RELIGION AND SCHOOLS IN CANADA

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The constitutional and statutory frameworks within which education operates in Canada are significantly different from those in other countries. This paper describes some of the key features of Canadian education, particularly those relating to Catholic schools. It examines the relationship between the religious community and the educational structures in Canada over the years, with a particular emphasis on recent events, and identifies some of the key historical factors in that development. A number of developments which appear to indicate a move to a more secular form of public education, and which are creating considerable tensions for Catholic educators, are also discussed.

Until the second half of the 19th century, the history of education in Canada reflected the deep and continuous involvement of Protestant and Roman Catholic churches. Foster and Pinheiro (1988) comment that,

> ...the history of the rise of public education in the provinces of Canada reveals, above all, the influence of the Protestant and Roman Catholic churches. The educational philosophy, aims, and broader objectives of the public education system reflected the moral and religious doctrines of the faith which had sponsored the founding of the institution. (p. 759)

Schools were seen as vehicles whereby Christian civilization might be preserved and extended in the new world. Canada, as a British colony, never felt the demand to separate policy matters into domains of the sacred and profane. In this regard we can be mindful of the need, pointed out by Deem, Brehony, and Heath (1995) to see educational policy as part of the wider public policy context. No public policy initiative in Britain separated church from state; nor was any legislation passed in Canada which would enshrine such a separation. When Canada's basic educational legislation was drawn up

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as part of its constitution, it was not considered appropriate to include requirements similar to those imposed in the United States by the First and Fourteenth Amendments to the Constitution.

These amendments state that neither Congress nor state legislatures can make any laws regarding the "establishment of religion or prohibiting the free exercise thereof." However, the direction which the United States took in this respect, a direction which is often held up as a model which any right-minded individual would follow, is itself a departure from the views held by many educators and legislators. How else can one explain the opening words of Article 3 of the Northwest Ordinance, passed on July 17, 1787: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged" (as cited in Giamatti, 1988). It is difficult to see beliefs such as these as providing the underpinnings for an essentially areligious educational system in which financial support can only be received provided there is no link to any religious creed or doctrine, Christian or otherwise. Many U.S. constitutional historians and public policy analysts believe that the direction taken to implement the First and Fourteenth Amendments was unnecessary and unfortunate. They suggest that it would be possible to avoid providing preferential treatment to particular religions without going so far as to provide no support at all to any. Indeed, inconsistencies in the application of the "wall of separation" requirement have received considerable attention, and fears have been expressed that the Establishment clause may well be changing from being the guardian of religious liberty, which it was originally intended to be, into a guarantor of public secularism. Such a transformation would be bothersome, if not downright abhorrent, to many.

The Canadian constitutional framework for education is Section 93 of the Constitution Act of 1867 (known prior to 1982 as the British North America Act). This section laid out three principles. First, it established that each provincial government had the right to make laws regarding education within its territory. Second, it guaranteed to Protestants and Roman Catholics that the legal rights they had in 1867 with respect to denominational schools would be constitutionally protected by provincial governments. Third, and in a sense linked to the first two principles because of what the section does not say, it established that there is no constitutional impediment preventing provincial governments from passing legislation to support religious schools and thus further denominational education. In other words, the only thing that provincial governments may not do is remove or "prejudicially" tamper with rights which were enshrined in law at the time of Confederation.

Peters (1996a) points out that it is possible to see the Confederation agreements as means whereby the Protestant and Roman Catholic communities were persuaded to accept control over their schools by the emerging provinces, provided that the rights which the law granted these communities

at the time of entering the Confederation were guaranteed. Sir Charles Tupper, one of the Fathers of Confederation, made clear that the Confederation would not have occurred in 1867 without this guarantee for the educational rights of the religious minority. Indeed there likely would have been considerable disturbance in Manitoba (1870), Alberta (1905), Saskatchewan (1905), and Newfoundland (1949) had similar constitutional protections not been available as each of these jurisdictions became provinces in the Confederation of Canada. In the case of Newfoundland, rights were guaranteed to Catholics and a range of Protestant groups in 1949 and were extended to include the Pentecostal Assemblies in 1987.

History also makes it clear that in 1867 and in subsequent years, as other areas entered the Confederation, the Confederation Agreement regarding education was understood to include the right to a publicly funded Protestant school system. This Protestant educational orientation was usually defined as one in which no specific religious doctrine would be fostered in the schools and no particular value structure advanced. Lawton and Leithwood (1991) speak of public school boards as those boards "into which the 'Protestant' school boards had evolved over the years" (p. 206). While the disappearance of Protestant schools within the public school system of Ontario was tacitly accepted by many and may have been openly welcomed by many more, the evolution to which Lawton and Leithwood refer clearly encompassed a change in the governing structure of education in that province.

