

The New Brunswick Schools Question

by Peter M. TONER

Section 93 of the British North America Act has probably caused more bitterness than any other article of Confederation. This was the section which theoretically guaranteed protection for the education of religious minorities of the various provinces by extending federal protection over any schools operated in the interests of the Catholic minorities in most provinces, and the Protestant minority in Quebec. Without question, the Manitoba Schools Question was the most famous dispute regarding education in Canada's history, with Regulation 17 of Ontario ranking second. It has been common in the past for historians of either controversy to cite the problem of Catholic schools in New Brunswick as the first example of an Anglo-Saxon provincial government defying the spirit of Section 93 and, by so doing, trample on the rights of French-Canadians. Writing in the *Journal of Canadian Studies*,¹ Professor W. L. Morton used the question of New Brunswick schools as the first step in the destruction of the principle of centralization in the "Macdonald Constitution". However, he asserted that denominational schools, almost by virtue of definition, implied teaching through the medium of French, thus making any question involving Catholic schools a question of language as well.² The New Brunswick Schools Question, because it involved Catholic schools, a portion of the Acadian people of the Maritimes, and provincial rights, was therefore the precedent for the later crisis in Manitoba and Ontario. In the course of a reply to Prof Morton's article, Prof Lovell C. Clark made a statement in the same vein. Clark insisted that the failure of the Macdonald Government to protect Catholic interests in New Brunswick was the first step in the destruction of the duality of English and French in Canada.³ Again, the New Brunswick Schools Question was portrayed as one of language.

With all due respects to the learned gentlemen, this is not the case. The problems of today cause many of us to find these problems in the confrontations of yesterday if there is the slightest justification for so thinking. There is no question that the rights of the Acadians were involved, for the vast majority of them were Catholic, but whatever else it was, the New Brunswick Schools Question was not a confrontation between the French and

¹ *Journal of Canadian Studies*, Vol. 1, No. 1, May 1966.

² *Ibid.*, pp. 12 and 13.

³ *Ibid.*, Vol. 1, No. 1, November 1966, p. 50.

English languages. Of all the crises revolving around education in Canada, that in New Brunswick was probably the only one in which religion was the overwhelming issue. As such, there is no possible justification for citing it as a barrage in the seemingly perpetual struggle between the two major language groups in Canada, or as a precedent for the dwindling status of French language education outside the Province of Quebec. The purpose of this paper is to outline the nature of the New Brunswick Schools Question in the hope that future historians will be more careful in their search for examples and precedents.

The Catholic minority of New Brunswick in the middle of the last century was a mixed lot. In 1871, they numbered 96,000 of whom some 44,000 were French and about 47,000 were Irish. Speaking only in terms of numbers can be misleading, particularly in this case, for the Irish certainly controlled the Church in the province, whatever their numbers might indicate. The first Bishop of New Brunswick, William Dollard, had been Irish, as was his successor, Thomas L. Connolly, and when Connolly was elevated to the Archbishopal See of Halifax, the province was divided into two dioceses, each presided over by an Irish bishop, John Sweeny over Saint John, and James Rogers over Chatham. The Church in New Brunswick was definitely Irish in character, and the importation of Irish priests, combined with a marked preference for Hibernian blood in appointments of merit, did little to alter that fact.

Demography, if we may use that term, does much to explain the existence and perpetuation of this imbalance. The Acadians had originally been refugees, and had taken root in the more remote areas of the province. There, they had been without the benefit of ecclesiastical and educational facilities for years at a time. Economically, they were almost completely out of touch with the times.

By means of contrast, the Irish had settled in areas of commercial activity, where labour was needed. For the most part, Irish immigrants sought work wherever they were landed because in many cases they had no money to move on. The major difference between the two groups was that the Irish were in the mainstream of provincial life, and were constantly in view of the majority of their Protestant neighbours, who could merely forget the French for the simple reason that they might never see them. Whatever the disadvantages suffered by the Irish, their geographical location made them a far more significant element in the population than their Acadian counterparts. In the cities and towns, they were sufficiently concentrated to establish schools, and to aid one another in moving up the scale of life.

