenay Street, snuggled up against UBC. Garland's Nelson locale is unknown.

88. "Letter," Advocate 9, pt.3 (May-June 1951): 88.

89. "Law Societies," Advocate 5, pt.1 (Jan.-Feb. 1947): 23; 5, pt.2 (Mar.-April 1947): 50; 6, pt.1 (Jan.-Feb. 1948): 20-1. The Vancouver Bar Association published the journal.

90. Watts, Society, 35-7. See Pue for more depth on the curriculum.

91. Peter B. Waite, Lord of Point Grey: Larry MacKenzie of U.B.C., (Vancouver: University of British Columbia Press, 1987), 126. Members of the elite who did not receive an LL.B. from a university law school included: Sloan, Smith, Wismer, Tupper, Moresby, Norris, O'Brian, Meredith, DesBrisay, Coady. This does not imply that they did not hold undergraduate degrees or that their education was inferior in any respect.

92. Harry T. Logan, Tuum Est: A History of the University of British Columbia (Vancouver: University of British Columbia, 1958), 3.

93. Jean Barman, The West Beyond the West: A History of British Columbia, (Toronto: University of Toronto Press, 1991), 193. UBC opened September 1915 at a temporary site before moving to Point Grey in 1925.

94. See Pue, Law School, 28-61 on the early educational developments in the province.

95. Watts, Society, 37; Stager, Lawyers, 90 (Table 4.1). He lists the law faculties start date of continuous operation at the following universities: Dalhousie-1883; New Brunswick-1892; Laval-1854; McGill-1853; Montreal-1919; York (Osgoode Hall)-1889; Manitoba-1914; Saskatchewan-1913; Alberta-1912. (Toronto-1940). One rivalry example was the following 1942 Law Society of Alberta memo which angered Ontario lawyers: 'The opinion of the Benchers of the Law society of Alberta is that the system of Legal Education followed in this Province is superior to that followed in Osgoode Hall or in similar schools in Canada where legal education is carried on by means of lectures morning and evening with service under articles in an office in the interval.' Cited in Ian C. Kyer and Jerome E. Bickenbach, The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923-1957, (Toronto: The Osgoode Society, 1987), 151.

96. Plans seemed secure enough to hold the attention of educators interested in career moves, including Osgoode's Cecil Wright. See Wright to Farris, 15 Sept. 1938, cited in Kyer, Fiercest, 146; Bencher Minutes, 7 April 1942, cited in Watts, Society, 37; Waite, Lord, 110. UBC's puritanical President Klinck held no favour with the earthy provincial cabinets under Premier Duff Pattullo and in 1941, John Hart. A casualty of funding needs, Klinck watched the search for a new president begin. See also Pue, Law School, 117-148 for an in-depth account of events.

97. Appointed to the UBC Board of Governors in 1920, Justice Denis Murphy served until 1946 when Justice Coady succeeded him.

98. R. St. J. Macdonald, 'An Historical Introduction', Canadian Yearbook of International Law 12 (1974): 104-7, cited in Kyer Fiercest, 58; Ibid., 292; Waite, Lord, 56, 76. MacKenzie received a B.A. from Dalhousie in 1921 and an LL.B. in 1923, and an LL.M. from Harvard by 1925.

99. Waite, Lord, 76, 157, 200. Waite establishes MacKenzie as an ardent internationalist with close ties to Newton Rowell in the mid-20s. In the west, he maintained a friendship with such UBC benefactors as H.R. MacMillan, who donated \$47,000 in 1945 to start a Forestry Program. MacKenzie attained a 1966 Senate seat, sitting as an independent Liberal.

100. Waite, Lord, 116; See also Veterans Rehabilitation Act Statutes of Canada 1945, c.35.

101. Waite, Lord, 126. Arthur Lord was a barrister and UBC alumnus who sat first in the Senate then on the Board of Governors.

102. Watts, Society, 37; Logan, Tuum, 157.

103. Watts, Society, 42-3. According to Watts, substantial financial reductions also aided veterans. Altered requirements reduced articulated time and allowed "broken articles," meaning articling during summer months.

104. Logan, Tuum, 157; Waite, Lord, 126.

105. Kyer, Fiercest, Intro.; Girard, "Roots," 184. The Ontario battle was over decentralization and the balance between arts, theory and the office tradition. Decentralization problems were due to Ontario's competing universities. In BC, only UBC existed, "there were to be no other gods." See Waite, Lord, 110. Educational credentials of the men profiled included: Osgoode Hall: Bird, Robertson, Haldane, Selkirk; University of New Brunswick: O'Halloran; University of Pennsylvania: Farris Harvard University: Long; Oxford (Trinity College): Lett; Haileybury College, England: Crease. Private firms: Sloan, Smith, Wismer, Tupper, Moresby, Norris, O'Brian, Meredith, DesBrisay, Coady. (No data on Garland). These men graduated prior to the great American-inspired legal education debates of the 1920s. This may be a factor in the delayed agitation for a BC university law degree program through the 1920s and early 1930s.

106."Faculty of Law," Advocate 5, pt.2 (Mar.-April 1947): 51-2; "Curtis Heads," Ubysey 25 Sept. 1945. New Brunswick native McAllister held a Columbia degree. Kennedy's credentials included having Toronto's renowned Dean W.P.M. Kennedy for a father.

107.Ibid. Part-time and special lecturers included Bird, Coady, the Farris brothers, Smith, Tupper and N.A.M. Mackenzie. Students had options towards a law degree. They could graduate in six years with LL.B and B.A. degrees (three years Arts credits plus three years Law). Or, they could enter a five year program (two years Arts plus three years Law) resulting in an LL.B. degree.

108."Bench and Bar," Advocate 6, pt.3 (May-June 1948): 89. Emil Kingsley practised first in Poland, then London under famous Marxist D.N. Pritt, K.C, M.P. His political beliefs are not reported. "Entre Nous," Advocate 6, pt.4 (July-Aug. 1948): 131; "Bench and Bar," Advocate 6, pt.6 (Nov.-Dec. 1948): 208. Of the twenty, the father of one grad was a customs official. The remaining nineteen were the male progeny of members of the profession. The two women who graduated in 1948 had no reported legal parentage. The eighty-eight figure is from Stager, Lawyers, 96 (Table 4.3). The Faculty officially opened in January 1946, at which time R.H. Tupper became "Dean Emeritus" in recognition of his work to advance legal education.

109."Officers," Advocate 5, pt.2 (Mar.-April 1947): 50 and 6, pt.3 (May-June 1948): 78. The five members of the Standing Committee on Credentials in 1947 were: Messrs. Moresby, Long, O'Brian, Tupper and Meredith. In 1948: Tupper, Moresby, Long, Lett and Selkirk.

CHAPTER THREE - THE ROAD LESS TRAVELLED

Gordon Martin's political and class beliefs, labour background, and his personality brought him into conflict with the Benchers. He took an ideological road less travelled towards a legal career. Born into a tight-knit Manitoba farm family in 1917, Martin soon understood the worth of labour. He contributed to the frugal family economy through father-directed farm chores and learned the skills of the needle from his mother. Martin developed a penchant for reading and study, nurtured by the home environment and childhood bouts of confining illness.¹ In search of better economic opportunities, the family moved to BC's Vancouver Island in 1926, settling first in Courtenay before putting down Victoria roots in 1930. While his father William found employment alternately as a labourer, garden nursery worker and watchman, Gordon Martin pursued the regular course of public school studies.²

His formative teen years coincided with the Great Depression, and Martin's analysis of the contemporary situation led to belief in a better future through communism. Researching a school project on political parties, the student took greater inspiration from the content of Joseph Stalin's speeches than the words of contemporary Liberals and Conservatives.³ Future circumstances nourished this initial accord with communism. Graduating from high school in 1933, Martin worked at a

garden nursery before beginning post-secondary Arts and Science studies at Victoria College. Despite winning a Kiwanis academic prize and maintaining an honours standing, illness prevented his writing of the exams needed to win a university scholarship.⁴ He continued his education through correspondence courses and worked a year in a local dairy. Learning of employment prospects in Trail, Martin headed east to this hotbed of labour radicalism in 1937.⁵

On the job at the Canadian Pacific-owned Consolidated Mining and Smelting dairy farm, Martin soon made his presence known. Calling for better wages, and condemning a CM&S bunkhouse as a citadel of bad food and bedbugs, the twenty-year-old stirred up a "hurricane of controversy" in the labour press that earned him a lay-off notice.⁶ Months later, Martin joined a Trail smelter labour gang and found an outlet for his ideological inclinations in the International Union of Mine, Mill and Smelter Workers' drive to organize labour.⁷ In the late 1930s, Trail's hard-rock industry employed roughly 4,400 people, workers important to the newly-formed Mine Mill locals.⁸ Unionists considered Trail the heart of a major industry, the ideal place to set an example and through it, advance labour organization province-wide.⁹

Martin joined Mine Mill in 1938, and his commitment to Marxian-socialism and Canadian workers strengthened through

his aid to new Trail resident Arthur "Slim" Evans.¹⁰ A long-term union activist and an effective organizer, Evans figured prominently in Depression-era events as the leader of the Relief Camp Workers' Union and the Strike Committee for the On-to-Ottawa trek. His agitation earned him several stints in prison and the wrath of Prime Minister Richard B. Bennett.¹¹ It also won the admiration of many workers, including Martin. He viewed Evans as a dauntless fighter for workers' rights and admired his ability to deal effectively with union allies and rivals.¹² The labour leader impressed his assistant with his view of the capitalist system and his desire to "terminate" it.¹³ Martin joined the Communist Party of Canada (CPC) at this time with Evans an open and unwavering role model.¹⁴ In 1939, Royal Canadian Mounted Police (RCMP) intelligence noted that the CPC considered the educated assistant "good material for Evans to train."¹⁵ The state appraised him as "dangerous."¹⁶

Throughout his time in Trail, Martin proved a dedicated worker on behalf of the Communist labour agenda. In addition to assisting Evans, he wrote articles and delivered The Commentator, Mine Mill's newspaper.¹⁷ He participated in local Young People's Clubs.¹⁸ In essence, Gordon Martin found his own beliefs and principles in concert with the CPC tenets. Ivan Avakumovic interprets the 1938-9 pre-war period as one in which the CPC Democratic

Front drive won the Communists increased respect from the general public. The Party worked to become "ultra-Canadian" and union activities brought new successes.¹⁹ The CPC's strength should not be exaggerated, but it did benefit from its image as a defender of depression victims and an opponent to fascism and war. A growing number of youths, intellectuals, trade unionists and voters seriously considered CPC proposals.²⁰ Gordon Martin joined the roughly fifteen thousand Canadians ideologically committed to the Marxist-Socialist analysis of society.²¹

Trade union attachments prompted an entry into the legal sphere. When Evans and the unionists pressed intimidation charges against Canadian Pacific and its representative, CM&S manager Selwyn Blaylock in 1938, Martin came forward as a key witness against the company.²² This action brought him into contact with John Stanton, a lawyer for the Mine Mill union. Stanton's career included the shedding of a conservative upbringing for a socialism kindled by the activism of Tim Buck and J.S. Woodsworth in the Depression years.²³ After his 1936 call to the Bar, he joined in the struggles of the new unions led by the left, modestly-funded organizations "too radical for a conservative profession."²⁴ Stanton and Martin's fellowship developed from their first meeting.

Laid off with hundreds of other smelter workers in 1938, Martin stayed in Trail to support the union process,

working as the district Mine Mill Recording Secretary until 1941.²⁵ To survive financially he took assorted jobs, including a stint at a hotel which resulted in another legal skirmish. Dismissed when his union ties became known, Martin used section 502A of the Canadian Criminal Code against the Trail Hotels Ltd. Arguing that it discharged "an employee for the sole reason that he was a member of a trade union," Martin won a plea of "Guilty" from the company. Although he later described his win as a Canadian precedent-setter, legal recorders ignored the episode.²⁶ Martin subsequently divided his time between Trail, Quadra Island and Victoria, working on behalf of labour and the unemployed.²⁷

His actions in Trail highlight an important aspect of Martin's personality. He consistently refused to compromise his principles and convictions in response to intimidation or anticipated personal consequences. He challenged the CM&S company, took the stand on behalf of Evans and won his case against the hotel owners. Martin proclaimed "right" and "wrong" where he saw it. He defended his perceived rights and the rights of the members of the class he admired in defiance of powerful interests. According to everyone who knew him, Gordon Martin could be stubborn to the point of inflexibility on matters of principle. The intent here is not to create a hero or martyr, but to establish his strong will and the

tenaciousness apparent in his postwar actions. This quality of commitment paralleled the determination and ideological dedication of the legal order, setting the stage for the ensuing battle.

Martin heeded the early Communist line against the war effort. When the Party outlook changed following Hitler's June 1941 attack on Soviet Russia, he went to Calgary to volunteer for service.²⁸ Martin numbered among the many Canadians in their early twenties who wanted to be air pilots or air crew members. Colour-blindness thwarted these ambitions and the Royal Canadian Air Force (RCAF) recruited him as an Instrument Mechanic.²⁹ To enter the RCAF, Martin basically slipped past a security system hostile to Communists and labour agitators. In June 1940 the federal government banned sixteen organizations, including the CPC, and 133 domestic "reds" went to internment camps until their 1942 release.³⁰ The military accordingly shunned Communist volunteers until late 1942 and the RCMP worked to block their enlistment. Only months after Martin's signing up did they discover the new recruit's history.³¹

In October 1941, requests for information and fingerprint checks, made irrelevant by Martin's lack of a criminal record or previous printing, passed between RCMP and RCAF divisions. He kept his beliefs quiet, and his behaviour raised no complaints. The authorities allowed the

volunteer's military career to continue, opting to watch and wait.³² The wartime alliance with the USSR changed the situation, and after 1943 Canadian Communists gained a tenuous legitimacy. Martin attended the 1943 Toronto founding convention of the Labor-Progressive Party (LPP) and called for "regular contacts" between the LPP and the Armed Forces.³³ This shift in political status coincided with other life and career changes. While stationed in Ontario, he met Marion, the daughter of an Anglican minister.³⁴ They soon decided to marry, and thereafter Martin's service profile ascended as the Instrument Mechanic made Corporal and took a 1944 transfer to an RCAF Repair Depot in Calgary.³⁵

Participating openly in the Calgary LPP constituency, Martin was selected as a local candidate for the 1944 provincial election until residency requirements forced him from the slate.³⁶ He then chaired a party commission, and sat on a committee charged with handling local functions in anticipation of a federal election.³⁷ On 11 June 1945, victory day for the King Liberals, Martin returned to Ontario for training at an RCAF Engineers School.³⁸ By mid-August, a promoted Acting Sergeant Gordon Martin joined the staff as an Instrument Instructor and Mechanic. He chose not to discuss ideology at the Station, and the RCAF paid more attention to his skill than his politics.³⁹ War's end brought an honourable discharge. This relatively

prominent Communist succeeded in serving Canada's war effort while holding fast to his political and class beliefs.

The Martins looked to the west coast for the future. Although the prospect of owning land under the veterans' grants scheme appealed to the couple, Martin placed great value on education and aspired to university. During the war he helped fund his sister Tannis's college stint and she believes that he would have strived for a postwar degree against all odds.⁴⁰ The government university assistance package made higher learning immediately achievable for veterans, a boon for those from the working class. Martin excelled in physics, with a penchant for electronics and engineering.⁴¹ Family members encouraged him to enter the sciences, and a UBC professor reportedly agreed.⁴² The political forces in his life, however, urged another choice.

John Stanton and a handful of CCF-affiliated lawyers had pioneered the "disreputable" field of labour law but more minds were needed; Martin appeared an attractive candidate.⁴³ One observer considered Stanton an influential canvasser, although he recalls Martin making the approach and denies pressing the subject. Stanton places his influence in the example of his practice and philosophy.⁴⁴ The bottom line was that the LPP wanted lawyers for the benefit of LPP unionists, organizers, and

the left-wing labour cause. As a measure of his full support for the party direction, Martin entered the UBC Law program.⁴⁵ He took up Articles with Stanton and enrolled in the LSBC books.⁴⁶

His subsequent academic and practical training records present no aberrations to the norm. The student-at-law attended lectures through the fall and winter terms and worked in the Law Library to supplement his income allowance.⁴⁷ "The Martins" now included two children.⁴⁸ In the spring and summer months he articulated for Stanton & Munro in Vancouver, and in the 1948 summer break at the firm's Nanaimo branch.⁴⁹ A capable student, Martin judged his exam results as credible if not at the top of his class.⁵⁰ The university awarded him the LL.B. on 13 May 1948; he looks out from the photograph of the first graduating class of the Law Faculty.⁵¹ If Martin's campus record had been defined by scholarship and employment, the story would be over. His political activism, however, made him an extraordinary student. He invested great energy in promoting his beliefs to peers on a campus transformed by numbers, postwar expectations and opportunities.

The Dominion Bureau of Statistics (DBS) reported more than 119,034 veterans as full-time Canadian university and college undergraduates between 1944 and 1950.⁵² A.B. McKillop's data shows that of the roughly 1,050,000 people released from service, 175,000 sought education, with some

33,000 at university.⁵³ Before the war, full-time total undergraduate enrolment peaked in 1939-40 at 35,164 students; veterans pushed the 1946 count to 76,237.⁵⁴ By October 1945, UBC tallied roughly 5,600 students, forty per cent veterans, for the second highest institutional enrolment of ex-service students in the country.⁵⁵ The new Faculty of Law and the LSBC found estimates of roughly thirty students for 1945 crushed under the weight of the eighty-six who arrived, "most of them veterans."⁵⁶ The figure roughly tripled in 1946 and peaked with 472 Law students listed in 1948, a number neither matched nor supplanted for two decades.⁵⁷

Labelled a period of "distortion" by the DBS, 1944-50 is better termed "revolutionary" or "class-disrupting."⁵⁸ People previously blocked from knowledge by socioeconomic criteria took their place in the classrooms, and subsequently, diverse occupations.⁵⁹ Furthermore, the changed character of the student body caused a vivid upheaval in the political life of the campus. The mature veteran presence offered the potential for political interest, and a dynamic core of war-mature activists of all ideological bents made good on that promise.

In the midst of this tumult, what brought Gordon Martin to the attention of the LSBC? According to John Stanton it was "Martin himself."⁶⁰ He exacted attention as a prominent member of a far-left circle of students.

Marxists, particularly those affiliated with the LPP, drove a postwar politicization of UBC by doggedly testing the institutional and popular limits to reform. Between 1945 and 1948, law students Martin, Ike Shulman, Norm Littlewood, Harold Dean and Harry Rankin established a potent left-wing presence through club participation, political agitation and articles in the student press. The LPP group stimulated student political awareness by bringing controversial speakers to the campus. Ultimately, they battled containment under the combined influences of right-wing critics, a student reaction against campus politics, and Cold War tensions.⁶¹ The legal order took note of these developments. Of the group, Martin was the academic senior and sole candidate for a 1948 graduation.

Making no secret of his politics, he competed for the "blue-stocking" Vancouver-Point Grey riding in the October 1945 provincial election.⁶² His call for housing and better terms for veterans was popular, but did not bring victory.⁶³ The riding went to Conservative R.L. Maitland, K.C., former Bencher, CBA chief, AG (1941-46) and co-leader of the coalition government.⁶⁴ Province-wide, the twenty-one LPP candidates failed to win a seat.⁶⁵ LPP students had more success in the UBC Parliamentary Forum, an arena for contentious ideological debates and biannual mock elections.⁶⁶ The left also gained a high profile in varsity groups such as the Social Problems Club (SPC),

which Martin chaired from early 1946 to the end of his studies. Officially apolitical, the SPC attracted students open to controversial speakers and eager to apply varieties of socialist economic theory, including Marxism, to contemporary problems.⁶⁷ Multi-club unity on specific issues contributed to Martin's future support network.⁶⁸

If UBC President MacKenzie and the LSBC previously failed to register his politics, Martin's 1946 application for a campus LPP political club ensured their regard.⁶⁹ The request did not immediately succeed, but students credited the letter with causing such a political "fever rash" that UBC experienced the greatest level of activism of all Canadian universities "with the possible exception of one."⁷⁰ The UBC debate over political clubs preceded similar actions at most other campuses by close to a year.⁷¹ Martin's next effort caused another stir. The SPC fought for the right to bring LPP national leader Tim Buck in as a campus speaker, sparking heated discussions within the greater Vancouver community and press.⁷² The club gained both official and broad student approval, and changed campus policy in the process.⁷³ The altered UBC protocol gave politicians from across the spectrum their first direct access to students.

From 1946 through 1948, campus politics heated up. Simmering conflicts between left and right-wing students, many in law, increasingly erupted into open exchanges.⁷⁴

Martin, Shulman, Littlewood, Rankin and Dean made speeches, headed forums, denounced capitalism in the Ubyyssey and competed, with limited success, for high student offices. Champions of the right such as Grant Livingstone, David Tupper, Stuart Porteous, Stuart Chambers, Don Lanskail and Marshall Bray responded in kind.⁷⁵ The caustic cross-fire between groups drew broad publicity. The ideological left suffered the consequences.

A most important UBC club policy change took effect in the fall of 1947. Martin and the LPPers' battle to win sanctioned political status came to fruition with a twist that reflected a control strategy. The new Livingstone-headed student executive went beyond granting clubs the right to open political status, to forcing declarations of affiliation. This coincided with a new ban on the off-campus financing of clubs, and a ruling which confined students to single-club election participation.⁷⁶ According to a Liberal Forum member, the move made visible "the struggle between the majority of the student body and the radical elements; it was a successful anti-LPP "containment" policy, reported the Daily Ubyyssey.⁷⁷ Prior to 1947, the student majority regarded the LPPers with guarded tolerance, sporadic collegiality and restrained hostility.⁷⁸ The 1947 mood shifted to increased and overt antagonism, which further hardened through to the spring of 1948. Along with the official and unofficial curbing of the

far-left students, a gag party swept Parliamentary Forum elections in March 1948, as students rebelled against serious politics.⁷⁹

Tim Buck's campus visit that same month reflected the changed climate. As with his 1946 speech, roughly two thousand students packed the auditorium, but this crowd differed from the more receptive former audience. Strategically placed anti-Communists jeered, heckled and took aim with pea shooters. A dead cat landed on the stage. In a "surprise visit" following Buck's exit, anti-red author John Hladun whipped up emotions. In the wake of "the hottest political meeting in UBC history," Stuart Chambers took credit for placing "his men" in the audience and bringing in Hladun "with the sanction of most of the campus political clubs." Littlewood accused Tupper and Marshall Bray of being co-conspirators. Although labour and civil liberties representatives condemned the right-wing students' actions, UBC President MacKenzie showed little surprise and Livingstone deemed the uproar 'understandable.'⁸⁰

To return to the question: What brought Gordon Martin to the attention of the LSBC? According to one insider, "it came to the attention of the Benchers through various channels that Mr. Martin might be a Communist."⁸¹ His self-propelled visibility constituted one of those channels. A key player in a process of campus

politicization, he put his beliefs forward for scrutiny and actively opposed UBC Conservatives whose opinions carried weight beyond the campus. Did students' backgrounds correspond to the political schisms? That question remains for future study. To the degree that ideology and class merged in the LPP faction, however, no left-wing law student could expect to be embraced by political opponents in the legal fraternity. What Martin failed to realize, or perhaps accept, was that his post-graduation plans held the attention of a wider audience. An LL.B. meant little without the call to the Bar, and elite discussions about the "radical" law student commenced prior to graduation day. As John Stanton phrased it, the ire of the Benchers rose "like a thunderstorm" except, as Martin discovered, its force proved more focused and of greater longevity.⁸²

Notes to Chapter Three

1. Lillian Martin, daughter of Gordon Martin, interview by author, 10 March 1993, Sardis BC, Tape/Transcript (hereafter LM interview).
2. LM interview; Tannis Warburton, sister of Gordon Martin, telephone interview by author, Ottawa-Victoria, 16 July 1995, Tape/Transcript (hereafter TW interview). William Martin earned his fourth-class Steam Engineer's papers when he was 58, then his third-class papers at the age of 64, in 1946.
3. LM interview.
4. TW interview. Martin attended Victoria College in 1934-35. He studied Physics, Chemistry, Math, English, French and Greek.
5. National Archives of Canada, Record of the Canadian Security Intelligence Service, RG 146, Volume 1220, William John Gordon Martin file, Part 1, 759-60 (hereafter NAC, RG146, v.1220, GM pt. etc) Dept. of National Defence Air Service, Report to RCMP Commissioner, Ottawa, 21 Oct. 1941. Martin attended Courtenay Public School 1928-1930; Mt. View, Saanich 1930-1933; Victoria College 1934-35; High School Correspondence 1936-1941. He worked at Malahat Nurseries 1933-34, and Registered Dairies, 1936-37.
6. Gordon Martin, Letter, "Mine, Mill, Vet. Can't Practise," B.C. Union District News, 19 Nov. 1948 (may be a feature in B.C. Worker News, CPC weekly); Stanton, Never, 30; Lance H. Whittaker, "Young Stormy Petrel May be Barred," Rossland Miner, 5 Aug. 1948.
7. LM interview; Stanton, Never, 30.
8. Ibid. For a view of the union drive from the left perspective, see Ben Swankey and Jean Evans Sheils, "Work & Wages"! A Semi-Documentary Account of the Life and Times of Arthur H. (Slim) Evans, (Vancouver: Trade Union Research Bureau, 1977). Not until June 1944, did the Mine, Mill Union gain certification at the Consolidated Mining and Smelting Company in Trail, after reportedly signing on roughly eight thousand members. See Paul A. Phillips, No Power Greater: A Century of Labour in British Columbia (Vancouver: B.C. Federation of Labour, 1967), 125.
9. Swankey, "Work," 273.

10. Martin, "Mine, Mill," Union, 19 Nov. 1948.
11. Communist Party of Canada, Canada's Party of Socialism: History of the Communist Party of Canada 1921-1976, (Toronto: Progress Books, 1982), 94-98; Swankey, Work, Foreward, 5, 269. First arrested for "free speech" labour activities in 1911, Gordon Wismer also arrested Evans in the 1930s under Section 98, and the law came down on him on several other occasions.
12. Stanton, Never, 31-2.
13. Ibid., 34.
14. Stanton, Never, 31. NAC, RG146, v.1220, GM, pt.1, 767. RCMP HQ "Extract," 17 Oct. 1939. Martin became Party member CPC No.16818. RCMP noted that he was associated with Evans "from the start."
15. NAC, RG146, v.1220, GM, pt.1, 770. RCMP Lethbridge, "K" Div. "Intelligence" in conjunction with Evans, 22 May 1939.
16. NAC, RG146, v.1220, GM, pt.1, 767, RCMP HQ "Extract," 17 Oct. 1939.
17. Ibid., pt.1, 770, RCMP Lethbridge, "K" Div., 22 May 1939.
18. Ibid., pt.1, 767, RCMP "Extract," 17 Oct. 1939.
19. Avakumovic, Communist Party, 96-8, 131. The CPC sought a Democratic Front alliance with moderates and socialists in demanding increased federal responsibility in such areas as unemployment, health and crop insurance, housing and pensions.
20. Ibid., 114-6.
21. Ibid., 115. He cites the following figures and sources indicating the growth of CPC membership between 1934 and 1939: 5,500..July 1934..Source International Press Correspondence (London), 21 September 1934, 1328; 15,000 ..Spring of 1938.. Source A Democratic Front for Canada (Toronto), 1938, 47; 16,000..early 1939..source L.Morris, The Story of Tim Buck's Party (Toronto), 1939, 30.
22. Stanton, Never, 34; John Stanton, telephone interview by author, 2 Sept. 1995, Ottawa-Victoria, Tape/Transcript, (hereafter JS interview).

