

**KEEPING THE FAITH: THE JEWISH RESPONSE TO COMPULSORY RELIGIOUS
EDUCATION IN ONTARIO'S PUBLIC SCHOOLS. 1944-1990.**

by

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**A Thesis Submitted in conformity with the requirements
for the degree of Doctor of Education
Department of Theory and Policy Studies
Ontario Institute for Studies in Education of the
University of Toronto**

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ABSTRACT

In 1944 Ontario Premier George Drew's minority Conservative government introduced compulsory religious education into the Province's public schools. The enabling legislation, the "Drew Regulation," prescribed two one-half hour periods of religious instruction per week. A response to world-wide godlessness symbolized by Nazi Germany's crimes, remarkably, the Drew Regulation remained in place in Ontario for forty-six years.

The wholesale implementation of the Drew Regulation throughout Ontario's public school system went beyond the need to balance the evil of war with the goodness of faith. Over time it became clear that the Regulation's benign terms which prescribed no specific religious preference was being used for decidedly doctrinal Protestant purposes. When predominantly Protestant Ontario issued little protest, by default, the task of opposing the Drew Regulation fell to the Jewish community. There was no realistic alternative. Other minority faith groups were small in number. Human rights organizations were only just beginning to appear. Moreover, after some initial anxiety, the general community's concern about the discriminatory aspects of the Drew Regulation rapidly dissipated. Emerging from an erstwhile immigrant persona, only a vigilant Jewish community was sensitive to the abuses visited on Jewish and other minority children by this Regulation. At times, hamstrung by its reticence to assume a high public profile, especially when this meant clashing with deeply-felt convictions of the general community, the Jewish community stayed the course. Finally, unable to balance its opposition to the Drew Regulation with increasing internal demands for Provincial funding of Jewish Day Schools, the Jewish community gratefully relinquished responsibility for determining the place of religious education in the public schools to the judicial system.

ACKNOWLEDGEMENTS

In Modern Man in Search of a Soul (1933), Carl Jung wrote that

We cannot live in the afternoon of life according to the program of life's morning...The afternoon of life must also have a significance of its own.

With deep appreciation for their contribution to a significant event in the “afternoon of my life,” I acknowledge the following:

Professor Harold Troper, aka “Hesh,” who encouraged me to enter the doctoral program, and thereafter mentored me in the true sense of that term, providing thought-provoking insights, meaningful feedback, helpful suggestions and loyal support;

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Jeanie Stewart, who applauded my deliberate, albeit feeble, attempts to understand the language and methodology of word processing and, thereafter, magically transformed my amalgam of chapters and paragraphs into a Dissertation;

My wife Gayle and our children who eased my frustrations, forgave my preoccupation and whose constant and unconditional reassurances instilled in me the confidence necessary to achieve closure.

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INTRODUCTION

Anthony Road Public School
Anthony Road at Northgate Blvd.
Downsview P.O. Ont.

October 1, 1952

Dear Mr. & Mrs.

The Protestant Ministerial Association has arranged for Rev. Mr. Binning of Armour Heights United Church to conduct a half-hour religious education period at the school each Wednesday morning from 9 to 9:30. Mr. Binning plans to discuss the life and teachings of Jesus.

Your child is permitted to be excused from this class on your written request. To-day I urged all children of the Hebrew faith to leave the class, but they preferred to stay. I trust that we have not embarrassed them, nor put them in any form of compromising position with you as parents, or with your Spiritual Advisors.

Will you please indicate your preference, by letter, before next Wednesday?

Yours truly,

L. J. Smith
Principal¹

In this manner, parents of Jewish students in one North York public school were introduced to the subject of religion and education in Ontario. On its face, an innocent request, drafted in a seemingly respectful tone, this form letter encapsulated the difficult choices that faced these parents. Do non-Protestant parents take their children out of religious education classes or do they have them remain to listen to a sectarian minister present doctrinal Protestant teachings? Why were public schools in Ontario able to force parents into the position of having to make such a choice?

¹ OJA, Catzman Papers, MG6/E3, File 5755, 1952.

In 1944, Ontario Premier George Drew's Conservative government revised Regulation 13 of the General Regulations, Public and Separate Schools, to read as follows:

13.

2 a) Subject to the Regulation, two periods per week of one-half hour each, in addition to the time assigned to religious exercises at the opening of school, shall be devoted to religious education.

b) Religious Education shall be given immediately after the opening of school or immediately before the closing of school in either the morning or the afternoon session.

c) Instruction in Religious Education shall be given by the teacher in accordance with the course of study authorised for that purpose by the Department [of Education], and issues of a controversial or sectarian nature shall be avoided.

d) By resolution of the School Board, a clergyman or clergymen of any denomination, or a lay person or lay persons selected by the clergyman or clergymen, shall have the right, subject to the regulations, to give Religious Instruction, in lieu of a teacher or teachers.²

This Regulation, as originally presented, and indeed throughout its more than four decade existence, did not specify the proposed content of the religious education. Nor did it deal with the troublesome question of the nature of the denominational views to be presented by whatever program was developed from the Regulation. However, the Regulations and Program for Religious Education in the Public Schools (sometimes referred to by teachers as the Brown Book), issued by the Minister of Education did offer guidelines:

For Religious Education in the Public Schools, the Sacred Scriptures or the Bible Readings for Schools issued by the Department of Education, the Program for Religious Education in the Public Schools of Ontario, and the Teachers' Guides to Religious Education, Grades I to VIII, as approved by the Department and published by the Ryerson Press, shall be used as prescribed by the Regulation of the Department of Education.

This Regulation, which I will refer to as the Drew Regulation, dealt with both religious exercises and religious education. Under the Drew Regulation, religious exercises (sometimes

² Regulation 30/44, R.O. 1944. This Regulation replaced existing Regulation 13 of the General Regulations, Public and Separate Schools, 1939 as amended, February 2, 1944. The new regulation was approved on August 22, 1944 and filed on August 31, 1944.

referred to as opening exercises) included the recital of a prayer, generally the Lord's Prayer, reading from the Bible and possibly the singing of a hymn. Religious exercises were not introduced to public schools by the Drew Regulation. Religious exercises were part and parcel of public schooling in Ontario since the first public school legislation, the Common School Act of Upper Canada in 1816. Prior to the Drew Regulation, religious exercises were held within school hours and although mandatory, subject to exemption.³ Although it is difficult to discuss religious education without making some reference to religious exercises, the latter are not the prime focus of this study. This study is primarily concerned with religious education, the teaching of, or instruction in, religious doctrine in Ontario's public schools and the significant changes made to religious instruction by the Drew Regulation. The term "public," can and often does refer to both the elementary and secondary levels of schooling. In fact, the Drew Regulation only applied to the elementary grades 1 to 8. For the purposes of this study, public is used to connote these elementary grades.

Unlike religious exercises, until the Drew Regulation, compulsory religious education had not enjoyed a lengthy history in Ontario's public schools. Prior to the 1944 revision, religious instruction was not formally part of the public school curriculum. Religious instruction was limited to a clergyman of any denomination giving "religious instruction to the pupils of his denomination...at least once a week before the hour of opening in the morning or after the hour of closing the school in the afternoon..."⁴ Religious instruction was definitely extra-curricular. On its face, this is somewhat surprising because Egerton Ryerson, credited with founding Ontario's public school system, was a Methodist clergyman. However, although Ryerson

³ Regulation 13/24, R.O. 1924. General Regulations, Public and Separate Schools, 1924, sections 13(1) and (2).

⁴ Regulation 13/24. R.O. 1924. General Regulations, Public and Separate Schools, 1924, section 13(3).

believed that school systems should engender respect for religion, he was opposed to formal religious instruction in the public schools.⁵ Moreover, as religion was an essential ingredient in the lives of most Ontarians, there was minimal pressure for Ryerson to change his position on religious education because the various Protestant sects of the time jealously guarded the instruction of their youth.⁶

In 1857, when religious instruction was introduced, it was not without restrictions. Clergy were permitted to give religious instruction to their own faith adherents after the school day concluded. Quite clearly, these classes were extra-curricular, not an integral part of the school curriculum and not imposed upon public schools or public school students.

To suggest, however, that for the century preceding and for the six decades that followed, religious instruction in the public schools was left to this after-hours program would be naive indeed. In an informal sense, religion was an integral part of Ontario schooling since 1791 and the founding of Upper Canada. From that time forward, most schools opened and/or closed their school day with scripture readings and the recitation of the Lord's Prayer. In early schools, the

⁵ In 1871, toward the end of his tenure, Ryerson introduced an experimental curriculum for teaching religious education in the schools, basing it on "Christian Morals." This spoke to Ryerson's expectation that public education would ultimately expand the role of religion in the classroom by creating "a common patriotic ground of comprehensiveness and avowed Christian principles." See William Westfall, Two Worlds. The Protestant Culture of Nineteenth Century Ontario (Kingston: McGill-Queens University Press, 1989), 6-7. Soundly criticised by sectarian forces, after 73 clergymen endorsed its removal, the curriculum was dropped in 1874. Charles E. Phillips, The Development of Education in Canada (Toronto: Gage Publishing, 1957), 329.

⁶ Phillips, The Development of Education in Canada, 161-167. Phillips suggests several reasons for the lack of religious instruction in public schools, including:

- 1) Each Protestant denomination, e.g. Presbyterian, Baptist, Lutheran, Methodist, Anglican, etc., had their own teachings for which there was no common denominator.
- 2) Most denominations would not entrust teaching of sacred doctrine to untrained teachers.
- 3) In the 19th century, church Sunday Schools were successful and there was no need to supplement them.
- 4) Baptists and others were strongly opposed to handing over responsibility for religious education to the government.

Bible was often employed as a primer to teach young children to read.⁷ Such a practice was endorsed by Bishop John Strachan, who served as Chairman of the General Board of Education for Upper Canada from 1823 to 1833. Strachan, credited with infusing Ontario's educational system with a strong Christian emphasis, endeavoured to establish school programs in which the Church of England's influence was prominent. Egerton Ryerson, during his term as Superintendent of Education for Upper Canada and Ontario from 1844 to 1876, was less narrowly sectarian than Strachan. Ryerson preferred that public schooling was constructed on a "broad basis of common Christian faith." By "common Christian" Ryerson and others were referring to Protestantism. The distinctions between Strachan and Ryerson in this area were in degree only.

Discussions of religion and education inevitably lead to the issue of the separation of church and state. This concept, firmly grounded in the anti-establishment provisions of the First Amendment to the United States Constitution, does not hold true in Canadian constitutional law. In fact, as if to emphasise this distinction, public school religious education and the "Christian ideal" had been bedfellows since 1791 when Upper Canada was first organised as a British colony. At that time, the majority of schools in Upper Canada opened or closed with Scriptures and the Lord's Prayer.⁸ Moreover, the Constitutional Act of 1791 uniting Upper and Lower Canada provided for the support and maintenance in Upper Canada of the Protestant clergy. These clergy reserves were eventually secularised by 1854, but by then Protestantism had formed

5) Other denominations feared that public school religious education was the first step toward establishing a church in Ontario.

⁷ Robert M. Stamp, The Schools of Ontario, 1876-1976 (University of Toronto Press: Toronto, 1982), 11. Stamp confirms that in the last decades of the nineteenth century curriculum was presented to Ontario's school children primarily through authorised readers. Lessons included reminders to students to be "thankful for God's blessings."

⁸ E.R. McLean, Religion in Ontario Schools (Toronto: Ryerson Press, 1965), 1-2.

a stronghold in Ontario.⁹ As well, without the historic wall of separation between church and state that confronted their counterparts in the United States, the Protestant stranglehold on public education was supported by education statutes that enabled it to flourish in Ontario.¹⁰ For instance, by the end of the nineteenth century, it was a statutory obligation for public school teachers, already required to be “persons of Christian sentiment,” to “inculcate by precept and example, respect for religion and the principles of Christian morality...”¹¹

Under the stewardships of Bishop John Strachan and Egerton Ryerson the foundation of the Ontario education system in the nineteenth century was laid with a strong Protestant emphasis. And who would take exception to this practice? Religion counted in nineteenth century Ontario. In 1871, four years after Confederation, virtually all Ontarians were Christians, the vast majority Protestant. Ontario was said to be “the home of the best kept Sabbath in the world.”¹² The Toronto Daily Mail boosted circulation with “the most popular pastor” contest and Consumers Gas Company reserved pews at the Metropolitan Methodist Church as today’s

⁹ The clergy reserves were a source of conflict between Strachan, who wanted the Church of England to have exclusive title to the reserves and Ryerson who wanted the reserves sold and the proceeds made available for general education purposes. J. Donald Wilson, “The Ryerson Years in Canada West,” in J. Donald Wilson et al., (eds.) Canadian Education: A History (Toronto, Prentice Hall of Canada, 1970), 214-240, at 216.

¹⁰ By providing that “no pupil in a public school shall be required to read or study from any religious book or join in any exercise of devotion of religion objected to by his parent or guardian,” the Common Schools Act, 1843, c. 29 (Upper Canada), assumed that religion was just as much central to the public school curriculum as it was to nineteenth century life generally. With the 1846 amendment to the Common Schools Act, c. 20, responsibility for religious instruction was vested in school trustees, thus creating a tradition of local autonomy. In 1850, the Common Schools Act, c. 48, provided that a teacher should be a person “of Christian sentiment.” By 1855, the Common Schools Act, c. 132, provided that school days began and ended with a prayer. By 1859, the Common Schools Act, c. 64, permitted clergy to instruct children of their own denomination. More positively still, the Common Schools Act of 1860, c. 49, provided that “pupils shall be allowed to receive such religious instruction as their parents or guardians allow.”

¹¹ The Public Schools Act, 1896, c.70, section 76 (1).

¹² John Webster Grant, A Profusion of Spires: Religion in Nineteenth Century Ontario (Toronto: University of Toronto Press, 1988), 235 citing the Methodist Christian Guardian.

corporations might reserve boxes for major sporting events.¹³ The marked success and influence of Protestant Christianity fed into the vision of the Canadian nation as “His Dominion.”¹⁴

At the dawn of the twentieth century religion was also secure in Ontario’s public schools.¹⁵ Although the influence of a single church in Canada was less pervasive than that afforded to its English cousin, nevertheless, centuries of association with England and the Church of England contributed greatly to Canada’s development of a unique affiliation between church and state. Not quite on the English model, but most definitely not modelled on the American example, the Canadian church and state relationship has been described as “legally disestablished religiosity.”¹⁶ Whereas there was no Church of England filling the role of the established church, the combined, albeit sectarian, influence of a number of Protestant churches was not to be denied.

As the twentieth century progressed, societal changes brought an end to the honeymoon between church and state in Canada. Mainstream religious institutions became battered by forces over which they had no control. Industrialisation, urbanisation, World War I, immigration from countries other than Great Britain, all combined to gradually diminish the influence of the churches in Canada. Youth was greatly affected by these changes. After-school religious education classes faltered. Sunday Schools, a carry-over from the English model, were poorly

¹³ Grant, A Profusion of Spires: Religion in Nineteenth Century Ontario, 197.

¹⁴ It has been suggested that many Protestant denominations bought into this vision thereby contributing the basis for the formation of “a broad Protestant consensus and coalition.” N. K. Clifford, “His Dominion: A Vision in Crisis,” in Studies in Religion/Sciences Religieuses, 2, No. 1 (Summer, 1972), 315-326, at 315.

¹⁵ “Religion” in the nineteenth century had a very traditional connotation. It meant a system of belief which included a reference to a ‘higher’ divine power. George Grant, “Religion and the State,” Queens Quarterly, 70 (1963), 183-197 at 184.

¹⁶ John S. Moir, Church and State in Canada. 1625-1867 (Toronto: McLelland and Stewart, 1967), xiii.

attended. Juvenile delinquency was on the rise. Families restructured as more women entered the paid workforce. The Great Depression also affected the churches considerably, impoverishing them just as it did its parishioners, removing from church budgets local outreach projects as well as the foreign missions that enhanced their work and their reputations.¹⁷ To add to their grief, the churches had internal issues that were difficult to overcome. The United Church suffered from a lack of internal unity; the Presbyterians from the wounds of Church Union; the Baptists from the disarray caused by disputes with the Catholics; the Anglicans from reduced subsidies and the Catholics from the rising costs of Separate Schools.¹⁸ In the result, many Ontarians simply drifted away from all but minimal contact with churches. It was said that, like Americans, “Canadians seemed determined to kick their institutions to pieces...to cast off the Puritanism in which they and their forebears had been steeped.”¹⁹

The immediate signs of a malaise in church influence were reflected in the shrinking of congregations, the dinginess of church buildings, declining enrolment in Sunday Schools and, generally, a reduced interest in all things religious. The preoccupation of churches with their own economic problems also diverted attention from theological reflection resulting in no appreciable

¹⁷ John Webster Grant, The Church in the Canadian Era (Toronto: McGraw-Hill Ryerson Limited, 1972), 136-138.

¹⁸ Some of this disarray was caused by Protestant religious leaders such as T. T. Shields. From 1910 to 1955, Pastor of the Jarvis Street Baptist Church in Toronto, the largest Baptist Church in Canada and one of the largest churches of any denomination in Canada, Shields was known to be a “colourful controversialist.” Shields’ major assaults were on the Roman Catholics whom he blamed for the Drew Regulation. Shields’ reaction to Drew’s announcement of compulsory religious education in the public schools was that the government had “sold out to the Roman Catholic Church.” Not to suggest that the situation would improve with another political party in office, Shields declared further that “Every political party in Canada holds office by the grace of the Roman Catholic Church.” Grant, The Church in the Canadian Era, 136. Also Toronto Telegram, February 25, 1944. Shields believed so strongly in the separation of church and state that he had his church voluntarily pay realty taxes to the City of Toronto even though religious institutions normally are exempt from this obligation. C. Alyn Russell, “Thomas Todhunter Shields, Canadian Fundamentalist,” Ontario History, 70, No. 4 (December, 1978), 263-280. See also Gerald Anglin, “The Battling Baptist,” Maclean’s Magazine, 62, (June 15, 1949), 15ff.

congregations, the dinginess of church buildings, declining enrolment in Sunday Schools and, generally, a reduced interest in all things religious. The preoccupation of churches with their own economic problems also diverted attention from theological reflection resulting in no appreciable spiritual movements coming to the fore in the 1930s.²⁰ As church attendance fell, some clergy portrayed the rise of Hitler and Nazism as the “devil and his work.” At the same time, Protestants became alarmed with the successful inroads that Catholic Separate Schools were making into the teaching of “Christian” values. In return, Catholics were demanding a more equitable sharing of education tax dollars.²¹ The Protestant churches were feeling besieged.

Hard pressed to keep pace with change, by World War II Protestant churches looked for ways to shore up their defences while ensuring that their message reached Ontarians who were finding alternatives to church attendance. Just as the Allies stepped up their military efforts in the war against Hitler and Nazi Germany, many Canadian Christian organisations pronounced the necessity for a spiritual battle plan to ensure the moral vigour of the common cause. At a November, 1941 conference, for example, Canadian Christian leadership proclaimed the need to organise Canadian youth for “good” to counter Hitler’s organisation of youth for “evil.”²² What better place to reach youth with their message, they argued, than the public schools?²³ Faced with the reduction of religious education to after-school status, frustrated commentators decried

¹⁹ Grant, The Church in the Canadian Era, 131, citing Lower in Brown, Canada, 481.

²⁰ Grant, The Church in the Canadian Era, 148-160.

²¹ Grant, The Church in the Canadian Era, 136.

²² F. D. L. Smith, Saturday Night Magazine, (November 8, 1941), 14ff.

²³ The public schools had long been looked upon as a proving ground for “Canadianisation and assimilation into the Anglo-Saxon monocultural system.” In her 1926 publication, Our Canadian Mosaic, published by the Young Woman’s Christian Association, Kate A Taylor pronounced the public school “the greatest force in moulding the new Canadian.” Clifford, “His Dominion: A Vision in Crisis,” 320.

Provincial education regulations which restricted denominationally based classroom activities, in the early years of World War II some communities in Ontario, Fort William and Chatham and much of Grey County among them, managed to initiate religious instruction into public school curricula *during* the school day. These breaches of the regulations were portrayed as necessary responses to immoral times. “If good can come out of evil [the war], this development [religious instruction in the public schools], will prove one of the most far reaching by-products of the war as far as Canada is concerned.” Defenders of these incursions by the churches into the public school program suggested that a “secular education without a Christian education was a liability rather than an asset.”²⁴ Counter arguments were offered. Some resented the “encroachment into learning time.”²⁵ Others were concerned about the “further dissension and disruption of our educational system [from religious education].”²⁶ And there were those who saw religious instruction simply as archaic and hoped it would “die a peaceful death.”²⁷

Beyond narrowly permitted limitations, those who opposed extending religious instruction in the public schools faced a problem. Their position, however reasonable, was based in rational pedagogy or common sense, stripped of emotion. Their adversaries, advocates for classroom religious education, attributed all kinds of societal ills to the lack of religion in the public schools and built a passionate case on that account. There was no arguing with them. Until religious education was enconced in public school curricula, their case could not be refuted. In the final analysis, even neutral observers noted that, “with the world at war, the development of

²⁴ Reverend Hugh G. Crozier, Saturday Night Magazine, December 13, 1941.

²⁵ Saturday Night Magazine, November 22, 1941.

²⁶ Saturday Night Magazine, January 3, 1942.

²⁷ Saturday Night Magazine, February 14, 1942.

social attitudes and Christian conduct in children becomes an increasingly difficult and challenging problem for religious educators.”²⁸

The time was definitely ripe for some change to Ontario’s public school religious education program. Previously, the predominant Protestant influence both within the public school system and in the body politic generally had enabled the schools to avow Christian principles without the need to express them programatically. For church purposes, it had sufficed to have Protestant clergy enter the schools after school hours to give religious instruction to those who wanted it. But if forced to admit to it, many ardent Protestants would agree that state-supported Catholic education, with its doctrinaire infusion into all aspects of the curricula, was the model that Protestants needed. A change in the curriculum to a more proactive approach was needed and as far as some were concerned, the Drew Regulation was but a good first step. With both empty pews and coffers, churches were desperate to find a cheap and effective way to reach Ontario’s children with the message of Christ and, equally important, implant the value of regular church attendance. To accomplish this, the churches put aside sectarian differences to make common cause. Their goal was to force a shift from the principle of passive Christian orientation in Ontario schools to one of active Christian engagement.²⁹ The churches were lobbying. Circumstances, locally and internationally dictated a Provincial response. All that was missing was the political will.

George Drew provided that will. Drew became leader of the Conservative opposition party in 1938. A devout Anglican, Drew’s service overseas during World War I had intensified his strong Anglophile leanings. As events would unfold, Drew’s Conservative Party’s narrow

²⁸ Globe and Mail, March 11, 1944.

²⁹ Jack Arthur Mobley, “Protestant Support of Religious Instruction in Ontario Public Schools,” unpublished Doctoral dissertation, University of Michigan, 1962, 1-10.

election victory over Mitchell Hepburn's Liberal Party in August, 1943, and Drew's subsequent formation of a minority government, presaged a significant change to religious education in Ontario's public schools. Drew looked on the timing of his election victory as fortuitous. He could make a difference. While the result of World War II was still in doubt, Great Britain was considering the introduction of compulsory religious education. To Drew the British model of democratic society and Christian society were closely linked. Drew advocated a similar program for Ontario.

Although George Drew personally felt very strongly about the importance of religious education, the Conservative Party made little mention of it in their election campaign in the fall of 1943. In part, this could be attributed to Drew's political savvy. A few years later, one of his strongest supporters questioned Drew's sincerity when he first introduced religious teaching and subsequently supported the opening of cocktail bars in Ontario. The theory then bandied about by Drew's critics and political opponents was that, by offering Protestant clergy religious instruction in the public schools, Drew had ingratiated himself with church leadership, thereby preparing the way for more open liquor laws.³⁰ Whether or not Drew or his Conservative minority government promoted religious instruction in the schools out of religious conviction or political opportunism, religious education was not an issue that merited much attention from the media, the electorate or most members of the Provincial Legislature. The Speech from the Throne gave only a hint of the change to come, stating simply that "Increased emphasis will be

³⁰ PAO, Drew Papers, M9046, Volume 95, File 901. Mills to Drew, May 12, 1946. Drew to Mills, May 17, 1946. J. D. Mills, Chairman of the East York Board of Education, was a long-time supporter of Drew who represented the riding of East York. Some years later, temperance and religious education were still issues when two private members bills, one advocating strict enforcement of the Drew Resolution and the other seeking permission for beer sales at corner grocery stores were presented to the Ontario legislature on the same day, June 24, 1982. The former resolution was successful while the latter was defeated. Toronto Star, June 25, 1982.

placed on the development of character. Religious education will be offered in public and secondary schools.”³¹ Yet, without much fanfare, once endorsed by the Premier, the Conservative government devoted a considerable amount of attention to the issue of religious education. Within six months, the existing regulations were revised following less than two hours of debate in the Legislature.³²

Clearly, Drew’s Conservatives also knew that what they were planning was without precedent in North American public schools.³³ But, if this was “a very radical proposal, bordering on State control,” Drew argued that his revisions were very much in line with English traditions and modelled on what was, by then, English practice.³⁴ To Drew, Canada and, in particular, Ontario was just another part of England, somewhat distant but English nevertheless.³⁵ The lack of an established church, as in the case of the Church of England in Great Britain, did not present a problem. Protestantism spoke to all Ontarians:

There has at no time been any suggestion that we had thought of introducing doctrinal teaching in the schools...merely the idea of teaching the ethics of Christianity about which, in fact, there is very little dispute.³⁶

Drew interpreted the lack of strong opposition to the Drew Regulation as a window of opportunity.³⁷ Only the Liberal Opposition in the Legislature, led by former Premier Mitchell Hepburn, continued to object:

³¹ Toronto Daily Star, February 26, 1944.

³² The Ontario Gazette, September 16, 1944.

³³ Phillips, The Development of Education in Canada, (1957), 330.

³⁴ Globe and Mail, September 1, 1944 referring to a statement by the Board of Christian Education of London, Ontario.

³⁵ In August 1947, Drew arranged for low-cost flights from England in order to encourage English immigration. Although Drew thought that Canada could support a population of 50,000,000, he was anxious that these numbers be restricted to “the right class of people.” Globe and Mail, January 4, 1973.

this House regrets that the Government has reversed our traditional policy of non-sectarian public schools by introducing a program of religious education which has caused disunity among large sections of our people and has thereby violated the cherished democratic right of each to worship according to his conscience, free from interference by the State.³⁸

As the cause of religious education gathered momentum in this public arena, Premier Drew challenged the Liberal Opposition to vote “want of confidence.”³⁹ His strategy worked. “Tension, which had existed for days, and which charged the chamber and even the galleries with an electric suspense reflected by many short, sharp exchanges, cracked toward the approach of the voting.”⁴⁰ The vote of non-confidence was lost by the Liberals. They failed to convince the C.C.F., who also held seats in the legislature, to come out against compulsory religious education. As a result, many of the C.C.F. members of the legislature, free to vote their conscience, chose to retain the Conservative government rather than vote against religious education in the public schools. Shortly thereafter, the C.C.F. precipitated an election with their own successful non-confidence motion critical of the minority Conservative government’s administration, without making specific reference to the issue of religious education.⁴¹ When, in

³⁶ PAO, Drew Papers, M9045, Volume 176, File 7. G. Drew to Reverend Gordon Domm, March 9, 1944.

³⁷ The response was “warm,” polls aside. Before the Drew Regulation was instituted in Ontario’s classrooms, only 49 percent of those polled were actually in favour of religious instruction in public schools, while 44 percent opposed and 7 percent were undecided. Canadian Institute of Public Opinion, News Service Release, June 30, 1944.

³⁸ Maclean, Religion in Ontario Schools, 32, referring to Hepburn’s statement in the Ontario Legislature on March 13, 1945.

³⁹ Globe and Mail, March 7, 1945.

⁴⁰ Globe and Mail, March 23, 1945.

⁴¹ Globe and Mail, January 4, 1973.

the election that followed, Drew's Conservative Party was returned to office by a landslide, it felt it had a mandate for all of its policies, including that on religious education.⁴²

From the outset, Drew and his Conservative government worked within very tight time-lines to institute the religious education programs prescribed by the Drew Regulation.⁴³ By the time that the Drew Regulation was published in August of 1944, Teachers' Guides to Religious Education were already prepared, albeit, as the title page to the first edition noted, hurriedly.

