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CANADIAN JEWRY AND THEIR STRUGGLE FOR AN EXEMPTION IN THE FEDERAL LORD'S DAY ACT OF 1906

by

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DEPARTMENT OF HISTORY

A thesis submitted to the Faculty of Graduate Studies in partial fulfillment of the requirements for the degree of Master of Arts
University of Windsor

WINDSOR, ONTARIO
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PREFACE

This study begins in the first decade after Confederation when the question of Sunday law entered the sphere of federal politics. The first chapter includes an analysis of the origins of the struggle which ultimately resulted in a Dominion-wide Sunday law. The clamour for Sunday regulations is examined; the promoters of such legislation both inside and outside of Parliament are identified and an attempt is made to explain the objectives of the proposed Sunday legislation. Parliamentary reaction to the various proposals is also examined and an explanation of initial parliamentary inactivity on the question of Sunday law is provided to the reader.

Following the parliamentary deferral of Sunday legislation, the Judicial Committee of the Privy Council ruled that Sunday law was within the domain of the Parliament of Canada, according to the British North America Act, 1867. In July of 1906 the Lord's Day Act was passed by the Dominion Parliament. The struggle involved in the actual enactment of the legislation is examined and a review is made of the principles to which Parliament adhered in the passage of the legislation. In light of these preceding events, the Jewish Exemption Issue came to the fore.
In Chapter II the political and civil status of Canadian Jewry by 1906 is established. The position and attitudes of and about Canadian Jewry, among themselves and between their Gentile neighbours, are examined. The remainder of this chapter deals with an analysis and evaluation of the effects Sunday law had on Canadian Jewry, so as to understand the significance of an exemption for this group within the Lord's Day Act.

The third chapter consists of a detailed examination of the struggle for a Jewish exemption. The bill as introduced did not contain a religious dissenting minority exemption, and accordingly, a study is made of the actions of the Jewish interests in their attempts to have their convictions respected. Following this, an explanation and justification for a Jewish exemption position is presented to the reader. At the opposite end of the question the position of the opponents of a religious dissenting minority exemption is discussed. Supplementing the above, expressions of public opinion are offered through press accounts concerning the controversy. This is followed by the parliamentary select committee's adoption of the Jewish proposal. Finally, a description and analysis is provided of both the Jews' and their opponents' attempts to influence the federal legislators to adopt their respective positions. The remainder of
the paper constitutes the crucial part of the issue.

In Chapter IV, the arguments of the legislators when they discussed the infamous "Jew Clause," Section 11, on June 27, 1906, are brought forward. A general explanation regarding the positive and negative reactions of the parliamentarians to a Jewish exemption is given.

In Chapter V, discussion surrounding the exemption is subjected to a detailed analysis. Since amendments were proposed to replace Section 11, the arguments of the amendment exemption supporters as well as the amendment exemption opponents are cited. The votes on the various exemption proposals - all of which were decisively defeated, concludes this chapter.

Chapter VI contains an analysis as to WHY Parliament denied the Jews an exemption. An attempt is made to answer the following questions: Was the denial of an exemption in concert with the purpose, principle and directive of the measure as envisaged by Parliament? What was the major reason for denying an exemption? Who were the members of Parliament who voted negatively or positively and why? Was the denial of an exemption an expression of Anti-Semitism? Chapter VI provides a summation of the Canadian perspectives concerning the Jewish Exemption Issue.

In the Conclusion, following a review and assessment of the actions of the Jewish interests, an attempt
is made to determine whether it was appropriate to deny
the Jews an exemption from a strictly Jewish point of
view.
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CHAPTER I

THE CONCEPT OF FEDERAL SUNDAY LAW

The origins of Canadian Sunday law dates back to colonial times. The English Lord's Day Act, 1677, *An Act for the Better Observation of the Lord's Day*, commonly called *Sunday*, was the basis of Sunday law in the British North American colonies.¹ This law was part of the law for the pre-confederated colonies, although the colonies themselves could enact Sunday regulations to meet their own social conditions.² This state of affairs prevailed both prior to and after Canadian Confederation. By the first decade of the twentieth century most provinces had passed legislation which was the same or similar to the laws of Great Britain.³ The purpose of this legislation was to provide for the due observance of the Lord's Day by curtailing activities which might have profaned Sunday.⁴ Despite these regulations which were in force, public abuse of them was evident in Canada not less than ten years after Confederation.

With the growth of industry and business,⁵ a seven day work week was not uncommon in a variety of occupations. Aside from nightly rest, individuals laboured long hours without a rest day which tended to weaken their working
capacity in greater proportion than had they been given a day of rest on a weekly basis. Excessive hours of work not only hampered their working ability but affected their life expectancy because a weekly day of rest was needed for a longer life. As a result of a lengthy work week for many people, the nation was adversely affected because of the deteriorating conditions of the labour force. In occupations where the labourer worked seven days despite physical fatigue, he endangered the safety of other workers and that of the general public. Furthermore, the possibility of a family day as the result of a weekly rest day was deemed to be highly desirable in many quarters. The people of Canada demanded one day a week in which they could benefit by the quiet, peaceful and undisturbed enjoyment of the day. Rest was the ultimate purpose of such a day, save in cases of necessity and mercy, so that one could benefit from the day to his individual discretion. One might worship his Maker, as well as relax, which was the primary function of the weekly day of rest. The increasing rise of secularism and materialism, and increased religious indifference, led to a greater disregard for a weekly day of rest which was embedded in Sunday law. Since the Canadian nation as a whole was affected, the time came to examine the situation, and the Dominion Parliament became the arena for debate.

In 1876 Alan Gordon, Liberal M.P. for Ontario North,
proposed a resolution for Sunday observance but he withdrew the proposal after debate.\textsuperscript{14} Gordon's proposal was introduced "in the interest of public morality and the physical well being of the community," that there should exist a strict and uniform observance of the Lord's Day with regards to the "closing and cessation of labour on canals, railways and other public works of the Dominion Government...save and except only such services as may be of absolute and unavoidable necessity."\textsuperscript{15} Similar proposals were introduced in 1878 and 1879 by Thomas Christie, Liberal M.P. for Argenteuil. The former resolution aimed at canals while the latter affected the post office. Both resolutions met the approval of the House as amended by Hector Langevin, who represented Quebec's interest and insisted on respecting provincial rights.\textsuperscript{16}

In 1884 and 1885 John Charlton, Liberal M.P. for North Norfolk, introduced bills to prevent Sunday passenger excursions on steamboats and railways. These bills faded into oblivion because the House felt that Sunday legislation was competent of the provincial governments and \textit{ultra vires} of the federal government.\textsuperscript{17} The issue over federal Sunday law was laid to rest at this point by the Canadian federal legislators.\textsuperscript{18} It was evident, however, that Canadians were not satisfied with the answer that the Dominion Parliament had no jurisdiction in the area.\textsuperscript{19}

Since 1875 the Presbyterian Church of Canada had
been the leader in seeking changes in Sunday law so as to rid the country of Sabbath desecration. The Church petitioned the Government and supported the various parliamentary proposals regarding the restriction of Sunday labour. However, its lack of success caused the church to realize that individual effort was not enough to influence the legislators to change the Sunday laws. Cooperation and consolidation was necessary. In an attempt to secure this objective, the Presbyterian Church sought the support of other Christian churches in an attempt "to free our land [Canada] from the reproach and sin of tolerating the systematic and persistent violation of our [Canadian] Sabbath laws." With the Federal Parliament refusing to legislate, the time was right to secure church cooperation for federal Sunday law and the Protestant Ontarians became the protagonists.

On Friday evening April 28, 1888, at the city hall in Ottawa, a group of individuals acting in response to the instructions of the Presbyterian General Assembly of the whole Committee on Sabbath Observance, met to discuss the question of Sunday observance. This group consisted of Presbyterians, Methodists and Anglicans. These representatives were of clerical and lay extraction. Some of the latter were Canadian legislators. The meeting produced an organization known as the Lord's Day Alliance of Canada. This marked the beginning of an
intense and serious struggle for adequate Dominion-wide Sunday observance legislation.

The Alliance became a sophisticated organization with the adoption of a constitution to regulate its existence and actions. Membership was open to anyone who would support this group. But the majority of its supporters came from the Protestant groups of Presbyterians, Church of Englanders, Methodists, Congregationalists, Baptists and Reformed Episcopalians. The foundation of the Alliance was "the Divine authority...enjoined in the Fourth Commandment of Moral Law...as essential to the best physical, intellectual, moral and social welfare of mankind." The main objective of the Alliance was to protect and preserve the observance of the Lord's Day by securing the "toiling man his rightful claim to one day's rest in seven." The Christian churches placed the responsibility of leadership in the Lord's Day problem upon the Alliance thereby making it "a focal point for the influence of the various religious bodies." The Alliance did not limit its source of support to the churches but solicited cooperation from everyone who was interested in meeting its goals.

Before the Alliance could embark on its task, the manner of approaching the problem had to be determined. A committee to investigate the constitutionality of Sunday legislation was appointed consisting of federal
politicians. The consensus of the committee was that jurisdiction to enact Sunday law lay within the province of the Parliament of Canada under its powers of criminal law and laws for the peace, order and government of the country. Also, Sunday laws could be legislated in areas under direct federal control such as management of postal services, railways and canals. The Alliance adopted this resolution as their *modus operandi* and the task of fulfilling this goal was taken up by John Charlton. This man alone, introduced measures for federal Sunday law in the House of Commons, through a private member's bill. Basing his conviction on his public duty, Charlton promised to introduce Sunday legislation and fight for its adoption until it became law, as long as he sat in the Commons. Over the next eight years Charlton kept the parliamentarians occupied on the subject of federal Sunday law, nearly fulfilling his promise.

The bills which Charlton introduced had in principle secular and religious connotations. The object of Sunday legislation as stated by Charlton was primarily secular in its intent and effect. Charlton attempted to secure for the labourer his right of one day's rest in seven in the name of human liberty, and the welfare of society. To achieve this and avoid confusion, one day of rest per week would exist which would be mandatory and legally binding throughout the country. Everyone required by
law to rest, would abstain from labour on that day.

Religious overtones played a role in Sunday legislation despite the absence of the word religion. All the bills were religiously oriented to a religiously moral law in harmony with the Divine law of Christian dogma. Furthermore, the chosen day of rest would be the traditional and customary Sabbath, Sunday, which is observed by all Christian professing nations. Although the legislation proposed by Charlton was religiously motivated, defending the conscientious scruples and freedom of worship of first-day Christians, it was shrouded in the secular aspect of the day for the labourer. The religious freedom of the dissenting religious minorities and the religious non-observant were respected because the law did not force anyone to observe Sunday in any religious manner. The only thing required was the cessation of labour. Therefore, combining the secular and religious aspects, Charlton's proposed national day of rest coincided with the popular Christian Sabbath and created a national Sabbath.

'Charlton's bill of 1891 was a modification of his previous year's bill which was intended "to serve the better observance of the Lord's Day." The first six provisions, in the 1891 bill prohibited: general labour; sales and purchase of goods and pursuit of ordinary calling; undesirable games such as horse-racing and betting; frequenting inns and tippling; hunting and fishing
on Sunday. The remaining sections prohibited newspaper
or journal printing, publication and delivery; public
excursions by rail and steamboat; railway traffic; and
the opening and closing of canals and post offices. 46
A parliamentary select committee to which the bill was
referred, deleted the first six provisions because those
areas fell under the jurisdiction of the provincial
legislatures. Yet the remaining clauses were thought
valid because they were under the jurisdiction of the
federal government. 47 Because the Commons accepted the
decision of the select committee which based their opinions
on section ninety-one and ninety-two of the British North
America Act, 1867, the federal legislators did not pass
the bill. 48 Charlton's attempt for an all encompassing
federal Sunday law ended in failure. He was not to give
up. A new course of action was underway in which federal
Sunday law was to be achieved.

Between the years 1892 and 1898, Charlton annually
attempted to have federal Sunday legislation passed.
Initially the proposals covered the topics which the 1891
parliamentary select committee thought to be intra vires.
As the years passed, the subject matter of the bills
deteriorated to those areas which the Commons might have
passed. 49

The bills of 1892 and 1893 introduced by Charlton
were altered versions of the bill which came out of the
1891 select committee. The prohibitory regulations in the bill pertained to newspaper or journal publishing and sale; the cessation of public excursion; and the closing of railway traffic and canals. Using his secular and religious arguments along with the results of the 1891 select committee, Charlton strengthened his case by explaining the federal government's power to legislate under the criminal law. The legislators recognized all these facts, especially their power to act under the criminal law, but failed to discuss the matter. The parliamentarians felt that the provinces could adequately deal with the situation with a greater knowledge of local circumstances. Charlton's hopes for federal Sunday law diminished until the following year.

In 1894, echoing his reasons for federal Sunday law, Charlton re-introduced his bill of the previous two sessions. This time the Commons responded to it with some success because it passed amended sections dealing with newspapers and canals while omitting the others. The success was short-lived. The Senate rejected the bill on the grounds that it was unnecessary and a useless piece of legislation thereby ending discussion on the topic.

However, Charlton was not to be outdone by the Senate. He re-introduced similar proposals in 1895, 1896, and 1897. He supplemented his earlier arguments with the point that the Commons passed a measure in 1894 but to no
avail. The bill had no success in either 1895 or 1896 but some success in 1897.

The Liberal party formed the Government of Canada on July 11, 1896 under the leadership of Wilfrid Laurier, and the question of Sunday observance was raised in the following year. The Commons accepted Prime Minister Laurier's amended version of the bill's newspaper clause which would become Section 173 of the Criminal Code. The clause dealing with canals, which the Conservative Government of 1894 had passed, was rejected because the Government enacted the necessary legislation by orders-in-council. The remaining sections of the bill were also eliminated and with it, the newspaper amendment did not go any further because debate on the issue was discontinued.

In 1898, Charlton made a final attempt to advance federal Sunday legislation. The bill was strictly limited to a section dealing with newspapers which the legislators had accepted in principle the previous year but failed to accept in 1898. The Commons, predominately Liberal, maintained the same views as their Conservative predecessors; that Sunday law be left to the provinces to handle. Federal Sunday law and Charlton's attempt to secure it had reached its finale.

Opposition to Sunday legislation in Parliament was substantial because none of these bills ever received
parliamentary sanction. The Conservative Governments (1891-1896) and the Liberal Government (1896-[1911]) ruled out federal Sunday legislation on the basis of its avowed unconstitutionality.

It was apparently assumed...that the power of legislation with reference to Sunday observance... was by S.92 of the Act exclusively committed to the Provinces as being either (S.92, Ss.13) relating to property and civil rights or... (S.92, Ss.16) of a merely local or private nature in the Province.59

Secondly, those respective Governments felt that they had the power to enact Sunday legislation on certain topics but balked;

...because the subjects which are legislated upon can be likewise legislated upon by Provincial Parliaments... with more effect and with better knowledge of local circumstances...60

Nonetheless, other opposition was evident. Minor resistance to the religious principle was expressed in defence of seventh-day observers61 and the religious non-observant62 whose rights of conscience were being infringed upon. Secondly, the French Canadian Roman Catholic representatives felt that even though they recognized the same Sabbath as the English Canadian Protestants, the manner in which they conducted their activities differed and would be hampered by a federal Sunday law.63

Religious opposition, however, was merely token and played a minor role in the decision of not enacting federal Sunday regulations. The Commons generally accepted the secular and religious principles of the bills. The major
disagreement rested with the constitutional aspects of the issue. This was the important factor which influenced the legislators because it was "difficult to find a prominent politician who was not at least willing to pay lip service to the principle of provincial rights...." The debate over the constitutionality of Sunday law did not cease with the federal legislators but was picked up by the judicial system.

Three cases reached the highest provincial courts of different provinces. Two of the courts, the Supreme Court of New Brunswick and the Appeal Court of Ontario, had complementary judgements in holding that jurisdiction over Sunday law was *intra vires* of the provincial legislatures under the powers allotted to them by the British North America Act, 1867, (S.92, Ss. 13 and 16). The third court, the Supreme Court of Nova Scotia, viewed the situation differently. It stated that jurisdiction over Sunday law, being under the scope of criminal law, went to the Dominion Parliament by the British North America Act, 1867, (S.91, Ss.27); thereby it was *ultra vires* of the provincial legislatures. The idea of a federal Sunday law was overruled by a majority of the courts which favoured provincial rights. The lack of support for a uniform nation-wide Sunday law on the part of federal politicians and the courts revealed that the principle of provincial rights "attained a position close
to motherhood in the scale of Canadian political values." 67 At this point in Canadian history, the ideas of Charlton and the Lord's Day Alliance of Canada were not very popular with the lawmakers of the country.

Up to this time the Alliance's chief work was to assist Charlton in his attempts to secure federal Sunday law. 68 The Alliance approved of and supported the bills which Charlton introduced. Complementing this, they pressured parliamentarians consistently through petitions, letters and deputations to gain support for Charlton's measures. In addition, the general public became aware of the Sunday law issue through the efforts of the Alliance whose media were the pulpit, press and platform. Parliamentary petitions were circulated by the Alliance to the public through the churches. The Alliance urged everyone to write to their members of Parliament and to send organized deputations to influential men at Ottawa to secure support for Sunday legislation and let public opinion be known. 69 These efforts failed to secure federal Sunday law.

By this time provincial Lord's Day Alliances had been established. Their goals were the same as those of the Dominion Alliance but their sphere of influence was limited to their own areas. 70 They became the new centres of activity since Sunday legislation was thought of, as far as the Dominion Parliament was concerned, as a matter
to be left to the provincial legislatures. Because of the constitutional dilemma, the importance of the provincial Alliances became apparent. Cooperation was necessary to solve the problems of Sunday law. 71

The Dominion Alliance called a conference which was held on October 5, 1899 at the St. James Methodist Church on St. Catherine St. in Montreal. The delegates represented various provincial Alliances and the executive board of the Dominion Alliance. On that occasion major resolutions were adopted. The reorganization of the Lord's Day Alliance was necessary to bring about "a more vital relationship" with the provincial Alliances. Of more importance, a field secretary was to be named to the Dominion Alliance whose functions would include the arousal of public opinion "to the need of preserving the Lord's Day" and to establish new provincial Alliances. 72 The following year the Dominion Alliance acted on these resolutions by extending the membership of its executive board to include the president and secretary of each provincial Alliance. After consulting the Ontario Lord's Day Alliance, the Dominion Alliance appointed Rev. J. G. Shearer of Hamilton as field secretary. 73 Within sixteen months of his appointment Shearer fulfilled his obligations. He travelled from coast to coast spreading the gospel of Sunday law, founded the official organ of the group, The Lord's Day Advocate and organized new provincial Alliances. But further re-
organization was necessary.

On June 25, 1901, a convention was held in Hamilton in order to reorganize the Alliance's status. The Lord's Day Alliance of Canada became a Federation of Provincial and Territorial Alliances. Their officers consisted of a typical executive and an executive board which directed the general management of the organization. The federated organization was comprised of an executive, president of each provincial or territorial Alliance and thirty delegates chosen at convention. Its objective was to keep the public aware of the value of the Lord's Day and to secure both legislation and enforcement of the law so as to obtain for everyone a quiet and peaceful Sunday. Each provincial body was autonomous in its area, but cooperation was acceptable between a provincial and the national Alliance.

Therefore, as long as Sunday law problems existed, the Alliance was ready to meet them in either the federal or provincial sphere of Canadian politics. Constitutional barriers in Canadian law did not force the Alliance out of existence but rather expanded its growth and influence. But, the Dominion Alliance still maintained its original modus operandi despite parliamentary and judicial decisions. It continued to petition the Government, send deputations and was prepared to introduce legislation into the Dominion Parliament. With all the interest and
public awareness in this issue, it was only a matter of time for the highest court of appeal to settle the constitutional, jurisdictional problem surrounding Sunday law.

In 1903, the Judicial Committee of the Privy Council accepted the appeal regarding the decision rendered by the Supreme Court of Ontario in the preceding year. In the case, Attorney-General for Ontario v. The Hamilton Street Railway Company, the court ruled that the provincial legislation, "An Act to Prevent the Profanation of the Lord's Day," treated as a whole was ultra vires of the Ontario Legislature. The august tribunal held that an infraction against the original Act, excluding the aforementioned amendment, was in "operation at the time of Confederation as an offence against the criminal law."

Since exclusive authority rested with the Federal Parliament in criminal matters, it was the criminal law in its "widest sense" which was reserved. Only the Parliament of Canada could enact legislation pertaining to Sunday law. Clearing the path for federal Sunday law, the Privy Councillors' opinion coincided with the Nova Scotian Supreme Court but more significantly with the position of the federal faction of the Lord's Day Alliance of Canada regarding criminal law. With this turn of events, the Alliance resumed its original crusade for nation wide Sunday legislation.

The Alliance immediately went into action. After
corresponding with Laurier and his cabinet, the former interviewed a group representing the Alliance on August 13, 1903. This delegation pressed the urgency for a dominion Sunday law in light of the Privy Council decision. Laurier, speaking for himself and his cabinet, received the delegation's request sympathetically. He acknowledged their objective but wanted first to review the jurisdictional problems with respect to the Privy Council decision. Barring complications with the court ruling, action would be taken on the issue, but not during the present session so that time could be spent in drafting a measure which would be beneficial for everyone. 79

Following this positive discussion, the Alliance appointed a legislative drafting committee composed of the Dominion executive board and the chairman of various provincial legislative drafting committees. 80 After contacting interest groups such as churches, industry, commerce, trades and labour, the drafting committee completed its work within four months. A British Columbia Sunday law measure was used as a pilot bill and the drafting committee outlined a bill which they felt would meet the wishes of all Canadians. 81 This tentative federal measure received the approval of the Alliance and was on its way to the Government. 82

A small delegation presented this draft bill to Charles Fitzpatrick, Minister of Justice, and his deputy.
Newcombe. Both of these men sympathized with the measure but wanted to make sure that the Parliament could deal with the issue. Fitzpatrick stated he would introduce a bill based on the Alliance's proposal and refer it to the Supreme Court of Canada and the Privy Council to ascertain its validity. Assuming acceptance, the enactment would be placed on the statute books as part of the criminal law. But Newcombe was hesitant about doing even this because some of the sections of the proposed legislation fell under provincial jurisdiction and he did not know if the Privy Council decision left the provinces any power at all to deal with the matter. To safeguard the Federal Parliament from being accused of interfering with provincial rights, Fitzpatrick altered his plans but maintained the procedure. A provincial draft bill would be submitted by himself and the Attorney-General of Ontario to the courts.

The issue was referred to the Supreme Court of Canada on February 21, 1905 by the Governor-General in Council In the Matter of the Jurisdiction of a Province to立法Respecting Abstention from Labour on Sunday. Their Lordships found no difference between this draft measure and the act which the Privy Council rendered ultra vires in a previous case and declared the enactment "as a whole ultra vires of a Provincial Legislature." Furthermore, they asserted that not even in part did a province have the right to enact Sunday legislation and that such legislation
"which had for its object compulsory observance or the fixing of rules of conduct (with the usual sanctions) to be followed on that day..." fell within the jurisdiction of the Parliament of Canada under the criminal law. 86

Following this decision of March 27, 1905, application for leave to appeal was sent to the Privy Council. 87 Newcombe went to England to ask for admission to appeal in the hope that, if granted, the appeal would be scheduled for the latter part of the year. 88 On July 26, 1905, the Privy Council refused to grant an application for leave to appeal because judgement had been rendered on this topic by itself and the Canadian Supreme Court and those decisions were final. 89 Fear of interfering with provincial rights was eliminated. The stage for convincing was over.

The Alliance appointed a new legislative drafting committee 90 who, along with seventy-five other federal legislators, drafted a proposed Sunday law bill. 91 Fitzpatrick's cooperation was secured but the cooperation of the Government as a whole was still needed. An interview was held with Laurier and Fitzpatrick on December 20, 1905. Here the Alliance pressed for immediate action because inadequate laws remained on the statute books in lieu of the recent court decisions. Nonetheless, the Alliance added that any new legislation would have to meet the needs of a diversified country while including
the essentials to sustain the purpose of the law. Both Laurier and Fitzpatrick agreed with the Alliance and accepted the draft bill. The cabinet also accepted the draft provision and it was decided to present the bill as a Government measure. Federal Sunday law was now becoming a reality.

While the Alliance was the precursor in the issue, it obtained the support of many influential organizations which added strength to its cause. The trades and labour affiliations of Canada, manufacturers associations and the railway brotherhoods sided with the Alliance but their motives were based strictly on economic grounds. This joint cooperation represented "an unprecedented alliance between labour and church." Additional support came from fraternal societies such as the Masons, Oddfellows, Templars and Foresters who agreed with the principles of Sunday legislation. Also, religious support came from Protestant and Roman Catholic elements of the church of both French and English extraction. Lastly, the Alliance gained support from some of the more important secular presses who favoured the principle behind Sunday legislation.

The measure left the hands of the Alliance and was taken over by the Government and specifically the Minister of Justice, Fitzpatrick. Under his guidance the bill entered parliamentary debate and was in turn taken over
by Allan B. Aylesworth when he became Minister of Justice on June 4, 1906.\(^{100}\) Having secured Government support and that of the leader of the Opposition, Robert L. Borden who heartily approved of the bill,\(^{101}\) the Alliance nonetheless saw the bill through until it became law. Shearer and R. U. McPherson (legal counsel for the Alliance) remained at Ottawa for the duration of the proceedings. The Alliance was given special consideration and a special position by the Government.\(^{102}\) Nonetheless, the Liberal Government assumed a certain measure of responsibility because it initiated the legislation.\(^{103}\) But naturally, the onus for the enactment in the final analysis fell upon Parliament.\(^{104}\)

Bill No. 12, which proposed to legalize Sunday as the national day of rest received royal assent on July 13, 1906 and came into force on March 1, 1907.\(^{105}\) In the main, its contents consisted of permissive\(^{106}\) and prohibitory regulations.\(^{107}\) Other noted features were the interpretations,\(^{108}\) offences and penalties\(^{109}\) as well as the procedure to be followed to sustain conviction.\(^{110}\) On the whole, the Act was characterized as a "salutary provision"\(^{111}\) revealing the spirit of compromise and concession which was needed to meet the elements of a heterogeneous country.\(^{112}\) Strong opposition came from Quebec until the issue of provincial rights was incorporated in the measure,\(^{113}\) while the Maritimes and Ontario provided
strong support. 114 Traditional Christian ideals were to be found throughout the measure. Even the exemptions which were granted in the bill were in line with Christianity because they were the ones which were compatible to the norms of Christianity followed by the Canadian people at that time. Yet more significantly, the extent of these exemptions revealed the importance of material and economic benefit to the nation. Despite the Christian religious overtures for a Sunday law, the Act was an indicator of "the degree of secularity" which characterized a Christian nation. 115 For some elements in the country, the Act went too far, while not far enough for others. But, Rev. Dr. Stanley, Secretary of the American Sabbath Union, assessed the Act as being the most advanced Sunday law on any statute book in the world. 116 Commercialization of the day was attacked in which everyone abstained from labour but it did not entail any religious observance nor obligations of the day. The people could do as they wished in accordance with the law. 117 The Act was the Magna Charta of the people's right to a weekly day of rest. 118 In so doing, a national day of rest was created for the Canadian people as a social institution. 119

The bill had been introduced into the Commons as a result of recent court decisions which stated that the Parliament of Canada had jurisdiction in this area. 120 These judgements placed Sunday law under the domain of
criminal law as offences against religion thereby labelling such enactments as religious legislation.\textsuperscript{121} In dealing with this subject, the purpose of the measure was to create a national day of rest in which everyone "may be free to abstain from labour."\textsuperscript{122} It was this principle which was placed before the Commons\textsuperscript{123} and from which the legislators worked.\textsuperscript{124}

Nevertheless, a principle needs a foundation for its existence and the basis on which the enactment stood was the moral law of the Fourth Commandment, stating: "For six days thou shalt labour and do all your work; but the seventh day is a sabbath day of rest...."\textsuperscript{125} All (monotheistic) religions accepted this aspect of moral law\textsuperscript{126} and it was the;

\ldots very basis of any legislation of this kind must be to give civil [secular] sanction, the sanction of positive law to the moral and Divine law. That is the basis...upon which this measure proceeds.\textsuperscript{127}

Yet application of this foundation was strictly limited in scope, and the secular element as opposed to the religious factor was stressed in the legislation.

Parliament concerned itself with the morality of the Fourth Commandment - being man's interaction with man; not the religious, being man's interaction with God.\textsuperscript{128}

The Sabbath is for two purposes. One is for our religious duties. That has largely been kept out of the discussion on this Bill - ...The other purpose of the Sabbath is to have a day of rest for the working man...and I will leave it to the House...(that) they have not stood up...for the Sabbath as a religious day.\textsuperscript{129}
No mention was made of either religious observance or obligation of the day because that aspect was left up to the individual's conscientious convictions and to the religious leaders of the country.\(^\text{130}\) In addition, the absence of the word Divinity\(^\text{131}\) and the direct avoidance of recognizing the national day of rest as a holy day,\(^\text{132}\) justified the affirmation that the bill was neither holy or religious in its purpose.\(^\text{133}\) Parliament merely sustained the religio-moral Mosaic-Christian tradition of granting one day's rest in seven\(^\text{134}\) and adhered to the moral aspects of a national day of rest.

The power which the legislators possessed to deal with public morals made the effect of the bill secular, being within the labouring aspect. This coincided with the purpose, principle and foundation of the measure. Since Parliament's obligation was to legislate on matters for the benefit of the community at large, the intent of the bill was such.\(^\text{135}\) Under this category fell the right to create a national day of rest for economic, physiological, commercial and social reasons.\(^\text{136}\) This being the case, a labour principle predominated which provided "that every labouring man shall have a day of rest."\(^\text{137}\) However, in line with the advent of twentieth century Canadian society, exemptions in the bill had to be made - works of necessity and mercy had to be allowed on the national day of rest for the general welfare of the community.\(^\text{138}\)
Because some men legally worked on the national day of rest, Parliament provided that any other day during the week could be their weekly day of rest.\textsuperscript{139} This being the case, Parliament adequately fulfilled the purpose and directive of the measure because it was felt;

...that no man shall work seven days in the week without an ample opportunity for that proper rest which is necessary to his physical and moral well being\textsuperscript{140}

Therefore, in legislating for a national day of rest under the criminal law, Parliament dealt with the secular-labouring aspects of the day utilizing moral obligations which were inherent in all (monotheistic) religions.\textsuperscript{141}

Yet, conditional to any type of legislation which has a moral foundation, is the characteristic religious aspect which is imminent because "religion is to morality, its heart and soul, its motive, power and end."\textsuperscript{142} The day chosen for the national day of rest coincided with the popular, customary Christian Sabbath, Sunday.

If Sunday legislation has any meaning at all, if it can have any basis at all, it is to give sanction to the divine precept that Sunday be made a day of rest and their shall be no work done on that day.\textsuperscript{143}

Since the majority of the population were first-day Christians (these Christians who kept Sunday, the first day of the week as the Sabbath) they made Canada a Christian professing nation, whose law through English common law was based upon Christianity, and this made Sunday the likely choice for the national day of rest.\textsuperscript{144} But more important and more significant from a materialistic point
of view, with the vast majority of the inhabitants being first-day Christians it was deemed;

...desirable to abstain from placing an individual in the practise of being obliged to choose between his religious convictions and his personal gain.\textsuperscript{145} Complementing this was the religious conscientious aspect which allowed an individual belonging to the religious majority "if he so desires to give one day in the week to the service of his Creator" in an atmosphere of peace and tranquility.\textsuperscript{146} In this manner, the effects of Sunday observance would increase the moral standards of the nation.\textsuperscript{147} Sunday, the national day of rest was the dominant and generally accepted theme throughout the debate on the issue;\textsuperscript{148} especially with regard to the nation's economic and financial situation. Since the majority of the people were first-day Christians, it was a consideration which was for the general good of the community by having a coalition of the secular and religious aspects of the ruling majority.\textsuperscript{149} Therefore, joining all the concepts upon which Parliament legislated, the enactment was consistent in the priority of providing a weekly day of rest for the benefit of the nation under its jurisdiction of criminal law.

With the bill's directive aimed at the populace, exceptions to the rule of mandatory rest had to be made to appease those unable to abide by the legislation. This was done as long as an exemption was thought to be in the
interest of the community at large. In this light, the secular interests and Canadian political jurisdictional interests received exemptions. The former ranged from small time businessmen to large industrial magnates many of whom received an exemption under "the works of necessity or mercy." And to balance the above out, so as to maintain consistency with the purpose, principle and directive of the measure, labour interests were taken into consideration. To accommodate those who worked because of the secular exemptions; Parliament made provision which allowed these toilers another day during the week as their day of rest. The jurisdictional exemptee was conciliated with the recognition of provincial rights in the enactment. The provinces were allowed to regulate activity on the national day of rest which would be in keeping with the prevailing conditions of their respective area.

Other interests which sought exemptions were "the easiest to dispose of," namely the religious interests. In this consideration, Canada was divided into three sections: Protestants, Catholics and Non-conformists. The first two groups had their religious conscientious convictions taken into consideration within the measure. The former was represented by the Lord's Day Alliance who drafted the bill which the Government adopted as their measure. The latter received an exemption under the principle of provincial rights. Here, the representa-
tives from Quebec protested against the attempt of a British Protestant Ontario in forcing their views upon the French Canadian Roman Catholics who were dominant in Quebec.\textsuperscript{157} Therefore, both Protestants and Catholics, the two major religious interests in Canada, had their conscientious convictions recognized.

