

## LETTER TO THE MINISTER OF EDUCATION

June 23, 1989

### CENSORSHIP AND DENOMINATIONAL SCHOOLS

It is with regret that we have been following the recent controversy about the deletions to be made to the new grade XII literature text. Our concern is based on the following points:

1. The Newfoundland-Labrador Human Rights Association strongly supports the concept of Freedom of Expression as guaranteed in Section 2(b) of the Canadian Charter of Rights and Freedoms and Article 19 of the Universal Declaration of Human Rights. Naturally we also recognize "reasonable limits" but the present situation does not seem to touch on this since the reason for the deletions are not even distantly related to the issue of pornography.
2. Article 26 of the Universal Declaration clearly encourages that education be "*directed to the full potential of the human personality*". This in practice means that we must allow and foster an atmosphere of research, questioning and freedom in the educational system. Our Association feels that the types of deletions imposed on the production of this textbook are contrary to the aim of developing a truly mature mentality in our students.
3. As you are well aware the Newfoundland-Labrador Human Rights Association is also on record as being opposed to the unique position of the Denominational Education system in Newfoundland. Our objection to the imposing of one system of thought and philosophy on those who do not share this view and who are unable to enrol in an alternative system is well known. The present controversy again illustrates the byzantine contortions that you and other educational authorities and experts are forced to perform in order to meet standards which are contrary to what true education should be - a search for knowledge and the fostering of the ability to make rational judgements.
4. Considering the dire financial situation of this province, we also question the expenditures in light of the fact that experts in the curriculum development department had agreed that the text was appropriate from an educational point of view, which we feel should be the only valid criteria.

Sir, our Association recognizes the difficulty of your position but we do feel that you must be aware that we strongly oppose censorship; support the freedom of research and study; reject the imposition of religious criteria when no alternative exists for dissenters; and question excessive expenditures in order to allow the domination of sectarian philosophies.

## POLICY

March 17, 1987

### DENOMINATIONAL SCHOOL SYSTEM POLICY

The NLHRA advocates a non-discriminatory system of education. According to Article 26 of the United Nations Declaration on Human Rights, parents have the right to choose the type of education for their children. The NLHRA does not advocate the elimination of denominational education.

Rather, we object to the discriminatory policies inherent in the present denominational system whereby:

1. Candidates for school board elections must be of a specified faith;
2. Student entrance to area schools and special programs is based on religious affiliation;
3. Hiring preference is given to teachers of specified faiths;
4. Teachers can be dismissed for grounds of neglect of duty, insubordination, or "similar just cause" where similar just cause is not defined and is arbitrarily used as grounds for dismissal based on school board definitions of acceptable moral and social standards.

We propose within the present system these discriminatory aspects can be removed through the adoption of the following policies:

1. Open school board elections;
2. Entry to special programs on a first-come, first-served basis;
3. Hiring and Dismissal policies to be based solely on the professional qualifications and demonstrated competency of the individual teachers in their specialized academic field.

In addition, we advocate the development and implementation of a public non-denominational system as a viable alternative.

#### Issues for NLHRA

- disc. against students - bad exemption
- " " teachers - hiring
- refused rights for school board elections

**POLICY/BRIEF**

Approved: February 11, 1991

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**ROYAL COMMISSION OF INQUIRY INTO THE DELIVERY OF PROGRAMS  
AND SERVICES IN PRIMARY, ELEMENTARY, SECONDARY EDUCATION  
SUBMISSION**

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*" Parents have a prior right to choose the kind of education that shall be given to their children. "*

*Art. 26.(3). Universal Declaration of Human Rights.*

## 1. Introduction

**1.0** The purpose of this brief, prepared by the Newfoundland-Labrador Human Rights Association and submitted to the Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary, Secondary Education, is to present the Association's concerns with the nature of the Denominational System in the Province of Newfoundland.

Before stating our views on the very important issues to be considered, the Association wishes to go on record as declaring that it fundamentally disagrees with the composition of the Royal Commission and the way that it was established. Our major concern is that the Commission's membership overly represents the educational establishment and does not contain even one representative from major groups such as parents and teachers who, together with the students, are the real participants in the educational process.

We have drawn extensively on the research and other documentation that has been prepared by various members of our Association and by experts that we have retained to examine specific aspects of Denominational Education. Special mention should be made of Mr. A. Grant, a lawyer contracted in 1989, whose work forms the core of sections 2 and 3 of this presentation.

Most people who read and study our presentation will be familiar with the history and development of the Denominational Education System. For this reason we will direct our attention to the effects of the Denominational Education System on those groups that are not included in the list of enumerated Christian Denominations as defined in the Schools Act.

