

Winter 1997

NEWFOUNDLAND SCHOOL REFORMS

Since the Senate passed an amended bill, the House of Commons was forced to pass the original Newfoundland constitutional change a second time before much needed school reforms could begin.

As with the first Commons vote, the second, in another free vote, easily passed 171 - 41.

Summer 1997

Churches Will Lose Control of Newfoundland's Schools



Senators discussing constitutional amendments to remove religious influence from the schools of Quebec and Newfoundland.

The people of Newfoundland voted overwhelmingly in a referendum held on September 2nd to remove church control of their education system. This will eliminate publicly-funded religious indoctrination and end discrimination against religious minorities.

At the present time, eight Christian religious denominations have constitutional authority to own and operate their schools. (These are: Anglican, Moravian, Pentecostal, Presbyterian, Roman Catholic, Salvation Army, Seventh

Day Adventist, and United. See *Friends* newsletter headed "Newfoundland's Patchwork", February 1990, Volume 6, Number 2.)

At one point there were 1266 schools, more than half of which had only one or two rooms, administered by 270 school boards. Through the late 1960s and early 1970s the United, Anglican, Salvation Army, Presbyterian and Moravian churches established integrated schools throughout the province which reduced the total number of schools to 531 run by 26 boards.

A Royal Commission reported in 1992 and recommended a reduction in church control. Premier Clyde Wells spent two and a half years in negotiation and finally proposed a slightly modified constitutional clause (Term 17) for approval through a referendum. After approval by the federal government, a revised school act was in the process of being implemented when a court case, launched by the Roman Catholic and Pentecostal churches, resulted in an injunction to stop the process.

Premier Tobin saw this as the last straw and called a referendum for September 2nd to settle the matter once and for all.

The referendum question was: **"Do you support a single school system where all children, regardless of their religious affiliation, attend the same schools where opportunities for religious education and observances are provided?"**

With all votes counted, almost 73 per cent agreed with the government initiative to end control of Newfoundland's schools by churches, a control that has existed for more than 165 years.

Despite efforts by church leaders, the results suggest that a majority of Roman Catholics and Pentecostals sided with the government and voted Yes. Roman Catholics make up about 37 per cent of Newfoundland's population and Pentecostals about seven per cent.

Mr. Tobin called the vote a clear and strong mandate "to end the separation of our children."

He described the size of the Yes majority as without precedent in the history of referendum votes in Canada.

The results were a startling contrast to the referendum just two years ago when the government of then Premier Clyde Wells suggested diminished control of the school system but did not attempt to eliminate the influence of the churches.

In September of 1995, just 54 per cent-of the voters supported the compromise formula put forward by the government.

RELIGIOUS INTOLERANCE SPAWNED NEWFOUNDLAND'S SEPARATE SCHOOLS

The following is an article by Peter Fenwick, a columnist for the St. John's Evening Telegram. Mr. Fenwick is a political commentator living in Cape George, Newfoundland.

He is a former leader of the province's New Democratic Party and a former Member of Newfoundland's House of Assembly. Reprint permission requested.

The battle for a public school system did not start with Clyde Wells, or with Brian Tobin. As unlikely as it may seem, the drive for a common school system predates denominational schooling. It has its roots in the early part of the last century.

Advocates of denominational education have always claimed that tradition and history were on their side; actually it was the partisanship and religious hostility of the nineteenth century that led to the present system. The public schools were actually there first.

In 1823 prior to the institution of a representative legislature, the Newfoundland School Society was established to provide a non-sectarian education system. Within two years this mainly Protestant Society was operating seven non-denominational schools on the east Coast. Even the Benevolent Irish Society, that most Irish Catholic of institutions, established its own non-denominational school, which later became known as the Orphan Asylum School.

Contrary to what people would now have you believe, the early schools not only were non-denominational, they expressly forbade religious education during school hours.

