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**CATHOLIC SCHOOLS IN NEWFOUNDLAND:
AN INVESTIGATION INTO THEIR NATURE
ACCORDING TO THE CODE OF CANON LAW**

by
Brian J. DUNN

A dissertation submitted to the Faculty of Canon
Law, Saint Paul University, Ottawa, Canada, in
partial fulfillment of the requirements for the
degree of Doctor of Canon Law



Brian J. Dunn, Ottawa, Canada, 1991



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DEDICATED

TO MY PARENTS,

who were my first teachers in the ways of life and faith,

TO MY MANY TEACHERS,

who awakened in me a love for the pursuit of truth,

AND

TO MSGR. J.M. O'BRIEN AND MSGR. R.T. WOODFORD,

who gave me a deep appreciation of

the Catholic schools in Newfoundland.

TABLE OF CONTENTS

	page
TABLE OF CONTENTS	i
ABBREVIATIONS	vii
ACKNOWLEDGEMENTS	xi
BIOGRAPHICAL NOTE	xii
INTRODUCTION	xiii
1 - Catholic Schools as Part of the Church's Mission	xiv
2 - Catholic Schools in Newfoundland	xv
3 - Scope of this Study	xviii
4 - Sources for this Study	xx
5 - Limitations of this Study	xxii
6 - Plan of this Study	xxiv
1 - THE HISTORICAL CONTEXT OF CATHOLIC EDUCATION IN NEWFOUNDLAND	1
1.1 - Prior to 1836: Background	3
1.2 - 1836 - 1887: Establishment of the Denominational System	7
1.3 - 1887 - 1927: Additional Measures to Improve the System	18

TABLE OF CONTENTS

ii

1.4 - 1927 - 1949: Events Leading to Confederation	26
1.5 - 1949 - 1969: Major Changes	33
1.6 - 1969 - 1991: New Challenges	40
Summary and Conclusion	46
2 - CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS .	48
2.1 - Some Background Documents Prior to 1917	50
2.1.1 - Documents Prior to the Nineteenth Century	50
2.1.2 - Documents Concerning the Church in Ireland	52
2.1.3 - Documents Issued During the Pontificate of Pius IX	55
2.1.4 - Documents Issued During the Pontificate of Leo XIII	58
2.2 - Documents Between 1917 and 1960	65
2.2.1 - 1917 <i>Code of Canon Law</i>	65
2.2.2 - Papal and Curial Teachings	66
2.3 - Vatican II and Postconciliar Teaching	74
2.3.1 - The Documents of Vatican II	74
2.3.2 - Postconciliar Teaching	86
2.4 - The <i>Code of Canon Law</i>	90
2.4.1 - The 1977 and 1980 Schemata	91
2.4.2 - The Promulgated Text (Canon 803)	96
Conclusion	97

TABLE OF CONTENTS

iii

3 - CATHOLIC SCHOOLS IN THE *CODE OF CANON LAW* 102

 3.1 - The Concept of a Catholic School in the Code 103

 3.1.1 - Implications from the Broader Context of the Code 103

 3.1.2 - Canon 803 106

 3.2 - Consequences Flowing from Being a Catholic School 112

 3.2.1 - Parents 113

 3.2.2 - Diocesan Bishops 118

 3.2.3 - Teachers 122

 3.2.4 - Religious Institutes 127

 3.2.5 - Christian Faithful 132

 3.2.6 - Parish Priests 134

 3.2.7 - Civil Society 134

 3.2.8 - School Boards 136

 Conclusion 136

**4 - THE TEACHING OF THE NEWFOUNDLAND BISHOPS
 ON CATHOLIC SCHOOLS 140**

 4.1 - Newfoundland Bishops: Prior to 1917 141

 4.1.1 - Bishops O'Donel, Lambert, and Scallan (1784-1830) . . . 141

 4.1.2 - Bishop Michael Fleming (1830-1850) 144

 4.1.3 - Bishop Thomas Mullock (1850-1868) 154

 4.1.4 - Bishops of Harbour Grace and St. George's 160

TABLE OF CONTENTS

iv

4.1.5 - Bishop Michael Howley (1895-1914) 164

4.2 - The Newfoundland Bishops Between 1917 and 1960 167

4.3 - The Bishops' Teaching in the Vatican II Period 175

4.4 - Major Concerns of the Bishops Between 1970 and 1991 179

Conclusion 186

5 - SECULAR LEGISLATION

GOVERNING CATHOLIC SCHOOLS IN NEWFOUNDLAND 189

5.1 - 1836-1843: The Beginning of Catholic Education 192

5.2 - 1844-1887: Further Development of Catholic Education 200

5.3 - 1887-1927: Period of Consolidation 210

5.4 - 1927-1949: Period of Turbulent Changes 215

5.5 - 1949-1967: Confederation and Subsequent Changes 219

 5.5.1 - Specific Phrases of the *Terms of Union* 221

 5.5.2 - Other Developments 227

5.6 - 1968-1991: Period of Radical Change 229

 5.6.1 - Educational Legislation 229

 5.6.2 - Other Legislation Related to Education 233

 5.6.3 - Newfoundland Case Law Material 235

Conclusion 240

TABLE OF CONTENTS

**6 - SEEKING LEGISLATIVE HARMONY REGARDING ISSUES
RELATED TO CATHOLIC SCHOOLS IN NEWFOUNDLAND 245**

6.1 - Catholic Schools in Newfoundland and the Code 247

 6.1.1 - Implications for Newfoundland in Light of the
 Broader Context of the Code 247

 6.1.2 - Catholic Schools in Newfoundland and Canon 803 252

6.2 - Consequences Flowing from Being a Catholic School 255

 6.2.1 - Parents 255

 6.2.2 - Diocesan Bishops 261

 6.2.3 - Teachers 264

 6.2.4 - Religious Institutes 267

 6.2.5 - Christian Faithful 269

 6.2.6 - Parish Priests 270

 6.2.7 - Civil Society 272

 6.2.8 - School Boards 272

Conclusion 274

GENERAL SUMMARY AND CONCLUSION 278

1 - Responses to Questions Posed in the Introduction 281

2 - Other General Remarks 283

3 - Future Directions 288

TABLE OF CONTENTS

APPENDICES 294

1 - Map of Newfoundland and Labrador 294

2 - Chronological development of the dioceses of Newfoundland
with the list of the bishops of each diocese 295

3 - Various drafts of Term 17 of the *Terms of Union*
of Newfoundland with Canada 299

4 - Bishop J.T. Mullock's letter to the legislature 308

5 - Memorandum to the Honourable Members of the
Commission of Government of Newfoundland submitted
by the R.C. Hierarchy of Newfoundland on certain
proposed changes in the Education Act of 1927 310

6 - Mission Statement of the Catholic Education Council 315

7 - Provisions of section 93 of the *Constitution Act, 1867*
and its variants for other provinces 316

8 - Selected sections of the *Canadian Charter of Rights and Freed* 319

9 - Recommended School Board By-Law on Duties of Teachers 320

SELECTED BIBLIOGRAPHY 322

ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
AASJ	Archives of the Archdiocese of St. John's, Newfoundland
A.C.	Law Reports, Appeal Cases, House of Lords and Judicial Committee of the Privy Council
ACFC	Archives of the Congregation of Christian Brothers, Mono Mills, Orangeville, Ontario.
ADGF	Archives of the Diocese of Grand Falls, Newfoundland.
ADLCS	Archives of the Diocese of Labrador City-Schefferville, Newfoundland.
ADSG	Archives of the Diocese of St. George's, Corner Brook, Newfoundland.
Alta.Q.B.	Alberta Court of Queen's Bench
Alta.S.C.	Alberta Supreme Court, Appellate Division
APBVM	Archives of the Sisters of the Presentation of the Blessed Virgin Mary, St. John's, Newfoundland.
ASCPF	Archives of the Sacred Congregation for the Propagation of the Faith, Rome.
ACTA	<i>Acta</i> of the Sacred Congregation for the Propagation of the Faith.
SRC	Scritture riferite nei Congressi
AM.Sett	<i>America Settentrionale. Canada, Nuova Bretagna, Labrador, Terra Nova</i> (After 1867 the official title for these volumes is <i>America Settentrionale. Canada</i>).
N.S.	Nuova serie.
ASM	Archives of the Sisters of Mercy, St. John's, Newfoundland.

ABBREVIATIONS

viii

B.C.C.A.	British Columbia Court of Appeal
B.C.L.R.	British Columbia Law Reports
B.C.S.C.	British Columbia Supreme Court
B.I.S.	Benevolent Irish Society
c.	In canon law, canon; in secular law, cap. (prior to 1934) or chapter (1934 and after)
CCCB	Canadian Conference of Catholic Bishops
C.E.C.	Catholic Education Committee (Council)
<i>CLD</i>	<i>Canon Law Digest</i>
col.	column
diss.	dissertation
D.L.R.	Dominion Law Reports
GR	Grant
n. or nn.	number or numbers
NAC	National Archives of Canada, Ottawa, Ontario.
N.B.R.	New Brunswick Reports
N.B.S.C.	New Brunswick Supreme Court
[n.d.]	no date
Nfld.C.A.	Newfoundland Court of Appeal
Nfld. & P.E.I.R.	Newfoundland and Prince Edward Island Reports
Nfld.S.C.	Newfoundland Supreme Court
[n.p.]	no place or no publisher, or both
N.R.	National Reporter

ABBREVIATIONS

ix

Ont.C.A.	Ontario Court of Appeal
Ont.H.C.	Ontario High Court of Justice, Divisional Court
PANL	Provincial Archives of Newfoundland and Labrador, Colonial Building, St. John's, Newfoundland.
P.C.	Privy Council
PRO, CO	Public Record Office, Colonial Office, London, England
Q.B.D.	Queen's Bench Division, London, England
R.J.Q.	Rapports judiciaires officiels de Québec, Cour supérieure
R.S.C.	Revised Statutes of Canada
R.S.N.	Revised Statutes of Newfoundland
s. or ss.	section or sections
Sask.C.A.	Saskatchewan Court of Appeal
Sask.Q.B.	Saskatchewan Queen's Bench
S.C.	Supreme Court
SCB	Sacred Congregation for Bishops; after 1983, Congregation for Bishops
SCC	Sacred Congregation of the Council; after February 29, 1968, Sacred Congregation for the Clergy; after 1983, Congregation for the Clergy
S.C.C.	Supreme Court of Canada
SCCE	Sacred Congregation for Catholic Education; after 1983, Congregation for Catholic Education
SCDF	Sacred Congregation for the Doctrine of the Faith; after 1983, Congregation for the Doctrine of the Faith
SCPF	Sacred Congregation for the Propagation of the Faith; after

ABBREVIATIONS

x

February 29, 1968, Sacred Congregation for the Evangelization of Peoples; after 1983, Congregation for the Evangelization of Peoples

- SCR** Sacred Congregation for Religious; after February 29, 1968, Sacred Congregation for Religious and Secular Institutes; 1983-1989, Congregation for Religious and Secular Institutes; after 1989, Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
- SCHO** Sacred Congregation of the Holy Office (until December 7, 1965); Sacred Congregation for the Doctrine of the Faith; after 1983, Congregation for the Doctrine of the Faith
- S.N.** Statutes of Newfoundland
- W.W.R.** Western Weekly Reports

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BIOGRAPHICAL NOTE

Brian Dunn was born on January 8, 1955 in St. John's, Newfoundland. He received his primary and elementary education at St. Theresa's School in Buchans and his high school education at St. Francis Central High School in Harbour Grace. After studying at Memorial University of Newfoundland for one year, he attended Saint Peter's Seminary and the University of Western Ontario, London, Ontario, where he received a Bachelor of Arts degree in 1976 and a Master of Divinity degree in 1980. On August 28, 1980, he was ordained to the priesthood for the Diocese of Grand Falls, Newfoundland. He served as associate pastor at the Cathedral of the Immaculate Conception in Grand Falls for five years and then as pastor of St. Gabriel's Parish in St. Brendan's for three years. He received a Licentiate in Canon Law from Saint Paul University, Ottawa and a Master of Canon Law from the University of Ottawa, in 1990. On August 28, 1991, he became pastor of the Cathedral of the Immaculate Conception in Grand Falls.

INTRODUCTION

During his public life on earth, Jesus spent much of his time teaching.

[T]he unique consistency and persuasiveness of His teaching can only be explained by the fact that His words, His parables and His arguments are never separable from His life and His very being. Accordingly, the whole of Christ's life was a continual teaching: His silences, His miracles, His gestures, His prayer, His love for people, His special affection for the little and the poor, His acceptance of the total sacrifice on the cross for the redemption of the world, and His resurrection are the actualization of His word and the fulfillment of revelation.¹

This authoritative teaching of Jesus led his first disciples to refer to him as "Teacher" and ultimately, Jesus commanded them: "Go, therefore, make disciples of all nations; [...] teach them to observe all the commands I gave you."² Throughout the centuries, the Church used various means of carrying out this teaching mission in an attempt to form and educate people in the faith as well as to contribute to their development within particular societies. Essentially, the Church viewed its teaching mission as an integrated ministry embracing the three interlocking dimensions of message, community and service:

[T]he message revealed by God (*didache*) which the Church proclaims; fellowship in the life of the Holy Spirit (*koinonia*); service to the Christian community and the entire human community

¹ JOHN PAUL II, Apostolic exhortation, *Catechesi tradendae*, October 16, 1979, n. 9, in *AAS*, 71 (1979), p. 1284; English translation in *Catechesis in Our Time*, Boston, Daughters of St. Paul, [n.d.], pp. 8-9.

² Mt 28: 19-20 (from *The Jerusalem Bible*, London, Eyre & Spottiswoode, 1968).

(*diakonia*).³

1 - CATHOLIC SCHOOLS AS PART OF THE CHURCH'S MISSION

In the early Church, concern for the instruction of catechumens led to the emergence of educational programs for converts.⁴ These "catechetical schools", as well as schools for the formation of the clergy and schools associated with monasteries, all arose as a result of specific needs in the Church. By the early Middle Ages, the Church acknowledged the importance of these schools as effective means of accomplishing its teaching mission, and throughout the Middle Ages, it continued to found various kinds of educational institutions, e.g., monastic schools, cathedral schools, parish schools. Subsequently, these formed a vital part of the Church's saving mission, a mission that penetrated various levels and dimensions of the society of the time.

However, as a result of the Renaissance, the Reformation, the Enlightenment, and the Industrial Revolution, the Church's educational role in schools underwent a profound evolution, especially precipitated by such trends as secularism, nationalism, laicism, modernism, totalitarianism, and secularization. Influenced by these trends, various countries began to establish their own school systems and soon enacted laws governing education and schools. This inevitably had repercussions on

³ NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "To Teach As Jesus Did: A Pastoral Message on Catholic Education", in *Origins*, 2 (1972-1973), p. 352.

⁴ For an overview of the development of schools up until the eleventh century, see C.H. BOFFA, *Canonical Provisions for Catholic Schools (Elementary and Intermediate)*, Canon Law Studies, no. 117, Washington, DC, Catholic University of America Press, 1939, pp. 10-32.

the Church's educational role, especially in the schools, and as a result, the Holy See began to assert certain principles regarding its role in education and in schools. Accordingly, strain and even antagonism at times characterized the consequent Church-State relationship in various countries in the area of education, especially concerning the issue of the control of schools.

This position of the Holy See during the nineteenth century had a noticeable impact on the 1917 *Code of Canon Law*. Moreover, the Church continued to develop its teaching during the twentieth century, especially through the 1929 encyclical of Pius XI, *Divini illius Magistri*, the *Declaration on Christian Education* from the Second Vatican Council and several postconciliar documents from the Congregation for Catholic Education. Influenced by these texts, the 1983 *Code of Canon Law* included a title on Catholic education with a specific chapter on schools. Within this chapter, the Code introduced a new canon (c. 803), describing how a Catholic school is to be understood. Accordingly, this study will explore the canons on schools, especially canon 803, with a view of seeing how the 1983 Code regards a Catholic school as well as examining the responsibilities of various groups of people in relation to these schools.

2 - CATHOLIC SCHOOLS IN NEWFOUNDLAND

Inevitably, at the same time, the world-wide context associated with the Church-State relationship regarding schools also influenced the relationship between the Catholic Church and the government in Newfoundland. Since the Roman

Catholic Church established its first permanent structures in Newfoundland only in 1784, little progress took place in the establishment of Catholic schools during the eighteenth century. However, during the 1830s and 1840s, the Church opened its first schools in Newfoundland. At the same time, the government of the colony began to provide some financial assistance to schools, including those attended by Catholics. During the ensuing years, it continued its involvement in the area of education, and by the mid-1870s, a public denominational school system had developed. By the end of the nineteenth century, this system included 217 Catholic schools -- 190 board schools, 1 college, 3 academies, 21 convent schools and 2 Christian Brother schools -- attended by 13,180 Catholic children, with 341 teachers.⁵

This system continued to develop through the twentieth century, and as Newfoundland society experienced tremendous growth after Confederation with Canada in 1949, the government established a Royal Commission on Education and Youth in 1964. By this time, all Catholic schools had been incorporated into the denominational system which then comprised 82 Roman Catholic school boards operating 364 schools with 1,996 teachers and 55,646 students.⁶

⁵ These statistics are found in Parliamentary Papers 1900 XXI, "The System of Education in Newfoundland", in GREAT BRITAIN, BOARD OF EDUCATION, *Special Reports on Educational Subjects*, vol. 4, pp. 541-573.

	population	schools	teachers	pupils
Roman Catholic	72,696	217	341	13,180
Church of Eng.	69,823	220	222	11,818
Methodist	53,276	186	194	9,150
Other	4,858	6	6	360

⁶ These statistics have been compiled from information in ROMAN CATHOLIC HIERARCHY OF NEWFOUNDLAND AND LABRADOR, *A Brief Presented to*

Although the denominational system as such underwent major renovations in the wake of this Royal Commission, it continued as a public denominational school system, i.e., a partnership between the various religious denominations and the government, whereby each party shared to some extent both support for and control of schools. On the one hand, the government, in the final analysis, controlled educational policy and provided most of the money which sustained the operation of the system, thus maintaining its public nature. On the other hand, the religious denominations controlled those aspects of education relative to their purpose, thus distinguishing the system as denominational.

Meanwhile, after 1969, public debate on the denominational system escalated and numerous briefs and reports called for major improvements, especially in the areas of the quality of education and the efficiency of the system; some even favoured the elimination of the denominational system itself.⁷ Moreover, during the 1970s and 1980s, several events triggered the necessity for a clear understanding of what it means for a school to be "Catholic". These events included legislation

The Royal Commission on Education and Youth, [1965?], xii-225p.

⁷ The arguments against the denominational system are similar to those against Catholic schools in other countries. M. Ryan summarizes these objections -- from a U.S. perspective -- against having a Catholic school system: the system represents a relic of the siege mentality; general education and religious education should be separated; Catholic schools usually involve a financial burden and mediocre education; religious education in schools is too formal to be effective in life; Catholic schools are divisive in a pluralistic society; they are contrary to the spirit of ecumenism; and the time and efforts could be better spent on adult formation (M. RYAN, *Are Parochial Schools the Answer? Catholic Education in the Light of the Council*, New York, Holt, Rinehart and Winston, 1964, ix-176p.).

introducing human rights awareness as well as collective bargaining for teachers, several court cases involving Roman Catholic School Boards, questions about school board membership, and movements in the area of interdenominational cooperation. All these events, together with the appointment in August 1990 of a Royal Commission to enquire into the educational system, give new impetus to the need for a deeper appreciation of the nature of the "Catholic" schools in Newfoundland.

3 - SCOPE OF THIS STUDY

Therefore, this study will investigate the nature of "Catholic" schools in Newfoundland. While almost all Catholic children in the province attend "Catholic" schools,⁸ the question arises whether they are merely public schools for Catholics or truly Catholic schools. In responding to this question, another question emerges, namely, "What is a Catholic school?" Thus, while considering this question from a canonical perspective, this study will necessarily include an examination of the Church's teaching on the nature of a Catholic school. However, this teaching and legislation could prove irrelevant, unless the secular legislation gives some recognition to these concerns of the Church. Therefore, this study will consider how

⁸ The statistics for the 1990-1991 school year include 11 Roman Catholic school boards and 177 Catholic schools with 3,178 teachers and 49,028 students (CATHOLIC EDUCATION COUNCIL, *A Brief Presented to the Royal Commission of Enquiry into the Delivery of Programs and Services in Primary, Elementary and Secondary Education*, St. John's, April 30, 1991, 123p., appendices). As a result of the recommendation of the Catholic Education Council, the government has approved the merger of three school districts, effective July 1, 1991, thus reducing the number of Roman Catholic school boards to nine.

the secular law of Newfoundland accepts the prescriptions of canon law regarding Catholic schools.

The mention of "Newfoundland" in the title of this study refers to the civil province of Newfoundland, including both the island and the Labrador portions of the province.⁹ This immediately raises the issue of boundaries, for the ecclesiastical province of Newfoundland consists of only the three dioceses on the island; the Diocese of Labrador City-Schefferville, consisting of territory from the civil provinces of Newfoundland and Quebec, belongs to the ecclesiastical province of Keewatin-Le Pas, centred in Manitoba. However, since the bishop in Labrador acts in union with the three bishops of the island on the question of Catholic schools, this study will presume this collaborative relationship.

Accordingly, this study proposes to examine the following questions:

- What are the theological and canonical requirements for a Catholic School?
- Are the "Catholic Schools" in Newfoundland truly Catholic, or are they simply public schools for Catholics?
- Does the public denominational education system in Newfoundland allow for the protection of the values and principles of Catholic education and Catholic schools outlined in the *Code of Canon Law* (cc. 793-806)?
- Considering the current developments in education in Newfoundland, what canonical and pastoral issues arise in light of the prescriptions of the *Code of*

⁹ See APPENDIX 1 for a map of Newfoundland and Labrador, which includes an indication of the ecclesiastical boundaries.

Canon Law?

4 - SOURCES FOR THIS STUDY

Since this study will synthesize certain historical and legal aspects of the Newfoundland educational system, as well as investigate the theological and canonical criteria for Catholic schools, previous research in at least three areas provides material on which this study shall depend and build. The first area concerns the numerous theses and books written on various aspects of the denominational education system of Newfoundland. Although F. Rowe's works are valuable pioneer studies,¹⁰ recent research has deepened much of his contribution. Numerous writers have presented the views of the various denominations, e.g., Anglican, Methodist and Salvation Army, and M.B. McCormack and M.P. Penney have treated the Catholic perspective by studying the educational contributions of the religious institutes to the Newfoundland school system.¹¹ However, these Catholic works do not include an analysis of the Church's teaching and legislation on Catholic education and make only passing references to the educational views of the Newfoundland bishops.

The second area of background material for this present inquiry involves those

¹⁰ *The Development of Education in Newfoundland*, Toronto, Ryerson Press, 1964, 225p.; *Education and Culture in Newfoundland*, Toronto, McGraw-Hill Ryerson Press, 1976, xiv-225p.

¹¹ M.B. McCORMACK, *The Educational Work of the Sisters of Mercy in Newfoundland, 1842-1955*, M.A. thesis, Washington, DC, Catholic University of America, 1955, iii-131p.; M.P. PENNEY, *A Study of the Contributions of Three Religious Congregations to the Growth of Education in the Province of Newfoundland*, Ph.D. (Education) diss., Boston, Boston College, 1980, viii-263p.

numerous studies which have investigated the issue of Church-State relationships concerning Catholic education in different countries and in the various provinces of Canada. These studies have reiterated the importance of the *de facto* relationship between the Church and the civil government of a particular territory, especially in the area of education. While M.T. Bruce has examined the relationship between the government and the various Churches in Newfoundland,¹² she does not specifically investigate how the secular legislation of Newfoundland offers protection for the requirements of the Church's teaching and legislation concerning Catholic schools.

The third source of material associated with the topic of Catholic schools comes from several canonical studies on various aspects of Catholic education. C.H. Boffa studied the canonical provisions for Catholic schools according to the 1917 *Code of Canon Law*;¹³ P.O. Okpaloka's study centred in a general way on the Church's role in education rather than the specific analysis of the meaning of a Catholic school.¹⁴ The studies of both L. Bordonaro and B. Cusack focus on several aspects of Catholic schools according to the 1983 *Code of Canon Law*,¹⁵ but neither

¹² *The First Forty Years of Educational Legislation in Newfoundland*, M.A. (Education) thesis, Ottawa, University of Ottawa, 1956, xiii-85p.; *A Historical Study of Family, Church, and State Relations in Newfoundland Education*, Ph.D. diss., Ottawa, University of Ottawa, 1963, xv-186p.

¹³ C.H. BOFFA, *Canonical Provisions for Catholic Schools*, x-211p.

¹⁴ P.O. OKPALOKA, *The Role of the Church in Nigerian Education in the Light of Vatican Council II and the 1983 Code of Canon Law*, J.C.D. diss., Roma, Pontificia Universitas Urbaniana, 1989, xvi-352p.

¹⁵ L. BORDONARO, *Separate Schools in Ontario, Canada: Their Canonical Status and Relationship to the Church According to the 1983 Code of Canon Law*, J.C.D. diss., Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1989,

study concentrates on the specific question: "What is a Catholic School?"

Ultimately, this present study will build on each of these areas, first, by investigating the foundations of the denominational system of Newfoundland from the Catholic perspective, especially through the teaching of the Newfoundland bishops; second, by observing the relationship between the government and the Catholic Church, especially as seen in the way secular legislation recognizes the various obligations and rights of the Church in the field of education; third, by examining Church teaching and legislation in order to specify the elements required for a school to be Catholic, especially as presented in the *Code of Canon Law*, and then applying these elements to the Catholic schools in Newfoundland.

While using the various studies mentioned above as well as other resource material, this study shall make extensive use of documents from numerous archives, including those of the four Newfoundland dioceses, those of the three religious institutes involved in Catholic schools in Newfoundland, the Provincial Archives in St. John's, the National Archives in Ottawa, and the archives of *Propaganda Fide* in Rome.

5 - LIMITATIONS OF THIS STUDY

In outlining the above interdisciplinary approach, this study immediately

vii-196p.; B.A. CUSACK, *A Study of the Relationship Between the Diocesan Bishop and Catholic Schools Below the Level of Higher Education in the United States: Canons 801-806 of the 1983 Code of Canon Law [=The Diocesan Bishop and Catholic Schools]*, *Canon Law Studies*, no. 525, Washington, DC, Catholic University of America, 1988, xi-308p.

acknowledges several limitations. Without addressing several wider educational issues, e.g. curriculum or teaching techniques, this dissertation focuses only on the organization of an educational system. More specifically, since the Catholic schools in Newfoundland are essentially connected with the denominational system, our focus will be on the development of this system as it accompanies the evolution of Catholic schools in Newfoundland. Besides this educational limitation, this study also has a historical one, for, while it touches on various sociological, historical, political and economic factors, it refrains from lingering on any of these, choosing rather to explore a very limited part of the history of Newfoundland and of the Roman Catholic Church in the Province. Furthermore, this study has limits in the area of secular law, for, while the Newfoundland government regularly enacts legislation governing the entire denominational system and while the courts judicially consider many aspects of this legislation, this study will mention only those dimensions of the body of secular school law which have implications for Catholic schools. Finally, since this study focuses on the canonical understanding of a Catholic school, examining how the applicable canons relate to the Catholic schools in Newfoundland, it does not deal with specific canonical issues such as, the nature of the bishop's authority over Catholic schools, the delegation of the bishop's or others' responsibilities, or the concept of juridical personality in relationship to schools. Furthermore, while the study considers the relationship between ecclesial and secular legislation governing Catholic schools, it avoids a detailed exploration of the relationship between Church and State within public ecclesiastical law.

6 - PLAN OF THIS STUDY

The study consists of six chapters as well as this general introduction and a conclusion. Chapter one provides the historical context of the development of the denominational system in Newfoundland, with particular emphasis on the perspective of the Roman Catholic Church. This includes the religious, social, political and economic developments in Newfoundland during the past two hundred years. This chapter also places particular emphasis on the gradual establishment and evolution of the Roman Catholic Church in Newfoundland, noting the relationship of the various Catholic leaders with the government of the day, especially in the area of education.

Chapter two focuses on the sources of canons 793-806 of the *Code of Canon Law* in order to enable us to appreciate the various components of the Church's teaching on Catholic education and schools, especially as it evolved in particular situations during the past two hundred years. The exploration of these various sources places primary emphasis on the elements which constitute a Catholic school. While highlighting many pre-Vatican II texts, the chapter gives particular consideration to the contributions of the Second Vatican Council and of several postconciliar sources.

Chapter three examines the current legislation on Catholic schools as found in canons 796-806 of the *Code of Canon Law*. Building on the material in chapter two, this chapter analyses the various canons in an effort to appreciate the issues associated with the legislation on Catholic schools. Besides treating the individual

canons, the chapter gives special consideration to the meaning of a Catholic school in the Code as well as to the role of various persons and agencies in relation to the apostolate of schools.

Chapter four considers how the Catholic Church in Newfoundland, through the leadership of its bishops, has viewed the Catholic schools within the denominational system. By presenting some of the teaching of the various bishops, this chapter examines how they adapted Church teaching and legislation on Catholic schools to the particular circumstances of Newfoundland. This occurred most frequently when the bishops perceived that the government, especially through new legislation, was about to introduce a change in the denominational system.

Chapter five examines the educational legislation of Newfoundland, highlighting how the secular laws have recognized certain rights of the Roman Catholic Church with regard to its schools. This reveals how the educational legislation reflected the evolution of the various forms of Catholic schools in Newfoundland. Furthermore, this chapter analyses Term 17 of the *Terms of Union of Newfoundland with Canada* and explores several recent court decisions involving Roman Catholic School Boards in Newfoundland.

Chapter six attempts to harmonize the distinctive concerns of both the secular and ecclesial legislation governing Catholic schools in Newfoundland. Having summarized the Church's current legislation on Catholic schools, the chapter then applies this to the situation in Newfoundland, making suggestions as to how both the Church and the government might address the distinctive and legitimate concerns of

both parties. Thus, this chapter explores some of the ongoing issues that affect Catholic schools in Newfoundland, e.g., the role of parents in the schools, the authority of the diocesan bishop over the schools, the personal qualifications of teachers, concerns associated with the curriculum, membership on school boards and the role of the government in the denominational system.

It is hoped that this study will enable those entrusted with the mission of Catholic education in Newfoundland to carry out their responsibilities with a new insight as well as with an appreciation of the past that opens unto a promising future.

CHAPTER ONE

THE HISTORICAL CONTEXT OF CATHOLIC EDUCATION IN NEWFOUNDLAND

An appropriate image to describe the context of the denominational system of education in Newfoundland is the soil required for the planting of a particular kind of tree, soil which provides the right conditions for the nourishment and growth of this tree.¹ Just as the oak and the elm do not necessarily flourish in the same kind of soil, so the educational system originated and developed in conditions peculiar to Newfoundland in the nineteenth and twentieth centuries. In fact, any analysis of this denominational system must include an appreciation of these conditions, for education in Newfoundland, as in any other province² or country³,

¹ W. Blackall used a similar image in his work. See PANL: P6/A/33, File C, "The History of Education", manuscript, p. 7.

² Some of the studies on the development of the educational systems in other Canadian provinces include G.E. CARTER, *The Catholic Public Schools of Quebec*, Toronto, W.J. Gage, 1957, xiii-128p.; M.R. LUPUL, *The Roman Catholic Church and the North-West School Question: A Study in Church State Relations in Western Canada, 1875-1905*, Toronto, University of Toronto Press, 1974, x-292p.; F. WALKER, *Catholic Education and Politics in Upper Canada*, Toronto, Catholic Education Foundation of Ontario, 1955-1986, 3 vols.

³ Some of the studies on the development of the educational systems in other countries include D.H. AKENSON, *The Irish Education Experiment: The National System of Education in the Nineteenth Century*, Toronto, University of Toronto Press, 1970, x-430p.; J.J. GARNHAM, *Independent Schools and Vatican II in Australia: A Study in Religious Liberty*, Launceston, G. Young, 1986, xi-206p.; J. MacKEY, *The Making of a State Education System: The Passing of the New Zealand Education Act*,

is inseparably intertwined with the various dimensions which comprise that particular society. Furthermore, the distinctive intensity of these elements in Newfoundland makes their consideration a vital necessity. Thus, this first chapter proposes to explore some of the contextual soil of the island's educational system.

This soil of Newfoundland's history includes the early attempts to settle the island as well as the religious, social and economic environment of the nineteenth century inhabitants who occupied the small settlements scattered along the island's extensive coastline. Planted in this soil, the denominational system evolved in the midst of various political developments, e.g., Responsible Government (1855), the Commission of Government (1934) and Confederation with Canada (1949). However, the major social and economic changes in the 1950s and 1960s, together with the scrutiny of the Royal Commission on Education and Youth led to an awareness that the contextual soil, in which the denominational system had developed, had changed. As a result, a kind of replanting of the entire denominational system took place as the 1968-1969 legislation established new structures, known as the Denominational Educational Committees. However, in spite of these changes, several people have voiced questions about the system during the past two decades. Some have even raised the axe to the tree, calling for the abolishment of the system, especially as they perceive new conditions within the soil, e.g., the demand for fiscal restraint and for denominational cooperation.

1877, London, G. Chapman, 1967, xiv-298p.; P.O. OKPALOKA, *The Role of the Church in Nigerian Education in the Light of Vatican Council II and the 1983 Code of Canon Law*, J.C.D. diss., Roma, Pontificia Universitas Urbaniana, 1989, xvi-352p.

In examining this soil, one also observes the gradual establishment and evolution of the Roman Catholic Church in Newfoundland, including the contributions of the various religious institutes and the colourful personalities of many of the Church's leaders.⁴ In fact, this chapter will consider the development of the denominational system, with particular emphasis on the perspective of the Roman Catholic Church. This Catholic emphasis requires a cautionary note for the establishment and the development of this system resulted from the interaction of the various denominations among themselves and from the continuous exchange between the denominations and the government. Thus a comprehensive view of this entire era must also incorporate the contributions of the other denominations.⁵

1.1 - PRIOR TO 1836: BACKGROUND

John Cabot arrived as the first English explorer in Newfoundland in 1497 and

⁴ See APPENDIX 2 for the chronological development of the dioceses of Newfoundland as well as the list of bishops of each diocese.

⁵ For a consideration of the contribution of other denominations, see R.L. ANDREWS, *Integration and Other Developments in Newfoundland Education: 1915-1949* [=1915-1949], St. John's, Harry Cuff Publications, 1985, xvii-392p.; R.L. ANDREWS, *Post-Confederation Developments in Newfoundland Education: 1949-1975* [=1949-1975], St. John's, Harry Cuff Publications, 1985, xvii-436p.; J. PARSONS, *The Origin and Growth of Newfoundland Methodism 1765-1855*, M.A. thesis, St. John's, Memorial University of Newfoundland, 1964, vii-166p.; H.B. SAUNDERS, *The Origin and Development of Salvation Army Schools in Newfoundland*, M.Ed. thesis, Wolfville, Acadia University, 1975, x-201p.; G. SHAW, *The Purpose of Pentecostal Schools*, St. John's, Pentecostal Assemblies Provincial Board of Education, [1964?], 43p.; M. SHELDON, *The Establishment of the Denominational School System in Newfoundland with Particular Reference to the Role of the Anglican Church*, M.A. thesis, Toronto, University of Toronto, 1972, 109p.

established the colony of Newfoundland as a summer fishing station for European fishermen. In order to safeguard its fishing rights, the English government attempted to forbid settlement on the island. As a result, the harshness of the isolation and the living conditions as well as the ruthless system of the fishing admirals kept the settlement at a primitive stage of development. For the next two hundred years, education in Newfoundland made little or no progress and by the eighteenth century facilities for education were practically non-existent.

Yet, the churches⁶ and charitable organizations made the first attempt to bring religion and educational opportunities to the people. Although the French Recollects may have carried on some educational work at Placentia in the 1690s,⁷ the first known school was established by an Anglican clergyman, named Jacob Wells, some time before 1709.⁸ Later, the Church of England Society for the Propagation

⁶ Although the Church of England was the officially established church -- when Sir Humphrey Gilbert took formal possession of the island in the name of Queen Elizabeth in 1583, the Church of England became the established Church -- other churches, including the Roman Catholic Church and the Methodist Church, had planted roots by the 1800s.

⁷ When New France was constituted a Vicariate Apostolic on July 5, 1657, it included Newfoundland and Labrador. On April 22, 1689, Bishop Jean de St. Vallier of Quebec sent a Recollect friar to serve the settlers in Placentia, who had already built a church. Whether education was involved in the "duties of the Mission to the faithful" cannot be substantiated; the French eventually abandoned Placentia in 1713. For the text of the documents of this period, see M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, Boston, Doyle and Whittle, 1888; reprint, Belleville, Mika Publishing, 1979, pp. 142-147.

⁸ "Testimony of R. Lahey", in *Policy Grievance - Newfoundland Teachers' Association vs. Roman Catholic School Board Exploits-White Bay, Transcript of Evidence*, 1981, p. 43.

of the Gospel sponsored a school at Bonavista in 1725⁹ and eventually established many other schools during the eighteenth century. In the early nineteenth century, schools were established by other charitable organizations, including the Society for Improving the Condition of the Poor in St. John's, the Benevolent Irish Society and the Newfoundland School Society.

On May 17, 1784 the Holy See established Newfoundland as a Prefecture Apostolic and Father James O'Donel (1784-1807), the first prefect apostolic, arrived in St. John's on July 4, 1784, accompanied "by an unknown school teacher."¹⁰ Within the first year he had trained enough catechists for the outports to instruct the people in the rudiments of the faith.¹¹ Later, Bishop O'Donel (consecrated in 1796) supported the establishment of the Charity School of 1804.¹² Although this school

⁹ For the correspondence in November, 1725, associated with the establishment of this first school, see NAC: Fulham Papers, MG 17, B 5, V. 1.

¹⁰ R.J. LAHEY, *James Louis O'Donel in Newfoundland 1784-1807: The Establishment of the Roman Catholic Church*, Newfoundland Historical Society Pamphlet, St. John's, Harry Cuff Publications, 1984, p. 9.

¹¹ J. O'Donel to Cardinal G. Antonelli, *Letter*, December 1785?, in C. BYRNE, *Gentlemen-Bishops and Faction Fighters: The Letters of Bishops O'Donel, Lambert, Scallan and Other Irish Missionaries*, St. John's, Jesperson Press, 1984, p. 55. In 1860, Bishop Mullock seems to confirm these efforts when he referred to the fact that Bishop O'Donel encouraged education in the outports of the island (T.J. MULLOCK, *Two Lectures on Newfoundland, delivered at St. Bonaventure's College, January 25, and February 1, 1860*, New York, John Mullaly, 1860, p. 23).

¹² In 1802, Governor J. Gambier drew up a plan for the establishment of a denominational charity school in order to teach religion and morality, but before this school was established, Governor E. Gower arrived and in 1804 opened it along nondenominational lines. "This school owes its origin in great measure to Lord Gambier; and I believe he was assisted in his laudable object at the time by the Roman Catholic Bishop, Doctor O'Donel" (P. MORRIS, *Remarks on The State of Society, Religion, and Morals at Newfoundland*, London, A. Hancock, 1827, p. 20).

aimed at preventing "an increase in Roman Catholic schools", Catholic children attended these schools for several years.¹³ In 1806, Bishop O'Donel supported the formation of the Benevolent Irish Society (B.I.S.), a nondenominational body established to alleviate some of the suffering of the Irish residents in St. John's; this group eventually opened the Orphan Asylum School in 1827.

Both Bishop Patrick Lambert (1806-1817) and Bishop Thomas Scallan (1817-1830) continued to support the Charity School in St. John's as well as the Benevolent Irish Society. Although the B.I.S. was nonsectarian in its origins, it gradually became a predominantly Catholic society and its school, open to children of all denominations, became in actual practice, the chief Roman Catholic school in St. John's before 1833. Yet, by the early 1840s, some Catholic children also attended the schools of the Newfoundland School Society,¹⁴ even though Bishop Scallan had warned Catholic parents against this practise.

By the 1830s, Catholics also attended a number of private schools in various communities, since the six or seven Catholic schools in 1784 subsequently increased

¹³ M.N. MULCAHY, "The St. John's Schools of Industry", in *The Newfoundland Quarterly*, 77 (4/1983), pp. 19 and 22. See also M.N. MULCAHY, "The Catholic Church in Newfoundland: The Pre-Emancipation Years", in *Canadian Catholic Historical Studies*, 52 (1985), pp. 20-21.

¹⁴ See P. McCANN, "The Newfoundland School Society 1823-1855: Missionary Enterprise or Cultural Imperialism?", in J.A. MANGAN (ed.), *'Benefits Bestowed'? Education and British Imperialism*, Manchester, Manchester University Press, 1988, p. 99.

to double that number.¹⁵ These "Catholic schools" simply referred to private schools operated by individual Roman Catholics for Catholic children in an attempt to provide rudimentary education, including some instruction in the faith.¹⁶ Thus, besides these private schools, it seems that, during this period from 1784 to 1830, Catholic children received rudimentary education from several sources including the catechists trained by Bishop O'Donel, the Charity School, some of the schools of the Newfoundland School Society and the Orphan Asylum School operated by the B.I.S.

1.2 - 1836-1887: ESTABLISHMENT OF THE DENOMINATIONAL SYSTEM

From the perspective of Catholic education, the period between 1836 and 1887 consists of two parts, namely, the episcopacy of Bishop Fleming (1829-1850) and the gradual establishment of various convent schools (1850-1887), in the midst of the struggle for the sub-division of the Protestant education grant. During the 1830s and 1840s, Newfoundland society underwent a tremendous transformation on a number of different levels. The influx of immigrants from southwest England and southeast Ireland in the first two decades of the century contributed to the evolution of Newfoundland society from a transitory fishing settlement to a more permanent

¹⁵ P. McCANN, "Catholics and Education", Unpublished Notes for course F6208, St. John's, Memorial University of Newfoundland, Spring 1990, p. 1. For information on private schools, see F. ROWE, *The Development of Education in Newfoundland*, Toronto, Ryerson Press, 1964, pp. 51-62.

¹⁶ In 1834 Bishop M. Fleming described one of these schools in Fortune Harbour, where a Mrs. Power instructed the children of her neighbours in the paths of religion and morality (M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, pp. 305-306).

community. At the same time, government by the fishing admirals gave way to the establishment in 1832 of Representative Government consisting of a Governor, an appointed Council and an elected Assembly. Despite the fact that the Irish Roman Catholics made up virtually fifty percent of the population, the island was governed as a "Protestant state -- the Governor, administrative officials, the Council and nearly all the merchants were English Protestants."¹⁷ The resulting political, social and economic divisions along religious lines contributed to a chaotic societal context where bitter strife and dissension often erupted in violent affrays. Eventually the British government appointed an Amalgamated House (1842-1848) consisting of both appointed and elected members.

Within this entire societal context, the government passed its first educational legislation in the 1830s and 1840s. In 1836, the government allocated funds to some schools already existing and instituted a non-denominational system of education, appointing school boards in each of the nine electoral districts. However, the next seven years proved disastrous for the operation of this system and in 1843, the government decided to divide its educational funds between Protestants and Catholics, thereby taking the first step toward the eventual establishment of the denominational system in 1874.

In the midst of this social, religious, economic and political context, Bishop

¹⁷ P. McCANN, "Bishop Fleming and the Politicization of the Irish Roman Catholics in Newfoundland, 1830-1850", in T. MURPHY and C. BYRNE (eds.), *Religion and Identity*, p. 82. This article also gives a succinct description of the political context of this period as well as Fleming's role in that context.

Michael Fleming (1829-1850) assumed the leadership of the Roman Catholic Church of Newfoundland and inaugurated a new era for the Church, an era that resulted partly as a consequence of the *Act of Emancipation* in 1829. Educated in Ireland (and not on the continent like the first three bishops), Michael Fleming was a devoted follower of the Irish nationalist leader, Daniel O'Connell, as well as a defender of the rights of the poor Irish immigrants in Newfoundland. Unlike his predecessors, Fleming consistently opposed the English administration and condemned any kind of fraternization with the Protestants. His strong opinions and uncompromising character led him into numerous conflicts with various groups of people, including the British administration, one of his own priests who nurtured relationships with the Protestants, and some of the laity whom he named "liberals".¹⁸

One of his conflicts with a group of lay Catholics in St. John's provides an insight into Fleming's view of education.¹⁹ The Benevolent Irish Society had opened the Orphan Asylum School in 1827 as a nondenominational school in principle, even though most of the students and teachers were Catholics. Fleming wanted to give religious instruction after school hours, but six members of the society refused to allow him admittance. The members argued that the school was

¹⁸ In actual fact, these "liberals" were more or less conservatives, but called "liberals" by Fleming to gain the support of Pope Gregory XVI, who detested liberals. In reality, Fleming himself could be called a political liberal.

¹⁹ For an account of this conflict, see M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, pp. 229-230; N. VEITCH, *The Contribution of the Benevolent Irish Society to Education in Newfoundland from 1823 to 1875*, M.Ed. thesis, Antigonish, Saint Francis Xavier University, 1965, pp. 49-54.

nondenominational in its foundation and they felt that to give religious instruction might have inhibited children of other denominations from attending the school. Fleming himself admitted that the Orphan Asylum School received public confidence because it was based on nondenominational principles.²⁰ After he became coadjutor in 1829, he proceeded to prepare four hundred children for communion. Fleming asserted "from that time forward the school has been placed under my immediate supervision."²¹ Rowe clarifies that this supervision referred to religious instruction, because the school committee continued to function.²² Moreover, Bishop Howley refers to this incident as the "commencement of the great fight for Catholic education."²³

During the first half of his episcopate, Fleming's ministry was marred by political and sectarian difficulties. The difficulties involved people such as Father E. Troy, H. Winton, M. McLean Little, Chief Justice H. Boulton; the British government even complained to Rome in an effort to have Fleming censured.²⁴ Eventually *Propaganda Fide* advised Fleming to avoid clerical involvements in politics

²⁰ M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, p. 229.

²¹ M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, p. 230. A. Morine also concludes that the school "became practically a Roman Catholic school under the supervision of the Roman Catholic bishop" (PANL: P4/3/15, "The History of Newfoundland. Chapter 15. Education", manuscript, p. 4).

²² F. ROWE, *The Development of Education in Newfoundland*, p. 38.

²³ M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, p. 230.

²⁴ See Bishop Fleming's statement to the British government answering the complaints against him (PRO, CO: 194/99).

and encouraged him to give greater attention to his pastoral duties.

Meanwhile, in fact, Fleming showed remarkable pastoral solicitude for his people as witnessed in his several visitations throughout his extensive vicariate, in his constant attempts to secure additional clergy to work in the parishes and in his untiring efforts to build the cathedral at St. John's. His concern for the integrity of the Catholic religion especially motivated him to become involved in the whole area of education, for he recognized the urgent necessity of the education of girls, both the poor²⁵ and the rich.²⁶ Thus, he established a Presentation convent (1833), in order to open a school for poor children and, later established a convent of the Sisters of Mercy (1842) to provide for the education of the more "respectable and wealthier" classes. Writing to Pope Gregory XVI in July 1842, Fleming says "there were no (Catholic) schools for the education of the rich or the poor. We have now two convents established one for the education of the poor and another for the rich with a number of Catholic schools over the island."²⁷

Bishop Fleming also expressed concern about the education of the boys who had remained at the Orphan Asylum School when the Presentation sisters had begun

²⁵ *Third letter*, in M. FLEMING, *Letters on the State of Religion, Addressed to the Very Rev. Dr. A. O'Connell, P.P.*, Dublin, James Duffy, 1844, p. 18.

²⁶ *Fourth letter*, in M. FLEMING, *Letters on the State of Religion*, p. 22.

²⁷ ASCPF: SRC: AM.Sett., 5 (1842-1848), M. Fleming to Gregory XVI, *Letter*, July 1842, f. 135 (Fleming himself inserted the word "Catholic", giving an indication of his view of the schools he established). [The series *Scritture riferite nei Congressi* (SRC) at *Propaganda Fide* contains documents that were referred to in the general meetings. In this study the folio number (f.) refers to these numbers that have been assigned by the Congregation.]

teaching the girls in 1833.²⁸ Thus, in 1847 he obtained a community of teaching brothers from Ireland, the Franciscan Brothers of the Third Order Regular of Mount Bellew, to provide for the education of the boys; although they were commonly so called, they were not technically "monks".²⁹ Ultimately, by the time of his death in 1850, Fleming had made a significant contribution to the area of Catholic education, especially through his relentless efforts in establishing three religious institutes.

Bishop Fleming's successor, Thomas Mullock, began his episcopate with views on education that manifested a clear similarity to those of Fleming:

It is education alone, religious, literary and industrial, that can raise our people from the depressed state in which they have been hitherto kept. To an educated people, justice cannot be long denied; and Catholic Female Education is the basis of all others.³⁰

Although his concept of education included the industrial with an emphasis on agriculture, he emphasized, like Fleming, the importance of female education. This emphasis prompted him to establish Presentation and Mercy foundations outside St. John's.³¹ Thus, between 1851 and 1865 he had Presentation convents established

²⁸ M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, p. 227.

²⁹ *Ibid.*, p. 235.

³⁰ AASJ: 104/1/31, J.T. Mullock to the Catholics of Carbonear, *Reply*, *Newfoundlander*, June 7, 1852. The bishop maintained this view of female education to the end of his episcopate: in 1865 he wrote that "education of girls is necessary in order to exercise an influence in family where the father is often gone" (ASCPF: SRC: AM.Sett., 9 (1864-1865), J.T. Mullock to Cardinal A. Barnabò, *Letter*, October 3, 1865, f. 1171).

³¹ "[...T]wo convents [...] for education in Harbour Grace and Carbonear besides those in St. John's for in these American Regions female education is the great leaven of Catholicity" (ASCPF: SRC: AM.Sett., 6 (1849-1857), J.T. Mullock to Cardinal G. Fransoni, *Report of Mission*, August 30, 1852, f. 502). See also ASCPF:

throughout his diocese, i.e., Harbour Grace (1851), Carbonear (1852), Harbour Main (1853), Fermeuse (1853), another one in St. John's (1856), Ferryland (1858), St. Mary's (1859), Witless Bay (1860), Placentia (1865), Torbay (1865).³² Bishop Mullock made special mention of the work of these sisters,

who are now engaged in the great work of female education, in moulding the characters of generations yet unborn, instructing in religion, industry and refinement the future mothers of the people of Newfoundland.³³

The bishop's efforts also led to the eventual establishment of five convents of the Mercy Order: Belvedere Orphanage (1859), Brigus (1861), Burin (1863), Petty Harbour (1866) and Conception (1869).³⁴

From the early 1850s, Bishop Mullock exhibited considerable interest in the work of the Benevolent Irish Society, and cooperated with the Society in trying to introduce the Christian Brothers of Ireland to St. John's.³⁵ Unfortunately, he died

SRC: AM.Sett., 6 (1849-1857), J.T. Mullock to Cardinal G. Fransoni, *Report of Mission*, December 9, 1853, f. 595; ASCPF: SRC: AM.Sett., 7 (1858-1861), J.T. Mullock to Cardinal A. Barnabò, *Letter*, August 21, 1858, f. 59.

³² An account of these foundations is given in M.J. DINN, *Foundation of the Presentation Congregation in Newfoundland*, St. John's, [n.p.], 1975, pp. 19-21. See also M.P. PENNEY, *A Study of the Contributions of Three Religious Congregations to the Growth of Education in the Province of Newfoundland*, Ph.D. (Education) diss., Boston, Boston College, 1980, pp. 67-73.

³³ J.T. MULLOCK, *Two Lectures on Newfoundland*, p. 60.

³⁴ For a detailed account of these and other Mercy foundations, see M.W. HOGAN, *Pathways of Mercy in Newfoundland, 1842-1984*, St. John's, Harry Cuff Publications, 1986, xiv-450p. See also M.P. PENNEY, *A Study of the Contributions of Three Religious Congregations to the Growth of Education in the Province of Newfoundland*, pp. 73-86.

³⁵ ACFC: H-1-4, J.T. Mullock to Mr. Walsh, *Letter*, December 16, 1860.

in March of 1869 without seeing his plans for the establishment of the brothers fulfilled.

Bishop Mullock's successor, Thomas Power (1870-1893), began his episcopate in 1870 by renewing the request for the establishment of a community of Irish Christian Brothers in St. John's. After much correspondence, negotiations began in the fall of 1875, and the first community of brothers, established on January 19, 1876, began teaching at the Orphan Asylum (renamed St. Patrick's Hall).³⁶ In 1889, Bishop Power asked the Christian Brothers to operate St. Bonaventure's College and he later invited them to open another school, i.e., Holy Cross (1890).³⁷ Furthermore, he was involved in the opening of the Mercy convent in St. Lawrence (1871) as well as the opening of St. Bride's Boarding School (1884).³⁸ Ultimately, these efforts by Bishop Power to obtain further members of religious institutes to work in the schools manifests his commitment to Catholic education; Bishop Howley

³⁶ In the initial negotiations between the brothers and the bishop, an interesting issue arose concerning interference in the internal management of the brothers' schools, especially regarding inspection and the choice of textbooks. Accordingly, the original agreement of September 8, 1875 between Bishop Power and the brothers contained the provision: "4. The Brothers will not be obliged to receive or accept any government grant or to place their schools under government inspection" (ACFC: H-1-4, "An Outline of the Institute", p. 133). For further information regarding this policy of non-interference, see *Centenary Volume: Benevolent Irish Society of St. John's, Newfoundland 1806-1906*, Cork, Guy and Co., pp. 220-224; D.H. AKENSON, *The Irish Education Experiment: The National System of Education in the Nineteenth Century*, pp. 310-370.

³⁷ CHRISTIAN BROTHERS, *Journey into a New Century*, [n.p., 1976?], pp. 15 and 18.

³⁸ M.W. HOGAN, *Pathways of Mercy in Newfoundland, 1842-1984*, pp. 153 and 218.

later remarked that "the great glory" of Bishop Power's episcopate was "the introduction of the Christian Brothers as teachers of the Benevolent Irish Society's schools."³⁹

This entire period from 1850-1887 was also marked by the further development of the ecclesiastical structures of the Church in Newfoundland: the creation of the Harbour Grace Diocese on May 25, 1856 and the erection of the Prefecture of St. George's on June 2, 1870. Bishop John Dalton (1856-1869) became the first bishop of the Harbour Grace Diocese, while his successor was the controversial Italian, Enrico Carfagnini (1870-1880), who had been president of St. Bonaventure's College. Reginald MacDonald (1881-1906) from Cape Breton became the third bishop of Harbour Grace in 1881.⁴⁰ In the Prefecture of St. George's, the Holy See appointed Father Thomas Sears (1870-1885) as the first prefect apostolic.

Meanwhile, the period from the 1850 *Education Act* until the decisive Act of 1874 displayed several changes in the social, political and religious configurations of the island. A new level of sectarian contention arose around the issue of Responsible Government: Protestants held that the colony was not ready for this

³⁹ M.F. HOWLEY, "The Roman Catholic Church in Newfoundland", in *A History of the Churches in Newfoundland by Various Authors: A Supplement to the History of Newfoundland from the English Colonial and Foreign Records* by D. PROWSE, London, MacMillan, 1895, p. 35.

⁴⁰ Some discrepancy exists as to whether Bishop MacDonald's name is Reginald or Ronald. When he was appointed bishop (ASCPF: *Acta*, 249 (1881), May 2, 1881, f. 240), the Congregation of *Propaganda Fide* referred to him as "Reginaldus", and he signed some of his correspondence as "Reginald" (ADGF: 102/1). On the other hand, subsequent history refers to him as "Ronald".

kind of government and that the Catholic influence would be too strong, while the Catholics, urged on by Bishop Mullock, emphasized that this concession had been made elsewhere. Even though Responsible Government was established in 1855, sectarian rivalries continued in the early 1860s and led to the principle of religious representation in government, which gradually permeated the whole of public life in Newfoundland.⁴¹

By the late 1860s and early 1870s, the Orange Order, established in Newfoundland in 1863, had contributed to a new outbreak of anti-Catholicism. Undoubtedly, the culmination of this denominational antagonism consisted in the violent incidents between the Roman Catholics and the Orange movement in St. John's (1875), Kelligrews (1878) and Harbour Grace (1883).⁴² Moreover, the political battles during the 1860s over confederation with Canada led to pro- and anti-confederate positions and the old political and religious identification, e.g., Conservative-Protestant and Liberal-Catholic, gradually disappeared.⁴³ The early

⁴¹ For a detailed account of the struggles involved in the establishment of Responsible Government, see G. GUNN, *The Political History of Newfoundland, 1832-1864*, Toronto, University of Toronto Press, 1966, pp. 113-175. See also F. JONES, "Bishops in Politics: Roman Catholics v Protestant in Newfoundland 1860-1862", in *The Canadian Historical Review*, 55 (1974), pp. 408-421.

⁴² After the 1878 incident, Bishop T. Power gave a report on the incident. In the Harbour Grace Affray, five people were killed and seventeen wounded. For a consideration of these incidents, see E. SENIOR, *The Origin and Political Activities of the Orange Order in Newfoundland, 1863-1890*, M.A. thesis, St. John's, Memorial University of Newfoundland, 1960, pp. 104-172.

⁴³ For a consideration of the confederation debates, see J. HILLER, "Confederation Defeated: The Newfoundland Election of 1869", in J. HILLER and P. NEARY (eds.), *Newfoundland in the Nineteenth and Twentieth Centuries: Essays in Interpretation*, Toronto, University of Toronto Press, 1980, pp. 67-94.

1870s also witnessed a fresh awareness of the deplorable state of education in the island and as a result, the government established a Select Committee on Education in 1871. Although this committee made some suggestions about educational reform in its report of 1873, these suggestions were lost amidst the discussions for the sub-division of the Protestant grant.

The movement toward the sub-division of the Protestant grant on the part of the Church of England, under the leadership of Bishop Edward Feild, which had begun after the government divided its educational funds between the Catholics and the Protestants in 1843, represents one of the most important segments in the development of the denominational system in Newfoundland. Although "the conflict of philosophies, personalities and politics makes the Protestant denominational split in education one of the most colourful parts of our history",⁴⁴ the Catholic Church remained neutral toward this sub-division. However, with the awareness in 1857 that the Methodist population had increased to seventeen percent of the population, some Catholic politicians offered occasional support to the Methodists, on the grounds that they were giving support to the rights of the minority. Ultimately, the conclusive legislation of 1874 emerged in the midst of these diverse developments, subdividing the education grant between the Catholic Church, the Church of England and the Methodist Church, and some other smaller denominations, thus establishing the denominational system of education in Newfoundland.

⁴⁴ L. PARSONS, "Some Observations on Two Theses on Educational Legislation in Newfoundland", Unpublished Paper, St. John's, Memorial University of Newfoundland, December 9, 1967, p. 2.

After the system had existed for ten years or so, the government undertook a thorough examination of the denominational system during the debate on the 1887 *Education Bill*. When A. Morine introduced an amendment for free, public non-sectarian education, with religious instruction in all schools separate from secular instruction, the ensuing discussion represents a kind of watershed in the attitudes of politicians toward the system, for after this debate, even though criticisms of the system still arose, politicians generally focused on improvements within the system.⁴⁵

1.3 - 1887-1927: ADDITIONAL MEASURES TO IMPROVE THE SYSTEM

During the period from 1887 to 1927, Newfoundland society experienced numerous social and political crises, including the St. John's fire of 1892, the bank crash of 1894, and frequent changes of government. Furthermore, the period also saw the negotiations concerning the French Shore and the railway contract, the developments associated with foreign investment companies, as well as the rise of the Fishermen's Protective Union (F.P.U.). At the same time, various educational changes took place, especially in the sparsely populated areas of the island. This concern for education in sparsely populated areas became particularly evident in the various legislative debates wherein politicians, though frequently criticizing the

⁴⁵ P. McCANN, "The Politics of Denominational Education in the Nineteenth Century in Newfoundland", in W. McKIM (ed.), *The Vexed Question: Denominational Education in a Secular Age*, St. John's, Breakwater Books, 1988, p. 58.

system, attempted to introduce improvements.⁴⁶ Accordingly, these social, political and educational developments evoked various responses from the Catholic Church.

In 1903 Robert Bond introduced the *Education Bill* in order to provide education for many of the smaller settlements scattered along the coastline of the island.⁴⁷ The Bill resulted in the *Education Act* of 1903 which authorized the establishment of amalgamated schools in sparsely populated settlements where the small number of children did not warrant the building of separate denominational schools.⁴⁸

The Catholic response to this provision for amalgamated schools occurred during a meeting of all the Catholic clergy of the island in 1905. The meeting

⁴⁶ For example, see *The Evening Telegram*, June 21, 1893; *The Daily News*, March 20, 1909 and March 30, 1911.

⁴⁷ During the 1887 debate, Bond had blamed the appalling state of education on the denominational system, but P. McCann raises serious arguments against Bond's contention and instead, places the real cause of the crisis in education at that time in the structure of the economy and in "the functions of the dominance of merchant capital, the truck system and the ossified class structure rather than the multiplicity of church schools" (P. McCANN, "Class, Gender and Religion in Newfoundland Education, 1836-1901", in *Historical Studies in Education*, 1 (2/1989), p. 190).

Furthermore, one of the concerns mentioned during another debate was the number of small communities that had no school at all (*The Evening Telegram*, June 21, 1893). During the following few years some small communities attempted to establish a "common or undenominational" school but without much success, e.g., Cochrane Dale in 1895 (*The Daily News*, November 4, 1895) and Herring Neck in 1901 (reported in *The Free Press*, April 24, 1906).

⁴⁸ The concern for schools in smaller communities, especially those financed by the Destitute Grant, became a contentious issue between Archbishop Howley and Bishop March between January and April of 1910, resulting in the matter being referred to the Attorney General. The dispute revolved around the fact that the Destitute Grant was supposed to be placed at the disposal of the Boards of Education outside of St. John's (for more information, see AASJ: 106/16/1).

focused on the difficulty concerning the erection and maintenance of schools in sparsely populated settlements. The clergy resolved that any changes in the *Education Act* contrary to the spirit and principle of the denominational system must be strenuously opposed and that further information on the matter of the difficulties in the system should be obtained.⁴⁹ During the meeting, Archbishop Howley stated that the 1903 Act would not affect Catholic schools, due to the stipulation which prohibited amalgamation from interfering with the principle of denominational education which was established by law.⁵⁰

This provision for amalgamated schools also proved useful for some foreign companies. These companies eventually built new industrial towns such as Grand Falls, Corner Brook and Buchans and wanted to subsidize quality schooling without fostering religious distinctions. Utilizing the minor alterations to the provision of the 1903 *Education Act* which permitted interdenominational cooperation in small outports, these companies established "amalgamated" schools. Although these were non-sectarian schools, governed by boards appointed by the companies, the churches were sometimes represented. Moreover, the public meetings in Grand Falls and Botwood concerning this issue soon manifested that people were divided on the issue of reforming the school system, some advocating no change while others were willing

⁴⁹ Accordingly, Fr. E. Roche circulated a letter seeking responses from the various parishes on the island (AASJ: 106/16/15, E. Roche, *Letter*, September 5, 1905).

⁵⁰ AASJ: 106/16/14, Report of the Educational Meeting, June 24, 1905.

to bury their denominational differences.⁵¹ These meetings as well as the changes brought by these foreign companies reflected the presence of new influences in Newfoundland society.

Perhaps the most widespread criticism of the denominational system during this period came from the social and political movement known as the Fishermen's Protective Union, founded by William Coaker at Herring Neck in 1908. Coaker initiated this movement after he became aware of the inequities of the economic system, especially as experienced in the truck system of credit.⁵² Coaker proposed that the fishermen side-step the entire system by forming their own union. He not only challenged the economic structure of the day but he also challenged the position of the churches in the various communities, a position that had evolved partly due to the lack of local government. Eventually, this movement questioned some of the social and economic institutions integral to the very structure of Newfoundland society; Coaker even scorned the excessive "denominational nonsense in the

⁵¹ See *The Daily News*, April 5, 1910; *The Evening Chronicle*, November 25, 1910 and November 29, 1910.

⁵² This system operated because "every fisherman depended absolutely on credit, either directly from a St. John's merchant or indirectly through his intermediary, for his season's supplies. Prices were not established at the time the supplies were given, but were 'adjusted' when the fisherman sold his catch to the same merchant in payment of his debts. [...] Furthermore, in addition to selling supplies and buying fish, and setting the price of both, the merchant also had absolute discretion in the grading or 'culling' of fish" (S.J.R. NOEL, *Politics in Newfoundland*, Toronto, University of Toronto Press, 1971, p. 80).

government of the colony."⁵³ At its early conventions, the union advocated several policies that affected the denominational system, e.g., outport night schools organized in a purely undenominational way, co-operation of all denominations in order to provide a school in smaller places where twenty schoolable children existed, free and compulsory education, the election of school boards at a public meeting of all denominations.⁵⁴

Gradually Catholics became involved in the movement, even though the F.P.U. consisted primarily of the Protestants in the northern part of the island and had a particular association with the Orange Order.⁵⁵ This Catholic involvement disturbed the leaders of the Catholic Church, because it threatened Catholic solidarity.⁵⁶ Consequently, in early 1909, Fr. J. St. John wrote to Archbishop Howley concerning the fact that the fishermen of his area of Placentia Bay had

⁵³ I.D.H. McDONALD, *"To Each His Own": William Coaker and the Fishermen's Protective Union in Newfoundland Politics, 1908-1925*, J. H. HILLER (ed.), St. John's, ISER Books, 1987, p. 39.

⁵⁴ See the references to the educational issues in the Journal of Proceedings of the various conventions in W. COAKER, *Twenty Years of the Fishermen's Protective Union of Newfoundland From 1909 - 1929*, St. John's, Advocate Publishing, 1930; reprint St. John's, Creative Printers, 1984, pp. 10, 21, 24, 40, 50.

⁵⁵ P.J. McCANN, "Denominational Education in the Twentieth Century in Newfoundland", in W. McKIM (ed.), *The Vexed Question*, p. 64.

⁵⁶ Prior to this, Catholics had often acted as a political unit, partly because of the concentration of Catholics on the Avalon Peninsula, partly because of the Irish tradition of obeying their leaders in temporal matters and partly as a consequence of the sectarian conflicts of the nineteenth century.

formed F.P.U. councils.⁵⁷ Archbishop Howley's response consisted of a detailed consideration of the F.P.U. and a subsequent condemnation of the union.⁵⁸ After Coaker made some modifications, Archbishop Howley withdrew his ban on the union and declared "that I have received a sufficient guarantee that no attempt will be made by the F.P.U. to interfere with our Educational system."⁵⁹ Although Coaker's efforts continued for the next decade, the movement failed to attain sufficient power to overcome the alliance of institutions and factions that opposed him.

Meanwhile, during this period further alterations occurred within the structure of the Roman Catholic Church as well as within the organizations of the female religious institutes. On April 28, 1892, the Prefecture Apostolic of St. George's became a vicariate apostolic and Michael Howley became its first bishop on June 24, 1892. When Howley became bishop of St. John's after the death of Bishop T. Power, Bishop Neil McNeil became his successor in St. George's on October 20, 1895. Then in 1904, the Holy See established St. George's as a diocese and St. John's became the archdiocesan metropolitan see. In the Diocese of Harbour Grace, John March was consecrated on November 4, 1906.

In 1915, the restructuring of the various convents in Newfoundland resulted partly out of a concern for the denominational system. On November 25, 1915 all

⁵⁷ AASJ: 106/19/2, J. St. John to M. Howley, *Letter*, February 9, 1909; J. St. John to M. Howley, *Letter*, March 26, 1909.