HISTORICAL ORIGINS

Governments in Canada, France, and Britain have, until comparatively recently, supported and at times actively solicited the involvement of churches in the development and operation of schools. Until the late 18th century, support for education was provided by governors and government officials, particularly during the years of the French empire. Johnson (1968) points out that as early as 1616, Champlain, the French governor in New France, supported the Recollet Fathers who traveled with him from France. And the Jesuits, who came to the New World strictly as missionaries and educators in 1633, received 11% of all the land grants. In fact, the government of New French colony gave over 25% of all land grants to the Church, a type of state aid to education as it were, though most of the religious orders also performed other social works such as the operation of hospitals and orphanages. Similarly, in Acadia, religious orders received extensive land grants and operated schools, hospitals, and orphanages.

Following the British victory at the Plains of Abraham near Québec in 1759 and the treaty marking the end of the Anglo-French struggle in 1763, government support for the operation of schools of any sort in Canada virtually disappeared for over 30 years. Schools operated by the Catholic religious

orders were shut down and the orders forbidden to take in new members. Many of the older missionaries returned to Europe, their schools and other social activities terminated.

The American Revolution of 1776 changed the Canadian scene drastically, bringing a large influx of English-speaking settlers to the British colony in what is today southern Ontario and southern Québec and even to New Brunswick and Nova Scotia. These immigrants demanded schools from the government. Education became an item on the government agenda, and the immediate governmental response was to establish a committee to look into the matter. In 1789 this committee presented the first attempt at a form of church/state separation. The liberal arts college which the committee recommended be established in Montréal would not teach any theology and so would avoid all religious bias. But this recommendation was opposed vehemently by the Catholics and the Catholic clergy, who wouldn't accept a nonsectarian university or nonsectarian, even if free, elementary and secondary schools. In the words of Sissons (1959), the "school would be sectarian or there would be no school" (p. 132).

The committee report is the first clear government attempt at involvement in education and the first clear area of disagreement regarding government involvement in education. From that point on, history records the attempt to reach agreement among three forces: the state, the Protestant churches and their members, and the Catholic Church and its members.

The first decades of the 19th century saw the evolution of an educational system in which schools were established and governed by locally elected school boards. This practice had been imported into Canada by the United Empire Loyalists in the 1770s and remains in nine of the ten provinces today.

Canada as a single country within the British Commonwealth was formed in 1867 with the passing of the Constitution Act. The provinces of Ontario, Québec, New Brunswick, and Nova Scotia joined to form a single, federal state to which other territories could be added in future years. As previously stated, Section 93 of this Act provides the constitutional foundation for the Canadian educational system.

While the legal history of Catholic schooling in Canada may at first appear comparatively uneventful, closer examination shows governments adopting a stance to ensure that the religious minority, generally Catholic, be given the bare minimum rights which the 1867 agreement demanded, and no more.

ECCLESIASTICAL CONFLICT

During the second half of the 19th century and the early decades of the 20th, the internal squabblings between French- and English-speaking factions in the Catholic Church represented as significant a challenge in many respects

as any conflict between the Catholic Church and the provincial governments. This internal, uncivil, quite public, and certainly not very edifying battle raged in Ontario, in Alberta/Saskatchewan, and, of course, in Québec.

The events surrounding the 1890 prohibition of the use of French in schools and in governmental affairs in Manitoba and the subsequent prohibition of the use of French as a language of instruction in schools in Ontario and elsewhere exemplify confrontations within the Catholic Church in which linguistic allegiance contributed to the fragility of Catholic schools.

RECENT DEVELOPMENTS

PUBLIC SCHOOLS

Two decisions of the Ontario Court of Appeal in the mid-1980s established that in the Ontario public (not separate or private) schools it is permissible to teach about religion, but not to teach religion or attempt to inculcate any type of religious belief. One of the two cases *(Zylberberg v. Director of Education of Sudbury Board of Education, 1988)* dealt with a Ministerial regulation requiring that public schools be opened each morning with a recitation of the Lord's Prayer or "other suitable prayers," while the second *(Corporation of the Canadian Civil Liberties Association v. Ontario, 1990)* dealt with the right of a school board to permit religious instruction in its schools. The rulings in these cases led to amendments in the Ministerial requirements and regulations. The news release from the Ontario Ministry of Education of December 6, 1990, states that it is permissible to teach about how the belief systems of the world's religions provide individuals and communities with meaning and a sense of purpose. However, it is not permissible to teach particular religious beliefs or doctrines nor to suggest primacy for any particular beliefs. A resource guide from the Ontario Ministry of Education reproduces eight principles from the *Corporation of the Canadian Civil Liberties Association* decision, which schools should follow in order to ensure that they are not involved in indoctrination:

1. The school may sponsor the study of religion but may not sponsor the practice of religion.
2. The school may expose students to all religious views but may not impose any particular view.
3. The school's approach to religion is one of instruction, not indoctrination.
4. The function of the school is to educate about all religions, not to convert to any one religion.
5. The school's approach is academic, not devotional.
6. The school should study what all people believe, but should not teach a student what to believe.