The third major group which sought an exemption was the Non-conformists. This group rallied for an exemption because of the effects which the bill had on their secular lives, that of financial-economic material conditions which directly correlated with their religious practices. They were a minority in Canada and not large or significant enough to either receive an exemption under the works of necessity or mercy or under the jurisdictional auspices of provincial rights. Since their contentions were founded upon purely religious motives, they sought to be exempted under the auspices of respect for a dissenting religious minority's conscientious convictions. Under this consideration fell the Jewish Exemption Issue within the Lord's Day Act of 1906.\textsuperscript{158}
FOOTNOTES.


2W. R. Jackett, "Foundations of Canadian Law in History and Theory," in Contemporary Problems of Public Law in Canada, ed. O. E. Lang (Toronto, 1968), 4 - The colonies were able to enact Sunday legislation "as far as it was applicable to the conditions of the newly discovered domains of the sovereign."

3"Report of the Committee on Sabbath Observance and Legislation," The Acts and Proceedings of the Twenty-sixth General Assembly of the Presbyterian Church in Canada (13-20 June 1900), by D. R. Drummond, Chairman (Toronto, 1900), 240-253; Rev. T. A. Moore, "Canada - Sunday Rest," in Sunday Rest in the Twentieth Century, ed. Dr. A. Jackson (Cleveland, 1905), 246; D. A. Schmeiser, Civil Liberties in Canada (London, 1964), 102; When Saskatchewan and Alberta became provinces in 1905, they carried over the Northwest Territories Sunday law ordinance. - See Canada, Laws, Statutes, etc., An Act to establish and provide for the government of the Province of Saskatchewan, 1905, 4 & 5 Ed. VII, ch. 42, Statutes of Canada, 1905, I: 204 (sec. 16).

4See "Committee on Sabbath," Presbyterian Church (13-20 June 1900), 240-253, passim.


Debates, Senate, Session 1888:314.


Between the years 1880-1888 there were numerous petitions sent to the Senate asking for better legislation for the observance of the Sabbath. After looking into the problem the Senate decided that provincial legislation had covered the areas of complaint. Accordingly, the Senate disposed of the issue. See Debates, Senate, Session 1884:333, 506-507; Session 1888:311.

Ibid., Session 1888:310, 311, 314.


The concern displayed that everyone should have one day of rest in the week from labour was not unique to Canada. The United States of America and some European countries were also petitioning for better Sunday laws. The momentum which erupted from this concern brought about the International Congress's for Sunday Rest. The first one was held in Geneva in 1876 and up to and
including 1906, the eleventh congress was held in Milan. (Two such congress's were held in the United States of America. One was in Chicago (1893) and the other in St. Louis (1904). Canadian delegates participated at these conferences.) See E. Deluz, "The Continent of Europe," in The World's Rest Day, ed. R. Mackenzie (Edinburgh, MCMIX), 162-192, passim.

14Canada, Parliament, Parliamentary Journals (Commons), X (1876):207 (hereafter cited, Journals, Commons, ...).

15Canada, Parliament, Parliamentary Debates (Commons), 3d Session, 3d Parliament (1876):851 (hereafter cited, Debates, Commons,...).

16Ibid., IV (1878):727-735; V (1879):75-84.

17Ibid., XV (1884):655; XVII (1885):256-266.

18In 1892 when Charlton introduced a Sunday observance bill, a fellow M.P., Tisdale, commented that a bill "of a similar sort" had been introduced every session of every Parliament while he was a member. (Tisdale entered the House in 1887.) Following Tisdale's remarks, Charlton referred to the 1892 proposal as being introduced twice before. Then Charlton referred to the sixth such introduction of a bill prior to the 1892 proposal, thereby making the 1892 bill, number seven. (Ibid., XXXIV (1892):col. 2293-2295.) After reviewing the bills which Charlton introduced, no such bill or one of a similar sort was proposed between 1886-1889 by Charlton or anyone else.

19Debates, Senate, Session 1888:313.


21Christie, "Presbyterian Church," 236-239, passim.

22Ibid., 241, 245.

23Ibid., 245.

24Lord's Day Alliance of Canada, First Minute Book, Annual Meeting, 28 April 1888, 7-8. (Henceforth, Lord's
Day Alliance will be noted as Alliance. Also, First Minute Book will be noted as First M. B.)


26 Alliance, First M. B., Annual Meeting, 21 March 1889, 15; Minutes of Executive Committee, 5 May 1890, 187.

27 **Ibid.**, Annual Meeting, 21 March 1889, 19.


29 Alliance, First M. B., Annual Meeting, 22 May 1891, 34.

30 **Ibid.**, 28 April 1888, 8.

31 **Ibid.**, 22 May 1891, 34.

32 **Ibid.**, 28 April 1888, 8.

33 **Ibid.**, 21 March 1891, 16-17.


35 **Ibid.**, XXXIV (1892): col. 2295.


37 **Ibid.**, Session 1894, I: col. 2305-2306; XXXI (1891): col. 762 - "...The common rest day must be protected by law. It is not an efficient rest day unless the law protects the right of labourers to rest on that day."

38 **Ibid.**, Session 1894, I: col. 2305-2306.

39 **Ibid.**, XXXI (1891): col. 747; Session 1894, I: col. 2319.

40 **Debates, Commons, XXXI** (1891): col. 747; Session 1894, I: col. 2305-2306.

41 **Ibid.**, XXXIV (1892): col. 1066-1067; Session 1894, I: col. 2315 - The bill "promotes religious liberty and religious observance."

42 **Ibid.**, col. 2326 - The bill stood "purely and squarely on the principle of civil [secular] rights and the religious portion of the law is merely incidental."

43 **Ibid.**, XXXI (1891): col. 761-762.

44 **Ibid.**, col. 747.

45 The bill of 1890 only received first reading.

46 **Debates, Commons, XXXI** (1891): col. 757-759.

47 **Ibid.**, XXXII (1891): col. 2936.

48 **Ibid.**, XXXII (1891): col. 2955 - The Committee rose. The vote was 63-18.

49 **Ibid.**, col. 2942, Mr. Charlton - "I have modified my views on this subject, in view of the adequacy of provincial legislation. I have modified my views to a certain extent in view of the desirability of getting some legislation."

50 The bill of 1893 only received first reading; **Debates, Commons, XXXIV** (1892): col. 1062 - The change in the bill out of the one which the select committee allowed in 1891 was the removal of the clause relating to the post office and the mail train.

51 **Ibid.**, col. 1076-1077; XXXV (1892): col. 3398 - The Committee rose; XXXII (1891): col. 2940 - This was the same reason why the House rejected the bill which came out of the select committee in 1891.

52 **Ibid.**, XXXVIII (1894): col. 4087.
53 Debates, Senate, Session 1894:566-578, passim; also, Ibid., 579 - The vote passed in the affirmative, 22-13.

54 Journals, Commons, XXIX (1895):105 - The Committee rose; XXX (1896):94 - The bill only received first reading.

55 Debates, Commons, XLIV (1897):col. 2462.

56 Ibid., col. 2473.

57 Journals, Commons, XXXII (1897):163 - The Committee reported progress.

58 Debates, Commons, XLVI (1898):col. 2425 - The Committee rose.

59 Ibid., XXXII (1891):col. 2938; also, Ibid., XVII (1885):266; XLIV (1897):col. 694; Re the Act to Amend the Lord's Day Act [1923], 3 D.L.R. 564; Ontario Law Reform Commission, Report, 38.

60 Debates, Commons, XXXIV (1892):col. 2296; also, Ibid., XXXII (1891):col. 2940; XLIV (1897):col. 694.


64 R. Cook, Provincial Autonomy, Minority Rights and the Compact Theory, 1867-1921 (Ottawa, 1969), 44.

65 Ex Parte Green [1900], 30 N.B.R. 137; Re Lord's Day Act of Ontario [1902], 1 O.W.R. 312.

66 The Queen v. Halifax Electric Tramway Co. [1898], 30 N.S.R. 469.

67 Cook, Minority Rights, 44.
"The Lord's Day Alliance of Canada," in Sunday Rest in the Twentieth Century, ed. Dr. A. Jackson (Cleveland, 1905), 425.

Alliance, First M. B., Annual Meetings, 1889-1898, 7-61, passim.

Ibid., 26 April 1889, 60.

Ibid., Executive Committee Meeting, 15 July 1899, 67; 8 August 1899, 70; 14 September 1899, 71-72.

Ibid., Conference, 5 October 1899, 74.

Ibid., Annual Meeting, 27 March 1900, 82.

Ibid., 22 April 1901, 93-96, passim.


Ibid., Annual Meeting, 26 April 1899; Alliance, Minute Book, 1901-1918, Minutes of Executive Board, 17 September 1902, 10; Minutes of Sub Executive Committee, 6 November 1902, 13. (Henceforth, Minute Book, 1901-1918 will be cited, M. B. 1901-1918.)


Alliance, M. B. 1901-1918, Interview... with Laurier..., 13 August 1903, 16-17.

Ibid., Minutes of Executive Board, 12-13 August 1903, 18.

Alliance, Committee Book, Minutes of Legislative Drafting Committee, 1 September 1903, 6.

Ibid., 28 December 1903, 10.
Ibid., Report of the Interview...with the Minister of Justice, 30 December 1903, 11; Alliance, M. B. 1901-1910, Triennial Report of the Executive Board...to the Convention at Ottawa, 6-7 April 1904, 26.


Ontario Lord's Day Alliance, Minutes of Executive Board, 3 March 1904, 79.

In the Matter of the Jurisdiction of a Province to Legislate Respecting Abstention from Labour on Sunday [1905], 35 S.C.R. 592.

Laurier Papers, vol. 361, Fitzpatrick to James W. Falconer, D. D., (Secretary of the Lord's Day Alliance), Halifax, Nova Scotia, 10 April 1905, 96427.

"To the Privy Council Again," The Lord's Day Advocate III, no. 6 (May 1905): 5.

Alliance, M. B. 1901-1910, Minutes of the Annual Meeting of the Executive Board, Report of the Counsel on the Reference made by the Minister of Justice to the courts as to the jurisdiction...to legislate regarding the prohibition or regulation of Sunday labour, 9 November 1905, 49.

Ibid., Minutes of the Annual Meeting of the Executive Board, 9 November 1905, 49.


"Interview with the Government. Application for a Dominion Lord's Day Act," The Lord's Day Advocate III, no. 3 (January 1906): 4-5.

Debates, Commons, LXXIV (1906): col. 19-20 - The bill was presented by the Minister of Justice, Charles Fitzpatrick on March 12, 1906.

Organized labour was concerned strictly with the idea of rest, being the abstention from work. It was not concerned about the religious aspect at all. Nevertheless,
It aided the primary advocate for a better Sunday law, the Lord's Day Alliance of Canada, because it was to labour's benefit to secure some sort of rest day legislation.

The first time organized labour made mention of Sunday regulations was in 1888 when the Canadian Trade and Labour Congress passed resolutions regarding the restriction of work on railways and canals. Two years later came the first demand for legislation regarding the restriction of all Sunday labour by the same congress. Similar demands for Sunday legislation came in 1894, 1897 and 1899. In these resolutions organized labour justified its claim that everyone should have the right to rest one day in seven. Rest was an absolute necessity of human life and could not be broken with safety. It also argued, since seven men could do the same work in six days as six men could do in seven days, any time six men worked on Sunday they were injuring the earning power of a fellow worker.

In 1901, organized labour took an active part to secure its objectives. A standing committee was appointed "to act in conjunction with the Lord's Day Alliance in maintaining and accuring the due observance of the seventh rest day in Canada." In 1903, the Trades and Labour Congress passed a resolution which reiterated its support to the Lord's Day Alliance and it also requested other labour organizations to cooperate. While the Alliance sought parliamentary action on the Sunday law question, organized labour tried to secure double time pay for those individuals who worked on Sunday. See E. Forsey, "Labour and the Lord's Day Act, 1888-1907" (Typescript, n.p., n.d.), 1-6, passim; "Sunday Labour," The Labour Gazette IV, no. 4 (October 1903):325; also, "Visit to the Trades and Labour Congress," The Lord's Day Advocate II, no. 1 (October 1904): 9-10; Alliance, M. B. 1901-1918, Triennial Report, 27; Waterman, "Canadian Lord's Day Act of 1906," 122, n. 91; Moore, "Canada - Sunday Rest," 248; "The Sunday Laws in Canada," The Week. A Canadian Journal of Politics, Society and Literature VIII, no. 47 (18 September 1891):668.


96 "Fraternal Societies and the Lord's Day," The Lord's Day Advocate I, no. 5 (January 1904), 8-9.


Fitzpatrick was appointed Chief Justice of the Supreme Court on June 4, 1906.

Alliance, *Letterbook Correspondence, 1905-1906*, J. G. Shearer to the Editor of the Halifax Herald, Toronto, 24 March 1906, 495.


(b) *Debates, Commons, LXXVII (1906)*, col. 5731, Piché - "The Lord's Day Alliance..., were alone to discuss the bill with the members of the select committee after the evidence was closed and at the last meeting of the committee a similar privilege was refused to the other interests concerned."

(c) "Sabbath Observance and Legislation," *The Acts and Proceedings of the Thirty-second General Assembly of the Presbyterian Church in Canada (6-14 June 1906)*, by J. A. Paterson, Chairman (Toronto 1906), 308 - Rev. J. G. Shearer, T. A. Armstrong and R. U. McPherson were an advisory council for the Government.

(d) Alliance, M. B: 1901-1918, Minutes of Sub Executive Committee, 30 April 1906, 55 - The select committee asked the Alliance and the Transportation interests to discuss the feasibility of a transportation exemption. When an agreement was reached, then the select committee would act.
103 Debates, Commons, LXXVII (1906): col. 7227, Fielding.

104 (a) 
Ibid., col. 7226, Fielding.

(b) 
Ibid., LXXVI (1906): col. 5788, R. Smith — "We cannot throw the responsibility of this measure upon any other gentlemen than the members of this House, and it is for us to consider the clauses accordingly to our judgement."

(c) 
Ibid., col. 5770, Bourassa — "This government and this parliament [sic] are completely responsible for it [the measure] from beginning to end. . . ."

(d) 
See Below, Ch. 1, n. 115(c), (d).

105 Canada, Laws, Statutes, etc., An Act respecting the Lord's Day, 1906, 6 Ed. VII, Ch. 27, Statutes of Canada, 1906, I: 149 (sec. 16); see Appendix for the entire Act.

106 An Act respecting the Lord's Day, 1906, 146-147 (sec. 3).

107 Ibid., 145 (sec. 2), 147-148 (sec. 4-9).

108 Ibid., 145 (sec. 1), 149 (sec. 13).

109 Ibid., 148-149 (sec. 10-12).

110 Ibid., 149 (sec. 14-15).


113 (a) An Act respecting the Lord's Day, 1906, 145 (sec. 2), 147-148 (sec. 5), 148 (sec. 6); The Senate amended section 2 by replacing an amendment which read — "exceptions provided in any provincial Act now or hereafter in force regarding matters coming within the classes of subjects enumeration
in Section 92 of the British North America Act" to read -
"except as provided in any provincial act or law now or
hereafter in force." The Senate also added its amendment
to sections 5 and 6. The House adopted these amendments.
Debates, Commons, LXXVII (1906): col. 7667-7668.

(b)

The Senate also amended section 15 to give the
Attorney-General of the provinces the power to prosecute.
The Senate also increased the limitation period of prosecu-
tion from thirty days to sixty days. The House concurred
in this amendment. Ibid., col. 7692.

114J. Castell Hopkins, The Canadian Annual Review of
Public Affairs, 1906 (Toronto, 1907), 559.

115(a)

Waterman, "Canadian Lord's Day Act of 1906," 121;
also, Ibid., 110 - The degree of secularity is defined "as
the proportion of future real income which that society
refuses to sacrifice by the enactment of laws for the
sanction of religious principle."

(b)

Debates, Commons, LXXVII (1906): col. 7214, Black -
"...That dollars and cents are at the bottom of nearly all
the opposition to this Bill."

(c)

Ibid., LXXVI (1906): col. 5668, Barr - "Comparing
the Bill as it is now, (the select committee's version),
with the Bill as originally introduced into the House we
must concede that it has undergone a very important change,...
in fact the title is about all that is left."

(d)

Debates, Senate, Session 1906:1120, Scott - "The
Bill as originally presented has been entirely metamorpha-
sized from its original form."

(e)

Debates, Commons, LXXVI (1906): col. 5646, Piché -
"Well gentlemen (of the Lord's Day Alliance,) we are ready
to grant your request so far as we are allowed to do so
owing to the powers conferred unto us by the constitution
but not without forcing people's conscience."

(f)

J. G. Shearer, "The New Lord's Day Act - Its Scope
and Value," The Christian Guardian LXXXII, no. 29 (18 July
1906): 6 - "We (the Alliance,) have not secured all we
sought."
(g) The manner in which Parliament handled the measure coincided with the concepts of organized labour. See Above, Ch. I, n. 94; see Below, Ch. I, n. 137(d).

116 "Sabbath Observance and Legislation," Presbyterian Church (6-14 June 1906), 252.

117(a) Rev. C. H. Heustis, "Sunday Over the Border - Actual Conditions in Canada," The Michigan Lord's Day Leader III, no. 2 (March-April 1928): 24 - Sunday law did not deal with the religious observance but confined "its attention strictly to the commercializing of the day and has as its aim the giving to everyone in Canada one day in the week from business."

(b) C. C. Morrison, "Canada's Sabbath," The Michigan Lord's Day Leader III, no 5 (September-October 1928), 27 - Sunday law allows "an entire national community to lay aside most of its work and all of its commercialized pleasure and devote itself to the presence of religion and the quiet enjoyment of recreation and pleasure under forms of voluntary self-expression."

(c) Alliance, The Lord's Day Act and Seventh-Day People (Toronto, circa. 1907), 1 - "The law is concerned SOLELY WITH THE QUESTION OF BUSINESS OR LABOUR ON SUNDAY, NOT OF RELIGION. [sic]"

(d) See Below, "Ch. I, n. 137(d).

118 [Rev. C. H. Heustis], Saving a Great Institution (Toronto, 1930), 8.

119(a) J. B. Lightman, "The Status of Jews in American Sunday Laws," The Jewish Social Science Quarterly X, no. 3 (March 1935), 275 - This author contends that Lightman's interpretation of the legal outlook in the United States about Sunday is applicable to the Canadian situation. "...It is necessary to protect the health and morals of people,... - As a social institution, Sunday, whether for recreation, religion, rest or what other purpose, is to be preserved, and the Sunday law..., be the means of preserving it.

(b) W. A. Butler, "The Sunday Rest May be Maintained
by Legislation? The Grounds and Limitations of Such Inter-
ference," in The Sunday Problem: Its Present Day Aspects, 

120 Debates, Commons, LXXIV (1906):col. 19, Fitzpatrick; 
Debates, Senate, Session 1906:1125, Scott.

121(a) 
B. Laskin, "Freedom of Religion and the Lord's Day 
Act - The Canadian Bill of Rights and the Sunday Bowling 
Case," The Canadian Bar Review XLII; no. 1 (March 1964), 
150 - The Federal Lord's Day Act is constitutionally enacted 
on the basis of religious legislation. Any other "assess-
ment of the Canadian Lord's Day Act would be to deprive it 
of its constitutional underpinning." For the Sunday Bowling 
Case, see Robertson and Rossetanni v. The Queen [1964], 41 

(b) 
Schmeiser, Civil Liberties, 102, n. 4 - The Privy 
Council gave no reason for their decision.

122 Debates, Commons, LXXIV (1906):col. 1010, Fitzpatrick; 
Debates, Senate, Session 1906:1125, Scott; Butler, "Legisla-
tion?...Grounds and Limitations," 179, 203.

123 Debates, Commons, LXXVI (1906):col. 5625; Aylesworth.

124 Ibid., LXXVII (1906):col. 7230-7231, Foster - "One 
principle of this Bill...is that no work that is not ab-
solutely necessary shall be done on the Sabbath day. We 
are all at one at that; there is no contention between us 
[the Opposition and the Government] on"that." Also, see 
Below, Ch. I, n. 139; Ch. III, n. 5; Ch. IV, n. 4, O.E., 
n. 43-45, S.E.

125(a) 
Exodus 20:9-10; Deuteronomy 5:12-14.

(b) 
J. Cook, "What is Sunday Worth," in The Sunday 
Problem: Its Present Day Aspects, ed. Rev. W. W. Atterbury, 
et al. (Boston, 1894), 310 - He referred to the moral law of 
the Fourth Commandment as the "law of periodicity."

126 J. Cardinal Gibbons, "The Place of Sunday Observance 
in Christianity," in The Sunday Problem: Its Present Day 
Aspects, ed. Rev. W. W. Atterbury, et al. (Boston, 1894) 
240 - He stated that all people have a rest day.


129 Debates, Commons, LXXVII (1906):col. 6624-6624, Martin; also, Butler, "Legislation?...Grounds and Limitations," 179; Schmeiser, Civil Liberties, 102; Rev. W. McDough, Sunday Our Sabbath (Toronto, 1901), 27-28.

131 Debates, Senate, Session 1906:1138, Cloran.

132 Debates, Commons. LXXVI (1906):col. 5807, Guthrie - "This Bill goes to no such length that the...day should be kept holy as a Sabbath day."


134 Debates, Senate, Session 1906:1154, Frost; Butler, "Legislation?...Grounds and Limitations," 179 - This does not mean "that either the Christian or Judaic concept of one-seventh rest to perpetuate either the Jewish or Christian designation of the day, or the Jewish or Christian rule of observance."

135 Ibid., 181; "Physical Necessity of Lord's Day Rest," 41.


137(a) Debates, Commons, LXXVI (1906):col. 5642, W. Laurier; col. 5756-5760, R. Smith - He considered this point as the principle of the measure.

(b) See Above, Ch. I, n. 124.

(c) R. C. Brown and R. Cook, Canada, 1867-1921 (Toronto,
1974), 122-123 — The Lord's Day Act was a piece of labour legislation.


139(a) Debates, Commons, LXXVI (1906): col. 5759, R. Smith: An Act respecting the Lord's Day, 1906, 147 (sec. 4); see Below, Ch. III, 83, n. 5; Debates, Commons, LXXVI (1906): col. 5627, Daniel; This section was placed into the bill by the select committee on June 1, 1906. Dr. Black suggested this amendment in the public's interest of which organized labour insisted upon. (See Above, Ch. I, n. 94.) It applied to people who worked the same number of hours on Sunday, as on any other day. This section did not apply to those people who performed incidental work. This would give twenty-four hours of rest on one of the other six days. See Debates, Commons, LXXVI (1906): col. 5758-5760, R. Smith; LXXVII (1906): col. 7211-7216, passim, Black; Journals, Commons, XLI (1906): Appendix 1, Select Committee on Bill No. 12, Respecting the Lord's Day - Minutes of Evidence, 27 April 1906, 123-127 (hereafter cited, Minutes of Evidence).

(b) Section 4 of the Act was incorporated into the bill for the benefit of those who legally worked on Sunday. It was framed to protect both the employer and the employee. It was applicable to the exempted areas of communications, transportation and the industrial process. See Debates, Commons, LXXVI (1906): col. 5758-5786; LXXVII (1906): col. 6660-6663, col. 7682-7683; Debates, Senate, Session 1906: 1190-1193.

140 Debates, Commons, LXXVII (1906): col. 6597, R. Borden.

141 For further discussion on Parliament's power under the criminal law dealing with the contemporary viewpoints as well as this author's, see Below, Ch. VI, n. 40.

Debates, Commons, LXXVI (1906): col. 5638, W. Laurier.

Ibid., col. 5623, Aylesworth.

Ibid., LXXIV (1906): col. 1010, Fitzpatrick.

Ibid., Butler, "Legislation...Grounds and Limitations," 185, 200.

Debates, Commons, LXXIV (1906): col. 1011, Fitzpatrick; Butler, "Legislation...Grounds and Limitations," 185; Rev. H. H. Jamieson, The Nation and the Sabbath (Toronto, 1903), 133.

G. C. Grimaud, "A Brief on Sunday Observance Legislation," no. 67, submitted to the Ontario Law Reform Commission (Toronto, 1970), 8 - He stated that this RELIGIOUS PRINCIPLE (which this author calls MORAL PRINCIPLE) held dominance throughout the debates without any opposition.; see Above, Ch. I, 25, n. 141.

Butler, "Legislation...Grounds and Limitations," 179 - The coalition of secular and religious interests was not peculiar.

Ibid., An Act respecting the Lord's Day, 1906, 146-147 (sec. 3).

See Above, Ch. I, 25, n. 139.

Ibid., 22, n. 116; An Act respecting the Lord's Day, 1906, 147-148 (sec. 5), 148 (sec. 6); Provincial powers were held intra vire by the Canadian judiciary. See Schmeiser, Civil Liberties, 102-107.


See Below, Ch. VI, 182, n. 32.

See Above, Ch. I, 21, n. 113.
(b) Grimaud, "Brief," 7 - He stated that religion played an important role with respect to the jurisdictional problem.

(c) Butler, "Legislation?...Grounds and Limitations," 205 - "Christian people differ as to the details of due observance of the Lord's Day, and it is wholly impossible and impractical to compel acquiescence in any rigid standard form of observance."


158(a) See Below, Ch. III, 94, n. 46.

(b) The scope of this paper limits itself to the Jewish struggle. Other members of the Non-conformist camp were Seventh-Day Adventists, Seventh-Day Baptists and other Gentile religions. In a larger perspective this struggle would be labelled A Religious Dissenting Minority Exemption.

(c) The religious Non-conformist element in Canadian society would be those religions which do not accept Sunday as a religious day of rest.
CHAPTER II

THE STATUS OF CANADIAN JEWRY AND
FEDERAL SUNDAY LAW

By 1906 the Jew living in Canada fared much better than his brethren throughout the world. Jews were citizens of Canada, having political and civil equality with their fellow non-Jewish neighbours through their Magna Charta or Bill of Rights of 1832. In that year, the Quebec colonial legislature passed an Act to declare persons professing the Jewish Religion entitled to the rights and privileges of other subjects of His Majesty in this Province. None of the other colonies in British North America or Canada passed a similar enactment because Jewish rights were never questioned in them. This may be attributed to the general acceptance of Jewish rights through English common law. Also, legal equality among all religious denominations and the fundamental freedoms of religion, conscience and worship were guaranteed to the Jews by the colony of Canada in 1851. These guarantees finalized Jewish emancipation. Other sectors of Canada accepted this policy through common consent and English common law. Therefore, legally, the Jew was able to take advantage of all the opportunities afforded to him in Canadian secular life. At the same time, he was able to express his Jewishness as he saw fit, either in
public or private. The Jew was a first-class citizen with rights, privileges and protection.

Jewry who had the advantage of the Canadian opportunity took up residence in two major stages; the first period of immigration occurred between 1759 and 1881, and the second, after 1881. The first group of Jews came from England, Holland, France, Spain, Portugal and Germany. They quickly adapted to the framework of Canadian society. Their native western European countries were leaders in colonial expansion, trade and commerce and produced emigrant Jews who were wealthy, well versed in commercial activities and acquainted with urban life. They engaged in any type of occupation ranging from professional skills and labour to retailers, artisans and politicians. When Canada began its industrial movement into secondary industry, these Jews were predominate in the clothing trade.

Even though they were closely related with the life of the Canadian economic community, the new arrivals retained a distinctive identity as members of the Jewish faith. They established their own religious communities and followed the traditional habits of their forefathers. Two religious communities evolved out of this western European migration because of the diversity of the countries of origin. The earlier settlers came from the Mediterranean district and they were Sephardic Jews. The latter settlers, who came after 1840, emigrated from the English Channel area and Germany
and were Ashkenazic Jews. Aside from variations of ceremony and ritual in their religious observance, their concepts of Judaism and its relationship to the secular and/or Gentile worlds were the same.

This degree of cohesion was attributable to the ideological concepts of the English and German Jew. To them, Judaism was a personal and private affair to follow as they desired. With their Jewish education being schematic and superficial and with the successful attainment of financial status, they believed that religious adherence should not affect their non-religious activities. Consequently, since religion was personal and private, it could be separated from their secular relationships with the Gentile citizenry because, "the Jews, devoted as they might be to their own faith, do not make any ostensible display of their Jewishness...."

This Anglo/German Jewish ideological concept of being a citizen on the street and a Jew at home was rooted into Canadian Jewry because the Anglo/German Jew was the dominant Jewish force in the country, and played a significant role in enriching Jewish life. Leading this type of bicultural lifestyle, neither the Jew or non-Jew was conscious of any differences, so that a spirit of widest tolerance and friendliness was created throughout Canada.

The next great wave of Jewish immigration came after 1880 from eastern Europe. These newly immigrated Jews fled persecution from Russia, Austria-Hungary and Romania. Many
came from small European towns and were very poor, usually arriving without means of economic support. 22 Religion to these strict Orthodox Ashkenazic Jews 23 was their way of life and they followed without an "iota of deviation" the religious concepts of their ancestors. 24

His customs, his education, his tradition enjoin him to lead at least as pure and moral life as any other citizen, while his "Articles of Faith" require of him no considerable self-denial and impose no restrictions as to interfere with his normal social function. 25

The eastern European Jews set out to retain their Judaic culture, creed and religion in the newly found freedom afforded to them in the democratic society of North America. 26 They transferred the lifestyle of the old country to that of Canada. Here, they practised their religion in private by fulfilling their duties in their synagogues and homes, as well as in public by way of speech, dress and mannerism. 27 But their religious commitments were not confined to these activities.

With faith being the uniform element and focal point in the lives of these immigrant Jews, their secular activities were dependent upon their religious philosophy. They lived in sub-communities which resembled the shetel of Russia. 28 Here, they maintained economic connections among themselves and lived their type of life "even at the cost of material success." 29 Because of this, the occupations which they sought had to be compatible with their religious tenets of which Sabbath observance was the holiest. 30 The occupa-
tional structure of this class of Jews consisted of artisans, common labourers, petty merchants, clerical workers and a considerable portion of people without any specific skills. Their employment in Canada was "a complex of interrelated vocations which were intimately associated with immigrant life;" for the most part they laboured in "the factory and the workshop, between machines and hard labour." They predominated the sweat-shop system of the garment industry because it was owned and operated by Jews. This afforded the immigrant Jews an opportunity of quick, steady employment and a chance to observe their religious Sabbath.

These newly immigrated Jews with their unwaivering adherence to their faith, made a definite impact on Canadian society.

Prior to the influx of eastern European Jewry, the principal divisions within the Canadian Jewish community were denominational. With the advent of these new Jews, religious divisions were retained because of their strict traditional outlook which challenged the established Canadian Jews definition of Judaism. But this dichotomy of religious attitudes was "almost wholly overshadowed by a deeper and more significant social cleavage." Canadian Jewry was split into two distinctive residential social groups; the old established Canadianized citizen, the Uptown Jew and the newly arrived, unfamiliar immigrant, the Downtown Jew. Each group maintained their own identify, lived their own lives within their communities.
and did not seek social interaction with the Jews of different status. Because of the influx of the immigrant Jew, Canadian Jewry created a social demarcation which was not limited within their circles, but openly evident to non-Jewish Canadians.

Until the end of the nineteenth century, expressions of Anti-Semitism were non-existent in Canada. The twentieth century, however, witnessed a rise of Anti-Semitism in Canada. One of the major causes was the physical fact of the new and large Jewish immigration which was not a "quickly passing phenomenon." The Jewish population increased from 2,393 in 1881 to 16,401 in 1901, and to 42,754 in 1906; the largest percentage of Jewish immigration took place between 1901 to 1906. Outnumbering the Uptown Jews, the Downtown Jews' mode of life became dominant within Jewish circles and was the one which the non-Jewish Canadians connected with Jewry in general. By deliberately limiting themselves to their "apologetic" ideology, their strange ways confirmed the anti-Semitic argument about them being an "unlikeable, unassimilable, alien boyd [sic] with narrow concerns" which excluded all things Canadian. They lived in poverty and ugliness in the poorest quarters of cities and maintained contact with the poorest elements of Canadian society. Their work in the sweat shop system, where they earned meagre wages under unsanitary conditions, connected Canadian Jewry with the onslaught of degeneration,
nervous diseases and even insanity.\textsuperscript{45}

Furthermore, the international Anti-Semitism which evolved out of the Dreyfus affair reached the shores of Canada. Since a greater number of the Jews lived in Quebec\textsuperscript{46} and with the latter's historical relationship to France, and its adherence to Roman Catholicism, it followed that Anti-Semitism played a strong role in that province. Anti-Dreyfus conservatism was strong in Quebec because of the "ideas which swirled about in the fatherland of all French Canadians."\textsuperscript{47} In addition, the Ultramontanes of the Canadian Catholic Church conducted an anti-semitic campaign which coincided with the growing conservatism of the Catholic Church after Vatican Council.\textsuperscript{48} Also important were the prominent people in Canada who personally espoused Anti-Semitism; Goldwin Smith, Henri Bourassa and Archbishop Paul Bruchesi.\textsuperscript{49} For Canadian Jewry, the early decades of the twentieth century were trying times because of the display of Anti-Semitism.