⁵⁸ AASJ: 106/9/6, M. HOWLEY, *Circular Letter on Secret Societies*, March 31, 1909. For references to secret societies, see also AASJ: 106/9/5, M. HOWLEY, *Pastoral Letter*, February 18, 1912.

⁵⁹ AASJ: 106/19/2, M. Howley to J. Kent, *Letter*, September 29, 1913.

the independent houses of the Presentation Sisters were united to form one separate congregation with its own superior general and in like manner the independent houses of the Sisters of Mercy were united to form one congregation, under the one general superior.⁶⁰ This development concerning amalgamation took place in order to provide for a central novitiate, to assist in better government and administration of the various convents as well as to provide for a more effective apostolate.⁶¹ By this arrangement, sisters were professed in the work of each institute, which included the possibility of being sent to any part of the island. Consequently, the introduction of properly trained young sisters led to an increase in the educational efficiency of small convents.⁶²

The educational changes during this entire period began in 1890 with the appointment of a Select Committee on Education. This Committee, entrusted with the work of enquiring into the condition of education, approached its task by organizing an essay contest to seek suggestions for improvement. The Committee's

⁶⁰ On November 25, 1915, the Congregation for Religious gave the apostolic delegate, Archbishop P.F. Stagni, the faculties for the establishment of these unions. On July 14, 1916 the apostolic delegate executed this decree (ASM: RG 1/6/45a-45b, SACRED CONGREGATION OF RELIGIOUS, Decree, November 25, 1915; ASM: RG, 1/6/46-47, P.F. STAGNI, Decree, July 14, 1916).

⁶¹ "The interchange of Sisters from one House to another would be of great advantage in securing more experienced teachers in small communities in many of which are at present no Novices or Postulants and where new teaching Sisters are absolutely necessary" (for documents concerning this amalgamation, see ASM: RG 1/6/37).

⁶² R. Andrews refers to the startling changes that resulted in September 1916 when a complete change of staff occurred at the Presentation convent at Harbour Grace (R.L. ANDREWS, 1915-1949, p. 36).

report, influenced by Brother L. Slattery's winning essay, suggested improvements within the system and these suggestions eventually led to the formation of the Council for Higher Education in 1893.⁶³ This Council attempted to advance the interests of higher education, especially by setting common external examinations. Negative reactions soon emerged as the educational evaluation of teachers and schools gradually focused almost exclusively on the number of successful candidates in the "C.H.E. exams".⁶⁴

Eventually, three major changes occurred in the structure of the denominational system: the creation of the Department of Education with its own Minister (1920), the establishment of the Normal School for the training of teachers (1921), and the founding of Memorial University College (1925). Even though these innovations continued some denominational representation, especially in the persons of the denominational superintendents, i.e., L. Curtis (U.C.), W. Blackall (Anglican)

⁶³ See *Report of Select Committee on Education*, February 11, 1891, in *Journal of the House of Assembly*, 1891, Appendix, pp. 447-456.

⁶⁴ During the debate on the 1893 *Bill*, several politicians feared that the Council's concern would focus on the rich as well as those in St. John's rather than on people in the outports (see *The Evening Telegram*, June 21, 1893). Bishop Howley also criticized the Council (AASJ: 106/9/1, M. HOWLEY, *Pastoral letter*, February 20, 1898). Further criticism came from W. Blackall: "Our schools are rapidly becoming a forcing home for the plants which may show possible signs of prize-winning at the annual educational flower show ... The plants which are forced suffer by the forcing and the plants not thought worthy of attention suffer by neglect" (reported during the debate on the *Education Bill* of 1911: *The Daily News*, March 30, 1911).

and R. Kennedy (R.C.), the Catholic bishops expressed hesitations about the changes.⁶⁵ The influence of these superintendents gradually increased, reaching an apex in 1927 when the *Education Act* abolished the position of Minister of Education and gave them positions on the Bureau of Education. While the churches manifested a dissatisfaction with ministerial control of education, they "regarded the 1927 Act as a Magna Carta of their rights and privileges."⁶⁶

1.4 - 1927 - 1949: EVENTS LEADING TO CONFEDERATION

The economic crisis of 1929 had drastic effects on Newfoundland and by 1931 the government began to consider the possibility of reducing educational expenses by more than \$500,000, i.e., 50%.⁶⁷ By the end of 1932, financial conditions in Newfoundland had deteriorated to the extent that the government agreed to the

⁶⁵ Due to strong representations from the bishops of both Harbour Grace and St. George's, Archbishop Roche wrote the government: "[...] we want to know to what extent and in what directions will the new Department constitute a departure from our present education system and methods" (ADSG: File: Archbishop of St. John's 1918-1940, E. Roche to Brownrigg, *Letter*, November 23, 1919). Bishop Power wrote the Prime Minister that the position of the Minister of Education "creates serious uneasiness about the safety of the Denominational System" (ADGF: 103/6/2, M. Power to R. Squires, *Letter*, [n.d.]).

Bishop March regretted giving permission for the Normal School for "this has compromised our Catholic position" (ADGF: 103/6/5, J. March to E. Roche, *Letter*, December 3, 1924) and he raised questions about the Memorial College (ADGF: 103/6/5, J. March to E. Roche, *Letter*, July 23, 1924), because he saw this College as "mixed [nondenominational] education" (ADGF: 103/6/5, J. March to W. Monroe, *Letter*, [n.d.]).

⁶⁶ P. J. McCANN, "Denominational Education in the Twentieth Century", in W. McKIM (ed.), *The Vexed Question*, p. 68.

⁶⁷ For the bishops' reaction to this reduction, see ADGF: 103/6/4, J. March to R. Squires, *Letter*, May 2, 1931; ADSG: File: Archbishop of St. John's 1918-1940, E. Roche to R. Kennedy, *Letter*, September 13, 1932.

appointment of a Royal Commission of Enquiry to examine the financial situation of the island. This Commission, reporting to the British House of Commons on October 4, 1933, made only a few references to education, but it alluded to an educationalist, who was already investigating the Newfoundland education system.⁶⁸ That investigation proved to be the C.A. Richardson Report of October 18, 1933.⁶⁹ The report had an important effect on the churches for they perceived this enquiry as an attack on the denominational system.⁷⁰

One year later, on October 3, 1934, Thomas Lodge, the Acting Commissioner for Education, decided to amend the *Education Act* of 1927, especially with a view to reorganizing the Bureau of Education in such a way that the positions of the denominational superintendents would be abolished. In its report on January 22, 1935, the Commission disclosed its plan regarding the reorganization of the system and mentioned that, at a later date, it would consider the abolition of local boards

⁶⁸ *Newfoundland Royal Commission, Report Presented by the Secretary of State for Dominion Affairs to Parliament by Command of His Majesty, November, 1933*, London, H.M. Stationery Office, 1933, paragraphs 53 and 577. The recommendations of the Amulree Commission were implemented by the British Parliament. As a result, a Commission of Government, consisting of three Newfoundland appointees and three British appointees, assumed office on February 16, 1934.

⁶⁹ The report proposed teaching practical subjects and life skills rather than formal academic subjects, and it called for a superior academic education for the ablest children (C.A. RICHARDSON, *Certain Aspects of the Educational System of Newfoundland*, October 18, 1933, 21p).

⁷⁰ Archbishop Roche considered Richardson's visit as an "attack" on the denominational system (ADSG: File: Archbishop of St. John's 1918-1940, E. Roche to H. Renouf, *Letter*, October 19, 1933).

as well as the possibility of having a state school in St. John's.⁷¹

Archbishop Roche's responses to these proposals and to the accompanying draft bill initiated a struggle between the Catholic Bishops -- with other denominations -- and the Commission of Government over the issue of the denominational system. The bishops wanted to retain certain essential elements in the system, e.g., the superintendents, while the Commission of Government proposed to whittle away the denominational system.⁷² In spite of opposition from the bishops and after much negotiating with the denominations, the Commission enacted amendments to the *Education Act* in 1935 and 1939. These amendments replaced the Bureau of Education with a committee which would act as a channel of communication between the denominations and the Commissioner of Education⁷³ and established a Council of Education consisting of denominational representation with the authority under the Commissioner for all educational policy.

During the next few years the Commission of Government continued to make progress in the field of education:

⁷¹ See the full text of these proposals in R.L. ANDREWS, *1915-1949*, pp. 186-187.

⁷² AASJ: 108/76/1, E.P. Roche to F.C. Alderdice, *Letter*, August 20, 1935. The research of P. McCann has shown that the Commission of Government was adhering to the policy of the Dominions Office which attempted to break the denominational framework and achieve "State education" (see P. McCANN, "The Education Policy of the Commission of Government", in *Newfoundland Studies*, 3 (2/1987), pp. 205-211).

⁷³ This committee evolved in an effort to respond to the opposition by the denominations (see P. McCANN, "The Education Policy of the Commission of Government", in *Newfoundland Studies*, 3 (2/1987), p. 205).

[B]y 1949 it had built 555 new schools and renovated 264 others, spending \$3,400,000 on school construction between 1938 and 1949. The curriculum had been broadened and improved, and the 1942 Act for free and compulsory education had increased attendance. The Commission also widened the conception of education to include vocational and industrial instruction and introduced the idea of regional high schools.⁷⁴

The Commission of Government also extended the concept of the amalgamated school in its 1943 legislation on "common" schools and opened several land resettlement schools on a strictly secular basis.⁷⁵

With the improvements in Newfoundland's financial situation, the British government announced on December 11, 1945, that members for a constitutional convention would be elected in Newfoundland to consider among themselves the financial situation of the island and to make recommendations concerning the possible forms of government to be put before the people in a national referendum. This convention met in September of 1946 and two delegations were appointed: one to ascertain from the United Kingdom what financial assistance might be anticipated, the other to discuss with the Canadian government the possibility of federation. Nine committees were established to investigate various areas of concern; one of these

⁷⁴ P. McCANN, "The Education Policy of the Commission of Government", in *Newfoundland Studies*, 3 (2/1987), p. 212. For an evaluation of education under the Commission of Government, see R. L. ANDREWS, *1915-1949*, pp. 367-371.

⁷⁵ Archbishop Roche wrote the Government concerning one of these resettlement schools, i.e., the Markland school: "We regard parents as having certain inalienable rights with regard to the education of their children and one of these is to have children educated in schools of their own faith. This does not necessarily mean that they cannot send their children to other schools; but it does mean that they are not at liberty to forgo their right to have their children educated in their own schools" (ADGF: 103/6/6, E. Roche to F. Emerson, *Letter*, October 9, 1934).

committees considered education.⁷⁶ This committee immediately decided that, due to the lack of educational qualifications of the committee members, it would restrict itself to the financial aspect of education.

Eventually, a delegation appointed by the National Convention went to Ottawa on June 24, 1947 to begin negotiations. At the meeting of July 7, 1947, the Newfoundland delegation inquired about the position of the system of denominational education under section ninety-three of the *British North America Act*, if union were to take place. The Canadian delegation expressed that the federal government might reasonably accept any arrangements Newfoundland wished to make regarding education.⁷⁷ As a result, the drafting committee began to compose a section on education, which after a series of drafts, was incorporated in the *Proposed Arrangements for the Entry of Newfoundland into Confederation* on October 29, 1947. At the press conference of November 6, 1947, L. St-Laurent, the Secretary of State for External Affairs, reiterated the fact that the arrangements concerning education were drafted according to the desire of the people of Newfoundland.⁷⁸ Subsequently, the Newfoundland delegation returned home in order to prepare for the referendum by which Newfoundlanders would vote on these arrangements.

⁷⁶ See the report of this committee in NAC: MG 31, E 39, V. 11, File: Committee Reports submitted to Newfoundland National Convention, 1946-1947.

⁷⁷ NAC: MG 30, E 159, V. 4, File: Newfoundland - Canada Discussions: minutes of meetings, 1947. See also the question regarding education in NAC: MG 30, E 159, V. 5, File: Questions raised by Newfoundland delegation with responses, 1947.

⁷⁸ NAC: MG 30, E 159, V. 4, File: Proposed Arrangements for admission of Newfoundland. See APPENDIX 3 for the various drafts of the section on education.

In the meantime, a Responsible Government League had formed in Newfoundland in 1947 and had begun a concerted campaign against confederation. The official position of the Catholic Church seemed to concur with aspects of this Responsible Government League for Archbishop Roche constantly spoke of the virtue of independent self-reliance and the editorials of the archdiocesan newspaper, *The Monitor*, from November 1947 to June 1948, frequently expressed an anti-Confederate philosophy.⁷⁹

The referendum of June 3, 1948 did not produce a majority decision and as a result another vote was set for July 22 with only two forms of government to be placed on the ballot. Prior to this second vote, the Orange Lodge issued a letter to all the lodges on the island asserting that the Roman Catholic Church was attempting to influence the result of the referendum.⁸⁰ The vote of July 22, 1948 produced a

⁷⁹ "The position taken by *The Monitor* in its November edition was that the final decision as to Newfoundland's future should be made only after full discussion and negotiation by a parliament elected by, and representative of the people of Newfoundland. [... T]hree main reasons for this position: 1) The pledge that Responsible Government should be restored to the country on the request of the people. 2) Only a duly elected parliament, with both branches of the legislature functioning, would be competent to deal with the complicated issues, social, economic, educational and religious, which would be involved in any radical constitutional change. 3) No other course would be consistent with our dignity as a people and with our traditions and history" (*The Monitor*, February 1948). Thus, the paper decided to carry a series of articles which will help people make a "sane, unprejudiced and patriotic decision."

⁸⁰ See copy of this letter of July 16, 1948 in NAC: RG 25, Accession 83-84/351, Box 12, File: 10300-E-40 pt. 1. P. Bridle, Acting High Commissioner for Canada also expressed a fear that A. Walsh, who was involved in the negotiations for the Newfoundland delegation, might be subjected "to pressure of a personal nature from Roman Catholic friends, and perhaps even from the Archbishop himself acting in a personal capacity" (NAC: MG 31, E 39, V. 11, File: Legal Procedures for Admission

slight majority in favour of confederation.⁸¹ Immediately after the referendum, R. MacKay visited Newfoundland on behalf of the Canadian Department of External Affairs and met with numerous people including the Roman Catholic hierarchy of Newfoundland.⁸²

After this visit by MacKay, Prime Minister King announced on July 30, 1948 that the Canadian Government accepted the outcome of the referendum and invited Newfoundland representatives to Ottawa to finalize the terms of union. During the next few months, numerous discussions took place on various aspects of the terms of union⁸³ and on December 11, 1948 the document of the *Terms of Union* was signed.

of Newfoundland, 1947-1949).

⁸¹ The official results from the two votes were:

	June 3	July 22
Commission of Government	22,311 (14.3%)	-----
Confederation	64,066 (41.1%)	78,323 (52.3%)
Responsible Government	69,400 (44.6%)	71,334 (47.7%)

⁸² In meeting with co-adjutor Archbishop T. Flynn, Bishop M. O'Reilly and Bishop J. O'Neill on July 27, 1948, MacKay remarked: "They also argued quite strongly and with considerable prejudice about the financial aspect of the terms. [...] They showed little disposition to regard confederation favourably. For example, they admitted that education would be safeguarded but queried the usefulness of this if there was not enough money to provide proper education" (NAC: RG 25, Accession 83-84/351, Box 12, File: 10300-E-40 pt.1).

⁸³ According to the draft minutes of a meeting held on August 9, 1948, on the occasion of a discussion of constitutional procedures, Mr. Smallwood remarked that Newfoundland was not interested in constitutional technicalities. "The only point he was concerned with was the question of education. The legislation passed on this matter should be binding so that any groups in Newfoundland, namely the Catholic Church which forms one third of the population, could not later on start to overlook it or discard it altogether" (see NAC: RG 25, Accession 83-84/351, Box 11, File: 10300-A-40). Interestingly, after the revision (dated August 13, 1948) of the draft minutes of this meeting between Bradley and Smallwood and the Canadian ministers, no mention of these comments regarding the Catholic Church are found (see NAC:

After the document passed in the Canadian and British Parliaments, Newfoundland became the tenth province of Canada on April 1, 1949, with the rights of classes of people to operate denominational schools entrenched in the *Terms of Union*.

1.5 - 1949-1969: MAJOR CHANGES

The period immediately following Confederation witnessed some of the most dramatic social and economic changes in Newfoundland and these in turn gave rise to extensive developments in the educational system. The living standards of the population radically changed with the impact of federal welfare programs, e.g., family allowances, old age pensions, unemployment insurance and veterans' benefits. With their improved economic situation, people demanded better school facilities and higher standards of education. F. Rowe described the flood of problems that the government of the time had to face, including the extraordinary increase in Newfoundland's population; the relatively small number of qualified and experienced teachers; the need for newer and larger schools; the low standard of education in the two- and three-room schools (778 out of the 1,187 schools were one-room schools); isolation of small communities, which prevented the growth of central and regional high schools; the large number of children who were not able to acquire a Grade XI Matriculation and thus could not attend university; overcrowding at Memorial

University College; the kind of education offered by the system.⁸⁴ In considering these conditions, the government realized the need for a comprehensive educational policy.

Meanwhile, other concomitant developments contributed to the revolution in the education standards of the province. The process of migration and resettlement, that had begun in several areas, increased in 1954, when the government provided assistance for people in isolated communities wishing to move to other areas. Also a thorough program of building new roads and improving old ones made it possible to centralize education to some degree. As a result, the ideas of regional and central high schools, initially proposed by the Commission of Government could be implemented and in 1954, one of the first regional high schools opened at Corner Brook for Roman Catholic boys. The government policy of supplying subsidies for school bus transportation as well as bursaries and scholarships for those who desired to complete their high school, contributed to the advances that occurred in the system by the beginning of the 1960s and influenced the development of a new awareness on the part of the Catholic Church.⁸⁵

In the early 1960s, as a result of the developments at Carol Lake (later

⁸⁴ For a description of these changes, see F. ROWE, *Education and Culture in Newfoundland*, Toronto, McGraw-Hill Ryerson Press, 1976, pp. 54-70.

⁸⁵ In considering the government subsidy to bus transportation, Archbishop Skinner articulated an emerging awareness: "[...] while we adhere most firmly to the principles that safeguard the system, should we not perhaps envision a certain prudent flexibility at times within the framework of the system" (ADSG: File: Archbishop of St. John's 1955-1964, P. Skinner to M. O'Reilly, *Letter*, November 6, 1956)?

Labrador City), the government proposed new legislation that would call for the establishment of a non-denominational school. The Newfoundland bishops became concerned about this amendment, but at the same time, they were in an awkward position because the Vicariate Apostolic of Labrador, which had been established in 1945 under the ecclesiastical jurisdiction of Rimouski, Quebec, had territory in the civil jurisdictions of both Newfoundland and Quebec. Despite this position, Archbishop Skinner wrote to Bishop Lionel Scheffer of Labrador concerning the importance of safeguarding the denominational system.⁸⁶ In 1966, when Bishop Scheffer died, the Archbishop insisted with the apostolic delegate that "the education issue is of primary Importance" in the choice of a new vicar apostolic for Labrador.⁸⁷ On July 22, 1967, the Diocese of Labrador-Schefferville was established as a suffragan diocese under the ecclesiastical jurisdiction of Keewatin-Le Pas and Henri Légaré became its bishop on September 9, 1967.⁸⁸ In terms of Catholic education in Labrador, F. Rowe reports that in the early 1960s, the Roman Catholic School Board of Labrador North operated a school for the Naskapi Indians at Davis Inlet and one for the Montagnais Indians at North West River "under the direct

⁸⁶ AD SG: File: Archbishop of St. John's 1955-1964, P. Skinner to L. Scheffer, *Letter*, April 29, 1960.

⁸⁷ The Archbishop remarked that possible developments in Labrador "will no doubt, sooner or later, call for a serious look at civil and ecclesiastical boundaries, always bearing in mind the all important question of our Catholic schools under the Education Act of Newfoundland" (AD SG: File: Archbishop of St. John's 1965-1967, P. Skinner to S. Pignedoli, *Letter*, October 26, 1966).

⁸⁸ The name of the diocese was changed to Labrador City - Schefferville on April 27, 1987.

supervision of the Oblate missionaries."⁸⁹ While Labrador had a total of nine Catholic schools in the 1960s, the number has almost doubled in 1991.

Despite the accelerated growth in the Newfoundland school system after 1949, numerous problems still plagued the educational scene, e.g., Newfoundland's low general standard of education, low percentage of well-trained teachers, duplication of school services, a multitude of small isolated schools. The system required further developments and in December 1964 the government established a Royal Commission on Education and Youth, with P. Warren as the chairman.⁹⁰ The task of the Commission called for "a careful study of all aspects of education in Newfoundland."⁹¹

The Commission collected information from written submissions, private and public hearings, and research; they also made visits to schools throughout the province and attended conferences outside the province. The Commission wanted to improve the quality of education so that every child would be able to achieve "his fullest development as a person and as a member of society."⁹² With this goal, the

⁸⁹ F. ROWE, *The Development of Education in Newfoundland*, p. 187.

⁹⁰ A myriad of factors including historic, educational, political, social and religious conditions, preceded and probably precipitated the government's appointment of this Commission. See C.A. ANSTEY, *A Study of Certain Factors Surrounding the Origin and Implementation of the Recommendation of the Royal Commission on Education and Youth that the Newfoundland Department of Education be Reorganized Along Functional Lines*, M.A. (Education) thesis, St. John's, Memorial University of Newfoundland, 1972, pp. 14-35.

⁹¹ NEWFOUNDLAND AND LABRADOR, *Report of the Royal Commission on Education and Youth*, vol. 1, 1967, p. xiii.

⁹² *Ibid.*, p. xvii.

commission attempted to balance the various rights of the parties within the system, e.g., those of the child, the churches, parents and the state. The Commission declared that if the rights of the churches infringed

in any way on the unqualified right of every child to an education suited to his abilities and interests, then the state has an obligation to see that appropriate changes are made in legislation.⁹³

With this basic philosophy, the Commission concluded that their task of evaluation must include a study of the denominational framework.

In this regard, an underlying bias seemed to colour the work of the Commission, i.e., the Commission's stance regarding the denominational system. C. Anstey studied the ambiguity of the Commission's intention concerning whether or not the Commission wanted the complete elimination of the churches' role in education and concluded

that the majority of the Commission members genuinely believed that the influence which the church presently exercised resulted in duplication and fragmentation of effort and, therefore, was detrimental to the overall improvement of the quality of education. Because of this, the Commission presented its reorganization recommendation as an attempt to break the hold of the church on certain aspects of education in the province. The Commission thought that this initial move against the influence of the church, if successful, would initiate a series of events that would gradually phase down the involvement of the church, not to the point of complete elimination, but to the point where its main interest would lie in religious education.⁹⁴

The Commission received a total of one hundred and forty-seven written

⁹³ *Ibid.*, p. xv.

⁹⁴ C.A. ANSTEY, *A Study of Certain Factors*, p. 97.

briefs, but "only thirty eight dealt with the Denominational System of education."⁹⁵ After analyzing all the briefs, the Commission released its two-volume report in January and October 1967. This comprehensive report analyzed the organization and structure of the system and contained a total of three hundred and forty recommendations, including the reorganization of the Department of Education, the consolidation of school districts, the consolidation of schools, the upgrading of teachers, the diversification of the school curriculum, and the improvement of public examinations. The first recommendation embodied the most revolutionary changes: "that the Department of Education be reorganized on a functional rather than a denominational basis." Indeed this recommendation occasioned a minority report from the three Catholic members of the twelve member Commission. Although these Catholic members felt that this recommendation would probably safeguard the rights of parents, they feared that the traditional right of the churches to be involved in formulating educational policy needed to be continued in the law. They warned that "to tamper with this traditional right of the churches [...] to formulate the policy for education, is to open the door for complete secular education."⁹⁶

However, concerning the role of the churches, the commissioners themselves believed

that the churches should continue their interest in education, especially in remote areas. We believe, however, that they should place less

⁹⁵ *Ibid.*, p. 44.

⁹⁶ NEWFOUNDLAND AND LABRADOR, *Report of the Royal Commission on Education and Youth*, vol. 1, p. 195.

emphasis on controlling the educational enterprise, and more emphasis on developing and implementing programmes of Religious Education for the schools. We also believe that any control that does exist should be exercised at the school district and school levels.⁹⁷

The Commission suggested that the churches act in an advisory capacity and recommended that the recognized religious denominations and the amalgamated schools "each establish a committee with a full-time executive officer to perform the functions"⁹⁸ outlined in the Commission report. Gradually, the various churches became involved in defining the nature of their "advisory role" in education.

Meanwhile during this same period, various educational developments were occurring within the denominations. The Catholic Church had begun to consolidate many of its school boards and in 1967, the Association of Roman Catholic School Boards was established in order to address the concerns of Catholic boards in a political/public/advocacy role especially in relationship with the government. At the same time, the Protestant denominations had begun the process of integration and on March 27, 1969, the Anglican Church, the United Church and the Salvation Army formally signed the Document of Integration. Moreover, four denominations (Roman Catholic, Anglican, United Church and Salvation Army) agreed on the functional reorganization of the Department provided that the government establish certain bodies including the Denominational Education Committees.⁹⁹ By the

⁹⁷ *Ibid.*, p. 69.

⁹⁸ *Ibid.*, p. 72.

⁹⁹ In the midst of the ecumenical climate of 1968, the Catholic Church approached the negotiations in a spirit of co-operation and goodwill in order to preserve the authority of the Church concerning denominational rights (ADSG: File:

legislation of 1968-1969, the churches retained certain denominational rights concerning educational policy, teacher education and certification, and the integration of school services with interdenominational cooperation among the various schools of all denominations.¹⁰⁰ Ultimately, *The Department of Education Act* of 1968 and *The Schools Act* of 1969 embodied revolutionary changes both on the local level as well as on the level of the Department.

In the final analysis the changes of 1968 and 1969 introduced a new perspective for the churches. Prior to 1968 they had been involved in both a policy-making role and an administrative role, but after 1968 they saw themselves as influencing policy from a position external to the department, leaving the administrative chores to the functionally structured department. This new perspective also influenced the entire area of Catholic education.

1.6 - 1969 - 1991: NEW CHALLENGES

Recently, several issues have caused renewed interest in Newfoundland's denominational system. The first concerns the increased numbers of people who are expressing concerns about the system, including a growing number of non-Christians

Archbishop of St. John's 1968-1969, P. SKINNER, Memorandum to successors, *Concerning the Decision Taken with Regard to our Education System*, March 12, 1968).

¹⁰⁰ This had already been advocated by the Catholic Church (ROMAN CATHOLIC HIERARCHY OF NEWFOUNDLAND AND LABRADOR, *A Supplementary Brief Presented to The Royal Commission on Education and Youth*, [1966?], pp. 14-16).

in the province together with those denominations whose official policies call for an integrated system.¹⁰¹ One of the objections raised by these people focuses on the right to run for a position on a school board, especially when the person does not belong to the denomination(s) for which the school board in question was established.¹⁰² Another issue which continues to surface revolves around the possible establishment of non-denominational public schools. If these schools were established and if the government were to provide financial assistance to them, would problems arise due to the constitutional requirements of Term 17, whereby public funds are allocated on a non-discriminatory basis to protected denominations?¹⁰³ This has not yet been tested in the courts. Another issue of public policy involves the possibility of children gaining access to French immersion programs even when these programs take place in a school of a different denomination than the child's. This issue raises the matter concerning whether or not a child has a right of admission to a particular school.

The period of the 1970s and 1980s, with an increased human rights awareness, witnessed a number of cases of litigation associated with denominational rights, especially in light of the first teachers' collective agreement signed in 1973. These court cases between teachers and Roman Catholic School Boards involved the

¹⁰¹ See R.G. PENNEY, "The Constitutional Status of Denominational Education in Newfoundland", in W. McKIM (ed.), *The Vexed Question*, pp. 90-92.

¹⁰² A. PONDER, "School Board Elections Undemocratic in Newfoundland", in *The Canadian School Executive*, 5 (9/1986), pp. 17-18.

¹⁰³ R.G. PENNEY, "The Constitutional Status of Denominational Education in Newfoundland", in W. McKIM (ed.), *The Vexed Question*, p. 92.

relationship between the rights of teachers under the collective agreement and the rights of classes of people to operate denominational schools under Term 17 of the *Terms of Union* as well as those of school boards under *The Schools Act*.

In addition to the areas of criticism mentioned above, developments of recent years have prompted a more direct criticism of the denominational system. Declining enrolments combined with the reorganization of the high school program on the occasion of the introduction of grade twelve in 1983, have contributed to a renewed awareness of the duplication of services, especially in small communities. In May 1986 the Newfoundland Teachers' Association, in its brief to the government (*Exploring New Pathways*), recommended the establishment of a Royal Commission to examine "the administrative and economic disadvantages of the current denomination system and provide recommendations for improvement."¹⁰⁴ The NTA Brief identified a number of basic flaws in the current system, including the overlapping jurisdictions of school boards, the problem of small schools, the flaw of "isolation by denomination", and the administration of the system.

In 1986 the Royal Commission on Employment and Unemployment mentioned the area of education and bemoaned the fact that "there is still

¹⁰⁴ NEWFOUNDLAND TEACHERS' ASSOCIATION, *Exploring New Pathways: A Brief Presented to the Government of Newfoundland and Labrador*, May 1986, p. 25. See also the response of the C.E.C. to this Brief: CATHOLIC EDUCATION COUNCIL, "Denominational Education in Newfoundland - A Heritage for the Future: Executive Summary", Unpublished Paper, pp. 1-5.

denominational segregation in the Newfoundland school system."¹⁰⁵ The *Report of the Small Schools Study Project* (January 1987) criticized the Denominational Education Councils for having emphasized buildings to the detriment of the moral and religious development of the children.¹⁰⁶

Besides these reports, the Integrated and the Catholic Denominational Councils have investigated the area of school board boundaries, recognizing the importance of interdenominational cooperation, especially for rural areas of the province.¹⁰⁷ With the increasing number of "joint service schools" between the Integrated and Catholic school boards, the Denominational Education Councils introduced guidelines to govern the establishment of these "shared services schools". Recently, A. Harte, after studying the issue of interdenominational cooperation concluded:

While the findings of this study support the contention that joint service arrangements represent a step towards greater secularization of education, there is also evidence from the data to suggest that these schools do, in fact, retain, and even promote a religious identity. This retention of a religious element or identity, as well as the fairly widespread support of and level of satisfaction with the joint service schools among the individuals and groups surveyed, suggest that joint service arrangements provide a reasonable and acceptable approach to

¹⁰⁵ NEWFOUNDLAND AND LABRADOR, *Building our Strengths: Final Report of the Royal Commission on Employment and Unemployment*, St. John's, 1986, p. 220.

¹⁰⁶ NEWFOUNDLAND AND LABRADOR, *Report of the Small Schools Study Project*, January 1987, p. 53.

¹⁰⁷ See *School District Boundaries Revisited: Report of the Task Force on Integrated School District Boundaries*, St. John's, February 1987, 68p.; *Educational District Boundaries: A Framework for the Future: A Study of Roman Catholic Educational District Boundaries*, February 1988, iv-191p.

improving educational facilities and services in sparsely populated areas of Newfoundland and Labrador.¹⁰⁸

Moreover, during the past fifteen years, various surveys have measured how public opinion views major reforms in the denominational system. A recent survey done in 1989 for the city of St. John's revealed that, while 34 percent of those polled favoured maintaining the denominational system, 60 percent favoured its elimination and replacement with a public system without church control.¹⁰⁹ In 1990, the report of the archdiocesan Winter Commission maintained that the denominational system "may have tended to compound paternalistic and patriarchal attitudes [...] the Church's administrative role in education [...] was threatening if not oppressive."¹¹⁰

¹⁰⁸ A.J. HARTE, *The Joint Service School: A Study in Interdenominational Cooperation in the Education System of Newfoundland and Labrador*, Ph.D. (Education) diss., Toronto, University of Toronto, 1989, p. iii. The recent Report on Educational Finance also encouraged this phenomenon of interdenominational sharing and made suggestions for its implementation (NEWFOUNDLAND AND LABRADOR, *Report of the Task Force on Educational Finance: Financing Greater Equality and Excellence in the Newfoundland School System*, St. John's, June 1989, pp. 214-218).

¹⁰⁹ M.W. GRAESSER, "Church, State, and Public Policy in Newfoundland: The Question of Denominational Education", Address at the Annual Meeting of the Canadian Political Science Association, University of Victoria, Victoria, British Columbia, May 27-29, 1990, pp. 19-22. However, in the survey sponsored by the Catholic Education Council in 1990, 65% of Catholic parents thought the denominational system should be retained, while at the same time, 70% surveyed thought that more sharing should take place among the various school boards of the province (R.K. CROCKER, *Catholic Education in Newfoundland and Labrador. Report of Surveys of Members of the Catholic Education Community [=Report]*, [St. John's], December, 1990, vol. 1, p. 78).

¹¹⁰ *Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy*, Archdiocese of St. John's, 1990, vol. 1, p. 94. As a result of this report, Archbishop Penney announced that he had submitted his resignation as archbishop to Pope John Paul II (*The Evening Telegram*, July 19, 1990).

Then on August 7, 1990 the government appointed a Royal Commission to examine the organizational and administrative structures of the education system, with a view to the effective, efficient and equitable delivery of programs and services.

In the midst of all these reports and briefs, the Roman Catholic Church, through the Catholic Education Council, has attempted to assert its own position regarding the denominational system. In 1980 the Catholic Education Council promoted a Catholic Education Congress in St. John's and attempted to focus on the theme: "Catholic Education, Home, School, Church: Partnership in Christ." In the past ten years the C.E.C. has challenged Catholics to a deeper appreciation of Catholic schools, especially through the annual celebration of Catholic Schools Week (now revised to encourage a Catholic awareness throughout the year). Moreover, recent developments in the C.E.C. have focused on the commitment to preserve and enrich Catholic Education, striving to build a vibrant community among home, school and parish. Most recently, the C.E.C. has completed a needs assessment of the entire Catholic population to ascertain how Catholic education is viewed throughout the province. After surveying teachers, students, parents, parish council members, priests, school board members and senior officials, the assessment concluded that a "broad consensus in support of Catholic education and of its particular structure in this province seems to exist among various groups."¹¹¹ After considering the ongoing criticism of the system as well as the recent efforts on the part of the C.E.C. to revitalize the awareness of the strengths of Catholic education, one realizes that

¹¹¹ R.K. CROCKER, *Report*, vol. 1, p. 145.

just as Newfoundland stands at a critical moment in the evolution of its denominational system of education, so the Catholic Church stands at a decisive moment concerning Catholic schools within Newfoundland.

SUMMARY AND CONCLUSION

This chapter has highlighted the social, religious political and economic context which provided the peculiar characteristics contributing to the establishment and evolution of the denominational education system in Newfoundland. Utilizing the particular perspective of the Roman Catholic Church, this chapter has portrayed the inextricable relationship between the Church and the denominational system. Accordingly, the Catholic Church has assumed numerous roles and postures in relationship to the system. By introducing the various religious institutes within the particular context of the island, the Church acted like a gardener, trying to facilitate the optimum growth in the moral and religious lives of its young people. During the first few decades of the twentieth century, the Church acted as a paternal guardian nostalgically yearning for the comforts of peace and security, and even when radical societal changes were necessary, stubbornly resisted many innovations. When the Commission of Government attempted to alter the denominational system, the Church vehemently opposed the move in order to protect jealously its rights and privileges. In establishing one of the first regional high school in Corner Brook and in consolidating many of its school boards, the Church manifested a readiness to initiate new proposals. During the reorganization of 1968-1969, the Church

functioned as a persistent negotiator, wisely recognizing when changes were necessary. Most frequently the Church acted as a sentinel, vigilantly watching to see that forces in society did not endanger the precious heritage of Catholic education that exists within the context of the denominational system.

Meanwhile, the future will require that the Church continue these various roles and acquire new ones, especially with the radical decrease in the number of religious teaching in the Catholic schools (221 in 1982 to 120 in 1990) and the necessity of interdenominational cooperation. The changing contextual soil of Newfoundland society demands a renewed awareness of the specifically Catholic qualities in the educational system. Accordingly, the task of the next two chapters will focus on the meaning of a Catholic school, according to Catholic teaching and canonical legislation.

CHAPTER TWO

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS

Canons 796-806 of the *Code of Canon Law* formulate the current legislation regarding schools and also present in a concise way the elements of the Church's teaching on Catholic schools. This chapter will focus, then, on the sources of these canons and the canons on Catholic education (cc. 793-795) in order to help us recognize various components of the Church's teaching on Catholic schools, as well as appreciate the evolving background to these canons, thus contributing to a better understanding of the present law. This chapter will also assist us in our examination of Catholic schools in Newfoundland for in examining the various sources of the canons, we will be examining at the same time the teaching on Catholic schools, which the bishops of Newfoundland utilized during the past two hundred years. One particular question will act as a thread throughout the entire chapter, namely, which elements constitute a Catholic school?

When one speaks of the sources of particular canons, the image of an iceberg may help to illustrate their importance. The tip of an iceberg, available for all to inspect, may be appreciated in its aesthetic beauty, but ninety percent of the iceberg remains underwater. The iceberg's real power comes from "underneath", as it were. Moreover, sometimes these "underwater extensions" cause the iceberg to become

grounded, thus acting as a hazardous obstacle for all who are in the same waters.

The canons on schools particularly exemplify this image because they have evolved as a result of specific developments in the past two hundred years, developments which for the most part remain hidden from view. By investigating these developments, the underlying historical context begins to emerge and the real power "underneath" the canons comes into full view. As a result the canons, illuminated by their historical evolution, begin to disclose the values contained therein. Furthermore, the various sources have developed beyond their original historical context and have taken on different emphases. Have the specific requirements of particular historical situations created "underlying extensions" which ground the canons, making them obstacles for all who attempt to apply them today? To consider this question, our investigation will attempt to distinguish between elements required only in a particular historical context and those required as essential for a Catholic school.

One may understand the sources (*fontes*) of a particular canon in two entirely different ways: *fontes existendi* and *fontes cognoscendi*. The former refer to the authority behind the law, that is, its roots or foundations, while the latter refer to the documents which express the law and from which we may learn its meaning and applications.¹ Our present focus concerns this latter meaning of sources and will centre mostly on the documents directly related to the present canons, although on

¹ See T. BOUSCAREN, A. ELLIS, and F. KORTH, *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, Bruce Pub. Co., 1966, p. 8.

occasion we will refer to a few others which have a remote or indirect relationship. Our task, then, will involve an analysis of the background documents listed by P. Gasparri² and of the relevant ones mentioned by the Pontifical Commission for the Revision of the *Code of Canon Law*.³

2.1 - SOME BACKGROUND DOCUMENTS PRIOR TO 1917

The documents prior to the promulgation of the 1917 *Code of Canon Law* manifest an increasing concern on the part of the Church to articulate some of the principles underlying its teaching on schools.

2.1.1 - DOCUMENTS PRIOR TO THE NINETEENTH CENTURY

Although a large majority of the relevant sources find their historical context in the nineteenth century, the few sources that are extant prior to that time originated with the Council of Trent.⁴ The Council promulgated both dogmatic and disciplinary decrees, and its educational legislation concentrated on disciplinary

² *Codex iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus; fontium annotatione et indice analytico-alphabetico ab Emmo Petro Card. Gasparri auctus*, [in Civitate Vaticana], Typis Polyglottis Vaticanis, 1933, cc. 1372-1383.

³ *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus; fontium annotatione et indice analytico-alphabetico auctus*, in Civitate Vaticana, Libreria Editrice Vaticana, 1989, cc. 793-806.

⁴ For a description of the upheaval associated with these times, see P.J. MARIQUE, *History of Christian Education*, vol. II, New York, Fordham University Press, 1926, pp. 11-120.

regulations that concerned the establishment of seminaries for clerics, the regulation of the life of regulars and nuns, and the teaching of theology in universities.⁵ During the fifth session, it issued a decree prohibiting any person from holding the office of instructor in Catholic institutions unless the bishop of the locality had previously examined and approved that person's life, morals and knowledge.⁶ Later, during its twenty-second session, this same Council decreed that the bishop had the right to visit hospitals, colleges and schools.⁷ Both these decrees had the effect of giving more control to the bishop, so that he could ensure the orthodoxy of the schools.

Another document of the post-Reformation period which has influenced the *Code of Canon Law* is a 1659 decree of the Congregation for the Propagation of the Faith. This decree called for the establishment of Catholic schools and urged that Catholic youth not be entrusted to infidels for instruction.⁸

⁵ *Ibid.*, pp. 122-156.

⁶ "[...] neminem ad hujusmodi lectionis officium [...] admittendum esse, qui prius ab Episcopo loci de vita, moribus et scientia examinatus et approbatus non fuerit [...]" (COUNCIL OF TRENT, Sess. V, *de ref.*, c. 1) {source for canon 805}. Hereafter, {c. n} will indicate the source for a particular canon in the 1983 *Code of Canon Law*, n being the number of the canon.

⁷ COUNCIL OF TRENT, Sess. XXII, *de ref.*, c. 8 {c. 806, §1}. Benedict XIV repeated this same reference (BENEDICT XIV, Constitution, *Ad militantis*, March 30, 1742, § 31, in P. GASPARRI and I. SEREDI (eds.), *Codex iuris canonici fontes* [=Gasparri, *Fontes*], Romae, Typis Polyglottis Vaticanis, 1923-1939, n. 326).

⁸ SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH [=SCPF], Instruction, 1659, in Gasparri, *Fontes*, n. 4463 {cc. 798, 802, §1}.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 52

2.1.2 - DOCUMENTS CONCERNING THE CHURCH IN IRELAND

The situation of the Church in Ireland also occasioned several decrees from *Propaganda Fide*, which eventually had implications for the Church in Newfoundland. In the wake of the penal legislation of the eighteenth century, the "hedge school" system arose in order to meet the desires of those who wanted Catholic education. This education provided a contrast with that received in the "bible" schools founded under English and Protestant auspices. In fact, these "bible" schools, characterized by their proselytizing element, coupled with the economic conditions at the beginning of the nineteenth century in Ireland, gave rise to the founding of numerous congregations of religious brothers and sisters. These congregations, including the Presentation Sisters, the Christian Brothers and the Sisters of Mercy,⁹ attempted to

⁹ After spending the period from 1755 to 1770 offering religious education to poor girls of Cork, Nano Nagle began a concerted effort in the area of Catholic education for she perceived that the "hedge schools" only represented a limited and unpredictable education. Her efforts eventually led to the final approbation by Pope Pius VII in 1805 of the Sisters of the Presentation of the Blessed Virgin Mary (see T.J. WALSH, *Nano Nagle and the Presentation Sisters*, Dublin, M.H. Gill, 1959, pp. 44-129).

Impressed by the work of the Presentation Sisters and after hearing the 1797 pastoral letter of the Bishop of Waterford concerning the dangers of young Catholics losing their faith by attending certain schools, Edmund Rice began to instruct many of the poor boys in Waterford and eventually decided to establish a religious congregation -- the Brothers of the Christian Schools -- for the education of poor boys (see M.C. NORMOYLE, *A Tree Is Planted: The Life and Times of Edmund Rice*, 2nd ed., Private Circulation, 1976, pp. 38-40, 51-65).

Catherine McAuley saw the plight of the poor children of Dublin and attempted to permeate the newly-established National System of Education of 1831 with her religious ideals and ultimately founded the Sisters of Mercy (see CONGREGATION FOR THE CAUSES OF SAINTS, *Documentary Study for the Canonization Process of the Servant of God Catherine McAuley Founder of the Congregation of Sisters of Mercy 1778-1841: Positio super virtutibus*, vol. I, Cork City,

provide poverty-stricken children with food, clothing, education and opportunity of advancement in life.

In 1819, the Congregation for the Propagation of the Faith wrote to the Irish hierarchy about the evils of the "bible society" schools, warned parents not to send their children to these schools and encouraged the establishment of Catholic schools where the poor could receive proper instruction.¹⁰ Later, in 1831 the British Parliament established the Irish National School System, whereby Catholics and non-Catholics received their instruction in secular subjects together, but their religious instruction took place separately. Since the bishops viewed this system as at least religiously neutral and an alternative to the state-aided, proselytizing Protestant schools, they initially gave their consent to its establishment. They supported the system for they recognized the dire need for schools and concluded that Catholics themselves had little hope of providing for schools in the circumstances.¹¹

By 1838 Archbishop J. MacHale of Tuam complained about several issues associated with the system, including the composition of the school board, some of

M.A. Bolster, 1985, pp. 709-729).

¹⁰ SCPF, Encyclical letter to the Bishops of Ireland, September 18, 1819, in Gasparri, *Fontes*, n. 4714 {cc. 798, 802, §1}. Twenty years later the congregation decreed against attendance at "pagan" schools (SCPF, Decree, July 19, 1838, in Gasparri, *Fontes*, n. 4773) {c. 798}.

¹¹ For a description of the events associated with the establishment of this system as well as the controversy with the Holy See that took place from 1838-1841, see ASCPF: *Acta*, 202, *Ponenti*, July 15, 1839, ff. 201-257; *Acta*, 203, *Ponenti*, January 16, 1841, ff. 408-473. See also P.C. BARRY, "The Holy See and the Irish National Schools", in *The Irish Ecclesiastical Record*, fifth series, 92 (July-December 1959), pp. 91-105.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 54

the textbooks and the fact that the bishops had no direct authority over the schools. After an intensive investigation into the system, the Congregation for the Propagation of the Faith decided on July 15, 1839 that the Irish National System represented a danger to the faith of Catholics and urged the establishment of completely Catholic schools;¹² however, as a result of a subsequent inquiry, the Congregation in 1841 reversed its original decision of 1839 leaving it to the discretion of each individual bishop to allow or not the National System in his diocese.¹³ This decision, approved by Pope Gregory XVI, contained several precautions including the choice of textbooks, the training of teachers, the need for specifically Catholic religious instruction combined with the teaching of common religious instruction, and the importance of the general vigilance over the National System by bishops and parish priests.¹⁴

The conception of Catholic education that seemed to inspire the various sources contained a number of elements, including instruction according to the Catholic faith, an awareness of the dangers of proselytism, the need for Catholic

¹² ASCPF: *Acta*, 202, *Ponenti*, July 15, 1839, ff. 207-208. Due to the delicate nature of this entire question, the Holy Father did not confirm this decree but urged that further study take place.

¹³ The subsequent inquiry concluded that all the bishops agreed on the rights of the Church in education and on the desirability of purely Catholic schools, but disagreed on whether the defects of the system should prevent Catholics from attending the schools. Thus, the inquiry suggested that, though the National System had defects, Catholics could attend the schools, especially since nothing better seemed forthcoming (ASCPF: *Acta*, 203, *Ponenti*, January 16, 1841, ff. 412-413 {c. 798}).

¹⁴ SCPF, Letter, to the Bishops of Ireland, January 16, 1841, in Gasparri, *Fontes*, n. 4787 {c. 798}.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 55

textbooks, the importance of Catholic teachers who had a certain appreciation for Catholicism, and a pastoral vigilance based on their duty of guarding the faith on the part of both the parish priest and the bishop.¹⁵

2.1.3 - DOCUMENTS ISSUED DURING THE PONTIFICATE OF PIUS IX

The rise of nationalism in the nineteenth century proved an important factor in the Church's articulation of its position on Catholic schools. Nationalism became particularly prominent after the American and French Revolutions and it stimulated the growth of State-controlled and State-supported public school systems.¹⁶ Its proponents viewed education as an instrument by which the state could maintain itself and achieve its national ideals. As a result, the nineteenth century educational developments in most European countries as well as in North America evoked a constant vigilance on the part of the Church, resulting in numerous papal and curial

¹⁵ In his encyclical to the bishops of Italy, Pope Pius IX repeated many of these characteristics including the need for bishops' supervision of the schools to ensure that the program of study agrees with Catholic teaching; the necessity of textbooks free from any error; and the need for teachers of proven honesty (see PIUS IX, Encyclical letter, *Nostis et nobiscum*, December 8, 1849, in Gasparri, *Fontes*, n. 508; English translation in BENEDICTINE MONKS OF SOLESMES (eds.), *Papal Teachings: Education [=Education]*, translated by A. REBESCHINI, Boston, Daughters of St. Paul, 1979, nn. 12-13). This book contains an English translation of many of the sources discussed in this dissertation.

¹⁶ For a consideration of the influence of nationalism on education, see E. WILDS and K.V. LOTTICH, *The Foundations of Modern Education*, 4th ed., New York, Holt, Rinehart and Winston, 1970, pp. 318-357. To appreciate how the Church vindicated its right to educate at this time, see "The Right to Educate: To Whom Does It Belong?", in *The Irish Ecclesiastical Record*, 3 (1867), pp. 281-294, 410-418, 541-544.

statements that eventually were assumed into the Church's canonical legislation.

Thus, for instance, in the first years of his pontificate, Pope Pius IX strongly deplored the fact that governments had passed laws entrusting the full management of public and private schools, including the choice and approval of teachers, to the direction of the State. This legislation also deprived bishops of their right of supervision, especially in the area of teaching the faith to children.¹⁷ Throughout his long pontificate (1846-1878), Pius IX consistently asserted the right of the Church to provide instruction and education to its children, and warned bishops of various countries to assert this right.¹⁸ In fact, the vindication of this right lies behind two of the principal errors listed in the *Syllabus of Errors* of 1864.¹⁹ The thinking contained in the *Syllabus* also found its way into a schema on the Church prepared

¹⁷ PIUS IX, Allocution, *In consistoriali*, November 1, 1850, in Gasparri, *Fontes*, n. 509 {cc. 804, §1, 805}.

¹⁸ For example, Spain (Allocution, *Quibus luctuosissimis*, September 5, 1851, in Gasparri, *Fontes*, n. 512 {c. 804, §1}); Sicily (Encyclical letter, *Cum nuper*, January 20, 1858, in Gasparri, *Fontes*, n. 523) {cc. 804, §1, 806, §1}; Paris (Allocution, *Multis gravibusque*, December 17, 1860, in Gasparri, *Fontes*, n. 529) {c. 804, §1}; Fribourg (Apostolic letter, *Quum non sine*, July 14, 1864, in Gasparri, *Fontes*, n. 539) {cc. 798, 804, §1}; Bavaria (Apostolic letter, *Maximae quidem*, August 18, 1864, in Gasparri, *Fontes*, n. 541) {c. 804, §1}; Italy, Germany and Switzerland (Encyclical letter, *Etsi multa*, November 21, 1873, in Gasparri, *Fontes*, n. 566) {c. 804, §1}.

¹⁹ Error 45 focused on those who thought that the entire system of public schools ought to appertain to the civil authority, such that no other authority whatsoever should be recognized as having any right to interfere in the discipline of the schools, the organization of the studies, the conferring of degrees, and the choice or approval of the teachers. Error 47 focused on those who thought that schools should be free from all ecclesiastical authority, control and interference, and should be fully subjected to the civil and political power (PIUS IX, *Syllabus errorum*, December 8, 1864, in Gasparri, *Fontes*, n. 543 {cc. 804, §1, 805}).

for the first Vatican Council (1869-1870).²⁰

Ultimately, the emphasis of Pius IX's teaching focused on the right of the Church to educate. He based this right on the fact that Christ urged the Church to teach the divine faith to all, to defend the integrity of the faith, and through education, to contribute to civil society.²¹ Furthermore, he attempted to counteract the growing nationalist tendency of state control of education by emphasizing the importance of instruction in Catholic doctrine, especially in Catholic schools.

Another document, the 1875 instruction by the Holy Office approved by Pius IX and addressed to the bishops of the United States, makes a further contribution to this evolving teaching regarding Catholic schools. The instruction warned against secularism in education, cautioned against the possible corrupting influence of co-education and reiterated the stand that religious instruction and sound doctrine must occupy first place in the Catholic school.²² Since Catholics had to avoid public schools, the Holy Office urged the U. S. bishops to establish their own schools, not

²⁰ Section fifteen of the schema *De Ecclesia Christi* concerned "Certain particular rights of the Church in relation with Civil Society" and singled out the fact that civil governments violated the rights of the Church by excluding all consideration of religion and prohibiting the Church from any control or from providing instruction in the Catholic religion. Due to the suspension of the Council, this section did not receive public discussion. For the text of this schema, see G.D. MANSI (ed.), *Sacrorum conciliorum nova et amplissima collectio*, vol. 51, Paris, H. Welter, 1926, col. 549. For a discussion of the issues involved, see E.C. BUTLER, *The Vatican Council 1869-1870*, London, Collins and Harvill, 1962, pp. 264-285.

²¹ PIUS IX, Apostolic letter, *Quum non sine*, July 14, 1864, in Gasparri, *Fontes*, n. 539 {cc. 798, 804, §1}.

²² SACRED CONGREGATION OF THE HOLY OFFICE [=SCHO], Instruction, November 24, 1875, in Gasparri, *Fontes*, n. 1046 {cc. 798, 800, §2, 802, §1}.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 58

inferior to public schools. However, the instruction contains an interesting exception, which repeated an earlier provision permitted for the Irish Church: if no Catholic schools existed in a particular area, Catholic parents could send their children to public schools, provided that they did not endanger the faith of the children and that the children received their own religious instruction outside of school hours.²³

2.1.4 - DOCUMENTS ISSUED DURING THE PONTIFICATE OF LEO XIII

The historical realities of the late nineteenth century which marked the pontificate of Leo XIII (1878-1903), had serious repercussions on education and on Catholic schools. While the state continued to assert its right to educate, especially in the area of secular education, Leo XIII tirelessly asserted the Church's right to educate and, throughout his pontificate, addressed the educational situation of numerous countries. In writing to five of these countries -- Belgium, Hungary, Bavaria, Prussia, and Canada -- he highlighted various elements that pointed to the catholicity of a school.

Writing to the Belgium bishops, Leo XIII noted the importance of religious instruction in the schools. In 1879 the Belgian government had eliminated religious instruction from public schools, thus called "neutral schools", and from denominational normal schools.²⁴ As a result, the Belgium bishops kept their young

²³ This exception also occurred in *SCHO*, Instruction, March 21, 1866, in Gasparri, *Fontes*, n. 992 {cc. 798, 804, §1, 805}.

²⁴ For a description of the historical elements that affected Belgium, see R. McLAUGHLIN, *Religious Education and the State: Democracy Finds a Way*,

people from these public schools and at great financial sacrifice, opened Catholic schools which included religious instruction. Leo XIII viewed this 1879 law as contrary to the teaching of the Catholic Church and reiterated the position that Catholic youth were not permitted to attend these neutral schools, except out of necessity and only after the elimination of possible dangers to the faith of the youth.²⁵ In condemning neutral schools, the pope specifically highlighted dangers arising from the Freemasons, who wanted to educate the youth according to "civil and independent" morals with no connection to any religious faith.²⁶

In writing to the bishops of Hungary, Leo XIII highlighted the importance of the pastoral vigilance of the Church in its schools. He pointed out that, in establishing various kinds of schools,²⁷ many people wanted to eliminate the vigilance of the Church and the influence of religion especially by eliminating or

Washington, DC, Catholic University of America Press, 1967, pp. 325-343.

²⁵ LEO XIII, Allocution, *Summi Pontificatus*, August 20, 1880, in Gasparri, *Fontes*, n. 581 {c. 798}. See also PIUS X, Encyclical letter, *Editae saepe*, May 26, 1910, §§ 23-24, in Gasparri, *Fontes*, n. 687 {cc. 793, 802, §1, 804, §2}.

²⁶ LEO XIII, Encyclical letter, *Humanum genus*, April 20, 1884, in Gasparri, *Fontes*, n. 591 {cc. 793, 804, §1}.

²⁷ "Neutral" schools referred to schools where no religious instruction took place; "mixed" schools referred to schools where each denomination took care of its own religious instruction; "lay" schools referred to schools independent of ecclesiastical authority (LEO XIII, Encyclical letter, *Quod multum*, August 22, 1886, in Gasparri, *Fontes*, n. 594 {cc. 798, 804, §1}). Pius X referred to "neutral" or "lay" schools as the stronghold of the powers of darkness (PIUS X, Encyclical letter, *Editae saepe*, May 26, 1910, in Gasparri, *Fontes*, n. 687) {cc. 793, 802, §1}.

reducing religious instruction as a part of the education of young people.²⁸ In response to this situation, the pope urged the bishops to train their young people in Christian living and Christian wisdom, a task that would reflect on the State as well as on the Church.²⁹ Furthermore, he singled out the importance of high standards of training for the teaching staff,³⁰ and, on another occasion, suggested the appointment of diocesan inspectors of schools to collaborate with the bishop in the concerns of faith, morals and the care of souls.³¹ In the final analysis, Leo XIII considered the vigilant care and the instruction of youth in Christian doctrine as a special part of the pastoral office of parish priests and bishops,³² for he thought that

²⁸ LEO XIII, Encyclical letter, *Quod multum*, August 22, 1886, in Gasparri, *Fontes*, n. 594 {cc. 798, 804, §1}.

²⁹ N. Predovich asserts that Leo XIII added a novel dimension to traditional doctrine by emphasizing that religious instruction would contribute to the good and future welfare of society (N. PREDOVICH, *Leo XIII On Education: An Historical, Analytical and Critical Study*, Woodstock, Woodstock College Press, 1962, pp. 14-15). Although this theme undoubtedly represents an important emphasis on the part of Leo XIII, e.g., Apostolic letter, *In mezzo*, June 26, 1878; Encyclical letter, *Quod multum*, August 22, 1886; Encyclical letter, *Officio sanctissimo*, December 22, 1887; Encyclical letter, *Sapientiae christianae*, January 10, 1890, this theme was also alluded to by Pius IX, e.g., Encyclical letter, *Nostis et nobiscum*, December 8, 1849; Apostolic letter, *Quum non sine*, July 14, 1864.

³⁰ LEO XIII, Encyclical letter, *Quod multum*, August 22, 1886, in Gasparri, *Fontes*, n. 594 {cc. 798, 804, §1}.

³¹ LEO XIII, Encyclical letter, *Constanti Hungarorum*, September 2, 1893, in Gasparri, *Fontes*, n. 620 {cc. 800, §2, 804, §1, 805, 806, §1}. This call for the appointment of diocesan inspectors may have influenced Bishop R. MacDonald's decision in the late 1890s to request an inspector for the schools of the Diocese of Harbour Grace (AASJ: 106/17/7, "History of Catholic Education", 1913?, p. 42).

³² LEO XIII, Encyclical letter, *Constanti Hungarorum*, September 2, 1893, in Gasparri, *Fontes*, n. 620 {cc. 800, §2, 804, §1, 805, 806, §1}.

education in schools belonged especially to the government of the diocese.³³

Writing to the Bavarian and Prussian bishops, Leo XIII drew attention to the importance of Catholic teachers and insisted that religion should permeate the entire school. Within the German states, educational controversies had involved issues such as state control of education, the efforts of the state to divert religious instruction to its own purposes and the question of confessional versus interconfessional schools.³⁴ While these states affirmed the principle of instructing the child in the religion of the parent, they also maintained that education represented a function of the state and thus, they gradually eradicated Church control over the schools.³⁵ Leo XIII reminded the Bavarian and Prussian bishops that the exclusion of the authority of the Catholic Church from the places of learning violated the office of teaching religion, divinely entrusted to the Church.³⁶ As a result, the pope's corrective measures challenged the bishops to prevent the banning of religious education from schools, to entrust the teaching of religion to capable teachers of proven virtue and even to

³³ LEO XIII, Apostolic constitution, *Romanos Pontifices*, May 8, 1881, in Gasparri, *Fontes*, n. 582 {cc. 802, §1, 804, §1, 805, 806, §1}.

³⁴ For a description of the historical elements that affected the German states, see R. McLAUGHLIN, *Religious Education and the State: Democracy Finds a Way*, pp. 355-380.

³⁵ The single confessional schools developed into mixed denominational ones and the state school inspectors gradually became authorized to inspect even the teaching of religion. These mixed denominational schools referred to schools where teachers of various denominations taught and where children of different denominations were educated together for all subjects except religion.

³⁶ LEO XIII, Encyclical letter, *Officio sanctissimo*, December 22, 1887, in Gasparri, *Fontes*, n. 596 {cc. 793, 798, 802, §1, 804, §1}.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 62

find other means to ensure the teaching of youth in a practical and irreproachable manner.³⁷ The pope urged that Catholics not frequent the mixed schools, but that they establish their own Catholic schools. Most especially, he noted that within these schools the sense of Christian piety should permeate the entire system of education and not be restricted to a few hours a day, and he hoped that this same spirit of piety would penetrate and inflame the souls of both teachers and pupils.³⁸

The 1897 encyclical addressed to the Canadian Bishops concerning the Manitoba School Question³⁹ provides an example of some of Leo XIII's concrete directives regarding Catholic schools, including the need for Catholic teachers, approved textbooks and quality education, as well as the need to have appropriate civil legislation to guard the rights of Catholics in matters of education. The occasion of the encyclical was the repeal of certain provisions of the 1870 *Manitoba Act* which had assured Catholic children of the right to receive education in public schools according to their conscience; the revised educational legislation of 1890 no longer recognized this right. Thus, the encyclical reiterated the Catholic position prohibiting Catholic children from attending certain schools, especially when these did not teach

³⁷ *Ibid.*

³⁸ LEO XIII, Encyclical letter, *Militantis Ecclesiae*, August 1, 1897, in Gasparri, *Fontes*, n. 635 {cc. 798, 802, §1, 804, §1, 805}.

³⁹ For an analysis of the Manitoba School Question, see M.R. LUPUL, *The Roman Catholic Church and the North-West School Question: A Study in Church State Relations in Western Canada, 1875-1905*, Toronto, University of Toronto Press, 1974, x-292p. See also L.P.A. LANGEVIN, *Pastoral Letter on the Manitoba School Question*, St. Boniface, April 13, 1913, 12p.

the Catholic doctrine or where they manifested something contrary to Catholic teaching. This position was based on the belief that the Catholic religion represented the one true religion,⁴⁰ and Catholics could not hold the indifferent attitude which treated all religious beliefs equally.⁴¹ In this Canadian situation, the pope further insisted on the necessity of having Catholic teachers and of obtaining reading books and textbooks approved by the bishops; he also highlighted the significance of guarding the freedom to organize schools, thus ensuring a teaching in accordance with the Catholic faith.⁴² Furthermore, the Catholic schools should excel both in the methods of formation and in the quality of teaching. In closing, the pope noted that the legislative changes had not made sufficient provisions for the rights of Catholics and the education of the children of Manitoba.⁴³

One other theme permeating the pronouncements of Leo XIII concerned the traditional teaching on the natural right and obligation of parents as the first teachers of their children.⁴⁴ He reiterated the position that children received their best

⁴⁰ "Atqui catholico homini una atque unica vera est religio catholica" (LEO XIII, Encyclical letter, *Affari nos*, December 8, 1897, §3, in Gasparri, *Fontes*, n. 636).

⁴¹ See LEO XIII, Encyclical letter, *Affari nos*, December 8, 1897, in Gasparri, *Fontes*, n. 636 {cc. 798, 800, §2, 804, §1, 805}. Leo XIII's position reiterates the position taken with the Canadian bishops in 1895 when *Propaganda Fide* warned of the dangers for Catholics attending neutral schools (SCPF, Encyclical letter, March 14, 1895, in Gasparri, *Fontes*, n. 4932) {cc. 800, §2, 802, §1}.

⁴² LEO XIII, Encyclical letter, *Affari nos*, December 8, 1897, §3, in Gasparri, *Fontes*, n. 636 {cc. 798, 800, §2, 804, §1, 805}.

⁴³ *Ibid.*

⁴⁴ LEO XIII, Encyclical letter, *Caritatis providentiaequae*, March 19, 1894, in Gasparri, *Fontes*, n. 623 {cc. 798, 805}.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 64

training during their growing years in their homes, in the midst of examples of upright life and of Christian virtue.⁴⁵ He urged parents to vindicate their right to educate their children especially by ensuring that their children receive and learn the necessary religious doctrine from "capable teachers of proven virtue" and not from those who express a "religious indifference or have an open hostility toward the Church or have no religion at all."⁴⁶ As a consequence of protecting the parents' right of directing the education of their offspring, both the Church and society would benefit: the Church would have religiously educated members and, since the pope regarded the family as the cradle of civil society,⁴⁷ society would become stronger due to the presence of conscientious families.

The final document from this period to be studied shows an increasing attempt on the part of the Church to protect the catholicity of its schools. In 1900 the Holy Office issued an instruction to the bishop of Iasi in Rumania.⁴⁸ Considering the peculiar local circumstances, the Holy Office permitted Catholic schools to receive schismatic pupils provided certain conditions were followed and the school would remain Catholic. These conditions included the following: that no danger to

⁴⁵ LEO XIII, Encyclical letter, *Sapientiae christianae*, January 10, 1890, in Gasparri, *Fontes*, n. 605 {c. 800, §2, 802, §1}.

⁴⁶ LEO XIII, Encyclical letter, *Officio sanctissimo*, December 22, 1887, in Gasparri, *Fontes*, n. 596 {cc. 793, 798, 802, §1, 804, §1}.

⁴⁷ LEO XIII, Encyclical letter, *Sapientiae christianae*, January 10, 1890, in Gasparri, *Fontes*, n. 605 {cc. 800, §1, 802, §1}.

⁴⁸ SCHO, Instruction, August 22, 1900, in Gasparri, *Fontes*, n. 1245 {c. 804, §1}. For comments on this instruction, see C.A. BACHOFEN, *A Commentary on the New Code of Canon Law*, vol. 6, St. Louis, Herder, 1925-1936, p. 425.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 65

the faith or morals of Catholics would arise from the practice; that the Catholic school boards should not employ schismatic catechists; that teachers not teach an interdenominational or common catechism; that non-Catholics not teach metaphysics, ethics and any allied sciences; that schools not use textbooks written by non-Catholics unless the books have passed examination. These conditions indicate the way that the Holy Office began to implement various norms to ensure the catholicity of the school.

2.2 - DOCUMENTS BETWEEN 1917 AND 1960

Between 1917 and 1960, the Church continued to develop its teaching concerning education and schools, especially through the 1917 *Code of Canon Law* and the 1929 encyclical of Pius XI.

2.2.1 - 1917 *CODE OF CANON LAW*

The 1917 *Code of Canon Law* made its own contribution to the topic of schools.⁴⁹ In book III, part IV, title XXII, the twelve canons considered various kinds of schools, including elementary and secondary ones as well as universities.⁵⁰

⁴⁹ Canons 1372-1383.

⁵⁰ For commentaries on canons 1372-1383, see C.A. BACHOFEN, *A Commentary on the New Code of Canon Law*, vol. 6, pp. 411-427; T. BOUSCAREN, A. ELLIS, and F. KORTH, *Canon Law: A Text and Commentary*, pp. 767-775; C.H. BOFFA, *Canonical Provisions for Catholic Schools (Elementary and Intermediate)*, *Canon Law Studies*, no. 117, Washington, DC, Catholic University of America Press, 1939, pp. 77-189; R. LARIVIÈRE, *Catholiques et écoles publiques; essai d'interprétation sur le canon 1374*, J.C.D. (droit canonique) diss., Ottawa, Université

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 66

The Church reiterated its right to establish schools (cc. 1375, 1379, §1) and reminded the faithful of their duty to support them (c. 1379, §3). Canon 1374 prohibited Catholics from attending non-Catholic schools, although the local ordinary could decide if conditions would permit such attendance. The Code also stressed the fact that since all the faithful had the right to a religious and moral training, elementary and high schools should provide this training (c. 1373).⁵¹ Furthermore, the Church had the authority to inspect this religious instruction in the schools, thus giving local ordinaries the right to guard against anything contrary to faith and morals, as well as the right to approve and remove teachers and textbooks of religion according to the criteria of faith and morals (cc. 1381, 1382). In conclusion, it seems that these canons, by concisely summarizing various documents on education, attempted to codify for the whole Church the elements of its teaching on schools.

