Searching for Rights in the Age of Activism: The Newfoundland-Labrador Human Rights Association, 1968-1982

DOMINIQUE CLÉMENT

UNTIL THE LATE 1990s, Newfoundland was the only Canadian province with a public education system administered and monopolized by the churches. As a result, when 25-year-old Judy Norman in 1972 refused to state her denominational affiliation on the application form, she was denied a teaching certificate. With the aid of friends and colleagues, student committees were formed at Memorial University to debate the value of a church-based education system, and supporters marched through shopping malls in St. John's, Gander, Grand Falls and Harbour Grace with petitions demanding that Norman be granted her certificate. In the House of Assembly, the Liberal opposition's education critic, F.W. Rowe, echoed the demands of the petitioners that "academic or professional qualification be the basis for recommendation [for a teaching certificate]."[1] Progressive Conservative Premier Frank Moores responded by announcing an immediate investigation into the matter by a committee of the House. Newspaper articles discussing the activities of Judy Norman and her colleagues were carried in at least 11 papers across the country. In dismissing accusations of discrimination, Rev. Geoffrey Shaw, head of the Pentecostal examining board, argued that the existing system was ideal for a province where 98 percent of the population was Christian. He also stressed the need for children not to "be subjected to a militant atheistic Communist who might unteach Christian principles," though he had no evidence about Norman's political views.[2] A potentially divisive social issue quickly died away. Moores's investigation never materialized, the media soon tired of the case, and Norman began teaching for the Integrated School Board a few months later, having never declared her affiliation.

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A significant sidebar to this event, ignored by the media and Norman herself, was an exchange of letters between John Carter, Minister of Education, and Dr. Biswarup Bhattacharya, a psychiatrist at the Waterford Hospital and president of the Newfoundland-Labrador Human Rights Association (NLHRA). In response to Bhattacharya's concerns about religious discrimination in the education system, Carter countered with the contradictory response that "never has a teacher been denied a Teaching Certificate in Newfoundland on the basis of Religion ... if a teacher will agree to uphold the Christian tradition within the school system of her choice ... but the candidate for certification ought to indicate the denomination he or she wishes to teach under ... [Judy Norman] failed to assure the certifying authorities that she would not seek to undermine the religion of others."[3] In reply, Bhattacharya challenged Carter's assumptions about the value of a "Christian" education system in a multicultural society, and dismissed the idea that non-Christians would undermine the religion of others. He claimed to have contacted civil liberties and human rights associations across the country, and all agreed that this was a case of religious discrimination: "Our [concern] lies ... with the process within which there remains a loophole which allows discrimination on religious grounds, and not accepted merit only."[4] Bhattacharya then offered the services of the NLHRA to Norman in her fight to gain a teaching position. She did not respond, and the NLHRA moved on.

The Norman episode incorporates many of the key themes in the history of one of Newfoundland's most enduring community groups. Founded in St. John's in 1968, the NLHRA was a child of the age of rights: human rights codes were being passed by provincial governments; the federal Bill of Rights became law in 1960; the United Nations had recently passed international covenants on civil and political rights and economic, social and cultural rights; the Universal Declaration of Human Rights (UDHR) was achieving the dreams of its creators in becoming a widely cited and discussed symbol around the world; and the new Prime Minister, Pierre Elliot Trudeau, had renewed debate over the possibility of an entrenched Canadian Charter of Rights. Judy Norman's assertion that her religious beliefs were not the state's business reflected principles enshrined in each of these covenants and laws. It was an appeal to an idea entrenched in national and international law, but contrary to the policies of the provincial government.

This article examines the evolution of the NLHRA within the context of the national rights movement until 1982, when the Charter of Rights and Freedoms inaugurated a new era of rights activism. As one of the few surviving human rights associations in the country, an analysis of the NLHRA helps to explain the historical divisions among civil liberties and human rights organizations. Through its interaction with other rights organizations, the NLHRA had an impact on national debates, and at home achieved some minor success in its educational campaigns and support for issues of local concern. These successes were limited only by the state-centered nature of human rights advocacy compared with the broader social movements of

the period. Unlike the emerging radicalism of the women's movement in the 1970s but similar to the activism of an increasingly institutionalized labour movement, the NLHRA's state-centered form of social activism created significant obstacles to promoting substantive social change. This self-imposed ideological boundary would prove a significant obstacle in taking on one of the most dominant human rights issues in Newfoundland history: denominational education.[5]

Social Activism and the Civil Liberties Movement in Canada: Pre-1968

Civil liberties groups have been active in Canada since at least the 1930s. These were voluntary, middle-class associations, usually led by academics and lawyers, concerned primarily with the defence of individual rights. Perhaps the most active was the Association for Civil Liberties (ACL), founded in Toronto in 1937. It gained national prominence during the Second World War for speaking out against censorship and the deportation of Japanese Canadians. Led by such figures as B.K. Sandwell, editor of *Saturday Night*, and Liberal Senator Arthur Roebuck, groups such as the ACL were not based on a particular identity group, class, race or religion, and were non-partisan.[6] They expressed only one form of rights activism in calling for the protection of traditional British civil liberties, and employed a state-centered form of social activism by focusing on governments and the courts. Their tactics involved petitioning Parliament and legislatures, issuing press releases, placing advertisements in major newspapers, challenging the legitimacy of legislation in court, and lobbying political leaders. Composed of prominent professionals, this was an institutionalized social movement in that civil liberties advocates and adherents offered no systemic critique of society, and worked through established social institutions. Civil liberties groups were uninterested in subverting systemic barriers to equality such as patriarchy or class, and focused on expressing their concerns through liberal democratic institutions, and by promoting institutional reform. They did not try to bring about fundamental changes in attitudes and beliefs. Institutional social movement organizations are also characterized by their hierarchical structure (a president and board of directors), in contrast to radical organizations which are more decentralized and possess little or no formal decision-making process. The goal of civil liberties advocates was thus legislative change, public awareness and broadening the law.

In contrast to the institutionalized rights movement, other activists employed forms of civil disobedience and mass demonstrations, and developed a sense of identity as a form of political protest. Religious movements such as the Doukhobors, Jehovah's Witnesses and Hutterites asserted religious freedom in the face of state repression, each offering a systematic critique of society.[7] Jehovah's Witnesses sought to bring about a religious revolution and undermine the hierar-

chical control of the Catholic Church, while the Doukhobors rejected all forms of materialism and wealth in society. These groups also made use of mainstream, institutionalized tactics. They organized petitions, lobbied politicians, and used the courts. Hutterites, for instance, challenged the legality of provincial legislation limiting the sale of land, and Jehovah's Witnesses fought charges of sedition and asserted their right to distribute literature.[8] All of this was done employing the language of rights, in the name of religious freedom.

Other social movements in this period also employed the language of rights, from women to organized labour. Using the post-war rights discourse symbolized in the UDHR, and concerned with racial and religious equality, these movements were successful in convincing governments to prohibit discrimination in employment, services and housing.[9] These movements were organized around a sense of identity, united by a particular characteristic, whether it was class, gender or race, and they articulated a notion of rights associated with that identity. Women saw inequality rooted in patriarchy, racial minorities in racist attitudes, and labour in class exploitation. In contrast, the civil liberties movement had no identity base, but articulated a liberal notion of rights in which the state treated individuals equally without distinctions based on race, gender or class. Their concern was not with patriarchy or capitalism, but in equality under the law.

Social Movement Activism in Newfoundland: Conservative or Radical?