Canadian Jewry on the whole felt the effects of Anti-Semitism and reconciled misconceptions among themselves\textsuperscript{50} and their position in Canadian society. Therefore, "the new arrivals constituted a bridge to the outside world and in many ways drew (the old established) Canadian Jews out of their virtual isolation..."\textsuperscript{51} The Uptown Jews began to defend their incoming European brethren from the anti-semitic onslaughts, and in so doing, stood up for the
centuries old traditions and customs of Rabbinical Judaism which they themselves recognized. Within this climate, the question of the Jewish position in federal Sunday law came to the fore. This brought Canadian Jewry closer together than ever before: "all the groupings had and were conscious of the common denominator of being Jews and were alert to Jewish needs." The issue of Sunday law forced Canadian Jewry for the first time in its history to act as a united entity on the national level in voicing a Jewish point of view on a public issue. The importance of this issue over any other was a response to the religious inferences of Sunday law and its materialistic effects upon the Jews especially. To the Jews, the "prima causa" of their survival was their religion of which the Sabbath was the core. Canadian Jewry was ready to stake its claim.

The leaders of the Canadian Jewish community who pursued action on this issue were of the old established Jewry. They were the spokesmen for the Jewish community in the past and retained their position. They were best qualified to handle problems pertaining to Jews in Canadian society because of their knowledge and adaptation to both Judaism and Canadian society. These people of Anglo/German ideological extraction were profound thinkers on social problems and were publicly active. The basis upon which they worked to solve these social problems was their "ideal society" of the "American Dream." A society where
public life and religious consideration were separate because
the latter was a personal affair. They desired a free
society without any type of discrimination where everyone was
an equal. This was uppermost in their lives and they sought
to apply it to Canada. When social conditions or laws
appeared to counter this concept, thereby affecting Canadian
Jewry, they sought to alleviate the problem. 57 Realizing,
however, that their type of society was idealistic and non-
existent in Canada, their approach to the solution of exist-
ing problems was pragmatic. It was their intention to solve
the dilemma created by the introduction of federal Sunday
law for the conscientious Canadian Jew who observed his
traditional, customary, religious Sabbath as his day of rest
on the seventh day, commonly called Saturday.

Up to this time, the Jewish connection with Sunday
law was no different than that of the majority of the
Canadian people. No previous Sunday regulation contained
any type of exemption for the religious dissenting minority.
Jews who were not religiously conscious were not affected
by these measures because they worked as much as the law
allowed. 58 On the other hand, some Jews who were re-
ligiously conscious were able to work on Sunday and maintain
their status as law abiding citizens. This faction of
Canadian Jewry, whether faithful to their religious convic-
tions or not, had the various occupations which entailed
legal guarantees for Sunday labour along with other
Canadians. The Jews who worked on Sunday did not incur any economic or financial disabilities under Sunday regulations thereby avoiding an internal problem between religious scruples and material sustenance.

An internal problem confronted the remainder of the Jewish community in their attempts to maintain material sustenance, religious convictions and the status of law abiding citizens. Religion taught the Jew "to honour the law of the land in which he lives." The Jews who wished to be law abiding citizens and faithful to their religion had no other choice but to abstain from labour for two days during the week. The ones who could bear the financial brunt did so, but those who could not, did not. This latter class, the unfortunate Jew, who illegally worked on Sunday did so out of moral obligation, which was based upon a deep religious conviction so that he would be able to sustain himself and his family financially. To him, Sunday labour was justified because any circumstance in which religious conscience and law were not synonymous, his religious conscience superceded any type of legal enactment. Out of this classification, two types emerged; those who were working but not caught and the others who were apprehended and convicted.

The vast majority who fell under the former classification were those who manufactured products behind closed doors in factories and/or allowed no retail trade or those
who did personal work in their private establishments. This group worked quietly and inconspicuously, creating no disturbance which was offensive to those who complied with the Lord's Day legislation. The Jew who worked on Sunday in this manner was not found out. 63

The most unfortunate Jews were those who were arrested and convicted for violating Sunday. They had a dual moral obligation to fulfill; the first being their own financial position and also to furnish necessities and commodities upon which other Jews were dependent. The occupational structure of this group of Jews consisted of vocations which entailed in the main, the selling of various commodities to fellow Jews who had been unable to purchase these items since the beginning of their Sabbath on Friday evening. 64

With the introduction of Sunday legislation by the Government at the prompting of the Lord's Day Alliance, opposition rose throughout the country in which the Jews took part. Generally speaking, Canadian Jewry viewed the measure as put forth by an ultra religious group who found people to be delinquent in their church attendance and therefore intended to force people to be religious by an act of Parliament. 65 Because the Alliance dismissed Jewish arguments, the Jews felt that the legislation was intolerable. 66 It seemed comparable "to the old blue laws of Massachusetts" declared the Disraeli Club. 67 The enactment known as the Shearer Bill, 68 was opposed by Canadian
Jewry because their conscientious convictions were not taken into consideration; the measure interfered and infringed upon their civil [secular] and religious liberties. Therefore, faced with the Government's control of Sunday legislation coupled with the peculiar predicament in which the "bulk" of Canadian Jewry found themselves, the spokesmen for the community decided to take advantage of their political and constitutional rights and voice their opinions on the proposed law.

Out of the Baron de Hirsch Institute in Montreal, a group of individuals worked to promote the Jewish cause. Under the guidance of Maxwell Goldstein, a temporary society was formed in February, 1906. Its purpose was the protection of the Jewish people of this country from all manner of unjust treatment, criticism and discrimination. The formation of the Jewish deputation regarding Sunday law stemmed from this group and its membership was open to Jews across the nation. From Montreal came H. Vinberg (chairman), M. Goldstein (legal counsel), S. Kellert (secretary), M. Workman, C. I. de Sola, D. S. Friedman, L. Cohen, S. Jacobs, R. H. Blumenthal, along with Rev's M. de Sola, H. Abramowitz and H. Kornfield. Single representatives from the cities of Toronto, Ottawa and Hamilton were Rev. S. Jacobs, Alderman Rosenthal and Rev. L. Weiss. Their occupations included five spiritual leaders (Rabbis), five in the garment industry, one in bridge and shipping, one in jewellery
and the last two in law. These men worked diligently in the preparation of an appeal for the Jewish cause and were prepared to present their case three days after the Sunday bill had been introduced in the Commons.

On March 15, 1906, the Jewish deputation met with Laurier and Fitzpatrick. Goldstein presented a memorial and addressed the Prime Minister and Minister of Justice along with Vinberg and Rabbis de Sola, Jacobs and Weiss. They argued that the bill as introduced was unfair, unjust and a piece of class legislation because the promoters of the measure ignored the considerations of many segments of society. Moreover, the supporters of the Act overlooked existing regulations concerning Sunday labour in other countries, especially Britain and the United States where exemptions were given to religious dissenting minorities. In a country like Canada, where a guarantee existed of legal equality among all religious denominations, religious conscientious convictions of the minority were not respected within the bill.

Coupled with the complaint of constitutional standing via religious affiliation, the deputation stressed the financial hardships which would be incurred because of religious adherence. The "bulk" of Canadian Jews would be obliged to abstain from labour because of secular and religious law for fifty-two Sabbaths, fifty-two Sundays and thirteen days because of festivals. In the latter group,
if a religious festival fell on a Monday or Thursday, four consecutive days of labour would be missed by the religiously conscious Jew. The absence of work for a total of one hundred and seventeen days a year was a severe hardship placed upon one who followed his religious convictions as well as the law of the land. Since Canada did not allow pauper immigrants, the creation of pauper citizens had to be avoided. The result of the Sunday legislation would spell poverty for the Jew and make him, for the first time, a burden on the state.  

Because of constitutional and financial deprivations, the Jewish deputation recommended in March, 1906 that the bill as introduced not be passed. Instead, they urged that if legislation along these lines was necessary, it should be enacted through an appointed parliamentary select committee which would "be acceptable and do justice to all sections of the community." Finally, in any bill so drafted, an exemption should be incorporated for those who did not observe Sunday as a religious day of rest. In reply, Laurier sympathized with the Jewish appeal because the only effectual difference between the Jew and the Christian was the day each regarded as their religious Sabbath. He was personally "anxious to meet the views of the Deputation," but was steadfast in his refusal to promise or concede anything. Nonetheless, he assured the deputation that he would present their views to the cabinet and
"nothing would be done without full consideration." 78

Negative reaction to the Jewish appeal went to Ottawa as quick as the Jewish response to the introduction of the measure. On March 20, 1906, a large and influential deputation representing the Lord's Day Alliance, Dominion Trades and Labour Congress and the various Christian churches of Canada, waited upon Laurier and Fitzpatrick. This deputation protested against any type of religious minority exemption in the bill. Members of this delegation consisted of a number of federal legislators, clergy of the Roman Catholic and Protestant churches, J. G. O'Donoghue, solicitor of the Trades and Labour Congress, and Rev. Shearer, deputation spokesman and representative of the Alliance. 79 Even though these individuals sympathized with the religious dissenters because of the financial disabilities they might incur in light of their conscientious convictions, they argued effectively against the religious minority demands.

Regarding the religious convictions of some other Canadians, this deputation claimed that Mormons were not allowed to follow their conscience. Canadian law forbade the practice of polygamy and this consideration, the deputation felt, would even be upheld by Jews. These gentlemen believed that conscience "should be respected at all costs," but not on the question of Sunday observance. It was not unique for a group of people to endure financial
hardships because of religious or conscientious convictions, and in the consideration of Sunday law and the position of the Jew, such a disability was quite unavoidable in the view of the Canadian people.  

Sunday was chosen as the national day of rest because of the first-day Christian majority and these gentlemen felt that a religious minority exemption would impair the efficiency of the proposed law which was instituted for the general welfare of the community. Granting such an exemption would destroy Sunday law in the communities where they lived, the results would be an open Sunday thereby robbing the whole community of its Sunday privileges for the one or two per cent "to do what they think they ought to." Since legislation was dependent upon majority rule, this deputation simplified the issue by stating, "the liberty of rest for each demands the law of rest for all."  

To complement the contention of majority will, political tradition was also used. They argued that granting a religious minority exemption would be a departure for which there is no precedent in existing Sunday regulations either in Canada, Britain or the rest of the Empire.  

The deputation also pointed out that the complaints of the Jews regarding the religiosity of the bill were misconceptions because infringement upon freedom of conscience and religion was non-existent. The Jews were still guaranteed full religious liberty because there was
nothing to stop them from observing their religious Sabbath. Also, the restrictions placed upon the Jew in the Sunday bill did not entail any religious observance of the day but rather affected them as it did everyone else. As long as the law was upheld, the day remained the protected day of rest and left "all free to make such use of it as they chose." 84 Because of these arguments, this deputation urged that the religious dissenting minority demands of an exemption not be taken into consideration.

After listening to their exposition, Laurier replied sympathetically to their pleas and also mentioned that he sympathized with the Jewish contention, as long as selling and scandal could be avoided. He ended by stating that all parties would have an opportunity to present their views to a parliamentary select committee. 85 On hearing this, the Alliance knew the Government meant business. They also felt that the Jews would not bring about too much opposition because of the Alliances' influential lobby within parliamentary circles. 86 Still, within the legislative scope then, the issue rested for the moment but was still a lively one in the press until the end of the month.

Immediately following the publication of the meeting between the Jewish deputation and the Government, the controversy centred upon statements made by Rev. J. Edgar Hill, President of the Quebec Alliance. The Jews, to Hill, were refugees who sought asylum on Canadian shores so that
they might live a peaceful life on this continent. The privileges they received were those which they were entitled to under British law; therefore, these refugees ought to be thankful for that and should not be excessive in their demands. Since Sunday law was to secure every citizen a day of rest for the benefit of the nation, it affected the Jew accordingly. The Jew must remember that he lived in a Christian country, run by a Christian Government, and that a bill devised by Christian men could never meet the views of the Jews. It would be offensive to the Christian community for Jewish Sunday labour to be legalized when the Christian is obliged not to work. It would be going much too far to offer such a privilege to a people who were not law abiding citizens or Sabbath keeping as they were made to be. It was unfortunate for the Jew that his Sabbath differed in day from the Christian. It was, therefore, his conscience, not the law, which compelled the Jew to lose those numerous days of work. Because of this, Hill contended an apology to the Jews was not in order. "The trouble with Jews everywhere," Hill commented further, "was that the Jew is an anachronism in modern society." Through such assertions of overt Anti-Semitism, Hill stated his case and immediately rebuttals came from both Jews and Christians.

Jewish defence against Hill's attacks stemmed from religious and lay circles. Rabbis Jacobs, de Sola and
Weiss represented the former while Vineberg, Lewis A. Hart and Allan Judah Hart, descendants of the renowned Hart family who fought for Jewish rights and privileges in colonial Canada, represented the latter. These men contended that Hill's accusations of Jews being Sabbath breakers and not law abiding were unwarranted and merely one-sided. There were more Gentiles, per ratio of population, in penitentiaries than Jews and the desecration of the Christian Sabbath was more preponderant within Gentile circles than Jewish. Instead of rallying against Jewry, these defenders stated, "more time should be spent in getting Christians to observe Sunday as faithfully as the Jew does his Sabbath." If this was accomplished, Sunday legislation would not be necessary by trying to make men religious through the fear of law.89

Moreover, the Jewish deputation's action was defended by these men against Hill's attacks. In this situation, they merely stood up for their minority rights which a Christian Government in a Christian land existed to protect. In so doing, they did not seek new privileges but "protested in conformity with religious liberty." They were not interested in detracting from the sanctity of the Christian Sabbath nor in working seven days a week which they along with other Canadians sought to alleviate. All the Jews desired was to be able to work six days a week like first-day Christians and not be limited to five.
The Jews felt they had a right to speak out on the issue just as the majority of the citizenry of the country. This concept of religio-minority rights ought to have been one with which Hill, himself, was familiar, being a member of one such group in the province of Quebec.

The tone in which Hill presented his case was unjustifiable. When the Jews presented their case, not one derogatory statement was made about Christians whereas throughout Hill's condemnation of the Jew, the spirit of bigotry, ignorance and intolerance was overwhelming. Since his religious affiliation preached brotherly love, it was difficult to comprehend Hill's position which seemed to be somewhat hypocritical at the very least. The most degrading statement which Hill made was in calling the Jew an anachronism in modern society. This term was not original but used by Christian "Jew baiters and Jew haters" throughout preceding centuries during the Judaic persecutionary periods. Yet, Hill never stated why the Jew was an anachronism but implied that the retention of age old traditions and concepts was itself anachronistic. This did not justify one being an anachronist, but rather revealed how Hill was "behind the times" by neglecting to reveal the spirit of toleration which other Christians in Canada as well as other countries displayed.

Because of his intolerant attitude, deSola suggested that the Christian public would not accept Hill's conten-
tions, nor did they. Christian responses to Hill's comments not only substantiated Jewish claims that the Christians and not the Jews were the real offenders of Sunday law, but went much further to condemn Hill than did the Jewish defenders. To the tolerant Christian, it was not the Jew but Hill and the church he represented which was the anachronism.

Meanwhile, the Canadian press became involved in the controversy and expressed a wide range of opinions in relation to the solution of the Jewish dilemma. The Ottawa Witness felt that the Jews ought to have a high estimation of a national Sabbath and not ask for an exemption. With the Jews seeking an exemption, this paper felt the major question was "whether the Jews will let us have a Sabbath or not." At the opposite end of the scale, The Montreal Star stated that despite the Christian appeal for a quiet Sabbath, the Jewish protest could not be ignored. Christians should not override the conscientious feeling of the religious Jew who felt that abstention from labour two days a week would result in financial disabilities. When Christians allowed some men to work seven days a week, "they must in all conscience permit others to work six." The only solution to this problem would be to compromise on the issue by aiding the minority in such a manner which would not be offensive to the majority. A solution would not be simple admitted the writer, but it would be "worthwhile
to take some trouble to meet the conscientious scruples of all our citizens." Finally, The Toronto News sympathized with the Jews because of the economic hardships the legislation would entail, but believed that no alteration could be made for the religious dissenting minority "without making a loophole for others to crawl through." This paper acknowledged that the legislation was beneficial for the community and one which should become law.

Nonetheless, the Hill controversy continued after the Jewish defence. After receiving public condemnation, Hill attempted to make a crucial situation look superficial and to "pass the buck" on to the Jews themselves. He claimed that the word, anachronism, was an innocent one because an anachronist was a person "who lives and professes to live in the past." "This being the pride of Israel (and) the preservation of their faith," claimed Hill, "the Jews should not have taken offence." However, if this interpretation was misleading, Hill stated that "the Jew was weakening in what used to be his strength." Furthermore, he contended that deSola's arguments about Hill's predecessors who also considered the Jew an anachronism and persecuted them was a subtle ploy to steer away from the issue because Jewish persecution was non-existent in Canada. Hill vividly compared deSola's argument to that of an endangered cuttlefish who "emits the inky fluid about itself within the water (so that)
escape undercover to a place of safety" was feasible. From 

On the whole, Hill's defence was not enlightening. From 
the Jewish side, de Sola pointed out that Hill merely tried 
to divert public attention on the Jewish stance towards 
Sunday law through his illustrative comparison of the 
cuttlefish along with the minute difference of meaning 
between an anachronism and an anachronist. By trying to 
escape this display of insulting tolerance through decep-
tion, de Sola remarked that Hill was not only guilty of 
breaking rules of decency, by insulting another creed, 
but also immature for not admitting his error when greater 
men than he, "had the manliness to do so."  

Christian replies to Hill's defence still favoured 
the contentions of Canadian Jewry. The Jew being "in our 
midst due to our acceptance," and a law abiding citizen, 
commented a Christian defender, he cannot be "flouted as an 
interloper or an anachronism" because of his conscientious 
position. Furthermore, the insistence that the Jew 
was an anachronism, left much to be desired for the 
Christian, let alone modern society, whose foundations 
were of the Judaic tradition.  

With rising tension and friction caused by this 
controversy over the Jewish plea, the press wanted to 
wash its hands of this difficult issue. After relating 
both sides of the argument, The Montreal Gazette informed 
its readers that it would cease to publish any more in-

formation on the topic. The Montreal Star also warned the public that "no seed (brought)... forth a more bitter harvest than an acrimonious religious controversy (which) the truest friends of religion in all forms would deplore." Fearing what might result from the editorials of the newspapers, and realizing that nothing could be resolved, the Canadian press, being realistic and practical, removed itself from further involvement in the controversy since the solution lay in the hands of the federal legislators.
FOOTNOTES


3 Lower Canada, Laws, Statutes, etc., An Act to declare persons professing the Jewish Religion entitled to the rights and privileges of other subjects of His Majesty in this Province, 1832, 1 Wm. IV, ch. 57, The Provincial Statutes of Lower Canada, 1831-1834, XIV:82; A. Brodey, "Political and Civil Status of the Jews in Canada" (Thesis for the Degrees of Rabbi and Master of Hebrew Literature, Jewish Institute of Religion, New York, 1933), 53-55 – The 1832 Act which was passed by the Quebec Legislature was limited to only natural born subjects. To vindicate this, the colony, Canada, passed Naturalization Acts so that Jewish rights would be applicable to naturalized British subjects. (These Acts were 4-5 Vic., ch. 7 and 54 Vic., ch. 7. [sic] [It should be 12 Vic., ch. 197.]) The latter Act is found in C.S.C. 1859, ch. 8.) The Naturalization Acts passed after Confederation did not affect Jewish rights. (Also, see C.S.C. 1859, ch. 6 (sec.; 4) – for Jewish voting rights.); Ibid., 165 – Because certain oaths contained the words "on true faith of a Christian," Jews were unable to take those oaths. To alleviate the problem, the colony, Canada, disposed of taking certain oaths. (This Act was 13-14 Vic., ch. 18.)

4 M. E. Gordon, "Political and Legal Aspects of Jewish History in Canada" (A paper, Montreal, 1959), 4.

5 Brodey, "Status of Jews in Canada," 2-9 – He contends that the Act of 1832, which was passed by the Quebec Legislature, merely staturized Jewish rights in Canada because the Jews attained those rights through English Common Law. The Imperial Statutes regarding naturalization which affected His Majesty's Colonies in America were: 13 Geo. II, ch. 7; 20 Geo. II, ch. 44; 13 Geo. III, ch. 25. After the British takeover of New France (despite the loss of the Thirteen Colonies), these statutes were incorporated into the political and constitutional life of British North America.; Settlement of the Jews in North America...Daly, ed. by Kohler, p. 154 [sic], quoted in Brodey, "Status of Jews," 14, n. 2 – Dr. Felsenthal of Chicago stated that 13 Geo. II, ch. 7 was the first legislation in all Christendom in favour of Jewish emancipation vis à vis judicial and political status.;
Rosenberg, Jewish Community in Canada, 72 - He stated that Sam Hart, a Jew, from Newport, Rhode Island, was the first Jew to hold a political position in British North America. While residing in Nova Scotia, Hart sat in the Nova Scotian Legislature from 1763-1769.

6. Brodey, "Status of Jews in Canada," 54-55 - The Act was 14-15 Vic., ch. 175 (sec. 1). (See C.S.C. 1859, ch. 74 (sec. 1)).


8. Schmeiser, Civil Liberties, 68-71, N.B. 70.


11. Ibid., 37.

12. Ibid., 8.

13. E. L. Israel, "Occupations of Jews," Central Conference of American Rabbis Yearbook XXXVI (1926): 249 - Religious adherence and the accessibility of jobs played an important role in the occupations of Jews. Some of these vocations were butchers, bakers, dairymen, food dealers, tailors, printers and bookbinders. These jobs met the necessary requirements to fulfill a religious life style. Also, these vocations played an important part in the observance of the Hebrew Sabbath in a non-Jewish environment. "It led one to a desire to be one's own economic master...."


15. H. E. Wilder, ed., The 100th Anniversary Souvenir of Jewish Emancipation in Canada and the 50th Anniversary Souvenir of the Jews in the West (Winnipeg, 1932), 8 - Because of the milleniums of wandering the "Jew acquired a marked degree of elasticity in religious practices. The necessity of his continuously shifting about has made it imperative for him to cast his dogmas in malleable moulds and he has used this semi-detachment to evolve an intellectual
mechanism which enables him easily to adjust himself to his new environment by adopting the general customs and manners of the place without affecting his inner home-life or compromising his spiritual heritage." Also, I. Cohen, Jewish Life in Modern Times (New York, 1914), 276.

16 Ibid., 19. Because of social and economic forces, one of the distinguishable features of western European Judaism was its growing tendency "to divorce religious practice from daily life, to exclude the former more and more from the home and to confine it to the synagogue."

Sack, Jews in Canada, 234.

18 Wilder, 100th Anniversary, 8.

19 Sack, Jews in Canada, 234.


Kage, Faith and Thanksgiving, 29.

23 Cohen, Life in Modern Times, 275.


Wilder, 100th Anniversary, 8.

26 Rome, "Anti-Semitism," 5; Cohen, Life in Modern Times, 37 - "The Ghetto in the East may be a symbol of political bondage; but in the West the only bondage that it typifies is that exercised by sentiment and tradition."


Ibid., 5.

Ibid.
See Above, Ch. II, n. 13.

Kage, Faith and Thanksgiving, 30.


Sack, Jews in Canada, 212.

Ibid.


Ibid., 2-3; S. Dinin, Judaism in a Changing Civilization (New York, 1933), 4 - In societies where church-state relationships are broken, and political and civil equality of the Jew exist, attacks upon this group is known as Modern Anti-Semitism.


Total Increase of Jewish Population of Canada by Immigration and Natural Increase 1901-1906. (Figures taken from the Annual Increase of Jewish Population of Canada by Immigration and Natural Increase, 1901-1943.)

Fiscal Year (April 1 - March 31)

Annual Total 1901 - 16,401
<table>
<thead>
<tr>
<th>Category</th>
<th>1901-1906</th>
<th>1906</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Immigration</td>
<td>1901-1906</td>
<td>24,725</td>
</tr>
<tr>
<td>Total Natural Increase</td>
<td>1901-1906</td>
<td>2,076</td>
</tr>
<tr>
<td>Total Emigration to U.S.</td>
<td>1901-1906</td>
<td>(446)</td>
</tr>
<tr>
<td>Total National Increase</td>
<td>1901-1906</td>
<td>26,353</td>
</tr>
<tr>
<td>Annual Total</td>
<td>1906</td>
<td>42,754</td>
</tr>
</tbody>
</table>

Ibid., 15 - Population was recorded by religious denomination, e.g., 1901 - religious 16,401; origin 16,131.

L. Rosenberg, *The Demography of the Jewish Community in Canada*, Canadian Jewish Population Studies, Population Characteristic Series, no. 2, *The Jewish Journal of Sociology* I, no. 2 (December 1959); reprinted (Montreal, 1957), 218 - Between the years 1851-1891, the census of Canada used only religion as a base. In 1901, the census used both origin and religion. This author used religion throughout because religion would give a more accurate account. Also, Ibid., 6 - The census used origin because many Jews denoted Judaism as a nationality because of the Zionist movement, 1897. Also, the Jews who were persecuted in Europe did not want to affiliate themselves with their former land of persecution. Therefore, Judaism became their nationality.

41 Ibid., 221.
43 Ibid., 7.
44 Sack, *Jews in Canada*, 244.
46 Rosenberg, *Jewish Population...Statistical Summary*, 15 - In 1901, 7,498 Jews lived in Quebec. The total Jewish population in Canada was 16,401.
48 Ibid., 4.
50 J. O. Hertzler, "The Sociology of Anti-Semitism

51 Sack, Jews in Canada, 217.

52 Rome, "Anti-Semitism," 4; S. W. Baron, "The Modern Age," in Great Ages and Ideas of the Jewish People, ed. L. W. Schwarz (New York, 1956), 374 - Orthodox Judaism of eastern Europe was strict in its observance. Orthodox Judaism of western Europe resembled the old in its "unwaverings adherence to all the commandments." Cohen, Life in Modern Times, 285 - Orthodox Judaism of western Europe differed from that of the east because the former theoretically acknowledged"the authority of the Oral Law, but in practice they mostly ignore[d] it."

53 Kage, Faith and Thanksgiving, 43; Hertzler, "Sociology of Anti-Semitism," 73 - Whether the Jew is "Orthodox, Reformed, 'liberal,' rationalistic or atheistic, he usually does not want to cease being a Jew. Jews as far apart in faith, conviction and modes of living...are one...."

54 Rome, "Anti-Semitism," 29; Cohen, Life in Modern Times, 166-167 - "The Sunday closing of shops and workshops is a main question in regard to which Jews are influenced less by party consideration than by religious motives and racial solidarity."

nation - a most unique social phenomenon.

56(a)

(b)
See "The Sabbath Question," Yearbook of the Central Conference of American Rabbis XII (1902):103-152; "The Sabbath Commission," Yearbook of the Central Conference of American Rabbis XIII (1903):55-58, 74-87, 96-101, 139-171 - The importance of the Jewish Sabbath was evident at the beginning of the twentieth century. At the annual meeting of the Central Conference of American Rabbis in New Orleans, May 5-10, 1902, the "Sabbath Question" was discussed. Some delegates felt that the Seventh-Day Sabbath of Judaism should be changed to a Sunday Sabbath because of existing circumstances. Others were utterly opposed to the idea and wanted the retention of the original Sabbath. Yet, others saw a compromise by maintaining the historical Sabbath but make provision for an inspirational Sunday service for those who did not attend the Sabbath Service.

The following year the conference met in Detroit from June 29 - July 4 and rendered a decision. The motion which they adopted read:

This conference declares itself in favour as maintaining the historical Sabbath as the fundamental institution of Judaism and of exerting every effort to improve its observance;...

The vote passed in the affirmative 23-9. (Ibid., 101.) N.B. Some of the negative votes were not intended to declare itself against the motion, but rather against the principle of voting on the change of the Sabbath because no one had the authority to change the Sabbath Day even if they wanted to. To understand where authority in Judaism lies, see S. S. Cohen, "Authority in Judaism," Hebrew Union College Annual XI (1936):593-646.

57 Rome, Interview; Kallen, "Jewish Survival," 14 - Emancipation according to the American Idea is "emancipation
for rather than emancipation from, creative rather than
defensive." It gives the Jews "numerous amounts of freedom."
It is "the protection and cultivation."

58 Minutes of Evidence, 27 April 1906, 182, Goldstein;
Debates, Commons, LXXVII (1906):col. 6292, Barr, col. 6303,
Gagnon.

59 Minutes of Evidence, 27 April 1906, 183, Goldstein -
e.g., In Quebec, cigar and fruit stores were allowed to stay
Under the application of the Ejusdem Generis rule, farmers
were allowed to work on Sunday. See The King v. Hamren [1903],
7 C.C.C. 188; Young v. Taylor [1921], 3 W.W.R. 882.

60 Minutes of Evidence, 19 April 1906, "Supplementary
views of the Jewish Deputation upon the Bill entitled the

61 Minutes of Evidence, 27 April 1906, 184, Goldstein.

62 Ibid., 19 April 1906, "Supplementary Views...Jewish
Deputation," 18 - "That which leads a man to violate a
cardinal sin of his religion is subversive of the salutary
influence of religion and destruction of reverence for
religion does not make a man a good citizen."

63 Debates, Commons, LXXVII (1906):col. 6287-6288.
Macdonell, col. 6303, Bergeron.

64 "Hebrews and the Lord's Day," The Lord's Day Advocate
II, no. 11 (August-September 1905):7; Minutes of Evidence,
19 April 1906, "Why Seventh-Day Adventists Oppose the Sunday
Bill," 29; Isreal, "Occupations of Jews," 265 - Actual
figures for Jews who were classified as working at various
occupations were not available until 1926; Kage, Faith and
Thanksgiving, 29-31, passim - He stated that occupational
and population statistics of Jews in the past were in-
adquate. Studies concerning wage earners of ethnic origin
were not instituted until 1931.

65 The London Jewish Chronicle, 13 July 1906, Interview
with Rabbi Mendola de Sola.


67 The Montreal Star, 16 March 1906.

69. The Montreal Star, 16 March 1906, Disraeli Club Convention, 24 March 1906, Harris Vineberg; Minutes of Evidence, 19 April 1906, "Memorial Submitted to the Government of Canada by a deputation of Jewish citizens with regard to the Bill concerning the observance of Sunday, entitled 'The Lord's Day Act,'" 17.

70(a) Minutes of Evidence, 27 April 1906, 185, Goldstein; 19 April 1906, "Jewish Deputation," 16.

(b) Ibid. - The synagogue has no means to enforce Sabbath observance. At best it induces moral persuasion. Baron, "The Modern Age," 375-376 - it is difficult to denote the strength of Orthodox Judaism. The synagogue is only what people make it, be it strictly Orthodox or nominally Orthodox. Numbers are not known, nor size of membership, nor the extent of the people's religious conformity in or outside the synagogue.

(c) D. Rome, "Their Life in their Synagogues" (Manuscript, Montreal, n.d.), 25-26 - By 1906 there were only two Reformed Synagogues; one in Hamilton and the other in Quebec. Holy Blossom Synagogue in Toronto gave indications of Reformed tendencies but did not break until 1920. (Therefore the remainder of the Synagogues would be Orthodox, but the memberships may not have been that of Orthodox-practising Jews.) Also, see S. E. Rosenberg, "Canada's Jews: An Overview," Judaism A Quarterly Journal XX, no. 4 (Fall 1971): 487.

71. Rosenberg, Jewish Community in Canada, 178. Also, Ibid., 179-181, passim - This Jewish deputation became the Jewish Legislative Committee which was established in 1909 as a standing committee "dedicated to the defence of Jewish civil [secular] rights in Canada."

72. The London Jewish Chronicle, 13 July 1906, Mendola desOla - Canadian papers, The Ottawa Evening Citizen and The Montreal Star, on March 15, 1906 also listed the members of the Jewish deputation. However, those papers were incomplete as compared with The London Jewish Chronicle. The only name which appeared in the Canadian press coverage which did not appear in The London Jewish Chronicle was
L. Sapery. The other notable difference was the Canadian press listed M. Workman from Toronto while The London Jewish Chronicle listed him from Montreal.

73 A. D. Hart, ed., The Jews in Canada (Toronto and Montreal, 1926), 87-379, passim.

74 The London Jewish Chronicle, 13 July 1906, Mendola de Sola.

75(a) Minutes of Evidence, 19 April 1906, "Supplementary Views...Jewish Deputation," 18.

(b) Ibid., 19 - For regulations concerning Jewish labour on Sunday in Great Britain see, 1 Ed. VII, ch. 22 (sec. 47-48).

(c) Debates, Commons, LXXVII (1906): col. 6289, Macdonell - Where Sunday law existed in the various states of the United States of America, nine out of ten states enacted a conscience exemption clause. A. H. Lewis, A Critical History of Sunday Legislation. (From 321 to 1888 A.D. (New York, 1888), 209-256 - He stated which states had Sunday laws and of those, which had a conscience exemption clause. The figures were, total number of states, forty-three; territories, three. The territories contained no exemption clause. (Ibid., 251-256, passim.) Only Arizona had no Sunday law. (Ibid., 212.) Eighteen states enacted an exemption clause. Pennsylvania refused to pass an exemption clause. (Ibid., 245-246.)

76 Minutes of Evidence, 19 April 1906, "Jewish Deputation," 15-17, passim.

77 Ibid., 17.

78 Wilfrid Laurier, quoted in Rosenberg, Jewish Community in Canada, 179.


80 Ibid.

81 Ibid., 6-7.
82 Ibid.

83 Ibid., 7.

84 Ibid., 6-7.

85 Ibid., 7.

86 Alliance, Correspondence 1905-1906, J. G. Shearer to J. B. Mitchell, School Board Office, Winnipeg, Manitoba, Toronto, 23 March 1906, 483.

87 The Montreal Gazette, 17 March 1906.


91 Ibid.


93 Minutes of Evidence, 19 April 1096, "Behind the Times," 14; E. Z. Dihur, Israel and the Diaspora (Philadelphia, 1969), 66-76 - He divides the diasporic history of the Jews into eight chronological periods. The divisions depict periods of stability (s) and crisis (c).