23. Stanton, Never, Preface vii-viii. Stanton's political party affiliations shifted throughout his career, but his left-wing sympathies remained consistent.

24. Ibid., Preface viii. Stanton notes that his law firm was not pleased at his joining in a Victoria peace march. He was "lucky" to get into a Vancouver firm and have his articles taken over by the Treasurer of the Law Society.

25. NAC, RG146, v.1220, GM, pt.1, 760, 767.

26. Martin, "Letter," Union, 19 Nov. 1948; NAC, RG146, v.1220, GM, pt.1, 757, RCMP Div."E," 24 Oct. 1941. This is referred to as Martin v. Trail Hotels Ltd.; Martin terms it the Crown Point Hotel case. According to Stanton, Martin may have been attempting some organization of the hotel workers, but this is not confirmed. See JS interview; TW interview. The case is not reported in the British Columbia Law Reports.

27. Martin, "Letter," Union, 19 Nov. 1948; TW interview and correspondence. Martin visited unemployed men living in abandoned downtown Victoria buildings. He offered what funds he could and on one occasion, dinner in the family home.

28. NAC, RG146, v.1220, GM, Pt.1, 757.

29. LM interview; TW interview.

30. Ramsay Cook, "Canadian Freedom in Wartime," 40-1, 46; Reg Whitaker, "Official Repression of Communism During World War II," 145-6. PC 2363, an order-in-council issued under the Defence of Canada Regulations, made the CPC and other organizations illegal. See William Repka and Kathleen Repka, Dangerous Patriots: Canada's Unknown Prisoners of War, (Vancouver: New Star Books, 1982) and Ben Swankey, "Reflections of a Communist: Canadian Internment Camps," Alberta History 30, no.2 (1982): 11-20 for accounts of the camps.

31. Hannant, Infernal, 120-1; NAC, RG146, v.1220, GM, pt.1, 761. The first RCMP inquiry into the linkage between Gordon Martin of Trail and Gordon Martin RCAF recruit was generated by an "K" Division Assistant Intelligence Officer to the Vancouver "E" division, 15 Oct. 1941.

32. Ibid., pt.1, 759, DND Air Service, "Letter," office of Air Vice Marshal to S/Insp. E.H. Perlson, Ass. Intelligence Officer 21 Oct. 1941; 758, "Letter," Perlson to S/L E.T. Atherton RCAF, 27 Oct. 1941; 756, "Letter," Perlson to Atherton, 6 Nov. 1941.

33. Ibid., pt.1, 752, RCMP HQ "Extract," 3 Sept. 1943.
34. Ibid., pt.4, 291, RCMP "Report," 7 Dec. 1950. He was stationed at St. Thomas; Marion Martin, "Letter," Vancouver Sun (hereafter Sun), 29 Nov. 1948. Mrs. Martin's family name is not included in respect with her wish for privacy.
35. NAC, RG146, v.1220, GM, pt.1, 759, DND Air Service, "Letter," Air Vice Marshal to Insp. Perlson, Ottawa, 21 Oct. 1941; 742, RCMP Calgary "K" Div., "Extract" re: Communist Activity in Labour Progressive Party, Calgary, 7 July 1944.
36. Ibid., pt.1, 741-2, RCMP Calgary "K" Div. "Extract," 18 July 1944.
37. Ibid., pt.1, 734, RCMP Calgary "K" Div. "Extract" re: Subversive Activity within Labour Progressive Party Calgary, 12 April 1945; 732, RCMP Alberta "K" Division, "Extract," 16 May 1945.
38. Ibid., pt.1, 730-1, RCMP Calgary "K" Div. Ref.15 June 1945 and Ref. 28 June 1945.
39. Ibid., pt.1, 729, RCMP "O" Div. Ontario re: Sgt. W.J.G. Martin, 14 August 1945.
40. TW interview. Even after his marriage, Martin sent twenty dollars per month for five months for Tannis' college education.
41. LM interview; TW interview.
42. TW interview. Dr. Young of the UBC Physics Department reportedly encouraged Martin to enter the field.
43. LM interview; JS interview.
44. TW interview; JS interview; Elspeth Gardner (nee Munro), interview by author, July 1994, Burnaby BC, Tape recording/ Transcript (hereafter EG interview). Stanton influenced Elspeth Munro's career in law by supplementing her income during her studies. She came from a working-class background and could not afford legal education without aid. She became Stanton's law partner in 1947 upon her LSBC Call and Admission.
45. LM interview; TW interview. Records of the LPP regarding the "direction" of Martin are not yet available to the researcher, if they do exist. This assertion is based on oral testimony.

- 46.LSBC, Martin file (hereafter LSBC, GM), administrative note re: W.J.G. Martin. He enrolled as a Student-at-Law and Articled Clerk 6 Oct. 1945 and arranged Articles of Clerkship with Mr. J. Stanton dated 24 Sept. 1945, filed 6 Oct. 1945.
- 47.LM interview; Elmore Philpott, "Kuzych and Martin," Sun, 11 Jan. 1950.
- 48.LM Interview; "Martin Ready To Quit," Sun, 28 April 1950. In 1950 the Martins had a son aged five and daughter Lillian, three.
- 49.EG interview; LSBC, GM, "Candidate's Declaration regarding Call and Admission," 19 July 1948. Martin's twelve months of broken articles ran from 1 May 1946 to 21 Sept. 1946, 5 May 1947 to 20 Sept. 1947 and 27 April 1948 to 19 July 1948. See Advocate 6, pt.1 (Jan.-Feb. 1948): 17, re: Stanton and Munro's firm.
- 50.LM interview.
- 51.LSBC, GM, "Declaration"; See the class photograph in "First Graduates," Advocate 6, pt.3 (May-June 1948): 84.
- 52.Government of Canada. Dominion Bureau of Statistics, Education Division. Survey of Higher Education 1948-1950: Part II of the Biennial Survey of Education in Canada, 1948-50, (Ottawa: Queen's Printer, 1952), 67. The annual break-down is as follows: 1944 = 68 veterans; 1945 = 517; 1946 = 20,000; 1947 = 34,000; 1948 = 29,600; 1949 = 21,800; 1949-50 = 13,049. These figures excluded Normal School students, students in the Registered Nursing programs, and figures from Newfoundland.
53. This figure may include part-time and graduate students, plus the women in nursing and others excluded from the DBS report. See A.B. McKillop, Matters of the Mind: The University in Ontario 1791-1951, (Toronto: University of Toronto Press, 1994), 547.
- 54.Canada, DBS, Higher Education 1948-1950, 67, Table 14.
- 55.Waite, Lord, 124.
- 56.Logan, Tuum, 186. The figure included students integrated from the Vancouver Law School and partakers of a five-month refresher course for veteran lawyers; "Progress of the U.B.C. Faculty of Law," Advocate 5, pt.1 (March-April 1947), 51. The reference to a veteran majority is made in the 1945 context.

57. See Stager, Lawyers, 96-7, Table 4.3. By 1947, the success of the UBC program resulted in its attendance being greater than the combined numbers in Alberta, Saskatchewan and Manitoba.

58. In making this statement, I am discussing class indicators in terms of what John Porter deemed the sociologists' approach: where class is determined by measurable criteria such as income, the ownership of property, level of education, degree of occupational skill etc., traditionally determined by the class position of a person's family. See Porter, Vertical Mosaic, 9-10.

59. Canada, DBS, Education 1948-50, 19; A socio-economic breakdown of veteran students is yet to be documented.

60. JS interview.

61. This evaluation of UBC politics is based on items in the Ubysey student publication, which is The Daily Ubysey in some periods. The problems of reliance on one source is eased by the variations in report approaches, content, and apparent biases. For clarity and space needs, newspaper citation style is used although the paper was issued by volume and number.

62. Vancouver News-Herald, (hereafter News-Herald) 27 Sept. 1945. LPP candidate Stanton dropped out "pleading pressure of business."

63. "Candidates Woo Pt. Grey Voters," Vancouver Province (hereafter Province), 9 Oct. 1945; "More Cash Asked," Sun, 9 Oct. 1945; "Clean the Stable," Province, 17 Oct. 1945.

64. "Election Results," Province, 26 Oct. 1945. Alex Paton and Tillie Rolston were the other two winners.; Watts, Society, 68, 122; "In Memorium," Advocate 5, pt.1 (Jan.-Feb. 1947). Maitland served as Treasurer of the Law Society from 1942-44 and as provincial Conservative party leader.

65. NAC, RG146, v.1220, GM, pt.1, 724, RCMP HQ, re: LPP Activities in Provincial Elections, 8 Nov. 1945. Martin took 474 votes (.8% of possible votes). Provincially, the Party took 14,291 (less than 5%) votes according to this source. Martin Robin offers different election statistics in Pillars Of Profit: The Company Province 1934-1972 (Toronto: McClelland and Stewart Ltd., 1973), 87. He records the LPP as gaining 3.5% of the popular vote counting 16,479 of the 457,017 votes cast. The LPP did, however, beat the Social Credit party which received 6,627 votes.

66. "Forum Offers Chance," Ubysey, 29 Sept. 1945.

67. "SPC Meeting," Ubysey, 17 Mar. 1944. The SPC invited political speakers such as Harold Pritchett, President of the International Woodworkers of America, and mainstream guests such as Dr. G.J. Weir of the Dept. of Education. The club also arranged debates between opposed politicians such as Fergus McKean, LPP provincial head and J.E. McCormack, federal organizer for BC Liberals. See Ubysey, 9 Oct. 1945; "McKean Claims," Ubysey, 22 Mar. 1945.

68. "SPC Sponsors USSR Study," Ubysey, 1 Nov. 1945; "Forumites Call Protest," Ubysey, 30 Jan. 1947. For example, the SPC aligned with the Student Christian Movement and the International Relations Club to study Soviet Russia. A 1947 protest on behalf of the Jehovah's Witnesses' civil liberties brought the SPC into a liberal coalition with these two clubs and the campus branch of the Canadian Civil Liberties Union, the Varsity Christian Fellowship, the Socialist Forum and Parliamentary Forum.

69. He wrote on behalf of the Students Club - LPP, requesting 'clarification of our status as a political group at the University', and protesting the policy and belief 'that we are politically free outside of the campus but limited within.' The letter was forwarded to MacKenzie and the story landed on the Ubysey page publicizing the Law School's opening ceremony. See Jack Ferry, "LPP Checks Its Campus Status," "Sloan, Farris, to Speak at Law School Opening," Ubysey, 10 Jan. 1946. Law student Ike Shulman actually spearheaded the drive for political status. See Fred Lipsett, "LSE Head Lipsett opens club week," Ubysey, 29 Sept. 1945. Once prospective clubs received approval from the Literary and Science Executive (LSE), organizers sought funding and permission from the elected AMS Student Council. The Council had the constitutional authority to permit students to organize, based on the LSE recommendation. The Student Council and LSE also mediated between students and the university President and Board of Directors who considered any requests involving outside personalities, groups or activities.

70. "Political Clubs?" Ubysey, 15 Jan. 1946. The university is no doubt McGill. Tim Buck spoke on that campus prior to his UBC engagement, and at least from 1946 on, there is evidence of left and right factions coming into open opposition in the same fashion as in BC. See, for example, CUP - Montreal, "McGill Veterans Blame Executive," Ubysey 28 Nov. 1946; and CUP, "McGill Paper Lampoons Communist Influence Rap," Ubysey, 22 Feb. 1947.

71. Canadian University Press (CUP), "U of M Discusses Political Clubs," Ubysssey, 7 Nov. 1946. For example, it was not until November 1946 that Labor-Progressive students at the University of Manitoba petitioned their Students' Union for the right to form an LPP Club.

72. "The Tim Buck Case," Ubysssey, 2 Nov. 1946.

73. Buck appeared before over 2,000 students jammed into the auditorium, delivering a reportedly tame, economic-focused speech "spiced" with anecdotes. See "The Tim Buck Case," Ubysssey, 2 Nov. 1946; Bob Mungall, "Buck Spices Economics With Jokes," Ubysssey, 14 Nov. 1946; "Tribune Lauds Buck Audience," Ubysssey, 19 Nov. 1946.

74. These factions met head-on in forums and open meetings in the stadium before masses of agitated students. Ubysssey editors gave ample space to debates on ideology. Letters to the editor and partisan attacks in all directions made for lively reading. Through their visible defence of LPP and Communist principles, the names of the members of the left-wing became well-known to students and off-campus readers concerned about UBC's reputation and student morale. See samples of open animosity in the Ubysssey such as "AMS Votes," 3 Oct. 1947; "Student Forum," 4 Mar. 1947; David Tupper, "Letter," 19 Nov. 1947.

75. See Ubysssey, 1 Feb. 1947. It reports Livingstone as working on an Arts degree but aspiring to law, Porteous as registered in first year law; Lanskaill graduated from the law class of 1950. Chambers is listed in 1956 Canadian Law List. Tupper was in Martin's class. Shulman, Dean and Rankin were in law one year behind Martin. Arts student Littlewood hoped to enter the program in the fall of 1949.

76. "Political Clubs Must State Party," Ubysssey, 8 Oct. 1947. The finance action curtailed club financing beyond fund-raising and club fees. The single-club ruling meant that a student participating in, for example, the Social Problems Club could not run for, or vote for, the executive of any other campus club.

77. "Council Seeks to Lift Political Party Ban," Ubysssey, 26 Sept. 1947; "AMS Votes Political Clubs," Ubysssey, 3 Oct. 1947.

78. From the Ubysssey, see "Barrister Flays B.C. Electric," 1 Mar. 1947; "Student's Forum," 5 Nov. 1947; "Political Clubs Expand," 28 Nov. 1947. By the end of 1947, the Students' Socialist Club boasted a membership of 250 students. David Tupper headed a 35-strong PC Club, and roughly 30 students held to the LPP philosophy, although SPC guest speakers

such as John Stanton drew audiences upwards of 150. The Liberals gave no figures. A vocal LPP opponent, Livingstone conceded that although the political clubs launched by left-wing agitation were a "headache" for Student Council, they filled a "necessary part of student life."

79. This was the WUSTEST Party (Whig Union of Socialist Tories Excepting Stalinist Trotskyites). The party swept the March election in one of the largest votes recorded. See "Forum Leader Raps 'Mockery' in Mock House," Ubysey, 2 March 1948; "'Gag' Party Victorious," Ubysey, 4 March 1948. The votes were as follows: WUSTEST 603; CCF 372; Liberals 300; PCs 197. The LPP declined to participate, earning the scorn of critics.

80. "'My Men' Planted at Buck Meet, Student Says," Ubysey, 19 Mar. 1948.

81. LSBC, GM, Letter, Sec., LSBC to Sec., Bar of the Province of Quebec, 29 Nov. 1948.

82. JS interview.

CHAPTER FOUR - DUE PROCESS

Histories, legal works and memoirs give only brief mention to the LSBC and justice system's remarkable "handling" of Gordon Martin. This chapter is a narrative walk through the 1948 to 1950 events, coordinating evidence and constructing a base for layers of analysis. Two initial points should be noted. This affair did not play out in isolation; the LSBC containment policy affected the entire left-wing law circle. Martin's peers, however, did not share his pre-war history of union and political activism. Martin also stood out for tenaciously fighting the decision against him and refusing to compromise his political/ideological beliefs, even as a superficial gesture. The case also follows a "due process of law" formula whereby no citizen may be denied legal rights and "laws must conform to fundamental accepted legal principles," such as the right to confront one's accusers.¹ The strength or justice of due process depends on the equity of the legal rights, principles and system within which the process occurs.

Martin received no official warning prior to graduation that his call might be blocked. Privately, Stanton and others expected trouble unless he curbed the force and visibility of his "communistic views."² While Martin believed that the Benchers might act, he did not anticipate their severity.³ After his May 1948 receipt of the LL.B., the graduate prepared for a position in the

Nanaimo office of the Stanton and Munro firm, pending the completion of his Articles and July call to the Bar.⁴ He remembered learning of potential barriers to his call on the day of the grad prom. The news came as a shock.⁵ The LSBC formation of a position began in April when the Credentials Committee first formally anticipated Martin's July petition for acceptance.⁶

Despite the existing broad powers granted the Benchers through the LPA, they moved to augment their authority.⁷ In light of "matters pending," the LSBC governors drafted amendments to various items in the LPA-supported LSBC Rules, including Section 39 revisions.⁸ As Treasurer O'Brian reported, the changes altered discretionary powers "regarding the fitness and character of applicants for call and admission."⁹ On 28 April the Legislature agreed that students and clerks must be of "good moral character" and satisfy the Benchers of their "apparent fitness for enrolment."¹⁰ This affected both Norm Littlewood as a prospective student and the still-articling Martin.¹¹ In hindsight, the changes did not determine Martin's case as the crucial "good repute" clause already existed. The revisions highlight the Benchers' expectation of a contest and a determination to win it.¹²

A first test involved Harry Rankin, whose application for LSBC enrolment went to a hold file pending "information."¹³ Rankin had arranged articles with Dugald

McAlpine, and the barrister averted trouble by setting a meeting between the student and R.H. Tupper.¹⁴ Rankin's memoirs detail that exchange: How did he vote? Was he linked to the campus LPP faction? What did he think of Canadian institutions? The "long, long interview" won Rankin approval to proceed and a "new awareness of this reactionary group" and its power.¹⁵ Norman Littlewood's realization came in May when the Benchers refused to enrol him.¹⁶ In June, he requested an explanation and supplied the LSBC with a secret statement which bought him a second chance.¹⁷

The Benchers moved Martin's case to a 9 July meeting, and invited the graduate to appear before them. He declined.¹⁸ Instead, he filed his petition to be "called to the degree of Barrister-at-Law and admitted as a Solicitor" at the ceremony scheduled for 31 July.¹⁹ The Benchers countered by planning a hearing of various petitions, including Martin's, one day prior to the court ritual. The LSBC governors notified Martin of their intent to assess his LPP ties and Communist beliefs to determine "how far these affect your good repute."²⁰ He could bring counsel, if desired.

The 30 July in-camera hearings found a scared Littlewood first up in front of eleven Benchers at the Vancouver Court House.²¹ The panel took more than five hours to question him, consider exhibits and hear Garfield

King on the student's behalf.²² CCF civil libertarian King impressed Stanton as a blend of "theatrical director, an actor and a fearless man in the courtroom."²³ Although transcripts remained "top secret," King publicized a defence based on 'the right of every Canadian citizen to choose his own occupation, regardless of his politics'.²⁴ Littlewood's capitulation to the LSBC will carried more weight. He renounced communism and resigned from the UBC LPP Club.²⁵ As an LSBC counsel later asserted, left-wing students "repented" prior to their Society entry.²⁶ After his expiation, Littlewood became a Student-at-Law and Articled Clerk.²⁷

Late in a day of "pacing the halls," Martin went before the tribunal with Harry R. Bray, K.C., a Rhodes scholar, former Law School dean and "maverick" according to some lawyers.²⁸ As Martin's mentor, Stanton requested the acceptance of this "industrious and capable young man" whose "good repute cannot be doubted."²⁹ The panel doubted the integrity of his ideology and pressed the point. Reports of the hearings distinguish the difference between Martin and Littlewood. Both men expressed 'complete willingness' to swear allegiance to the King and denounce treason. Martin, however, did "not believe the Benchers have the authority to inquire into mine, nor anyone else's politics" and at first would not say "whether or not he was a Communist."³⁰ He argued that the query violated his

freedoms of thought and association.³¹ Stanton, law student Lloyd McKenzie and an unnamed testifier also spurned political confessions.³²

The hearing continued 31 July, a day which found the Martin family on the court house steps watching graduates pass by in "flowing gowns" en route to their Call.³³ At day's end the Benchers deferred a decision to a September meeting, allowing Bray to tender new character references and arguments.³⁴ The delay also gave the Benchers time to study transcripts.³⁵ Martin clearly provided some sought-after answers between July and September. An LSBC insider noted that "on the advice of Counsel he [Martin] later changed his stand and did give evidence which satisfied the Benchers that he was a Communist."³⁶ A later counsel argued that his client first went before the Benchers like 'a lamb led to the slaughter' and had been 'ill-advised in giving them the answers he did. His political ideas were sacred to him.'³⁷ Select passages of in-camera testimony, edited and made public by the Benchers to support their position, included the showpiece:

- Q. I ask if you are a Communist?
A. When I refer to myself as a Communist, which I do sometimes loosely, I mean a person who proscribes (subscribes?) generally to the political and economic theories of Marx.
Q. You don't have to answer this, but are you a Marxian Communist?
A. I am a Marxist, yes.....(LSBC edit)
Q. Are you a Marxian Socialist?
A. Yes Sir.....(LSBC edit). . .
Q. (Quoting) "On August 21 [1943] men and women of the

left wing labor movement from every part of the country will gather in Toronto to establish a new political party of Communists in the Dominion. . . You haven't any doubt have you that it is the Communist Party under a new name?

- A. I haven't any doubt it is the successor to the old Communist Party, but I wouldn't say there is an unbroken thread of development.
- Q. So the LPP in Canada occupies the same position as the Communist Party does in the United States?
- A. I would say generally yes.....(LSBC edit)
- Q. Mr. Martin, I gathered from what you said that your opinions and beliefs, if carried into effect, would involve the establishment of a dictatorship of a class in this country.
- A. Yes, and I think I defined what I meant by that, perhaps crudely but I think I got across the general idea when I was questioned before....(LSBC edit)

Martin presented his beliefs and those of BC Communists as averse to the overthrow of constituted authority by force.³⁸ In view of the LPP's legality, Bray challenged the political line of questioning. Martin had committed no overt subversive act, and his counsel argued that he had a legal right to be admitted, a right to freedom of speech, and faced personal hardship if refused.³⁹ The Benchers' held to their denial of "good repute."⁴⁰ In the wake of his rejection, a bitter Martin broadcast the intent to push for an explanation.⁴¹ One newspaper reported Bray as calling the hearing "disgraceful" and grounds for appeal. He immediately contacted the LSBC to pledge his fidelity and renounce the "misquote."⁴²

Martin retained Garfield King for the next round. The new team sought another hearing, transcripts, exhibits and

the Benchers reasons, all of which depended on LSBC consent.⁴³ The Benchers met the first two requests "in confidence."⁴⁴ Martin and King made no headway in the new hearing, and on 30 October, nine Benchers met to deliver a unanimous verdict: petition for Call and Admission refused. There is no evidence indicating dissenting Bencher opinions on Martin at any time. The lack of a record of their internal talks blocks a firm conclusion.⁴⁵

Prior to the decree, the Benchers organized their thoughts and charged two members with synthesizing a statement for release to King.⁴⁶ Privately, the reasons were defined as "written on the basis that the Benchers are a quasi judicial body." In their administrative capacity they looked at Martin and beyond to "all the circumstances and factors of Communism in the world today." Noting the decision's uncertain reception by some public elements "and even certain parts of the Profession," LSBC correspondence blamed the trouble on Martin's charge of political discrimination "which is certainly not the case."⁴⁷ On this point, a state observer agreed with Martin. Monitoring the proceedings, the RCMP believed "there is no doubt but that the subject's application was refused because of his political beliefs."⁴⁸

A contracted agency's long-term collation of related press coverage alerted the Benchers to the varied reaction to their ruling. Martin's situation and his publicized

demand for an explanation provoked comment and criticism in provincial newspaper and interest group circles. Radio newsrooms and the Canadian Press and University Press wire services took the case to a wider public.⁴⁹ In response, the Benchers crafted a 3,000-word statement of "Reasons." The complete pronouncement appeared in The Advocate. The vigilant Vancouver Sun published an extensive summary in mid-November.⁵⁰

The Benchers addressed Bray's argument for a right to practice by stressing their discretionary duty to judge good repute honestly and in the public interest. Support rested in a 1922 ruling that "there is no right of admission but only a privilege. . . privilege becomes a right only after admission." In that judge's opinion any right of review worked against the public interest and the Court should not substitute its own view for that of the Benchers.⁵¹ Martin's impeccable personal morals could not erase the taint of his support for a party headed by Tim Buck or his ties with "one Evans, also convicted of subversive activities."⁵²

The Benchers steered attention to the Barristers' and Solicitors' oaths. Despite Martin's pledges during RCAF service, they could not imagine vows being taken conscientiously. Could he swear to alert the throne to, and defend the King from "all traitorous conspiracies" without "equivocation, mental evasion, or secret reservation" in

the name of God? A barrister must not "seek to destroy any man's property." The revolutionary words in the Communist Manifesto and edicts against private property moved the Benchers more than Martin's promises.

To dispel any doubts, the statement evoked international events interpreted as evidence of domestic Communist loyalty to a foreign power. Had not Igor Gouzenko proved the existence of fifth columns to Canadians? Eleanor Roosevelt, Chair of the United Nations Human Rights Commission, believed that domestic reds taught "the philosophy of the lie" and neither the labour unions, RCMP, governments abroad or the LSBC trusted them in their midst. The Benchers considered and constructed a global, contemporary portrait of Communism and applied it in their jurisdiction. They surveyed Martin, Marx, Engels, Stalin, Buck and Gouzenko's "spies," and found all wanting of good repute.

Bray's submission on LPP legality met the counter-argument that government toleration did not "give the so-called Labour Progressive Party any stamp of approval of legality." Viewing the argument for freedom of speech as irrelevant, the Benchers offered that Martin could think freely and express his views. They merely exercised their right to consider those views in a matter of repute. The panel found Martin unfit to practice law. If the decision meant hardship for the applicant, he caused that hardship

and the public interest must take priority.