2.2.2 - PAPAL AND CURIAL TEACHINGS

Pius XI's encyclical on the Christian education of youth is probably the most

d' Ottawa, 1947, 317p.

⁵¹ In order to impart religious instruction, the 1917 Code also required the establishment of the Confraternity of Christian Doctrine in every parish (c. 711, §2). However, the Code Commission declared that another Pious Union or Sodality of Christian Doctrine could be established in its place (PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE, Private response, October 12, 1955, in *Periodica*, 44 (1955), p. 449; English translation in *Canon Law Digest* [=CLD], 4 (1953-1957), pp. 246-247).

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 67

important expression of the Church's teaching on schools prior to Vatican II.⁵² The flowering of various trends, e.g., socialism, materialism, communism and nationalism, as well as the influence of naturalism in education⁵³ led Pius XI to issue his encyclical. He clearly distinguished the rights of three societies -- family, Church and State -- in the education of youth and urged that they cooperate in the exercise of their particular rights. Although parents possessed an inherent, natural and inalienable right to educate their children (n. 32), the pope taught that the family, an imperfect society not entirely competent to fulfil its task, must receive assistance from the State. Meanwhile, he based the State's right to educate on the purpose of civil society, namely, the promotion of the temporal welfare of the community, by fostering the interests of its citizens and families and offering protective measures so that the family and the Church might freely exercise their rights in the area of education (n. 42).

Concerning the Church's right to educate, Pius XI taught that this right arose from two sources: the divine mandate to teach all nations and the Church's duty to nourish and form those members whom it begets through baptism. This right to

⁵² PIUS XI, Encyclical letter, *Divini illius Magistri*, December 31, 1929, in *Acta Apostolicae Sedis [=AAS]*, 22 (1930), pp. 49-86; English translation, C. CARLEN (ed.), *The Papal Encyclicals, 1903-1939*, vol. 3, Wilmington, McGrath Pub., 1981, pp. 353-372. (The number in parenthesis within the body of the text will refer to the numbered paragraphs in this English translation).

⁵³ Pius XI considered pedagogic naturalism as "every method of education founded, wholly or in part, on the denial or the forgetfulness of original sin and of grace, and which relies on the sole powers of human nature" (*ibid.*, n. 60) {cc. 793, §1, 797, 800, §1}.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 68

educate on the part of the Church also includes the right to establish and maintain schools (n. 21) and to watch over the entire education of its children (n. 23). Furthermore, due to the danger to the faith of the children, Pius XI forbade Catholic children from attending "neutral or lay" schools which excluded religion, or from attending "mixed" schools where both Catholics and non-Catholics attended together. He called for "Catholic education in Catholic schools for all the Catholic youth."⁵⁴ He emphasized the importance of teachers who possessed the intellectual and moral qualifications of their important office: "perfect schools are not so much the result of good methods as of good teachers."⁵⁵ Viewing the school as a subsidiary and complementary institution to the family and the Church, he considered the Catholic school

a fit place for Catholic students [... where] all the teaching and the whole organization of the school, and its teachers, syllabus and textbooks in every branch, [are] regulated by the Christian spirit, under the direction and maternal supervision of the Church.⁵⁶

This encyclical touched on several themes that characterized this entire period prior to Vatican II, including the collaboration among family, Church and State, the qualities of teachers, and the characteristics of a Catholic school. Several other documents focused on this relationship among family, Church and State, emphasizing the right of the Church to teach especially in order to safeguard the Christian faith, and stressing the right of parents in the education of their children, particularly when

⁵⁴ *Ibid.*, n. 82.

⁵⁵ *Ibid.*, n. 88.

⁵⁶ *Ibid.*, n. 80.

they were denied this right.⁵⁷

Another important trend in Church documents of this period concerns the role of teachers in the Catholic school. Pius XII sensitively described their delicate role as fashioning and moulding the souls of young people, sometimes supplementing the failings of parents, and often feeling overwhelmed by widespread social upheaval.⁵⁸ In speaking to the Catholic teachers of Bavaria, he mentioned that "the teacher is the soul of the school, gives it spirit [... and is not one who is] indifferent, negative or even hostile to the religious and moral convictions of the parents."⁵⁹ He also presented the teacher as one who must form the students' spirits and characters and

⁵⁷ In speaking of the social and education commissions of the U.S. conference of bishops, Benedict XV praised the U.S. bishops for establishing Catholic schools and warned them against enemies who attempt to vindicate their exclusive right to teach to the exclusion of the Church's right to teach the young (BENEDICT XV, Encyclical letter, *Communes litteras*, April 10, 1919, in *AAS*, 11 (1919), pp. 171-174) {c. 800, §1}. In writing to the bishops of Italy after the Concordat of 1929, the Congregation of the Council applied canons 1373 and 1381 to the Italian situation (SACRED CONGREGATION OF THE COUNCIL [=SCC], Circular letter, June 12, 1930, in X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae, collegit, digessit notisque ornavit Xaverius Ochoa* [=*Leges Ecclesiae*], Roma, Commentarium pro Religiosis, 1966- , 1 (1917-1941), n. 975) {c. 804, §1}. When the Nazis separated religion and morality in their policy of State schools, Pius XI reminded the German bishops that these regulations disregarded the natural right of parents to educate their children in the faith (PIUS XI, Encyclical letter, *Mit brennender Sorge*, March 14, 1937, in *AAS*, 29 (1937), pp. 145-167) {cc. 793, §1, 794, §1}.

⁵⁸ PIUS XII, Allocution, September 8, 1946, in *Discorsi di S.S. Pio XII agli educatori ed ai giovani* [= *Discorsi*], Roma, A.V.E., 1956, pp. 188-191 {cc. 793, §1, 794, §1}.

⁵⁹ "Der Lehrer ist ja die Seele der Schule; er ist es, der ihren Geist bestimmt. [...] deren Lehrkräfte den religiösen und sittlichen Überzeugungen des Elternhauses kühl, ablehnend, ja feindlich gegenüberstehen" (PIUS XII, Allocution, December 31, 1956, in *AAS*, 49 (1957), p. 64) {c. 796, §1}. The double use of the affirmative word "ja" signifies an emphatic appreciation of the role of the teacher in the school.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 70

who must communicate to them the wealth of the teacher's own spiritual life.⁶⁰ Furthermore, he insisted on Catholic schools and on the Catholic training of teachers in order to assure the existence and well-being of Catholic families and their children.⁶¹ Likewise, he taught that the relationship between the home and the school, between Catholic parents and the teachers must reflect a warm atmosphere of understanding, mutual confidence and cooperation.⁶²

This period offers two examples of issues associated with Catholic schools, which, due to the difficulties of adaptation, gradually were disregarded. The first is that of coeducation. Although the Church had referred to coeducation prior to 1929,⁶³ Pius XI condemned the practice especially due to its naturalistic tendencies.⁶⁴ In 1957, the Sacred Congregation for Religious prohibited coeducation in its proper sense, especially in high schools, but allowed for the possibility of co-institutional education, and reminded local ordinaries that they had

⁶⁰ PIUS XII, Allocution, September 14, 1958, in *AAS*, 50 (1958), pp. 696-700 {c. 796, § 1}.

⁶¹ PIUS XII, Allocution, December 31, 1956, in *AAS*, 49 (1957), pp. 63-65 {c. 796, § 1}.

⁶² *Ibid.* V. Yzermans remarked that Pius XII's appreciation of teachers and emphasis on parent-teacher cooperation represent two of "the principal contributions of Pope Pius XII to the philosophy of Catholic Education" (V.A. YZERMANS (ed.), *Pope Pius XII and Catholic Education*, St. Meinrad, Grail Publications, 1957, p. xiii).

⁶³ For example, see LEO XIII, Encyclical letter, *Nobilissima*, February 8, 1884, in Gasparri, *Fontes*, n. 590; SCHO, Instruction, November 24, 1875, in Gasparri, *Fontes*, n. 1046.

⁶⁴ PIUS XI, Encyclical letter, *Divini illius Magistri*, December 31, 1929, nn. 68-69 {c. 795}.

the faculty to make certain decisions in their own cases.⁶⁵ The instruction also prohibited religious, without prior permission of the Holy See, from directing coeducational secondary schools;⁶⁶ but, in 1971, the Sacred Congregation for Catholic Education, after considering the teaching of *Christus Dominus*, lifted this prohibition.⁶⁷

The second issue that caused difficulties during this period was the relationship between priests and brothers especially as mentioned in canon 1373, §2, of the 1917 Code, which required that priests give religious instruction in high schools. In 1948 the Sacred Congregation of the Council prescribed certain norms regarding the theological preparation required for the religion teachers of lay

⁶⁵ SACRED CONGREGATION FOR RELIGIOUS [=SCR], Instruction, December 8, 1957, in *AAS*, 50 (1958), pp. 99-103; English translation in *CLD*, 5 (1958-1962), pp. 690-695. For a commentary on this instruction, see B. FRISON, *Coeducation in Catholic Schools: A Commentary on the Instruction on Coeducation*, Roma, Commentarium pro Religiosis, 1959, 77p.

In response to this instruction, the bishops of Newfoundland wrote the apostolic delegate on December 16, 1958, concerning "the educational set-up in the Catholic schools of Newfoundland", and the delegate responded that the Newfoundland system conforms in spirit to the instruction (ADSG: File: Archbishop of St. John's 1955-1964, G. Panico to P. Skinner, *Letter*, January 6, 1958).

⁶⁶ However, the Congregation for Religious explained that only communities of men and not those of sisters had to obtain the special permission from the Holy See (SCR, Response, November 24, 1959, in *CLD*, 5 (1958-1962), p. 695).

⁶⁷ SACRED CONGREGATION FOR CATHOLIC EDUCATION [=SCCE], Declaration, February 1, 1971, in *AAS*, 63 (1971), pp. 250-251; English translation in *CLD*, 7 (1968-1972), pp. 887-888 {c. 801}. Although the Second Vatican Council discussed the topic, the Council resisted several attempts to condemn coeducation as such (see M.J. HURLEY, *De educatione christiana: The Declaration on Christian Education of Vatican Council II, Promulgated by Pope Paul VI, October 28, 1965: Commentary*, Glen Rock, Paulist Press, 1966, pp. 32, 89).

religious institutes in Madrid.⁶⁸ When Brother Felix of the Brothers of the Christian Schools complained of the deprivation of the right of the brothers to teach religion in legitimately established schools, the Congregation of Religious replied that the requirement of canon 1373, §2, "has never been applied to schools of religious."⁶⁹ This evolution showed how the requirement of having priests teach religion in high schools was gradually relaxed as properly trained lay religious became available. Another aspect of this relationship between priests and religious institutes of brothers arose in 1954, when Pius XII wrote the procurators general of eight religious institutes of brothers commending them for remaining faithful to their founders in the task of educating youth with sound doctrine and in the task of cultivating vocations to the priesthood.⁷⁰ He also acknowledged the work of

⁶⁸ SCC, Response, July 26, 1948, in *Leges Ecclesiae*, 2 (1942-1958), n. 2004 {c. 804, §2}.

⁶⁹ SCR, Response, January 26, 1959, in *CLD*, 5 (1958-1962), pp. 363-365 {cc. 804, §2, 806, §1}.

⁷⁰ PIUS XII, Letter to V. Valeri, *Procuratores generales*, March 31, 1954, in *AAS*, 46 (1954), pp. 202-205 {c. 801}. The mention of the fact that the brothers cultivated vocations to the priesthood raises an extremely sensitive issue that arose in the Archdiocese of St. John's in the 1950s. In November 1954, Archbishop Skinner announced plans to build a new regional high school for the boys of St. John's and he began negotiations with the Christian Brothers. Due to the financial arrangements, negotiations broke off and in 1959, the archbishop made the surprising announcement that he had contracted with the Jesuits to take over the secondary education of the boys of St. John's. Part of the reason why Archbishop Skinner had decided to obtain the Jesuits to teach at the new regional high school was an effort to foster vocations to the priesthood. The ensuing negotiations involved the archdiocese and the two religious institutes. Eventually these discussions reached Rome and the Congregation of Religious requested a quick settlement of the question. The issue dragged on for two more years, until on March 15, 1961, the Congregation of Religious wrote the archbishop again urging that meetings take place. Undoubtedly, this decision to place the issue back in the hands of the local

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 73

religious sisters and reminded them that "according to the Catholic concept, the object of the school and of education is the formation of the perfect Christian."⁷¹ The pope reminded the sisters that, although parents entrusted their children to them for an education in Catholic schools, the children should "not suffer by receiving in your schools an education of inferior value."⁷² Both these documents highlight the importance of religious institutes in the work of Catholic education.

By the closing of this period on the eve of the Second Vatican Council, the meaning of a Catholic school had reached a new level. Both papal and curial statements continued to speak of Catholic schools, but a new clarity had emerged which can be expressed using Pius XII's comments. After calling teachers to communicate their spiritual lives to their pupils, the pope remarked:

To do this, the external organization of the school, its discipline and its curriculum, must constitute a framework adapted to its essential function, and the school must be penetrated, even in its apparently most humble and material details, with an authentic spirituality: Is it a matter of indifference what daily schedule is adopted, or what choice of subjects, teaching methods, or disciplinary systems is made? Legal requirements or other circumstances have led many times to regrettable surrenders and have greatly diminished the efficacy of religious education itself. [...] The Christian school will justify its

authorities resulted partly because of the support of the suffragan bishops who strongly stated "that no decision by the Holy See should even appear to undermine the authority of a bishop as Ordinary of his Diocese" (ADSG: File: Archbishop of St. John's 1955-1964, *Document*, Support of Suffragan Bishops, January 23, 1960). By July 1961 the various parties had settled the issue and the Jesuits opened Gonzaga High School, while the Christian Brothers opened Brother Rice High School (for the documents concerning the entire issue, see ACFC: File 2-G-2, Archdiocese of St. John's, *The School Question 1955-1962*).

⁷¹ PIUS XII, Allocution, September 13, 1951, in *Discorsi*, p. 268 {c. 806, §2}.

⁷² *Ibid.*

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 74

existence in so far as its teachers [...] succeed in forming Christians. Therefore their zeal should apply itself unfailingly to bring their pupils more and more into the life of the Church, to have them take part in its liturgy and its sacraments, and then to initiate them -- according to the capacities of their age -- into apostolic work among their companions, in their own families, and in their walk of life. [...] The pupils of a Catholic school should not regard their future career as a simple social function [...] but] as the exercise of a personal responsibility in the work of saving the world.⁷³

2.3 - VATICAN II AND POSTCONCILIAR TEACHING

The primary sources of the canons on Catholic education and schools consist of the documents of Vatican II, especially the *Declaration on Christian Education*, as well as the document, *The Catholic School*, issued by the Congregation for Catholic Education in 1977.

2.3.1 - THE DOCUMENTS OF VATICAN II

During the period of preparation for the Second Vatican Council, numerous bishops and heads of religious institutes called for a discussion of issues associated with Catholic schools.⁷⁴ These revolved around problems in various countries where, due to a lack of financial support for Catholic schools, the number of State schools had increased. Furthermore, the responses reflected a concern that doubts

⁷³ PIUS XII, Allocution, September 14, 1958, in *AAS*, 50 (1958), pp. 696-700 {c. 803, §2}.

⁷⁴ For a list of the issues suggested, see *Acta et documenta Concilio Oecumenico Vaticano II apparando*, [in Civitate Vaticana], Typis Polyglottis Vaticanis, 1961, series I, appendix, vol. 2, part 2, pp. 508-519.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 75

had arisen about the apostolic value and even the necessity of Catholic schools.

In March 1962, the Preparatory Commission on Studies and Seminaries prepared the first version of the schema for the constitution *De scholis catholicis*.⁷⁵ This schema consisted of a preface and seven chapters, including chapters on the importance and requirements of a Catholic school, the rights of the family and the Church, the training, rights and duties of teachers, the necessity of preserving and developing the Catholic school, and the means required to maintain Catholic schools. During the next three years, various commissions made numerous revisions to this schema, until on October 28, 1965, Pope Paul VI solemnly promulgated the *Declaration on Christian Education, Gravissimum educationis*.⁷⁶

This revision process contains several elements of background information that contribute to an understanding of the Council declaration. First, the nature of the schema progressed from the most solemn category of constitution (1962-1963) to the lowest category of a votum (January 1964), to a series of seventeen propositions

⁷⁵ For an outline of this schema, see *Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, [in Civitate Vaticana], Typis Polyglottis Vaticanis, 1976, vol. 3, part 8, p. 191.

⁷⁶ For an account of the revision process, see *Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 3, part 8, pp. 185-425, 485-547, 953-1065; vol. 4, part 4, pp. 231-287. See also M.J. HURLEY, *De educatione christiana*, pp. 26-58; J. POHLSCHNEIDER, "Declaration on Christian Education", in H. VORGRIMLER (ed.), *Commentary on the Documents of Vatican II*, vol. 4, New York, Herder and Herder, 1969, pp. 1-9; J. GARCIA CARRASCO, *La política docente: Estudio a la luz del Vaticano II*, Madrid, Editorial católica, 1969, pp. 38-97.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 76

(summer 1964) to a declaration (October 1964-1965).⁷⁷ Second, the title changed from *De scholis catholicis* to *De educatione christiana* because the former title failed to give adequate consideration to those Catholic children who did not attend Catholic schools.⁷⁸ Furthermore, the latter title allowed the Council fathers to consider various factors, besides the school, which affected the education of youth in the modern world. Third, by November 1964, the Council fathers realized that they could not adequately treat the far-reaching scope of the topic and consented to have a postconciliar commission properly examine the theme. The fourth issue that received clarification concerned the distinction between society and the state. The Council fathers considered "society" to refer to all the people, while the "state" or "civil society" referred to the instrument of society, i.e., its political arm, which directed the common temporal good.⁷⁹ The final important element in the discussions concerned the development in the definition of a Catholic school. Early drafts of the schema contained Pius XI's definition taken from the encyclical, *Divini illius Magistri* (n. 80), while the promulgated declaration utilized Vatican II theology and defined the Catholic school in terms of an evangelizing community, of the

⁷⁷ M.J. HURLEY, *De educatione christiana*, p. 26. F. Morrissey considers the nature of a declaration: "Declarations were policy statements giving the teaching of the Church on certain more controverted matters, and thus are more liable to be revised with time" ("Papal and Curial Pronouncements: Their Canonical Significance in the Light of the 1983 Code of Canon Law", in *The Jurist*, 50 (1990), p. 111).

⁷⁸ *Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 3, part 8, pp. 210-211.

⁷⁹ M.J. HURLEY, *De educatione christiana*, pp. 70-76, 119.

mission of the People of God, and of dialogue between the Church and the world.⁸⁰ Furthermore, the Council fathers viewed the "Catholic school" not just in its catholicity but also as a vehicle of educational excellence.⁸¹

The promulgated declaration expressed its teaching on Catholic schools in articles eight and nine. These represent a high point in the declaration, following several articles that progressively build on one another.⁸² Article eight asserted that the Catholic school, like other schools, must attend to the human and cultural

⁸⁰ Compare the following texts:

- 1) article 11 of the 1963 schema *De scholis catholicis* (*Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 3, part 8, p. 957);
- 2) articles 8-10 of the 1964 schema *Propositionum de scholis catholicis* (*Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 3, part 8, pp. 186-187);
- 3) article 7 of the 1965 schema *Declarationis de educatione christiana* (*Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 4, part 4, pp. 238-240);
- 4) article 8 of the promulgated *Declaratio, de educatione christiana* (*Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 4, part 5, p. 610).

⁸¹ M.J. HURLEY, *De educatione christiana*, pp. 52, 83-85. This idea gradually found its way into canon 806, §2: "that the instruction given in them [Catholic schools] is [to be] at least as academically distinguished as that given in the other schools of the region."

⁸² These articles assert that all people have a natural right to education based on the dignity of the human person (n. 1) {c. 795, §1}; that Christians have a right to a Christian education, which elevates natural education and contributes to the good of society as a whole (n. 2); that various agencies -- family, society and Church -- possess various rights and duties regarding education (n. 3) {cc. 793, §1, 794}; that the Church uses various means in fulfilling the task of education, including catechetics (n. 4){c. 794, §2} and schools (n. 5) {c. 796, §1}; that parents have a right to the choice of school for their children and the State must guarantee the exercise of this right (n. 6) {cc. 793, 797}; that the Church assists those children educated in non-Catholic schools (n. 7){cc. 793, §2, 796, §2, 799}. After the treatment of Catholic schools (n. 8) {cc. 798, 800, 803, §2} (n. 9){cc. 800, §2, 802, §2, 803, §2}, two articles give consideration to Catholic higher education in universities and ecclesiastical faculties (nn. 10 and 11). Subsequent references to this declaration will use only the article number quoted within the text.

development of its students. Then the declaration gave its description of the Catholic school:

[The Catholic school] has several distinctive purposes. It aims to create for the school community an atmosphere enlivened by the gospel spirit of freedom and charity. It aims to help the adolescent in such a way that the development of his own personality will be matched by the growth of that new creation which he became at baptism. It strives to relate all human culture eventually to the news of salvation, so that the light of faith will illumine the knowledge which students gradually gain of the world, of life, and of mankind.

So it is that while the Catholic school fittingly adjusts itself to the circumstances of advancing times, it is educating its students to promote effectively the welfare of the earthly city, and preparing them to serve the advancement of the reign of God [... and] become as it were, the saving leaven of the human family.

Therefore, since it can contribute so substantially to fulfilling the mission of God's people, and can further the dialogue between the Church and the family of man, to their mutual benefit, the Catholic school retains its immense importance in the circumstances of our times too.⁸³

An elaboration of the four purposes⁸⁴ mentioned in this description of the Catholic school will contribute to a better appreciation of the meaning of the Catholic school according to Vatican II. The first purpose highlighted the fact that the school community itself, with its various human relationships, when animated by

⁸³ *Gravissimum educationis*, n. 8; English translation, W.M. ABBOTT (ed.), *The Documents of Vatican II*, New York, Guild Press, 1966, p. 646.

⁸⁴ Unlike the 1983 Latin Code, the 1990 Oriental Code incorporates the first three of these purposes in canon 634, §1 (*Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus*, in *AAS*, 82 (1990), p. 1191). Hereafter, references to this Code will indicate the Oriental Code and the canon number. All English translations of this Code have been made in conjunction with an English translation of the 1986 schema: *Code of Eastern Canon Law: 1986 Draft*, English translation, Brooklyn, United States Eastern Catholic Bishops' Consultation, 1987, pp. 131-133.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 79

the spirit of liberty and charity, creates a gospel atmosphere, wherein people are evangelized and catechized. Through this evangelizing community,⁸⁵ the Church becomes present, i.e., the school makes the Church present and becomes a sign to the human community. The Council recognized the importance of the community aspect of the school, and taught that in the school one acquires an experience of the world, of life and of humanity and thus, this experience of community in community is built on that first experience of community found in that first school, the family. Moreover, the mention of liberty -- connecting this declaration with the *Declaration on Religious Liberty* -- further described this community, for the spirit of liberty based on the dignity of the human person must condition the relations of teachers and students.⁸⁶

The second purpose of the Catholic school consists in promoting the growth in the new life of baptism. Article two of the declaration gives a description of this growth: students are gradually introduced into the mystery of salvation, become more conscious of the gift of faith, learn to adore God especially through liturgical worship, discover how to live in righteousness and truth and devote themselves to the upbuilding of the Church. The Council emphasized that the elements of Christian growth of the individual must also characterize the students' growth through the

⁸⁵ For further development of how the Catholic school is an evangelizing community, see J.T. MULLIGAN, *Evangelization and the Catholic High School: An Agenda for the 1990s*, Ottawa, Novalis, Saint Paul University, 1990, xiii-296p.

⁸⁶ J. GARCIA CARRASCO, *La politica docente*, pp. 239-262. See also V. SINISTRERO, *Il Vaticano II e l'educazione*, Torino-Leumann, Elle Di Ci, 1970, pp. 646-648.

Catholic school.⁸⁷

Thirdly, the Council taught that the Catholic school must illuminate all knowledge with the gift of faith. The Catholic school fulfils this purpose by introducing the gift of faith into those aspects which are functions of a school, namely: cultivating the intellect, developing the capacity of judgement, introducing the cultural heritage, fostering a sense of values, preparing for professional life, and growing in mutual understanding (n. 5). In this way the Council avoided the tendency to reduce the Catholic school to the teaching of religious instruction.⁸⁸ As a result, it clearly distinguished between evangelization through catechesis and evangelization through the Catholic school.⁸⁹

The fourth purpose of the Catholic school is the preparation of the student to contribute to the world and to extend the reign of God, thus acting as a saving leaven in the human family. The Catholic school must penetrate and elevate human knowledge and culture with the light of faith in Christ. This penetration would thus

⁸⁷ "[T]odos esos elementos [en el n. 2] hayan de estar perfectamente representados en el interior de la institución escolar" (J. GARCIA CARRASCO, *La política docente*, p. 297).

⁸⁸ This teaching does not downplay religious education in the school, for as John Paul II stated: "The special character of the Catholic school, the underlying reason for it, the reason why Catholic parents should prefer it, is precisely the quality of the religious instruction integrated into the education of the pupils" (Apostolic exhortation, *Catechesi tradendae*, October 16, 1979, n. 69, in *AAS*, 71 (1979), p. 1335; English translation in *Catechesis in Our Time*, Boston, Daughters of St. Paul, [n.d.], p. 58).

⁸⁹ For a discussion of the difference between the two, see J. GARCIA CARRASCO, *La política docente*, pp. 119-129. For a consideration of catechesis as an instrument of evangelization, see PAUL VI, Apostolic exhortation, *Evangelii nuntiandi*, December 8, 1975, n. 44.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 81

show the link between the Church and the world, a link which represents one of the foremost challenges of the Council. Just as the Church possessed the mission of being in the world, announcing the good news to the world, and consecrating the world, so too the Council demanded that the Catholic school exist in the world, giving its students a positive relationship to the world, and teaching its students to contribute to human society especially as its saving leaven. Furthermore, this radical distinctiveness of the Catholic school in the world manifests a connection with the Council's teaching on the secular call of the laity: to live in the world, to contribute, like a leaven, to the sanctification of the world, and to illuminate all temporal things with faith.⁹⁰

Building on these purposes, the Council then taught that the *raison d'être* of the Catholic school consists in developing the mission of the People of God and promoting dialogue between the Church and the community at large. This development of the mission of the People of God occurred as students progressed in their awareness and involvement in the apostolate, and as the Catholic school itself showed care and concern for the poor, for those deprived of the assistance and affection of a family and for those who were strangers to the gift of faith (n. 9). The Council also connected the element of dialogue, a prominent theme during the

⁹⁰ For a consideration of the similarities of the call of the laity and the call of the Catholic school, as well as a textual comparison between *Lumen gentium*, n. 31 and *Gravissimum educationis*, n. 8, see J. GARCIA CARRASCO, *La politica docente*, pp. 262-284. For a recent development of this theme of the laity and the Catholic school, see SCCE, Document, *Lay Catholics in Schools: Witnesses to Faith*, October 15, 1982; English translation in A. FLANNERY (ed.), *Vatican Council II: More Post Conciliar Documents*, vol. 2, Northport, Costello Pub. Co., 1982, pp. 630-661.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 82

Council, to the Catholic school. The Church's dialogue with the world especially perceived in its presence to the world, becomes individualized in the Catholic school. As a result, the school becomes the sign of the Church's dialogue, making the Church present to the world, contributing to the maturity of the human person, and assisting in the development of human society.⁹¹

After describing the specific purposes of the Catholic school, the declaration also raised five other issues associated with these schools. First, the Council highlighted the essential role that teachers play in determining whether the Catholic school achieves its goals and purposes. The declaration outlined some of the qualities necessary for the teacher in the Catholic school, including both secular and religious training (n. 8). Furthermore, the Council encouraged teachers to work as partners with the parents, to pay attention to the sexual differences of the students, to inspire the personal initiative of the student and to assist students who have graduated with advice and friendship. Ultimately, the Council recognized that the ministry of such teachers is a true apostolate,⁹² providing an important service to

⁹¹ For a discussion of the notion of dialogue relating to the school, see J. GARCIA CARRASCO, *La politica docente*, p. 201.

⁹² *Gravissimum educationis*, n. 8. See also *Apostolicam actuositatem*, n. 30 {cc. 798, 803, §2, 804, §2}: "Teachers and educators, who carry on a distinguished form of the apostolate of the laity by their vocation and office [...]" (English translation, W. M. ABBOTT (ed.), *The Documents of Vatican II*, p. 518). The reference to apostolate raises the issue of the connection between the apostolate of the hierarchy and that of the laity. Whether the hierarchy "praises", "recommends", "recognizes", "entrusts" or "mandates" the laity, no project may claim the name "Catholic" without the consent of the lawful Church authority (*Apostolicam actuositatem*, n. 24) {c. 803, §3}.

the Church and to society.

The second issue concerns the Council's acknowledgement of the existence of other forms of schools which vary in the way that they depend on the Church (n. 9); for example, parochial schools established by the parish, state denominational schools found especially in Europe, and missionary schools in newly founded Churches. The awareness of this variety of schools led to an open flexibility regarding the nature of schools' dependence on the Church; nevertheless the Council safeguarded the importance of "establishing and conducting" Catholic schools (n. 9), the right of local ordinaries to supervise Catholic schools and the right of religious to direct their own schools.⁹³

The third trend found throughout the declaration concerns the role of parents.⁹⁴ The Council urged parents to send their children to Catholic schools, to support these schools and to cooperate with them for the good of their children (n. 8). By doing so, the declaration seems to take note of a delicate situation: while

⁹³ "Catholic schools conducted by religious are also subject to the authority of the local Ordinaries as regards general policy and supervision, but the right of religious to direct them remains intact" (*Christus Dominus*, n. 35 (4); English translation, W.M. ABBOTT (ed.), *The Documents of Vatican II*, p. 423) {cc. 801, 806, §2}.

⁹⁴ John Paul II further developed the role of parents in the education of their children and in Catholic schools in his Apostolic exhortation, *Familiaris consortio*, November 22, 1981, nn. 36-41. For a consideration of how this role of the parents permeates the entire 1983 *Code of Canon Law*, see P. BAILLARGEON, *The Canonical Rights and Duties of Parents in the Education of Their Children*, Ph.D. (Canon Law) diss., Ottawa, Saint Paul University, 1987, xxi-375p.; F. MORRISEY, "The Rights of Parents in the Education of Their Children (Canons 796-806)", in *Studia canonica*, 23 (1989), pp. 429-444.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 84

emphasizing the inalienable right of parents to educate their children and the right of parents to a free choice regarding the education of their children, the declaration also hoped that parents would choose to involve the Church in the education of their children. Realizing this position, the Church acknowledged its obligation to give special attention and help to the great number of Catholics that attend non-Catholic schools (n. 7),⁹⁵ especially through the example of teachers, the teaching of doctrine and the provision of spiritual assistance.⁹⁶

The Council's awareness of the religious plurality of contemporary society leads to the fourth issue, namely, cooperation. The declaration urged coordination between various Catholic schools and, for the well-being of the whole community, collaboration between Catholic schools and other schools (n. 12). The precise meaning of this coordination and collaboration remains flexible, depending on the particular circumstances involved.⁹⁷

The fifth issue from the declaration relating to Catholic schools concerns the

⁹⁵ By this assertion, the Council seems to overturn the prohibition whereby Church teaching forbade Catholics from attending neutral or mixed schools. As a result, the 1983 Code makes no reference to canon 1374 of the 1917 Code. However, the Oriental Code of 1990 still acknowledges that the eparchial bishop has the competence to forbid the Christian faithful, for a grave reason, from attending a particular school (c. 633, §1).

⁹⁶ These assertions of the Council give further background to the reason for the provision of canon 804, §2: "The local ordinary is to be concerned that those who are assigned as religion teachers in schools, even in non-Catholic ones, be outstanding for their correct doctrine, their witness of Christian living and their pedagogical skill." The Oriental Code adds the qualifying phrase "teachers of the Catholic religion" in any school (c. 636, §2).

⁹⁷ M.J. HURLEY, *De educatione christiana*, pp. 91-92.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 85

attempt to articulate the complex relationships among those agencies with rights and obligations in the area of education. The Council based the right of the Church to educate on the fact that the Church is a human society capable of teaching; that the Church has an obligation to assist and provide for the education of its members; and that the Church has a divine mandate to bring the saving message of Christ to all people. While attempting not to overemphasize the rights of parents to the exclusion of the rights of other agencies, the declaration highlighted the right of civil society to provide for the common good in temporal matters according to the principles of subsidiarity (n. 3) and distributive justice (n. 6). Besides this overall right, the State must also safeguard the rights of children to an adequate education, oversee the ability of teachers and the standard of teaching, and not monopolize the schools (n. 6). In the final analysis, the Council attempted to solicit "both an intelligent harmony and a willing cooperation among all those with a proper role to play",⁹⁸ for it considered the school as a centre of growth and activity where families, teachers, various civic and religious groups, civil society and the whole community could participate (n. 5).

In concluding these reflections on Vatican II's teaching on Catholic schools, several overall impressions emerge. The Council clearly attempted to focus on the Catholic school as an evangelizing institution and this focus represents the doctrinal

⁹⁸ *Ibid.*, p. 69.

development in the declaration.⁹⁹ While reiterating much of the traditional teaching on the various agencies involved in education, the Council attempted to ground its right to Catholic schools on the dignity of the human person and on the right to religious liberty.¹⁰⁰ As a result of the Council's attitude of openness to the world, the Church has portrayed a different attitude toward non-Catholic schools, viewing them not with a suspicion emerging from a defensive posture, but with goodwill and with a readiness to cooperate. Finally, the Council expressed an extremely positive appreciation for the ministry and contribution of teachers.

2.3.2 - POSTCONCILIAR TEACHING

We would note in passing that during the postconciliar era numerous conferences of bishops issued pastoral letters on Catholic education and especially on Catholic schools, but a consideration of these letters extends beyond the scope of our present study.¹⁰¹

⁹⁹ J. Garcia Carrasco speaks of this development as "el progreso doctrinal de la declaración" (*La política docente*, p. 120).

¹⁰⁰ "The Council's *Declaration on Religious Freedom* in section 5 insists that freedom of choice in education is often the key test in a country or nation as to the sincerity of its commitment to religious freedom" (M.J. HURLEY, *De educatione christiana*, p. 83). For a discussion of the issues associated with Catholic schools and religious liberty, see J.J. GARNHAM, *Independent Schools and Vatican II in Australia: A Study in Religious Liberty*, Launceston, G. Young, 1986, pp. 123-163, 202-206.

¹⁰¹ Since this chapter focuses primarily on the sources of the canons in question, these pastoral letters are not included. Yet one must acknowledge their indirect influence, for these pastoral letters reveal the local teaching, which ultimately influenced the comments that conferences made during the revision process of the Code. Some examples of these statements include: EPISCOPAL CONFERENCE

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 87

The first important document for our subject from this era is the *Directory on the Pastoral Ministry of Bishops* issued by the Sacred Congregation for Bishops in 1973. This directory further developed the role of the bishop in relation to Catholic schools, challenging him to ensure that young people receive religious and moral education as well as formation for the apostolate; to ensure that the school apostolate has a place in the pastoral organization of the diocese; to form an "education community" to assist in the Catholic education of the diocese; and to foster a relationship with civil authorities in order to promote the religious instruction of students, especially Catholic students.¹⁰²

Another important text is the document, *The Catholic School*, issued by the Sacred Congregation for Catholic Education on March 19, 1977, in an attempt to

OF BELGIUM, "The Specificness of Catholic Education", in *Lumen vitae*, English ed., 31 (1976), pp. 235-245; EPISCOPAL CONFERENCE OF THE NETHERLANDS, "Catholic Teaching in the Netherlands", in *Catholic Mind*, 76 (April/1978), pp. 37-64; NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "On Catholic Schools", in *Christian Brothers' Educational Record*, 1968, pp. 133-138; NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "Teach Them: U.S. Bishops' Statement on Catholic Schools", in *Origins*, 6 (1976-1977), pp. 1-7; NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "To Teach as Jesus Did: A Pastoral Message on Catholic Education", in *Origins*, 2 (1972-1973), pp. 349-364; ONTARIO CONFERENCE OF CATHOLIC BISHOPS, *Pastoral Letter on the Subject of Ecumenism and Catholic Truth*, Toronto, 1965, 8p.

¹⁰² SACRED CONGREGATION FOR BISHOPS [=SCB], *Directory on the Pastoral Ministry of Bishops*, *Ecclesiae imago*, February 22, 1973, n. 66 {cc. 802, §2, 806, §1}; English translation by the Benedictine monks of the Seminary of Christ the King, Mission, B.C., Ottawa, Publications Service of the Canadian Catholic Conference, 1974, pp. 37-38.

deepen the thinking of the Council.¹⁰³ Aware of the numerous difficulties with and objections to Catholic schools, the Congregation presented the school as part of the saving mission of the Church (n. 9). After considering the general purpose of a school, the document focused on the specific character of the Catholic school (nn. 33-37), including the task of providing a synthesis of culture and faith and a synthesis of faith and life. The Congregation emphasized the fact that this task finds its fulfilment by integrating all human knowledge with the light of the Gospel and by encouraging the growth of values characteristic of the Christian. Some of these values included the significance of community (n. 53), the role of the dignity of the human person (n. 55), cooperation with others (n. 57), the call to build a just society (n. 58), and the importance of working for the common good (n. 60).

While making reference to religious instruction (nn. 49-50),¹⁰⁴ the document asserted that the Catholic school achieves its specific aim depending "not so much on subject matter or methodology as on the people who work there [... and] to a very

¹⁰³ SCCE, Document, *The Catholic School*, March 19, 1977; English translation in A. FLANNERY (ed.), *Vatican Council II: More Post Conciliar Documents*, vol. 2, pp. 606-629 (subsequent references to this document will use only the article number quoted within the text). In the canons on Catholic education and on schools in the 1983 Code, seven canons, especially canons 803 and 804, use this document as one of their sources.

¹⁰⁴ For a recent development of this theme of religious instruction in the Catholic school, see SCCE, Document, *The Religious Dimension of Education in a Catholic School*, April 7, 1988, nn. 66-112; English translation in *Origins*, 14 (1988-1989), pp. 221-227. [Although the office which issued this document was called the Congregation for Catholic Education, this thesis will use the abbreviation SCCE for the sake of consistency.]

great extent on the teachers."¹⁰⁵ Moreover, the document made reference to the role of the bishop giving "in some manner the 'mandate' of an apostolic undertaking"¹⁰⁶ to the Catholic school, and called for greater responsibility on the part of the entire educative community -- including parents, teachers and bishops -- in sharing in the task of ensuring that a distinctive Christian educational environment is maintained (nn. 72-73).¹⁰⁷ The document urged religious institutes not to abandon their apostolic work of education in the Catholic schools (nn. 74-76, 89). Ultimately, one may consider this document as an attempt to develop the institutional witness of a Catholic school (nn. 18, 62, 64), as well as an effort to address realistically, through practical directives, some of the problems facing the Catholic school in today's world.

¹⁰⁵ *Ibid.*, n. 43. For further references to the role of the teachers, see nn. 71, 73, 78, 83, and 90, some of which provide source material for cc. 803 and 804.

¹⁰⁶ *Ibid.*, n. 71 {c. 803, §1}. While this document leaves open the precise meaning of this "mandate", the Council viewed the concept of a "mandate" as "a juridical acknowledgement on the part of a member of the hierarchy that a particular apostolate of the laity, having a spiritual end, is in communion with his plan for the diocese and with the Church" (R.P. DEELEY, "An Interpretation of Canon 812", in Canon Law Society of America, *Proceedings of the Fiftieth Annual Convention* (1988), p. 74).

¹⁰⁷ Recently Pope John Paul II continued this theme of developing this "formation community" in the Catholic school and he appealed to the prophetic task of the school (JOHN PAUL II, Apostolic exhortation, *Christifideles laici*, December 30, 1988, n. 62, in *AAS*, 81 (1989), pp., 514-517; English translation in *The Vocation and the Mission of the Lay Faithful in the Church and in the World*, Ottawa, Canadian Conference of Catholic Bishops, pp. 182-187).

2.4 - THE *CODE OF CANON LAW*

In the aftermath of the Second Vatican Council, the Pontifical Commission for the Revision of the Code of Canon Law received the task of accommodating canon law to the "new way of thinking" of the Council. The group working on the section on the Church's teaching office was motivated by two fundamental principles, namely, that parents, who possess the first and inalienable obligation and right to educate their children ought, to enjoy true liberty in establishing schools and that the faithful ought to be concerned that civil society recognize this freedom of parents.¹⁰⁸ Various study groups prepared drafts of particular sections of the Code and these drafts circulated throughout the world in order to obtain the comments of numerous groups.

¹⁰⁸ *Communicationes*, 7 (1975), p. 156.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 91

2.4.1 - THE 1977 AND 1980 SCHEMATA¹⁰⁹

By 1977, the first draft of the canons on the Church's teaching office (*Liber III, De munere docendi*) was circulated for comment. After this worldwide consultation, a one-volume draft of the entire Code was produced in June 1980 and the members of the Commission made written comments on this text, their comments eventually forming the basis of a 1981 *Relatio*. At its plenary session in October 1981, the Commission studied both the 1980 Schema and the 1981 *Relatio*. Finally, after personally studying the Code for a year, Pope John Paul II promulgated it on January 25, 1983.

¹⁰⁹ The following table gives an overview of the relationships among the two schemata, the 1977 Code and the 1983 Code. The sign ~ indicates the fact of a less direct relationship with the 1990 Oriental Code.

1977 Code	1977 Schema	1980 Schema	1983 Code	1990 Oriental Code
1372	43	748	793	~627,§1
	44	749	794	628
	47,§1	750	795	~629
	48	751	796	631,§1, ~639
	49	752	797	627,§3
	50	753	798	627,§2, 633,§2
	51	754	799	--
	52	755	800	631,§2, 630,§2
	--	756	801	--
	1375	52	755	800
--		756	801	--
1379	53	757	802	635
	--	758	803	632, ~637, ~639
	55,§1	759,§1	804,§1	~636,§1
	54,§2	759,§2	804,§2	~639
	56,§1	761	805	636,§2
1381	55,§2	760,§1	806,§1	638,§1
	54,§1	760,§2	806,§2	~634,§3
1382	55,§2	760,§1	806,§1	638,§1
	54,§1	760,§2	806,§2	~634,§3

During the process of revision, numerous changes took place in the section on Catholic education and schools and the discussions of the consultors¹¹⁰ reveal three important considerations applicable to Catholic schools. The first concerns the name assigned to the title in question: from *De scholis* of the 1917 *Code of Canon Law*, to *De educatione christiana* in the 1977 schema, to *De educatione catholica* of the 1980 schema and the 1983 *Code of Canon Law*. Beginning with the material contained under title XXII, *De scholis* (cc. 1372-1383), of the 1917 *Code of Canon Law*, the consultors, influenced by the direction of the Council, decided to expand the material to include norms for the entire area of Christian education, thus changing the title accordingly.¹¹¹ This expansion resulted in some introductory canons on Christian education and then three chapters on various kinds of schools.¹¹² Eventually, in

¹¹⁰ For a summary of these discussions, see *Communicationes*, 20 (1988), pp. 126-142, 170-182, 214-230; R.J. CASTILLO LARA, "Le Livre III du CIC de 1983: histoire et principes", in *L'Année canonique*, 31 (1988), pp. 23-27. Although J. Fox gives an outline of the various discussions which have not yet been published ("A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law", in *The Jurist*, 48 (1988), pp. 800-840), these discussions are not available for research purposes. For a consideration of the evolution of the various drafts, see L. BORDONARO, *Separate Schools in Ontario, Canada: Their Canonical Status and Relationship to the Church According to the 1983 Code of Canon Law*, J.C.D. diss., Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1989, pp. 41-61.

¹¹¹ *Communicationes*, 22 (1988), p. 130. At the same time, they did not want to diminish the importance of Catholic schools (*Communicationes*, 22 (1988), p. 216). During the revision process for the Oriental Code, a similar change in title occurred (G. NEDUNGATT, "The Schema *De magisterio ecclesiastico*", in *Nuntia*, 11 (2/1980), p. 62).

¹¹² *De scholis, De catholicis universitatibus aliisque studiorum superiorum institutis*, and *De universitatibus et facultatibus ecclesiasticis*. When speaking of schools in chapter one, the *coetus* acknowledged the ambiguity of the title "De scholis" (*Communicationes*, 15 (1983), pp. 100-101), but agreed that the title refers to only

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 93

the 1980 schema, the consultants wanted to focus on the rights and obligations that pertain specifically to Catholic education, and thus changed the title accordingly.

The second consideration during the revision process concerns the role of conferences of bishops. The 1977 schema gave the conferences significant authority over schools, for the schema makes eight references to these conferences.¹¹³ Utilizing the principle of subsidiarity, the Commission reduced these references to a single one in the 1983 Code, namely, the responsibility of the conference to issue general norms regarding Catholic religious formation and education given in schools (c. 804, § 1).¹¹⁴

The third underlying concern of the consultants centred on the meaning of a

primary, elementary and high schools and not schools of higher learning. Furthermore, the chapter focuses primarily on Catholic schools; the Oriental Code makes this explicit in its heading for Title XV, Chapter II, Article I: "Schools, especially Catholic Schools."

¹¹³ These references included enacting norms to assist parents in selecting the means to provide an education for their children (c. 43, § 3); recognizing certain schools as Catholic (c. 50, § 1); enacting norms to define the conditions whereby parents could send their children to non-Catholic schools (cc. 50, § 3; 53, § 2); having vigilance over the religious content and religious training in schools (cc. 54, § 1; 55, § 1); watching over the institutions involved in the education and formation of God's people (c. 55, § 3); and nominating, approving or removing teachers of religion in interdiocesan schools (c. 56, § 1).

¹¹⁴ The Canadian Conference of Catholic Bishops (CCCCB) further acknowledges the principle of subsidiarity in its decree no. 29: "[...] taking into account the competence and activities of the Episcopal Commissions for Christian Education and the various catechetical offices, all of which constantly monitor Catholic religious education and advise the Conference and regional assemblies of Bishops accordingly, the general norms presently in force remain operative and new norms may be issued if necessary" (CCCCB, *Official Document*, no. 597, June 28, 1988, in *Studia canonica*, 22 (1988), p. 473).

Catholic school.¹¹⁵ Recognizing the large variety of Catholic schools throughout the world, the consultors initially proposed that the Code not give a definition of a Catholic school, but merely provide norms which parents could use in choosing schools. In discussing these norms for parents, however, the consultors were forced to consider numerous ways of describing a Catholic school: one which ecclesiastical authority at least implicitly recognizes and which comes under the vigilance of the bishops; one which ecclesiastical authorities or individual Catholics establish and direct; one which the Church establishes and directs according to its fundamental principles of education and which has an atmosphere imbued with the spirit of the Gospel; one which cares for the passing on of Christian education. In the midst of these descriptions, the consultors expressed their awareness of schools in countries such as Germany, Belgium and Holland, and thus proposed several distinctions, e.g., Catholic schools properly called and Catholic schools in the broader sense; Catholic schools by law and Catholic schools in fact; optimal and minimal¹¹⁶ Catholic schools. Finally they agreed on the wording of canon 50 of the 1977 schema.

Canon 50, §1: Insofar as circumstances allow, parents should

¹¹⁵ *Communicationes*, 20 (1988), pp. 137-139, 171-176, 215-216, 223-224.

¹¹⁶ The consultors referred to schools whose teaching is not Catholic and yet which the Catholic hierarchy has recognized and approved, e.g., in Algeria (*Communicationes*, 20 (1988), p. 216). The concern in these cases in missionary countries probably revolves around the importance of providing a basic education, rather than giving a specifically Catholic education; this interpretation finds expression in the document on Catholic schools (SCCE, *The Catholic School*, n. 77). The Oriental Code makes reference to this phenomenon, thus calling the Catholic school to adapt to particular circumstances, if the majority of students are non-Catholic (c. 634, §2).

entrust their children to schools that the Catholic Hierarchy recognizes as really Catholic. If there be none, they should entrust them to schools where the teaching of christian doctrine is provided, especially those that have been declared suitable for Catholics to attend by a particular law resulting from a concordat between Church and State or enacted by the Conference of Bishops or the diocesan Bishop.

§2. In cases where they cannot send children to schools mentioned in paragraph 1, the parents are obliged themselves to take care that their christian education is provided for according to norms issued by competent ecclesiastical authority.

§3. It is within the competence of the Conference of Bishops and, in accord with its rules, that of the diocesan Bishop to enact norms, suited to local conditions, which define more precisely under what conditions parents may be permitted to send their children to non-Catholic schools.¹¹⁷

During the subsequent revision process, the Code Commission reworked canon 50 which became canon 753 of the 1980 schema eventually passing unchanged into the 1983 Code as canon 798:

Canon 798: Parents are to entrust their children to those schools in which Catholic education is provided; but if they are unable to do this, they are bound to provide for their suitable Catholic education outside the schools.¹¹⁸

In rewording canon 50, the Commission focused on the responsibility of parents to provide Catholic education for their children, and eliminated any consideration of the meaning of a Catholic school. At the same time, though, the Commission added

¹¹⁷ *Codex recognitus (Schema): Liber III, De munere docendi: Draft of the Canons of Book Three: The Church's Teaching Mission*, [Vatican City], Vatican Polyglot Press, 1977, p. 18. Translated under the auspices of the Canon Law Society of America by Porter White.

¹¹⁸ *The Code of Canon Law*, Latin-English edition, translation prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 1983, p. 301. Hereafter, all English translations of the Code will be taken from this translation.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 96

canon 758 of the 1980 schema, which also passed unchanged into the 1983 Code as canon 803.

Canon 803, §1: That school is considered to be Catholic which ecclesiastical authority or a public ecclesiastical juridic person supervises or which ecclesiastical authority recognizes as such by means of a written document.

§2 It is necessary that the formation and education given in a Catholic school be based upon the principles of Catholic doctrine; teachers are to be outstanding for their correct doctrine and integrity of life.

§3 Even if it really be Catholic, no school may bear the title "Catholic school" without the consent of the competent ecclesiastical authority.¹¹⁹

In the final analysis, this canon contains the legal criteria to determine whether or not a school is "Catholic".

2.4.2 - THE PROMULGATED TEXT (CANON 803)

According to the *Code of Canon Law*, then, the "formal"¹²⁰ element which makes a school Catholic, centres on the fact that the school either comes under the supervision of church authority, or under that of a public juridical person, or is

¹¹⁹ Canon 803, §1. Schola catholica ea intellegitur quam auctoritas ecclesiastica competens aut persona iuridica ecclesiastica publica moderatur, aut auctoritas ecclesiastica documento scripto uti talem agnoscit.

§2. Institutio et educatio in schola catholica principiis doctrinae catholicae nitatur oportet; magistri recta doctrina et vitae probitate praestent.

§3. Nulla schola, etsi reapse catholica, nomen *scholae catholicae* gerat, nisi de consensu competentis auctoritatis ecclesiasticae.

¹²⁰ L.Z. Legaspi uses the distinction between formal and material elements of a Catholic school ("The Teaching Office of the Church", in *Philippiniana sacra*, 18 (1983), p. 436). See also K. LÜDICKE (hrsg.), *Münsterischer Kommentar zum Codex iuris canonici, unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, Essen, Ludgerus Verlag, 1985- , c. 803.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 97

recognized in writing as such by an ecclesiastical authority. Moreover, the canon also recognizes that some schools which might not possess these criteria of appropriate supervision or recognition, are nevertheless truly Catholic (c. 803, §3). The next chapter will provide a more complete analysis of the implications of this canon.

CONCLUSION

After reflecting on the canons of the 1983 Code in light of their various sources, several conclusions emerge. The first concerns the fact that the sources of the canons on Catholic education and on schools (793-806) express an ambivalent tension of preservation and progress.¹²¹ This tension arises as one detects two distinct visions of Church, i.e., the older ecclesiology of *societas perfecta*¹²² and the newer vision of the Church in the modern world as a pilgrim people. On the one hand, the Church portrays itself as a perfect society declaring certain rights in relation to society and in relation to schools, in an attempt to establish control; on the other hand, the Church acknowledges the primary responsibility of parents to provide for the education of their children, the freedom of parents in choosing a school for their children, and the importance of a complete physical, moral, intellectual, and social education. Thus, the resulting canons incorporate at least two

¹²¹ For a discussion of this tension found in the 1977 and 1980 schemata, see M.C. CONNOLLY, "De munere docendi: Some Orientations", in Canon Law Society of America, *Proceedings of the Forty-Fourth Annual Convention* (1982), pp. 219-232.

¹²² M. Connolly sees this ecclesiology in those canons of the 1983 Code, i.e., cc. 793, 800, 802, 805, and 806, which have attempted to incorporate the canons from the 1917 Code.

different ecclesiologies.

The second conclusion, following from the first, concerns the Commission's fidelity to the sources used during the revision process. To consider this conclusion, we must first appreciate what it means to speak of canons "faithfully reflecting their sources". In promulgating the 1983 Code, Pope John Paul II alluded to the importance of the Code's reflecting its sources, when he stressed the fact that the new Code must be understood as an effort to translate conciliar teaching into canonical language, and to the extent that the Code is unable to do this, the Code must be referred to conciliar teaching.¹²³ Thus, in this translation process, the Code must retain a balance between the pastoral emphasis of the Council and the necessary juridical quality of the Code. As an example of this translation process, we might consider the elements involved in a Catholic school as seen in canon 803, §2, namely, education based on Catholic doctrine and qualified teachers. While these two elements are easily verifiable, they seem to give little consideration to the conciliar teaching on the purposes of a Catholic school as taught in article eight of *Gravissimum educationis*. On the other hand, the Oriental Code admirably reflects this teaching by emphasizing that the Catholic school ought to create a Gospel atmosphere in the school community, assist the young in the growth in the life of

¹²³ JOHN PAUL II, Apostolic constitution, *Sacrae disciplinae leges*, January 25, 1983, in *The Code of Canon Law*, Latin-English ed., p. xiv. See also R.J. CASTILLO LARA, "Le Livre III du CIC de 1983: histoire et principes", in *L'Année canonique*, 31 (1988), pp. 40-42. Moreover, J. Alesandro insists that the Council is the Code's primary *fons* (J. ALESANDRO, "The Revision of the *Code of Canon Law*: A Background Study", in *Studia canonica*, 24 (1990), pp. 92-101).

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 99

baptism, and help students acquire a knowledge illumined by faith (c. 634, §1).¹²⁴ In this instance, we can conclude that the Oriental Code exhibits a greater fidelity to its sources than does the Latin Code.

Utilizing this understanding of fidelity, it seems that the Code Commission exhibited an overall fidelity to its sources, with two exceptions. The first concerns teachers. The extremely positive teaching on the importance of teachers by Pius XII, by Vatican II, and by the Congregation for Catholic Education, gets translated canonically as "teachers are to collaborate closely with parents who are to be willingly heard" (c. 796, §2) and "teachers are to be outstanding for their correct doctrine and integrity of life" (c. 803, §2). Surely the canons could have expressed some appreciation of the affirmative perception of the service of the teachers as an "outstanding form of apostolate!"¹²⁵ This lack of positive appreciation of teachers

¹²⁴ G. Nedungatt contends that the revision process for the Oriental Code utilized a more creative reading of the sources than that used in the Latin Code Commission (see G. NEDUNGATT, "The Teaching Function of the Church in Oriental Canon Law", in *Studia canonica*, 23 (1989), p. 41). In an earlier article, Nedungatt hints at the meaning of this "creative reading". He mentions that some exhortatory canons function as "juridical stand-bys": while not imposing strictly binding juridical obligations, these canons could be transformed into binding lawful precepts as the occasion arises. Moreover, these exhortatory canons are a reminder that in the Church, some ideals and norms have not been confined to precepts and commandments as well as a reflection of the style of the divine Lawgiver who gently calls people through "the cords of love" to aim for the high ideal of perfection (G. NEDUNGATT, "The Schema *De magisterio ecclesiastico*", in *Nuntia*, 10 (1/1980), p. 75).

¹²⁵ For example, the Oriental Code seems to reflect the sources in a more positive and more faithful light: "As it depends chiefly on the teachers whether a Catholic school achieves its purpose and realizes its undertakings, they should be outstanding in learning and exemplary in the witness of their lives; and they are to work in close collaboration chiefly with the parents but also with other schools" (c.

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 100

reflects a defensive attitude that seems to permeate other parts of book III of the 1983 Code.

The other exception regarding the issue of fidelity to the sources concerns the concept of the school. Both conciliar and postconciliar sources present the school itself as an apostolate, as an evangelizing community, as an institutional witness of the Church in the modern world. Yet, the Code fails to give much acknowledgement to this teaching and, in the end, portrays the school, not for the institutional witness it can provide, but merely as the principal means of assisting parents in fulfilling their educational tasks (c. 796).

The third conclusion concerns the Church's relationship with the civil society. Throughout its documents for the past two hundred years, the Church constantly taught that the secular law should recognize both the Church's right to have schools and the right of Catholic parents to have a school which provides for the Christian education of their children. The 1983 *Code of Canon Law* continues this teaching, stating that civil society must safeguard the right of parents to have a real freedom in their choice of school for their children (c. 797) and that laws should regulate the formation of the young, including the provision for religious and moral education in the schools in accord with the conscience of the parents (c. 799).

The fourth and final conclusion concerns the fact that the sources reveal a gradual development in the understanding of the nature of the Catholic school. In the early nineteenth century, Church teaching viewed the Catholic school in

CHURCH TEACHING AND LEGISLATION ON CATHOLIC SCHOOLS 101

opposition to non-Catholic schools, and required that Catholics attend a Catholic school, which would teach religious education and have Catholic teachers. This understanding of the Catholic school received deeper reflection in the 1950s and 1960s as a result of several developments including a deepening of the Church's own self-understanding, an awareness of the call of ecumenism in the midst of religious pluralism and the realization of the complexity of problems in the whole field of education. Thus recent Church teaching presents the Catholic school as an apostolate that fosters the internal renewal of the Church and intensifies the Church's presence in the modern world. Before proceeding further with our study of the Catholic schools in Newfoundland, it would be important to examine in detail the elements of the current canons on Catholic schools which can then be applied to the particular situation of the schools in Newfoundland.

CHAPTER THREE

CATHOLIC SCHOOLS IN THE *CODE OF CANON LAW*

Utilizing the background material of chapter two, this chapter focuses on the canons on Catholic education and schools in the *Code of Canon Law* (cc. 793-806). To facilitate our appreciation of these canons, we could use the image of a newly-constructed house. While the architect had a clearly designed plan, and the builder utilized the plan to meet certain specifications, the real evaluation of the building occurs only after someone actually lives in the house. As a result, the person's familiarity with the house leads to an appreciation of its design as well as an awareness of any problems that might exist.

This image assists us in our present task: the legislator and the Code Commission designed these canons with "certain specifications" in mind, but the effectiveness of the canons can properly be evaluated only after they have been "lived in" and applied in particular situations. Accordingly, this implementation leads to an appreciation of the content of the canons as well as to an awareness of some of the difficulties that might be inherent in the canons themselves.

The canons on schools (cc. 796-806) provide the juridical understanding of a Catholic school and delineate certain obligations and rights of different people and agencies in relation to schools. This present chapter, then, will focus especially on this current legislation on Catholic schools, providing an analysis of the eleven canons

concerned. At the same time, this commentary will also provide the framework for the task of the final chapter of this study, i.e., the canonical examination of the Catholic schools in Newfoundland.

3.1 - THE CONCEPT OF A CATHOLIC SCHOOL IN THE CODE

To facilitate our study of Catholic schools in the Code of Canon Law, we shall consider the canons on schools from two perspectives: first, from the perspective of how the canons fit into the broader context of the Code and second, from the perspective of how the Code views a Catholic school.

3.1.1 - IMPLICATIONS FROM THE BROADER CONTEXT OF THE CODE

The first issue in this analysis concerns the canonical context of the canons on Catholic schools, that is, how these eleven canons fit into the broader context of the Code. Book II on "The People of God" includes canons on the obligations and rights of all the Christian faithful (cc. 208-223) as well as those of the lay members of the Christian faithful (cc. 224-231). Both these sections contain a canon concerning education: canon 217 speaks of the right of the baptized to a Christian education, while canon 226, §2 expresses the serious obligation and the right of parents to educate their children, and of Christian parents to ensure the Christian education of their children in accord with the teaching of the Church. While other canons refer to "Christian education", e.g., canons. 802 and 835, the Code more often speaks of

"Catholic education",¹ and the context of the particular canon usually implies "Catholic" education.² The Code then places the norms on Catholic education in book III on "The Teaching Office of the Church", which emphasizes the obligation and right of the Church to proclaim the Gospel to all peoples (c. 747). Accordingly, the Code presents Catholic education as one of the ways of preaching the Gospel. In addition, the canons on schools are but one chapter within the title "Catholic education", indicating that Catholic schools are one of the means -- albeit, the principal one (c. 796) -- of obtaining a Catholic education.

The mention of a "Catholic education" raises the issue of the Code's

¹ For example, canons 528, 793, 794, 798, 800, 801, 804, and 868.

² F. MORRISEY, "The Rights of Parents in the Education of Their Children (Canons 796-806)", in *Studia canonica*, 23 (1989), p. 433. While acknowledging that the right to a Christian education arises from baptism, the Code approaches the dimension of parental obligations in such a way that the education of children should "include all the elements necessary to embrace full communion in the Church [...]. As based in baptism, it is a right enjoyed by all Christians, although only those in full communion with the Catholic Church can vindicate that right canonically" (J. PROVOST, "The People of God", in J. CORIDEN, T. GREEN, and D. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary* [=CLSA Commentary], New York, Paulist Press, 1985, p. 151).

Furthermore, the general principle regarding the term *christifideles* provides an important perspective concerning Christian education. While acknowledging that the term *christifideles* includes all the baptized, the Code Commission claimed that in the Code the term always means Catholics since the Code is for the Latin Catholic Church and non-Catholics are not bound by merely ecclesiastical laws (c. 11) (PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis* [=Relatio], [in Civitate Vaticana], Typis Polyglottis Vaticanis, 1981, p. 50).

Accordingly, the assumption throughout this thesis is that, when using the phrase "Christian education", the Code refers to "Catholic education".

understanding of a "Catholic education" or a Catholic curriculum. Canon 804, §1 states that formation and education in the Catholic religion in any school remains under the authority of the Church, but the canon does not address the contents of this formation or education. Likewise, while canon 795, one of the introductory canons on Catholic education, outlines the general goals of education, it makes no attempt to specify the elements of Catholic education. Canon 803, §2 makes the closest attempt to do so, i.e., a formation and education based on the principles of Catholic doctrine.³

However, other canons throughout the Code provide some assistance in the task of obtaining a fuller description of Catholic education. Canon 217 refers to a Christian education by which the faithful develop "the maturity of a human person and at the same time come to know and live the mystery of salvation." Canon 1136 refers to the fact that parents have the obligation to ensure "the physical, social, cultural, moral and religious upbringing of their children."⁴ Moreover, canon 750 specifies that the deposit of faith, i.e., all that is contained in the written Word of God and tradition, proposed as divinely revealed must be believed with divine and Catholic faith. While the Code gives no list of the elements of this Catholic education, nor does it make any reference to family life education, other conciliar

³ Canon 226, §1 makes a similar statement, calling Christian parents "to care for the Christian education of their children according to the teaching handed on by the Church."

⁴ For a recent study of these various elements, see A. KOWALSKI, *Educazione della prole nella vigente legislazione canonica*, Roma, Pontificia Universitas Lateranensis, 1987, 132p.

and postconciliar documents give clear directives on the elements to be included in a Catholic education as well as the principles relating to family life education.⁵

3.1.2 - CANON 803

As mentioned in chapter two, canon 803, §1 provides the "formal" element whereby a particular school is considered Catholic.⁶

Among the many possible criteria of a school's Catholicity, e.g., name, recognition, origin, stated purpose, ownership, operating authority, faith commitment of teachers or students, spirit and

⁵ For example, *Gravissimum educationis*, nn. 1, 2 and 4; SACRED CONGREGATION FOR THE CLERGY, General Catechetical Directory, *Ad normam decreti*, April 11, 1971, nn. 36-69; SACRED CONGREGATION FOR THE CLERGY, Guidelines, *Educational Guidance in Human Love: Outlines for Sex Education*, November 1, 1983, Ottawa, Canadian Conference of Catholic Bishops, 1983, 36p.; JOHN PAUL II, Apostolic exhortation, *Familiaris consortio*, November 23, 1981, n. 37; English translation in *The Role of the Christian Family in the Modern World*, Ottawa, Canadian Conference of Catholic Bishops, 1982, pp. 72-74. For an example of how gospel values might permeate the curriculum, methodology and intentionality of the Catholic school, see M.L. WELCH, *A Beginning: Resource Book for Incorporating Values and Church Teachings in the Catholic School Curriculum*, Washington, DC, National Catholic Educational Association, 1990, 145p.

⁶ Several authors follow this interpretation: J. CORIDEN, "The Teaching Ministry of the Church - A Commentary", in *The Living Light*, 20 (1983-1984), pp. 134-135; *Código de derecho canónico*, edición bilingüe comentada por los profesores de la Facultad de derecho canonico de la Universidad Pontificia de Salamanca, 4a ed. rev., Madrid, Editorial católica, 1984, p. 499; T. PAZHAYAMPALLIL, *A Commentary on the New Code of Canon Law*, Bangalore, K.J.C. Publications, 1985, pp. 528-530; *Droit canonique*, sous la direction de P. VALDRINI, [et al], Paris, Dalloz, 1990, p. 286.

The promulgated Oriental Code succinctly summarizes the juridical criterion in canon 632: "Schola in iure non reputatur catholica, nisi ut talis erecta est ab episcopo eparchiali vel ab auctoritate superiore ecclesiastica aut ab eisdem ut talis agnita" (A school is not considered Catholic in law unless it has been erected as such by the eparchial bishop or by a superior ecclesiastical authority or has been recognized as such by them).

atmosphere, orthodox teaching, or actual inculcation of gospel values, the Code has chosen what is perhaps the simplest and most verifiable criterion: operation or recognition by church authority (either directly, or indirectly exercised in the establishment of a public juridic person).⁷

This "formal" element centres on the fact that the school either comes under the supervision (*moderari*⁸) of church authority, or under that of a public ecclesiastical juridical person,⁹ or is recognized (*agnoscere*) in writing as such by an ecclesiastical authority.¹⁰ Due to this requirement, schools established by the State, or by civil

⁷ J. CORIDEN, "The Teaching Office of the Church (cc. 747-833)", in J. CORIDEN, T. GREEN, and D. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary* [=CLSA Commentary], New York, Paulist Press, 1985, p. 568.

⁸ The deponent verb "*moderari*" has a variety of meanings including to set bounds, to keep within bounds; to regulate, moderate, restrain; to direct, guide; to govern, rule, regulate. The verb, used sixteen times in the 1983 Code (see J. OCHOA, *Index verborum ac locutionum Codicis iuris canonici*, Città del Vaticano, Libreria editrice Lateranense, 1984, pp. 280-281), describes the activity of juridical persons (c. 115), associations (c. 215 and others), seminary teachers (c. 254, §1), priest moderators (c. 517, §2), pastors (c. 528, §2), chaplains (c. 567, §2), competent authority (c. 576), diocesan bishops (cc. 790, §1, 1649, §1), conferences of bishops (c. 1272), judges (c. 1346). Thus, the Code gives this word a rather broad meaning.