7. The school should strive for student awareness of all religions, but should not press for student acceptance of any one religion.
8. The school should seek to inform the student about various beliefs, but should not seek to conform him or her to any one belief.

While the Ministry of Education directives intend to prevent boards of education from engaging in indoctrination, and while the document acknowledges the problems in attempting to define religion, the resulting curriculum is totally secular and appears unsatisfactory for a significant portion of the population. The religion curriculum which has evolved following these two rulings resembles what one might find in the United States: It is fine for a school to provide information about religion—about any or all religions—but the school must say nothing to imply that one religion is better than another, nothing about the goodness or appropriateness or value of any particular religion.

The legal basis for both the *Zylberberg* and *Corporation of the Canadian Civil Liberties Association* decisions is Section 2 of the Canadian Charter of Rights and Freedoms, which guarantees the "freedom of conscience and religion." The rulings tell us that this freedom will be infringed upon if, in order to exercise it, one is required to seek an exemption from one's normal practice. It appears, then, that public schools must operate so that no one need seek an exemption from any activities or practices, because "every course or program in the public school should be designed to be acceptable to all reasonable persons, and consequently leave no justification for requiring discriminatory exemptions." Even in the most positive light, the Ministerial directive invites blandness and sterility in addressing religion, morality, and values in public schools.

Some parents have seen the application of this Ministerial order as an intrusion on the religious freedom of those who expect their children to receive religious formation in the public schools and who want more than blandness and sterility in this crucial element in their children's formation. The order seems to oblige parents to lower their expectations regarding the value formation their children may receive in schools.

A recent court case in Ontario points to the difficulties faced by non-Catholic parents who want their children to receive religious formation at school but are unable or unwilling to send their children to unfunded private schools. The plaintiffs in *Bal v. Ontario (1994)* claimed that amendments to Regulation 298 under The Education Act effectively removed a school option to provide alternative minority religious schools. Dickinson and Dolmage (1996) point out that "the applicants claimed that removal of this discretion restricted their freedom of religion and conscience as guaranteed under section 2(a) of The Charter and their freedom of expression as guaranteed under section 2(b)" (p. 98). As a result of the ruling of the Divisional Court in this

case, it is clear that the government is not bound to provide financial assistance to denominational schools beyond its obligations to Roman Catholics. The court also found that the government is not obliged to support the exercise of freedom of religion by funding religious schools. It further stated that the public schools of Ontario are secular and therefore religiously neutral. Hence, it is constitutionally impermissible for the province to fund religious schools within the public school system even if it should wish to do so. Given this decision and the rulings in the two cases mentioned earlier, Dickinson and Dolmage present four generalizations which they believe "are probably fair to propose." The second of these reads:

> Ontario public schools are to be secular. While it is permissible to teach about religion in public schools, it is not permissible to support or promote any particular religious view; to do so would inevitably violate the religious freedom rights of students who do not share the view being supported or promoted. (p. 107)

The July 2, 1997, decision from the Ontario Court of Appeal affirmed the lower court decision in the *Bal v. Ontario* (1997) case. Although he sympathized with the appellants' concerns, the judge concluded that the case was essentially about funding, specifically the fact that the province had decided not to fund religious schools. He agreed with Justice Winkler's reasoning in the earlier decision which suggests that even if it wished to do so the provincial government was prevented by the Charter of Rights and Freedoms from providing funding to the type of "religious" public schools sought by the plaintiffs.

Many parents do not see the areligious perspective which public schools must advocate as value-free. They see this orientation as value-laden and in favor of a moral relativism to which they are unwilling to subscribe. Many also likely see the original constitutional bargain of 1867 broken by these requirements, which entirely remove any religious component from public schools, at least in Ontario. In the years leading up to confederation, educators endeavored to ensure that the needs of both Protestants and Roman Catholics were satisfied and that neither group was compelled to send its children to a school operated for and by the other. In practice, then, although Canada West (Ontario) had a national school system in which separate schools were an element, at the time of confederation the national schools were largely Protestant in orientation, while the separate schools were largely Catholic. Attempts to redefine this Protestant orientation as a secular one in which no particular value structure or creed is advanced may be inappropriate and more reflective of the increasing secularization of society than an evolution in the school system. If public schools are permitted to reflect the reality of only the dominant sector of society, those who do not share this

reality will inevitably be educationally marginalized. This appears to be the fate of the significant population in Ontario and elsewhere which is unable to find appropriate, value-based education in the public schools. The redefinition of this element of the constitution may also explain the steadily growing enrollment of private and independent schools.