Legal debate on the validity of these reasons required a court date but reactions were immediate. Martin did not accept the Benchers' logic or seek appeasement. Condemning "anti-Red hysteria" aimed at a member of a legal political party, he predicted that the precedent would shock every democratic citizen. "Nowhere in any British country has anyone been denied admission to the legal profession because of his views."⁵³ He placed his loyalty to Canada in a triad with "peace and support for Socialism." He could vow allegiance to the King, if not Mackenzie King, capitalism or private property in industry. Distinguishing "expropriation" from "destruction," Martin dismissed the Bencher interpretation of his ideas on property as "pure balderdash."⁵⁴

Politicians, students and civil libertarians showed increased interest in the whole of the Martin affair. The provincial CCF council charged the Benchers with an "un-democratic and un-Canadian decision" and the Young Liberals shared this opinion.⁵⁵ Students at a UBC Civil Liberties Union rally demanded an LPA amendment to halt political persecution, and roughly seven hundred signed a petition on Martin's behalf.⁵⁶ As an indicator of divergent opinion, intruders took the document from the Student Christian Movement office and left it in shreds.⁵⁷

In a new and geographically enlarged round of mixed

press attention, journalists, editors and public respondents raised the major themes of the two-year "case." The conservative British Columbia Financial Times took the view that "there is no place in a democracy for such organizations" as the LSBC executive.⁵⁸ "Dangerous precedent," commented journalists in view of civil liberties. Noting the legality of the LPP, an Ottawa Journal editor argued that if Communists could sit in Parliament, the Benchers reflected "government by men instead of by laws."⁵⁹ Saturday Night's Erwin Kreutzweiser echoed: "Can a creature of the legislature, which admits Communists, refuse them?"⁶⁰

A Vancouver Sun editor rebutted with the popular conviction that the "court of public opinion" backed the LSBC.⁶¹ Columnists debated Communist loyalties, and reflections on Martin's freedoms begged the tough question: "Is it undemocratic to curb the activities of a Communist who by his actions, speech, and thoughts undermines the very warp and woof of our democratic way of life?"⁶² The press analyses of the case revealed a variety of understandings attached to democracy, conceptual schisms mirrored in interest group correspondence and actions. Onlookers agreed, however, on the import of the issues raised by the case. It opened up discussion about the meaning of freedom of thought, speech and politics, loyalty, democracy, professional regulation and domestic

communism. The Sun ranked the case as one of the year's "ten greatest" news stories to break in BC.⁶³

The furore did not alter the fact that Martin had exhausted the LSBC avenue of appeal. Due process invited a court test. LPP advisors instructed Martin to make civil liberties the central issue in the upcoming battle with the goal of entry to the Bar. This clashed with his opinion that under capitalism, liberties extended only as far as the class in power allowed. Martin felt that he could compromise his principles and possibly be admitted, or fight the Benchers on a civil liberties basis and accept a loss.⁶⁴ He opted to fight, and approached a lawyer known for his work on behalf of labour and unpopular minorities.⁶⁵ Jacob L. Cohen of Toronto received Martin's suggestion that he might "wish to take a personal position or any action in the matter."⁶⁶ How much help Cohen, disbarred from 1947 to 1950, could offer is questionable and his reply is not recorded.⁶⁷

Local lawyers discussed Martin's need for counsel at a December Vancouver Bar Association meeting. Departing President Norris argued that contrary to some opinions, an appeal was possible.⁶⁸ The Courts would respect the Benchers' administrative discretion but "would upset the decision if it is not in accordance with sound legal principles or if there has been a denial of justice."⁶⁹ In fact, Norris "welcomed a test of Martin's case in

court."⁷⁰ One barrister proposed a committee to assess and aid Martin's financial ability to try the system "so that in the words of the King's fiat: 'Let justice be done.'⁷¹ During debate, the idea gained some support as a public relations move. Critics directed Martin to the LPP for aid.⁷² Amid "applause and table-thumping" the resolution narrowly failed by a show of hands.⁷³ The VBA then ratified the LSBC decision as a measure of unity and professional support.⁷⁴

Appeals cost money and Martin potentially needed hundreds of dollars. Aware of his situation, D.C. McNair of the Vancouver Civil Liberties Union branch made a public appeal for a "Gordon Martin Fund."⁷⁵ Other observers turned their focus away from an appeal to the LPA. In February 1949, for example, CCF Opposition Leader Harold Winch demanded a Government overhaul of professional acts in light of the case.⁷⁶ A "Gordon Martin Committee" (GMC) composed mainly of LPP-associated trade unionists concurrently launched a "high-pressure campaign" for LPA changes. Chaired by city Trades and Labor Council leader Tom Parkin and Emil Bjarnason of the Trade Union Research Bureau, the GMC prepared radio broadcasts, petitions and union speeches.⁷⁷

The LPA remained intact, and Martin's due process route directed him to apply to the provincial Supreme Court (SCBC) for a writ of mandamus to force his LSBC acceptance.

The press understood the writ to be "a court order which found the Benchers had not carried out their duties" properly under the LPA.⁷⁸ A dictionary offers the literal meaning of "mandamus" as 'we command' but also notes that the writ "will not be issued where the doing or not doing of the act is within the discretion of such [public] official."⁷⁹ Would Martin find satisfaction in the Court? His chance came 25 February when King and LSBC counsel Farris and Norris met before Justice Coady. Delivered in March, Coady's basis for refusing the mandamus motion illustrates what transpired at the legal level.⁸⁰

King attacked the LSBC on four grounds, the first being that Martin had no need to take oaths prior to his call. The judge found for the LPA and the Benchers. In answer to King's charge of a neglect of disciplinary procedures, the justice noted the lack of a complaint against Martin and deferred to his burden of proving "fitness." Coady saw some support for King's line that the 1945 acceptance of Martin's certificate of good moral character established a right to LSBC entry, but he distanced moral character from "good repute." The ground that an attack on Martin's beliefs infringed on his constitutional rights met judicial silence. Coady cited Chief Justice Sloan's edict on another administrative body: "Whether its decision was right or wrong on the merits is not, I think, our concern." In support of discretionary

power and echoing words from decades past, Coady resolved that "it is not for the Court to substitute its views for that of the Benchers."

In lieu of transcripts, shards of detail caught by reporters alert to strong quotations aid in reconstructing floor-level exchanges.⁶¹ After making statements, Farris and King squared off before roughly seventy spectators "including a good number of matronly housewives." In his "unconstitutional" charge, King evoked the "law of the land," the spectre of "thought control" and the federal Supreme Court's denial of a provincial power to restrict political belief. Farris outlined the Benchers' rights and fought their curtailment. Once in the LSBC, he argued, a lawyer "may have the most unholy views" but remained safe unless guilty of "some overt act." Communists such as Martin "could strike at the heart of the safety of the state." That strike must be blocked by the LSBC "guardians." The senator advised Coady that Communist judges would "taint" high justice, and entreated: "I know of nothing that would be more tragic than if in the limitation of your power Your Lordship should feel compelled to order the Benchers to take this man in as a lawyer."

King's dismissal of the oaths controversy as "absolute nonsense" met with Farris' insistence that Martin disavow the LPP before attempting any pledge. He cited the 1932

judgment against Buck under Section 98 of the Criminal Code, earning King's wrath at the LSBC's 'vicious theory of guilt by association.' The senator resubmitted the Benchers' international findings on communism: 'we consider a man who is associated with a party whose admitted beliefs are subversive, is rendered an unfit person to be a member of the legal profession.' 'Marxian Socialism seems to chill the very blood of the Benchers', retorted King, who referred to the "competence" of prominent British Marxists Lord Chief Justice Jowett and Dennis Pritt.

As a civil liberties analyst, King offered that Canada's signing of the United Nations 1948 Universal Declaration of Human Rights should affect the decision, citing Article 18 on the right to freedom of thought, conscience and religion, and Article 19's guarantee of freedom of opinion and expression. "Cardinal Mindszenty did not find much protection under that," responded Farris.⁸² "When I hear a Communist invoking the declaration of human rights I am reminded of the saying that the devil can quote scripture for his own purposes." Turning to the crowd, King entreated, "Let us not slip into fascism by a greasy skid." He condemned "hysteria." "There never was a time when it was so necessary," rejoined Farris, "but I don't call it hysteria. The sober, solemn thought of the people of this country today is that the menace to the world is from Communism."

Justice Coady's verdict stresses that results from these exchanges applied only to public discussion. Legislation and precedent supported the Benchers, and the judge did not stray from a narrow construction of the law.⁸³ The SCBC ordered Martin to pay the costs of this stage of due process to the LSBC.⁸⁴ The next step was unclear. No candidate previously tried to appeal the Benchers' judgement on Call and Admission and no LPA recourse existed.⁸⁵ Elite strategy changed this. To placate public concerns the AG sponsored Bill 44 in March. The LPA amendment enabled any person refused by the Benchers to petition the Court of Appeal, BC's high court. This bench could "in whole or in part, either reverse or confirm the decision" or return the matter to the LSBC.⁸⁶ At the Benchers' urging, Wismer announced financial aid to allow Martin "his day in the highest court." At this time, the financially strapped Martin worked "in the woods" after a stretch of unemployment.⁸⁷

King negotiated fees with Wismer, unaware that his client planned a counsel change.⁸⁸ Martin retained Vancouver barrister John S. Burton and unsuccessfully attempted to enlist an out-of-province lawyer as Senior Counsel.⁸⁹ Working on the government aid of \$150 for disbursements and \$500 for counsel fees, Burton shaped the appeal books. The anticipated event was scheduled, rescheduled and ultimately set for March 1950.⁹⁰ Assuaged

by the prospect of justice for Martin, local and regional press interest waned in this period except for news of LSBC criticism from such bodies as the International Association of Democratic Lawyers and the Haldane Society in London.⁹¹

The "Gordon Martin Committee" caused a commotion with an anti-LSBC fund-raising letter mailed province-wide to lawyers, doctors and other professionals.⁹² This action plagued Burton, whose politics and motives for taking the case are unknown, but whose legal work for the LPP and unions caught RCMP attention. They reported that "opinion formulated in law circles" linked Burton's clients to his politics.⁹³ At the "suggestion" of the AG and Benchers, the barrister publicly distanced himself and his client from the GMC: "I do not act for this committee, and disapprove of its aims and methods."⁹⁴ The RCMP saw this as an effort to allay suspicions of his "Communitistic views."⁹⁵

Martin's appeal opened in Vancouver on 7 March 1950 and went for two days. The importance of the case is indicated by the full bench of judges: O'Halloran, Robertson, Smith and Bird presided under Sloan, Chief Justice since 1944. Burton appeared for Martin. Alfred Bull, K.C., former magistrate, Bencher, and head of the Bull, Housser, Tupper, Ray, Carroll, Guy & Merritt firm, acted for the LSBC.⁹⁶ As with the SCBC, the transcripts'

storage term expired prior to this study.⁹⁷ Judicial and press commentaries are again consulted, but only for major courtroom moments as the argument trends are established.⁹⁸

Reporter Ted Schrader assessed the tone of the hearing as "an intellectual drama." Martin, "tousle-haired, his face barren of expression," sat beside his counsel. No crowds attended but journalists and a representative of the National Lawyers' Guild of the United States watched the two barristers "making history in quiet, sometimes boring, legal arguments." These debates of principle, Burton predicted, would echo across Canada. Questioned "precisely and thoroughly by the five jurists," he answered to his client's repute, ideology and politics. Was Martin a Communist and did he or his party advocate force as the path to power? Did the LPP differ from the CPC? "If Martin does not advocate violence, and yet admits he is a Marxist, is there an authority who espouses Communism, but accepts the democratic form of government in effect in Canada and the U.S.?"

Justice O'Halloran directed the court to focus on "whether a Communist can be called to the bar in B.C., that is the point." Burton tried to make Martin's repute the main issue, charging the Benchers with presuming the subversive nature of the LPP. He demanded proof against a party with elected representatives in Manitoba and Ontario.

"The Benchers must be bound by law, not by personal views or prejudices," he contended. 'We're taught at university to think. Martin is a thinker, and he is penalized because his views are unorthodox in the eyes of the Benchers.' His client had no record of subversive action against the state. Burton asked pointedly: "Would Martin blow up bridges?"

"He didn't get an answer, in so many words" quipped a reporter, but met frequent challenges. Bull halted readings from the LPP constitution with the comment, "it is stupid to think that any party with subversive ideas would put them into writing." A reference to a pre-war California judgment in favour of Communists caused O'Halloran to remark that "ideas have changed since Canada's espionage trial." The judge also objected to Burton's logic that the ban might extend to a CCF member: "It is nothing to do with politics. . . a Conservative or a Liberal who subscribed to subversive views could be held inadmissible."

In an "unbridled" ideological discussion Burton asked the court: "What is communism? It's a term never defined in Canadian law." No clear definition emerged and the vocal O'Halloran noted that there must be '50 or 60 branches.' Bull parried the charge that Martin deserved a decision before putting his grants and time into training by stressing the new awareness of Communism's "sinister connotation." He added that Martin could reapply. "If he

submitted evidence that he was not a Communist, no doubt he would be accepted." He later assured the Benchers that his words committed them only to "consider" future applications, regardless of Martin's actions.⁹⁹

On the final day, Burton evoked the guarantees of the UN Declaration, stating that Martin lost the right to a livelihood by exercising "a freedom enjoyed by all citizens." If the Benchers' decision stood, it would prove Canadians 'a servile people' and 'our claim to individual freedom is an idle boast'. Burton concluded that Communism was no crime; Martin's membership in a 'minority group' caused his trouble. O'Halloran denounced any "cloaking" of the argument: "Freedom of thought is not the issue but subversive activity is." To close, Alfred Bull justified the Bencher pronouncement and insisted that Martin agreed that "he received a fair hearing" from the LSBC tribunal. He met Burton's strong words with his own: 'His membership in the LPP is not the important thing. He is a Communist!'

The bench delivered its decision in April, and the panel agreed with the Benchers both technically and ideologically. If the Benchers were Cold Warriors, the judges carried their standards. In procedural terms this was not a new hearing of Martin's application. Chief Justice Sloan reinforced that the court's only consideration was "whether the discretion vested in the Benchers was properly exercised according to law."¹⁰⁰ He

upheld their jurisdiction and their reasoning. Justice O'Halloran concurred that a person professing to the Marxist philosophy of law and government could not "be of 'good repute' within the meaning of the Legal Professions Act."¹⁰¹ "Freedom is not license," found O'Halloran, launching into a lengthy intellectual exploration of "freedom," "democracy," and the roots of "Fascist and Communist perversions." He dismissed the appeal on the broad ground that "a Marxist Communist cannot be a loyal Canadian citizen."¹⁰²

Justice Robertson had "little to add" to the Benchers' arguments.¹⁰³ He believed that Martin's appeal must be dismissed due to the violent and alien principles of the Communist Party and the problem of loyalties.¹⁰⁴ Stressing the Court's inability to challenge the Benchers' discretion, Justice Smith noted that "the Benchers are given no standard whatever to apply; so they can only base their decisions on what they consider prudent and expedient."¹⁰⁵ He contended that the LSBC governors needed no evidence of Martin's overt participation in a conspiracy against the status quo, the probabilities sufficed.¹⁰⁶ Smith did not find the Benchers' actions contrary to reason, or the public interest.¹⁰⁷ Justice Bird surmised that Governments, public and private organizations, "alive to the danger of Communist infiltration and influence are now alert to the menace, and

are actively moving towards its elimination."¹⁰⁸ Thus, Bird judged the Benchers' decision "right"; their findings disclosed "a lawful and proper exercise of the discretion and public responsibility imposed upon them under the Legal Professions Act."¹⁰⁹

The court's unanimous ruling blocked a hearing in the Supreme Court of Canada without special leave, delay and expense. Burton announced the possibility of the Marxist Pritt taking an appeal to the Judicial Committee of the Privy Council. If the JCPC agreed, this remained an option as the case began prior to Ottawa's 1948 closure of the London appeal path.¹¹⁰ Instead, Martin "quit the fight."¹¹¹ He could not see winning a character evaluation which rested on politics and ideology, and family illness taxed his strained financial and emotional resources.¹¹² His sister surmised that he "didn't figure that he had any support - and he really had no money at all."¹¹³

Did these two years of due process deal Gordon Martin justice? The question remains open to legal, ideological and emotional debate. Martin's life-long friend Elspeth (Munro) Gardner offered the opinion: "I'm satisfied the position was put, but it wasn't being bought by the establishment."¹¹⁴ John Stanton saw no chance for a win without Martin's bending to the rules, or in his words, kissing "a certain number of rear ends, and that was the price." Nothing in Martin allowed that, and "therein lay

his downfall, or his uplift."¹¹⁵ According to daughter Lillian, Martin came away from the process holding no great bitterness towards any individual or group. He believed that "that was the way the system worked, and hated the system."¹¹⁶

"The system" digested the verdict. The Advocate published the remarks for legal readers and publicity coordinator Meredith submitted an appraisal to the Canadian Bar Review.¹¹⁷ Seeking coverage, the LSBC sent copies of the judgment to regional newspapers and Saturday Night. The magazine took stock of "one of the most important judgments by Canadian courts on the subject of Communism." The case proved that no "absolute right" to be called to the Bar existed, and the Benchers need only give applicants a "proper hearing" with testimony "not necessarily to be accepted." The writer extended the principles to admitted Communists seeking work "in a great many other fields beside the law. They seem to us to be reasonable and not unduly restrictive of political freedom."¹¹⁸ "Due process" had been served. Case closed.

Notes to Chapter Four

1. See "due process of law" also called "due process" or "due course of law" in Random House, College Dictionary, 408.
2. JS Interview.
3. TW Interview; JS interview. According to Stanton, Martin felt that he could reason with the Benchers and promote Marxism. Reports of his initial LSBC "interview" do not support this.
4. EG interview.
5. LM interview.
6. LSBC, GM, Letter, LSBC Sec., to Martin, 18 June 1948. The first recorded discussion of Martin is at a Credentials Committee meeting 23 April 1948. No details from this meeting exist.
7. See Legal Professions Act, R.S.B.C. 1936, c.149, s.39, regarding the good repute requirement for call and admission. Admittedly, to say "the Benchers" did this or that as a group is misleading in the sense that individual opinions on specific issues are not taken into account. Records outlining positions taken in internal discussions are not available.
8. "Rules Committee," Advocate 6, pt.3 (May-June 1948): 95. Meredith acted as Chairman of the Committee on the revision of Rules reported as needing an overhaul.
9. "Treasurer's Report," Advocate 6, pt.4 (July-Aug. 1948): 127.
10. Legal Professions Act Amendment Act, 1948, S.B.C. (assented to 28 April, 1948), c.36, s.17. This reads: "They may enrol on the books of the Society as a student-at-law or articled clerk any person, being a British subject, who is of good moral character and who satisfies the Benchers as to his character and apparent fitness for enrolment."
11. LSBC, GM, "Declaration of Principal." Martin concluded his articles in the 27 April to 19 July 1948 period.

12. For a biting review of the amendments and the process of legislative approval, see Tom McEwen, "The Martin case: Thin end of a fascist wedge," Pacific Tribune, 28 Jan. 1949.
13. LSBC, Benchers' Minutes file, (hereafter Minutes), Adjourned meeting, 15 May 1948.
14. Rankin had completed his first year of the UBC Law Program.
15. Harry Rankin, Rankin's Law: Recollections of a Radical, (Vancouver: November House, 1973), 62.
16. "Reports of Committees," Advocate 6, pt.3 (May-June 1948): 94.
17. LSBC, Minutes, Meeting of Credentials Committee, 17 June 1948. Littlewood's request for reconsideration was granted and the matter of his enrolment left for consideration. The contents of the declaration submitted by Littlewood, dated June 1948, are not open. See also LSBC, Minutes, Special Meeting, 23 June 1948.
18. LSBC, GM, Letter, LSBC Sec., to Martin, 14 June 1948.
19. LSBC, GM, Registered letter, Gordon Martin to LSBC Sec., 19 July 1948. In one petition clause the candidate swears to "faithfully and truly submit and conform himself to and obey, observe, perform, fulfil and keep all the rules, resolutions, orders and regulations of the said Society..."
20. LSBC, GM, Letter, LSBC Sec., to Gordon Martin, 21 July 1948.
21. "Benchers' Special meeting," Advocate 6, pt.4 (July-Aug. 1948): 137. Present: Messrs. O'Brian (Treas.), Crease, Tupper, Long, Meredith, Norris, Lett, DesBrisay, Farris, Moresby and Haldane. Selkirk was absent; "Future of Two Law Students," Sun, 30 July 1948; JS interview. Stanton believes Littlewood was "scared to death."
22. "Ignore Query," News-Herald, 31 July 1948. The press reported that the "array of documents" considered by the Benchers "included photostatic copies of Communist publications."
23. Rankin, Radical, 64; Stanton, Never, 15.
24. "'Red' Law Student Okayed," Sun, 31 July 1948.

25. Jack Scott, "Our Town," Sun, 13 Nov. 1948. At least two students signed declarations divorcing the LPP and Communism. Rankin details his pledge in his memoirs. The LSBC files contain the affidavit of another student.
26. "'Repented' Commies Admitted," Sun, 8 Mar. 1950.
27. "Student Okayed," Sun, 31 July 1948.
28. Watts, Society, 38; JS interview. Bray was not affiliated with the LPP.
29. LSBC, GM, Letter, John Stanton to LSBC Sec., 30 July 1948.
30. "Student Okayed," Sun, 31 July 1948.
31. "Students Protest Martin Ban," Province, 25 Nov. 1948.
32. "Ignore Query," News-Herald, 31 July 1948. Mackenzie's politics at that time were not reported, but he was not known to be in the left-wing law circle. He acted as a character witness for Martin, and later became a prominent mainstream participant in the legal order.
33. Several of the first Law graduates were Called on 15 May 1948. Fifty-four students were admitted on 31 July, however not all were UBC graduates, and on 30 Nov. 1948 another twelve applicants entered the Bar. See "Bench and Bar," Advocate 6, pt.3 (May-June 1948): 85, 89; pt.6 (Nov.-Dec. 1948): 208; "Entre Nous," Advocate 6, pt.4 (July-Aug. 1948) :131; "Ignore Query," News-Herald, 31 July 1948; "Red Law Grad Banned," Ubysey, 28 Sept. 1948.
34. "Benchers' Special Meeting," Advocate 6, pt.4 (July-Aug. 1948): 137; LSBC, GM, Letter and enclosures, H.R. Bray to LSBC Sec., 15 and 17 Sept. 1948; LM interview. The letters came from various people, including RCAF colleagues. His daughter Lillian stated that all sorts of people who had known him at one time or another came forward and volunteered to act as character witnesses for him.
35. LSBC, GM, "Memo," 3 Sept. 1948.
36. LSBC, GM, Letter, Sec., Bar of the Province of Quebec to LSBC Sec., 29 Nov. 1948. Accurate dating of specific testimony is blocked by transcript secrecy.
37. J.S. Burton, quoted in "'Repented' Commies," Sun, 8 Mar. 1950.

38. Rankin, Radical, 65-6. Rankin submits that Martin presented the LPP as a party for socialism, democracy through common ownership of the means of production for a government of allied workers and farms, and the abolition of class. He cites Martin as saying that if the Party "should advocate anything subversive he would fight such a policy or leave the party."
39. British Columbia Archives, Dept. of the Attorney General, (hereafter BCARS, AG) GR1723, reel B7446, file L205-4, 95-105. "Reasons of the Benchers for the Refusal of the Application."
40. "Law Society Activities," Advocate 6 pt.6 (Nov.-Dec. 1948): 202; LSBC, Minutes, Meeting of the Benchers, " 25 Sept. 1948." Long appears to be absent. Garland and Selkirk did not participate due to their absence from prior hearings and discussions.
41. "Red Student Asks Reasons," News-Herald, 28 Sept. 1948.
42. LSBC, GM, Letter, H.R. Bray to LSBC Sec., 27 Sept. 1948. The News-Herald made the reference. Bray hoped that his letter would be submitted to the Benchers.
43. LSBC, GM, Letter, Garfield King to O'Brian, 6 Oct. 1948; Letter, O'Brian to King, 12 Oct. 1948; Letter, King to O'Brian, 13 Oct. 1948; Letter, LSBC Sec., to King, 15 Oct. 1948.
44. LSBC, GM, Letter, LSBC Sec., to King, 15 Oct. 1948; LSBC, Minutes, Special meeting of the Benchers, 15 Oct. 1948; "Special Meeting," Advocate 6, pt.6 (Nov.-Dec. 1948): 202. An earlier special meeting of the Benchers was held 5 October to first consider a course of action in response to Martin's request for reasons. See LSBC, Minutes, Special meeting, 5 Oct. 1948.
45. "Minutes of a Special Meeting," Advocate 6, pt.6 (Nov.-Dec. 1948): 202-3; LSBC, Minutes, Special Meeting of the Benchers, 30 Oct. 1948. Selkirk, Long, Moysesby and Garland did not attend, however there is no evidence of any of these men taking a position for Martin.
46. LSBC, Minutes, Adjourned Meeting, 30 Oct. 1948.
47. LSBC, GM, Letter, LSBC Sec. to Sec., Bar of the Province of Quebec, 29 Nov. 1948.
48. NAC, RG146, v.1220, GM, pt.1, 702. RCMP, Special Branch Div. "E," 28 Sept. 1948. Several branches, including Ottawa HQ, followed the progress of the case.

49. Press, interest group, and individual comment and activity related to Gordon Martin is explored with relative thoroughness in the next chapter; LSBC, GM, Letter, member of the Washington State Bar Association to LSBC, 10 Dec. 1948. The letter reported that radio news broadcasts referring to the case either occurred or were picked up on both sides of the border.

50. See Advocate 6, pt.6 (Nov.-Dec. 1948): 209-220; Sun, 12 Nov. 1948, 28.

51. See BCARS, AG, GR1723, f.L205-4,95-105, "Reasons." All excerpts are taken from this source, which corresponds directly to the Advocate version.

52. Ibid.

53. "Martin Replies," News-Herald, 13 Nov. 1948.

54. Gordon Martin, Letter, "Charges Attempt at 'Thought Control'," Sun, 17 Nov. 1948.

55. "Benchers Hit By CCF Over Martin Ruling," Sun, 15 Nov. 1948.

56. "Students Protest," Sun, 26 Nov. 1948.

57. "UBC Protest Petition Torn," Province, 29 Nov. 1948.

58. "The Martin Case," British Columbia Financial Times, 22 (20 Nov. 1948): 6.

59. "B.C. Benchers' Action Seen as 'Intolerable'," Editorial in the Ottawa Journal reprinted in News-Herald, 23 Nov. 1948.

60. Erwin Kreutzweiser, "Should Politics Prevent Admission To The Bar?" Saturday Night 64 no.9 (4 Dec. 1948.): 18.

61. "Red's Loyalty at issue," Sun, 13 Nov. 1948.

62. "Must Not Abuse Privileges of Democracy," Nelson Daily News, 20 Nov. 1948.

63. NAC, RG146, v.1220, GM, Pt.2, 487, RCMP HQ extract from the Pacific Tribune, 14 Jan. 1949.

64. LM interview.

65. See Kaplan, State and Salvation, 60. Kaplan describes Cohen as a friend to the "underdog" and a "small dapper man

with a swift tongue, a large ego, and a harsh, unattractive personality, who wrote masterful legal briefs."

66.NAC, MG30, A94, v.48. File 10, "Gordon Martin," item 1, "Letter from Gordon Martin to J.L. Cohen. Refused admission to bar in B.C. for alleged Communism. Correspondence and Press Statements. 1948." Martin told Cohen of his willingness to work with the CCLU in shaping a protest; JS interview, Stanton indicated that he encouraged the communication and spoke to Cohen on Martin's behalf. Earlier, Stanton and Cohen worked together to win union recognition for the Longshoremen's Union in BC.

67.Kaplan, State, 198.

68."Legal Aid Offered," News-Herald, 2 Dec. 1948.

69.T.G. Norris, "Annual Report," Advocate 6, pt.6 (Nov.- Dec. 1948): 196.

70."City Bar Association Backs Benchers," Province, 2 Dec. 1948.

71."Legal Aid Offered," News-Herald, 2 Dec. 1948.

72."City Bar Association," Province, 2 Dec. 1948.

73."Legal Aid Offered," News-Herald, 2 Dec. 1948; "Benchers Won't Pay Martin Appeal Cost," Sun, 2 Dec. 1948.

74."Annual Report," Advocate 6, pt.6 (Nov.-Dec. 1948): 196; "Ratifies Decision," (CP) Toronto Evening Telegram, 2 Dec. 1948; "Bar Association Backs Martin Ban," Montreal Gazette, 3 Dec. 1948.

75.Letter, Sun, 17 Dec. 1948; "CLU seeks aid for Martin," Pacific Tribune, 17 Dec. 1948; "Martin to Appeal," Province, 11 Dec. 1948.

76."Overhaul Demanded," Victoria Times, 11 Feb. 1949.

77."Martin committee campaigning," Pacific Tribune, 11 Feb. 1949.

78."Martin Seeks Writ To Enter B.C. Bar," Sun, 9 Feb. 1949.

79.The Canadian Law Dictionary, (Toronto: Law and Business Publications (Canada) Inc., 1980), s.v. "mandamus." The definition continues: "The writ of mandamus is a high prerogative writ the purpose of which is to supply defects of justice; and accordingly it will issue, to the end that just may be done, in all cases where there is a specific

legal right and no specific remedy for enforcing such right; and it may issue in cases where, although there is an alternative legal remedy, if such mode of redress is less convenient, beneficial and effectual." R v Cortier, R.M., (1922) 2 W.W.R. 670, 68 D.L.R. 741 (Man.).