⁹ The canon intends to stress the ecclesiastical dimension. Accordingly, a civilly incorporated school has legal standing in secular law, but does not have **juridical personality** in canon law unless that personality has been given by the law itself or by a decree from a competent authority (c. 114). Furthermore, the juridical person becomes a **public person** by the law itself or by a special decree of the competent authority, and thus can act in the name of the Church (c. 116). Some examples of public ecclesiastical juridical persons are a public association of the faithful (c. 313), a diocese (c. 373), a parish (c. 515), an institute of consecrated life (c. 634) and a society of apostolic life (c. 741).

¹⁰ In devising criteria for the recognition of a Catholic school, perhaps the criterion of ecclesiality suggested by Pope John Paul II for discerning and recognizing lay associations could provide some basic principles. This criterion includes: the primacy given to the call of every Christian to holiness, the responsibility of professing the Catholic faith, the witness to a strong and authentic communion in relationship with the Pope and the local bishop, conformity to and participation in the Church's apostolic goals, and a commitment to a presence in human society.

juridical persons, e.g., an association, or by private persons, even if they teach Catholic doctrine and have Catholic teachers, and are not subsequently recognized, do not fulfill the juridical requirement necessary to be considered a Catholic school according to canon 803, §1.

Furthermore, this "formal" element as such does not include those elements mentioned in canon 803, §2. However, in order to avoid the danger of "extrinsicism"¹¹ or legalism, the Code includes those elements of canon 803, §2, as a kind of "material" criterion to gauge the catholicity of a school. This criterion includes both a formation based on the principles of Catholic doctrine, as well as teachers who are outstanding for their correct doctrine and integrity of life. Therefore, although canon 803, §1, does not include this "material" criterion in its formal element for a school to be considered Catholic, those supervising Catholic schools as well as those with the authority to recognize a school as Catholic have the obligation of giving some consideration to this "material" criterion. Interestingly, the Oriental Code contains a broader view of this "material" criterion.¹²

Moreover, these fundamental characteristics find their verification in a variety of "actual fruits" (JOHN PAUL II, Apostolic exhortation, *Christifideles laici*, December 30, 1988, n. 30, in *AAS*, 81 (1989), pp. 446-448; English translation in *The Vocation and the Mission of the Lay Faithful in the Church and in the World*, Ottawa, Canadian Conference of Catholic Bishops, [n.d.], pp. 82-85).

¹¹ J. CORIDEN, "The Teaching Office of the Church (cc. 747-833)", in *CLSA Commentary*, p. 568.

¹² Although the Oriental Code acknowledges the importance of Catholic instruction (c. 637) and the character and competence of teachers (cc. 636, 639), it also implies that the "material" criterion of the Catholic school ought to reflect the purposes of article eight of *Gravissimum educationis*, namely, the Gospel atmosphere in the school, the growth in the life of baptism, and knowledge illumined by faith (c.

Moreover, when the *Code of Canon Law* mentions the reality of "Catholic schools in fact" (*reapse catholica*, c. 803, §3), the question arises whether or not the words "reapse catholica" refer merely to the schools of canon 803, §1 or also to other schools. After considering several arguments, e.g., the meaning of the word "reapse" in the other parts of the Code,¹³ parallel passages to canon 803, §3,¹⁴ the right of parents to erect schools (c. 800, §1), the discussions of the Code Commission,¹⁵ and

634, §1).

¹³ For example, canon 102, §2 refers to two ways of acquiring a quasi-domicile: residing in a place with the intention of remaining at least three months or staying in fact (*reapse*) in a place for three months; canon 166, §3 speaks of an election invalid in virtue of the law itself if more than one third of the electors were overlooked, unless all those overlooked were in fact (*reapse*) present. Thus, it seems that the Code uses the word *reapse* when it wishes to recognize a *de facto* situation. See also cc. 170 and 1743.

¹⁴ The requirement calling for the consent of the competent ecclesiastical authority to bear the name or title "catholic" occurs four times in the code: cc. 216 (apostolate), 300 (associations), 803, §3 (schools), 808 (universities). The first two references do not contain the phrase "*etsi reapse catholica*" while the other two do. Why did the Code Commission insert this phrase in the 1980 Schema for schools and universities? Since the minutes of the discussions are not yet available for examination, one can only speculate. Perhaps the fact that the law gives recognition to *de facto* apostolic action (c. 216) and *de facto* associations (c. 299, §1) made it necessary to add the phrase "*etsi reapse catholica*" to canon 803, §3 in order to acknowledge *de facto* Catholic schools. Moreover, the Oriental Code does not have a canon comparable to canon 803, §3 of the Latin Code. However, in its canon which parallels canon 803, §1 of the Latin Code, the phrase "in law" has been added: "*schola in iure non reputatur catholica*" (c. 632), thus giving rise to the distinction between Catholic schools in law and Catholic schools in fact.

¹⁵ In summarizing the discussions, Cardinal Castillo Lara reported that the Code Commission had lengthy discussions regarding the definition of a Catholic school. He referred to two diverse positions of the members of the Code Commission concerning the notion of a Catholic school: on the one hand, it is a school established by the Church; on the other hand, one in which *de jacto* a Christian education is given. Ultimately he alludes to two categories of Catholic schools: "Après une discussion plutôt longue, on en arriva à une solution de compromis, qui tenait

the comments made by several canonists,¹⁶ it seems that canon 803, §3 refers both to the schools mentioned in c. 803, §1 as well as to other schools which might not come within the provisions of canon 803, §1.

Accordingly, a "Catholic school in fact" includes both an external and an internal element, in a fashion somewhat analogous to the Code's external and internal elements describing a Catholic person, e.g., one who is joined with Christ "by the bonds of profession of faith, of the sacraments and of ecclesiastical governance" (c. 205). For a school, the external element would include some kind of Catholic supervision (*moderari*); the internal element would include Catholic formation and education as well as teachers outstanding in correct doctrine and integrity of life.¹⁷ This internal element could also include a situation where *de facto* the entire school community consists of Catholics living the Catholic faith.

compte des deux éléments fondamentaux ou mieux des deux situations existantes dans la réalité" (R.J. CASTILLO LARA, "Le Livre III du CIC de 1983: histoire et principes", in *L'Année canonique*, 31 (1988), p. 25).

¹⁶ For example, L. BORDONARO, *Separate Schools in Ontario, Canada: Their Canonical Status and Relationship to the Church According to the 1983 Code of Canon Law*, J.C.D. diss., Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1989, pp. 74-76, 79-80; J. PROVOST, "The Canonical Aspects of Catholic Identity in the Light of *Ex corde Ecclesiae*", in *Studia canonica*, 25 (1991), pp. 159-164; *Droit canonique*, sous la direction de P. VALDRINI, [et al], Paris, Dalloz, 1990, p. 286.

¹⁷ For further consideration of various ways of describing a Catholic institution, see F. MORRISEY, "What Makes an Institution 'Catholic'?", in *The Jurist*, 47 (1987), pp. 531-544; J. MYERS, "Church Approval Necessary for Activity to be Truly Catholic", in *Health Progress*, 68 (September 1987), pp. 70, 74; J. PROVOST, "Canon 216: Catholic Identity for a Hospital", in W. SCHUMACHER and J. CUNEO (eds.), *Roman Replies and CLSA Advisory Opinions 1988*, Washington, DC, Canon Law Society of America, 1988, pp. 48-54; J. PROVOST, "The Canonical Aspects of Catholic Identity in the Light of *Ex corde Ecclesiae*", in *Studia canonica*, 25 (1991), pp. 155-191.

As a consequence of this distinction between the formal element expressed in canon 803, §1 and the internal and external elements implied in canon 803, §3, it seems that the Catholic schools as described in canon 803, §1 and the "Catholic schools in fact" of canon 803, §3 represent overlapping but not necessarily synonymous categories. Moreover, the possibility exists that a legally defined Catholic school might not be a "Catholic school in fact", e.g., in some missionary countries, or a "Catholic school in fact" might not be recognized as a Catholic school as described in canon 803, §1, e.g., a school established and operated by Catholic parents.

Canon 803, §3 also contains one other consideration, namely, the requirement that "no school may bear the title 'Catholic school' without the consent of the competent ecclesiastical authority."¹⁸ This canonical provision concerning the use of the title "Catholic school" helps "to prevent confusion and assure the faithful that a particular institution has an official seal of approval."¹⁹ Although the canon does

¹⁸ Several other canons require the consent of competent ecclesiastical authority to use the name or title "Catholic": cc. 216 (apostolate), 300 (associations) and 808 (universities). Canon 304, §2 prescribes that the title or name of an association ought to reflect its intended purpose. For a consideration of the distinction between using the name "Catholic" (cc. 216, 300, 808), e.g., being Catholic, and using the title "Catholic" (c. 808), e.g., being presented as Catholic, see J. PROVOST, "The Canonical Aspects of Catholic Identity in the Light of *Ex corde Ecclesiae*", in *Studia canonica*, 25 (1991), pp. 159-161.

¹⁹ J. CORIDEN, "The Teaching Ministry of the Church - A Commentary", in *The Living Light*, 20 (1983-1984), pp. 144-145. Thus, while the title could involve some civil benefits, e.g., tax deductions, the provision aims for canonical authenticity. Moreover, although the consent to use the title "Catholic school" is a separate provision from the recognition of a school as Catholic, one could presume that the recognition given in a written document according to c. 803, §1 implicitly includes

not identify the "competent authority" to give such consent, the use of a parallel canon leads to the conclusion that one example of this authority is the diocesan bishop.²⁰

3.2 - CONSEQUENCES FLOWING FROM BEING A CATHOLIC SCHOOL

Besides the above considerations, the *Code of Canon Law* also contains several consequences which follow once a school is a Catholic school -- either by virtue of canon 803, §1 or by virtue of being a Catholic school in fact -- and these consequences flow from the obligations and rights of various people and agencies.

the consent to use the title "Catholic school". However, schools considered as Catholic because they are under the supervision of ecclesiastical authority or that of a public ecclesiastical juridical person still require consent to use the title.

Regarding this issue of using the title of "Catholic school", L. Bordonaro concludes that "in order to meet the legal criterion in bearing the title 'Catholic school' it is necessary that the school be intrinsically grounded on 1) formation and education based on the principles of Catholic doctrine, and 2) that the atmosphere and education provided by teachers be one that is imbued with a Christian spirit, by means of their faithfulness to true doctrine in light of the Magisterium, and in their proclaiming and living the Gospel message" (L. BORDONARO, *Separate Schools in Ontario, Canada*, p. 150).

Considering the comments in the first part of this note as well as the possibility of a school's bearing the title when it has a majority of non-Catholic students or teachers, or both, L. Bordonaro's conclusion requires further nuancing so that the criteria which he mentions become important but not "intrinsically necessary".

²⁰ Since canon 17 urges the use of "parallel passages" when the meaning of a particular canon remains doubtful, canon 312 provides some assistance, for it stipulates that the competent authority concerning the establishment of public associations includes the Holy See, the conference of bishops, the diocesan bishop or those with an apostolic privilege.

3.2.1 - PARENTS

Pope John Paul II noted that the whole treatment of education in the *Code of Canon Law* begins with the word "parents",²¹ thus providing a key to the understanding of many of the canons on education and on schools. In his Apostolic exhortation, *Familiaris consortio*, he elaborated on the teaching of *Gravissimum educationis* (nn. 3 and 6) and emphasized five qualities of the responsibility of parents in the area of education:

The right and duty of parents to give education is essential, since it is connected with the transmission of human life; it is **original and primary** with regard to the educational role of others, on account of the uniqueness of the loving relationship between parents and children; and it is **irreplaceable and inalienable**, and therefore incapable of being entirely delegated to others or usurped by others.²²

The Code incorporates these qualities of the role of parents by specifying three fundamental principles, i.e., that all parents have the obligation and right to educate their children (c. 793, §1), that Catholic parents have the duty and right to choose those means and institutes which will best promote the Catholic education of their children (c. 793, §1) and that Catholic parents have the right to avail themselves of that assistance they require from civil society to provide for the Catholic education

²¹ JOHN PAUL II, Address to a Group of U.S. Bishops, October 28, 1983, "What Is the Value of Catholic Education?", in *Origins*, 13 (1983-1984), p. 390. Moreover, in the *Relatio* of 1981, one appreciates the importance of parents in the title on schools: "Iura et officia parentum affirmare oportet praesertim quoad scholas, quod est maioris momenti" (*Relatio*, p. 179). When the Code mentions parents, it also includes "those who take their place" (c. 793, §1).

²² *Familiaris consortio*, n. 36 (emphasis in text).

of their children (c. 793, §2).²³

These introductory canons highlight two issues which underlie many of the canons on education and schools.²⁴ First, in reflecting the teaching of Vatican II, they stress the fact that these obligations and rights are predicated of all parents, and not just of Catholic parents. *The Charter of the Rights of the Family* asserts the same truth by stating that the obligations and rights of parents in relation to the education of their children find their source in "the natural reality of the family."²⁵ The second issue raised in these introductory canons is that the obligations and rights of parents are difficult to fulfill in a pluralistic society and their fulfillment depends on the particular social and political circumstances in which parents find themselves.

Next the Code incorporates into the chapter on schools the three fundamental principles of the introductory canons, by formulating four specific canons which delineate several obligations and rights of parents in relation to educational

²³ A fundamental assumption underlying this educative role of parents revolves around the fact that their educative obligations and rights flow inseparably from their procreative obligations and rights, and that both procreation and education form a constitutive element of marriage. Accordingly, two canons in Book IV under the title on Marriage (cc. 1055 and 11:6) refer to the procreation and education of children. For the Code Commission's view on this issue, see *Communicationes*, 5 (1973), p. 76.

²⁴ For a further discussion of issues associated with these introductory canons, see M.A. HAYES, "As Stars for all Eternity: A Reflection on Canons 793-795", in *Studia canonica*, 23 (1989), pp. 409-427.

²⁵ *Charter of the Rights of the Family, Presented by the Holy See to all Persons, Institutions and Authorities Concerned With the Mission of the Family in Today's World, October 22, 1983*, Ottawa, Canadian Conference of Catholic Bishops, [n.d.], p. 3. This Charter is addressed primarily to governments; article 5 deals with several rights of parents in relation to the education of their children.

institutions.²⁶ Canon 796 reasserts the primary role of parents in the education of their children by viewing the school in a subordinate and supplementary manner as the principal means of helping parents to fulfill their role in education. This same primary role is further upheld in the various kinds of collaboration among parents, teachers and school authorities, especially in the cooperation between parents and teachers and through associations and meetings. The *Charter of the Rights of the Family* elaborates on this role by encouraging parental participation in those forms of meetings "designed to give citizens a voice in the functioning of schools and in the formulation and implementation of educational policies."²⁷

Canon 797 speaks of parents' real freedom in the choice of schools for their children and the corresponding obligation on the part of civil society to respect this freedom and to provide assistance for its exercise. This canon firmly upholds parental freedom of choice regarding the selection of schools and calls for the allocation of public funds for education so that those parents who exercise their freedom to choose specific schools for their children would not be penalized for their choice.

This issue of public funding of Catholic schools is unquestionably the most contentious issue affecting Catholic schools in the pluralistic societies of most

²⁶ For a complete discussion of the various obligations and rights of parents with regard to Catholic education and schools, see P. BAILLARGEON, *The Canonical Rights and Duties of Parents in the Education of Their Children*, Ph.D. (Canon Law) diss., Ottawa, Saint Paul University, 1987, pp. 283-311.

²⁷ *Charter of the Rights of the Family*, article 5 (e).

countries; the crux of the matter revolves around the axiom that as the government gives more aid, it usually demands more control. As a result, several patterns have evolved:²⁸ in some countries, Catholic schools form an entirely separate system and the government denies any public aid;²⁹ in other countries, Catholic schools are integrated within the public system, are managed as public schools in their secular aspects and are permitted to keep their denominational character, while the government furnishes substantial support;³⁰ in other countries, the government provides complete support to Catholic schools which continue to be operated as

²³ For further details on the operation of various school systems, see R. McLAUGHLIN, *Religious Education and the State: Democracy Finds a Way*, Washington, DC, Catholic University of America Press, 1967, ix-439p.

²⁹ For example, the United States of America considers that public funding of Catholic schools contravenes its constitution. Most U.S. court cases against public funding of Catholic schools argue on the basis of the First Amendment concerning the "wall of separation" between the Church and the State. However, some States acknowledge the parents' right of freedom of choice in schooling through the practices of tuition tax credits, tax deductions and vouchers. For more information on this U.S. perspective, see R. GATTI and D. GATTI, *Encyclopedic Dictionary of School Law*, West Nyack, Parker Publishing Co., 1975, 316p.; D.E. BOLES, "Religion and the Public Schools in Judicial Review", in *Journal of Church and State*, 26 (1984), pp. 55-71.

³⁰ Examples of this method of operation include several Canadian provinces and the Catholic confessional schools in Germany. Although Canada constitutionally recognizes rights associated with denominational schools, the status of these schools depends on the circumstances of each province and territory; however, the governments of most provinces provide substantial assistance to Catholic schools. For an overview of the various situations of Catholic schools in Canada, see C.J. MATTHEWS (ed.), *Catholic School Systems Across Canada*, Toronto, Canadian Catholic School Trustees' Association, 1990, 56p.

Church-related schools.³¹ Realizing the various ways by which educational systems meet the requirements of distributive justice, one must acknowledge that the implementation of the principle underlying this canon ultimately depends on local circumstances.

Canon 798 obliges parents to send their children to schools which will provide for their Catholic education and, if this is not possible, to provide for Catholic education outside the school.³² While canon 1374 of the 1917 *Code of Canon Law* prohibited Catholic children from attending non-Catholic schools, canon 798 of the 1983 *Code of Canon Law* stresses that the primary consideration in the midst of the ecumenical teaching of the Second Vatican Council is not whether or not Catholic children attend Catholic or non-Catholic schools, but that the children receive a Catholic education, whether in school or out of it. While the law obviously expects parents to utilize a Catholic school as described in canon 803, or other schools which

³¹ For example, in Holland and in Ireland, the governments provide almost all expenses for education. This arrangement comes closest to describing Newfoundland's system of education.

³² This obligation and right on the part of parents to educate their children is so serious that the *Code of Canon Law* prescribes a penalty of "a censure or another just penalty if they [parents] hand their children over to be baptized or educated in a non-Catholic religion" (c. 1366). However, the application of this penalty is governed by the precise principles found in book VI of the Code. While the Holy Office mentioned that parents who entrusted their children to communist youth organizations ought to be refused the sacraments (SCHO, *Monitum*, July 28, 1950, in *AAS*, 42 (1950), p. 553; English translation in *CLD*, 3 (1942-1953), pp. 660-661), Leo XIII's approach in this situation calling for pastoral "benevolence, embracing in charity all those who err" seems as important today as in 1880 (LEO XIII, *Summi Pontificatus*, August 20, 1880, in Gasparri, *Fontes*, n. 581; English translation BENEDICTINE MONKS OF SOLESMES (eds.), *Papal Teachings: Education*, translated by A. REBESCHINI, Boston, Daughters of St. Paul, 1979, pp. 86-87).

are imbued with Catholic teaching and formation, the canon does not restrict parents in fulfilling their educational responsibilities towards their children, providing that these receive a Catholic education.

Canon 799 reminds the faithful to see that the laws which regulate the formation of the young provide for a religious and moral education in the schools in accord with the conscience of parents. Here the canon follows the teaching of the Second Vatican Council³³ and focuses on laws ensuring the religious and moral education of children, especially Catholic children in public schools, in accordance with the conviction of parents. When applied to Catholic schools where non-Catholics attend or even where Catholic children "opt out" of the religious instruction, this canon calls for respecting these genuine requests made on the basis of the conscience of the concerned parents seeking to have their children excused from religious instruction.

3.2.2 - DIOCESAN BISHOPS

The bishop's role in relation to Catholic schools finds its motivating principle in an introductory canon under the title "Catholic Education": canon 794, §2 obliges pastors of souls "to arrange all things so that all the faithful may enjoy a Catholic education."³⁴ In applying this principle, the Code stipulates several responsibilities,

³³ For example, see *Gravissimum educationis*, n. 7; *Apostolicam actuositatem*, n. 11; *Dignitatis humanae*, n. 5.

³⁴ Furthermore, the *Directory on the Pastoral Ministry of Bishops* clearly inserts schools within the "general program or pastoral orientation of the diocese" (SACRED

including certain obligations and rights, of the diocesan bishop in relation to schools,³⁵ and this section will highlight six of these responsibilities.

The first is his responsibility to establish schools, i.e., to ensure the establishment of primary or secondary ones, if schools "imbued with a Christian spirit do not exist" (c. 802, §1); to provide for professional, technical or other schools for special needs, if he judges it advantageous (c. 802, §2);³⁶ and to give consent for religious institutes to establish schools (c. 801). Each of these canons contains a different degree of responsibility on the part of the bishop to establish schools.³⁷

The second responsibility mentioned for bishops concerns the area of Catholic

CONGREGATION FOR BISHOPS, *Ecclesiae imago*, February 22, 1973, n. 66; English translation by the Benedictine monks of the Seminary of Christ the King, Mission, B.C., Ottawa, Publications Service of the Canadian Catholic Conference, 1974, pp. 37-38).

Unfortunately, canon 386, §1 which describes in a general way the teaching office of the bishop and specifically mentions the ministry of the word, including the homily and catechetical formation, does not mention the bishop's role in the area of Catholic education, even though c. 1336 of the 1917 Code mentioned the role of the local ordinary in the regulation of the teaching of Christian doctrine. In spite of this omission, canon 528, §1, describing the teaching role of the parish priest makes specific reference to the area of Catholic education.

³⁵ For an extensive treatment of the role of the diocesan bishop in relation to Catholic schools, see B.A. CUSACK, *A Study of the Relationship Between the Diocesan Bishop and Catholic Schools Below the Level of Higher Education in the United States: Canons 801-806 of the 1983 Code of Canon Law* [=The Diocesan Bishop and Catholic Schools], Canon Law Studies, no. 525, Washington, DC, Catholic University of America Press, 1988, pp. 131-189.

³⁶ The reference in this canon to the establishment of schools for special needs finds its source in *Gravissimum educationis*, n. 9. The fact that this source specifically mentions "training colleges for teachers" might have particular application for Newfoundland as the Catholic Education Council continues to discuss the issue of the preparation of teachers for the Catholic schools.

³⁷ B. CUSACK, *The Diocesan Bishop and Catholic Schools*, pp. 159-162.

religious formation and education. Canon 804, §1 states:

Catholic religious formation and education which are imparted in any schools whatsoever as well as that acquired through the various media of social communications are subject to the authority of the Church; it is the responsibility of the conference of bishops to issue general norms in this area, and it is the responsibility of the diocesan bishop to regulate such education and be vigilant over it.

As mentioned in chapter two, this canon contains the only reference to the conference of bishops in the title on schools; the conference has the responsibility to issue general norms, while the bishop has the responsibility to regulate and be vigilant over this education.³⁸ While "regulation" implies a more direct intervention

³⁸ This canon has caused a debate in the Netherlands over the question whether the diocesan bishop can "issue directives concerning the general regulation of Catholic schools" (c. 806, §1) if the conference of bishops does not issue its "general norms" (c. 804, §1) regarding Catholic religious formation and education (P. STEVENS, "The Competence for Making Rules Regarding Catholic Formation and Catholic Schools", in J. PROVOST and K. WALF (eds.), *Ius Sequitur Vitam, Law Follows Life: Studies in Canon Law Presented to P.J.M. Huizing*, Leuven, Leuven University Press, 1991, pp. 120-141).

P. Stevens contends that if the conference of bishops has not issued the general norms of formation and education, it is impossible for the diocesan bishop to undertake the tasks of regulation and vigilance of canons 804, §1 and 806, §1. However, it seems that Stevens has not fully considered the conjunctive structure of canon 804, §1: both the conference and the bishop have certain competencies. Furthermore, the canon does not state that the bishop must give consideration to previous norms of the bishops' conference, a principle that is mentioned in canon 775, §1. Consequently, it seems that he has overemphasized the interrelationship between the two levels of authority to such an extent that if the conference does not act, then the bishop cannot act. Two consequences of this interpretation result: a partial denial of the bishop's authority in the area of Catholic education and a failure to give sufficient recognition to the collaborative relationship between the diocesan bishop and the conference of bishops throughout the rest of book III, e.g., cc. 766, 772, 775, 809, 810, 821, 823, 825, 830.

or supervision, "vigilance" suggests a less direct stance of overseeing.³⁹ This canon focuses primarily on the formation and education in the Catholic religion in any school, while canon 803, §2 concentrates on the formation and education in Catholic schools.

Other major responsibilities which belong to the bishop as well as to the local ordinary⁴⁰ include these three: concern for the religion teachers in schools (c. 804, §2); the right to name or approve as well as to remove or have removed teachers of religion (c. 805); and vigilance that the instruction in the Catholic schools is as academically distinguished as in other schools in the area (c. 806, §2). Each of these responsibilities will receive further comment in other sections of this chapter.

The final major responsibility of the bishop concerns his right of vigilance over and visitation of Catholic schools in his diocese as well as his right to issue prescriptions for the general regulation of Catholic schools in his diocese (c. 806, §1). This responsibility will be examined in connection with the educational role of religious institutes.

³⁹ In the 1917 *Code of Canon Law*, canons 1381 and 1382 mention various kinds or degrees of control by the Ordinary: a general vigilance that nothing taught in schools is contrary to faith or good morals, a more direct authority whereby religious instruction is under the authority and inspection of the Church, and canonical visitation of schools. The 1983 Code seems to incorporate similar kinds of control by the bishop. While canon 1381, §3 of the 1917 Code also spoke of the local ordinary's responsibility in the area of religious books in schools, canon 827, §2 of the 1983 Code gives the competent authority the responsibility to approve textbooks in the area of religious or moral disciplines for elementary, middle or higher schools.

⁴⁰ For the proper interpretation of the terms "local ordinary" as well as "diocesan bishop", see canons 134 and 381.

3.2.3 - TEACHERS

While the Church has obviously acknowledged the importance of teachers, its documents since the 1960s have placed a new emphasis on the place of the teacher in the school and in the mission of the Church. The Second Vatican Council stressed the fact that the achievement of the purpose of the Catholic school depends chiefly on teachers and that their service constitutes "an active apostolate".⁴¹ The 1982 document of the Congregation for Catholic Education, *Lay Catholics in Schools: Witnesses to Faith*, developed this teaching, especially by focusing on the identity of the lay Catholic educator in the Church and in the school. The document eloquently presents the lay Catholic educator as

a person who exercises a specific mission within the Church by living, in faith, a secular vocation in the communitarian structure of the school; with the best possible professional qualifications, with an apostolic intention inspired by faith, for the integral formation of the human person, in a communication of culture, in an exercise of that pedagogy which will give emphasis to direct and personal contact with students, giving spiritual inspiration to the educational community of which he or she is a member, as well as to all the different persons related to the educational community.⁴²

With this vision of the Catholic teacher as one who has the vocation to help in the process of forming persons, the Code's references to teachers assume a new vitality.

⁴¹ *Gravissimum educationis*, n. 8. See also SCCE, *The Catholic School*, n. 78.

⁴² SCCE, *Lay Catholics in Schools*, n. 24. See also JOHN PAUL II, Address to Representatives of Catholic Institutes of Tertiary Education, November 28, 1986, "The Success of Catholic Education Depends on the Attitudes of Parents and Teachers", in *L'Osservatore romano*, Weekly edition in English, December 9, 1986, pp. 9-10.

Canon 796, §2 stresses the fundamental principle underlying the teacher's role in the school: teachers must cooperate and collaborate with those parents who entrust their children to them to be educated. This collaborative relationship which facilitates the education of children, requires that teachers "encourage opportunities for contact with parents of students",⁴³ in an effort to listen to the concerns of parents. Furthermore, certain presumptions underlie this collaboration: that the educational roles of the parents and of the school complement one another in various areas, including the establishment of associations or meetings of parents; and that the parents have committed "themselves totally to a cordial and active relationship with the teachers and the school authorities."⁴⁴

Besides this fundamental collaborative relationship, the Code stresses in canon 803, §2 that "teachers are to be outstanding for their correct doctrine and integrity of life."⁴⁵ This "correct doctrine" refers not just to the instruction "based on holy scripture, tradition, liturgy, and on the teaching authority and life of the Church"⁴⁶ which teachers must impart to the students, but includes a certain vision of the world and of education⁴⁷ and implies that the Catholic teacher must "share in, and make

⁴³ SCCE, *Lay Catholics in Schools*, n. 34. For a further description of this collaborative "partnership based on faith", see SCCE, *Religious Dimension of Education in a Catholic School*, nn. 39-43.

⁴⁴ *Familiaris consortio*, n. 40.

⁴⁵ "[M]agistri recta doctrina et vitae probitate praestent."

⁴⁶ *Christus Dominus*, n. 14.

⁴⁷ SCCE, *The Catholic School*, n. 78.

one's own, the statements that the Church, enlightened by Divine Revelation, has made about the identity of an educator."⁴⁸ The reference to an "integrity of life" (*probitas*) describes a characteristic which the Code frequently requires for offices in the Church⁴⁹ and involves an honesty, sincerity, and uprightness of life as well as an uncompromising adherence to the highest principles and ideals.

In examining canon 803, §2 concerning these qualities of teachers, two questions arise: are all Catholic schools included in the reference to Catholic schools and are all teachers in Catholic schools included in the reference to teachers? Since the three paragraphs of this canon provide a context which refers specifically to the Catholic schools of canon 803, §1 and to those "in fact" of canon 803, §3, the canon probably intends to include any Catholic school, especially in light of its concern for the internal element of the Catholic school. Accordingly, while the Catholic schools of canon 803, §1 are legally bound by canon 803, §2, those "Catholic schools in fact" are at least doctrinally and morally bound by the standards of the same paragraph.⁵⁰

The answer to the second question must consider the fact that the canons sometimes focus on specific teachers, e.g., canon 804, §2 speaks only of teachers of religion. However, canon 803, §2 makes no such specification and, therefore presumably includes all teachers in Catholic schools, especially since the canon's

⁴⁸ SCCE, *Lay Catholics in Schools*, n. 26.

⁴⁹ For example, vicar general or episcopal vicar (c. 478, §1), diocesan financial administrator (c. 494, §1), parish priest (c. 521, §2), teacher in a Catholic university (c. 810, §1) or teacher in an ecclesiastical university or faculty (c. 818).

⁵⁰ One could make a similar statement about the other canons that specifically mention a "Catholic school", i.e., cc. 806, §1, 806, §2.

purpose centres on a description of some of the internal elements required if a Catholic school is to achieve its aims.⁵¹ In addition, the requirement of "correct doctrine" conceivably applies to both Catholic as well as non-Catholic teachers, especially regarding their teaching of the instruction and values which make up the curriculum of the school. The necessity of "integrity of life" also applies to non-Catholic teachers, for in deciding to teach in a Catholic school, they commit themselves, without violating their own religious convictions, to the elements which contribute to the fulfillment of the aims of a Catholic school, e.g., assisting students to acquire knowledge, values, attitudes and behaviour fully integrated with faith. Therefore, it seems most reasonable to conclude that canon 803, §2 refers to all teachers in all Catholic schools.

The next canon pertaining to teachers, canon 804, §2, mentions "teachers of religion in schools, even non-Catholic schools." Since canon 804, §1 specifically mentions the formation and education in the Catholic religion, it seems reasonable

⁵¹ While some people raise questions about a Catholic approach to mathematics or sciences, many writers today acknowledge that underneath all curricula, explicit or implicit, lie basic moral beliefs and "what matters in the hidden curriculum is the moral character and ideology of the teachers and principal as these are translated into a working social atmosphere which influences that atmosphere of the children" (L. KOHLBERG, "The Moral Atmosphere of the School", in H. GIROUX and D. PURPEL (eds.), *The Hidden Curriculum and Moral Education*, Berkeley, McCutchan Publishing Corporation, 1983, p. 75).

For some succinct remarks on how each subject in the curriculum "becomes a revelation showing forth the beauty, the providence, the power and the infinity of the Creator", see AASJ: 108/71/4, P. POCOCCO, "What Is a Catholic School?", Address to the 27th Annual Convention of the English Catholic Education Association of Ontario, Toronto, March 31, 1971. See also SCCE, *Religious Dimension of Education in a Catholic School*, nn. 57-61, 76.

to conclude that canon 804, §2 also refers to teachers of the Catholic religion. Prescribing qualities more specific than those mentioned in canon 803, §2, canon 804, §2 requires that these teachers "be outstanding for their correct doctrine, their witness of Christian living and their pedagogical skill."⁵² The difference in the two sets of qualities revolves around the fact that the Church views religious education as "an extremely important instrument for attaining the adequate synthesis of faith and culture"⁵³ and the religion teacher as "the key, the vital component, if the educational goals of the school are to be achieved."⁵⁴ For these religion teachers, the quality of "correct doctrine" must include the intention to impart not "one's own doctrine, or that of some other teacher, but the teaching of Jesus Christ Himself."⁵⁵ Moreover, due to the nature of their task, these teachers require a further quality, namely a "pedagogy which gives special emphasis to direct and personal contact with

⁵² "[M]agistri recta doctrina, vitae christianae testimonio atque arte paedagogica sint praestantes." In the case of a priest who has received the indult of laicization, he is prohibited from "discharging the functions of director of a Catholic school, or teacher of religion in any kind of school, whether Catholic or not. On the other hand, the local Ordinary, according to his own prudent judgement, can, in particular cases, permit a priest who has been reduced to the lay state and dispensed from the obligations connected with sacred ordination, to teach religion in public schools and, by way of exception, also in Catholic schools provided that no scandal or wonderment is to be feared" (SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Norms, January 13, 1971, n. VI, 4 (e); English translation in *CLD*, 7 (1968-1972), p. 116). See also SCDF, Specimen of Rescript of Laicization, 1980; English translation in *CLD*, 9 (1978-1981), pp. 99-101.

⁵³ SCCE, *Lay Catholics in Schools*, n. 56.

⁵⁴ SCCE, *Religious Dimension of Education in a Catholic School*, nn. 35-36.

⁵⁵ SCCE, *Lay Catholics in Schools*, n. 59.

the students.⁵⁶ In this contact, the witness of the teacher's life must conform to the instruction presented, so that the students will see in this witness "something reasonable and worthy of being lived, something concrete and realizable."⁵⁷

Canon 805 legislates one of the consequences of these requirements for teachers of religion, namely, the possibility of their removal "for reasons of religion or morals", e.g., concerning their doctrine or the witness of their Christian living. Like the previous canon, this one expresses a fundamental concern for those being formed and educated in the Catholic religion, even in non-Catholic schools. While this canon transforms this fundamental concern into a right of the local ordinary, its implementation would be difficult in many Catholic schools, and almost impossible in non-Catholic or public ones. Further complications would arise if the teacher concerned belonged to another faith, since the local ordinary has no direct rights over teachers of other faiths; however, in a Catholic school the implementation of this right could occur indirectly, depending on certain legitimate policies of employment enacted for the school, in accord with canon 803, §2.

3.2.4 - RELIGIOUS INSTITUTES

The canons on schools make two references to "religious institutes",⁵⁸

⁵⁶ *Ibid.*, n. 21.

⁵⁷ *Ibid.*, n. 32.

⁵⁸ The use of the phrase "religious institutes" in canons 801 and 806, §1 raises a question regarding whether this term refers also to secular institutes and societies of apostolic life. Two sources of this canon, i.e., *Christus Dominus*, n. 35 (4) and *Ecclesiae sanctae*, I, n. 39, use the term in a very broad sense seeking the

emphasizing the importance of another group of people involved in the apostolate of Catholic schools. These canons attempt to balance two fundamental concerns: the fidelity to the mission and works of the institute and the relationship of these

coordination of all the Catholic schools in a diocese. Moreover, the 1977 document, *The Catholic School*, uses the phrase "religious institutes" to refer to those institutes "founded for the school apostolate" (n. 76).

- In the revision process, the Code Commission made the following changes:
- 1) from 1969 to 1977, two canons referring to "religious institutes", i.e., one on teachers and the other on visitation (*Communicationes*, 7 (1975), p. 157; 20 (1988), pp. 222, 227), were changed so that in the 1977 Schema, the two canons refer to "institutes of consecrated life" (cc. 48, §2 and 55, §2); however, the reason for this change was not mentioned;
 - 2) the 1980 Schema included a "new" canon (c. 756) referring to religious institutes in schools -- in place of the reference to teachers -- and a canon on visitation (c. 760); canon 756 used the phrase "religious institutes", while canon 760 on visitation used the phrase "institutes of consecrated life";
 - 3) the 1982 Schema included the two canons and used the same phrase, "religious institutes", in both canons (cc. 801 and 806, §1); after studying this version, Pope John Paul II made no further changes;
 - 4) the Oriental Code has no specific canon comparable to c. 801 of the Latin Code; however, its canon on visitation of schools (c. 638) refers to "institutes of consecrated life".

The reason for the Code Commission's making the change from the 1980 Schema to the 1982 Schema remains unclear, for the *Relatio*, in preparation for the 1981 Plenary, makes no reference to the change. Can we presume that it is merely an editorial change? Perhaps.

In seeking clarification in other parts of the Code, we note that c. 738 relates the apostolate of religious institutes to societies of apostolic life. Furthermore, c. 776 acknowledges the involvement of members of institutes of consecrated life (religious and secular institutes) and of societies of apostolic life in the area of catechetical formation, while c. 778 refers to the involvement of religious institutes and societies of apostolic life in schools.

Realizing that canons 801 and 806 attempt to encourage and coordinate the apostolate in the schools and aware of the above revision process, we can reasonably conclude that the phrase "religious institutes" is a generic term which includes both secular institutes and societies of apostolic life, to the extent that they have a corporate apostolate in Catholic education.

institutes to the particular Church.⁵⁹ Canon 801 gives juridical expression to an exhortation from the document *The Catholic School*⁶⁰ and alludes to the fact that "the mission and charism of a religious institute necessarily and properly affects the different apostolic works or ministries"⁶¹ of that institute. The canon focuses specifically on those institutes whose "proper mission" is education and represents an application of canon 677, §1 which reminds institutes to accommodate prudently to the needs of times and places, while retaining the mission and works proper to the institute.⁶² Canon 801 also challenges these institutes to "devote themselves to Catholic education through their schools established with the consent of the diocesan bishop." This latter part of the canon flows from the bishop's fundamental responsibility for the exercise of the various apostolates in his diocese (c. 394, §1); accordingly, he must give consent for an institute to establish a school in the diocese,

⁵⁹ For a summary of the canonical issues involved in these two concerns, see F. MORRISEY, "The Apostolate of Religious According to the New Code", in *The Australasian Catholic Record*, 60 (1983), pp. 380-391.

⁶⁰ "The Church [...] looks with confidence and trust to religious institutes [...]. May they be faithful to the inspiration of their founders and give their wholehearted support to the apostolic work of education in Catholic schools and not allow themselves to be diverted from this by attractive invitations to undertake other, often seemingly more effective, apostolates" (SCCE, *The Catholic School*, n. 89). For a similar encouragement, see SCCE, *Religious Dimension of Education in a Catholic School*, nn. 35-36.

⁶¹ R.A. HILL, "Schools of Religious and the Diocese", in *Review for Religious*, 46 (1987), p. 295. Canon 675, §1 states: "In institutes dedicated to works of the apostolate, apostolic action pertains to their very nature."

⁶² For a description of some of the dangers which threaten religious as they attempt to remain faithful to this mission, see J. BEYER, "Religious and the Local Church", in *The Way Supplement*, 50 (1984), pp. 91-92.

a consent that is inherent in the erection of a religious house of the institute (c. 611, §2).

The second canon regarding religious institutes, i.e., canon 806, §1, concerns the right of the diocesan bishop pertaining to the "vigilance over and visitation of the Catholic schools located in his territory."⁶³ While canon 801 mentions only schools established by religious institutes, canon 806, §1 applies the vigilance and visitation of the bishop to schools established or directed by religious institutes.⁶⁴ The bishop's "vigilance over Catholic schools" in this canon flows from his vigilance over the Catholic religious formation and education in any school; accordingly, the vigilance over Catholic schools should be interpreted within the context of the broader vigilance of canon 804, §1.⁶⁵ Likewise, the bishop's "visitation of Catholic

⁶³ For a consideration of the some of the broader issues associated with this canon, see A. PINHEIRO, "Bishop-Religious Relationship: The 'Apostolic Subjection' of Religious to the Power of the Diocesan Bishop in the Exercise of Apostolic Activities in the Diocese (can. 678, §§1 & 2)", in *Commentarium pro religiosis et missionariis*, 68 (1987), pp. 193-222.

⁶⁴ This distinction takes into consideration the various ways by which religious institutes might be involved in schools, e.g., as a work of the institute (c. 677, §1) or as a work entrusted to the institute by the diocesan bishop (c. 681, §1).

⁶⁵ J.A. CORIDEN, "The Teaching Office of the Church (cc. 747-833)", in *CLSA Commentary*, p. 570. The conclusion that this vigilance applies to all Catholic schools emerges as a result of a 1920 decision by the Sacred Congregation of the Council, stating that, although a particular Society of St. Vincent de Paul in the Diocese of Corrientes (Argentina) was not an ecclesiastical society and not subject to the Ordinary in terms of its existence, constitution, organization, rules, activities, and internal government, the society was nevertheless subject to the bishop in the sense that he had the right and duty to exercise vigilance over it in all that concerns faith and morals (SACRED CONGREGATION OF THE COUNCIL, Resolution, November 13, 1920, in *AAS*, 13 (1921), pp. 135-144; English summary in *CLD*, 1 (1917-1933), pp. 714-715). The conclusion specifically mentions the vigilance associated with schools erected by these societies: "si erigunt scholam, quoad modum

schools" flows from his general obligation to visit his diocese (c. 396, §1), including the Catholic institutions of the diocese (c. 397, §1), as well as from his right to visit schools entrusted to religious, with the exception of "schools which are open only to students belonging to the institute" (c. 683, §1).⁶⁶ Canon 806, §1 further authorizes the bishop to "issue prescriptions dealing with the general regulation (*ordinatio*) of Catholic schools."⁶⁷ While these prescriptions seem "to imply policies or general guidelines rather than detailed regulations",⁶⁸ they would bind all Catholic schools in the diocese because the purpose for their issuance relates to the general good ordering of the Catholic school apostolate within the diocese, in an effort to apply specifically the bishop's responsibility to coordinate all apostolic activity under his direction (c. 394, §1).⁶⁹ Finally, canon 806, §1 states that the bishop's prescriptions

instructionis religiosae in ea impertiendae" (*ibid.*, p. 141).

⁶⁶ According to the apostolic constitution, *Romanos Pontifices*, of May 8, 1881 (in Gasparri, *Fontes*, n. 582), the colleges and other schools of regulars -- but not their elementary parochial schools -- enjoy the privilege of exemption from episcopal visitation (see J.M. QUIGLEY, "The Authority of the Local Ordinary Over Schools Conducted by Religious", in *The Jurist*, 21 (1961), pp. 47-56).

⁶⁷ While this canon mentions "prescriptions" which usually involves legislative authority, neither this canon nor canon 804, §1, specifies whether the diocesan bishop acts by virtue of legislative authority -- which cannot be delegated (c. 135, §2) -- or by virtue of his executive authority. B.A. Cusack presents the cogent position that most of the other actions of the diocesan bishop in relation to schools involves administrative acts emanating from his executive authority (see B.A. CUSACK, *The Diocesan Bishop and Catholic Schools*, pp. 272-281).

⁶⁸ J.A. CORIDEN, "The Teaching Office of the Church (cc. 747-833)", in *CLSA Commentary*, p. 570.

⁶⁹ R.A. HILL, "Schools of Religious and the Diocese", in *Review for Religious*, 46 (1987), p. 297. These prescriptions would bind "Catholic schools in fact" at least at a moral level.

apply to schools directed by religious, "with due regard for their autonomy regarding the internal management of their schools."⁷⁰ This concern for the autonomy "regarding the internal management" acknowledges the differences among religious institutes, realizing that such often relate to the distinctive characteristics that flow from the patrimony of a particular institute.⁷¹

3.2.5 - CHRISTIAN FAITHFUL

Within the introductory canons on Catholic education, canon 794, §1 stresses that the Church possesses the duty and the right to educate because it "has been divinely entrusted with the mission to assist men and women so that they can arrive at the fullness of the Christian life."⁷² The word "Church" in this canon "refers to the whole People of God, the whole body of the faithful who share in the prophetic

⁷⁰ In order to ensure clarity, the written agreement, called for in canon 681, §2, could include the issues involved in the internal management of these schools.

A concern for the autonomy of religious institutes also underlies a recent authentic interpretation (January 24, 1989) from the Council for the Interpretation for Legislative Texts. The Council responded in the negative to the question: "Do the words of canon 1263, 'public juridical persons subject to his authority' include external schools of religious institutes of pontifical right?" (*AAS*, 81 (1989), p. 991). For a commentary on this interpretation, see V. DE PAOLIS, "Adnotationes ad responsa authentica, II", in *Periodica*, 80 (1991), pp. 108-127.

⁷¹ "The intention of the founders and their determination concerning the nature, purpose, spirit and character of the institute which have been ratified by competent ecclesiastical authority as well as its wholesome traditions, all of which constitute the patrimony of the institute itself, are to be observed faithfully by all" (c. 578).

⁷² Although Vatican II taught that the Church also had the right to educate by virtue of being a human society capable of imparting education (*Gravissimum educationis*, n. 3), the Code referred to only one source of this right, i.e., the divinely entrusted mission.

mission of Christ and, therefore, have rights and duties flowing from that mission",⁷³ while its use in canon 800, §2 regarding the right to establish and supervise schools, similarly refers to the whole People of God "with due respect for the moderating role of the bishop."⁷⁴

Besides using the references to the term "Church", the canons also refer to the "faithful". Canon 794, §2 expresses the goal "that all the faithful may enjoy a Catholic education"; unfortunately, the canon does not specify that the faithful enjoy (*fruo*) this education by virtue of a right. Furthermore, the canons on schools exhort the Christian faithful, and not just parents of children, to value schools greatly (c. 796, §1), and "to foster Catholic schools by supporting their establishment and their maintenance in proportion to their resources" (c. 800, §2). Moreover, the canons urge the faithful to undertake some action within civil society for the purposes of ensuring the acknowledgement of parental freedom in the selection of a school for the appropriate education of their children (c. 797), of safeguarding this freedom through the just allocation of society's resources (c. 797), and of obtaining laws which provide for the religious and moral education of children in any schools (c. 799). Ultimately, these various canons involving the faithful emerge from the fundamental principle that the Catholic school represents an authentic and invaluable apostolate within the Church and, consequently, the entire school community requires the

⁷³ B.A. CUSACK, *The Diocesan Bishop and Catholic Schools*, pp. 136-137.

⁷⁴ *Ibid.*, p. 153. For a discussion on the various possible interpretations of the term "Church" in this canon, e.g., parents, faithful, hierarchy, see *ibid.*, pp. 151-153.

support of the whole Church.⁷⁵

3.2.6 - PARISH PRIESTS

Although the Code does not mention parish priests in the canons on schools, canon 794 from the introductory canons on Catholic education does acknowledge the obligation of "pastors of souls", i.e., bishops and parish priests, to make appropriate arrangements so that all may enjoy a Catholic education. More specifically, canon 528, §1 obliges parish priests to take special care of the Catholic education of children and young people.

3.2.7 - CIVIL SOCIETY

Utilizing the phrase "civil society" (*societas civilis*)⁷⁶ on three occasions, the

⁷⁵ For references regarding the obligation of the whole Church to support and work for Catholic schools, see JOHN PAUL II, Address at the Inauguration of the Catholic Centre for Education in Perth, November 30, 1986, "The Effectiveness of Catholic Education Depends on the Cooperation of all Members of the Church", in *L'Osservatore romano*, Weekly edition in English, December 9, 1986, p. 23; *Gravissimum educationis*, nn. 5-6; SCCE, *The Catholic School*, nn. 60-63; SCCE, *Lay Catholics in Schools*, nn. 71-80.

⁷⁶ Technically, "society" refers to the collection of people living within the boundaries of a territory; "government" refers to the instrument, including administrative agencies, consisting of executive, legislative and judicial powers; "state" refers to both society and government, plus sovereignty (H.A. BUETOW, *The Catholic School: Its Roots, Identity, and Future*, New York, Crossroad Publishing, 1988, p. 179).

However, the sources of these three canons use various terms to speak of these realities and use them almost interchangeably, i.e., *Gravissimum educationis* uses *societati civili* (n. 3), *potestas publica* and *res publica* (n. 6) as well as *auctoritates et societates civiles* (n. 7); *Dignitatis humanae* uses *civili potestate* (n. 5).

When these canons consistently use *societas civilis* in place of the variety of

canons on Catholic education and schools follow the teaching of the Second Vatican Council and specify how the Church views the role of the State in the realm of education and schools.⁷⁷ Canon 793, §2, in asserting that parents have the right to some assistance from civil society, implicitly maintains that civil society has an obligation to provide this assistance to parents so that they can promote the Catholic education of their children.

Implementing this general obligation on the part of civil society, the canons in the chapter on schools designate two specific ways by which civil society could fulfill this obligation, i.e., by protecting parental freedom in the choice of schools, especially by safeguarding this freedom with its resources in accord with the demands of distributive justice (c. 797), and by providing laws which would ensure the right of parents to educate their children according to the conscience of parents (c. 799). Although civil society does not have the obligation to provide religious instruction, it does have an obligation to enact laws to ensure that children, in whatever school, are educated according to the religious and moral convictions of parents. Furthermore, parents who do select schools on the basis of their religious and moral convictions should not suffer economic liabilities for their decision. Since the

terms found in their sources, they, therefore, refer in a general way to that agency which has the authority to care for the common good of society. Accordingly, this thesis also uses these terms almost interchangeably.

⁷⁷ J. Hendriks contends that, since the Church views State authority as incapable of discerning specifically religious values, the context for discussing issues regarding the Catholic school is no longer that of the respective competencies of Church and State, but rather the human rights of parents and students (J. HENDRIKS, "Schola catholica, ecclesia, civilis societas", in *Periodica*, 76 (1987), pp. 271-308).

fulfillment of these tasks in the midst of pluralistic societies involves complex issues, the canons refrain from further specifying the responsibilities of civil society.

3.2.8 - SCHOOL BOARDS

Although the Code does not mention schools boards as such, the reference to the "directors" (*moderatores*) of Catholic schools in canon 806, §2 could implicitly include school boards.⁷⁸

CONCLUSION

After analysing the canons on schools in the *Code of Canon Law*, the following concluding remarks seem appropriate. First, this chapter has examined how canon 803 provides the canonical understanding of the nature of a Catholic school. Canon 803, §1 describes the formal requirement necessary for a school to be considered Catholic, namely, a particular relationship with the Catholic Church, whether through supervision (*moderari*) or through recognition (*agnoscere*). Moreover, canon 803, §3 also acknowledges that, while some schools might not fulfill the requirements of canon 803, §1, they nevertheless are truly Catholic schools. Furthermore, the two categories used by the Code to refer to the variety of Catholic schools will prove helpful in responding to the inquiry about whether or not the

⁷⁸ For examples of the various kinds of Catholic school boards, e.g., consultative boards, boards with limited jurisdiction, boards of schools constituted as separate juridical persons, see L. SHEEHAN, *Building Better Boards. A Handbook for Board Members in Catholic Education*, Washington, DC, National Catholic Educational Association, 1990, x-186p.

Catholic schools in Newfoundland are truly Catholic.

Second, while many of the canons on Catholic education and schools are exhortatory in the sense that they contain some principles reminding the faithful of their duty, some of them also specify numerous responsibilities of at least two groups of people, i.e., parents and diocesan bishops. Accordingly, the following lists of responsibilities provide an appropriate summary.

Regarding the role of parents, we can isolate several rights and obligations:⁷⁹

- 1) parents have the right to schools that will assist them in fulfilling their role in education (c. 796, §1);
- 2) parents have the right to a collaborative relationship, especially through associations, with those involved in the education of their children (c. 796, §2);
- 3) parents have the right to real freedom in the choice of schools for their children (c. 797);
- 4) parents have the right to have the civil society acknowledge this freedom of choice and to provide some assistance (c. 797);
- 5) parents have the right to a religious and moral education for their children, in conformity with their own conscience (c. 799);
- 6) parents have the obligation to cooperate with the schools and teachers to whom they entrust a portion of their children's education (c. 796, §2);
- 7) parents have the obligation to enroll their children in schools that will provide for

⁷⁹ This summary has been condensed in conjunction with the list from P. BAILLARGEON, *The Canonical Rights and Duties of Parents*, pp. 338-341.

their Catholic education (c. 798); and

8) parents have the obligation to see to the Catholic education of their children where there are no Catholic schools available or when they enroll them in non-Catholic institutions (c. 798).

Regarding the role of diocesan bishops, we can isolate the following responsibilities:⁸⁰

- 1) granting consent to religious institutes for the establishment of schools in the diocese (c. 801);
 - 2) seeing to the establishment of schools imbued with a Christian spirit (c. 802, §1);
 - 3) providing for the establishment of schools of all types as needed (c. 802, §2);
 - 4) recognizing a school as Catholic by means of a written document (c. 803, §1);
 - 5) giving consent for the use of the title "Catholic school" (c. 803, §3);
 - 6) exercising vigilance over and regulating any Catholic religious education and formation provided in schools (c. 804, §1);
 - 7) exercising concern regarding those who are appointed as teachers of religion (c. 804, §2);
 - 8) exercising rights regarding the appointment or removal of teachers of religion (c. 805);
 - 9) exercising vigilance over and visiting Catholic schools in the diocese (c. 806, §1);
- and

⁸⁰ This list has been compiled in conjunction with the list of responsibilities found in B.A. CUSACK, *The Diocesan Bishop and Catholic Schools*, pp. 188-189.

10) issuing general regulations for Catholic schools (c. 806, § 1).

After considering Church teaching and legislation on Catholic schools, the next task involves an examination of the teaching of the bishops of Newfoundland regarding the schools attended by Catholics. This examination will include a consideration of the ways that these bishops implemented the Church's teaching and legislation for the particular circumstances of Newfoundland.

CHAPTER FOUR

THE TEACHING OF THE NEWFOUNDLAND BISHOPS ON CATHOLIC SCHOOLS

The 1977 document, *The Catholic School*, from the Sacred Congregation for Catholic Education provides the guiding principle for this chapter:

[T]he diverse situations and legal systems in which the Catholic school has to function in Christian and non-Christian countries demand that local problems be faced and solved by each Church within its own social-cultural context.¹

Although the expression of this principle comes from a document in 1977, the teaching summarized in chapter two reminds us that the principle has existed in doctrine and in fact during the past two hundred years. Therefore, utilizing this principle, this chapter will consider how the Catholic Church in Newfoundland, through the leadership of its bishops, has "faced and solved" the local problems which have confronted Catholic schools. Accordingly, we will focus on some of the teaching of the various bishops with a view to examining how they adapted Church teaching and legislation on Catholic schools to the "social-cultural context" of Newfoundland.²

¹ SCCE, Document, *The Catholic School*, March 19, 1977, n. 2; English translation in A. FLANNERY (ed.), *Vatican Council II: More Post Conciliar Documents*, vol. 2, p. 606.

² Throughout this chapter we will use the same periods that were used in chapter two, in order to show more clearly how the Newfoundland bishops applied

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 141

The bishops used a variety of circumstances to express their teaching, but one of the most frequent occasions was when the bishops perceived that the government intended to implement a change in the system, especially through new legislation.

Ultimately, this chapter will act as a bridge between chapters two and three and chapter five. As chapters two and three outlined Church teaching and legislation on Catholic schools, this chapter will analyze how the Newfoundland bishops have applied this teaching to the "diverse situations" in Newfoundland. At the same time, this chapter will also show how they struggled with the "legal system" of Newfoundland in an attempt to ensure that the Catholic Church received legal recognition of certain rights regarding Catholic schools, thus leading into the fifth chapter which will describe how secular legislation has in fact granted certain rights to the Catholic Church regarding its schools.

4.1 - NEWFOUNDLAND BISHOPS: PRIOR TO 1917

Aside from the first three bishops of Newfoundland, the bishops of the nineteenth century manifested an ongoing concern for the educational system of Newfoundland.

4.1.1 - BISHOPS O'DONEL, LAMBERT, AND SCALLAN (1784-1830)

Unfortunately, the sources for the period of the episcopate of the first three Newfoundland bishops fail to reveal much interest in education on their part. In

Church teaching and legislation on Catholic schools in varying circumstances.

fact, Bishops J. O'Donel, P. Lambert, and T. Scallan, partly because of their continental education and partly due to the absence of social peers in an uneducated Irish flock, pursued a policy of collaboration with the Protestant merchants and British authorities, even though the governors were closely linked to the established Church of England.

In the late eighteenth century, Irish factions and revolutionary ideas led Bishop O'Donel to focus primarily on controlling the people in the interests of order.³ His educational contribution seems to be more in the area of political socialization than in that of formal education through schools. Both Bishops Patrick Lambert (1806-1817) and Thomas Scallan (1817-1830) continued the policy of accommodation with the British, which had been followed by O'Donel. Bishop Scallan's relationship with the Protestants was particularly conciliatory and this disposition seems to have influenced his educational views. He not only supported the non-denominational St. John's Charity School, but he also approved the foundation of the Orphan Asylum School along the same lines.⁴ On the other hand, Bishop Scallan was aware that *Propaganda Fide* had condemned the proselytizing

³ For example, in his diocesan statutes of 1801, priests were asked to use every means to establish law and order and to inculcate a willing obedience to the laws of England and to the commands of the governors and magistrates of the island (AASJ: 100/6, J. O'DONEL, *Diocesan Statutes*, August 2, 1801).

⁴ In light of this support for the non-denominational principles underlying both the St. John's Charity School and the Orphan Asylum School, Bishop R. Lahey surmises that Bishop Scallan "apparently endorsed the principle of schools open to pupils of all persuasions with religious instruction given separately outside school hours" (R.J. LAHEY, art. "Scallan, Thomas", in *Dictionary of Canadian Biography*, 6 (1821-1835), Toronto, University of Toronto Press, 1987, p. 692).

tendency of the "Bible Schools" in 1819⁵ and he reported to the Congregation in 1822 that none were present in Newfoundland.⁶ However, after the establishment of schools by the Newfoundland School Society, he warned Catholic parents not to send their children to them.⁷

During this pre-emancipation period from 1784 to 1830, the available evidence reveals that the early bishops expressed relatively little interest in education, although Bishop Scallan did leave property to his successor to establish schools.⁸ Since these early bishops laboured under the restrictions of the penal legislation, their concerns had to be more fundamental, e.g., collaborating with the British authorities in order to establish the Church on a stable foundation. In any case, their concerns seemed similar to those in the Maritime provinces where the "leaders of the Catholic community struggled to find an adequate supply of priests, to establish discipline among an unruly population and to maintain a *modus vivendi* with non-Catholics and

⁵ SCPF, Encyclical letter to the bishops of Ireland, September 18, 1819, in *Collectanea S. Congregationis de Propaganda Fide; seu, Decreta, instructiones rescripta pro apostolicis missionibus*, vol. I, *Ann. 1622-1866, NN. 1-1299*, Romae, Ex Typographia Polyglotta S.C. de Propaganda Fide, 1907, n. 738.

⁶ M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, Boston, Doyle and Whittle, 1888; reprint, Belleville, Mika Publishing, 1979, p. 244.

⁷ Father W. Herron to Bishop O. Plessis, *Letter*, December 21, 1824, in C. BYRNE, *Gentlemen-Bishops and Faction Fighters: The Letters of Bishops O'Donel, Lambert, Scallan and Other Irish Missionaries*, St. John's, Jesperson Press, 1984, p. 340. This letter reveals an aversion toward proselytism due to the religious indifference which would result when Catholics were educated in these "Bible Schools". He suggests that the English replaced the cruelty of the penal oppression with an attempt "to infuse their poison by education [...] in order to subvert the Irish Catholic Church" (p. 341).

⁸ M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, p. 247.

the civil authorities."⁹

4.1.2 - BISHOP MICHAEL FLEMING (1830-1850)

Bishop Fleming's efforts in the area of Catholic education and Catholic schools were focused primarily on his attempts to obtain religious institutes for the Catholic education of children in Newfoundland. These efforts arose out of his clearly articulated views on Catholic education, views that he expressed in 1844 in a series of letters addressed to Dr. A. O'Connell, a parish priest in Dublin. Although he considered education as a call to share in the Christian mission itself, and thus regarded the reception of religious instruction as an important element in education, Bishop Fleming also considered that education involved the formation of the individual as a member of society:

[A]s nothing can avail so much to confirm in the minds of the faithful the principles of religion, and a proper sense of the moral obligations of life, so is education the most salutary auxiliary in the hands of the ecclesiastic to render those committed to his charge useful members of society, and faithful and loyal subjects to the crown. [...] I have always considered it [the work of public instruction] as constituting the very basis of the great end of the Christian mission to unfold and enhance the treasures of the human mind.¹⁰

Impelled by these strong convictions of the importance of religious education, he expressed the urgent necessity of providing for the education of girls.

⁹ T. MURPHY, "The Emergence of Maritime Catholicism 1781-1830", *Acadiensis*, 13 (2/1984), p. 29.

¹⁰ *Third letter*, in M. FLEMING, *Letters on the State of Religion, Addressed to the Very Rev. Dr. A. O'Connell, P.P.*, Dublin, James Duffy, 1844, pp. 16-17.

I felt the necessity of withdrawing female children from under the tutelage of men, from the dangerous associations which ordinary school intercourse with the other sex naturally exhibited; [...] in mixed schools, they [females] lose much of that delicacy of feeling and refinement of sentiment which form the ornament and grace of their sex. Besides, viewing the great influence that females exercise over the moral character of society -- the great and useful and necessary influence that the example and the conversation of the mother has in the formation of the character of the children, as well male as female -- I judged it of essential importance to fix the character of the female portion of our community in virtue and innocence, by training them in particular in the ways of integrity and morality, by affording them the best opportunities of having their religious principles well fixed, by imparting to them while their young minds were daily receiving the elements of a general and useful education, a course of religious instruction that should teach them the true value and the proper use of these mental treasures by which they were being enriched; for I felt that [...] once the future mothers are impressed with the truths of religion [...] the domestic fireside is immediately made the most powerful auxiliary to the school, and instruction and true education, the basis of which is virtue and religion, are instilled into the little ones at their mother's knee, and they go abroad by-and-by into school, or into society, with all the elements that fit them to become virtuous citizens.¹¹

This section highlights several aspects of Fleming's view on education. He saw the necessity of separating the boys and girls for their education and held that an integral education included religious instruction. Furthermore, he viewed formation in the home as an auxiliary to the school and not the school as the auxiliary to the home. This reversal of the contemporary way of viewing the relationship between the home and the school undoubtedly revolved around the desperate need for education as well as the prevalence of illiteracy on the part of the parents.¹² Finally, he recognized

¹¹ *Ibid.*, p. 18.

¹² In the debate on the *Academy Bill* of 1844, J. Nugent emphasized that, due to the illiteracy of parents, the school was the sole agent for religious education (*The*

that education would eventually facilitate changes within society.

These convictions led Fleming to consider the establishment of a Presentation convent, in order to provide a school for poor children. The Presentation Sisters arrived in September of 1833 and established the first officially Roman Catholic school in St. John's; by 1844, the school could accommodate about twelve hundred children, not only from St. John's but from every district of the island.¹³ Moreover, these nuns also taught religious instruction to adults.¹⁴

Bishop Fleming gradually became concerned about the needs of the more respectable and wealthier classes and he believed that the reception of religious instruction also formed a part of their education.

Thus was it incumbent on me [...] to raise the character of Catholicity, to give it a position in public estimation that it had not before; and therefore, as no school had ever been established in Newfoundland where respectable Catholic ladies could receive a good and religious education [...] I determined [...] to introduce a community of the Order of Mercy, whose rule would permit them to keep a pension school; [...] a day school for such as could pay for their education -- a school where children may be taught the elegant and fashionable accomplishments of the day, and at the same time may have their young minds properly imbued with the principles of religion.¹⁵

The Sisters of Mercy arrived from Ireland in June 1842 and opened the first Catholic

Newfoundlander, April 4, 1844).

¹³ APBVM: "Presentation Schools in Newfoundland", 7p.

¹⁴ *Fourth letter*, in M. FLEMING, *Letters on the State of Religion*, p. 29.

¹⁵ *Ibid.*, p. 22.

pension school in St. John's on May 1, 1843.¹⁶

Bishop Fleming also acknowledged the dreadful condition of society and realized that this condition especially influenced the boys at the time. Accordingly, his concern for the boys' education directed him to Ireland once again, this time for the purpose of obtaining a community of teaching brothers for the education of the male poor, "a work grievously wanted in our society [...] and I know no other means of counteracting the evil better than bestowing on them a sound Christian education."¹⁷

Ultimately, Fleming's decision to seek some brothers was influenced by his desire for Catholic education, for when the Benevolent Irish Society felt that the condition of its school had necessitated a change, its discussions with Bishop Fleming in March 1847 included some consideration of the Catholic character of the school.¹⁸ Eventually the bishop brought the Franciscan Brothers of the Third Order

¹⁶ ASM: RG 10/1/1, "The Foundation of the Convent of Our Blessed Lady of Mercy in the Diocese of St. John's, Newfoundland", in *The Annals of Foundations*, pp. 5-9.

¹⁷ ASCPF: SRC: AM.Sett., 5 (1842-1848), M. Fleming to Cardinal G. Fransoni, *Letter*, April 3, 1847, f. 135.

¹⁸ N. Veitch makes the following summary of the discussions: "For those who might object that bringing in the brothers would give a Catholic character to the school, Bishop Fleming reasoned that since the B.I.S. had been accepting the legislative grant for some years as a Catholic school it was now their 'duty to that Legislature to make it now in reality and truth that which before now was only in appearance.' For those who might object that bringing in the brothers might not keep the school open to all religious persuasions, the bishop stated that this could easily be refuted by looking at the record of the brothers' schools in Ireland" (N. VEITCH, *The Contribution of the Benevolent Irish Society to Education in Newfoundland from 1823 to 1875*, M.Ed. thesis, Antigonish, Saint Francis Xavier University, 1965, p. 74).

Regular of Mount Bellew to teach at the Orphan Asylum School; unfortunately most of these brothers returned to Ireland in 1854.¹⁹ Thus, by the time of his death in 1850, Fleming had secured three religious institutes for the Catholic education of the youth of the island and he believed that the children "will not fail to improve the mind of the adult portion of the population in a very short period."²⁰

Bishop Fleming's opposition to the *Two Colleges Bill* provides another opportunity to examine his attitude toward Catholic education and Catholic schools. On February 6, 1843, the government introduced a Bill for the establishment of two colleges, one for Protestant education and one for Roman Catholic education. Although this Bill focused on secondary education, Bishop Fleming's opposition to it provides an awareness of the importance he attributed to several elements of Catholic education. His opposition centered around the following points:

1. While Protestants are secured in their rights, there is no provision to secure the appointment of Roman Catholics as directors of the Catholic college. 2. That according to the tenets of the Catholic religion the Bishop or ordinary is *de jure* and *de facto* Superior of every Roman Catholic college; yet no mention is made of such fact, nor is he by the *act* supposed to have any power or control over it. 3. That the only causes assigned in the act for the vacancy of the position of director are "death, resignation or absence from the country;" whereas he declares it is necessary that these directors should be recognized members of the Catholic communion, appointed and approved by the said Bishop, and that he should have the power of suspending or dismissing a director for such cause as gross misconduct or departure from the Catholic religion, confession of the tenets of which

¹⁹ For a description of the events leading up to the brothers' departure, see *ibid.*, pp. 75-81.