The Irish were not well-liked by their neighbours. Not only did the Irish have an unsavoury reputation for rebellion and disloyalty, but they had also brought disease and extreme poverty with them during the famine, which had taxed the local authorities beyond their limits during the years of the Famine.

The fact that most Irish were also Catholic only made their reputation worse, and caused protestant Irishmen to assume postures of extreme anti-Catholicism in order to salvage what they could from their Irish origins. By the 1860's, the Irish were well-established in New Brunswick, even if on the lowest socio-economic scale, and even if respectability was not yet theirs.

The Confederation era was by no means pleasant for anyone in New Brunswick, but even less for the Irish. One of the important factors at the time was the Fenian movement, part of which was determined to establish an "Irish Republic" on British territory in North America. This external threat contributed in great part to the success of Confederates, who used the equation of loyalty and Confederation. But it also carried with it reaction against the Irish Catholics of Canada, who were considered a fifth column for the Fenians. In response to this reaction, and to achieve their own goals, the Catholic Hierarchy of the Maritimes in the eleventh hour threw their weight behind Confederation.

Archbishop Connolly of Halifax had always been a strong ally of D'Arcy McGee and a supporter of Confederation, but his subordinates had been less enthusiastic. Bishop Rogers of Chatham sat out the election of 1865 in New Brunswick, while Bishop Sweeney of Saint John was clearly against the scheme. Bishop MacKinnon, of Cape Breton, was not in favour of the type of union envisioned by the Quebec Resolutions. The Fenian threat, and undoubtedly the ambivalence of the anti-Confederates, brought a change in their attitudes. On the eve of the 1866 elections in New Brunswick, Bishop MacKinnon published a letter denouncing the Fenian movement and offering his support to any scheme of Confederation which would improve the defences of British North America. This powerful salvo was followed by a series of letters by Bishop Rogers, which not only denounced the Fenians and extolled the virtues of Confederation, but which went on to attack Timothy Warren Anglin, the most violent anti-Confederate in New Brunswick, and, more importantly, the acknowledged political leader of the Irish Catholics in the province.

The 1866 elections almost wiped out political resistance of Confederation in New Brunswick, and paved the way for its temporary acceptance by the government of Nova Scotia, which had not dared go to the polls on the issue. Archbishop Connolly, confident that all could see the vital role played by himself and his supporters, went to London, determined to collect what he considered a just reward for the timely intervention of the Catholic Church. During the London Conference, Connolly haunted the Colonial Office, and lobbied the delegates to the Conference seeking the extension of the Canadian system of separate schools to the Maritimes.

Connolly's concern was of very recent origin. In 1864, the government of Nova Scotia reformed its system of education, withdrawing support from all schools which were religious or which used any language other than

English as a medium of instruction. In New Brunswick, things were somewhat better for the Catholics, but still not satisfactory. The New Brunswick Parish Schools Act of 1858 had provided for a system of schools under a loose control by the Board of Education, but with the real power and authority resting with the trustees of each individual school. There was no system of separate schools in the province, but merely one system of schools. However, the vague wording and loose nature of the 1858 Act created a situation whereby every school was denominational. Textbooks, for example, were not standard, with the result that each school used whatever the trustees selected. Generally, the textbooks of the National Schools of Ireland were used, except in Irish Catholic Schools, where the books of the Irish Christian Brothers did service. Schools which used French, few in terms of the Acadian population, used textbooks from Quebec. Schools were invariably started by religious groups, except where the population was too small to warrant duplication, and each school assumed the religious character of the founding powers, in many cases priests or ministers.

What Connolly wanted was the establishment in New Brunswick and Nova Scotia of school systems for Catholic and Protestant children, each supported by public taxation, Catholic taxpayers supporting the Catholic schools, Protestants theirs. At first it seemed that he might succeed, or at least he thought he had some measure of support amongst certain of the Maritime delegates.⁴ To grant such a system of separate education to the Maritimes could have been done in only one fashion, by investing the federal government with control over educational matters. Unfortunately, the delegates from Lower Canada objected to any such arrangement as would place the education system of the new province of Quebec under control of the English-speaking majority in the new union. According to Bishop Rogers, who must have received his information from Connolly, the French-Canadian delegates, Cartier and Langevin, went so far as to invoke the diplomatic assistance of the French Government to preserve French-Canadian control over French-Canadian education.⁵

What Connolly received for his efforts was Section 93, which allowed the Dominion Government to intervene in any situation which might lead to infringement of the rights of separate, dissentient, or denominational schools where established by law at the time of Confederation or subsequently.⁶

⁴ Archives of the Diocese of Chatham, the papers of the Rt. Rev. James Rogers (hereafter "A.D.C."), Bishop Michael Hannon, Halifax, to Rogers, August 20, 1866.