80. BCARS, AG, GR1723, f. L205-4, 122-128.

81. The transcripts were destroyed after exceeding their SCBC storage shelf life prior to this study's conception. The articles considered are: "Martin Appeal Opposed," Province, 25 Feb. 1949; "No Judges From 'Tainted Source'," Sun, 25 Feb. 1949; "Lawyers Battle on 'Right to Practise'," Sun 26 Feb. 1949; "Judgment Reserved in Martin Appeal," Province, 26 Feb. 1949; "Ruling Reserved in Martin Appeal," News-Herald, 26 Feb. 1949. These articles are cited just once for the sake of space and redundancy. Some statements are carried unanimously, and in no case do the journalists disagree.

82. Thomas S. Arms, Encyclopedia of the Cold War, (New York: Facts on File, Inc., 1994), s.v. "Josef Mindszenty." The cardinal headed the Roman Catholic Church in Hungary and was "consistently anti-communist." Taking power in 1947, the Hungarian Communists intimidated, arrested and executed opponents. In 1949, Mindszenty received a 1956-repealed sentence of life imprisonment.

83. Re Legal Professions Act, Re Martin, [1949] 1 D.L.R., 105-114.

84. LSBC, GM, "Order In The Supreme Court of British Columbia In The Matter Of the 'Legal Professions Act' and In The Matter of William John Gordon Martin," before The Honourable Mr. Justice Coady, 12 Mar. 1949, 1-2.

85. Elmore Meredith, "Communism and the British Columbia Bar," Canadian Bar Review 28 (1950): 895.

86. Legal Professions Act Amendment Act, 1949, S.B.C. 1949, c.35, ss.2, 3; "Gordon Martin Promised Aid," Province, 22 Mar. 1949.

87. "Gov't Offers Aid," Sun, 22 Mar, 1949; LSBC, GM, Letter, R.H. Tupper to J.S. Burton, 28 Oct. 1949.

88. BCARS, AG, GR1723, f.205-4, 130, 132. Letters from King to Gordon Wismer, 18 Mar. 1949, 23 Mar. 1949.

89. Ibid., file 205-4, 134, Letter, Burton to Wismer, 25 April 1949. This seems a late date to be referring to J.L.Cohen.

90. The case was originally scheduled for the sitting on 17 May 1949 in Vancouver, however the appeal books were not ready. The next dates set were September, January and finally March 1950. See Province, 26 April 1949 and 7 June 1949. Re: finances see BCARS, AG, f.L205-4, 135. Letter, Wismer to Burton, 2 May 1949.

91. "'World' Protests Ban On Martin," News-Herald, 18 May 1949; "International interest aroused," Pacific Tribune, 12 Aug. 1949.

92. LSBC, GM, Letter, M.D., C.M. to LSBC Sec., Oct. 1949; Letter, Nelson lawyer to LSBC Sec., 16 Nov. 1949.

93. NAC, RG146, v.1220, pt.4, 380-1, RCMP Special Branch Div. "E," 10 Nov. 1949. Burton was called to the BC bar in 1927.

94. See "Lawyer Shuns Martin 'Aid' Committee," Sun, 3 Nov. 1949; "Drive To Publicize Martin Bar Appeal," News-Herald, 2 Nov. 1949; LSBC, GM, Letter, AG to a Bencher, 24 Oct. 1949. The letter states that Wismer contacted Burton and the barrister had relayed his intent to see the GM Committee activities cease; LSBC, GM, Letter, a Bencher to Burton, 28 Oct. 1949. One excerpt reads: "It is clear that the Law Society itself, through the Benchers, instigated the necessary amendments to the Legal Professions Act in order that Mr. Martin could appeal and at the same the Government indicated that it would pay Mr. Martin's legal fees in connection with the appeal. The Benchers accept your assurance that you had no knowledge of the letter in question prior to circulation. However, as you are Counsel for Mr. Martin and this misleading letter has been circulated, they suggest that a public statement should be made by yourself confirming the facts set out in the preceding paragraph."

95. NAC, RG146, v.1220, pt.4, 380-1, RCMP Special Branch Div. "E," 10 Nov. 1949.

96. Watts, Society, 122. Alfred Bull, K.C. was a bencher from 1929-1933; LSBC, GM, Letter, Bull to LSBC Sec., 23 May 1950. See also Bull in Tunnell, Who's Who 1948, 125.

97. Materials related to the appeal were destroyed prior to the conception of this study as per correspondence with David O'Brien of the British Columbia Court of Appeal, 11 July 1995.

98. The press articles, cited once here, are: Ted Schrader, "New Arguments Drag Out Appeal," News-Herald, 9 Mar. 1950; "'Repented' Commies Admitted to Bar," Sun, 8 Mar. 1950;

"Martin Appeal Ends," Province, 9 Mar. 1950; "Martin Case Decision Reserved," Sun, 9 Mar. 1950. See Martin v. Law Society of British Columbia [1950] 3 D.L.R., 173-199, for judicial comment.

99.LSBC, Minutes, meeting prior to May 1st 1950, exact date unavailable, item (e), Mr. W.J.G. Martin.

100.Martin v. Law Society [1950], 3 D.L.R. at 175.

101.Ibid., at 176.

102.Ibid., at 186-188, 190.

103.Ibid., at 190.

104.Ibid., at 192.

105.Ibid., at 194.

106.Ibid., at 195.

107.Ibid., at 196.

108.Ibid., at 199.

109.Ibid.

110."Martin Case May Go to London," Sun, 27 April 1950.

111."Martin Ready To Quit Fight," Sun, 28 April 1950.

112.LM interview.

113.TW interview.

114.EG interview.

115.JS interview.

116.LM interview.

117.LSBC, Minutes, meeting prior to 1 May 1950, item (e); See also NAC, RG146, v.1220, GM, Pt.4, 331, RCMP HQ, Memo of 18 May 1950, to Insps. Parsons, Leopold, MacNeil, Guernsy. A copy of the judgment of the Court of Appeal was circulated among the Ottawa inspectors as a matter of interest.

118."The Bar and Communists," Saturday Night 65 no.36 (June 1950): 6.

CHAPTER FIVE - THE CONTEXT FOR REPRESSION

The Martin affair invites analysis. In this chapter it is evaluated as a case of state-sanctioned political repression in the Cold War context. Although the case set a unique domestic precedent, its components are less singular. Other Canadians perceived as subversive or troublesome lost their jobs and liberties by political means in this period. Some historians equate this, and the LSBC action, with McCarthyism. This raises the question: To what degree did BC's legal order take its cue from the Americans? There is evidence of mutual cross-border borrowings, influences and fears. The case and the conservative Cold War ideology must, however, be positioned within BC's historically volatile socio-political milieu. Conservative forces ran an ongoing campaign against labour radicalism, socialism and social criticism. The Cold War provided defenders of the establishment with a pillar by which to elevate their ideological validity and affirm their postwar agenda. The legal elite's treatment of Martin complemented the larger strategy.

In his work on left-wing dissent and the state, political scientist Reg Whitaker offers definitions of analytically distinct, but related methods of repression which apply to the Martin case. State repression involves coercive controls applied through official apparatus;

political repression marks intimidation "outside the state system proper, but originating in the wider political system (parties, interest groups, private associations)."¹ Martin suffered state-supported political repression in the private, professional sector.² The Benchers initiated his political rejection as governors of a private association, but one fused with the state. Wismer's actions as AG (and ex-officio Bencher), and the "objective" judiciary's full support for the Bencher reasoning amounted to a state endorsement of political repression.

Human rights scholar Irwin Cotler offers Martin's case as a model example of state-supported or state-inspired restrictions on freedom of association. In this model, the state curbs freedom by denying a government benefit to members of a "troublesome" association, or it makes opportunities depend on oaths of disaffiliation.³ Cotler credits Martin's loss of freedoms to the LSBC, downplaying the state's contribution to his predicament. For example, Wismer presumably knew of the "matters pending" when he took the Legal Professions Act amendments strengthening the Bencher powers to a receptive legislature in April 1948.⁴ The AG and Coalition government majority upheld the LSBC course by refusing to review or alter the LPA in the applicant's favour, appeal clause notwithstanding. It is also plausible to assume that either the AG's office, RCMP or Provincial Police equipped the Benchers with Communist

publications and reinforced to the governors that "Martin was at one time closely associated with one Evans."⁵

Cotler offers other models of the state-supported negation of associational freedoms, and at least one should be applied to Martin. This is: when an association remains lawful, but the government interferes with its internal structure or "an activity integral to the association in the sense that the association's protected purposes would be seriously prejudiced if the activity were disallowed."⁶ Legal direction is vital to an association's well-being, thus the LPP had hoped for the entry of Martin and the other "radicals" into the thin ranks of left-wing lawyers. Martin's exclusion and the implications of the LSBC precedent impaired LPP members' and left-wing unionists' access to effective, sympathetic counsel. Martin's loss also led to the closure of Stanton & Munro's Nanaimo office, which cost Vancouver Island workers convenient legal counselling.⁷

How unique, in domestic Cold War terms, was this case? The successful LSBC pressure exerted on Littlewood, Rankin, Dean and Shulman must be taken into account for a total of five politically-repressed BC law aspirants. The exclusion of non-conformist Gordon Martin set an example for both students and BC lawyers. One implication of the case was the weakening of the already tenuous position of leftist lawyers who found themselves under intense scrutiny.

Attention from the LSBC and AG moved J.S. Burton to guard his future by publicly distancing himself from the far left.⁸ Stanton remembered it as "a dicey period to live through."⁹ LSBC counsel Alfred Bull dragged the left-wing lawyer into the court arguments with the statement that "the benchers had 'inferred'" that Stanton was an LPP member, "perhaps even a Communist."¹⁰ The persecution of these men evidently stopped at innuendoes, but the tensions these produced must be seen in light of extremist calls in the Legislature to "purge the ranks of the entire legal profession of anyone with Communist ideas."¹¹

The larger effect of the precedent on Canadian law students and lawyers is unknown except for the swift attention it received from the Quebec Bar. In November 1948, a member of that body sought an LSBC resume of the case as "the same question will be presented to our Law Society in a very near future."¹² The LSBC confidentially replied, supplying documents and guarantees of further assistance if required.¹³ The correspondent welcomed this "very helpful" material.¹⁴ This reference occurred in mid-December, and no mention of a Martin-styled Quebec case is evident in published sources. Clearly, however, a law student or practitioner in that province faced a possible verdict of unacceptability from decision-makers guided by the BC precedent.

When the frame of reference is expanded to occupations

outside of law, Martin's is a less isolated episode of political repression in the early Cold War. The medical order, comparable to the legal guild in many organizational respects, reveals no clear counterpart.¹⁵ However, Len Scher's collected memories from blacklisted "un-Canadians" included testimony from people connected to the National Film Board, Toronto Symphony Orchestra, universities, the arts, civil service and journalism.¹⁶ Ivan Avakumovic makes a generic reference to the repressive and sometimes job-costing scrutiny of public school teachers holding Communist cards or views in this period.¹⁷ Reg Whitaker and Gary Marcuse add to the lists of establishment-critical Canadians in various professional and career quarters facing overt, and more often covert persecution in Cold War Canada.¹⁸

Specific to BC, Martin's rejection coincided with the dismissal of an instructor/performer from the BC Institute of Music and Drama. Actor/singer John Goss had been caught in a police raid at the 1949 Cultural and Scientific Conference for World Peace in New York. Under the provisions of the McCarran Act, Goss had the choice of a fast exit from the U.S. or deportation.¹⁹ The incident caught the attention of a hostile Vancouver press, and cost him a job.²⁰ Bencher and Board of Trade chairman Norris linked Goss with Martin as would-be "martyrs."²¹ The timing of these events paralleled the well-documented power

struggles in organized labour at the local, national and international levels, which seriously undermined the CPC's union presence and strength.²² In 1950, Prime Minister Louis St.Laurent openly lauded the "good judgment, patriotism and Christian tradition of the labouring people" which guided them to autonomously expel Communists from their unions. The state sanctioned a political repression which precluded the need for legislative steps to the same end.²³

Of the documented Cold War tests of private powers versus individual liberties, the 1949 dismissal of George Hunter from the University of Alberta stands out for its similarities to Martin's situation.²⁴ Although their backgrounds and positions differed and Hunter's case involved questions of academic freedom, both men held the RCMP's interest due to their involvement with Communist-approved causes.²⁵ A family member depicted Hunter as principled, idealistic, impractical, opinionated and 'not loath to make his views known', traits shared by Martin.²⁶ As the head of the Biochemistry Department, Hunter met his profession's academic standards, but this mattered little to the Board of Governors and government-appointed University president.

Hunter's Soviet sympathies were not the lone "problem." His criticism of the U of A administration antagonized the autocratic governors, who held no more

tolerance than the BC Benchers for anyone showing "disrespect for constituted authority."²⁷ In the conferral of discretionary powers the University Act mirrored the LPA by allowing the Board to oust faculty, holding posts at the Board's pleasure, without any "legal obligation to give a reason for the dismissal."²⁸ Hunter had little opportunity to answer to the charges against him, and neither the public nor the courts heard the full circumstances of his case. Historian Michiel Horn deemed the political firing a "travesty of due process" and a blow to academic freedom.²⁹ Hunter and Martin both register as examples of the political repression of professionals by state-sanctioned private tribunals.

How accurate was Martin's defence that no comparable case occurred in any other British country?³⁰ In absolute terms, the LSBC action appears unique. A comparative study of British Commonwealth countries is needed even though political, cultural and legislative variables would frustrate a sound conclusion. For example, the respect given Marxist jurist and politician D.N. Pritt by Britain's legal community may not have been extended to obscure newcomers.³¹ How did Marxist lawyers fare in the failed 1950 drive by the Australian government to ban the Communist Party, or in South Africa, which did outlaw communism?³² Can or should the LSBC action be compared to the status of dissident lawyers in India, where the state

crushed an uprising and the strength of the Communist Party of India in 1948?³³ Or Malaysia, where a Communist revolt resurrected the death penalty?³⁴

Every state and political organization attempts to repress, by varied means, internal, and if it has the power and desire, external elements considered threatening. Working from this premise, questions of uniqueness or who is the most or least repressive become speculative - the stuff of endless revisionist rounds of value judgments. Canadian Cold War historians routinely debate whether Canada's treatment of Communists was less, more, or as repressive as the American state's, our main external influence.³⁵ The intent of this next section is to bypass that debate in favour of exploring the evidence of Martin-related procedural and intellectual exchanges between North Americans.

Michiel Horn stressed that Hunter's dismissal "was not part of any 'McCarthyite' witch hunt," whereas other analysts of Martin's case take a reverse position.³⁶ Harry Rankin concluded that "this was the era of McCarthyism in the United States and this [Martin] was simply a tragic display of its irrationality here in Canada."³⁷ Whitaker and Marcuse viewed the LSBC action as "one of the worst examples of McCarthyite victimization to occur anywhere in Canada."³⁸ "McCarthyism" is a term better suited to its country of origin, however, aspects of the LSBC's handling

of Martin do correlate to the unfolding of the American war on domestic radicals.

"Rhetoric" is defined as persuasive forms of discourse which give "public meaning to events, people, and policies as a basis for belief or action."³⁹ BC's legal elite regurgitated American rhetoric to raise a Cold War consciousness in law circles, and to justify and give public meaning to anti-Martin actions. They used RCMP warnings, British sources, and select phrases from Lenin, Marx and Engels to mark the Soviet course as violent and lawless, but the American discourse received more thorough attention.⁴⁰ Samples include a 1947 Advocate cover and feature dedicated to the U.S. Supreme Court Chief Justice's views on the dangers to "our civilization."⁴¹ The journal editors bordered the account of Martin's rejection with anti-Communist statements by the American Bar Association (ABA).⁴² The Benchers went to some lengths to access excerpts from Eleanor Roosevelt's speeches, and on the bench, Justice Robertson cited bombast circulated by HUAC (the House Un-American Activities Committee).⁴³

Plausible reasons for the rhetorical attraction include sensationalism and familiarity. American Cold Warriors made strong, emotional statements without the baggage of Canadian political party affiliation.⁴⁴ Canadian opinions on the crusade to the south divided, but U.S. rhetoric entered our consciousness in force. A major

point is the legal elite's identification with the ABA. A speech by Canadian Bar Association leader A.N. Carter at a 1950 CBA-ABA joint meeting in Washington reflected this bond. Touting a 1913 ABA meeting in Montreal as the stimulus for the resurrection of an ailing CBA, Carter effused that "the friendship of the two Associations had flowed in an unruffled stream since that time."⁴⁵ The stream's depth is uncharted, but Canadians sought coordinated CBA-ABA meetings with the aim of enhancing ties between the two folds of jurists.⁴⁶ American respect mattered to Canadians seeking judicial autonomy from Britain and a self-determined legal system incorporating elements from both the British and American models.⁴⁷

LSBC leaders supported the CBA aims and, presumably to boost provincial status on the national stage, the 1945 executive set a precedent by making CBA membership a must for BC lawyers.⁴⁸ BC produced CBA leaders, including Senator Farris (1937-8).⁴⁹ An alumnus of the University of Pennsylvania, he represented the CBA at a 1935 ABA convention and became an honorary member of that organization.⁵⁰ His personal accomplishments illustrate some educational and organizational channels nurturing ideological accord between the legal communities. In 1950, the CBA and ABA chiefs showed their accord on the Soviet threat to freedom and individualism.⁵¹ Further mutual cross-border exchanges of influence are apparent in Martin-

related developments.

For its spring 1948 meeting, the CBA's BC section lined up guest speakers Dean Falknor of the University of Washington Law Faculty and Seattle's Frank Holman, ABA President-elect.⁵² This choice is interesting given Jane Sanders' history of Cold War events at the University of Washington (U of W).⁵³ In its fight against "Un-American Activities," the Republican-heavy Washington state legislature launched an investigative Committee under Albert Canwell in 1947.⁵⁴ Suspected "red" professors first appeared before the Committee early in 1948.⁵⁵ U of W Law School alumni A.R.Hilen and Tracy Griffin helped prepare the briefs which led to formal charges against six faculty members in September 1948.⁵⁶ This resulted in the first Cold War-related dismissals of tenured professors on a U.S. campus.⁵⁷

In July 1948, after the initial U of W action, George Cameron of the BC Progressive Conservative Association called for a similar 'housecleaning' at UBC, claiming that a former RAF secret service operator knew of twenty 'pinks' on faculty. "The 'red' probe was 'entirely an American proposition', countered Dean F.M.Clement, who denied the presence of Communists on staff.⁵⁸ The UBC administration took no action but undoubtedly felt pressured to manage campus radicalism with care. Perhaps by chance, the Benchers formulated their plans to deal with Martin and

Littlewood during the period of the U of W hearings.

Montreal Gazette editors made connections. In their view, the Benchers' refusal to accept a Communist's oath of allegiance mirrored the Seattle case of faculty dismissed because "they cannot perform the ordinary duties of professors without ulterior motives and aims."⁵⁹ In both cases, the Gazette noted, "it was held that there is no such thing as a passive Communist." The inter-case links are tenuous, but one member of the U of W legal team showed firm interest in a news broadcast on Martin. Writing for the Washington State Bar Association in December 1948, the attorney requested the LSBC "data" used to block admission as "our Bar should be greatly interested."⁶⁰

Another relevant development came out of the ABA's annual meeting, held in Seattle in the fall of 1948. BC Bar members deemed this a significant matter and planned special hospitality for the American "brethren" on a scheduled visit to Vancouver Island.⁶¹ A new ABA resolution coincided temporally with the Benchers' decisive rejection of Martin's application. The Advocate prominently displayed the declaration:

any lawyer who publicly or secretly aids, supports or assists the World Communist Movement to accomplish its objectives in the United States, by participating in its program, whether he be an avowed party member or not, is unworthy of his office and should not be permitted to become or remain a member of the American Bar Association." Seattle, September 1948.⁶²

This pronouncement fit into a larger ABA-FBI-HUAC campaign against the membership of the National Lawyers Guild (NLG).⁶³ Formed in 1937 and inspired by the New Deal and Popular Front, the NLG ideology blended "humanism, Marxism, populism, and the democratic tradition"; the founders put human rights above property rights.⁶⁴ Members also doggedly fought for FBI budget cuts, to have J. Edgar Hoover fired, and to expose FBI agents' "extraconstitutional exploits."⁶⁵ After 1940, the Attorney General, FBI and HUAC labelled the NLG a subversive Communist front, which frustrated but did not defeat the Guild.⁶⁶ As earlier noted, the NLG sent an observer to Martin's Appeal Court hearing, marking Guild concerns about the outcome.⁶⁷ Censure of the LSBC by the allegedly Communist-dominated International Association of Democratic Lawyers and the Haldane Society indicated wider perceptions of the import of the case.⁶⁸

To pursue the American record, the FBI applied new pressure on the NLG in the early 1950s, working with an ABA Special Committee to Study Communist Tactics, Strategy, and Objectives. Using HUAC lists, the ABA launched disbarment proceedings against attorneys taking the Fifth Amendment before committees.⁶⁹ In historian Kenneth O'Reilly's view, the FBI saw the NLG's danger in its challenge to Cold War values and the Bureau's ability to act "without fear of restraint."⁷⁰ HUAC condemned NLG members' aid to people

facing political trials. The ABA wanted to weed out radicals, discipline the profession and "silence critics of Cold War politics and priorities."⁷¹ In Canada, left-wing lawyers did not organize and neither the CBA nor the LSBC attempted a full-scale purge of internal "reds" or "pinks."⁷² The Martin case did, however, allow the LSBC and other conservative jurists to share the ABA's clarity in expressing its position on Communists in the legal profession. The organizers of the LSBC's 1950 general meeting also tried (unsuccessfully) to get J. Edgar Hoover as keynote speaker.⁷³

The legal orders of BC and California shared a further awareness of mutual purpose and processes. Pondering the "controversy among members of the profession regarding the procedure which should be followed" in cases such as Martin's, a Vancouver barrister conveyed California Senate Bill no. 298 to the Benchers in June 1949.⁷⁴ The LSBC governors noted the State Bar's demand for sworn affidavits from its members testifying to their loyalty and non-association with the Communist Party or any "subversive and un-American" group. California attorneys failing to deliver affidavits faced suspension, would-be practitioners would not be admitted, and the bill made it a felony to file affidavits "known" to be "untrue."⁷⁵

The Benchers were already acquainted with affidavits. The amendment process for the California bill began in May

1949, the same month that at least one of Martin's student peers signed the following LSBC-prepared statement:

I,, do solemnly swear that I am no longer a Communist nor a member of any association holding Communist views, that if called to the Bar I can take the Barristers Oath without reservations of any kind and that I have no intention of joining any Communist Association in the future.

May 27th (1949), [Signature]⁷⁶

Harry Rankin took that pledge one year later, with the addition: "That I do not and will not advocate nor am I a member of any organization that advocates the overthrow of democratic government by force or violence or other unconstitutional means."⁷⁷ Norm Littlewood, Harold Dean and Ike Shulman each had a turn at proving themselves "fit and proper persons."⁷⁸ In 1951, after dealing with these students, the LSBC Credentials Committee further determined that every candidate for Call and Admission should be interviewed by an appropriate member.⁷⁹ The tone of these interviews is yet to be researched, but universal screening paralleled the California process. This is not to imply that the LSBC did not look to other models of screening, oaths and exclusionary processes established by the Canadian and American governments and other organizations.⁸⁰ In this study, however, the search is for parallels within legal circles. In turn, the Californian Bar sought six copies of the Appeal Court judgments on Martin during the 1951 prelude to HUAC's hearings on the

"Communist infiltration of the legal profession" in that state.⁸¹

Documents do not explicitly reveal direct ties between the actions of the LSBC governors and the executives of the ABA, Washington and California State Bars, but mutual understanding and a dialogue on approaches is apparent. These cross-border exchanges raise questions for future study. Did the LSBC precedent of excluding Martin as an "unfit" candidate for the legal profession have a practical effect on the strategies of other North American professional organizations to still radical elements? How did the Benchers' and judges' promotion of the idea of subversion without an overt act, or the inability of Communists to scrupulously take loyalty oaths come into direct play in other contexts?

While important, American influences, in isolation, do not explain the BC decision-makers' rejection of Gordon Martin. In part, their actions stemmed from the intellectual debris of World War II which fuelled the Cold War: anxiety about Stalin's ambitions, distrust of appeasement strategies, and a dread of American isolationism.⁸² Most of the Benchers served in at least one world war, an experience which would shape their stance on the prospect of increased Soviet aggression and influence in the postwar world order. The Berlin blockade,

the Soviet seizure of Czechoslovakia, the polarization of East and West implicit to the Marshall Plan/Cominform divide and the formulation of NATO all contributed to a global mood of suspicion and crisis. Stalin and his state's subordination of law, jurists and courts could only augment the belief of some members of the legal elite that Communism was the evil foil to Western democracy - the "other."

On the domestic front, suspicions and animosity fed on what, in hindsight, is known to be excessive speculation about the number and strategic strength of Canadian Communists. Defector Igor Gouzenko's mix of hard evidence and rumours regarding Canada's spy ring nurtured paranoia after 1945. Whitaker and Marcuse deemed the resulting 1946 espionage report by the Taschereau-Kellock Commission a "virtual spy novel" in which countless Kremlin-allied Canadians engaged in a clandestine conspiracy.⁸³ "Novel" or not, few Canadians questioned this authoritative report. Furthermore, Supreme Court justices Roy Kellock and Robert Taschereau emerged as Cold Warrior role models for interested conservative jurists.

Hinds and Windt defined the Cold War as an ideology and a moral imperative fed by hatred and suspicion; a war of rhetoric and imagination which saw fear "realize itself."⁸⁴ Without a psychobiographical study of the men in the legal elite connected to Martin's case, their

individual perceptions of the threats of Communism are beyond reach. However, an element of genuine fear is evident in Norris' publicized warning that "communist activity in Canada penetrates into every sphere of life."⁸⁵ Presumably Chief Justice Wendell Farris sincerely believed that in light of the Korean War the future seemed "horrifying," his words to the 1951 BC Bar convention.⁸⁶ AG Wismer's appeal to the Bar to show those behind Iron "and bamboo curtains" that only democracy and law upheld individual rights transcended pure politicking.⁸⁷

From a Cold War perspective, even a small group of Marxist law students, the first to proclaim their politics prior to Call and Admission, could appear sinister to members of the legal order.⁸⁸ John Stanton assigned fear to the older lawyers; others endorsed anti-communism for professional reasons.⁸⁹ Elspeth Gardner believes that the number of left-thinking people at the LSBC gates shook decision-makers.⁹⁰ With law at the base of the structure upon which their world turned, the spectre of internal elements promoting alternative plans for society prompted the LSBC guardians to "pull up the drawbridge" to keep these people or their ideas out.⁹¹ This observation ties into John Porter's analysis of the value system of Canadian elites. He put the "upholding of legal norms" at the centre, norms cemented by capitalism (most important), Christianity and nationalism, the key sources of western

ideology and power-building.⁹² Lawyers trying to rework legal standards around conflicting values would be an obvious anathema to the elites.