1(s) Oriental and Occidental Diaspora, 636-1086 C.E. - (c) Crusades to Pope Innocent III, 1096-1215 C.E. -

2(s) Decrees of Innocent III to Black Death, 1215-1348 C.E. - (c) Black Death to Inquisition, 1348-1496, C.E. -

3(s) Inquisition to Chmelnicky Massacres, 1496-1648 C.E. - (c) Chmelnicky Massacres to French Revolution, 1648-1789, C.E. -
4(s) French Revolution to Russian Pogroms, 1789-1881 C.E. - (c) Russian Pogroms to State of Israel, 1881-1948 C.E.


95 The Montreal Star, 21 March 1906, Mendola de Sola.


97 The Ottawa Witness, 16 March 1906.

98 The Montreal Star, 17 March 1906.


100 The Montreal Star, 24 March 1906.

101 Ibid., 28 March 1906.

102 Ibid., 29 March 1906, Anglican.

103 Ibid., 28 March 1906, Christian.

104 The Montreal Gazette, 28 March 1906.

105 The Montreal Star, 31 March 1906.
CHAPTER III

THE EFFORTS OF CANADIAN JEWRY TO SECURE AN EXEMPTION.

After the controversy within the press, the Jewish issue returned to Parliament Hill. On April 5, 1906, a parliamentary select committee dealing with the proposed rest day legislation which Laurier had earlier promised, was formed. The committee consisted of the following M.P.'s; Daniel, Ames, Fitzpatrick, Macdonell, Piché, R. Smith, Miller, Geoffrion, Macdonald, Sinclair and Roche who was replaced by Schaffner on April 23, 1906. The altered select committee was representative of a cross section of the populace of Canada. It consisted of six Liberals (three Roman Catholics; three Protestants) and six Conservatives (one Roman Catholic, five Protestants). Also, two of these men were executive board members of the Lord's Day Alliance of which one of them was a labourite M.P. All of these committee members were in accord with the principle of the bill, of supplying one days rest in seven. It was the Government's hope that in this committee that various interests would be heard in the production of a reasonable and workable measure. Through their cooperation the bill would "have behind it the force of public opinion," so as to make it become
a law which the people would follow, not evade. With the appointment of the parliamentary select committee, the Jews felt that they had achieved remarkable success having earlier requested the formation of such a committee. Knowing that the Alliance disapproved of a religious dissenting minority exemption, the Jewish outlook became optimistic because they did not have "to appeal to the alliance for relief, but to a tribunal composed...to do justice...." Having this opportunity before them, the Jewish deputation sought to capitalize on the situation and to convince the select committee of their needs.

Their approach in solving the Jewish dilemma of Sunday law was realistic and practical. Many of the Jewish ideals coincided with those of the Christians. Being cognizant of the fact that the Jews were a minority and that the majority must rule, hypothetical considerations were not evident in their attempt to resolve their problems. The Jews recognized the principle of the bill, one day's rest in seven and regarded it as sound. They favoured the idea of eliminating selling on that day, keeping it peaceful and quiet as well as upholding the concept of not forcing an individual to choose between his financial stature and religious convictions. Working within this principle, the Jews lobbied for an exemption.

By maintaining similar concepts with the Christians over Sunday law, the only thing that differed between the
Jew and the Christian was the day which their religion designated as the day of rest. In their fight for Jewish labour on Sunday, the Jews merely wanted to give their fellow Jew who observed a Saturday Sabbath as his weekly day of rest, the opportunity to maintain financial sustenance. In achieving this end, only Jewish labour behind closed doors would be a prominent issue. Yet this was usually done in such a manner which would not disturb others in their observance of the day. The Jews had no intention of interfering with the religious majority concepts whatsoever. Since they realized that the application of Sunday law pertained equally to everyone in the country, the Jews' only objective would be a restricted form of labour. Working within this framework, the Jewish deputation felt that a case existed "where the majority could well concede to the minority their view...."10

They were prepared for the hearing before the select committee.

The select committee, under its chairman John W. Daniel,11 began its work immediately after conception to bring about a congenial rest day law. Between its first sitting on April 9, 1906 and its last of June 1, 1906, ten sessions were held until the completion of its work.12 Because of the numerous interests wishing to be represented, the committee was allowed to carry on its business while Parliament was in progress.13 Public hearings were
conducted during the first eight sittings while the last three sessions (nine and ten exclusively) concerned amending and redrafting the bill.\textsuperscript{14} The religious interests were the last on the agenda and the Jewish delegation was scheduled for April 24, 1906.\textsuperscript{15} Here, the Jewish interests would try to secure Jewish Sunday labour through constitutional and legal means.

Goldstein, representing the Jewish interests, pleaded the case before the select committee on April 27, 1906.\textsuperscript{16} Members of the committee on hand that day were Daniel, Fitzpatrick, Ames; Macdonald, Macdonell, Miller, Piché, R. Smith and Schaffner.\textsuperscript{17} Only Miller and Fitzpatrick remained silent throughout the proceedings. The Jewish amendment drafted by Goldstein and amended by Ames,\textsuperscript{18} was the focal point of discussion:

\textit{Notwithstanding anything herein contained whoever conscientiously and habitually observes the seventh day of the week as the Sabbath and actually refrains from work and labour on that day, shall not be subject to prosecution for performing work or labour on the first day of the week, provided that such work or labour does not disturb other persons in the observance of the first day of the week as holy time, and that the place where the same is performed be not open for traffic on that day.}\textsuperscript{19}

Under this amendment, Goldstein contended both Jewish and Christian sentiment regarding Sunday law would be upheld and maintained. The only person who could avail himself of this section was the religiously conscientious Jew who did not work or labour on his Sabbath. Along with this, no Jew would be able to work seven days during the week.
because if he worked on Saturday he lost the advantage of the exemption and would be obliged to take Sunday as his day of rest according to the law. The Jew would have to prove that he conscientiously and habitually observed the seventh day by not working, which in turn afforded him the opportunity to work on Sunday; otherwise, if caught working on both Saturday and Sunday, he was held liable for his actions.

This was the only situation in which Goldstein contended that the Jew was liable for his actions under Sunday law. He objected to the suggestion of making the Jew liable to the same penalties for working on Saturday as the Christians were for working on Sunday. Aside from the idea that following this course of action, the Government would be re-instituting the stimulus of traditional Judaic law, the suggestion imposed restrictions upon the religiously conscious Jew for two days instead of one; unless, those restrictions were altered from Sunday to Saturday. This was absurd because the concept of a national day of rest would be lost, for, as Goldstein contended, the law in the main was applicable to everyone including the Jew. The only advantage afforded by the amendment was to the religiously conscious Jew who abstained from labour on his Sabbath and therefore was permitted to labour on Sunday under the amendment's provisions. The purpose of the exemption merely equalized the amount of period of rest.
required by law that one should take, that of one day's rest in seven.

Nevertheless, Goldstein reinforced the conviction that this consideration gave the Jew an advantage over the first-day Christian because the former had a choice of which day he desired to observe as his day of rest, either his religious Sabbath or the legal, national day of rest. Since the chosen day of rest coincided with the whims of the majority, it was naturally assumed that the Jew would have a choice while the first-day Christian did not have such an opportunity. Within the context of what had been said so far regarding the Jewish amendment, the principle of the bill would still be upheld. Assuming only Jewish labour existed, it appeared, as Goldstein first remarked, that the shops would have to be closed on Saturday in order to take advantage of the exemption.

As the questioning continued, loopholes appeared in Goldstein's arguments when first-day Christian labour within Jewish establishments was brought up. Goldstein endorsed the notion that first-day Christian labour on Sunday was amenable to the law under the amendment. It was up to the Christian to look after his own conscience. If he wanted to work on Sunday he would be allowed to do so without ramification upon himself or the Jewish owner. Otherwise, the religiously conscious first-day Christian would not be forced to work on Sunday. He would be limited to a five-
day work week as was the trend at that time when Jewish shops closed on Saturdays. From this argument, the Jewish shopkeeper was limited to only six days of operation and allowed the (religiously conscientious) Jew and the first-day Christian, if he so desired, six days of labour and one day's rest. This remained in line with both the principle of the bill and the Jewish amendment.

As this appeared to infringe upon the earning power of the religiously conscientious first-day Christian by limiting him to a five-day work week, a solution was noted within the amendment itself: Jewish shops did not have to close on Saturday, thereby enabling the first-day Christians to work six days a week. But, with this solution, a new problem arose: Jewish establishments could then remain open for seven days a week under the advantage of the amendment, so that both religiously conscious Jews and first-day Christians would be able to work six days a week. The religiously conscious first-day Christian could work on Saturday while full production was carried out and have Sunday off for rest, while similar Jewish employees could take their Sabbath off but work on Sunday under the provisions of the amendment. Assuming that both entities chose their rest day according to their religious beliefs, the shops could not operate on both days with a mixed staff; otherwise, the possibility of a mixed staff was feasible. The position of a Jewish shop owner operating seven days a
week was not disadvantageous because what was not done on Saturday due to the absence of the religiously conscious Jew could be done on Sunday by the same, provided that the labour performed remained in line with the provisions under the amendment. 31 Nevertheless, with the opportunity of being open for seven days, it appeared that the Jewish employer had the opportunity of receiving financial benefits over his competitors. 32 Therefore, with first-day Christian labour taken into account within Jewish establishments with respect to the ramifications of the Jewish amendment within the bill, complications arose which were unseen if only Jewish labour existed. Nonetheless, both the principle of the bill and the amendment remained intact.

Despite the loopholes in Goldstein's argument when first-day Christian labour was accounted for, his approach in solving the Jewish dilemma was consistent. In all the above considerations, the place where one laboured on Sunday was restricted to the point that sales were not allowed nor could such work disturb the first-day Christian in the observance of Sunday as a day of worship. No one would be able to work seven days in a week without resting at least one day as required by the bill. In order to fulfill this requirement, the loopholes were unavoidable; such as the possibility of first-day Christians working on Sunday and Jewish firms remaining open for seven days a week, but
they were necessary to maintain "an equilibrium between the different social (religious) forces" within the context of Sunday law. The Jews were given their chance to present their views and the decision of acceptance or denial of their cause rested with the select committee. But before this decision was rendered, another interest wished to present its views to the committee on the issue regarding the proposed Jewish exemption.

Prior to Goldstein's hearing, Shearer, representing the Lord's Day Alliance, wanted to know if he would be given a chance to express his viewpoints on the proposed amendments at a later date. Daniel consented to the request with no opposition from other members of the committee, but a bone of contention arose concerning the time Shearer should speak. Daniel desired that Shearer speak at that precise moment while most of the points were before the committee, but other committee members disagreed. Pringle objected because all the amendments had not been presented and those which existed were still in crude form. Shearer's address to the committee contended Fitzpatrick was rather premature.

The idea of allowing the Alliance to speak against certain groups who sought exemptions was undesirable to a representative of one such group. Lyon Cohen, a member of the Jewish deputation who sat in on the hearing, remarked that this course was unfair because the bill, according
to the Minister of Justice, was strictly a Government measure. By allowing this, Cohen contested that it was tantamount recognition of the Alliance's sponsorship of the bill. To this attack, Fitzpatrick replied that it was a Government measure and not one of any religious group. The Government's concern was not to "affect the religious convictions of any person in so far as the general interest of Canada may require legislation,..." Since Jewish interests were heard, representatives from the Alliance being "respectable people," Fitzpatrick further commented, were also "entitled to be heard." Still not pleased with the answer, Cohen insinuated that it was unfair for one group to speak out against another group's contention. Since the bill in totality would affect the entire populace, Fitzpatrick replied: "the interest of any particular class may be taken up (even upon)...any amendment of this legislation," because all parties, including the Alliance, had the right to present their views if the results of the legislation affected their interests. To further strengthen Fitzpatrick's contention, Miller noted that this recourse was not only limited to the Alliance but could also be capitalized on by the Jew since "everybody else had the same privilege."35 Before the Jewish amendment would be considered by the committee, opposition forces had a right to speak.

On April 27, 1906, coinciding with the Jewish
interest's presentation, Shearer spoke both prior to and after Goldstein's presentation to the committee. During his cross examination, Shearer expressed dissatisfaction on various amendments including the Jewish one. His contentions against the exemption were regurgitations of what the anti-religious minority deputation, of which Shearer himself was spokesman, stated to Laurier and Fitzpatrick a month earlier, namely; no precedent for such action, no infringement on either religious liberty or freedom of conscience, and the will of the majority must be maintained.

On June 1, 1906, the last day which the select committee met, the Jewish question was finally settled. Every member of the committee was present except for Macdonell (who was present at Goldstein's hearing and who was a supporter for the Jewish cause), whereas Geoffrion was the only member present when the voting took place who was not at Goldstein's presentation. After debating the issue, the committee's decision was to incorporate the Jewish amendment as Section 11 in the measure by a vote of five to four. Despite the Alliance's presence and influential opposition when the voting took place, the adoption of Section 11 was another Jewish victory in their continuing struggle.

The victory, however, was not a total one in every sense of the word. For all intents and purposes, the
majority feeling of the select committee went the opposite route.⁴³ An anonymous member of the committee who voted for the adoption of the exemption was wholeheartedly against it and would vote accordingly when the measure would be discussed in the Commons.⁴⁴ Therefore, the reason why he voted this way was the same reason why the exemption was incorporated into the bill as Section 11.

This was a clause of very considerable importance upon which there was a great difference of opinion and ...he voted for this so that it might be reported to the House and discussed by the whole House.⁴⁵ The anonymous member assumed this course of action through honest convictions. Aside from the Jewish deputation's pragmatic approach in solving the Jewish dilemma, it was to HIM that the Jews owed their thanks, that the Jewish exemption amendment, Section 11, referred to as the 'Jew Clause' was allowed to live and not die.⁴⁶ Miraculously, the Jewish struggle continued, but the longevity of Section 11 rested on the discretion of the entire parliamentary body.

The issue did not rest at this point by leaving it up to the legislators to decide. Both the opposition and supporters of Section 11 tried to influence the parliamentarian's decision. The Alliance, being the former of the two advocates vigorously attacked the Jewish position. In its efforts to secure the "toiling man his rightful claim to one day's rest in seven,"⁴⁷ the Alliance was consistent in its arguments against the acceptance of the Jewish exemption in the bill. Within the enactment itself, there
existed no infringement upon religious liberty or freedom of worship of the Jew, nor on any required religious observance of the day. The measure merely sanctioned the universally recognized principle of all Christian nations that Sunday, as an institution, was the weekly day of rest. In Canada, the views of the majority must be respected so as to ensure that Sunday be kept as the protected rest day. To secure this, the conscientious convictions of the religious dissenting minority could not be met and the principle of "the liberty of rest for each demands the rest for all" must prevail.48

This goal was only a means to secure the Alliance's ends. This secular contention was merely incidental and only a ploy to secure the original purpose of the Alliance itself: which saw the necessity of Sunday legislation "to protect and preserve, the observance of the Lord's Day."49 Those secular considerations to the Alliance were secondary to the essential motives of Sunday law which were "the principles of morality and religion...." Under the realm of religio-moral considerations, there existed, as the Alliance stated, "the importance and inestimable value of the Lord's Day as a weekly Day of Rest - as a National Institution." Without it, there could be "No Christian Sabbath, no Christianity," because the Lord's Day was "the right arm of the Church."50 For the Alliance and the people it represented, the Lord's Day, being the legally enacted day of rest, would by legitimate argument and fair approval become a holy day for the
worship of God. Striving for Sunday law to secure the protection of the Christian Sabbath and to promote Christianity, the Alliance desired Lord's Day legislation and rejected the Jewish appeal.

Viewing the Jews purpose in predominately Christian Canada to be limited to either seeking fortune or refuge from a persecutor, the Alliance held "that having bought our land for THEIR OWN GOOD [sic] they should conform to our laws and recognize the (prevailing) civil [secular] customs." Despite the Jewish appeal, the Alliance firmly believed that these "Saturdarians" intended to cause a general breakdown of Sunday law and accordingly placed this non-Christian force along side those outright enemies of Sunday law: the infidels, skeptics, pagans, criminals and irreligious groups. Coupling this interpretation of the Jew with their prime consideration for Sunday law, the Alliance rejected the Jewish exemption because there existed "a righteous limit beyond which we are not warranted in respecting conscientious convictions." "This limit," declared the Alliance, "was reached in the question of Sunday legislation when all were allowed to observe religiously or not as they pleased, the Christian Sabbath,..." To the Alliance, Sunday being the Lord's Day or the Christian Sabbath was of inestimable value; not Sunday as the national day of rest; but its retention as such could only be achieved legally, by making it the national day of rest. Therefore,
considering the Alliance's attitude towards Canadian Jewry with their religiously based contentions for Sunday law, the non-acceptance of the Jewish exemption went hand in hand with the Alliance's prime consideration of protecting and preserving the Christian Sabbath.

With the adoption of Section 11, the Alliance strengthened their objections with specific reference to the exemption. The Alliance claimed that the Jews worded it in a cunning manner so that Jewish entrepreneurs would be able to stay open for seven days a week by means of legal guarantees. They also claimed that this was the "most objectionable" clause in the enactment. Firmly believing that Section 11 would create widespread opposition throughout the country, the Alliance allowed that in all probability the Commons would reject the exemption. Aside from using the press, the Alliance personally acquainted legislators with their objections to Section 11 in the hope of swaying these parliamentarians to their side of the issue. Yet, to attain their objectives, the Alliance did not want to campaign alone. Realizing the strength of public opinion, the Alliance organized a powerful and influential front to have their contentions backed up by consensus and in this manner ensure defeat of Section 11.

The Alliance, being the representative for Protestant churches on the issue, approached this group. During the month of June, by coincidence, the majority of Protestant
churches held their annual synods or assemblies. Taking full advantage of the opportunity, the Alliance sent representatives to the various meetings. After explaining the situation, the Alliance called for (and received) strongly worded resolutions requesting "the government to preserve the bill inviolate." Not limiting themselves strictly to church assemblies, the Alliance urged individual ministers to encourage their congregations to write to their member of Parliament voicing their disapproval of the Jewish exemption.

Moreover, the Alliance did not limit itself to the Protestant sector of the country but also consorted with their Roman Catholic brethren. Up to this time, the Catholic element had made no specific commitment regarding the Jewish appeal outside of its representation on the protesting deputation of March 20, 1906. But, with the adoption of the Jew Clause, the Alliance wished to encourage Catholic support. In this consideration, Shearer not only wanted the Catholics to voice their opinions in disagreement with Section 11, but employed a new tactic to combat the clause. He took advantage of personal and sentimental attachments when he contacted one of the most prominent and influential Catholics in the nation, Paul Bruchesi, Archbishop of Montreal. Shearer, finding a common denominator between first-day Christians, pointed out that any exemption to the Jew was "offensive to the Christian religion besides being subversive of Sunday
observance." Feeling confident that Bruchesi's ideas were similar to those of the Alliance, Shearer asked him to contact Laurier and protest the exemption. With Fitzpatrick out of the Government, Shearer felt that Laurier was the only man who could ensure the defeat of Section 11; and no one else except Bruchesi could influence Laurier to do so. Shearer was confident that Bruchesi's interjection would resolve the issue. Bruchesi immediately contacted Laurier, but Bruchesi made no mention of Shearer's request. Laurier, however, being interested in the Archbishop's comments, sent him a copy of the select committee's draft of the bill and requested Bruchesi's opinions.

After reading the draft of the bill, Bruchesi replied to Laurier and substantially fulfilled Shearer's request. He opposed Section 11 on similar grounds to that of the Alliance which merely reinforced the Alliance's convictions. Bruchesi was of the opinion that in Canada, a Christian country, the Jews should observe the common law which, in this case, did not provide for Jewish liberty of religious conscience. Furthermore, he protested that this exemption was unnecessary because Saturday Sabbath observers among Jews were rare and they had relatively no scruples about working on that day. Bruchesi concluded his general comments by stating that the accorded exemption "sera un mauvais exemple donné à nos populations." Bruchesi contended that there was no substantial "raison d'être"
for a Jewish exemption. 63

Bruchesi also felt that a specific minority exemption which the measure allotted the Jews evoked bitterness from the majority. Despite the restrictions entailed in Section 11, Bruchesi felt they would not be advantageous when put into practice. He argued that many Catholics would take advantage of this opportunity to make "Sunday money" by rendering their services to Jewish establishments. With the numerous Jews in Montreal, Bruchesi felt the situation was bad enough; but with the increase in Jewish Sunday labour, Catholic labour under Jewish employers would become considerably worse. The Jews, protected by law, would be free to do that which was forbidden to Christians. To avoid this situation, Bruchesi urged that "nous devons être en garde." This being the practicality of the situation, Bruchesi summarized that there existed only one course to follow: "dans une question aussi grave." 64

Laurier differed in opinion with the Archbishop on the Jewish question. Being one who had defended minorities throughout his political career, Laurier was inclined to protect the Jewish minority "par instinct et tradition," in this situation. Yet, he did not limit his contentions merely to maintain consistency in his political tradition. Even though Section 11 was not completely satisfactory to him and susceptible to modification, Laurier approved of the principle behind the clause. It was upon this principle
that Laurier, speaking to Bruchesi, maintained that French Canadians should allow the greatest toleration on all occasions and at all times because "les cas seront nombreux où cette ligne de conduite leur sera d’un grand secours." 65

Personal pressure directed to Laurier such as that of Bruchesi, was not limited to religious interests but to other sources as well. Political patronage was employed to try to sway Laurier by Henry H. Miller, an M.P., a member of the Alliance and of the protesting deputation of March 20, 1906. Miller maintained that Ontarians disapproved of the exemption; if it were passed harm would result. 66 With the Liberal party support in Ontario stemming from "those classes who believe in church and in religious institutions and have strong views on moral issues," 67 and with the position of the Liberal party in Ontario, 68 it was perfectly clear that the Jewish question, as Miller pointed out, was a very important one. 69 Laurier, being well aware of his party's position in the province 70 and the overriding view of the party's supporters, 71 replied to Miller that he would support Section 11 because it was his rule to endorse a provision recommended by an appointed parliamentary select committee. 72 Despite Laurier's rebuttal to both Bruchesi and Miller, the reasoning behind the commitment to defeat Section 11 further strengthened the Alliance's project.

The course of action which the Alliance adopted of influencing legislators to achieve their goals was a normal
procedure to follow. When it appeared it was not gaining ground with a policy of suasion directed to parliamentarians, the Alliance followed a subtle yet tactful policy of behind the scene political coercion. When a legislator did not see eye to eye with the Alliance on the Jewish exemption, the Alliance encouraged and endorsed the policy of constituents applying political threats on their representative legislator regarding election support if he did not succumb to the whims of the Alliance. These protests were to be so effective that the legislator would think twice before embarking on his course of action in future issues. But, while the constituents applied such pressure, the Alliance profusely stressed that caution should be used to make certain that in no way could it be connected with that type of action. The Alliance, being the major opponent of the Jewish appeal, was adamant in its attempt to halt the string of Jewish successes as of this point. Defeat of the Jewish exemption was the Alliance's ultimate goal.

In contrast, the Jewish appeal group which supported the retention of Section 11 was not as lively or as intense as that of the Alliance. It was a simple procedure. The Jewish attitude towards the Alliance and the proposed Sunday law remained the same. The Jews did not feel themselves to be newcomers or foreigners because they had lived in Canada since the British takeover. Throughout their history, the Jews participated faithfully in spheres of Canadian concern.
Religiously, being the first group to observe one day's rest in seven, whence Christianity adopted the concept, they also felt that Sunday law would be used for the benefit and not injury of the Jew. The Christian concept of the Golden Rule, which was also part of Judaic adherence, should be applied. Despite the absence of these concepts, the Jews still believed that the measure had been drawn up by a "knot of Puritan divines," thereby making the measure "an astonishing and unnecessary piece of legislation," which tried to "establish the Christian Church in the Canadian constitution."

With the Government seeing necessity for Sunday law, Canadian Jewry accepted that fact and worked within the proposed legislation to alleviate their problems. The select committee's decision to adopt the Jew Clause was a victory the Jews were not about to lose by having the Commons reject it, and they continued to work for the passage of the exemption by maintaining consistency in their arguments. The Jewish deputation served the parliamentarians a memorandum explaining the merits of Section 11 and its relative position within the context of the bill itself. They felt that opposition to the clause was based upon misconception of its terms because the opponents to Section 11 had neither studied nor understood its application. Section 11, stated the Jewish deputation, merely succumbed to the principle of the measure with respect to the Jewish problem.
in providing for Sunday labour. Yet, this labour was clearly restricted upon four major conditions which the Jewish deputation felt would not hurt or infringe upon the religious sentiments of the majority.

1st That they strictly observe their own Sabbath;
2nd That they do not work on that day;
3rd That the place where they work be not open for traffic on that day;
4th That their work does not disturb Sunday Observance. 79

The Jewish deputation, being primarily concerned with helping the Jewish inhabitant, stated that Section 11 merely gave the religiously conscious Jew the opportunity to overcome economic hardship. This financial situation was the crux of the exemption issue; but the reasons which created this economic dilemma had their foundation, not in secular but religious adherence. Because the religiously conscious Jew was the only one affected, they claimed justification for the exemption on constitutional grounds as well:

Legal equality among all religious denominations is a consecrated principle of the British Empire and is specially guaranteed in the statutes of Canada. 80

Having attained equality, Canadian Jewry sought to initiate the principle of "equality of rights as a basic prerequisite for minority rights" 81 in their struggle for an exemption in federal Sunday law.

The Jewish deputation did not limit itself to written communiqués but also made personal contacts with legislators to try to obtain support. In this category, the Jews achieved "astonishing success with Henri Bourassa." 82 On
June 20, 1906, the first day of discussion on the bill by
the Committee of the Whole of the Commons, Bourassa lodged
a formidable and anti-semitic protest against the exemp-
tion and the Jews themselves. The exemption, to Bourassa,
had no raison d'être and he was not prepared "to vote for
any special privilege given to the Jews" over any other
class. He justified his contentions on the "experience of
every civilized country" in which the Jews were found as
being, "the most undesirable class of people." The Jews
were the least remunerative class, claimed Bourassa, because
of their tendencies "of suck(ing) the most from other people
and giv(ing) back the least." All that the Jew respected
was the criminal law. They were not a part of, but rather
apart from the community, Bourassa contended, because the
Jews did not "adapt themselves to the customs among the
people with whom they live."84

Within a week, however, Bourassa had a change of
heart after meeting with the Jewish representatives. He
framed an amendment to Section 11 which met both his and
the Jewish interests' approval. Bourassa explained his
sudden about face towards the Jew on the premise that
"the moment the Jew lands in this country and we collect
his money, we owe him the same law of justice and equality
that should govern every man in this country."85 Embarking
on this course of action, Bourassa earned praise from the
Jewish community because "he redeemed somewhat the obloquy
of previous utterances concerning our [the Jewish] people."  

With the Canadian Jewish community faithfully carrying on the struggle, they were hopeful that their "remarkable success" thus far would be climaxed by complete victory with the acceptance of a Jewish exemption. With both sides of the issue represented, and the measure being now under discussion, it was only a matter of time for Parliament to pass judgement.
FOOTNOTES

1Debates, Commons, LXXIV (1906):col. 1203; See Above, Ch. II, 63, n. 85.

2Debates, Commons, LXXIV (1906):col. 1203; Journals, Commons, XLI (1906):192 - Schaffner replaced Roche.

3Parliamentary Guide, 1905 (Ottawa, 1905); Parliamentary Guide, 1907 (Ottawa, 1907); J. K. Johnson, ed. Canadian Directory of Parliament, 1867-1967 (Ottawa, 1968); These figures include Schaffner, not Roche. Schaffner was a member of the select committee when the Jewish interests were heard.


5(a) Minutes of Evidence, 24 April 1906, 125 - Dr. Black, a representative of health interests, commented that everyone was against the idea of keeping the Sabbath holy. Everyone was interested in the idea of resting from labour. Fitzpatrick replied; "I think that we are agreed that there should be one day in seven for rest, I think we are all agreed to that." Rules, Orders and Forms of Proceedings of the House of Commons of Canada (Ottawa, 1896), 80, rule no. 78 - "A member who is against the principle of a bill or substance of a bill, cannot be nominated to such a committee."

(b) See Appendix. Section 4 should read the way it had left the select committee. See Debates, Commons, LXXVI (1906): col. 5758:

It shall not be lawful for any person to permit any employee, other than employees on boats which do not complete their regular trips within twenty-four hours, to do on the Lord's day any work within subsections (c) to (n) inclusive and subsections (g) and (r) of section 3 of this Act or incidental thereto, unless such employee is given during the next six days of such week twenty-four consecutive hours without labour.

6Ibid., LXXIV (1906):col. 1205, Fitzpatrick.
Rosenberg, *Jewish Community in Canada*, 179.

Minutes of Evidence, 27 April 1906, 182, Goldstein.

Ibid., see Above, Ch. I, 26, f. 145-147.

(b) Minutes of Evidence, 19 April 1906, 36-42, passim.

Questioning of Foolinsbee - As compared with another religious dissenting minority, the Seventh-Day Adventists, the Jewish outlook was pragmatic. Sunday legislation to the Adventists was an attack upon the concept of religious liberty. They believed that the concept of rest was strictly a religious concern for the individual but not one which should be established by legislation and enforced by law. The Adventists simply asked:

'Do not interfere with our religious liberty.' We do not interfere with you enacting legislation regarding the first day of the week, for others. If they need that legislation in order to keep them true to their principles, we do not. We believe that the word of God is sufficient and we do not want any legislation regarding the Sabbath at all....

The Adventists did not seek an exemption. They wanted to worship God according to their religious beliefs without incurring financial hardships. The Adventists declined to draft an amendment but their spokesman, Foolinsbee, drafted and submitted one which covered their case.

Notwithstanding anything herein contained, whosoever conscientiously observes the seventh day of the week as the Sabbath and actually refrains from work and labour on that day, shall not be subject for prosecution for performing work in [sic] the first day of the week, provided such labour does not actually disturb others on that day to any greater extent than the exemptions permitted by this Act, or to an unreasonable extent.

Also, see Ibid., 19 April 1906, 23-29, "Why Seventh-Day Adventists Oppose the Sunday Bill." For further details, see Ibid., 24 April 1906, 54-59.

Ibid., 27 April 1906, 182, Goldstein.

Journals, Commons, XLI (1906): Appendix No. 1, Select Committee on Bill No. 12, Respecting the Lord's Day - Minutes of Proceedings, 19 April 1906, v (hereafter cited, Minutes of Proceedings).
12 Ibid., v - xiv, passim.

13 Journals, Commons, XLI (1906):181.

14 Minutes of Proceedings, v - xiv, passim.

15 Ibid., 19 April 1906, viii.

16 Ibid., 27 April 1906, xi.

17 Ibid., x: Minutes of Evidence, 27 April 1906, 184 - Schaffner was not listed as being present when the meeting convened but his name appeared during the questioning of Goldstein.

18 Ibid., 184 - "and habitually."

19 Minutes of Proceedings, 27 April 1906, xi.

20 Minutes of Evidence, 27 April 1906, 185-186, passim - If one worked on Sunday, he could not work on Saturday.

21 Ibid., 186, Questioned by Pringle.

22 Ibid., 185, Suggested by Ames.

23 Ibid.

24 Ibid., see Below, Ch V, n. 28, n. 30, N.B. n. 30 IV.

25 Minutes of Evidence, 27 April 1906, 182, Suggested by Ames.

26 Ibid., 184, Suggested by Sinclair.

27 Ibid., Suggested by Sinclair and R. Smith.

28 Ibid., Suggested by Sinclair.

29 Ibid., 182, Goldstein.

30 See Above, Ch. III, 86-87, n. 20 - The same would apply to Gentile labour in Jewish-owned firms.
31 Ibid., 86-87, n. 20; 89, n. 29, 30.

32(a).
   Ibid., 88, n. 25.

(b)
   See Appendix. Section 2 should read the way it had left the select committee. See Debates, Commons, LXXVI (1906): col. 5645:

   It shall not be lawful for any person on the Lord's day, except as provided herein or in any provincial Act heretofore passed, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain, or to do or employ any other person to do on that day any work, business or labour.

   Those employers who would not be able to take advantage of the exemption amendment would have their shops open for six days only.


34 Minutes of Evidence, 24 April 1906, 42-43.

35 Ibid., 43.

36 Minutes of Proceedings, 27 April 1906, x.

37 Minutes of Evidence, 27 April 1906, 146-147 - Shearer filed his statement; Ibid., 177, 187 - Shearer spoke.

38 See Above, Ch. II, 61-63, n. 80-84.

39 Minutes of Proceedings, 1 June 1906, xiii; The London Jewish Chronicle, 13 July 1906, Mendola de Sola - It was stated that after the first session of voting on the various amendments, there was a tie on the Jewish proposal.

40(a)
   Minutes of Proceedings; 1 June 1906, xii.

(b)
   Debates, Commons, LXXVII (1906): col. 6287-6291,
passim, Macdonell. Also, The Montreal Star, 15 March 1906; The Ottawa Evening Citizen, 15 March 1906 - The Jewish deputation of March 15, 1906 was introduced to the Government officials by Angus C. Macdonell, M.P. and Robert Bickerdike, M.P.

41 Minutes of Proceedings, 1 June 1906, xii; Debates, Commons, LXXVII (1906): col. 6306, Miller, col. 6307, Piché; "The Battle at Ottawa. The Bill Reported by the Committee with Modifications," The Lord's Day Advocate III, n. 8 (July 1906): 5.