Secularization of public schools is not unique to Ontario. Amendments to the school legislation in Manitoba and British Columbia have created completely secular public schools in which neither prayer nor religious instruction is permitted. The new Education Act in Nova Scotia, passed in November 1995 and proclaimed in January 1996, also indicates a clear shift to a greater secularization of schools, a move strongly opposed by Christian church groups.

PROVINCIAL SCHOOL SYSTEMS

Until very recently, court challenges involving religion in schools tended to deal with matters of rights and jurisdiction, whether the rights of the religious minority were being infringed on, or whether individual rights relating to freedom of conscience and religion were being violated. More recently, however, two provincial governments have attempted to circumvent the first of these questions by recourse to Section 43 of the Constitution Act of 1982, which permits a province to change its constitutional responsibilities in certain circumstances. It reads:

> An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all provinces, including
> (a) any alteration to boundaries between provinces, and
> (b) any amendment to any provision that relates to the use of the French or the English language within a province,
> may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

Before 1996 this amending section had been used three times. The first was in 1987 when the Newfoundland government extended to the Pentecostal Assemblies the same constitutional protection that had been granted to seven other denominations in 1949. The section was used twice in 1993, first when the New Brunswick government specified explicit safeguards to English and French linguistic communities regarding educational and cultural services, and second when the government of Prince Edward Island proceeded with the fixed link to mainland Canada instead of the ferry service stipulated in the constitution.

In November 1995, the Newfoundland government set in motion the first

initiative under this section of the constitution whereby rights enjoyed by specified religious "classes of persons" would be limited. The Newfoundland House of Assembly voted to remove the churches from the governance and administration of the province's educational system. The vote in the legislature dealt with the last of the requirements specified under Section 43 of the Constitution Act of 1982. The approval of the legislature of the province to which the amendment would apply had been obtained.

The government proposed by way of amendment a major revision to Term 17 of the Terms of Union with Canada. In keeping with a recommendation of the Williams Commission (1992), the amendment would remove the schools of the province from the control of the churches.

The proposed amendment was introduced in the House of Commons on May 31, 1996, and approved within days. On June 6, the amendment was introduced in the Senate and, following thorough debate, was approved in an amended form on Nov. 27. The Senate amendment "called for continuing church involvement in decisions to build new schools, and for there to be denominational schools where numbers warrant" ("Senate vote," 1996). However, on December 4 the House of Commons revisited the proposal, defeated the Senate amendment, and approved unamended the revised Term 17 which had been submitted by the Newfoundland government. The way was opened for the Newfoundland government to restructure its educational system according to its own political, fiscal, and educational agendas without the need for agreement from the denominational councils which, on occasion, had limited the government's autonomy in dealing with educational problems.

As the Newfoundland proposal made its way through the legislatures, concern was expressed that this move could end denominational schooling and make possible a number of constitutional changes through the use of Section 43 of the Constitution Act of 1982. Despite reassurance from liberal Minister of Justice Alan Rock that "this is not an instance in which minority rights are being adversely affected by majority rule" ("Rock says," 1996), there were, and continue to be, considerable misgivings regarding the implications of the Newfoundland change. A fellow Liberal felt that the issue was more than religious: "it's about preventing the rights of minorities from being trampled by the tyranny of the majority" ("Rock says," 1996). Citizens expressed concern that this amendment sets a precedent for those wishing to undermine separate school system rights in Ontario or the equally vulnerable rights of the French-language minority in Manitoba. Some also feared that the matter added fuel to the constantly volatile sovereignty issue in Québec. Mr. Rock's reassurance on May 31, that, "I say to those who are concerned about the power of precedent from that perspective that they need not be" ("Senate vote," 1996), has not yet been shown by either parliament or the courts to be an iron-clad guarantee.

The Newfoundland government recently encountered another hurdle in its attempts to reorganize its educational system under the new constitutional specifications. The province's Supreme Court, on July 8, 1997, granted the Catholic Church and Pentecostal Assemblies an injunction preventing the government from closing or redesignating about 80 of the province's schools. (The word "redesignating" refers to changing the status of a school from being associated with a particular denomination to being either interdenominational or nondenominational.)

The Québec government intends to replace its confessional education system with a linguistic one by 1998. The constitutional amendment has been approved in the Québec legislature and introduced in the House of Commons. This amendment relieves the province of any restriction regarding denominational schools and states "in and for each province the legislature may exclusively make laws in relation to education." Given the comparatively unobstructed passage which the Newfoundland amendment was granted through parliament, particularly through the House of Commons, the Québec request is unlikely to be delayed when parliament reconvenes.