In this larger context, then, Gordon Martin's LSBC exclusion stemmed from the conservative establishment's fear and contempt for what he represented as a vocal political and labour activist with a trained legal mind. These sentiments pre-dated the Cold War. Greg Kealey, Lita-Rose Betcherman, Reg Whitaker, Larry Hannant and other left-sympathetic scholars established the historic enmity of conventional elites for Canadian reds and radicals.⁹³ Fear and contempt for activism induced the use of force to crush strikes and protests. It produced such legislation as the Criminal Code's section 98 and Quebec's Padlock Act.⁹⁴ It fuelled the Canadian state's launching of an intense security screening system to test the loyalties of its citizens.⁹⁵

Animosity flourished in primary resource-driven BC where economic, social and ideological dynamics polarized capitalists and workers. BC offered employment in forestry, mining, maritime and other industries - work under harsh conditions. Immigrants arriving late in the nineteenth century brought dreams and often experience with varied strains of socialism, from mild reformism to Marxism to revolutionary syndicalism. They struggled against an oppressive capitalist "boom" mentality, and many workers

became exceptionally militant by domestic standards.⁹⁶ To quote A. Ross McCormack, "Canadian socialism came of age" in BC.⁹⁷ In the 1930s and early 1940s the Communists established a potent presence on the labour front. CPC and labour studies demonstrate that they knew how to organize workers and won some substantial results.⁹⁸ The Mine Mill campaign, involving Evans and Martin, is but one example.

From the start, BC's powerful capitalists and leaders of state collectively fought to protect their common interests. They worked to check, and if feasible, crush any union tendencies threatening production, returns, new investment or war efforts. Paul Phillips' history of the provincial labour movement is rich with accounts of militia call-outs, company thugs, unjust trials and other tactics used by business, law-makers and law-keepers against demanding workers.⁹⁹ Phillips contends that prior to World War II, when the federal government intervened in BC's labour jurisdiction, workers faced a legal environment inimical to legislative gains for labour. Police action during strikes subverted the laws in place.¹⁰⁰ Wismer, Sloan, Farris and Bird participated directly in the labour-capital relations of the period, and none gained repute as the workers' champion.¹⁰¹

It is evident in the years leading up to the Martin affair that the establishment's response to challengers did not defeat them. The 1930s ended with BC's major industries

organized and the unemployed moving to collective action.¹⁰² The demands of war gave the unions, many CPC-influenced or led, unprecedented strength. Furthermore, social critics battered the conservative values of respect for established authority and processes. Depression hard times left many thousands of migrant and native unemployed in BC communities and camps that could not, or did not meet their needs.¹⁰³ Simon Tolmie's Conservative cold comfort and Duff Pattullo's Liberal intentions did not produce the results needed to hold the public's respect. A Vancouver mayor's reading of the Riot Act to demonstrators and police violence against relief workers fostered widespread empathy for the activists at the state's expense.¹⁰⁴ Wartime patriotism, full employment and Ottawa's assumption of emergency powers gave provincial and municipal leaders a reprieve, not a pardon. The respite ended in 1943, in Martin Robin's view, when the mood of selflessness gave way to anticipation of postwar paybacks for wartime sacrifices.¹⁰⁵

On the political front, parties formed and reformed around ideological discontent. Voters continued to reject the CPC but after 1932 the Co-operative Commonwealth Federation (CCF) vexed mainstream provincial politicians. In BC, the new party packed a double punch. Not only did workers and an exponentially growing number of social democrats vote CCF, but hard-line Marxists such as

Socialist Party-rooted Ernest Winch and his son Harold became a force in the provincial organization from the start.¹⁰⁶ Although internal moderate-militant schisms seriously divided the CCF, the 1933 membership coalesced around a platform which espoused, among other things, the end of the existing capitalist system, the socialization of resource, finance and health industries, and tax revisions. This blueprint fed, in Robin's satirical words, the fearful belief of the "possessing classes, their press and parties, that a hideous radical monster had crawled into the light of day."¹⁰⁷

The CCF stayed in the light of day to form BC's socialist voice of opposition and potentially, the old parties feared, the government.¹⁰⁸ A solid CCF provincial showing in 1933 and British Columbians' granting of the greater share of the popular vote to the federal CCF in 1935 caused Liberal and Conservative caucuses to predict the worst.¹⁰⁹ They countered with a decades-long campaign of red-baiting and smearing engaged in by prominent politicians, including the Farris brothers, Wismer and Norris. Each had a turn at the fore of the public crusade to associate the CCF with the CPC, Moscow and totalitarianism.¹¹⁰ This did not stop the socialists, under Harold Winch, from becoming the official opposition to a minority Liberal government in 1941. The CCF made especially notable gains in the Vancouver, and Wismer was

among the prominent Liberals who lost their seats.¹¹¹ The election and the war wrought change.¹¹² LSBC/Tory luminary R.L. Maitland's push for nonpartisan government forged a Liberal-Conservative alliance, Winch declining a merger.¹¹³ By the end of the war, coalition, a reportedly ethical effort at the start, became a strategy to thwart a BC repeat of the CCF's 1944 Saskatchewan success story.¹¹⁴

Reg Whitaker and Gary Marcuse submit that in the postwar period, Canadians reached a "conservative consensus" through relative prosperity under capitalism, the state-led Cold War-justified repression of the left, public deference to state authority and citizens' desire for overall security.¹¹⁵ The argument for a consensual outcome in BC is open to attack, but "conservative consensus" was the right-wing postwar agenda; an ambition to put down challenges to establishment-favoured economic, political and social practices. Traditional power-brokers recognized the need to come out with a strong postwar campaign to maintain their dominance, to remain ideologically relevant within a changed and demanding society, and to rejuvenate their doctrine. They came out against the postwar opposition in full force.

Premier John Hart introduced a formula for victory in the 1945 provincial election. Grits and Tories would not oppose each other in Coalition ridings, and a joint

committee would choose strong candidates to challenge the electoral strongholds of other parties.¹¹⁶ Coalition's promises of legislative reforms for workers and veterans also weakened the CCF platform.¹¹⁷ By 1948-49, conservatives had shaped and embraced the Cold War ideology and red-baiting reached a new high. This fed the rancour between the left-coalition-seeking LPP and the unwilling CCF, hurting both parties.¹¹⁸ Coalition's hard sell of a pink scare to BC voters and the Cold War dialogue of fear also left the CCF little choice but to dilute its social agenda and sell the residue gently.¹¹⁹

The legal establishment acted against Gordon Martin to make a statement in the context of the larger conservative political campaign against radicalism. In narrow terms, the LSBC governors confirmed their control over the membership's ideological makeup. The case set the standard for the profession's postwar values and sent law students and lawyers this message: Communists, militant Marxists and vocal critics will be questioned, pressured, processed and if required, cut from the fold. The Benchers had the power to do so and proved that they could use it with the sanction of the state and the courts. As a political statement, the rejection of Martin was a direct shot at the LPP. However, by publicizing him as a "Marxian-Socialist," and equating that label with "subversion," the Benchers indirectly smeared the vocal Marxian-Socialist wing of BC's

CCF membership as subversive.

Overall, the conservative forces scored several victories in the early Cold War period. Although never a power in the legislature, by 1949 the LPP was ravaged to the point of non-existence. This was largely due to the success of the Cold War ideology, elevated by international incidents such as the Soviet takeover of Czechoslovakia, and the labour wars. Communists were reduced to a very minor role in the unions by the mid-1950s.¹²⁰ The red/pink scare contributed to the provincial CCF's loss of three seats in 1949 and over half of its 1945 membership by 1950.¹²¹ Even cumulatively, however, these tactics and developments did not mean the unqualified achievement of the establishment goal of a conservative consensus.

In spite of labour's schisms and opponents, by the 1950s BC ranked as Canada's most "highly-unionized" province.¹²² Although the CCF lost seats in 1949, it took 35.1 per cent of the popular vote and in 1952, gained the largest provincial voting share to remain the socialist opposition.¹²³ In that contest a Liberal-Conservative transferrable ballot scheme designed to block the CCF reaped the old-line parties a swift, long-term descent from power.¹²⁴ True, the socialists were kept from office when the Lieutenant Governor, with reservations, called upon Social Credit to form a government.¹²⁵ The results of this choice, however, upset the agenda of the traditional

power-wielders. The conservatism of the new small business party deviated from the norm, and proved anything but predictable. Gordon Martin's exclusion also counted as a qualified win for the conservative legal establishment. The victory came with costs engendered by Canadians' postwar attention to private powers and individual liberties.

Notes to Chapter Five

1. Whitaker, "Dissent," 196. He includes coercive measures applied through the official mechanism under the state heading, while intimidation by interest groups, political parties and private associations constitute political repression.

2. I apply the term "repression" to Martin's case in the following sense: The Benchers controlled and checked his access to the Bar and thus, his ability to function as a left-wing lawyer. They gave him a repressive "choice": to renounce his politics and ideology, which would at least outwardly reduce him to a mental subjection to the Benchers, or if he held to his beliefs, to be excluded from membership in, and the rights and privileges of, the profession.

3. Cotler, "Freedom of Assembly," 175, 179. The specific wording is: "government makes non-membership in disfavoured associations a condition of various opportunities, or conditions such opportunities on oaths of disaffiliation with such associations."

4. "Rules Committee," Advocate 6, pt.3 (May-June 1948): 95.

5. See "Reasons," Advocate 6, pt.6 (Nov.-Dec. 1948): 211-3. The publications quoted are the Pacific Tribune and Canadian Tribune. This is not to imply that the LSBC did not tap internal channels of information. For example, see LSBC, GM, Personal and confidential Letter from LSBC member to a Nanaimo barrister, 28 Feb. 1950. One excerpt (name deleted by agreement) reads, "X mentioned to me that you might have some further information concerning Mr. Gordon Martin's activities in Nanaimo. I wonder if you could let me know by the end of the week as his hearing will come. . . ." Information and publications, may have also changed hands in casual corporate boardroom settings.

6. *Ibid.*, 169.

7. EG Interview. Gordon Martin and Harold Dean, who was one year behind Martin at UBC, were slated to take positions in the Nanaimo branch of the Stanton and Munro firm, headed by Elspeth Munro. In July, 1948, serious illness kept Munro out of the office for several months, and with Martin barred from practice and Dean not yet qualified, the branch had to be closed, and did not reopen.

8. See the next chapter for more detail on the internal pressures on Burton, but note this excerpt from NAC, RG146, v.1220, GM, pt.4, 380-1, RCMP, Special Branch, Div."E," Vancouver, Report from 10 Nov. 1949. "Opinion formulated in law circles in Vancouver are inclined to suggest that Mr. Burton is being retained by the L.P.P. and handling their business to such an extent as to cast a reflection upon his political views. It would appear that the article appearing in the "Vancouver Sun" above referred to was so placed by Mr. Burton for the specific purpose of allaying any suggestion or suspicion that he may be entertaining Communistic views."

9. JS interview. He remembered a constant anxiety about the possibility of RCMP visits or citations from the LSBC.

10. Bill Ryan, "Martin Case Decision Reserved," Sun, 9 Mar. 1950.

11. "MLA States He Favors Purging Of Reds in B.C. Law Society," Sun, 15 Feb. 1949. The MLA was A. Reg MacDougall, Point Grey Conservative Coalitionist, and presumably the A.R. MacDougall K.C., former Dean of the Vancouver Law School as mentioned in Watts, Society, 38. This was not an isolated incident.

12. LSBC, GM, Letter, Sec.-Treas., Bar of the Province of Quebec, to Sec., LSBC, 26 Nov. 1948.

13. LSBC, GM, Letter, Sec., LSBC to Sec., Bar of the Province of Quebec, 29 Nov. 1948.

14. LSBC, GM, Letter, Sec., Bar of the Province of Quebec to Sec., LSBC, 15 Dec. 1948.

15. For the history on the development of the medical profession in Canada, see Naylor, Private Practice. The lack of a documented case involving a Marxist doctor may indicate the need for more research, a scarcity of records, a lack of Marxist doctors or less professional relevance attached to doctors' politics.

16. See Scher, The Un-Canadians. The book relays a series of interviews with Canadians who believe that they were persecuted in the Cold War era, or who made observations on the persecution of others.

17. Avakumovic, Communist Party, 206.

18. See Whitaker and Marcuse, Cold War Canada.

19. See Reg Whitaker, Double Standard: The Secret History of Canadian Immigration (Toronto: Lester & Orpen Dennys Ltd., 1987), 21, 153. The McCarran Internal Security Act of 1950 allowed the exclusion of Communists from the United States. Two other Canadians were caught in the 1949 sweep: Barker Fairley of the University of Toronto (scholar, painter, writer) and his wife Margaret Fairley, a left-wing writer.

20. Roberta Bird and Lena Wilson, "Art For The People" (BC), Bulletin, (National Federation of Labour Youth, March 1950).

21. "Network May Unite Reserve Army Units," Province, 4 April 1949.

22. For a good account in terms of events in British Columbia, see Phillips, Power, especially 141-351.

23. Canada, House of Commons, Debates, 2 May 1950, 2087.

24. Horn, "Academic Freedom," 415-438.

25. Horn's research indicates that Hunter was not a CPC/LPP member.

26. Ibid., 423.

27. Ibid., 424. A third complaint involved Hunter's arguments about pay and alleged dishonesty about an expense statement.

28. Ibid., 427. According to a 1943 policy statement adopted by the Board, the President was to initiate the termination of the individual with the Board's concurrence, and begin by confidentially advising the person to seek employment elsewhere. In this case, President Newton chose not to advise Hunter.

29. Ibid., 427, 431-2.

30. Gordon Martin, "Disbarred Law Student Assails B.C. Benchers Over Decision," Sun, 12 Nov. 1948.

31. According to Merrily Weisbord, D.N. Pritt was an outstanding British constitutional expert, experienced before the Privy Council. When Canadian Fred Rose stood trial on espionage charges stemming from the Gouzenko revelations, Pritt asked to address the court on his behalf, but was refused. See Weisbord, The Strangest Dream, 163; "Martin Case May Go to London," Sun, 27 April, 1950. Pritt sat as a Labour MP in the 1930s.

32. Whitaker and Marcuse, Cold War Canada, 189; Canada, House of Commons, Debates, 2 May, 1950, 2089. On the Canadian position, St. Laurent remarked: "There are interesting experiments being attempted at the present time in Australia, South Africa, Malaya, Panama, and India. We will be interested in seeing what are the effective results of that method. There are other things being practised across the border, a sort of witch-hunt. . . I do not think that has created a very favourable impression on our Canadian public."

33. See S.S. Rai, The Red Star and the Lotus: The Political Dynamics of Indo-Soviet Relations, (Delhi: Konark Publishers PVT Ltd., 1990.), Chapter Two. The uprising occurred at Telengana.

34. See Canada, House of Commons, Debates 2 May 1950, 2081 (Mr. Drew); See also Thomas S. Arms, Encyclopedia of the Cold War (New York: Facts on File, 1994), s.v. "Australia"; Anthony Short, The Communist Insurrection in Malaya: 1948-1960 (London: Frederick Muller Ltd., 1975), 141. Under the Emergency measures enacted in Malaya in 1948, the death penalty could be applied for the unlawful carrying of arms.

35. See, for example, Whitaker and Marcuse, Cold War Canada, 282.

36. Horn, "Hunter," 435. He takes this position on the strength of the press abstention from focusing on Hunter's affiliation with the Communist peace drive, and the lack of an anti-Communist campaign in Canadian universities on the same scale as in the American institutions.

37. Rankin, Radical, 68.

38. Whitaker and Marcuse, Cold War Canada, 96, 288. They define the essence of McCarthyism as the "levelling of broad, general, and unsubstantiated charges of disloyalty or potential disloyalty." The term 'witch-hunting' appears next to McCarthyism in the Index. This definition is broader than that earlier outlined by Whitaker in "Dissent and the State", In this work, he argues that McCarthyism was relatively absent in the Canadian history, defining McCarthyism as "a form of political repression in which opposition politicians using the Communist issue to exploit the political system against the state apparatus itself." This is closer to my definition of contextual choice.

39. Lynn Boyd Hinds and Theodore Otto Windt, Jr., The Cold War As Rhetoric: The Beginnings, 1945-1950 (New York: Praeger Publishers, 1991), Preface xx, xvii. This includes spoken or written discourse. The authors credit postwar

rhetoric with shaping a consciousness that "created the political environment in which the perceptions of threat led to policies to meet that threat."

40. See, for example, in The Advocate 6, pt.4 (July-Aug. 1948): 126. An insert reads: "Dictatorship means - note this once and for all- unlimited power resting on violence and not on law - Lenin." The context for the quote is not supplied.

41. Chief Justice Vinson, "The Age of Great Challenge," Advocate 5, pt.6 (Nov.-Dec. 1947): Cover, 215.

42. Advocate 6, pt.6 (Nov.-Dec. 1948): 197.

43. See Advocate 6, pt.6 (Nov.-Dec. 1948): 217. The statement is "Members of the Communist Party. . .teach the philosophy of the lie. . .Because I have experienced the deception of the American Communists, I will not trust them." The Benchers used the line, then set an advertising agency to the task of digging up other excerpts from Roosevelt's speeches for their use, and to locating the original speech sources via Hyde Park. See LSBC, GM, Memo to a Bencher from V.P. O'Brien Advertising Ltd., 21 Feb. 1949; Telegraph from LSBC to Mrs. Eleanor Roosevelt, Hyde Park, New York, Feb. 1949. Roosevelt's work on civil liberties with the United Nations made her an especially attractive source; J.A. Robertson's comments are in Martin v. Law Society of British Columbia [1950] 3 D.L.R. at 191.

44. I see this as a key reason why the equally vehement and sensational statements of such Canadian Cold Warriors as George Drew and Solon Low were not employed by BC Benchers.

45. "The Canadian Bar Association at Washington," Chitty's Law Journal 1, no.1 (Nov. 1950): 3, 9-11. The CBA was founded in 1896 but the original organization lasted only three years.

46. Ibid., 9.

47. A study of outside influences on the developing Canadian legal paradigm, with its educational and jurisprudential components is beyond the scope of this study, but the importance of the American example is undeniable. See, for example, Kyer and Bickenbach's Fiercest Debate on the American influence on legal education. The drive for greater autonomy is most blatant in the 1949 achievement of a de facto supreme Court of Canada.

48. Watts, Society, 107; Stager, Lawyers, 42. CBA membership is open to law society members, active and retired judges, and law professors. New Brunswick joined BC in the membership drive.

49. Legal Professions Act, R.S.B.C. 1936, c.149, s.31(1) The statute deemed that the Benchers were to appoint ten provincial representatives to the Council of the Canadian Bar Association.

CBA Presidents from BC
J.W.deB. Farris 1937-8
(R.L. Maitland 1943-4)
(J.A. Clark 1951-2)

1948 Representatives of the
BC Section on CBA Council
(16 total)

J.W. deB. Farris (ex-officio)
W.H.M. Haldane, T.G. Norris,
A.C. DesBrisay, C.M.O'Brian
Chief Justice W. Farris
Attorney General Wismer

BC Representatives on the
Council of the Legal
Profession in Canada:
DesBrisay, Norris
LSBC Reps.: Haldane, O'Brian

50. Tunnell, Who's Who [Vol.VII 1955-1957], 350.

51. "Canadian Bar," Chitty's, 10-11. ABA President Gallagher included socialism and the welfare state as components of the contemporary crisis.

52. Advocate 6, pt.3 (May-June 1948): 80.

53. Jane Sanders, Cold War on Campus: Academic Freedom at the University of Washington, 1946-1964, (Seattle: University of Washington Press, 1979). See Chapters One and Two.

54. Ibid., 21.

55. Ibid., 17, 23, 27-8. The University Publicity Committee advised the Board of Regents to promote these as "fair hearings to guarantee the freedom of the university," and to direct faculty to support this "due process." The Board included anti-Communist Teamster Union leader Dave Beck.

56. Ibid., 43.

57. Ibid., Appendix A: Chronology, 179.

58. News-Herald, 27 July 1948.

59. "Inequality Before The Law," Montreal Gazette, 18 Mar. 1949. Their comments were made as an aside to the editorial's main thrust of asking the federal government to

either outlaw Communists or to step in and fully uphold their citizenship.

60. LSBC, GM, Letter from member of the Washington State Bar Association (Seattle), to President, LSBC, 10 Dec. 1948; LSBC, GM, Letter, LSBC Benchers to member, Washington State Bar Association, 18 Dec. 1948. The Benchers outlined the case, and regretted that as the proceedings to date had been held in camera, a transcript of the evidence was not yet available. The Benchers advised, however, that if Martin took the case to the courts, the court record would be open. The letter ended with the point of guidance: "You will no doubt observe that the raison d'être for the Benchers' decision is not that Martin was a Communist, but that holding his Communistic views he could not conscientiously take the requisite Barristers' Oath."

61. Advocate 6, pt.2 (Mar.-April 1948): 57.

62. "Resolution of the American Bar Association," Advocate 6, pt.6 (Nov.-Dec. 1948): 204.

63. Kenneth O'Reilly, Hoover and the Un-Americans: The FBI, HUAC and the Red Menace, (Philadelphia: Temple University Press, 1983.) See particularly Chapter Five titled "Bureau Enemies: The National Lawyers Guild and Max Lowenthal."

64. Ann Fagan Ginger and Eugene M. Tobin, eds., The National Lawyers Guild: From Roosevelt through Reagan (Philadelphia: Temple University Press, 1988), Preface xviii. The authors state that "Guild lawyers reflect the tradition of poor kids becoming the first lawyers in the family, joining a handful of lawyers from prosperous families who got the pro bono spirit." They also place the early NLG members' concentration on the East Coast.

65. O'Reilly, Hoover, 130-2, 148. In 1949, for example, the Guild sought an executive or congressional investigation of the Bureau.

66. Ibid., 132-144.

67. Bill Ryan, "Martin Case Decision Reserved," Sun, 8 Mar. 1950.

68. "International Interest Aroused," Pacific Tribune, 12 Aug. 1949; Martin Popper, "The International Association of Democratic Lawyers," in Ginger and Tobin, Guild, 79. The IADL formed in 1946, and was designed to bring together liberal lawyers from the countries in the United Nations to further international law, a lasting peace process and "democratic advancement." The NLG gave full support.

69. O'Reilly, Hoover, 144-5.
70. Ibid, 147.
71. Ibid.
72. The lack of organization may indicate a smaller number of left-wing or activist Canadian lawyers, or the outfall of a more conservative legal tradition.
73. LSBC, Minutes, Meeting between 25 March and 1 May, 1950, item (c), titled "Annual Meeting."
74. LSBC, GM, Letter plus enclosure, Vancouver barrister, to Sec., LSBC, 1 June 1949.
75. LSBC, GM, Enclosure. Senate Bill no. 298, (An act to add Article 10 to Chapter 4, Division 3, of the Business and Professions Code, relating to loyalty of attorneys), Amended in Senate, 17 May 1949.
76. LSBC, Minutes, "Minutes of the Meeting of the Credentials Committee held Friday, March 27th, 1949, in the Law Society Office." Naming the applicant is prohibited by agreement.
77. Rankin, Radical, 70.
78. Ibid., 69-72. The LSBC did not offer Martin an affidavit option, and it is doubtful that he would have signed one if given the chance.
79. LSBC, Minutes, "Minutes of a Meeting of the Credentials Committee," 27 Oct. 1951.
80. See Hannant, Infernal Machine on the Canadian state's security measures, or Alvin Finkel's "Canadian Immigration Policy and the Cold War, 1945-1980," Journal of Canadian Studies 21, no.3 (Fall 1986): 53-69. Canada's 1948 immigration legislation prohibited entry to 'persons who believe in or advocate the overthrow by force or violence of the Government of Canada or of constituted law and authority, or who advocate or teach the unlawful destruction of property.' U.S. measures included the 1947 Truman Loyalty Order which established boards to ensure federal employee loyalty.
81. LSBC, GM, Letter, Ass.-Sec., State Bar of California, to LSBC, 22 June 1951; O'Reilly, Hoover, 145.

82. Whitaker and Marcuse, Cold War Canada, 4-5. See also Parts Three and Four for an interpretation of how these, and other factors, directed foreign and domestic policy.

83. Ibid., 82, 110. This is the 'Royal Commission to investigate the facts related to and circumstances surrounding the communication by public officials and others in positions of trust of secret and confidential information to agents of a foreign power.' (Report, Ottawa, 1946). The authors contend that the commission set the tone for ideological attacks on left-wing groups and the "logic of guilt by association" for the future.

84. Hinds & Windt, Cold War As Rhetoric, Forward, Preface xviii.

85. "Network May Unite," Province, 4 April 1949.

86. "British Columbia Bar Convention Proceedings," Advocate 9, pt.4 (July-Aug. 1951): 116-7.

87. Ibid.

88. See JS interview, and Rankin, Radical, 62. Undoubtedly there were Marxist lawyers in most provinces, but at least in BC, the ideology of these women and men was not common knowledge prior to their LSBC acceptance. The socialism of labour-aligned lawyers such as John Stanton or the CCF-based Garfield King was either still forming or did not come to the Benchers' attention when they entered the field. Stanton, for example, was not known as a left-winger when called to the Bar in 1936 and King's call predated the CCF founding.

89. JS interview. Personal reasons might include the wish to belong, to gain power or flex new authority.

90. EG interview.

91. Ibid.

92. Porter, Mosaic, 212. He deemed capitalism the chief or "sacrosanct" value of all western industrial society elites because it is considered to have more rational properties than Christianity or nationalism.

93. See, for example, Gregory S. Kealey, "The RCMP, The Special Branch, 135-66; Lita-Rose Betcherman, The Little Band; and Whitaker's many writings, especially his work with Marcuse, Cold War Canada. Labour historian Kealey contends that 1919 marked the start of the Cold War for the RCMP. Whitaker and Marcuse agree.

94. See Whitaker and Marcuse, Cold War Canada, 452, n.4. Section 98 made it an offence to belong to an 'unlawful association' meaning one whose purpose was to bring about 'governmental, industrial or economic change' by force, threats of force, or instruction to that end. This legislation (repealed in 1936) made the trials of eight high-profile Communists possible in 1931.

95. Hannant, Infernal Machine. Security initially tightened in response to World War I and the Russian Revolution.

96. See A. Ross McCormack, Reformers, Rebels, and Revolutionaries: The Western Canadian Radical Movement 1899-1919 (Toronto: University of Toronto Press, 1977), especially the Introduction and Chapters One and Two.

97. Ibid., 18.

98. See, for example, Gad Horowitz, Canadian Labour in Politics; Irving Abella Nationalism, Communism, and Canadian Labour; and Norman Penner Canadian Communism: The Stalin Years and Beyond, 223. Penner lists the Communist-affiliated unions.

99. See Paul Phillips, No Power Greater.

100. Ibid., 116 - 7. He uses the Blubber Bay Strike by lime workers organized under the International Woodworkers of America as a case in point. In that case, any worker protection under the Industrial Conciliation and Arbitration Act fell to the open actions by police against union members.

101. Stanton, Never Say Die, 19, 22. In the 1938 Blubber Bay strike, Bird, acting as counsel for the company, was one of four men who refused to sign a letter assuring residents access to the post office, customs, telegraph and telephone offices, Provincial Police quarters and the federal government dock. Stanton lists this incident as one example of AG Wismer's habit of breaking, or not following up, promises to labour.

102. Robin, Pillars of Profit, 44.

103. Robin, Spoils, 235; Robin, Pillars, 17. In 1935 there were more than 100,000 unemployed in BC.

104. Robin, Pillars, 17, 44. The mayor was Gerry McGeer, who also ordered the aid of an RCMP detachment in 1935. In 1938, relief workers took over the Vancouver Art Gallery, the Georgia Hotel and the main Post Office.