There was no civil liberties movement in Newfoundland before 1968, and the most active social movement was organized labour. Founded in 1908 by William Coaker, the Fisherman's Protective Union (FPU) was an early example of radical social movement activism in Newfoundland. The FPU at its peak had over 20,000 members and elected 13 members to the House of Assembly, demonstrating the ability of people outside the economic and political elites to mobilize and exert real influence. Although the FPU declined in the 1920s, organized labour continued to be an active influence in the province, at times becoming quite radical, as evinced by the bitter 1959 strike involving the International Woodworkers of America (IWA). Richard Gwyn characterized the strike as the "most bitter labour dispute in Newfoundland's history."[10] Joseph Smallwood, who had been active in the labour movement and helped introduce Newfoundland's first labour legislation as premier, found himself confronted with a radical labour movement employing more confrontational tactics than the 'Gomperism' of the Newfoundland Federation of Labour (NFL).[11] Fearing the strike would shut down the province's largest employer, and facing public and clerical opposition to the strike, Smallwood introduced emergency labour laws which immediately decertified the IWA, empowered the government to dissolve trade unions, prohibited secondary picketing, and made

unions liable for illegal acts committed on their behalf. The International Labour Organization, the Canadian Labour Congress (CLC) and the NFL quickly condemned the legislation, and Prime Minister John Diefenbaker refused to provide the province with additional police to implement Smallwood's plan; even Lester B. Pearson, Liberal leader and Smallwood ally, publicly expressed concerns about the excessive measures. Running out of food and money, the loggers eventually abandoned the strike and joined Smallwood's newly created Newfoundland Brotherhood of Wood Workers and negotiated a settlement with the logging companies, ending the strike and effectively undermining the IWA.[12]

Twentieth-century Newfoundland was no stranger to radical social movements. The experience of the FPU and the IWA challenged assumptions about Newfoundland as an inherently conservative society. According to Robert Brym and R. James Sacoumen, it "has widely been assumed, especially by central Canadian scholars, that Atlantic Canadians are inherently conservative creatures, basically satisfied with their way of life ... If formal political attempts at improvement have not been as successful as in, say, the Canadian west, this is due less to any inherent conservatism than it is to the fact that the character of regional underdevelopment has, at least until recently, distributed political resources so unevenly as to militate against widespread success."[13] Given the island's history of radicalism, there was no reason to believe that any future movement in Newfoundland would be constrained by inherent social or political conservativism.

In addition, geographic isolation did not translate into social or political isolation. The FPU and the 1959 loggers strike had many parallels on the mainland, from the rise of the United Farmers and cooperative movements at the turn of the century to the Winnipeg General Strike of 1919 and the Asbestos strike of 1949 in Québec. It is therefore not surprising to see the rise of a human rights association in St. John's during a period of widespread mobilization of rights activists on the mainland in the 1960s. A new social movement, the rights movement (manifested, in this context, in self-identified civil liberties and human rights associations), was emerging in Newfoundland and, as had been the case with organized labour, it was part of a larger movement with links to Canada as a whole.

International Year for Human Rights and the Newfoundland Human Rights Code

The impetus to form the NLHRA began in Ottawa with plans to celebrate International Year for Human Rights (IYHR) in 1968. John Humphrey, Dean of Law at McGill and the original drafter of the UDHR, and Kalmen Kaplansky, an executive of the International Labour Organization, headed the Canadian Commission for IYHR. Formed in 1967 and funded through the federal government's Secretary of State citizenship program, one of the Commission's first tasks was to stimulate the

creation of provincial human rights committees to organize conferences and educational activities to celebrate the twentieth anniversary of the UDHR. Humphrey sent letters to provincial premiers requesting their support. In some provinces, the 1968 celebrations were organized by volunteer groups formed through the initiative of local community leaders. Others worked through the local human rights commission, but in Newfoundland and Prince Edward Island, the provincial governments set up their own human rights committees.

In 1967, Canada's rights movement was still in its infancy. The civil liberties groups which had emerged in the 1930s were all defunct by the 1950s, and it was not until 1962, with the creation of the British Columbia Civil Liberties Association (BCCLA) and the Nova Scotia Human Rights Federation, that a second generation rights movement began to emerge. Similar groups soon appeared in Montreal (Ligue des droits et libertés — LDL) in 1963 and Toronto (Canadian Civil Liberties Association — CCLA) in 1964. The IYHR was critical in encouraging the creation of new human rights groups in Saskatchewan, Alberta, British Columbia (B.C. Human Rights Council), Manitoba and Newfoundland, which remained active throughout the 1970s. They differed from civil liberties groups in that they called on the state to recognize social and economic rights (for example, access to quality education and welfare), while civil liberties groups concentrated on civil and political rights, notably due process and free speech. A report written for the federal Secretary of State estimated that at least 42 rights groups had been active in Canada at some time by 1972.

The Newfoundland-Labrador Human Rights Committee was formed on 31 January 1968 at a public meeting initiated by the provincial government. It was attended by 23 volunteer groups, Peter Truman of the United Nations Association of Canada, and 70 high school and university students. The meeting elected an executive composed of R.J. Greene and W.J. Noseworthy (co-chairs), Felix Murphy (secretary), and J.E. Butler and Shannon O'Keefe (directors). A cabinet committee was formed to consult with the executive and discuss recommendations for legislative action. It consisted of G.A. Frecker, F.W. Rowe, John Crosbie, Alex Hickman, W.J. Keough, Edward Roberts and J.G. Channing. A provincial grant of $7,500 and the composition of the committee reflected the importance the government placed on the event. Rowe was the influential Minister of Education (later appointed to the Senate); Crosbie was Minister of Municipal Affairs and Housing; and Keough, the Minister of Labour, was a close friend of Smallwood and later drafted the provincial human rights code. Members of the Human Rights Committee spent the year speaking at school assemblies, encouraging clergy to discuss human rights in sermons, organizing a conference at Memorial University, corresponding with community groups, and planning for a national conference in December.[14]

The efforts of the human rights committee during 1968 resulted in a series of recommendations to the provincial government. In summary, these recommendations included:

- establish a permanent human rights association with a $7,500 grant until it becomes independently funded
- establish a human rights commission to conduct research, education and conciliation activities
- introduce a human rights code and amend the Minimum Wage Act to eliminate differential pay between men and women
- establish an ombudsman's office with broad powers to include schools, universities, municipal councils and boards
- the government should take the initiative to have the United Nations Convention on the Rights of the Child and the UDHR entrenched in the Canadian constitution
- the government should undertake research to reassess the rights of minorities in Newfoundland, particularly in the case of Inuit and Indians
- review the prison system based on recommendations of the John Howard Society and expand the scope of the legal aid system
- reassess the viability of the denominational school system which currently discriminates against non-Christians[15]

These recommendations were based on input from community groups, and offer a glimpse into the human rights issues facing Newfoundland in the late 1960s.[16] It was one of only three provinces (alongside Québec and Prince Edward Island) lacking comprehensive human rights legislation; every other province had enacted either a human rights code, or laws dealing with discrimination in employment and accommodation. There was a clear appreciation for national and international issues, not only in the references to United Nations resolutions, but also in the decision to focus on an issue, prison reform, which was gaining increasing attention across the country.[17] The Minimum Wage Act was of particular concern, and the question of equal pay was to develop into the central human rights issue for the provincial government in the next decade. The recognition of discrimination against Aboriginals was significant, coming as it did from a committee sponsored by a government whose leaders dismissed the existence of racial discrimination. A year later, for example, Keough stated that he "knew of no case of racial and ethnic discrimination having taken place in this province."[18] The most controversial recommendation referred to the denominational school system. When Judy Norman created a minor stir in 1972, her complaint was directed towards discrimination in the hiring of teachers. The committee's recommendation was more far-reaching, attacking the legitimacy of a denominational education system which discriminated against non-Christians. It was a daring move, and from its inception a year later the NLHRA openly opposed the denominational school system. The provincial government, however, had no wish to deal with that issue.