Our brief is focused specifically at those parts of the Commission's mandate which direct it to:

*"Identify any existing barriers to the effective, efficient and equitable delivery of programs and services, and propose corrective measures and incentives".*

and

*" Consider the matter of accessibility for those groups and individuals who may not now be adequately served"*

Let us add to these introductory comments the fact that the wording of this part of the mandate is in the present tense. It is our view that the Denominational System does not now, and probably never has served the full needs of a substantial number of people who have been denied

full accessibility to the Denominational School System because of their lack of affiliation with the established Denominations.

Many goals and objectives of education have been formulated by various experts and organizations. One of the most poignant is expressed in the International Covenant on Economic, Social and Cultural Rights (Article 13). This agreement was adopted by the United Nations General Assembly in 1966. It states that the signatories, which include Canada, agree:

*that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups...."*

This goal is strongly supported by the Newfoundland-Labrador Human Rights Association and it is our position that any educational system which denies the minority full access through the imposition of religious criteria fails, not only the members of that minority, but also fails its own adherents. A system of discrimination cannot foster full development of a human personality, a sense of dignity, or strengthen respect for human rights. Furthermore, a system which bars the parents of a number of its students from participating in that system's management cannot claim to promote understanding and tolerance.

This lack of access for significant segments of the population forms a barrier to the effective, efficient and equitable delivery of programs and services. In this brief we will expand on those aspects of the Newfoundland and Labrador Denominational School System which deny this access and point out the inequalities of a system which is unique in Canada by virtue of the fact that there exists no alternative for members of religions not included in the Schools Act, or for those who classify themselves as non-religious.

## **2. The Discriminatory Effects of the Denominational School System**

**2.1** A purely Denominational School System, like that in Newfoundland, is one which is organized along the lines of Denominations. For the purposes of definition, a "Denomination" is a group of people belonging to one religious Sect.<sup>1</sup> In a purely Denominational School System, the students are classed by their religious affiliation or, more practically, by those of their parents. As well, the very nature of a Denominational School results in the practice of hiring teachers of a particular religious persuasion and the right to insist that these teachers follow the rules of the prescribed faith. Finally, where there is local government of the schools, such as local school boards, the character of such schools necessitates that members of the governing bodies are classified according to their particular Denominations. In essence, the above statements depict the state of the school system in Newfoundland as it is today and as it was at the time of the signing of the Terms of Union.

For those students, teachers, parents and tax-payers who support Denominational Schooling and whose Denomination is currently provided for under Newfoundland legislation, the effects of a purely Denominational School System may well be satisfactory. For those who do not fall into this category, however, the effect of the System is deleterious and distinctly discriminatory.

At this point in our brief, it should be stated what we mean by the term "discrimination". In Canadian constitutional terms that which is "discriminatory" is that which offends s. 15 of the Charter of Rights and Freedoms. This provision reads:

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.*

(2) *Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

Related to this discussion is Section 2 (a) of the Charter which provides that:

2. *Everyone has the following fundamental freedoms:*

(a) *freedom of conscience and religion;.....*

The debate on what sort of "equality" is protected by section 15, or what sort of "discrimination" should therefore be prohibited, can, for the purposes of this presentation, be largely circumvented. The discriminatory effects of the school system of Newfoundland are so patent and obvious that a very narrow definition of "discrimination" can be employed; that is, it must negatively impact on affected individuals in a manner that is unreasonable or unfair.

2.2 (1) There are three major types of discrimination engendered in our Denominational System. First, because all children of a certain age must attend school in Newfoundland, students who do not belong to one of the enumerated Denominations must nevertheless attend a school of a religious Denomination which does not correspond to their own faith or non-faith. Related to this first type of discrimination is the discrimination levied against parents of school age children who do not belong to one of the enumerated Denominations, or who conscientiously do not believe in religious indoctrination. Again, these parents are forced, under the threat of legal sanction, to send their children to schools of a religious stripe, either different from their own or contrary to their conscientiously held beliefs.

Summary

educ. disc.

The Schools Act, in Section 64, provides that *"no person shall, in any... school aided by money granted under this Act, impart to any child attending it any religious instruction which may be objected to, in writing, by the parent or guardian of that child"*. However, because parents are still obliged to send their children to a school with a certain religious atmosphere and homogeneity, their children will therefore be forced to endure the difficulties inherent in being "different" or "apart".

Older Newfoundlanders often reminisce about schooldays' battles against their contemporaries from other Denominations, but certainly time has coloured their perceptions and the romantic tinge that is added to those descriptions is no longer valid (if it ever was!). Today many of our children are subjected to a process of segregation that rests heavily on them as an unfair and unjust burden.

There are many examples where children in Grade 2 have been forced to sit in the back of churches or in the library while their Roman Catholic companions practice for the First Communion ceremonies. In fact, every time that children are made to participate in religious events, either in school or in a nearby church, the distinction between adherents and non-adherents is emphasized and often results in cruel and unjust discrimination on the part of those children who cannot understand why some of their classmates are different.