42 See Above, Ch. I, n. 102(b).

43 Debates, Commons, LXXVIII (1906): col. 6306, Miller.

44 Ibid. - Miller would not name the member. After discerning how the various members would vote on Section 11 in the House and transposing the statements to those gentlemen on the select committee and how they would have voted there, this author contends that this anonymous member is restricted to one of four people; Geoffrion, Macdonald, Pringle or Sinclair. Fitzpatrick was not considered because he was Chief Justice when the House debated Section 11.

45(a) Ibid. - This author contends this is the ONE and ONLY reason.

(b) Nonetheless, the members of the select committee who voted for the amendment did so on the financial arguments brought forth by the Jewish interest. (They did not vote to incorporate the amendment on the basis that there existed any infringement upon freedom of religion or conscience.) See Minutes of Evidence, 19 April 1906, Questioning of Foolinsbee, 36-42 - N.B. Fitzpatrick's statements, 37, 39 (religious), 39 (pecuniary) and Geoffrion's comment, 41 (pecuniary). Also, Debates, Commons, LXXVII (1906): col. 6289, Macdonell - "One reason why these people [the Jews] asked for this provision and why it was granted (by the select committee) was that the parties who appeared before the (select) committee thought if they were prevented from working on Sunday, they would lose 117 working days a year.

(c) The reasons why members voted against the Jewish proposal had nothing to do with the argument that the enactment did not infringe upon freedom of religion or conscience. Rather, they contested that financial hard-
ships would befall the religious majority if the Jewish proposal were adopted. See Minutes of Evidence, 27 April 1906. Questioning of Goldstein by Sinclair and R. Smith regarding first-day Christian labour in Jewish-owned firms, 184; Debates, Commons, LXXVII (1906):col. 6331, R. Smith — "As a member of the Select Committee I opposed the provision that was put in the Bill in favour of the Jews. I did so at that time for the same reason that I can give now, namely that the Jewish employers, employing as they do, ... a far larger percentage of (first-day) Christian workmen than of Jewish workmen, Section 11 would operate to enable them to compete unfairly in business against the (first-day) Christian employed on Saturday and against a Jewish employer on Sunday."

(d) Minutes of Evidence, 27 April 1906. Questioning of Goldstein, 184-186 — Throughout his questioning not once was the religious aspect brought forth about the measure being an infringement upon freedom of religion or conscience as was during Foolinsbee's questioning which the select committee ruled out. (See Above, Ch. III, n. 45(b).) Discussion in the main during Goldstein's questioning was limited strictly to the secular-labouring affects of the exemption on both first-day Christians and Jews.

Because the select committee limited itself to the secular-labouring aspect, the split vote was accounted for. The reason for the vote being so close was well described by R. Smith when he commented on Goldstein's presentation. (See Minutes of Evidence, 27 April 1906, 185 — "Though you say so in your speech it might be made very much clearer.") Because of the discrepancies and vagueness between what the exemption stated and the legislator's interpretation, it is evident why the anonymous member voted the way he did. (See Above, Ch. III, 94, n. 45(a).)

46(a) Rosenberg, Jewish Community in Canada, 180; Debates, Commons, LXXVI (1906):col. 5636, Bourassa; LXXVII (1906): col. 6313, Fielding — He indicated that the marginal note to Section 11 read "Exception as to Jews, etc."

(b) "The Battle at Ottawa. The Bill Reported by the Committee with Modifications," The Lord's Day Advocate, 5 — The Seventh-Day Adventists' amendment was rejected because it was more sweeping than the Jewish one. However, the Adventists were amenable to Section 11. See Above, Ch. III, n. 9(b).

47 Ibid., Ch. I, 5, n. 29.

49 See Above, Ch. I, 5, n. 28.

50 Alliance, Laws...Seventh-Day People, 1.

51 "Sabbath Observance and Legislation," Presbyterian Church (6-14 June 1906), 307; The Montreal Herald, 22 June 1906 quoted in Alliance, Snapshots at Parliament, 1 - Bickerdike stated that the Alliance's intention of the bill was "the keeping holy of the Christian Sabbath."

52 Alliance, Act and Seventh-Day People, 2.

53 "Jews and Other Saturarians Answered," The Lord's Day Advocate III, no. 6 (April 1906), 6.

54 Alliance, Laws...Seventh-Day People, 4.

55 "The Battle at Ottawa. The Bill Reported by the Committee with Modifications," The Lord's Day Advocate, 5.

56 Alliance, Laws...Seventh-Day People, 4; Journals, Commons, XLI (1906):61-321, passim - Between March 12, 1906 and June 1, 1906 inclusive, petitions which the House received that the bill before them become law (Section 11 not included in the measure at this time) numbered 289. (Ibid., 142-321, passim.) The number of petitions supporting the religious dissenting minority numbered four. Three of those requested that no bill be passed which would interfere with religious liberty. (Ibid., 190, 209, 239.) The last petition desired an exemption for Jewish farmers. (Ibid., 115.) The ratio of passing the measure inviolate, without a Jewish exemption, was 72:12:1.

57 "The Battle at Ottawa. The Bill Reported by the Committee with Modifications," The Lord's Day Advocate, 5.


60 Laurier Papers, vol. 415, J. G. Shearer to Archbishop Bruchesi, Ottawa 2 June 1906, 110871-110872.
61. Ibid., Archbishop Bruchesi à Sir Wilfrid, Montréal, le 4 juin 1906, 110869.

62. Ibid., Laurier à Monseigneur Bruchesi (A l'Archévéché Montréal), Ottawa le 8 juin 1906, 110873.

63. Ibid., vol. 416, Paul Arch de Montréal à Sir Wilfrid, Montréal, 13 juin 1906, 111157-111158.

64. Ibid., 111158-111159.

65. Ibid., Laurier à Sa Grandeur Monseigneur Bruchesi A l'Archévéché Montréal, Ottawa, le 16 juin 1906, 111161-111162.


68. Ibid., 96-98, passim.


70. Stevens, "Liberal Party in Ontario," 96 - Because of the existing political conditions in Ontario, Laurier selected Allan Aylesworth as the "political boss" in Ontario. Aylesworth entered the House and the cabinet as Postmaster General after winning a bye-election in North York in 1905. He became Minister of Justice in June of 1906; Parliamentary Guide, 1905; Parliamentary Guide, 1907 - At this time, excluding the one vacant seat in the House, the Liberals held thirty-eight seats from Ontario while the Conservatives held forty-seven.

71. Ibid. - Out of the thirty-eight Liberal seats from Ontario, five were held by Roman Catholics, four by Others; twenty-nine by popular Protestant sects of which the Presbyterians held fifteen seats. Laurier Papers, vol. 3, Laurier to Thomas Gibson, 16 May 1899, 33561 - Laurier recognized that the "backbone" of the Liberal party in Ontario was "the Presbyterian element."
72 Ibid., vol. 415, Laurier to H. H. Miller, Esq., M.P., Ottawa, 4 June 1906, 110834.

73 Alliance, Correspondence 1905-1906, J. G. Shearer to Rev. R. Emmett, Toronto, 7 May 1906, 533-534.

74 The Jewish Times (Montreal), 13 July 1906.

75 Mendola de Sola, Scrapbook, "Text of the Appeal to the Members of Parliament Regarding the Sunday Observance Bill."

76 The Jewish Times (Montreal), 13 July 1906; Dr. E. Gottesman, Canadian Jewish Reference Book and Directory, 1963 (Ottawa, 1963), 72 - Rabbi Hillel stated the Judaic parallel to the Christian Golden Rule: "What is hateful to you, do not to your fellow."

77 The Jewish Times (Montreal), 13 July 1906.


79 de Sola, "Text...Appeal...M.P.'s."

80 Ibid.

81 Baron, "The Modern Age," 318.

82 Rosenberg, Jewish Community in Canada, 180.


84 Debates, Commons, LXXVI (1906): col. 5636-5637.

85 Ibid., LXXVII (1906): col. 6283; Rosenberg, Jewish Community in Canada, 180. Also, see Debates, Commons, LXXVII (1906): col. 6280-6283, passim, Bourassa.

86 The Jewish Times (Montreal), 13 July 1906.

87 Rosenberg, Jewish Community in Canada, 179.
CHAPTER IV

PARLIAMENTARY OPINION ON A JEWISH EXEMPTION

On June 27th, 1906, the third day of debate on the bill in the Committee of the Whole, the Commons discussed the controversial section exempting the Jews. The atmosphere in which Section 11 was discussed was one of "intense and steadfast interest." The Toronto Globe reported:

From the opening this morning until midnight there was almost a full House, with eager faces, close attention and anxiety to take part, which shows how closely the measure touches every part of Canada.... The desire to speak was so great that sometimes half-a-dozen members would rise at once....

During the debate, many arguments were enunciated in which both the Alliance and the Jewish points of view were reiterated by their respective legislative supporters. Within this consideration, minimal emphasis was placed upon the status of the Jew in the country and/or his reasons for coming; regarding this aspect both the parliamentary opponents and supporters of an exemption crossed lines in support of the stance taken by either the Alliance or the Jewish interests. The core of the discussion centered upon the feasibility and practicality of an exemption to the Jewish minority within the context of the bill and its effects upon the nation as a whole. While earlier expressions of popular sentiment were brought forth by the

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respective parliamentary opponents and supporters, the
dissection of the Jewish exemption issue in the House was by
no means superficial. Being face to face with a condition
of society and not a theory, the legislators thoroughly
analyzed the problem in seeking a solution.

The opposition to a Jewish exemption in Parliament
was a powerful and well-founded force consisting of con-
servative Christians. 3 Aside from their differing reasons
for opposing an exemption, they were a solid core, unflinching
in their unwavering adherence to not granting any type
of exemption whatsoever. To these gentlemen, the principle
of the bill, one day's rest in seven meant, "that everyone
in this country whenever possible (should have) ONE DAY IN
SEVEN (during) which he shall NOT LABOUR, and...that day...
be the FIRST DAY OF THE WEEK." 4 (author's emphasis) Feeling
as they did, any section or amendment which prevented the
carrying of the bill into effect was "a reason for not
passing it." 5 This formidable group opposed any type of
exemption. The theme which the opponents of the exemption
held fast to, and one which recurred throughout their
argumentation, was that of the political concept of majority
rule, "the greatest good to the greatest number." 6

Since Canada was a Christian nation, predominately
consisting of first-day Christians, Sunday was made the
national day of rest so as to remain consistent with the
views of the majority. 7 But the measure was not enacted
for the ruling majority's sake, but for the welfare and betterment of the general community thereby making the law applicable to everyone in the same manner. One of the requirements was that all must rest (abstain from labour and certain public functions) on one day in seven, and that the designated day of rest was the first day of the week, Sunday. This did not prevent the Jew from either observing his religious Sabbath or from labouring upon it; nor did it require any religious observance of the national day of rest. Parliament did not debate these contentions because it was the concern of the individual and his conscience, not the state. Any infringement placed upon an individual's freedom which was exploited by this measure was of national concern and worked equally upon the inhabitants. It was not the law which injured the Jew's earning power, but his conscientious convictions. To protect and preserve the national day of rest, uniformity had to prevail at the expense of religious conscientiousness.

The numerical strength of the Jews was insignificant to cause a change from the general application of the law. Living in Canada, the Jews had a duty to observe its laws over and above the "mere personal preference of the individual." By granting an exemption within this consideration, it merely set the Jew "apart from the greater majority of the people" and made the enactment sectional in
application and a piece of class legislation. An exemption favouring a certain class would be harmful to the general community. Public scandal would result because certain individuals through their own conscientious scruples believed any type of work done on that day, whether quiet or not, would be setting a bad example for others to follow thereby disturbing their personal observance of the day. This, in turn, would create animosity within the populace, especially between Jews and non-Jews. Furthermore, prosecution and conviction would be difficult against the exempted individual based upon judging one's conscience as well as the evidence concerning one's working seven days in the week. Conscience and habitual observance during some chosen day of rest other than Sunday were both difficult things to prove before the courts. Also, human nature had to be taken into consideration regarding the people who were not exempted and could not work on the national day of rest. These people who saw or had knowledge that work was being carried out would desire to take advantage of the same opportunity. The sum total of all these sociological factors would result in the majority of the people losing respect for the law which, in turn, would lose its effect.

In a constitutional-legal sense, Christianity was a fundamental element of Canadian law. Through tradition, custom and common law, Canada inherited British institutions. One such institution was that early English Sunday Observance
Statutes were designed to protect the Christian Sabbath. Applying this theory to Canada, the Jew who came to this country which had existing institutions based "upon what this majority in this country [Canada] consider(ed) the truths of the Christian religion," was compelled to conform just as "the Jew who emigrated to that country [Great Britain] to observe the Christian Sunday, the first day of the week instead of the seventh day." This being the case, it was an anomalous thing to provide for such an exemption.

Yet, this was supplementary to another legal argument. Sunday regulations being within the domain of the criminal law, an exemption for the Jews within the statute was both anomalous and a "most extraordinary piece of legislation." It was a piece of class legislation which created:

...an exception to the general measure, which exception leaves a certain portion of the community altogether free from liability to the penalties which are provided against every other citizen who may transgress its provisions.

Existing conditions in other countries under the British rule were reviewed and compared to the present Canadian situation. There was no precedent to follow in this situation. Neither Canada, Great Britain nor any other member of the British Empire allowed for such an exemption, which was granted to the Canadian Jew within any general act for Sunday legislation. Therefore, constitutional-legal factors favoured not granting an exemption.
Economic considerations produced new arguments for the opposition. As previously stated, with the law being applicable to everyone, it was not the law but the Jew's own conscience which injured his earning powers. Yet, the Jews themselves were not conscientious in following their religion. Both Jewish employers and employees worked on their Sabbath. Exempting the Jew because of religious reasons was "a reasonable and logical thing to provide for" as long as he abided by his religious convictions, otherwise not. With the situation as such, the Jew was quite capable of looking after himself. The denial of an exemption would merely maintain the financial status quo.

To deny the Jews an exemption based on their present religious and economic practices was a secondary consideration in the discussion of the exemption issue. The primary factor was that the granting of an exemption would be a detriment to the nation at large. The majority, first-day Christians, especially the religiously conscious ones, who worked for a Jewish firm could have their earning power decreased when a Jewish employer shut down his place of business on Saturday for his benefit and/or that of his Jewish employees, so as to take advantage of the exemption. Many first-day Christians were employed at Jewish establishments, and they were compelled to work on Sunday for financial and conscientious reasons. Taking this into consideration, the managerial staff of these corporations,
being strictly controlled by the Jews, would not be affected because they were salaried wage earners. But the labourers, being hourly wage earners, would be greatly affected, especially the religiously conscientious first-day Christian. He would be limited to a five-day work week with no compensation for the extra day’s loss of pay, while the Jewish labouring minority would work six days.  

Viewing the situation thusly, the precarious position from which the troubled Jew was being removed would be assumed by the first-day Christian worker. Under these prevailing conditions, an exemption would create "a rank injustice to labour" as applied to the first-day Christians, and yet more significantly to the religiously conscious ones. Conscientious convictions of first-day Christians should be given the same consideration as those of the Jew. 

This being the case, the interests of the majority must be sustained so that they would not endure any financial hardships. The arguments presented by the opposition, concerning financial-economic considerations were the most significant and crucial ones in the denial of a Jewish exemption. Those opposed to a Jewish exemption had an extremely strong case in the sociological, constitutional-legal and financial-economic considerations, as well as the political concept of majority rule. The opposition's position was best described by one of their own, Thomas S. Sproule:

It is true that no Bill can be enacted which will
meet the requirements in every instance and the exceptions which we [the legislators] are making here are exceptions according to the best judgment of those who made the suggestion in favour of the enactment of this measure.41

It was the immoveable opinion of the legislative opposition that any type of exemption be denied to the Jews.

The parliamentary supporters of a Jewish exemption were also a powerful and well founded force. They consisted of moderate Christians.42 Aside from their differences of opinion as to why an exemption should be granted, they displayed cohesiveness in desiring to grant some sort of exemption. To these gentlemen, the principle of the bill, one day's rest in seven, meant, "that every person in the country shall observe ONE DAY...,"43 being "24 HOURS REST in the WEEK...,"44 and "that DAY should be SUNDAY...," but "ANY OTHER DAY in the week BESIDES SUNDAY may be a day of rest."45 (author's emphasis) Feeling as they did, the supporters sought an exemption because "the Parliament of Canada (had) the right...as a Christian country...to pass laws respecting that day.[Sunday], but (did not have) the right to dictate to (an individual) what day (he) shall observe as (his) Sabbath day."46 Basing their convictions upon this premise, the constant theme which dominated the supporters' arguments was majority rule with minority rights in which the majority ought "to respect the conscientious feelings and sentiments of this important minority."47

The supporters gave recognition to the sociological
arguments of the opposition, but differed in their application. They as legislators lived up to "one of its [Parliament's] fundamental principles," of protecting minorities and assuring absolute religious liberty,\(^{48}\) in their drive for an exemption based upon the concept of freedom of conscience. Since Canada was a Christian nation, the Christian principles "of the humble and lowly Nazarene"\(^{49}\) ought to be applied; in merely reversing the position of the two religious interests, religiously conscious first-day Christians would ask of the Jew that which the Jew was requesting.\(^{50}\) Furthermore, combating the exemption by entertaining the Sabbath idea of the Mosaic law against the Jew was unfair. The Jew, not having a country of his own, did not have the opportunity to set a precedent for the treatment of Christians in a similar situation.\(^{51}\) Since Christians did not follow the Mosaic law, the exemption supporters argued, Christians should not criticize the Jewish interpretation of Mosaic law. Instead, Christians should follow the law of Christ, the Golden Rule: "do unto another as you would like another to do to you."\(^{52}\) In such action, Christians would reveal to the Jew that Christianity was imbued with a liberal spirit.\(^{53}\)

With the religious element of the bill being carefully discarded,\(^{54}\) it neither forced the Jew to work on his religious Sabbath nor prevented him from labouring; religious observance of Sunday was similarly not forced upon the Jew.\(^{55}\)
Because of this, the supporters rallied for an exemption because the exemption was designed to protect the religiously conscious Jew and not the irreligious one. In this instance, the only concession ceded to the Jew was the provision for restricted Sunday labour because the Jew rested by abstaining the previous day from labour which was his religious Sabbath. With the remainder of the bill's terms applicable to the Jew as well as anyone else, the desire for uniform observance appeared to be neglected because of conscientious religious affiliation; yet uniformity of the day remained intact. The exemption within this light remained consistent with the principle of the measure as viewed by the supporters. Even though it was the Jew's conscientious convictions and not the law which injured his earning powers, respecting one's conscience "for the sake of religious beliefs" was necessary. It followed a greater law; the right of an individual "to earn a living for his family," thereby providing for in this situation, "absolute religious liberty" because the ramifications did not entail "any civil [secular] or financial disabilities." Otherwise, not protecting the religiously conscious Jew would simply be a case of "religious despotism."

Since the Jew was law abiding, he had a right to be protected by the law and to be treated like any other Canadian. Being a part of (and not apart from) the Canadian populace, the numerical strength of the Jews had
no bearing on the general application of the law. It was conceded that an exemption would let Canada be known "not only as a land of freedom, but also as a land where everyone's conscientious scruples were accepted, and the rights of minorities, large or small, respected." However, an exemption in this situation did not make the enactment "either a piece of class legislation or sectional in application, thereby maintaining an equilibrium among the inhabitants of the nation.

Harmful effects upon the general community would not occur in granting the Jews an exemption. The observance of the national day of rest by the remainder of the people in any form whatsoever would not be encroached upon. The work which was provided for had to be done on the Jew's own premises, as opposed to public places, so as not to affect the community. Further restrictions provided that no type of merchandising was allowed. Their work:

...cannot be of such a nature as to invite the complicity of other people...(who) do not agree with them on conscientious lines to participate in violating the first day of the week as is permitted to these classes [Non-conformists] under this section (11).

More restrictions protected the national day of rest for the religiously conscious first-day Christian as a day of peacefulness and serenity. The work being done by the Jew would have to be such as not to disturb other persons in the observance of the day as a holy day. The work would have to be silent in nature as contrasted with the
the rumble of labour, puffing chimney smoke and piercing signal whistles, so as not to create scandal within the community. In the event of difficulty, however, prosecution and conviction, argued the supporters, could easily be proven when the law was broken.

With the exemption being given for conscientious convictions of religious adherence, the Jew availing himself of this provision had to observe his religious Sabbath as the day of rest by abstaining from labour, but had to do so habitually, not periodically. Otherwise, if he did not abide by these rules, he had to take Sunday off as his regular day of rest like everyone else. Yet, once caught working seven days a week or alternating between the two days, he was held liable for his action because he was not a religiously conscious Jew. Furthermore, the Jew who availed himself of the exemption had to observe all the other restrictions of the law outside of restricted Sunday labour. Prosecution and conviction of the religiously conscious Jew in this instance would be a procedure similar to that of the rest of the community.

Under these conditions, both the Jewish minority and the first-day Christian majority would fare equally before the law and it would be deemed illiberal for the majority element of the country not to respect the religious conscientious convictions of the Jew. Combining all of these sociological factors in an attempt to exempt the Jew,
was indicative of "a desire to respect the conscientious convictions of all... (and to) ... bring about a result that would be for the benefit of the people as a whole."  

Constitutional-legal considerations were also brought up by the exemption supporters. With reference to the argument that Christianity was part of the law of the land, the supporters argued for the application of the Golden Rule. In order to further strengthen their case, the supporters argued that Christianity not only had its roots in Judaism but that the Holy Writ accepted both the Old and the New Testaments, establishing the existence of two (religious) Sabbaths. This being the case, and Christianity recognized as part of the law, an exemption ought to be enacted.

With specific reference to the exemption in the Canadian legal framework, the supporters urged its adoption. Up until this time, the Jew who illegally worked on Sunday had no legal, statutory right or privilege to do so. But working as he did, he acquired this privilege "by habit, by custom and usage." To grant an exemption in his favour was not creating anything new, but maintaining the status quo and legally safeguarding through a statutory proviso what had always been. Furthermore, with the bill being under criminal jurisdiction, the supporters' position was enhanced. Under the criminal law, there existed "no such thing as joint and several crimes or joint and several misdemeanours...," because everyone was "responsible for
himself and not for his neighbour." With Sunday regulations being part of the criminal law, the Jew and the Christian had only themselves to look after.

Nevertheless, referring back to the constitutional position concerning Great Britain and its affects on Canada, the supporters further enhanced their position. Under the British constitution, the Jew had rights which were protected. Even though he immigrated to that country with knowledge of its institutions being based upon Christianity, Britain recognized the principle of toleration with respect to liberty of conscience as a part of its constitution. Despite not having an exemption within any general Sunday regulation, the British Parliament somewhat exempted the religiously conscious Jew by providing for Sunday labour by means of a regulatory provision in their Workshop Acts. So, with similar circumstances surrounding the Jew who dwelled in Canada, whether he was naturalized or native born, the natural right of one's liberty of conscience should have been applied to everyone because it was "a principle of the British constitution we (Canadians) most glory." In the Canadian situation regarding Sunday law and the Jew, the British concept should be followed but to a greater degree because the principle of "liberty of conscience... (was) the cornerstone of the Canadian constitution." Making provision for an exemption in this instance would not only confirm the
legal-statutory position of the Jew in Quebec but the Jew's position throughout the Dominion.\textsuperscript{88} Granting an exemption by means of statutory law would reveal "the spirit of toleration"\textsuperscript{89} among Canadians and would give the Jew "freedom of conscience and at the same time freedom of citizenship."\textsuperscript{90}

Aside from sociological and constitutional-legal factors, financial-economic concerns played the most important and crucial role in the discussion. In professing the right of the Jew to earn a living so that religious and secular disabilities would not be incurred,\textsuperscript{91} the supporters maintained that numerical strength of the religiously conscious Jew had no bearing on the issue. Since the exemption was conceived to protect specifically those individuals,\textsuperscript{92} the supporters contested that when "talking of a principle and legislating according to a principle,"\textsuperscript{93} it would be quite adequate to have this protecting clause, even if there existed only "one (religiously conscious) Jew."\textsuperscript{94} Yet, the supporters contentions were not limited to basing arguments upon principles because they used actual existing conditions to strengthen their concepts when the effects of the exemption were taken into consideration with respect to the labouring class.

While arguing for an exemption, the supporters kept in mind the position of the first-day Christian labourer, especially the religiously conscious one who worked for a
Jewish firm. They argued that the granting of an exemption would not injure the first-day Christian's earning power, thereby not placing them in the precarious position of the religiously conscious Jew; whether or not the Jewish establishments had either a majority of Jews or first-day Christians as employees.\(^95\) In the former case, the supporters stated that the majority of factories which were owned and operated by Jews consisted of predominately Jewish labour because of an infra Jewish helping-hand policy.\(^96\) Of course, first-day Christian labour existed, but they were a small number who did not incur any financial liabilities because they received six days pay for five days work.\(^97\) Therefore, granting an exemption under this consideration would legally provide for the religiously conscious Jew six days labour during the week, enabling him to earn a substantial living while not injuring the earning power of the first-day Christian who received six days pay.

The latter group who contended there was a majority of first-day Christians rather than Jews labouring for Jewish firms were also convinced that the earning power of the first-day Christian, especially the religiously conscious one, would not be impaired if present conditions were maintained.\(^98\) Realizing "that the Jews as a class were good businessmen" and having a majority of first-day Christians as employees, they would not be "so foolish"\(^99\) as to shut down on Saturday when full production could
conceivably be maintained so that the minority of their employees would be able to work on Sunday. This being the situation, granting an exemption would not financially injure the (religiously conscious) first-day Christian. The religiously conscious Jews would be financially hurt, though, because the Jewish employers might not respect the conscientious convictions of their fellow (religious) Jews in light of this fact. Under the financial-economic considerations, provisions were made for the conscientious convictions of the religious Jews, while at the same time keeping the interests of the ruling majority in perspective. The financial status quo was maintained.

Fighting for an exemption, the parliamentary supporters based their contentions upon sociological, constitutional-legal and financial-economic considerations in conjunction with the political concept of majority rule with minority rights within the principle of one day's rest in seven of the bill. Their rule of thumb was well expressed by the Minister of Finance, William S. Fielding:

If we can please our neighbour in any way without hurting ourselves, if we can meet the conscientious views of our neighbour, aye, even his prejudices, in anything he does for conscience sake, and in addition, if we can do that without injury to ourselves and those who hold with us, then surely we ought to meet the views of the minority in matters of that sort. These gentlemen were firm in their convictions in wanting to grant the Jews an exemption.
FOOTNOTES


2 (a) E.g. Opposition Exemption: Legislators who went along with the Alliance's contentions. See Debates, Commons, LXXVII (1906): col. 6283-6284, G. Smith, col. 6292, Barr; Legislators who went along with the Jewish interests. Ibid., col. 6295, Aylesworth.

(b) E.g. Exemption Supporters: Legislators who went along with the Jewish interests. Ibid., col. 6296, Laverne, col. 6356-6358, Gervais; Legislators who went along with the Alliance's contentions. Ibid., LXXVI (1906): col. 5636-5637, Bourassa.

3 Grimaud, "Brief," 8-9 - "...The House of Commons was largely made up of conservative (first-day) Christians, while the Prime Minister and some of his followers, (among others,) being moderates."

4 Debates, Commons, LXXVII (1906): col. 6336, Paterson.

5 Ibid., col. 6328-6329, Lancaster.


7 See Above, Ch. I, 25-26, n. 144-149.

8 Ibid., n. 135; Debates, Commons, LXXVII (1906): col. 6335, Paterson, col. 6328, Lancaster; Ibid., LXXVI (1906): col. 5644, Sproule.

9 See Above, Ch. I, 24-25, n. 136-141; Debates, Commons, LXXVII (1906): col. 6335, Paterson, col. 6332-6333, R. Smith, 6294, Aylesworth.

10 See Above, Ch. I, 24, n. 130; Debates, Commons, LXXVII (1906): col. 6335, Paterson.


23. *Ibid*.


30. See Above, Ch. IV, 118, n. 12.
31 Debates, Commons, LXXVII (1906): col. 6292, Barr, 6332, R. Smith.

32 Ibid., col. 6332-6333, R. Smith.

33 Ibid., col. 6332, R. Smith - 75-80% Jews worked on Saturday.

34 Ibid., col. 6333, R. Smith.

35 Ibid., col. 6331, Gagnong.

36 Ibid., col. 6332, R. Smith, col. 6331 Gagnong - 90% (first-day) Christians employed; Ibid., col. 6342, Foster - 80 or 90% (first-day) Christians employed.

37 Ibid., col. 6342-6343, Foster.

38 Ibid., col. 6342, Foster.

39 Ibid.

40 Ibid., col. 6342-6343, Foster.

41 Ibid., LXXVI (1906): col. 5644, Sproule.

42 See Above, Ch. IV, n. 3.


44 Ibid., col. 6347, Daniel.

45 Ibid., col. 6297, Lavergne. Also, Ibid., col. 6343, Daniel, col. 6292, Bourassa. See Above, Ch. I, n. 139.

46 Debates, Commons, LXXVII (1906): col. 6305, Devlin.

Debates, Senate, Session 1906:1206, Kerr, 1207 [Dandurand].

48 Debates, Commons, LXXVII (1906): col. 6349, Parmalee.

49 Ibid., col. 6350, Parmalee.

50 Ibid., col. 6286, Bickerdike.

51 Ibid., col. 6301-6302, Conmee.

52 Ibid., col. 6296, Lavergne; Debates, Senate, Session 1906:1207, [Dandurand]. Also, Debates, Commons, LXXVII (1906): col. 6284, G. Smith, an opposition exemption exponent - He suggested the principle of applying the Mosaic Law in this consideration. Also, Matthew 7:12 - "Therefore all things whatsoever ye would that men should do to you, do you even so to them."

53 Debates, Commons, LXXVII (1906): col. 6303, Bergeron.

54 Ibid., col. 6298, Bristol.


58 Debates, Commons, LXXVII (1906): col. 6340, Bourassa, 6338, R. Borden.

59 Ibid., col. 6298, Bristol, col. 6313, Fielding.

60 See Above, Ch. IV, 123, n. 43-45.

61 Debates, Commons, LXXVII (1906): col. 6313, Fielding.

62 Ibid., col. 6282-6283, Bourassa.

63 Ibid., col. 6349, Parmalee.
64 Ibid., col. 6286, Bickerdike.

65 Ibid., col. 6296, Lavigne. See Above, Ch. III, 105, n. 85.

66 Debates, Commons, LXXVII (1906): col. 6301, Bristol.

67 See Above, Ch. IV, 124-125, 53-57.

68 Ibid., 124-125, n. 53-60.


72 Ibid., col. 6312, W. Laurier, col. 6314, Fielding.

73 See Above, Ch. IV, 125, n. 61.


75 See Above, Ch. IV, 125, n. 60.

76 Debates, Commons, LXXVII (1906): col. 6344, Fisher.

77 Ibid., col. 6301, Bristol.

78 See Above, Ch. IV, 124, n. 52.

79 Debates, Commons, LXXVII (1906): col. 6301, Bristol, col. 6310, Maclean, col. 6339, R. Borden.

80 Ibid., col. 6287, Lävergne.

81 Ibid., col. 6287, Macdonell, col. 6301, Bristol.
82. Ibid., col. 6303, Bergeron.

83. Ibid., col. 6356, Gervais.

84. Ibid., col. 6301, Bristol, col. 6308, Devlin. Also, see Ibid., col. 6362, Fielding - He mentioned a recent consideration of toleration which was given to the Jews in Great Britain.

85. Ibid., col. 6289-6290, Macdonell, col. 6301, Bristol. Also, see Above, Ch. II, 59, n. 75(b).

86. Debates, Commons, LXXVII (1906):col. 6308, Devlin. Also, Ibid., col. 6312, Connee.

87. Ibid., col. 6334, Lemieux.

88. Ibid., col. 6356, Gervais. Also, see Above, Ch. II, 47, n. 8.

89. Debates, Senate, Session 1906:1206, Kerr.

90. Debates, Commons, LXXVII (1906):col. 6291, Macdonell.

91. See Above, Ch. IV, 125, n. 62, 63.

92. Ibid., 125, n. 56.


94. Ibid., col. 6297, Lavergne.


96. Ibid., col. 6347-6348, Ames - 90% Jewish labour. Also, Ibid., col. 6348, Macdonell.

97. Ibid., col. 6348, Ames.

98. Ibid., col. 6346-6347, Daniel - 90% (first-day) Christian labour. Also, Ibid., col. 6352-6353, Bourassa.
99. Ibid., col. 6346, Daniel.

100. Ibid., col. 6352-6353, Bourassa.

101. Ibid., col. 6347, Daniel.

102. Ibid., col. 6313, Fielding.
CHAPTER V

PARLIAMENTARY JUDGEMENT ON A JEWISH EXEMPTION

Even though the parliamentary supporters of an exemption were firm in their convictions of wishing to grant the Jews an exemption, they were not as zealous in their stance as those in the House who opposed the exemption. All of the supporters wanted to grant some sort of exemption, but the degree to which the exemption should be conceded varied among them because of their individual prejudices, biases and convictions. This being the situation, amendments to the exemption clause, Section 11, were pursued.