Not to be outdone, Minister Snobelen of Ontario tossed some fuel on to the constitutional fire on April 23, 1996. He is reported to have said that abolishing the province's Catholic school system "would be something we would consider, obviously, in light of constitutional changes with Québec. But those constitutional changes haven't happened, and we have yet to see what the response will be federally or in Québec" ("Catholic school system," 1997). It is not clear from these statements whether Minister Snobelen is referring to the proposed constitutional amendment regarding schools in Québec or the broader sovereignty issue. If the Québec school amendment is approved, Ontario could assume that a similar amendment, seeking to have the four sub-sections of Section 93 of the 1867 Constitution Act not apply in that province, would also receive favorable consideration. Any debt- and deficit-obsessed government would likely find some appeal in a similar move, whether it be in Ontario, Saskatchewan, or Alberta.

PRIVATE SCHOOLS

Since there is no constitutional impediment to providing support for denominationally based activities, it is not surprising that five Canadian governments have decided to support financially those private schools which meet specified criteria. In all provinces private schools are required to follow government-approved curricula and are subject to government regulation and supervision. Generally, a school is subjected to more intense regulation as the amount of available funding increases. Nowhere, however, does the amount of money available to private schools come close to that which is provided for public schools. For example, in Alberta the per-student grant to accredit-

ed private schools is slightly less than one third of the amount available to public schools.

A recent, well-publicized ruling from the Supreme Court of Canada upheld the province of Ontario, which had argued that it had no constitutional obligation to provide funding to private schools, although funding was provided to Catholic schools. The court upheld earlier rulings which stated that the government action did not constitute religious discrimination in that the plaintiffs, members of a number of non-Catholic denominations, were permitted to operate their own private schools, and the decision to provide funding to Catholic schools was not a matter of choice for the government but rather a constitutional imperative. The judgment emphasized that, "failure to act in order to facilitate the practice of religion cannot be considered state interference with freedom of religion" (*Adler v. Ontario, 1996,* p. 8). Madame Justice McLaughlin pointed out that, "freedom of religion does not entitle one to state support for one's religion" (p. 11). Similarly, Madame Justice L'Heureux-Dubé made it clear that, "the failure to fund the independent religious schools does not constitute a limit on the guarantee of freedom of religion" (p. 12).

Nothing in the judgment suggests that the government of Ontario is constitutionally prohibited from allocating funding to private schools, provided it does so in a nondiscriminatory fashion. The decision not to provide funds to these schools is a policy decision. However, in delivering the earlier judgment of the Ontario Court of Appeal (1994), Justice Dubin commented that even had the absence of funding been ruled to be an infringement on the plaintiffs' freedom of religion, he would have held the absence of such funding to be "a reasonable limit on such freedoms and rights within the meaning of Section 1 of the Charter" (pp. 25-26). He would have made this judgment, at least in part, on the basis of the estimated annual cost to the government of $156 million to $340 million. He would also have been influenced by the fact that these schools are managed, operated, and funded by private agencies. Peters (1996b), without implying any legal or constitutional links, draws attention to the fact that "there would be increases in costs to the public in all provinces were private schools to be closed, though the actual figure would vary depending on the size of the grant currently available and the number of students in private schools" (p. 18).

Almost all private schools in Canada are affiliated with a religious denomination, in most cases a mainstream Protestant denomination. However, in British Columbia and Manitoba, Catholic schools make up the single largest grouping of private schools. If these schools were located in Alberta, Saskatchewan, or Ontario, they would receive full government funding. In both Ontario and Québec we find a significant number of non-Christian private schools. Private school enrollment in Canada is presently just over 260,000, approximately 4.8% of the total school enrollment. This

represents a steady increase in private school enrollment since the early 1970s, when private schools accounted for only about 2.5% of total enrollment. This increase has created concern in some circles that the status and power of the public schools are declining as they attract fewer desirable students and are left with a large number of students who are unacceptable in the more selective institutions for educational, social, financial, or behavioral reasons.

DISCUSSION

SOCIOPOLITICAL CLIMATE

Catholic education in Canada functions in an environment which is changing rapidly in ways which considerably reduce the strength of its statutory and constitutional supports. Increasing societal secularism and deep-seated skepticism regarding the need for religion in one's formation have created a climate in which support for religion in schools is diminishing rapidly. In the 1991 Canadian census, almost 46% indicated that they were Roman Catholic and 38% indicated that they were Christians other than Catholic. But the general social norms and practices in Canada today are just as materialistic, functionalistic, and consumer-oriented as in any other western country. Decreasing value is placed on the sacred as an intrinsic element in life; and while those who wish to develop a spiritual life are tolerated, resistance to including this aspect of formation being included as part of a state-sanctioned curriculum is increasing. A strident element in society would deny a parent's right to decide the values which a child should be helped to develop, but rather would invite students to shape their own values in some unexplicated fashion without being subjected to any creed or dogma by parents or teachers. The teaching of religion in schools is often viewed as indoctrination or brainwashing, and constitutional protection for this type of schooling as undesirable.