These children and parents are then effectively not represented by the current school system, unlike members of the enumerated sects. They are disadvantaged in that there is no school system which is representative of their own faiths or of their conscientiously held non-belief. Worse still, their dignity and spiritual integrity, allegedly protected by the freedom of conscience and religion section of the Charter 2.(a), is violated.

It should be noted that dignity is not fostered when a school such as Bishop Field places the names of children at the bottom of the list of candidates for admittance to the school because they are not members of the *"right Denominations"*. This affront to human dignity is repeated every time a child is refused access to a neighbourhood school on the basis of affiliation or non-affiliation with a particular church.

**2.3** <sup>(2)</sup> The second major form of discrimination addresses itself to teachers. For teachers in a purely Denominational School System to be successful, they must belong to one of the sects provided for by law and, they must adhere to the dictates of their religion. Dr. William McKim of Memorial University of Newfoundland has studied the hiring practices of the various Denominational School Boards in Newfoundland.<sup>2</sup> He listed some of the steps which must be followed by a teacher seeking employment in this province.

In order to teach in Newfoundland, a teacher must hold a teaching certificate. To obtain such a certificate, the teacher must be approved by one of the Boards of Examiners. There is a Board for each Denominational Education Council; that is, there is one for the Integrated School



System, one for the Roman Catholic School System and one for the Pentecostal School System. These boards do not examine professional or academic qualifications. This is done by a different examining board. Instead, these denominational *"Boards of Examiners are empowered to examine anything else about the (teacher) candidate"*.

This current practice requires that the teacher candidate submit the names of one or two referees, one of whom must be the candidate's priest, pastor or clergyman, *"although in some cases they will accept a letter from a responsible citizen if the candidate has a good excuse for not being able to produce one from a cleric"*. In *"routine cases"*, the approval is *"virtually automatic"*, but when the candidate is not religiously affiliated, he or she must often *"undergo several interviews and have their past more thoroughly investigated"*. Once the candidate has been approved by all examining boards, a certificate is issued and the individual is sanctioned to apply for a teaching position in any school of any Denomination in Newfoundland.

At this point, the teacher can apply to any School Board of his or her choice. The problem is that each Denominational School Board has the legal right to discriminate and to prefer members of its own religious faith when hiring and firing.

This legal right was discussed by the Supreme Court of Canada in the case of *Re Caldwell and Stuart*. In that case, the Court interpreted s.22 of the British Columbia Human Rights Code as providing that:

*"Where a religious . . . organization that is not operated for profit has as a primary purpose the promotion and welfare of an identifiable group or class of persons characterized by a common . . . religion, that organization ... shall not be considered as contravening [the Code] because it is granting a preference to members of the identifiable group or class of persons"*.

Mr. Justice McIntyre discussed the reason for this right, in giving judgement for the Court:

*"The purpose of this section is to preserve for the Catholic members of this and other groups the right to the continuance of denominational schools. This, because of the nature of the schools, means the right to preserve the religious basis of the schools and in so doing to engage teachers who by religion and by the acceptance of the Church's rules are competent to teach within the requirements of the school. This involves and justifies a policy of preferring Roman Catholic teachers who accept and practice the teachings of the church."<sup>3</sup>*

It would appear then, in hiring and firing, that an inherent right of Denominational Schools is the right to prefer teachers who belong to, and follow strictly, a preferred faith.

Dr. William McKim, who is also the editor of *The Vexed Question: Denominational Education in a Secular Age*, investigated the actual exercise of this legal right in Newfoundland and discovered that, in practice, it was exercised. For the Integrated School System, the practice was generally to "give preference to teachers of the integrating Denominations". In respect to the Pentecostal and Seventh Day Adventists, the policy seemed, in effect, to be to hire Pentecostal or Seventh Day Adventists respectively. Indeed, in the case of the Pentecostal Board, Dr. McKim confirmed that all of the teachers employed by it were "Evangelical Christians". Finally, he found that, generally speaking, the Roman Catholic School Boards gave preference to Roman Catholics.

In summary then, it can be said that, in the hiring of teachers, the school system discriminates against teachers who do not belong to one of the requisite faiths and who are usually discriminated against by the employer-school boards. Not only does it discriminate in practice, but the laws supporting it permit it to do so. These teachers are, in practice, excluded from their profession only for the reason that their religious beliefs do not accord with those which are "State-sponsored".