⁵ *Ibid.*, Rogers, Pastoral Letter, January 6, 1874.

⁶ *Ibid.*, Connolly to Rogers, March 12, 1867. Connolly said in part, "...the B.N.A. Act as it now stands amended is far more favourable to our views than it was, but yet it is not all that one could wish." Given the state of education in

There can be no question that the separate schools of Quebec were to be protected by Section 93, or the dissentient schools of Ontario, but the question of debate centres on denominational schools. Clearly, there must have been some reason for specifying such schools as distinct from the schools in the upper provinces. The only schools which could have been meant were the denominational schools in New Brunswick, which included virtually every school in the province at the time. A legitimate problem with the New Brunswick schools was whether they were established by law. To this, there can never be a conclusive answer, the wording of the 1858 Act was too vague. Only on a negative reading of that Act can any conclusion be drawn, and that is that there was nothing in the Act to prevent each and every school from becoming denominational and, indeed, the Act protected the pupils from indoctrination in religious principles contrary to the conscience of the parents. In a New Brunswick seething with religious fervour, such as it was when the 1858 Act was drafted, it is difficult to imagine that the framers wished to exclude religions from the schools.

Whatever was intended by either the provincial government of New Brunswick in 1858 or by the framers of the B.N.A. Act in 1866-7, there was only one province in which the effect of Section 93 could be in doubt, and that was New Brunswick.

Trouble came to a head very quickly. In 1870, the Government of New Brunswick fought and won an election on the issue of free and compulsory education, not really a bad issue at the time, except that there were many statements made to the effect that the schools would be nondenominational. Despite protests from various sources, the Common Schools Act of 1871 provided that all schools conducted under that Act be devoid of all but the most vague form of "common Christianity," such as readings from the Bible and the Lord's Prayer at the beginning of each day. No denominational school was to be supported by public funds. This did not mean that such schools would be closed, simply that, if they were to exist, the money was to come from private sources, and the parents of pupils attending such schools would be taxed to support the Common Schools.

At first there was some outcry from various Protestant denominations, particularly the Church of England, whose Madras Schools had been conducted under the 1858 Act, but as the most militant action became centred in Catholic districts, much of the Protestant reaction subsided, and the debate took on all the aspects of a purge of Catholic schools. Of all the denominations involved, the Catholics were least able to support a system of schools outside the Act, and many Catholics interpreted Common Schools as indirect persecution, which, for some Protestants, it may well have been.

Nova Scotia, Connolly must have felt that Section 93 (the "Galt amendment") gave some measure of protection to Catholic schools in New Brunswick.

In response to petitions from Catholics in New Brunswick, and some pressure from Timothy Warren Anglin, now the M. P. for the New Brunswick riding of Gloucester,⁷ Sir John A. Macdonald, in his capacity as Minister of Justice, examined the Common Schools Act in reference to Section 93 and the previous Acts of the Province. He found that there had never been any legislation establishing separate, dissentient, or denominational schools in New Brunswick, and therefore the Governor-General had no right to disallow the Common Schools Act.⁸ Whatever else might be said of Macdonald's interpretation, it was indeed a very narrow one. Even supposing there had been no basis whatsoever for the existence of denominational schools in New Brunswick, the spirit of Section 93 demanded that the Dominion Government intervene by use of disallowance or remedial legislation. However, Macdonald was a practical politician and there was a difficult election due. The Treaty of Washington was not extremely popular anywhere in Canada, but most dramatically in New Brunswick.⁹ In addition, the Provincial governments, particularly in the Maritimes, were still in a state of shock concerning their reduced powers under Confederation, and were likely to view with alarm any attempt to curb their powers even more. At the time Macdonald made his decision concerning the Common Schools Act, there was a simple problem involved: which were worth more, the few New Brunswick seats controlled by the opposition, or the possibility of fighting his own party in the Province, seeing that they were responsible for the Act? The solution was easy to find.