In 1832 Newfoundland elected its first House of Assembly, a group of men who would soon vote public funds to support a non-denominational education system in the fast-growing colony. They would fail, and in that failure would be the foundations of a segmented education system built along denominational lines that would survive for 165 years.

A new wave of more sectarian leaders, among them the Catholic Bishop Fleming and Church of England's Bishop Feild, started demanding separate schools and religious instruction. In the mid-19th century, amid the rising tide of religious intolerance, the House of Assembly was unable to keep to its vision of a common school system. The vote was split and the money distributed along sectarian lines again and again. At the turn of the century more than 780 schools were educating only 35,000 students, run by 216 school boards.

In 1935, the Commission of Government wanted to inject some common sense into the system only to be beaten back by the denominations. It was then that the denominational education committees were established with their power to appoint the local school board members. In 1937 the commission gave up completely and appointed a denomination-dominated council of education to direct policy. The only thing left for the commission to do was to pay teachers salaries. There were 1,200 schools.

Confederation should have been the time for the establishment of a common education system. But Smallwood, fearing he would lose the referendum, tried bribing the Catholics with Term 17, the infamous clause that cemented the

churches' rights into the Constitution for good. Smallwood needn't have tried. Catholics voted against Confederation in droves anyway.

Prior to Tuesday, the most significant victory for the centralizing forces was the coming together of the mainline Protestant denominations in the 1960s. More than 200 Protestant school boards shrunk to 22. The number of schools dropped as well.

Over the years the House of Assembly never stopped fighting for a single school system, even though it failed time and time again. Looking back over that century and a half of frustration, Brian To-bin, Roger Grimes, Clyde Wells and Chris Decker can take great satisfaction in finally seeing the job through. If the vote is Yes next Tuesday, that long fight will effectively be over.

Which brings us to the historic (referendum) vote scheduled for this Tuesday.

Contrary to the arguments and propaganda of the No side, the vote will not be to leave God at the schoolroom door. It will be a reversion to the vision of the men who sat in that first House of Assembly more than 165 years ago, and looking across at the other side, decided that the things that join us as a people are much Stronger than the things that divide us. If we want to build a strong society, then a common school system is a prerequisite.

When the vote is Yes on September 2, the Protestants who started the Newfoundland School Society as a non-denominational school system and the Catholics of the Benevolent Irish Society who established the non-denominational Orphan Asylum School will have finally won the day.

The bigotry and division will finally be put to rest.

A LONG AND DIFFICULT ROAD

The Road to Newfoundland's Education Referendum Has Been A Long And Sometimes Difficult One.

Some Major Highlights

With items from *The Evening Telegram* of August 30, St John's Newfoundland

March 31/49 Newfoundland Joins Canada; the 17th of the Terms of Union reaffirms the right of seven Christian denominations to own and operate their schools.

January 1967 Anglican, United and Salvation Army officials - later joined by the Presbyterians - form the Integrated System.

December 1987 Denominational education rights for Pentecostals are enshrined in the Constitution.

August 7/90 Premier Clyde Wells appoints Leonard Williams to chair *The Royal Commission of Inquiry into the Delivery of Programs and Services in*

- Primary, Elementary, Secondary Education* to examine the provincial education system.
- May 15/92** The Royal Commission's report - *Our Children Our Future* - is released. (See *Friends* newsletter of Fall 1992, Volume 8 Number 4) It's recommendations include a drastically reduced role for the churches in the education system.
- November 17/92** Premier Clyde Wells holds his first meeting with denominational leaders to seek consensus on implementing changes that involve the constitutional role of churches. Meetings continue over the next two and one-half years.
- November 30/93** Premier Wells unveils his government's plan for an educational system under which churches would have no role in school administration.
- June 1/95** Premier Wells says that negotiations with the churches have broken down and the public will vote in a referendum on revising Term 17.
- September 5/95** The referendum is held. 54.4% voted to support revision of Term 17. The turnout for the vote was 52%.
- October 1995** The Newfoundland House of Assembly debates and passes a resolution to amend Term 17.
- December 4/96** After considerable debate and Senate hearings, the House of Commons passes an amended Term 17.
- December 19/96** The House of Assembly passes a new Schools Act and Education Act reducing school boards from 27 to 10 and making them interdenominational.
- February 10/97** School boards begin distributing school registration forms to parents.
- May 1997** School boards across the province announce schools which they have designated denominational and the closure of about 60 schools.
- May 15/97** Pentecostal and Roman Catholic officials initiate legal action for an injunction to prevent school boards from re-designating and closing schools.
- July 8/97** Newfoundland Supreme Court Justice Leo Barry grants an injunction to church authorities effectively halting the education reform process.
- July 31/97** Premier Brian Tobin calls a second referendum for September 2.