This Teachers' Guide to Religious Education is authorised by the Minister of Education for use in Grade I of the Ontario Public Schools. The book in its present form is to be regarded as provisional and experimental. The Minister of Education desires that comments or criticisms of the book shall be sent from teachers and others who are making use of the Guide...Comments and reports should reach the Department of Education not later than May 31, 1945, in order that a revised edition of the guide may be prepared for issuance to the schools at the beginning of September, 1945.⁴⁴

The Drew Regulation was an innovation for Ontario schools, but, in some ways, it fit well with public school practices authorised by Ontario's Department of Education for the first half of the twentieth century.⁴⁵ During that time, it was assumed that parents and churches were

⁴² Stamp, The Schools of Ontario, 1876-1976, 179-181. In their brief first term, the Drew Conservatives passed the Teaching Profession Act which legitimised teachers' unions. In return for this pro-teacher legislation, teachers supported the Conservative Party in the 1945 election, even though teachers were somewhat uncomfortable about giving the religious instruction provided for in the Drew Regulation.

⁴³ PAO, Drew Papers, M9046, Volume 176, File 2. J. G. Althouse, to George Drew, October 25, 1944. "Beginning with Grade 1 and proceeding as *rapidly* as necessary, textbooks can be prepared with the valued co-operation of religious bodies, and particularly the Inter-Church Council on Week-Day Religious Education."

⁴⁴ Program for Religious Education in the Public Schools. Teachers' Manual (Toronto: Macmillan and Company, 1944). Issued by Authority of the Minister of Education.

⁴⁵ The Department of Education became the Ministry of Education under the provisions of the Government Restructuring Act, S.O. 1972 c. 1, sections 1 & 2. This act came into force on April 7, 1972. Reference will be made to the Department of Education until April, 1972 and thereafter to the Ministry of Education.

effectively instructing young children about moral and ethical values.⁴⁶ Schools were junior partners in this effort. But there was no glaring need for specific religious instruction in the public school system which already functioned within a context of widespread acceptance of the Christian values. There was nothing to prevent teachers, for example, from using the Bible as a resource. The Drew Regulation built on this by giving the schools an equal role, pulling the classroom into line with family and church. Presented as a complement to accepted family values, not even the radical changes of post-war society and their impact on educational practices could over-power the Regulation or the notion that public schools were a front-line defence of Christian values. For example, post-war pedagogical changes included revised approaches to the teaching of reading to young children. Primary readers were reconfigured to conform with new thinking on child learning patterns. These new readers, however, were seen by some as devoid of ethical messages. By the 1960s, Dick and Jane and their Ontario clones evinced charges from churches that the public schools, once again, were neglecting moral education. This, in turn, set the stage for a new debate on religion and values education in the Province.

In truth, implementing and sustaining support for religious education in the public schools was problematic for the Ontario government and its Department of Education because it generated controversy. In 1945, shortly after the Drew Regulation was instituted, a Royal Commission on Education, (the Hope Commission) undertook a comprehensive investigation of all aspects of education, including religious education. In 1966 a Provincially-appointed Committee, the Mackay Committee, conducted a review of religious education in Ontario public schools. In 1969 the public school system was re-organised into larger units of administration.

⁴⁶ PAO, Ministry of Education Papers, RG2-82-5, Acc. 17998, Box 12. File: Moral and Values Education, 1978. *Morals/Values Development and Education. The Ten-Year Perspective in Ontario~1968-78.* A Paper prepared for the Ministry of Education by the Research and Evaluation Branch.

This meant that centrally-prescribed courses of study for each subject were replaced with curriculum guideline policies which made room for local adaptation. In 1972 the Ministry of Education began to fund studies in moral education at the Ontario Institute for Studies in Education. The results of these studies included program suggestions for moral and religious education in public schools in a non-denominational or even non-religiously based format.⁴⁷ Subsequently, several internal Ministry of Education Committees including the advisory committee on Morals/Values Education of August, 1978, reviewed religious education and related issues. And, finally, a Ministerial Inquiry into Religious Education, (the Watson Committee) was convened in 1989.

How did the Drew Regulation manage to survive, almost intact, despite controversy, constant review, studies, committees and commissions, societal changes and pressure on government for changes? A key to its longevity was the inability of Drew Regulation opponents to mount a successful campaign for its removal. At the forefront of this opposition for the better part of four decades, Ontario's Jewish community bears some responsibility for the longevity of the Drew Regulation. At the same time, it deserves considerable credit for maintaining a fight against overwhelming odds with very little support from the larger civic community. Faced not only with the influence of the Protestant churches and the lack of a political will to change religious education in the public schools, the Jewish community also had to make a case against the Drew Regulation's exemption provision which read:

3(a). No pupil shall be required to take part in any religious exercises or be subject to any instruction in Religious Education to which objection is raised by his parent or guardian.

3(b). In schools without suitable waiting-rooms or other similar accommodation, if the parent or guardian applies to the principal for the exemption of his child or

⁴⁷ Moral Education in the Schools (Toronto: OISE, 1974).

ward from attendance while religious exercises are being held or Religious Education given, such request shall be granted.

3(c). If the parent or guardian objects to his child or ward taking part in religious exercises or being subject to instruction in Religious Education, but requests that he shall remain in the schoolroom during the time devoted to such education, the teacher shall permit him to do so provided he maintains decorous behaviour.⁴⁸

To many, the exemption sections of the Drew Regulation were safeguards for the right of freedom of conscience. Throughout over four decades of criticism of the Drew Regulation, its supporters in the Ontario government as well as in the church reminded the Regulation's detractors that parents, teachers and school boards could secure exemptions provided that they were willing to take appropriate and positive action. Notwithstanding arguments from the Jewish community that exemption was not a real remedy for those who opposed the Regulation, the right to exemption remained a stock answer to any charges of discrimination. Moreover, Premier Drew specifically questioned the weight of the Jewish community's claim that exemption

draws attention to the fact that these [Jewish] children are of a different denomination. I must say that I would not have thought this was the first time it [the fact that these children were Jewish] had been discovered by the other children...⁴⁹

The Ontario Premier's apparent insensitivity to his Province's Jewish citizens was a measure of the lack of regard accorded minorities in the Province generally and the Jewish community specifically. If the Premier harboured any doubts about minority rights, his Chief Director of Education, reminded him where the government's loyalties should lie:

[The Guide Books] are frankly Christian in tone. This is in complete harmony with the tradition in Ontario schools. To adopt a policy of avoiding emphasis on Christianity and to be content with merely broad ethical concepts and vague adulation of religion in general would be to abandon the consistent policy of

⁴⁸ Exemptions were also provided for teachers and boards.

⁴⁹ PAO, Drew Papers, M-9046, Volume 177, File 24. George Drew to W. R. Plewman February 11, 1946, referring to arguments made by the Canadian Jewish Congress.

Ontario education and would be resented by the vast majority of school supporters.”⁵⁰

Ontario's Jewish community challenged compulsory religious education in the public schools notwithstanding the intimidating strength of its defenders. The War, the churches anxiety that they were losing their grip on their parishioners and that parents were no longer up to the task of instilling positive values in young people, an Anglican Anglophile Premier and Ontario's Protestant legacy combined to form a mighty phalanx in defence of the Drew Regulation. Yet the response to the Drew Regulation by Ontario's Jewish community was singularly cogent and foreshadowed a long and relatively consistent if at times solitary struggle for religious minority rights. This enterprise began with the reaction to the 1944 Ontario Speech from the Throne announcing the changes to the teaching of religion in the public schools. Gradually, it took on different forms, ranging from legal briefs, to depositions, to community activism. It included lobbying by Canadian Jewish Congress and other organisations as well as individuals, both Jewish and non-Jewish, planned and spontaneous. In proposing Ontario's Jewish community's campaign against the Drew Regulation as the subject of my study, I have determined that a thorough investigation of the issues and events required a complementary study into the ways in which Jewish community politics were shaped and formed. In turn, the shaping of these politics in themselves throughout the decades of opposition to the Drew Regulation reflect the shifts in Ontario's political landscape. In the final analysis, the campaign would not conclude until there was a change in the law. And while the Jewish community remained at the centre of the anti-

⁵⁰ PAO, Drew Papers, M-9046, Volume 176, File 2. J. G. Althouse to George Drew October 25, 1944.

religious instruction struggle from its inception, at its conclusion, the banner would be carried by others.

CHAPTER ONE

LEADERS OF THE OPPOSITION

The Jews of this generation come from almost every quarter of the earth save Jerusalem, and there are accordingly Jews of many nationalities in Toronto...The total Jewish population [of Toronto in 1897] is in the neighbourhood of 2500¹

By 1944, the Jews of Ontario constituted the only non-Christian minority faith with any significant organisation that foresaw the negative potential of the Drew Regulation and had the capability to mount a response.² 1944 pre-dated much of the multicultural canvas that was to characterise the Province's landscape by the 1960's and thereafter.³ In the 1940's, Jews were a

¹ The Toronto Mail & Empire, September 25, 1897. PAO, 1958, Pamphlet 34. According to an archival note, the *anonymous* writer of the article was identified as W. L. Mackenzie King who was conducting the research as part of his post-graduate studies at the University of Chicago. PAO, Pamphlet 34, 1897.

² The 1941 Census of the population of Ontario contained a classification according to religious denomination listing fifty seven different religious denominations or sects, forty-nine of which considered themselves to be Protestant. The first seven on the list were as follows:

United Church	1,073,425
Roman Catholics	882,369
Anglicans	815,413
Presbyterians	433,708
Baptists	192,915
Lutherans	104,111
Jews	69,217

Of the total Ontario population of 3,787,655, these seven denominations totalled 3,573,158, leaving the balance, some fifty denominations and sects, with less than five per cent of the population. Sikhs, Hindus and Mohammedans (sic) combined, totalled less than 60, Unitarians 1,244, Adventists 2,353, Jehovah's Witnesses 4,486 and Baha'i none at all. 4,951 answered to No religion, 12,591 to Others and 1,625 were designated, or self-declared Pagans. Once one digests the numbers, the singular nature of the Jewish opposition becomes easier to understand.

³ From the end of World War II through the summer of 1948, Canada admitted 180,000 immigrants, the majority of whom were from Continental Europe, marking a significant change from war-time anti-immigration policies. Irving Abella and Harold Troper, None Is Too Many. Canada and The Jews Of Europe, 1933-1948 (Toronto: Lester & Orpen Dennys, 1983), 279. Fifty per cent of these immigrants came to Ontario. As most of these immigrants came from backgrounds devoid of the "English language or British traditions," they were bound to make an impact on the multicultural canvass that was beginning to take shape in Ontario. These immigrants and those that followed for years to come, had to learn what the Canadian traditions were before they could decide whether or not they wanted to embrace them. S. Davidovitch, "Education of New Canadians in Ontario," Canadian Education, 4, (1949), 25-38 at 35.

definite but not an imposing presence in Ontario.⁴ As of the 1941 census, the Jewish population in Ontario stood at 69,217, and as Jewish Day schools were not yet a factor in the education agenda of the Jewish community, almost all Jewish children attended public schools.

In 1944, Jews were still, for the most part, an immigrant community. Most Jewish immigration to Ontario and elsewhere in Canada had arrived from Eastern Europe after the turn of the century until the late 1920s. And whereas Canada destined its immigrants for life on the farm, Jews gravitated to the larger cities, particularly to Montreal and Toronto. In these larger communities, Jewish communal organisations struggled to respond to the glaring social service needs of their immigrant constituency. During the Depression this translated into providing basic necessities such as food, clothing and shelter. Jewish education was supplied by a confusion of late afternoon and Sunday supplementary schools operated at organisational or parental expense. But, by and large, Jews were public school enthusiasts. Recognising the potential security and upward mobility seemingly assured by education, Jewish parents were eager and grateful for the opportunities that universal, compulsory, free public education made available to their children.⁵ Thus, if immigrant Jews were unsure about their station and status in Ontario and smarted from the sting of any anti-Semitism they encountered in Canada, they were sensitive to anything that undermined their relationship to the Province's public school system. It is no surprise, therefore,

⁴ Gerald M. Craig, "The Canadian Setting" in Albert Rose (ed.), A People and Its Faith: Essays on Jews and Reform Judaism in a Changing Canada (Toronto: University of Toronto Press, 1959), 3-13 at 9. As early as 1921, Jews constituted over 5 per cent of Toronto's population, second only to the Anglo-Celts among the city's ethnic groups, "but a very small second."

⁵ Yaacov Glickman, "Jewish Education: Success or Failure," in M. Weinfeld et al. (eds.), The Canadian Jewish Mosaic (Toronto: John Wiley & Sons, 1981), 113. Jews were aware that the public schools posed certain threats to maintaining the faith of their children. But attempts to "assimilate" Jewish public school students, often equated with conversion attempts, were on the whole, unsuccessful. Luigi G. Pennacchio, "The Defence of Identity: Ida Siegel and the Jews of Toronto versus the Assimilation Attempts of the Public School and its Allies, 1900-1920," Canadian Jewish Historical Studies Journal, 9, (1985), 41-60.

that Jews, through their communal organisations, responded negatively when the Drew Regulation was promulgated in the fall of 1944.

JEWISH COMMUNAL ORGANISATIONS: CANADIAN JEWISH CONGRESS AND B'NAI BRITH

Who spoke for Canada's and Ontario's Jews? Although references will be made throughout to Jewish organisations as well as their elected and/or appointed officials, membership in such organisations while open to all Jews, was entirely voluntary. Jewish organisations, especially the umbrella organisation representing a wide swath of the organised Jewish community, the Canadian Jewish Congress (sometime referred to as "Congress"), might claim to speak for all Jews but, in truth, active participation in Congress and its many constituent committees involved a minority of Ontario's Jewish population.⁶ As if to underscore this point, Congress' official declaration on the issue of religious instruction in Ontario's public schools stated that Congress "represents the entire Jewish Population of the Dominion."⁷ Whereas one

⁶ It has been said that Congress fails in its purposes if it is regarded as an organisation or association. It must be regarded as "Canadian Jewry in corporate form..." Canadian Jewish Year Book, 1960 (Toronto: Zionist-Revisionist Organisation of Canada, 1960), 32.

⁷ The declaration dated March 22, 1945 was appended to Congress' submission to the Hope Commission on September 19, 1945. The claim that Congress spoke for all Ontario Jews was both true and untrue. Congress was not comprised of individual members. It was an umbrella group composed of constituent member-organisations--religious and secular and of all political stripes--functioning within the Jewish community. As such, it saw itself and was seen as the Parliament of Canadian Jewry and the political voice of Jewish life in Canada, speaking "in the name of the great majority of Jewish communities in Canada, directly or indirectly represented by delegates." C. M. Hanane, "Canadian Jewish Congress," Canadian Jewish Yearbook (Montreal: Canadian Jewish Year Book, 1940), 121-131 at 122. Louis Rosenberg, a long-time Jewish civil servant, described Congress as unique among voluntary Jewish national representative bodies in the Diaspora in that it was recognised by all elements of the Jewish community and the Canadian government as the representative body that spoke for the Jewish community in Canada. Louis Rosenberg, "Some Aspects of the Historical Development of the Canadian Jewish Community," Canadian Jewish Population Studies #4, 50, (1960), 121-142 at 139. Reprinted publication of the American Jewish Historical Society. Administratively, Congress is a national organisation, with headquarters in Montreal. But, having something of a federated structure, it contains three regional divisions, Eastern (Montreal), Central (Toronto), and Western (Winnipeg). The Central Region deals with issues in Ontario such as education which comes within Provincial jurisdiction.

can argue whether it was or was not the honest desire of Congress to so represent all the Jews of Canada, certainly, most Jews in Canada neither participated in the election or appointment of Congress officials nor in Congress' internal deliberations that resulted in countless official declarations.⁸ Although he sat on and chaired some of the pivotal Jewish communal committees for much of the period under discussion, J. Sydney Midanik, a lawyer and social activist, personally questioned the degree to which he and his colleagues, in general terms, actually spoke for the "Jew on the street." As he put it, "Chaim Ginsburg in Wawa Junction believes that Congress is made up of *gevirim* [privileged individuals] and upper-class intellectuals, who know nothing about his problems and who purport to speak in his name unfairly."⁹ Midanik's Chaim Ginsburg may have had a point. As the deliberations of Congress and its committees would attest, its executive and committee chairs, particularly in the first twenty-five years under consideration, were dominated by lawyers, law professors, holders of public office, rabbis and

⁸ This is not to say that, of its type, Congress was any more or less democratic. Some years later, when attesting to the merit of Congress' status as an intervening party in a legal action, Manuel Prutschi, National Director of Congress' Joint Community Relations Committee, claimed that virtually all organisations, congregations, societies, ideological groupings and other secular and religious bodies having a Jewish heritage, participate in Congress, which he characterised as "the single democratic decision-making organisation for all segments of Canadian Jewry." Osgoode Hall, Court of Appeal of Ontario, File # 364/88; The Corporation of the Canadian Civil Liberties Association et al. v. The Minister of Education et al.

⁹ J. S. Midanik, Interview, September 12, 1996. This view is confirmed by one observer who states that although organisations such as Congress and B'nai Brith served as the collective voice of Canadian Jewry, membership in these organisations was definitely voluntary and one could not assume automatically the support of all Jews. Henry F. Srebnik, "Multiculturalism and the Politics of Ethnicity: Jews and the Charlottetown Accord," in Howard Adelman and John H. Simpson (eds.), Multiculturalism, Jews and Identities in Canada (Jerusalem: Magnes Press, 1996), 95-107.

influential businessmen.¹⁰ Theirs was also largely a male domain.¹¹ Furthermore, whether or not Congress was responsible to a putative electorate, the issues relating to religious education were so fluid, often depending upon time and place, that Congress could not have known the mind-set of the constituency that it claimed to represent. Nevertheless, to the non-Jewish world, Congress was seen as the voice of a unified Jewish community and, if only by default, was also regarded as such by Jewish community members.¹²

At the national level, Congress had an auspicious beginning in March, 1919 with the convening of a Canadian Jewish Parliament. However, it soon fell victim to apathy, the absence of funding and a meaningful national agenda. To many, Congress was seen as a vehicle to ensure the position of Jews overseas. Once World War I ended and the peace treaties were signed, Jews in Canada felt that a single national Jewish voice was not required and so Congress entered a hiatus of inactivity that extended until the 1930s. Then, motivated by the menace of Hitler, the

¹⁰ Lawyers included the aforementioned Midanik, Donald Carr, Fred Catzman and Sydney Harris. Harris' maternal grand parents, the Geldzaelers, having settled in Toronto in the 1870's, qualified Harris as privileged on two counts. Who's Who in Canadian Jewry (Ottawa: Jewish Institute of Higher Research, Central Rabbinic Seminary of Canada, 1964). Law professors included Jacob Finkelman, Harry Arthurs and Bora Laskin. Public office-holders included Allan Grossman, Provincial Cabinet Minister, Philip Givens, Controller, City of Toronto (subsequently Mayor), and Saul Cowan, North York Board of Education Trustee. Rabbis included Maurice Eisendrath, Abraham L. Feinberg, Jordan Pearlson and Gunther Plaut. Businessmen included Edward Gelber, J. I. Oelbaum and Meyer Gasner.

¹¹ Rose Wolfe changed this with her active role in many aspects of Congress including chairing the Joint Community Relations Committee for several years commencing in 1982.

¹² For example, C. M. Hanane, Canadian Jewish Year Book (1940), 121, felt that Canadian Jewry recognised "the leadership and moral authority of the Congress."

public debate in Canada on the boycott of German goods and the spread of Nazi propoganda in Canada, Congress was revived in 1933.¹³

B'nai Brith, Canada's other Jewish organisation with a national profile, was an international Jewish fraternal organisation founded in the United States in October, 1843.¹⁴ Until then, individual synagogues and mutual benefit societies were the prime community organisations to which Jews in the United States could turn for support. However, they were unable to respond to the myriad problems faced by the American Jewish community including how to deal with immigrant integration, philanthropy, Americanisation, community unity and how to organise action on behalf of Jewish victims of persecution. B'nai Brith filled this felt need for a large and inclusive organisation to serve these secular requirements. In 1913 it formed its Anti-Defamation League to respond to issues of discrimination against Jews and non-Jews alike.¹⁵ Subsequently, B'nai Brith developed several similar committees in a number of Canadian centres. Unlike Congress, which derived its membership from constituent organisations, B'nai

¹³ Ben Kayfetz, Interview, August 13, 1996. Also, see Stephen A. Speisman, The Jews of Toronto. A History to 1937 (Toronto: McClelland and Stewart, 1979), 270, 331; Gerald Tulchinsky, Taking Root. The Origins of the Canadian Jewish Community (Toronto: Lester Publishing Ltd., 1992), 269-270, 274-275; Judith Nefsky, "The Prehistory of the Founding of the Canadian Jewish Congress," Canadian Jewish Historical Studies, 8, (1984), 73-84; Abella and Troper, None Is Too Many. Canada and the Jews of Europe, 1933-1948, 10-16.

¹⁴ History of B'nai Brith in Eastern Canada (Toronto: B'nai Brith, 1964). Initially called "Bundes-Brueder," League of Brothers, over time the name was changed to B'nai Brith to reflect the Mosaic covenant.

¹⁵ One of the first letters directed to the JCRC was from Max Sherman of Brantford, Ontario, writing on behalf of five Jewish students in a Brantford public school whose teacher used a prescribed text called "Sweetest Stories Ever Told." Sherman wrote that one of these "sweet" stories which described the "Jews [as] eager to have Jesus killed," promoted beatings of Jewish students by their class-mates. His letter was directed to the ANTI-DEFLAMATION Department of Canadian Jewish Congress. OJA, JCRC Papers, MG8/S, File 3A, Religious Education in the Public Schools Sub-Committee, 1954. Max Sherman to Congress, April 2, 1945.

Brith was individual membership-based. To this day B'nai Brith describes itself as the largest and oldest social, philanthropic, educational and fraternal Jewish organisation in Canada.¹⁶

During the 1930s Jews organised to battle anti-Semitism at home and abroad. In 1934, instead of setting up a Canadian version of the Anti-Defamation League, B'nai Brith teamed up with a revitalised Congress to form a single joint committee called the National Joint Public Relations Committee (NJPRC).¹⁷ This joint model was decided upon because the Jewish population of Canada was small and with less resources relative to Jews in the United States.¹⁸ Duplication of effort between Congress and B'nai Brith was therefore avoided, although Congress took the lead role. Congress staffed the Committee and all public statements were

¹⁶ B'nai Brith submission to the Watson Commission on Religious Education in Ontario, April 19, 1989. OJA, JCRC Papers, MG8/S, Sub-Committee on Religious Education in the Public Schools, 1989. According to Harold S. Freeman, "History of Montreal B'nai Brith," Canadian Jewish Year Book, 1939-1940, 275, the first Canadian lodge of B'nai Brith in Canada was established in Toronto in June 1875.

¹⁷ Pamphlet Commemorating the Opening of Samuel Bronfman House, Montreal, May 24, 1970 (Montreal: Canadian Jewish Congress, 1970). As noted earlier, Congress operated on both a national as well as a regional level. Similarly, major committees such as the JPRC had national as well as regional organisations. Often, individuals such as Sydney Harris, who were active in the Central Region's JPRC, also served nationally. But the national body deferred on regional matters to the regions. Sydney M. Harris, Interview, April 30, 1998. Unless designated otherwise, references to the JPRC and later to the JCRC refer to the Central Region.

¹⁸ The fact that Canada's Jewish community was both younger and considerably smaller than its counterpart in the United States and operated within a milieu that was distinct from that of the United States may have proved to be a boon to its communal organisations. For example, Louis Rosenberg argued that because there were two official languages and two major ethnic groups in Canada engendered a unique form of Canadian patriotism which did not require surrendering individual cultural, religious and language traditions. Furthermore, because there were very few old and well established Jewish organisations in Canada, save for the Zionist Organization of Canada (ZOC), Congress easily assumed the role of national representative of Canadian Jewry when it was re-established in the mid 1930s. Rosenberg, "Some Aspects of the Historical Development of the Canadian Jewish Community," (1960), 139. As for the ZOC, to many, its primary purpose was fund-raising. Tulchinsky, Taking Root. The Origins of the Canadian Jewish Community, 200-201.

issued by Congress.¹⁹ In its formative years an attempt was made to alternate leadership roles. The first Chairman, Rabbi Maurice Eisendrath of Toronto's Holy Blossom Congregation was Congress' nominee whereas the second Chairman, Toronto businessman J. I. Oelbaum came from the B'nai Brith ranks.²⁰ Some argued that the Committee's name, particularly the term "public relations," smacked of boosterism. Although the Committee was really about Jewish-Gentile relations, the "public relations [part of the name] sounded like we were paid to tell lies for our country" Nevertheless, the Committee's name remained intact for some years until it was eventually changed to the Joint Community Relations Committee (JCRC).²¹ For the purposes of this study, the Committee will be referred to as the JCRC throughout.

In its first decade or so of operations, the JCRC played a role in the enactment of Provincial legislation including the Anti-Discrimination Act of 1944 and the Fair Employment Practices Act of 1951 and generally concerned itself with the enhancing of human rights for the betterment of the wider community.²² The JCRC was especially concerned with damage done to the Jewish community by anti-Semitism in all its forms. It was equally disturbed by any general lessening of religious freedom which might hamper Jewish participation in the larger civil

¹⁹ The marriage between Congress and B'nai Brith within the JCRC lasted for almost fifty years until disputes about funding the operations of the joint committee (Congress claimed that B'nai Brith was not contributing its fair share) and a desire by B'nai Brith to develop some profile (it had established the League for Human Rights of B'nai Brith in the 1970's) caused them to go their separate ways. OJA, JCRC Papers, MG8/S, JCRC Minutes, 1986.

²⁰ Oftentimes, one's affiliation with a particular branch of the organised Jewish community was not a lasting one. Sydney Harris, a long-time Jewish community activist and a leader of the opposition to the Drew Regulation came to his JCRC involvement through B'nai Brith. However, over time, Harris found B'nai Brith overly beholden to its American associates, unwilling to deal with distinctly Canadian issues such as its more recent immigrant history and its significantly smaller Jewish population, and shifted his activities and affiliation to Congress. Sydney M. Harris, Interview, April 30, 1998.

²¹ The change of name took place in 1961. In 1987 the name was further changed to the Jewish Community Relations Committee when B'nai Brith terminated its co-sponsorship of the JCRC.

²² Ben Kayfetz, Interview, August 13th, 1996.

society or, indirectly, that of other religious or ethnic communities. It also considered and dealt with problems such as how closely the Jewish community might work with other ethnic or religious groups, how best to protect the rights of observant Jews in a commercial world not geared to their religious needs and how to deal most effectively with neo-Nazis.²³ Although occasionally regarded “like a fireman waiting for an alarm,” through an accumulation of case work and briefs, in time the JCRC developed the persona of the law and social action agency for the Jewish community.²⁴

RABBI FEINBERG AND THE JCRC

In 1944 Rabbi Abraham L. Feinberg became Chairman of the JCRC, succeeding J. I. Oelbaum. Born in Ohio in 1901 and educated at the Universities of Cincinnati, Chicago and Columbia, Rabbi Feinberg received his Rabbinical ordination from Hebrew Union College in Cincinnati in 1923. Thereafter, he served several American congregations. In 1930, he resigned from the rabbinate after becoming disillusioned with being more a “promoter and social director of a complex social organisation than a pastor of human souls”²⁵ Even though his next career in radio and theatre proved successful and lucrative, he was drawn back to the rabbinate in 1935 as the shadow of Hitler and Nazi Germany presaged a dim future for European Jewry. In 1943 he

²³ OJA, JCRC Papers, MG8/S, 1981. Ben Kayfetz memo to file, n. d.

²⁴ OJA, Catzman Papers, MG6/E3, File 5445, 1950. Notes to file, n. d.