²⁰ ASCPF: SRC: AM.Sett., 5 (1842-1848), M. Fleming to *Propaganda Fide, Relatio*, November 26, 1846, f. 778.

constituted his original title to appointment. 4. That in the said directors is vested the power of electing the professors and principal of the colleges. [...] This privilege [...] should be subject to the approval of the Roman Catholic Bishop, and to the condition that such principal and teachers should be Roman Catholics.²¹

This opposition, primarily focused in the area of the supervisory role of the bishop, illustrates Bishop Fleming's efforts to apply the Church teaching of the day to the specific area of secondary education. His opposition, combined with that of the Methodists, led to the abandonment of this Bill.

The opposition by Bishop Fleming to the denominational colleges raises sundry questions. On the one hand, he adamantly opposed a Catholic College on the basis that the legislation did not adequately protect some of the concerns of Catholic secondary education, while on the other hand, he seemed to consent to the "nondenominational elementary system" of the 1836 legislation. Why did he not make a similar case for Catholic elementary schools in 1836? The 1841 decision of the *Propaganda Fide* regarding the Irish National System, which included several precautions safeguarding Catholic education, may have influenced the bishop's strong stance in 1843.²²

²¹ Quoted from M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, p. 231. A copy of this letter is found in AASJ: 103/2/23.

²² After the establishment of the National System, the Irish bishops began to disagree about its merits until the question was finally presented to Rome. In July 1839, *Propaganda Fide* decided that the System was dangerous to the Catholic faith, that it should be abandoned and Catholic schools established (see this discussion and decision in the minutes of the monthly meeting in July of 1839: ASCPF: *Acta*, 202, ff. 201-257; M.A. O'REILLY, "The Renewal of the Church in Great Britain and Ireland After Emancipation", in J. METZLER (ed.), *Sacrae Congregationis de Propaganda Fide memoria rerum: 350 Years in the Service of the Missions 1622-1972*,

In spite of the possible influence of this decision, the bishop's actions prior to 1843 seem to indicate an ambivalent attitude toward the denominational system. On the one hand, he expressed an unmistakable conviction (as seen by the extensive quotations above) supporting religious education for both boys and girls,²³ and even expressed embarrassment that some schools which had taught secular education had excluded religious education.²⁴ Furthermore, his ongoing dispute with Father T.

vol. III/2 (1915-1972), Rome, Herder, 1975, pp. 217-218). The situation was again studied in January of 1841 and it was decided that the system should neither be approved nor condemned, but that the decision should be left to each bishop for his own diocese. At the same time the Rescript from the meeting laid down certain safeguards which affected subsequent legislation on the question of Catholic schools (see ASCPF: *Acta*, 203, ff. 408-472). For an analysis of this entire situation, see D.H. AKENSON, *The Irish Education Experiment: The National System of Education in the Nineteenth Century*, Toronto, University of Toronto Press, 1970, pp. 204-214.

F. Walker also describes this dispute and quotes at length from *The Dublin Monitor*, February 6, 1841 (F. WALKER, *Catholic Education and Politics in Upper Canada*, Toronto, Catholic Education Foundation of Ontario, 1955, pp. 11-13).

Since Bishop Fleming had regular contact with Ireland and especially with his good friend Daniel O'Connell, who had fought for the Irish National System, and since his petition on the *Education Bill* contained some of the same concerns, one could assume that he had an awareness of this entire discussion, which may explain the fact that his position became so adamant in 1843.

²³ Another incident indicating Bishop Fleming's personal commitment to Catholic education concerns his acquaintance with Edmund Rice. Inspired by Rice's example, Fleming "offered himself as a Brother [... but] could not be received, however, because of Article 6 of the Brief" (M.C. NORMOYLE, *A Tree Is Planted: The Life and Times of Edmund Rice*, 2nd. ed., Private circulation, 1976, p. 237). Article 6 in the Brief of Pius VII declared that "None of the Brothers shall aspire to the Priesthood, or to any ecclesiastical orders."

²⁴ On the occasion of the erection of the new Presentation convent in 1843, a newspaper reported: "There had been one great difficulty before him [Bishop Fleming] from which he confessed he had derived much embarrassment at the very onset. They had established a few schools where the elements of what was called a secular education were taught, but from which all religious instruction was excluded, and in such schools were gathered together the young of every age and sex" (*The*

Brown reveals Bishop Fleming's definite belief in the importance of Catholic teachers for Catholic students.²⁵

On the other hand, the bishop seemed to accept the non-denominational system initiated in 1836 for he eventually participated on the non-denominational St. John's school board from 1836-1843. Though he became aware of the mounting tension regarding the kind of religious books used by the other boards at the time, Fleming failed to take any action. In light of these apparent inconsistencies, an investigation into the Bishop's basic attitude toward the denominational education system and toward Catholic schools seems necessary. Since no specific documents

Newfoundland Patriot, October 18, 1843).

Although J. Nugent asserted that Bishop Fleming supported nonsectarian education (*Journal of the House of Assembly*, 1850, appendix, p. 140), this reference concerns the ongoing dispute between Fleming and Chief Justice H. Boulton and can scarcely be considered, in itself, as a reliable view for or against Fleming's position on nondenominational education.

²⁵ Apparently Father Brown had made little effort to establish a school prior to the 1836 legislation, even though his area of Ferryland consisted mainly of Catholics. When the legislature called for and financially supported the establishment of schools, Father Brown, in his capacity of commissioner, "gave the office of teacher to a Protestant, [...] thus committing the early instruction of the juvenile portion of his congregation, male and female to a Heretic in whose school there is not one Protestant child" (ASCPF: SRC: AM.Sett., 5 (1842-1848), M. Fleming to Cardinal G. Frasoni, *Letter*, September 23, 1842, f. 250 [emphasis in original]). This reference to the "office" of teacher suggests the influence of the Council of Trent (COUNCIL OF TRENT, Sess. V, *de ref.*, c. 1.), and at the same time demonstrates a clear influence of the instruction from the Sacred Congregation for the Propagation of the Faith in 1659 (SCPF, Instruction, 1659, in Gasparri, *Fontes*, n. 4463). Ultimately, this action on the part of Brown combined with some other issues led Bishop Fleming to deprive Father Brown of faculties, and it indicates the importance that Fleming attached to having Catholic teachers. For further details on Brown's life, see R.J. LAHEY, art. "Browne (Brown), Timothy", in *Dictionary of Canadian Biography*, 8 (1851-1860), Toronto, University of Toronto Press, 1985, pp. 106-108.

have been found to determine whether he expressed a preference for the nondenominational system of 1836 or for the denominational evolution of 1843, one can only speculate.

Perhaps the bishop felt that the school boards of the 1836 Act could enact by-laws which could give consideration to religious instruction. The cogency of this position becomes manifest when one considers the pattern of settlement in areas consisting of large Catholic concentrations, e.g., from St. John's to Placentia.²⁶ Perhaps the bishop did not want to express full support of the non-denominational system in light of his constant efforts to obtain religious orders to teach in the schools.²⁷ Perhaps Fleming acquiesced in the wake of the newly-won Catholic emancipation and in the midst of the mounting anti-Catholic campaign that resulted from the international "No Popery" crusade.²⁸ Perhaps Fleming feared that "an uncompromising attitude on the part of the church would have meant no government

²⁶ J. MANNION, "Introduction", in J. MANNION (ed.), *The Peopling of Newfoundland: Essays in Historical Geography*, Toronto, University of Toronto Press, 1977, p. 8.

²⁷ F. Rowe contends that several factors influenced Fleming in introducing religious to the island: "the difficulty of securing competent local teachers, [...] the desirability of proper and adequate religious instruction for Catholic children. [...] The defensive position of the Roman Catholic Church would be considerably strengthened by the institution of a religious order" (F. ROWE, *The Development of Education in Newfoundland*, Toronto, Ryerson Press, 1964, p. 79).

²⁸ F. Smith raises questions about the Catholic acquiescence because of this "newly-won emancipation" for he shows how Catholics were in fact politically active. However, Smith fails to give any consideration to the strength of the mounting anti-Catholic campaign that was evident at the time (F. SMITH, "The Commission of Government's Reorganization of the Department of Education: 1934-1939", Unpublished Paper, St. John's, Memorial University of Newfoundland, June 1976, pp. 8-9).

grants whatever."²⁹

Perhaps the social conditions of the day, including a high degree of illiteracy, child labour during the fishing season, winter schooling for the few people who did not go to the woods, as well as the economic structure of the fishery in which most fishermen remained in perpetual debt to the merchant, all contributed to a desperate need for education. Consequently, in this political, social, and economic climate, it seems reasonable to conclude that Bishop Fleming decided that some education, however inadequate, would prove better than none. This same conclusion represented the position of the Irish Bishops who, in 1831, accepted the Irish National System in order to ensure a schooling in literacy as a means of providing a basic education. The possible influence on Bishop Fleming of the Irish Bishops' acceptance of their system becomes particularly poignant when one realizes the numerous similarities between the Irish National System and the 1836 non-denominational system of Newfoundland. Furthermore, perhaps the speeches of Bishop Fleming's close Catholic associates in the Assembly, e.g., Patrick Morris, John Kent, John Nugent and Peter Brown, really reflected his views.³⁰ In the final analysis, despite these various speculations, one can certainly conclude that by the end of Fleming's episcopacy in 1850, as a result of his insistence on Catholic

²⁹ F. ROWE, *The Development of Education in Newfoundland*, p. 81.

³⁰ Some years after the 1843 Act, Nugent declared that the Catholics supported the Barnes' Bill (to divide the grant) because Barnes had the majority behind him and "some measure to promote education" was needed (see *The Times and General Commercial Gazette*, February 22, 1851).

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 154

education and his relentless efforts to establish three religious teaching institutes, and in spite of his somewhat pragmatic support for the non-denominational system, "Catholic education had become a generally established principle in Newfoundland."³¹

4.1.3 - BISHOP THOMAS MULLOCK (1850-1868)

Bishop Fleming's successor, Thomas Mullock (1850-1868), also became involved in the educational system of the colony, and like Fleming, began his ministry with a controversy whereby he spelled out the Catholic nature of Newfoundland schools as well as his own role within the denominational system. Apparently, J. Prendergast, member for Conception Bay, had alleged in 1851 "that with the exception of the Nunnery and Orphan Asylum School, the Catholic children were completely neglected and were not taught their catechism."³² In response, Bishop Mullock declared that "as Bishop and as Chairman of the Roman Catholic Board of Education for the St. John's District, I feel it necessary to defend the schools."³³ A few months later a petition presented to the House of Assembly requested the

³¹ R.J. LAHEY, art. "Fleming, Michael Anthony", in *Dictionary of Canadian Biography*, 7 (1836-1850), Toronto, University of Toronto Press, 1988, p. 298. In one of his early pastoral letters, Bishop Mullock revealed that Bishop Fleming "left all he possessed for the completion and adornment of the Cathedral, the erection of Convents for the poor, for furthering education, and principally for the establishment and support of a house for female orphans" (AASJ: 104/1/29, J.T. MULLOCK, *Pastoral Letter*, July 22, 1850 (emphasis added)).

³² AASJ: 104/2/9, J.T. Mullock to J. Prendergast, *Letter* (in Diary), February 11, 1851.

³³ *Ibid.*

removal of Bishop Mullock from his position as head of the newly-formed Central Board of Education for Catholic Schools, for the petition argued that he should not occupy this position. As a result, the Legislative Council decided to remove Mullock on May 27, 1851, but reversed this decision the next day. In a letter, dated May 27, 1851 (and reminiscent of Fleming's stand in 1843), Bishop Mullock clearly asserted the principles underlying his position as chairman of the Central Board of Education.

[I]t is necessary that the Catholic Bishop should be *ex officio* at the head of the Catholic Educational Board. By the Canonical Law of the Catholic Church, the Bishop is the Superior, President, and Visitor of all Catholic schools. It is a duty inherent in his office, and one which, were he willing, he has no power to resign.

That the Catholic Church recognizes the power of the State, to erect general or National schools, and allows, when nothing subversive of Faith and Morals is taught in them, her children to frequent them; and her bishops and priests to sit as members of their Boards. Still she can not admit the power of the state to organize Catholic Schools or Boards as such.³⁴

Furthermore, the bishop mentioned the permission required for a board to use the title "Roman Catholic"; he alluded to the grievous dissensions of establishing a general system of education irrespective of religious denominations; and he called for the recognition of the inherent right of the bishop to superintend the education of Catholics. Thus, Bishop Mullock emphasized the element of ecclesiastical control as an essential element of the Catholic schools in Newfoundland.

Besides this controversy, Bishop Mullock constantly referred to the subject of

³⁴ J.T. Mullock to the Legislature, *Letter*, May 27, 1851, in AASJ: 106/13, M.F. HOWLEY, "Ecclesiastical History of Newfoundland. Volume Two. Notes", pp. 28-29. See APPENDIX 4 for the text of this letter.

education in his annual pastoral letters.³⁵ Upon analysis of these pastoral letters, especially his letter on Catholic Education in 1857, his comprehensive teaching on Catholic education begins to emerge. This teaching finds its foundation in a holistic view of education which included moral, religious and social dimensions:

Education is the most important of all subjects in a social, a national, and a religious point of view; as not only our happiness here, but our eternal welfare hereafter, depends on the education we receive. [...] Without education of some sort, society could not exist.³⁶

With this view of education, he believed the Divine Founder had given the Catholic Church the mandate of education: "Go and teach all nations" (Mt 28: 19-20). In a triumphalistic perspective typical of the nineteenth century, he considered that the Church was "teacher and civilizer of the world" and held that it was "only under the guidance of the Catholic Church that true education can be found and whatever of good remains in other systems has been derived from that source alone."³⁷ He asserted that true education necessarily included both moral and religious dimensions, for "education without religion is a curse, not a blessing [...] without a religious education man becomes wicked in proportion to his intelligence."³⁸

Bishop Mullock clearly supported the denominational principle in education and praised the system of governmental financing:

³⁵ The pastoral letters from 1850-1859 are found in AASJ: 104/1/29, while those from 1860-1868 are found in AASJ: 104/1/30.

³⁶ *Pastoral Letter*, February 22, 1857.

³⁷ *Ibid.*

³⁸ *Pastoral Letter*, February 26, 1865. See also *Pastoral Letter*, March 3, 1867.

The Government has made, on the whole, considering the resources of the country, a fair provision for education; and we enjoy, besides, the great blessing, **perfect religious freedom**. [...] It must be evident that the only way to prevent bickering and disunion in the community, and to give justice to all, is the mode adopted by Government of dividing the education grant, *pro rata*, between all denominations.³⁹

Furthermore, the bishop reiterated the importance of the government's non-interference in the denominational system.

[W]e have endeavoured by every means in our power, to advance the cause of Catholic education, and thanks to the rational freedom which other governments would do well to copy, our endeavours have not been thwarted by any undue interference. The justice of our government leaves the education of Catholics to Catholics, and of Protestants to their respective congregations [...] and not vainly endeavouring to combine in an impossible union persons of different belief; thereby producing in general indifference, or infidelity and all its dreadful and anti-social consequences.⁴⁰

Aware of the world-wide nationalistic struggle in the area of education, he appreciated the fact that, in Newfoundland, the government treated all denominations with equal justice.⁴¹ Yet he was quick to warn against the disturbance to the denominational system that could result with confederation.⁴²

³⁹ Quoted in M.F. HOWLEY, *Ecclesiastical History of Newfoundland*, p. 233 (emphasis in original). See also *Pastoral Letter*, March 2, 1862.

⁴⁰ *Pastoral Letter*, February 22, 1857. See also *Pastoral Letter*, February 7, 1864.

⁴¹ "The great struggle now going on between the world and the Church is for the freedom of education" (*Pastoral Letter*, February 11, 1866).

⁴² He remarked that "the education of our people [might] be taken out of the hands of the local clergy and transferred to a Board in a remote Province notorious for its anti-Catholic spirit." He hoped that "the report that the union of the North American Colonies is to be based on the destruction of our Religious educational system is without foundation" (*Pastoral Letter*, March 3, 1867).

Furthermore, he reminded his people that numerous institutions throughout the colony, e.g., the rudimentary schools in the outports, the convent schools of the Presentation Sisters and of the Sisters of Mercy, and St. Bonaventure's College School,⁴³ provided the opportunity for both girls and boys to obtain a "purely Catholic education".⁴⁴ He proudly asserted that the education provided in the College School was of a superior quality equal "to any to be procured in any similar institution in Europe."⁴⁵ He especially affirmed the work of religious institutes in Catholic education, for he considered that the convent schools were making a great change in the character and improved habits of the population, which would bear fruit in later generations.⁴⁶

The bishop relentlessly urged parents to send their children to school so that the children might become good Christians and useful members of society:

Year after year we are calling on parents to educate their children. [...] When we consider how many parents will not avail themselves of this gratuitous blessing, but allow their children to grow up in ignorance [...] our heart is filled with sorrow. [...] The ignorance

⁴³ He began St. Bonaventure's with the encouragement of Pope Pius IX, as "a School and Seminary where children may be prepared by a solid, a refined, and a Catholic Education for any situation in life" (*Pastoral Letter*, February 22, 1857).

⁴⁴ *Pastoral Letter*, February 26, 1865.

⁴⁵ *Ibid.*

⁴⁶ J.T. MULLOCK, *Reply to a Circular from the Colonial Secretary's Office*, May 15, 1864, in *Journal of the House of Assembly of Newfoundland*, 1865, p. 610. See also ASCPF: SRC: AM.Sett., 6 (1849-1857), J.T. Mullock to Cardinal G. Fransoni, *Letter*, December 9, 1863, f. 595; *Pastoral Letter*, July 22, 1850; *Pastoral Letter*, February 22, 1857; *Pastoral Letter*, March 2, 1862.

of the children is the fault of the parents.⁴⁷

By the end of his episcopacy, the bishop became so adamant about the neglect of parents in their duty of educating their children that he called for the government to oblige parents to fulfil this obligation⁴⁸ and even for the right of voting to be restricted to those with a rudimentary education, hoping to shame parents into sending their children to school.⁴⁹ Part of the reason for the bishop's emphasis on the education of Catholics lay in the fact that he wanted the people to move beyond poverty and oppression and to take their rightful place in society.⁵⁰

In the final analysis, Bishop Mullock's comprehensive teaching on Catholic schools addressed most of the themes that would concern the future leaders of the Catholic Church in Newfoundland.

⁴⁷ *Pastoral Letter*, March 2, 1862. See also *Pastoral Letter*, February 22, 1852; *Pastoral Letter*, February 22, 1857; *Pastoral Letter*, February 19, 1860; *Pastoral Letter*, February 10, 1861; *Pastoral Letter*, February 7, 1864; *Pastoral Letter*, February 26, 1865; *Reply to a Circular from the Colonial Secretary's Office*, May 15, 1864, in *Journal of the House of Assembly of Newfoundland*, 1865, p. 610.

⁴⁸ *Pastoral Letter*, March 3, 1867.

⁴⁹ *Pastoral Letter*, February 23, 1868. Mullock concluded: "parents are worthy of the deepest reprobation for their neglect."

⁵⁰ "Knowledge is power; and if the rising Catholic youth be left without the means of a refined education [...] the native Catholics will be confined to the humblest occupations" (*Pastoral Letter*, February 10, 1861); "An uneducated people will always be poor and oppressed" (*Pastoral Letter*, February 7, 1864); "An ignorant people will always be poor and without influence, without industry or energy" (*Pastoral Letter*, February 11, 1866); "An uneducated people can never be anything at home or abroad but hewers of wood and drawers of water" (*Pastoral Letter*, March 3, 1867).

4.1.4 - BISHOPS OF HARBOUR GRACE AND ST. GEORGE'S

The educational views of the first three bishops of the Diocese of Harbour Grace remain a mystery, since only a few obscure references could be found. Bishop J. Dalton (1856-1869) made a reference to the subject of education on the occasion of the opening of the Mercy convent at Brigus,⁵¹ gave some statistical information in his 1862 report to *Propaganda Fide*,⁵² and "improved the education facilities of his diocese."⁵³ Similarly, a search through H. Carfagnini's voluminous correspondence with Rome reveals a man constantly in controversy, but very little concerning education. Much of the controversy of his episcopate (1870-1880) focused on his relationship with the Benevolent Irish Society in Harbour Grace,⁵⁴ i.e., suspending two priests for their role as trustees of the Society,⁵⁵ denying people the

⁵¹ The following statement was found in *The Newfoundlander*, September 23, 1861, p. 3: "The Bishop exhorted from the altar on the subject of education, more especially on the necessity of a religious education, the best means for which the people now possessed in the conventual institution just established there."

⁵² ASCPF: SRC: AM.Sett., 8 (1862-1864), J. Dalton to Cardinal A. Barnabò, *Letter*, July 2, 1862, f. 352.

⁵³ S. RYAN, art. "Dalton, John", in *Dictionary of Canadian Biography*, 9 (1861-1870), Toronto, University of Toronto Press, 1976, p. 189.

⁵⁴ The bishop considered the B.I.S. to be "anti-Catholic" and he acted "because the society had changed its nature from a religious to a civil society" (AASJ: 107/25/444e, clergy of St. John's to *Propaganda Fide*?, *Letter*, [n.d.] (emphasis in original)). See also ASCPF: *Acta*, 243 (1875), December 14, 1875, ff. 445-452.

⁵⁵ ASCPF: SRC: AM.Sett, 12 (1872-1874), H. Carfagnini to J. O'Connor and M. McCormack, *Letter*, June 15, 1874, f. 981.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 161

sacraments because of their membership in the B.I.S.⁵⁶ and reprimanding some Presentation sisters for their relationship to the Society.⁵⁷ R. J. Connolly cryptically describes the situation:

Rumors of difficulties at Harbour Grace at length spread to Rome, and in July 1874, Bishop Power was appointed by the Holy See to enquire into the state of things here. St. Mary's and St. Joseph's schools were then moved over to the Sisters' own ground; and Bishop Carfagnini was called to Rome -- and at length removed. But there is still much to be noted, especially connected with the Benevolent Irish Society, which formed a particular part in the drama.⁵⁸

In spite of his ongoing feud with the B.I.S., the documents at *Propaganda Fide* reveal little concern on the part of Carfagnini for the school system in Newfoundland, even though he had spent time prior to 1870 as the president of St. Bonaventure's College.⁵⁹ As with the first two bishops, the documents of Bishop R. MacDonald (1881-1906) make few references to Catholic schools. He simply referred to the "special difficulties" regarding Catholic schools and mentioned that new teachers have

⁵⁶ ASCPF: SRC: AM.Sett, 13 (1875), J. O'Donnell to Cardinal A. Franchi, *Telegram*, [n.d.], f. 803; ASCPF: SRC: AM.Sett, 13 (1875), R. Walsh to Cardinal A. Franchi, *Telegram*, [n.d.], f. 804.

⁵⁷ ASCPF: SRC: AM.Sett, 17 (1877B), H. Carfagnini to G. Conway, *Letter and another address to sisters*, April 22, 1878, f. 739-753.

⁵⁸ R.J. CONNOLLY, *A History of the Roman Catholic in Harbour Grace*, St. John's, Creative Publishers, 1986, p. 33.

⁵⁹ On Carfagnini's return from Rome in 1876, an address expressed the following sentiments: "Since your arrival in this Island, the education of our children has always been the cherished object of your heart. To attain this end, you have spared no labour, and we fervently hope your Lordship's desires of establishing in this Diocese superior schools for the education of youth, will soon be realized" (*ibid.*, p. 34). These sentiments are difficult to reconcile with the other documents of the time, unless they represent an expression of the persevering optimism of people regarding their bishop!

improved the schools,⁶⁰ emphasized the importance of schools in the religious development of youth,⁶¹ and gave some statistical information regarding Catholic schools.⁶²

Meanwhile, the Holy See erected the Prefecture of St. George's on June 2, 1870 and Father Thomas Sears became the first prefect apostolic. Father Sears expressed the frustrations of ministering in the primitive conditions of the West Coast, especially regarding the lack of schools,⁶³ and yet he was optimistic in seeing the possibilities for the area.⁶⁴ Like the other Catholic leaders of the island, he longed for the presence of a religious community:

A community of five or six well educated nuns would be of the

⁶⁰ ASCPF: SRC: AM.Sett., 23 (1883-1884), R. MacDonald to Cardinal G. Simeoni, *Letter*, October 30, 1883, ff. 547-548.

⁶¹ In drafts of a letter to *Propaganda Fide* seeking financial support, Bishop MacDonald spoke of "establishing ten schools which for some years to come must also serve as chapels. On the Labrador coast I have commenced building three similar establishments" (ADGF: 102/1/5, R. MacDonald to *Propaganda Fide*, 1884?). He viewed schools as means for providing religious instruction. In his 1906 *Pastoral Letter* on the occasion of his resignation as bishop, he remarked that "the future welfare of our Diocese, whether you regard the outlook from a social, economic or religious standpoint, will rest in a great measure with the care which may be, year after year, bestowed on the thorough and judicious training of the youth of each generation" (R. MacDONALD, *Pastoral Letter Addressed to the Clergy and Laity of the Diocese of Harbor Grace*, Harbor Grace, 1906, p. 5).

⁶² ASCPF: SRC: AM.Sett., 24 (1885-1886), R. MacDonald to Cardinal G. Simeoni, *Relatione*, February 19, 1885, f. 82; ASCPF: N.S., 363 (1906), R. MacDonald to *Propaganda Fide*, *Relatione*, December 20, 1905, ff. 275-276.

⁶³ T. SEARS, *Report to Propaganda Fide*, 1881, mentioned in M. BROSNAN, *Pioneer History of St. George's Diocese, Newfoundland*, Toronto, Mission Press, 1948, p. 54.

⁶⁴ AASJ: 106/33/3, T. Sears to *Propaganda Fide*, *Report of the Missions*, 1877.

greatest importance, especially in a district so peculiarly situated as this where the modern idea of abandoning the guidance of the religious element to the female side of the house obtains.⁶⁵

Father Sears also wrote about the struggle in the 1860s for denominational education, manifesting his view of the significance of the "direct control" of the Church over Catholic schools:

The result of this preponderance of Catholics is that in Newfoundland [...] the Catholics enjoy the privilege of separate and independent schools, all under the direct control of the church without any intermeddling on the part of the Government except by agencies approved by the Church.

Circumstances transpired [the rise in the Protestant population] between the years 1866 and 1870 that seem to endanger very much this security on the part of the freedom of Catholic education. [...] But it [if a preponderance of Protestants were introduced into the Colonial Legislature] will, I fear, throw the Catholic education system into the power of a Protestant majority [...] and] the blessing of separate schools for Catholics will be lost for generations to come.⁶⁶

Sears also alluded to the difficulties of building schools⁶⁷ and of finding the right teacher who could deal with the isolation,⁶⁸ and he acknowledged the importance of reminding parents of their duty to raise their children in the Catholic faith.

⁶⁵ T. SEARS, *Report to Propaganda Fide*, 1873, in M. BROSNAN, *Pioneer History of St. George's Diocese*, p. 39. Sears' role in the establishment of the first foundation of the Sisters of Mercy on the west coast is considered "highly significant" (M.W. HOGAN, *Pathways of Mercy in Newfoundland, 1842-1984*, p. 246).

⁶⁶ ASCPF: SRC: AM.Sett., 12 (1872-1874), T. Sears to Cardinal A. Barnabb, *Letter*, February 29, 1872, ff. 41-43.

⁶⁷ For an example of this, see AASJ: 106/33/6, T. Sears to R. Phippard, *Letter*, January 9, 1885.

⁶⁸ Sears mentions the task of procuring "good and efficient teachers" (AASJ: 106/33/7, T. Sears to T. Power, *Letter*, September 16, 1870). See also AASJ: 106/33/6, T. Sears to R. Phippard, *Letter*, October 6, 1884.

Brosnan concluded by saying that Sears

was motivated by both a sense of justice to the children who would through education be in a position to improve their status when grown up as well as by the danger he sensed from proselytizing effects of schools erected by other churches.⁶⁹

4.1.5 - BISHOP MICHAEL HOWLEY (1892-1914)

At the turn of the century, the letters of Bishop (later Archbishop) Howley represent a further attempt to focus on the importance of Catholic schools in Newfoundland. During his years as bishop, Howley consistently reflected papal teaching as he championed the cause of religious education within the denominational system. In his pastoral letter of 1898, he highlighted Leo XIII's encyclical on the Manitoba School Question concluding that

it is not lawful for our children to seek the benefits of Education in schools in which the Catholic religion is ignored, or actively combatted -- in schools where its doctrine is despised, and its fundamental principles repudiated.⁷⁰

Although Howley gratefully expressed that in Newfoundland, "we are in the

⁶⁹ M. BROSINAN, M., *Pioneer History of St. George's Diocese, Newfoundland*, p. 107. Sears revealed his motivation, for in appealing to Bishop Power for an equitable share of the Roman Catholic grant, he expressed the dire need for Catholic schools: "[...] the want of Catholic schools in our midst is instanced in the fact that almost all Frenchmen who have settled there having any pretensions to education or refinement marry Protestants and allow them to bring up their children in that belief" (AASJ: 106/33/7, T. Sears to T. Power, *Note*, [n.d.; attached to *Letter*, September 16, 1870?]).

⁷⁰ AASJ: 106/8/4, M.F. HOWLEY, *Pastoral Letter*, February 20, 1898.

enjoyment of the plenitude of denominational education established by law",⁷¹ he warned that the history of the Manitoba question with its broken promises

behooves us to have all our faculties on the alert [in the event of confederation with Canada], so as to secure, beyond all possibility of change, and independent of any possible future eventuality, this priceless gem of Religious Education, which we now possess.⁷²

Bishop Howley reminded Newfoundlanders that other countries, including Italy, France, Belgium, England and the United States, experienced grievous dissensions regarding public education and these dissensions arose because of a disdain for the idea of religious instruction. As a result, the governments in these countries imposed purely pagan or anti-Christian educational systems upon Christian and religious people.⁷³ By recognizing that other countries attempted "the impossible task of preserving the religious spirit in the schools, while forbidding the teaching of the distinctive dogmas of the Christian Faith",⁷⁴ the bishop implicitly acknowledged and affirmed one of the characteristic qualities of the Newfoundland educational system, namely the education of children according to their own faith. His fundamental praise for the Newfoundland system centered on the fact that the denominational system protected the religious element, which he viewed as the most important

⁷¹ *Ibid.* See also ASCPF: N.S., 98 (1896), M. Howley to Cardinal M. Ledóchowski, *Relatione*, May 15, 1896, f. 436.

⁷² AASJ: 106/8/4, M.F. HOWLEY, *Pastoral Letter*, February 20, 1898.

⁷³ AASJ: 106/8/4, M.F. HOWLEY, *Pastoral Letter*, February 10, 1907; M.F. HOWLEY, "Religion in Education", in *The Newfoundland Quarterly*, 1 (1/1901-1902), pp. 13-14.

⁷⁴ AASJ: 106/8/4, M.F. HOWLEY, *Pastoral Letter*, February 10, 1907.

element in a person's constitution and, "according to the Catholic Church, it must have a part -- and a prominent part -- in his education."⁷⁵

In his circular letter on secret societies, the bishop reflected the teaching of Leo XIII's encyclical, *Humanum genus*, where various societies were condemned for plotting against the Church and for attempting to overturn all lawful authority in the world. As Leo XIII had mentioned the influence of the Freemasons on education, so Bishop Howley highlighted some of the goals of the Fishermen's Protective Union (F.P.U.), e.g., the improvement of education by making it free and compulsory, and he declared that these apparently harmless or useful goals have the "insincere sound of a political manifesto" tending to instill the seeds of unrest and discontent into the people's minds.⁷⁶ Eventually, Howley received from the F.P.U. the assurance that the union would not interfere with the denominational system. Moreover, he succinctly voiced his opinion regarding any change in the denominational system:

I am prepared to say that I believe any radical change in our system of education could only prove detrimental to the cause, and injurious to the moral status of the community, and probably the cause of much rancour, discord and disunion among us.⁷⁷

In closing this period, one realizes that the bishops attempted to implement within the Newfoundland context various aspects of the Church's teaching on

⁷⁵ M.F. HOWLEY, "Religion in Education", in *The Newfoundland Quarterly*, 1 (1/1901-1902), p. 13 (emphasis in article).

⁷⁶ AASJ: 106/9/6, M.F. HOWLEY, *Circular Letter on Secret Societies*, March 31, 1909.

⁷⁷ M.F. HOWLEY, "Religion in Education", in *The Newfoundland Quarterly*, 1 (1/1901-1902), p. 14.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 167

Catholic schools. The efforts of Bishop Fleming manifested his desire to ensure the Catholic education of the children, especially through the ministry of the three religious institutes; furthermore, he consistently referred to the schools as "Catholic schools". Building on the foundation of Bishop Fleming, Bishop Mullock presented a comprehensive view of Catholic education and identified the various elements that contributed to the catholicity of the schools. Neither Fleming nor Mullock emphasized the primary right of parents to educate their children, but this lack of emphasis probably resulted from the poverty and illiteracy of most Catholic parents, a fact which made the exercise of their rights virtually impossible. Finally Bishop Howley tirelessly reminded his people that the denominational system incorporated the principle that religious education was imparted according to the Catholic faith. In reflecting on the Manitoba school question, he encouraged all to appreciate the fact that, unlike many other countries, the Church in Newfoundland had its right to Catholic schools established by law.

4.2 - THE NEWFOUNDLAND BISHOPS BETWEEN 1917 AND 1960

During his episcopacy that lasted from 1915 to 1950, Archbishop E.P. Roche showed constant concern for the educational system of Newfoundland. In one of his earliest addresses to the clergy of the colony, he reminded them that even if people do not manifest the interest in education that they should, the clergy must attend to the education of the children of their parish and must work to preserve the denominational system of Newfoundland.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 168

[Due to the possibility of Confederation, w]e must see to it no matter what happens that our denominational system be not placed in jeopardy, we must see to it that the most absolute and unequivocal guarantees are given us that our present system will be maintained in its integrity, and not only that, but that provision will be made financially and otherwise for the absolute maintenance for the future.⁷⁸

Besides this address to the clergy in 1916, he wrote several pastoral letters expressing satisfaction that the system of education established by law in Newfoundland met "the conditions which should govern Church and State in the education of a people."⁷⁹ Using quotations from the encyclicals of Pius IX and Leo XIII, Archbishop Roche clearly distinguished the various educational relationships concerning the family, the Church, and State.⁸⁰ He asserted that since the child belongs primarily to the family, the parents have the primary right to educate their children. For him, the State should foster religion in education and cooperate in facilitating the religious

⁷⁸ AASJ: 107/32, E.P. ROCHE, *Address to the Clergy of the Province at the Annual Retreat*, 1916.

⁷⁹ AASJ: 107/32, E.P. ROCHE, *Pastoral Letter to the Clergy, Religious Communities and Laity of the Archdiocese*, February 18, 1917. See also AASJ: 107/33, E.P. ROCHE, *Pastoral Letter to the Clergy, Religious Communities and Laity of the Archdiocese*, February 22, 1925; E.P. ROCHE, *Pastoral Letter to the Clergy, Religious Communities and Laity of the Archdiocese*, February 27, 1938, in *The Monitor*, February 1938, pp. 1-3; AD SG: File: Archbishop of St. John's 1941-1947, E.P. ROCHE, *Address of his Grace the Archbishop at the Close of the Priests' Retreat 1944*.

⁸⁰ See the references to PIUS IX, Encyclical letter, *Quum non sine*, July 14, 1864 and LEO XIII, Encyclical letter, *Libertas*, June 20, 1888, in AASJ: 107/32, E.P. ROCHE, *Pastoral Letter to the Clergy, Religious Communities and Laity of the Archdiocese*, February 18, 1917. See also E.P. ROCHE, *Pastoral Letter to the Clergy, Religious Communities and Laity of the Archdiocese*, February 27, 1938, in *The Monitor*, February 1938, p. 2.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 169

training of children, a task which would reflect advantageously upon the State. While asserting that the churches in Newfoundland erect and own the schools, he recognized that the State provided financial assistance for the education of the youth and showed proper consideration for the conscientious convictions of the various religious bodies. Although the archbishop acknowledged that the chief obstacles to educational advance in Newfoundland revolved around limited financial resources and peculiar geographical conditions, he also reminded parents of their serious obligation to keep their children in school until they had reached an "age sufficiently advanced to permit of their being properly prepared for their work in life."⁸¹

Perhaps the best example of the archbishop's defense of Catholic schools in Newfoundland emerged in confrontation with the Commission of Government established in 1934. When the Commissioner of Education attempted to amend the *Education Act* of 1927, Archbishop Roche responded to the draft proposals by writing to W. Howley, the only Catholic Commissioner, on February 23, 1935.⁸² The letter deprecated the undue haste with which the proposed amendments to the *Education Act* of 1927 were being made; pointed out the large investment which the Catholic people had made in scholastic institutions; urged that the *Education Act* should be dealt with as a whole and not piecemeal; suggested that any changes contemplated

⁸¹ AASJ: 107/33, E.P. ROCHE, *Pastoral Letter to the Clergy, Religious Communities and Laity of the Archdiocese*, February 22, 1925. See also AD SG: File: Archbishop of St. John's 1941-1947, E.P. ROCHE, *Address of his Grace the Archbishop at the Close of the Priests' Retreat 1944*.

⁸² AASJ: 108/76/1, E.P. Roche to W. Howley, *Letter*, February 23, 1935.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 170

should be the subject of "full, free and frank discussion"; and repeated his position that any legislation which infringed on the rights of the Catholic people, or placed in jeopardy the convictions and principles that they held as sacred cannot be accepted. This letter epitomized the power that the archbishop possessed in relationship to the Commission for, as a result of the letter, the Commission decided to obtain the views of the leaders of the other denominations.

In the meantime, on March 8, 1935, the three Newfoundland bishops submitted a *Memorandum* on the proposed changes in the *Education Act* of 1927.⁸³ The bishops declared that the system of superintendents, an integral part of the 1927 *Education Act*, embodied the denominational principle. Consequently, the abolition of these superintendents would destroy the denominational principle within the entire educational system, unless certain provisions safeguarded that principle. They also stressed the necessity of Catholic appointments to Roman Catholic Boards in order that the control and management of their schools would remain in the hands of Catholics.

The bishops concluded their *Memorandum* by emphasizing that, in order to obtain the acceptance of the Roman Catholic people of Newfoundland, any educational legislation must include certain essential conditions implicit in the formula "Catholic teachers in Catholic schools under Catholic control". These

⁸³ AASJ: 108/76/1, the Roman Catholic Hierarchy [E.P. Roche, J. March, H. Renouf] to the Commission of Government, *Memorandum on Certain Proposed Changes in the Education Act of 1927*, March 8, 1935. See Appendix 5 for a copy of this *Memorandum*.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 171

conditions required that the local school boards should have the right to appoint and dismiss teachers; that absolute religious freedom should exist in the schools, so that no child should be compelled to attend a school to which his/her parents or guardians have conscientious objections; that Roman Catholics should receive their proportionate share of all educational monies; that Catholics have an official Roman Catholic representation at the centre of educational government, an official who could inspect Roman Catholic schools, and who could act as an authoritative intermediary between Roman Catholic teachers and Catholic educational authorities on the one hand and the Department of Education on the other.

This clearly articulated stance of the bishops accentuated the traditional Roman Catholic teaching, and added a new thrust emphasizing the importance of Catholic teachers, maintaining the right to receive financial support, and clarifying the meaning of the Catholic control of schools. This control operated on two levels: at the local school board level, the boards would have the right to appoint and dismiss teachers, while on the level of the government, the superintendents would work to keep the Roman Catholic presence in the schools and in the Department.

In spite of this position taken by the bishops, the government enacted amendments to the *Education Act*, which radically curtailed several of the specifically denominational aspects of the *Education Act* of 1927. In response to this legislation, Archbishop Roche met with F.C. Alderdice, the Commissioner for Education, in order to reiterate the importance of Catholic representation in the administration of educational affairs as well as to articulate his position on the appointment of

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 172

teachers. Regarding the latter, he wrote:

The second question that arose was one about which I had thought there could be no misunderstanding, namely, the appointment of teachers. I inferred from some remarks of the Commissioner that it is the intention of the Government to take this matter out of the hands of the Boards and have the teachers appointed by the Department. This is a position which the Catholics can never accept, and if it were insisted upon by the Government it would mean a definite break with the Catholic body throughout the country. Our principle of Catholic teachers in Catholic schools necessarily implies the appointment of teachers by Catholic authorities. This also follows naturally and logically from our ownership of our Catholic schools. Moreover, nearly half of the Catholic pupils of Newfoundland are taught by the Sisters and Brothers, and the appointment of these teachers must be in the hands of the Church authorities either directly through the Boards, or indirectly through the councils of these Orders.⁸⁴

Although the government enacted further amendments to the *Education Act* of 1927 during the ensuing years, the churches succeeded in obtaining denominational representation at the level of the department. Eventually, this denominational system received constitutional protection in the *Terms of Union* at Confederation. Although the bishops continued their involvement in supporting the system, the bishops as a group did not make any further major pronouncements during this period.

Besides the common teaching of the Newfoundland bishops, the particular teaching of two other Newfoundland bishops requires consideration. J.M. O'Neill, bishop of the Diocese of Harbour Grace (later renamed the Diocese of Grand Falls) from 1940 to 1972, emphasized four particular themes in the area of Catholic

⁸⁴ AASJ: 108/76/1, E.P. Roche to W. Howley, *Letter*, April 29, 1935.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 173

education: the importance of religious education in the midst of the increasing secularization of society;⁸⁵ the specifically Catholic elements of the schools in Newfoundland;⁸⁶ the duty of parents to provide a Catholic education for their children;⁸⁷ and the rights of the three agents in education, i.e., family, Church and State.⁸⁸

Archbishop P. Skinner (1950-1979) displayed an ability to adapt Catholic

⁸⁵ "I wish to go on record as saying that a religious atmosphere in the school is an absolute essential if the product of the school is to be anything but an enlightened savage" (*The Monitor*, November 1940, p. 11). In addressing the graduates of St. Vincent's College in Halifax, Bishop O'Neill declared: "Up to now, you have been hot-house plants, nurtured tenderly and protected in this Catholic institution. Tomorrow you will be transplanted to the open air where the late spring frosts of secularism and the wintry blasts of godless materialism may blight the early promise of a bloom" (ADGF: 104/1/5, J.M. O'NEILL, *Baccalaureate Sermon*, May 17, 1960, p. 3).

⁸⁶ Following the teaching of Pius XI, Bishop O'Neill stated: "The function of the Catholic school is not only to provide for the enlightening of the child's mind in secular subjects, [...] nor is its function primarily to teach catechism [...] but] rather to provide a Christian atmosphere in which the child may grow" (*The Monitor*, November 1940, p. 11). Furthermore the bishop emphasized the importance of Catholic control: "The loyalty of the Catholic people has made it possible for us to turn our backs on the flesh-pots [the godless schools established by the foreign companies] and retain our own schools under Catholic management" (*The Monitor*, November 1949, p. 9).

⁸⁷ "Here in Newfoundland where we enjoy the blessing of free Catholic schools, there are many parents so insensible of their duty and the welfare of their children that they do not bother to send them to school at all, and in some cases send them to secular schools to their eternal detriment. [...] Parents have a sacred duty towards their children, a duty which they cannot side-step under penalty of eternal damnation. [...] They can fulfil this sacred duty by providing their children with a Catholic education such as is dispensed in our Catholic schools" (*The Monitor*, November 1940, pp. 11-12).

⁸⁸ Bishop O'Neill used the teaching on Pius XI's encyclical of 1929 as well as the teaching of the Second Vatican Council (ACFC: A-3-3, *Address of Bishop J.M. O'Neill: Blessing of new High School at Avondale*, June 4, 1968, 10p.).

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 174

teaching regarding education to the specific situation of Newfoundland and he played a key role during the turbulent changes in the denominational system in the 1960s.⁸⁹ The archbishop emphasized the importance of religion within education,⁹⁰ praised the contributions of the Christian Brothers⁹¹ and the Mercy and Presentation Sisters,⁹² and accentuated the significant role of the Catholic teacher.⁹³

In closing this period, one realizes that the Newfoundland bishops, following the example of papal teaching, focused on the rights of family, State and Church in

⁸⁹ Archbishop Skinner clarified why he accepted the reorganization of the Department: "The approach we have taken is one of co-operation and goodwill in trying to reach an agreement while still preserving the authority of the Church in all matters that concern the Churches or in other words, impinge on denominational rights. This positive approach has appeared to be all the more vital because of the completely changed climate in 1968. [...] It should be added that if we tried to keep the Department of Education exactly as it is, we would meet with strong opposition within the ranks of our own Catholics [...]. Standing firm on the letter of our constitutional rights we might win a legal battle, but lose a war. The results would be far worse in the not distant future" (ADSG: File: Archbishop of St. John's 1968-1969, P. SKINNER, Memorandum to successors, *Concerning the Decision Taken with Regard to Our Education System*, March 12, 1968).

⁹⁰ P.J. SKINNER, *Pastoral Letter to the Clergy, Religious Communities and Laity of the Archdiocese*, April 13, 1952, in *The Monitor*, April 1952, pp. 1, 13.

⁹¹ *Ibid.*

⁹² *The Monitor*, October 1956, pp. 4-5. For a consideration of the operation of Newfoundland schools by the three religious institutes during the twentieth century, see M.P. PENNEY, *A Study of the Contributions of Three Religious Congregations to the Growth of Education in the Province of Newfoundland*, Ph.D. diss., Boston, Boston College, 1980, pp. 67-91.

⁹³ For Archbishop Skinner, the Catholic teacher in Newfoundland was a Catholic leader who participated in the lay apostolate of Catholic Action. He urged teachers to "know their religion", to participate in the Newfoundland Teachers' Association, to be truly Church-minded and to inspire their students to follow the vocation of the Catholic teacher (*The Monitor*, September 1953, pp. 6-7).

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 175

relation to education and constantly struggled to have these rights recognized. Just as the papal and curial statements of the period attempted to focus on what makes a school "Catholic" (see chapter two), the Newfoundland bishops also endeavoured to specify some of the elements required for the catholicity of a school in Newfoundland, namely: Catholic teachers, Catholic school boards with the power of appointing and dismissing teachers, and some Catholic presence in the educational sector at the government level.

4.3 - THE BISHOPS' TEACHING IN THE VATICAN II PERIOD

Just as the 1960s initiated a major renewal throughout the whole Church, so these years brought major changes to the denominational system in Newfoundland. The bishops of Newfoundland utilized the teaching of Vatican II in their attempt to deal with the various educational changes, especially in their second brief to the Royal Commission on Education and Youth in the 1960s. The first brief focused primarily on matters handled at the school board level and did not refer to the denominational system or to the structure of the Department of Education, since the bishops considered these matters outside the terms of reference of the Commission. As a result this brief kept references to specifically Catholic teaching to a minimum.⁹⁴

⁹⁴ Although the three Newfoundland bishops had signed the *Declaration on Christian Education* at Vatican II in October 1965 (*Acta synodalia Sacrosancti Concilii Oecumenici Vaticani II*, [in Civitate Vaticana], Typis Polyglottis Vaticanis, 1978, vol. 4, part 5, pp. 625, 634), this first brief in 1965 only utilized the educational teaching of Pius XI's 1929 encyclical and some of the addresses of Pius XII (see

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 176

In their *Supplementary Brief* of 1966, however, they decided to address the subject of denominational education from the perspective of the Roman Catholic Church.⁹⁵ Using the teaching of the Second Vatican Council, they insisted on the fact that the role of the Government consisted in directing the requirements of the common good (p. 8). They described the function of the lay Catholic teacher as one "commissioned to bring Christ to others in the market place, even the market place of the school" and as "an integral, indispensable part of every Roman Catholic school" (p. 11). Quoting from the *Declaration on Religious Freedom*, the bishops focused on the rights of parents as the primary and principal educators (p. 15), especially in the area of sex education (p. 13). They also recognized the rights of the child to an education that included religious instruction combined with competent teaching (p. 14). The brief recommended "interdenominational cooperation involving the sharing of facilities and/or personnel or some form of joint services" (p. 15), with the stipulation that religious formation not be jeopardized. Concerning the

ROMAN CATHOLIC HIERARCHY OF NEWFOUNDLAND AND LABRADOR, *A Brief Presented to The Royal Commission on Education and Youth [=Brief]*, [1965?], pp. ix-xii, 145-159).

In the section on the training of teachers, the bishops called for the establishment of a Department of Religious Studies at Memorial University and urged that religious education courses carry university credits (*Brief*, pp. 139-140).

⁹⁵ ROMAN CATHOLIC HIERARCHY OF NEWFOUNDLAND AND LABRADOR, *A Supplementary Brief Presented to The Royal Commission on Education and Youth [=Supplementary Brief]*, [1966?], p. 4 (subsequent references to this brief will use only the page number quoted within the text). For a discussion of various elements in the bishops' briefs, see ASSOCIATION OF ROMAN CATHOLIC SCHOOL BOARDS OF NEWFOUNDLAND AND LABRADOR, *First Annual Convention*, March 28-29, 1967, [58p.].

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 177

Department of Education, it called for the elimination of structural weaknesses, but reminded the Commission that in view of the partnership between Church and State in Newfoundland, the Church should be consulted on any changes in the administrative pattern. Finally, the brief jealously guarded the powers and duties of its Board of Examiners in relation to teachers, and recommended the establishment of a Teacher Certification Review Board in order that the duty of organizing the training of teachers be safeguarded.

It seems that this brief had some influence on the *Minority Report* of the three Catholic members of the Commission.⁹⁶ This *Minority Report* mentioned many of the same concerns as those found in the *Supplementary Brief*, e.g., the reference to various rights, the call to eliminate weaknesses within the Department, the fear that tampering with the denominational system would open the door to complete secular education, and the reference to the opinion that the Commission had overstepped its terms of reference.⁹⁷ This report concluded with the warning that "people without full knowledge are quick to attribute our educational defects to the

⁹⁶ Rowe also alludes to a connection between the *Supplementary Brief* and the *Minority Report* (F. ROWE, *Education and Culture in Newfoundland*, Toronto, McGraw-Hill Ryerson Press, 1976, p. 149). On the other hand, J. Murphy, the author of the report, remarked that "the Catholic Hierarchy did not support my report" and that "Joe Smallwood [... told] me to vigorously resist this line of reasoning [to do away with the denominational system] and to uphold the Denominational Rights when making my recommendations" (J. MURPHY, "A Layman's Look at Education", in *NTA English Special Interest Council*, January, 1976, p. 2). Despite these statements, the similarities seem to indicate an influence by the Bishops' *Supplementary Brief*.

⁹⁷ See NEWFOUNDLAND AND LABRADOR, *Report of the Royal Commission on Education and Youth*, Vol. 1, pp. 194-197.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 178

Denominational System, whereas our educational problems stem from our unhappy history, our lack of money and our rugged geography."⁹⁸

During this period the Newfoundland bishops also issued a joint pastoral letter explaining some of the proposed changes. In that letter the bishops taught that Catholic education attempts "to train young people to make Christian choices in every situation of daily life, to realize that the glory of God and their own happiness are inseparable."⁹⁹ They reiterated their view that this objective reaches fruition only in a religious atmosphere, "for what we believe and cherish can become part of the child only if it is in the very air he breathes."¹⁰⁰ The bishops emphasized the fact that religious formation occurs not by memorizing certain data, but through a process of intertwining all the forces that influence a child's thinking and acting, thus giving the child a map of life. Furthermore the Catholic school assists each child "to take a place of honour in the workaday world and a place of glory in the kingdom

⁹⁸ *Ibid.*, p. 197. Compare this conclusion with the statement from the *Supplementary Brief*: "Let us be mindful that the Newfoundland system has not been devised by ivory-towered doctrinaires but has been hammered out on the anvil of experience by men of integrity seeking to provide the conditions necessary for the exercise of freedom. Let us now reason together to see how this system might be made still more effective" (ROMAN CATHOLIC HIERARCHY OF NEWFOUNDLAND AND LABRADOR, *Supplementary Brief*, pp. 8-9).

⁹⁹ *Statement of the Roman Catholic Hierarchy [P. Skinner, J.M. O'Neill, M. O'Reilly, H. L'égare] of Newfoundland and Labrador on Education*, February 27, 1968, p. 3. This statement, intended to be read at the Sunday liturgy, seems to focus on the benefits of Catholic education for the individual child, but does not refer to the fact that the school itself helps to further the development of the Church's mission, as taught by the Second Vatican Council.

¹⁰⁰ *Ibid.*

of Heaven."¹⁰¹

In scanning some of the Newfoundland bishops' teaching during the turbulent years of the 1960s, one can deduce that they attempted to incorporate the Church's teaching on Catholic schools, both on the official level with the government and on the pastoral level with their people. Their emphasis focused on the educational rights of various parties including children, parents, teachers, the government and the Church, as well as on the importance of a specifically religious education.

4.4 - MAJOR CONCERNS OF THE BISHOPS BETWEEN 1970 AND 1991

The reorganization of the denominational system under the 1968-1969 legislation initiated a new era in the formal structuring of Catholic education in Newfoundland. The legislation called for the establishment of a Catholic Education Committee -- organized at the discretion of the Church -- to represent the Catholic Church, with an executive secretary as the official channel of communication between the educational committee and the government. This Committee (the C.E.C.) consisted of the executive secretary (later changed to director), an executive officer, a financial administrator, representatives of the various Catholic school boards and organizations throughout the island, all under the leadership of the bishops. Prior to this, the bishops had maintained an unofficial link with the Catholic superintendent who worked within the Department of Education, and though the superintendent officially represented the Catholic Church, the government did not

¹⁰¹ *Ibid.*, p. 4.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 180

specify a body which would officially represent the Church. However, with the establishment of the C.E.C., the role of the bishops was formally acknowledged in a new organizational structure -- through the C.E.C. constitution -- and, since the archbishop was named the chairman of the Committee, and the three other bishops designated as co-chairmen, the bishops' responsibility in the area of Catholic education received full recognition.

The past twenty years have witnessed an attempt by this Committee (later changed to Council) to develop the understanding underlying numerous aspects of Catholic education in Newfoundland, and after reviewing its *Annual Reports*, one can isolate several general areas. The first and most predominant area concerns issues associated with teachers. During the teachers' collective bargaining discussions in the early 1970s, the Council reiterated the fact that teachers, Catholic and non-Catholic, in a Catholic school must be "committed to the specific aims and objectives of a Catholic school."¹⁰² Accordingly, the C.E.C., which recommends all Roman Catholic teachers for certification, decided to develop a by-law on the duties of teachers so that each board could implement a uniform policy regarding the requirements demanded of any teachers in a Catholic school. The by-law referred to the active participation of the teacher in the school's religious functions, the willingness of the teacher to teach a course in religious education, the impact of the teacher's personal life-style on his or her credibility with youth, the respect and

¹⁰² J.K. Tracey, Executive Secretary of the C.E.C., to all Catholic teachers, *Letter*, November 19, 1976.

sensitivity of a non-Catholic teacher toward Catholic beliefs and practices, and the expectation that the Catholic teacher abide by the laws and regulations of the Catholic Church.¹⁰³ Besides the duties of teachers, the council constantly examined the issue of the Catholic formation of teachers in Catholic schools, especially in light of the closure of St. Bride's College in 1974. Various approaches to Catholic formation were undertaken, including inservice training through summer institutes, several programs of teacher renewal, and envisaging the possibility of a Catholic College at Memorial University, but no approach produced the desired result of the ongoing Catholic formation of teachers.

The second area of concern for the council revolved around the development of religious education and family life programs.¹⁰⁴ Although the C.E.C. generally utilizes the programs developed by the Canadian Bishops, the council focused on developing a program for the high school level since the Canadian Bishops had not yet developed a program for high school. Furthermore, the council attempted without success to obtain funding from the government for a religious education

¹⁰³ "Section F: IX. Recommended R.C. Board By-Law on Duties of Teachers (June, 1977)", in CATHOLIC EDUCATION COUNCIL, *Policies and Procedures Manual*, [St. John's, 1990], pp. 149-151. All policy references are taken from this manual. See APPENDIX 9 for a copy of this by-law.

¹⁰⁴ Archbishop A. Penney emphasized the fact that both the content of the religious education program and the experience of a lived Christian community, i.e., both the information and the formation, "are constitutive of Catholic schools. While the former can be provided without Catholic schools, the latter is what gives our Catholic schools their unique distinctiveness -- schools with a difference" (A. PENNEY, "A Bishop's Expectations of Catholic Schools", Unpublished Paper, November 27, 1985, p. 1).

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 182

consultant who would coordinate and organize that which pertains to catechesis in the schools. Associated with this area of the religious education curriculum was the council's concern over the fact that a small number of parents of pupils registered as Roman Catholics have requested that their children be exempted from religious instruction. After much deliberation, the council introduced a policy requiring Catholic students to participate in the program of religious instruction of a particular school.¹⁰⁵

The third area concerned the increasing number of Catholic students (5,619 in 1990-1991) who, because of a lack of reasonable access or for other reasons, do not attend Catholic schools. Although the Presentation Sisters and the Sisters of Service have provided some correspondence courses for these students and although the responsibility for these children rests with the parents, the parish and the diocese, the council urged that Catholic education for these children be provided by trained catechists who would be given suitable recognition as carrying out the teaching ministry of the Church. In its negotiations concerning interdenominational cooperation, the C.E.C. also attempted to institute a more permanent way of providing assistance to those who do not have access to Catholic schools.¹⁰⁶ While formulating various guidelines on this form of cooperation, the C.E.C. remained committed to the principle that the ideal organizational arrangement for Catholics

¹⁰⁵ See the various policies contained in "Section C. Religious Education/Family Life Education", in C.E.C., *Policies and Procedures Manual*, pp. 71-77b.

¹⁰⁶ The C.E.C. developed various sets of guidelines for this cooperation in 1973, 1982 and 1990.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 183

is the independent denominational school, i.e., a Roman Catholic school, staffed by Roman Catholic teachers, offering quality Catholic education. In fact, the 1990 policy evolved on the principle that cooperation should preserve and respect the identity of each denomination and should not prejudice the ultimate right of each denomination to operate its own schools. Consequently, this policy maintained that each board in the partnership retain formal responsibility for the students of the denomination it represents.¹⁰⁷ Subsequently, the C.E.C. utilized this policy and signed four joint service agreements in 1989-1990 enabling each denominational school board to retain jurisdiction over its students and teachers, e.g., receiving operating grants for students and making decisions regarding teacher employment and tenure. This policy will help Catholic boards to provide a better Catholic education to those Catholic students who attend schools of other denominations because they do not have access to a Catholic school.

Other areas of the council's concern for Catholic education and Catholic schools include the issues of the boundaries of school board districts,¹⁰⁸ the concerns associated with school board elections,¹⁰⁹ the educational rights of

¹⁰⁷ "Section A: X. Policy on Interdenominational Co-operation in Education (May, 1990)", in C.E.C., *Policies and Procedures Manual*, pp. 34-39.

¹⁰⁸ Discussions concerning educational district boundaries took place "within the context of the essential mission of Catholic Education" (*Educational District Boundaries: A Framework for the Future. A Study of Roman Catholic Educational District Boundaries*, February 1988, p. 2).

¹⁰⁹ The issue of electing school board members gradually became more important as the 1984 amendment to the *Schools Act* increased the number of elected members from one third to two thirds. This intensified the issue of electing non-Catholic members to the school board. However, since the C.E.C. decided not

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 184

members of religious institutes,¹¹⁰ and the relationship between the C.E.C. and the Association of Roman Catholic School Boards.

Perhaps the most important work of the C.E.C. during the past twenty years is the attempt to heighten the awareness of the importance of the Catholic school in Newfoundland and to strengthen the partnership among home, school and parish. With goals aimed toward these ends, the C.E.C. sponsored a Catholic Education Congress in St. John's in October of 1980. After the congress, the Council implemented some of its recommendations, including the introduction of Catholic Schools' Week and encouraging the formation of Catholic Parent - Teacher Associations. Furthermore, a day of reflection in November 1983 eventually led to the 1986 report "Sent To Grow" calling for a more effective organization of the C.E.C. in the areas of its mission, structures, curriculum funding, and communications.¹¹¹

One of the most important events during this period was the 1984 visit to Newfoundland by Pope John Paul II, when he spoke of the role of Catholic educators

to permit the election of non-Catholics, school board constitutions provided for the possibility of the bishops appointing non-Catholic members to the boards.

¹¹⁰ As a result of the court case involving seniority rights of the Christian Brothers, the C.E.C. sought an agreement with the NTA concerning corporate contracts of religious in the schools, thus attempting to protect the rights of the members of religious institutes who are teachers in the Catholic schools.

¹¹¹ This report has already resulted in the formulation of the Mission Statement of the C.E.C. (see APPENDIX 6), the formation of a Stewardship Committee, the preparation of a *C.E.C. Policies and Procedures Manual*, the undertaking of a Needs Assessment survey of the attitudes of Newfoundland Catholics toward Catholic Education, and an investigation into the possibility of a Catholic Education Foundation.

and Catholic schools in the attainment of the goal of Catholic education.¹¹² The Holy Father challenged teachers to lead students to Christ by example, to accompany students in their search for truth and justice, to lead students patiently and lovingly in their journey of faith, and to reflect God's presence in the world. Furthermore, he insisted on the fact that Catholic schools must reinforce a sense of community, exemplify an institutional commitment to the Word of God as proclaimed by the Catholic Church, and take into account various rights, e.g., the right of children to an education, the right of parents to choose an education according to their own convictions, the right of all to religious freedom and the responsibility of society to support with public funding the educational services that correspond to the deepest aspirations of its citizens. Finally, while acknowledging the complex challenge of providing educational services in a pluralistic society, Pope John Paul II stressed that the government must not ignore the centrality of God in the believer's outlook on life and noted that a totally secular school system would not be a way of meeting the challenge of education in a pluralistic society. In closing, he repeated the teaching that the Catholic school is a community effort, requiring the cooperation of all and, through the ministry of its Catholic teachers, is a privileged place for the development and communication of a world-view rooted in the meaning of creation and redemption.

¹¹² JOHN PAUL II, Address to Canadian Catholic Educators, September 12, 1984, "Support Asked for Catholic Schools", in *Origins*, 14 (1984-1985), pp. 225-228.

CONCLUSION

After presenting this overview of the teaching of the Newfoundland Bishops on Catholic schools, we can formulate several conclusions. First, in their teaching on Catholic schools and Catholic education, the bishops often made conscious efforts to adapt Church teaching to the peculiar circumstances of the Newfoundland situation. Furthermore, just as Church teaching displayed a gradual development in the understanding of the nature of a Catholic school, so the Newfoundland bishops manifested a gradual development in their own understanding of the meaning of a Catholic school in Newfoundland.

Second, they constantly referred to the schools as "Catholic schools" and these schools exhibited several characteristics, including an education based on Catholic teaching, the opportunity for almost all Catholic students to receive this Catholic education, the important presence of Catholic teachers and the contributions of a large number of members from religious institutes.

Third, throughout the entire period, the bishops reiterated their policy on the importance of some kind of ecclesiastical control, whether through the bishop himself, or the Catholic superintendent, or through the Catholic School Board, or some other body. This element of ecclesiastical supervision seems to be one of the essential elements which the bishops considered intrinsic to the Catholic schools of the island and, in their negotiations with the government, they continuously insisted upon this element of Church control.

Finally, in the consideration of the relationship between the bishops and the

government, one can recognize that this local relationship between Church and State captures some of the aspects of the whole area of public ecclesiastical law.¹¹³ For example, as the teaching of the Bishops evolved, the conception of the Church moved from the apparent triumphalism of the nineteenth century to an awareness that the Church's redeeming presence must permeate every level of society. Moreover, the insistence placed on the role of the Catholic teacher as well as on the organization of the C.E.C. acknowledges the fact that all members of the Church -- and not just the hierarchy -- have an obligation to participate in the mission and apostolate of the Church. Perhaps the clearest testimony of this local relationship between the Church and the State occurred in the ongoing negotiations between the bishops and the government regarding educational legislation. The mention of this educational legislation leads us to the next chapter in which we will consider how the secular law in Newfoundland has recognized the rights of the Catholic Church in relation to

¹¹³ Public ecclesiastical law focuses on the juridical relations between the Church and the State and although this subject as such dates only from the eighteenth century, history provides an abundance of material describing the various power struggles between the Church and the State. The relationship between Church and State depends on one's understanding of "Church" and as a result, the ecclesiology of Vatican II emphasizing the Church not as a "perfect society" but as a "pilgrim People of God" contains numerous ramifications for the study of public ecclesiastical law. Some of these ramifications include: a move away from seeing the Church in a triumphalistic way to an awareness that the Church's redeeming presence must penetrate every level of society; an emphasis on religious freedom based on the rights of the human person; a different working relationship between the hierarchy and the laity; a recognition that the members of the Church -- and not just the hierarchy -- have an obligation to participate in the mission of the Church. For more information, see the various articles in T.JIMÉNEZ URRESTI (ed.), *Structures of the Church's Presence in the World of Today*, in *Concilium*, vol. 6, whole issue no. 8 (October/1970), 160p.; P. HUIZING and K. WALF (eds.), *May Church Ministers be Politicians?*, in *Concilium*, whole issue no. 157 (September/1982), 89p.

NEWFOUNDLAND BISHOPS' TEACHING ON CATHOLIC SCHOOLS 188

education and schools.

CHAPTER FIVE

SECULAR LEGISLATION

GOVERNING CATHOLIC SCHOOLS IN NEWFOUNDLAND

The theme permeating this chapter highlights the manner whereby the secular legislation of Newfoundland has granted certain rights to the Roman Catholic Church with regard to Catholic schools. At the same time, this chapter will demonstrate how the countless Acts of educational legislation reflected the evolution of the various forms¹ of a Catholic school in Newfoundland as well as the diverse levels of Catholic education offered in these schools.²

Attempting this feat is comparable to embarking on a journey over an extensive range of mountains, a range that includes certain important peaks. The mountainous area closer at hand has numerous charts which give full details of the best way to climb some of the peaks. However, the peaks that loom in the distance, often shrouded with mist, seem to meld indistinguishably into one another. One's perception of these distant peaks becomes clearer when walking through the valleys

¹ For example, schools operated by the B.I.S., schools operated by religious institutes under the supervision of the bishops, schools operated by Roman Catholic school boards, academies or colleges operated by special boards.

² For example, elementary education, superior or high school education, secondary education.

between the peaks, discovering the unexpected height of a particular peak. The lack of charts for the distant peaks makes the pace painfully and inescapably slow and often leads to the need to regress to more familiar ground.

This image captures part of the underlying thrust of the present chapter. While the courts have judicially considered some of the recent educational legislation since 1949, the resulting case law "charts" various judicial principles, thus contributing to the proper interpretation of the statutes involved. On the other hand, the legislation enacted between 1836 and 1949 suffers from a lack of case law which could have assisted in the proper interpretation of the particular statutes. Furthermore, the ambiguous mist which often surrounds past events viewed from the present, frequently shrouds this "distant" legislation. One can dispel or at least penetrate this mist only by considering some of the events³ which contributed to the enactment of any given *Education Act*.

The investigation contained in this chapter utilizes two underlying methods of procedure. First, the interpretation of the various statutes follows the rules succinctly summarized by E. Driedger:

[T]he words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.⁴

The second procedural method concerns a particular understanding of "rights". The

³ The historical context provided in the first chapter will help the reader to appreciate some of these events.

⁴ E.A. DRIEDGER, *The Construction of Statutes*, Toronto, Butterworths, 1974, p. 67.

word "right" can have at least three meanings, i.e., objective right, normative right and subjective right.⁵ This chapter will focus primarily on normative rights, i.e., those powers, privileges, faculties or demands granted through legislation to a specific group (or groups) of persons.⁶ Consequently, we intend to go somewhat beyond the strict legal meaning of "rights", i.e., those subject to a legal sanction for their infringement.⁷ At the same time, though, we do not intend to linger on a consideration of vested rights, acquired rights, rights arising from practice or custom, or rights in equity. Moreover, the chapter refrains from fully elaborating on the consequences of some of these rights.⁸

To facilitate our study, we shall review the applicable legislation by periods, complementing it where appropriate by pertinent court decisions.