EDITORIAL COMMENT

This "Minority" Business

The vocal "NO" side of the Newfoundland referendum on schools, represented by the Roman Catholic and Pentecostal communities, has now moved to Ottawa as opponents of the change urge the prime minister, MPs and senators to protect "minority rights."

An open letter printed in the Ottawa Citizen on September 3rd "On behalf of Roman Catholic parents of Newfoundland and Labrador" stated, in part, that "As concerned parents, we believe the government's conduct during the referendum has

compromised the democratic process. . . By exploiting the referendum 'mandate', the provincial government plans to subordinate the rights of religious minorities to the tyranny of the majority.

In response to this, political scientist Mark Graesser, in an article printed in the Ottawa Citizen of September 4th, said that these arguments about minority rights are "an elaborate •rhetorical device" without solid legal backing. "Given that many Catholics voted for reform, they obviously decided this is not a justifiable privilege worthy of maintaining when there are growing demands on the education system and shrinking resources."

On the minority argument, Newfoundland Senator Bill Romkey said that "All Christian churches were treated equally and they've all lost the same rights. The real minorities are the Jews, Muslims and the Moravians."

Roman Catholics make up 37 per cent of the population of Newfoundland but it is obvious from the referendum results that most Roman Catholics voted Yes. For instance, in two voting districts where the population is more than 90 per cent Roman Catholic, Ferryland and Port au Port, a majority voted Yes. The obvious conclusion is that the 200,000 Roman Catholics in Newfoundland actually prefer to have common schools in which their children attend with all others. **If their "minority rights" were extinguished, they were SELF-extinguished in an open democratic exercise.**

The bishops may continue to argue that they represent their flock, but the flock seems to have abandoned their leadership decisively.

Individual Rights Will be Enhanced by the Amendment

At the same time that the Roman Catholics and the Pentecostals are claiming that their rights will be infringed by the proposed changes, teachers are rejoicing that their rights to be employed regardless of their religion, will finally be recognized.

Brendan Doyle, head of the Newfoundland and Labrador Teachers' Association, said teachers are relieved that if the changes are approved by the federal government, then teachers will no longer be hired by school boards that could make their hiring decisions based on the religion of the applicant.

EDITORIAL COMMENT

Was a Referendum Necessary?

Did premier Brian Tobin need the strong referendum result to alter Newfoundland^ school system?

No.

For changes to the Constitution of Canada that affect only the province concerned, all that is required is a bill passed in that provincial legislature plus the approval of both the House of Commons and the Senate. Although the federal government has no obligation to approve the measure, it would need good reason to defy the request of a democratically elected government.

Having said this, the federal government also has the power of disallowance whereby it may disallow any legislation introduced by the province with which it does not agree. (See *Not Carved in Stone*, page 50, reference 2-)

Given the high level of emotion raised when governments choose to remove privilege from private institutions, namely churches, Tobin needed a strong hand.

"As a political party proposing such a fundamental change, we require the political authority to act", he said.

To do that, he needed a negotiating chip that's tough to beat: a mandate. And that's what he got.

EDITORIAL COMMENT

Was a Referendum Appropriate?