In this increasingly secular society, debt- and deficit-obsessed governments focus on reductions in public spending while many citizens preoccupy themselves with what Charles Taylor (1991) refers to as functionalism and absolute faith in the marketplace. The fact that this faith is not shared by many educators and other thoughtful commentators on our time, such as Bellah (1985), McQuaig (1993), and Saul (1995), has not affected educational policy makers. The insensitivities associated with the commitment to the current political ideology ensure that those who critique Canadian social policy, such as Barlow and Campbell (1995), or who question the real depth of the fiscal crisis, such as Taft (1997), are ignored in a headlong rush to redefine the society. As Salutin reminds us, "the individuals living in the world created from Reagan through Harris don't make ethical or political choices. Life comes down to acquiring money and going shopping with the proceeds"

(as cited in Barlow & Campbell, 1995, p. 209). None of this makes for a deep understanding or genuine support for an alternative education system which cannot immediately and obviously be linked to articulated government goals, reduction in spending, and job creation. As Kenway, Bigum, Fitzclarence, Collier, and Tregenza (1994) warn us, "schools will be expected primarily to produce workers and consumers and their socially critical, creative, moral, cultural, and aesthetic agendas will become marginal" (p. 330).

Two aspects of the prevailing sociopolitical climate may, if permitted to develop, provide some support for those interested in the maintenance of religious schools. Within the "New Right" ideology is an acknowledgment of the importance of choice as an element of everyday living. The marketplace requires consumers who are free to make choices and create the momentum which activates the exchanges needed to drive the market. Without choice we cannot tell which practices or institutions succeed and which fail and should be discarded. The New Right agenda also includes a revival of interest in religious values, although there is considerable concern about the intolerant and oppressive nature of many of these religious articulations. It is possible, however, that when tied to the value placed on choice, the rights of parents to select educational options based on adherence to particular religious values may receive some government support. At present there is little evidence to support this line of reasoning. Even as choice in education is being advocated and expanded, governments in Canada are refusing to acknowledge religious belief as a basis for choice decisions and are excluding religious schools from public funding. The Alberta government, for example, recently introduced legislation permitting the establishment of charter schools provided that these schools not be affiliated with a religious denomination.

Allied with the changing orientation of Canadian society is a beleaguered public school system with an essentially egalitarian outlook which frowns on the types of discriminations which religious schools are permitted to practice. Religious schools must be permitted to discriminate in their hiring practices to ensure religious orthodoxy in the teaching force. They are frequently able to discriminate in selecting students because of limited program offerings or religious affiliation requirements. Public schools may not make distinctions of this type in staffing or in student selection, and they resent private schools being spared the difficulties of having to deal with the increasing number of challenged students.

Governments are obviously reluctant to be seen as supporting a religious presence in schools, in spite of the significant numbers of professed religious individuals in these governments. Some of this reluctance may be linked to a desire to distance government from the abuses which have occurred in many schools operated by religious groups and which have become the subjects of court cases. It remains to be seen how loud a voice the religious wing of governing parties has when issues of school choice and funding are raised.

LEGAL/CONSTITUTIONAL CLIMATE

There is a general understanding in Canada that the country's public schools, distinguished from the private and separate schools (though, properly speaking, separate schools are also public schools), will be secular and nondenominational. Indeed, in *Bal v. Ontario* (1994), the Divisional Court expressly stated that the public schools of Ontario are secular and, therefore, religiously neutral, a connection which some might not see. In fact, many would not see a secular position as value-free or neutral. Clearly, however, this statement by Justice Winkler is a reasonable paraphrasing of the view which the majority in Canadian society would take regarding the appropriate value position of public schools. There is a belief that public schools should reflect the reality of only the dominant sector of society; but putting this belief into practice results in the educational marginalization of those who do not share the dominant reality. Clearly, this is the fate which has fallen on significant numbers in Ontario and elsewhere who are unable to find appropriate, value-based education in the public schools. Many members of Canadian society see an intrinsic connection between education, value formation, and religious development and clearly expect more from their schools than a secular, value-free exposure to a soulless curriculum.

And what of those communities, whether they be municipal entities or simply school communities, in which the vast majority are of one religious persuasion and desire to operate religious schools? Under present statutory interpretations they will be unable to do so. Denominational rights which are available to a class of persons, whether Roman Catholic or Protestant, when they are in a minority in a community, are not available to them when they are in the majority! This nonsensical position appears to have escaped the policy makers' scrutiny, with the result that many parents interested in a religious education for their children are unable to exercise that right. This is clearly a diminution of the educational rights enjoyed by both Protestants and Catholics prior to Confederation and appears to stand rationality on its head, all in the name of a most narrow interpretation of the law. To deny a class of persons educational rights when they are in the majority and grant them these same rights when they are in a minority is clearly ludicrous. Minority rights only make sense in a context of majority rights.