²⁵ Biographical material and sketches on Rabbi Abraham L. Feinberg in manuscript collections of the Public Archives, Ottawa, Canada, MG 31, F9 and the American Jewish Archives, Cincinnati, Ohio, Number 588.

assumed the pulpit at Toronto's pre-eminent Reform congregation, Holy Blossom Temple, where he remained until his retirement from the active rabbinate in 1961.²⁶

Rabbi Feinberg personified liberal and progressive views through all of his rabbinical career, from his condemnation of American isolationism of the 1930s and 1940s to his concerns about nuclear disarmament in the 1950s and 60s. After leaving the pulpit he was outspoken in his criticism of the Viet Nam War. This resulted in threats against his life and the publication of a pamphlet which dubbed Feinberg "the Red Rabbi."²⁷

Rabbi Feinberg brought his somewhat militant, at least for Canada, approach to social issues to Canada's Jewish community where, aside from his pulpit at Holy Blossom Temple, his passion for social causes found voice in the JCRC. However, his first response to the proposed changes to religious education came, appropriately enough, from his pulpit. In a sermon delivered at Holy Blossom on March 12, 1944, Feinberg disputed Drew's argument that imposition of religious instruction in the public schools was a solution to juvenile delinquency, characterising this as a "tempting, convenient and over-simplified method of meeting a complex and deep-rooted social evil." Feinberg warned that the introduction of the Drew Regulation

²⁶ Holy Blossom, the oldest synagogue in Ontario, was formed in September of 1856. The congregation's annals disclose many examples of strong statements by congregation rabbis on the subject of religion in public schools. For example, in 1926 in response to the argument by churches that the state needed the force of religion to foster responsible citizenship in the schools, Rabbi Ferdinand Isserman countered that the "public welfare required schools to be secular." Like Feinberg, the American-trained Isserman was sensitive to the separation of church and state. This countered any arguments promoting increased church involvement in the schools. See Rose (ed.), A People and Its Faith, 69. On the other hand, by 1941 Rabbi Maurice Eisendrath of Holy Blossom counselled the Jewish community to consider compromising its strict separationist attitude toward religious education. Eisendrath compared the desire of the Christian majority to combat "godlessness" by having religion taught in the schools to state-mandated inoculations against typhoid over the objections of anti-vaccinationist citizens. In his autobiography, some twenty years later, Rabbi Eisendrath admitted that this concept of majority rule had had "deleterious effects in American life." Maurice Eisendrath, Can Faith Survive? (New York: McGraw-Hill Book Company, 1964), 96.

would poison the otherwise friendly atmosphere existing between religious groups and urged consideration of “the potentialities for antagonism which attend such a proposal as Premier Drew has cryptically placed before the Province and weigh them against the positive values it calculates to contribute to the common welfare.” Feinberg argued that organised religion should improve its own house, particularly in the field of Sunday Schools, and should not be invading the public schools or requiring the state to do the work of the church. He rejected this as “a lamentable confession of the failure of Sunday Schools to establish an efficient and joy-providing program,” citing the successes of Holy Blossom Religious School as a more appropriate approach to religious education. He also inveighed against the myth of “universal religion,” arguing that such a religion cannot exist, because the concept of an abstract religion is an unlikely commodity in the face of the concrete religious beliefs that many people hold. But whether concrete or abstract, he asserted that religion did not belong in the public school which was supposed to endorse no one particular confessional approach.²⁸ Furthermore, he warned his congregants that since the existing regulations already permitted clergy to instruct students of their own particular faith before or after class, the proposed changes could only bring religious instruction into the regular classroom routine, which, “unless it contained protective and disinfecting features which would be extremely cumbersome, unwieldy and expensive, would

²⁷ Published and distributed by David Stanley, who, according to Congress research had a reputation as a purveyor of anti-Semitic and anti-negro(sic) material. OJA, JCRC Papers, MG8/S, File 32A, JCRC Legal Committee Minutes, 1964. The Legal Committee determined not to commence an action against Stanley.

²⁸ The issue of “universal religion” arose not only in response to the Drew Regulation but also in other jurisdictions. In addressing the issue of “The New Religion-The Public School Religion,” Leo Pfeffer, Director of the American Jewish Committee’s Law and Social Action Committee, voiced concern for the amalgam of Protestantism, Catholicism and Judaism that was being passed off in American public schools as a replacement for these traditional faiths. OJA, JCRC Papers, MG8/S, File 9A. Religious Education in the Public Schools, Sub-Committee, 1959. Report of an Address by Leo Pfeffer at a conference in Washington, D. C., November, 1959. Whereas Pfeffer was using the term to describe the neutralising of religion in American public schools, Rabbi Feinberg saw it as an example of Protestantism appropriating for itself the right to claim religious authority over Ontario public school students.

have to be opposed without compromise.”²⁹ The next day, Rabbi Feinberg’s remarks were extensively reported in the Globe and Mail.³⁰

After this initial foray, Rabbi Feinberg continued to speak out forcefully and eloquently. Yet, he had a realistic sense of what could be accomplished. His public militancy was tempered by a private conviction that, in the long run, right would triumph: “We can do nothing to alter Drew’s project at present. I am convinced however that his plan will be vulnerable after its evils become manifest in operation.”³¹

Notwithstanding this optimistic point of view, Feinberg sought out allies who would support him. He helped convene a meeting of community rabbis to discuss the proposed changes in religious education. Other than the fact that the meeting was called and held, no record is available as to the discussion. Yet the burgeoning of Jewish community activism and the cooperation of community rabbis even for an informational meeting and a bit of brainstorming speaks to Feinberg’s concern as to where this issue might lead.³² Later Feinberg would be condemned for “shooting from the hip” by some of his rabbinical colleagues.³³ But, in these early stages, Feinberg seemed content to plan rather than act, suggesting in his invitation to the

²⁹ Excerpted in Rabbi Abraham L. Feinberg, “Secular Teaching of Religion in the Public Schools,” The Public School Supporter, (1944), 29-31.

³⁰ Globe and Mail, March 13, 1944. It is likely that because of Feinberg’s experience as a social activist and his American background he contrived to have the Globe and Mail present that Friday evening to cover his sermon.

³¹ OJA, JCRC Papers, MG8/S, Reel 1, Files 30 & 31. Abraham L. Feinberg to Ben Lappin, August 6, 1944.

³² The meeting was held at the Jewish Community Services Building at 150 Beverley Street in Toronto on May 7, 1944. OJA, JCRC Papers, MG8/S, Reel 1.

³³ See Conclusion below, 324-334.

rabbis that “we must formulate a plan based not on the expediency of the moment but on long term principle and perspective.”³⁴

Principle and perspective were admirable, but Jewish parents needed some guidance in dealing with everyday issues with regard to religious instruction in the classroom. Congress responded by advising parents that the Drew Regulation provided for the right of parents to seek exemptions from religious instruction on behalf of their children. Unfortunately, the Regulation offered no details, including, for instance, how one applied for an exemption. To facilitate potential exemption requests, Congress provided sample notice forms of requests for exemption.³⁵ Admittedly, this was making the best of a bad deal. Rather than encourage individual exemptions, Congress would have preferred to be rid of the Regulation in its entirety. But, this would take political clout. As a step to accomplish this end, the Feinberg-led JCRC and Congress sought to bring influential Jewish business figures on side.³⁶ A meeting of the “cream” of Toronto Jewry’s business community was convened on March 23, 1945 to discuss religious education in the public schools and what plans Congress was developing to oppose it.³⁷

And what exactly were these plans? Although somewhat thin on specifics, the JCRC proposed lobbying government, the media, “liberal” allies, and other faith groups with a view

³⁴ OJA, JCRC Papers, MG8/S, Reel 1. Abraham L. Feinberg to Ben Lappin, August 6, 1944.

³⁵ OJA, JCRC Papers, MG8/S, Reel 1. Form Letter, Oct. 23, 1944.

³⁶ Abraham L. Feinberg, Storm The Gates of Jericho (Toronto: McClelland and Stewart, 1964), 298. Feinberg claimed that “the more pacific element” in Jewish communal leadership including “elders who had no children in school” were unwilling to support his “American brand of militancy.”

³⁷ OJA, JCRC Papers, MG8/S, Reel 1. Those invited included Samuel Zacks, Abe Posluns, Ben Sadowski, Gurston Allen, Nat Taylor, Dave Hildebrand, Sam and Bert Godfrey, Henry Rosenberg, Sam Granatstein, Haske!! Masters, Sam Hurwich, Edward Gelber and J. I. Oelbaum. Of this group, only Samuel Zacks, a successful stockbroker, was listed in the Who’s Who, 1948, but others in the group, such as Taylor and Masters in the motion picture industry, Sadowski, in automobile industry, Posluns in the clothing business, Gelber in textiles and many others had or were on the verge of forging most successful business and/or professional careers. Who’s Who in Canada, 1948. (Toronto: Trans-Canada Press, 1948).

toward change in or the withdrawal of the Regulation. This “playing” by the political rules of the game may seem straight forward by today’s standards. But, in 1944 the Jewish community was, at best, marginal to the political process and distant from the centre of Provincial political power. For the Jewish community to talk about a Provincial political lobbying campaign bespoke a major, innovative shift in its self-perception. What may have contributed to this leap was the fact that community’s leading spokesman, Rabbi Feinberg, was neither an East European immigrant nor a Canadian. He was a product of an American rabbinical school and an American political system that prided itself on the strict separation of church and state, even though this was not necessarily universally reflective of the state of the American public school system.³⁸ Thus, at the same time that the organised Jewish community was attempting to respond to a situation that it saw gravely threatening, it had in Feinberg an advocate who was less constrained by the heavy baggage of immigrant inferiority. He asserted his right to be heard. But if Feinberg was ready to play the political game, he had more to deal with than an unresponsive government. He also had to contend with a deeply entrenched immigrant Jewish community’s fear of offending Provincial power brokers by pushing too hard. Feinberg, however, refused to be so intimidated, not by government and not by the go-slow Jewish leadership.³⁹ Feinberg’s combative, confrontational side was certainly more aggressive image than Jewish leaders were accustomed to projecting. This was demonstrated in his caustic response to the Department of Education’s request for his input into the curriculum planning of proposed changes to the religious education program. Feinberg replied that the new plan should not be called “Religious Instruction” but rather

³⁸ In his previous post in Denver, Colorado, Rabbi Feinberg led opposition to an attempt to legislate Christian teaching into the public school curriculum. In that case, Feinberg was warned by a local Catholic clergyman that Jewish efforts to minimise Christian religious influence in public schools would provoke Catholics to retaliate against the Jews. Feinberg, Storm the Gates of Jericho, 292-314.

³⁹ See Feinberg, Storm the Gates of Jericho, 292-314, for an elaboration of Feinberg’s perspective.

“Christian Instruction,” because of its exclusion of Jewish content. Rhetorically, he asked why he, a rabbi, was being requested to assist in the planning of a program of Christian study. Whether this was cynicism or frustration on Feinberg’s part, Dr. J. G. Althouse, Provincial Director of Education, took the Rabbi’s words at face value. Since the Rabbi was not willing to participate, Althouse encouraged the Minister to pay no heed to the Rabbi and to proceed without him. According to Althouse, “It’s my view that you’ve already considered Rabbi Feinberg’s point of view and rejected it in favour of the theory that this government is committed to the support of Christianity.”⁴⁰

In a strong and well-researched sermon delivered on February 18, 1945, Rabbi Feinberg again attacked the Drew Regulation, lamenting that his prophecies, as reported in the Globe and Mail the previous March, were turning out to be true. In particular, Feinberg cited the reservations of several Christian religious bodies respecting government interference with religion. But, more importantly, Feinberg, in his own somewhat flowery rhetoric, detailed concerns that would become the basis of the Jewish community campaign against the Regulation. He sympathised with Christian clergymen whose sincere concern for the religious welfare of “the coming generation” had compelled them to enter into an arrangement with the government which relieved the churches of part of their traditional educational role. But he predicted that this was the “counsel of defeatism.” As he saw it, any alliance between a strong political unit and a church in disarray would inevitably lead to the absorption of the weaker by the stronger. Eventually, he felt, the state would be able to teach anything it wanted under the guise of religion, even going as far as suggesting that materialistic science or communism could

⁴⁰PAO, Department of Education Papers, RG2-43, Box 249, File 1, 1944. A. L. Feinberg to Department of Education, August 4, 1944. Althouse memo August 9, 1944.

be presented as a form of state sponsored religion. Again he urged the churches to do a better job in their Sunday Schools rather than permitting the state to interfere with religion.

Feinberg also addressed concerns about the role of the classroom teachers in the delivery of religious instruction. He claimed that they were ill-equipped to

venture into the highly-delicate and explosive realm of religion. That subject involves contact with ingrained patterns, sensitised emotions, and family and tribal sanctities and taboos of ancient vintage. Its frame of reference is not the tangible reality of science, but the unseen of mystic communion and faith.

He suspected that teachers, irrespective of formal guidelines, would draw from their own experience and beliefs in providing religious instruction. This could be a licence to proselytise and certainly meant that there would be few checks on what transpired in the classroom in the name of religious education. The prospective disparity in the substance and the quality of instruction as well as the possibilities for the provision of platforms for those with heretofore latent missionary zeal was a grave concern.

As for textbooks, Feinberg indicated that he had first-hand knowledge about their content and proposed use. During the summer prior to the actual imposition of the legislation, the government committee formed for the purpose of proceeding with this aspect of implementation of the Drew Regulation had sought his counsel with respect to the formulation of the textbooks. Although he refused to become engaged in this process, he did read the materials. Thus, he was able to point out that the Teacher's Manual clearly stated that classroom scriptural interpretations at one and the same time were to be both non-sectarian as well as confined to those "expressions of the Christian faith upon which all Christian denominations are in substantial agreement." Feinberg argued that these goals were at best contradictory. Moreover, with respect to substantive aspects of the actual course of study, Feinberg's review of further volumes of the Manual determined that they highlighted Jewish participation in the crucifixion, distinguished

between Jesus as loving and tender and the Jews as bitter and harsh, and left a very clear and unsavoury depiction of the historic, biblical Jewish people.

Feinberg had no argument with those who claimed that Canada was a Christian country, so long as a Christian country meant guaranteed equality and required all Canadians to protect and care for their fellow citizens. But as far as he was concerned, Canada was not at all a Christian country if it valued privileges to the exclusion of those who were not Christians. Feinberg's concern was that the acceptance of a Christian country-privilege equation would only force minority children out of public schools and into parochial schools, a pattern already followed by a large segment of the Catholic population. To Feinberg, any parochial schools, including Jewish parochial schools were anathema, an example of "the white flag of defeatism, as resistance to the dream of a united brotherly Canada, where all groups can mingle for mutual blessing."⁴¹ Feinberg mused that the freedom of religion offered by the Department of Education could well include the freedom to study one's own religion as well as the freedom not to pay for someone else's religion. Certainly, "one need not pay to have one's religion defamed," which is what Feinberg determined was the effect of the Drew Regulation on Ontario's Jews.

Addressing the non-compulsory aspect of the Drew Regulation, namely the right of exemption, he pointed out that the child's right to absent himself totally ignores "the elementary fact of psychology that a sense of security, of belonging to a group, is no less essential to a child's health than nutritious food." He questioned the impression left on class-mates of Jewish children who were excused from religion classes and were seen to be irreligious. Furthermore, he

⁴¹ Rabbi Feinberg's opposition to Jewish Day Schools was more or less the official position of Reform Judaism. This position changed after the 1967 Six-Day War in the Middle East, when support for Jewish Day Schools as well as other Jewish communal services received a boost from the heightened sense of Jewish ethno-religious consciousness inspired by that brief conflict. Thereafter Jews of all stripes endorsed Jewish Day School education for their children notwithstanding the charges of dual loyalty. Al Vorspan, "Will Peace Transform American Jewry," Reform Judaism 22, No. 2 (Winter, 1993), 8-14.

questioned the impression left on Jewish children whose parents opted for the lesser of two evils by not excluding their children from class thereby exposing these children to Christian doctrine.

Feinberg predicted that the Drew Regulation could very well act as an instrument for divisiveness by accentuating the differences between groups. Quoting a statement from “a prominent educator” as to the dearth of complaints from Jewish parents concerning the Drew Regulation, Feinberg justified this as a “symptom not of indifference but of fear.” In sum, Feinberg urged the removal of religious instruction from the public schools because “it endangers Canadian unity, the inalienable equality of citizens, the emotional and psychological health of youth, the balance between church and state and a clear perspective on the problems that confront our war-ravaged community.”⁴²

Recognising the possible far-reaching effects of the Drew Regulation, Congress entrusted the carriage of this issue to a special sub-committee of the JCRC under the chairmanship of Rabbi Feinberg. In March, 1945, the JCRC passed a resolution expressing its opposition to the Drew Regulation. Thereafter, in response to the announcement of a Royal Commission on Education in Ontario, the JCRC recognised the potential of a platform for presentation of the Jewish community’s opposition to compulsory religious instruction in the public schools.

As Rabbi Feinberg was a magnet for media attention, the early years of Jewish opposition to the Drew Regulation were characterised by controversies. If Congress wanted attention focused on the Drew Regulation, Rabbi Feinberg delivered.⁴³ In December, 1948, the press

⁴² CJCNA, Feinberg Papers, ZB Collection. Sermon delivered at Holy Blossom Temple, February 18, 1945, 3-15. Understanding the value of politicising a position, Feinberg saw to it that his views were widely published. Excerpts of this sermon appeared in the Canadian School Journal, (1945), 229-230.

⁴³ Rabbi Feinberg’s ability to attract attention was not always advantageous. Ten years later, a newspaper editorial reacted to a Feinberg attempt to seek common ground between Christians and Jews by suggesting that “There are many Christian principles to which Jews and others could wholeheartedly subscribe. Why not base the course on such principles...?” Port Arthur News-Chronicle, April 4, 1959. A common denominator course of study was not on Rabbi Feinberg’s agenda.

reported that Feinberg had accused some public school teachers of deliberately attempting to convert Jewish children. Feinberg denied the accusation, pointing out that he had actually used the term “propaganda” rather than conversion. But, once he had the attention of the press, he made the most of the opportunity to reiterate his and Congress’ position. Even the Christian press published his views.⁴⁴

This was not without negative impact in some Jewish circles. Rabbi Feinberg’s stewardship of the Jewish campaign against religious education in the public schools was characterised by a directness, indeed a militancy that was unusual in Jewish dealings with the non-Jewish world, particularly dealings with government. The position that the organised Jewish community often took on issues that were not explicitly Jewish was, wherever possible, no position. This followed from an ingrained immigrant fear that the Jewish community as a whole bore or would be made to bear responsibility for the actions or statements of every individual Jew. Ontario’s Jewish community of the 1940s and 1950s was, after all, a minority community, trying to survive in an often unwelcoming political and social culture. To accomplish this end, some Jews opted for invisibility. This was not always easy to maintain. History, religion and language made Jews stand out as different. An overly public profile, especially in opposition to the larger public will, would only serve to accentuate differences.⁴⁵ Consequently, if an individual Jew committed an act which might be regarded as offensive by others, the entire Jewish community often saw itself compromised. Thus, when Rabbi Feinberg, for example, suggested that the singing of Christmas carols in public schools infringed the principle of the

⁴⁴ For example, The Churchman, May 15, 1949, 7-8 and Current Religious Thought, June, 1949, 20-23.

⁴⁵ In January, 1950, the City of Toronto conducted a “Sunday Sports” vote. Almost ten years later, in The Sentinel, May, 1959, the Grand Master of the Orange Lodge of Ontario cited the heavy Jewish vote in favour of Sunday Sports as an example of the fact that the Jews were out of sync with the balance of opinion in the Province.

separation of church and state, a resulting storm of controversy caused considerable consternation within the Jewish community, which, to a large extent, sought accommodation not confrontation.⁴⁶

Save for the outspoken Feinberg, the more typical approach advocated by most Congress leaders, including many involved in the JCRC, was cautious in the extreme.⁴⁷ Even before the religious education issue came to the fore, the JCRC was known for its *sha shvil* (keep quiet), “don’t rock the boat,” approach. Before Feinberg took over, members defended this position.⁴⁸ They claimed that theirs was not a planned program of kow-towing to the government and the larger non-Jewish civic culture. Rather, it was a by-product of their experiences as Jews in Eastern Europe. There, when it came to education, for example, they were often denied the right to even attend public schools. Once in Canada, these Jews were grateful for the openness of

⁴⁶ Details of this controversial incident suggest that Feinberg’s outspoken nature made him *persona non grata* in the opinion of both Jewish and Christian clergy. AJA, Feinberg Papers, Series B, Box 6, Folder 7, 1950-1951. Christmas Carol Controversy.

⁴⁷ Deborah Dash Moore, B’Nai B’Rith and the Challenge of Ethnic Leadership (Albany: State University of New York Press, 1981), xiii. Concerns were no different in the other partner organisation, B’nai Brith, (note that Moore adopts the American spelling “B’Nai B’Rith”) which carried on a dialectic between “its thrust toward acceptance by American society and its desire to maintain Jewish integrity.”

⁴⁸ In response to the setting up of a special committee to investigate the structure and activities of the joint committee, JCRC staff reported on committee activities. According to this unsigned report, the JCRC had been charged with inadequacy and incompetence. “Of all the allegations made by the special committee, the one which carries with it real harm is the charge of ‘keep quiet.’ Lately, it has become as easy for a great many Jews in North America to say ‘keep quiet’ when confronted with the problem of anti-Semitism as it has become simple for the anti-Semite to say ‘Jews’ when he is confronted with the world’s woes.” Exaggerating to make the point, JCRC staff felt that they were wrongly accused by some members of the Jewish community of being too ginger in their responses to anti-Semitism. OJA, JCRC Papers, MG8/S, Reel 1, 1944. Activity Report of the Joint Public Relations Committee, April, 1944. Its likely that Ben Lappin drafted this report as he had been the JCRC’s first full-time executive director since November, 1942. Prior to that time the executive director of Congress doubled in that position for the JCRC as well. Ben Kayfetz, Interview, August 13, 1996. See also Pathways to the Present. Canadian Jewry and the Canadian Jewish Congress (Toronto: Canadian Jewish Congress, 1986), 30.

Ontario's public schools.⁴⁹ If religious instruction was incidental to public schooling, some argued that it did not warrant full-scale opposition by the Jewish community.

This “don't rock the boat” attitude may have slowed down early opposition to religious instruction in the public schools. Because of its status as the largest and most vocal minority opposed to the Drew Regulation, the Jewish community was looked upon for leadership in pressing for its removal. But in this early years of opposition, the Jewish Community's uncertainty about its own status proved a barrier to an unequivocal stance. Some years later a prominent Jewish educator condemned this approach, claiming that

we [Jews] console ourselves that such religious education is ‘not really very serious’ since, fortunately, it is more observed in the breach than in actual practice. It is a far cry, we are told from what goes on elsewhere; and it could be worse if we begin to pester them about our rights. This is a consolation and a ‘*Golus*’ [exile] mentality which is very bitterly reminiscent of Jewish experience in the past and in other lands, where our very physical existence often depended upon breach of law by bribed benevolent officials, and for which we were ever so grateful... Such consolation of ‘leave well enough alone’ may be interpreted by some as cynicism on our part either to law or to the ‘breachable’ religious

⁴⁹ There were exceptions. At the end of World War I, the refusal of the Toronto Board of Education to permit Jewish students at King Edward Public School to fly the “Jewish flag” precipitated a “strike by these students which spread to several other Toronto schools. Shmuel Shammai, “The Jews and the Public Education System: The Students’ Strike Over the ‘Flag Fight’ in Toronto After the First World War,” Canadian Jewish Historical Society Journal, 10, (1988), 46-53. To Shammai, the flag fight was more an indication of the strength of the assimilationist posturing of public educators than a lack of gratitude for public education on the part of recent Jewish immigrants.

convictions of our Christian school authorities, or both.⁵⁰

Rabbi Feinberg took over the helm of the JCRC in 1944. How disposed other Jewish leaders and the general civic community would be to his brand of political action remained to be seen.

⁵⁰ Dr. Joseph Diamond, "The Case for Government Support of Jewish Day Schools in Toronto, Ontario," June 13, 1962. OJA, Catzman Papers, MG6/E3, File A6389A.

CHAPTER TWO

PLAYING BY THE RULES

Taking advantage as they are of the schools of this city, the younger generation of Jews will prove to be better than their fathers before them¹

Once the initial reactions to the Drew Regulation were processed, the sermons preached and the JCRC appointed to administer the complaints and give advice to parents, the organised Jewish community looked for other ways to make their case against religious instruction in the classroom. Most important, it chose to make repeated, respectful and formal approaches to governmental authority. Like cap-in-hand supplicants before a ruling monarch, it hoped that “people in high places” could be moved to sympathise with a heartfelt appeal to justice. This may have been the residue of long Jewish historical experience. For a stateless people who were seldom accorded the accoutrements of citizenship, it had been common to plead for sufferance before the powerful.² In the eyes of many members of the Jewish community, this no less applied to the Province of Ontario in the 1940s and 1950s than it did to Middle Europe in the Middle Ages. His own self-confidence and aggressive tactics notwithstanding, even Rabbi Feinberg, when serving the community and, in particular, as Chair of the JCRC and of the special sub-committee formed to respond to the Drew Regulation, was not averse to bending the ear of those who, if moved, could improve the situation. Where Feinberg differed from others in the Jewish community was that he believed in the citizen’s right to be heard. Other members of the community still thought it was a privilege to be allowed to speak.

¹ Toronto Mail and Empire, September 25, 1897. Part of a series entitled “Foreigners Who Live in Toronto,” the author of this article on Toronto’s Jewish community was identified as W.L. Mackenzie King, then, a graduate student at the University of Chicago.

² Selma Stern, The Court Jew: A Contribution to the History of the Period of Absolutism in Central Europe (Philadelphia: Jewish Publication Society, 1950).

On June 3, 1943, several months prior to the Drew Conservatives' minority victory, Rabbi Samuel Sachs, Rabbi of Toronto's Goel Tzedec Congregation and Chairman of the Jewish Education Committee of Congress, together with Edward Gelber, a Vice President of Congress, met with Duncan McArthur, Minister of Education in Mitchell Hepburn's Liberal government, to register their concerns about then practices in some of the Province's public schools. They complained about those Ontario public schools that provided Protestant religious instruction as part and parcel of their curriculum notwithstanding the clear statement in the regulations that religious instruction was to be restricted to extra-curricular programming. McArthur advised Sachs and Gelber that to make a fuss about the current state of affairs would be counter-productive.³ It was all his department "could do to stem the rising clamour to have religious instruction made a compulsory item in the curriculum which status it does not enjoy today."⁴ A Jewish request for "special privileges" such as the enforcement of the letter of the law restricting religious instruction to the beginning or the end of the day could incite those who had remained "on the sidelines" to that point to join with those who were currently demanding that religious instruction be entrenched in the curriculum as a compulsory subject.⁵ From the Jewish perspective, the situation would then get worse.

Bowing to authority and backing down from their request that the law be enforced, the Jewish delegation withdrew with some measure of satisfaction, as if being heard was a victory in

³ McArthur originally entered government service as Deputy Minister of Education in 1934 when the Liberal Party came to power in Ontario for the first time in thirty years. He assumed the Minister's role in 1940. Having experienced Department of Education culture at a hands-on level as well as from the loftier ministerial heights, McArthur knew how far one could push a position. J. A. Pipher, "Ministers of Education For Ontario," The Argus, (April, 1964), 147-151 at 150.

⁴ OJA, JCRC Papers, MG8/S, Reel 1. Memorandum to file, June 3, 1943.

⁵ This was urged by the Women's Missionary Society of the Presbyterian Church in Canada, January 28, 1943. OJA, JCRC Papers, MG8/S, Reel 1, 1943.

itself. Then, in a manner of a few short months, George Drew's Conservatives formed a minority government and proceeded to introduce the compulsory religious instruction that McArthur had hinted would not come about if the Jewish community refrained from questioning existing practices.

THE HOPE COMMISSION

The February 25, 1944 Drew government's Speech From the Throne promised a change to religious education in the public schools. Drew was as good as his word. By the end of August, 1944, an amended Regulation to the Department of Education Act was in place. Compulsory classroom religious education was now the rule. In the press, the reaction to these changes was mixed.⁶ The same could be said of public opinion.⁷

But if the press was unsure and the public was seemingly unconcerned about the religious education issue or education generally, Premier George Drew was neither. First, Drew took on the Education portfolio himself.⁸ Then, on March 21, 1945, he appointed a Royal Commission of twenty-one members under the chairmanship of Mr. Justice John A. Hope to inquire into and

⁶ Globe and Mail, April 12, 1944. Teachers were apprehensive that their new roles as religious instructors would put them in a "very uncomfortable position." In the same issue of the Globe and Mail, Charlotte Whitton, later Mayor of Ottawa, but then Social Research Advisor to the Progressive Conservative Party, described the Drew Regulation as "one of the greatest steps forward in the direction of post-war reconstruction."

⁷ A Canadian Institute of Public Opinion poll, June 30, 1944, found forty-nine per cent of Ontarians polled in favour of the proposed changes to religious education and forty-four per cent opposed. W. D. Edison Matthews, "The History of the Religious Factor in Ontario Elementary Education," unpublished Doctoral Dissertation, University of Toronto, 1950, 191.