The government was prepared to pass a provincial bill of rights, though, and in May 1969, a Human Rights Code became law. Speaking to the bill, Smallwood saw the legislation as

> not a Bill to establish human rights, to create them or to establish or protect them. This has been handsomely done by our forefathers.... This legislation does not create the right to free speech, because the right is already there, it does not need to do it. This does not create the right of free press ... it is already established.[19]

The bill was meant to bring together existing laws under one statute enforceable by a human rights commission. In the debate, Clyde Wells was the only member to grasp the essence of the new Human Rights Code: it was more akin to fair employment and fair accommodation practices acts, than to the more sweeping human rights codes which existed in such provinces as Ontario and New Brunswick.[20]

The Newfoundland Human Rights Code was indeed a weak piece of legislation. The bill was divided into three key sections, the first dealing with discrimination in accommodation, the second employment, and the third with enforcement and the human rights commission. It forbade discrimination in accommodation or employment for reasons of race, religion, political opinion, colour or ethnicity, and national or social origin, with the caveat of a 'bona fide occupational requirement' for employment.[21] No provisions were made for the administration of justice, such as guaranteeing humane treatment while under arrest, or an individual's right to be promptly informed of the substance of charges laid against him or her.[22] The commission was a temporary body with no permanent staff, to be called upon when needed, and beholden to the Minister of Labour. Regulations were included to ensure equal pay for women, but only for work done in the same establishment — a corporation or the government could continue with discriminatory wage scales, so long as men and women did not work in the same place. Only the inclusion of political opinion as a prohibited ground of discrimination could be considered progressive. Indeed, Newfoundland was the first Canadian jurisdiction to protect political opinion in its human rights jurisdiction.[23] The key weakness of the legislation, also noted by Clyde Wells, was the exemption under section 9 for all educational institutions.[24] This exemption was a clear sign of the government's unwillingness to use the Code to implement substantial change.[25]

The first Human Rights Commissioner was not appointed until March 1971. This was Gertrude Keough, wife of the recently deceased Minister of Labour and a former school teacher who, in an *Evening Telegram* interview, admitted to knowing little about the issues.[26] This appointment possibly limited the ability of the Commission to push the government to expand the scope of the Code (Mrs. Keough served until 1981). The Commission did not make a single proposal for amending the Human Rights Code, even though Fred Coates, the full-time Director, was publicly critical of such provisions as the exemption for educational insti-

tutions. It was he who was successful in pressuring the Treasury Board and private employers to end discriminatory wage practices.[27] In 1974 the Progressive Conservative government under Frank Moores removed the "same establishment" clause to guarantee equal pay for equal work across the board (the implementation of equal pay for work of equal value would take another generation).[28] But in the House of Assembly it was the NLHRA, not the Commission, which was credited for lobbying and informing the amendment. In contrast, the chairs of human rights commissions in Ontario (Dan Hill) and British Columbia (Kathleen Ruff) were active in the 1970s in promoting substantive changes to their respective provincial human rights codes, particularly in expanding the definition of accommodation and the inclusion of sexual orientation as a prohibited basis of discrimination.

Despite its weaknesses, the passing of a Human Rights Code and the creation of a Human Rights Commission was an important step in a province lagging behind the rest of the country in anti-discrimination legislation. It created a potential forum for handling complaints and promoting awareness of human rights, and helped eliminate gender differentials in minimum wage laws. The remaining recommendations of the Human Rights Committee were generally ignored. Grants to the legal aid fund were increased but remained small, the decision to create an ombudsman's office was rejected, and no advances were made in prison reform or in the further reform of the denominational education system.

THE RISE OF THE NLHRA

Interest in establishing a human rights association had waned by early 1969. At some point between December 1968 and July 1969, W.J. Noseworthy stepped down as president of the Human Rights Committee and Dr. Biswarup Bhattacharya, a psychiatrist at Waterford Hospital, took control of what was now known as the Newfoundland-Labrador Human Rights Association. Keough's death in 1969, and the dissolution of the cabinet liaison committee due to lack of interest, effectively severed the NLHRA's ties with the provincial government. However, an increasingly frustrated Bhattacharya lobbied Smallwood for continued funding, asserting that it was the "duty of the provincial government to start us off."[29] In his last recorded attempt to convince Smallwood, he argued that

> the very survival of the organization depends on your generosity. Perhaps it is true that we could receive money from different sources in this Province, but we feel this possibly would bind us in subtle ways to groups which may prevent us from working without bias and independently. It is our understanding that the responsibility of maintaining a Human Rights Association in the province is the joint responsibility of the government of the province and the Federal Government.[30]

There were small grants of $250 and $500 in 1969 and 1970, but these ended government financial support, and the NLHRA might well have become defunct, like similar committees in Québec, Saskatchewan, Manitoba, Alberta and Prince Edward Island, had it not been for Bhattacharya and his small executive.

There are few NLHRA records before 1972, but it appears that in its early years the organization concentrated on attempting to secure government funding, and on lobbying for the full implementation of the Code.[31] With little or no financial support, the original members (Bhattacharya, Lillian Bouzane, James Morgan and Rae Perlin) met in their homes. As early as 1971 the NLHRA began tapping into a large federal government grants system through the Opportunities for Youth and Local Initiatives programs. These were project-specific grants aimed at providing youth with community-oriented work experience, with most of the money going to workers' salaries. In 1976 the NLHRA began to receive core funding from the federal Secretary of State to establish an office and hire secretarial staff, with additional grants for summer student research projects.[32] These projects involved the investigation of particular human rights issues and the production of flyers and booklets for distribution to schools and members. Various federal government grants have remained a central source of funding for the organization until the present day.[33] At no point did membership fees ever provide more than three percent of the budget.[34]

The change in financial support did not change the group's tactics. The NLHRA was not in any way radical. At no time did the organization promote a systemic challenge to the established order, in the way communists and others on the political left had done earlier in the century, or present a vision of social change, as did the women's movement in the 1970s. The limits placed on the organization were partly self-imposed, but other factors should not be ignored. It was dependent on annual grant applications to the federal government for specific projects and, secondly, it was not the result of a grassroots movement, but of a provincial government initiative. According to Donald Smiley, a member of the Canadian Civil Liberties Association (the only rights group in Canada to shun state funding in the 1970s), it was "naive to expect significant demands for social change to originate either from interest groups that are overwhelmingly dependent on public largesse, or from government-funded institutes for research on public policy."[35] Moreover, the Board of Directors (three directors, president, treasurer and secretary) and the small membership was drawn from the educated professional middle class of St. John's. Bouzane and Morgan, one a civil servant, the other a politician, remained on the Board until the mid-1970s, but fewer directors were now linked with the provincial government.[36] Bhattacharya was replaced as president by John Peddle, former general manager of the Newfoundland Association of Public Employees, until Norman Whalen, a young Liberal lawyer, took over in 1977, remaining until 1981. Other directors included Karl Beck (college professor), James Boyles (social worker) and David Kirby (professor). They were members of a newly emerging and maturing middle class that had grown out of the economic boom of the

post-confederation period with the expansion of public works programs, the bureaucracy and the education system.[37] The NLHRA was able to recruit from a pool of social activists with a shared concern in human rights issues, and the leadership of the NLHRA maintained continuity. Bhattacharya recruited Peddle and then Whalen to take over the presidency, and Whalen recruited William Collins, another St. John's lawyer, to replace him for a short period in 1981.[38]

The group used its meager funds in the first few years to set up a telephone line to provide legal advice and direct complaints to the appropriate agency or organization. By the mid-1970s the NLHRA was able to establish an office with a part-time secretary who could direct complaints to members of the Board. They would review individual cases, discuss cases at monthly Board meetings, and decide whether or not to redirect the case to another agency or take it on themselves. Lacking the funds for litigation, the best the NLHRA could do in most situations was to send a letter to the individual or organization the complaint had been lodged against, warning them that their actions could lead to legal sanctions or a Human Rights Commission tribunal. The complaints phoned in to the NLHRA office during this period (1968-1982) were predominantly in the area of employment discrimination, although there were also calls dealing with housing discrimination, refusal to offer a service, and accusations of police abuse. In 1974 there was an average of 30 to 40 calls per month. By 1980 there were over 1,500 calls annually.