Summary  
Teacher

For teachers who "make the grade" and succeed in obtaining employment, however, there is a further obstacle of discrimination perpetrated by the Denominational School System. If the teacher fails to obey the rules of his or her school's religion, the employing Denominational School Board is then permitted to dismiss the offending teacher. The offence against the religious rules may be in respect of a strictly personal matter, such as a decision to marry a divorced person whose legal divorce is not recognized by the employer's religion. This was the case in *Re Caldwell and Stuart* where the Court upheld the school's right to dismiss the teacher for her breach of the Roman Catholic Church's rules. In Newfoundland a teacher needs to belong not only to one of the enumerated Denominations, but he or she must also pay strict attention to the rules of the employer's faith. Failure to do so can expose the teacher to reprimand or dismissal.

In Newfoundland's strictly Denominational System, therefore, the failure of a given teacher's religious sect to attain legally recognized status would severely impair that individual teacher's marketability in the educational labour market. Also, if a teacher contravenes an edict of his/her school's religion, even if the contravention was in respect to a very personal matter, the teacher can be subjected to reprimand or dismissal. Unlike a school system which has secular schools parallel to denominational schools and where such a teacher can attempt to find employment with a Non-Denominational School Board, the teacher in a purely Denominational School System is virtually excluded from the market. Is such a system just? The answer to this question must be no!

Dr. Phil Warren, formerly with Memorial University of Newfoundland's Faculty of Education, has espoused the position that "a truly just situation would require the formation of secular Public Schools as well as Denominational ones".<sup>4</sup> Even proponents, such as Dr. Romulo Magsino, formerly of the Faculty of Education, when dealing with the legal right of Denominational Schools to hire and fire teachers on religious grounds, cannot deny this dilemma

exists. In an article supporting this legal right, his concluding paragraph, complete with qualifying footnote, is telling:

*"Is requiring Catholic teachers to conform to Catholic belief and to bear witness to that belief in the conduct of their life a diminution of their freedom? Surely the answer is yes. This is, however, a consequence of one's free choice to enter into an agreement or contract of any kind. In a religiously pluralistic society, people are free to join (or not join) a religion of their choice. They are also free to offer their services to schools whose institutional beliefs are consistent with their own \*. Provided the requirements at the point of entry are clear, and provided the requirements are accepted by both parties, the Church is not asking any more than the honouring of one's commitments when it imposes its requirements on the teacher."*

*"\* Newfoundland has a unique problem because there are no secular schools in this province. This author inclines toward the view that a truly just situation in the province will require the formation of secular Public Schools alongside Denominational Schools."<sup>5</sup>*

2.4 <sup>3</sup> The third form of discrimination in the delivery of services to be discussed in this presentation is the discrimination exercised against people who wish to present themselves as candidates for school board elections but who do not belong to one of the enumerated Denominations. This occurs every time School Board Elections are held. Examples of this occurred in 1989 when Ms. Lynn Byrnes and others, were refused permission, on the basis of religious affiliation, to stand as candidates.

Byrnes rejected for School Board

The Schools Act in Section 7 provides that the School Boards shall consist of "such number of persons, not less than seven, as the Minister approves, of the same religious Denomination or religious Denominations as that or those for which the district was established". As is clear from the language of the legislation, persons who are not adherents to one of these designated Denominations are effectively barred from participation in the local government of schools, despite the fact that they pay public taxes in support of such schools and, by virtue of the law, are forced to send their children to such schools. These strictures result in the creation of "second class" citizens with less democratic rights than those of the "select" religious backgrounds. By no fair yardstick can this discrimination be labelled as "just". It excludes, it offends, it penalizes, it disadvantages, and all this because an individual's most personal beliefs and religious convictions do not conform to those of the Denominations enumerated in the Schools Act.

Second class citizens

In summary, the present system discriminates against students, teachers, parents, and candidates for school board elections who are not members of one of the designated Denominations. It discriminates against students and parents who are not members of one of the preferred groups by obliging them to attend a school which is contrary to their beliefs. It discriminates against parents who in conscience, do not believe in a union of church and state. It discriminates against teachers by essentially requiring them to be a member of one of the Denominations designated in the Schedule to the Schools Act. It further requires them to conform

in even their personal life to the teachings of the faith of their school or else face possible dismissal, and all this without recourse to finding employment with an institution whose beliefs are compatible with their own. Finally, it discriminates against individuals who might wish to run for positions on school boards but cannot do so because their religious affiliations or non-affiliations do not accord with one of the enumerated Denominations. It does so in a manner which cannot objectively be called "fair" or "just". It does so, it is submitted, in a manner which contravenes the principles set forth in ss. 2 (a) and 15 of the Charter.