⁸ Drew's preoccupation with education was not appreciated in all circles. At least one observer noted that Drew's assumption of dual cabinet responsibility and the "emphasis he has placed on the need for discipline in education will give new heart to every educational die-hard and obscurantist in the country." Canadian Forum, 23, (1943), 171.

report on the Provincial education system as a whole.⁹ This was not a religious education study. The Commission was authorised to look at courses of study, examinations, text-books, financing and the general system and scheme of public schools at both the elementary and secondary levels. To emphasise the breadth and scope afforded the Commission, Mr. Justice Hope noted that its terms of reference were wider than any other commission or committee previously requested to study education in the Province in over one hundred years.¹⁰ Hope also offered that, in his opinion, this Royal Commission compared favourably with the Butler Commission on Education that had recently completed its deliberations in Great Britain. This reference underscored the relevance Hope placed in English precedent for his Commission's work.¹¹ As well, Hope complimented the selection process, noting that the Commission was "representative of all classes, creeds and conditions. That is as it should be. Education transcends all political, sectional or like considerations."¹² Indeed, although half of the members were from Toronto, the remainder were from other communities in the Province such as Port Arthur, Brampton,

⁹ Claris Silcox, A Brief Critique of The Report of the Royal Commission on Education in Ontario (Toronto: The Ryerson Press, 1952). Hope had served as a Supreme Court of Ontario Justice from 1933 to 1945, and had just received an appointment to the Ontario Court of Appeal prior to receiving his appointment as Chairman. Born and raised in Perth, Ontario, Hope had a background in education having served as a member and then Chairman of the Perth Board of Education. Hope's service record in World War One as Commander of the Lanark and Renfrew Scottish Regiment would also have commended him to Premier Drew whose own war service often had him referred to as Colonel Drew decades later. Who's Who in Canada, 1948 (Toronto: Trans-Canada Press, 1948).

¹⁰ Report of the Royal Commission on Education for Ontario, Volume 1-34, Miscellaneous Correspondence and Reports (Hope Report) (Toronto: Department of Education, 1951), 1-3. Commission Minutes, April 11, 1945. Hope referred to a commission with similarly wide-ranging scope of 1839.

¹¹ Edwin Cox, Problems and Possibilities for Religious Education (London: Hodder and Stoughton, 1983), 4-6. The Butler Commission resulted in the imposition of compulsory religious education into the English public schools. Although no religion was specified in the relevant legislation, to Cox it was clear that Protestant doctrine was intended.

¹² The first meeting took place on April 11, 1945. Report of the Royal Commission on Education for Ontario, Volume 1-34, Miscellaneous Correspondence and Reports (Toronto: Department of Education, 1951), 1-3. The Chairman commented that the size of the Commission had provoked a suggestion that "half of us should be chloroformed."

Hamilton, Oakville and North Bay. As for the comment about classes and creeds, the names and addresses of the Commission members would leave some doubt as to their breadth. What is clear is that no Jews or other minorities were represented.¹³

The Commission sat as a whole for a period of one hundred and thirty-three days, completing their hearings in the fall of 1948. Thereafter, Commission staff and members worked on a report of their findings which was submitted in December of 1950. During the hearings, the Commission received two hundred and fifty-eight briefs, forty-four memoranda and heard from four hundred and seventy-five witnesses. Although the issue of religious education in the public schools was only one of scores of matters reviewed, twenty-three briefs devoted all or a serious portion of their presentations to this issue. These were roughly divided into two camps: those partial to the Drew Regulation and those opposed.¹⁴

¹³ Who's Who in Canada, 1948 (Toronto: Trans-Canada Press, 1948), lists seven of the Commission members as follows:

William Henry Clarke, Publisher, Clarke, Irwin & Co.

Charles R. Conquergood, Manufacturer, Canada Printing Ink.

John Andrew Hope, Judge, Ontario High Court.

Arthur Kelly, Lawyer.

Joseph M. Pigott, Contractor, Pigott Construction.

Charles Rupert Sanderson, Librarian-in-Chief, Toronto.

Sydney Earle Smith, President, University of Toronto.

Five of these were listed as Protestants (one Presbyterian and four United Church) and the remaining two as Catholic.

¹⁴ Briefs to the Royal Commission on Education (Toronto: Department of Education, 1951).

Partisan briefs included:

Brief 28, July 4, 1945, The Inter-Church Committee on Weekday Religious Education.

Brief 36, August 23, 1945, The Ontario School Trustees' and Ratepayers' Association.

Brief 44, September 13, 1945, The Department of Education.

Brief 64, November 7, 1945, The Board of Christian Education of the United Church of Canada.

Brief 69, October 25, 1945, The Ontario Educational Association.

Brief 77, November 9, 1945, The Church of England in the Ecclesiastical Province of Ontario.

Brief 103, November 13, 1945, Judge G. W. Morley.

Brief 118, November 26, 1945, Judge G. W. Morley.

Brief 119, November 23, 1945, Rev. T. F. Summerhayes (formerly of the Anglican Diocese of Toronto).

Brief 135, December 21, 1945, The Ontario Federation of Home and School Associations, Inc.

Brief 147, January 8, 1946, The Ontario Provincial Council of Women.

Brief 156, February 14, 1946, The 1945 Regional Conference of the Ontario Educational Association.

Drew Regulation Partisans

It is instructive that the Department of Education provided a brief to the Commission in support of the Drew Regulation.¹⁵ No questions of conflict of interest were raised about the propriety of the administrative arm of the Minister of Education, participating by way of submission. The Department explained in its very succinct presentation that the need for “a more adequate provision for the teaching of religious education arose because a large percentage of pupils was known to be without Sunday School or Church association.” This was deemed justification for the government’s religious initiative and the assertiveness of the Department’s role in promoting the program. The fact that only sixty-three out of 5,405 public school boards in the Province had asked to be exempted from the program after one year of experience was offered by the Department as proof of its success in avoiding controversy and sectarian conflict as proscribed by the Drew Regulation.¹⁶ As evidence of its devotion to the cause of religious education, the Department listed the Teachers’ Manuals and Teachers’ Guides published by the

Brief 159, March, 1946, Rev. Harold G. Salton (of the Toronto East Presbytery of the United Church).

Brief 196, November 26, 1946, the Catholic Bishops of Ontario.

Brief 206, November 18, 1946, St. Michael’s College.

Those opposed included:

Brief 43, September 10, 1945, The United Electrical, Radio and Machine Workers of America.

Brief 45, September 12, 1945, The Association for Religious Liberty.

Brief 46, September 19, 1945, Canadian Jewish Congress.

Brief 150, January 19, 1946, Gus Harris.

Brief 154, February 7, 1946, The Ontario Provincial Executive of the Trades and Labour Congress of Canada.

Brief 175, March 14, 1946, The Ontario Committee of the Labour-Progressive Party.

Brief 177, April 23, 1946, Leslie P. Myers.

Brief 205, November 19, 1946, the Public School Supporters’ League.

¹⁵ The Department of Education. *The Teaching of Religious Education in the Public Schools of Ontario*. Brief 44 to the Royal Commission on Education in Ontario.

¹⁶ The Department maintained a strict policy not to disclose the identity of the specific boards that had sought exemption. OJA, Catzman Papers, MG6/E3, File 5491, Ben Kayfetz memorandum to Fred Catzman, December 13, 1951.

Department “in collaboration with the Inter-Church Committee on Week-Day Religious Education.”¹⁷

The Department of Education’s uncommon interest in the religious education program was raised in another brief to the Royal Commission submitted by Gus Harris, a private citizen. Harris was concerned about the involvement of Department employees in the publishing of the Teachers’ Guides.¹⁸ Gus Harris made it his business to determine how and by whom these guides were published.¹⁹ He discovered that although, initially, the Department intended to import English text books, when it was determined that they were in limited supply, it was decided to print Canadian texts.²⁰ This resulted in the publishing of six separate texts in September of 1944, covering the first six years of public school, a total of more than fifty thousand copies in all, and known as the Teachers’ Guides to Religious Education. The title page of the first edition demonstrated the haste with which the guide books were prepared.²¹

¹⁷ This Committee was an outgrowth of the Ontario Religious Education Council formed in 1927 by eight Protestant churches including the Baptist, Disciples, Anglican, Evangelical, Presbyterian, Salvation Army, Lutheran and United. The Inter-Church Committee on Weekday Religious Education, formed in 1936, was a key component of the Council. The Committee’s prime function was to respond to Protestant denominations’ growing concern about religious education for young people. McLean, Religion in Ontario Schools.

¹⁸ Gus Harris, “Preparation of the Canadian Teachers’ Religious Guide Books.” Brief 150 submitted to the Royal Commission on Education. The Harris brief was neither for nor against the Drew Regulation. Reference is made to this brief at this juncture because of the issue of textbooks and the insights about the Department of Education and its relationship to churches and church lobby groups.

¹⁹ For his purposes, this process may have been viewed by Harris somewhat as a learning experience. Harris went on to have a lengthy and successful career as a municipal politician in the Borough of Scarborough, in Metropolitan Toronto.

²⁰ Importing textbooks from overseas was part of a tradition in Ontario. In 1846, The Irish National Readers borrowed from Ireland by Egerton Ryerson were the first textbooks formally authorised in the Province. This established the principle of provincial authority to determine textbooks which was never questioned until Harris’ brief. See Brief 10 of the Editor-in-Chief, Textbooks, Department of Education, to the Royal Commission on Education in Ontario. See also Wilson, “The Ryerson Years in Canada West,” 219-220.

²¹ See footnote 44, p. 16.

Harris observed that the Inter-Church Committee worked with the Department of Education in the preparation of these guides. Harris was concerned that the publisher, Ryerson Press, which was owned and operated by the United Church of Canada, gave the United Church excessive influence in setting the religious tone of the texts. Moreover, the fact that Ryerson paid Department employees fees for their work reviewing and editing the guides raised questions as to the ethics of these arrangements. A further inquiry by the persistent Mr. Harris of the Minister of Education, George Drew, was responded to by J. G. Althouse, Chief Director of Education for Ontario.²² Althouse advised Harris that as long as the spare-time activities of Department employees did not interfere with their departmental duties, they could do with their spare time as they wished. Harris was not satisfied. In view of the fact that Ryerson invoiced the guides it published to the same Departmental official who was, with permission, apparently, earning a commission on their sale, Harris accused those involved of a possible conflict of interest.

Harris also learned that these guides were regarded as experimental and provisional, it being understood that criticisms and comments would result in further revisions prior to the 1945 school year.²³ Harris questioned the urgency to publish over fifty thousand copies of texts in 1944 when the government planned to revise these Guides for the September, 1945 school

²² Harris' persistence may not have been entirely altruistic. The Commission learned that until October 1945 Harris had been employed by the United Church as an accounting clerk and was privy to the accounts and procedures of Ryerson Press which was a branch of the United Church. During extensive examination by the Commission counsel and Commission members, Harris testified that he was concerned that Ryerson Press was a tool of the Conservative Party. PAO, Department of Education Papers, RG 18-131, Volumes 7, 7A, 7B. Transcript of Proceedings of Special Sub-Committee of Hope Royal Commission, 4904.

²³ A Department of Education memorandum confirmed that the Minister of Education recommended to the Lieutenant-Governor-in-Council that F. S. Rivers, Stanley Watson and F. A. Jones draft the Manual on religious instruction and that course outlines should be sent to "representatives of the Roman Catholic Church and the Jewish Church (sic) for comments and any necessary changes." PAO, Department of Education Papers, RG2-43, Box 259, File 2, Central Registry Records, 1944. Department of Education memorandum, June 16, 1944.

year.²⁴ His conclusion was that the Ryerson Press and the moonlighting officials were all United Church supporters and that the Department had conspired with the publisher and the Department employees to this end.²⁵ His view was that the publisher had hired Department officials so as to ensure control of religious instruction by one religious group, the United Church.

Because of Harris' allegations and the "gravamen of the impropriety," the Commission felt obliged to conduct a thorough investigation into the events surrounding the publication of the Teachers' Manuals and the Guide Books. In order to determine whether there was any wrong doing, a Special Sub-Committee of the Royal Commission interviewed Harris and Department of Education officials, Ryerson Press executives and employees, and members of the Inter-Church Committee. In retrospect, much of the examination seems an attempt to impugn Harris' motives and the manner in which he went about gathering evidence to make his case, which appeared less than forthright. After conducting its inquiry, the Special Sub-Committee of the Commission dismissed Harris' charges. It found that the United Church and Ryerson Press had no control over other churches on the Inter-Church Committee which also had a voice in approving materials for religious instruction in Ontario. Nor was the Special Sub-Committee satisfied that there was a "tittle of evidence" that the engagement of Department employees by Ryerson Press impaired their loyalty to the Department of Education. However, the extensive discussion of this latter issue was most influential in convincing the government to adopt a policy prohibiting civil servants from accepting spare-time work that could later come under review within their own

²⁴ E. R. McLean, Secretary of the Inter-Church Committee, testified before the Commission that the text book revisions were "done in a hurry," and "not intended to be the final word." PAO, Ministry of Education Papers, RG 18-131, Volumes 7, 7A, 7B. Transcript of the Royal Commission On Education respecting Brief 28 of The Inter-Church Committee, 526.

²⁵ It has been suggested that George Drew was so keen to move forward on the program, that the excessive printing of the Guide books was at his personal direction. Mobley, "Protestant Support of Religious Instruction in Ontario Public Schools." 54. In light of the significant volumes published, it appears that the texts in their initial form were viewed by some as permanent.

department. Furthermore, in the process of conducting its inquiries, the Commission's Special Sub-Committee enlightened members of the Commission respecting the events leading up to publication of the Guides and other documentation in support of the Drew Regulation. And although convened to investigate Harris' allegations of impropriety, the Special Sub-Committee succeeded in tracking the process of translating a government decree into the practical delivery of teaching aids for classroom purposes.

Much of the information provided to the Special Sub-Committee was brought out through the evidence of the Secretary of the Inter-Church Committee. Prior to the introduction of the Drew Regulation, the Inter-Church Committee had reviewed the applicability of what the Secretary referred to as "old country books" for use in Ontario's religious education program. Eventually, the Inter-Church Committee recommended certain English texts, the Surrey Guides, to those ministers who were providing classroom religious instruction at that time in accordance with pre-Drew Regulation legislation. When later called upon by the Department of Education officials to assist in the choice of textbooks to meet the requirements of the Drew Regulation, the Inter-Church Committee members of the Department of Education advisory group proved particularly influential in shaping not just the choice of textbooks but also the parameters of the whole religious instruction program. The Inter-Church Committee was loathe, however, to take too much credit for the ultimate product. In effect, it admitted that the revisions to the textbooks, although numerous, were mostly cosmetic, leaving the "spirit of the [British] text preserved."²⁶ Instead, credit was directed to a new employee at the Department of Education, just arrived from serving as a school inspector in North Bay, and experienced in drafting curricula, who was sent

²⁶ Examples given included changing "petrol" to "gasoline" and "greengrocer" to "vegetable store," as well as abbreviations to the introductions of the individual units. PAO, RG 18-131, Transcript of Proceedings of the Royal Commission on Education, 4899-4928, 5066-5288 at 5219.

to work on a small Departmental team to draft the Regulations.²⁷ Relying heavily on the Surrey Guides as texts and the Cambridgeshire Syllabus for curriculum, he took only ten days to produce the Teachers' Manuals. This work was abetted by the Macmillan Company which owned Canadian publishing and manufacturing rights to The Cambridgeshire Syllabus, known in Canadian educational circles as the "little brown book," because it also contained the regulations concerning the statutory dos and don'ts of religious education. A final draft of text material was completed during the summer of 1945 in co-operation with Ryerson Press.²⁸

The brief from the Inter-Church Committee on Weekday Religious Education, confirming earlier testimony before the Special Gus Harris-driven Sub-Committee, reminded the Commission that the texts that Harris was so concerned about were grounded in textual material that was in existence prior to the Drew Regulation. In particular, the Committee brief referred to the Program of Studies for Grades I-VI of the Public and Separate Schools, 1941, which stated that the "schools of Ontario exist for the purpose of preparing children to live in a democratic society which bases its way of life upon the Christian ideal."²⁹

The Inter-Church Committee had lobbied the Provincial government for many years advocating the teaching of religious education in the public schools. In an earlier brief to the Minister of Education, the Inter-Church Committee encouraged use of certain passages in the Macmillan Readers, Bible Readings for Schools, published in 1930 and designed to supplement

²⁷ Subsequently, the employee, L. J. Rivers was asked to provide some guidance for teachers in text and methodology.

²⁸ Throughout almost 300 pages of testimony to the Special Sub-Committee, there was no discussion about the doctrinal Protestant approach taken by the textbooks. It would appear that government employees, publishers, Commission members and church organisations alike all found this state of affairs acceptable.

²⁹ The Inter-Church Committee on Weekday Religious Education. Brief 28 to the Royal Commission on Education in Ontario.

teaching materials for religious education.³⁰ The Committee understood that religious instruction was not going to be an easy sell to cash starved schools. They noted that although the Readers were made available at a price of seventy-five cents each, many schools were unwilling to pay even that amount.³¹ Did the Committee expect that the government would mandate use of the texts? Hardly. The Committee was sufficiently realistic to understand that this was highly unlikely. But the Committee did serve notice that a lobbying effort on behalf of religious education was forthcoming, for which it assumed there would be scant opposition.³² The Committee noted with some pride that even the Jewish community did not object to the use of Scriptures and the Lord's Prayer which had achieved a "virtually unquestioned place in Opening Exercises."³³

As the major voice for religious education in the public school, the Inter-Church Committee tended to lead from behind. Hence when the Drew government announced its plans for compulsory religious education, the Committee's response, after recovering from the initial

³⁰ McLean, Religion in Ontario Schools, 6-8.

³¹ In 1949 the Inter-Church Committee encouraged the reduction of the price of the Readers to sixty cents each. It was anxious to prove the point that "moral instruction without a scriptural background hangs in the air. It lacks authority." McLean, Religion in Ontario Schools, 6.

³² Mobley, "Protestant Support of Religious Instruction in Ontario Public Schools," 14.

³³ McLean, Religion in Ontario Schools, 11-12.

shock that the government had moved so far so fast, was cautionary at best.³⁴ Although pleased to be consulted on plans to initiate the program, at first the Inter-Church Committee was concerned that Drew's step might be seen as too radical and counselled a "slowdown...We don't want to retard the movement [by advancing too quickly]."³⁵ But by the time the Committee came to present its brief to the Commission, it was invoking the words of Egerton Ryerson as a battle cry: "as Christianity is the basis of our whole system of elementary education, that principle should pervade it throughout."³⁶ Naturally, if the government was prepared to commit to religious instruction, the Inter-Church Committee was prepared to endorse the government's position and possibly take a leadership role in its implementation. Shifting ground, the Committee determined to bolster the government's resolve, entrench the gains that the Drew Regulation had won and even press for more religious activism in the schools. It reminded the Commission that from the earliest of times, clergy were invited to visit schools and once there, to make observations. Thereafter, Bible selections were incorporated into school texts, scripture

³⁴ Some Protestant organisations were not as patient as the Inter-Church Committee. On January 28, 1943, the Toronto Presbytery of the Women's Missionary Society of the Presbyterian Church in Canada urged that "daily reading of the Bible and religious instruction be given in all schools for Protestant children." because of the lack of religion in the homes and widespread juvenile delinquency. OJA, JCRC Papers, MG8/S, Reel 1, 1943. The Women's Missionary Society and others claimed that religious education would resolve the juvenile delinquency problem. It is of interest that the lengthy brief to the Royal Commission from the Toronto Assistant Masters' Association which reviewed countless possible causes of juvenile delinquency and provided numerous recommendations for its reduction made no reference to the lack of religious education as a cause nor its provision as a cure. Brief 126 To The Royal Commission on Education In Ontario, "A Statement on Delinquency," from the Toronto Assistant Masters' Association.

³⁵ PAO, Department of Education Papers, Central Registry, RG2-43, Box 259, File 2, 1944. E. R. McLean to George Drew, July 7, 1944. Years later, McLean became a supporter of the Drew Regulation, describing it as a "combination of corporate compulsion and individual freedom; strangely contradictory but marvellously practical and workable." McLean, Religion in Ontario Schools, 3.

³⁶ Inter-Church Committee, Brief 28 to the Royal Commission on Education in Ontario. Even prior to the Drew Regulation the Committee had climbed on the religious education bandwagon, circularising members of the legislature with details of the Committee's position on religious education in the schools. Morley Brief 103 to the Royal Commission On Education in Ontario.

readings and prayers were provided for in Provincial regulations respecting opening exercises, and teacher training included classes in religious knowledge. The Committee also made the point that those who “in the earliest days in this Province pressed for a system of free, public and compulsory education and desired to make it non-sectarian, never intended that the schools were to be non-Christian.” Without engaging in the separation of church and state argument, the Committee concluded that the Drew Regulation embodied the principle of *co-operation* between church and state to which Ontario had become accustomed.

Less restrained than the Inter-Church Committee was one of its lay members, Judge G.W. Morley of Owen Sound.³⁷ A County Court Judge for the County of Grey, Morley presented two separate briefs to the Commission. In his first brief, Morley used what he saw as lessons provided by World War II as his jumping-off point. Associating paganism and cruelty with Germany and Japan, Morley compared those countries unfavourably with countries which professed Christianity. Displaying more than a little versatility, Morley was equally at ease using Christianity as a sword or a shield. As such, he had no difficulty distinguishing between religion and Christianity. Accordingly, to suggest in the same breadth that he did not wish religion taught in the schools, but merely the “general principles of Christianity as set out in the Bible,” was perfectly legitimate for Morley. Clearly, for Morley, Christianity and the teaching of Christianity were twin keys to the resolution of all society’s ills. He urged that “the schools must leave doctrine behind and put forward our ‘pet’ theories but agree on basic principles...[for] is not

³⁷ Judge Morley, appointed to the bench in 1932, was an active churchman, serving as an executive member of the Diocese of Huron from 1934 and the Dominion and Provincial Synods of the Church of England from 1935. Who’s Who in Canada (1948), 692. In Theodore Elia Thomas, “The Protestant Churches and the Religious Issue in Ontario’s Public Schools: A Study in Church and State,” unpublished Doctoral Dissertation, Columbia University, 1972, 150, Thomas describes Morley as an Anglican layman who played a leading role in advocating for religious instruction as an integral part of the regular school curriculum.

Christianity the ideology of all democratic nations as opposed to fascism, atheistic communism and paganism?" Drawing on his professional experience, Morley reminded the Commission that "every time we go to the court room and give evidence in any case, we are asked to swear on the 'Holy Bible.'" He granted the "free thinkers" the right to express their opinions, "because this is a democratic country," but questioned their rights as a "bare minority" to deny the teaching of Christianity, "which is our ideology."³⁸

Morley delivered yet another submission in which he referred to statements made at two sessions of the General Synod of the Church of England in Canada which, he argued, demonstrated the consistency of his approach. The first, in September of 1924, held in London, Ontario, stated that

this Synod would urge upon every Provincial and Diocesan Synod, the desirability of putting forth every effort, in conjunction with the proper representatives of other religious communions, to secure more adequate provision for religious instruction, both by way of increased facilities in the public schools, and by co-operating therewith...

The second, in 1937, in Halifax, within the context of concerns about a war in Europe, stated that

in view of this menace of secularist philosophies which threaten to undermine the Christian foundations of life, this Synod urges more definite and positive teaching of the great truths of the Christian faith, with their practical implications in the Churches, homes and schools of our land.

Morley felt that the issue of religious education reached a crisis point in the fall of 1939, just after the War broke out in Europe. Thereafter, Morley became a man with a mission. He corresponded with all of the premiers in Canada, attempting to convince them of the need for religious commitment. Even the Inter-Church Committee was not up to the task he had in mind. It was conscientious, but not sufficiently interventionist for his purposes. He felt that the best

³⁸ Judge G. W. Morley. "The Urgent Necessity of Teaching Christianity (the Bible) in our Schools." Brief 103 to the Royal Commission on Education in Ontario.

way to enhance Christian values was to have the Bible taught in as many schools as possible. He was successful, at least, in promoting Bible study in many of the public schools of Grey County where he served as a County Court judge. He set up a lay-clergy committee, designed to make representations to boards of education. Sometimes he and his group were more successful than others. With respect to the Owen Sound Board, “we were fortunate in having as Chairman of the Board [of Education] then, a Clergyman who strongly favoured the action we were suggesting.” The approval granted, religious instruction was introduced into Owen Sound Public Schools for one-half hour per week.³⁹

Lobbying municipalities outside Owen Sound followed. By June, 1941, Bible instruction was introduced into many of the boards of education in twenty-five of the twenty-six municipalities in Grey County.⁴⁰ Following these successes in Grey County, a resolution urging that Bible be taught as part of the curriculum in public schools across Ontario was circulated by the Morley group and adopted by many other County Councils.⁴¹ In fact, by 1941 it was reported

³⁹ This took place three years prior to the introduction of the Drew Regulation.

⁴⁰ Grey County’s and Judge Morley’s tradition was carried on in the Ontario legislature some years later by Bob McKessock, M.P.P. for Grey County. A Liberal Party backbencher who wore a “Jesus First” pin in his lapel, McKessock introduced a resolution into the Ontario legislature on June 24, 1982 calling for strict adherence to the Drew Regulation. The resolution which also requested the repeal of exemption privileges afforded to school boards by the Regulation succeeded by a vote of 56:22 in favour, receiving almost unanimous support from the Conservative M.P.P.s. No changes were made to the Drew Regulation or to its enforcement as a result of this resolution. Toronto Star, June 25, 1982.

⁴¹ Judge G. W. Morley. “Is Public Opinion Behind the Principle of Bible Instruction in the Schools?” Brief 118 to the Royal Commission on Education in Ontario. Judge Morley referred to some of these accomplishments a few years later in a personal letter to George Drew when Morley was seeking an appointment as Chairman of the Workman’s Compensation Board. PAO, Drew Papers, RG 3-17, Box 448, File 197G. Morley to Drew, April 8, 1947. Morley was equally anxious to share the kudos for any of his successes with the Ontario Education Association, whose “indefatigable Secretary was a member of the Commission.” The member was M. A. Campbell.

that clergymen were giving Bible instruction within the curricula of 686 Ontario public schools.⁴²

The Morley briefs are instructive not just for their reflection of one line of thinking but for the light they shed on religious instruction advocacy at a grass roots level. Organisations such as the Inter-Church Committee seemed reserved compared to the street-level activism of members of these organisations, such as Judge Morley, who carried out hands-on work designed to bring religious education into the local classroom to ensure children would not grow up as “infidels.”⁴³

The Ontario Educational Association, (“O.E.A.”) was yet another advocate for religious instruction in the public schools. Included in its membership base were trustee and ratepayers associations, teachers groups and schools. The O.E.A., with its 6800 members, referred to itself as the “Educational Parliament of Ontario.”⁴⁴ An Association with dozens of sections touching all aspects of education, the O.E.A. filed twenty briefs with the Commission, including a general brief which addressed the religious education issue. In sum, the O.E.A. accepted the Drew Regulation, even advocating an extension of the program into the Secondary Schools.⁴⁵

⁴² Religious Information and Moral Development The Report of the Committee on Religious Education in the Public Schools of the Province of Ontario (Mackay Report), (Toronto: Ontario Department of Education, 1969), 11.

⁴³ Morley, Brief 118.

⁴⁴ Founded in 1861, when it sponsored the first Provincial teachers’ meeting, this was a voluntary association which concerned itself with education issues. Although originally formed to serve teachers, it also provided services to school trustees and school administrators. By the 1980s the O.E.A. was made redundant by the proliferation of subject oriented associations. School Progress, (March, 1963), 29-30 and Canadian School Journal, (November/December, 1959), 362ff and Canadian Education Association Library files.

⁴⁵ The Ontario Educational Association, Briefs 69 and 156 to the Royal Commission on Education in Ontario.

The Ontario School Trustees and Ratepayers Association, a constituent member of the Ontario Educational Association, supported the Drew Regulation on the grounds that “everyone should be taught the underlying principles of good character and morals.”⁴⁶ Similarly, the Ontario Federation of Home and School Associations, with a Province-wide membership of 26,000, also supported the Drew Regulation. It too held that “no education can be regarded as complete if the spiritual aspects of life are neglected.”⁴⁷ But, bowing to the importance of the state in the church and state partnership, the Home and School Association recommended that churches and the Department of Education share equally in the development of the religious education curriculum.

Supportive of the goals of the Drew Regulation but exhibiting some sensitivity to the concerns of opponents was the Ontario Provincial Council of Women. This too was an organisation of large but unknown membership, including in its numbers, members of organising societies such as Provincial branches of the Women’s Christian Temperance Union, the Women Teachers Association and the Imperial Order of the Daughters of the Empire. It suggested that the term “Scripture Knowledge” instead of “religious education” or “religious instruction” might allay the suspicions of those who were concerned that religious education was not education but proselytisation.⁴⁸

Although lobbying on behalf of a number of mainstream Protestant churches was co-ordinated by the Inter-Church Committee which submitted a brief on behalf of its constituent

⁴⁶ The Ontario School Trustees and Ratepayers Association. “Education in Ontario.” Brief 36 to the Royal Commission on Education in Ontario, 7.

⁴⁷ The Ontario Federation of Home and School Associations, Inc. “Recommendations on Education.” Brief 135 to the Royal Commission on Education in Ontario, 3.