The educational function of the NLHRA beyond publications and seminars was limited by the range of media available in the province. The dominant newspaper, *The Evening Telegram*, sometimes sent a reporter to annual general meetings and printed interviews with members of the Board. Bhattacharya contributed three articles to the short-lived radical publication, *The Alternate Press*, in 1971/2.[39] Press releases were sent to the Canadian Broadcasting Corporation and local papers but with minimal coverage in return.[40]

The organization was able, however, to take an active stance on local issues and implement change. It pressured the Minister of Justice in 1973 to destroy police photographs of protestors taken the year before in front of Confederation Building, and elicited a statement confirming that the RCMP was not keeping photographic files on protestors.[41] Not only did it help secure an amendment to the equal pay provisions of the Code noted earlier, but in the following year sex and marital status were added to the Code as prohibited grounds of discrimination.[42] In 1978/9, the NLHRA made representations to the Minister of Justice in a successful bid to improve conditions at the St. John's courtroom jail, and convinced the Mutual Life Insurance Company to remove a question regarding illegal drug use on insurance applications. During the same period the association teamed up with residents in rural Labrador to push the provincial government to stop uranium mining because of health and environmental dangers.[43] In conjunction with its educational and referral activities, the NLHRA had demonstrated an ability to deal effectively with issues

of local concern. In 14 years it had become a stable and legitimate voice for social commentary within the boundaries of human rights advocacy.

A great deal of the Association's work involved individual complaints rather than legislative reform. For instance, on 26 October 1973, the Medical Records Librarian at the Waterford Hospital in St. John's received a subpoena to appear in Supreme Court three days later to discuss the medical records of a specific patient. This was not a criminal matter but a divorce case, and neither the patient nor the psychiatrist were informed of the subpoena. Unsure about whether or not to accede to the request and divulge private patient information, the librarian contacted Bhattacharya, who immediately took possession of the documents and refused to hand them over to the court, arguing that the records were the property of the hospital and it was an unnecessary violation of a patient's privacy. When the Justice Department realized it would have to take the president of the NLHRA to court, the matter was quietly dropped and the subpoena retracted. It was just one example of the type of service the NLHRA could provide on an individual basis for people unsure about their rights, or the rights of others.[44]

The NLHRA could also claim some credit for the appointment of an ombudsman in 1975, although the process had been a long one. In 1969 a government committee recommended the creation of an ombudsman's office.[45] Although legislation was passed in 1970 creating the position, the legislation was not proclaimed and an ombudsman appointed until 1975. Moores awarded the position to a recently defeated Progressive Conservative M.P., Ambrose Peddle. The Leader of the Opposition called the appointment a "filthy act of political patronage," and the NLHRA expressed concern that the appointee would not develop the position's full potential.[46] Indeed, Peddle proved to be a weak advocate, and the NLHRA's hope that the office's scope would be expanded beyond government agencies to Crown corporations and other government businesses never materialized.[47]

None of these issues had the visibility or momentum to provide the NLHRA with a public profile comparable to organizations like the Newfoundland Status of Women's Council (NSWC) or the Newfoundland Federation of Labour (NFL). The women's movement quickly became very influential following the report of the Royal Commission on the Status of Women in 1972, and the subsequent creation of women's bureaus and help centers across the province.[48] The NSWC established itself as the institutionalized form of the women's movement, while radical and grassroots activists were drawn to the local women's centers.[49] Their efforts led to legislative reforms, including the Jury Duty Reform Act (1972) and Anti-Discrimination Human Rights Act (1979), and an advisory council (1980) and policy office (1985) were established within the provincial government.[50] These advances were complemented by the broader cultural challenge raised by the women's movement in Newfoundland and Canada which, while much more difficult to chart empirically, encouraged women to question gender-based employment stereotyping and attitudes towards sexuality and the family.[51] The NFL, and organized labour in gen-

eral, was especially active in the 1970s, with the first teacher's strike in provincial history and a series of major strikes by hospital workers, public sector employees, and nurses.[52] The NLHRA maintained contacts with these movements (the short-lived Corner Brook chapter of the NLHRA was given office space by the local Women's Bureau) but played no role in the strikes of this period or in the activities of the women's groups.

Despite all its work, and the infrastructure it had developed, the NLHRA lacked a major issue, an event to mobilize not only its own members, but the public at large in any way comparable to other social movement organizations in the province. It may have played an important role in Newfoundland in promoting awareness of human rights issues through its educational activities, but compared to organized labour and the women's movement, the rights movement had only a marginal impact.

THE NLHRA AND THE NATIONAL RIGHTS MOVEMENT

The dearth of local issues mobilizing rights activists in Newfoundland contrasted with many controversial events mobilizing civil liberties and human rights activists on the mainland between 1968 and 1982. The Royal Commission on the Status of Women (1967), the crisis of October 1970, involving kidnappings by separatist terrorists in Québec, and the McDonald royal commission on RCMP illegal practices were just a few of the events mobilizing rights activists on the mainland. The 1960s and 1970s were also periods of intense social activism in areas such as the environment, nuclear weapons, and the rights of prisoners, children, students, tenants, gays, and racial minorities.[53] In addition, capital punishment, abortion, affirmative action, teaching religion in public schools, native poverty, pornography and hate literature were prominent topics of public debate, and were conceived and discussed in a national context.

The NLHRA was not directly involved in these issues, but neither was it completely aloof, since it participated in the Canadian Federation of Civil Liberties and Human Rights Associations, later the Canadian Rights and Liberties Federation (CRLF). It was created in 1971, with the NLHRA as one of 16 founding members, as a federation of civil liberties and human rights groups, each having an equal vote and voice and paying minimal membership fees. Funding for annual meetings and staff came from the Secretary of State. The idea emerged from the October crisis, when civil liberties and human rights associations from Montreal, Toronto, Vancouver and St. John's (NLHRA) coordinated their efforts to oppose the imposition of the War Measures Act and lobby the federal government to rescind it as soon as possible. Although the Toronto-based CCLA was initially active in the coalition, it boycotted the CRLF because it opposed the acceptance of state funding, and sought to

set itself up as a national rights association representing individual Canadians, instead of being part of a federation of autonomous groups.[54]

The CRLF developed position papers on abortion and capital punishment, presented a brief to the McDonald Commission and made recommendations in 1980/81 on the proposed Charter of Rights and Freedoms. Both Bhattacharya and Whalen served on the CRLF executive during the 1970s and 1980s. Perhaps the most successful accomplishment of the Federation was its presentation to the Special Joint Committee on the Constitution in 1981, led by Norman Whalen. Among its recommendations were revisions to sections 7 and 10, which were adopted.[55] The success enjoyed by the CRLF before the joint committee remains a small but lasting contribution of the NLHRA and its former leaders to the national rights movement.

The CRLF was a logical association for the NLHRA, but the effect was to divert interest in national issues with important local consequences, such as abortion or capital punishment, to another organization. During the October crisis, for instance, it was the British Columbia Civil Liberties Association (BCCLA) which organized groups around Canada to sign a joint declaration calling on the federal government to rescind the War Measures Act. Groups in Toronto, Montreal and Vancouver all sent their own separate letters and briefs to the federal government expressing their opposition to the War Measures Act, yet the NLHRA's only action during the crisis was to support the declaration written by the BCCLA. In Vancouver, Montreal and Toronto rights activists used the media to publicize their opposition to Trudeau's actions in an attempt to mobilize local opinion against the federal government. Yet the NLHRA made no similar attempt to mobilize Newfoundlanders.

A similar silence greeted the McDonald commission. Instead of taking a stand on the issue, the NLHRA did nothing to raise concerns in Newfoundland about RCMP wrongdoings, preferring to allow the CRLF to take the lead in Ottawa. In this and many other situations the NLHRA preferred to allow the CRLF to take the lead. One potential reason for the NLHRA's lack of action on national issues could have been its dependance on grants from the Secretary of State, and a fear of jeopardizing that source of funding. In Montreal, for instance, the LDL received a substantial federal grant in 1970/1 ($20,000) and was publicly thrashed in the media and other circles for not taking a strong stand against the War Measures Act.[56] As a small organization with limited resources, and with a mandate to concentrate on local issues, the NLHRA remained aloof. The absence of Aboriginal or gay rights organizations on the island in the 1970s contributed to the lack of public debate over national human rights concerns, although the women's movement raised the abortion issue within the context of women's rights in Newfoundland as early as 1975.[57] Local issues dominated the agenda of the NLHRA, but it nonetheless maintained important links to the national rights movement and made its own unique contribution during the constitutional debates.