### 3. Justifications for the Denominational Education System

3.1 All the Denominations protected by Newfoundland law are Christian Denominations, but not all Newfoundlanders are Christians. According to the 1981 Statistics Canada Census, 6,590 Newfoundlanders were either of no religious affiliation or of a non-Christian religious background.<sup>6</sup>

Further, this Census shows that the United Church, a Denomination consistently opposed to Denominational Schooling in Newfoundland,<sup>2</sup> had a membership in 1981 totalling 104,830.<sup>6</sup> In total then, approximately 20% of Newfoundland's population either is forced to send their children to Denominational Schools which do not represent their religious views, or are forced to do so despite their non-support of the purely Denominational System. Thus it is very difficult to contend that the school system in Newfoundland does not discriminate against anyone. In fact, a very significant percentage of the population is subject to discrimination.

3.2 The principal reasons offered as justification for the discrimination caused by Newfoundland's school system are two-fold: that a religious education confers special benefits and that Denominational Education is the "*Newfoundland way*", a *distinct part of Newfoundland culture*".

Neither of these reasons holds up when subjected to analysis. The first justification which argues that religious instruction imparts morals or other benefits, is a subjective point of view. Equally valid opposing arguments are that religion should be separate from the State, and that indoctrination of religious views by the State limits one's capacity to reasonably assess moral issues.

The first justification implies that the State's moral judgement, in respect to the matter of conscience and religion, can be imposed. This runs contrary to the general thrust of all human rights documents and especially to that of the Charter. The words of Chief Justice Dickson, in *R. v. Big M Drug Mart Ltd*, are appropriate:

*"What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The Charter safeguards religious minorities from the threat of 'the tyranny of the majority'."*

**3.3** As for the second contention, it also falls on its own sword. To state that something is part of the "*Newfoundland way*" implies virtual uniformity, unanimous domestic support and a continuous historical experience. Such is not the case however. While churches have played a large role in the development of education in Newfoundland, there was nevertheless considerable anti-denominational sentiment in Newfoundland throughout its history. Some Denominations themselves have consistently advocated a Non-Denominational approach to education. Indeed, according to the survey conducted by Dr. Mark Graesser, 51% of all Newfoundlanders would like to see a switch to a unitary Public School System. An additional 29% would prefer to add some Public Schools. Only 11% of the Newfoundland population would prefer to continue with the current purely Denominational School System. In light of these statistics, it is difficult to say that Denominational schooling is the "*Newfoundland way*". It may be the "way" schooling is currently conducted, but it is clearly not an accepted aspect of Newfoundland life by a majority of its residents.

Moreover, to say that a discriminatory system is a province's "way" is to permit that province to do exactly what the Charter prohibits. According to Chief Justice Dickson : the Charter is designed to protect against the tyranny of the majority, to prevent the State from imposing its will, in respect of religious beliefs and practices, on individuals who differ. The State, in Newfoundland, may well like to make all residents between certain ages attend schools defined along the lines of certain religions, taught by teachers of certain religions, and run by school boards of certain religions. But it cannot use this preference as a justification for imposing its will on the dissenting minority. The factual justifications therefore are not justifications at all: they are really restatements of the alleged right to impose the State's moral judgement in respect of religious beliefs.

**3.4** There is, also, a third rationale used to justify the Denominational System in Newfoundland and Labrador. This is an argument which rests primarily on Section 29 of the Charter. This section states that:

*"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".*

As we indicated at the end of the previous section, the various forms of discrimination inherent in the Denominational System are unfair and unjust and contravene the principles of Equality and Freedom set out in sections 15 and 2(a) of the Charter. Where then lies the balance between these principles and the protection of Denominational Education as defined in section 29?

The Newfoundland-Labrador Human Rights Association reaffirms its support for the struggle of minorities against the tyranny of the majority. We recognize that religious groups must have the right to manage their own schools for the benefit of their own adherents. We also

NLHRA  
re 29 rights of  
minorities

recognize that government financial support should be provided to such schools. Naturally these rights should be exercised within the parameters of quality control and financial guidelines, but these rights are nevertheless real and are protected under the Equality and Freedom provisions of the Charter.

However, this commitment does not detract from a further position that those who are not adherents to the designated Denominations also have rights and that they in turn are entitled to a system of education free of the domination of the churches. The fundamental right of equality dictates that they should therefore have their own schools. The right to freedom of conscience and religion should certainly mean freedom from religious domination.

This Association feels strongly that the balance lies in recognising these rights of non-adherents and thus instituting a Public School System while at the same time allowing for a Denominational System.

#### 4. **Position of the Newfoundland-Labrador Human Rights Association**

4.1 In 1987, the Newfoundland-Labrador Human Rights Association refined and updated its official policy on education. In its statement, it strongly objected to the discriminatory policies inherent in the Denominational System. Much of the rationale for this position has been explained in the first part of this brief.

We proposed at that time that the discriminatory aspects could be removed through the adoption of the following policies:

1. Open School Board elections.
2. Entry to Special Programs on a first come, first served basis.
3. Hiring and dismissal policies based solely on the professional qualifications and demonstrated competency of the individual teachers in their specialized academic field.
4. The development and implementation of a public and non-denominational system as a viable alternative.