⁴⁸ The Ontario Provincial Council of Women. “Suggestions Relating to the Schools of Ontario.” Brief 147 to the Royal Commission on Education in Ontario.

members, many churches and their individual members, lay and clergy alike, chose to make their own submissions.⁴⁹ In its brief to the Commission, the Board of Education of the United Church of Canada asserted that all education should have a religious education component and that this component should lead to the development of “religious conviction and Christian living.”⁵⁰ To meet this end, “a larger measure of integration of moral and religious instruction in the system of public education is imperative and urgent, [and therefore] the complete separation of religion from public education is no longer necessary or desirable.”⁵¹ When called upon to make a commitment, the United Church did not pull its punches. It proclaimed the Drew Regulation as an affirmation of “the historic right of the Church to be the interpreter of the Christian faith.”

As for the implementation of the Drew Regulation, the United Church took a very pragmatic approach. Naturally, it rejected the American principle of separation of church and state. However, opting for a softer sell, it acknowledged the virtue of co-operation between what it characterised as two parallel American systems, one under the direction of the state in public schools and one under the direction of the church in weekday religious schools. The United Church did recognise a virtue in the American practice of “released time” whereby students were released at certain times of the day from public schools so that they might participate in Christian

⁴⁹ Individual briefs were presented by Reverend Harold G. Salton, of the Toronto East Presbytery of the United Church and Reverend T. F. Summerhayes of the Anglican Diocese of Toronto.

⁵⁰ Although social gospel strains helped to establish the United Church as a denomination in 1925, the United Church “remained strongly imbued with older pietistic and evangelical assumptions concerning the superiority of Christianity...” Allan Davies and Marilyn Felcher Nefsky, “The United Church and the Jewish Plight During the Nazi Era, 1933-1945,” Canadian Jewish Historical Studies Journal, 8, (1984), 55-71.

⁵¹ In discussion with Commission members after he delivered the United Church brief, Reverend F. R. Hendershot, Chairman of the Board of Christian Education of the United Church, bemoaned the poor attendance at Sunday Schools, noting that although there had been a mild upswing in attendance in recent years, “we are hoping that the teaching of religion in the public schools may interest children in religion.” PAO, RG 18-131 Volumes 7, 7A, 7B. Brief of the United Church. Transcript of Proceedings of the Hope Royal Commission, 1746.

education programs. However, as released time could involve a serious outlay of funds, possibly necessitating the erection of church-operated buildings in the vicinity of public schools and the training of church-employed teachers, the United Church concluded that the current practice should prevail. Without legislated separation of church and state, the United Church concluded that since churches and the Department of Education already worked together providing curriculum, teacher training and textbooks and utilising the facilities of the public system for religious instruction, this provided a great savings to the public and the churches.⁵²

The Church of England was less circumspect than the United Church. It framed its brief as a defence of religious education against those who were not so much opposed to the Drew Regulation as they were to Protestant teachings in school settings. Indeed the Church of England seemed almost offended at the need to submit a brief in defence of religious education and suggested that “if it were not the fact that the place of religion in education is being challenged in this Province by certain groups, it would hardly be necessary to deal with it.” As the Church of England understood Ontario educational history since Ryerson’s time, the Province “had always recognised the place of religion in education.” From the earliest days of Ontario schools, Protestantism was part and parcel of the school day. Church representatives were familiar figures in school buildings. Even prior to the Drew Regulation, schools had been taking increased advantage of the “opportunity” to augment their programs with some form of Protestant religious education. According to Church of England studies, as many as 75,000 public school students were receiving religious instruction from Christian ministers in accordance with Protestant doctrinal teachings even prior to the Drew Regulation. So, why all the fuss? On this basis, the

⁵² The Board of Christian Education, The United Church of Canada, “Religion and Public Education.” Brief 64 to the Royal Commission on Education in Ontario. The United Church brief failed to point out that this would also result in great savings to the church.

Drew Regulation did not constitute a new principle insofar as “the recognition of the place of religion in education is concerned.” The significance of the Drew Regulation could only be one of degree. The Regulation simply served to make religious instruction more available to greater numbers. Church of England statistics further confirmed that, by May 1, 1945, members of the clergy were giving religious instruction in 200 schools and a further 2,000 schools had clergy and classroom teachers providing joint instruction. The Church of England claimed that these facts bore witness to “the tenacity with which public opinion in this Province has held to the unaltering conviction that Religion should have its own important place in our Educational system.” Responding to what it termed “common objections” to the state’s co-operation with the church in religious instruction in the schools, the Church of England insisted that the place for religion was in the home *and* the church, but that the school was yet *another* agency to get the job done. The Church of England feared that if the public school remained neutral about religion, then the school’s failure to train students “in the right way, [will permit] the forces of evil [to train them] in the opposite direction.” Thus the Church of England defended the Drew Regulation on the grounds that even if religious teaching *does* interfere with the rights of those who are opposed to it, “there is a liberty to have as well as a liberty not to have.” Furthermore, it scoffed at the suggestion that religious education contributed to disunity and racial discrimination, claiming that “in Christ, there is neither Jew nor Greek, bond nor free....”⁵³

Religious education in the public schools placed Catholic educators on the horns of a dilemma. How could they support a program that featured indoctrination into Protestant principles? Somehow, the Ontario Catholic Education Council was able to extricate itself from this dilemma sufficiently to come down on the side of the Drew Regulation. The rationalisation

⁵³ The Church of England in the Ecclesiastical Province of Ontario. “Suggestions Regarding the Place of Religion in Education.” Brief 77 to the Royal Commission on Education in Ontario.

went this way. The Drew Regulation would inculcate Christian ideals in school children. This was a principle to which Catholics could adhere because it was helping Canada maintain “the Christian character to which it is indebted for its liberty and happiness.” At the same time, fearing that “Christian” might be equated with “Protestant,” Catholic educators demanded that Catholic children, including those in the public schools, be taught according to Catholic beliefs.⁵⁴ The logical conclusion of such a statement was the further extension of public funds for separate secondary schools.⁵⁵ Thus, Catholic educators took the occasion of the presentation of their brief to make this very partisan point.

St. Michael’s College offered another form of rationalisation that focused on the gap that would be created if public education was devoid of religious education. Such education, the College argued would become purposeless, vague and ineffective. Even worse, in a godless classroom, other subjects could take the place of religion in defining the “mysteries of life,” potentially offering up the materialistic way of life as its own theology.⁵⁶

There was no little irony in the fact that Catholic educators rallied behind the Drew Regulation, at least in principle. Early in the nineteenth century, religious affiliation in Ontario was divided into three major groupings: Roman Catholics, Churchmen (Anglicans and Presbyterians), and Protestant dissenters. Once Protestants resolved sectarian differences between themselves, Anglicans, Presbyterians and dissenters combined in an informal alliance to

⁵⁴ Ontario Catholic Education Council. Brief 196 to the Royal Commission on Education in Ontario.

⁵⁵ Mobley, “Protestant Support of Religious Instruction in Ontario Public Schools,” 75.

⁵⁶ St. Michael’s College. “Educational Problems in Ontario.” Brief 206 to the Royal Commission on Education in Ontario.

oppose secularisation on the one hand and Catholics on the other.⁵⁷ Since the 1840's, the Catholic Church was placed on the defensive by leaders of the Church of England in Canada, who voiced dissatisfaction with "separate school" legislation. This legislation provided for the support of Catholic schools in Ontario but not Church of England schools. Initially, the establishment of Catholic Separate Schools was limited to the protection of the rights of families whose faith was not consonant with that of the school teacher.⁵⁸ By the 1850s, even with this limitation, Separate School boards had grown significantly. Political leaders, including William Lyon Mackenzie, were carrying on active crusades against the creation of any further Separate School boards. They were concerned that the proliferation of such boards could impact negatively on the resources available to the public schools. This could also encourage separate grammar (secondary) schools, create competition and ultimately strife between the students of the different systems.

Notwithstanding concerns such as these, The Scott Act of 1863, "An Act to Restore to Roman Catholics in Upper Canada Certain Rights in respect to Separate Schools," extended the rights and privileges of Separate Schools. Catholic schools were allocated a share in legislative grants and their supporters were exempted from the obligation of supporting the public schools. Drafted by R. W. Scott, a Roman Catholic member of the Legislature, this Act became the basis for Separate School rights provided for under the BNA Act a few years later. Then, it was determined that whatever education rights religious minorities had as of 1867 were entrenched

⁵⁷ William Westfall, "The End of the World: An Aspect of Time and Culture in Nineteenth Century Protestant Culture," in William Westfall et al. (eds.), Canadian Issues/Themes Canadiens, Religion/Culture: Comparative Canadian Studies 7, (1985), 72-86.

⁵⁸ The Common Schools Act (Hincks Act), 1843, c. 29. Those opposed required ten signatures to establish another school which was usually Roman Catholic. In 1847 the legislation was amended to give the authority to establish such Separate Schools to the public school boards. Matthews, "The History of The Religious Education Factor in Ontario Elementary Education," 228-235, 235-250.

under section 93 of the BNA Act. This feature, introduced by Alexander Galt, a spokesman for the Protestant minority in Lower Canada, granted the legislatures of the new Provinces the exclusive right to make educational regulations. Furthermore, it provided that these regulations would never prejudicially affect any right or privilege enjoyed in law by a denominational school at the time of Confederation.

For the Protestant majority in Ontario, this encroachment by the BNA Act into what they had always believed to be their natural right, was perceived as a grievous injury. In 1887 the injury would be further aggravated by the application of section 21 of the Separate Schools Act which afforded Catholics the right to establish Separate Schools in unorganised townships or territories without pre-existing public schools, namely the heavily Catholic Northern and Eastern sections of the Province, sometimes referred to as the “clay belt.”⁵⁹ To the Protestants in Ontario, this was equal to ceding this vast area of the Province to the Catholics.

Previously, in 1871, with the passing of the inaugural “Ontario High School Act,” for the first time a system of secondary schools was set up in Ontario.⁶⁰ This would have far-reaching consequences. All public schools, including Separate Schools, were defined as elementary schools. Secondary school boards were created to operate non-denominational secondary schools for grades 9 to 13 both inclusive. This resulted in Catholic Separate School Boards being limited to offering instruction from grades 1 to 8. This was later extended to grades 9 and 10 through the medium of continuation schools, a concept established by legislation in 1896 to permit the

⁵⁹ Separate Schools Act, R.S.O. 1887 c. 227. The section 21 access to the clay belt for Roman Catholics was believed to have given rise to, or at least to have encouraged, the Jacques Cartier Order, a French Canadian Roman Catholic nationalist group that agitated for the joining of eastern and northern Ontario with the Province of Quebec. Mobley, “Protestant Support of Religious Instruction in Ontario Public Schools,” 47.

⁶⁰ C. B. Sissons, Church and State in Canadian Education (Toronto: The Ryerson Press, 1959), 101. Common and Grammar Schools Act (1871), c. 33, s. 34.

establishment of continuation classes for the first two years of secondary schools in areas where there was limited accessibility to high school. The true import of the 1871 legislation was not appreciated in a society in which children seldom stayed in school *until* grade 8 and for whom attendance at a secondary school was beyond the realm of possibility.⁶¹ But by the turn of the century, this would change. As students stayed in school longer, Catholics began agitating for their own secondary schools.⁶²

The Separate School issue was raised again in 1936 when, in an attempt to equalise the allocation of realty taxes for the benefit of the Separate Schools, Ontario Premier Mitchell Hepburn introduced Bill 138, an Amendment to the School Assessment Act. Since the Scott Act, Catholics had tried, largely unsuccessfully, to have the Separate School share of taxes for public schools extended beyond residential to commercial property taxes. Their one breakthrough was by means of a legislative change in 1886 which permitted shareholders of companies to divert their portion of the tax obligation of the company to the support of Separate Schools. An attempt to have this applied to the taxes payable by the company itself failed. Hepburn's Amendment addressed this issue in part. It compelled all companies that were unsure of the religious affiliations of their shareholders, as well as companies with head offices outside Ontario, to pay a portion of their taxes to the benefit of Catholic Separate Schools on the basis of the relative assessment between the public and the Separate Schools in each municipality. This was to apply even if their shareholders were uniformly Protestant. In an overwhelmingly Protestant province

⁶¹ According to statistics provided by a leading advocate for the extension of funding to Separate Secondary Schools, in 1867, 308,511 pupils attended Common (elementary) schools, whereas only 5,696 pupils attended Grammar (secondary) schools. Carl J. Matthews, S. J., "The Historical Background of Catholic Secondary Education in Ontario." PAO, Clare Westcott Papers, RC ZOHB, 2-2-9, File 1, Roman Catholic Separate Schools, n.d.

⁶² Stephen B. Lawton, "A Case Study of Choice in Education: Separate Schools in Ontario," A paper prepared for the Phi Delta Kappa Fortieth Biennial Conference, Toronto, Ontario, October 31-November 1, 1985.

this change was not well received. A by-election in East Hastings was fought on this issue in 1936, and Hepburn's Liberal candidate was soundly defeated.⁶³ Shortly thereafter, Hepburn's Liberal government repealed this Act.⁶⁴

A decade earlier, Catholic pressure for equal funding with the public schools had reached its peak in Tiny Township, a test case in which the Privy Council determined that the right of Catholic Separate Schools to receive public funds was limited to the elementary level.⁶⁵ After the Tiny Township decision, the Catholic community came to grips with political reality. Like it or not, funding of Separate Schools beyond the elementary level education including then currently Provincially-funded junior high school, namely grades 7 through 9, as well as the contemplated secondary level, was "a matter of government policy rather than constitutional right."⁶⁶ Thus, with the decision in Tiny Township, Ontario's Catholic community became resigned to the futility of pursuing a constitutional argument. Thereafter it initiated a slow but determined political lobbying effort to gain support for the public funding of secondary Separate School education. To advance its goal, the Catholic community, under the leadership of the Church, argued that Catholic young people needed a Catholic education as much at the secondary level as

⁶³ R. S. Pennefather, The Orange and the Black: Documents in the History of the Orange Order. Ontario and the West. 1890-1940 (Toronto: Orange and Black Publications, 1984), 152. Referred to in Orange Order lore as the "Battle of Hastings," the Orange Order saw the result as "a splendid victory for the cause of Public Schools." During the campaign, Orange Order designates conducted over twenty public meetings in the riding, distributed over 16,000 pamphlets on the school question and several thousand free copies of the Orange Sentinel.

⁶⁴ Jonathan Manthorpe, The Power and the Tories. Ontario Politics-1943 to the Present (Toronto: MacMillan of Canada, 1974), 23-28.

⁶⁵ Roman Catholic Separate School Trustees for the Township of Tiny v. The King (1928) A. C. 363, (Privy Council). See Robert T. Dixon, "The Ontario Separate School System and Section 93 of the 'BNA' Act," unpublished Ed. D. Dissertation, University of Toronto, 1975, and Stephen B. Lawton, "A Case Study of Choice in Education: Separate Schools in Ontario."

⁶⁶ Neil Finkelstein, "Legal and Constitutional Aspects of Public Funding For Private Schools in Ontario," A Paper Prepared For The Committee On Private Schools In Ontario (Shapiro Committee), Ministry of Education, Toronto, 1984, 12-13.

they did at the elementary level. As well, the Church tried historical arguments, staking claims to grandfathering rights on the basis that prior to Confederation, some Catholic schools offered secondary programs. But, mainly, the Catholic campaign was grounded in moral considerations.⁶⁷

Catholic organisations recalled this long and often difficult history of conflict when they appeared before the Hope Commission. They suspected, as well, that in the context of the current political atmosphere, their goal of obtaining public funding for Catholic Secondary Schools was still not within sight. The Hope Commission had been convened by Premier and Minister of Education, George Drew. The Catholic community knew George Drew as the organiser of the Conservative Party's 1936 by-election campaign in East Hastings. For that by-election, fought on the Catholic Schools issue and, specifically, Liberal Premier Mitchell Hepburn's decision to allocate a larger share of the tax dollar to the Catholic schools, Drew engineered "one of the strongest electoral appeals to racial prejudice in modern Canadian History."⁶⁸ East Hastings, a Protestant stronghold and "very Orange," was a perfect forum for such a strategy.⁶⁹ The Conservatives won a resounding victory.⁷⁰ Convinced of the value of anti-Popism, the Conservative Party chose Drew as party leader less than two years later. Now that Drew was

⁶⁷ Matthews, "The Historical Background of Catholic Secondary Education in Ontario," 7.

⁶⁸ Manthorpe, The Power and the Tories. Ontario Politics, 1943 to the Present, 23-28.

⁶⁹ During this campaign, the Orange Order supporters of the Conservative Party candidate warned that if the Liberal candidate won, crosses would appear on all Provincial highway signs and Toronto's Casa Loma would become the Canadian residence of the Pope. Toronto Daily Star, November 30, 1936.

⁷⁰ Drew's early political experience was at the municipal level in Guelph where he served first as an alderman, and later as mayor. On one occasion, when the elected Guelph aldermen voted for one of their number as mayor, Drew participated in a strategy to ensure that the Roman Catholic candidate was not successful. R. E. Bawtinheimer. "The Development of an Ontario Tory: Young George Drew," Ontario History, 69, (1979), 55-75.

Premier and Minister of Education, the Catholic community did not expect to see their cause advanced during his tenure.

If there was little to gain, what was the Catholic agenda insofar as the Hope Commission was concerned? The Catholic community was mindful of its failure to obtain public support for Catholic education much beyond that allowed in 1863. Yet, there was always the possibility that the Drew Regulation would open up public funding possibilities wedge for Catholic education. If the Provincial government was funding doctrinaire Protestant religious education, then, perhaps there was an opening in the Catholic battle for similar funding.

Drew Regulation Opponents

Opponents of the Drew Regulation faced formidable adversaries. Not only were they dealing with a government regulation, but one that was strongly supported by influential bodies, not the least of which were the mainstream Protestant churches. And for its own political purposes, even the Catholic Church had chosen to support the introduction of compulsory Protestant education in the public schools.

By far the most comprehensive brief in opposition to the Drew Regulation was submitted by the Canadian Jewish Congress. As one of its first submissions to a government body, it was one which Congress would learn from, both in the substance of the brief and the manner in which it was received.⁷¹ Drafted in provisional form by the National Research Director of Congress, Louis Rosenberg, the brief was revised and edited by Rabbi Feinberg, with the

⁷¹ "For Children in a Democracy: Religious Instruction in the Public Schools of Ontario." PAC, Feinberg Papers, MG 31, F9, Volume 2, File 19. September 19, 1945.

assistance of A.B. Bennett and Edward Gelber of the Congress regional executive.⁷² To Congress, this was a seminal document. Presentation of the brief was left to Rabbi Feinberg, who placed the Congress position before the Commission at open sitting on September 19th, 1945. By this time, Feinberg had honed his arguments made in sermons over the previous eighteen months. He explained that the Jewish community was not necessarily opposed to religious instruction, because

Religious Instruction in the Public Schools rests on certain basic and inescapable premises. First, religion, as taught by genuine Christianity and true Judaism, is the spiritual core of democracy...Second, character training is the inescapable task of every educational instrument, including the public schools.

However, the Drew Regulation brand of religious instruction violated the principle of separation of church and state, which he described as the basis of the Canadian school system and “the road to the fulfilment of democracy everywhere.”⁷³ To Feinberg, without separation of church and state, one could not experience “true democracy.” To this end, the Congress viewed the “recent Great War[‘s]” preservation of freedom of conscience as manifest in the absolute separation of church and state. The breach of this separation was not simply a matter of legal theory to the

⁷² Louis Rosenberg’s full title was National Research Director of the Bureau of Social and Economic Research of the Canadian Jewish Congress which position he held from 1945 to 1972 when he retired. When the Congress brief was prepared Rosenberg was the Bureau. Rosenberg’s credentials as a Jewish civil servant were considerable, including an extended term as Director of Jewish farm settlements for the Jewish Colonisation Association in Western Canada from 1919 to 1940 and a term as Western Director of Congress from 1940 to 1945. A subsequent perspective on Rosenberg characterised him as having “a brilliant career as a social statistician.” Louis Rosenberg, Canada’s Jews. A Social and Economic Study of Jews in Canada in the 1930s (Montreal: McGill-Queens University Press, 1993). See Editor’s Introduction by Morton Weinfeld. xi-xxi.

⁷³ We can only assume that Rabbi Feinberg was aware that the American First Amendment was not the law in Canada. However, in interpreting separation of church and state in Canada as *de facto* if not *de jure*, Feinberg was not alone. Terrence Murphy claims that the secularisation of the Clergy Reserves in Upper Canada in 1854, *inter alia* “removed the last substantive manifestation of the confessional state from what is now Canada.” He points out that although “the Church of England might enjoy some residual financial advantages...legally, however, all religious denominations were now on an equal footing.” Terrence Murphy, “The English-Speaking Colonies To 1854,” in Terrence Murphy (ed.), A Concise History of Christianity in Canada (Toronto: Oxford University Press, 1996), 108-189 at 187.

Jewish community. By 1941 there were almost 70,000 Jewish citizens in Ontario, making Jews the seventh largest faith group in Ontario. Although predominantly located in the major centres, Jewish families could be found in hundreds of Ontario cities, towns and villages. The brief argued that the Drew Regulation negatively impacted on every one of these Jews and, in particular, every Jewish child.

In his address to the Commission, Feinberg allowed that character training was important but stressed that there were methods other than compulsory religious instruction in the classroom with which to achieve it. One of these alternate methods was the Springfield Plan, increasingly employed by educators in the United States to encourage mutual understanding and respect among children of numerous ethnic and religious groups without employing a doctrinaire religious basis.⁷⁴ As for the actual program, Feinberg referred the Commission to a detailed critique of the representation of the Jewish religion in the textbooks and Teachers' Manuals prescribed by the Department of Education.⁷⁵ Referring to the authorised textbooks, he noted "numerous unfriendly and unauthentic[sic] references to Judaism and the Jewish people." This only served "to undermine brotherly love, mutual respect and neighbourly good-will among future Canadian citizens."

⁷⁴ Clarence I. Chatto and Alice L. Halligan, The Story of the Springfield Plan (New York: Hinds, Hayden and Eldredge, 1945). The Springfield Plan originated in Springfield, Massachusetts, in 1939. The Plan was the brainchild of John Granrup, Superintendent of Schools of Springfield, who was concerned about racial, religious, economic and political tensions affecting the classroom. But even the Springfield Plan, favoured by many who opposed religious education in the public schools for its emphasis on mutual respect, was influenced by majoritarian principles. For instance, the Plan suggested using a plastic tree in classrooms as a teaching aid to demonstrate the "different religions the people of the world believed in." Each branch contained glass prisms representing different religions. "All the prisms are the same size and they all shine with the same brightness, because every religion is equally important to the people who believe in it." Yet the religion of the natives of New Guinea was referred to as the "queer religion" and Judaism as "the religion of the Hebrews," somewhat ancient terminology. And the religion reserved for the top branch was Christianity. Chatto, The Story of the Springfield Plan, 68.

⁷⁵ Appendix I of the Brief credited Rabbi Fischel of St. Catharines with the research for this undertaking.

Congress and Feinberg believed that their brief was well received. Feinberg reported that proponents of the Drew Regulation were already “smitten with doubt” and were exploring the Springfield Plan option as proposed in the Congress brief.⁷⁶ Furthermore, in a sermon to his congregation a few months later, Rabbi Feinberg declared that although the hearing given Congress by the Royal Commission “revealed what seemed to be an inquisitorial spirit,” Congress anticipated some positive change to the teaching of religion in the public schools as a result of its submission.⁷⁷ Congress expected, naively perhaps, that there would be some reciprocity of treatment. The tone of the Congress brief had been respectful. Although it defended the Jewish position, it was careful to couch its criticism of the Drew Regulation in

⁷⁶ CJCNA, Congress Papers, Series FA IOI 20. Inter Office Information from National Headquarters: Canadian Jewish Congress, November 20, 1946, commenting on an article by Milton R. Konvitz in the October, 1946 issue of Commentary, a widely read publication of the American Jewish Committee.

⁷⁷ PAC, Feinberg Papers, MG 31 F9, Volume 1. Sermon at Holy Blossom Temple, Toronto, December 17, 1948. In an article published some years later when he was less infused with optimism, Feinberg recounted that the dialogue between the Commission members and the Congress delegation had created some tension. In particular, Feinberg recalled that the Chairman of the Royal Commission, in his anxiety to justify the Drew Regulation, had declared that Canada was a “Christian nation under the Crown.” Jewish Standard, June 15, 1954. Similar sentiments were expressed by Feinberg years later still when he recalled that the Chairman “unleashed a barrage...so inquisitorial that a Gentile waiting in the wings to make a submission on art classes telephoned [Feinberg subsequently] to apologise for Christians and the Canadian people.” See Feinberg, Storm The Gates of Jericho, 299. According to the transcript of Commission proceedings, the statement that Feinberg attributed to the Chair was actually made by Major Dunbar, Commission counsel. Dunbar’s statement in full was, “Rabbi Feinberg, you’ll agree that Ontario, which is a Christian Province under the British Crown, has the right to teach its own religion in its own schools?” When Feinberg hesitated to respond, the Commission Chair put to Feinberg that “you cannot dispute that the whole character of the British people has been built up for a thousand years or more with Christianity as its bed-rock?” PAO, Hope Royal Commission Transcript of Proceedings, RG 18-131, Volumes 7, 7A, 7B, 537-538. Feinberg recalled his reaction to this statement as one of discomfort both as a Jew and as a newcomer to Canada. He doubted his own qualifications to respond to an interpretation of Canadian law posed by a Canadian judge. As a result he turned to his technical advisor, Louis Rosenberg who, in turn, “demolished the Chairman’s rash defence of Canada’s constitutional Christianity with an erudition and valour which somewhat discomfited its author.” Aside from his credentials as a social statistician, Rosenberg was no stranger to the issue of religious education in the public schools. Together with others, in 1926 he had successfully opposed an attempt by the Regina Ministerial Association to incorporate religious instruction into the public schools of Regina, Saskatchewan. OJA, Hamilton, Ontario Jewish Community Papers, PR 131.52, L1, MG8/S. Louis Rosenberg to Oscar Cohen, July 27, 1938.

terms of the slight to democracy rather than to the Jewish community. This minority community still knew its place.

All of the opponents of the Drew Regulation were not as respectful. In the fall of 1944, school districts in the Province were flooded with a pamphlet entitled "What To Do to Combat Religion in the Schools." The pamphlet was authored by Reverend A. C. Cochrane of the St. Andrews Presbyterian Church in Port Credit, Ontario assisted by W. Bastedo.⁷⁸ Taking a very aggressive stance, the pamphlet suggested that religious education in the public schools was objectionable as "contrary to Confessions of Faith," which left religious education in the hands of the church. This publication was only one of Reverend Cochrane's forays against the Drew Regulation. His name appeared again as a prime mover in the Association for Religious Liberty.⁷⁹ In its brief to the Hope Commission, the Association advised that it had been formed on February 5, 1945 in direct response to the Drew Regulation. With no serious objections to the previous system of teaching religion in the schools, the Association declared that "if the system in use prior to Autumn, 1944 had been continued unaltered, the Association would not have come into existence."⁸⁰ The Association had four major objections to the Drew Regulation:

1) The transfer of responsibility for instruction from clergy to teacher was problematical:

⁷⁸ The Superintendent of Education, C.C. Goldring, had learned of the pamphlet and asked his principals to monitor its distribution. (11 copies were turned into the Superintendent). TBEA, Curriculum Department, General Files, 1907-1972. Religion. Memorandum to Toronto Board of Education Files, September 13, 1944.

⁷⁹ "The Christian Faith and the Religion in Ontario Schools." Supplementary Statement to Brief 45, April 19, 1945. According to this supplement to the main brief, Cochrane was joined by other churchmen. The seven essays in the supplementary statement were "a serious protest against the type of Biblical instruction which has been introduced into the Public Schools of Ontario." In particular, the authors complained of the "humanistic principles" that were found in the manuals.

⁸⁰ The Association for Religious Liberty. "Religious Education in Ontario Schools." Brief 45 to the Royal Commission on Education in Ontario.

In many cases, the teacher who is keen will be an honest and sincere and competent person who will do a really excellent job; in many cases however, such a person will prove to be a fiery-eyed fanatic, intent upon indoctrinating the children with his or her own peculiar version of religion.

2) Departmental prepared text books were equally problematical: “In preparing and circulating official textbooks in religious knowledge, the Department is, in effect, maintaining that there is [as with mathematics and spelling] a right way of thinking about God in moral and religious questions.”

3) Religion as a compulsory part of the school curriculum was wrong-headed and discriminatory. The Association questioned the adequacy of the exemption provision in the Regulation, arguing that it introduced “a most vicious principle - the principle of religious segregation.”