CIVIL LIBERTIES VERSUS HUMAN RIGHTS

The NLHRA also supported the national movement by introducing, along with other human rights associations formed in the wake of IYHR, an alternative approach to rights advocacy. The original name chosen for the national federation immediately suggests a conceptual distinction: the Canadian Federation of Civil Liberties and Human Rights Associations. In a 1972 report to the Secretary of State, Don Whiteside (future president of the CRLF and of the National Capital Region Civil Liberties Association) noted how "civil liberties associations, in addition to a longer history, were born out of non-government interventions, while the growth of human rights associations is directly related to government interventions, especially the federal government's intervention in sponsorship of programs related to the 20th anniversary of the signing of the Universal Declaration of Human Rights."[58] RCMP repression of the Sons of Freedom in 1962 led to the formation of the BCCLA, the creation of the National Capital Region Civil Liberties Association was a reaction to censorship of the local *Free Press*, and the London Civil Liberties Association emerged from the decision of local authorities to jail mothers and children guilty of shoplifting as a deterrent during the Christmas season. Prior to 1967, all the rights associations in Canada, with the exception of the Halifax group formed to combat discrimination against blacks, were civil liberties groups. IYHR was pivotal in promoting the creation of human rights groups, of which the NLHRA was representative, and introducing a broader approach to rights activism.

The ideological division between civil liberties groups and human rights groups was rooted in their conception of the role of the state. Civil libertarians viewed individual rights predominantly in the form of fundamental freedoms (press, religion, speech, association and assembly) and protecting individuals from administrative abuse of delegated power. For instance, the oldest civil liberties group in Canada and one of the most active, the BCCLA, adopted a position on social assistance which emphasized the *administration* of welfare and regulations dealing with residency, invasion of privacy by government agents, and the enforcement of morality codes on welfare recipients. It raised concerns about the level of assistance provided to welfare recipients, but solely within the context of clearly defining the rights of recipients in order to limit potential abuse by social workers.[59] The BCCLA also adopted positions on such issues as tenant rights, due process, police powers, prisoners' rights and privacy, in each case focusing on individuals' negative rights (ensuring equal treatment by the state without prejudice).

The NLHRA adopted a more expansive understanding of individual rights, incorporating both negative and positive freedoms. The role of the state articulated by the NLHRA saw governments taking a more active role in creating equality among individuals within society through programs promoting economic and social rights. While the NLHRA's contribution to the Charter debates through the CRLF in the form of section 10 reflected a shared concern with due process, it was active

at home in pushing for low-income housing and improving the conditions of foster care. What the BCCLA would have considered questions of social policy, the NLHRA considered fundamental rights. In a brief to the Mayor of St. John's at a conference on housing issues, the NLHRA was "concerned with two issues. The first being that monies be made available for housing to people with low incomes; the second, that housing be so built and allocated that it becomes a part of, and integrates with, the environment in which we live."[60] Throughout the 1980s the issue of low-income housing was an important priority for the association and, drawing on the edicts of the UDHR which called for minimum standard of housing, the NLHRA lobbied for more and better public housing, often acting as a liaison between individuals seeking housing and government departments.[61] In placing individual rights within the context of subsidies to alleviate poverty or better conditions for foster children, the NLHRA deviated from the civil liberties approach to economic and social rights which focused simply on equal treatment by the state.[62]

These ideological divisions resulted in several conflicts within the CRLF, which became defunct in 1990. Splits erupted over such issues as affirmative action and prostitution. Civil liberties groups wanted to avoid the former issue and pushed for the removal of solicitation from the criminal code, while human rights associations considered laws against prostitution and affirmative action in employment as positive measures for ensuring equal rights for women.[63]

Despite the expansive approach to individual rights adopted by the NLHRA, promoting equality through rights advocacy imposed severe limitations on both civil liberties and human rights advocates. It was not the NLHRA itself but the inherent nature of rights advocacy which limited the group's ability to promote social change. The rights movement had evolved by the 1970s into a movement focused on using the state and law to tackle contemporary social issues. This created a fundamental obstacle in dealing with certain key debates of the period compared to the more effective activism of radical, grassroots movements such as the women's movement. No issue better exemplifies the boundaries established by the rights advocacy of civil liberties and human rights groups in Canada than the battle over denominational education in Newfoundland.

The Limits of Rights Advocacy: Denominational Education

Newfoundland's state-funded denominational education system was rooted in the nineteenth century. There had been sporadic criticism of the system from time to time — both Wilfred Grenfell and the FPU voiced serious concerns, for example. The Commission of Government tried to implement reform, but was rebuffed by the churches. It was to appease the churches, and Roman Catholics in particular, that the Newfoundland delegation negotiating the Terms of Union with Canada in-

sisted on the insertion of Term 17 to protect denominational education. There were some amalgamated schools by 1956, composed primarily of Protestant denominations, which formed the closest thing to the type of public education system available on the mainland. But they were few in number — 24 in 1956, out of a total of 1,193 schools — and served only 8 percent of the school population.[64] Nowhere else in Canada, with the possible exception of the province of Québec, did the churches enjoy such expansive control over education.

In 1967, the Royal Commission on Education (Warren Commission) recommended a switch to a secular education system which Phillip McCann attributes to the influence of "United Nations policy on Human Rights and Children's Rights, and North American thinking on development of human resources in a technological age."[65] A minority report accused the majority of violating its terms of reference by considering the denominational issue, and pointed to the Terms of Union as a constitutional protection for religious education. The government implemented some of the commission's recommendations, but the denominational system remained entrenched.

Only four years after the Warren Commission report, the birth-mother of the NLHRA, the government-sponsored Human Rights Committee, recommended abolishing the denominational education system. From its inception, and later reaffirmed in 1972 when Judy Norman was refused her teaching certificate, the NLHRA had opposed the churches' monopoly over education as a violation of religious freedom. In 1984 the NLHRA prepared a brief on the Human Rights Code to the Minister of Justice arguing that

> The greatest single threat to equality of religion and freedom of worship [in Newfoundland] is the restrictive nature of the denominational education system. It is recommended that a second alternative be available for students who are not of faiths which benefit from a special constitutional privilege, or that denominational schools be prohibited from discriminating on the basis of religion. The best resolution of this issue would be an immediate court reference to seek a declaratory judgement concerning the scope of Term 17 of the Terms of Union.[66]

The current system allowed teachers to be fired for not following the tenets of the faith, such as marrying outside the church.[67] To vote or to be a candidate in school board elections, individuals were required to belong to one of the recognized Christian churches. At a gathering of 120 people at Memorial University in 1987, Lynn Byrnes, who served as president of the NLHRA after 1982, stated that the system was "based on some very blatantly discriminatory policies which we feel must be changed ... If these legal rights allow such cut and dried examples of religious discrimination then the legal rights are wrong."[68] For two decades, the NLHRA conceived the problem of denominational education as a question of legal rights derived from the state and focused their attention on the Human Rights Code.

The NLHRA was no different than any other rights association in Canada in focusing on legal rights and state protection for religious freedom, and in opposing state funding for denominational education. Canada's two largest and most active civil liberties groups, the CCLA and BCCLA, made concerted attempts to eliminate religious practices in public schools in their respective provinces, with little success. In each case, rights groups focused on political lobbying or legal challenges under human rights legislation to protest religious instruction in public schools. It was in fact a court challenge under the Charter in 1990, led by the CCLA, which led to the removal of religious practices from public schools in Ontario.[69] In Newfoundland, the reality of local politics made it difficult to challenge a system which, according to the Human Rights Commissioner in 1985, was "a fact of life ... and is such because it is in accord with the wishes and desire of a large majority of the Province's population."[70] In addition, the province had a history of weak human rights legislation, politicians were cautious, and the system was protected in the constitution.