⁵ An objective right refers to the object of the virtue of justice (what is just); a normative right refers to the object of the virtue of justice that arises through a particular norm or law; a subjective right refers to the inviolable power or faculty of each human being to possess or own something or claim something as one's own (J. PROVOST, "Title I: The Obligations and Rights of all the Christian Faithful (cc. 208-223)", in J. CORIDEN, T. GREEN, and D. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, New York, Paulist Press, 1985, p. 137).

⁶ H.C. BLACK, *Black's Law Dictionary*, 6th ed. by Publisher's editorial staff, St. Paul, West Publishing Company, 1990, pp. 1323-1325.

⁷ Rights secured by law "must have been capable of being clearly and legally defined, and there must have existed legal means for their enforcement, or legal remedies for their infringement, for it is a clear maxim of law, that *ubi jus, ibi remedium*" (*Ex parte Renaud et al.* (1873), 14 N.B.R. 273, at p. 292 (N.B.S.C.)). See also *Rex v. Ulmer*, [1923] 1 W.W.R. 1, at p. 21 (Alta.S.C.). The list of abbreviations at the beginning of this dissertation explains all the abbreviations used in the references to the case law material.

⁸ For example, when the government grants the bishops the right to receive funds for convent schools, does this same provision also recognize the right of bishops to entrust some schools to religious institutes?

5.1 - 1836-1843: THE BEGINNING OF CATHOLIC EDUCATION

To appreciate fully the period of the first educational legislation, we must recall briefly the impact of the penal laws of England and Ireland on Newfoundland. These anti-Roman Catholic penal laws, enacted in the sixteenth and seventeenth centuries and eventually extended to Newfoundland, remained in effect until the late eighteenth century. While these penal laws restricted Catholics in their social and religious activities, including the operation of schools⁹ and in the practice of their religion, the Church still operated in "underground" circumstances especially through the activities of itinerant priests and "hedgerow" schoolmasters. Although full religious liberty became a matter of public record and policy under Governor John Campbell in 1784, the full effects of Catholic emancipation did not occur in Newfoundland until after 1829.

Newfoundland received its first Representative Government in 1832, and although requests for financial assistance for education were received almost immediately,¹⁰ the government did not enact legislation on education until 1836,

⁹ "The penalty for keeping a Catholic school had been as high as imprisonment for life" (A.C.F. BEALES, *Education Under Penalty: English Catholic Education from the Reformation to the Fall of James II, 1547-1689*, London, Athlone Press, 1963, p. ix). For a consideration of the influence of these penal laws on Newfoundland, see F. MORRISSEY, "The Juridical Situation of the Catholic Church in the Canadian Maritime Provinces from 1713 to 1840", in *Studia canonica*, 2 (1968), pp. 216-222.

¹⁰ The B.I.S. had requested money from government in 1832 (R.J. LAHEY, "Religion and Politics in Newfoundland: The Antecedents of the General Election of 1832", Unpublished Lecture, St. John's, Newfoundland Historical Society, March 15, 1979, p. 10). Furthermore, the "Blue Book" of statistics for 1835 refers to a request by Dr. Fleming for assistance for the Presentation Convent School (PRO,

when a report of the Select Committee on Education suggested that the government financially assist those groups and individuals who had already maintained charity supported schools and that, in the nine electoral districts, the legislature appoint school boards to establish other elementary or primary schools.¹¹ The legislature substantially incorporated this report in its first *Education Act* of May 1836,¹² supporting the voluntary system and providing for the establishment of other schools. In offering financial support for several specifically mentioned church-related schools (s. 1), the legislature recognized three schools which were explicitly or at least *de facto* Catholic schools, i.e., the Presentation Convent School established by Bishop Fleming, the *de facto* Catholic Orphan Asylum School (O.A.S.) established by the Benevolent Irish Society, and St. Patrick's Free School of Harbour Grace.¹³

CO: 199/32).

¹¹ *Report of the Select Committee on Elementary Schools*, in *Journal of the House of Assembly*, 1836, pp. 66-69.

¹² In order to streamline the extensive references to the educational legislation, we have adopted an abbreviated method of citing these statutes. Since the legislature generally enacted only one Act of educational legislation in a given year, we shall refer to the "educational legislation of a particular year". In those years where more than one educational Act was enacted, we shall also include the number (No.) or the chapter (c.) of the specific Act; the bibliography contains the complete reference. Moreover, references to a specific section of an Act will be given within the text. Throughout this entire work, we have generally used the recommendations of C.-S. TANG, *Guide to Legal Citation and Sources of Citation Aid: A Canadian Perspective*, 2nd ed., Don Mills, Richard De Boo Publishers, 1988, xxiv-369p.

¹³ The Roman Catholic pastor of Harbour Grace, Thomas Ewer, established a school in 1814 and supported it for twelve years out of his own pocket. In 1826, he put this school on a more permanent footing as St. Patrick's Free School (R.J. LAHEY, art. "Ewer (Yore), Thomas Anthony", in *Dictionary of Canadian Biography*, 6 (1821-1835), Toronto, University of Toronto Press, 1987, p. 244). This school operated under church supervision and imparted Roman Catholic religious

Consequently, the legislature gave Catholics a right to financial assistance for these three schools, a right repeatedly maintained in subsequent legislation until the 1949 Act (No. 91).¹⁴

The legislation also set aside grants which would encourage the newly-formed school boards to establish and support other elementary schools throughout the island (s. 1). Whether these subsequent schools were undenominational¹⁵ or interdenominational,¹⁶ the legislation made no provision for the inclusion of specific religious teachings in the curricula and neither Catholics nor other denominations had any recognized right to turn these schools into denominational ones.

Yet, in spite of these provisions, the legislation did confer a special right on the Catholic Church as one of the existing denominations at the time: the appointed

instruction (R.J. LAHEY, "Memorandum Regarding the Educational Legislation in Effect in Newfoundland as of March 31, 1949, as it Concerns Rights and Privileges with Regard to Roman Catholic Denominational Schools" [= "Memorandum"], in *Policy Grievance - Newfoundland Teachers' Association vs. Roman Catholic School Board Exploits-White Bay, List of Exhibits*, 1981, p. 69).

¹⁴ When the Irish Christian Brothers began teaching in the Orphan Asylum School in January 1876, the school's enrolment increased and by 1880, the B.I.S. had built a new school called St. Patrick's Hall. Thus, the 1887 legislation provided financial assistance not to the O.A.S. but to the new St. Patrick's Hall. Similarly, the 1892 legislation allocated funds, not for St. Patrick's Free School in Harbour Grace but for its successor school, the Roman Catholic Academy. Specific statutory assistance to the Harbour Grace Academy was discontinued by s. 11 of the 1946 Act (No. 19), while specific assistance for some Presentation convent schools and for the St. Patrick's Hall School was discontinued by s. 4 of the 1949 Act (No. 91).

¹⁵ F. ROWE, *The Development of Education in Newfoundland*, Toronto, Ryerson Press, 1964, p. 80.

¹⁶ P. McCANN, "The Origins of Denominational Education in Newfoundland: 'No Popery' and the Education Acts, 1834-1843", Unpublished Paper, St. John's, p. 5.

school boards had to include "the senior or superior Clergyman of each of the Religious Denominations, being actually resident within the District" (s. 2). One could debate whether this section really intended to grant a right to the religious denominations, conceding at least some share of the management of the schools to church leaders, or whether the legislation merely recognized the fact that the clergymen of the island were among the few educated people in the various districts.¹⁷ Whatever the reason, the legislation recognized the possibility, and eight of the eighteen Catholic clergy were selected. However, the governor did not include Bishop Fleming as one of his appointees and when pressed for an explanation, his secretary responded that the Roman Catholic bishop must be considered a general superintendent over the Church and not a senior clergyman of a particular district.¹⁸ The acknowledged position of the bishop in relationship to the Church gradually developed, so that some years later the members of the House of Assembly admitted that "in this colony the education of the Catholic children is under the control of the Catholic Bishop and clergy"¹⁹ and

the Roman Catholic Bishop is by necessity of his office, the head of the Catholic Board. The provision of the Assembly [placing the Catholic Bishop at the head of the Central Catholic Board] therefore creates no new fact -- it simply affirms a pre-existent one -- recognized

¹⁷ C. Sissons sees this provision of s. 2 as an acknowledgement of the religious role of the clergy as the leader of souls with a responsibility for the training of the young (C.B. SISSONS, *Church and State in Canadian Education*, Toronto, Ryerson Press, 1959, pp. 394-395).

¹⁸ *The Newfoundland Patriot*, July 9, 1836.

¹⁹ Proceedings of the House of Assembly, in *The Newfoundlander*, February 13, 1851.

by precedents, and which it would have been sheer absurdity to refuse to see.²⁰

Since the boards had the power to issue by-laws for the establishment and management of schools and to distribute the government grants (s. 2), some boards issued by-laws similar to those of the Irish National System, selecting only nondenominational school books and allowing ministers of religion to withdraw pupils of their own denominations for religious instruction. However, the predominantly Protestant school boards of Conception Bay,²¹ Trinity Bay and Bonavista Bay became involved in heated disputes about the use of the Authorized Version of the Bible as the reading book for religious instruction.²² In the ensuing struggles, both Catholic and Protestant school board members resigned for various reasons; parents kept their children from school; the Protestants began to call for a sub-division of the education grant; Governor D. Prescott, who favoured the nondenominational system as it was, withheld some of the educational grants.²³

²⁰ Proceedings of the House of Assembly, in *The Newfoundlander*, May 29, 1851.

²¹ For the day-to-day developments in the Conception Bay District, see the *Minute Book* and the *Correspondence Book* of the Board of Education, Harbour Grace, 1836-1852, PANL: GN 21/6. For a copy of the "By-Laws, Rules and Regulations" of this Board under the 1836 and the 1843 Acts, see the *Minute Book*, pp. 29-31 and 108-110, respectively.

²² Protestant and Catholic approaches to the Bible became a persistent theme in distinguishing between Catholic and Protestant views of education (see *The Newfoundland Patriot*, August 13, 1836; September 10, 1836; October 26, 1836; *The Newfoundlander*, February 23, 1843; March 23, 1843; March 20, 1851).

²³ For the details of these developments, see P. McCANN, "The Origins of Denominational Education in Newfoundland: 'No Popery' and the Education Acts, 1834-1843", pp. 6-27.

By July 1837, the situation reached an impasse and a new *Education Act*, in 1838, introduced two new rights. The legislation gave all ministers of religion the right to visit schools, provided that they did not impart any religious instruction in the school or interfere in the management of the school (s. 2). Secondly, the legislation authorized the school boards to select books for their schools, on the condition that boards not select any book with a tendency to teach or inculcate the doctrines or peculiar tenets of any particular group or church (s. 3). To contribute to this selection, the legislation provided funds for the purchase of specific books used in the Irish National Schools (s. 4).

Opposition soon arose as some boards established regulations allowing the use of the Authorized Version of the Bible.²⁴ The resulting factions, accusations and exaggerated newspaper reports manifested that the Protestant opposition to the Act was led by militant evangelical forces, in a mounting campaign of anti-Catholicism under the slogan "No Bible - No Schools".²⁵ As a result, the educational system began to break down.

Faced with the unmistakable determination of both the Protestants and the Catholics not to compromise on the Bible issue, the government passed another *Education Act* in 1843 whereby Catholic and Protestant Boards were set up in each

²⁴ These regulations resulted because of a decision by the attorney general, James Simms, who declared that the Authorized Version of the Bible was not sectarian.

²⁵ See P. McCANN, "The Origins of Denominational Education in Newfoundland: 'No Popery' and the Education Acts, 1834-1843", pp. 10-18.

district and the education grant divided according to the numbers of Catholics and Protestants. In effect this Act established the principle of denominational elementary education, one which pertained primarily to Catholics since specific Protestant denominations did not benefit fully from it until the 1874 legislation. Essentially, the 1843 Act contains three rights specifically associated with Catholics.²⁶ First, it provided for the division of the educational grant between the Catholics and the Protestants, the Catholic portion given "in the support of Schools appropriated to the Instruction of the Children of Members of the Roman Catholic Church" (s. 1). Since the law did not qualify this "instruction", one could assume that this provision permitted religious instruction. Thus, the legislature acknowledged the principle of providing financial assistance for the education of Catholics according to the doctrines of their own faith, a principle that underlies every *Education Act* to the present day.

Secondly, the government could nominate and appoint seven persons of the Roman Catholic Church, including the senior clergyman of the district, to form a Roman Catholic board in each of the seventeen educational districts (s. 5). Although this section does not legally give Catholics the right to nominate their own members, it does recognize the importance of having Catholics as members of the Catholic school board.

Thirdly, the school board had full authority to make certain by-laws, rules and

²⁶ Although this chapter focuses on the rights of Catholics, many of the remarks could be applied, *mutatis mutandis*, to the Protestants as a group up until 1874, and afterwards applied to the various "recognized denominations".

regulations (s. 7), but these needed the sanction of the government, thus indicating the intention of the legislature that the denominational boards operate, not on their own, but within the entire system.

Before we proceed, we must comment on why the system of 1836 developed into the Catholic/Protestant system of 1843. Some people contend that the system evolved because Catholics demanded this change,²⁷ while others hold that "the Catholics were forced into an all-or-nothing situation."²⁸ It seems that a more nuanced position must give further consideration to the role of Catholics, namely, that the failure of the 1836 nondenominational system occurred partly because the rights of Catholics to instruct their children according to the Catholic faith and to participate in the management of their own schools had not been recognized, either in the two Acts of legislation or in their practical implementation.²⁹

²⁷ V. BURKE, *The History of Catholic Education: Newfoundland, the Oldest British Colony*, LL.D. (Education) diss., Ottawa, University of Ottawa, 1914, p. 43; M.T. BRUCE, *The First Forty Years of Educational Legislation in Newfoundland*, M.A. (Education) thesis, Ottawa, University of Ottawa, 1956, p. 68; AASJ: 106/13/8, M.F. HOWLEY, "Ecclesiastical History of Newfoundland. Volume Two", p. 56.

²⁸ P. McCANN, "The Origins of Denominational Education in Newfoundland: The 1843 and 1874 Education Acts", Unpublished Paper, St. John's, p. 9.

²⁹ This position on the Catholic contribution to the change from the 1836 legislation to the 1843 legislation emerges as a result of evidence from a number of sources: 1) the significance of the teaching on Catholic education; 2) parents wanted Catholic education for their children, thus they kept them from school; 3) the debate regarding the Bible revealed a pro-Catholic as well as an anti-Protestant response; 4) Newfoundland Catholics, influenced by Daniel O'Connell, were becoming aware of their rights; 5) debate on the *Two Colleges Bill* emphasized that Catholics and Protestants could not be educated together and yet no true education occurred without religion; 6) people had no confidence in a system that demanded an abandonment of their religious principles. Interestingly, many of these same considerations influenced the struggle for the statutory provisions for Catholic

Thus, by the end of this period, the legislation had granted to Catholics, in a seminal way, the right to a Catholic education in a school for Catholics as well as the right to manage their own schools through Catholic school boards.

5.2 - 1844-1887: FURTHER DEVELOPMENT OF CATHOLIC EDUCATION

The period from 1844-1887 saw legislation enacted for several new rights associated with Catholic schools. The tradition of the Catholic Academy highlights the first area in which the secular legislation recognized the rights of Catholics. Although the legislature discussed a proposal for two colleges (Catholic and Protestant) in 1843, the legislature did not pass the Bill, because of the opposition of both the Methodists and Bishop Fleming.³⁰ Consequently, the 1844 legislation established a non-denominational academy which gave no specific rights to Catholics; indeed, the law even prohibited religious instruction and forbade ministers of religion from forming part of the staff of the institution (s. 4). In the 1850 Act, the legislature divided this academy³¹ into three branches, i.e., Roman Catholic, Church of England and General Protestant, which by 1851, became the foundation of three denominational academies. The Catholic Academy, which gradually became St.

Separate Schools in Upper Canada (F. WALKER, *Catholic Education and Politics in Upper Canada*, Toronto, Catholic Education Foundation, 1955, vol. 1).

³⁰ Bishop Fleming opposed this proposal primarily because the Bill did not give sufficient recognition to the supervisory role of the Roman Catholic Bishop.

³¹ The 1850 reports of C. Newman and J. Nugent summarize some of the reasons for the failure of this Academy (*Journal of the House of Assembly*, 1850, Appendix, pp. 133-140).

Bonaventure's,³² had its own board with the power to appoint a Roman Catholic master. The funds granted for the salaries of the masters of the three establishments were proportionate to the numerical strength of the three denominational groups. By 1858 this principle of dividing the educational grant according to denominational strength became firmly established for the academy grant³³ and by 1874 the principle applied as well to all educational grants allocated to the various denominations.

The legislation of 1851 introduced a Central Board of Education for both Protestants and Roman Catholics; the Central Board for Roman Catholics consisted of five Roman Catholics including the Roman Catholic Bishop "for the time being" (s. 3).³⁴ Originally, the government wanted these central boards to bring efficiency, unity and good order into the entire system, but during the discussion on the Bill, the members decided to limit the power of the central board to the apportionment of government funds to the various boards.³⁵ Subsequently, new legislation in 1852 widened this authority to include several powers: to make such by-laws, rules and regulations for the management and good government of all schools under their

³² Bishop Mullock spoke of using funds allocated for the academy "to commence the erection of a College" (AASJ: 104/1/29, J.T. MULLOCK, *Pastoral Letter*, February 22, 1857).

³³ *The Newfoundlander*, May 6 and 10, 1858.

³⁴ The appointment of the Roman Catholic Bishop as an *ex officio* member initiated an intense debate in the House of Assembly and in the Legislative Council (see *The Newfoundlander*, February 13, 1851; May 29, 1851).

³⁵ *The Newfoundlander*, May 29, 1851.

respective control; to determine where schools should be built; to appoint teachers and remove them for sufficient cause; and to determine the salary for teachers, the allotment for schools and the amount of fees charged to pupils (s. 4). Moreover, this 1852 legislation also gave the Central Board the authority to require inhabitants to contribute toward the erection or repair of a school and toward the maintenance of the schoolmaster; this authority involved the right to exclude a particular settlement from receiving public monies (s. 11). This authority, transferred to the individual school boards in the 1853 legislation, essentially initiated the principle of obliging Catholics to support the education of their children.³⁶

The legislation of 1853 abolished the Central Boards and returned to the system of local boards.³⁷ Four elements of this legislation require further comment. First, this legislation attempted to implement a uniform course of instruction in the schools (s. 17). Second, the 1853 legislation included a provision (s. 21) making it unlawful

for the teachers in any of the Schools appointed under this Act, to impart to any child or children attending the same, any religious instruction which may be objected to by the parents or guardians of such child or children.

This provision respected the religious freedom of parents and guardians of children and all successive *Education Acts* up to the present day have incorporated this

³⁶ For a summary of how this principle was implemented in Newfoundland, see F. ROWE, *The Development of Education in Newfoundland*, pp. 148-154.

³⁷ Part of the reason for this change hinged on the opposition from the outports (M. BRUCE, *The First Forty Years of Educational Legislation in Newfoundland*, p. 52).

provision with minor changes. The third comment concerns the fact that newly established Presentation convent schools received funds from the government. This practice of setting aside certain funds for convent schools continued the original 1836 intention of the government to support Catholic schools which were established and operated directly by the Church under the supervision of the bishop; this practice generally continued until the legislation of 1946 (No. 19).

The fourth element of the 1853 Act which requires comment concerns the meaning of the provision which permitted Catholic boards to appropriate surplus funds to support or establish "any Roman Catholic Schools" (s. 6). Were these schools merely government schools for Roman Catholics or were they truly Catholic schools? Although the government did provide some funds for the support of these board schools and had some control through the sanctioning of board regulations, these schools truly operated under the supervision of Roman Catholic school boards, which had "full power and authority" to operate the schools for the instruction of Roman Catholic children. Thus, at this stage of the legislation, the expression "Roman Catholic school" essentially referred not just to a school under the supervision of the Catholic bishop, e.g, the B.I.S. schools and the convent schools, but also to those under the control of a Roman Catholic school board.³⁸

³⁸ The attorney general, E. Archibald, in his commentary on the 1843 legislation made no distinction between the Catholic schools operated by the Church, e.g., Presentation convent school, and Catholic schools operated by the school boards (E.M. ARCHIBALD, *Digest of the Laws of Newfoundland Comprehending the Judicature Act and Royal Charter and the Various Acts of the Local Legislature in Amendment of the Same*, St. John's, Henry Winton, 1847, pp. 176-177).

The legislation of 1858 introduced three innovations concerning the Catholic Church. First, since the Diocese of Harbour Grace had been established in 1856, the 1858 *Education Act* referred to funds distributed to the Bishop of Harbour Grace for the convent schools in his diocese (s. 5). In addition, only one board was appointed for the districts of Harbour Grace, Carbonear, Bay de Verde and Trinity South and West and the bishop was named its chairman (s. 9). One could conclude from this provision, in light of the debates in the House of Assembly,³⁹ that the legislation gave implicit recognition to the bishop's role in the education of his people. However, as the system evolved, the legislature gradually withdrew this specific recognition.⁴⁰

Secondly, the Act made funds available for the training of teachers for Protestant schools and for Catholic schools. The Catholic board in each district

³⁹ While discussing the grants for the academies, the member for Harbour Grace, J. Prendergast, bemoaned the fact that the Bishop of Harbour Grace "had no control over or direction in the education of the youth" who attended the nondenominational grammar schools of Carbonear and Harbour Grace, while in St. John's the Bishop rightfully presided over an institution which provided for the higher education of his flock (*The Newfoundlander*, May 10, 1858). Thus, this legislation of 1858 seemed to acknowledge the bishop's authority by appointing him the chairman of a board which included several districts. As an aside, Prendergast's request for public money for an academy in Harbour Grace was not answered until the *Education Act* of 1892, the year when the grants for St. Patrick's Free School were discontinued.

⁴⁰ The 1903 legislation no longer mentioned the bishop as the chairman (s. 26) of this board, while the 1916 legislation made no reference at all to special provisions for one board for Harbour Grace and surrounding communities. Meanwhile, with the establishment of the Harbour Grace Academy, the 1892 legislation provided for a special board for this academy and the bishop was appointed as the *ex officio* chairman; however, the 1893 Act did not refer to a special board for the academy.

could select candidates according to regulations adopted by them and approved by the Governor in Council; the Act further mentioned that the Roman Catholic Academy in St. John's could serve as the place of training, boarding and lodging. Moreover, while the 1858 legislation granted the Roman Catholic Academy the right to be the training centre for Catholic teachers,⁴¹ later legislation gradually conferred this right on other schools.⁴² Although these provisions of 1858 were rather rudimentary, they clearly gave the Catholic Boards the right to make decisions regarding the selection and training of the teachers who would teach in Catholic schools.

The third innovation of this Act concerns the appointment of two inspectors: a Catholic and a Protestant. Although the legislation of 1843 had provided for the office of inspector, namely a Catholic one in 1844 and a Protestant one in 1845,⁴³ the 1846 legislation had discontinued the practice. The 1858 legislation gave

⁴¹ Although the convents had no statutory right to provide training for teachers, Bishop Mullock reported that the "Nuns train, free of expense, any number of female teachers who may present themselves" (Response to the 1864 Circular, in *Journal of the House of Assembly*, 1865, Appendix, p. 611).

⁴² For example, the Presentation convent in St. John's East (s. 57 of 1892); St. Bride's Academy (s. 52 of 1895); the Roman Catholic colleges and the training schools of the Christian Brothers of Ireland, the Sisters of Mercy and the Presentation Sisters (s. 5 of 1944 (No. 32)).

⁴³ Each inspector confined his inspection to schools of his own denomination, except where the other denomination desired a visit by the inspector (F. ROWE, *The Development of Education in Newfoundland*, p. 138).

Catholics the right to appoint an inspector who would inspect⁴⁴ their board schools and report to the Governor (s. 27).⁴⁵ Despite the fact that the Catholic inspector was a Catholic and generally inspected only Catholic schools, his reports did not consist of specifically Catholic concerns. However, M. Fenelon did comment on the religious instruction offered in the board schools,⁴⁶ while R.K. Kennedy attested to the specifically Catholic training of teachers.⁴⁷

Although the pivotal legislation of 1874 established the denominational system as such, this legislation added little to the legal position of Catholic schools. Nevertheless, the legislation provided funding for specifically "Catholic Commercial Schools" (s. 2) and for the training of Roman Catholic teachers (s. 3). Furthermore, the 1874 legislation mentioned the possibility of boards providing for "superior education", with the proviso that the establishment of a higher grade would not interfere with the elementary system of education in a particular school (s. 18).

⁴⁴ Although this Act did not specify his duties beyond that of "inspecting", the 1876 Act (s. 56) fully outlined the duties of the superintendents, who were the successors of these early inspectors.

⁴⁵ The annual reports of the Catholic inspector mention that the convent schools do not come within the scope of his inspection (*Report upon the Inspection of Catholic Schools, 1859*, in *Journal of the Legislative Council, 1860*, Appendix, p. 416). However, since these convent schools did receive money from the government, the bishops submitted their own reports to the Governor.

⁴⁶ "In no part of school business was there less fault to be found than with the knowledge possessed by the pupils of the ordinary prayers, of catechism and Christian Doctrine. It affords me much pleasure to be able to state that there were few exceptions indeed to this evidence of careful training in Christian knowledge" (*Report of the Public Schools of Newfoundland, Under Roman Catholic Boards, 1879*, p. 13).

⁴⁷ *Annual Report of the Department of Education, 1922-1923*, p. 75; *Annual Report of the Department of Education, 1928-1929*, pp. 62-63.

Through this arrangement, the right to a higher education gradually extended beyond the exclusive domain of the grammar schools and academies and Catholics could more readily avail themselves of the opportunity of obtaining a higher Catholic education for their children.

The *Education Act* of 1876 extensively applied the denominational principle of 1874 to various aspects of the educational system and at the same time introduced some important changes which have had an influential and enduring effect on the Catholic view of the denominational system. The two most important innovations included the appointment of superintendents and the establishment of boards of examiners. The Catholic superintendent supervised, inspected and directed all Catholic schools receiving aid from the government (ss. 60-61) and also served *ex officio* on the Catholic Board of Examiners for the training and examination of teachers (ss. 43-48). The law also gave boards of education the right to dismiss summarily any employed teacher guilty of immorality (s. 49). Accordingly, these sections recognized, in a rudimentary way, the right of the Catholic Church to make decisions about teachers in Catholic schools.⁴⁸

⁴⁸ According to the principle of analogy, two recent court decisions indicate possible interpretations of this 1876 legislation. In 1979, Mr. Justice N. Noel narrowly construed the power of a school board to dismiss teachers under the *Education Act* as a law of general application and not as a right pertaining to denominational schools (*Stack v. Roman Catholic School Board for St. John's* (1980), 23 Nfld. & P.E.I.R. 221, at p. 227 (Nfld.S.C.)). In 1988, Mr. Justice W. Marshall gave a broad interpretation to this power of the school board and thus considered it a right of a denominational school (*Walsh and Newfoundland Teachers' Association v. Newfoundland (Treasury Board) and Federation of School Boards of Newfoundland* (1988), 71 Nfld. & P.E.I.R. 21, at p. 26 (Nfld.C.A.)).

Besides these major changes, the 1876 legislation also introduced several other elements that touch on rights granted to the Catholic Church. Section one indicates that the government provided funds "to be apportioned among the several Religious Denominations, according to population, to be expended by the several Boards of Education". Accordingly, the legislation no longer allotted money in support of schools (1843), but to the denominations; the law presumed that the schools were "owned and operated by the various churches."⁴⁹ Furthermore, if the various funds, i.e., the grants for destitute communities, for commercial schools, for school supplies, for teacher training, for the academies, had not been paid, then the particular denominational boards had a right to have recourse for the unpaid amount (s. 12). This recourse indicates a further entrenchment of the right to the various grants. Moreover, the legislation granted the corporate board for the Catholic Academy the authority to manage the affairs of the academy, including the appointment of masters and the choice of curriculum. Finally, the Act also attempted to protect the rights of Catholic teachers.⁵⁰

The 1879 legislation contained the first reference to "public schools" and defined them as all the schools (except academies and grammar schools) referred to

⁴⁹ "Testimony of R. Lahey", in *Transcript of Evidence*, p. 59.

⁵⁰ The Act listed the duties of teachers; correlatively these duties also involved specific rights. As these duties multiplied in subsequent legislation, teachers began to organize themselves into a protective organization, thus leading to the establishment of the Newfoundland Teachers Association in November, 1890 (see H. CUFF, *A History of the Newfoundland Teachers Association 1890-1930*, St. John's, Creative Publishers, 1985, pp. 1-27).

in the 1876 *Education Act*.⁵¹ As this definition received further clarification in the legislation of 1895 and 1916, public schools came to mean those which received money from a school board. Thus, one can conclude that public schools, as such, included convent and other Catholic schools between 1879 and 1916 -- and again after 1946 (No. 19).⁵² More significantly, we can assert that the term as such did not deny the specifically Catholic character of any of the schools.

The 1887 *Education Act* consolidated many of the previous provisions and was passed only after a thorough discussion of various aspects of the denominational system.⁵³ This pivotal legislation closes this period from 1844 to 1887, and in reviewing this interval, we note that Catholics had received further privileges associated with Catholic education at the academy and "high school" levels as well as a certain authority over the selection and training of teachers. Moreover, the various Acts of the legislature had protected the religious freedom of Catholic parents and had begun to make provisions for the central administration of the system, especially through a Catholic superintendent and a Catholic Board of Examiners.

⁵¹ Besides referring to public schools, the Act also mentions "Catholic Schools" by referring to the "Superintendent of Roman Catholic Schools" (s. 6).

⁵² Between 1916 and 1946 funds for these specific Catholic schools were allocated to the bishops, rather than to the school boards.

⁵³ *The Evening Mercury*, April 16, 1887. See also the issues of March 29, 30, 31, April 1, 2, 12, 13, 18, 1887.

5.3 - 1887-1927: PERIOD OF CONSOLIDATION

Although the changes introduced by the legislation during the period from 1887 to 1927 had significant consequences on the entire denominational system, the educational rights granted to the Catholic Church by previous legislation continued with only minor variations. While the provisions of the 1892 Act represented logical consequences of the Church's involvement in various aspects of the denominational system,⁵⁴ three important developments during this period had some influence on the rights of Catholics. These developments included the creation of the Council of Higher Education in 1893, the provision for amalgamated schools in 1903 and the creation of the Department of Education in 1920.

The Council of Higher Education arose out of a growing awareness in the 1890s of the need for improvements in education. The 1891 legislation had appointed a Board of Commissioners with far-reaching powers and in appointing the three Catholic members to this Board, the Act required the prior written approval of the bishops, thus ensuring that the specific members actually represented the denomination. This principle of acknowledging the approval of the bishops gradually

⁵⁴ For example, the appointment of the Bishop of Harbour Grace as the chairman of the Board for the Harbour Grace Academy (s. 33); considerations of teacher dismissal (ss. 51, 60); the requirement of a character reference from the person's clergy prior to being admitted as a pupil teacher (Schedule C). The Act also designated the "denominational academies" of previous legislation as "colleges" (s. 75), a term used, not in the American sense, but with the English connotation of grade-school instruction, for most of the colleges only offered high school education (W.D. EASTMAN, *The Roles and Functions of the Denominational Colleges of Newfoundland, Canada, with Special Emphasis on Physical Education: A Historical Analysis*, Ph.D. (Education) diss., Boston, Boston University, 1986, p. 8).

developed and found application in the bishops' right to nominate persons for appointment to the boards of the colleges.

Eventually, the 1893 legislation instituted the Council of Higher Education with the superintendents and headmasters of the colleges as *ex officio* members. This Council attempted to introduce into the education system some measure of uniformity of curriculum and examinations and, as a result, succeeded in encouraging the spread of high school education throughout the island. The Council was subsequently replaced by the Advisory Committee on Public Examinations (1949 Act, No. 85), a committee that consisted of representatives of the various denominations. Ultimately, the provision for Catholic membership on both these bodies ensured Catholics the right to be involved in the choice of curriculum and evaluation of Catholic students.

The 1903 legislation initiated a second development during this period, by providing for the "establishment of amalgamated schools in sparsely populated settlements where the number of children" did not warrant the establishment of separate schools, on the condition that the boards and superintendents concerned gave consent and that the denomination having the majority of the population of that settlement would have the management of the board (s. 104). These schools also made specific arrangements for the teaching of religious instruction.⁵⁵ Thus, when

⁵⁵ F. ROWE, *The Development of Education*, p. 92.

Catholics took advantage of this option,⁵⁶ they chose not to use their right to a Catholic school, but arranged for the religious education of their Catholic children through supplementary instruction.⁵⁷

The third important development of this period occurred as the 1920 Act introduced several structural changes, including the creation of a Department of Education with a Minister and Deputy Minister, the authority for the establishment of a Normal School, the appointment of several denominational supervising inspectors, and the creation of a Departmental Advisory Board with denominational representation.⁵⁸ The creation of the Department of Education raised some initial concerns about the rights of Catholics to operate their own schools, while the

⁵⁶ The first amalgamated school, erected in 1905 in Grand Falls, accommodated all denominations including Catholics (C. ROBBINS, "The Amalgamated Schools of Newfoundland," in *The Newfoundland Quarterly*, 70 (1/1973-1974), p. 30), but the Catholics eventually withdrew and established their own school.

⁵⁷ This provision for amalgamated schools further developed in the legislation of 1916, 1943 (No. 30) and 1946 (No. 44). The 1916 Act permitted the establishment of common schools, not only in particular settlements, but in districts which had different denominational boards coinciding geographically (s. 16). The 1943 Act (No. 30) allowed boards of education to set up a common board or governing body which had the right to own and administer the particular school property, while the 1946 Act (No. 44) permitted an officer of the Department to administer the school. These common schools multiplied in the 1940s and 1950s and led to the formation of the Association of Amalgamated School Boards in 1952, but the entire Common (Amalgamated) School System terminated in 1969 with the integration of many of the Protestant denominations.

⁵⁸ For a variety of reasons, the provisions concerning inspectors and the Advisory Board were never implemented (R.L. ANDREWS, *Integration and Other Developments in Newfoundland Education: 1915-1949*, St. John's, Harry Cuff Publications, 1985, p. 123).

establishment of the non-denominational Normal School initiated apprehension about the training of Catholic teachers, an apprehension that has reached new intensity in the 1980s.

Besides these three major changes, the period from 1887 to 1927 also introduced several minor innovations, which influenced the situation of Catholics. First, the 1896 legislation recognized the diocesan changes of the Catholic Church, for it allocated funds to the vicar apostolic of St. George's for the convent school at Sandy Point. Second, the legislation of 1899 provided for the appointment of two Catholic superintendents, one for the Catholic schools of the Harbour Grace Diocese and the other for the rest of the island,⁵⁹ even though the other denominations received only assistant superintendents. However, the 1920 legislation rectified this situation by appointing only one superintendent (s. 18) and one assistant superintendent (s. 19) for the Catholic denomination. A third matter during this period concerns the appointment of the Board of Directors for the Catholic College. Although the 1892 legislation gave certain churches, i.e., the Church of England, the Methodist Church and the Presbyterian Church, the right to nominate directors for their colleges,⁶⁰ no such right was accorded to the Roman Catholic Church.⁶¹ The

⁵⁹ Apparently, Bishop R. MacDonald requested this appointment (AASJ: 106/17/7, *History of Catholic Education*, 1913?, p. 42).

⁶⁰ Although the government gave denominations the right to nominate directors for their colleges, it retained the authority to appoint the boards, emphasizing the need for some form of control over the college boards in order to prevent the colleges from becoming theological colleges (*The Evening Mercury*, April 16, 1887).

legislation of 1916 (s. 23) eventually rectified this lacuna and gave the Catholic hierarchy the right to nominate the directors of the Catholic college, a right which still remains in the present legislation (s. 45 of the 1970 *Schools Act*).⁶² The fourth issue during this period concerns the teachers' pension fund. When the fund was introduced in the 1892 Act (s. 67), members of religious institutes did not have to contribute to the fund, unless they so desired. While the 1912 Act (s. 1) set a procedure for fixing the annual pension of a member of a religious institute, the 1916 Act, however, did not permit religious to claim from the fund since they did not contribute to it. The final innovation of this period occurred in 1916 when the legislation included the first list of the various duties of local school boards; this list continued to recognize the right of the board to appoint and dismiss teachers (s. 6).

The culmination of this period lies in the legislation of 1927 which abolished the position of the Minister of Education and provided for a Bureau of Education

⁶¹ Although the 1892 Act (s. 76) mentioned a Roman Catholic Board of Directors for the college, the omission of any nominating authority of the bishops needs comment. The Christian Brothers had assumed control of St. Bonaventure's College in 1889 and had an adamant policy of non-interference by other agencies or persons in the internal operation of their schools. Thus, the 1889 agreement between the Christian Brothers and Bishop T. Power gave the brothers the right to select their own Board: "The Board of Directors hereby [...] take charge of and manage and control the Educational Interests of said Institution (under the patronage of the Bishop of the Diocese) as may be selected by the Superior for that purpose, free of any control or interference" (see this agreement in ACFC: H-3-1, "An Outline of the Institute", pp. 177-183). For further background to these issues, see W.A. O'HANLON, "Christian Brothers, Bishops, and the Holy See", in *Christian Brothers' Educational Record*, 1983, pp. 5-25; 1984, pp. 5-75; 1985, 41-111.

⁶² Presumably, the bishops merely nominated those selected by the superior of the Christian Brothers.

with twelve members, including the prime minister, the three superintendents, a secretary for education and other members appointed on a denominational basis. While the bureau exercised general control over the educational system, the Catholic superintendent retained the authority for the general supervision and direction of all Catholic schools (ss. 6, 67), including the right to approve courses of study and textbooks prescribed by the local boards (s. 11(y)), and the right to chair the Catholic Board of Examiners (s. 47). Ultimately, although this entire period included some innovations to the denominational system as seen in the provision for amalgamated schools, the Department of Education and the Normal School, the period ended with the firm acknowledgment of denominational rights in the 1927 Act.

5.4 - 1927-1949: PERIOD OF TURBULENT CHANGES

The period from 1927 to 1949 involved turbulent changes in the structural arrangements of the denominational system. On the brink of financial disaster, Newfoundland accepted the appointment of a Commission of Government in 1934. The first educational legislation of this Commission, the 1935 Act (No. 11), reorganized the Department on a nondenominational basis, so that "a secularised Department was administering a denominational school system."⁶³ This Act also appointed a Committee of Education, consisting of the Secretary and six denominational representatives. This Committee became the channel of

⁶³ P. McCANN, "The Education Policy of the Commission of Government", in *Newfoundland Studies*, 3 (2/1987), p. 206.

communication on educational matters (s. 1) and assumed the role of the denominational superintendents (s. 2). Furthermore, the legislation called for the appointment of a secretary for Education,⁶⁴ who assumed the functions of the Bureau of Education of the 1927 Act, thus significantly affecting the rights of the denominations.

The resulting response from the denominations⁶⁵ led to the legislation of 1939 which abolished the Committee of Education and established a Department of Education. The Department, supervised by the Secretary for Education (s. 3), included the Commissioner⁶⁶ as well as denominational executive officers as "the recognized representatives on educational matters of their respective religious denomination within the Department" (s. 4).⁶⁷ This Department, with the addition of a Salvation Army representative, also served as a Council of Education which had authority for all educational policy (s. 5). Meanwhile, the legislation of 1944 (No. 32) outlined the powers of the denominational Boards of Examiners, thus reiterating the fact that Catholics had control over the examination of teachers and the granting or

⁶⁴ A few months later, another Act (1935, No. 46) abolished this position and appointed a general superintendent.

⁶⁵ See the various drafts of the *Educational Bills* and responses of Archbishop Roche in AASJ: 108/76/1, J.A. Winter to E.P. Roche, *Letter*, October 12, 1938; E.P. Roche to J.A. Winter, *Letter*, October 15, 1938; J.A. Winter to E.P. Roche, *Letter*, January 17, 1939.

⁶⁶ By s. 10, the Commissioner assumed the functions of the Bureau of Education of 1927.

⁶⁷ The legislation of 1950 (No. 13) renamed these "executive officers" as "superintendents" (s. 6).

cancellation of teaching certificates. Accordingly, the law had reorganized the Department on a denominational basis once again and had granted Catholics certain prerogatives over educational policy and the training of teachers.

The *School Attendance Act* of 1942 introduced the obligation on the part of parents or guardians to select a school and enrol their children who were between the ages of seven and fourteen (amended to fifteen in 1951 (No. 27)).⁶⁸ This legislation had an indirect influence on the rights of Catholic children, since one of the persistent problems throughout the history of the educational system concerned the general failure of parents, especially Catholic parents, to keep their children in school.⁶⁹ Thus, one could conclude that the Act and its amendments had the effect of protecting the right of a Catholic child to attend a Catholic school: on the one hand, the legislation did not force a child to attend a school of another denomination (s. 7(c) of 1942 (No. 32); s. 2 of 1955 (No. 9)), and on the other hand, it ensured that the non-payment of fees or assessments did not deny a child's right to be enrolled in a school (s. 7 of 1956 (No. 18); s. 18 of 1978 (c. 78)).

The 1946 Act (No. 19) introduced a new principle concerning grants and

⁶⁸ In 1943, the bishops expressed their support for this new legislation (ROMAN CATHOLIC HIERARCHY [E.P. Roche, J.M. O'Neill, M. O'Reilly], *Circular Letter*, February 1, 1943, in *The Monitor*, February 1943, p. 5).

⁶⁹ References to this phenomenon abound: for example, in the first report on the inspection of Catholic schools in 1845, in the annual *Pastoral Letters* of Bishop Mullock from 1850-1868, in the first two addresses of Archbishop Roche to the clergy of the island. Furthermore, the school attendance reports in the *Annual Reports of the Department of Education* from 1944 to 1955 manifest that the attendance at Catholic schools was the lowest, in comparison with the schools of the Church of England and those of the United Church.

although this principle had little effect on the right of the Catholic Church to a certain overall financial assistance, it eventually affected the statutory grants to particular Catholic schools. The Act legally sanctioned the use of scales, thus allocating funds on the more equitable basis of enrolment in the schools, rather than on the total denominational population. These scales applied to grants for teachers' salaries, for high schools, for maintenance and supplies as well as the augmentation grant for teachers' salaries, but they did not apply to the grant for colleges, pupil teachers, board contingencies, industrial education and the erection of schools (s. 10). This principle of using scales for financial grants was incorporated into the 1949 *Terms of Union* and eventually with the *Schools Act* of 1969 (No. 68), applied to all grants except capital construction.

In order to provide for the efficient working of these scales, this 1946 Act abolished the statutory grants to convent schools and to the academies of Harbour Grace and Carbonear (s. 11). Accordingly, the Church no longer possessed the right to grants for specified schools.

At the end of this turbulent period as Newfoundland began its discussions concerning confederation, the Catholics had once again secured certain prerogatives regarding the selection and training of its teachers, as well as some input into educational policy. Moreover, the introduction of compulsory attendance, as well as the beginning of scales for financial grants, initiated certain benefits for the Church.

5.5 - 1949-1967: CONFEDERATION AND SUBSEQUENT CHANGES

The legislation incorporating the *Terms of Union of Newfoundland with Canada* constitutes an important piece of legislation for Catholic schools, for Term 17 gives constitutional protection to denominational schools and colleges. The discussions regarding the development of this term on education show that several concerns influenced the negotiating parties. Originally the Canadian delegation thought that section 93 of the *British North America Act* would protect the denominational system, but it had no wish to dictate to Newfoundland concerning the system of education;⁷⁰ thus the proposals were drafted according to "the desire of the people of Newfoundland."⁷¹ In its proposals, the Newfoundland delegation wanted to protect existing denominational rights and to permit the voluntary amalgamation of the denominational schools.⁷² Moreover, as the negotiations proceeded, the delegation saw the necessity of ensuring that the rights associated with denominational colleges also received protection.⁷³ Furthermore, the negotiations showed how Newfoundland's situation differed from other provinces. When Alberta and Saskatchewan became provinces, the Canadian Parliament had control over education in the territories, whereas it had no control over the educational system

⁷⁰ DEPARTMENT OF EXTERNAL AFFAIRS, *Documents on Relations Between Canada and Newfoundland: Vol. 2 (1940-1949)*, Ottawa, Canadian Government Publishing Centre, 1984, p. 669.

⁷¹ *Ibid.*, p. 720. See also *ibid.*, p. 669.

⁷² *Ibid.*, p. 668.

⁷³ *Ibid.*, pp. 1082, 1084.

of Newfoundland.⁷⁴ While Manitoba could make an appeal to the governor in council for remedial legislation, the Newfoundland delegation preferred to have recourse to the courts of law as a more effective safeguard of its rights.⁷⁵ After all the negotiations, the final version read:

In lieu of section ninety-three of the *British North America Act, 1867*, the following Term shall apply in respect of the Province of Newfoundland:

In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland provided for education,

- (a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and
- (b) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

Since any discussion of the rights or privileges of Catholic schools in Newfoundland demands a proper understanding of this Term 17, we now turn to a consideration of

⁷⁴ *Ibid.*, p. 1371.

⁷⁵ *Ibid.*, pp. 1372, 1439-1440.

the proper meaning of several words and phrases in this text.⁷⁶

5.5.1 - SPECIFIC PHRASES OF TERM 17

The opening lines refer to the fact that Term 17 replaces s. 93 of *The British North America Act, 1867* (renamed *The Constitution Act, 1867*), and the question immediately arises as to the similarities and differences between this term and s. 93.⁷⁷ Because of the similarities, the case law material from other provinces, which includes judicial principles in relation to s. 93, assists in the proper interpretation of Term 17 and establishes legal precedents which will influence court cases involving Term 17.

While Term 17 states that the provincial legislature possesses exclusive power

⁷⁶ The interpretation of these words and phrases comes from the analysis of numerous court decisions as well as a study of several other sources including, the *Minutes of Meetings* of the Newfoundland-Canadian Discussions found at the Public Archives of Canada (NAC: MG 30, E 159, V. 4); A. BRENT, "The Right to Religious Education and the Constitutional Status of Denominational Schools", in *Saskatchewan Law Review*, 40 (1974-1976), pp. 239-267; B. FISH, "Constitutional Aspects of Teacher Dismissals", in *Alberta Law Review*, 17 (1979), pp. 545-554; C.J. GREENE, "A Memorandum Dealing with Certain Questions Arising Under Term 17 of the Terms of Union of Newfoundland with Canada and the Statutes of the Province Relating to Education" [= "Memorandum"], December 8, 1955, 39p., appendices; P. HOGG, *Constitutional Law of Canada*, 2nd ed., Toronto, Carswell, 1985, pp. 823-830; R.G. PENNEY, "The Constitutional Status of Denominational Education in Newfoundland", in W. McKIM (ed.), *The Vexed Question: Denominational Education in a Secular Age*, St. John's, Breakwater Books, 1988, pp. 89-90; W. TARNOPOLSKY and G. BEAUDOIN (eds.), *The Canadian Charter of Rights and Freedoms: Commentary*, Toronto, Carswell, 1982, pp. 185-211; P.J. WARREN, "Church and State in Canadian Education", in W. McKIM (ed.), *The Vexed Question*, pp. 104-105.

⁷⁷ For a copy of the provisions of s. 93 as well as the parallel section that governs the rights in education for the other provinces, see APPENDIX 7.

to make laws in relation to education, thus acknowledging that the federal government has minimal jurisdiction over education,⁷⁸ the term imposes a limitation on this provincial legislative power, namely, in areas associated with the "rights or privileges with respect to denominational schools". Accordingly, Term 17 gives constitutional protection to three kinds of schools: denominational schools, common (amalgamated) schools and denominational colleges. A denominational school refers to one "under the exclusive government of some one denomination of christians, and where the tenets of that denomination are taught."⁷⁹ In Newfoundland, these "denominational schools" refer to the schools operated by any of the seven denominations⁸⁰ which had the right to operate schools before confederation. For

⁷⁸ The federal government has authority over schools operated under federal authority on military bases and on Indian reserves. For a consideration of the emerging new possibilities regarding the federal role in education, see J.W. IVANY and M. MANLEY-CASIMIR (eds.), *Federal-Provincial Relations: Education Canada*, [Toronto], OISE Press, 1981, x-150p. In Newfoundland the Indian Band Council of Conne River signed an agreement with the C.E.C. in 1986, whereby the school "will remain and be operated and administered as a Catholic school" with Catholic religious education and teachers who are trained in teaching Catholic religious education (C.E.C., *Annual Report*, 1986-1987, p. 32).

⁷⁹ *Ex parte Renaud et al.* (1873), 14 N.B.R. 273, at p. 294 (N.B.S.C.); see also *Maher v. Town Council of Portland* (1874) (P.C.), in G. WHEELER, *Confederation Law of Canada*, London, Eyre and Spottiswoode, [1896], p. 367.

⁸⁰ These denominations include the Church of England, the Congregational Church, the Presbyterian Church, the Roman Catholic Church, the Salvation Army, the Seventh-Day Adventist Church and the United Church -- and after 1987, the Pentecostal Assemblies.

Since most of the case law focuses on denominational schools, this section will focus on Roman Catholic denominational schools in order to exemplify some of the rights and privileges of all these schools as protected by Term 17. As a result, this focus will isolate principles that could also be applicable to Roman Catholic denominational colleges.

Catholics, the phrase "denominational colleges" refers to St. Bonaventure's and St. Bride's colleges.⁸¹ In the final analysis, this phrase emphasizes schools as such, rather than denominational education; consequently, constitutional protection applies not to every right of an educational character, but only to those with respect to denominational schools.

The phrase "denominational schools" is qualified by the phrase "by law", for constitutional protection applies only to schools which were denominational by law, not schools which were merely *de facto* denominational or even schools which were denominational due to longstanding practices, and customs.⁸² This distinction between "by law" and "by practice" has particular relevance for Manitoba, because when it joined Confederation in 1870, no denominational schools existed "by law", but

⁸¹ St. Bride's Academy had become a College by the 1920 Act, s. 50. Although St. Bonaventure's College was limited to elementary education in the 1960s and although St. Bride's College discontinued to operate in 1974, the Catholic Education Council fought to retain the legislative provisions for Catholic colleges on the basis of the constitutional protection of Term 17 (see C.E.C., *Annual Report*, 1982-1983, pp. 17-18).

⁸² Mr. Justice J. Ritchie emphasized that, if a school becomes *de facto* denominational, due to the religious feelings of the inhabitants or due to the religious denomination of the trustees, this does not mean that the legal status of the school changes (*Ex parte Renaud et al.* (1873), 14 N.B.R. 273, at p. 285 (N.B.S.C.)). See also *Maher v. Town Council of Portland* (1874) (P.C.), in G. WHEELER, *Confederation Law of Canada*, London, Eyre and Spottiswoode, [1896], pp. 366-367.

Furthermore, the *Hirsch* case described a school, denominational by law, as one whereby "provisions for the management and control of the schools by persons of a particular religious persuasion set upon them a denominational stamp which could not be effaced by the attendance of a certain number of children of a divergent faith" (*Hirsch et al. v. Protestant Board School Commissioners of Montreal et al.*, [1928] A.C. 200, at p. 212 (P.C.)).

"in practice" both the Roman Catholics and the Protestants operated various schools.⁸³ Furthermore, Term 17 demands that these legal rights or privileges have to exist "at the date of Union",⁸⁴ i.e., March 31, 1949, in order to be protected, since rights or privileges created subsequently do not receive constitutional protection.⁸⁵

The phrase "class or classes of persons" refers to a class of persons determined according to religious belief and not according to race or language.⁸⁶ In practice, the rights and privileges of a particular class of people, e.g., Roman Catholics, are vested in the school board trustees, the legal representatives of the real beneficiaries.⁸⁷

The phrase "prejudicially affect" focuses on the fact that only some provincial laws are prohibited by Term 17, i.e., those which "prejudicially affect" protected rights or privileges. Accordingly, the legislature has the power to enact laws that have

⁸³ This distinction forms the basis of two Manitoba cases: *City of Winnipeg v. Barrett*, [1892] A.C. 445 (P.C.) and *Brophy v. Attorney-General for Manitoba*, [1895] A.C. 202 (P.C.). This latter case focuses on the possibility of utilizing the remedy found in s. 22, whereby the Parliament of Canada could make remedial laws to protect rights acquired by legislation subsequent to Union (B. FISH, "Constitutional Aspects of Teacher Dismissals", in *Alberta Law Review*, 17 (1979), p. 547). Interestingly, in Newfoundland, Term 17 does not provide this remedy.

⁸⁴ A Saskatchewan case (*McCarthy v. The City of Regina et al.*, [1917] 1 W.W.R. 1105 (Sask.C.A.)) focused on the meaning of "date of union" as the date when Saskatchewan became a province.

⁸⁵ However, in the special circumstances of a constitutional amendment, a denomination could share in the rights of Term 17. For example, the Pentecostal Assemblies of Newfoundland received legislative recognition for educational purposes only in 1954, but the amendment to Term 17 on December 22, 1987 gave constitutional protection to their educational rights.

⁸⁶ *Ottawa Separate Schools Trustees v. MacKell*, [1917] 1 A.C. 62, at p. 69 (P.C.).

⁸⁷ *Greater Hull School Board et al. v. Attorney General of Quebec* (1985), 56 N.R. 99, at p. 119 (S.C.C.).

either a beneficial or a neutral effect on protected rights or privileges⁸⁸ as well as the power to legislate on matters, e.g., health or building codes, which would eventually apply to denominational schools.⁸⁹ The fact that a particular act of the government interferes with a protected right causing some effect on it, does not necessarily mean that the act prejudicially affects the right.⁹⁰

The phrase "non-discriminatory funding" essentially means that the protected denominations have "a right to receive their fair share in common with all other

⁸⁸ See P. HOGG, *Constitutional Law of Canada*, pp. 826-827. Two Ontario cases highlight these benign and neutral laws. The first one occurred in 1878 when the legislature had passed a law which interfered with the usual way of electing separate school trustees. Mr. Justice Burke ruled that the provincial legislature had some power to legislate regarding denominational schools and did not preclude "remedying defects in, or improving the machinery for the working out the separate school system" (*Board of Trustees of the Roman Catholic Separate Schools of Belleville v. Grainger et al.* (1878), 25 GR 570, at p. 579). See also *Hirsch et al. v. Protestant Board School Commissioners of Montreal et al.*, [1928] A.C. 200, at p. 215 (P.C.).

In the second Ontario case, the Privy Council required the separate schools trustees to assume liabilities incurred by a provincially-appointed commission which had operated the schools for a short time. These liabilities were not considered "prejudicial" since the trustees would have incurred the liabilities themselves had they been operating the schools (*Ottawa Separate Schools Trustees v. Quebec Bank*, [1920] A.C. 230 (P.C.)).

⁸⁹ *City of Toronto Corporation v. Trustees of the Roman Catholic Separate Schools of Toronto*, [1926] A.C. 81 (P.C.).

⁹⁰ *Trustees of the Roman Catholic Separate Schools for Ottawa v. Ottawa Corporation et al.*, [1917] A.C. 76, at p. 81 (P.C.). In practice, a fine line often exists in this difficult distinction between "prejudicially affecting" and merely "affecting" denominational rights. For two recent examples where judges utilized this distinction, see *Re Essex County Roman Catholic Separate School Board and Porter et al.* (1979), 89 D.L.R. (3d) 445 (Ont.C.A.); *Re Essex County Roman Catholic Separate School Board and Tremblay-Webster et al.* (1984), 5 D.L.R. (4th) 665 (Ont.C.A.).

denominations"⁹¹ and does not mean that they have an exclusive right to receive the public funds. This interpretation admits that the legislature has the power to establish boards of education for other denominations besides those which existed at the time of Union, but these new boards would not have constitutional protection unless a constitutional amendment provided such protection. At the same time, these new boards could have a right to share in public funds allotted for education, provided that their share did not discriminate against the others, e.g., receive a higher percentage than the scale allowed. In future, the possibility of the establishment of non-denominational schools will undoubtedly result in further reflection on this provision of "non-discriminatory funding".⁹²

Finally, the crucial issue in the consideration of Term 17 converges on the question: what are the rights or privileges with respect to denominational schools that have been entrenched by Term 17? These rights must refer to some "claim belonging to, or immunity, benefit, or advantage"⁹³ enjoyed by a class or classes of

⁹¹ C.J. GREENE, "Memorandum", p. 31. See also *Minutes of Meetings of the Newfoundland-Canadian Discussions* (NAC: MG 30, E 159, V. 4).

⁹² R. Penney mentions that, since the system of education at the time of Union was denominational, the possible establishment of non-denominational schools would probably be considered unconstitutional "since any change in the legislation so as to provide for public schools would be a diminution of this right [of the religious denominations] to receive funds" on a non-discriminatory basis (R.G. PENNEY, "The Constitutional Status of Denominational Education in Newfoundland", in W. McKIM (ed.), *The Vexed Question*, p. 92). To consider this possible development, one of the essential questions will certainly focus on whether or not the diminution of this right of the religious denominations would constitute a prejudicial affecting of their protected right to receive funds on a non-discriminatory basis.

⁹³ *Regina Public School v. Graton Separate School and City of Regina* (1914), 18 D.L.R. 571, at p. 580 (Sask.S.C.).

persons. Although several authors have attempted to enumerate the "rights and privileges",⁹⁴ a 1980 *Brief on the Constitution* includes a fairly thorough list:

While denominational "rights and privileges" in education now held in Newfoundland are not enumerated in any detail in the statutes, they certainly include the following:

- a) the right of the denominational school system to exist and to continue to work;
- b) the right of the denominations to preserve and promote their interests and fundamental rights in education;
- c) the right to provide and operate schools in accordance with the spiritual and religious tenets of the denominational groups;
- d) the right to non-discriminatory allocations of public funds for education.

Quite clearly, a number of concomitant rights and privileges derived from both law and practice flow from each of such fundamental "rights" (e.g. establishment and alteration of school district boundaries, appointment of school board members, certification and employment of teachers, religious education programmes, etc.).⁹⁵

With this list of constitutional rights of denominational schools, we now continue to examine other educational legislation.

5.5.2 - OTHER DEVELOPMENTS

One of the most dramatic developments during the period from 1950 to 1967

⁹⁴ R.G. PENNEY, "The Constitutional Status of Denominational Education in Newfoundland", in W. McKIM (ed.), *The Vexed Question*, pp. 89-90; NEWFOUNDLAND AND LABRADOR, *Report of the Royal Commission on Education and Youth*, vol. 1, p. xv.

⁹⁵ JOINT EXECUTIVE OF THE DENOMINATIONAL EDUCATION COMMITTEES OF NEWFOUNDLAND, *Brief to the Special Joint Committee on the Constitution of Canada*, December 1980, pp. 9-10.

occurred in the domain of the school boards, e.g., the Catholic Church reduced the number of its boards from eighty in 1960 to fifteen in 1969, and two issues associated with this development have implications for the rights of Catholics. First, the legislation of 1951 (No. 71) included a provision that eventually mushroomed into a heated debate in the 1980s: it permitted the appointment to a school board of "persons other than those of the religious denomination of the Board" (s. 2).⁹⁶ This provision had the potential of eliminating the exclusive right of Catholics to serve as members on a Catholic school board. The second school board issue concerned land titles: legislation prior to 1959 had stated that no grants would be allotted where the legal title to the site was not vested in the board. In spite of this requirement, the legal title associated with the site of practically all Catholic schools was vested in the Roman Catholic Episcopal Corporation of each of the dioceses.⁹⁷ However, the 1959 legislation (No. 60) legally recognized this situation by referring to the legal title to a site being vested in the board "or in the appropriate denominational authority" (s. 4).

By the time of the radical changes of the late 1960s, the Church had received through the *Terms of Union* a constitutional guarantee to operate Catholic schools under the management of Catholic school boards and this guarantee included some

⁹⁶ The 1949 Act (No. 91) had already used a similar provision allowing the appointment of a board representing the United Church and Presbyterian denominations (s. 3).

⁹⁷ The 1897 Acts (s. 3) as well as their 1913 Amendments (s. 5) incorporated each of these dioceses and provided for the holding of land for "educational purposes".

authority concerning teachers and the choice of religious education programs.

5.6 - 1968-1991: PERIOD OF RADICAL CHANGE

The interval between 1968 and the present represents a revolutionary period in the history of the denominational system. The legislation of 1968 and 1969 introduced an entirely new structural arrangement; school board elections sparked the demand for new Regulations affecting membership on school boards; several other pieces of legislation, e.g., the first *Newfoundland Teacher (Collective Bargaining) Act*, the *Newfoundland Human Rights Code* and the *Canadian Charter of Rights and Freedoms* all raised new issues associated with denominational education. In addition, four Newfoundland court cases gave further expression to certain rights associated with Catholic schools.

5.6.1 - EDUCATIONAL LEGISLATION

The period began as four denominations, i.e., Roman Catholic, Anglican, United Church and Salvation Army, in response to one of the recommendations of the 1967 *Report of the Royal Commission on Education and Youth*, agreed on the functional reorganization of the Department of Education.⁹⁸ This agreement of

⁹⁸ At the same time, the Protestant denominations had begun the process of integration as the Anglican and United Church Consolidated School Boards in St. John's discussed the sharing of various services according to the provision of s. 7 of the 1966-1967 legislation (No. 93). Eventually, the Salvation Army joined these discussions, and on March 27, 1969, the three largest Protestant churches in Newfoundland formally signed a Document of Integration, "whereby each church relinquished its right to operate its own school" (F. ROWE, *Education and Culture*

February 19, 1968 became the basis for the departmental changes legislated in 1968 and 1969.⁹⁹ The 1968 *Education Act* (No. 58) called for the establishment of three new bodies: a Denominational Education Committee for one or more denominations each with an Executive Secretary¹⁰⁰, a Denominational Policy Commission set up outside the Department, and a General Advisory Committee.

By providing for the establishment of Denominational Education Committees¹⁰¹ (D.E.C.), the Act safeguarded the various denominational rights in education, for, like the denominational superintendents at the Department prior to 1968, these committees officially represented their respective churches in educational relationships with the government. This 1968 Act (No. 58)¹⁰² delineated the duties of these committees and the *Annual Reports* of the Catholic Committee categorize

in Newfoundland, p. 159). For a detailed account of this integration process, see R.L. ANDREWS, *Post-Confederation Developments in Newfoundland Education: 1949-1975*, St. John's, Harry Cuff Publications, 1985, pp. 268-282.

⁹⁹ P. Warren made it quite clear that "the Denominational Education Committees and the Denominational Policy Commission [...] were not recommended by the Royal Commission" (P.J. WARREN, "The Royal Commission on Education and Youth - Three Years After", Unpublished Paper, Memorial University of Newfoundland, 1970?, p. 4).

¹⁰⁰ The 1983 legislation (c. 43) renamed these "Secretaries" as "Directors".

¹⁰¹ Three Committees (renamed Councils by the legislation of 1983 (c. 43)) were established: Catholic Education Council [= C.E.C.], Integrated Education Council and the Pentecostal Assemblies Education Council. The archbishop of St. John's chairs the C.E.C., while the other bishops of the province are co-chairmen. For further information on the C.E.C., see J. SCOTT, "A Council Examined", in W. McKIM (ed.), *The Vexed Question*, pp. 158-194.

¹⁰² Subsequent legislation (c. 80 of R.S.N. 1970; c. 46 of 1984; *The Department of Education Act*, 1990) makes little changes to these powers.

these duties in six areas, each of which includes a prerogative granted to the Church: curriculum, with the right to develop religious education programs (s. 17.a.ii); educational policy, with the right to recommend changes to existing policies or to recommend new policies, especially through the General Advisory Committee (s. 22); legislation, with the right to view draft copies of all educational legislation prior to being introduced (s. 25); school boards, with the right to make recommendations regarding board boundaries and board membership (s. 17.a.i); teacher education and certification, with the right to make recommendations in this area (s. 17.b);¹⁰³ finances, with the right to distribute capital grants, including monies for the maintenance of schools (ss. 84 and 89 of 1969 (No. 68)).¹⁰⁴

In the area of policy formation, the C.E.C. provides input through both the General Advisory Committee and the Denominational Policy Commission.¹⁰⁵ While the latter commission advises on all educational policy that affects any right or privilege of the *Terms of Union*, the General Advisory Committee examines and

¹⁰³ The 1968 Act (No. 94) reaffirmed the powers of the Board of Examiners with the exception that the board could only recommend to a Teacher Certification Committee the cancelation of a teachers certificate. Furthermore, the amendment to the *Education (Teacher Training) Act* of 1990 deleted "drunkenness" as a reason for the suspension or cancelation of a teacher's certificate.

¹⁰⁴ For Catholic schools, the government allocates capital grants through the C.E.C., on a non-discriminatory basis and in accordance with the percentage of Catholics in the total population. Grants for operations are paid by the department directly to the schools in accordance with the Regulations of 1970 and generally on the basis of pupil enrollment.

¹⁰⁵ See L.-A. BROWNE, *The Role of the Church in Determining Educational Policy in Newfoundland*, B.A. Hon. (Political Science) thesis, St. John's, Memorial University of Newfoundland, 1984, iii-53p.

makes recommendations concerning administrative or academic policy.

After examining the primarily advisory powers of the three bodies introduced by the 1968 Act (No. 58), one realizes that the government ultimately has the final authority, for s. 25 stated that the minister is not bound "to adopt any recommendation, proposal or advice" of the Denominational Policy Commission, the General Advisory Committee or any comments on the draft legislation made by the C.E.C.(s. 25).¹⁰⁶

The legislation of 1970 (No. 55) contributed to the contentious issue of school board elections, for it mandated the election of at least one-third of the members of a school board (s. 2). The 1972 Regulations specified the qualifications of those entitled to vote as well as those entitled to run for election. The C.E.C. responded to these changes by suggesting changes in all the constitutions of the Catholic Boards, such that those elected according to the Regulations had to be Catholic, while those appointed to the board might be of another faith, with the condition that these latter appointees did not exceed ten percent of the membership.¹⁰⁷ Eventually, the legislation of 1984 (c. 38) called for the election of two-thirds of the members of

¹⁰⁶ In the 1984 Act (c. 46), the section concerning the binding force of advice (s. 29) did not specifically mention the General Advisory Committee. Yet, given the generally advisory nature of the three bodies concerned, one must conclude that the minister is never bound by the recommendations received, except for the case when a unanimous recommendation comes from the Denominational Policy Commission (s. 25).

¹⁰⁷ See C.E.C., *Annual Report, 1973-1974*, pp. 11-13.

school boards,¹⁰⁸ while the Regulations of 1985 and 1989 further specified the qualifications of those who could run and vote in elections, giving due respect to the constitutions of the Catholic Boards. After the school board elections of 1985, the C.E.C considered the possibility of allowing a number of non-Catholics to be elected to boards, but eventually decided against this possibility, for Catholic "schools must continue to be operated in accordance with the Roman Catholic philosophy of education."¹⁰⁹

5.6.2 - OTHER LEGISLATION RELATED TO EDUCATION

Besides these issues arising from the educational legislation, three other Acts have had a direct effect on the denominational system of Newfoundland. The 1973 *Newfoundland Teacher (Collective Bargaining) Act*¹¹⁰ included s. 19, amended in 1975, prohibiting anything in the collective agreement from infringing the rights or privileges associated with Term 17. This section provides an explicit principle of interpretation for the articles of the collective agreement.¹¹¹ Furthermore, the

¹⁰⁸ The draft legislation of 1990 proposes to introduce the election of the entire board (s. 72).