While a reading of the *Zylberberg* and *Corporation of the Canadian Civil Liberties Association* decisions clarifies how the decisions were reached, the question must also be asked whether the reading of the Charter which the courts followed has deprived the very minorities it was designed to protect the rights which were available to them prior to its adoption. The rulings do far more than remove the Christian majoritarian influence from Ontario public schools; they effectively remove all minoritarian influences, Christian or other, as well. It is unclear what Justice Lacourcière meant when, in his dis-

senting judgment in *Zylberberg*, he spoke of a bridge between church and state in the realm of public education. If a bridge ever existed, it appears to have been closed off to large segments of the population. Similarly, an analysis of recent developments in relation to religious schools would make it difficult to agree with the MacKay's (1984) statement that "religion in the schools is guaranteed rather than forbidden" (p. 213). Today that statement is simply wrong as far as many of our schools are concerned.

The ease with which Newfoundland's constitutional amendment passed in the Canadian Parliament should cause anyone interested in minority rights to worry. The House of Commons gave the matter only cursory examination, paying little attention to possible implications of the change or the precedent which its approval could create. While the Senate gave the matter a more thorough examination, the partisan voting patterns in both houses suggest that the matter was decided more by party affiliation than by the compelling weight of the proposal. This is unfortunate, as Parliament will very soon consider a similar request for a change to the Constitution from the government of Québec, a request which will be difficult to turn down following the quick approval given to Newfoundland.

The very idea that a provincial government can change the Constitution when it so desires is bothersome. There is no requirement that the matter be pressing, urgent, or overwhelmingly justifiable. While approval must be obtained from both the provincial legislature and the Canadian Parliament, it is unlikely that Parliament will stand in the way of a provincial government in changing a section of the Constitution which falls within provincial jurisdiction and which only applies within that province. Of course this latter criterion may be interpreted quite loosely by the courts, and may be applied to Francophone schools, labor legislation, environmental matters, or any matter in which provincial laws apply. In other words, in terms of Catholic schools, if a provincial government is unhappy with the present limitations which the Constitution places on its control of these schools, it can change the Constitution. The Shapiro Report (1985) informed us that "the public school context represents...the most promising potential for realizing a more fully tolerant society" (p. 50), and this statement was endorsed by the Supreme Court in *Adler v. Ontario* (1996). While this court judgment relates to the funding of private schools, provincial governments could introduce changes which would result in all of Canada's religious schools being categorized as private schools. Such a move could result in huge financial savings, and from that perspective, as well as from certain ideological viewpoints, might be attractive. Clearly, supporters of religious schools in Canada must continually remind governments of the benefits these schools provide.

CHANGING GOVERNANCE CONTEXT

Every province is currently reducing the number of school jurisdictions, school boards, and school trustees and is moving toward models of school- or site-based decision making. In one province school boards have been disbanded entirely. The centralization which has emerged from these changes means that the larger schools and school systems serve a more heterogeneous population than previously. Diverse student populations then create difficulties in terms of maintaining religiously distinct schools.

At another level, the move to larger school jurisdictions distances school board members from the schools to a greater extent than formerly, requiring local school councils to expand their role, albeit as advisors. While one can hope for considerable benefits from effective school councils, their very nature may create problems in sustaining commitment, providing continuity, and maintaining a clear focus on the broader purposes of the religious school. Parents may prove unable to separate themselves from their children's particular interests to take a perspective which reflects broader community interests. In a sense, the move of power away from school boards to local schools and school councils can be seen as a form of privatization. Parents, school staff, and even students are involved in designing and delivering on a contract relating to the education of a particular, identifiable group of students. The broader community is left out of this picture and the realization that education is a public good as well as a private one suffers.

Changing governance structures provide an opportunity, however, for school and parish communities to form a mutually beneficial liaison. The Canadian Church is increasingly aware that each parish needs the invaluable involvement of the students and the school staff. The emergence of school councils provides an opportunity to define the manner in which the two entities can cooperate more successfully than in the past. Nothing in the statutes prevents religious schools from creating formal council positions for representatives from the parish.

CHANGING CHURCH CONTEXT

As elsewhere, the decrease in the number of priests, nuns, and brothers in the Catholic Church in Canada has been notable over recent decades. This decrease has affected the makeup of the teaching force in Catholic schools as well as the relationship between the institutional Church and the schools. In many cases, lay people are called on to take responsibility for activities which had been handled almost exclusively by religious. Many of these functions are clearly secular; but others, such as sacramental or liturgical preparation, are explicitly religious.