In May, 1872, the matter of disallowance of the Common Schools Act was brought into the House of Commons by John Costigan, the M.P. for Victoria, a Catholic riding in Northern New Brunswick. Costigan's argument was simple, that the Act in question violated the constitutional rights of the Catholic minority of New Brunswick. After the debate adjourned, he sought to conciliate the supporters of the Catholic position by offering an amendment calling for the extension of separate schools to the Maritimes, exactly what Archbishop Connolly attempted to achieve in 1866. According to Anglin, this amendment was proposed to Costigan by a Government whip who promised that Macdonald would do all he could to get it passed.¹⁰ Despite the fact that acceptance of any such amendment would undermine their original argument of constitutionality, Costigan and Anglin accepted the offer as an

⁷ Public Archives of Canada, the *Macdonald Papers*, Anglin to Macdonald, October 5, 1871.

⁸ A.D.C., Extract of the Report of the Minister of Justice (Sir J. A. Macdonald), January 20, 1872.

⁹ J.P. Mansfield, "New Brunswick and the Treaty of Washington," unpublished M.A. Thesis, U.N.B., 1958, pp. 51-82.

¹⁰ *Ibid.*, Anglin to Rogers, May 22, 1872.

easy way out. Macdonald's problems were also weighty. On May 25, S. L. Tilley, the former Premier of New Brunswick, wrote a letter of resignation from Macdonald's Government on the grounds that he was opposed to Costigan's motion and the proposed amendment.¹¹ The resignation was not accepted. On May 29, when debate resumed, Charles Colby, a government supporter, moved an amendment which merely expressed regret at the action of the Government of New Brunswick. Although Costigan protested the apparent double-cross, Colby's amendment went through, and the case was lost.

Macdonald preserved his government at the election, but his majority was reduced drastically and, in such circumstances, whatever Costigan and Anglin could manage would have great effect. Their opportunity came when the New Brunswick Government passed certain acts of legislation which patched the loopholes in the assessment acts and went so far as to claim back taxes from those, chiefly Catholics, who had refused to pay them since the passage of the Common Schools Act. Carefully mustering their forces, Costigan and Anglin felt that they could win the struggle on this issue. Pressure was exerted on the Catholic Hierarchy of Quebec to issue a statement of support for the New Brunswick Catholics,¹² and French-Canadian Conservative M.P.'s were seduced from their allegiance to the Conservative Party on this issue. On May 14, 1873, Costigan rose in the House to move disallowance of the various acts in amendment of the Common Schools Act, which provided the tax foundation. Macdonald warned that any such action on the part of the House would endanger the rights of Quebec. More to the point, Hector Langevin pleaded with his rebellious followers not to desert the Government on the question of New Brunswick schools. Such pleadings and warnings were in vain, because the opposition were joined by a number of *Bleus* in carrying the motion.

Macdonald's Government was by no means defeated by the vote, but it was certainly an embarrassment to have more than twenty of the Quebec members desert to the opposition on a matter which had virtually become Government policy. And clearly the opposition were confident that they would and could taste blood again on any such emotional issue. Anglin, for his part, was in a state of ecstasy, and he jubilantly announced in his newspaper that "Sir John is now bound to advise the Governor to do that which he says will tear our Constitution to tatters."¹³

On May 19, the long-awaited statement of support for the New Brunswick Catholics was issued by the Hierarchy of Quebec. The Archbishop

¹¹ *Macdonald Papers*, Tilley to Macdonald, May 25, 1872.

¹² A.D.C., Rogers to the Archbishop and Bishops of Quebec, May 6, 1872.