The broader, cultural challenge presented by the women's and other social movements in the 1960s had emerged as a reaction to the limits of state-focused activism. Nancy Adamson, Linda Briskin, and Margaret McPhail have distinguished between 'institutionalized feminism' — groups of "professional women who operated within traditional institutions and wanted more opportunities for women within them" — and 'grassroots feminism,' referring to groups of women "drawn into the movement from the Left, from the universities, from their homes and workplaces, [who] knew little or nothing about the institutional expressions of feminism."[71] The rise of grassroots feminism was a reaction against the liberal-democratic ethos of the institutionalized forms of the women's movement: "In its attempt to overthrow all vestiges of male domination, radical feminism tended to look on both formal organizations and theory with more suspicion than other currents did. Institutionalised feminism accepted a fairly traditional organizational structure, which had a built-in emphasis on record keeping."[72] The break between radicals and liberals in the 1970s was based on a belief that the National Action Committee on the Status of Women, *the* women's coalition of the period, did not accurately reflect women's diversity, as well as a desire to engage in such activities as the abortion caravan and women's day parades.[73]

The women's movement in Newfoundland reflected this national trend, and institutionalized feminism in the form of the NSWC coexisted with the rise of women's centers and grassroots mobilization. In contrast, the NLHRA and the rights movement never developed a radical phase, and exhibited the same weaknesses as the institutionalized women's movement. The nature of the NLHRA as a human rights association influenced by the UDHR and the covenants of the 1960s, focused on the protection of individual rights and led by a small group of professionals, did not have the tools necessary to challenge the denominational education system.

The NLHRA and the human rights movement was not the only social movement facing the obstacle of institutionalization. There was a possibility of a challenge to the education system from the Newfoundland and Labrador Teachers' Association (NLTA), which was concerned about the power of religious school boards to dismiss teachers on non-professional grounds. However, Robert Magasino has suggested that "Newfoundland teachers have not been noted for their aggressiveness in arguing their political, civil and academic rights before the courts."[74] In 1975, Gregory Stack was fired by a Roman Catholic school board for marrying a non-Catholic. The NLTA argued that this constituted dismissal without cause, and was therefore a violation of the collective agreement. A board of arbitration supported the school board's argument that the Terms of Union protected the rights of the school boards to dismiss at will, and that the collective agreement was *ultra vires*.[75] The Newfoundland Supreme Court overturned the decision, but the ruling did not challenge the right of the Catholic school board to fire Stack (and others) if sufficient notice and cause was given. In fact, courts in Newfoundland, British Columbia and Ontario upheld the power of religious schools to dismiss teachers for violating tenets of the faith, because religious observance was a "bona fide occupational requirement" under provincial human rights codes.[76]

The NLTA, like many unions, focused on the collective agreement and issues such as salaries and job security. These legalistic boundaries precluded the genuine social activism demonstrated by the women's movement, for example, with its emphasis on social change. Similarly, the rights movement, its leadership dominated by lawyers, focused on legal rights derived from the state. The NLHRA's tunnel vision led directly to the Human Rights Code at every turn. Legal actions challenging the school boards' discretion to dismiss teachers based on religious dogma failed to change the system, and certainly did nothing to change social attitudes.[77] That would have taken grassroots mobilization, which neither the NLTA nor the NLHRA were prepared to organize. As a result, the denominational education system remained entrenched in Newfoundland until, sensing that support for the system had dwindled, the government of Premier Brian Tobin held a province-wide referendum in 1997 which in turn led to the secularization of the school system.

The NLHRA may have been an effective organization in dealing with individual cases of discrimination, but when it came to established institutional structures such as the education system, the group was unsuccessful because of the nature of rights activism. The implementation of the Charter of Rights and Freedoms only reinforced this mistaken belief in the potential of rights discourse for promoting social change. This was the consequence of a movement born from moments in Canadian history characterized by excessive state abuse of individual rights, financially supported by governments, and composed of urban middle-class professionals. The NLHRA was particularly vulnerable given its dependancy on federal funds, a small membership in a small city, and its genesis in a provincial government initiative during the International Year for Human Rights. Only broader, pervasive

cultural shifts and challenges had the potential to undermine established institutions in Newfoundland society.

Acknowledgement

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Notes

[1]Newfoundland, *Hansard*, vol. 11, 1972, p. 4126.

[2]*Star Weekly* (Toronto), 12 August 1972.

[3]John Carter to Biswarup Bhattacharya, 29 January 1972, Centre for Newfoundland Studies (CNS), Newfoundland-Labrador Human Rights Association Papers (NLHRA), f. 2.08.001.

[4]Biswarup Bhattacharya to John Carter, 5 July 1972, CNS, NLHRA, f. 2.08.001.

[5]The question of whether or not the provinces could legislate in such areas as freedom of the press was first raised in 1932 when the Alberta government attempted to impose restrictions on media coverage in the province. Most of the judges avoided the issue, although two argued that only the federal Parliament could legislate against fundamental rights. Subsequent rulings by the Supreme Court of Canada confirmed this view in relation to religion, assembly, association and speech. Roncarelli v. Duplessis [1953] Supreme Court Reports (S.C.R.) 118; Alberta Social Credit Act [1937] S.C.R. 102; Co-Operative Committee on Japanese Canadians [1946] S.C.R. 111; Saumur v. Cité of Québec [1953] S.C.R. 107; Switzman v. Elbling and Attorney-General of Québec [1957] S.C.R. 111.

[6]For a history of Canada's early rights movement, see Dominique Clément, "Spies, Lies and a Commission, 1946-8: A Case Study in the Mobilization of the Canadian Civil Liberties Movement," *Left History* 7.2 (2001), pp. 53-79; Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: University of Toronto Press, 2004).

[7]For further information on the activism of these three sects, see Gary Botting, *Fundamental Freedoms and Jehovah's Witnesses* (Calgary: University of Calgary Press, 1993); John McLaren, "The State, Child Snatching, and the Law: The Seizure and Indoctrination of Sons of Freedom in British Columbia," in John McLaren, Robert Menzies and Dorothy E. Chunn, *Regulating Lives: Historical Essays on the State, Society, the Individual and the Law* (Vancouver: University of British Columbia Press, 2002); Douglas Sanders, "The Hutterites: A Case Study in Minority Rights," *Canadian Bar Review* 42.2 (May 1964), pp. 225-242.

[8]In one of the most important cases on religious freedom in Canada, the Supreme Court decided in 1953 that laws regulating the distributing of leaflets on city streets was criminal law and thus beyond the jurisdiction of the provinces. While the decision was not rooted in religious freedom, several justices commented on the implications of the law in limiting the rights of religious minorities to distribute religious tracts, and suggested that only the federal government had the power to legislate against freedom of religion. In Alberta, the 1947 Communal Property Act required all Hutterite settlements to be at least 40 miles apart and later, in 1960, concern over continued Hutterite expansion led to an amendment to the legislation requiring cabinet consent for any new purchases. An attempt to challenge the Alberta legislation before the Supreme Court failed when the court determined the legislation did not involve religious freedoms but the regulation of land in the province. Saumur v. City of Québec [1953] 2 S.C.R. 299; Walter and Fletcher v. Attorney General of Alberta [1969] S.C.R. 383.

[9]Ontario's initial steps into the field of human rights legislation had a snowball effect throughout Canada. Within five years of the Ontario Fair Employment Practices legislation, Manitoba (1953), Nova Scotia (1955), New Brunswick (1956), British Columbia (1956) and Saskatchewan (1956) had passed similar legislation, with Québec becoming the seventh province to pass a similar law in 1964. The first Fair Accommodation Practices Act was passed in Ontario in 1954, with Saskatchewan (1956), New Brunswick (1959), Nova Scotia (1959), Manitoba (1960) and British Columbia (1961) soon doing the same. British Columbia passed a more restricted statute in 1961 while the Province of Québec avoided passing legislation entirely, but Québec did add a section to the Hotels Act to forbid discrimination in hotels, restaurants and camping sites. Walter Surma Tarnopolsky, *Discrimination and the Law* (Toronto: Richard DeBoo Limited, 1982), pp. 27-8.