4) The standardisation of all religious teaching in public schools did a disservice to religious freedom and pluralism, even among Christians. The Association could not accept the proposition that the English model could be used in Ontario because “Ontario is far more heterogeneous than England in its ethnic and religious character...and has no tradition or experience of an established church such as England had for centuries.”

Unlike the Jewish community, the Association for Religious Liberty had no established profile. Yet, it was not lacking in self-esteem for an organisation in its infancy. Claiming 1000 members, Association spokesmen explained to the Commission that religious affiliation, while not a prerequisite for membership, included many branches of Christianity and Judaism together with those unaffiliated with any religious faith group. The Commission was not impressed with the mandate of this organisation.⁸¹

⁸¹ PAO, RG 18-131 Volumes 7, 7A, 7B, 476-477. Transcript of the Proceedings of the Hope Royal Commission. The testiness of the Commission was obvious, prompting the Chair to explain that “We are not trying to put you on the spot; rather we are trying to get a common solution.” Reverend Cochrane on behalf of the Association responded that “We have not had that feeling [i.e. of good-will].”

Mandate was also an issue for The Public School Supporters League.⁸² In its brief in opposition to the Drew Regulation the League claimed to speak for the larger civic society and public interest:

This brief is submitted on behalf of the Public School Supporters of the Province that great body of people who own schools, who have built them in the past with their taxes, who have contributed the great bulk of Provincial grants over the years, through indirect taxation, who have provided the hundreds of thousands of scholars of these schools annually, who have always maintained and exercised the rights of ownership and management of the schools through their local Boards of Trustees.⁸³

The League voiced concern about “the continuous encroachments of the Sectarian interests in the field of the Public, Non-Sectarian, Non-Denominational Schools.” The League warned of encroachments being made by the Roman Catholic Separate School system and an increased centralised bureaucracy. Quoting Ryerson and George Brown extensively to support its position, the League concluded that “if it was a crime in the days of Brown and Ryerson to introduce sectarianism into the school system, it was equally vicious to extend the wrong principle time and again in succeeding years up to and including 1943 and 1946.” The League recalled an unsuccessful attempt in 1924 to introduce compulsory religious education into the public schools which plan failed, in part, because of the opposition of individuals and groups such as the Eastern District Orange Lodge of Toronto, the Grand Orange Lodge of Ontario West and other

⁸² Under examination by the Commission counsel, W. Bastedo could give very little detail about his organisation, save to acknowledge that it was not a mass movement, did not ask for membership and held no elections, from which the Commission deduced that Bastedo had appointed himself as spokesman. PAO, RG 18-131. Transcript of Proceedings of the Hope Royal Commission, 4867-4870.

⁸³ The “great body of people” was apparently no more than thirteen in number, for whom W. Bastedo, self-appointed or otherwise, was the designated spokesperson. Bastedo was also a member of the Association for Religious Liberty. There was some suggestion that the rabble-rousing, anti-Catholic Pastor T. T. Shields was a member of the League, but no membership list was made available. PAO, Drew Papers, RG3-17, Box 435. Memorandum from J. G. Althouse to Premier George Drew, April 27, 1947. See also The Public School Supporters League. “Public Schools of Ontario.” Brief 205 to the Royal Commission on Education in Ontario.

branches of that organisation.⁸⁴ The League argued that the ultimate result of the Drew Regulation would not only be sectarian public schools but the creation of a precedent for the classification of Separate Schools as “Denominational Public Schools.” This would be disastrous for the public school system.

The League also took exception to the attempts by all three major political parties to curry favour with Catholic voters by promising to improve the lot of the Separate Schools and their supporters.⁸⁵ In contrast the League called for a “return to the bare concessions granted Separate Schools in 1863, [failing which]...steps be considered to expropriate all Separate Schools on a fair basis and wipe them out entirely.”⁸⁶ Just as Catholic supporters of the extension of public funding to Catholic secondary schools had found a way to rationalise support for the Drew Regulation, so too Protestants could translate their opposition to the public funding of

⁸⁴ Pennefather, *The Orange and the Black*, 3-12. Convinced that the “last shot for the maintenance of a British Canada would be fired within the school system,” Orangemen spared no effort to ensure that public schools maintained their British character. The Orange Lodge position of 1924 had not changed in the intervening twenty years. For their purposes, the recognition of Christianity was adequately provided for in the opening exercises portion of the school program and compulsory religious instruction was superfluous and only served to violate the principle of non-sectarian education.

⁸⁵ The League did not play favourites. The C.C.F. was criticised for allegedly sending secret circulars to Separate School Districts in Northern Ontario promising to pay seventy per cent of Separate School costs if elected in the 1943 election campaign. The Conservatives under Drew in the 1945 election campaign were accused of promising, if elected, to relieve the Elementary Separate Schools of fifty per cent of their tax liability. And in an attempt to out-bid Drew, Hepburn’s Liberals supposedly offered to pay 90 per cent of elementary Separate School costs.

⁸⁶ This animosity toward the Catholics was not surprising. The League originated in 1939 in Windsor, Ontario in response to a decision of the Supreme Court of Canada to award a portion of realty taxes payable by Ford Motors to Separate Schools without requiring proof of entitlement from those schools. See *The Board of Education For the City of Windsor v. Ford Motor Company of Canada Limited and the Board of Trustees of the Roman Catholic Separate Schools For the City of Windsor*, [1939] S.C.R. 412. This decision was overturned on appeal to the Privy Council. See [1941] A.C. 453. The emphasis that the League placed on the Supreme Court’s decision as a threat to the public schools should not detract from its essential anti-Catholic thrust. Moreover, the Department of Education alleged that Bastedo had been antagonistic to Separate Schools for some time, and had tried, unsuccessfully, to arouse the Orange Order to oppose the Drew Regulation. PAO, Drew Papers, RG 3-17, Box 435, Separate Schools, 1944-1947. J. G. Althouse to George Drew, April 27, 1947.

Catholic Separate Schools into an openly hostile stance against compulsory Protestant indoctrination in the public schools.

THE HOPE REPORT

The Report of the Hope Commission (Hope Report), was delivered on December 15, 1950.⁸⁷ The Report, covering all aspects of education in Ontario, was quite weighty. It contained some 938 pages of text constituting the majority report signed by fifteen of the twenty remaining members of the Commission. There was also a lengthy Minority Report dealing with the issue of Separate Schools signed by four members and a separate statement signed by the remaining member.⁸⁸

For all of the discussion of religious education before the Commission, the Report's consideration of the issue, save for the issue of Separate Schools, occupied only four and one-half pages under the general heading of Social, Spiritual, and Other Aspects of Education.⁸⁹ The basic thrust of the Commission's proposals respecting religious education was that "religion and morality, though not sectarianism, must have a central place in any system of education."⁹⁰ The Commission saw this principle embodied in pre-Confederation statutes such as the Consolidated Common School Act for Upper Canada, 1859, and, tracing the history of this legislation, found

⁸⁷ Report of the Royal Commission on Education in Ontario. (Toronto: Baptist Johnston, 1950). (Hope Report).

⁸⁸ Of the original twenty-one Commissioners, one had died and was not replaced. The number and length of the dissenting opinions led one commentator to entitle his critique "Hope Report is Not a Report (but a Statement of Disagreement)," B. K. Sandwell, Saturday Night, January 9, 1951.

⁸⁹ Hope Report, Public Elementary Schools, 123-127.

⁹⁰ Hope Report, 123 citing C. B. Sissons, Egerton Ryerson, His Life and Letters Vol. II (Toronto: Clarke, Irwin, 1947), 95.

little change in Provincial statutes or regulations up to the date of their deliberations.⁹¹ Furthermore, the Commission, taking its cue from the Inter-Church Committee submission, extrapolated from the Program of Studies for Grades I-VI of the Public Schools, 1941, that the social purposes of the public schools were to reflect the ethical standards of society, which, in turn, were derived from “the ethics of the Christian religion and the principles of democratic living.” The Commission saw the Drew Regulation as a logical extension of this practice, not a departure from the Province’s established tradition of non-sectarianism. Indeed, the Report pointed out that the Regulation specifically provided that issues of a controversial nature were to be avoided, and that individual religious freedom was guaranteed by the exemption provision.

The Commission endorsed the introduction of religious instruction into the formal curriculum because many children were not receiving any in Sunday Schools or at home, because the practice of having clergymen go into the classroom was not universally applied in Ontario, and because, in principle, it agreed with those numerous briefs which extolled the virtues of religious education.⁹² Acknowledging that there had been objections from mainstream Christian clergy as well as Jews, the Hope Report declared that the exemption provisions could meet any objections concerning the possibility of the state interfering with matters of conscience. Moreover, in support of its conclusion that the Drew Regulation had not radically changed

⁹¹ In support of this statement, the Hope Report cited section 7(2) of the Public Schools Act, R.S.O. 1937 c. 357, which provided that children should be permitted to receive whatever religious instruction their parents desired, subject to not being required to read or study from any text objected to by their parents. The Hope Report also cited s. 7(1) of the Public Schools Act, R.S.O. 1937 c. 357, which provided that clergy could visit schools and s. 22 (1) (c) of the Public Schools Act, R.S.O. 1937 c. 357, which provided that the duty of teachers is to “inculcate by precept and example respect for religion and the principles of Christian morality...”

⁹² To support these statements, the Hope Report cited Brief 44 of the Department of Education, Brief 64 of the United Church of Canada and numerous other church briefs. It also cited the Congress brief, although it did point out that Congress did not endorse the policy of the Department of Education.

existing practice, the Commission pointed to the relatively few requests for exemption.⁹³ Finally, the Commission was so taken with the short term successes of the Drew Regulation that it recommended that religious education as a subject of instruction not only be continued in the public schools but that it be included in the curriculum of the secondary schools as well.⁹⁴

The Hope Report's relatively brief but far-reaching statement on religious education should not have come as a surprise. It was little more than an affirmation of then majoritarian views about religious education. Certainly this was the working assumption stated in the Report's General Statement of the Aims of Education. There, the Commission makes it clear that as far as it and the majority of Ontarians were concerned, a prime duty of the public school was to give moral training. The "cardinal virtues" that the Commission saw as the foundation of that moral training were "honesty and Christian love." The Commission was so certain that this simple statement was universally acceptable, that it declared that "No earnest Christian or Jew, or sincere adherent of any other enduring faith or philosophy of intelligence and good will, could have conscientious scruples regarding these two virtues." The common good, the Commission elaborated, was served by the inculcation of these virtues and, in co-operation with churches,

⁹³ Specifically, the Hope Report referred to the records of the Deputy Minister of Education dated January 13, 1949 detailing exemption requests as follows:

1944-45 - 65

1945-46 - 37

1946-47 - 35

1947-48 - 46

These requests from school boards across the Province were out of a total of 5,405 boards.

⁹⁴ The Hope Report provided that any future revisions to the guide books should take into account the specific criticisms set out in the Congress brief. However, there was no time frame for these revisions stipulated in the Report, an indication, perhaps, of the lack of importance the Commission attributed to Congress concerns.

these virtues “may therefore be taught by the strongest means at the school’s command-an explicit acceptance that they are right. If this be indoctrination we accept the stricture.”⁹⁵

REACTION TO THE HOPE REPORT

The Hope Report touched upon many aspects of education in Ontario. Many of its recommendations were implemented. Included among these were recommendations respecting use of audio-visual aids, textbooks and classroom supplies, health education and services, classification of pupils’ growth, progress and temperance. However, the major proposal for re-organisation of the entire educational system into three separate units, elementary to the end of grade 6, secondary to the end of grade 10 and further education to incorporate grades 11-13 and junior college, was rejected. This proposal could well have resulted in a roll-back of Catholic funding to grade 6. Similarly a proposal for larger school units under a regional board of education was also dismissed out of hand. This could have led to the virtual obliteration of Separate School Boards. Leslie Frost, the Premier of Ontario when the Report was released recognised that such proposals would re-open a “regrettable controversy” and took no steps toward their implementation.”⁹⁶

As for the Hope Report’s recommendations respecting religious education, an early critique concluded that

the majority of people in Ontario have shown that they are not secularists any more than they are communists...They not only do not object to priests and

⁹⁵ The confidence with which the Hope Commission made this admission confirms that this may very well have been the “high water mark of religion in public education.” Peter D. Lauwers, “Religious education in the Public Schools of Ontario,” in Legal Images in Our Schools in the 21st Century, Canadian Bar Association-Ontario, 1996 Institute of Continuing Legal Education, Toronto, January 25-27, 1996, 12.

⁹⁶ Franklin Walker, Catholic Education and Politics in Ontario. Volume II (Toronto: Federation of Catholic Education Associations of Ontario, 1976), 483-4.

ministers of religion visiting the schools to give instruction to the children of their own faith, but since 1944, they have gone even further and included religious education as an integral part of the school curriculum.⁹⁷

Subsequently, the Hope Report was described as pursuing a classic Calvinistic approach reflecting the social conservatism and political naiveté of the Commission.⁹⁸ The Commission's social conservatism led it to dismiss recommendations from trade unions, political parties left of centre and minority and civil rights/religious rights organisations. As for political naiveté, clearly the Commission misread both the impact of some aspects of its Report on Separate Schools and how this would play negatively with government.

The Hope Commission had failed to anticipate the Conservative government's fear of opening up the Separate School funding can of worms. However, it did have an accurate reading of the Province's pulse respecting religious education. No one complained about the Report's position on religious education. Not even the Jewish community. After making a serious case to the Commission for the removal of religious education from the public schools, the Jewish community's response to the Hope Report's support for the Drew Regulation was neither outrage nor disappointment. It was cautious, bordering on meek. In fact, it was not until the fall of 1951 that the Hope Commission's recommendations on religious instruction were even addressed at JCRC meetings. By that time, George Drew's successor, Leslie Frost, was seeking re-election. The JCRC weighed whether the Hope Report's failure to respond positively to Jewish concerns about religious education in public schools should be raised by Congress in the ensuing political campaigns. The discussion that ensued was telling. Edward Gelber, a Congress Vice-President, advocated making the Jewish community's opposition to the Drew Regulation clear to the

⁹⁷ Silcox, A Brief Critique of the Report of the Royal Commission on Education in Ontario, 54.

⁹⁸ Stamp, The Schools of Ontario, 187-188.

representatives of all three parties. Sydney Harris, also an officer of Congress, advocated circularising all three leaders to ascertain their views. But even these muted suggestions were too much for some who disputed the justification of such tactics during a political campaign. For this careful community, a political campaign was not yet the forum to raise Jewish concerns about an encroachment on their civil liberties! One community leader and former chair of the JCRC, J. I. Oelbaum, warned that such a move might even have “a boomerang effect” and result in religious education becoming a “political football.” Others concurred, feeling that the post-election period would be a more appropriate time to press this matter. Some felt that it was improper for the Jewish community to issue any public statement voicing its disappointment in the Commission’s treatment of the Drew Regulation. Professor Jacob Finkelman reminded the JCRC that the Hope Report was itself “a sensitive and delicate matter,” dealing with many issues like Separate Schools that did not necessarily relate to Jewish community concerns. At a time when the Hope Report had evoked little or no public comment, Finkelman was loathe to see the Jewish community initiate discussion. This might inject unwanted religious prejudice into the current political campaign.

Why was the Jewish community so concerned about making its dissatisfaction public knowledge? Because, in contrast, for instance, to the Congress campaign for fair employment practices which had received support from many non-partisan groups in the Province, for the time being, religious instruction would be widely identified as a “Jewish issue.” As such, Congress determined that the Jewish community could be exposed and vulnerable to attacks that

could outweigh any foreseeable gains from a public statement.⁹⁹ As a result, the relatively harmless motion to canvass the political leaders on their views of religious instruction in the public schools was withdrawn by the movers.¹⁰⁰ It was not until November, 1952, well after the election and the return of the Conservatives to power, that Congress issued an official statement regretting the Hope Report's recommendation to retain the Drew Regulation.¹⁰¹

Bruised by the results from the Hope Commission, Congress dithered for five years before again broaching the religious education issue with the Provincial government. In fact, a delegation to Premier Leslie Frost on January 16th, 1957 was the first to make a significant public statement in opposition to the Drew Regulation in almost twelve years.¹⁰² By this time, it was no longer necessary for Congress to predict dire results from the Drew Regulation. After a decade of classroom religious instruction, the delegation argued, experience "justified their apprehensions in 1945." Religious education, they protested, "sets up an alienation and estrangement in an area where respect and intimacy should prevail." To dramatise these concerns, Congress outlined a series of deleterious incidents involving Jewish children that had

⁹⁹ The predicament described by Professor Finkelman, who subsequently served as Chairman of the Ontario Labour Relations Board, and was respected in Jewish and general community and professional circles alike, was problematical for the Jewish community. The community wanted desperately to address religion in the schools without having it seen as just a Jewish problem. By 1957, the Toronto Daily Star was still not convinced that the Drew Regulation should be changed. However, on January 21, 1957, its editorial stated that, "taking all the factors into consideration, we feel that religious instruction in the schools should be continued, but in a way as to obviate as far as possible any discrimination against Jewish pupils or their parents." To the Toronto Daily Star religious instruction in the public schools was a "Jewish issue." This view was precisely what Finkelman and others were attempting to deflect. They were also being careful to choose their battles. Like it or not, religious education was not the major thrust of the Hope Commission. To make an issue out of the offhand treatment given Congress' concerns by the Hope Commission was viewed as inappropriate. Sydney M. Harris, Interview, April 30, 1988.

¹⁰⁰ OJA, JCRC Papers, MG8/S, File 2, Box 4. JCRC Minutes, October 31, 1951.

¹⁰¹ PAO, Ministry of Education Papers, RG 2-43 Box 150, 1951, File 994c. Sydney Harris letter and enclosure, January 8, 1960.

¹⁰² A public deputation to the Premier meant receiving press coverage. The Toronto Daily Star did report on the deputation in its January 21, 1957 issue.

occurred since the inception of the Regulation in public school classrooms in various communities in the Province, including, Brantford, Kitchener, St. Catharines, and Toronto.¹⁰³ At the same time, Congress described a religious education induced anomaly with respect to teacher training. Although teachers were entitled to claim an exemption from teaching religious education, no such exemption was applicable to teacher training which included compulsory classes in religious instruction. The following predicament resulted:

In one [Teachers'] college where there is a sizeable number of Jewish teachers-in-training, the principal has in all good faith and with the most laudable intentions arranged for a Rabbi to instruct this group in the principles of Judaism. His reason is that, should he not do this, the students would be obliged to take courses from Protestant clergymen as they must have the certificate of religious instruction. Now let us take a look at the paradox this reveals. The students are being given instruction in Judaism. Why? Will they be teaching Judaism in the schools later? No. They will be teaching another religion, Christianity. Why are they being taught Judaism? So that they will not have to be taught Christianity which incidentally is what they will be expected to teach.¹⁰⁴

Finally, the Congress delegation declared that it was baffled that a government that enacted Fair Employment Practices laws and Fair Accommodation Practices laws chose to segregate children of minorities on the basis of religious belief. The government listened politely but did nothing.

The first phase of Jewish opposition to the Drew Regulation ended in feelings of disappointment. The Jewish community was well organised and had mounted a reasoned,

¹⁰³ Appendix A was described as containing "a number of sample cases which are typical of our experience since religious education has been introduced into the schools. In a number of these cases some remedial steps have been taken. It must be understood however that corrective action cannot remove fundamental injury nor prevent it from recurring in other schools and under new teachers or principals." As an example, "We have the following report from Kitchener in 1952. A teacher possessed of missionary zeal persisted in what could only be described as proselytising efforts directed against a Jewish child [the only Jewish pupil in the class]. She extended this activity into her teaching in other subjects, having him copy out New Testament lessons on the blackboard during the literature classes." OJA, Harris Papers, MG6/H, File 70, Frost Submission, January 16, 1957.

¹⁰⁴ OJA, Harris Papers, MG6/H, File 70. Frost Submission, January 16, 1957.

responsible and, above all, moderate response to the implementation of the Drew Regulation. However, it did not have the political clout to deal with the forces that were ranged against it. These forces included the Provincial government, the Department of Education, much of the mainstream church, the Catholic Church and large sectors of public opinion. The fact that Jewish communal leadership was unwilling to take a more aggressive posture for fear of putting the standing of the Jewish community at risk only guaranteed that the government would be unmoved. If the organised Jewish community was intending to mount a serious challenge against the Drew Regulation, it would need to consider alternative tactics.

CHAPTER THREE

PLANS AND STRATAGEMS

The great majority [of Jews] while they are engaged in mercantile pursuits, have not attained as yet positions of much importance.¹

When the Hope Report revealed that the combined efforts of Congress and Rabbi Feinberg's JCRC had not achieved a felicitous result, the Jewish community hunkered down for a long struggle. The experience seemed to corroborate that the Jewish community remained an outsider to the political process. Not only did members of the Jewish community feel unwelcome in the clubs, professions and businesses of establishment Ontario, but their children were also compelled to choose between forced exposure to Christian preaching and teaching or self-imposed banishment from classroom activity.² The effort to withdraw the Drew Regulation would require a long term commitment. But if the Jewish community was going to continue playing by the political rules, how could it do so more effectively? Certainly it would need to make more persuasive formal submissions to government. It would be necessary to give public statements to the press and to deliver the message of opposition to religious education to other public and private bodies. Such an agenda would ideally require a reservoir of well-researched information. It would also necessitate extending the ambit of opposition beyond the Jewish community.

¹ Toronto Mail & Empire, September 25, 1897.

² Even though less than a month prior to release of the Hope Report the Supreme Court of Canada had ruled in favour of the Jewish community's case opposing a covenant in a deed of land restricting sale to Jews, the Court had not based its decision on public policy, i.e. that discrimination is abhorrent on its face. Instead, the Court determined that the restriction was void for uncertainty. Noble and Wolf v. Alley, [1951] 1 D.L.R. 321.

BACK TO THE DRAWING BOARD

Research into Ontario's educational history and religious education in particular was an obvious component in any form of reasoned campaign against the Drew Regulation. Yet, records or evidence of Jewish community efforts in this direction are sparse. This could indicate one of two possibilities. First, that very little research was in fact done. This implies that many of the statements, briefs and depositions made by Congress or others in the organised Jewish community were based on anecdotal evidence supported by a strong dose of intuition. Second, that research was conducted in house and ad hoc by Congress staff led by Congress Executive-Director, Ben Kayfetz.

As for the first view, the general absence of actual formal research tends to support the notion that research did not play a significant role in Congress' preparation of its case. There were, however, exceptions. For example, in March, 1952, "at a cost not to exceed two hundred dollars," Congress hired Hamilton historian Manuel Zack to conduct a study of the history of church and state relations in Ontario for the period 1850 to 1950. Zack was asked to uncover evidence to support the Congress position that Ontario's public schools had not experienced compulsory classroom instruction in religious education prior to 1944. In addition, he would look into questions of church influence in public education generally.³

Zack's preliminary examination of the published record found the period so understudied that he could establish no concrete pattern. His research eventually did disclose that the relations between church and state typically were stable and static for a considerable time until the Drew Regulations. In order to corroborate his findings, Zack looked into the subjects of horse racing

³ Although Zack was in business at the time, he had an interest in history and historical research. Subsequent to his completion of this study, Zack returned to school, obtained a post-graduate degree and pursued a career in academic administration at McMaster University in Hamilton. Ben Kayfetz, Interview, July 30, 1997.

and liquor control, potential areas of controversy and conflict between church and state. Here too he found that the state and the church managed to avoid conflicts. Ultimately, Zack determined that, notwithstanding the distinction between the Canadian and American concepts of the separation of church and state, the Ontario experience for the one hundred years prior to 1944 substantiated a de facto separation of church and state.⁴ JCRC Executive-Director Ben Kayfetz was frustrated with Zack's work. Although left with the result that Kayfetz wanted, Zack provided Kayfetz with very little by way of hard facts that could be used in submissions and press releases. Kayfetz wanted facts. He wanted "colour." Instead he received suggestions of tendencies which, on balance, pointed in no one direction rather than another. It was not helpful.

The lack of factual material that could be pulled out of Zack's research may account for the particular delight that Kayfetz took in running across a somewhat curious and solitary incident during the course of conducting other research. It may also explain repeated references to this incident in Congress briefs.⁵ As Kayfetz related it, basing his information on reports in the Toronto press at the time, in 1897 the Church of England approached the Toronto Board of Education with a request that religious education be introduced into the public school curriculum. The Board forwarded the request to its Management Committee, encouraging amendment to Board timetables in order to accommodate the new classes. A Jewish deputation spearheaded by leaders of Holy Blossom Congregation appeared before the Management Committee and presented vigorous opposition to this proposal, objecting that permitting

⁴ OJA, JCRC Papers, MG8/S, Box 5. Correspondence, 1952. Ben Kayfetz to Fred Catzman, August 25, 1952.

⁵ Kayfetz came across this incident "quite by accident" while researching a separate matter. Subsequently, the incident was referred to in briefs to Premier Frost in 1957 and to the Mackay Committee in 1966. Kayfetz' source, the Toronto Mail & Empire, September 29, 1897, described the incident in part of a series of articles called "Foreigners Who Live in Toronto." Greater detail is provided in the Toronto Mail & Empire, June 4, 1897 and October 22, 1897, the Toronto Evening Star, June 4, 1897 and June 10, 1897, the Toronto World, June 11, 1897 and the Toronto Evening Telegram, June 11, 1897.

curricular religious education would, in all likelihood, impart a sectarian basis to the character of teaching in the public schools and undermine the schools' atmosphere of equality. Others joined in on the attack. Ultimately, the Board of Education rejected the Church of England request. In so doing the Board acceded to the arguments of both the Chancellor of McMaster University, who warned against uniting the authority of the church and the state, and to those of the Solicitor for the City of Toronto, who was of the opinion that permitting instruction in religion would be prohibited under then existing Provincial education statutes.⁶ By association, the Jewish community's objection was sustained. To Kayfetz this was compelling evidence that, in practice, the doctrine of the separation of church and state was honoured in Ontario's public schools.⁷

This incident provided a useable historical precedent in support of the consistency of the Jewish position. However, it contributed little by way of evidence to demonstrate that if the government did mandate religious instruction in the public schools, Jewish children would be adversely affected. To provide data to sustain the argument that Jewish children were suffering damage, research was conducted but, again, in a haphazard and halting manner.⁸ For instance, in 1952 the JCRC approved, in principle, a proposal that the Toronto Jewish Youth Council and the Council of Jewish Women conduct a fact-finding survey concerning the impact of religious instruction. In particular, the Council's inquiry planned to review exemption requests, how courses were administered, teaching methods and the content of text books.

⁶ OJA, JCRC Papers, MG8/S, Box 5. Correspondence, 1953. Ben Kayfetz to Fred Catzman, April 2, 1953. At this stage of its development, McMaster University was located in Toronto.

⁷ In this regard, the views of Kayfetz and Rabbi Feinberg were as one.

⁸ OJA, JCRC Papers, MG8/S, Box 5. JCRC Minutes, January 21, 1952.

The duty of staffing this study was assigned to a Social Work student who was then serving a field placement at the JCRC.⁹ But plans for this survey were put on hold when a meeting was arranged between Congress representatives and the Superintendent of Elementary Schools for the City of Toronto, Zach Phimister.¹⁰ At this meeting Phimister informed the Congress representatives that exemption requests from Jewish parents had begun with a flurry in 1944 and then dropped off to virtually none. To underline the significance of this statement, Phimister noted that, although there were over 60,000 students in Toronto public schools in 1952, he would be hard pressed to find more than a handful of students being exempted. Phimister also pointed out that no non-Jews, including the forty-five hundred Roman Catholic students in public schools, were seeking exemptions either. If, as the Jewish community claimed, the religious education program was causing damage, wouldn't parents be insistent on exemptions? In the course of these discussions, Phimister did concede that the Toronto Board of Education had no program or materials in place to inform parents that exemptions from religious instruction for their children were available. Nor were there any procedures to process requests for exemption should any be made.¹¹ But even if procedures to facilitate the exemption

⁹ The student, Max Cohen, was employed without remuneration. This was significant to the cash-strapped Congress.

¹⁰ OJA, JCRC Papers, MG8/S. Religious Education in the Public Schools Sub-Committee, 1952.