¹³ *Saint John Morning Freeman*, May 17, 1873.

of Quebec and his suffragan bishops, all traditionally supporters of the Conservative Government, pledged the support of the Catholics of Quebec with their Ministers and Members of Parliament.¹⁴ On the same day, Timothy Anglin rose in the House to question the matter of disallowance. Macdonald answered that the Governor-General felt it necessary to seek the advice of the Imperial authorities before acting on the motion. The House became a turmoil. After being clearly instructed by the Commons on the matter of disallowance, the Government refused to carry out these instructions. According to procedure of the day, the Government was obliged to answer for the actions or lack of action by the Governor, or to resign if it could not bear responsibility for those actions or lack of action. Again, Macdonald was in trouble. The Opposition was looking for blood, and he could hardly expect his rebellious *Bleus* to return to the fold. Costigan and Anglin began to draft a motion of non-confidence, which they fully expected to win.

The motion was never to reach the floor of the House. At the eleventh hour, telegrams were received by a number of Anglin's Quebec allies, from their various bishops, advising them that the Government should not fall on the question of New Brunswick Schools. In disbelief, Anglin checked with Bishop Sweeny, then in Quebec City, and the answer was that their Lordships felt no further action should be taken.¹⁵ Thus the only real victory the Catholics of New Brunswick ever attained in the struggle was allowed to die with no effect whatsoever. Macdonald, perched out on a procedural limb, was plucked back to safety by the support of the Quebec Hierarchy less than twenty-four hours after they promised that Bishops Rogers and Sweeny "... nous trouveront tout disposés à les appuyer dans cette demande si légitime, et avec nous, nos ministres et nos législateurs catholiques, nous osons nous en porter garants."¹⁶ The close alliance between the Church in Quebec and the Macdonald party, for the second time in less than seven years, defeated the aspirations of the Catholic minorities of the Maritimes.

The remainder of the story is merely the unfolding of events. Despite continued resistance on the part of the Catholics, the Common Schools Act became accepted as law, especially after the Judicial Committee of the Privy Council ruled against the Catholic case. There could be no hope from the Federal Government, even after Macdonald's defeat over the Pacific Scandal, because Alexander Mackenzie initially depended upon support from a number of Maritime Protestants who deserted Macdonald in his hour of need. Besides that, Mackenzie's own following was mainly Protestant, and the Ontario

¹⁴ A.D.C., the Archbishop and the Bishops of Quebec to Bishops Rogers and Sweeny, May 19, 1873.

¹⁵ *Ibid.*, Anglin to Rogers, May 20, 1873.

¹⁶ *Ibid.*, Archbishop and Bishops etc., May 19, 1873.

Grits cared little for the position of the New Brunswick Catholics once they were in power. There were, however, a number of positive results. The long procedure involving appeals to the Judicial Committee of the Privy Council was exposed by the test case submitted by the New Brunswick Catholics, and steps were taken to establish the Supreme Court of Canada. Also, by an Act of Parliament, it was later established that the Government was bound to advise disallowance if the House of Commons so directed.

However, the true significance of the New Brunswick Schools Question is not to be found in these minor items. To begin with, it was a serious clash of opposite social groupings within the Province of New Brunswick. The dominant group was Anglo-Saxon Protestant, and their most visible enemy was the Irish element in and about the cities and towns. The actions of the Vatican Council had alarmed many Protestants, and when the Catholics began to resist the civil authority, many could see Popish Plots in the offing. The level of religious and ethnic tolerance in New Brunswick had never been high, and the events of the early 1870's did little to alleviate the difficulties. The struggle had been bitter and, several times, the hostility threatened to break into violence. Indeed, on one occasion, blood was shed. In 1875, there was a minor flare-up in Caraquet, involving stone throwing. Simple enough, except the militia was called out to restore order and, in doing so, two lives were lost. There are a number of factors which suggest that the so-called "Caraquet Riots" involved far deeper emotions than those set in motion by the Schools Question.