There were a total of four amendment exemption clauses proposed of which the core of the discussion focused upon the first two amendments along with Section 11 itself. Henri Bourassa and William S. Fielding, respectively, proposed their substitutional clauses for Section 11. Bourassa's amendment read:

Notwithstanding anything herein contained, whoever from reasons of conscience, habitually and invariably observes as a day of rest and worship any other day of the week and actually refrains from work, labour or trade, on that day, and if he be an employer permits no work, labour or trade to be performed on that day upon his premises, shall not be subject to prosecution for performing or permitting to be performed work or labour on the first day of the week; provided any such work or labour does not disturb or cause annoyance to other persons in the observance of the first day of the week as a holy day and pro-
vided the said premises be not open for traffic on that day.

2. The day of rest and worship mentioned above is the period of time reckoned as such by the religious bodies to which may belong the person who has the right to enjoy the privileges granted by this clause.

Fielding's substitution stated:

Notwithstanding anything herein contained, whoever from reasons of conscience, habitually and invariably observes as a day of rest and worship, any day of the week other than the Lord's day and actually refrains from work, labour and trade on that day and, if he be an employer, permits no work, labour or trade to be performed for him on that day, shall not be subject to prosecution under this Act for performing or permitting to be performed work or labour on the Lord's day, provided such work or labour is done within any inclosed building and does not disturb or cause annoyance to any other person in the observance of the Lord's day as a holy day, and provided that the place where the same is performed be not open for traffic or business on that day.

The latter exemption proposals were in line with the principles and features of the Lord's Day Bill and the exemption as generally viewed and consistently advanced by the legislative supporters of an exemption.

It was suggested that these exemption clauses be accepted over the exemption which the select committee inserted, in order to solve the apparent problems of Section 11. But, in so doing, they strengthened that segment of Parliament which was opposed to granting any type of exemption because of the apparent difficulties involved with any exemption clause.

One of the problems was that Section 11 made the exemption a piece of class legislation by giving the privilege of Sunday labour to only conscientious religious
observers of the seventh day. Neither Bourassa nor Fielding wanted an exemption to favour any particular denomination or sector of society. Rather, the exemption had to be extended to meet the conscientious views of every religious dissenting minority which might dwell in the country and which observed any other day of the week other than Sunday as its religious day of rest and worship. They provided for it accordingly.

The substantial complaint against the exemption, Section 11, was the effect of the exemption on the economic positions of the first-day Christians and Jews. In this instance, it was noted that the Jewish employer, who employed a mixed staff, was able to use first-day Christian labour on Sunday. However, the solution to this problem created yet another difficulty with Section 11 itself. The Jewish employer would be able to keep his place of business open for seven days a week. The objective of the amendments was the reconciliation of both these difficulties.

As for the former problem it was possible to use first-day Christian labour on Sunday. Although clause 2 of the bill forbade anyone to labour on Sunday, Section 11 was applicable to anyone who fell within its jurisdiction and it provided for an exception to the rule of mandatory rest. With parliamentary concern over the national day of rest strictly limited to the secular-labouring aspects, and not the religious-spiritual, Section 11 fell within the
scope of the proposed rest day law. Accordingly, first-day Christians fell within the context of Section 11. The intention of the clause was to secure an exemption for the religiously conscious member of a dissenting minority only, the wording of Section 11 implied this but did not specifically state it. According to its terms, Section 11 applied to anyone "who conscientiously and habitually observ(ed) the seventh day of the week as the Sabbath," a term having been ruled by the Canadian judiciary as a name of an institution for the purpose of rest. 10 Under Section 11 anyone could work on Sunday who abstained from labour on the seventh day from reasons of conscience." Therefore, by merely designating an exemption for conscientious reasons, yet not specifically stating religious conscientious reasons for abstention from labour on the seventh day, non-seventh-day observers fell within its context. 11

A first-day Christian, whether or not religiously conscious, who worked for a Jewish firm which closed every Saturday would habitually and conscientiously, through habit and custom, observe Saturday merely as a day of rest by abstaining from labour. This coincided with the meaning of rest expressed both within the proposed Act and Section 11. Because of this, the first-day Christian who worked on Sunday did so from reasons of conscience in the sense of his obligation to earn an adequate living for the support of his family. Accordingly, he fell within
the scope of Section 11 which legally enabled the first-day Christian to work on Sunday. Saturday would be his legal, national day of rest, while Sunday remained his religious day of rest and worship. The first-day Christian would, however, be unable to fulfill his religious obligations, especially in the case of the religiously conscious one, according to the Christian beliefs which he professed. This being the case, the religiously conscious first-day Christian reversed positions with the unfortunate Jew when no exemption was conceded. To alleviate this problem, but at the same time maintain the principle behind the exemption, which was to aid the religiously conscious Jew, the proposed amendments replaced the word "Sabbath" in Section 11 with the words "as a day of rest and worship." Using this terminology, the only person who could profit from the exemption would be a religiously conscious member of a dissenting minority and not a first-day Christian. Since Sunday was the latter's religious day of rest and worship, the provision for the same in the amendments to Section 11 of the anticipated Act remained consistent with the bill which designated Sunday as the legal, national day of rest. Sunday was, and continued to be, the Christian Sabbath.

Paraphrasing the exemption to read "a day of rest and worship" alleviated another problem for one certain group of first-day Christians, the Roman Catholics, especially the religiously conscious one. In their case,
according to Section 11, a Jewish employer was "able to concentrate work on Sunday even at the expense not exactly of the (religious) conscience of his (Roman Catholic) Christian employees but almost so." The primary stipulation placed upon the Roman Catholic according to his religious tenets, was to go to Mass to fulfill his religious obligations. The remainder of the day was left for the individual to do as he pleased. A Catholic, who worked for a Jew who closed on Saturday, could use Saturday as his legal day of rest. On Sunday he was able to fulfill both his religious obligations and his financial commitments. But, because he was a first-day Christian, living in a majority ruled Christian professing nation where Sunday was recognized by statutory law and judicial opinion, it was provided that Sunday remain his legal, national day of rest as guaranteed by the enactment itself. Under this consideration, it was impossible for the Roman Catholic to work on Sunday. The proposed amendment exemptions, therefore, protected all first-day Christians keeping Sunday as their legal, national day of rest along with allowing any other day of the week to be one of rest also, to accommodate the religious dissenting minority. The replacement clauses to Section 11 remained consistent with the principles of both a Jewish exemption and the bill itself. Reconciling the issue in such a fashion removed an objection to granting an exemption to the religiously conscious Jew.
Another objection to the exemption by the opposition in Parliament was that Section 11 allowed the Jewish employer\textsuperscript{22} to keep his "store open on Saturday and have work performed behind closed doors on Sunday."\textsuperscript{23} According to the wording of Section 11, Sunday labour under the prescribed conditions was applicable to an individual person regardless if he was an employer or employee: "whoever...refrains from work and labour on that day, shall not be subject to prosecution for performing work or labour...." Under this consideration, it was then possible for the exempted owner of an establishment to remain open every day of the week as long as he, the employer, and his employees regarded either Saturday or Sunday as their legal, national day of rest. It was quite conceivable that the staff could consist of both Saturday and Sunday observers on both days, or that Jews and first-day Christians could work denominational shifts (that is Christians on Saturday, Jews on Sunday), depending upon whether each person took his religious Sabbath as his legal, national day of rest.\textsuperscript{24} But, with the amendment exemptions already establishing the fact that first-day Christians could not work on Sunday,\textsuperscript{25} the working alignments were altered to a mixed staff on Saturday and a strictly religiously conscious Jewish staff on Sunday. This being the case, the possibility of a seven-day work week still prevailed and the amendment exemptions proceeded to rectify this problem in the following manner:
Whoever... refrains from work, labour or [and] trade, on that day, and if he be an employer permits no work, labour or trade to be performed on that day upon his premises, [for him on that day] shall not be subject to prosecution (under this Act) for performing or permitting to be performed work or labour on the first day of the week [on the Lord's day];... 26

Wording the amendments in such a fashion placed the onus of respecting freedom of conscience upon the Jewish employer vis-à-vis his Jewish employees. If the Jewish employer was a religiously conscious Jew who wished to derive benefit from the exemption for himself and his religiously conscious Jewish employees, he had to completely shut down all operations on Saturday. 27 In so doing, it appeared that Saturday would be the legal, national day of rest for everyone in that firm. 28 Otherwise, if the employer was a religiously conscious Jew who personally abstained from working on Saturday, but allowed any of his employees to work on Saturday, or, if the employer was not a religiously conscious Jew who worked on Saturday, he had to completely close on Sunday. 29 In this situation, the whole of Sunday would be observed by everyone in the firm as the legal, national day of rest. 30

Furthermore, the word "trade" appeared in the amendment exemptions and not in Section 11. Its addition halted any attempt on the part of the Jewish employer to reap supplementary financial rewards and clarified and strengthened the contention of limiting Jewish owned firms to a six-day work week. By the terminology of Section 11,
it was possible, where there existed a store connected with a manufacturing establishment, that the Jewish employer "could have his employees work (anywhere) on Saturday and on Sunday he could have them work (strictly) in the factory;"31 as long as everyone took either Saturday or Sunday as their legal, national day of rest.32 Allowing for this gave the Jewish employer an opportunity for additional income, although legally done, but it appeared "he would have been breaking his own religious law in order to make profit by retail trade on Saturday and breaking our [the national] law by having (religiously conscious) Jewish employees work on Sunday."33 Merely adding the word "trade" to Section 11 was insufficient to close the firm one day a week, but including it in the amendment exemptions made it virtually impossible for the Jewish employer to have an opportunity to gain additional monies while keeping his firm open seven days a week. Therefore, the amendment exemptions strictly limited the Jewish owned firm to a six-day work week.34

Even though the Bourassa and Fielding amendments satisfactorily covered these two complaints, another one arose which was the most important of all. It dealt with the economic position of the first-day Christian, especially the religiously conscious one. This was the major complaint against granting any type of exemption,35 yet this point held a special significance with the amendment exemptions.36
Despite restricting first-day Christians to only taking Sunday off as their legal, national day of rest\textsuperscript{37} and the fact it was up to the Jewish employer which day he wished to choose as the firm's legal, national day of rest,\textsuperscript{38} a factor which created the possibility of first-day Christians abstaining from labour for two days a week,\textsuperscript{39} it was argued that under the amendment exemptions the present condition of things would not change. In "all" Jewish owned firms, Jews were the heads, while the majority of the employees were first-day Christians. Because of this, these establishments habitually stayed open on Saturday. Therefore, the Jewish owned firms could not take advantage of the amendment exemption in having Sunday labour for the religiously conscious Jew because the employer either operated or had his place operated for him on that day.\textsuperscript{40} Under these conditions, the first-day Christian would not be placed in any financial distress. This rounded off the outstanding complaints in granting an exemption which were not covered by Section 11. The resulting effect of the amendment exemptions (either of them) in replacing Section 11 as the exemption clause, would be the retention of the financial status quo.\textsuperscript{41}

However, the amendments (most significantly Bourassa's) not only cleared up complaints of Section 11 to bring about some sort of reconciliation, but clarified possible misconceptions in both Section 11 and the amend-
ments themselves for the benefit of the religiously conscious Jew. The point of significance was the subclause of the Bourassa amendment. It affirmed that the day of rest and worship which the religiously conscious Jew would be taking as his legal, national day of rest would be the one according to his religious beliefs and not the universally reckoned time period of day which the bill itself endorsed. Being limited to a five-day retail work week, this consideration gave the religiously conscious Jewish retailer, whether he was a big time entrepreneur or a petty merchant, the opportunity to make money by trading Saturday evening once his religious Sabbath ended, until midnight, the beginning of the nation's legal day of rest. It not only aided Jewish employees and shop owners but also the Jewish populace who purchased items from them, because of religious adherence for the necessity of family sustenance. Jewish sentiment was taken into account through the amendment exemptions to aid and protect the religiously conscious Jew and not the irreligious one who was protected and gained from Section 11.

Up until this point, both amendments were identical in thought and content but the practical application of each amendment differed greatly. Aside from the possibility of the variation in interpretation of the time slot recognition of the Jewish Sabbath, the difference between the amendments was the location where Sunday labour should be allowed.
Under the Bourassa amendment, the work or labour could be done anywhere while the Fielding amendment strictly limited the activity to "inclosed buildings." In the latter instance, work would have to be done behind closed doors in the home, shop or establishment so that the work was hidden from public view as compared to work or labour which could be done in the open. This bone of contention was characteristic of the personal viewpoints of the respective movers but was a crucial one because neither would vote for the other's recommendation. Other than this point, the ideas expressed in the amendments were identical. They overcame the loopholes of Section 11 (and the arguments against the amendment exemptions themselves,) as well as possible in both theory and practical application in an honest attempt to make an exception in favour of the religiously conscious Jew. While so doing, the amendment exemptions remained consistent with the principles and features of both the bill and the exemption. Yet, they added strength to the opposition's point of contention that the granting of any type of exemption was too difficult.

Despite the arguments presented by the movers of the amendment exemptions, opposition to the changes developed. As the amendments were proposed to alleviate the problems of the original exemption and to accommodate the movers' personal views, opposition to them along personal and individual lines was evident among the supporters of an
exemption. For various reasons, the latter wanted Section 11 to remain as the exemption clause. Since the proposal of granting an exemption was made by a parliamentary select committee, it was often recognized as a rule that the House should accept the findings of such a committee, even more so in this instance. The committee to which the Lord's Day Bill was referred worked hard, diligently and gave its utmost consideration to the problem. After hearing the arguments of the complaintees; checking into other countries where similar laws existed; and placing into context the ramifications of such an exemption with respect to the effect of the measure upon the general community, this group of individuals had incorporated Section 11. Because of the existing problems, it was to them the best and most workable conclusion and the one which they felt would be most acceptable to the Commons. In their earnest attempt to have Section 11 sustained, their arguments against the amendment exemptions aided the opposition in its stand against the passage of any sort of exemption.

These men, the opposition amendment exemption core, countered the concept of extending the exemption to any religious dissenting minority in the country on the grounds that it would be too wide in application. The only groups which they felt should receive the benefit of an exemption were those who presented their case and
petitioned for one, thereby limiting it to only seventh-day observers. It was also argued that since Christianity in Canada was part of the law and "especially connected with British institutions," limiting the exemption to seventh-day observers coincided with this idea because "Christianity, as based upon the Holy Writ" established the existence of two Sabbaths, Canada should also. Therefore, by not granting the benefit of an exemption to those who were not represented, practical problems of the present day were taken care of, as opposed to the unknown and unconsidered problems which could occur in extending the exemption to its greatest degree.

Further complaints about the width of application surrounding the amendment exemptions were not limited to which groups it would apply to, but stretched into another perspective. This new consideration was the type of work which should be allowed on Sunday by ones who benefited from an exemption. Some contended that the Bourassa amendment (which in this context was the same as found in Section 11) went too far because work or labour could be done in the open even though done on the exemptee's own premises. In this case, such work would have a detrimental effect because of its visibility to the general public who would be observing Sunday as a day of rest. On the other hand, a counter, but similar argument appeared against the Fielding amendment where
work or labour was restricted to an "inclosed building." In this instance, the exemption was not protecting certain groups who could benefit from the clause. It failed to cover people such as farmers who worked in the open on their own premises. Jewish farmers were small in numbers, but the predominate agricultural group was the Seventh-Day Adventist. It was evident that personal prejudice and bias played a role in the opposition to the amendment exemptions in this instance.

The substantial issue of the economic well being of both Jews and first-day Christians was once again the crucial matter. Even though both amendment exemptions limited Jewish firms to a six-day work week and kept Sunday as the first-day Christian's legal, national day of rest, the point of contention was the effect of the exemption on the first-day Christian employees of Jewish firms. Despite the contention that the amendment exemptions retained the financial status quo, it was felt that the wording of the exemption which allowed the choice of the day of rest to be left to the Jewish employer, with the possibility of first-day Christians being limited to a five-day work week, was more likely than under Section 11. This being the case, first-day Christians would work only five days and not six, thereby losing one day's pay if the Jewish employer closed down on Saturday. The first-day Christian would be placed in
financial difficulty unlike his fellow Jewish worker in the same firm, in contrast to other first-day Christians who did not work for Jews. In trying to resolve the Jewish dilemma, the first-day Christian was placed in one. In the final analysis, the position of first-day Christians, being the majority in the nation, had to be taken into consideration; their conscientious convictions, moreover, were placed above those of the Jew.  

Nevertheless, within this opposition amendment exemption group, support for the original exemption came forth in order to show that the complaints lodged against the amendment exemptions would be amply covered by Section 11 itself. The businessman (the Jew being notoriously good at this profession) would operate his firm in a manner most beneficial to his own financial interests, with or without an exemption. By granting an exemption, it would be foolish for the Jewish employer to close down his shop on Saturday when full production could be carried on by a majority, especially first-day Christian staff, as opposed to being open on Sunday with a minimal staff under restricted labour conditions. The work on Saturday would be done by a majority of the employees, while the religiously conscious Jew utilized it as his day of rest. The Jewish owner, however, would be foolish to open his shop for the few religiously conscious Jews on Sunday because the work they would
enough to cover the owner's cost of keeping the place open. Under these conditions, the intention of Section II would be carried out. The Jewish employer could not benefit financially because he would lose money in trying to do so, thereby limiting him to a six-day work week. In addition, first-day Christians would be working six days a week with Sunday being their legal, national day of rest. Accordingly, they would be able to take home their full weeks pay. 71

Surprisingly, the arguments in favour of Section II presented by its respective supporters, were a replica of those which favoured the amendment exemptions over Section II itself. The problems surrounding the granting of an exemption were specifically covered by the amendment exemptions although implied by Section II. In light of this development in the financial-economic realm, combined with the width of application entertained in the amendment exemptions, the arguments for sustaining Section II over the substitutional clauses as the exemption proviso, reinforced the opposition's arguments of not granting any type of exemption at all. 72 The vote was ready to take place.

With the heat of the summer's June night compounding the intensity of the debate, temperatures were exceedingly high among the legislators. The controversy was thoroughly dissected and had reached its saturation point; the re-
remaining decision entailed choosing which exemption would be implemented, if any at all. The votes were cast and counted. The Bourassa amendment was overwhelmingly defeated\textsuperscript{73} and was followed subsequently by the defeat of the Fielding amendment.\textsuperscript{74} With the rejection of these two amendments, two more were immediately proposed.

Herbert B. Ames proposed a substitute clause very similar to that of Bourassa's with the exception that the extent of the exemption was limited to the religiously conscious seventh-day observer. With this change, he was hopeful of winning support; but the amendment lost on division.\textsuperscript{75} Following this, Armand Lavergne proposed an amendment which merely protected the religiously conscious person of any dissenting minority from being forced to work on his religious day of rest and worship; but it did not, however, provide for Sunday labour. This merely respected religious convictions of which the enactment itself\textsuperscript{76} and Canadian judicial opinion\textsuperscript{77} sustained, but did not alleviate financial-economic disabilities of the religiously conscious member of any dissenting minority. Despite the reasoning of the proposal, it was voted down accordingly,\textsuperscript{78} thus ending the train of amendment exemptions.

At this point, the issue went to its final stage and the only exemption which could be implemented was the select committee's proposal, Section 11. The vote
was taken and the decision of the legislators was recorded 79 to 57 in favour of not granting an exemption. The Jewish Exemption Issue had reached its conclusion. The stormy controversy which began on March 15, 1906 was over on June 27, 1906.
FOOTNOTES

1 Debates, Commons, LXVII (1906): col. 6281, 6283.

2 Ibid., col. 6362.

3 Ibid., col. 6280, 6351, Bourassa, col. 6315, 6360, Fielding.

4 Ibid., col. 6280, 6282, 6351, Bourassa — The contention that the day which was to be observed by the religious dissenting minority, must be the individual's religious day of rest and worship, was further strengthened by clause 2 of the Bourassa amendment. Ibid., col. 6313-6314, Fielding. See Above, Ch. IV, 118-119, n. 14-18 — The opposition exemption group called the exemption a piece of class legislation but for different reasons.

5(a) The legislators limited their scope to dealing strictly with Jewish employers throughout the debate. This is found in the body of the paper. However, this author noted other problems which the legislators had overlooked while debating an exemption. But in so doing, this author used various principles which the legislators had enunciated. Indication of these will be noted with a *

(b) The term Jew will suffice for any reference made to seventh-day observers.

(c) With specific reference to the word employer as designated in Section 11, its context may be extended to first-day Christians and "Others" (Non-Christian Gentiles).

(d) In this consideration with respect to "Others," it was possible for the individual to work for one of the aforementioned employers in (c). But, the employee's position was not accounted for in Section 11. Section 11 was limited strictly to Jewish and first-day Christian employees.

(e) Anyone who came under the "Other" group, being one who observed a day between Monday and Friday inclusive, as a religious day of rest, was not taken into consideration in Section 11. If this person was religiously conscious,
he was limited to a five-day work week. Otherwise, he could work six days a week either taking Saturday or Sunday as his legal, national day of rest. (See Below, Ch. V, 142-144, n. 9-12. The argument concerning both Saturday and Sunday being legal, national days of rest for first-day Christians may be applied to "Others" also.) Nonetheless, the significance of this "Other" group was noted in the amendment exemptions because its case was taken into consideration.


7Ibid., Ch. V, n. 5(c).*

8Debates, Commons, LXXVII (1906):col. 6351, Bourassa, col. 6314, Fielding. See Above, Ch. III, 89, n. 28.

9Debates, Commons, LXXVII (1906):col. 6351, Bourassa, col. 6314, Fielding. See Above, Ch. IV, 121-122, n. 35-38, Ch. III, 88-89, n. 26, 27, 30.

10(a) Re Cribben and the City of Toronto [1891], 21 O.R. 330 - "The term used in the By-law is the Sabbath-day in place of Sunday. In the Imperial Dictionary 'Sabbath' is defined not 'as strictly synonymous with Sunday. Sunday' is the mere name of the day; Sabbath is the name of the institution. Sunday is the Sabbath of the Christians...."


11(a) See Above, Ch. IV, 121, n. 35-37.

11(b) This would also include the "Other" religious denominations.*

12One exception to this rule was the Roman Catholic, but his case was also covered.

13Debates, Commons, LXXVII (1906):col. 6352, Bourassa.
See Above, Ch. I, 25-26, 144-149, N.B. 145, 149; Ch. IV, 117, n. 4 – opposition exemption; Ch. IV, 123, n. 43-45 – exemption supporters.

14 Ibid., Ch. V, 142-143, n. 10(a).

15 Ibid., n. 5(c).*

16 Debates, Commons, LXXVII (1906): col. 6280, Bourassa.

17 Ibid. Also, Laurier Papers, vol. 415, Paul Arch de Montréal à Sir Wilfrid, Montréal, 13 juin 1906, 111158.

18 See Above, Ch. I, 1, n. 1-3.

19 Ibid., Ch. V, 144, n. 14.

20 Ibid., n. 13.

21 Therefore, up to this point, Sunday was definitely protected as the legal, national day of rest for first-day Christians. For the Non-conformists, Saturday was protected for the Jews. Any other day from Monday to Friday inclusive, was protected for "Others" as their legal, national day of rest. However, notwithstanding the remainder of the amendment, the Non-conformists day of rest was only somewhat protected as their legal, national day of rest. See Below, Ch. V, 147, n. 28, 30, passim.)

22 See Above, Ch. V, 142, 5(c).*

23 Debates, Commons, LXXVII (1906): col. 6280, Bourassa. Also, Ibid., 6281, Bourassa. See Above, Ch. III, 89, n. 28. Ibid., n. 45(c).

24 Ibid., 89, n. 28, 29; Ch. V, n. 5(e).

25 Ibid., n. 13, 14.

26(a) [ ] and ( ) – The wording of the Fielding amendment which differed from that of Bourassa's.

(b) Under the amendment exemptions the alignment of the staff changed from that which was found in Section 11.
(See Above, Ch. V. n. 5(d).) Since the exemption was extended to all Non-conformists, the alignment of the staff had to be altered. Under this consideration, the staff alignments were: the employer - I Jew, II First-day Christian, III "Other"; who employed single or any combination of the following: Jews, first-day Christians and "Others."

27(a): Debates, Commons, LXXVII (1906): col. 6281, 6282, 6351, Bourassa, col. 6314, Fielding.

(b) The same consideration is applicable to the "Other" employer and his "Other" employees regarding the "Other" day.*

28 The following is the alignment of which would be the legal, national day of rest under the amendment exemptions. One must account for Jews, first-day Christians and "Others." In this consideration, they would be employers or employees. Also, the number of days the work week would entail must be taken into consideration:

I Under a Jewish Employer.

A. For the Jewish employer and his Jewish staff - Saturday, legal, national day of rest - six-day work week.

B. For the first-day Christian staff - Sunday, legal, national day of rest; Saturday, (legal recognition, therefore) day of non-employment - five-day work week.

C. For the "Other" staff (1) non-religiously conscious - Sunday, legal, national day of rest; Saturday, day of non-employment - five-day work week. 

(2) religiously conscious - "Other" day, legal, national day of rest; Saturday, day of non-employment - five-day work week.

II Under a First-day Christian Employer.

A. For the first-day Christian employer and his first-day Christian staff - Sunday, legal, national day of rest - six-day work week.
B. For the Jewish staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week.
   (2) religiously conscious - Sunday, legal, national day of rest; Saturday, (no legal recognition, therefore) Religious Sabbath - five-day work week.

C. For the "Other" staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week.
   (2) religiously conscious - Sunday, legal, national day of rest; "Other" day, Religious Sabbath - five-day work week.

III Under an "Other" Employer.

A. For the "Other" employer and his "Other" staff - "Other" day, legal, national day of rest - six-day work week.

B. For the first-day Christian staff - Sunday, legal, national day of rest; "Other" day, day of non-employment - five-day work week.

C. For the Jewish staff (1) non-religiously conscious - Sunday, legal, national day of rest; "Other" day, day of non-employment - five-day work week.
   (2) religiously conscious - Saturday, legal, national day of rest; "Other" day, day of non-employment - five-day work week.*

29(a)
Debates, Commons, LXXVII (1906): col. 6281, 6331, 6351, 6352, Bourassa.

(b) The same consideration is applicable to the "Other" employer and his "Other" employees, regarding their "Other" day.*

30. The following is the alignment of which day would be the legal, national day of rest under the amendment exemptions. One must account for Jews, first-day Christians and "Others." In this consideration, they would be employers or employees. Also, the number of days the work week would entail must be taken into consideration.
Under a Jewish Employer.

A. For the Jewish employer (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 

   (2) religiously conscious - Sunday, legal, national day of rest; Saturday, Religious Sabbath - five-day work week.

For the Jewish staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 

   (2) religiously conscious - Sunday, legal, national day of rest; Saturday, Religious Sabbath - five-day work week.

B. For the first-day Christian staff - Sunday, legal, national day of rest - six-day work week.

C. For the "Other" staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 

   (2) religiously conscious - Sunday, legal, national day of rest; "Other" day, Religious Sabbath - five-day work week.

Under a First-day Christian Employer.

A. For the first-day Christian employer and his first-day Christian staff - Sunday, legal, national day of rest - six-day work week.

B. For the Jewish staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 

   (2) religiously conscious - Sunday, legal, national day of rest; Saturday, Religious Sabbath - five-day work week.

C. For the "Other" staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 

   (2) religiously conscious - Sunday, legal, national day of rest; "Other" day, Religious Sabbath - five-day work week.
III Under the "Other" Employer.

A. For the "Other" employer (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 
   (2) religiously conscious - Sunday, legal, national day of rest; "Other" day, Religious Sabbath - five-day work week.

For the "Other" staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 
   (2) religiously conscious - Sunday, legal, national day of rest; "other" day, Religious Sabbath - five-day work week.

B. For the first-day Christian staff - Sunday, legal, national day of rest - six-day work week.

C. For the Jewish staff (1) non-religiously conscious - Sunday, legal, national day of rest - six-day work week. 
   (2) religiously conscious - Sunday, legal, national day of rest; Saturday, Religious Sabbath - five-day work week.*

IV Therefore, under this consideration (and see Above, Ch. V, n. 28, passim), it is evident that first-day Christians had one choice for their legal, national day of rest. Sunday was always protected. It is also evident that Jews and "Others" had two choices for their legal, national day of rest. But, their Religious Sabbath was not always protected as their legal, national day of rest.

V Therefore, under this consideration (and Ibid.), the work week for everyone fluctuated between five or six days.

31 Debates, Commons, LXXVII (1906): col. 6281, Bourassa.

32 See Above, Ch. V, 146, n. 24.

33(a) Debates, Commons, LXXVII (1906): col. 6281, Bourassa.

(b) See Above, Ch. III, n. 45(c).
(c) Ibid., Ch. V, 142-143, n. 9-11.

(d) (1) With reference to Bourassa's statement about breaking religious law, it holds true that the Jewish employer would have broken Judaic law if he worked on Saturday. If the Jewish employer completely abstained from labour and observed the Sabbath according to religious dogma but allowed his employees to work on Saturday, then the employer, depending upon his motives for allowing the work to be carried out, might or might not have broken Judaic law. For Judaic law regarding work done by a non-Jew, for a Jew, on the Sabbath, see Rabbi S. Ganzfried, Code of Jewish Law, Kitzler Shulhan Aruch. A Compilation of Jewish Laws and Customs, revised edition, trans. by H. E. Goldin (New York, 1961), Ch. 73, 68-70, N.B. no. 1-5(c); Chapter 90, 125-130, N.B. no. 2, 13, 14, 16.

(2) With respect to the national law, its intention would have been broken, but not the law according to its wording. (See Above, Ch. V, n. 23.) Debates, Commons, LXXVII (1906):col. 6351, Bourassa - "...Under the clause as framed [Section 11] you empower the Jewish employer to keep his establishment open for seven days a week, and I do not think that is the intention of anyone." Ibid., col. 6353-6354, Bourassa - "...We are not going to say what was done by any subcommittee should not be amended, when it is found that the wording of the subcommittee does not carry out the intention of the committee. ...The intention of the subcommittee was that those Jews who from reasons of conscience observe their Sabbath should be protected on Sunday, but not that those exacting Jews who try to make the best they can out of Saturday and Sunday should be protected, and that is what you would be doing if you adopted that clause [Section 11] and that is why I am substituting this amendment."

(e) See Above, Ch. V, n. 5(c) - Similar conditions may be applied to Gentile employers*  
(1) The "Other" employer would be taking advantage of someone else's religious position with respect to the exemption by making profit from retail trade on Saturday and having work done behind closed doors on Sunday. He would be breaking the intention of the national law. With respect to breaking religious law, it depended upon the regulations set forth by the "Other" employer's religion.

(2) The first-day Christian employer would
also take the aforementioned advantage. In this case, he might or might not be breaking religious law. (Ibid., n. 15-17.) But, he would be breaking the intention of the national law.

34 Ibid., n. 5(c) - The same applies to Gentile employers. Their firms were limited to a six-day work week.*

35 Ibid., Ch. IV, n. 35-40; (1) Nonetheless, even with the amendments worded in such a fashion, both Jews and "Others" could incur financial disabilities. (Ibid., Ch. V, n. 28, 30, passim.) But Parliament was only concerned with first-day Christians in this situation. Ibid., n. 35, Ch. IV, 130-132, n. 95-101.

(2) A noted indifference to this point by a legislator who supported an exemption was Fielding when he was questioned by Bristol (another exemption supporter). Debates, Commons, LXXVII (1906):col. 6315, Fielding - He just wanted to make sure that the first-day Christian would not work on Sunday.

36 See Below, Ch. V, 154-155, n. 66-70.

37 See Above, Ch. V, 144, n. 13, 14.

38 Ibid., 146-147, n. 26.

39(a) Ibid., n. 28, passim.

(b) Ibid., n. 36.

40 Debates, Commons, LXXVII (1906):col. 6330, 6352-6353, Bourassa.

41 In this consideration, this author contends that the "Other" employer would do the same as the Jew and keep his place open for business on his religious day of rest. The employer, being a businessman, would be more interested in material success rather than religious pursuit. (See Above, Ch. IV, 131-132, n. 98-101. Also, see Below, Ch. V, 155-156, n. 71.) Therefore, the financial status quo for first-day Christians would still prevail under the "Other" employer.*

42 See Above, Ch. V, 140-141, n. 1.
43 (a) Debates, Commons, LXXVII (1906): col. 6282, Bourassa.

(b) See Appendix (sec. 1(a)).

(c) (1) At this point, reference must be made to U.S. judicial decisions because similar exemptions were passed by various states, as that of Section 11. (See Above, Ch. II, n. 74(c).) Lightman, "Jews in American Sunday Laws." 274 - With reference to the recognition of time spent of the day of rest, be it according to religious adherence or not, it was stated that "as late as 1917, the sundown to sundown Jewish Sabbath was still, in some places, in need of judicial sanction before cognizance of it would be taken by some civil authorities;..."

(2) Furthermore, because of the recognition of provincial rights in the Act (See Above, Ch. I, n. 152), the province of Quebec passed their own Sunday law which contained an exemption for the religiously conscientious seventh-day observer. (See Below, Conclusion, 209, n. 39.) With this exemption on the statute books, a case surrounding it reached the Canadian judiciary. Judgment was rendered by the courts concerning the rights (or privileges) of the religiously conscientious seventh-day observer under that respective clause. Rex v. Poyaners Inc. [1925], 44 C.C.C. 90-91 - In the lower court decision, the Recorder of Montreal who heard the case convicted the Jewish defendants, for working on Saturday night. The defendants claimed that Saturday night was the end of their Religious Sabbath, therefore enabling them to work. However, the court ruled that the seventh day meant midnight Friday to midnight Saturday, thereby disallowing the Jews the right to work on Saturday night. Brodey, "Status of Jews in Canada," 150 - It was stated that "the Jew would have to be more religious than required by his religion."