105. Robin, Pillars, 77.

106. Robin, Rush, 258-9. The CCF came into being after the 1932 Calgary conference. Robin describes Ernest Winch as a "journeyman bricklayer with a Cockney accent." The Socialist Party of BC affiliated with the CCF in 1932; See also Whitaker, "Dissent," 191-2. He notes that CCF's overall ideological thrust tended to a "reformist social democracy," the slow transformation of capitalism coinciding with expanded political and economic role for the state. The BC faction's more revolutionary Marxist strains were exceptional within the party.

107. Robin, Rush, 259-60.

108. For full provincial election statistics, see Jean Barman, The West Beyond the West: A History of British Columbia, (Toronto: University of Toronto Press, 1991), 358-9, Table 4.

Popular vote and seat figures for the major parties in the period relevant to this study are as follows:

	Popular Vote%	Seats
<u>1933 election</u>		
Liberals	41.7	34
CCF	31.5	7
Non-Partisan Independent Group	10.2	2
<u>1937 election</u>		
Liberals	37.3	31
Conservatives	28.6	8
CCF	28.6	7
<u>1941 election</u>		
CCF	33.4	14
Liberals	32.9	21
Conservatives	30.9	12
<u>1945 election</u>		
Coalition (Liberal and Conservative parties)	55.8	37
CCF	37.6	10
<u>1949 election</u>		
Coalition	61.4	39
CCF	35.1	7
Social Credit	1.2	0
<u>1952 election</u>		
CCF	34.3	18
Social Credit	30.2	19
Liberals	25.3	6
Progressive Conservatives	9.7	4

109. John Herd Thompson, Canada 1922-1939: Decades of Discord, with Allen Seager (Toronto: McClelland and Stewart, 1985), 275, 336, Table Ie. Nationally, the CCF gained 8.8% of the popular vote in 1935. In BC, the party

took 33.6% of the vote, Liberals 31.8% and Conservatives 24.6%. The authors credit this vote not only to a socialist bent, but to western discontent.

110. See, for example, Martin, Rush, 262 on W.B. Farris at the fore of the 1933 Liberal anti-socialist "tirade," or Mitchell, Bennett, 94-5. He discusses the 1949 election campaign and Premier Byron Johnson, Herbert Anscomb, W.A.C. Bennett and Gordon Wismer's use of "scare tactic"-styled rhetoric to turn voters away from socialism.

111. Robin, Pillars, 51.

112. Mitchell, Bennett, 65; Barman, West, 359. In popular votes, the CCF took 33.4%, Liberals 32.9% and Conservatives 30.9%.

113. Mitchell, Bennett, 66. Due to the CCF principles of socialist co-operation and non-competition, a merger with the establishment parties was not considered ethical (or of political benefit), and the CCF remained an alternative party.

114. See Robin, Pillars, 57; Mitchell, Bennett, 77. Mitchell contends the coalition began as an "honest" try for nonpartisan government, but it soon became an anti-socialist alliance.

115. Whitaker and Marcuse, Cold War Canada, 13-4, 20-3.

116. Mitchell, Bennett, 78. Barman, West, 359. Coalition took 37 seats to the CCF's 10 (down from 14).

117. Robin, Pillars, 77. The program included changes to the Workmen's Compensation Act and Industrial Conciliation Act.

118. Mitchell, Bennett, 78; Robin, Pillars, 85-6.

119. Robin, Pillars, 103-4.

120. Robin, Pillars, 104. Provincial LPP leader Nigel Morgan was the lone Communist candidate in the 1949 election.

121. Robin, Pillars, 142. He contends that the 1949 election demoralized the CCF, and the party membership fell from 8,915 in 1945 to 4,425 in 1950 (3,500 by 1952).

122. Phillips, Power, 152.

123. Barman, West, 359-60, Table 4. The CCF gained 34.4% to Social Credit's 30.2%.

124. Robin, Pillars, 120-1; Mitchell, Bennett, 154. The Elections Act was amended to allow alternative voting or a transferrable ballot. This was meant to get Conservative and Liberal voters to transfer their second choices to the mainstream parties - CCF voters would have no option but to give them votes in this way. The majority of voters, however, transferred their votes to the Social Credit party.

125. Robin, Pillars, 164; Mitchell, Bennett, 170-2; Paddy Sherman, Bennett (Toronto: McClelland and Stewart, 1966), 119-20. The Socreds took one more seat than the CCF and had the support of independent Tom Uphill. A flustered Lt.-Gov. Clarence Wallace sought help with his decision. Robin submits that "after lengthy consultations with the outgoing Premier, the Liberal and Conservative rumps, Sherwood Lett, Chief Justice Sloan, and the federal Liberals including Prime Minister Louis St. Laurent, Wallace concluded that there was no other choice than to call W.A.C. Bennett to the premiership." Mitchell and Sherman contend that Lett favoured the Socreds, but Sloan initially rejected the idea, fearing that once in power they would be hard to remove.

CHAPTER SIX - IN PROTEST

To develop Martin's experience as a civil liberties history, this chapter dissects the protest raised on his behalf. A study of the membership, focus, and demise of this "movement" provides insight into Canadians' participation in, and understanding of the civil liberties movement during its formative period. Segments of the general public viewed the LSBC's disregard for Martin's freedoms of association, speech, and his liberty to enter a profession as an arbitrary action at odds with liberal postwar ideals. Some interest groups fought the decision in self-defence. These critics challenged the Benchers' elitist attitude and procedures, the powers enshrined in the LPA, and government inertia in defending the individual. In part, the decline of pro-Martin activism reflected the movement's juvenile status. Disparate ideologies, politics and agendas impeded solidarity between protest factions. Nascent civil liberties groups lacked the strength, and perhaps the will, to overcome the rifts. Cold War-inspired hostility towards "reds," and fears of the consequences of defending them tempered liberal idealism.

Profiting from this climate of uncertainty, the Benchers and AG adroitly deflected the challenge to the existing LSBC power structure by directing Martin and his proponents to the due process option. The legal elite granted the Communist his day in the high provincial court

but he could not win in that venue; the judiciary found for the status quo. Protesters claimed a partial victory in Martin's gaining a right of appeal and the shifting of debate on the issues from the private administrative sphere to an open court. By accepting the appeal process and ruling as the authoritative final word on the case, however, civil libertarians gave primacy to the democratic trappings of due process over its result: the continued denial of the freedoms of a member of an unpopular minority group.

Early news of Martin's problems caused concern in select quarters. Left-wing political and labour elements viewed the LSBC action as a conservative strike at their interests. A Rossland Miner writer attributed Martin's troubles to the Benchers' dread of another able labour lawyer "in their hair."¹ The Communist Canadian Tribune agreed, deeming "a number" of the LSBC governors "notorious for their reactionary anti-labour views."² Appealing to the Benchers for a statement and a right of appeal for Martin, the Vancouver Trades and Labor Council reported "widespread" concern about discrimination against legal party members.³ Provincial Labor-Progressive Party chief Nigel Morgan petitioned Attorney-General Wismer for an immediate investigation.⁴

Alarmed at a graduate's loss of political and career

freedom, a mass of UBC students condemned the in-camera hearings and Benchers' silence as elitist. By not immediately providing a statement of the grounds for their action, the Benchers also gave Martin the chance to give an uncontested appraisal of events to the campus community. Fifteen hundred "angry and confused" students met in protest in October, backed by the UBC branch of the Canadian Civil Liberties Union (CCLU) and six other clubs.⁵ This assembly believed in Martin's and all citizens' free access to professions of choice. If the Benchers remained mute or offered an "unsatisfactory" explanation, the students demanded that Wismer alter the existing power structure. Although the Vancouver CCLU chapter awaited official statements before taking a position, Dr. G.G. Sedgewick opposed the lack of information in a situation "serious enough to be fully aired before the public."⁶

The reaction of UBC law students was mixed. In a published letter, one student derided the Benchers' false and "cloistered virtue," but intimated that many of his peers disagreed.⁷ Law aspirants, whose career success largely depended on the LSBC's good will, might well hesitate to vocally oppose the Society's leadership. A Ubyyssey editor chided a "milquetoast" Law Undergraduate Society for staying clear of the matter. The editor held, however, that many law students stood with Martin, and early protest efforts by several students-at-law

representing Young Liberal and CCF groups indicate some support.⁹ Despite vague reports of a "widespread feeling" among lawyers that a compromise should be reached to allow Martin into the profession, they kept their early thoughts on the decision to themselves.⁹ Students, the LPP and its labour allies lacked the high-profile social force needed to push the LSBC to a compromise. No members of the political, media, economic, religious, or academic elites immediately championed Martin.¹⁰

The potential for increased public censure and a broad-based protest movement did, however, concern the Benchers. Bad publicity always disturbed the LSBC, and it earlier established a committee to combat negative views of the profession. By 1948, the Society also put thousands of dollars into advertising to promote the profession's value to the public. Aware that any "serious lapse from grace by a lawyer" would undermine the promotion, the Benchers recognized the potential harm of Martin's case. While the affair did not reflect on lawyers' competence, it might draw critical attention to the LSBC and thus, the profession.¹¹ Their use of the Western Press Clipping Bureau to monitor coverage revealed image concerns, and a press interview by the chief Bencher suggested damage control.

Addressing the local press, Treasurer O'Brian termed the LSBC's novel scrutiny of Martin a 'routine' matter, and

although no effective appeal remedy existed, he asserted that disgruntled applicants could try the courts.¹² This statement came out on 23 October 1948, the same day that the first member of the national media elite entered the fray. Toronto's Saturday Night editor B.K. Sandwell directed readers to Martin's case and the divide between actions "needed to keep down" Communists and methods imperiling basic freedoms.¹³ The civil libertarian put Martin's beliefs beyond LSBC scrutiny, and took aim at the elite status of the profession by placing it nearer to dentistry than the civil service. How dangerous could a Communist lawyer, or dentist, be to society? Sandwell's comments irritated the Benchers and encouraged executive action.¹⁴ Though not legally bound to give any explanation for Martin's rejection, on 30 October they announced plans for a statement "in due course."¹⁵

Gordon Martin soon received the official "Reasons." On 12 November, the Sun printed a widely-read summary and the Advocate reproduced the full text.¹⁶ If the Benchers expected their logic to appease critics, or the authority of the text to exact respect, the intent backfired. Observers wanted a full airing of the issues and justice for the law graduate. Instead, the Reasons placed Bencher decisions beyond public scrutiny and captured the essence of the profession's elitism and extreme conservatism in print. The Benchers proved unwilling or unable to

comprehend the postwar intellectual climate and in effect, their statement launched the protest movement. Infuriated press commentators and interest groups responded to the Reasons with an intensity unmatched at any other time during the two-year affair.¹⁷ Previously mute onlookers attacked the LSBC governors in editorials, petitions, letters and speeches, and this public pointedly demanded that the state, through the AG and the Legislature, curb the LPA's powers and jurisdiction.

An examination of the words, symbols and structure of the Bencher text is required to understand the force of this reaction. In the full Advocate version, the Reasons with a capital R projected finality - a judgment made and advanced for unquestioned acceptance via a dominant discourse of conservative authority.¹⁸ As high symbols of prudence, judicial rulings bolstered this discourse. Riddled with "duty," "public interest," and other words of self-justification, the text distanced the executive from authorship and liability. Never "we" but "they" the Benchers were "limited" to calling persons of good repute, pushing Martin's rejection beyond personal control into the LPA's statutory realm of legal and moral obligation.

The language of the statement attested to the executive's ability to judge Martin's "fitness" in a reasoned, unarbitrary way. They had superior knowledge and credentials, and jurists gave the "fully competent"

Benchers authority beyond review by the public or the courts. They heard "full argument" and gave "full consideration" to the evidence. Martin's "full opportunity" to present his position, with counsel, cemented the fairness of the proceedings. Martin made "some effort" to argue his beliefs, his character witnesses knew "vaguely" of his ideas and did not declare, but "alleged" his repute. With such doubt cast on Martin and the Benchers' authority so clear, to challenge their verdict amounted to a questioning of their personal honesty and ability.

Cold War language and symbolism removed the applicant from Canadian "civilization," placing him in the "other" category. Never termed a Canadian citizen or Canadian Communist, the "evasive" and "avowed Communist" Martin represented subversion by association.¹⁹ The text separated the Communist from oaths of loyalty and the "democratic" lawyers in the LSBC by making him the fearful postwar symbol of "fifth columns" and evils worse than Hitler. The text channelled the concepts of freedom and democracy into the Cold War discourse through the symbolic use of "outstanding libertarian" Eleanor Roosevelt and her condemnation of the Communist "lie." Cold War invective gained an air of legal respectability when sandwiched between judicial commentary.

Although the Sun summary kept sentences intact and contained most of the original text, editing and a new lay-

out altered its tone and form. The paper reduced the statement's legal authority by cutting judicial comments and legislative clauses.²⁰ This pushed the Benchers' language and reasoning forward for evaluation by the general public and the major market media scanning the Sun. Using sub-headings, the daily reordered the text according to its own interests: the decision, Martin's beliefs, the Benchers' view, the oaths, LPP legality and public interest. The juxtaposition of a rejoinder from Martin on the next page further challenged the discourse of authority.²¹ He addressed items absent from the Reasons: his civil liberties, the apparent uniqueness of the decision in the British Commonwealth, his RCAF service, and the hardship to his family.

At least three items in the Reasons deserve special attention. The text stressed the duty of the Benchers to hold "due regard for the public interest without being swayed by consideration of hardship on individuals." This thinking excluded the possibility that the individuals forming this public identified more with Martin and his interests than the legal order and its concerns. Next, consider the analogy: "it might well be said that because persecution for religious beliefs is abhorrent, a professing atheist should be admitted to Holy Orders." In addition to evincing semi-sacred professional self-perceptions, this implied a belief-based "persecution" of

the UBC grad. The Benchers denied the LPP "any stamp of approval of legality" as a legitimate party "must of its very nature owe allegiance to the Canadian Democratic system." This logic separated Law from Government, with the Benchers deferring to a constructed natural "party" law more profound than statutes. They placed their own wisdom above the understanding of elected legislators.

"How's that again?" retorted Sun columnist Jack Scott.²² In this, as in all protests, journalists and their publications played a critical role. Journalists supplied details on the case, framed and cemented the issues, and articulated common cause. The press provided a forum for communication. Columnists and editors gave a sense of legitimacy to socially critical convictions, and if the Sun editors correctly judged that "the court of public opinion" supported the Benchers, liberal writers worked to shift opinion.²³ Known for his sharp, provocative commentary, Scott fired the first local media barb at the legal establishment. Berating all aspects of the "sorrowful" LSBC document and its "anonymous authors," he depicted Martin as a fighter against "unquestioning acceptance" of the system and a victim of a Canadian civil liberties tragedy.²⁴ The News-Herald's Erwin Kreutzweiser focused on "public interest" and found it at odds with the barring of anyone from a profession for political

beliefs.²⁵ The right-wing Province made scant comment, but the conservative BC Financial Times surprised everyone by attacking the LSBC.²⁶ Anger at "closed corporations" of lawyers, dentists, druggists and "heaven help us," agrologists, outweighed the editor's dislike of Communists. He used Martin's case as a vehicle to demand a review of the value of all professional societies.²⁷

Out-of-province editors followed with some of the most strident criticisms of the Benchers' position.²⁸ Perhaps, as one media analyst noted, they found it easier to be "high and mighty" about incidents and people far from home.²⁹ Ottawa's high and mighty conservative Journal pronounced the case 'intolerable.' If "private individuals" retained such grave power, the precedent might logically apply to other professions, parties and religious groups.³⁰ Fred Rose held office until proven guilty: Why should the high-handed LSBC "be permitted discretionary powers above those Parliament has not assumed itself?" asked the Edmonton Journal.³¹ Saskatoon's Star-Phoenix agreed, predicting a court case but espousing a challenge "in the Legislature from where the Law Society's authority stems."³² Had Canada "convicted itself of being undemocratic?" queried Time Magazine.³³ Saturday Night wondered if all Canadian Communist lawyers now faced disbarment.³⁴

These comments demonstrate the outrage of some members

of the media elite at the abuse of the freedoms and citizenship of anyone, Communist or otherwise, by a private, administrative body. Processes blocking livelihoods and social mobility appeared to be a corruption of democracy. Postwar liberal, representative and increasingly pluralistic democracies such as Canada, Great Britain and the United States held freedom of opportunity in high esteem. In his 1973 ordering of the most valued private or non-political rights, political scientist John Plamenatz gave primacy to the right to choose a career, followed by access to the education to pursue that choice. The right to social criticism and qualified non-conformity also ranked high.³⁵ The Benchers' statement failed to take this value trend into account, nor did it anticipate the degree to which elements of the public identified with Gordon Martin. He stressed his integrity and loyalty at every opportunity, and the qualities of citizenship in his RCAF oaths, record, and academic fitness were antithetical to subversiveness.³⁶

The protesting Women's International League for Peace and Freedom pointed out his "unquestioned qualifications" and war record to the LSBC.³⁷ Members of the Women's Auxiliary of the Woodworkers Industrial Union saw a veteran of a war against fascism fighting a new one at home.³⁸ Even the Courtenay Comox Argus, while not proud that the city "bred a Communist," lauded Martin for not disguising

his convictions to access the bar.³⁹ He also represented the "family man." Defending her husband in print, "Mrs. Gordon Martin" insisted that he met the high standards of this "daughter of an Anglican minister," whose children need never look down on their father. Why bar him from law, she asked, if his "ravings" about society held no merit or sway? And if they did apply, were efforts to improve Canada disloyal?⁴⁰

UBC scholars identified with a grad blocked from putting his years of education to work. The campus Civil Liberties Union club brought Martin, philosophy professor Barnet Savery and CCF-allied law student Jim Sutherland before a rally of roughly fifteen hundred peers.⁴¹ Savery decried the LSBC "super-government," Sutherland deplored its "totalitarian methods." Even law student/ UN Society leader Don Lanskail, no Martin fan, spoke out against the Benchers' political judgment. By resolution and petition, these students urged LPA changes. Groups at other campuses, including the University of Toronto's Law Club, followed with motions of LSBC condemnation.⁴² UBC law students continued to refrain from publicized internal debate. They "informally" received "a correct understanding" of the issues from the LSBC Public Relations Committee.⁴³ Martin also lost the earlier-pledged backing of Canadian Legion Branch 72, UBC's most powerful society.⁴⁴ Factional squabbles moved the president to set "telegraph wires

humming" to the Ottawa command in search of a definition of "Communist" and the related Constitution by-laws. Branch 72 learned that Communist veterans could not hold Legion membership for reasons parroting the LPA: "an applicant for membership must be a fit and proper person."⁴⁵

Moving from identification to anxiety, the LPP and its labour allies stood to lose the most, Martin excepted, from the decision and precedent. If Party membership cost careers it would be a hard sell. As one worker noted, the ban appeared to "be the beginning of a whole series of drastic actions taken against our civil rights."⁴⁶ Thus, the Communists agitated for political and associational protection, and they hoped for vote-winning publicity. RCMP informants relayed the LPP's intent to make "a leading issue" of Martin; its Civil Liberties League would leave "no stone" unturned to fight the decision.⁴⁷ Martin worked for himself and his party, asking Mine Mill peers to write to the LSBC and elect the Trail LPP candidate to take his fight forward. The B.C. District Union News rounded out his appeal by naming the Benchers and scorning a legal "closed shop and hiring hall," judiciary included.⁴⁸

Concern about the implications of Martin's case extended into other political quarters, including the domain of syndicated columnist and radio commentator Elmore Philpott. A high-profile political hybrid, Philpott embodied the progressive aspects of both the Liberal and

CCF parties, or as one critic put it, he talked red, wrote pink and voted green. Renowned for his work on public and international affairs, the journalist's personal history moulded him into a crusader for socio-economic reform and the rights of veterans and the downtrodden.⁴⁹ Not surprisingly, Martin's predicament caught Philpott's attention and he repeatedly assaulted the LSBC governors in his daily Sun column. The Legislature's intent was never, he argued, to allow "12 rich lawyers, including some key bosses in the old line parties" to block an "RCAF medal winner" from his living. Philpott ordered an LPA overhaul to curb the Benchers' attack on Marxism, noting that "at least half of all the elected CCF members of parliament and the British cabinet are Marxian Socialists."⁵⁰ The Young Liberals, a progressive cog in a conservative provincial party machine, joined Philpott in verbally slapping the LSBC.⁵¹

Martin's exclusion presented CCFers with a prime conundrum. Would they remain silent on a Communist issue, or defend the right of a Marxist to practice law? If they acted, they risked giving the opposition fuel for its charge of a CCF-LPP alliance. Yet, if the decision stood, it would communicate to voters and organized labour that legal party members at political odds with the Benchers had few rights, and less power within the system. The party had a civil libertarian reputation to uphold, and the LSBC

action raised the spectre of a similar assault on all Marxist professionals. The CCF lacked the influence within the legal and other elites to ensure that such a campaign would not happen. CCF News writer George Weaver censured the Benchers' denial of LPP and Marxist legality, and forecast legislative action to pry open the LSBC and other union and medical "closed shops."⁵² These bodies, of course, upheld the existing social power structure which blocked the CCF's reform agenda. The provincial CCF council took up Weaver's line in mid-November, publicly terming the LSBC decision "undemocratic and un-Canadian." A unanimous resolution to seek legislative amendments against political/ideological discrimination, should Martin's exclusion "go unchallenged," drew unwanted LPP cheers.⁵³

Analyzing the composition of the protest following the release of the Bencher "Reasons," it remained politically left-of-centre, but strengthened by a broad spectrum of high-profile media support. Martin's case directly involved a provincial corporation and legislature, but the precedent and principles were relevant to all Canadians. In organizational terms, participants rarely united in action. Although journalists read each other's work, they wrote in isolation. The CCF fought to distance itself from the LPP agenda. Letters to the LSBC arrived as independent resolutions or complaints, with no evidence of a coordinated campaign. Students rallied under the unifying

influence of the campus site and culture but brought in few outsiders. The protest movement's intellectual unity rested in liberal anger at the seemingly arbitrary use of private powers against the civil liberties of any citizen. The varied calls for a legislative restructuring of the power system which upheld the political discrimination formed the main challenge to the legal establishment.

The Benchers met the challenge head on, maintaining their stance and putting their considerable resources to work. They gave priority to combatting internal unrest, although the real potential for dissent is questionable. John Stanton believes that "some of the fellows" suffered a "bit of an uneasy conscience" about Martin, but were not prepared to risk professional futures by challenging the governors.⁵⁴ Taking no chances, the LSBC chiefs used an Advocate issue to refute the publicized criticisms for the benefit of the provincial readership.⁵⁵ Acknowledging "widespread misapprehension" about their action against Martin, the Bencher-authors defended their position and denied the relevance of political affiliation or civil liberties to the case. They deferred to the Communist-inspired "state of national emergency" which validated loyalty checks and purges in union, government, and thus, legal quarters. Offended by the many press references to their profession and the LSBC in union terms, the Benchers placed lawyers akin to high public officials and assured

readers that the Society bore no resemblance to a closed shop. They displayed the professional oath on the Advocate cover, and closed their commentary by upholding lawyers as "the first line of defense in the guardianship of the rights of man."

Bencher T.G. Norris used the December 1948 meeting of the Vancouver Bar Association to set local lawyers, reporters and the Canadian Press straight about the "correct" course of action for Martin.⁵⁶ Raising the case with the 175 assembled lawyers, he denied any validity to legal opinions that no right of appeal existed. Norris welcomed a court opinion as to whether the Benchers had erred, and deemed any public discussion of the case improper prior to a court test.⁵⁷ This was a strategic announcement; a conservative court would preserve the status quo and Martin's sole existing option was to seek a writ of mandamus in BC's Supreme Court. As earlier noted, a mandamus upset of the Bencher decision was improbable if not impossible. Norris also followed the logic intrinsic to the legal paradigm within which the lawyers functioned. They did not openly acknowledge the protest demands for LPA amendments, thereby denying that possibility the legitimacy of professional debate. The VBA membership presented a unified front by ratifying the Bencher decision. This unity, and the direction of Martin to the courts, made front page local news and reached across the nation through

the Canadian Press wire.

The prospect of the issues being openly debated and tested in a court appealed to one group of civil libertarians. In his letter to J.L. Cohen, Martin had expressed a will to work with the Canadian Civil Liberties Union, and contact between the graduate and the organization occurred at the local level. Previously aloof from the protest, the Vancouver CCLU branch joined his cause. The branch secretary published a letter stating that Martin would go to court at great personal expense. In support of the "fundamental principle of British justice and of civil rights," D.C. McNair announced an appeal fund launched with fifty dollars, and asked every citizen to donate.⁵⁸ Martin, who worked to fight the LSBC decision with every resource at his disposal, agreed to a test of due process. On Christmas Day, the press reported his wish to try the SCBC, adding Treasurer O'Brian's remark that the Benchers would "extend every facility to him" so that "justice is done."⁵⁹ Premier Byron Johnson indirectly supported the court option by publicly reinforcing the government's long-standing policy of non-intervention in professional matters.⁶⁰

Despite these developments, Martin and many of his allies remained sceptical of the court as the final remedy and continued to assault the LPA. Unconvinced of the wisdom of appealing to the courts, Philpott contended that they

could only determine whether the Benchers acted within "their legal rights," leaving the "basic injustice" unconsidered.⁶¹ He maintained that "the Legislature, and only the Legislature, can undo the injury by closing the loophole in the abused law." Communist observers agreed. Tom McEwan, editor of the Pacific Tribune, deemed court appeals as "virtually useless since the Benchers are the final judges." He urged readers to ask their MLAs to pressure the LSBC to accept the candidate.⁶² Martin personally approached the Vancouver Labour Council to request a "resolution asking amendment of the legislation as the only effective action."⁶³

In February 1949, the month of Martin's BC Supreme Court date, LPP economist Emil Bjarnason and Tom Parkin of the Vancouver Trades and Labor Council formed the "Gordon Martin Committee." The GMC aimed to press legislators by all media and campaign methods to rework the Legal Professions Act.⁶⁴ Inside the Legislature, Harold Winch concurrently launched a series of demands for the overhaul of all professional acts, using Martin's exclusion as the case in point.⁶⁵ Winch, no favourite of the legal elite, met stiff opposition from "anti-Red" Conservative A. Reg MacDougall.⁶⁶ Defending the Benchers, he favoured the complete "purge" of Communist and Marxist Bar members. In line with contemporary pre-election red-baiting, the MLA twisted CCF support for Martin into evidence of the "red"

ties, or infiltration of the party.⁶⁷

Critics quieted following Martin's late-February Supreme Court appearance in anticipation of Justice Coady's 12 March verdict. The legal order also prepared for the ruling, and the speed of subsequent developments confirms the confidence of the Benchers and AG Wismer in the due process strategy. Debate in the Legislature on a CCF resolution asking for a review of all professional acts occurred within days of Coady's refusal of Martin's application. In the midst of the exchange, Wismer announced an LPA amendment to allow Martin his day in the high Court of Appeal. The AG further reported that on the Benchers' advice, the Government would assist Martin financially.⁶⁸ This display of apparent generosity sealed the predictable defeat, without division, of the CCF resolution by the coalition majority. The CP wire sent news of Martin's "luck" nation-wide.