¹⁰⁹ C.E.C., *Annual Report*, 1987-1988, p. 26. See also the *Annual Report*, 1986-1987, pp. 29-31. At the same time, non-Catholics may still be named to Roman Catholic Boards through the provision allowing bishops to appoint one third of the members of each board.

¹¹⁰ For a consideration of the evolution of this legislation, see B.J. MYERS, *The Origin and Development of the Newfoundland Teacher (Collective Bargaining) Act 1973*, M.Ed. thesis, St. John's, Memorial University of Newfoundland, 1978, vii-130p.

¹¹¹ Recent legislation concerning the Department of Education contain a similar principle of interpretation, e.g., s. 3 of both 1968 (No. 58) and 1984 (c. 46).

human rights legislation of 1970, 1974, and 1988 incorporated a similar principle of interpretation (s. 4(2)) ensuring that no provision would affect any right or privilege with respect to denominational schools.¹¹² Moreover, one could conclude analogically from the Supreme Court decision in the *Caldwell* case, that s. 4(2) of the *Newfoundland Human Rights Code* represents, not merely a limiting section on individual rights but, a positive protection of the rights associated with denominational schools.¹¹³ The third Act concerns the *Canadian Charter of Rights and Freedoms*¹¹⁴ of 1982, which, at the request of a Newfoundland delegation,¹¹⁵ incorporated s. 29 protecting the rights of denominational schools from challenges under the Charter by reason of the individual rights of freedom of conscience and

¹¹² As yet, no boards of inquiry of the Human Rights Commission have dealt with issues regarding denominational schools, probably due to the provision of s. 4(2) of the Human Rights Code (source: phone conversation with G. Vivian, Executive Director of the Newfoundland Human Rights Commission, February 4, 1991).

¹¹³ *Re Caldwell et al. and Stuart et al.* (1985), 15 D.L.R. (4th) 1, at pp. 19-21 (S.C.C.). See also *Re Caldwell and Stuart et al.* (1982), 132 D.L.R. (3d) 79, at pp. 89-91 (B.C.C.A.).

¹¹⁴ For the text of pertinent sections of the Charter, see APPENDIX 8.

¹¹⁵ In fact, s. 29 did not appear in the original draft of the Charter, but was incorporated when the Joint Executive of the Denominational Education Committees of Newfoundland insisted on the insertion of a section to ensure that the various provisions of the Charter would not override the right to denominational schools (JOINT EXECUTIVE OF THE DENOMINATIONAL EDUCATION COMMITTEES OF NEWFOUNDLAND, *Brief to the Special Joint Committee on the Constitution of Canada*, December 1980, pp. 12-26).

For the judicial significance of this background development especially regarding the intent of the Charter to give preference to existing guaranteed denominational rights, see *Re An Act to Amend the Education Act* (1986), 25 D.L.R. (4th) 1, at pp. 34-40, 59-64 (Ont.C.A.); *Reference Re Roman Catholic Separate High Schools Funding* (1987), 77 N.R. 241, at pp. 252-254, 293-296 (S.C.C.).

religion (s. 2) and equality (s. 15), or anything else in the Charter. Mr. Justice T. Zuber recently used s. 29 to interpret the constitutional protection provided to a Catholic school, emphasizing that

[i]t is this essential Catholic nature which is preserved and protected by s. 93 of the *Constitution Act, 1867* and s. 29 of the Charter. The courts must strike a balance between conduct essential to the proper functioning of a Catholic school and conduct which contravenes such Charter rights as those of equality in s. 15 or of conscience and religion in s. 2(a). Thus, the right of a Catholic school board to dismiss Catholic members of its teaching staff for marrying in a civil ceremony, or for marrying divorced persons, has been upheld as permissible conduct for a separate school board [...].¹¹⁶

5.6.3 - NEWFOUNDLAND CASE LAW MATERIAL

Although numerous cases concerning teacher dismissal or suspension have taken place in Newfoundland,¹¹⁷ four recent ones indicate how the Newfoundland

¹¹⁶ *Re An Act to Amend the Education Act* (1986), 25 D.L.R. (4th) 1, at p. 64 (Ont.C.A.). See also *Board of Education for Moose Jaw School District No. 1 of Saskatchewan et al. v. Attorney General for Saskatchewan et al.* (1974), 41 D.L.R. (3d) 732, at pp. 736-739 (Sask.Q.B.); *Re Casagrande and Hinton Roman Catholic Separate School District No. 155 et al.* (1987), 38 D.R.L. (4th) 382, at pp. 388-393 (Alta.Q.B.).

¹¹⁷ Although many of these cases found their way to arbitration, none of them concerned "rights or privileges with respect to denominational schools." Examples of some of these arbitration cases include: *Burin Peninsula Roman Catholic School Board and Newfoundland Teachers' Association*, Report of a Board of Arbitration, St. John's, May 28, 1980; *The Newfoundland Teachers' Association and the Conception Bay North Roman Catholic School Board*, Report of a Board of Arbitration, St. John's, September 1, 1983; *The Newfoundland Teachers' Association and the Humber-St. Barbe Roman Catholic School Board*, Report of a Board of Arbitration, St. John's, October 20, 1980; *The Newfoundland Teachers' Association and the Port au Port Roman Catholic School Board*, Report of a Board of Arbitration, St. John's, December 18, 1979.

courts approach issues connected with the rights of Roman Catholic School Boards.¹¹⁸ Three of these focus on the right of a school board to dismiss a Roman Catholic teacher, who marries "outside the Church" without the proper dispensations or who "leaves" the Church, while the fourth concerns the right to maintain Christian Brothers in Catholic schools.

The first case involved Greg Stack, a Roman Catholic, who married in the Anglican Church without a dispensation from the Roman Catholic bishop and was dismissed without notice by the school board on December 2, 1975.¹¹⁹ In the subsequent court case, Mr. Justice N. Noel held that the law regarding teacher dismissal was of "general application" and did not relate to "denominational teaching or to the integrity of the specified schools but to the terms and conditions of employment of all teachers in public schools" (p. 227). Although he cautioned about interpreting a particular right too broadly and acknowledged that in some situations an employee's conduct could prove "intolerable", he disputed an earlier Ontario decision which held that "if a school board can dismiss for cause, then in the case of a denominational school cause must include denominational cause."¹²⁰ Nevertheless, the judge affirmed certain rights of the Catholic boards whereby the interpretation of the collective agreement, in the case of a Catholic teacher employed

¹¹⁸ Another case in the late 1970s involved a teacher on probation, but this case did not go to court.

¹¹⁹ *Stack v. Roman Catholic School Board for St. John's* (1980), 23 Nfld. & P.E.I.R. 221 (Nfld.S.C.). For a discussion of some of the issues in this case, see R. MAGSINO, "Teacher and Student Rights Within the Denominational Schoolhouse Gate", in W. McKIM (ed.), *The Vexed Question*, pp. 126-157.

¹²⁰ *Re Essex County Roman Catholic Separate School Board and Porter et al.* (1979), 89 D.L.R. (3d) 445, at pp. 445-448 (Ont.C.A.).

by a Catholic board, must consider the teaching of the Roman Catholic Church (pp. 232-233).

A second Newfoundland case occurred when the Conception Bay North R. C. School Board dismissed Genevieve Barron-Babb without notice because of her marriage in the Anglican Church without the required dispensation.¹²¹ The school board viewed her action as a breach of a by-law which required Roman Catholic teachers "to abide by laws and regulations common to all members of the Catholic Church" including fundamental Roman Catholic values, the official teachings of the Magisterium and the educational objectives of the Roman Catholic Church. Subsequently, the Newfoundland Supreme Court, Trial Division, dismissed the application on the ground that the by-law, which lacked the required approval of the Minister, was invalid. In that court, Mr. Justice N. Goodridge held that if the law had been valid, the arbitration board should have considered whether the violation of a by-law constituted a just reason for dismissal. Thus, the school board lost the case on the technicality of not having a board by-law properly approved.

At the same time, Mr. Justice N. Goodridge's decision reaffirmed the ruling in the *Stack* case, whereby the "circumstances of a Roman Catholic teacher employed by a Roman Catholic School Board and the teaching of the Roman Catholic Church are all relevant" (p. 353). Moreover, he emphasized that the courts would recognize duly approved by-laws of the school board.

¹²¹ *Roman Catholic School Board for Conception Bay North, Newfoundland Teachers' Association, and Barron-Babb* (1984), 45 Nfld. & P.E.I.R. 346 (Nfld.S.C.).

The third case arose when Richard Walsh left the Roman Catholic Church, joined the Salvation Army and married in that church.¹²² When the St. John's R.C. School Board dismissed him, Walsh grieved the action on the basis of a denial of his freedom of conscience and religion. The arbitration board ruled Walsh's action eliminated a *bona fide* occupational qualification, the loss of which constituted a just cause for dismissal.¹²³ Both the Newfoundland Supreme Court, Trial Division, and the Court of Appeal upheld the decision. The Court of Appeal ruled that the interpretation of "just cause" must consider the denominational system and the legal imperatives inherent in that system, e.g., "the right to hire and dismiss for denominational cause" (p. 27). Utilizing the *Caldwell*¹²⁴ and the *Porter*¹²⁵ cases, Mr. Justice W. Marshall broadly interpreted the right of the board to dismiss for

¹²² *Walsh and Newfoundland Teachers' Association v. Newfoundland (Treasury Board) and Federation of School Boards of Newfoundland* (1986), 59 Nfld. & P.E.I.R. 129 (Nfld.S.C.).

¹²³ *Ibid.*, at p. 132. For a consideration of the requirements involved in a *bona fide* occupational qualification, see *Ontario Human Rights Commission et al. v. Borough of Etobicoke* (1982), 132 D.L.R. (3d) 14 (S.C.C.).

¹²⁴ "The role of the teacher [...] is fundamental to the whole effort of the school [...]. It is my opinion that objectively viewed, having in mind the special nature and objectives of the school, the requirement of religious conformance including the acceptance and observance of the church's rules regarding marriage is reasonably necessary to assure the achievement of the objects of the school. [...] In the case at bar, the special nature of the school and the unique role played by the teachers in the attaining of the school's legitimate objects are essential to the finding that religious conformance is a *bona fide* qualification" (*Re Caldwell et al. and Stuart et al.* (1985), 15 D.L.R. (4th) 1, at p. 18 (S.C.C.)).

¹²⁵ *Re Essex County Roman Catholic Separate School Board and Porter et al.* (1979), 89 D.L.R. (3d) 445 (Ont.C.A.).

denominational cause.¹²⁶ Moreover, the judge ruled that s. 29 of the *Canadian Charter of Rights and Freedoms* protects the rights of denominational schools from attack under other Charter provisions.¹²⁷

The fourth case occurred when teachers with seniority grieved the priority given to the corporate contract of the Christian Brothers.¹²⁸ During arbitration, the school board argued that the Roman Catholic Church possessed a right to have certain of its schools entrusted to and administered by religious institutes. By a majority ruling, the arbitration board concluded that no entrenched rights existed regarding religious orders.¹²⁹ In dissenting, M. Harrington held that the legislature had recognized the bishop's right to entrust certain Roman Catholic schools to religious institutes, which could operate such schools without interference in so far as their internal workings were concerned, and that therefore, prior to 1949 the

¹²⁶ In this decision, Mr. Justice W. Marshall considered the context of the denominational system and gave a broad interpretation to the issue of "denominational cause" and, interestingly, did not refer to the narrow interpretation given by Judge N. Noel in the *Stack* case.

¹²⁷ He made special reference to the evolution of s. 29 of the *Charter* as related by the Ontario Court of Appeal in *Re An Act to Amend the Education Act* (1986), 25 D.L.R. (4th) 1 (Ont.C.A.).

¹²⁸ *Re Roman Catholic School Board, Exploits-White Bay and the Newfoundland Teachers' Association*, Nfld.C.A., 1982 No. 167, May 8, 1983 (unreported).

¹²⁹ *The Newfoundland Teachers' Association and the Exploits-White Bay Roman Catholic School Board*, Report of a Board of Arbitration, St. John's, March 31, 1982 (unreported).

Roman Catholic Church enjoyed this right in respect to its schools.¹³⁰ While subsequent court decisions upheld the ruling of the arbitration board,¹³¹ the NTA, the Catholic Education Council and all the Catholic school boards negotiated an agreement concerning the employment of members of religious institutes.¹³²

CONCLUSION

This chapter has examined the secular legislation of Newfoundland in order to see how it has recognized the various rights of Catholics regarding their schools. Generally speaking, the legislation has enshrined numerous rights, including that of having Catholic schools with teaching based on the Catholic faith, and the right to have some Catholic control over the operation of these schools, either by the bishops or by the C.E.C or through Catholic school boards. As a result of isolating these various prerogatives mentioned throughout the chapter, five general conclusions emerge.

The first conclusion concerns the concept of a Catholic school. The legislation

¹³⁰ This keenly argued position manifests the difficulty of making a distinction between legislation at the date of union, which merely "recognizes" a *de facto* situation and that which grants a right associated with denominational schools.

¹³¹ *Re Roman Catholic School Board, Exploits-White Bay and the Newfoundland Teachers' Association*, Nfld.S.C., 1982 No. 2080, September 2, 1982 (unreported); *Re Roman Catholic School Board, Exploits-White Bay and the Newfoundland Teachers' Association*, Nfld.C.A., 1982 No. 167, May 8, 1983 (unreported). On June 20, 1983 the Court of Appeal refused to give leave to appeal this judgement to the Supreme Court of Canada.

¹³² The authority to make such an agreement was legislated in the 1988 amendment to the 1973 *Newfoundland Teacher (Collective Bargaining) Act*.

prior to the twentieth century recognized an amorphous array of schools attended by Catholic children, for it mentions at least six variations of a Catholic school: the convent schools under the supervision of the bishop;¹³³ the schools operated by the boards of the B.I.S. with less supervision by the bishop; the schools operated by the local boards of education whose membership included a clergyman; the academies (St. Bonaventure's and St. Bride's) which eventually evolved into colleges under the supervision of an appointed board of directors; the academies of Harbour Grace and Carbonear which eventually came under the control of the local Boards of Education; and some obscure schools which were entitled to some grants from the government but whose method of operation is unclear.¹³⁴ By the 1950s, these variations gradually narrowed to two kinds of Catholic schools: board schools operated by District School Boards and colleges.

Second, this examination of the legislation clearly manifests that the right to denominational schools is a fundamental constitutional right in Newfoundland society

¹³³ Besides those convent schools mentioned in the legislation, the Sisters of Mercy also operated "pay schools" for the upper classes, e.g., Our Lady of Mercy and St. Clare's Boarding School (1861-1881), as well as schools for the poor, e.g., St. Bridget's (1863-1881) and St. Peter's (1881-1903).

¹³⁴ For example, funds were allocated to the bishop for "Roman Catholic Schools in Kelligrews and Topsail" (see the 1876 Act, s. 16; also the 1858 Act, s. 18) and for the "schools at Shoal Point, Upper Island Cove and Riverhead" (the 1876 Act, s. 17). Perhaps these schools were established by the bishops or clergy, e.g., Father Morris managed the schools in Kelligrews and Topsail ("Testimony of R. Lahey", in Policy Grievance - Newfoundland Teachers' Association vs. Roman Catholic School Board Exploits-White Bay, *Transcript of Evidence*, 1981, p. 158). Perhaps the schools had been donated by Roman Catholics under certain conditions, e.g., the school in Crocker's Cove (House of Assembly debate, in *The Newfoundlander*, March 23, 1843).

and, therefore, needs "to be raised from the quagmire of religious and political rivalry in which it is enmeshed to become an issue of fundamental civil rights."¹³⁵ Furthermore, this constitutional right includes a number of administrative powers which ensure denominational status, and although these powers are not necessarily religious in nature, e.g., the power to hire and dismiss teachers, such means are inherently related to, and directly connected with maintaining the denominational status of these schools.¹³⁶ Third, the fact that Catholics have a right to denominational schools does not give the Church the right to ignore the legitimate rights of individual teachers. Accordingly, Catholic school boards need to specify clearly the qualifications and requirements demanded of teachers so that the latter may understand precisely the expectations of their employment by a Roman Catholic school board.¹³⁷

Fourth, the present debate about the rights of teachers and the rights of denominational schools appears to be a symptom of a more fundamental conflict in

¹³⁵ A. BRENT, "The Right to Religious Education and the Constitutional Status of Denominational Schools", p. 267. This position must be upheld even in the face of the diametrically opposed view of some people, e.g. M. MacGuigan (AASJ: 108/33/1, "New Perspectives of Catholic Education", Toronto, Osgoode Hall Law School, [n.d.], 12p.).

¹³⁶ *Greater Hull School Board et al. v. Attorney General of Quebec* (1985), 56 N.R. 99, at pp. 108-109 (S.C.C.). See also *Protestant School Board of Greater Montreal et al. v. Attorney General of Quebec et al.*, [1989] 1 S.C.R. 377 (S.C.C.).

¹³⁷ Recent policies concerning teachers go a long way to reaching this goal. For example, see the policies in "Section B. The Roman Catholic Board of Examiners" and "Section F: IX. Recommended R.C. Board By-Law on Duties of Teachers (June, 1977)", in CATHOLIC EDUCATION COUNCIL, *Policies and Procedures Manual*, [St. John's, 1990], pp. 65-67, 149-151.

society between two conflicting ideologies,¹³⁸ a conflict which is reflected in some of the court decisions regarding denominational schools. On the one hand, the traditional religious ideology views life, religion, education and teaching in a holistic way and views teachers as important academic, moral and religious examples for the student. On the other hand, the secular, individual-oriented ideology emphasizes the primacy of the state and the democratic rights of free individuals, including teachers. To achieve a resolution to this present tension, educators and politicians need to articulate the societal values that underlie particular decisions that they make.

Fifth, recent decisions from the Supreme Court of Canada, e.g., the *Caldwell* case,¹³⁹ have made some specific statements about the nature of Catholic schools. The court made the statements in the *Caldwell* case partly because of the extensive research by the Archdiocese of Vancouver to articulate for the courts the meaning of a Catholic school. Perhaps the Church needs to take a more active role in judicial decisions that could have an influence on educational rights, e.g., the Church could embark on a long-term plan of "strategic litigation" by becoming involved in selected cases in order to influence the development of jurisprudence in its favour or it could

¹³⁸ For more information, see R. MAGSINO and J. COVERT, "Denominational Thrust in Education: Some Issues Affecting Canadian Teachers", in *Canadian Journal of Education*, 9 (1984), pp. 243-260.

¹³⁹ Moreover, a 1985 Quebec decision, later confirmed in the Supreme Court of Canada, used an 1849 encyclical of Pius IX as well as the canons on Catholic schools and concluded that "[i]l y a donc entre catholiques et protestants des différences fondamentales dans leur conception respective de l'école confessionnelle" (*Quebec Association of Protestant School Boards et al. v. Attorney General of Quebec*, [1985] R.J.Q. 872, at p. 880).

request "intervenor status" in order to present a wider view of situations which are usually presented narrowly or from one perspective in the courts.¹⁴⁰

In the final analysis, one can conclude that although the Newfoundland legislature and courts have clearly protected and recognized numerous rights of Catholics with respect to Catholic schools, future developments will undoubtedly continue to probe the content of the rights or privileges of Catholics entrenched in Term 17.

¹⁴⁰ A. LAMER, "The Supremacy of God and the Rule of Law: Interrogatory", Unpublished address at the Canadian Canon Law Society, October, 1990, pp. 8-10. As an example of this role by the Church, see the *amicus curiae* brief of February 1, 1983, in support of a Minnesota law providing a state tax deduction for certain school-related expenses (UNITED STATES CATHOLIC CONFERENCE, "New Perspective on the Establishment Clause", in *Origins*, 12 (1982-1983), pp. 593-600).

CHAPTER SIX

SEEKING LEGISLATIVE HARMONY REGARDING ISSUES RELATED TO CATHOLIC SCHOOLS IN NEWFOUNDLAND

The use of the word "harmony" in the title of this chapter evokes an image that effectively captures the primary thrust of the following pages. Imagine an orchestra playing a symphony. The pleasant mixture of the various strings, from the high-pitched violin to the sombre-toned cello to the ethereal harp, creates an underlying consistency upon which the rest of the musicians build. The woodwinds consisting of the instruments such as the dainty piccolo, the penetrating flute and the murmuring clarinet and saxophone, produce a peculiar vibrancy that bestows a certain vitality to the resulting harmony. The distinctive blend of the brass instruments, from the blaring trumpet and trombone to the booming tuba, generates a reverberating foundation for the entire opus. The percussion section reinforces a commanding and orderly progression throughout the arrangement. Under the proficient direction of a conductor who perceptively appreciates the unique capacity of each individual instrument, the orchestra literally creates a melodious harmony by appropriately fusing the distinctive sounds produced by each musician.

Metaphorically, the goal of this chapter involves a similar harmony of the distinctive concerns of both the secular and ecclesial legislation governing Catholic schools in Newfoundland. This image of harmony also finds a source in the Second

Vatican Council, for, after calling the faithful to distinguish between the rights and duties that arise as a result of belonging to the Church and those that result from being members of society, the Council urged the faithful to "strive to harmonize the two."¹

Because Catholic schools involve a two-fold dimension,² these schools often find themselves governed by two different and often divergent systems of law.³ While these systems are quite distinct, the concrete reality often requires an effort to harmonize the particular concerns of both.⁴ Accordingly, in seeking this harmony,

¹ "This distinction and also this harmony should shine forth as radiantly as possible in the practice of the faithful, so that the mission of the Church may correspond more adequately to the special conditions of the world today" (*Lumen gentium*, n. 36; English translation, W.M. ABBOTT (ed.), *The Documents of Vatican II*, New York, Guild Press, 1966, p. 63). See also *Gaudium et spes*, n. 76.

² On the one hand, they act as ecclesial realities, witnessing to Christ in the world; on the other hand, they serve as components of civil society, committed to the service of humanity, culture and the common good (T. PAZHAYAMPALLIL, *A Commentary on the New Code of Canon Law*, Bangalore, K.J.C. Publications, 1985, p. 536).

³ L. Orsy contends that the body of secular law attempts to organize a community on the basis of justice, while the body of ecclesial legislation attempts to organize a community to receive the gift of redemption. In the final analysis, he concludes that the goals of each system "are so different that the rules they inspire and generate cannot be of the same nature even if they appear similar under many aspects" (L. ORSY, "Models of Approaches to Canon Law and Their Impact on Interpretation", in *The Jurist*, 50 (1990), p. 97).

⁴ A presently contentious issue of canon law involves the situation which arises when an institution falls under two systems of law. The so-called "McGrath thesis" held that, in this situation, civil ownership of Church goods excludes the necessity of applying the requirements of canon law. The Holy See has not accepted this position (SACRED CONGREGATION FOR CATHOLIC EDUCATION, Letter, January 2, 1974, in *CLD*, 9 (1978-1981), p. 367-369; SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Letter, October, 7, 1974, in *CLD*, 9 (1978-1981), p. 369-371). As a result, other canonists (e.g., A.J. MAIDA and N.P.

we shall first summarize the Church's legislation on several issues in relation to Catholic schools, especially as developed in chapter three. Following this, we shall then consider how the Catholic Church and the secular legislation of Newfoundland address these same issues and, where applicable, make suggestions as to how both the Church and the government might meet the challenge of creating or maintaining a harmony between the distinctive and legitimate concerns of both parties.

6.1 - CATHOLIC SCHOOLS IN NEWFOUNDLAND AND THE CODE

Just as the task of interpreting the canons on Catholic schools demanded the consideration of both the broader context of the Code as well as canon 803, so the application of the canons to Newfoundland must also consider the implications of both the broader context of the Code as well as canon 803.

6.1.1 - IMPLICATIONS FOR NEWFOUNDLAND IN LIGHT OF THE BROADER CONTEXT OF THE CODE

The broader context of the Code, when applied to the situation in Newfoundland, accentuates three concerns that linger almost unnoticed in many educational discussions. First, we must recognize the serious obligation and right that parents have to ensure that their children receive a Catholic education, and for

CAFARDI, Church Property, Church Finances and Church Related Corporations: A Canon Law Handbook, St. Louis, Catholic Health Association Press, 1984, xxii-339p.) attempt to protect the interests of the institution by fulfilling, as far as possible, the requirements of both canon and secular law, especially by ensuring that the prescriptions of canon law are sufficiently protected in the secular law.

Newfoundland, this means in the Catholic schools within the denominational system. However, during the 1990-1991 school year, 5619 Catholic children did not attend Catholic schools, some because they did not have access to them in their area and others because their parents chose not to have their children educated at these schools. This phenomenon of Catholic children not attending Catholic schools requires attention from several perspectives. The Catholic Education Council, realizing that Catholic education is a much broader reality than Catholic schools, has attempted to provide some form of assistance to those not able to attend Catholic schools, e.g., by encouraging correspondence programs in religious education and by establishing guidelines for joint service schools in an effort to contribute to the education of Catholic children who do not have access to Catholic schools. At the parish level, pastors must encourage and support all Catholic parents in their responsibility of ensuring the Catholic education of their children and must provide appropriate pastoral care when parents choose to send their children to non-Catholic schools.

These canons further emphasize a second issue, namely, that all Catholics, both children and adults, possess the right to a Catholic education, a right which arises from baptism.⁵ The Code persistently challenges parents, according to their own conscience, to educate their children; however, the canons usually express this demand, not by virtue of the child's right to an education, but by virtue of the

⁵ While canon 96 states: "By baptism one is incorporated into the Church of Christ and constituted a person in it with duties and rights [...]", canon 217 connects baptism and education.

parents' obligation to educate their children.⁶ Unfortunately, the Code, in the canons that govern the only institution in the law specifically concerned with children, does not forthrightly express the child's right to a Catholic education,⁷ nor the child's

⁶ Within the introductory canons on Catholic education and the canons on schools, the Code uses a variety of terms referring to those who receive education, but none of them gives positive expression to the child's right to a Catholic education. While the term *minor* possesses the strongest legal expression of rights, the Code does not use it in the canons on Catholic education or in those on schools.

- 1) *proles* (offspring): c. 793, § 1 - usually referring to the obligation of parents to educate their children, e.g., cc. 1055, § 1, 1061, 1096, 1125, § 1, 1136, 1153, § 1, 1689;
- 2) *filius* (child): cc. 793, § 1, 793, § 2, 796, § 2, 798 - usually referring to parental obligation to children (cc. 226, § 2, 774, § 2, 835, § 4, 867, 1129, 1154);
- 3) *puer* (child, with connotation under the age of seventeen): c. 795 - usually referring to sacramental preparation, e.g., cc. 777, § 2, 913, 914, but also to catechetical formation (c. 776) and Catholic education (c. 528, § 1);
- 4) *iuvenis* (youth, with connotation over the age of twenty): cc. 795, 799 - has a wide variety of uses referring to Catholic education (c. 528, § 1), catechetical formation (cc. 776, 777, § 5), seminarians (c. 235.1), spiritual assistance at university (c. 813), marriage (cc. 1063, § 1, 1072).

Furthermore the Code uses three other words:

- 1) *alumnus* (pupil or nursling, in the sense of being raised as part of a group): used mainly in reference to seminarians (cc. 232-264), but also used for members of institutes or societies (cc. 683, § 1, 985, 1019);
- 2) *studens* (student): cc. 811, 813, 815 - used only to refer to a person enrolled in a Catholic university;
- 3) *minor* (under eighteen): used in c. 98, § 2 to refer to a person who has rights, even though these rights are often exercised under the guidance of parents, e.g., domicile (c. 105, § 1), marriage preparation (cc. 1063, § 1, 1071, § 1.6), education regarding fast and abstinence (c. 1252), penalties (cc. 1324, § 1.4, 1395, § 2); trials (cc. 1478, 1481, § 3, 1521, 1550, § 1, 1646, § 3).

⁷ For instances where the Church gives a clear expression of students' rights regarding education, see JOHN PAUL II, Apostolic exhortation, *Catechesi tradendae*, October 16, 1979, n. 69, in *AAS*, 71 (1979), pp. 1334-1336; English translation in *Catechesis in Our Time*, Boston, Daughters of St. Paul, [n.d.], p. 58 (right to religious education, especially through the school); SACRED CONGREGATION FOR CATHOLIC EDUCATION, Document, *Lay Catholics in Schools: Witnesses to Faith*, October 15, 1982, nn. 14 and 56, in A. FLANNERY (ed.), *Vatican Council II: More Postconciliar Documents*, vol. 2, Northport, Costello Pub. Co., 1982, pp. 634 and 651,

right to spiritual assistance within the school.⁸

The issue of the child's right to an education raises the related issue of the child's exercise of this right. The Code sets the age of majority at eighteen, so that prior to eighteen, a minor usually remains subject to parents or guardians in the exercise of his or her rights, while after the age of eighteen, the person has the full exercise of rights.⁹ At the same time, the Church urges students to be "active agents in their own education."¹⁰

In Newfoundland, while the law implicitly recognizes the right of the child to a religious education, especially according to the convictions of parents,¹¹ perhaps the new *Schools Act* could more explicitly recognize the right of the child to a religious education. Furthermore, the draft of the new *Schools Act* proposes to recognize the fact that, at sixteen, the student can act with his or her parent in relation to student records (s. 11). Perhaps a similar provision regarding religious

respectively (right to choose the system of education; right to religious education).

⁸ In the chapter on Catholic universities, canon 813 explicitly acknowledges that students at university require spiritual assistance. While a university differs radically from primary and secondary schools, the Code could have explicitly mentioned the principle that students at all schools require spiritual assistance. However, in light of the right of all to receive pastoral assistance (c. 213), canon 813 could analogously be applied, *mutatis mutandis*, to primary and secondary schools.

⁹ For the principles concerning the exercise of rights in relation to age, see cc. 97-99.

¹⁰ CONGREGATION FOR THE CATHOLIC EDUCATION, Document, *The Religious Dimension of Education in a Catholic School*, April 7, 1988, n. 32, in *Origins*, 18 (1988-1989), p. 217.

¹¹ *The Schools Act*, R.S.N. 1970, c. 346, ss. 64 and 81 (c).

instruction could acknowledge the fact that older students, e.g., those sixteen or seventeen years old, have a right to a religious education, which could be exercised in conjunction with their parents.

The third concern centres on the quality of Catholic education given in Catholic schools. Sometimes parents perceive that the education in another school is better academically. Aware of the stipulation of c. 806, §2 directing that the academic formation in Catholic schools be at least as outstanding as that in other schools in the area, the C.E.C. in collaboration with school boards and school administrators must ensure that the Catholic schools provide both a truly "Catholic" and truly "academic" education. This task raises the necessity of an ongoing evaluation of these two dimensions of the Catholic education in the schools.¹² In this regard, we could view the present inquiry by the Royal Commission on Education as a form of the government's evaluation of its own commitment to provide quality education to the children of Newfoundland.

¹² "Loyalty to the educational aims of the Catholic school demands constant self-criticism and return to basic principles, to the motives which inspire the Church's involvement in education" (SACRED CONGREGATION FOR CATHOLIC EDUCATION, Document, *The Catholic School*, March 19, 1977, n. 67, in A. FLANNERY (ed.), *Vatican Council II: More Postconciliar Documents*, vol. 2, Northport, Costello Pub. Co., 1982, p. 621). The 1988 document from the Congregation for Catholic Education also addresses the importance of evaluation by highlighting numerous educational goals for the Catholic school (see SCCE, *The Religious Dimension of Education in a Catholic School*, nn. 100-107).

Although much evaluation takes place on different levels, the various instruments used in Australia could prove helpful in Newfoundland, e.g., CATHOLIC EDUCATION OFFICE, *Purposes and Outcomes for Catholic Schools*, Sydney, 1986, 28p.; CATHOLIC EDUCATION COUNCIL, *Self Renewing Catholic Schools. A Manual for Catholic School Communities*, Brisbane, Archdiocese of Brisbane, [1989], 31p.

6.1.2 - CATHOLIC SCHOOLS IN NEWFOUNDLAND AND CANON 803

The fundamental issue within the canons on schools relating to the topic of this study, concerns how the *Code of Canon Law* understands a Catholic school. As seen in chapters two and three, canon 803, § 1 contains the formal canonical criterion for a particular school to be considered Catholic:

That school is considered to be Catholic which ecclesiastical authority or a public ecclesiastical juridic person supervises or which ecclesiastical authority recognizes as such by means of a written document.

This criterion embodies a multitude of Catholic schools, thus giving rise to various kinds of Catholic schools:

- 1) those under the direct supervision of ecclesiastical authority,¹³
- 2) those where ecclesiastical authority exercises indirect supervision either through an individual¹⁴ or through a corporate body,¹⁵

¹³ For example, the Presentation school opened by Bishop M. Fleming in 1833.

¹⁴ For example, a superintendent of Catholic schools exercises a diocesan supervisory role in many dioceses in the United States.

¹⁵ For example, the Catholic schools in Australia are governed by both a Catholic Education Commission on the state level and a Catholic Education Office at the diocesan level. Moreover, in Ireland local managerial boards at the parish level exercise much control over the Catholic schools. For a discussion concerning the catholicity of the Irish education system, see M. BRENAN, "The Catholic School System of Ireland", in *The Irish Ecclesiastical Record*, fifth series, 52 (July-December 1938), pp. 257-272; C. LUCEY, "Making the School System of Ireland Catholic", in *The Irish Ecclesiastical Record*, fifth series, 52 (July-December 1938), pp. 405-417.

- 3) those under the supervision of a public ecclesiastical juridical person;¹⁶
- 4) those acknowledged as Catholic in a written document by ecclesiastical authority.

This acknowledgement by ecclesiastical authority could be given to a wide spectrum of schools ranging from those possessing only minimum Catholic qualities,¹⁷ through those which operate within a public system,¹⁸ to those which have been established by a group of Catholics.¹⁹ Moreover, canon 803, §3 alludes to the reality of schools which do not fulfill the criteria of canon 803, §1, but which are truly Catholic schools. In analyzing canon 803, one realizes that an almost endless variety of Catholic schools throughout the world could fall within the ambit of the kinds of Catholic schools alluded to in this canon.

¹⁶ For example, many dioceses of the United States operate diocesan or regional schools and, until recently most parishes also had their own schools; in numerous other countries, religious institutes operate their own schools.

¹⁷ For example, the vast majority of pupils (82%) and teachers (70%) in the Catholic schools in Denmark are non-Catholic. Part of the reason why the bishops might acknowledge these schools could focus on the fact that the Danish State has a long tradition of recognizing and financially supporting private initiatives in education (H. VANACKERE (ed.), *Catholic Education in Western Europe*, in *Pro Mundi Vita Bulletin*, 97 (2/1984), pp. 22-23). Moreover, T. Pazhayampallil contends that the Catholic schools in India provide an evangelizing effect in the midst of a non-Christian country (T. PAZHAYAMPALLIL, *A Commentary on the New Code of Canon Law*, pp. 530-532).

¹⁸ For example, the bishops of the Netherlands and of Ontario have acknowledged that the Catholic schools within the public system are Catholic schools (see EPISCOPAL CONFERENCE OF THE NETHERLANDS, "Catholic Teaching in the Netherlands", in *Catholic Mind*, 76 (April 1978), pp. 37-64; L. BORDONARO, *Separate Schools in Ontario, Canada: Their Canonical Status and Relationship to the Church According to the 1983 Code of Canon Law*, J.C.D. diss., Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1989, pp. 144-154).

¹⁹ An example of this could include a school established and operated by Catholic parents for their children.

This awareness of the variety of Catholic schools helps to appreciate some of the variations and even tensions that often arise in the day-to-day operation of the schools in Newfoundland, e.g., the relationship of a regional or central high school to the various parishes from which the students come, the relationship between the school and the parish in the area of sacramental preparation, the slightly different approaches to education taken by the various religious institutes. In other countries, these variations lead to different kinds of Catholic schools, while in Newfoundland the differences are minimized as all the schools are operated by Catholic schools boards.

Perhaps both the Church and the government in Newfoundland need to appreciate more fully the diversity of Catholic schools and realize some of the differences. The recent court case involving the corporate contracts of religious provides one example of some of the essential differences which arise in a school operated by religious and shows how the legislation can recognize these differences.²⁰ Most importantly, the awareness of the variety of Catholic schools could contribute to a new openness regarding the development of new kinds of Catholic schools in Newfoundland. In terms of secular legislation, perhaps the government could include as one of the duties of the Catholic Education Council the right to recognize those schools which are indeed Catholic.

One other issue relating to the recognition of a Catholic school concerns the

²⁰ *Re Roman Catholic School Board, Exploits-White Bay and the Newfoundland Teachers' Association*, Nfld.C.A., 1982 No. 167, May 8, 1983 (unreported).

requirement of canon 803, §3 regarding the consent necessary to use the title "Catholic school". In Newfoundland the school board usually decides on the name of a particular school, although the C.E.C. is often involved in this process.²¹ Perhaps clearer guidelines could give school boards the appropriate awareness of the underlying concerns of this canon, e.g., the importance of having an authentically Catholic school. Moreover, perhaps the bishops could delegate the authority regarding the use of the title "Catholic school" to the chairperson of the board.

6.2 - CONSEQUENCES FLOWING FROM BEING A CATHOLIC SCHOOL

According to the *Code of Canon Law*, the fact of being a Catholic school -- either by virtue of canon 803, §1 or by virtue of its being a Catholic school in fact -- has several consequences which flow from the obligations and rights of various people and agencies. In the following pages, we shall closely follow the commentary on the canons on schools of chapter three, highlighting canonical and pastoral issues applicable to Newfoundland.

6.2.1 - PARENTS

The canons on the obligations and rights of parents in relation to schools

²¹ Interestingly, in Newfoundland none of the schools contains the phrase "Catholic school" in their title, since this phrase would be redundant for most of the schools, e.g., All Hallows Elementary School, Corpus Christi Central High School, Holy Cross Elementary School, Holy Heart of Mary Regional High School, Roncalli Central High School, Sacred Heart Elementary School, Stella Maris High School, St. Pius X High School, St. Theresa's Elementary School, St. Anne's Elementary School, etc.

represent one of the more important new emphases of the Code. The canons state that all parents have the obligation and right to educate their children (c. 793, § 1); that Catholic parents have the duty and right to provide for the Catholic education of their children (cc. 793, § 1, 798); that Catholic parents have the right to assistance from civil society in providing for the Catholic education of their children (c. 793, § 2, 797); that they have the right to assistance from schools and teachers in fulfilling their role in education (c. 796, § 1); that parents have the right to a freedom of choice in choosing schools for their children (c. 797); that they have the right to a religious and moral education for their children, in conformity with their own conscience (c. 799).

In Newfoundland, where ninety-five percent²² of Catholic children have the opportunity of attending Catholic schools and where parents enjoy real freedom of choice in sending their children to Catholic schools since the government funds almost the complete cost of the operation of the educational system, one can conclude that the principles underlying some of the canons on schools find splendid support. However, because of the fact that the educational system is organized denominationally, with the expectation that Catholics will attend Catholic schools, the dimension of choice on the part of parents to send their children to Catholic schools

²² While 49,028 Catholics attend Catholic schools in the present 1990-1991 year, 5619 Catholics attend non-Catholic schools. Of this latter number, about 2500 (or about 5%) of these Catholic children live in areas where the population does not warrant the establishment of a viable Catholic school.

seems less conscious and sometimes may even be taken for granted.²³

Moreover, perhaps the area which requires most emphasis in implementing the canonical principles revolves around the primacy of the role of parents in the education of their children. While this parental role is not an exclusive one, since other agents also have rights in the education of children, at the same time, others cannot usurp this parental role nor can parents totally surrender it. Although the Church has unequivocally taught that parents are the primary educators of their children, it seems that some Church authorities have been somewhat meagre on practical implementation "where parental rights in school have been concerned."²⁴

In Newfoundland, the C.E.C. has consistently emphasized the partnership among home, school and parish and has encouraged parent-teacher associations as

²³ In the recent survey conducted by R.K. Crocker, some respondents remarked "that the strong protections enjoyed by the denominations may embody a weakness in that there is less need to defend the system and less conscious commitment to the system than would occur if the system was a private one, supported directly by parents and the Church" (R.K. CROCKER, *Catholic Education in Newfoundland and Labrador: Report of Surveys of Members of the Catholic Education Community [=Report]*, vol. 1, [St. John's], December, 1990, p. 154).

²⁴ M. REARDON, "Catholic Education: The Challenges of the Next Decade", in Canon Law Society of Australia and New Zealand, *Proceedings of the Twentieth Annual Convention* (1986), p. 92. S. Ó Buachalla makes a similar comment about the Irish school system (S. Ó BUACHALLA, *Education Policy in Twentieth Century Ireland*, Dublin, Wolfhound Press, 1988, pp. 236-237). In a study of Catholic education in several Western countries, a similar discrepancy was found in some countries, e.g., the Netherlands, Italy, the United States, whereby parental rights in education were strongly emphasized, but their practical implementation was rare. On the other hand, France and Germany showed a marked difference by providing for active parental involvement in education. For further information, see J.M. LEE (ed.), *Catholic Education in the Western World*, Notre Dame, University of Notre Dame Press, 1967, xiv-324p.

one way to give recognition to the primary role of parents in the education of their children. However, these associations have been slow in evolving.²⁵ Perhaps part of the difficulty regarding them has its source in the emphasis that some of the early bishops had placed on the school, especially when parents seemed to neglect their duty of educating their children. The C.E.C. and the whole Church must place greater emphasis on the essential, primary, and irreplaceable role of parents in the education of their children.

Other ways to ensure that parents exercise their proper educational role could include the following:²⁶ both school boards and the C.E.C. could increase their representation of parents as parents; each form of collaboration could emphasize the primary right of parents; school boards could strongly recommend the formation of school committees which could assist in the formulation of policies and could provide an effective liaison with the school board;²⁷ parishes and schools could initiate

²⁵ The Crocker Report raised a question about the real strength of PTAs in Catholic schools and suggested further study (R.K. CROCKER, *Report*, vol.1, p. 78).

²⁶ For further suggestions, see L. LONG, "Parents: The Untapped Resource", in *Momentum*, 13 (3/1982), pp. 21-22; M. McKINNEY, "Parental Leadership in a Vatican II Church", in *Momentum*, 15 (3/1984), pp. 18-19.

²⁷ Throughout Australia, a trend toward localization has led to a school-based decision-making, eventually moving toward the establishment of school councils. These consist of representatives of the entire school community, who then act as advisory or decision-making bodies for the school. For more information on these school councils, see H. BEARE, "Changing Structures in Education", in *Catholic Education in Victoria: Yesterday, Today and Tomorrow*, East Melbourne, The Catholic Education Office of Victoria, [1985], pp. 218-222. Even though such councils are of greater significance in Australia since school boards as they exist in Newfoundland have not been established, nevertheless, they could make a real contribution to parental participation in Catholic schools in Newfoundland, especially since *The Schools Act* (R.S.N. 1970, c. 346, s. 22) already provides for the establishment of

Christian parenting classes.²⁸ With the increasing emphasis on lay ministry and lay formation, the Church in Newfoundland needs to consider further the challenge of Pope John Paul II who taught that "the sacrament of marriage gives to the educational role the dignity and vocation of being really and truly a 'ministry' of the Church at the service of the building up of her members"²⁹ and that "the Christian family, as the 'domestic Church', also makes up a natural and fundamental school for formation in the faith."³⁰

Besides having the Church encourage the educational role of the parents, secular legislation also has a part to play. The long tradition in Newfoundland -- beginning in 1853 -- whereby educational legislation has protected the religious convictions of parents, thus forbidding any person from imparting any religious instruction to which the parent or guardian of the child may object,³¹ provides an outstanding example of secular legislation giving expression to a principle of

school committees.

²⁸ W. McMANUS, "Building Support for Catholic Schools and Their Teachers", in *Origins*, 18 (1988-1989), p. 13.

²⁹ JOHN PAUL II, Apostolic exhortation, *Familiaris consortio*, November 22, 1981, n. 38, in *AAS*, 74 (1982), p. 129; English translation in *The Role of the Christian Family in the Modern World*, Ottawa, Canadian Conference of Catholic Bishops, [n.d.], p. 75.

³⁰ JOHN PAUL II, Apostolic exhortation, *Christifideles laici*, December 30, 1988, n. 62, in *AAS*, 81 (1989), p. 514; English translation in *The Vocation and the Mission of the Lay Faithful in the Church and in the World*, Ottawa, Canadian Conference of Catholic Bishops, [n.d.], p. 184.

³¹ *The Schools Act*, R.S.N. 1970, c. 346, ss. 64 and 81 (c) presently enshrines this tradition.

canonical legislation. Meanwhile, recent criticism has raised the issue of the rights of those non-Christian or other parents who desire an education for their children which the present system does not provide. While the present statistics of the parents concerned do not indicate a large number,³² this will probably increase in the future, thus making it more imperative that the government consider ways of addressing the rights of these parents.³³ At the same time, any change in the system must give recognition to constitutionally protected rights of the various Christian denominations concerning denominational schools. Yet, while the present structure, as constitutionally protected, may make it difficult to implement the rights of some parents, perhaps the government, in cooperation with the various denominations, could introduce some changes, e.g., perhaps the *Terms of Union* could appropriately

³² The 1981 census showed the denominational representation in Newfoundland as follows: Roman Catholic (36.3%), Anglican (27.2%), United Church (18.6%), Salvation Army (8.0%), Pentecostal (6.6%), Presbyterian (0.5%), Moravian (0.4%), Adventist (0.1%), Other Christian (1.1%), Jewish and Eastern Non-Christian (0.2%), No religion (0.9%). Only the last three groups or 2.2% of the population do not have protected rights in the denominational system.

³³ The C.E.C. made a similar recommendation in its 1991 Brief to the Royal Commission: "The Council recommends that, wherever numbers warrant, parents who do not belong to religious denominations now recognized for educational purposes in this Province, be provided the opportunity to have their children educated in the traditions and value systems which they themselves hold" (CATHOLIC EDUCATION COUNCIL, *A Brief Presented to the Royal Commission of Enquiry into the Delivery of Programs and Services in Primary, Elementary and Secondary Education* [=Brief], St. John's, April 30, 1991, p. 100). Similarly, the Bishops of Ontario, recognizing the primacy of parental rights in education, publicly committed themselves "to support the concept of the development of alternative schools for people of other faith communities" (ONTARIO CONFERENCE OF CATHOLIC BISHOPS, *This Moment of Promise: A Pastoral Letter on Catholic Education in Ontario*, Toronto, 1989, p. 36).

provide for the non-discriminatory allocation of funds to those who do not enjoy the protection of their rights regarding denominational schools; or perhaps all the parties involved could consider, while firmly acknowledging the rights of individual denominations in the area of education, the possibility of discontinuing denominationalism as a principle of organizing the educational system.³⁴ Undoubtedly, these changes would involve extensive negotiations, especially regarding certain constitutional rights, e.g., non-discriminatory public funding. However, the consequent agreement could make provisions for the transferral of the various rights within the pre-1949 denominational system to the denominations which enjoy those rights and could provide an alternate way of entrenching the formula for non-discriminate funding as found in the *Terms of Union*.

6.2.2 - DIOCESAN BISHOPS

The Code spells out several responsibilities of the diocesan bishop in relation to schools, the first pertaining to his responsibility in establishing schools (cc. 802, 801). In Newfoundland, the school boards have the responsibility for the establishment of schools, since the boards must "organize the means of elementary or secondary education" and provide schools for this education.³⁵ Since the secular legislation already indirectly gives the Church, through the school board, a certain

³⁴ The bishops of the Netherlands make a similar statement regarding their system of education (EPISCOPAL CONFERENCE OF THE NETHERLANDS, "Catholic Teaching in the Netherlands", in *Catholic Mind*, 76 (April/1978), p. 42).

³⁵ *The Schools Act*, R.S.N. 1970, c. 346, ss. 12 (a) and 85.

HARMONY BETWEEN SECULAR AND ECCLESIAL LEGISLATION 262

role in this area of establishing schools, perhaps the school board needs further awareness that its responsibilities are an expression of the obligation of the bishop.

The second responsibility focuses on the bishop's role to regulate and be vigilant over Catholic religious formation and education (cc. 803, §2, 804, §1). In Newfoundland, section 16 (a)(iii) of the *Department of Education Act, 1990* gives the C.E.C. the responsibility "for the development and administration of religious education." Accordingly, the C.E.C. has specific responsibility for religious education in all Catholic schools as well as a general concern for all programs of study in Catholic schools. The Council also negotiates with other school boards, especially through joint service agreements,³⁶ in order to regulate the religious education and formation of Catholic students in non-Catholic schools.

Finally, the bishop has the right of vigilance over and visitation of Catholic schools in his diocese as well as the right to issue prescriptions for the general regulation of Catholic schools in his diocese (c. 806). In Newfoundland, the district superintendent of each board has the duties to "exercise general supervision over all schools, property, teachers and [... to] ensure that each school is visited as frequently as feasible and at least twice in each year."³⁷

A lingering issue underlying this entire consideration of the role of the bishops

³⁶ The Brief to the Royal Commission mentions that these joint service agreements include various elements depending on the particular circumstances of the local area and describes seven different models of schooling as illustrations of this variety (C.E.C., *Brief*, pp. 72-83).

³⁷ *The Schools Act*, R.S.N. 1970, c. 346, s. 19 (h).

in relation to Catholic schools in Newfoundland concerns the canonical relationship of the four bishops involved. Although the educational legislation acknowledges the presence of the four bishops within a civilly recognized structure, a problem surfaces when one seeks an ecclesiastical counterpart, e.g., ecclesiastical province or ecclesiastical region.³⁸ Despite this secular structure providing the bishops with a forum for the exercise of their responsibility in the area of Catholic education, the four bishops do not have a similarly defined canonical relationship. The three bishops on the island comprise the ecclesiastical province of St. John's under the leadership of the metropolitan archbishop of St. John's, while the bishop of the Diocese of Labrador City-Schefferville falls under the ecclesiastical jurisdiction of Kewatin-Le Pas. Clearly, the ecclesiastical boundaries of Labrador City-Schefferville need further review in light of the call of Vatican II to facilitate fruitful relations between bishops and the civil authorities.³⁹ However, realizing that any boundary changes affecting Labrador would necessarily affect the boundaries of the Diocese of Baie-Comeau, Quebec, negotiations will certainly not take place in the midst of the present tension relating to the position of Quebec within the Canadian federation. Thus, in the absence of a proper ecclesiastical structure, the C.E.C. provides an effective legal structure whereby the four bishops of Newfoundland can

³⁸ While the metropolitan archbishop possesses a limited power of governance over his suffragan sees (c. 436), the purpose of the grouping into ecclesiastical provinces concerns the promotion of a common pastoral action of various neighbouring dioceses.

³⁹ *Christus Dominus*, nn. 39-41.

promote a common pastoral action in the area of Catholic education.

6.2.3 - TEACHERS

The Code mentions several issues regarding teachers, including the collaborative relationship between parents and teachers (c. 796, §2), the necessity of the teachers' having correct doctrine, witness of Christian living and pedagogical skill (cc. 804, §2, 803, §2), and the appointment and removal of teachers of religion (c. 805).

When one examines the canons concerning teachers in relationship to the situation in Newfoundland, several considerations relating to contemporary and often delicate issues begin to surface. First, those connected with the school in any way need to cultivate constantly the fundamental attitude of being at the service of parents, in the education of their children. Activities sponsored by Parent-Teacher Associations, e.g., social events, informative gatherings on current issues, an annual open house at the school, could strengthen the required collaborative relationship between teachers and parents.

Second, the fact that the employment policies of Catholic school boards explicitly identify the expectations of teachers, both Catholic and non-Catholic, provides an excellent example of implementing the requirements of ecclesial legislation.⁴⁰ Furthermore, various Acts of secular legislation, including *The Schools*

⁴⁰ See APPENDIX 9 for an example of a school board by-law on the duties of teachers.

Act and the *Newfoundland Teacher (Collective Bargaining) Act*, give appropriate recognition to the expectations expressed in these legitimate school board by-laws. More importantly, in applying the constitutional protection of denominational schools, the courts have upheld these by-laws in cases regarding the removal of teachers, to the extent that the by-laws flow from the nature of a Catholic denominational school.

The third issue, probably the most important one associated with teachers in Catholic schools, concerns their formation. While most teachers in Newfoundland receive their teacher training from Memorial University of Newfoundland, this training has little that specifically refers to Catholic education or the nature of Catholic schools. Since the teacher has such a vital role in the fulfillment of the aims of a Catholic school, the importance of the Catholic formation of teachers requires immediate response, especially in light of the decreasing number of teachers and principals who are members of religious institutes. While the C.E.C. has already given consideration to the topic, further efforts are necessary, especially in light of the realization that "the continued existence of Catholic schools [will ...] depend largely on the laity"⁴¹ and in light of the awareness that Catholic teachers have a right

to expect that [the Church ...] will help to awaken them to their personal needs in the area of formation, and will find the means to stimulate them so that they can give themselves more totally to the

⁴¹ SCCE, *Lay Catholics in Schools*, n. 45.

social commitment that such a formation requires.⁴²

Accordingly, while continuing to accentuate the required professional development of the teacher, the C.E.C. must also emphasize the vocational dimension of the teacher,⁴³ for the way teachers "bear witness to the faith will depend on how they perceive their identity in the Church and in their work."⁴⁴ This could be developed in several ways, including through some kind of support groups⁴⁵ or through a periodic bulletin published by the C.E.C. or some other body. Moreover, the bulletin, circulated to schools and to teachers, could present various issues concerning Catholic education, e.g., the pastoral care of students, ongoing analysis of Catholic values in the midst of secular society, philosophy of Catholic education, the faith development and spiritual growth of teachers, and the development of their ministerial skills.

Ultimately, teachers need to regard themselves as cooperating in the

⁴² *Ibid.*, n. 63. This comment about formation is merely a consequence of the Church's emphasis on the formation of the laity, e.g., *Apostolicam actuositatem*, n. 30; *Christifideles laici*, nn. 57-63.

⁴³ Although all the baptized share a common baptismal call to participate in the mission of the Church, specific characteristics can transform the life of a teacher into a specific vocation (SCCE, *Lay Catholics in Schools*, n. 7). For further references to the vocation of the Catholic teacher, see *ibid.*, nn. 6, 8-11, 15-24, 33, 37, 60-70.

⁴⁴ *Ibid.*, n. 5.

⁴⁵ In this regard, G. Frecker had already emphasized nearly fifty years ago the importance of on-going teacher formation through "reading circles", in an effort to study the spiritual, social, economic and geographic conditions that affect education in Newfoundland (ASM: RG 1/8/20-25, G.A. FRECKER, "Self-Improvement of Teachers", Address to the Convention of Catholic Teachers' Guild of St. George's Diocese, August 30, 1943, 6p).

apostolate of the bishop.⁴⁶ To develop this awareness, the bishops could promote an annual "commissioning" of teachers in some form of public ceremony, whereby parishes could express appreciation for the significant role that teachers play in the Church and in their apostolate of Catholic education. This practice might even evolve to the point where the bishops could officially institute the ministry of Catholic teacher as an established ministry in the local Church.

Another dimension of this Catholic formation concerns its implementation, appropriately supported by secular legislation. This could involve a training program, whereby teachers could participate in a multi-level program and, upon completion, could move into another salary bracket,⁴⁷ although such would not necessarily follow. Moreover, such a program could give the school boards the right to require that teachers be at least enrolled in the program as a "*bona fide* occupational qualification and requirement"⁴⁸ for employment in Catholic schools.

6.2.4 - RELIGIOUS INSTITUTES

The two canons which mention religious institutes in relation to schools focus

⁴⁶ SCCE, *The Catholic School*, n. 71. This paragraph also speaks of the Catholic school receiving in some manner the "mandate" of an apostolic undertaking.

⁴⁷ The Ontario English Catholic Teachers' Association of Ontario has implemented a program of this kind. See OECTA/OSSTA, *Ministry Courses in Religious Education*, 1990, 48p.

⁴⁸ For a legal consideration of the characteristics involved in this "*bona fide* occupational qualification and requirement", see *Ontario Human Rights Commission et al. v. Borough of Etobicoke* (1982), 132 D.L.R. (3d) 14 (S.C.C.).

specifically on those institutes whose "proper mission" is education (c. 801) and affirm the right of the diocesan bishop to vigilance over and visitation of the schools established or directed by religious institutes (c. 806, § 1).

Any schools in Newfoundland established by religious institutes since the 1950s have been incorporated under the general supervision of Catholic school boards. While this contributes to the overall coordination of the Catholic school apostolate, it sometimes fails to give appropriate recognition to the role of religious institutes in the various Catholic schools⁴⁹ as well as to the distinctive character of each of the various religious institutes. Perhaps the C.E.C. in collaboration with the religious institutes could highlight more clearly the specific character which flows from the charism of the institute that directs the school. Thus, the Catholic school directed by religious could become a concrete expression of the specific charism of that particular religious institute.⁵⁰ Accordingly, the effects of the charism would permeate the entire school community providing inspiration for the other teachers in the school.⁵¹

⁴⁹ An example of this lack of recognition for the role of religious institutes within the school apostolate occurred in the court case of the early 1980s regarding the nature of the corporate apostolate of the Congregation of Christian Brothers. This case also demonstrated the importance of balancing the corporate rights of religious with the seniority rights of other lay teachers in the board.

⁵⁰ SCCE, *Lay Catholics in Schools*, n. 39.

⁵¹ This sharing with other teachers in the vision of the religious institute would not make mini-religious of the other teachers, but would necessarily give due consideration to the fact that as educators, religious and lay people share the ministry of teaching in specifically different ways. For further development of the relationship between religious and laity in education, see J.H. GO, "Religious and Lay Collaboration in School", in *Seminarium*, N.S., 34 (1982), pp. 240-253; J.W. SAUVE,

6.2.5 - CHRISTIAN FAITHFUL

The Code exhorts the Christian faithful to value schools greatly (c. 796, §1) and to support and maintain Catholic schools (c. 800, §2); moreover, the canons urge the faithful to act within society to ensure parental freedom in the selection of schools for their children (c. 797), to safeguard this freedom through the just allocation of resources (c. 797), and to obtain laws which provide for the religious and moral education of children in any schools (c. 799).

The recent efforts of the C.E.C. emphasizing the partnership among home, school and parish contribute to the strengthening of the role of the whole Church in the support of Catholic schools in Newfoundland. However, an inherent paradox⁵² within the denominational system of Newfoundland calls for the continuance of these efforts at all levels of Church life. Regarding the faithful's role in seeking suitable laws, section 27 of the *Department of Education Act, 1990* gives the C.E.C. the right to review and make recommendations on all educational legislation prior to its introduction into the legislature, thus providing the Church with an effective way of fulfilling its obligation to seek appropriate laws regarding the religious and moral education of the young.

"The Collaboration of Religious and Lay Educators in the Ministry of Teaching", in *Seminarium*, N.S., 34 (1982), pp. 254-267.

⁵² That is, while the system enjoys the strength of many legislative protections, these protections seem to contribute to a certain *laissez-faire* attitude regarding the necessity of expressing support for Catholic schools.

6.2.6 - PARISH PRIESTS

Canon 528, §1 obliges parish priests to take special care of the Catholic education of children and young people, especially by making appropriate arrangements for the fulfillment of this obligation (c. 794, §2).

In Newfoundland prior to the late 1960s, virtually every parish had a school board chaired by the parish priest. Accordingly, the pastor had an immediate relationship with the Catholic school(s) in his parish. With the reorganization of the denominational system in the late 1960s as well as the increasing pastoral demands on pastors, the relationship between priests and Catholic schools has radically changed. These changes must not eliminate the essential connection between the school and the parish, for the school must constantly insert itself into pastoral activities, in such a way as to complement the activities of parish ministry.⁵³ Furthermore, although priests provide a general pastoral care for students at schools, e.g., liturgical services and some retreats, the use of pastoral care committees⁵⁴ could greatly enhance the pastoral care of students and provide some means of facilitating the relationship between the school and the parish.

Secular legislation⁵⁵ provides for the presence of clergy -- usually by appointment from their bishops -- on school boards, thus at least indirectly giving due

⁵³ SCCE, *Lay Catholics in Schools*, n. 44.

⁵⁴ For further information on this area, see CATHOLIC EDUCATION COMMISSION OF VICTORIA, *Pastoral Care in Catholic Schools*, [n.p.], 1985, 32p.

⁵⁵ *The Schools Act*, R.S.N. 1970, c 346, s. 7 (3)(c).

recognition to the role of parish priests in the Catholic education of the children of their parishes. However, the recent developments in the direction of fully elected school boards, e.g., the changes in the *School Board Election Regulations* as well as those proposed in the draft for the new *Schools Act*, will seriously alter the bishops' right to appoint people to the school board. The resulting change will eliminate two prerogatives found in the previous law, i.e., the bishops' appointees gave each bishop an official input into the membership of each school board, thus acknowledging the bishops' involvement in the ministry of Catholic education; also the bishops often appointed priests to the school board, thus recognizing their role in the area of Catholic education.

With the possible changes in legislation, priests could run in these school board elections, but an increasing number of priests are content to forego their positions on school boards, especially in light of the increasing administrative role of such boards, the evolution of the role of the laity and the increasing demands of parish life. However, priests need to remain aware of the various movements in the denominational system as they affect Catholic schools. This awareness could filter through diocesan religious education offices, through presbyteral councils or through deaneries. In light of the future possibility regarding the election of all school board members and in light of the parish priest's role in the area of Catholic education, perhaps secular legislation could specify that one of the duties of the school board member would be to act as an official link between the school board and the parish priest(s) of the parish(es) concerned.

6.2.7 - CIVIL SOCIETY

The canons on schools specify two responsibilities on the part of civil society, i.e., to protect parental freedom in the choice of schools, especially by safeguarding this freedom with its resources in accord with the demands of distributive justice (c. 797), and to provide laws which would ensure the right of parents to educate their children according to the conscience of parents (c. 799).

Term 17 of the *Terms of Union of Newfoundland with Canada* ensures that, in its allocation of public funds for education, the government will distribute funds on a non-discriminatory basis to various denominational schools. Regarding the other responsibilities of civil society, these seem fulfilled in that the C.E.C. has the responsibility "for development of religious education"⁵⁶ and teachers have the obligation to "teach the courses in religious instruction directed by the appropriate denominational authority."⁵⁷

6.2.8 - SCHOOL BOARDS

The schools boards, within the denominational system of Newfoundland,

⁵⁶ *The Department of Education Act, 1990*, s. 16 (a)(iii). However, this section is subject to section 28 of this same *Act*, which refers to the fact that a particular denomination could "repose full or partial responsibility" for this task in its denominational council. While the C.E.C. carries out this function *de facto*, it is not clear whether it does this because the function has been reposed in the C.E.C. or whether the C.E.C. undertakes this task by virtue of the *ex officio* presence of the bishops.

⁵⁷ *The Schools Act, R.S.N. 1970*, c. 346, s. 81 (c).

possess statutory responsibilities which the *Code of Canon Law* designates as belonging to the bishop or the local ordinary, e.g., the establishment of schools, the employment of teachers, the formulation of regulations and by-laws regarding the coordination of the Catholic schools under the board and the appointment of a superintendent with duties of general supervision and visitation of the schools of the board. Although school boards are entrusted with these functions by secular law, they need to become more conscious that, since they are involved in the realm of Catholic education, they are also exercising responsibilities which Church law attributes to bishops. Realizing the necessary relationship on various matters between the boards and the C.E.C., the secular law seems to provide an appropriate acknowledgement to the supervisory role of the bishops. However, the bishops could delegate the superintendents or chairpersons of the boards to act on their behalf on most matters contained in the canons on schools. Whether the bishops delegate these responsibilities or not, the school boards must deepen their appreciation of the fact that their actions ought to flow from the perspective of Catholic values and principles.⁵⁸

Perhaps the most confused canonical concern associated with school boards revolves around the fact that the boards have various duties and powers regarding land and finances. While the Church owns the schools and land and protects them under the civilly recognized episcopal corporations of the various dioceses, the land

⁵⁸ T. SAVAGE, "Trustees at the Crossroads: Strengthening Their Future Position", in *Health Progress*, 69 (May 1988), pp. 33-36. Although this article deals with hospital boards, many of the same issues apply to school boards.

often still belongs canonically to particular parishes.⁵⁹ Furthermore, the school board often makes financial transactions which have consequences for the parish. Since book V of the *Code of Canon Law* has numerous prescriptions regarding the acquisition, administration and alienation of temporal goods,⁶⁰ school boards need to know these requirements in order to protect the interests of the juridical persons of the parishes involved.⁶¹ With this obligation in mind, the bishops could appoint the business managers of the school boards as the canonical administrators in the realm of educational affairs.

CONCLUSION

In concluding this analysis of the canonical and secular legislation affecting the Catholic schools in Newfoundland, the following remarks will build on the particular suggestions made in each section of the chapter.

⁵⁹ Although this is the usual canonical principle when a bishop erects a parish, the particular situation of individual parishes in Newfoundland needs further investigation. Accordingly, in each situation, one must consider whether or not the bishop intended to reserve some property of the parish in the name of the juridical person of the diocese.

⁶⁰ For example, the Code distinguishes three types of administration: acts of ordinary administration, e.g., paying of salaries, short term leases; acts of extraordinary administration, e.g., purchasing of real estate; acts of major importance, e.g., determined in light of the financial situation of the diocese. For the valid exercise of an act of extraordinary administration, the consents of the diocesan finance committee and the college of consultors are required, while for acts of major importance, consultation is required.

⁶¹ For examples of requests made to the Holy See to borrow certain sums of money for the construction of schools, see ADGF: 104/2/4, J.M. O'Neill to the Holy See, *petition*, August 11, 1958; 104/2/10, J.M. O'Neill to the Holy See, *petition*, April 28, 1956.

First, in order for the Minister of Education to direct properly the various educational concerns and maintain harmony within the denominational system, the minister must have some awareness of the distinct requirements of the Catholic Church in the realm of Catholic schools. Moreover, the discussion of the various dimensions of Catholic schools reveals that the *Code of Canon Law* contains an underlying Catholic philosophy of education. The initial step toward any kind of harmony between the secular and ecclesial legislation requires an acknowledgement of the Catholic philosophy and doctrine, which permeate the ecclesial legislation. Recently, because of the demands of fiscal restraint, this Catholic view sometimes gets ignored or even denied.⁶² Furthermore, one needs to give appropriate acknowledgement to the proper task of the secular legislation in seeking the common good in a democratic society. Ultimately, harmonizing the concerns of both ecclesial and secular legislation

requires constant attention, so that the tension between a serious effort to transmit culture and a forceful witness to the Gospel does not turn into a conflict harmful to both.⁶³

This first remark leads inevitably to the second conclusion. After recognizing

⁶² In calling for change within the denominational system, W. Russell, quoting R. Grimes, provides a poignant example of this: "What is needed is a change in our thinking so that when we plan we do not automatically think isolated denominational schools and then ask how can the program be delivered; rather we think most effective program delivery and then ask how can the principles of the denominational system be incorporated" (W. RUSSELL, "Where Once We Feared to Tread: An Examination of the Denominational Education System", in *The Morning Watch*, 15 (1-2/1987), p. 18).

⁶³ SCCE, *Religious Dimension of Education in a Catholic School*, n. 67.

the variety of Catholic school systems throughout the world, we can conclude that Catholic teaching and legislation find their concrete expression in a diversity of schools, all of which can legitimately be termed "Catholic schools". Thus, within Catholic teaching and therefore, within the *Code of Canon Law*, the phrase "Catholic school" is analogical, rather than an univocal expression,⁶⁴ referring to schools which conform in some way to the prototype of a Catholic school as described in Vatican II⁶⁵ and subsequently legislated in canon law.