4.2 Since we adopted the above policy we have not seen any real attempt by the authorities to adjust the Denominational structure so that its discriminatory aspects would be diminished or eliminated. At the same time, however, we have witnessed a strong growth in public discontent with the way the publicly funded schools in this province are governed.

Children are continually being denied access to neighbourhood schools because they do not meet their religious qualifications. This was brought home again in 1989 when we witnessed the spectacle of another child, this time on the west coast, being denied access to such a school and forced to be bussed to a school consistent with the parents' religious affiliation.

To compound this injustice, the parents of children who do not belong to the enumerated Denominations are being denied the right to run for School Boards. We recognize that some flexibility has been introduced, but, the overall thrust is still to deny the right of all persons to be proposed as School Board candidates.

Equally disturbing is the fact that teachers continue to retain their employment at the pleasure of their school boards and can be penalized if they refuse to toe the religious line.

**4.3** The public discontent with the Denominational Schools came out quite dramatically in June 1989, when the Task Force on Mathematics and Science Education/Task Force on Educational Finance published Research Report # 7.

This report revealed that a solid 42.4% of the population believes that changes are needed in our Denominational System. This group remained constant when, in a later question, 45.7% indicated that as an alternative they wished to see one Public School System with no Denominational control established. Even those who wished to retain Denominational Education were almost evenly split (28% vs 22.7%) between those who wanted a Public System in addition to Denominational Schools, and those who wished to expand the present system by allowing other Denominations to establish schools of their own<sup>8</sup>.

In addition to the growing disillusionment in the general population with the Denominational System, the Association has also taken note of growing trends of intolerance throughout Canada. Thus we are more convinced than ever of the need to use both the philosophy of the Charter of Rights and Freedoms and of international law as a guide for the conduct of civilized society.

**4.4** We recognize that the entrenched position of section 17 of the Terms of Union makes it difficult to implement legal changes to allow for full participation of people who are not members of the enumerated Denominations. We find this conflict with the Equality sections of the Charter extremely problematic and are convinced, moreover, that the violation of the rights of children, parents and teachers is contrary to our Constitution.

This Association notes that this contradiction becomes even more pronounced when viewed against the intent and wording of such international covenants as those on Civil and Political Rights and Economic, Social and Cultural Rights. These instruments were formulated by the United Nations and signed by Canada and as such they have the strength of law and must be taken into consideration when we evaluate accessibility for those persons who are not included in the enumerated Denominations as defined in the Schools Act.

**4.5** Article 25 of the International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly in 1966 and acceded to by Canada in 1976, states that:

*"Every citizen shall have the right . . . (a) to take part in the conduct of public affairs, directly or through freely chosen representatives and (b) to vote and be elected . . . "*

This Article clearly states that political rights should be enjoyed by all people. Newfoundland is a part of a democratic country and we therefore can expect to have these rights. Following on this we must ask ourselves the question: does the concept of public affairs include the management and direction of the schools in which our children are enrolled and which are maintained by the public purse? It is this Association's contention that the concept of public affairs does include this area and, furthermore, that a substantial section of our population is denied this participation.

Article 13 of the International Covenant on Economic, Social and Cultural Rights deals at length with the rights of children to an education. A basic aspect of this document is expressed when it states that governments must ensure that religious and moral education of children is to be in conformity with their own convictions.

Obviously, although all other Canadian jurisdictions adhere to this principle, Newfoundland stands out as the only province which does not provide for this right and in fact refuses to establish a Public School System which would allow children to be enrolled as equals regardless of their religious affiliation.

**4.6** The Denominational System discriminates and therefore denies access to services and information in many other ways.

One area that is quite problematic is the cost of our school system and the consequent reduction in the quality of education that our children receive. We are not equipped to deal with these items and will therefore leave this task to others. These are, however, two issues that directly concern us as a Human Rights association.

A. The Newfoundland-Labrador Human Rights Association has always taken the position that freedom of expression is a right that must be guarded and protected. It forms one of the fundamental elements of our Freedom and any tampering with it will lead to a rapid erosion of our civil liberties. Naturally, we also recognize that there are reasonable constraints on this right as it applies to such areas as hate propaganda and violent pornography.

We have witnessed in recent years such extreme manifestations of censorship on the part of educational and Denominational authorities that this Association calls into question the quality of teaching in our schools. Instances such as the change of the verb "to dance" to "to sing" in a French text and the removal of excerpts from literary works by such authors as Hemingway and Atwood are but some recent examples of a philosophy which we find extremely frightening.



It is this Association's view that censorship at any time is a highly questionable activity, but the manner in which this sword has been wielded by our educational authorities, on behalf of the churches, is dangerous and reinforces our belief that students are receiving an education which places them at a disadvantage when compared to the rest of the country.