This manoeuvre by the legal elite took much of the steam out of the movement. Mainstream public discussion of legislative amendments focused on those enacted by Wismer, instead of a review of the Benchers' powers. As Sun editors put it, the Benchers, AG and Legislature cleared the way for Martin to go before "the high tribunal." How could he refuse the invitation, they contended, and continue his bid for martyr status?⁶⁹ After the sound defeat of their resolution, CCF leaders pulled back from direct

involvement, removing a vital force from the push for LPA changes. Interested liberals could laud Martin's new right of appeal and its enshrinement in the LPA as a recourse for future applicants. Most observers turned their attention from Martin's LSBC ban and its implications to the processes allowing him a new hearing. If journalists' comments reflected general thinking, what the public sought from the high court justices was an opinion based on issues, not technicalities: Were the Benchers "right or wrong?" Were Communists "fit" to practice law?⁷⁰

Letters of protest trickled to the LSBC from such disparate sources as a dentist, the Women's International League for Peace and Freedom, and the Sussex Fellowship.⁷¹ A lone United Church reverend penned his belief that Martin's LSBC exclusion clashed with the liberal principles promoted by the United Church General Council.⁷² That he wrote as a private citizen underscores a fundamental void in the protest movement. Religious leaders and institutions added a strength and tenacity to other crusades which contributed to wins, but this elite remained aloof from the Communist's cause.⁷³ The LSBC had no desire to see any religious-based opposition mount, and sent a swift, multi-drafted reply to the cleric. A Bencher reminded him that a candidate for ordination needed more than an exemplary moral character: "he must adhere to recognized Christian principles before admission to the profession to which you

have the honour to belong."⁷⁴

At UBC, CCLU actions, related protest and even the Communist presence dwindled in the 1949-50 school year, aided by fears attached to Martin's morale-deflating predicament. "Few students are willing to incur the wrath of the authorities which hold their future in the balance," the News-Herald reported. "Even the most consistent advocates of civil liberties were unusually quiet during discussion of the Martin affair."⁷⁵ The Vancouver branch of the Canadian Civil Liberties Union took no recorded action after its effort to take the case to the provincial Supreme Court.⁷⁶ The cause of this inactivity remains a mystery, although Martin's personality offers a clue.⁷⁷ He showed flexibility in working with ideological moderates, but had no real faith in their approach. The SCBC loss no doubt hardened his attitude.⁷⁸ This analysis is consistent with Harry Rankin's submission that Martin "could not cement his supporters into a solid faction" due to his dogmatic Marxist views.⁷⁹ Vancouver civil libertarians may also have reacted to his rejection of member Garfield King as counsel, or to the co-emergence of the LPP-affiliated Gordon Martin Committee. Did the agendas of these groups irrevocably clash, or did the mainstream CCLU turn its back on Communist freedoms as Cold War animosities escalated?

The legal order publicized its negative opinion of the

GMC in no uncertain terms. The LSBC and Attorney General directed J.S. Burton to both publicly acknowledge the promise of government funding and to disassociate the appeal process from the Gordon Martin Committee's campaign.⁸⁰ Burton's statement was meant to halt the GMC's publicity and funding potential. Wismer advised a Bencher that "the only legitimate way in which the monies raised could be used would be for counsel fees and court costs." With these costs covered by the government, GMC money would fund the LPP's five-point "province wide campaign" aimed at the Legislature, with an anti-discrimination LPA amendment one point.⁸¹ The GMC continued to raise funds, prompting Wismer to call for an investigation of the defiant Committee. Vancouver Bar Association President William Murphy gave his condemnatory opinion that "this case is for the courts to determine. No Committee can influence the courts, thank God."⁸²

Increasingly isolated and thus prominent in its continued agitation, the far left marshalled its resources, Gordon Martin Committee included, to sustain public interest in the case. With a one year delay between Wismer's decree and Martin's March 1950 appeal, the press had shifted the story to the back burner.⁸³ Martin spoke at labour functions. Barrister Elspeth Munro put his case to the Point Grey Kiwanis Club with some success.⁸⁴ Locals of the Mine Mill and International Union of Operating

Engineers wrote to the LSBC.⁸⁵ Martin also won international celebrity, prompted in part by Stanton's contact with British Marxist jurist D.N. Pritt.⁸⁶ At a May 1949 Paris meeting, the International Conference of Democratic Lawyers denounced the LSBC decision, stressing its contradiction to the United Nations Charter guarantees for the freedoms of speech and thought.⁸⁷ Roused by this motion, the acting chair of Britain's Haldane Society chastised the Benchers in the London Times. He trusted that the discrimination would be "removed in a typically magnanimous British way." An irate, London-based BC House Industrial and Trade Representative promptly requested "facts" from the Benchers and urged a reply to the Times in "the interests of our Province."⁸⁸ These incidents rescued the case from obscurity.

A technically unrelated case also sparked renewed interest in the months leading up to Martin's hearing. Upon appealing his expulsion from a union by committee decision, boilermaker Myron Kuzych received a \$5000.00 award in damages in the lower court of one Justice Whittaker.⁸⁹ A letter-writer to the Sun compared this justice with Martin's uncompensated ban, concluding that "quaint decisions are handed down for political and other reasons." Elmore Philpott agreed.⁹⁰ The case is notable as the award decision later went to the Court of Appeal before the men judging Martin. Justices Smith, O'Halloran and Robertson

upheld the Kuzych award. O'Halloran gave the further opinion that "such a concentration of power over a workman's livelihood was contrary to our democratic institutions, and a denial of the liberty of the subject." Three of the five justices agreed that the union committee did not follow constitutional procedure and that "the proceedings were tainted with bias."⁹¹

Overall, however, Martin drew minimal public notice by this stage. His award was the unsuccessful March 1950 appeal. The hearing received basic coverage, and after the April release of the judicial reasons, journalists buried the story. Furthermore, the majority of press commentators seemed convinced of the justice of society's processes, or refused to recognize its failure to uphold basic freedoms. The Sun reported Martin's loss of "the last round of his long battle," lauding the Legislature's role in making the round possible. Civil liberties issues secured no mention and the editors saw no logic or validity to claims that Martin's "liberty to earn a living" had been hindered.⁹² The News-Herald concluded that neither civil liberties nor the Benchers' powers had been pertinent to the case.⁹³ Critiquing "one of the most important judgments by Canadian courts on the subject of Communism" (versus freedoms), Saturday Night deemed the judicial principles "reasonable."⁹⁴ At the same time, the League for Democratic Rights struggled to prove the relevance of

Martin's case to the 1950 Senate Committee on Human Rights and Fundamental Freedoms.⁹⁵ Postwar Canada found it hard to confess to illiberalism in the present tense.

Writers for the legal community assessed the appeal result in terms of its meaning for the profession. Bencher and Advocate chief Elmore Meredith advised Canadian Bar Review readers that the judgment made it clear that the Benchers "at least" retained the power over admittance.⁹⁶ They honoured their duty to public interest over duty to the individual. Meredith surmised that the decision protected the LSBC "brotherhood" from an element with the potential to defeat its purposes, cause its disrepute or "cloak the sabotage of our public institutions." Toronto's R.M. Willes Chitty, K.C. savoured the outcome in the first issue of his far-reaching Chitty's Law Journal in November 1950.⁹⁷ He capped the case details with the exultation: "so ended one attempt by the enemies of society as we understand it to infiltrate the ranks of the key profession" in the protection of freedom under the rule of law. Better that the profession "err on the side of excluding potential subverters of freedom," in Chitty's opinion, than risk a dictatorship.

As Jack Scott later claimed, his was a lonely cry against a decision that "ought to scare the hell out of everyone who loves freedom." Who would dare stray out of line and suffer the "awful" court-sanctioned power in

professional hands?⁹⁸ He had company in a writer for the Jewish weekly Wochenblat, who offered Martin as one more reason why Canadians needed a bill of rights.⁹⁹ Calgary Albertan editors expressed alarm at new venues of exclusion being legally sustained by the precedent and raised an outmoded demand for changes to the status quo "if the legal profession wants to retain public respect."¹⁰⁰ This censure marked the final words of contemporary protest on behalf of Gordon Martin's civil liberties. The question is: Why did former protesters credit the appeal court process and outcome as evidence of democratic justice? After all, the judges' reasons retained the qualities of conservative authority and elitism which fuelled the earlier uproar, and neither the civil liberties issues nor the verdict had changed.

Part of the answer resides in the conformity of Martin's appeal to the fundamental "rule of law." A basic component of British tradition, the "rule" demands "the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts." Ideally, the judges in these courts confined their considerations to the law without regard for political or other influences.¹⁰¹ Canadians lauded the "rule of law" as a check to arbitrary, irregular or oppressive uses of power, and the rule was implicit to the value system underlying their traditional endorsement of procedural liberalism.

According to political scientist Janet Ajzenstat, as procedural liberals, Canadians historically expected any notion of "what is best for society" to emerge from political debate, popular participation and the political process, courts included.¹⁰² As part of the system of government, the courts had a duty to be "neutral" and not favour any particular ideology or political interest in order to make justice possible.¹⁰³ Ajzenstat explains that under procedural liberalism, "it is assumed that the requirements for justice have been met when the procedures set out in the constitution have been adhered to."¹⁰⁴ In general, Canadians in the early postwar period still demonstrated confidence in procedural institutions such as the courts. They demanded that the court procedure be exercised, without looking too closely at the judicial approach or the results of the process.

The attractiveness of the appeal court as the means to resolve the Martin conflict may be further gauged according to quasi-sociological criteria outlined by Kim Scheppele and Karol Soltan.¹⁰⁵ These scholars propose that authority is not hegemonic, but granted by people to options made obvious through precedent, symmetry, uniqueness, simplicity and prominence.¹⁰⁶ Governments had long referred tough problems to courts, and people with varied understandings of the issues attached to Martin's unique case welcomed their judicial interpretation and

clarification. The symmetry in ideological opponents meeting in an "equal" opportunity venue held appeal, and the process promised relatively quick answers. The legal elite, Vancouver CCLU branch, and many journalists espoused a court hearing as the correct path for Martin: it emerged a popular, prominent option.¹⁰⁷ It also conformed more closely to contemporary social values than an alternative which would pit the state against its legal attendants. Whereas a court offered simplicity, a restructuring of a professional act required complex adjustments of administrative norms. No party raised the option of a costly, time-consuming Royal Commission, and not until 1968 did Ontario take that step with the "McRuer Report" on professional powers in the civil rights context.¹⁰⁸

According to Scheppele and Soltan, "justifiable" options are the most authoritative. The judicial reasons were "persuasively justified" in terms of reliability, robustness, universality and non-arbitrary image. Easily communicated, they seemed "to capture the essence" of the issues for public consumption. Judicial adherence to the Benchers' logic gave the verdict a new reliability.¹⁰⁹ Decisions become robust if similarly justified by people with diverse interests confronted with the same choices; they gain universality by cutting across social contexts.¹¹⁰ The judges' echoing of the Bencher deference to the purging of Communists by unions and governments in

the Canadian and global context met this criteria. Whereas the private Bencher process appeared arbitrary, this verdict came from an "unbiased and selfless" court bench open to view.¹¹¹

In isolation, these factors did not determine the widespread acceptance of the Martin decision. In their fight against the federal government's postwar deportation orders, for example, Japanese Canadians and their civil libertarian allies lost before both the Supreme Court of Canada and the Judicial Committee of the Privy Council.¹¹² That community, for whom no "effective voice of protest" was raised during World War II, benefitted from Canadians' guilt and belief that a debt of shame existed.¹¹³ Court rulings did not end their protest; it continued with the strength to force a government retreat. Nor do jurisdictional barriers explain the demise of activism on Martin's behalf. His case transpired at the provincial level, and the BC Appeal Court's unanimous ruling posed obstacles to a federal Supreme Court hearing. The later Jehovah's Witnesses cases in Quebec proved, however, that civil libertarians and minority groups could loosen provincial leaders' and courts' authority over matters affecting fundamental freedoms.

In Martin's case, the cohesion of people, purpose and the popular support base needed to sustain the protest movement did not exist. Unlike the Japanese Canadians, he

belonged to a minority which lost the public favour achieved through the war alliance as the Cold War, and news of Stalin's disregard for life and liberty, settled in. The "due process" alternative attracted civil libertarians dubious about the merits of the campaign for their own interests. An appeal remedy had been won. Future flexes of LSBC powers could be challenged anew and they had other, more popular and fruitful causes to champion.¹¹⁴ Thus, when the legal elite offered the option of giving responsibility for Martin's fundamental freedoms to the court, the majority took it. Indeed, democracy was dangerously served if it is defined as majority contentment and a public sense of participation.

Placed within the larger context, the course of the protest and its outcome illustrated the juvenile status of the civil liberties movement. Success relied on the dictates of public opinion, political and social interests, and the disposition of elite decision-makers, including judges. It remained all too easy for people to exchange vigilance over freedoms for processes symbolizing, but not delivering, liberal justice. Not until 1959 did Frank R. Scott resurrect Martin's case as an example of illiberalism.¹¹⁵ That acknowledgement indicated a new awareness of civil liberties and the evolution of the movement closely linked to the campaign for a Canadian Bill of Rights.

Notes to Chapter Six

1. Lance H. Whittaker, "Young Stormy Petrel May Be Barred From Law Practice," Rossland Miner, 5 Aug. 1948.
2. "1,500 Students Condemn B.C. Law Society," Canadian Tribune, 25 Oct. 1948. The Benchers were not named. The Tribune and editor A.A. MacLeod acted as the main public CPC and LPP presence in terms of leadership and shaping opinions on issues as per Penner, Stalin, 168-9. The Tribune started in 1940 and came out weekly.
3. LSBC, GM, Letter, Sec., Vancouver, New Westminster and District Trades and Labor Council to Sec., VBA, 7 Oct. 1948; See Letter, Sec., Local 170, United Ass. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry to Sec., LSBC, 20 Oct. 1948. The union rep "respectfully" asked the Benchers to reverse the decision to preserve "our Canadian way of life."
4. "Morgan Raps Benchers," Pacific Tribune, 8 Oct. 1948.
5. The six groups were the Student Christian Movement, Liberal, CCF, LPP, Social Problems and Teacher Training clubs. See "Students Demand Curb," Province, 16 Oct. 1948; "Barring of Martin Evokes UBC Furore," News-Herald, 16 Oct. 1948. Regarding the campus Civil Liberties Union branch, See "Students Form Union Branch," Ubysey, 11 Feb. 1947; "Students Form Branch of the CLU," Ubysey, 18 Feb. 1947; Norm Klenman, "The Wassail Bowl," Ubysey 27 Feb. 1947. Inspired by Dr. G.G. Sedgewick, W.D. MacDonald and Hunter Lewis, this non-sectarian, non-political organization formed in Feb. 1947. It welcomed students and faculty and aimed to defend all democratic rights of freedom. Lewis also headed the Vancouver branch of the Canadian Civil Liberties Union. No provincial organization existed at the time.
6. Sedgewick was a prominent CCLU (Vancouver branch) member.
7. Robt. J. Harvey, "Letter," News-Herald, 5 Oct. 1948.
8. "Dropping the Bar on Reds," Ubysey, 28 Sept. 1948; "Let the Lawyers blush," Editorial, Ubysey 19 Oct. 1948.
9. See, for example, "Benchers Reconsider Martin," News-Herald, 23 Oct. 1948.

10. Porter, Mosaic, 27, 309. Porter's discussion of elites includes bureaucratic and labour decision-makers. Martin's labour allies either did not hold the balance of power over critical supplies of labour, or did not threaten work action, hence their place in the less powerful category.

11. Watts, Society, 111-3; "Report of Treasurer," Advocate 5, pt.4 (July-Aug. 1947): 131. In 1946, the LSBC approved up to \$3,500 per year for promotional purposes. The original committee to combat bad publicity was established in 1935.

12. "Bencherers Reconsider," News-Herald, 23 Oct. 1948.

13. "The Front Page-B.C. Law Society," Saturday Night (hereafter SN) 64, no.3 (Oct. 1948): 5; Fleming, Circles, 312. SN had a long-standing reputation as an "editor's magazine" and was influential in the 1940s and 1950s. Paul Rutherford positioned SN as for "the liberal-minded highbrow," and notes that newspaper professional rhetoric deemed (rightly or wrongly) the editorial page "the soul of the newspaper, the place where a paper applied its wisdom and views to the issues of the day." See Rutherford, The Making of the Canadian Media (Toronto: McGraw-Ryerson Ltd., 1978), 63, 83.

14. LSBC, GM, Letter, B.K. Sandwell to Mr. E. Fowkes, Victoria, 16 Nov. 1948; Letter from one Bencher to another, 20 Nov. 1948.

15. "Law Society Again Rejects UBC Graduate," Sun, 30 Oct. 1948; LSBC, Minutes, "Minutes of a special Meeting," 30 Oct. 1948.

16. See "Bencherers Ban Martin," Sun, 12 Nov. 1948; "Reasons," Advocate 6, pt.6 (Nov.-Dec. 1948): 209-220. Fleming, Circles, 276; Charles Bruce, News and the Southams (Toronto: Macmillan of Canada, 1968), 338. Bruce calculates the circulation at Sept. 1949 as Province: 97,000 and Sun: 160,000. Why the great Sun interest in the case? Perhaps the editors pounced on a selling story. The daily also touted itself as the Liberal opposition to the orthodox Province. Bruce notes that inter-paper rivalry treated Vancouverites to some of "the liveliest newspaper cut-and-thrust of modern times." The Sun gave a great deal of space to the case.

17. The two-years of predominantly mainstream press coverage is as follows by item: 34 editorials with 13 from Vancouver editors; 3 columns by Jack Scott and 5 by Elmore Philpott; 24 letters to editors and several feature articles. By chronology (items): July-Sept. 1948..7; Oct. 1948..12; Nov.

-Dec. 1948..73; Jan.-Feb. 1949..23; Mar.- May 1949..32; June-Sep. 1949..5 (Communist); Oct. 1949-Jan. 1950..5; Mar.-April 1950..14; May-June 1950..4; Jan. 1951..1. This does not include Advocate or Ubysey items. Letters of protest kept by the LSBC are balanced in date distribution until November 1949, after which no letters of criticism came in, or they were destroyed. Press commentary is not easily divided into "for" or "against" categories as much of the support for reversing the decision against Martin or revising the process was qualified by anti-communist hostility. "Left" or "right" press groupings are also misleading: although partisan left-wing interests figured prominently, some of the strongest LSBC critiques came from staunchly conservative quarters.

18. For this usage, authority is defined as the power to act or judge with the support of institutions and socio-cultural norms. By "discourse" I mean a process of communication with a structure shaped and limited by internally-developed conceptual language. The Benchers drew on the language familiar to them to both construct and reinforce the conservative authority which dominated the "Reasons."

19. In their assessment of the concept and implications of "subversion," Elizabeth Grace and Colin Leys illustrate the use of the term by established orders "to deligitimize" opposed activities and ideas, although lawful. To label people or their actions subversive is to legitimate state actions against them on the grounds of their potentially unlawful consequences. See Grace and Leys, "The Concept of Subversion," 62-3.

20. Presumably the cuts were made to make the article conform to the newspaper's space and lay-out needs.

21. Gordon Martin, "Disbarred Law Student Assails B.C. Benchers Over Decision," prepared statement in Sun, 12 Nov. 1948.

22. This is not to discount the applause of vehemently pro-LSBC editors, but to keep the focus on the protest.

23. Jack Scott, "Our Town-The Martin Case," Sun, 13 Nov. 1948; "Red's Loyalty At Issue," Editorial, Sun, 13 Nov. 1948.

24. Scott, "Martin," Sun, 13 Nov. 1948; Rutherford, Media, 64. Scott's writing and role should be considered in terms of Rutherford's outline of the mandate of the resident columnists of the daily press. They "might specialize in humour, politics, pessimism or dissent," but the purpose

was to add colour and reach out to readers without committing the newspaper to their opinions. Sun editors disagreed with Scott on the Martin case. See also "Civil Liberties Union Honors Vancouver Sun's Jack Scott," Sun, 19 Mar. 1949; B.C.'s Scott and Webster join hall of fame," Sun, 16 Mar. 1987. In 1949, the UBC branch of the Civil Liberties Union honoured Scott for his efforts to further civil liberties. This child of a "newspaperman" worked for the News-Herald at fifteen and joined the Sun in 1946. He wrote on local and international affairs and received several awards, including a posthumous place in the Canadian News Hall of Fame.

25. Erwin Kreutzweiser, "The Gordon Martin Case," News-Herald, 18 Nov. 1948; Bruce, Southams, 366. The News-Herald was a less successful Vancouver daily. The Sun bought it in 1951 to get its surplus newsprint, sold the paper in 1952, and it soon folded.

26. The Province's hostile pamphlet on Communism in British Columbia earned it a place in the select bibliography of How Communists Operate: A Brief Memorandum on Communist Tactics (Montreal: Dept. of Economic Development, The Canadian Chamber of Commerce, 1948). A Southam daily, the Province's editorial stance on Martin vied with that of such Southam papers as the Ottawa Citizen, Calgary Herald and Edmonton Journal. Bruce notes that Southam's chain was known for editorial independence. See Bruce, Southam, 411; Arnold Edinborough, "The Press," Chap. in Mass Media in Canada, ed. John A. Irving (Toronto: Ryerson Press, 1962), 28; "Martin Case," Editorial, BC Financial Times, 20 Nov. 1948.

27. The Kelowna-based Financial Times' animosity towards the LSBC may have reflected anger at its contemporary geographic power base. The LSBC executive consisted almost exclusively of Vancouver and Victoria-based lawyers whose decisions may have been in the interests of the membership in those regions. Legal education facilities were also confined to the provincial south.

28. Although not referred to in the protest discussion, the furthest point of Canadian geography in press coverage is Halifax. Some large dailies basically ignored the case. For example, I found one Globe and Mail reference to a small CP item on Martin. Surprisingly, Canadian Forum, noted for its attention to civil liberties issues, gave no time to the case.

29. Edinborough, "Press," 19.

30. Editorial, Ottawa Journal, reprinted in News-Herald, 23 Nov. 1948; Edinborough, "Press," 25, 28. He accords the Journal with an excellent reputation for news interpretation. Although the paper belonged in the Liberal FP (Sifton-Max Bell) chain, contemporaries labelled it Conservative in its views.
31. "Bar Association and Politics," Editorial, Edmonton Journal, 15 Nov. 1948.
32. Editorial, Saskatoon Star-Phoenix, reprinted in News-Herald, 25 Nov. 1948. The Star-Phoenix was Sifton-owned.
33. "Theory and Practice," Time Magazine, vol.52 (22 Nov. 1948): 17.
34. Kreutzweiser, "Should Politics Prevent?" SN 64, no.9 (4 Dec. 1948): 18.
35. John Plamenatz, Democracy and Illusion: An Examination of Certain Aspects of Modern Democratic Theory, (London: Longman Group Ltd., 1973), 200. This ranking applied generically to liberal, representative democracies. The most valued private rights were to: the choice of a career; education enabling an informed career choice and the necessary knowledge and skills; decide whom you will marry; discuss and criticize anything, especially all social rules and received standards; the right not to conform to these rules and standards unless necessary to secure the rights of others or to allow the community to function; form organized groups for any purpose not harmful to others. His political list included the right to vote in and hold elections, to criticize law-makers and their subordinates publicly, and to form organized groups to make demands on them, and recommend policies to them.
36. See, for example, Gordon Martin, Letter, Sun, 17 Nov. 1948.
37. LSBC, GM, Letter, Sec., Women's International League for Peace and Freedom, Vancouver Branch, to Sec., LSBC, 3 Jan. 1949.
38. LSBC, GM, Letter, Sec., Women's Auxiliary, Woodworkers Industrial Union of Canada, Lake Cowichan local, to "Benchers," 30 Dec. 1948. This was a Communist-affiliated union.
39. Editorial, Courtenay Comox Argus, 1 Dec. 1948.
40. Mrs. Gordon Martin, "Letter," Sun, 30 Nov. 1948.

41. Ubysey 17 Feb. 1948. Savery joined SPC members in at least one house party, bringing his trade union (music) records. This indicates a personal acquaintance with Martin and sympathy for the labour cause.

42. "Students Protest," Province, 25 Nov. 1948; "UBC Students Rap Benchers' Decision," News-Herald, 26 Nov. 1948; "Editorial," Ubysey, 18 Nov. 1948; "Benchers Condemned by Saskatchewan Students," Pacific Tribune, 26 Nov. 1948; LSBC, GM, Letter, Sec., Law Club of the School of Law of the University of Toronto to Sec., LSBC, 15 Dec. 1948.

43. Advocate 6, pt.6 (Nov.-Dec. 1948): 194.

44. LSBC, GM, Letter, Sec., UBC Branch No.72, The Canadian Legion of the British Empire Service League, to Sec., LSBC, 5 Nov. 1948. Regarding Branch 72, see "UBC Legion Branch Will Receive Charter," Ubysey, 31 Oct. 1946; Ubysey, 11 Feb. 1947, and Logan Tuum Est, 207. Founded in September 1946, UBC's Legion Branch emerged a 2300-member strong organization by October and the number increased in 1947 to make it BC's largest veteran outlet. The branch lobbied on behalf of veterans, made loans to ex-service students, and reportedly aided the UBC Administration with matters of "general University policy."

45. John Lakes, "Letter," Province, 30 Nov. 1948; "Legion Refuses To Aid Gordon Martin's Case," and "Legion Asks Definition of Communist," Ubysey, 25 Nov. 1948.

46. Gordon Wood, "Letter," Rossland Miner, 2 Dec. 1948.

47. NAC, RG146, v.1220, GM, pt. 2, 575, 577. Vancouver Special Branch, "Report" re: Labor-Progressive Party, BC, 30 Nov. 1948.

48. Gordon Martin, "Letter," B.C. Union District News, 19 Nov. 1948.

49. Young, Anatomy of a Party, 44, 144; "Elmore Philpott Joins the Sun," Sun, 3 May 1943; "Elmore Philpott Dies at Age of 68," Sun, 10 Dec. 1964; Elmore Philpott, Crusader," Sun, 11 Dec. 1964. Born the son of a Toronto minister, Philpott studied at university before going overseas in World War One. A commissioned and crippled veteran, he bought into a printing plant in a poor section of Toronto. The venture failed but the environment made Philpott an activist for social and economic reform throughout his career as a journalist, associate editor for several papers including the Globe, and a politician. He challenged Mitchell Hepburn for the leadership of the Ontario

Liberals, then broke with the party to work for the CCF, helping to draft the Regina Manifesto and serving as president of the Ontario Association of CCF clubs until he left the party in 1934. He moved to Vancouver and became a prominent Liberal, but intellectually he transcended party politics. His "As I See It" column was picked up by several Canadian newspapers and in the 1940s he did a nightly radio news commentary on CBR and a Sunday night feature on CKWX. A frequent guest of the UBC Social Problems Club, Philpott no doubt knew Martin personally.

50. Philpott, "The Martin Case," Sun, 16 Nov. 1948.

51. "Liberal Group Raps Lawyers Over Martin," Sun, 29 Nov. 1948.

52. George Weaver, "Lawyers and Loyalties," CCF News, 2 Dec. 1948.

53. "Benchers Hit By CCF Over Martin Ruling," Sun, 15 Nov. 1948; "Communist Speakers Urge Defeat," Trail Daily Times, 19 Nov. 1948. LPP organizer Maurice Rush praised the CCF and added his call for the legislative curbing of "dictatorial powers." Internal CCF and trade union debates about the case and the course of action to be taken are yet to be located.

54. JS Interview.

55. See Advocate 6, pt.5 (Sep.-Oct. 1948): Cover and 166-7. This issue would have been published in November, subsequent to a portion of the criticism. The specific author is unknown, but Elmore Meredith edited the journal. See Watts, Society, 112.

56. Edinborough, "Press," 21-2. Founded in 1917, the cooperatively-owned Canadian Press was used by daily newspapers to exchange news between their roughly one hundred members.

57. "Legal Aid Offered to 'Red' Law Clerk," News-Herald, 2 Dec. 1948; "City Bar Association Backs Benchers," Province, 2 Dec. 1948.