Third, perhaps the most important direction in implementing the requirements of the canons on schools involves the raising of consciousness of the entire Catholic community regarding the role of the various persons and agencies within the whole area of Catholic education. Each group involved in the school system -- students, parents, educators, clergy -- needs a deeper appreciation of ways to participate more effectively in the apostolate of Catholic education. Moreover, rather than just fostering the parent role, the teacher role or the role of any specific group, Pope John Paul II emphasized that, in the circumstances of the present day,

[w]hat is needed is to constitute and develop this "formation community" which is together composed of parents, teachers, clergy, women and men religious and representatives of youth.⁶⁶

⁶⁴ Both L. Orsy and J. Provost make similar conclusions about the term "Catholic university" (L. ORSY, *The Church: Learning and Teaching*, Wilmington, Michael Glazier Inc., 1987, pp. 113-129; J. PROVOST, "The Canonical Aspects of Catholic Identity in the Light of *Ex corde Ecclesiae*", in *Studia canonica*, 25 (1991), pp. 155-191).

⁶⁵ *Gravissimum educationis*, nn. 8-9.

⁶⁶ *Christifideles laici*, n. 62.

This need for a "formation community" emerges from the realization that the truly Catholic school is itself a community whose aim is the transmission of values for living, that the values transmitted must include a faith-relationship with Christ, that faith is principally assimilated through contact with people whose daily life bears witness to it. Therefore, what ultimately makes a school Catholic is the people involved. Moreover, since "Christian faith, in fact, is born and grows inside a community",⁶⁷ the community of the Catholic school emerges from the wider Catholic community, i.e., from the heart of the Church.

Finally, after examining the ecclesial legislation on Catholic education and schools and how it is implemented in Newfoundland, one can conclude that the various requirements and values of the ecclesial legislation, in general, find suitable expression and a large measure of protection within the secular legislation. The individual sections within the chapter mention when discrepancies exist and, consequently, make some suggestions for the creation or maintenance of the desired harmony.

⁶⁷ SCCE, *The Catholic School*, n. 53.

GENERAL SUMMARY AND CONCLUSION

During the past two hundred years, the Church's teaching and legislation regarding Catholic schools has undergone a continual development, especially as a result of the changing relationships between the Church and the State. During this same period, the Catholic Church in Newfoundland has treasured the Catholic schools within the denominational system and constantly negotiated with the government to ensure that the requirements of Church teaching and legislation were recognized by the secular law. This study has traced the status of Catholic schools in Newfoundland and each chapter has made its own contribution to this investigation.

Chapter one highlighted the social, religious, political and economic context which contributed to the establishment and evolution of the denominational education system in Newfoundland. In particular, it examined the inextricable relationship between the Roman Catholic Church and the Catholic schools within the denominational system, showing how the Church has assumed numerous roles and postures in relationship to the system itself.

Chapter two examined the various sources of the canons on Catholic education and on schools (793-806) in the *Code of Canon Law*, stressing the importance of interpreting the canons in light of their legislative, conciliar and postconciliar sources. This chapter also traced the gradual development in the

understanding of the nature of the Catholic school from the nineteenth century, through the Second Vatican Council, to the 1983 *Code of Canon Law*. The Council's description of the Catholic school encompassed the functions of creating an evangelizing community, promoting the growth in the new life of baptism, illuminating all knowledge with the gift of faith, preparing the student to contribute to the world and to extend the reign of God, developing the mission of the People of God and promoting dialogue between the Church and the community at large.

Chapter three examined the canons on Catholic education and schools in the 1983 Code, giving special attention to the meaning of a Catholic school within the Code as well as examining the responsibilities of various people and agencies in relation to Catholic schools. This chapter showed how canon 803 provides the canonical understanding of the nature of a Catholic school. Canon 803, §1 described the formal requirement necessary for a school to be considered Catholic, namely, a particular relationship with the Catholic Church, whether through supervision (*moderari*) or through recognition (*agnoscere*). Moreover, canon 803, §3 also acknowledged that, while some schools might not fulfill the requirements of canon 803, §1, they nevertheless could be truly Catholic schools.

Chapter four presented an overview of the teaching of the Newfoundland bishops on Catholic schools, showing that these schools incorporated several elements of the universal Church teaching, namely, an education based on Catholic teaching, the opportunity for almost all Catholic students to receive Catholic education, and the presence of Catholic teachers, including many members of religious institutes.

Furthermore, the bishops stressed the importance of some type of ecclesiastical control as one of the essential elements intrinsic to the Catholic schools of Newfoundland.

Chapter five showed how the secular legislation of Newfoundland enshrined numerous rights granted to Catholics, including those of having Catholic schools with teaching based on the Catholic faith, and having some Catholic control over the operation of these schools. This chapter also showed how this secular legislation provides an insight into the development of Catholic schools as they progressed from at least six types in the nineteenth century to two in the 1950s. Furthermore, in examining the constitutional right to denominational schools in Newfoundland, the chapter observed an underlying conflict between two ideologies of education, namely, the religious and the secular.

Chapter six, after noting the innumerable varieties of Catholic school systems throughout the world, concluded that, within the *Code of Canon Law*, the phrase "Catholic school" is an analogical, rather than an univocal expression, referring to schools which conform in some way to the prototype of Catholic school described by the Second Vatican Council. After summarizing the responsibilities of several groups of people relating to Catholic schools, the chapter showed how the secular legislation of Newfoundland acknowledges and upholds these responsibilities. Moreover, the chapter also noted several contemporary pastoral and canonical issues concerning the Catholic schools in Newfoundland.

1 - RESPONSES TO QUESTIONS POSED IN THE INTRODUCTION

In light of the above conclusions as well as those mentioned at the end of each chapter, we are now ready to respond to the original questions posed in the introduction to this study, thus emphasizing the new discoveries that have surfaced as a result of the analysis of the data from the individual chapters. The first question regarding the theological and canonical requirements for a Catholic school finds its response in the second and third chapters. Chapter two provided a consideration of the teaching of Vatican II on the nature of a "Catholic" school. Moreover, in exploring the canons on schools, especially canon 803, chapter three concluded that the Code refers to two categories of "Catholic" schools, i.e., those that fall within the formal criteria of canon 803, §1 and "Catholic schools in fact" mentioned in canon 803, §3. The criteria associated with these two categories provide guidelines to respond to the second question of our inquiry, namely whether or not the Catholic schools in Newfoundland are truly Catholic.

To decide whether the Newfoundland schools are "Catholic schools in fact", we need to consider the internal and external elements of the schools. The evidence of the sixth chapter demonstrates the recent efforts of the C.E.C. to highlight the distinctive Catholic quality of the Catholic schools, including the development of religious education and family life programs for the schools and the issuance of guidelines for the employment of Catholic and non-Catholic teachers. Furthermore, the Roman Catholic school boards, consisting almost entirely of Catholic members, one third of whom are appointed by the bishop, provide a pivotal role since these

boards operate the schools as Catholic schools within the denominational system. Also, the C.E.C., which includes the four Newfoundland bishops, exercises both legal and moral responsibilities for certain aspects of the boards' operation, e.g., distribution of funds, development of the religious education curriculum, and assistance of boards in the formulation of policies. After recognizing these internal and external elements of Catholic schools in Newfoundland, one could conclude quite emphatically that these schools are at least "Catholic schools in fact".

In addition, however, the formal requirement of canon 803, §1 is fulfilled, for the Catholic Church in Newfoundland could be said to own the "Catholic" schools and operates them under its indirect supervision, namely, through the provincial C.E.C. and the nine Catholic school boards. Moreover, the one hundred and fifty year old tradition whereby the bishops of Newfoundland constantly referred to the schools as "Catholic" schools, stressing the necessity of the essential element of some kind of ecclesiastical control, surely contributes to the recognition necessary for a school to be Catholic under canon 803, §1.¹ Therefore, this study concludes that the "Catholic" schools within the denominational system of Newfoundland are truly Catholic schools, according to the criteria implicit in canon 803 of the *Code of Canon Law*.

In considering the third and fourth questions of the introduction, the analysis found in the sixth chapter provides a lengthy response to the canonical and pastoral

¹ F. Morrissey contends that in some circumstances, custom and prescription would apply, "giving at least de facto recognition" (F. MORRISEY, "What Makes an Institution 'Catholic'?", in *The Jurist*, 47 (1987), p. 537).

issues that arise in light of the current developments in the denominational system of Newfoundland. Moreover, the same chapter ultimately concludes that the various requirements, principles and values found in the ecclesial legislation on schools, in general, find suitable expression and a measure of protection within the public denominational system of Newfoundland. Consequently, in a time when many countries are seeking a proper harmony between the concerns of secular society and of ecclesial life in the area of education, the Newfoundland denominational system stands as an exemplary model for many countries throughout the world.

2 - OTHER GENERAL REMARKS

Besides the above conclusions, several other observations emerge from this study. The first concerns the post-Vatican II emphasis on institutional ministries, e.g., educational institutions, health-care institutions and social service agencies. While many of these ministries existed prior to the 1960s, Vatican II emphasized the importance of the Church's witness in the world, both on the individual and on the institutional levels. Accordingly, in an effort to develop how an institution can provide witness, the Church has reiterated the fact that these institutional ministries are to be truly "Catholic".² As a result, realizing that these ministries simultaneously exist in the Church and within pluralistic societies, various ecclesial sectors are

² "At every level, [...] there is the need for an institutional commitment of the Catholic school to the word of God as proclaimed by the Catholic Church. And this institutional commitment is an expression of the Catholic identity of each Catholic school" (JOHN PAUL II, Address to a Group of U.S. Bishops, October 28, 1983, "What Is the Value of Catholic Education?", in *Origins*, 13 (1983-1984), p. 391).

attempting to develop the requirements necessary for institutions to have a Catholic identity.³

Accordingly, this present study contributes to this wider discussion regarding institutional witness. Just as a Catholic school participates in the saving mission of the Church, assisting students to grow in their baptismal commitment, so too the Catholic identity of any institution hinges on the requirement that its ministry must stem from the mission entrusted to the Church by its founder, and must assist people in the process of working out their salvation.

The second observation follows as a consequence of the first. This study has noted a paradigmatic shift in terms of the evolution of the concept of Catholic school to the point where the Church now stresses the entire school community as an evangelizing agent, rather than focusing on specific elements within the school, even though these still have significance as they contribute to the formation of the evangelizing community. This shift, also witnessed in Newfoundland, summons the

³ For example, see J. BERNARDIN, "Catholic Institutions and Their Identity", in *Origins*, 21 (1991-1992), pp. 33-36; W. BURGHARDT, "Is Being 'Catholic' Worth Saving?", in *Health Progress*, 66 (September 1985), pp. 107-114; G. DANNEELS, "Healthcare and Catholic Identity", in *Health Progress*, 68 (October 1987), pp. 35-40; J.A. DONAHUE, "Religious Institutions as Moral Agents: Toward an Ethics of Organizational Character", in A. MAIDA (ed.), *Issues in the Labor-Management Dialogue: Church Perspective*, St. Louis, Catholic Health Association of the United States, 1982, pp. 139-159; A. FITZPATRICK and C. GAYLOR, "Catholic Institutions: Mirror or Model for Society?", in *Health Progress*, 68 (April 1987), pp. 74-82; A. GALLIN, "On the Road: Toward a Definition of a Catholic University", in *The Jurist*, 48 (1988), pp. 536-558; W. McCREADY, "Catholic Identity in a Changing Church", in *Health Progress*, 70 (December 1989), pp. 66-71; J. PROVOST, "The Canonical Aspects of Catholic Identity in the Light of *Ex corde Ecclesiae*", in *Studia canonica*, 25 (1991), pp. 155-191.

whole school community to reflect Catholic values and principles, e.g., primacy of parental role in education, the central place of the student, the significance of the roles of teachers and religious within the schools, and a commitment to the principles of the social teaching of the Church.

The third observation concerns the area of the lay apostolate. Realizing that Vatican II connected the radical distinctiveness of the Catholic school with the secular call of the laity,⁴ i.e., to live in the world, to contribute, like leaven, to the sanctification of the world, and to illuminate all temporal things with faith, this study has implications for the whole area of lay ministry, an important issue in the Church and one having contemporary urgency in Newfoundland. By emphasizing the Catholic character of the school, the Church in Newfoundland could at the same time contribute to the development of many areas of lay ministry, e.g., the ministerial possibilities of parents especially flowing from the sacrament of marriage, the vocational apostolate of teachers, the role of clergy in offering pastoral care to those already involved in their own apostolate, the exemplary role of religious as they remain faithful to the charism of their own institute, and ultimately, the awareness of the lay apostolate which students could acquire during their formative years. The Church could further develop the lay apostolate in connection with Catholic schools through a body such as a Catholic Education Association whose aim would consist of the ongoing education and faith development at various levels of the Church in the province. This group of people, totally committed to Catholic education, could

⁴ *Gravissimum educationis*, n. 8.

oversee a Catholic education group in every parish and could assist in the formation of parish leaders.⁵

The fourth observation concerns an issue related to teachers. This study shows that both ecclesial and secular legislation place much emphasis on the role of the teacher; as a result, numerous relationships focus, and an abundance of expectations converge on the person of the teacher. In terms of canon law, the teacher possesses an essential relationship with the parents; while parents have the primary obligation of educating their children, teachers assist them in their educative role. The secular legislation and jurisprudence emphasize this same perspective in applying the principle of *in loco parentis*, whereby teachers have the duty to care for students as a reasonable and prudent parent would have. Furthermore, both canonical and secular legislation make certain demands from the perspective of authority. On the one hand, the Church, out of a concern for the Catholic formation and education of its members, emphasizes the right of vigilance over teachers as well as over the religious curriculum taught by them.⁶ On the other hand, teachers in public schools have expectations placed on them to follow the guidelines of the

⁵ For further information on the idea of a canonically established association of this kind, see H.A. BUETOW, *The Catholic School: Its Roots, Identity, and Future*, New York, Crossroad Publishing, 1988, pp. 312-334.

⁶ In its statement on denominational education, the Newfoundland Teachers' Association seems to hold a position contrary to this teaching: "Teachers must be free to teach without interference and restrictions from denominational authorities" (for this statement -- on p. 4 -- and other views of the NTA, see K. COOMBS, "Notes for a Speech to Exploring New Pathways", Presentation made to "Exploring New Pathways", a Forum on the Denominational Education System in Newfoundland, St. John's, February 13, 1990, 13p).

government, those of the school board, as well as those of the principal who has the authority to coordinate their work in the schools. Moreover, while various sources stress the need for professionalism, the Church also emphasizes personal formation. At the same time, teachers often experience the frustration of a lack of parental support and more particularly teachers in Newfoundland also experience the recent fundamental questioning associated with child abuse by those in trusted positions in the Church and in society. Consequently, in the midst of these various, often conflicting pressures, the pastoral care of teachers is absolutely imperative for the health of both the teachers and the Catholic schools in Newfoundland.

The last observation concerns the emergence of various recent developments in both secular and canon law. Law suits against charitable and religious organizations are increasing, especially in the atmosphere of administrative scrutiny at all levels. At the same time, the whole Church is growing in the awareness of the area of obligations and rights, especially regarding ministerial accountability and due process. These new developments demand an increasing effort to observe, as far as possible, the prescriptions of both legal systems.⁷

⁷ For an extensive treatment of many of these concerns, see W. BASSETT, "Christian Rights in Civil Litigation: Translating Religion into Justiciable Categories", in *The Jurist*, 46 (1986), pp. 229-288. In a recent case involving the decision by a Catholic school board to close a school, Mr. Justice R. Wells ruled that the board, due to its lack of consultation, failed to follow the requirement of procedural fairness (*Re M. Furey, R. Smith, et al, the Roman Catholic School Board for Conception Bay Centre and the Western Avalon Roman Catholic School Board*, Nfld.S.C., 1991 No. 2488, August 27, 1991, (unreported)).

3 - FUTURE DIRECTIONS

One of the nagging issues that arises in many discussions concerning Newfoundland schools focuses on the need for changes in the denominational system. The suggestions range from a totally secular education system with no place for religion, to one which is more Christian, whether as a single church-school system with all the churches forming a single provincial structure, or as a system with more interdenominational sharing at the local school board level. While the governments of some countries have imposed a totally secular education policy,⁸ the religious context of Newfoundland society seems to demand some acknowledgement of religion in the schools. Therefore, the possibility of a totally secular school system in Newfoundland remains highly unlikely, at least for the present. At the same time, the recent suggestions by the Integrated Education Council for a single church-school system or for a joint education council⁹ point in the direction of greater interdenominational cooperation, not only at the school board level, but within the very structure of the system. While these suggestions appropriately build on the ecumenical foundation which calls for a collaboration in the elements shared by all

⁸ During the 1970s, the Nigerian government expropriated the Catholic schools and imposed its own educational policy on all the schools. Moreover, for an insightful analysis of the situation of the Catholic schools in East Africa, see D.W. ROBINSON, "The Church, Schools and Religious Liberty", in *African Ecclesiastical Review*, 7 (1965), pp. 9-22.

⁹ INTEGRATED EDUCATION COUNCIL, *Brief to the Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary and Secondary Education in Newfoundland and Labrador*, St. John's, April 30, 1991, 51p.

Christians,

this ecumenical cooperation is by its very nature limited; it must never mean a "reduction" to a common minimum. Furthermore, catechesis [as well as Catholic education] does not consist merely in the teaching of doctrine: it also means initiating into the whole Christian life [...]. Therefore, where there is an experience of ecumenical collaboration in the field of catechesis, care must be taken that the education of Catholics in the Catholic Church should be well ensured in matters of doctrine and of Christian living.¹⁰

In those situations where civil authorities or other circumstances impose a common instruction in the Christian religion, the Church must take great care to ensure a specifically Catholic education.¹¹

Realizing this emphasis on Catholic education, the Catholic Church in Newfoundland has basically two ways of proceeding in terms of structure: either the Church, while not exercising its right to Catholic schools, agrees to a more common instruction in the Christian religion in "Christian schools" and establishes some form of specifically Catholic education at the parish level especially concerning sacramental preparation; or it continues to utilize the Catholic schools of the denominational system to provide a Catholic education for its children, with the awareness that these schools are indeed offering an alternate vision of education, yet academically comparable, to the other denominational schools in Newfoundland. The first option seems less inviting for it would mean the establishment of new

¹⁰ JOHN PAUL II, Apostolic exhortation, *Catechesi tradendae*, October 16, 1979, n. 33, in *AAS*, 71 (1979), pp. 1305-1306; English translation in *Catechesis in Our Time*, Boston, Daughters of St. Paul, [n.d.], p. 29.

¹¹ *Ibid.*

structures, e.g., catechetical classes, resulting in fundamental changes within parishes which already experience both personnel and financial constraints. However, the second option means a constant effort on the part of the Church to ensure that its schools are more closely emulating the prototype of the Catholic school as taught by Vatican II. In fact, one of the most consistent challenges to the Catholic school in the 1980s and into the future concerns the development of the "Catholic character" of the school.¹²

Besides this question of future changes in the denominational system, several directions for further research in at least five areas have surfaced as a result of this study. Historically, what specific contributions did some of the Roman Catholic superintendents, inspectors and politicians make to the development of Catholic schools in Newfoundland?¹³ In terms of religious sociology, how does the fact of being educated in a Catholic school affect the religious practice of students and how does this practice differ from that of Catholic students educated in a non-Catholic

¹² JOHN PAUL II, Address to the Bishops of Ontario, April 26, 1988, "We Must Help the Young People Become Witnesses to the Hope That Is in Them", in *L'Osservatore romano*, weekly edition in English, May 9, 1988, p. 3; A. BEVILACQUA, "Catholic Schools in the 21st Century", in *Origins*, 19 (1989-1990), pp. 396-400; T. McCARTHY, "The Co-Sponsorship of Catholic Schools", in *Origins*, 17 (1987-1988), pp. 224-225.

¹³ Other historical studies could include 1) how the C.E.C.'s present investigation into the possibility of a Catholic Education Foundation could fulfill the desire of Bishop M. Fleming to establish a permanent endowment for education in Newfoundland (*Third letter*, in M. FLEMING, *Letters on the State of Religion, Addressed to the Very Rev. Dr. A. O'Connell, P.P.*, Dublin, James Duffy, 1844, p. 17); 2) how the Sisters of Service and other religious institutes contributed to Catholic education in Newfoundland in the area of religious education through correspondence.

denominational school?¹⁴ In terms of the family, how has the Catholic family of Newfoundland acted as an agent of education?¹⁵ In terms of canon law, what is the nature of the relationship between an apostolate and a public juridical person, e.g., how does a school established, owned and operated by a religious institute share in the juridical status of that institute? Although Newfoundland presently does not have a proclivity for litigation, what secular law consequences arise as a result of issues associated with the relationship between the diocese and the Catholic schools, e.g., suits for negligence or damages? In light of the conciliar emphasis on the Church's

¹⁴ Another study in this area could include an examination of the contribution, in the light of the decrease in popular devotions since the mid 1960s, which popular religiosity and popular devotions have made to the Catholic education of children in Newfoundland (some studies have already opened this field of research: M.P. HOGAN, *The Role of Mary in the History of the Church in Newfoundland*, M.A. thesis, Ottawa, University of Ottawa, 1957, vii-146p.; M. VENARD, "Popular Religion in the Eighteenth Century", in W. CALLAHAN and D. HIGGS (eds.), *Church and Society in Catholic Europe of the Eighteenth Century*, London, Cambridge University Press, 1979, pp. 140-154).

¹⁵ A recent study examined the role of mothers and fathers in transmitting values to their children and concluded that, when parents are in disagreement regarding religious values, adolescents are more likely to agree with the father than with the mother (R.L. DUDLEY and M.G. DUDLEY, "Transmission of Religious Values from Parents to Adolescents", in *Review for Religious Research*, 28 (1986-1987), pp. 3-15).

Other studies in the area of the family could include 1) a study of the obstacles in the nineteenth century which hindered parents in Newfoundland from sending their children to schools; 2) how the home and the school in Newfoundland might reinforce one another in the transmission of religious values (three studies have found that the Catholic school has most impact on children from religious families: A. GREELEY, W. McCREADY, and K. McCOURT, *Catholic Schools in a Declining Church*, Kansas City, Sheed and Ward, 1976, ix-483p.; A. GREELEY and P. ROSSI, *The Education of Catholic Americans*, Chicago, Alpine Publishing Co., 1966, xxii-368p.; M.P. HORNSBY-SMITH, *Catholic Education: the Unobtrusive Partner*, London, Sheed and Ward, 1978, xi-211p.).

presence in the modern world, what philosophical and theological foundations give justification to both the Church and civil society's involvement in the area of education?¹⁶

In closing, we recall Bishop M. Fleming's words describing the reason for establishing a Catholic school in St. John's in 1842: he wanted to "raise the character of Catholicity"¹⁷ in Newfoundland. This same motivation can continue to inspire those associated with Catholic schools at present, for, more than ever, the social forces of materialism and secularization which influence the young, the recent upheaval in the Catholic Church in Newfoundland, the overextension of parishes and the fragility of family life, all point to a realization that Catholic children and young people in Newfoundland continue to require a solid religious formation and education in the Catholic faith, so that they will be prepared to build the Church and the society of tomorrow. Thus, a vibrant and faith-filled community within the Catholic schools can provide an authentic experience of Church for these Catholic children and young people as they grow in knowledge and maturity. As Bishop Peter Sutton said in 1977: "In a nutshell -- our schools must be *OASES OF HOPE* to our

¹⁶ Other studies in the area of pastoral theology could include 1) a study of how priests and bishops in Newfoundland could implement the support they have for Catholic schools, especially realizing their leadership role in the area of Catholic education and in light of their responses in the Crocker Report (a similar study was recently done for the United States: J.S. O'BRIEN, *Mixed Messages: What Bishops and Priests Say About Catholic Schools*, Washington, DC, National Catholic Educational Association, 1987, vii-149p); 2) in light of the ongoing importance of school boards, how could boards further incorporate Catholic values and principles in their decision-making process?

¹⁷ *Fourth letter*, in M. FLEMING, *Letters on the State of Religion*, p. 22.

people and for the Church today."¹⁸

Furthermore, Pope John Paul II, when he visited Newfoundland in September 1984, reminded teachers and parents that the Catholic school, whose existence depends on them, is a reflection of their convictions and

is one of those privileged places, together with the family and the parish community, where our faith is handed on. [...] You are called, dear educators and parents, to create those schools which will transmit the values which you would hand on to those who will come after you.¹⁹

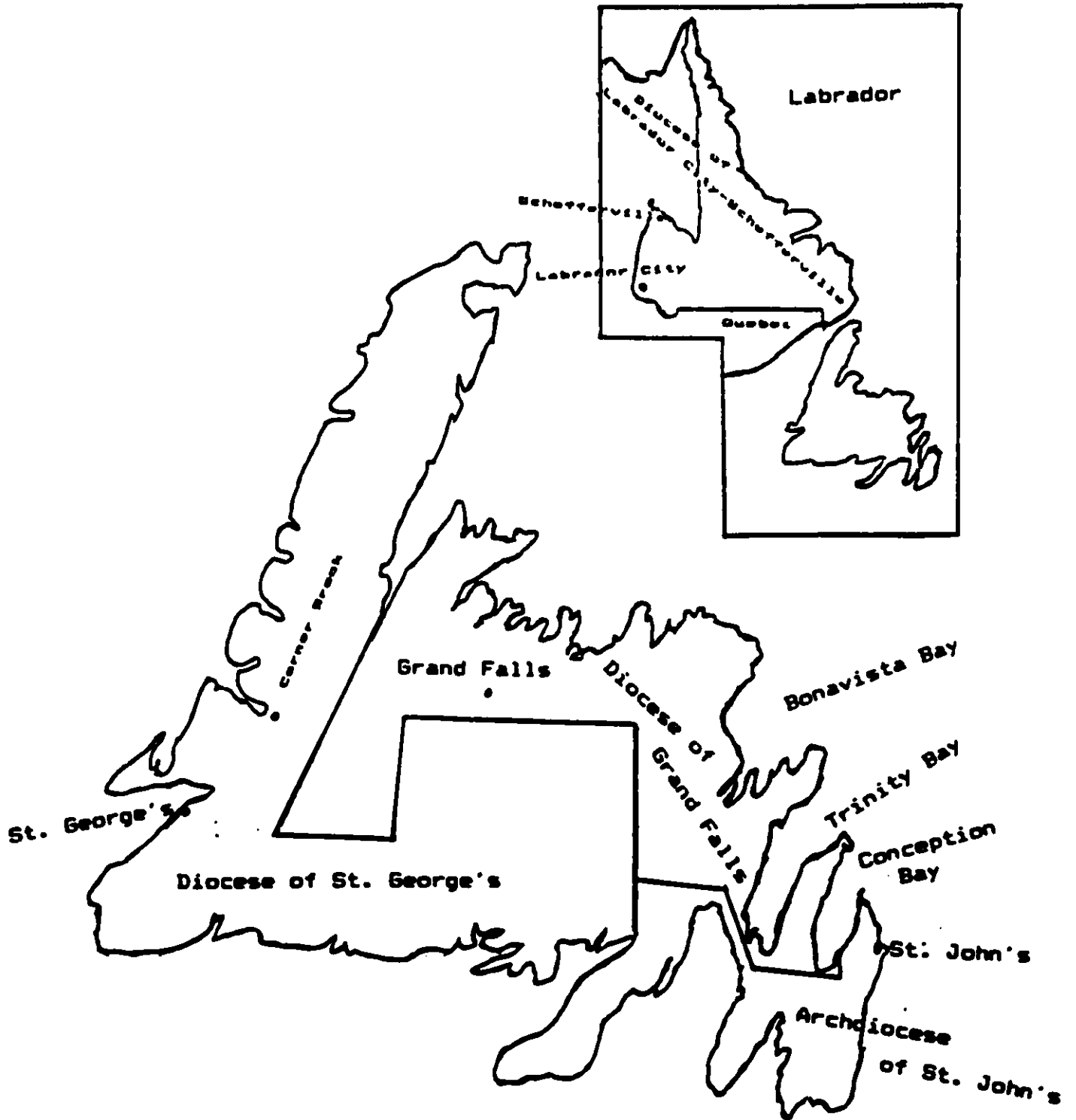
This study reiterates the fact that the whole school community, inspired by the Spirit who continues to bring to mind all that Jesus taught us, can utilize the Catholic schools of Newfoundland -- because of the partnership between the Church and the State and the partnership among home, school and parish -- as effective means of handing on the faith to the next generation, that those yet unborn might set their hope in God and never forget God's deeds (Ps 78: 6-7).

¹⁸ ADLCS: P. SUTTON, Address, "Catholic Schools - Oases of Hope", October 26, 1977, p. 1

¹⁹ JOHN PAUL II, Address to Canadian Catholic Educators, September 12, 1984, "Support Asked for Catholic Schools", in *Origins*, 14 (1984-1985), p. 228.

APPENDIX 1

MAP OF NEWFOUNDLAND AND LABRADOR
(INCLUDING ECCLESIASTICAL BOUNDARIES)



APPENDIX 2

CHRONOLOGICAL DEVELOPMENT OF THE DIOCESES OF NEWFOUNDLAND WITH THE LIST OF THE BISHOPS OF EACH DIOCESE

Diocese of Newfoundland

- July 5, 1657 Alexander VII constituted New France as a vicariate apostolic and this vicariate included Newfoundland and Labrador. In 1674, Clement X erected the Vicariate Apostolic of New France into a diocese and Bishop Laval became the first bishop of the Diocese of Quebec.
- May 17, 1784 Pope Pius VI constituted Newfoundland as a prefecture apostolic, immediately subject to the Holy See, with Fr. James O'Donel as prefect apostolic.
- November 29, 1795 Vicariate Apostolic of Newfoundland
- June 4, 1847 Diocese of Newfoundland; divided into two dioceses on February 29, 1856

Diocese of St. John's

- Diocese of St. John's
Archdiocese and Metropolitan
see of St. John's
- February 29, 1856
- February 8, 1904

Diocese of Harbour Grace/Grand Falls

- Diocese of Harbour Grace
(including Labrador)
- February 29, 1856
- Diocese of Harbour Grace-Grand Falls
- February 22, 1958
- Diocese of Grand Falls
- October 30, 1964

Diocese of St. George's

- Prefecture Apostolic of St. George's
- September 16, 1870

Vicariate Apostolic of St. George's	April 28, 1892
Diocese of St. George's	February 8, 1904
Seat of the See transferred to Corner Brook	July 20, 1946

Placentia Bay

Prefecture Apostolic of Placentia Bay	September 16, 1870
Suppressed and merged with the Vicariate Apostolic of St. George's	April 28, 1892

Diocese of Labrador City - Schefferville

Vicariate Apostolic of Labrador under Rimouski, Quebec	July 13, 1945
Diocese of Labrador-Schefferville under Keewatin-Le Pas, Manitoba	July 22, 1967
Diocese of Labrador City-Schefferville	April 27, 1987

BISHOPS OF THE DIOCESES OF NEWFOUNDLAND
(initial date for each bishop represents episcopal ordination; * = appointed co-adjutor)

Archdiocese of St. John's

1. James O'Donel (appointed prefect apostolic on May 17, 1784; consecrated bishop on September 21, 1796 - resigned January 1, 1807)
2. Patrick Lambert (April 11, 1806* - September 23, 1816)
3. Thomas Scallon (May 1, 1816* - May 29, 1830)
4. Michael Fleming (October 28, 1829* - July 14, 1850)
5. Thomas Mullock (December 27, 1847* - March 29, 1869)
6. Thomas Power (June 12, 1870 - December 4, 1893)
Thomas Brennan, bishop of the Diocese of Dallas, Texas, was appointed auxiliary of St. John's on February 1, 1893; with the death of Bishop Power, he was transferred to the titular see of Caesarea in Mauritania and lived in Rome until his death in 1916.
7. Michael Howley (January 9, 1895 - October 15, 1914)

8. Edward Roche (June 29, 1915 - September 23, 1950)
9. Thomas Flynn (June 24, 1945* - September 1, 1949)
10. Patrick Skinner (appointed auxiliary on March 17, 1950; appointed archbishop on January 23, 1951 - resigned April 6, 1979)
11. Alphonsus Penney (May 31, 1979 - resigned February 2, 1991)
12. James MacDonald (February 2, 1991 -)

Diocese of (Harbour Grace) Grand Falls

1. John Dalton (May 25, 1856 - May 5, 1869)
2. Henrico Carfagnini (May 22, 1870 - transferred to the Diocese of Gallipoli, Italy on February 27, 1880)
3. Reginald (Ronald) MacDonald (August 21, 1881 - resigned September 3, 1906)
4. John March (November 4, 1906 - January 12, 1940)
5. John Michael O'Neill (July 7, 1940 - resigned November 23, 1972)
6. Alphonsus Penney (January 18, 1973 - April 5, 1979)
7. Joseph Faber MacDonald (March 19, 1980 -)

Diocese of St. George's

1. Thomas Sears (appointed prefect apostolic on June 2, 1870 - December 5, 1885)
2. Michael Howley (pro-prefect apostolic on December 1885; consecrated bishop on June 24, 1892; transferred to the Diocese of St. John's on January 9, 1895)
3. Neil McNeil (October 20, 1895 - transferred to the Archdiocese of Vancouver on January 19, 1910)
4. Michael Power (July 25, 1911 - March 6, 1920)
5. Henry Renouf (December 8, 1920 - March 2, 1941)
6. Michael O'Reilly (September 9, 1941 - resigned January 14, 1970)
7. Richard McGrath (July 22, 1970 - resigned June 5, 1985)
8. Raymond Lahey (August 3, 1986 -)

Diocese of Labrador City - Schefferville

1. Lionel Scheffer (April 26, 1946 - October 3, 1966)
2. Henri Légare (September 9, 1967 - transferred to the Archdiocese of

Grouard-McLennan on November 23, 1972)

- 3. Peter Sutton (July 18, 1974 - transferred to the Archdiocese of Keewatin-Le Pas on February 5, 1986)**
- 4. Henri Goudreault (June 17, 1987 -)**

APPENDIX 3

VARIOUS DRAFTS OF TERM 17 OF THE TERMS OF UNION OF NEWFOUNDLAND WITH CANADA

1. PROPOSAL OF DRAFTING COMMITTEE: August, 1947.

NAC: MG 30, E 159, V. 5, File: Draft Committee Meetings. Rough Drafts of Proposals, 1947 (2 of 2)

Education

Notwithstanding anything contained in the British North America Act 1867 and amendments, Education will be exclusively within the jurisdiction of the Legislature of Newfoundland.

2. REVISED PROPOSAL OF DRAFTING COMMITTEE: September 15, 1947.

NAC: MG 30, E 159, V. 5, File: Draft Committee Meetings. Rough Drafts of Proposals, 1947 (2 of 2)

16. *Education*

Notwithstanding anything in the British North America Act 1867, the legislature of the Province of Newfoundland shall have exclusive jurisdiction over education, provided that the provisions of section 93 of the British North America Act, 1867, or any of them, regarding denominational schools shall be applicable to Newfoundland if the legislature of the province at anytime so requests.

3. FIRST DRAFT: *Basis for the Admission of Newfoundland as a Province of Canada, September 23, 1947.*

NAC: MG 30, E 159, V.5, File: Draft Committee Meetings. Rough Drafts of Proposals, 1947 (2 of 2)

16. (17.) *Education* [Copies of this draft use both numbers for this section on education.]

Section 93 of the British North America Act shall not apply to Newfoundland and the following is substituted therefore:

In and for the Province of Newfoundland the Legislature may exclusively make laws in relation to education, subject to the following provisions:

a) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational or separate schools which any class of persons have by law in the Province at the date of Union.

b) Nothing in any such law shall prohibit or prejudicially affect the right of

any 2 or more of such classes of persons at any time to amalgamate or unite their schools or in any way impair or restrict their right to proportionate financial support from the public funds of the province.

[This draft was revised on September 26 and September 30, 1947.]

4. **FIRST DRAFT REVISED:** *Basis for the Admission of Newfoundland as a Province of Canada, September 30, 1947.*

NAC: MG 30, E 159, V.5, File: Draft Committee Meetings. Rough Drafts of Proposals, 1947 (2 of 2)

19. Education

Education being under provincial jurisdiction, subject to certain safeguards, the Government of Canada would desire to meet the wishes of the people of the province in the matter. The following provisions, to be incorporated in the Act of union, are suggested.

Section 93 of the British North America Act shall not apply to Newfoundland and the following is substituted therefore:

In and for the Province of Newfoundland the Legislature may exclusively make laws in relation to education, subject to the following provisions:

a) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational or separate schools which any class of persons have by law in the Province at the date of Union.

b) Nothing in any such law shall prohibit or prejudicially affect the right of any 2 or more of such classes of persons at any time to amalgamate or unite their schools or in any way impair or restrict their right to proportionate financial support from the public funds of the province.

c) Provided that the foregoing provisions with regard to education may be altered at any time within two years of the union by the appropriate legislature at the request of the legislature of the Province of Newfoundland.

5. **SECOND DRAFT:** *Proposed Arrangements for the Admission of Newfoundland, October 20, 1947.*

NAC: MG 31, E 39, V. 11, File: Proposed Arrangements for the Admission of Newfoundland.

17. Education

The legislature of the Province of Newfoundland will have exclusive authority to make laws in relation to education within the province, provided that:

a) The legislature will not have authority to make laws prejudicially affecting

any right or privilege with respect to denominational or separate schools which any class of persons has by law in Newfoundland at the date of Union;

b) any two or more such classes of persons will have the right to amalgamate or unite their schools and to receive, notwithstanding such amalgamation or union, their proportionate share of the public funds of Newfoundland devoted to education.

[This draft was revised on October 22, 1947.]

6. **THIRD DRAFT:** *Proposed Arrangements for the Admission of Newfoundland, October 27, 1947.*

NAC: MG 31, E 39, V. 11, File: Proposed Arrangements for the Admission of Newfoundland.

19. *Education (1)*

The legislature of the Province of Newfoundland will have exclusive authority to make laws in relation to education within the province, provided that:

a) The legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational or separate schools which any class of persons has by law in Newfoundland at the date of Union;

b) any two or more such classes of persons will have the right to amalgamate or unite their schools and to receive, notwithstanding such amalgamation or union, their proportionate share of the public funds of Newfoundland devoted to education.

(1) Note, See reference to education in paragraph 4 of covering letter

[This paragraph in the covering letter from W. L. Mackenzie King to Gordon MacDonald, Governor of Newfoundland, remarked: "With respect to those matters which are primarily of provincial concern, such as education, the Government of Canada would not wish to set down any rigid conditions, and it would be prepared to give reasonable consideration to suggestions for modification or addition."]

[On October 28, 1947, the Cabinet committee made additions to the Draft of October 27.]

7. **THIRD DRAFT REVISED:** *Proposed Arrangements for the Entry of Newfoundland into Confederation, October 29, 1947.*

NAC: MG 31, E 39, V. 11, File: Constitution 1947-1950. Nfld: Documents relating to its entry into Confederation.

19. *Education* (1)

The legislature of the Province of Newfoundland will have exclusive authority to make laws in relation to education within the province, provided that:

The legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational or separate schools which any class of persons has by law in Newfoundland at the date of Union, but the legislature may authorize any two or more such classes of persons will have the right to amalgamate or unite their schools and to receive, notwithstanding such amalgamation or union, their proportionate share of the public funds of Newfoundland devoted to education.

(1) Note: See reference to education in the fourth paragraph of covering letter from the Prime Minister of Canada.

8. THIRD DRAFT DISCUSSED: *Memorandum Submitted by the Newfoundland Delegation, October, 1948.*

NAC: MG 30, E 159, V. 5, File: Memorandum Submitted by the Newfoundland Delegation to Ottawa, October, 1948.

XXIV. *Education*

Clause 19 of the proposed arrangements should be redrafted to read as follows:

19. The legislature of the Province of Newfoundland will have exclusive authority to make laws in relation to education within the province, provided that:

The legislature will not have any authority to make laws prejudicially affecting any right or privilege with respect to denominational or separate schools and colleges which any class of persons has by law in Newfoundland at the date of union, but the legislature may authorize any two or more such classes of persons to amalgamate or unite their schools and for and in respect of schools so amalgamated or united to receive, notwithstanding such amalgamation or union, their proper share of the public funds of Newfoundland devoted to education.

[On October 26, 1948, the Cabinet Committee on Newfoundland agreed on the nature of the reply to be given to the Newfoundland delegation on the subject of education. (See NAC: MG 30, E 159, V. 4, File: Cabinet Committee on Newfoundland, Minutes and Reference Documents, Sept. 1948-Jan. 1949.) In response to the *Report of the Sub-committee on Law and Procedure on items [...] XXIV [...] of the Memorandum dated October 1948 and Submitted by the Newfoundland delegation*, the following statement was reported:

XXIV. Education: The Proposed clause, which modifies section 93 of the B.N.A. Act, was approved in principle, subject to minor drafting alterations to be suggested later by the Newfoundland delegation. (See NAC: MG 30, E 159, V. 3,

File: ICCNR, Minutes and Correspondence, 1948-1949.)

In a letter on October 30, 1948, the Newfoundland delegation expressed "no comment" when they considered the section on Education. (See NAC: MG 30, E 159, V. 4, File: Cabinet Committee on Newfoundland, Minutes and Reference Documents, Sept. 1948-Jan. 1949.) The decision to wait for the Newfoundland delegation to make "minor drafting alterations" might explain the fact that no section on education occurs in the next three drafts.]

FOURTH DRAFT: November 5, 1948.

NAC: MG 30, E 159, V. 6, File: Terms of Union. Printed Drafts, 1948.

[No reference to education.]

FIFTH DRAFT: November 9, 1948.

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

22. Education [Nothing was written under this title.]

SIXTH DRAFT: November 17, 1948.

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

18. Education [Nothing was written under this title.]

9. SEVENTH DRAFT: November 22, 1948.

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

18. Education

(1) In lieu of section ninety-three of the British North America Act, 1867, this Term shall apply in respect of the Province of Newfoundland:

(2) In and for the Province of Newfoundland the Legislature may exclusively make laws in relation to education, subject to the following provisions:

(1) the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational colleges, denominational

schools, or common schools, which any class or classes of persons have by law in Newfoundland at the date of Union;

(2) the Legislature may authorize any class or classes of persons not at the date of Union having the right to amalgamate or unite their schools with those of any other class or classes of persons so to amalgamate or unite such schools;

(3) the Legislature may provide that the schools referred to in item one of this paragraph and any schools amalgamated or united under authority of the Legislature after the date of Union shall receive their share of the public funds of the Province Newfoundland voted for education in accordance with scales determined from time to time by the Legislature;

(4) the Legislature may authorize any two or more classes of persons to amalgamate or unite their colleges and provide that such amalgamated or united colleges shall receive out of the college grant an amount equal to the sum of the amounts that each of such colleges so amalgamated or united would have received if such amalgamation or union had not taken place.

10. **EIGHTH DRAFT: November 25, 1948.**

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

17. **Education**

In lieu of section ninety-three of the British North America Act, 1867, this Term shall apply in respect of the Province of Newfoundland:

In and for the Province of Newfoundland the Legislature may exclusively make laws in relation to education, subject to the following provisions:

a) the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational colleges, denominational schools, or common schools, which any class or classes of persons have by law in Newfoundland at the date of Union;

b) the Legislature may authorize any class or classes of persons not at the date of Union having the right to amalgamate or unite their schools with those of any other class or classes of persons so to amalgamate or unite such schools;

c) the Legislature may authorize that the schools referred to in paragraph (a) of this Term and any schools amalgamated or united under authority of the Legislature after the date of Union shall receive their share of the public funds of the Province Newfoundland voted for education in accordance with scales determined from time to time by the Legislature;

d) the Legislature may authorize any two or more classes of persons to amalgamate or unite their colleges and provide that such amalgamated or united colleges shall receive out of the college grant an amount equal to the sum of the amounts that each of such colleges so amalgamated or united would have received if such amalgamation or union had not taken place.

[In the *Supplement to the Eighth Draft*, December 1, 1948, the following statement was made under Term 17: "A revision is to be submitted by the Newfoundland Delegation." At the meetings of the delegations on December 2, 3, 6, and 9, 1948, discussions continued on Term 17 on education. (NAC: MG 30, E 159, V. 4, File: Newfoundland - Canada Discussions: Minutes of meetings, 1948.)]

11. **FIRST PRINTING:** *Terms of Union between Canada and Newfoundland*, December, 1948.

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

17. Education

In lieu of section ninety-three of the British North America Act, 1867, the following Term shall apply in respect of the Province of Newfoundland.

In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common schools, or denominational colleges, which any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland provided for education,

- (a) all such schools shall receive their share of such funds in accordance with scales determined from time to time on a nondiscriminatory basis by the Legislature; and
- (b) all such colleges shall receive their share of the grant for colleges, distributed on a non-discriminatory basis.

12. **SECOND PRINTING:** *Terms of Union between Canada and Newfoundland*, December, 1948.

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

17. Education

In lieu of section ninety-three of the British North America Act, 1867, the following Term shall apply in respect of the Province of Newfoundland.

In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common schools, or denominational colleges, which any class or classes of persons have by law in Newfoundland at the date of Union, and out of

public funds of the Province of Newfoundland provided for education,

- (a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and
- (b) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

13. **THIRD PRINTING:** *Terms of Union of Newfoundland with Canada, December, 1948.*

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

17. Education

In lieu of section ninety-three of the British North America Act, 1867, the following Term shall apply in respect of the Province of Newfoundland:

In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland provided for education,

- (a) all such schools shall receive their share of such funds in accordance with scales determined on a nondiscriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and
- (b) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

14. **FOURTH PRINTING:** *Terms of Union of Newfoundland with Canada, December, 1948.*

NAC: MG 31, E 39, V. 11, File: Terms of Union (Canada and Newfoundland)

[This FOURTH PRINTING of the *Terms of Union of Newfoundland with Canada* contains the same version of Term 17 found in the *Third Printing*. This version became the official wording which was signed on December 11, 1948, incorporated

in *An Act to Approve the Terms of Union of Newfoundland with Canada* (Can), 1949, c. 1, and passed by the Canadian Parliament on February 18, 1949. Subsequently the British Parliament passed *The British North America Act, 1949* (U.K.), 12-13 Geo. VI, c. 22. *The Constitution Act, 1982* renamed this latter Act the *Newfoundland Act*.)

15. AMENDMENT TO THE *TERMS OF UNION*

Constitution Amendment, 1987 (Newfoundland Act), Statutory Instruments/88-11.

(1) Term 17 of the Terms of Union of Newfoundland with Canada set out in the Schedule to the said Act [*The Newfoundland Act*] is renumbered as Term 17(1).

(2) Term 17 of the Terms of Union of Newfoundland with Canada set out in the Schedule to the said Act [*The Newfoundland Act*] is further amended by adding thereto the following:

"(2) For the purposes of paragraph one of this Term, the Pentecostal Assemblies of Newfoundland have in Newfoundland all the same rights and privileges with respect to denominational schools and denominational colleges as any other class or classes of persons had by law in Newfoundland at the date of Union, and the words "all such schools" in paragraph (a) of paragraph one of this Term and the words "all such colleges" in paragraph (b) of paragraph one of this Term include, respectively, the schools and colleges of the Pentecostal Assemblies of Newfoundland."

APPENDIX 4

BISHOP J.T. MULLOCK'S LETTER TO THE LEGISLATURE

Principles underlying Bishop Mullock's position as chairman of the Central Catholic Board of Education

May 27, 1851

That your petitioner has learned that by a decision of the Council the R. C. Bishop is removed from superintendence of the Central Catholic Board of Education.

That the Education of this Country is *denominational*, and as such regarded by law. That the senior clergyman is *ex-officio* President of the local Board: that in order to carry out this Denominational System, as far as the Catholics are concerned, it is necessary that the Catholic Bishop should be *ex officio* at the head of the Catholic Educational Board. By the Canonical Law of the Catholic Church, the Bishop is the Superior, President, and Visitor of all Catholic schools. It is a duty inherent in his office, and one which, were he willing, he has no power to resign.

That the Catholic Church recognizes the power of the State, to erect general or National schools, and allows, when nothing subversive of Faith and Morals is taught in them, her children to frequent them; and her bishops and priests to sit as members of their Boards. Still she can not admit the power of the State to organize Catholic schools or Boards as such, for in such cases the Bishops are *ex officio* their superiors, and would, if they consented to such an anomaly be giving to Caesar what belongs to God.

That should such a project pass into law your petitioner will be obliged, with deep regret to prevent any of his clergy taking any part in the system, and to prohibit any lay Boards which may be established from taking the name of Roman Catholic Boards, a title which the vote cannot give them.

That your Honourable House must be aware how injurious it will be to the country to have the Education of the whole Catholic Community at a dead stop, or to pass a law which in conscience they cannot obey.

In fine your petitioner sees but two ways in which this matter may be settled, either to establish a general system of Education, irrespective of Religious denominations, a plan which he fears may be productive of grievous dissensions, or to recognize the inherent right of the Roman Catholic Bishop, a right which even under penalty of death he could not forego to superintend the Education of those for whose salvation he is responsible.

Hoping that your Honourable House will accede to his request. He will ever pray & c.

Presented to the Council by Hon. Laurence O'Brien and immediately carried. An other intended for the House of Assembly but at Mr. Crowdy's (Atty. Genl's) request not presented.

AASJ: 106/13, J.T. Mullock to the Legislature, *Letter*, May 27, 1851, in M.F. HOWLEY, "Ecclesiastical History of Newfoundland. Volume Two. Notes", pp. 28-30.

APPENDIX 5

MEMORANDUM TO THE HONOURABLE MEMBERS OF THE COMMISSION OF GOVERNMENT OF NEWFOUNDLAND SUBMITTED BY THE R.C. HIERARCHY OF NEWFOUNDLAND ON CERTAIN PROPOSED CHANGES IN THE EDUCATION ACT OF 1927

March 8, 1935

We the undersigned, Roman Catholic Archbishop of St. John's, Bishop of Harbour Grace, and Bishop of St. George's, beg to submit to the Honourable Commission of Government the following memorandum on the Draft Bill to amend the Education Act of 1927 which was forwarded to us by the Secretary of the Commission.

Whilst we are glad to avail of this opportunity of putting the Roman Catholic position on Education in general, and on this proposed legislation in particular, clearly before the Honourable Commission, we feel constrained to say that the situation is rendered very difficult for us because of the fact that the Government have given no indication of their general Educational policy. It is generally supposed that the Commission of Government have in mind some very comprehensive Educational changes, but no information has been forthcoming as to what form these changes are to take. The system of Superintendents embodied in the present Education Act is an integral part of this Act, is essential to its proper working, and cannot be removed without destroying the denominational principle upon which it is based, unless safeguards for that principle are otherwise provided. To show how minutely and comprehensively the system of the Superintendents enters into the working of the Act, and the difficulty -- we might say the impossibility -- of considering it except in correlation with the rest of the Act, it is only necessary to say that it affects, directly or indirectly, approximately seventy-five sections, subsections, and schedules of the present Educational legislation. Without analyzing these sections and subsections in detail we would wish to direct the attention of the commission of Government to two sections which vitally affect the Roman Catholic position. Section 6, subsection (a), provides that the Superintendents have, subject to the Governor-in-Council, the general supervision and direction of all schools, academies, colleges, and training schools. Under the proposed legislation, therefore, the general "supervision and direction" -- words of very wide and indefinite meaning -- of all Roman Catholic institutions including Convent schools and the schools of the Christian Brothers would be vested absolutely in the Commissioner for Education or "such person or persons" as he might appoint, without any provision being made for safeguarding their denominational character, and preserving in them the spiritual atmosphere that we regard as essential. It is hardly necessary to point out to the Commission of Government that these institutions are the property of the Roman Catholic people. They represent in their building the labour and sacrifice of more than three quarters of a century, during which time they have been under Roman

Catholic management, control, and supervision. Can the Commission of Government reasonably expect us to hand over these institutions to the supervision and direction of an Administrative Department without some effective guarantees that their denominational character and Catholic atmosphere will be preserved and that they will be administered in accordance with the wishes and intentions of the Roman Catholic people by whom they were erected, and by whom they are being maintained?

It may be said that we have sufficient safeguards in the Board system which is still a part of the Education Act. Our reply to that is that we do not know whether the system of Boards as at present constituted is to be continued. In interviews with the Commissioner for Education and the Commissioner for Justice, no intimation could be obtained as to the Government's policy in this respect, nor could we obtain any assurance that the Government did not contemplate drastic legislation with regard to the Boards.

The second point which we would wish to stress particularly is that under the proposed Bill the appointment of all Boards of Education would be on the recommendation of the Commissioner for Education, or such person or persons as he might appoint. It is true that as long as other parts of the present Act remain unchanged the Commissioner would be obliged to recommend Roman Catholics for Roman Catholic Boards; but if this Bill becomes law the recommendations of appointments to Roman Catholic Boards for the control and management of Roman Catholic schools would be taken completely out of the hands of the Roman Catholic Educational authorities, and left to the absolute discretion of the Commissioner or some person or persons named by him. We find it difficult to believe that the Commission of Government seriously contemplate such interference with Roman Catholic rights under the present Act; but if this is not their intention then we are driven to the conclusion that they were not fully informed nor legally advised as to the far-reaching implications of the legislation which they are asking us to accept.

In the absence then of any clear pronouncement as to the intentions of the Commission of Government, in the absence of any statutory guarantees that the Roman Catholic rights and vested interests will be protected in any legislation that the Honourable Commission of Government have in mind, we feel compelled to take the definite position that the Draft Bill which has been submitted to us is, in its present form, not acceptable to the R. C. people of Newfoundland.

In taking this position we wish to assure the Commission of Government that it is not our intention to adopt an uncompromising or unreasonable attitude. Might we then venture to submit a suggestion that it appears to us would meet the present situation temporarily, until such time as the Government have their Educational policy fully developed and formulated and embodied in new legislation? We have reason to believe that one of the main objects which the Government have in mind

in the proposed legislation is to facilitate the reorganization of methods of accounting, auditing, etc., in connection with Educational finance. Our suggestion then would be that the sections of the Act dealing with the powers of Superintendents as to requisitions and financial recommendations be repealed, [?] repealed, the said powers being transferred to the Commissioner, or such person or persons as he might name, the other sections as to general supervision and direction remaining as they are for the present. It would, of course, be understood that the financial clause of the Act as to the denominational division of grants would remain in force as at present provided. This would enable the Commission of Government to carry out their financial policy whilst, at the same time, leaving as the statutory safeguards which we enjoy under the present Act.

As the Commission of Government has at present the whole question of Education under consideration, we deem it expedient to make known clearly the conditions which we regard as being essential to any Educational legislation that will be acceptable to the Roman Catholic people of Newfoundland.

1. The basic principle governing Catholic education here as everywhere is contained in the well known formula: Catholic teachers in Catholic schools under Catholic control. This implies that the present system of local boards should be retained, with most of the powers conferred on them by the present Act. The sections dealing with finance might be deleted, as it is understood that the Commission of Government is anxious to secure unification of financial control centralized in the Educational Department. The Boards should have the right to appoint and dismiss teachers, and the right to extend their present schools or to build other schools where necessary, subject, of course, to any reasonable conditions as to plans, constructions, etc., which the Department might require. Apart from any other consideration, we are of opinion that, having regard to the widely scattered population of this Country, and to the difficulty of communication with the central Educational authority, no system of Education can be workable without local authorities or local boards.

2. There must be absolute religious freedom in the schools, and no child should be compelled to attend a school to which its parents or guardians have conscientious objections.

3. The Roman Catholics should receive their proportionate share of all Educational monies voted for Colleges, Pupil Teachers, and School Building and Equipment.

4. No Roman Catholic institutions at present in receipt of Government grants should be placed in an inferior position financially under the new arrangements, but should receive at least the amount they are receiving from all sources at the present time.

5. There should be official Roman Catholic representation at the centre of Educational Government, an official who should have certain definite statutory duties, who should be free at all times to inspect Roman Catholic schools, and who should act as an authoritative intermediary between Roman Catholic teachers and Roman Catholic Educational authorities on the one hand and the Department of Education on the other. This must not be construed as implying any objection on our part to the fullest inspection and supervision which the Department might see fit to provide.

We [...] in outline the principles which we regard as vital, and which must be protected by effective statutory safeguards in any Educational legislation that will be satisfactory to the Roman Catholic people.

We hope that the Honourable Commission of Government will permit us to direct attention briefly to certain phases of Educational legislation in Canada and England which have a bearing on the present situation in Newfoundland. [Thus follows a consideration of aspects of the school systems in these two countries, i.e., Canada and England, that protect Catholic rights.]

We wish to bring to the notice of the Commission of Government the fact that in the Report of the Royal Commission, upon whose recommendation the Commission of Government was formed, and the general lines of which the Commission of Government have been following, there was only a passing reference to Education. The Commissioners were, no doubt, well informed on this important matter of Education, and must have had representations made to them by many of those who gave testimony. In their report, the Commissioners were fearless in their criticism and unsparing in their condemnation whenever they thought criticism and condemnation were called for. Is it not, therefore, significant that there was no comment upon the system of Education of the Colony? Furthermore, the Commission expressly recommended that the Commissioner for Education under the new form of administration should be one of the Newfoundland Commissioners. Are we not then justified in inferring from their report that the Commissioners regarded Education as being very largely a local matter, in dealing with the traditions of the country, the rights and interests of all parties concerned, and the views and opinions of the people should be taken into consideration.

May we [crave?] the indulgence of the Honourable Commission of Government if we venture to plead with them to consider very carefully and from every angle the Educational legislation which they have in mind before putting it into effect. The Honourable Commission, we are sure, will feel as strongly as we do that it would be very unfortunate if an Educational controversy were to arise which could not but disturb the unity and harmony which should exist in a community like ours, a controversy which would be bound to be bitter and prolonged. The Honourable Commissioners cannot fail to realize that any legislation imposed upon a large

section of the people of the country which they would regard as being in contravention of their rights and convictions could only result in engendering discontent, disaffection, and resentment, and assuredly would not conduce to that good-will, cooperation, and loyalty, which, in the opinion of all right-thinking people, are absolutely necessary for the success of the work of the Commission of Government in Newfoundland.

AASJ: 108/76/1, the Roman Catholic Hierarchy [E.P. Roche, J. March, H. Renouf] to the Commission of Government, *Memorandum on certain proposed changes in the Education Act of 1927*, March 8, 1935.



APPENDIX 6

MISSION STATEMENT CATHOLIC EDUCATION COUNCIL

Called to assist in the Church's mission of education, we, members of the Catholic Education Council, come together to promote the fullest development of our students in the image of Jesus Christ through an education that is open to the whole universe with God as its centre.

The aspirations and rights of our Catholic parents have led to the development of a unique, denominational, education system which is protected in the legislation of our Province and in the Constitution of our country. Recognizing the long-standing partnership between the Christian denominations and the Government of Newfoundland and Labrador and relationships with other Governmental Authorities, we facilitate the provision of an education which enables our students to take their places as responsible and informed citizens of our province, our country and our world. Respectful of the Gospels in the tradition of the Roman Catholic Church, and of the primacy of responsibility of parents to provide for the education of their children, we strive to build within our province a vibrant community among home, school and parish.

In keeping with the authentic character of Catholic education, we seek to respond to the changing circumstances of the Church and society, and of education in particular. We welcome our legislated responsibilities, dedicate our efforts to create improved structures, and signal our eagerness to work with other responsible educational agencies in planning for the future.

"Section A. The Catholic Education Council: I. Mission Statement" (October, 1987), in **CATHOLIC EDUCATION COUNCIL, *Policies and Procedures Manual***, [St. John's, 1990], p. 3.

APPENDIX 7

PROVISIONS OF SECTION 93 OF THE CONSTITUTION ACT (formerly THE BRITISH NORTH AMERICA ACT), 1867 AND ITS VARIANTS FOR OTHER PROVINCES

A. ONTARIO AND QUEBEC

The Constitution Act (formerly The British North America Act), 1867 (U.K.), 30-31 Vic., c. 3

93. In and for each province the Legislature may exclusively make laws in relation to education, subject to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union:

(2) All the powers, privileges, and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and schools trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec:

(3) Where in any province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the Legislature of the province, an appeal shall lie to the Governor General in Council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education:

(4) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section.

B. NEW BRUNSWICK AND NOVA SCOTIA (1867)

No special provisions with regard to separate schools at the time of Confederation.

C. MANITOBA (1870)

Manitoba Act, 1870, R.S.C. 1985, Appendix II, No. 8.

22. In and for the Province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the Union:

(2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education:

(3) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

D. BRITISH COLUMBIA (1871) AND PRINCE EDWARD ISLAND (1873)

British Columbia Terms of Union, R.S.C. 1985, Appendix II, No. 10; *Prince Edward Island Terms of Union*, R.S.C. 1985, Appendix II, No. 12.

No special provisions with regard to separate schools at the time of Confederation.

E. SASKATCHEWAN AND ALBERTA (1905)

Alberta Act, R.S.C. 1985, Appendix II, No. 20.
Saskatchewan Act, R.S.C. 1985, Appendix II, No. 21.

17. Section 93 of the British North America Act, 1867, shall apply to the said

province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.

(2) In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

(3) Where the expression "by law" is employed in paragraph 3 of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression "at the Union" is employed, in the said paragraph 3 it shall be held to mean the date at which this Act comes into force.

APPENDIX 8

SELECTED SECTIONS OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982, Schedule B of the Canada Act 1982, R.S.C. 1985, Appendix II, No. 44.

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
2. Everyone has the following fundamental freedoms:
 - (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.
15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.
32. (1) This Charter applies
 - (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
 - (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

APPENDIX 9

SCHOOL BOARDS

IX. RECOMMENDED R.C. BOARD BY-LAW ON DUTIES OF TEACHERS

PREAMBLE

Since the chief aim of this Roman Catholic School Board is to provide an education service enlightened by faith in which our youth can grow in the knowledge, love and practice of the Roman Catholic Faith, our schools must be centres of Catholic life and worship. But since in the words of Vatican Council II teachers must recognize "that the Catholic school depends upon them almost entirely for the accomplishment of its goals and programs", it shall be obligatory for all teachers employed by this Board, in the exercise of their functions and responsibilities, to carry out, perform and respect the following duties:

COMMUNITY AND FUNCTIONS

1. A teacher, whether involved in the actual teaching of Religious Education courses or not, must make a positive contribution to the development of a genuine spirit of Christian Community within the school, and subject to Article 5, of this By-Law, must actively participate in the school's religious functions, wherein and whereby both the teacher and the students can grow to the full measure of Christian teachings.

TO TEACH R.E. COURSES

2. Subject to Section 81 (c) of The Schools Act, a Roman Catholic teacher in a school operated by this Board must teach the prescribed course in Religious Education, if directed to do so by, or on behalf of, this Board.

APPROVED BY THE R.C.E.C.

3. The courses in Religious Education approved by the Roman Catholic Education Committee must be used by a Roman Catholic teacher in a school operated by this Board and no courses and no textbooks in Religious Education or in Family Life other than those approved by the Roman Catholic Education Committee may be used without prior written authorization by the Roman Catholic Education Committee or by the local Ordinary. (This article does not prevent wide recourse to appropriate reference materials by a teacher.)

TEACHER CREDIBILITY

4. The task of Catholic Education is understood to be not merely the discovery of meaning and the sharing of knowledge but also live evidence of fundamental Christian values and a teacher employed by this Board must recognize that his or her personal life-style has an impact upon his or her credibility with youth.

TEACHERS WHO ARE NOT ADHERENTS OF THE ROMAN CATHOLIC FAITH

5. This Board respects the freedom of conscience of a teacher who is not adherent of the Roman Catholic faith and who so advises the Board in writing at the time of commencement of employment with this Board. Such a teacher, while maintaining fidelity to his or her own conscience, is expected at all times to demonstrate a respectful and sympathetic sensitivity to the Catholic beliefs and practices of the students in the schools operated by this Board.

INCOMPATIBILITY

6. A Roman Catholic teacher in the schools operated by this Board is expected to abide by the laws and regulations common to all members of the Catholic Church and by word and example to encourage students to do likewise. When such a teacher employed by this Board acts in flagrant and explicit contradiction with fundamental Roman Catholic values or with the official teachings of the Magisterium or with the educational objectives of the Roman Catholic Church, that action is incompatible with the continued exercise of that teacher's function in a school operated by this Board.

(June, 1977)

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Part I: CANON LAW AND CHURCH TEACHING

- A. Primary Sources
- B. Reference Works
- C. Books
- D. Articles

Part II: EDUCATIONAL ISSUES

- A. Archives
- B. Legislation
- C. Case Law Material
- D. Books and Pamphlets
- E. Articles
- F. Reports, Briefs and Other Documents
- G. Theses
- H. Newspapers
- I. Unpublished Papers

PART I: CANON LAW AND CHURCH TEACHING

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PART II: EDUCATIONAL ISSUES

II-A. ARCHIVES

Archives of the Archdiocese of St. John's, Newfoundland.

100/6	106/9/6	106/33/6
104/1/29	106/13	106/33/7
104/1/30	106/16/1	107/25/444e
104/1/31	106/16/14	107/32
104/2/9	106/16/15	107/33
106/8/4	106/17/7	108/33
106/9/1	106/19/2	108/71/4
106/9/5	106/33/3	108/76/1

Archives of the Diocese of Grand Falls, Newfoundland.

102/1	103/6/5
102/1/5	103/6/6
103/6/2	104/1/5
103/6/4	104/2/4

Archives of the Diocese of Labrador City-Schefferville, Labrador City, Labrador.**File: Bishop P. Sutton****Archives of the Diocese of St. George's, Corner Brook, Newfoundland.****File: Archbishop of St. John's 1918-1940****File: Archbishop of St. John's 1941-1947****File: Archbishop of St. John's 1955-1964****File: Archbishop of St. John's 1965-1967****File: Archbishop of St. John's 1968-1969****Archives of the Irish Christian Brothers, Mono Mills, Orangeville, Ontario.****A-3-3****H-3-1****H-1-4****File 2-G-2****Archives of the Presentation Sisters, St. John's, Newfoundland.****File: Presentation Schools in Newfoundland****Archives of the Sisters of Mercy, St. John's, Newfoundland.****RG 1/6****RG 10/1/1****RG 1/8****Archives of the Sacred Congregation for the Propagation of the Faith.****Acta of the Sacred Congregation for the Propagation of the Faith.*****Acta*, 202*****Acta*, 243*****Acta*, 203*****Acta*, 249****Nuova serie.****N.S. 98 (1896)****N.S. 363 (1906)**

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5 (1842-1848)	12 (1872-1874)
6 (1849-1857)	13 (1875)
7 (1858-1861)	17 (1877B)
8 (1862-1864)	23 (1883-1884)
9 (1864-1865)	24 (1885-1886)

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MG 17, B 5, V. 1
 MG 30, E 159, V. 3
 MG 30, E 159, V. 4,
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 MG 30, E 159, V. 6
 MG 31, E 39, V. 11
 RG 25, Accession 83-84/351, Box 11
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Provincial Archives of Newfoundland and Labrador, Colonial Building, St. John's, Newfoundland.

GN 21/6
 P4/3/15
 P6/A/33

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194/99
 199/32

**II-B. LEGISLATION
 (IN CHRONOLOGICAL ORDER)**

An Act for the Encouragement of Education in this Colony, S.N. 1836, c. 13.

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- An Act for the Encouragement of Education in this Colony, S.N. 1843, c. 6.*
- An Act to Provide for the Establishment of an Academy at St. John's, S.N. 1844, c. 3.*
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- An Act to Amend "The Education Act, 1895"*, S.N. 1896, c. 7.
- An Act to Incorporate the Roman Catholic Bishop of Saint John's*, S.N. 1897, c. 18.
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