[10]Richard Gwyn, *Smallwood: The Unlikely Revolutionary* (Toronto: McClelland and Stewart, 1999), p. 239.

[11]Smallwood and the Liberals were responsible for passing the Labour Relations Act and Workers Compensation Act, introducing Canadian standards of compulsory arbitration to Newfoundland. William Gillespie, *A Class Act: An Illustrated History of the Labour Movement in Newfoundland and Labrador* (St. John's: Newfoundland and Labrador Federation of Labour, 1986), pp. 27-9.

[12]The emergency labour laws were amended to transfer power of decertification from the Lieutenant-Governor in Council to the Supreme Court. For further information on the IWA strike, see William Gillespie, "A History of the Newfoundland Federation of Labour, 1936-1963" (MA thesis, Memorial University of Newfoundland, 1980).

[13]R. Brym and R.J. Sacouman, "Introduction," in R. Brym and R.J. Sacouman, eds., *Underdevelopment and Social Movements in Atlantic Canada* (Toronto: New Hogtown Press, 1979), p. 13.

[14]CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), correspondence between human rights committee and Smallwood, February 1967-December 1968.

[15]CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), correspondence between human rights committee and Smallwood, February 1967-December 1968.

[16]The community groups officially registered as members of the Human Rights Committee that drafted the recommendations included: Canadian Red Cross Society, Newfoundland-Labrador History Teachers Association, Canadian Mental Health Association, Newfoundland Co-operative Services, Newfoundland Teachers Association, Canadian

University Overseas, Local Council of Canadian Women, Canada Manpower Center, Canadian Federation of University Women, Law Society of Newfoundland, 4 H Clubs, Youth Action Committee, YMCA, St. John's High School Debating League, Ministerial Association, Association of Registered Nurses, Newfoundland Government Employee Association, Newfoundland Federation of Labour, Boy Scouts Association, Newfoundland Branch of Canadian Association of Social Workers. CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), Members of the NFLD-Labrador Human Rights Committee.

[17]Prison reform was discussed extensively throughout the December conference on human rights in Ottawa. Lucie Laurin notes that prison reform was an important part of the work of the Ligue des droits et libértes and the issue is also raised in the files of the BCCLA. Law Society of B.C. Archives, British Columbia Civil Liberties Association Papers, Annual General Meeting Reports, 1963-1970, f. 1-1 to 1-1-8; Canada. *Report of the Proceedings, National Conference on Human Rights and Activities of the Canadian Commission*, 1969; Lucie Laurin, *Des Luttes et Des Droits: Antécédants et histoire de la Ligue des Droits de l'Homme de 1936-1975* (Montréal: Éditions du Meridien, 1985).

[18]Newfoundland, *Hansard*, vol. 9, 1969, p. 3639.

[19]Newfoundland, *Hansard*, vol. 9, 1969, p. 3648.

[20]In his extensive analysis of human rights legislation in Canada, Walter Tarnopolsky argues that human rights codes differ from fair accommodation and fair practices legislation in two key ways. First, codes prohibit discrimination in areas beyond simply accommodation and employment, such as advertising or commercial units. Second, codes are enforced by Commissions as opposed to being dependant on an officer or responsible minister in a government department. Newfoundland did not appoint a permanent commission until 1974 and fields of prohibited legislation under the Act were limited to employment and accommodation (p. 31).

[21]Province of Newfoundland and Labrador, *An Act to Establish the Newfoundland Human Rights Code and to Provide for its Implementation*, Statutes of Newfoundland and Labrador, 1969, no. 75.

[22]In the late 1960s there were no provisions for the administration of justice in the Ontario Human Rights Code and other similar provincial legislation, although such provisions had been proposed when the Ontario code was drafted. In 1975 the Province of Québec passed its own human rights code and it included extensive protections for the administration of justice.

[23]British Columbia followed Newfoundland's lead in 1973 by incorporating political opinion as a prohibited form of discrimination, and Manitoba (1974), PEI (1975) and Québec 1975 soon did the same (Tarnopolsky, pp. 320-1).

[24]Newfoundland, *Hansard*, vol. 9, 1969, p. 3677-8. There is no evidence in the historical record nor from interviews indicating why Memorial University, alongside the denominational education system, was also exempted. It seems to have simply been included as a side product of broad wording in the legislation exempting all educational institutions.

[25]Over the years government officials often linked the Code with Canada's obligations under the UDHR. In reality, the Code had little in common with the UDHR, with the former's almost exclusive focus on employment issues. It is more likely, and this was suggested by Keough himself at first reading, that the Code reflected the conventions of the International Labour Organization. Newfoundland, *Hansard*, vol. 1, 1969, p. 3.

[26]*Evening Telegram*, 9 July 1971.

[27]Interview, Fred W. Coates, 11 March 2002.

[28]Newfoundland, *An Act Further to Amend the Newfoundland Human Rights Code*, Statutes of Newfoundland, 1974, No. 114.

[29]*Alternate Press*, 27 May 1971.

[30]Bhattacharya to Smallwood, 2 September 1971, CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights).

[31]CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), correspondence between human rights committee and Smallwood, February 1967-December 1968; *Alternate Press*, vol. 1, nos. 1-3; *Evening Telegram*, 9 July 1971.

[32]The paucity of documentation available for the organization's early period makes it impossible to determine exactly when they began receiving financial grants, but as early as 1969 the NLHRA received a $250 grant from the Secretary of State and by 1972 the amount had risen to $3000 to hire a part-time administrator. Grants from the Secretary of State were made available in the following amounts: $16,576 (1976), $22,411 (1977), $15,000 (1978), $17,900 (1979), $9,930 (1980), $21,280 (1983). CNS, NLHRA, f. 1.03.001, budgets and financial statements of the NLHRA, 1972-1982; Report of the Department of the Secretary of State of Canada for the Year Ending 31 March 1970.

[33]The Opportunities for Youth and Local Initiatives Program were discontinued in 1977 and replaced by the Canada Works Program.

[34]Between 1968 to 1982, the organization's revenues from membership fees peaked in 1976 ($781) and 1980 ($827) with its lowest point in 1977 ($59). In general, membership fees during this period provided $500-$600 in annual revenue, but with no fee structure and limited documentation there is no way of knowing how many members were registered at any given time. CNS, NLHRA, f. 1.03.001, budgets and financial statements of the NLHRA, 1972-1982.

[35]Donald V. Smiley, "Rights, Power and Values in Canadian Society," in John P. Humphrey and R. St. J. Macdonald, eds., *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms* (Toronto: Butterworth & Co., 1979), p. 19.

[36]Two of the original four executive were drawn from government circles: Lillian Bouzane was the representative for Labrador Affairs and James Morgan a Progressive Conservative Member of the House of Assembly. Little is known about Rae Perlin except that she was a local artist in St. John's. There are also references to there being six, not four, executives of the NLHRA in a newspaper article in 1971. These were likely Jim O'Dea and Ben Squires whose names appear on director's minutes in 1972. Interview, Lillian Bouzane, 13 March 2002; Interview, John Peddle, 12 April 2002; *Evening Telegram* (n.d., legislative library, press clippings).

[37]James Overton, in his analysis of Newfoundland neo-nationalism, has characterized this segment of the new middle class as an intellectual elite in the province centered in St. John's. His contention is that the "emergence of the new middle class in Newfoundland, a significant group of intellectuals, has been made possible by substantial development of the economic and cultural infrastructure that has arisen since Confederation. The number of occupations for intellectuals has expanded rapidly as a result of Newfoundland's bureaucratic revolution, much like the 'quiet revolution' in Quebec." James Overton, "Towards a Critical Analysis of Neo-Nationalism in Newfoundland," in Brym and Sacouman, eds., *Underdevelopment and Social Movements in Atlantic Canada*, p. 237.