A number of other aspects of the changing demographic pattern within the Church affect the administration of Catholic schools. Even where reli-

gious schools are classified as public schools, there is no legal recognition (except in Newfoundland) of a special place in the educational context for Catholic or Protestant clergy and bishops. And the constitutional changes to the Newfoundland educational arrangements significantly downgrade the constitutional protections which the denominations currently enjoy. Nowhere do members of the clergy have ex officio positions on provincial education committees, nor do they have statutory recognition in relation to the separate school districts which function within their jurisdictions. Clergy, like other citizens, obtain their legal status by virtue of being "residents" of a school district. Yet, within the Catholic Church, by virtue of their office, bishops and priests receive a certain status from Canon Law which should be respected by the laity, although not demanded by provincial legislation. The specific nature of the role or authority which the clergy or bishops should enjoy is difficult to determine and will probably vary from context to context. In any case, it is clear that the evolving picture must be based on mutual respect for the strengths and qualities which the different parties bring to the educational scene. All of this contributes to a certain level of confusion about the relationship between the overworked parish priest and the equally overworked school administrator.

While lay Catholic teachers with special training in religious education and formation are still fairly rare, their number has increased significantly in recent years. Nonetheless, as all Catholic-school teachers are expected to be teachers of religion, Catholic schools must find resources to assist teachers who lack formal catechetical training, and this must be paid for out of regular operating funds. On the other hand, the number of clerics with substantial expertise in pedagogy or administration has, if anything, declined in recent years. Still, many priests and bishops feel an urgency to be intensely involved in the operation of the schools in their areas. Sometimes this involvement creates tension, confusion, and role ambiguity. The traditional lines between roles in the Church are becoming more blurred, particularly in the area of education. But in time partnerships based on mutual respect and trust will inevitably replace the older, more established, authoritarian, hierarchical relationships.

A further challenge in this area has already been mentioned, namely, the need to establish links between the emerging religious school councils and the policy-making, direction-setting bodies within parishes—in most cases the parish councils. Again, this is a link that must transcend jurisdictions and grow from the conviction that neither the school nor the parish will function as effectively in its mission without the support of the other.

In recent and ongoing discussions relating to changing the constitution, governments have bypassed input from the institutional Church. Provincial and federal politicians have ignored the bishops' requests to discuss the Newfoundland reforms. The Church has been muted as an influential voice

in formulating changes in education in most Canadian provinces. At times the absence of an institutional church presence from court challenges has been problematic. For example, there was no Catholic Church presence through clergy or Catholic-school system trustee organizations when the Québec government obtained the approval of the Supreme Court to dismantle the denominational educational system in that province. No substantial national opposition was mounted against the Newfoundland amendment, which drastically alters the basis for denominational schools in that province. The nature of the Catholic presence in Canada's schools is changing fundamentally and there appears to be little leadership from within the Catholic Church itself. Perhaps in time this leadership will evolve; and it may be that, given the changing demographics within the Church as well as the evolving understandings of roles and responsibilities, this leadership will come largely from the laity.

CONCLUSION

Canada's churches have played a leading and complementary role in the development of educational structures across the country. In our current concern for individual rights, we must not adopt a simplistic educational structure which ignores this historical reality. It would be easy to address the challenges of individual rights in a rapidly diversifying society by enshrining a public school system from which contentious value positions are excluded. But it would be boneheaded to assume that this secular and nondenominational system would be neutral in any intellectual or formative sense. The social dangers of adopting such an approach are self-evident, yet this is the approach we seem to be choosing.

We will continue to be challenged to find an alternative model for education which will safeguard the freedom and dignity of all individuals while allowing for the formation of robust, even if religiously based, value systems in our young. The principles which gave rise to Section 93 of the constitution are eminently worth preserving. In our constitutional tinkering, we should seriously consider whether these principles need major re-working. Perhaps today's changed society, with notably altered racial and religious make-up, requires a rewording which takes account of this changed reality and guarantees the rights which evolve from these principles to more than the Protestant or Roman Catholic communities. If we refuse to commit ourselves generously to the principles which gave rise to this section of the 1867 Act, we will, in effect, be denying the tolerance, open-mindedness, and respect for others which we profess so eloquently and so forcefully. Catholics in Canada are the major beneficiaries of the agreement worked out during the last century and the first half of the present one. We must forcefully press our governments to stop taking the easy way out by expunging religion and religious

values from our schools simply because the entire population is incapable of agreeing on the specific details of all value positions. If we do not stridently oppose such a trend in our society, not only will we be denying the children of our country the education they deserve, we will be ignoring our history, deserting those who need our support, and merely adopting the course of least resistance.

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