(d) Therefore, assuming in 1906 that the sundown to sundown concept would have been recognized for the legal national day of rest in the amendment exemptions, clause 2 of the Bourassa amendment merely clarified this point. Otherwise, the subclause of the Bourassa amendment was necessary to substantiate this point.

44 Debates, Commons, LXXVII (1906): col. 6282-6283, Bourassa.

45 See Above, Ch. II, 55-57 n. 58-64.
46(a)  

(b)  
The same is applicable to the "Other" group.*

(c)  
In this consideration, the first-day Christian who worked for a Jew could not work on Saturday night. Even though he took Saturday (daylight hours) off, Saturday was not his religious day of rest and worship. (See Above, Ch. V, 144, n. 13, 14.) The same argument is applicable for the "Other" person who worked for a Jew. (Ibid., n. 5(e).) Ibid., n. 46(a) - The only person who could take advantage of this exemption was the religiously conscious Jew.*

47  
Ibid., 150, n. 45.

48  
Ibid., 140-141, n. 1, 2.

49  
Debates, Commons, LXXVII (1906): col. 6314-6316, passim, col. 6360-6361, Fielding.

50  
Ibid., col. 6327-6328, 6359, Fielding.

51  
See Below, Ch. V, 156, n. 72 - It covered the arguments against the amendment exemptions.

52  
The amendment exemptions also covered the contentions brought forth by this author which were not dealt with by the legislators.*

53  
Debates, Commons, LXXVII (1906): col. 6303, Bergeron, col. 5307, Piché. Also, see Above, Ch. III, 101, n. 72.

54(a)  

(b)  
At this point, mention must be made about the anonymous individual who voted for the exemption in the select committee but would vote against it in the House. (See Above, Ch. III, 94, n. 45(a).) Even though this
was the case as expressed by Miller (Ibid., n. 42-45(a)), the legislators who favoured Section 11 argued that the select committee by a majority vote had passed the adoption of the Jewish amendment. See Debates, Commons, LXXVII (1906):col. 6307, Piché - "My answer to the hon. gentleman [Miller] is that the vote of the majority was recorded on that very point." For the content of the argument between Miller and Piché, see Ibid., col. 6306-6308.

55 Because of the interrelation of arguments against the amendment exemptions by both supporters and opponents of an exemption, legislators will be designated by the following:

O.E. - Opposition Exemption  
S.E. - Supporter of All Exemptions  
S(S.11)E. - Supporter of Section 11 Exemption  
S(B.A.)E. - Supporter of Bourassa Amendment Exemption  
S(F.A.)E. - Supporter of Fielding Amendment Exemption  
S.E.?O.E. - Doubtful on how the individual would vote or if he favoured an exemption or not.

56 Debates, Commons, LXXVII (1906):col. 6287, Macdonell, col. 6301, Bristol, col. 6339, R. Borden, S(S.11)E.

57 Ibid.

58 Ibid., col. 6347, Fisher, S(S.11)E.


60 See Above, Ch. III, 88, n. 25, Section.11; Ibid., Ch. V, 140-143, n. 1; See Below, Ch. V, n. 62(b).


62(a) See Above, Ch. V, 151, n. 48. Fielding, S(F.A.)E.; Debates, Commons, LXXVII (1906):col. 6349, Parmalee, S(S.11)E.
The Seventh-Day Adventists will be just as well protected by my amendment as by the existing clause in the Bill [Section 11]."

Ibid., col. 6351, Bourassa, S(B.A.)E. - "The

Ibid., col. 6350-6351, Lewis, S.E.?O.E.

Journals, Commons, XLI (1906):115 - A petition
was presented in favour of exempting Jewish farmers.
Also, see R. A. Grunier, "Jewish Immigration into Canada,
1896-1910: A Survey" (Major Paper, University of Windsor,

See Above, Ch. V., n. 62(b). Debates, Commons,
LXXVII (1906):col. 6349, Parmalee, S(S.11)E. Minutes of
Evidence, 19 April 1906, 39, Foolinsbee.

Debates, Commons, LXXVII (1906):col. 6315, Bristol,
S(S.11)E, col. 6330-6331, Gagnong, col. 6342, Foster, O.E.
Also, see Above, Ch. V., 146-148, n.26-34, passim.

Debates, Commons, LXXVII (1906):col. 6315, Bristol,
S(S.11)E, col. 6332, R. Smith, col. 6342, Foster, O.E.
Also, see Above, Ch. V., 144., n. 13, 14.

Ibid., 148, n. 35, 36.

Debates, Commons, LXXVII (1906):col. 6346, Daniel,
col. 6315, Bristol, S(S.11)E, col. 6332, R. Smith, col. 6342,
Foster, O.E.

Ibid., col. 6346, Daniel, S(S.11)E, col. 6330-6331,
Gagnong, col. 6332, R. Smith, col. 6342, Foster, O.E.

Ibid., col. 6346-6347, Daniel S(S.11)E.

(b)
See Above, Ch. V., n. 5(c) - Since Daniel favoured
Section 11 over the amendment exemptions, his contentions
are also applicable to Gentile employers.

Furthermore, the areas where the amendment exemp-
tions patched the loopholes found in Section 11, namely,
keeping Sunday for the first-day Christians, their legal,
national day of rest and limiting Jewish firms to a six-day
work week - Section 11 supporters contended that the opposite occurred with the amendment exemptions. They argued that the amendment exemptions did not keep Sunday as the first-day Christian legal, national day of rest nor was the Jewish firm limited to a six-day work week because of the proposals wording. Section 11, argued its supporters, did not make any special provision for the aforementioned points of contention nor was there any intent for such a provision.

(1) Debates, Commons, LXXVII (1906):col. 6352, 6355-6356, Demers, S(S.11)E. - He argued that first-day Christians could work on Sunday because it was specifically provided for by the amendment exemptions. For a counter argument presented by the amendment exemption supporters, see Above, Ch. V, 142-144, n. 9-14.

Debates, Commons, LXXVII (1906):col. 6344, Fisher, S(S.11)E. - He stated that Section 11 specifically designated the exemptees. For a counter argument presented by the amendment exemption supporters, see Above, Ch. V, 142-144, n. 9-21.

(2) Debates, Commons, LXXVII (1906):col. 6340-6341, Borden, S(S.11)E. - He complained about the employer-employee relationship and the work which could or could not be done, and by whom. For a counter argument by the amendment exemption supporters, see Above, Ch. V, 146-148, n. 22-34.

(b)
This author contends that the supporters of Section 11 had overlooked the loopholes in that clause, thereby not being able to see the significance of the amendment exemptions. They were under a misconception that Section 11 did not entertain any of the loopholes which the amendment exemption supporters had stressed. Supporters of Section 11 believed that the amendment exemptions brought forth those problems. This author endorses the arguments behind the amendment exemptions and feels that those proposals effectively provided a solution in the two contested areas. Therefore, the arguments presented by the supporters of Section 11 were actually arguments against Section 11 itself. This strengthened the opposition exemption's motives for not wanting to grant any type of exemption at all.

73 Debates, Commons, LXXVII (1906):col. 6759 - The recorded vote was 94-43.

74 Ibid. The vote was not recorded.
75 Ibid.

76 See Above, Ch. IV, 118, n. 10, 124, n. 54, 55.

77 Ibid., Ch. II, 47, n. 1-8.

78 Debates, Commons, LXXVII (1906):col. 6759 - There was no recorded vote.

79 Ibid. There was a recorded vote.

80 The actual issue ended at this point despite further attempts to give the Jews an exemption.

(a) Ibid., col. 6659-6660 - On June 29, 1906, Bickerdike (S.E.) introduced a new exemption clause.

Notwithstanding anything herein contained, whoever for conscience sake habitually and invariably observes the fourth commandment, shall not be subject to prosecution for performing work or labour on the first day of the week, provided that such work or labour does not disturb or cause a nuisance to any other persons in the observance of the first day of the week as the Lord's day, and that no premises be open for traffic on that day.

A point of order was brought forth by Barr (O.E.) and the ruling of the Deputy Speaker was that Bickerdike's motion was out of order "because it would be asking the committee to reverse its judgement...."

Ibid., Senate, Session 1906:1206-1207 - On July 10, 1906, Kerr proposed an exemption, Section 11. It was a duplicate of Section 11. The Senate rejected it by a vote, 24-18.

(b) An interesting point came up later in the House concerning the principle behind the Deputy Speaker's decision on the Bickerdike motion of a Jewish exemption. (Debates, Commons, LXXVII (1906):col. 7277.) Aylesworth moved during the third reading of the bill to refer back to the Committee of the Whole so that he could make a motion to strike out an amendment which was previously added to section 5 of the bill. (Ibid., col. 7286-7287.) The Speaker ruled that the motion was in order and it was adopted.

Ibid., col. 7278 - Nonetheless, a complaint arose
from Henderson concerning the principle behind the Speaker's decision. Henderson did not complain about returning to the Committee of the Whole, but that Parliament was willing to reverse one of its judgements. He stated that Bickerdike tried a similar move but was ruled out of order. Henderson felt that the same principle should have been applied in this situation. Despite Henderson's objection, the Speaker ruled that Aylesworth's motion was in order.

_Ibid._, col. 7287 - Aylesworth moved to strike out the amendment.

_Ibid._, col. 7295 - Aylesworth's motion was adopted, 8038.

The note worthiness of this situation was the fact that even though the House would have rejected Bickerdike's proposal, it was not given a chance at trial. However, in a similar situation, another proposal was given the opportunity to stand trial.
CHAPTER VI

THE DENIAL OF THE JEWISH EXEMPTION IN THE CANADIAN PERSPECTIVE

Federal Sunday law was introduced and legislated upon for the interest of the nation at large, therefore, justification for the loss of a Jewish exemption went down to the legislator's interpretation of the various exemptive clauses and their effects upon the nation. One of the areas of concern was the viewpoint of the individual legislator with regard to which non-conforming religious sects would be able to avail themselves of the exemption and to what types of work ought to be allowed. In this instance, the amendment exemptions, in which individual opinion differed from or was the same as Section 11, merely intensified opposition to an exemption. The aforementioned factors, however, were not conclusive enough to account for the wide discrepancy of support for Section 11 over that of the amendments; nor to outrightly deny an exemption at all. Another area was the crucial and deciding factor.

As the exemption was requested by the Jews and granted by the select committee because of the economic difficulties incurred by the religiously conscious Jew, the major justification in denying an exemption was based upon the same considerations when the first-day Christian

175.
majority was taken into consideration. Both the parliamentary opposition and supporters of an exemption sought a common objective – the protection of the first-day Christian majority. The former believed this goal would be secured by not granting an exemption while the latter speculated that the first-day Christian majority could be protected even with the granting of an exemption. The financial-economic implications were consistently outlined in all the amendment exemptions. Yet, the amendments differed from the original exemption proposal because Section 11 merely suggested financial implications.

Under the amendment exemptions the legislators came to the conclusion that the greatest financial-economic hardships would be endured by first-day Christians. By taking advantage of any of the exemptions, the Jewish employer would not be gaining anything over his first-day Christian competitor. However, an advantage was noted for the Jew over the first-day Christian in the labouring aspect. Here, the Jewish labourer fared better because he had a six-day work week while his first-day Christian counterpart lost one day's pay during the week, thereby only working five days and receiving five days' wages. The situation was effectively summarized by Ralph Smith:

If there is anything in the contention that the Jewish employer has a conscience, then these factories must be closed against (first-day) Christian workmen on Saturday and the factory will be closed by law against (first-day) Christian workmen on Sunday.
Accordingly, the first-day Christian was financially hurt which implied a gain for the Jew. Because of this, the opposition was overwhelmingly against the amendment exemptions, and, as a consequence, the Bourassa amendment was defeated by a substantial majority of forty-six. Both Section 11 supporters and the opposition exemption members joined hands.

Section 11 was defeated as well but the roles were reversed because the fiscal hardship was not evident against the first-day Christian. Here, there existed the possibility of extended privileges to the Jew which should not exist. Taking advantage of Section 11, the religiously conscientious Jewish labourer and his first-day Christian counterpart fared equally because both were able to work six days a week and receive six days' pay. The extra privilege was noted for the Jewish employer. It was possible for him to obtain additional financial rewards because his place of business could remain open for seven days a week. This gave the Jewish employer an advantage over the first-day Christian employer who could not take advantage of the exemption. Once again, Ralph Smith defended the anti-exemptionist position:

"...we would be perfectly reasonable in assuming that a Jewish employer would take advantage of this law, if it was passed to operate his factory on every day of the week." 11

Accordingly, it was possible that the Jew could be given a direct gain which in turn revealed an indirect injustice
toward the first-day Christian. Because of this, Section 11 received more support than did the amendment exemptions but was still defeated by a majority of twelve. Here, the supporters of the amendment exemptions added minimal strength to the case of the opposition exemption crew.

The question over an exemption in its final analysis was a simple one for the legislators. Despite the enthusiasm for an exemption by supporters who speculated that the first-day Christian would not be adversely affected, and that the Jew would not gain any special privilege because of the exemption over the first-day Christian, the vote in support of an exemption failed. Speculation was an inadequate ground upon which to provide for an exemption. A certainty was that the concession of any type of an exemption would give the Jew, in the words of Ralph Smith again, "a commercial advantage over the (first-day) Christian competitors in the same business." An unawareness of the existing conditions of the Jewish and first-day Christian working relationship, along with the probability that if and when an exemption was put into practise, the first-day Christian majority would suffer, doomed an exemption clause. These reasons, based upon monetary ramifications, were sufficient for the legislators to deny the religiously conscious Jew an exemption.

In viewing the denial of an exemption with respect to the enactment itself and the happenings in Parliament,
during the debates, the characteristic feature of the
controversy was its 'individualism.' Every clause of the
bill which was debated upon fell under one of the follow-
ing categories: a unanimous adoption; complete rejection;
or else adoption by majority vote where the principle of
the clause was accepted by some form of compromise. But
this was not the case for any of the Jewish exemption
proposals. They were all voted upon and their underlying
principle was not accepted. The Jewish exemption was the
only clause in the bill which was debated upon and whose
fate was rejection when the measure appeared in its final
form.

As for the individual members of the Government,
an approach was taken which may be termed unconventional
because of their actions surrounding the exemption issue.
The bill, as a whole, was a Government supported measure.\textsuperscript{17} But this was not so for the Jewish exemption clause.\textsuperscript{18}
The cabinet itself was thoroughly split on the issue.
Some members advocated an extension of the exemption to
its greatest degree; others desired a restricted exemption;
still others desired no exemption at all.\textsuperscript{19} It was
especially noteworthy that Prime Minister Laurier and the
Minister of Justice, Aylesworth, were at complete odds on
the issue.\textsuperscript{20} Because of the difference of opinion among
the cabinet members themselves, the principle behind an
exemption provision was the only clause in the bill which
was not supported by the Government.

Within the cabinet, another event occurred. It was always assumed that the Minister in charge of a bill made the motion to adopt a clause, but not so in this instance. Aylesworth, being totally against granting an exemption, refused to comply with routine procedure. In light of this fact, the Minister of Agriculture, Sydney A. Fisher, a supporter of the Section 11 exemption, moved the adoption of the select committee's proposal. This being the cabinet's position, its members acted not as a group but as individuals.

This approach was not limited to cabinet members but to the legislators in the Commons as a whole. "I had stated," commented Aylesworth:

...the position of the government with respect to that provision [Section 11] of the Bill to be that it was a detail of the measure which was not presented by the government as part of their measure, but in regard to which every individual member of the House, as well as the government would vote as he pleased.

This was the manner in which the Jewish Exemption Issue was presented, debated and voted upon by the individual legislators. No attempt was made to reconcile the consciences of the members of Parliament. Rather, as Laurier remarked, "everybody has [had] to do the best he can [could] according to his own views." In so doing, discrepancies between supporters and opponents of the various exemption proposals revealed the importance of the individual parliamentarians voting pattern. The vote over Section 11
as reported by *The Toronto Globe*, was carried over to the voting pattern on the proposed amendment exemptions:

Party lines were practically wiped out and provincial lines were not regarded, so that it would be difficult to classify the opposing forces. 25

Individualism characterized its defeat which in itself revealed that the politics of the Jewish Exemption Issue made strange bedfellows. 26

The defeat of a Jewish exemption on individualistic voting, consolidation, through individualism was a noteworthy feature throughout the entire debate. An analysis of the statements derived from the legislators who expressed their opinions would seem to indicate the presence of various voting patterns in relation to a Jewish exemption. It was evident that the French Canadian members of Parliament as a whole favoured granting the Jew some sort of exemption, but varied in the degree to which the exemption ought to be conceded. Being a minority within the Dominion, as the Jew was a minority among minorities, the French Canadians had something in common with them and, accordingly, sympathized with them. This attitude was further enhanced because the French Canadians fought for something for another minority in the country which they themselves, being the largest ethnic27 and religious28 minority in the country, failed to receive at that time: 29 respect for the Roman Catholic conscientious convictions. Armand Lavergne outlined the French Canadian position:
As a Roman Catholic, as a French Canadian, I am forbidden by this Bill of doing many things to which my conscience does not object. But thanks to God, this is not an objection to me or a reason I should not want another minority to be deprived of what they have a right to do.  

The French Canadians appeared to be gallant crusaders for a Jewish exemption.

The English Canadians, on the other hand, were decisively split in the exemption issue. This group's ideas varied from being totally in favour of the most extended exemption to that of not granting any type at all. This group was the dominant majority both ethnically and religiously within the country. As such, there existed no common tie with the Jew. The Lord's Day Bill originated from the Lord's Day Alliance of Canada, which, while favouring the measure, was totally against the granting of a religious dissenting minority exemption. The Alliance represented a religious group which was largely Protestant and which composed over half the Canadian population. Its convictions and sentiments were adequately covered within the enactment. Even though some of the parliamentarians sympathized with the Jews in their dilemma, all those legislators who opposed the exemption proposals came from this segment of society. The English Canadian position was adequately summarized by Henry H. Miller:

...The people of this country, the clergymen of the various denominations are not in favour of any such
principle as we have in Section 11 [the proposed exemptions].

The English Canadians appeared to be the devil's advocate in the Jewish Exemption Issue.

Overall, the supporters of an exemption displayed respectable solidarity and unity, but, in the particulars, they revealed incohesion. They wanted to concede some sort of exemption. Their arguments for granting an exemption based upon conscientious convictions of the Jewish minority broke down when the manner and approach with which to fulfill their object was tested. In arguing against the various exemption proposals among themselves, they strengthened the opposition's contentions to possible loopholes, inconsistencies and future problems which would not occur if an exemption was not given. In this respect, the personal prejudices and biases of each member, together with the anticipated financial-economic ramifications of an exemption, revealed the significant role which individualism played in the issue.

On the other hand, the opposition exemption group was a solid, united entity which fought against the principle behind a Jewish exemption. Even if the supporters could have rallied together and found one acceptable resolution, their numerical strength was insufficient to surpass that of the opposition exemption group; the exemption proposals, even the Lavergne proposal which did not provide for an exemption, were defeated. Nor were
the supporter's arguments influential or convincing enough to sway any opponents to their way of reasoning because the latter's contentions were sound. In the end, the convictions of those opposing the exemption were sustained. As such, the prejudice and bias of each member of this group accompanied their fears of what could happen, for ultimately the effects would be detrimental to the economy of the nation if an exemption was granted. The situation was effectively summarized by Prime Minister Laurier:

It is useless to argue upon this question [a Jewish exemption]. Men have their convictions made in advance, and their convictions are largely the result of education, early training and circumstances. You may reason until doomsday and you may pile up your arguments but it would be impossible to convince those whose early training has fixed their convictions on this subject.35

It was the anonymous individual in the select committee who was opposed to the issue of a Jewish exemption initially who gave it its life and breath.36 Yet, in deferring judgement to Parliament on this issue, the vote of the Commons confirmed the convictions of the anonymous member of the select committee and brought suffocation and death to the Jewish Exemption Issue. The onus of the enactment as a whole fell upon the legislators;37 in part, with respect to a Jewish exemption in was more accurate because of its dependency upon the individual member.

The inevitable occurred regarding the Jewish Exemption Issue in the Lord's Day Bill. From the beginning, Minister of Justice Aylesworth realized the difficulties
with legislation for a national day of rest, and prophetically remarked on the tenderness of this particular issue:

...The religious and conscientious convictions of equally well meaning citizens looking at this question from different view points, are unable to be reconciled.\(^{38}\)

And, to further supplement Aylesworth's prediction, Henri Bourassa speculated as to the results of the Jewish exemption controversy prior to its being put to the vote:

Therefore it comes to this that the only exception which this House is prepared to refuse is the (Jewish) exception that will be based on reasons of conscience.\(^ {39}\)

Because of these preconceived notions, the issue of the Jewish exemption was narrow, limited and confined to the point of knowing what lay ahead. Its defeat was a forgone conclusion.

The loss of a Jewish exemption revealed the consistency which characterized the enactment itself. Because the measure was directed to the general welfare of Canadian society, the provisions of the bill typified this objective. Also, the provisions remained in concert with the principle and purpose of the measure, being the creation of a national day of rest, one day in seven. Since Parliament had the constitutional power to deal with religio-moral issues in this instance, it merely confined itself to the moral aspects of rest-day legislation, being the secular-labouring aspects of the day and the religiousity of Sunday was
ignored throughout. 40

The measure had no religious effect whatsoever on any segment of the Canadian population. One was free to fulfill his religious obligations any day of the week as the individual saw fit and there existed no religious requirements to be fulfilled on the national day of rest. 41 Moreover, the Act, through its provisions, did not equate the national day of rest with any religious significance at all. 42 But, if a Jewish exemption had been conceded, the avoidance of religious significance in the enactment would not hold true. All the exemption proposals gave cognizance to the religious significance of Sunday and some other day, in which all, except the Lavergne amendment, specifically designated the national day of rest as Sunday, the Lord's Day or the first day of the week as a 'holy day.' In this context, all the amendment exemptions recognized the religious significance of Sunday and some other day as a day of rest and worship. 43 Omitting a Jewish exemption based on these considerations maintained the idea that the national day of rest was strictly limited to the secular-labouring aspects because the religious connection was non-existent.

While legislating for the benefit of the nation as a whole, stability among the members of the labour forces in the country was an important result. Sunday was chosen as the national day of rest because the ruling majority
was first-day Christian. But, in so doing, the effects of the measure fell equally upon all because all that was required by everyone was to observe the national day of rest by abstaining from labour and to follow the regulations of the measure so as to allow his fellow man the right to rest. At the outset, this was the Government's intention behind the measure, but exceptions to the rule had to be made.

With the measure directed for the general welfare and betterment of the nation, exceptions were provided to sustain this directive within the purpose and principle of the enactment. Majority interest could not be infringed upon. The exemptions were compatible with the norms of Christianity adhered to by the nation but they were seen from a secular-labouring point of view. This revealed the "degree of secularity" in Canada by 1906. Opposition to the measure in general was based upon dollars and cents because the secular interests vied for exemptions; a Jewish exemption was denied for the same reason. The financial-economic ramifications of an exemption within the measure could have had a detrimental effect upon the majority of the people. Because of this, the nation as a whole would adversely be affected. As a consequence, a Jewish exemption would not have been beneficial to the general welfare of the country as were the other exemptions. Denying a Jewish exemption was in the best interest of the majority but more so for the
nation as a whole:

The loss of income suffered by these groups [the religious dissenting minority] as a result of the Act, even when multiplied for its final effect upon the national income, was a negligible social cost to incur for the sake of religious principle. 50

In this light, the arguments presented both by the exemption's supporters and opponents tended to favour the opposition's contentions. Denying a Jewish exemption upheld the purpose, principle and directive of the Lord's Day Bill and was an indication of the consistency of the enactment.

As an Act providing for a national day of rest, the omission of a Jewish exemption revealed an expression of nationalism. There were only two groups which received exemptions because their intentions coincided with the purpose, principle and directive of the Act: firstly, the secular interests received an exemption under the works of necessity and mercy; 51 and secondly, religious interests whose convictions were adhered to through the recognition of provincial rights. 52 The bill, as described by Senator L. O. David in his praising of Parliament's handling of the measure, confirmed such recognition:

The Bill is not a triumph of a party, of a religious denomination, or of a national association. It is the triumph of justice, of liberty, of provincial autonomy, of all those who think that in this country we must work the confederation on the principle upon which it was based, namely, mutual concession. Mutual forbearance is the price of harmony and of the national and material progress of Canada. 53

The ones who received an exemption made the measure what it turned out to be in the Canadian context.
The Jews were not so fortunate as the two above-mentioned groups because an exemption in their favour was not as important as the exemptions which were conceded. The granting of an exemption to the Jews would have been a liability to the Canadian nation because of the detrimental economic effects experienced by the nation as a whole. The underlying theme in the parliamentary decision over a Jewish exemption was best described by a member of the opposition exemption contingent, George Smith, of letting "sleeping dogs lie." Denying the Jews an exemption in light of the purpose, principle and directive of the measure revealed an expression of nationalism.

Religious interests were the easiest to dispose of, and the Non-conformist element of Canadian society presented the least difficulty. It was defeated, a defeat which was based upon logical, well-founded and justifiable conclusions. In Senator H. J. Cloran's description of the handling of the entire bill, he analyzed the crux of the matter involving the Jewish (religious dissenting) minority in the country:

...Human wisdom is too finite, too restricted to frame a law that will meet the consciences of all men. The Almighty Himself could not do it.

The decision came from Parliament Hill and the Jewish Exemption Issue legally died.
FOOTNOTES

1 See Above, Ch. IV, 117-118, n. 8, 127-128, n. 76, 77.

2 When referring to the amendment exemptions heretofore, the Bourassa, Fielding and Ames proposals are considered. For the reasons why the Lavergne amendment is excluded, see Above, Ch. V, 157, n. 76-78.

3(a) For the areas of personal prejudices and bias', see Ibid., 142, n. 4, 151, n. 48-50, 152-154, n. 56-65.

(b) Alliance, Act and Seventh-Day People, 2 - In this article the Alliance mentioned the areas of personal prejudices and bias'. "Further, if their day [the Jewish Sabbath] is allowed, it must be remembered that there are people who keep Wednesday and some people who keep Friday. The logic of this situation would require exemption under the statute in their behalf also. It would therefore be easy to conceive that relief could be sought for people with respect to every day in the week." This was not the primary reason why the Alliance felt that the exemption was denied. It was only an incidental one. For the primary reasons, see Below, Ch. VI, n. 5.

4 See Above, Ch. II, n. 76, Ch. V, n. 54(a).

5(a) Alliance, Act and Seventh-Day People, 1 - In this article the Alliance mentioned the economic difficulties. "In the debate upon the bill before the House the fact was adduced that in factories owned by Seventh-Day people, only five in one hundred of the employees observed the Seventh Day, whilst ninety-five observed the first day. If, therefore, a Seventh-Day exemption clause had been embodied in the Act, the burdened complained of would have been lifted from the five and placed upon the ninety-five. FOR THESE REASONS THE RECOMMENDATION OF THE [SELECT] COMMITTEE WAS 'REFUSED.' (Author's emphasis.)

(b) Shearer, "The New Lord's Day Act," 6 - The exemption was denied because it was felt that "while giving some financial relief to Jewish employees, would, on the other hand, put on a much larger number of (first-day) Christian employees in Jewish-owned factories, which under the exemption would be closed on Saturday, an equally serious financial disability, and our legislators felt that in a Christian land this would be unjustifiable."
6 See Above, Ch. IV, 121-122, n. 35-40, 130-132, n. 95-101.

7 Ibid., Ch. V, 144, n. 13, 14, 146-147, n. 26. These two factors made it explicit.

8 Ibid., 155-156, n. 71 - This factor made it implicit.

9 Debates, Commons, LXXVII (1906): col. 6332.

10 The same would be applicable with respect to the "Other" employer and his first-day Christian employees.*

11 Debates, Commons, LXXVII (1906): col. 6332.

12 (a) See Above, Ch. V, n. 5(c) - The same would be applicable to first-day Christian and "Other" employers. Therefore, especially with respect to first-day Christians, some would be gaining advantage over their own brethren. The realism of this situation is not farfetched.*

(b) (1) Johns, Dateline Sunday, 136-139 - He interpreted a U.S. Supreme Court decision, that religious minority exemptions were not in the best interest of the community because an exemption clause "would operate to encourage some to join a minority faith for sheer commercial advantage."

(2) This author believes that the principle behind Johns' concept would be more reasonable than his statement itself. This author will not wholeheartedly accept that one would join a minority faith for commercial advantage because of an exemption in a Sunday law. Rather, one would join the bandwagon if his financial assets were heavily dependent upon a religious dissenting minority group. He would follow commercial practices to his own advantage, which in this instance would be those practices of the religious dissenting minority.

13 See Below, Ch. VI, 183-184, n. 34, 35 - These are the reasons for minimal strength.

14 See Above, Ch. VI, n. 7.

15 Debates, Commons, LXXVII (1906): col. 6332.
16. Ibid., col. 6348, Galliher, S.E.?O.E.

17. See Above, Ch. I, 20, n. 93.


19. A divisional breakdown on the voting of the cabinet.

Commons: S.E. - W. Laurier, Lemieux
          S(F.A.)E - Fielding
          S(S.11)E - Brodeur, Fisher
          O.E. - Aylesworth, Paterson
          S.E.?O.E. - F. Borden, Emmerson, Templeman, Hyman, Oliver (Silent)

Senate: S(S.11[17])E. - Scott
        S.E.?O.E. - Cartright (Silent)

20. Debates, Commons, LXXVII (1906): col. 7224, R. Borden, S(S.11)E.

21. Ibid., col. 6350, Emmerson, S.E.?O.E.

22. Ibid.

23. Ibid., col. 7226.

24. Ibid., col. 6312.


26. For other noted features on individualism, see Above, Ch. V, n. 80(b); see Below, Ch. VI, n. 31(b).

27. Canada Yearbook, 1912, second series (Ottawa, 1913), 23, Chart #13, "Origins of the people in 1901 and 1911, with increase in the ten years and ratios percent of population."

1901 - Total population - 5,371,315
      - French (Canadian) - 1,649,371
1911 - Total population - 7,206,643
- French (Canadian) - 2,054,890

28 Ibid., 28, Chart #16, "Religions of People 1881, 1891, 1901 and 1911."

1901 - Total population - 5,371,315
- Roman Catholic - 2,229,600
1911 - Total population - 7,206,643
- Roman Catholic - 2,833,041

29 See Above, Ch. I, 27, n. 156.

30 Debates, Commons, LXXVII (1906): col. 6296.

31(a) See Above, Ch. XII, 61-63, n. 79-84, Ch. III, 92-93, n. 36-38, 94-96, n. 47-56.

(b) There were also M.P.'s who were members of the Alliance. With the available evidence, the closest figure was thirty-one members. (Alliance, M. B. 1901-1918, Annual Meeting of the Executive Board, 9 November 1905, 7; "Jews and Other Saturdarians Answered," The Lord's Day Advocate, 6.) A noted feature was the individualism displayed by these M.P.'s in their voting pattern on a Jewish exemption.

S.E. - Ames, Bickerdike
S(S.11)E. - R. Borden
O:E. - Miller, McKenzie, R. Smith

32(a) See Above, Ch. I, 5, n. 26. Also, Canada Yearbook, 1912, 28, Chart #16 - Out of this group so as to establish the numerical strength of these dominant Protestant sects, this author used Anglicans in place of Church of Englanders because the latter did not appear in the statistics. Also, Reformed Episcopalians did not appear in the statistical table but no substitution was made.

1901 - Total population - 5,371,315
- Protestants - 2,787,090
1911 - Total population - 7,206,643
- Protestants - 3,654,953

(b) Ibid., 23, Chart #13.

1901 - Total population
- British (English Canadian) - 3,063,195
1911 - Total population - 7,206,643
- British (English Canadian) - 3,896,985

33(a)
Debates, Commons, LXXVII (1906): col. 6306.

(b)
(1) Within this context, other notable consolidations were apparent, yet offshoots of the cultural diversity. Limitation is set to those legislators who spoke during the debate on Section 11. Aside from the ethnic connection, in a religious breakdown, every Roman Catholic spoke in favour of an exemption. The Protestants varied from wanting to grant any type of exemption to not wishing to grant one at all. Excluding French Canadians, because the vast majority were Roman Catholic, English Canadian Roman Catholics were: Connnee, Macdonnell, Devlin and Monk (split parentage).

(2) Furthermore, aside from religious affiliation, it is noticed that English Canadians who lived in Quebec also favoured a Jewish exemption. (French Canadians who lived outside of Quebec remained SILENT during the debate.) The English Canadian legislators were: Fisher, Ames, Bickerdike and Monk (split parentage).

(c)
Through the parliamentarians who spoke during the debate, party consolidation was definitely non-existent.