¹¹ Phimister had previously served as Inspector of Public Schools for Niagara Falls. In that capacity, he participated in the deliberations of the Religious Education Committee of the Ontario Educational Association on September 15, 1941. In attendance were representatives of the United and Baptist Churches, the Salvation Army, the Gideon Society, the Church of England, Reverend McLean from the Inter-Church Committee as well as V. K. Greer from the Department of Education. Phimister reported to the meeting on Niagara Falls' success with having clergy from local ministerial associations give religious instruction to grade seven and eight classes. Phimister described the clergy as representative of every denomination, including, Anglican, Baptist, Free Methodist, Lutheran, Presbyterian and United churches. He reported on satisfaction with the text used, "Jesus and Youth-A World Study of Jesus Christ." He also noted that "no Jew or Roman Catholic has ever asked to be excused from classes nor has there been any unfavourable reaction on the part of any parent." TBEA, Toronto Board of Education, General Files. Religion. Circulars and rulings. 1907-72.

provisions of the Drew Regulation were problematic, the signal received by the Jewish community was loud and clear. The survey Congress was planning might be counter-productive of the results that they needed in order to make their case. Faced with the uncomfortable prospect of verifying that, although Jewish parents did not like religious instruction in the public schools, their dislike was not so strong that they demanded exemptions for their children, Congress cancelled the proposed survey.

A year later, on its own initiative, Congress proposed another research project. This time a Congress staffer was asked to form a committee to be made up of Jewish parents of public school students who were concerned with abuses created by the religious instruction program.¹² The committee's task was to obtain and catalogue information about specific incidents where Jewish children were negatively impacted by religious instruction in the classroom. It was proposed that selected school principals be interviewed to obtain this information. In particular, principals were ear-marked because of their position of local authority within the public education system. Instead of Congress staff, parents were chosen to conduct these interviews because it was felt they could more easily access principals. Congress officials hoped that this hands-on approach to information gathering by Jewish public school parents would serve several of their purposes:

- 1) the information gathered would provide useful detail for subsequent briefs by Congress.
- 2) principals of public schools would come away with a better understanding of the grass-roots concerns of some of their parent body.
- 3) these parent volunteers would take on additional leadership in the campaign against religious education, beyond specific concerns for their own children.

¹² Joseph Klinghofer, who worked in the Education Committee of Congress, was the Congress staff person assigned to this project.

Although twenty-seven parents at first agreed to work on this study, most showed some discomfort at actually gathering confidential information. Indeed, the very hands-on nature of this information-gathering proved to be its weakness. Parents who were sometimes themselves unsure of the far-reaching detrimental effect of religious instruction on their children, feared that revealing their open opposition might reflect badly on them and ultimately undermine their children's position in school. As a result, most who at first agreed to participate begged off. In the face of parent defections, the research project crumbled.¹³

When, for different reasons, surveys, studies and research projects proved unproductive, Congress tried another tack. Textual exegesis was a form of research typical to Jewish religious studies. The Appendix to the Congress brief to the Hope Commission was a prime example of this approach. It offered a critical analysis of the Teachers' Guides authorised by the Department of Education setting out many specific examples of the Guides' depictions of erroneous descriptions of Jewish practices. Using this approach, the JCRC determined that an ongoing sub-committee should constantly review teaching manuals and Provincially approved textbooks. This committee, initially composed of Toronto rabbis, Slonim and Schild, assisted by Ben Kayfetz, conducted an extensive review of existing materials. Their analysis concluded that the Guides betrayed a lack of scholarship and a tendency to omit facts in support of the "tendentious aims of these manuals." In particular, the committee took issue with the references to unusual Jewish

¹³ OJA, JCRC Papers, MG8/S. Religious Education in the Public Schools Sub-Committee, 1953. Klinghofer Memorandum to Ben Kayfetz, June 3, 1953.

ritual observances and the highlighting of the alleged absence of character training as a basic tenet of Judaism.¹⁴

Textual review was heavily relied upon to reinforce the Jewish community contention that the Drew Regulation supported the spread of discriminatory and, it was argued, hurtful attitudes toward Jews and other minority faiths. But, beyond this, Congress and the JCRC continued to look for other opportunities to advance the Jewish community's case against the Drew Regulation. In Allan Grossman, then a young Conservative politician, Congress saw such an opportunity. Grossman was first invited to join the JCRC when he became a City of Toronto Alderman for Ward Four. A few years later, in 1955, he was elected as a Member of the Provincial Legislature. In winning the downtown Toronto riding of St. Andrews, Grossman had to defeat the immensely popular Communist Party candidate, Joseph Salsberg. The Jewish community saw Grossman, as a likely *shtadlon*, one of those with access to authority and a

¹⁴ OJA, JCRC Papers, MG8/S. Religious Education in the Public Schools Sub-Committee, Memorandum April 1, 1952. This Sub-Committee began with Ben Kayfetz writing to 17 Rabbis in the Province, requesting that they read the enclosed Teachers' Manual for Grade 2 "at your leisure [this was in August, presumably Summer vacation time] with a view of reporting any discrepancies, historical inaccuracies, biased interpretations, etc." Among those canvassed, Rabbi Slonim responded with a five page memorandum. This probably earned him the chairmanship of the Sub-Committee. Pointing out the lack of a critical, historical approach to the Manual, Slonim allowed as such an approach would probably cause inter-denominational friction. Then he "question[ed] the justice of sacrificing historical accuracy for the sake of inter-denominational agreement," and concluded that this was one of the problems in trying to teach religion in public schools in the first place. OJA, Catzman Papers, MG6/E3, JCRC Papers, File 5558. Slonim Critique of Teacher's Manual, 1952.

potential conduit between the Jewish community and the Province's political power brokers.¹⁵ On the one hand, the notion that the Jewish community of Ontario still required *shtadlonim* or at least Court Jews for their survival, seems somewhat far-fetched.¹⁶ But, on the other, given the fact that there was very little sympathy in the larger civil society for the withdrawal of religious education from the public schools, recasting the role of the *shtadlon* into that of modern day lobbyist was a strategy that made sense. Members of the JCRC put their case to Grossman in political terms. They stressed that religious education was a controversial question which, if not resolved, could erode what support there was for the Conservative Party within the Jewish community. If Grossman was concerned about what side his electoral bread was buttered on, he still seemed hesitant about pushing this issue with his political masters. Grossman was inclined then, and would continue thereafter, to be circumspect about being the Jewish community's standard bearer in Provincial corridors of power. In this instance, he suggested that the matter did not warrant his making representations to the government until a thorough study had been

¹⁵ This was in even greater evidence in the years following his first Cabinet post. When crises arose in the State of Israel, Grossman agonised more than some considered necessary, including then Premier John Robarts, over the issue of dual loyalty. Grossman's biographer, Peter Oliver, sees Grossman paying a big price for the privilege of being the first Jewish minister in Provincial Conservative governments, namely, that there was an expectation from the Jewish community that as the "most powerful elected Jewish political leader," he would see that their interests were served. Oliver observes that "although he [Grossman] served the Jewish community loyally and faithfully, he did not put it [the Jewish community] before his service to the Conservative Party and to the larger Provincial society." Peter Oliver, Unlikely Tory. The Life and Politics of Allan Grossman (Toronto: Lester & Orpen Dennys Limited, 1985), 104-105, 118. Prior to his defeat at the hands of Grossman, J. B. Salsberg, a Communist Party member of the Provincial Legislature, was counted on by Premier Leslie Frost for his counsel on Jewish attitudes and positions generally. Sydney M. Harris, Interview, April 30, 1998.

¹⁶ In the Middle Ages it was expected that the *shtadlon*, through diplomacy and advocacy, would plead the case of the community in response to recurring themes such as the blood libel or punitive taxation. Latterly, in nineteenth century Europe, the term took on a pejorative tone as it was used to describe those who failed to stand up for their community or who exhibited weakness and an eagerness to compromise.

undertaken to determine the legal position of religious education.¹⁷ This provoked a discussion as to whether in fact there might be a constitutional bar to the teaching of religion in the public school. Since the JCRC had no conclusive answer one way or the other, Grossman refused to make a political approach until the legal options had been exhausted.¹⁸

The possibility of a legal analysis did not originate with Allan Grossman. Having lived over a decade with the Drew Regulation, the JCRC could see that with each passing year the Regulation was becoming more and more entrenched as part of the societal landscape. Therefore, barring a persuasive argument to the contrary, it was unlikely that the Provincial government would pull back from its support of religious education. Congress was convinced that people such as Grossman, who were somewhat tentative about being advocates for the Jewish cause, needed the reassurance of a strong legal position. Accordingly, the issue was referred to the Legal Committee of the JCRC. Chaired for many years by Professor Bora Laskin, this Committee had access to an abundance of Jewish community legal talent.¹⁹ It had previously been involved in some major issues and had experienced more than a modicum of success.²⁰ But, oddly, prior to this time, the Legal Committee had not been invited to consider the legal

¹⁷ In his official biography of Grossman, Oliver suggests that, early in his political career, Grossman “became involved in the sensitive question of the Jewish presence in a common school system that was Christian in character...” However, although Grossman was active in the Conservative Party since his Young Conservative days in the early 1930’s, there is no evidence of his involvement in this issue. Oliver, Unlikely Tory: The Life and Politics of Allan Grossman, 116-117.

¹⁸ OJA, JCRC Papers, MG8/S. JCRC Minutes, November 3, 1955.

¹⁹ Laskin would subsequently serve as a judge of the Ontario Court of Appeal and then as Chief Justice of the Supreme Court of Canada. Included among the Committee’s members were Fred Catzman, Sydney Harris and Sydney Midanik, each of whom served as Chairman of the JCRC.

²⁰ For a thorough discussion of Congress’ input in the case of Noble and Wolf v. Alley see James W. St. G. Walker, “Canadian Anti-semitism and Jewish Community Response: The Case of Noble and Wolf,” in Howard Adelman and John H. Simpson (eds.) Multiculturalism, Jews, and Identities in Canada (Jerusalem: Magnes Press, 1996), 37-68.

position on religious education in the public schools. Why not? Perhaps because the JCRC had previously seen religious education as a political or values issue best not dealt with by lawyers, or perhaps because the Legal Committee was occupied elsewhere. In the period during which Congress was taking up the issue of religious education in the public schools, the Legal Committee was focused on other issues of Jewish import, issues such as kosher slaughtering practices, offences under the Lord's Day Act and the Liquor Licence Act, many of which were also human rights issues and all of which were specifically inimicable to practising Jews and which required legal representation.

It was soon clear to the JCRC that their Legal Committee had little or no stomach for a constitutional attack against the Drew Regulation. From a strictly legal point of view, the Legal Committee viewed the prospect of success of such an attack as problematical at best. In the 1950's, the vague and somewhat elusive principle of the non-establishment of religion still remained beyond the grasp of prospective litigants in Canada. Never enshrined in written form in Canada as it was in the First Amendment to the American Constitution, neither had it been the subject of any direct Canadian judicial decision. The Legal Committee was mindful that an argument in a Canadian court, without the support of a Canadian counterpart to the American First Amendment, would have to be based upon what was subsequently and elegantly described as a "constitutional postulate of liberal-minded persons."²¹ This was not the stuff of winning law suits. The Legal Committee's lack of enthusiasm led Congress staff to shift their horizons to more sustainable positions:

a lack of a clear constitutional separation [between church and state, as in the American experience] encouraged us not to pursue legal argument but to say that

²¹ OJA, JCRC Papers, MG8/S, Box 13, File 2, 1962. Arthurs Report, 35.

religious education in the public schools is against good citizenship and good educational practice.²²

Congress leadership was fully aware that good citizenship and good educational practice, while laudable in and of themselves, would not force a change in religious education. Because there were very few other avenues to pursue, some argued that, like it or not, the legal avenue had to be explored. Existing staff had neither the time nor the training to evaluate the position of the Legal Committee. This prompted the decision to add a staff member. In the fall 1958 Alan Borovoy, a recent law graduate with a deep interest in human rights and civil liberties issues, was hired on a part-time basis. Borovoy's job description initially included a constitutional study of church and state and its relationship to religious education in Ontario's public schools.²³

Borovoy did undertake the constitutional study and drafted memoranda setting out his findings. But for all his legal training, Borovoy's strength as a social activist soon convinced Congress leaders and professionals that these talents could be of more use to the opposition campaign than his legal research.²⁴ As for the chore of defining Congress' legal position on religious education, including exploring the possibilities of a successful court challenge of the Drew Regulation, Congress agreed that the major task of researching and formulating a legal strategy should be placed in the charge of another able young graduate lawyer with an interest in civil liberties, Harry Arthurs.²⁵

²² OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, 1958, File 10. Ben Kayfetz Memorandum to Saul Hayes, August 22, 1958.

²³ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, File 10. Ben Kayfetz to Saul Hayes, November 28, 1958.

²⁴ A. Alan Borovoy, When Freedoms Collide: The Case for Civil Liberties (Toronto: Lester & Orpen Dennys, 1988), vii. Borovoy describes himself "primarily an activist and not an academic."

²⁵ Professor Harry Arthurs, Interview (telephone), December 15, 1997. At this juncture in his legal career, Arthurs was engaged in completing his LL.M. at Harvard. He and Borovoy had a common interest in civil liberties which provided Arthurs with an introduction to Congress and to the undertaking of the legal

Taking up where Borovoy left off, in the spring of 1962 Arthurs completed a lengthy, learned memorandum on the law pertaining to religious education in the public schools of Ontario.²⁶ Arthurs explained that the declared objective of finding a legal hook on which to hang an action against the Drew Regulation resulted in some contradictions. He admitted, for instance, to having explored in depth those broad issues which would underlie any prospective litigation. This would, he hoped, provide future litigators with at least some research in areas that they could in turn expand upon. However, he did allow that he had overlooked or underplayed obvious areas of inquiry such as American jurisprudence because, at that time, Canadian courts were not disposed to follow American constitutional cases. He also described his perspective as “conservative and pessimistic.” Very “mindful of the consequences of defeat” in the courts, Arthurs was cautious about advising Congress to seek a resolution in court prior to setting out all the downsides of a legal action.

Arthurs explored the constitutional character of religious education legislation to determine whether a province could enact laws authorising a program of religious education in the public schools. He concluded that in order to satisfy constitutional legal criteria, the fact situation of any given circumstances would have a strong bearing on the characterisation of any public education program as “religion” rather than “education” and the nature of the program as unequivocally sectarian.

memorandum. Professor Arthurs, who is Jewish, recalls that his own personal introduction to the spirit of the Drew Regulation took place when he was a nine year old student at Regal Road Public School in the City of Toronto. After Reverend Harry Matthews, a visiting minister from the neighbourhood United Church, addressed a school assembly on the crucifixion of Christ by the Jews, young Arthurs’ fellow students “took me into the schoolyard and beat the—out of me.” Subsequently, Arthurs taught law at the University of Toronto Law School, became Dean of Osgoode Hall Law School at York University and later still, President of York University.

²⁶ Harry W. Arthurs, “Religious Education in the Public Schools of Ontario,” (Arthurs Report). A Memorandum prepared for the Canadian Jewish Congress, Toronto, May 30, 1962.

To address the issue of whether religious education, in any event, was purely within the purview of the federal parliament, he reviewed the case of Saumur v. Quebec.²⁷ There the Supreme Court of Canada quashed a conviction of a Jehovah's Witness member who was charged with distributing religious tracts without a permit. Arthurs favoured the opinion of Mr. Justice Rand who felt that if such laws were permitted, certain constitutional safeguards such as those for minorities found in section 93 of the BNA Act "could be written off by the simple expedient of abolishing as civil rights and by Provincial legislation the religious freedoms of minorities, and so, in legal contemplation, the minorities themselves." But Arthurs was unwilling to base a case against the Drew Regulation on this judgement. There were too many variables, including the uniquely liberal makeup of the court. Arthurs was concerned that there could be a swing away from the liberal attitude of the Saumur Court.

Besides, as far as Arthurs was concerned, the Drew Regulation was distinguishable from the offensive legislation in Saumur in that the legislation in Saumur visited penal consequences on the Jehovah's Witnesses *qua* religious minority. No such outcome was contemplated by the Drew Regulation. Although the Drew Regulation was most troublesome for non-Christian children and their parents, there was no actual loss of freedom, in the sense of incarceration, as in Saumur. Clearly, Saumur was not the basis for a claim that the Drew Regulation was beyond the scope of Provincial authority.²⁸

As for the competence of provinces to deal with religious education, Arthurs confirmed the following principles:

²⁷ (1953) 2 S.C.R. 299.

²⁸ Arthurs Report, 5.

- 1) That the provinces have been held to enjoy plenary powers in relation to education, subject only to safeguards in section 93 of the BNA Act.
- 2) That section 93 does not preclude religious instruction in the public schools.
- 3) That provincial legislation may be struck down if it is *ultra vires* [beyond the authority of] the provincial constitution, even though authorised by section 93 of the BNA Act. In order to pursue this tack, Arthurs resurrected a century old statute which, he reasoned, formed part of Ontario's constitution and which forbade both discrimination and preference.²⁹ Once again, on the basis of his review of this case law, Arthurs could not make a case for striking down the Drew Regulation as *ultra vires* the Province.
- 4) That, in matters of conscience, parents enjoy natural rights in relation to the education of their children which cannot be over-ridden by legislation. Referring to the facts in Chabot v. School Commissioners of Lamorandiere, Arthurs doubted that the success of a Jehovah's Witness parent in compelling a school board to accept his child without requiring him to participate in religious education was convincing authority for such a statement.³⁰

Arthurs also examined relevant Provincial education legislation to determine the proper exercise of Provincial authority in religious education. He found that there were no express laws authorising religious education programs. Furthermore, he determined that there was no discrimination or preference demonstrated on the face of the Drew Regulation. However, whereas legal precedent had offered very little encouragement, Arthurs felt very different about the actual Department of Education curriculum materials. He was of the view that the Provincially authorised Teachers' Guides and Program for Religious Education clearly

²⁹ The Freedom of Worship Act, 1851 c. 175, re-enacted as the Rectories Act, R.S.O. 1897 c.306, s. 1.

³⁰ [1957]12 D.L.R. (2d) 796. (Quebec Court of Appeal).

demonstrated a preference for Protestant religious principles. Since there was no authority for such a preference in the education statutes then existing, Arthurs felt that the enabling legislation for the errant Guides and Program, the Drew Regulation, was vulnerable to attack.³¹ He warned that evidence to demonstrate the highly sectarian nature of the program and the prejudice and discrimination imposed upon non-adherents would be countered by an attempt to seek the shelter of the exemption provision. But, as Arthurs read the situation presented to non-Christian children, exemption did not offer a realistic option. Citing a justice of the Supreme Court of Canada to bolster his position, Arthurs suggested that “In our society there is no state religion. All religions are on an equal footing, and Catholics as well as Protestants, Jews and other adherents to various religious denominations, enjoy the most complete liberty of thought.”³² Arthurs was able to demonstrate that this principle of equality was rooted in the public school system and could, in fact, be substantiated in a number of cases. These cases made the point that if a statute afforded equal access to educational facilities to all children regardless of colour or otherwise, then these same children should be afforded equal treatment *within* the schools as

³¹ Arthurs Report, 30. He cited the Department of Education’s participation in the preparation of Teachers’ Manuals and Guides with decidedly Protestant emphasis as a particular example of preferential treatment.

³² Taschereau J. in Chaput v. Romain, (1955) S.C.R. 834 at 840 The court here was offering *obiter dicta* [a non-binding opinion] on the secular nature of Canadian society.

well.³³ As far as Arthurs was concerned, the exemption provision was not an example of equal treatment.

Not only did Arthurs set out the legal basis for an action, he also suggested the format. He recommended that ratepayer parents seek a declaration that the existing system of religious instruction and the teaching materials used in connection with it were unconstitutional, or unauthorised by the legislation, or were not being conducted in accordance with the Regulation. In the alternative, Congress, representing Ontario Jewry, could seek a declaration alleging that Jews were deprived of their right to be free from discrimination.³⁴ On balance, Arthurs felt that, on the basis of statutory interpretation rather than constitutional invalidity, there was sufficient chance for success to warrant litigation.

Completed at the end of May, 1962, the Arthurs Report was subject to review by the JCRC's Legal Sub-Committee.³⁵ When finally tabled at the JCRC, the Report was praised by JCRC members who were most complimentary of the diligence of the legal research and the probity of the conclusions. Yet, the Legal Committee of the JCRC was reticent to run with the

³³ Re Hutcheson and St. Catharines, (1871) 31 U.C.Q.B. 274. (Court of Appeal). In the course of his research for Congress Arthurs uncovered a number of cases based upon legislation which prescribed the exclusion of "coloured people [sic]" from public schools in Upper Canada. The fact that there was still legislation "on the books" authorising "the establishment of separate schools for coloured people" prompted Arthurs to write an article on the subject. In the article Arthurs admitted that the legislation "long since ceased to present a practical barrier to equal educational opportunities." However, he pointed out that Ontario's retention of "the legal machinery for the establishment of segregated schools" made a mockery of the expressed public policy that every person [in Ontario] is free and equal in dignity and rights without regard to race, creed, colour..." as set out in the Ontario Human Rights Code, S.O. 1961-2, c. 93, preamble paragraph 2. Harry W. Arthurs, "Case Comment," Canadian Bar Review, 41, (1963), 453-457. When the article was published, Arthurs was interviewed by the press and some publicity was garnered for this "anomalous provision in the Separate Schools Act." Subsequently, the Provincial government repealed the offending legislation, thereby providing "a happy ending to a sad Ontario folk tale." See the Separate Schools Act, S.O. 1964 c. 108 which re-enacted Part I of the Act, deleting the offending section 2 of the Separate Schools Act, R.S.O. 1960 c. 368.

³⁴ This claim would be made pursuant to the Freedom of Worship Act previously cited by Arthurs.

³⁵ In 1961 the Committee had changed its name to the Joint Community Relations Committee (JCRC) from the Joint Public Relations Committee.

legal options which Arthurs had detailed.³⁶ Not prepared to endorse the Report, the Legal Committee would only characterise it as “a good basis for further information and possibly action.”³⁷ The Legal Committee’s attitude toward attacking religious education in public was in tune with the ambivalence of the Jewish community, generally. As a result, Arthurs’ proposals were given short shrift. The Legal Committee held several meetings to review the Arthurs Report after its preliminary report to the JCRC. The little discussion generated focused almost as much on the cost of possible litigation as its outcome. Even an endorsement of the Arthurs Report from Professor F. R. Scott, a constitutional authority of some renown, failed to move the committee. Scott referred to the Report as “carefully reasoned [Arthurs appearing] to have weighed all the factors that need to be taken into consideration and to have reached a conclusion which is supportable on the line of argument adopted.”³⁸ Although Scott cautioned reliance upon a one hundred year old statute (The Freedom of Worship Act) and was of the opinion that a court would avoid upsetting the long established practice of religious education in public schools, he agreed that Arthurs’ argument, based upon interpretation of the relevant education statutes, made for a strong case to proceed with an action.³⁹

³⁶ OJA, JCRC Papers, MG8/S, Legal Committee, 1962, File 24. Ben Kayfetz to Harry Arthurs, November 2, 1962, enclosing honorarium.

³⁷ OJA, JCRC Papers, MG8/S. JCRC Minutes, November 28, 1962. These words are attributed to Donald Carr, Associate-Chair of the Legal Committee.

³⁸ OJA, JCRC Papers, MG8/S, Legal Committee, File 29. F. R. Scott to Saul Hayes, January 3, 1963. Scott, Dean of the Law School at McGill University and a pre-eminent constitutional law expert was asked for his views on the mounting of a legal action by Saul Hayes, National Vice-President of Congress.

³⁹ Globe and Mail, October 9, 1962. Arthurs and Scott were in very good company. In an address given on September 26, 1962, Professor H. Alan Leal of Osgoode Hall Law School stated that the Drew Regulation ran counter to the spirit of several important statutes enacted in the post World War II period aimed at eliminating discrimination. This prompted the Globe and Mail to suggest that “a sensible course[would be] to test the question of religious education in a court of law.”

Some months later, the Legal Committee referred the Arthurs Report to John J. Robinette, a senior Toronto litigation counsel, for yet another opinion on the viability of the recommended course of action.⁴⁰ No mention of Robinette's response appears in the files of the Legal Committee.⁴¹ However, an indication of the mind-set of Congress was the advice from one Congress staffer to another that if a decision was taken to proceed with a legal action, selection of counsel should proceed with "all deliberate non-haste."⁴²

The failure of the Jewish community to heed the aggressive recommendations of the Arthurs Report was predictable. It bespoke a deep-seated hesitancy born of a Jewish community that was not yet so secure that it was willing to risk taking action that might reflect poorly on its image among the general public. A legal attack on the widely supported Drew Regulation might do exactly that. And this attitude was not just the preserve of the more marginal within the Jewish community. It infected the thinking of the relatively worldly members and leaders of Congress.

Just how uneasy Congress leaders were about a frontal legal assault on the Drew Regulation was clear even before Arthurs took on the task of reviewing the legal options. In 1959, the JCRC discussed the impact of the Drew Regulation on a particular complainant, in this instance a Jewish parent whose son had been subjected to an embarrassing interrogation by a

⁴⁰ OJA, JCRC Papers, MG8/S, JCRC Minutes, July 3, 1963.

⁴¹ Neither Donald Carr, Associate chairman of the Legal Committee at that time nor Professor Arthurs, recalls that the matter was pursued with Robinette. Donald Carr, Interview, (telephone), December 11, 1997. Harry Arthurs, Interview, (telephone), December 15, 1997.

⁴² OJA, JCRC Papers, MG8/S, Legal Committee, File 29, 1963. Myer Sharzer Memorandum to Ben Kayfetz, February 6, 1963. Ben Kayfetz, who was the designated minute-taker at Legal Committee meetings confirms that he found the terminology used foreign to his usage, and the meetings, generally, lacking in rhythm, which usually left him with a bunch of incomplete ideas from which to frame comprehensive minutes. Hence, more often than not, minutes were not even prepared. Ben Kayfetz, Interview, August 20, 1997. This was unusual for Kayfetz whose work was meticulous.

Protestant clergyman at his Etobicoke public school. The parent protested the clergyman's presence in the public school classroom.⁴³ He was told that Provincial law permitted clergymen to visit schools for the purpose of talking to students.⁴⁴ A sympathetic trustee of the Etobicoke Public School Board referred the parent to another provision of the same statute which appeared to contradict the presumption underlying giving clergy access to public schools. This provision stated that "pupils are to receive such religious instruction as their parents or guardians desire."⁴⁵ The implication was that if a parent did not desire a particular brand of religious instruction, clergy would be excluded from the classroom. For the first time since the Drew Regulation became law, the JCRC was prepared to question whether the Regulation applied to all pupils. Perhaps it could be argued that the application of the Drew Regulation to public school curricula had been wrong from the beginning. Why not argue that instead of removing non-Protestant children from religious education classes at the request of their parents, those parents who want religious education for their children should request it specifically?⁴⁶

A decade and a half after the Drew Regulation first surfaced, this new interpretation of the Regulation held the promise of a basis for a legal challenge to the practice of religious

⁴³ OJA, JCRC Papers, MG8/S, JCRC Minutes, October 28, 1959.

⁴⁴ This was correct. See section 8(1) of the Public Schools Act, R.S.O. 1960 c. 330.

⁴⁵ Section 7(2) of the Public Schools Act, R.S.O. 1960 c. 330.

⁴⁶ OJA, JCRC Papers, MG8/S, JCRC Minutes, October 28, 1959. Sydney Harris, Chair of the JCRC admitted personally and on behalf of others on the Committee some embarrassment for not having considered the wording of this particular statute prior to this occasion. But now that he was so informed Harris felt that this was a matter worthy of some research. He explained that until this time the legal direction of the Committee had concentrated on the constitutional aspects of the offending legislation, but that this issue of statutory interpretation was an entirely different and worthy tack. Because the Drew Regulation was made pursuant to the Department of Education Act, the Committee had devoted most of its energies to determining legalities under that Act rather than the Public School Act. Eventually, in 1974, these statutes, together with the Secondary Schools and Boards of Education Act and the Separate Schools and Boards of Education Act would be consolidated into the Education Act, S.O. 1974 c. 109.

instruction in the schools. Yet the JCRC did not give the suggestion serious positive consideration. To the contrary, it chose to look at the downside of proceeding with any action on this basis. What if a legal challenge were successful?⁴⁷ One influential Committee member was concerned that a successful legal challenge could result in the removal of religious education from the public schools. Instead of seeing this as a positive outcome for the Jewish community, something that the community had sought for almost two decades, he predicted that to place this issue in the “crucible of the Courts” would create an ugly clash between the Jewish community and the general community. Win or lose in the courts, the Jewish community would be held up to an unfavourable light as the aggressor putting religion on trial. His preference and that of other JCRC members was to forgo legal avenues in favour of continued softer political persuasion.⁴⁸

ALLIANCES

Fifteen years into the campaign against religious education, the Jewish community appeared to be adrift, without any fixed direction. On the face of it, conditions continued to

⁴⁷ Notwithstanding this view, the JCRC reluctantly agreed that the issue was worth looking into. Alan Borovoy prepared a legal memorandum entitled “A cursory Glance at the Legality of Religious Education in the Public Schools.” A few years later, this treatment of Section 7 of the Public Schools Act was incorporated into the Arthurs Report. This was not, however, one of the legal arguments emphasised by the Report.