- B. Another area where the power of the Denominations has become untenable - even to the point of endangering lives - is in their policies of restricting information necessary to deal with the real threat of AIDS. The potentially fatal consequences of unprotected sexual activity requires that all information necessary to prevent infection be placed before our students. Failure to do so, for whatever reason, is not only immoral but possibly illegal. During a conference in 1989 on AIDS, Striking a Balance, the Deputy Commissioner of the Canadian Human Rights Commission, Madame Michelle Falardeau-Ramsay, stated that:

*"If I were a parent and my child was not allowed that type of education (AIDS education), I think that I would go to the Human Rights Commission. I think that it is very important that young people be made aware of viruses that pertain to this type of illness."*

It is the Association's position that the Denominations have prevented the development of a comprehensive and appropriate information package, applicable equally to all schools in the province. While some School Boards have better materials than others, the fact remains that children in some areas or School Board jurisdictions are at a disadvantage because they are not getting the full facts. In addition, even when these materials are somewhat more adequate, they are nevertheless demonstrably inferior when compared to those distributed in other parts of the country.

The safety of our children demands a uniform, appropriate and clear message on unprotected sex and AIDS. Denominational considerations should be secondary in facing this crisis.

4.7 Earlier in this brief we noted a basic and very serious contradiction when we cited the comments of Dr. Phil Warren, Dr. Romulo Magsino and others. It is the lack of an alternative that moves us to state that the present Denominational School System does not meet the needs of those who are not part of the enumerated Denominations.

The need to recognize that minorities should be safeguarded from the "tyranny of the majority" has already been stated earlier in this document. To ensure this, it is our conviction that the initiative for the establishment of a Public School System must come from the provincial government itself.

It is the Association's contention that we have not seen any real commitment for change among the established Denominational authorities. In fact, the discriminatory aspects of our system appear to be more and more entrenched. This phenomenon runs contrary to the popular views expressed in such surveys as that of the 1989 Task Force on Mathematics and Science Education and Educational Finance. Finally, our interpretation of the philosophy of the Charter and of the International Covenants reinforces our view that we must move from cosmetic changes to a fundamental adjustment with the establishment of a Public School System.

**4.8** Who should be responsible for the introduction of a Public School System? This question has been discussed at length by members of our Association. We have come to the conclusion that any real change must be implemented through Legislation. The reasons for this are many and varied and can best be summarized as follows:

1. It is questionable whether the Province can afford to add another school system to the number we have already. Thus, to establish a Public System requires a consolidation of the existing Denominational Systems into one or two units. Naturally, our preference is that they be combined into one to accommodate those people who want a religious basis for the education of their children *and* a parallel one for those who want a secular system.
2. We have argued that minority rights must be protected. Until recently we have advocated accommodations within the existing systems but now we have come to the strong conclusion that minority rights in education in Newfoundland can only be properly protected by the establishment of an alternative Public School System. At the same time, however, the Human Rights Association is extremely conscious of the fact that religious rights must also be protected.

Indications are that our country is going through some very major demographic changes in the matter of religion. Most certainly, the next census will confirm that those that have "No Religion", as indicated on the census forms, will probably constitute the second largest group in Canada after Roman Catholics. This projection is based on the statistics and rates of increase since 1981<sup>9</sup>.

If this same growth applies to Newfoundland, we will be faced with a dilemma. It could be argued that the rationale to justify the Denominational System and the prevention of the establishment of a Public School System can be turned around in the future when the majority of people are no longer adherents of the enumerated Denominations. At that time, if we are to be consistent, all Denominational Schools should then be closed.

It is our contention, therefore, that a progressive and forward looking government needs to take steps now to ensure the protection of religious rights by guiding the development of a Public School System to exist parallel to the Denominational one. This should effectively check any future resentment of those who are excluded now and who might, in the future, attempt to diminish religious rights of the "new minority".

3. It is unrealistic to assume that those people who do not fall into the enumerated Denominations are sufficiently organized to establish their own schools. By definition, these people look to Government to assume its proper role in the field of education in a manner akin to other jurisdictions in Canada. Even many religious adherents hold the view that education is the proper role of parents in partnership with government and without the participation of the churches. This then places the onus on government to take an active role in representing those that are either opposed to the Denominational System or who, through lack of accessibility , are not adequately served by the present system.
4. It is our contention that the government has a mandate expressed by the philosophy of the Charter to safeguard minorities from the threat of "tyranny of the majority" and as expressed in the international covenants. This mandate requires that it take a leading role in establishing a Public School System.
5. Democracy can only flourish where there is a determined and clear commitment by the majority to protect and accommodate minorities and their needs. Wherever majorities and their governments fail to fulfil this obligation, autocracy and authoritarianism take over. It is essential that people in our province realize that to preserve our democratic institutions, government must actively intervene through the establishment of a Public School System.
6. This country is presently engaged in a debate on individual versus collective rights. Both arguments have great validity and a compromise must be found. On a provincial level, however, this same debate applies to the rights of the Denominations versus the rights of individuals in the education system.