A referendum seeks to determine if a majority of the population agrees with a proposed action.

In the Newfoundland case, the proposed action was the removal of privilege for certain Christian churches with regard to education.

Our Canadian Charter of Rights and Freedoms, part of our constitution, lists religion as a prohibited ground for discrimination. Is it appropriate to have a referendum as to whether a province is to abide by the Constitution of Canada?

NO!

Brian Tobin's government could have just passed the legislation to remove church privilege and then presented that to the House of Commons on the basis that the status quo violates section 15(1), the freedom of religion clause in our Charter.

All that should be necessary is for a province to present its legislation to remove church privilege as a measure to fully comply with what our politicians profess to believe in: the Canadian Charter of Rights and Freedoms.

Would a politician sanction a referendum on whether to abide by the other equality provisions of the Charter: that of race, national or ethnic origin, colour, sex, age or mental or physical capacity?

Not likely.

Then why religion?

"NO" Lawyer Cites Flaws in New term 17

An article by Bernie Bennett which appeared in the
Newfoundland *Evening Telegram* on August 29th

The government's proposed new Term 17 will "fundamentally change the nature of religious instruction in Newfoundland schools" according to an expert legal opinion prepared for the No side.

Toronto lawyer and educational law specialist Peter Lauwers of the firm Miller Thomson argued that a Christian religious education program would be unconstitutional under the proposed new term 17 and would violate the Canadian Charter of Rights and Freedoms.

Lauwers examined the government's proposed constitutional amendment on education reform in the context of court rulings in Ontario where religious instruction has been struck down by challenges under the Charter.

He noted that in 1990 the Ontario Court of Appeal ruled that "courses about religion" in public schools were acceptable, but that "religious instruction" involving the practices, teachings and promotion of any one religious view was not constitutionally acceptable.

"There is no doubt that the new Term 17 would permit only courses about religion".

"The school system could no longer be relied upon to assist in the transmission of beliefs and values from one generation to the next."

Referring to the precedent set by the Ontario court, it is Lauwers' view that over time, the courts will come to determine that any sponsorship of religious observances in the schools will have to be entirely paid for and organized by the parents of that school. He said that would be necessary to prevent placing the school board, as a public authority, in a position of sponsoring one particular observance over another.

"Unless there is explicit and clear protection in Term 17 for a particular form of religious education, practice, or use of a school facility, the court will ultimately be compelled to ban them."

Another View

From an article in the Evening Telegram

Amending the Canadian Constitution to remove denominational rights, while protecting religious observances and activities in the school system, may not be as easy as the Newfoundland government thinks, says Corner Brook lawyer Joe Hutchings. He believes it may be impossible to frame an amendment that would not invoke the Charter's freedom of religion clause.

The constitution preserves rights for denominational schools, but if the province doesn't have denominational schools, it no longer has protection under this section and is then subject to the freedom of religion section in the Charter.

The freedom of religion section allows people of different faiths to practice their respective religions but also allows for "freedom from religion" by opposing religious indoctrination.

If the Newfoundland government has to seek a change to the Charter's freedom of religion section in order to enshrine religious rights in the Constitution, it may have to obtain consent of all the other provinces.

TWO letters

Excerpts from two letters written to *The Evening Telegram*, St John's Newfoundland.

Change long overdue

It is our right, the right of the majority, to expect a level of education second to none in this country. We do not have to accept a diluted education system to accommodate the minority. It is time for the churches to take their Christian responsibilities out of the schools and into the pews where it belongs

I ask, why should our public tax dollars be spent on the Christian education of a uni-denominational school? Why should we pay a Roman Catholic or Pentecostal teacher to do the work, of the church? Are we paying Integrated teachers to teach confirmation classes for a United Church student? I think not!

My children, as do other United or Anglican students, receive their sacraments through the church. All their Christian education was provided by their parents, ministers, Sunday school teachers and elders of the church, as it should be.