Catholic opinion in New Brunswick had never really been unanimous on the schools question, if the 1874 elections are any guide. These elections were fought on that issue pure and simple. Although the Irish vote seems to have been intact, the Acadian vote is more difficult to assess. One thing is clear, many Acadians, particularly in Madawaska and Kent Counties, voted for candidates who supported the Government. The reason is not really very elusive. The New Brunswick Schools Question had nothing to do with language and, whatever the outcome of the struggle between the Government and the Irish Bishops of Chatham and Saint John, the schools would be conducted through the medium of English. Outside of the fact that they were Catholic, the Acadians were simply not considered. It is probably significant in this respect that the first Acadian Nationalist ran for election against Anglin in 1878, and that, in 1880, the Acadian people began to organize themselves independently of the Church, and often, in the later years, in defiance of their bishops.

And above all, the New Brunswick Schools Question demonstrated something of the nature of Confederation. Contrary to what has been said, in many places, Macdonald's action in refusing to support the position of the New Brunswick Catholics can only be interpreted as a gesture in favour of provincial rights, not only in the case of the New Brunswick Government, but

also to assure Quebec that the Federal Government would not intervene in the education system of that province. It was not a gesture to the theory of the dual nature of the Canadian Constitution. In fact, the question had nothing to do with duality in the linguistic sense as it merely involved religion. The Irish Catholics of New Brunswick, or any other part of Canada, were interested in their own rights, which did not coincide with the interests of the French-Canadians.

The role of Quebec is also interesting, for it supports the “provincial” nature of the question. In 1866, when the background for this struggle was being laid at the London Conference, it was the French-Canadian delegates who objected to any measure which might allow federal interference in the educational matters of the provinces, except in the manner outlined by Section 93. The same two men, Cartier and Langevin, later opposed federal intervention in New Brunswick on the same grounds, that it allowed for possible federal intervention in Quebec. And when the time for decisive action came in May, 1873, the Hierarchy of Quebec reneged on their promise to Bishops Sweeny and Rogers and refused to allow the Macdonald Government to be defeated, as feeble and corrupt as it was.

Quebec was rightly concerned that any breach of provincial control over education might be turned against French-Canadians in that province, but any action against Quebec must be dismissed as remote at any time. If there ever was any principle of duality in the Confederation of Canada, then the actions of Quebec “vis-à-vis” the New Brunswick Schools surely demonstrated someone other than the French-Canadians put it there. In order to maintain the rights of French-Canadians in Quebec, it was necessary to jettison the minorities in the other provinces.

In this light, the New Brunswick Schools Question can be considered a precedent for later disputes involving education, even if not completely based upon religion. In both 1866 and 1873, the actions of Quebec determined to a great extent that provincial control on matters of education were to remain supreme. On each occasion, however, it might be pointed out that the dominant group in the minorities concerned were not French-speaking. In the 1890's, the shoe was on the other foot when the French-speaking minority of Manitoba was denuded of many rights in the schools system. There is a major distinction in this later dispute, and that is the issue of language. Whereas, in New Brunswick, language was never a contemporary issue, in Manitoba, it was the dominant theme. Section 93 did not offer protection for minority language rights in any province, although other sections of the B.N.A. Act specified certain protections.

The precedent offered by the New Brunswick question held true also for Manitoba, and there was no federal intervention in provincial control over education. The election of Sir Wilfrid Laurier's party reconfirmed the attitude of Quebec, even if the Church party was on the other side. The subsequent

dispute revolving around Regulation 17 in Ontario simply added to the confirmation, there was to be no federal intervention into education on any grounds whatsoever, be it religion or language.

The problems of Canada have not really changed in the past century, and it is unfortunate that we can discern the same attitudes today as in the days of Confederation. Separatism in Quebec is a logical development from the provincial isolationist tendencies demonstrated in 1866 and 1873. For example, Quebec separatists can offer little to the French-speaking minorities in other provinces. And on the other side of the coin, far too many English-speaking Canadians are reluctant to concede freedom of development to the same minorities or, for that matter, to recognize a duality which exists, not because of the B.N.A. Act, but in spite of it. Much of this preoccupation with past crises has ignored the fact that we are still a united country, and probably will remain so for generations to come. Concentration on divisions ignores the fact that we must have much in common with one another in spite of our differences, whether these be of linguistic, ethnic, or religious origins. Until Canadians, and particularly the historians, purge themselves of all negative feelings towards our development, and indeed our very existence, we can hardly be expected to adopt positive attitudes towards ourselves, and our future.