The commitment of this government to individual rights during the Meech Lake debate must be translated into an active role to protect the rights of those who are not served fully by the Denominational System because of their non-religious beliefs or because they are not members of the Denominations enumerated in the Schools Act.

5. **Recommendations**

The Newfoundland-Labrador Human Rights Association proposes the following recommendations:

1. The immediate establishment of an alternate Public School System for the province of Newfoundland. It is our suggestion that this be done through:
  - (a) The establishment of a Public System beginning with redesignated schools in all the major population centres.
  - (b) As acceptance grows, a similar redesignation be implemented in the rural areas beginning with the primary and elementary levels, and

- (c) In those areas where the numbers do not warrant two systems, a parallel system of Denominational and Public streams be designed within the schools.
2. Until a truly alternative Public School System has been established, the present system must be adjusted through:
- (a) Open School Board elections
  - (b) Entry to special programs on a first come, first served, basis
  - (c) Hiring and dismissal policies based solely on the professional qualifications and demonstrated competency of individual teachers in their specialized academic fields.

The Newfoundland-Labrador Human Rights Association recognizes the radical nature of its recommendations, especially in its call for the establishment of a Public School System. It also recognizes the government's current financial situation. Nevertheless, we feel that the establishment of a Public School System will, in due course, result in a more fiscally responsible expenditure of tax payers' money for education, lead to a better quality of education and a more vibrant, albeit, smaller parallel Denominational System, with a priority for the recognition and protection of individual rights.

## FOOTNOTES

1. **The Living Webster Encyclopaedic Dictionary of the English Language** (The English Language Institute of America, Chicago, 1977) defines "Denomination" in the following manner:

*"The act of denominating: a name or designation, esp. one for a class of things: a collection or society of individuals called by the same name, esp. a religious sect.. denominational, or pertaining to a denomination, esp. or religious denominational sectarian.*

*-- denominationally, adv. -- denominationalism, n. Denominational or sectarian spirit or policy, the tendency to divide into denominations or sects."*
2. William McKim, "**The Cost of the Denominational School System in Newfoundland**", published in *The Vexed Question: Denominational Education in a Secular Age* (Breakwater Books, St. John's, 1988).
3. It should be noted that the provision relied upon by the Court in *Re Caldwell*, namely, s.22 of the British Columbia Human Rights Code has a Newfoundland equivalent:s.4(2) of the Newfoundland Human Rights Code, R.S.N. 1970, c. 262. As amended.
4. Philip Warren, "**The School and the State: or Rights in conflict: Teachers and Denominational Rights in Newfoundland and Labrador**", unpublished paper containing excerpts from an address to a Conference sponsored by the Canadian Rights and Liberties Federation and the Newfoundland-Labrador Human Rights Association, St. John's, Nfld., March 22, 1986.
5. Romulo Magsino, "**Denominational Rights in Education**" in *Courts in the Classroom: Education and the Charter of Rights and Freedoms* (Detselig Enterprises Ltd., Calgary, 1986), p. 91 (footnote p. 94).
6. Statistics Canada, Census divisions and Population, occupied private dwellings and economic families in private households: selected social and economic characteristics: Newfoundland (Minister of Supply and Services, Ottawa, July 1983 8-5200-847 93-x-937).
7. Ron Penney, "**The Constitutional Statues of Denominational Education in Newfoundland**", *The Vexed Question: Denominational Education in a Secular Age.* ( Breakwater Books, St.John's, 1988), pp. 90-91.

- See also a survey published by Dr. Mark Graesser of Memorial University of Newfoundland for C.B.C. "On Camera", October 20, 1986, which showed that 76% of adherents of the United Church in Newfoundland would like to change the province's school system to a single public system. A further 17% would like to add some public

schools whereas only 7% would keep the current system: Table 4 at p. 8. This survey confirms that the members of that Denomination support their Church's position in this respect.

8. Statistics Canada, op. cit. n. 6.
9. See Ron Penney, op.cit.,n.7 who makes this same observation, at p. 91.
10. See the comments of Premier Brian Peckford, The Evening Telegram, April 11, 1987, p. 3.
11. See Survey by Dr. Mark Graesser, supra, n. 7
12. Task Force on Mathematics and Science Education/Task Force on Educational Finance, Public Opinion on Education: A Newfoundland Survey, Research Report #7. June 1989, Questions 16 and 17.
13. **"Religion in the Statistics Canada Census"**, Humanist Association of Canada Newsletter, Fall 1988.