[38]Interviews: Lillian Bouzane, 13 March 2002; William Collins, 10 April 2002; John Peddle, 12 April 2002; Norman Whalen, 4 April 2002.

[39]*Alternate Press*, 14 July 1971, 27 May 1971, 27 June 1971.

[40]CNS, NLHRA, f. 2.02.002, Media List file.

[41]There is some debate over what role the NLHRA actually played in the decision to destroy the files. The *Evening Telegram* article and the NLHRA leaders claim that dossiers on individuals were being maintained and the efforts of the latter led to their destruction, while the Minister at the time, T. Alex Hickman, denied the existence of the dossiers and claimed to have destroyed the photos prior to meeting with the association. *Evening Telegram*, 23 October 1973.

[42]Newfoundland, *An Act Further to Amend the Newfoundland Human Rights Code*, Statutes of Newfoundland, 1974, No. 114.

[43]Interview, Norman Whalen, 4 April 2002, and, CNS, NLHRA, f. 2.04.016, Mutual Life Insurance Company of Canada application form, filled out by Norman Whalen, 5 January 1979.

[44]Rights and Freedoms, Vol. 2, No. 4, August-September 1973.

[45]Newfoundland, *Hansard*, 1969, vol. 1, p. 3.

[46]Karl A. Friedman, "The Ombudsman," in Humphrey and Macdonald, eds., *The Practice of Freedom*, p. 356 (n. 20).

[47]Interview, Jerry Vink, 11 March 2002; CNS, NLHRA, f. 2.05.021, The Role of the Ombudsman.

[48]For further information on the development of the women's movement in Newfoundland, see Linda Kealey, ed., *Pursuing Equality: Historical Perspectives on Women in Newfoundland and Labrador* (St. John's: Institute of Social and Economic Research, 1993).

[49]Sharon Grey Pope and Jane Burnham, "The Modern Women's Movement in Newfoundland and Labrador," in Kealey, ed., *Pursuing Equality*, pp. 172-3.

[50]The Anti-Discrimination Human Rights Act amended several statutes which treated men and women differently and placed them in line with the principles of the Code (Pope and Burnham, pp.177, 206).

[51]These issues are covered in the following works: Nancy Adamson, Linda Briskin and Margaret McPhail, *Feminist Organizing for Change: The Contemporary Women's Movement in Canada* (Toronto: University of Toronto Press, 1988); Janine Brodie, Shelley Gavigan and Jane Jenson, *The Politics of Abortion* (Toronto: Oxford University Press, 1992); Doug Owram, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996).

[52]Interview, John Peddle, 12 April 2002.

[53]For further study on social movements in Canada in the 1960s and 1970s see, William Carroll, ed., *Organizing Dissent: Contemporary Social Movements in Theory and in Practice, Studies in the Politics of Counter-Hegemony*, 2nd ed. (Toronto: Garamond Press, 1997); Frank Cunningham, *Social Movements/Social Change: The Politics and Practice of Organizing* (Toronto: Between the Lines, 1988); Colin Leys and Marguerite Mendell, *Culture and Social Change: Social Movements in Québec and Ontario* (Montréal: Black Rose Books, 1992).

[54]Attempts to create a viable national rights association for Canada eventually failed. The CRLF became inactive in 1990 while the CCLA never managed to develop its own national base. The vast majority of the CCLA's members were located in Ontario, particularly

Toronto, and few of its campaigns and activities were outside Ontario. Several prominent figures such as Hugh Keenleyside and Mark MacGuigan refused to join the organization because they felt it was not a truly national group. Law Society of British Columbia Archives [LSBCA], British Columbia Civil Liberties Association Papers [BCCLA], vol. 1, f. 25, letter from Hugh Keenleyside to Eleanor Meslin, 25 May 1973; Mark MacGuigan to Sidney Midanik, 6 August 1970, National Archives of Canada [NAC], Canadian Civil Liberties Association Papers [CCLA], R9833, vol. 181, f. 2.

[55]Interview, Ed Webking, 26 August 2003; Canada, *Proceedings of the Special Joint Committee on the Constitution of Canada* (1980-1), RG 14, D4, Acc 90-91/119, Box 62, Wallet 10, brief of the Canadian Federation of Civil Liberties and Human Rights Associations.

[56]Laurin, *Des Luttes et Des Droits*; *Le Devoir* 3 April 1971; *Montreal Gazette* 5 April 1971; *Montreal Star* 9 April 1970; *Le Devoir* 26 March 1971.

[57]By 1975, the St. John's Status of Women Councils openly supported pro-choice and were members of the Canadian Association for Repeal of Abortion law (Pope and Burnham, p. 203).

[58]NAC, Kalmen Kaplansky Papers, MG30, A53, vol. 7, f. 3, A Brief Historical Analysis of the Development of Human Rights and Civil Liberties Associations in Canada, 6 June 1972.

[59]LSBCA, BCCLA, vol. 12, f. 6, Background Position Papers — Social Assistance.

[60]CNS, NLHRA, f. 2.04.011, Brief in respect to Housing submitted to the Mayor and Councillors of St. John's through the Conference on Housing, n.d.

[61]Interview, Bert Riggs, 15 July 2003.

[62]The conceptual divide among civil liberties and human rights groups continues today. Over the past 20 years the CCLA and the BCCLA have taken positions and occasionally lobbied to have prostitution removed from the criminal code and supported free speech for the Klu Klux Klan. The NLHRA has considered these issues within the context of the exploitation of women and the impact of hate literature on the perception of minority groups, and taken the opposing view in the belief that not all rights are inviolable (Interview, Jerry Vink, 11 March 2002).

[63]Interview, Norman Whalen, 4 April 2002.

[64]D.A. Schmeiser, *Civil Liberties in Canada* (Toronto: Oxford University Press, 1964), p. 185.

[65]Phillip McCann, "Denominational Education in the Twentieth Century in Newfoundland," in William A. McKim, ed., *The Vexed Question: Denominational Education in a Secular Age* (St. John's: Breakwater, 1988), p. 95.

[66]CNS, NLHRA, f. 2.06.004, Outline of Provincial Human Rights Code Analysis, 1984.

[67]The exemption for educational institutions in the Code had consequences outside of protecting denominational education from accusations of religious discrimination. In 1978 Marlene Webber, a professor in the School of Social Work at Memorial University, was dismissed because her "political activities have indicated considerable divergence from the philosophy and purposes of the School and [Webber's] involvement both on and off campus with a political movement [communism] which is totally inimical to and destructive of the system upon which our government is based." Such a clear violation of academic freedom and right to political opinion was immune from the Human Rights Code as a result of the

general exemption for educational institutions. CNS, NLHRA, f. 2.04.001, Press Release by the NLHRA on Marlene Webber, n.d.

[68]Quoted from *Evening Telegram*, 1 April 1987.

[69]Canadian Civil Liberties Association v. Ontario [Attorney General] [1990] 71 Ontario Reports (Ontario Court of Appeals).

[70]Quoted in Mark Graesser, "Public Opinion on Denominational Education: Does the Majority Rule," in McKim, ed., *The Vexed Question*, p. 35.

[71]Adamson, Briskin, and McPhail, *Feminist Organizing for Change*, p. 29.

[72]Adamson, Briskin and McPhail, p. 65.

[73]Adamson, Briskin and McPhail, p. 71.

[74]Robert Magasino, "Teachers and Student Rights Within the Denominational Schoolhouse Gate," in McKim, ed., *The Vexed Question*, p. 136.

[75]Stack v. Roman Catholic School Board, [1979] 23 Newfoundland and Prince Edward Island Reports (Newfoundland Supreme Court).

[76]CNS, Newfoundland Teachers Association Papers, *NTA Journals* 70.2 (Spring 1982).

[77]In 1976 a music teacher in Grand Falls was dismissed for marrying a non-Catholic, but because he was a non-tenured teacher he did not fall under the collective agreement and the NTA chose not to act. Gregory Stack was not rehired as a teacher in the Catholic School Board. CNS, Newfoundland Teachers Association Papers, *NTA Journals* 70.2 (Spring 1982).