58. D.C. McNair, "Letter," Pacific Tribune, 17 Dec. 1948.

59. "Martin Seeks Leave to Appeal," Province, 25 Dec. 1948.

60. "Martin Case Move Unlikely," News-Herald, 14 Jan. 1949. At a UBC Liberal Club-hosted meeting of over one thousand students, he received the specific question: Should the legislature 'act in curbing the powers of any professional

society, set up under provincial legislation, to consider a man's political beliefs or affiliation in deciding on his admission to the society?' Johnson replied that 'regulation of any profession should be a matter for the profession alone to decide. This has been the government's policy for many years'.

61. Philpott, "Martin," Sun, 15 Dec. 1948.

62. Tom McEwan, "The Martin Case: Thin Edge of a fascist wedge," Pacific Tribune, 28 Jan. 1949.

63. "Labor Group Seeks Legal Act Change," Sun, 9 Feb. 1949.

64. "Martin committee campaigning," Pacific Tribune, 11 Feb. 1949.

65. "Overhaul Demanded," Victoria Times, 11 Feb. 1949.

66. Advocate 6, pt.2 (Mar.-Apr. 1948): 52. H.E. Winch and his labour politician father E.E. Winch earlier denounced two SCBC judges in the legislature. The Benchers met the "derogatory statements" with a resolution charging the CCFers as "being unfair to the Judges, subversive of constituted authority" and cowardly. The executive reaffirmed its faith in the judiciary.

67. "MLA States He Favors," Sun, 15 Feb. 1949; "Winch Denies Inference Reds Supporting C.C.F.," Colonist, 15 Feb. 1949.

68. "Law Student May Get Right To New Appeal," Sun, 16 Mar. 1949; "Martin Case To Be Aided Wismer Says," (CP) Province 17 Mar. 1949.

69. "What Would a Court Say?" Editorial, Sun 17 Mar. 1949; "Gov't Offers Aid," Sun, 22 Mar. 1949; "Martin Takes the Plunge," Editorial, Sun, 27 April 1949.

70. "What Would?" Sun 17 Mar. 1949; "Plunge," Sun, 27 April 1949.

71. All from LSBC, GM: Letter, Vancouver dentist to Sec., LSBC, 29 Oct. 1949; Letter, private citizen to Sec., 7 Nov. 1949; Letter, President Vancouver Branch, WILPF, to Sec., LSBC, 28 Nov. 1949; Letter, Sec., Sussex Fellowship of Vancouver to Sec., LSBC, 22 Nov. 1949.

72. LSBC, GM, Letter, a Minister of St. George United Church to Sec., LSBC, 15 Oct. 1949. He cited principles outlined by the United Church General Council, 1948 Record of Proceedings, p.206-7. These entailed: vigilance against arbitrary procedures; respect for the rights, liberties and

equality of all citizens; and loyalty to the "principles and practices of justice."

73. Ward, White Canada, 164-5; Adachi, Enemy, 291, 307-310. In the Japanese-Canadian campaign, which emerged from a base of strong internal organizations, civil libertarians in the Co-operative Committee on Japanese Canadians joined with Protestant denominations, the Canadian Jewish Congress and related groups such as the YMCA and YWCA to give the protest a broad base.

74. LSBC, GM, Sec., Draft response, submitted to a Bencher, 17 Oct. 1949; Bencher response to Sec., LSBC, 18 Oct. 1949, Letter, LSBC Sec. to Minister, St. George United Church, 19 Oct. 1949.

75. "Communist Menace on the Wane," News-Herald, 22 Oct. 1949.

76. The CCLU withdrawal is important as not until 1962 did the BC Civil Liberties Association come into being. Robert Rowan notes that earlier groups "didn't survive." See Rowan, "The B.C. Civil Liberties Association," in Liberties, ed. John Russell (Vancouver: New Star Books, 1989), 6.

77. Ross Lambertson, a doctoral candidate at the University of Victoria working in the civil liberties field, advised that he had found no recorded reasons for the CCLU withdrawal, at the time of a discussion with the author, August 1995.

78. LM interview.

79. Rankin, Radical, 65.

80. LSBC, GM, Letter, Bencher to J.S. Burton, 28 Oct. 1949.

81. LSBC, GM, Letter, Wismer to a Bencher, 24 Oct. 1949; NAC, RG146, v.1220, GM, pt. 2, 486, items 1 and 6. LPP file, Special Branch, 24 Jan. 1949. The four remaining points to the program are edited out from the source.

82. "Drive To Publicize Martin," News-Herald, 2 Nov. 1949.

83. The delay reportedly involved J.S. Burton's preparation of the appeal books, indicating no apparent strategy by the legal order.

84. "International Interest aroused," Pacific Tribune, 12 Aug. 1949; EG interview. She recalls a hostile lawyer in

the audience being furious at the applause she received for her plea for Martin's civil liberties.

85.LSBC, GM File, Letter, Sec., Local Union No. 963 (School Engineers) of the International Union of Operating Engineers to Sec., LSBC, 31 Oct. 1949; Letter, Sec., Pioneer Miners' Union Local 693, IUMM&SW, to LSBC, 21 Oct. 1949.

86.JS interview. Pritt was involved with the ICDL; his influence in the Haldane Society is unconfirmed.

87."`World' Protests Ban on Martin," News-Herald, 18 May 1949.

88.LSBC, GM, Letter, H.F.E. Smith, Industrial and Trade Representative, BC House, to Sec., LSBC, 10 May 1949. The correspondence included the letter to the Times.

89."Labor Law," Advocate 8, pt.5 (Sep.-Oct. 1950): 221-2. The initial appeal decision was handed down prior to 1950.

90.Philpott, "Kuzych and Martin," Sun, 11 Jan. 1950.

91."Labor Law," Advocate 8, pt.5 (Sep.-Oct. 1950): 221-2, reporting Kuzych v. White, [1950] (3 May) 2 W.W.R. 193 (BCCA). Bird (with Sloan concurring) dissented on the basis of "substantial compliance" with the Union constitution.

92."Martin Appeal Refused," Sun 26 Apr. 1950; "Perjury at the Bar," Editorial, Sun, 29 Apr. 1950.

93."The Gordon Martin Case," News Herald, 28 April 1950.

94."Front Page-The Bar and the Communists," SN 65, no.36 (13 June 1950): 5-6.

95.Mark Frank, "No Freedom in Canada Without Freedom in Quebec Senate Told," Canadian Tribune, 8 May 1950.

96.Elmore Meredith, "Communism and the British Columbia Bar," The Canadian Bar Review 28 (1950): 898-900.

97.Editorial, Chitty's Law Journal 1, no.1 (Nov. 1950): 7. This new journal took over from the Fortnightly Law Journal, a publication for lawyers' use throughout the Dominion which started in 1931.

98.Scott, "Our Town," Sun, 28 April 1950.

99.A.Rosenberg, "In Canada," Wochenblatt 10 (May 1950): 4.

100. See "A Threat To Personal Rights," Editorial, Calgary Albertan, 2 May 1950; "The Rights of Communists...And of People of Good Repute," Editorial, Calgary Albertan, 1 June 1950. The Albertan was an FP (Sifton-Bell) paper.

101. See A.V. Dicey (1885), "The Rule of Law," in Law, Politics and the Judicial Process in Canada, ed. F.L. Morton (Calgary: University of Calgary Press, 1987), 15-17. The rule of law is fundamental to British tradition and institutions. Dicey emphasized that the rule meant the absolute supremacy of regular law "as opposed to the influence of arbitrary power" and the intent of "equality before the law" which worked against "administrative law" where authority is granted to "more or less official bodies" beyond the sphere of the courts. See also Judith Shklar, "Political Theory and the Rule of Law," in The Rule of Law: Ideal or Ideology, eds. Allan C. Hutchinson and Patrick Monahan (Toronto: Carswell, 1987), 1-16.

102. Janet Ajzenstat, "Decline of Procedural Liberalism: The Slippery Slope to Secession," in Is Quebec Nationalism Just?: Perspectives from Anglophone Canada, ed. Joseph H. Carens (Montreal-Kingston: McGill-Queen's University Press, 1995), 122, 130. Ajzenstat focuses on the procedural constitution.

103. Ibid., 127.

104. Ibid., 130-1.

105. Kim Lane Scheppele and Karol Edward Soltan "The Authority of Alternatives," chap. in Authority Revisited, eds. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1987), 169-200.

106. Scheppele and Soltan, "Authority," 170-2, 175. They state that: "authority exists in an alternative when the alternative possesses resources that would make autonomous, rationally choosing individuals select that particular alternative on the basis of the resources it possesses in a collective choice process." A resource is anything which can be used to influence a decision; the stronger the resources, the stronger the authority. Although the legal order steered attention to due process and the appeal court, I am arguing that the interested public voluntarily chose to accept the process and ruling as authoritative, thus ending the protest.

107. Ibid., 180.

108. See Ontario, McRuer Report, "Inquiry into Civil Rights," no.1, vol.3, c.79 (1968).

109.Scheppele, "Authority," 178-182. Justifications are reliable when individuals "asked at different points to give reasons for a decision, find the same reasons convincing each time."

110.Ibid., 183.

111.Ibid., 184.

112.See Adachi, Enemy, 316-7. The deportation orders passed in December 1945. The appeals were defeated in the courts in 1946.

113.Adachi, Enemy, 218-9; Ward, White, 165.

114.For example, the Japanese-Canadian community's efforts to gain compensation for wartime losses captured a great deal of attention during the period of the Martin affair.

115.F.R.Scott, Civil Liberties and Canadian Federalism, (Toronto: University of Toronto Press, 1959), 40. [Allan B.Plaunt Memorial Lectures/Carleton University, March 19 and 21, 1959.]

CHAPTER SEVEN - CLOSING REMARKS

This work closes with a epilogue which traces some writers' treatment of Gordon Martin's experience, the course of the judicial decision, legislation, and the people closest to the case. Alfred Watts upholds the Benchers' actions in his 1973 history of the Law Society. In his words, their refusal of Martin, "involving much personal hardship on him, illustrated vividly the heavy and continuing responsibility of the [Credentials] Committee and the Benchers to the public and to the profession."¹ Watts is entitled to this summation, it reflects both his position as LSBC Secretary during the Martin affair and his commitment to the professional ethos. Clearly, however, any discussion of professional responsibility must take evidence of self-interest and bias into consideration.

Allan Fotheringham alludes to Martin's LSBC rejection in his March 1995 Maclean's column. While his focus is on Harry Rankin, the journalist advises his broad readership that Martin was barred "for being a member of the Labor Progressive (i.e. Communist) party, it being illegal at the time. Saner heads finally prevailed and Harry Rankin became an official lawyer."² The error on LPP legality is blatant, and Rankin's adherence to the LSBC anti-Communist directive got him into the profession, not a change of heads or attitudes. The record should be set a little closer to straight.

The ruling is more than history as it stands as legal precedent, a text of judicial interpretation still consulted. A first reference occurred in a 1963 libel case where the plaintiff had been labelled a Communist. A justice of the Supreme Court of BC defined libel as words which "lower a person in the estimation of right-thinking men, or cause him to be shunned or avoided, or expose him to hatred, contempt, or ridicule."³ He then drew on comments made by Justices O'Halloran and Robertson in the Martin appeal to stress the depth of the contemporary society's contempt for Communists.⁴

Judicial usage of the Martin decision more commonly relates to jurisdictional questions on matters involving professional administrative tribunals. In 1983, an applicant to the Council of Professional Engineers, Geologists and Geophysicists of Alberta failed to satisfy the Council of "his good character." A justice of Alberta Queen's Bench was not convinced that the plaintiff had received fair treatment.⁵ He referred to the Martin ruling to establish the limited jurisdiction of the court, and to support his sending the matter back to the Council for a re-hearing.⁶

In two other cases where Martin is cited, the appellants sought reinstatement in professional societies after expulsion for prior incidents of professional misconduct. In 1972, the Council of the College of

Physicians and Surgeons of BC refused to register a doctor in the College because he failed to establish his "good professional conduct, and good character as a citizen."⁷ The plaintiff, Urbanek, applied to the SCBC for a writ of certiori to nullify the Council's decision and a writ of mandamus to force the Council to re-consider his application "in accordance with the provisions of The Medical Act, R.S.B.C. 1960, c.239, and principles of natural justice."⁸ Justice Munroe of the Supreme Court referred to the Martin judgment to uphold the discretionary powers of the Council of the College: "In this case the decision of the Council reflects the exercise of a proper discretion according to law."⁹

Justices Hinkson, Proudfoot and Gibbs of the BC Court of Appeal similarly applied this line in dismissing disbarred lawyer Walter McOuat's 1993 bid for renewed membership in the LSBC, an appeal made possible by the statutory amendment put in place to allow Gordon Martin's 1950 hearing. The LSBC's Credentials Committee remained unconvinced of McOuat's good character, repute and fitness to act as a barrister and solicitor.¹⁰ Justice Gibbs cited Chief Justice Sloan in Martin to support the judicial stance that the role of the court was not to judge the original case, or LSBC findings, but to consider whether the Benchers had stayed within their proper jurisdiction and exercised their discretion according to law.¹¹ The

intent in raising this case is not to dispute the Benchers' findings, but to point to the longevity of the professional power structure and the court's deference to it.

According to the 1987 Statutes of British Columbia, the legislation supporting the Benchers' discretionary powers also remains essentially intact. They may still call to the Bar and admit any person who satisfies them that, among other things, "he is a person of good character and repute" and "is fit to become a barrister and solicitor of the Supreme Court."¹² The statutory interpretation of conduct unbecoming a Society member is broad. This includes "any matter, conduct or thing that is deemed, in the judgment of the benchers or the discipline committee, (a) to be contrary to the best interest of the public or the legal profession, or (b) to harm the standing of the legal profession."¹³ As an evolutionary point of interest, except for the addition of "discipline committee," this definition is the same as a version introduced into the Act in 1955.¹⁴ Gordon Martin's legacy is, of course, that the Court of Appeal route remains open to all appeals, or new tests of private powers versus individual freedoms.

What happened to the main historical actors in the Martin affair? Some men on the 1948-50 LSBC executive advanced to the position of Treasurer. Reginald Tupper succeeded Clarence O'Brian as the Society head in 1949, to be followed by William Haldane (1951-53), Alexander

DesBrisay (1953-55), Elmore Meredith (1955-57) and T.G. Norris (1957-59).¹⁵ Tupper, Norris and G. Roy Long were among those honoured as "Life Benchers" by their colleagues. Four Benchers took on other duties. Thomas Selkirk became Magistrate of New Westminster in 1950 and DesBrisay acted as Chief Justice of British Columbia from 1958-1963.¹⁶ After his term as Treasurer, T.G. Norris went to the provincial Supreme Court. In 1961 he moved to the Court of Appeal and subsequently headed the Norris Commission to investigate the celebrated conflict between the Canadian Seamen's Union and the Seafarers' International Union.¹⁷ When the post of chancellor at UBC became vacant in 1951, prominent alumni Sherwood Lett took it by acclamation.¹⁸ In 1955, he went to Laos as Canada's member on the Indo-China Truce Supervisory Commission, and on his return, refused an appointment to the Supreme Court of Canada. Instead, Lett became Chief Justice of BC's Supreme Court and in 1963, he became Chief Justice of both the Court of Appeal and the province.¹⁹

As earlier noted, Gordon Wismer lost the job of Attorney General with the Social Credit win in the 1952 election. He returned to private practice. Justice James Coady was elevated from the Supreme Court to the Court of Appeal in 1954, joining Sidney Smith, Cornelius O'Halloran, Henry Bird, Harold Robertson and Gordon Sloan, who continued to dispense justice until retirement or loss of

life took them from the bench.²⁰ As the head of the 1948-50 Royal Commission to investigate the property claims of Japanese-Canadians, Bird gained renown for delivering what he termed "rough justice," or what historian Ken Adachi interpreted as "too little, too late."²¹ Bird became BC's chief justice in 1964. Sloan achieved fame for his reports on BC's forest industry, and as a mediator in labour disputes for the provincial and federal governments.²²

Excepting Martin, the left-wing law students of 1948 attained their degrees and calls to the Bar. Norman Littlewood went into practice in Princeton, BC.²³ Ike Shulman set up an office in Vancouver. According to Reg Whitaker, in 1952, he and Harry Rankin became the targets for unfounded RCMP suspicions of their involvement with illegal Chinese immigration schemes. Shulman later put his energies into mining engineering in Australia.²⁴ Harold Dean worked, at different times, with Elspeth Munro (married name Gardner), John Stanton and Harry Rankin. Munro, who broke several professional stereotypes as a woman lawyer from a working-class background, kept a general practice but focused on labour law until her retirement.²⁵ Stanton's career, and his high-profile legal battles on behalf of labour are detailed in his published memoirs.²⁶ Politically, he ran as an NDP candidate for municipal council in the 1970s.²⁷

Rankin's autobiography describes his work in criminal

and labour law, and his political career.²⁸ In 1967, his long campaign for election to Vancouver City Council produced a win. He became a socialist fixture in that body, and gained renown as a colourful public figure. He also took an interest in LSBC affairs and ran for the position of Bencher. In what Alfred Watts terms "a surprising turn of events," Rankin won an entry to that inner circle in 1971.²⁹ He subsequently publicly criticized the justice system in relation to a major case, raising the ire of his conservative Bencher peers to the point that they cited him with "conduct unbecoming a member of the Society."³⁰ Rankin beat the citation, and in 1979 he became the LSBC's senior Bencher and Treasurer, a remarkable outcome of his contentious history with the Society. He served his term without incident.

Following his loss in the BC Court of Appeal, Gordon Martin and his family dealt with health and money problems. His search for stable employment met no success until a saw mill took him on in 1952.³¹ His interest in television repair, a new field in line with his penchant for electronics, turned the situation around. In 1956, after taking a self-directed course, Martin opened up a T.V. and Radio repair shop in Nanaimo. Seven years later, the ever-attentive RCMP termed him a "good family man" whose "business seems to fare quite well."³² Surveillance teams had little else to report from 1954 to 1964, because

ironically, Martin's LPP membership ended.

Several factors contributed to this political divorce. During the hard times, Martin found his LPP peers short of empathy and support. He believed he had given his all to the party, and the return left him bitter.³³ A strong Stalinist, he also refused to take up the revisionist Communist party line. These two elements, his anger, and the LPP's wish to expel a non-conformist, caused the break.³⁴ He kept informed of the issues and in the mid-1960s, became active in the Progressive Workers Movement, a group reportedly attractive to hard-line Communists. The Movement publicly honoured Martin, and in 1966, as a PWM speaker, he shared his perspective of the "Socialist Revolution" and "the intellectual and society" with students at the Vancouver City College, Simon Fraser University and UBC.³⁵ If the RCMP records are correct, after this speaking tour Martin withdrew from involvement in politics and political organizations.

The state found no fault with his other activities, although in the wake of the appeal, U.S. officials apparently curbed Martin's free movement by adding him to the long list of border-blacklisted Canadians.³⁶ According to his daughter Lillian, Martin wished to avoid persecution in any form and obeyed the law to the letter, to a "preposterous" extent at times. He put his energy into family activities, and as an avid reader, scanned

everything from the Communist publications to books on Greek pottery and anthropology. Music inspired him, and he grew orchids for a hobby.³⁷ However, this veteran of the two-year battle with the LSBC, the courts and public opinion faced another long struggle in his middle years, this time with cancer. W.J. Gordon Martin passed away in 1974.³⁸ In tribute, the Pacific Tribune acknowledged his historic fight to practice law.³⁹ The RCMP closed his file.

In 1948, with his legal education and articles completed, Gordon Martin prepared to practice law. He applied to the LSBC Benchers for the routine stamp of approval, the ritual call to the Bar. Their response was unprecedented. As a vocal member of a Communist minority, Martin's candidacy for repression increased with the onset of Cold War anxieties and conservative forces' elevated use of anti-communism as a weapon in BC's political and labour arenas. This study outlines the depth of the conservatism of the contemporary legal elite, the connections between the LSBC and the state, and the degree of consolidation between the legal, government and corporate establishments. These factors ensured that a pro-labour LPP activist such as Martin would not be embraced by the LSBC oligarchy, but the guardians of the profession went further. Legislated to decide who could enter their fraternity, the Benchers

rejected him as "unfit" by reason of ideology.

Many observers, in turn, rejected this decision, along with the Benchers' posture of elite unaccountability. The flexing of discretionary powers appeared to be an arbitrary negation of the civil liberties of a qualified applicant who belonged to a legal, if controversial, political party. The resulting protest illuminated the postwar intellectual divide between the conservatism of the legal elite and the liberalism cum civil libertarianism of people drawn from all quadrants on the social and political spectrum. Alarmed at a private body's legislated power to block Martin's career goals, and thus, his political freedoms, the protesters questioned the intent and contents of the Legal Professions Act and the government's tenet of non-intervention. What may be termed a Canadian rights and freedoms culture was under construction and this challenge to the illiberal status quo exemplified the new mood.

The analysis of the course of this protest underscores the immaturity of the civil liberties movement of the late 1940s. Although Martin had many committed supporters, civil libertarians did not effectively coordinate a sustained campaign around his case. A Cold War strain of conservatism and fear restrained Canadians' liberalism, to the detriment of Martin's cause. Furthermore, both the Martin and George Hunter cases attest to civil libertarians' lack of experience and success in contests with private executives.

Martin battled one decision, but it came in a package of "sacrosanct" traditions in jurisdiction, state-profession relations and legislation. Through protest, Martin's proponents won the legal entrenchment of the right to appeal the Benchers' decisions. The government and judiciary's accord with the LSBC governors' actions, reasoning and jurisdiction marks the frailty of this process as a protection for the individual. The public's acceptance of the appeal outcome as conclusive accents the danger in the use of courts as a palliative to relieve the sense of an injustice without correcting it.

This case study's attention to these factors, and to the relationships between the legal profession and the state, and the LSBC and society, adds to its relevance as a legal history. This work also attends to intellectual, political and social questions and forces, however, and it is best described as a multi-faceted history. Although the scope of this study is necessarily limited, each inquiry which taps into the wealth of unconsidered materials contributes to the possibility of an informed comprehensive work. This applies to any area of history, and in this case, the early civil liberties field. As social values shift to the conservative, and the status and concepts of civil liberties, due process, and professionalism enter the turbulence of the twenty-first century, historians and other scholars will want to reconsider the Martin case.

Notes to Closing Remarks

1. Watts, Society, 43.
2. Allan Fotheringham, "A Tale of two veterans," Maclean's 108, no.10 (March 1995): 88.
3. See Brannigan v. Seafarers' International Union [1963], 42 D.L.R. (2d) 249 (B.C.), at 249-259. Brannigan, a Vancouver worker, successfully charged the SIU with publishing a defamatory article in that it labelled him a Communist. Justice Hutcheson cited Gatley on Libel and Slander, 5th ed., p.16.
4. O'Halloran, J.A., and Robertson, J.A., judgments in Martin v. Law Society of B.C. [1950] 3 D.L.R. 173, at 178-9, 192, cited in Ibid., 254.
5. See Simlote v. Association of Professional Engineers, Geologists & Geophysicists (Alberta), [1983] 4 W.W.R. at 408 (Alberta Queen's Bench). The Council claimed that Simlote's character problems stemmed from problems with the English language and his technical qualifications and experience. The Council did not notify Simlote of problems, he was absent for the decision and no transcripts were made of the proceedings.
6. Ibid., 406-409.
7. See Urbanek v. College of Physicians & Surgeons (British Columbia), [1972] 3 W.W.R. at 45-50.
8. Ibid., 46.
9. Ibid., 47, 50.
10. See McOuat v. Law Society (British Columbia) [March 31, 1993]. Doc.CA015762 (BCCA) and 43 W.A.C. at 248-253. McOuat abused client trust funds from 1976-1982.
11. Ibid., 476.
12. See Legal Profession Act, S.B.C. 1987, c.25, s.28.
13. Ibid., Preamble, "Interpretation."
14. Legal Professions Act, S.B.C. 1955, c.40, s.111.

15. Watts Society, 69, 122-3; "Nos Disparus" Advocate 30, pt.6 (Oct.-Nov. 1972): 38.
16. Watts, Society, 69; "Nos Disparus," Advocate 10, pt.4 (July-Aug. 1952): 155.
17. See William Kaplan, Everything That Floats: Pat Sullivan, Hal Banks, and the Seamen's Unions of Canada (Toronto: University of Toronto Press, 1987); Watts, Society, 123.
18. Logan, Tuum, 204.
19. David R. Verchere, A Progression of Judges: A History of the Supreme Court of British Columbia (Vancouver: University of British Columbia Press, 1988), 164-66.
20. Fraser, Judges, entries 4, 17, 77, 79, 88; Verchere, Progression, 154-156, 160. Robertson retired in 1955.
21. Adachi, Enemy, 331.
22. Fraser, Judges, entry 87.
23. Cartwright, Canadian Law List 1956, 369.
24. Rankin, Radical, 69; Reg Whitaker, Double Standard: The Secret History of Canadian Immigration (Toronto: Lester and Orpen Dennys, 1987), 99-100.
25. EG Interview.
26. See John Stanton, Never Say Die! The Life and Times of John Stanton, a Pioneer Labour Lawyer (Ottawa: Steel Rail, 1987).
27. Rankin, Radical, 212.
28. See Harry Rankin, Rankin's Law: Recollections of a Radical (Vancouver: November House, 1973), 106, 207-220 in regards to the events discussed in this paragraph; also "New Treasurer-Harry Rankin," Advocate 36, pt.6 (Oct.-Nov. 1978): 549-550.
29. Watts, Society, 125.
30. "New Treasurer-Harry Rankin," Advocate 36, pt.6 (Oct.-Nov. 1978): 550. This was in relation to the inquest into the death of Fred Quilt.
31. TW Interview; LM Interview; NAC, RG146, v.1220, GM, pt. 7, 3-4, RCMP extract.

32.NAC, RG146, v.1220, GM, pt.7, 71, RCMP Div."E," 15 Nov. 1963.

33.LM Interview.

34.NAC, RG146, v.1220, GM, pt.7, 7-8, RCMP, 1960. Martin participated in LPP activities up until his expulsion. In 1950 he was elected Secretary of the Nanaimo Union of Unemployed, in 1951, he became President of the Nanaimo Peace Council, and in 1952 he joined the Nanaimo Wood Workers' LPP Club.

35.NAC, RG146, v.1220, GM, pt.7, 37, "Pamphlet re: Progressive Workers Movement"; pt.7, 41, RCMP, Div."E," Report 15 Mar. 1966; pt.7, 35, RCMP, Div."E," 23 Mar. 1966; pt.7, 36, RCMP Report, 23 June 1966; pt.7, RCMP Report, 2 May 1967. Martin had more success with the message at the College than the universities. Among other things, the PWM protested U.S. aggression in Vietnam.

36.LM Interview; According to Whitaker and Marcuse, Cold War Canada, 224, countless Canadians were prevented from entering the U.S. through the joint means of the U.S. McCarran-Walter Act and RCMP-supplied information. Martin's addition to the list of "subversive" Canadians may have stemmed from a request sent to the LSBC. The Victoria-stationed Officer in Charge, United States Department of Justice, Immigration and Naturalization Service presented himself as "anxious" to secure a copy of the final Court of Appeal decisions. See LSBC, GM, Letter from Officer in Charge, U.S. Dept. of Justice, Immigration and Naturalization Service, Victoria, to Sec., LSBC, 27 Feb. 1951.

37.LM Interview.

38."Obituary," Nanaimo Daily Free Press, 27 Sept. 1974.

39."Gordon Martin dies in Nanaimo," Pacific Tribune, 4 Oct. 1974.

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