34 See Above, Ch. V, 157, n. 76-78.

35 Debates, Commons, LXXVII (1906): col. 6310.

36 See Above, Ch. III, n. 43-46.

37 Ibid., Ch. I, 21, n. 104.

38 Debates, Commons, LXXVI (1906): col. 5625.

39 Ibid., LXXVII (1906): col. 6353.

40 Contemporary viewpoints on this subject stated that the Lord's Day Act was passed by Parliament under the criminal law thereby making the Act: purely religious, prescribed religious obligations, supported a Christian tenet and that Christianity constituted part of the law of the land. (See Robertson v. Queen, 485, 487; Laskin, "Sunday Bowling Case," 149-150; Ontario Law Reform

Turning directly to the opinion of the Canadian Supreme Court, the aforementioned is clearly evident. In his dissent, Cartwright, J. expressed "that the purpose and effect of the Lord's Day Act are to compel, under penal sanctions of the criminal law, the observance of Sunday as a holy day by all the inhabitants of Canada..." (Robertson v. Queen, 438.) On the other hand, the ruling of the Supreme Court expressed by Ritchie, J. concurred that the effect of the Act upon those who observed a day other than Sunday as their religious day of rest was purely monetary. The purpose of the Act to Ritchie was irrelevant. (The purpose of the Act to Ritchie was the same as Cartwright's. See Ibid., 494.) This author contends that both interpretations were wrong. The purpose and effect of the Lord's Day Act upon EVERYONE was PURELY MONETARY. The power which Parliament possessed under the criminal law to deal with rest-day legislation was the SECULAR-LABOURING ASPECTS OF THE DAY - VIA MORAL OBLIGATIONS - INHERENT IN ALL (MONOTHEISTIC) RELIGIONS.

Because of the author's interpretation of the Lord's Day Act of 1906, he endorses that the ruling of the Supreme Court concerning the purpose and effect of the Act, was a misinterpretation of the Act as intended by the legislators. Therefore, in contemporary times, the Act is also misunderstood. This author believes that the whims of the ruling majority were respected in choosing Sunday as the National Day of Rest. However, contemporary sources have viewed this as due to the religious affiliation of the ruling majority upholding Christian dogma. Therefore, contemporary sources did not account for the important secular-labouring aspects of majority rule.

Furthermore, this author contends that substituting a title for the Lord's Day Act (i.e., An Act to Create a National Day of Rest) but retaining its provisions, the Act would retain its constitutional validity no matter which day of the week was chosen for the National Day of Rest. See Below, Ch. VI, n. 42(b).

41(a)

See Above, Ch. I, 23-24, n. 128-134, Ch. IV, 118, n. 10,124-125, n. 54-56. Butler, "Legislation?...Grounds
and Limitations," 197-200.

(b) This author contends that the Lord's Day Act is not an infringement upon either freedom of conscience or religion. (Even though the Canadian Supreme Court ruled that the Act was not an infringement upon freedom of religion, this author disagrees not with the judgement but the reasons behind the judgement.) (See Above, Ch. VI, n. 40. For an interpretation of Canadian judicial opinion regarding the concept of freedom of religion with respect to the Lord's Day Act of 1906 and the Canadian Bill of Rights, see Laskin, "Bowling Case," 147-156.)

Even though the Act did not require any religious observance of the day in form of church attendance or worship, the Act required everyone to rest (not to work). An important question arises. Is resting fulfilling a religious requirement of the day? If so, the Act would be an infringement upon one's freedom of conscience and religion. The individual [Jew] would be forced to conform to a religious tenet, dogma or doctrine which he does not follow nor would his faith condone. Nonetheless, this supposition is invalid. Merely resting on Sunday does not fulfill any religious obligations of the day. For an individual to fulfill the religious requirements of the day according to his sect of Christianity, he must attend church service for worship. For the remainder of the day the individual must rest. However, he must rest in accordance with the prescribed conditions set forth by his respective religious sect. (See Above, Ch. I, n. 156(c).) Since the prime consideration of Sunday was worship, Christianity instituted Sunday rest for the purpose of promoting Sunday worship. (J. Hastings, ed., Encyclopedia of Religion and Ethics, XII (New York, 1921), 111; Sir M. J. McTaggart Stewart, "In Relation to Social Functions," in The World's Rest Day, ed. R. Mackenzie (Edinburgh, MCMIX), 97; Rev. Prof. W. P. Paterson, "Uses of the Lord's Day," in The World's Rest Day, ed. R. Mackenzie (Edinburgh, MCMIX), 225; Christie, "Presbyterian Church," 249; See Above, CH. V, 145, n. 16, 17.) Therefore, if one did not worship and only rested in accordance with secular law, the individual would not be fulfilling any religious requirements of the day. Even though the National Day of Rest was Sunday, the Act dealt not with worship, but only rest. No form of any Christian religious obligation is fulfilled by one who abstains from labour on Sunday. Therefore, under these prescribed conditions, the Lord's Day Act is not an infringement upon freedom of conscience or religion.
42 (a) 
Ibid., Ch. I, 23-24, n. 129-133.

(b) 
A question arises concerning the title - An Act respecting the Lord's Day: Debates, Senate, Session 1906: 1224-1225 - The title was changed to "An Act respecting Sunday." Debates, Commons, LXXVII (1906): col. 7664-7666 - The House did not concur with this amendment. The title reverted back to the original one. Aylesworth called the change "mere verbal alteration" and argued that the term, Lord's Day, had been traditionally used in Great Britain and in Canada through legislative recognition. Nonetheless, the importance of the title with respect to this author's religious arguments was effectively stated by Aylesworth. See Ibid., col. 7665 - "...there is nothing in the change to affect the meaning of operation of the statute."

43 See Above, Ch. III, 86, n. 19, Ch. V, 140-141, n. 157, n. 75-78.


45 See Above, Ch. I, 23, n. 122-124, 24, n. 137, Ch. IV, 117, n. 4, 118, n. 11, 123, n. 43-45, 125, n. 57, Ch. VI, n. 40.


47 See Above, Ch. I, 22, n. 115(a).

48 Ibid., n. 115(b).

49 (a) 
Ibid., Ch. IV, 121-122, n. 35-40, O.E., Ch. V, 146, n, 23-25, S(B.A.)E, 154-155, n. 66-70, S(S.11)E.

(b) 
A. Hurt, Truth About the Jews. Told by a Gentile, with an introduction by Dr. R. H. Bell (Chicago, 1922), 233 - All religious denominations "are engaged in a political war against one another, but every object of strife is overshadowed by the economic consideration."
Ontario Law Reform Commission, Report, 59-60 - It claimed with respect to the Lord's Day Act "that secular objects were sought or allowed only in so far as they were compatible with Christianity. The Sabbatarian exemption clause, for example, was considered incompatible with the protection of the Christian Sabbath and was defeated." This author IS IN FULL DISAGREEMENT WITH THE COMMISSION'S CONTENTIONS.

Schmeiser, Civil Liberties, 55-56 - It was held up until 1917 that Christianity constituted part of the law of England. This ruling was also applicable to Canada. But, in that year, the British judiciary overruled such a contention in the case Bowman v. Secular Society, Limited [1917], A.C. 406. The court claimed that Christianity did not constitute part of the law of England, thereby making the same hold true for Canada. A new precedent was established. In this context, when applying Maitland's theory of common law in its broadest sense, Christianity never constituted part of the law of England or Canada. (Maitland, quoted in Jackett, "Canadian Law in History and Theory," 28.)

Common law is in theory traditional law - that which has always been and still is law insofar as it had not been overruled by statute ordinance. More and more common law is gradually evolved as ever new cases arise, but the judges are not conceived as making new law - they have no right to do that - rather they are but declaring what has always been law.

Using the theoretical argument of common law, even though valid, has the advantage of hindsight in declaring that Christianity never constituted part of the law of Canada. It did constitute part of Canadian law according to the legislators and the judiciary in 1906. But, this author contends that Christianity being part of the law of the land had no bearing on the manner in which the Lord's Day Act was enacted. Furthermore, Christianity being part of the law of the land had no bearing on the decision of denying a Jewish exemption within the Act. The purpose of the Act was to create a National Day of Rest under the criminal law (moral considerations) by granting one day's rest in seven from labour for the benefit of the nation. Yet, in so doing, the religious connection of the day was omitted. (See Above, Ch. VI, n. 40, 42(b).) Therefore, the idea of Christianity being part of the law of the land and Parliament supporting a Christian
tenet with respect to the Lord's Day Act, is incompatible with the purpose, principle and directive of the measure. This author asserts that it was majority rule, pertaining to first-day Christians via the secular-labouring aspects of the day, which denied the Jews an exemption. The measure, however, was instituted for everyone under the guise of majority rule. It was not enacted under the guise that Christianity was part of the law of the land or that Parliament was upholding a Christian tenet. Therefore, with regards to the Lord's Day Act itself, the common law theory that Christianity never constituted part of the law of the land was put into effect eleven years prior to judicial opinion establishing such a precedent. The Lord's Day Act was, in its own sphere, statutory law which overruled the common law theory at that time. Also, Butler, "Legislation?...Grounds and Limitations," 198 - In order to enact Sunday law, it is not necessary that Christianity constitute part of the law of the land.

Since the ruling majority were first-day Christians, it was not Christianity but its norms which the nation followed at that time that constituted part of the law of the land. If Christianity had constituted part of Canadian law, a Jewish exemption should have been granted under the guise of the Golden Rule. (See Above, Ch. IV, n. 52.) However, Christianity did not constitute part of the law of the land and the Jews were not exempted from the provisions of the Lord's Day Act. Thus, it was the norms of Christianity which the ruling majority followed that denied the Jews an exemption. (See Below, Ch. VI, 187-188, n. 50.) In this context, the concept which the ruling majority applied with regards to the Golden Rule was: "Therefore all things whatsoever ye would THINK that man WOULD do to YOU, do YOU EVEN SO TO THEM."

50 Waterman, "Canadian Lord's Day Act of 1906," 121, n. 90 - "Economists calculate the effect upon (aggregate) national income of an initial change in the expenditure of any point in the economy by multiplying this change by a coefficient derived from the propensity of the community to save a proportion of incremental income."

51 See Above, Ch. I, 27, n. 150, 151.

52(a) 
Ibid., 27, n. 156.

(b) It appeared that the legislators were upholding a maxim of legal interpretation regarding provincial rights
as contrasted with minority rights. During the time period in which the Lord's Day Act was adopted, the Privy Council had safeguarded provincial rights, not minority rights. (F. R. Scott, "The Privy Council and Minority Rights," Queen's Quarterly XXXVII (Autumn 1901:667.) This was an example where the French Canadians combined minority rights and provincial rights. However, for Canadian Jewry, minority rights was insufficient to secure an exemption.

53 Debates, Senate, Session 1906:1219-1220.

54 Debates, House, LXXVII (1906):col. 6285.

55(a) "Religious Liberty," The Lord's Day Advocate V, no. 10 (September 1906), 11 - "This is the nation's law, not the church's, and it deals not with the religious recognition of the Sabbath, but with the observance of the day solely from the standpoint of rest and that in the interest of national well being."

(b) This author strictly adheres to the decision that the denial of a Jewish exemption was an expression of nationalism in its own unique context. Despite the time period being one of Anti-Semitism in Canada (See Above, Ch. II, 52-55, 38-57.), the decision by Parliament was not in an anti-semitic vein. The legislators who opposed a Jewish exemption did not make direct anti-semitic remarks. Furthermore, other Non-conformists who lived in Canada were not of Semitic origin, but were also affected by Parliament's decision. Anti-Semitism and parliamentary judgement did not coincide whatsoever.

56 See Above, Ch. I, n. 153.

57 Debates, Senate, Session 1906:1148.
CONCLUSION

CANADIAN JEWRY AND THE DENIAL OF AN EXEMPTION

Reaction to the parliamentary decision by the Lord's Day Alliance and Canadian Jewry, the two major lobby groups which pressed their viewpoints on the legislators, was to be expected. The former was most content with the final outcome of the Jewish Exemption Issue and did not question Parliament's reasons for not acquiescing to the Jewish demands. The Alliance recognized the fact that the Jews were well represented by an influential deputation and counsel which "evidently impressed the (parliamentary select) Committee," but in the final analysis failed to move the whole parliamentary body. Accordingly, the Alliance emerged as the victor in the struggle.

The Jews, on the other hand, were discontented with Parliament's failure to grant them an exemption. They viewed the Lord's Day Act as "unique, without precedent or parallel." It exemplified the impossible task of framing a Sunday law to suit modern business conditions by allowing an exception to the rule of mandatory rest for commercial reasons, while an exception based upon religious convictions was a violation to the rule of mandatory rest and it was deemed a punishable offence. It was evident that the Jewish community in
Canada did not accept parliamentary justification based on the financial-economic, secular-labour aspects of the national day of rest. The Jews felt that, since exempted groups could work on Sunday as well as other people being able to work a six-day week and maintain their religious convictions while the Jews could not, the Lord's Day Act was "nothing but a piece of legislative humbug with a touch of bigotry." 6

Bigotry in the eyes of the Jews did not end with the Act but extended to the legislators who formulated it. The Jews viewed the actions of the English Canadian Protestants as intolerable because it was assumed that these legislators would uphold British fair play and defend the right of freedom of conscience. But this was not the case. The issue opened Jewish eyes "to the intolerance of those whom we [the Jews] regard as friends of religious freedom and upholders of British fair play." 7 Canadian Jewry's feeling was shared by their brethren in England who also commented on the situation; it was disappointing, stated The London Jewish Chronicle, "to find a great British colony which prides itself upon its progressive qualities lagging behind the motherland." 8

The victories which the Jews gained up to the time of parliamentary decision, ended abruptly in defeat. This defeat was a bitter one which the Jews did not accept in their hearts because they felt an injustice had been done.
Yet, they had to respect Parliament's decision so far as following the prescribed regulations, because the Jews felt themselves to be an intrinsic part of the Canadian nation, not merely a separate entity posing as Canadian residents.

The arguments presented by Canadian Jewry in their appeal to Parliament for an exemption were not accepted by the legislative body, but were rather effectively used to justify Parliament's denial of an exemption. With the introduction of federal Sunday law in Parliament which omitted an exemption for the religious dissenting minority, questions arose concerning the legality of the situation. Since the religious majority's sentiments had been taken into consideration, the Jews felt that they should be given the same treatment. The main concern of Canadian Jewry in this situation was to aid their religiously conscious brethren who would be at a financial disadvantage because of the law. To achieve this goal they struggled for an exemption clause which they felt would cover their case under the banner of respect for religio-conscientious convictions. The Jewish element believed that everyone's conscientious convictions would be respected in the granting and enforcement of such an exemption. They also felt that if an exemption was not given that freedom of conscience and religion would be curtailed, equality of religious denominations would not be maintained and
the Christian Church would have been firmly established in the Canadian Constitution. 13

Yet, contrary to Jewish opinion, freedom of conscience and religion continued to exist in Canada 14 because everyone was free to conscientiously follow their religious convictions with impunity. 15 Equality of religious denominations was similarly maintained. 16 Parliament still viewed denominations as voluntary associations which were recognized by law. Their property was protected and state interference within the religious organization and faith was non-existent unless civil [secular] rights were violated. 17 In this light, the Lord's Day Act was initiated and enforced for the benefit of all Canadians regardless of religious professions and beliefs. 18

Also, as Canada had no established church in terms of dogma, tenets, doctrine or form of worship, 19 status quo was maintained in spite of the Lord's Day Act. Ex- tricating itself from any religious obligations of the day, Parliament dealt with the moral aspect of the national day of rest, the cessation from labour. Since this was in compliance with the moral values of all (monotheistic) religions - one day's rest in seven, 20 no religious entity was ever constitutionally endorsed by the enactment. 21 Therefore, the only reason Parliament (or the constitution) ever appeared to infringe upon the religious rights or privileges of the Jews was that Sunday was chosen as the
national day of rest. It was implemented to conform to
the dictates of the ruling majority in a democratic society.
None of these freedoms were curtailed, but were rather sus-
tained in the passage of the Lord's Day Act within the
framework of Canadian law.

The final argument presented by Canadian Jewry
based on conscientious convictions was one which would be
deeply felt by those for whom an exemption was intended.
As the exemption was initiated to protect Jews who adhered
to the laws, customs and traditions of their religion, the
Jewish interests indicated that no matter what the ultimate
decision over an exemption was, Canadian Jewry was obliged
to obey the law because their religion taught them to do
so. With the difficulties placed upon the Jew because
of Sunday law compounded by this religious dilemma,
Canadian Jewry was hopeful that this emotional religious
appeal might attract support to their side. This religious
law is known as D'ina D'malkuta D'ina — "the law of the
kingdom (the state) is the law."

This diasporic law could only be applied to secular
matters of a diasporic country. It was never to be
applied when the basis of a religious system was being
forced upon the Jew. The diasporic law was never in-
voked when Jewish law was at stake, nor could governments
legislate in a manner which would nullify or abrogate
Judaic law. But, in certain instances in which secular
and Jewish law did co-exist, Jews were compelled to follow secular law. The diasporic law also stressed that secular law must take into consideration all citizens in which their equality before the law was evident. Whenever discriminatory laws existed, they were invalid in the eyes of Judaic law unless they were of a civil or criminal nature [secular in nature] intended to protect the majority of citizens. These being the major tenets of D'ina D'malkuta D'ina, the Jew should easily have adapted to the Lord's Day Act.

Canada was a diasporic country with a considerable Jewish population. The Lord's Day Act was a secular enactment under the criminal law which was specified as an offence against religion. Parliament, with its authority to legislate on religious matters where civil [secular] rights were concerned, did so on a moral concept which was accepted by all (monotheistic) religions, that of the secular-labouring aspects of a day of rest. Parliament created a national day of rest for Canada, void of implication regarding religious adherence. Since the Act was directed for the welfare of the country, Sunday was accepted as the rest day because the ruling majority were first-day Christians. In spite of this, the measure was not discriminatory to Jews: it was enacted for everyone's benefit based on a principle which provided for at least one day of rest in seven in which cessation
from labour was mandatory. The law, therefore, fell equally upon everyone. Even though Sunday was designated as the legal day of rest, the measure forced no one to observe the day in any religious manner. The enactment neither hindered one from observing his religious Sabbath, nor did it force one to break any tenet of his religion. Most importantly, it did nothing to nullify Judaic law whatsoever.

The Lord's Day Act fell neatly within the limits of D'ina D'malkuta D'ina despite the omission of an exemption. According to the Jewish religion, the Canadian Jew had to abide by the regulations of the Lord's Day Act because of the diasporic code of "the law of the land is the land." Therefore, the legal and religious arguments used by Canadian Jewry to acquire an exemption were effectively suited to justify Parliament's decision to deny the Jews an exemption.

Moral affiliations were the focal point in Parliament's reasoning behind a national day of rest. Parliament dealt with the issue with moral obligation in mind (that of granting the populace of Canada a day's rest from labour each week); yet, in doing so, Parliament had to take into account the moral considerations of the Canadian populace (that is, which day would be the most beneficial to the Canadian people as the national day of rest). A religiously oriented problem arose regarding the Jews:
since Sunday was the preferred day of rest by the first-day Christian majority, would the religious dissenting minority be allowed an exemption? Canadian Jews found themselves in a predicament in that their moral considerations, one day's rest in seven, were accounted for by Parliament, yet that day which the Jews religiously held as their Sabbath, Saturday, did not coincide with the national day of rest, Sunday, as in the case of the first-day Christian majority.

Morally, however, the Jewish cause in the Lord's Day Act was without a strong base, for "in politics of a constitution, claims based on moral principles are often less successful than those based on specific legal guarantees." Canadian Jewry did have specific guarantees in which equality of religious denominations was granted through constitutional and legal citations; but when moral considerations involving the nation at large were the main concern, legal interpretation would not side with the Jewish cause. Equality of religious rights in this context with the Lord's Day Act did not constitute respect for minority rights. This being the case, legal considerations would not support the oppressed.

Yet, over and above these considerations, national welfare, that is, majority rule in Canada, was of primary importance in determining whether the Jews would receive an exemption. In a democratic society the majority must
rule. In such a society which exists in Canada, "minorities must depend on persuading majorities of the justice of their cause." 38 Any religiously grounded moral affiliations would be based generally on custom, practical considerations or political expediency as seen by the ruling majority. 39 Since the first-day Christian majority saw no practical validity for granting a minority exemption along any of these lines, the Jewish Exemption Issue was completely dropped in the Federal Lord's Day Act of 1906.
FOOTNOTES

1. The Alliance's ally, organized labour, was also content. Forsey, "Labour and the Lord's Day Act," 6 - John G. O'Donoghue, Parliamentary Solicitor of the Canadian Trades and Labour Congress, stated, in his capacity as the labour representative, that he was against a Jewish exemption. It was opposed on principle because the results of such a provision would be dangerous.

2. See Above, Ch. VI, n. 3(b), 5.

3. Alliance, Act and Seventh-Day People, 1.

4. On other aspects of the Act, the Alliance was not victorious. See Above, Ch. I, n. 115(b)-(f).

5. The Jewish Times, (Montreal), 13 July 1906.


7. The Jewish Times, (Montreal), 13 July 1906.


9. Throughout the debate in Parliament on Section 11, these arguments received support from the legislators who favoured an exemption. See Above, Ch. IV, 123-132, n. 42-102, passim.

10. (a) Ibid., Ch. III, 84-85, n. 9, 10.

(b) While the Jews were primarily interested in taking care of their own by means of an exemption clause, they had done to the non-Jew that which they claimed the Alliance had done to them. When the Alliance gave the draft bill to Fitzpatrick to introduce in the Commons, the Alliance did not respect the conscientious convictions of any group other than first-day (Protestant) Christians. Likewise, the Jews did not respect the conscientious convictions of any group outside of their own (and other seventh-day observers). While vying for an exemption, the Jewish interests did not consider the non-Jews who worked in Jewish-owned firms and how the exemption would
affect these non-Jewish labourers. The Jewish interests, when questioned about this, merely stated that the non-Jew would have to look after his own conscientious convictions. (Ibid., 88-89, n. 26, 27.) Therefore, the denial of an exemption appeared to be an act of retributive justice because the Jewish interests had claimed throughout their struggle for an exemption, that they were in concert with the concept of "not forcing an individual to choose between his financial stature and his religious convictions." Ibid., 84, n. 9.

11 Ibid., Ch. II, 57-58, n. 69, 59, n. 75. Canadian Jewish Congress, "Brief," 6. Robertson v. Queen, 485 - This was the reason for the appeal.

12 See Above, Ch. III, 103, n. 78.

13 Ibid., n. 80.


15 See Above, Ch. VI, n. 40, 49(d). Butler, "Legislation...Grounds and Limitations," 201.


17 Dunnet v. Forneri [1872], 25 Gr. 199 per, Proudfoot V.C. 206, quoted in Schmeiser, Civil Liberties, 56, n. 1.

18 See Above, Ch. VI, n. 45, 49(d).

19 A. H. Young, "A Fallacy in Canadian History." Canadian Historical Review XV, no. 4 (December 1934):351, quoted in Schmeiser, Civil Liberties, 55, n. 1.

20 See Above, Ch. I, 23, n. 126-129.

21(a) H. W. Rodgers, "An Address," in The Sunday

(b) Canadian Jewry complained that the Alliance wanted to make people more religious by law, rather than by moral suasion in which Judaism held its strength. (See Above, Ch. II, 57, n. 65, 58, 70.) But the Lord's Day Act itself would not make people more religious. Rather, it gave people the opportunity to do so if they desired. Even though the Jews tried to secure an exemption for those who wished to sustain their religious convictions while not incurring financial hardships, the denial of an exemption should not provoke Jews to lose sight of their religious consciousness despite the complexity of modern economic conditions. Jewry does not need legal enactments to make an individual religious. The pious, Orthodox Jew, will remain faithful to his religion under any circumstances. For an argument regarding the economic situation of the Sabbath and its observance in the modern world, see Grunfeld, The Sabbath, 77-87.

22(a) See Above, Ch. VI, n. 44.

(b) Rabbi J. Berger, "The Guarantees of Liberty in the Canadian Constitution," in Jewish Daily Eagle, Centennial Jubilee Edition, 1832-1932, ed. B. G. Sack (Montréal, 1932), 29 - "The main principle underlying the (Canadian) constitution is that man has certain 'natural rights' and that society controls his exercise of those rights only to the extent necessary to give proper play to the like rights of his fellow men."

23 See Above, Ch. II, 56, n. 60.

24 L. Landman, Jewish Law in Diaspora: Confrontation and Accommodation (Philadelphia, 1968), 2 - "The Talmud states that with regard to civil [secular] law, the law is always to be decided in accordance with the opinion of Samuel." Ibid., 115, 22, 148, 39, 15 - The diasporic law was conceived on the premise of the difficulties which the Jews would encounter while living in diaspora. It provided the Jewish people with a modus vivendi in solving the problems where Judaic law and secular law conflicted. In this manner, the Jew could remain loyal to his ancestral way of life while living in harmony with the laws of the nation in which he dwelled. The diasporic law was expounded in the third century, C.E. by the Babylonian sage
Samuel. This law was constantly developed to meet the prevailing conditions in every nation at all times. Even though Jews had to abide by secular law, Rabbinical consensus indicated that secular law never assumed the status of Jewish law.

25 Ibid., 115, 125.
26 Ibid., 99.
27 Ibid., 125, 128.
28 Ibid., 148.
29 Ibid., 48.
30 Ibid., 147-148.
31 Civil in this case means as opposed to religious.
32 See Above, Ch. VI, 185-186, n. 40, 41.
33 Ibid., n. 44.
34 Ibid., 187, n. 45, 185-186, n. 40.
35 Ibid., n. 49(d), n. 41, Conclusion, 204, n. 19-21.
36 Cook, Minority Rights, 62-63.
37 See Above, Ch. VI,
39 With provincial rights being recognized in the Act (See Above, Ch. I, n. 152), Canadian Jewry still had a chance to be exempted from the provisions of the Lord's Day Act. However, an exemption would be limited strictly on a provincial level. In 1906, the Quebec Legislature passed an exemption clause in the provincial Sunday law for seventh-day observers. This law was similar to the purported exemption, Section 11, of the Federal Lord's Day
Bill. No other provincial Sunday law in Canada contained a similar provision. Nonetheless, the Jewish exemption in Quebec's Sunday law was abrogated in 1936. See Quebec, Laws, Statutes, etc. An Act Respecting Sunday Observance, 1906, 7 Ed. VII, Ch. 42, Statutes of the Province of Quebec, 1907, 84 (sec. 6). Also, Ibid., An Act to Repeal Section 7 of the Sunday Observance Act, 1936, 1 Ed. VIII, ch. 4, Statutes of the Province of Quebec, 1936, 13. Also, see Ontario Law Reform Commission, Report, 353.
APPENDIX

6—EDWARD VII

CHAP. 27.

An Act respecting the Lord's Day.

[Assented to 13th July, 1906.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:-

1. In this Act, unless the context otherwise requires,—
   (a) "The Lord's Day" means the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon;
   (b) "Person" has the meaning which it has in the Criminal Code, 1892;
   (c) "Vessel" includes any kind of vessel or boat used for conveying passengers or freight by water;
   (d) "Railway" includes steam railway, electric railway, street railway and tramway;
   (e) "Performance" includes any game, match, sport, contest, exhibition or entertainment;
   (f) "Employer" includes every person to whose orders or directions any other person is by his employment bound to conform.
   (g) "Provincial Act" means the charter of any municipality or any public Act of any province whether passed before or since Confederation.

2. It shall not be lawful for any person on the Lord's Day, except as provided herein or in any Provincial Act or law now or hereafter in force, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day any work, business, or labour.

3. Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or
mercy, and for greater certainty, but not so as to restrict the ordinary meaning of the expression "work of necessity or mercy," it is hereby declared that it shall be deemed to include the following classes of work:

(a) Any necessary or customary work in connection with divine worship;
(b) Work for the relief of sickness and suffering, including the sale of drugs, medicines and surgical appliances by retail;
(c) Receiving, transmitting, or delivering telegraph or telephone messages;
(d) Starting or maintaining fires, making repairs to furnaces and repairs in cases of emergency, and doing any other work, when such fires, repairs or work are essential to any industry or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry, or its product or to the plant or property used in such process;
(e) Starting or maintaining fires, and ventilating, pumping out, and inspecting mines, when any such work is essential to the protection of property, life or health;
(f) Any work without the doing of which on the Lord's Day, electric current, light, heat, cold air, water or gas cannot be continuously supplied for lawful purposes;
(g) The conveying of travellers and work incidental thereto;
(h) The continuance to their destination of trains and vessels in transit when the Lord's Day beings, and work incidental thereto;
(i) Loading and unloading merchandise, at intermediate points, on or from passenger boats or passenger trains;
(j) Keeping railway tracks clear of snow or ice, making repairs in cases of emergency, or doing any work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day;
(k) Work before six o'clock in the forenoon and after eight o'clock in the afternoon of yard crews in handling cars in railway yards;
(l) Loading, unloading and operating any ocean-going vessel which otherwise would be unduly delayed after her scheduled time of sailing, or any vessel which otherwise would be in imminent danger of being stopped by the closing of navigation; or loading or unloading before seven o'clock in the morning or after eight o'clock in the afternoon any grain, coal or ore carrying vessel after the fifteenth of September;
(m) The caring for milk, cheese, and live animals, and the unloading of and caring for perishable products and live animals, arriving at any point during the Lord's Day.
(n) The operation of any toll or drawbridge, or any ferry or boat, authorized by competent authority to carry passengers on the Lord's Day;
(o) The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act;
(p) Any unavoidable work after six o'clock in the afternoon of the Lord's Day, in the preparation of the regular Monday morning edition of a daily newspaper;
(q) The conveying His Majesty's mails and work incidental thereto;
(r) The delivery of milk for domestic use, and the work of domestic servants and of watchmen;
(s) The operation by any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch now regularly so operated;
(t) Work done by any person in the public service of His Majesty while acting therein under any regulation or direction of any Department of the Government;
(u) Any unavoidable work by fishermen after six o'clock in the afternoon of the Lord's Day in the taking of fish;
(v) All operations connected with the making of maple sugar and maple syrup in the maple grove;
(w) Any unavoidable work on the Lord's Day to save property in cases of emergency or where such property is in imminent danger of destruction or serious injury;
(x) Any work which the Board of Railway Commissioners for Canada, having regard to the object of this Act and with the object of preventing undue delay, deem necessary to permit in connection with the freight traffic of any railway. The costs of all applications to the Board under this paragraph shall be borne by the applicant, and, if more than one, in such proportions as the Board determines. Notice of application, in which the reasons to be relied on shall be fully set out, shall be given to the Department of Railways and Canals. In all other respects the procedure under The Railway Act, 1903, shall, so far as applicable, apply.

4. Except in cases of emergency, it shall not be lawful for any person to require any employee engaged in any work described in paragraph (c) of section 3 of this Act or in the work of any industrial process or in connection with transportation, to do on the Lord's Day the usual work of his ordinary calling, unless such employee is allowed during the next six days of such week, twenty-four consecutive hours without labour.
2. This section shall not apply to any employee
engaged in the work of any industrial process in which the regular day's labour of such employee is not of more than eight hours' duration.

5. It shall not be lawful for any person, on the Lord's Day, except as provided in any Provincial Act or law now or hereafter in force, to engage in any public game or contest for gain, or for any prize or reward, or to be present thereat, or to provide, engage in, or be present at any performance or public meeting elsewhere than in a church, at which any fee is charged, directly or indirectly, either for admission to such performance or meeting, or to any place within which the same is provided, or for any service or privilege thereat.

2. When any performance at which an admission fee or any other fee is so charged is provided in any building or place to which persons are conveyed for hire by the proprietors or managers of such performance or by any one acting as their agent or under their control, the charge for such conveyance shall be deemed an indirect payment of such fee within the meaning of this section.

6. It shall not be lawful for any person on the Lord's Day, except as provided by any Provincial Act or law now or hereafter in force, to run, conduct, or convey by any mode of conveyance any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amusement or pleasure, and passengers so conveyed shall not be deemed to be travellers within the meaning of this Act.

7. It shall not be lawful for any person to advertise in any manner whatsoever any performance or other thing prohibited by this Act.

2. It shall not be lawful for any person to advertise in Canada in any manner whatsoever any performance or other thing which if given or done in Canada would be a violation of this Act.

8. It shall not be lawful for any person on the Lord's Day to shoot with or use any gun, rifle or other similar engine, either for gain or in such a manner or in such places as to disturb other persons in attendance at public worship or in the observance of that day.

9. It shall not be lawful for any person to bring into Canada for sale or distribution, or to sell or distribute within Canada, on the Lord's Day, any foreign newspaper or publication classified as a newspaper.
10. Every person who violates any of the provisions of this Act shall for each offence be liable, on summary conviction, to a fine, not less than one dollar and not exceeding forty dollars, together with the cost of prosecution.

11. Every employer who authorizes or directs anything to be done in violation of any provision of this Act, shall for each offence be liable, on summary conviction, to a fine not exceeding one hundred dollars and not less than twenty dollars, in addition to any other penalty prescribed by law for the same offence.

12. Every corporation which authorizes, directs or permits its employees to carry on any part of the business of such corporation in violation of any of the provisions of this Act, shall be liable, on summary conviction before two justices of the peace, for the first offence to a penalty not exceeding two hundred and fifty dollars and not less than fifty dollars, and for each subsequent offence to a penalty not exceeding five hundred dollars and not less than one hundred dollars, in addition to any other penalty prescribed by law for the same offence.

13. Nothing herein shall prevent the operation on the Lord's Day for passenger traffic of any railway subject to the legislative authority of any province unless such railway is prohibited by provincial authority from so operating.

14. Nothing herein shall be construed to repeal or in any way affect any provisions of any Act or law relating in any way to the observance of the Lord's Day in force in any province of Canada when this Act comes into force; and where any person violates any of the provisions of this Act, and such offence is also a violation of any other Act or law, the offender may be proceeded against either under the provisions of this Act or under the provisions of any other Act or law applicable to the offence charged.

15. No action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney General for the province in which the offence is alleged to have been committed, nor after the expiration of sixty
days from the time of the commission of the alleged offence.

16. This Act shall come into force on the first day of March, one thousand nine hundred and seven.
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