Marilyn King, **Grand Falls-Windsor**

Children first

As a Roman Catholic and a former member of the Humber-St. Barbe Roman Catholic School Board for some 12 years, I was literally roiled by the CBC Television news report on August 12th.

The news report said that "leaders" of the Catholic church vowed to continue the fight against a public school system even if a majority of Newfoundlanders (including Roman Catholics) gave a resounding "yes" to reform in the upcoming referendum.

Who are these people who purport to speak on behalf of all Roman Catholics? Who appointed them and what is their position? If they are clergy who work in a parish, are they in fact representative of all Roman Catholics for this particular purpose? If they are laymen in some government-paid job in education, can they purport to represent all Roman Catholic parents? And where are they getting the money to continue a court battle to retain something that their parishioners may have voted against? Are they using the Sunday collection for this purpose?

I believe it is time for Roman Catholics to ask themselves if they condone the antics of these self-appointed "guardians" of our education system and ask what their real motive is? It is inconceivable to me that if a majority of people want a particular education system, that a self-appointed group can attempt to thwart the will of those parents who have a real concern about the education system and how it affects their children.

Priests and bishops have ample opportunity to teach religious beliefs from the pulpit. Religion belongs primarily in the churches and the homes, and the church hierarchy and their lay spokesmen, none of whom are elected, should stay out of the referendum debate and let the parents decide what they want

Jim Ronan, St John's

From HERE and THERE

I will vote Yes in the referendum because although I will always demand that God have a seat in our schools, I will also always demand that He keep His nose out of the running of those schools.

My grandson gets his religious instruction in our faith in God's house. He is taught honesty, respect, in my house.

He gets his academic education in the school house.

Is that not the way it should be?

Tom Badcock, Conception Bay

Do we want teachers hired or fired any more on the basis of religion?

Do we want school board elections that elect school board members on the basis of religion?

I believe it's time to allow all of our children, of every denomination, to sit in the same classroom, in the same schools, to ride the same bus, to play on the same sports teams, to live and learn together in the same community.

I believe it's time to hire our teachers because they're competent, caring and committed to our children , not because of their religion.

**Brian Tobin, Premier of Newfoundland
and of the Roman Catholic faith**

In the case of Newfoundland, the church-based system was not a minority protection so much as a remainder from an era when education finance was purely a private matter. The view that something given can never be revoked, if accepted, would make democracy impossible.

Democracy is fundamentally about majorities ruling. The Newfoundland and Quebec church-based school systems are constitutionally protected.

But constitutions are not written in stone. They were democratically created and can be altered the same way,-it's just that the hurdle is higher.

From an editorial in the Globe and Mail of September 5, 199'

The government has an obligation to put the Quebec amendment through. This is an identical amendment in essence, except there's another provisio - there's a guarantee of religious education and religious observances.

So if you're a member of Parliament who says he's concerned about this issue, you'd have a hard time explaining why you would vote for the Quebec amendment, which does not provide for religious education, and vote against the Newfoundland one, which does.

Brian Tobin, Premier of Newfoundland

I have yet to hear Roman Catholic and Pentecostal officials express concern about the rights of other minorities, like people of the Jewish faith.

I'm a Catholic. I don't feel like I'm a minority. I feel like I'm part of the mainstream of Newfoundland society.

Brian Tobin, Premier of Nfld.

Federal Intergovernmental Affairs Minister, Stephane Dion, has said that the federal government is committed to dealing with each province separately on issues concerning constitutional protections for minority rights, and that it would insist that there be a consensus among the minority groups affected.

Thus, even if the provincial legislature in Ontario were to vote on the existence of separate schools, he said, the federal government would insist that the change be supported by Ontario Roman Catholics.

Globe and Mail Thursday, September 4, 1997

We would like to see as strong a Yes vote as possible, a very decisive vote that will make it clear that this is the wish of the people.

Newfoundland Education Minister Roger Grimes, a Pentecostal