⁴⁸ OJA, JCRC Papers, MG8/S, JCRC Minutes, October 28, 1959. Philip Givens was the member of the JCRC who voiced these concerns. Givens was not a political novice. He served as Alderman for Ward Five in Toronto from 1952-1960, as Member of the Board of Control from 1960-1963 and as Mayor of the City of Toronto from 1963 to 1966. A lawyer by profession, he later served both as a Liberal Member of Parliament and as a Member of the Provincial Legislature. TA, Mayors Files, Givens File. Although Givens was neither a long-serving member of the JCRC nor an old hand in the opposition to the Drew Regulation, his concern was not unrealistic. “Persuasion” was a preferable course of action for many JCRC members who were concerned about the effect of negative public relations fall-out on the Jewish community. Sydney M. Harris, Interview, April 30, 1998. This course of action ignored the earlier advice of Allan Grossman who counselled against a political approach absent a thorough legal review. Of course, neither Givens, a Liberal, nor other members of the JCRC had either as much clout or as much to lose as Grossman if the clout was employed unwisely.

warrant strong opposition. Many incidents of abuse were being reported to Congress.⁴⁹ Long time opponents of the Drew Regulation, Sydney Harris and Sydney Midanik, persisted in their active commitment to the cause. The JCRC remained adamant in its opposition to religious education in the public schools. But other influential voices in the Jewish community were still reticent to be publicly perceived as the leaders of the opposition campaign. Jews might not like the Drew Regulation, but could Jews afford to be seen high profile campaigning for its removal? At JCRC meetings, moderates expressed a strong desire for some entity outside the Jewish community to deliver the anti-Drew message. An organisation such as the Ethical Education Association (EEA), might be a more appropriate choice than Congress to lead the public assault on the Drew Regulation.⁵⁰

Would a non-Jewish organisation be more effective? Several possible answers may be offered. For one thing, a non-Jewish organisation would rebut claims that opposition to religious education was a “Jewish issue.” Early opposition to the Drew Regulation might well have created such an impression. Since the inception of the Drew Regulation in 1944, Jewish lobbying against the Regulation had been consistently in the forefront. Even where other groups had joined in voicing objections, they had not exhibited the staying power of the Congress-led Jewish community. Congress, for its part, took little pride in having stayed the course. Constancy alone had not achieved success.

There was also a gnawing concern that the resolve of those who favoured the Drew Regulation was in direct proportion to the degree that the opposition was identified as Jewish. Reducing the upfront Jewish profile could lessen the likelihood of any anti-Semitic backlash. It

⁴⁹ See the Appendix to the Congress brief to Premier Leslie Frost in January, 1957.

⁵⁰ OJA, JCRC Papers, MG8/S, JCRC Minutes, October 28, 1959.

was not far-fetched to suggest that anti-Semitism was a possible by-product of Jewish opposition to religious education. Reacting to the Congress January 1957 brief to Premier Frost, The Huron Church News of London, Ontario, a United Church publication, printed an opinion piece entitled "Upon Their Own Heads." The author argued that many of the problems that had beset Jews over the ages were engendered by a tendency for Jews to expect more than their fair share from nations that hosted them, provoking troubles and persecutions that were of their own making. The author offered some "friendly" advice, urging Congress to refrain from

attacking policies essential to Christian polity; for by so doing they [Congress and the Jewish community] may leave themselves without Christian friendship and defence and exposed to the opportunist rabble-rousers, such as Hitler was, who will lead a prime facie case for their persecution.⁵¹

The anti-Semitic card was raised often in defence of the status quo in religious education. For example, six years later, in a sermon given to his suburban Toronto Asbury and West United Church Congregation, a minister warned Jewish leadership that its efforts against religion in the public schools would lead to anti-Semitism. Citing the position of Jews in the USSR as an example of what can happen to religious minorities in a "secularist" state, he forecasted similar results in Ontario claiming that "if and when secularism reigns, the Jews will be as they have always been, the first to suffer."⁵²

⁵¹ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, File 8B, 1957. The author of the article was a United Church Minister, H. R. Rokeby-Thomas.

⁵² Cornwall Standard-Freeholder, November 12, 1963. Seeking a Jewish response to these statements made by Reverend Gordon Crossley Hunter, a United Church minister, this Cornwall, Ontario newspaper interviewed Rabbi Gunther Plaut, of Holy Blossom Temple who was quoted as "saddened" that Hunter had chosen the anniversary date of "Crystalnacht" to make such anti-Semitic remarks. See also a discussion of the Hunter remarks, OJA, JCRC Papers, MG8/S, JCRC Minutes, November 12, 1963. Reverend Hunter was not simply a parish minister. According to an obituary published in the Globe and Mail, December 19, 1997, Reverend Hunter was "a gifted orator [who] divided his time between his United Church parishes and travelling as a special guest speaker, giving motivational seminars to Christian churches of various denominations around Canada, the United States, India, Japan and Bermuda."

For all of these reasons and perhaps as well to defray some of the costs of the campaign, allies outside the Jewish community were seen in a positive light.⁵³ But, if Congress and the JCRC had legitimate reasons to defer to a non-Jewish organisation or to team up with others, why choose the Ethical Education Association? Because it was precisely everything that Congress and its committees such as the JCRC were not. It was predominantly non-Jewish; its founding members were affiliated with the South Peel Unitarian Church. In the spring of 1955, this suburban church formed a Unitarian Committee on Religious Education “to investigate the propagation of the Christian faith in our public schools.” The Committee’s stated concern was that this program represented “a serious threat to the democratic way of life.” The main issue as Committee members saw it, was whether “public schools should be used to propagate a conception of Christianity which does not please all Christians let alone Jews and other non-Christian faiths.” Very new at political organising and unsure as to the manner in which they might be most effective, they called upon Congress for assistance in getting started.⁵⁴ This resulted in a mutually beneficial working relationship that would last for some years.⁵⁵

Ultimately, Unitarian Committee changed its name to the Ethical Education Association and expanded to include Quakers, Adventists, Anglicans and a few Jews. Although a diverse base such as this was important, the really key component to the success of the EEA was the participation and energetic leadership of Doris Dodds. Dodds became involved in the spring,

⁵³ One cannot put too much stock in this reason, simply because the Ethical Education Association had very little in the way of funding and not a very strong membership base upon which to rely for financial support. Ben Kayfetz, Interview, August 13, 1996.

⁵⁴ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, Box 19, File 4. Marion Clapham to Ben Kayfetz, October 19, 1955 requesting a Congress person at Unitarian Committee meeting called for October 26, 1955 to “give us the benefit of your advice.”

⁵⁵ The EEA decided to disband in the spring of 1969 as a result of the most supportive recommendations of the Mackay Report.

1958 after she learned that the Etobicoke Board of Education planned to extend religious education courses into Etobicoke high schools. Already angered by what she saw as religious indoctrination in the public schools, Dodds claimed that “they [the school authorities] were running the kindergarten like a Sunday School, teaching five year olds all the gory stories in the Old Testament and that Jesus goes home with you.”⁵⁶ Partly as a result of her protests to school authorities, the Gideon Bible Society was prohibited from entering Etobicoke classrooms, from giving students Bibles and from extracting pledges such as “I’m a sinner.”⁵⁷

From the perspective of the Jewish community’s campaign against the Drew Regulation, Dodds could not have been a more appropriate choice to take on established Christian institutions and practices. Doris Dodds grew up in the Maritimes, acquired a nursing degree from the Royal Victoria Hospital School of Nursing in St. Johns, Newfoundland and was married to an established medical doctor, Donald Dodds. He too was a social activist.⁵⁸ Doris Dodds became active in community work during her husband’s medical training in Halifax where she organised special classes for gifted children.⁵⁹ Alan Borovoy describes her as a “classic liberal”

⁵⁶ Ken Bagnell, United Church Observer, March 1, 1963, 8-12.

⁵⁷ The Gideons International, originally formed by business people as a recruiter “for the Lord Jesus Christ,” put a major emphasis on placing an abridged King James Bible in the hands of every school child (and in every hotel room). In 1948, the JCRC, aided by Toronto lawyer and politician, Herbert Orliffe, complained that the Gideon Bible provided to each pupil in Toronto Board of Education public schools was inscribed with his or her name. This meant that the Toronto Board of Education was providing access to school lists to the Gideons. On receiving a request from Orliffe, the Toronto Board ceased and desisted from this practice. OJA, JCRC Papers, MG8/S, JCRC Minutes, 1948, Reel 6. (Records on microfilm, sporadic, and often undated, save for the year). However, the Gideons were not deterred from pursuing the Toronto public school market. According to the Toronto Daily Star, May 10, 1954, in response to a criticism that the Gideons had distributed over 15,000 Bibles to Toronto school children in the previous school year, Director of Education, C.C. Goldring responded that “Education without religion would be a very empty thing.”

⁵⁸ Dr. Donald Dodds served for some time as the President of the Planned Parenthood Association. Alan Borovoy, Interview, March 12, 1997.

⁵⁹ Halifax Mail Star, Nova Scotia, June 12, 1968.

whose “positive personality,” and “genuine qualities of leadership” were a boon to the opposition campaign.⁶⁰ Sydney Harris calls her the “spark-plug,” without which, the EEA “would have been nothing.”⁶¹ As a Unitarian and a parent, she had no objections to her children being taught religion, but insisted that this be conducted in the home or the church, not in schools. In support of these convictions she requested and obtained exemptions from religious education classes on behalf of her own children. As a result of these exemptions, one of her children had felt “ostracised...different and thought that the others [children in her class] didn’t like her.”⁶²

Jewish community leaders also respectfully noted Dodds’ “impeccable WASP background.” They recognised with considerable admiration and some envy that Dodds and the EEA could recruit support from sources not accessible to Congress.⁶³ This, in turn, could foster a more broadly-based image for the opposition campaign. Alan Borovoy has maintained that this was not a *shtetl* mentality, which was convinced that “they will listen if there are non-Jews with us.”⁶⁴ To the contrary, Borovoy has reasoned that this was good, common sense politics. “One’s position can be more effective and more influential if it is seen as being broad-based rather than narrowly focused.”⁶⁵

⁶⁰ Alan Borovoy, Interview, March 12, 1997.

⁶¹ Harris recalls that Dodds was a “great fighter” who spent so much time working for this cause that it contributed to the break-up of her marriage. Sydney M. Harris, Interview, April 30, 1998.

⁶² Windsor Star, November 20, 1967.

⁶³ The small Jewish population in the Borough of Etobicoke where Dodds initiated her campaign against religious education played almost no part in the EEA or the opposition mounted by the EEA. Ben Kayfetz, Interview, August 13, 1996.

⁶⁴ *Shtetl* is a Yiddish term for village and usually associated with small, pre-twentieth century, Eastern European settings.

⁶⁵ Alan Borovoy, Interview, March 12, 1997.

In February 1959 the Ethical Education Association presented a brief, accompanied by 126 supporting signatures, to the Etobicoke Board of Education requesting the removal of religious education from the public schools and requesting further that religious education not be introduced into the high schools.⁶⁶ The EEA succeeded in blocking the extension of the religious education program into the high schools but failed in this initial attempt to eliminate it from the public schools. Nevertheless, the EEA was encouraged by the public's response, especially the media support.⁶⁷ As a result, Dodds and her associates decided to expand their organisation and to organise branches in other parts of Metropolitan Toronto and beyond.⁶⁸ For this expansion they formulated the following series of stated goals:

- 1) To promote religious and racial understanding and tolerance in public schools, primary and secondary.
- 2) To support research into the most effective ways of teaching moral and ethical values in public schools.
- 3) To support research into the most effective ways of teaching all subjects so as to prepare students for citizenship in a world community.
- 4) To inform and stimulate public interest in the above objectives.
- 5) To take appropriate action to further the above objectives.⁶⁹

⁶⁶ The JCRC, at Dodds request, advised the EEA on the technical aspects of its presentation, including how to approach the press. The JCRC also provided the EEA with material on the Springfield Plan and the Kentucky Plan to amplify the EEA's social philosophical perspective with examples of techniques for teaching moral values in public schools on a non-theological, non-sectarian basis. The JCRC was careful not to claim ownership to the theory or the actual text of the brief. OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, Box 19, File 12B. Memorandum from Ben Kayfetz to Fred Catzman, February 25, 1959.

⁶⁷ Editorials in support appeared in the Toronto Telegram, March 26, 1959 and in the Toronto Daily Star, March 26, 1959.

⁶⁸ Initially this was confined to the westernmost districts of Metropolitan Toronto, including the North Kingsway, South Kingsway, Rexdale and Port Credit. But plans were afoot to have branches in North York and in Oakville. Toronto Daily Star, October 30, 1959.

⁶⁹ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, Box 19, File 12B. Mrs. A. Percival to Sydney Harris, setting out the objectives of the EEA and requesting that he address one of their meetings.

The EEA was a god-send to Congress. It was exactly the kind of genuinely non-sectarian group which Congress had hoped would front the anti-Drew Regulation campaign. Realistically, bearing in mind the sad lack of organised non-Jewish participation in the opposition campaign at this stage, Congress would have been grateful for any respectable support.

Aside from Congress' desire to recruit non-Jewish organisations to the anti-Drew Regulation campaign in order to play down the Jewish tilt of the opposition, it was difficult for Congress to fight the Drew Regulation on its own. After the Congress submission to the Hope Commission, in the absence of supportive feedback from other organisations, Jewish communal organisations attempted no official representations or statements on the Drew Regulation until the deputation to Premier Frost in 1957. During that period, no other organisation or association seemed willing to join a united and public opposition to religious education. This was not for lack of Congress effort. Congress actively sought out the participation from several non-Jewish faith groups for the opposition campaign. In the course of these attempts, Congress representatives met at length with the administrators of the Seventh Day Adventist Church.⁷⁰ They tried to impress upon the Adventists the futility of separate representations by individual organisations or faith communities in opposition to religious education. They shared their fear that "special pleaders" coming from lone minority sectarian groups would not be given respect. In the place and stead of such groups they proposed a broadly-based coalition comprising all denominations and individuals committed to the same position. They argued that the composition of such a coalition would add lustre and credibility to the opposition and that

⁷⁰ Congress was represented by Sydney Harris and Ben Kayfetz. The Adventists had demonstrated their interest when they submitted a brief to the Education Minister on February 19, 1957, shortly after the Congress deputation to Premier Frost. Proposing the repeal of the Drew Regulation, the Adventists requested the government refrain "from any intervention in matters religious." Cited in Thomas. "The Protestant Churches and the Religious Issue in Ontario's Public Schools: A Study in Church and State," 262.

coalition statements would be given considerable weight. This coalition could make its own representations to government, stimulate public discussion and help circulate the rules respecting the exemption provisions provided for in the Regulations.⁷¹ The Seventh Day Adventists were not convinced by these arguments and chose not to participate in such a co-venture. Similar negative responses came from the Toronto Buddhist Church and the National Spiritual Assembly of Baha'is in Canada.⁷²

Thus, after failing in its efforts at recruiting allies, Congress' Ben Kayfetz appreciated the unsolicited arrival and early successes of the EEA. He noted that "it is particularly gratifying that their [presentation in Etobicoke] was a spontaneous one and was in no way 'engineered' by us."⁷³ This might have been so initially but not for long. Unwilling to leave such a valued resource unattended, not only were Congress staff members willing to be quietly called upon to assist the EEA when requested, but Alan Borovoy was loaned to the EEA as its part-time Executive-Secretary.⁷⁴ The pragmatic Borovoy reasoned that "since Congress pays me to work on a part-time basis in this area anyway, my appointment as the EEA's Executive Secretary

⁷¹ In April of 1958, Ben Kayfetz put in writing the gist of a discussion he and Sydney Harris had had with Darren Michael, Executive Secretary, Department of Public Affairs of the Canadian Union Conference of the Seventh Day Adventist Church. Congress acknowledged with appreciation the official representation made by the Adventists to the Hope Commission. OJA, JCRC Papers, MG8/S, File 10, 1958. Ben Kayfetz to D. Michael, April 28, 1958.

⁷² OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools, Sub-Committee, 1958. Toronto Buddhist Church response April 30, 1958 and Baha'i response September 11, 1958.

⁷³ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, Box 19, File 12A. Ben Kayfetz to M. Saalheimer, November 25, 1959.

⁷⁴ Aside from the Borovoy's participation as a staff member of EEA, other Congress professionals continued to take an active and hands-on interest in the workings of the EEA. For example, Myer Sharzer, a Congress staffer, critiqued an EEA pamphlet, pointing out that it failed to emphasise "the idea that religious instruction in the public schools in Ontario is not a century old, but rather it is relatively new." Sharzer also commented on the form of the pamphlet, suggesting "a slogan at the top; something that catches the eye... something like 'Yes, You are Involved!'" OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, File 14, 1960. Myer Sharzer to Ben Kayfetz, 1960, n.d.

might be the most effective deployment of my services.” At the same time, EEA projects and initiatives would benefit from the know-how and contacts that Borovoy had within and through Congress. The EEA became the address of non-sectarian opposition to religious education that Congress had previously tried and failed to organise.

Of course the EEA was not the first nor the only non-Jewish organisation to make representations, independently, to the Provincial government in opposition to the Drew Regulation. The Association for Religious Liberty was organised in 1945 with the specific purpose of opposing the teaching of religion in the public schools.⁷⁵ Save for media reports, the sole written record of this Association’s existence is their brief to the Hope Commission. In that brief, the Association allowed that it could live with whatever religious instruction permitted in the public schools prior to the Drew Regulation. The Association maintained that its organisation never would have come into existence were it not for the Drew Regulation. The Association feared that “fiery eyed fanatics intent upon indoctrinating the children with his or her own peculiar version of religion” would be given free rein under the Drew Regulations.⁷⁶

Even before the creation of the Association, in 1944 Reverend A. C. Cochrane, Minister of St. Andrews Presbyterian Church in Port Credit, Ontario, was one of the first to speak out against the Regulation. In a sharply-worded article in Toronto’s Globe and Mail, Cochrane

⁷⁵ See above, Chapter Two, footnote 80. Jack Wainberg, who subsequently enjoyed a lengthy career practising corporate law, recalls that a social group called the Group For Democratic Action had a relationship with an organisation called The Association for Religious Liberty, which may have been Reverend Cochrane’s association or an entirely different one. Wainberg suggests that the Group For Democratic Action was an outgrowth of a women’s social organisation of which his first wife, Rose Prasow, was a member. The members were “left-wingers” and “active do-gooders,” some twenty or so, who met at each others’ homes, including Wainberg’s home at 86 Beverley Street in Toronto. Wainberg said that they were interested in stopping the government from proceeding with its plans to provide for mandatory religious education in the public schools which many of his friends felt was an infringement of the civil liberties of school children and their parents. Jack Wainberg, Interview (telephone), July 30, 1997.

⁷⁶ Brief 45 to the Hope Commission.

protested “Perhaps the Government meant well and thought that the proposed religious education in the public schools would be Christian and Biblical...[But, why then] would there be a need to invite criticism from a Jewish Rabbi?”⁷⁷ Cochrane was also concerned that the Regulation would impose an unacceptable brand of Christianity upon school children.⁷⁸ Although Cochrane’s critique did not fit with Jewish concerns, the Jewish community viewed any opponent of the Regulation as a potential ally. For this reason, Congress monitored Cochrane’s movements as he travelled around the Province spreading the Association’s message.⁷⁹ But ultimately, with little specific common ground on which to build, no alliance was forged between the Association and Congress. Before long the Association gradually began fading from the picture.⁸⁰

Perhaps this was just as well. Reverend Cochrane was not the most attractive of partners. He had his own agenda. Cochrane seemed concerned that “the priests of Queen’s Park seem

⁷⁷ Globe and Mail, September 11, 1944.

⁷⁸ When C. C. Goldring, Superintendent of Schools for the Toronto Board of Education, sent a memorandum to all school principals to be on the look-out for anti-Drew Regulation pamphlets emanating from the Association for Religious Liberty, there was no indication that Goldring was attempting to remove the pamphlets from circulation. However, some of his actions confirmed his support of the spirit of the Drew Regulations. For example, when Goldring became Director of Education for the Toronto Board, he circulated a list of recommended prayers and homilies including the following: “Teach us to appreciate those who differ from us...so that we may hasten the day of universal brotherhood through Jesus Christ our Lord.” TBEA, Curriculum Department, General Files, 1907-1972. Religion-Research. Memorandum from C.C. Goldring September 13, 1944; and Memorandum from C. C. Goldring to all principals February 21, 1947.

⁷⁹ OJA, JCRC Papers, MG8/S, Reel 1, April, 1945. The monitoring was not very sophisticated. Congress had people listen to radio broadcasts of Cochrane’s talks in cities such as Chatham, Kingston, Sudbury and Ottawa.

⁸⁰ OJA, JCRC Papers, MG8/S, Reel 1. On March 9, 1945, a special committee of Congress received a delegation representing an organisation which was also called the Association For Religious Liberty represented by J. Wainberg and H. M. Goodman. Although they gave this group a hearing, Congress was unwilling to join forces with them. The fact that some members of this group were “left-wingers” may have soured Congress on the prospect of a continuing relationship. Jack Wainberg, Interview (telephone), July 23, 1997. Indeed, Congress was very wary of left-wing affiliations, having decreed that the United Jewish Peoples’ Order could not be a member organisation because of its communist affiliation. Sydney M. Harris, Interview, April 30, 1998.

blithely unaware that they are operating with a theology and doctrinal interpretations that are highly controversial.” And to Cochrane, the controversial aspect was the “state imposed synthetic religion--a weird mixture of idealism, humanism, naturalism and pietism,” which was not Christianity [which he would have settled for but] just a mass of false doctrine that the Government is going to propagate at taxpayer’s expense.”⁸¹

Statements such as these were not as easy to embrace as the classic liberal doctrine of the EEA’s Doris Dodds. What is more, by 1959 the Drew Regulation had been in force for fifteen years and, notwithstanding the efforts of Congress, no meaningful opposition was making common cause against the Regulation.⁸² Because of the singular lack of success, interest and longevity of other non-Jewish groups, the EEA was a welcome ally for the Jewish community. In fall 1959 the EEA echoed Congress concerns in a presentation to the United Nations in which it argued

- 1) religious education in Ontario public schools teaches children to hate Jews, despise Asians and approve of religious dogmas held by some Protestant churches.
- 2) the textbooks for the program developed from the Drew Regulation were published by Ryerson Press, owned by the United Church of Canada; and
- 3) UNESCO principles, to promote world understanding, are violated by Ontario’s religious education texts.⁸³

⁸¹ Globe and Mail, September 11, 1944.

⁸² One of the notable exceptions was a January 9th, 1945 letter circulated by the Group For Democratic Action over the signature of Harry Manson, Chairman, alleging that “no Provincial legislation in recent years has created so much disunion amongst the people of Ontario as has the inauguration of religious teaching in public schools.” The Group For Democratic Action proposed a Province-wide committee to co-ordinate expressions of public opinion opposing religious teaching in public schools. It argued that religious education in the public schools was unacceptable because it violated the democratic right of each man to worship in his own way. OJA, JCRC Papers, MG8/S, REEL 1. This organisation may have had a connection with the offshoot delegation from the Association for Religious Liberty which met with Congress on March 9, 1945. The Group for Democratic Action was not heard from again.

⁸³ Toronto Daily Star, October 30, 1959.

Thereafter, the EEA continued to deliver briefs and to make representations, consistently making the point that its was not an argument against religion or religious institutions. What it wanted was a return to the position that had been in effect prior to “the ill-advised experiment of 1944.” That is, the EEA wanted to restore non-denominational schooling. This theme occupied the thrust of its representations to various school boards in Metropolitan Toronto and beyond, in the period from 1959 through 1966.⁸⁴

The EEA developed a broad profile as a civil libertarian group, delivering a brief on religious education in the public schools to the Royal Commission on Civil Rights (the McRuer Commission), in 1965. In that brief, it stressed that the Province of Ontario, by identifying itself with a doctrinal position and then undertaking to promote that position, was undermining religious equality and religious freedom.⁸⁵

The brief to the McRuer Commission was divided into two parts. The second of the two parts presented a critical analysis of the principles underlying the program of religious education currently in force. This was written and presented by Alan Borovoy, who, by this time, was the legal advisor to the EEA. The first part of the brief was in the nature of an historical account. Designed to demonstrate that the current program in religious education represented a departure from the historical educational standard, its draftsman and presenter was the President of the Association, Professor Charles E. Phillips. Unlike Manuel Zack whose major attribute when Congress selected him to prepare an historical analysis of church and state educational relations

⁸⁴ The EEA presented briefs to many school boards, including, North York, February 13, 1961, proposing an exemption from the regulations for all schools in the Township, Hamilton, 1962, requesting exemption from teaching of religious education in Hamilton Public Schools, Etobicoke, March 27, 1963, objecting to the injection of religious instruction into student assemblies at Heatherbrae Public School and North York, October 15, 1963, requesting exemption from religious instruction program for Owen Boulevard Public School. CCLAA, FF. REL., Ethical Education Association File.

⁸⁵ CCLAA, FF. REL., Ethical Education Association File. EEA Brief, April 27, 1965.

in Ontario was that he was inexpensive and available, Phillips was a leading authority on the history of education in Ontario.⁸⁶ In March 1965 he was installed as president of the EEA, succeeding Doris Dodds. Phillips, whose academic credentials included his positions as Professor of Education and Director of Graduate Studies at the Ontario College of Education, added to the EEA's prestige. In Alan Borovoy's opinion, for an organisation seeking to make an impact, Phillips was "a real find."⁸⁷ The internal organisation of the EEA also benefited from Phillips' contribution to the Association Newsletter. He took it upon himself to update Association members on various aspects of research in education that were relevant to the EEA, especially those that supported the Association's position on religious education.⁸⁸

In addition to the brief to the McRuer Commission, Phillips contributed his reputation and scholarship to presentations before many school boards.⁸⁹ Phillips authored pamphlets, such as one based on a lecture he gave at the Royal Ontario Museum Theatre in Toronto which became the basis of the EEA brief to the McRuer Commission. Phillips' argument readily acknowledged that, since ancient times, there had been "a liaison between education and the

⁸⁶ Phillips published The Development of Education in Canada in 1957 prior to his involvement with the Association, and The Public School in Ontario in 1979 some years after the Association had been wound up. In both of these works, Phillips expressed his opposition to the Drew Regulation, as "contrary to precedent in the North American public school system," Phillips, Development of Education in Ontario, 330, and as "a renunciation of public school for all," Phillips, The Public School in Ontario (Toronto: OISE, 1979), 195. In this latter-mentioned volume, Phillips also referred to requests by Protestant clergy for religious education in the public schools as an "insoluble nuisance in public education."

⁸⁷ The fact that Phillips was an Anglican only enhanced his credentials. Alan Borovoy, Interview, March 12, 1997.

⁸⁸ One of these research projects involved experimental academic research into the moral effects of religious teaching. The researcher evaluated courses in religious education introduced in 1944 in Ontario schools and found that there was no relationship between the pupils' knowledge of Biblical passages and their own attitudes towards verbal honesty. According to Phillips, this was most troublesome to the author. R. E. Harlow, "Bible Knowledge and Ideals of Verbal Honesty," unpublished Doctoral Dissertation, University of Toronto, 1948. See OJA, JCRC Papers, MG8/S, Box 19, File 126B, 1965. Religious Education in the Public Schools Sub-Committee. EEA Newsletter February 6, 1965.

⁸⁹ CCLAA, FF. REL., Ethical Education Association File.

supernatural,” that the school was linked to the temple in Egypt, Babylonia and Palestine, and then to the church during the Middle Ages. He admitted further, that, even as late as the nineteenth century in Europe, most schooling was conducted by churches or church affiliated charitable organisations. But, he distinguished past history from the public school system that started to form in Upper Canada in the early part of the nineteenth century. Providing references to statutes to support his thesis, Phillips argued that the decision to downplay religious instruction in the public schools was made in order to eliminate sectarian disagreement over religious education in all provinces in Canada, save for Quebec and Newfoundland. As for Egerton Ryerson’s statements seemingly approving religious instruction Phillips claimed that they were insincere. “In his pronouncements on the subject, he [Ryerson] was obliged to include double-talk to make it difficult for opponents to pin him down and denounce him convincingly as an enemy to religion.” Phillips saw “this need to be slippery about anything with possible religious connotations,” as much a problem in the 1960’s as in the mid-nineteenth century. He was especially concerned about “the implications of these devious tactics in the education of the young.” After reviewing the history of religious education and the manner in which it was treated in Ontario public schooling from Ryerson’s times until World War II, Phillips concluded that the Drew Regulation was a “radical step at variance with the North American tradition in public education...” He saw the abolition of this Regulation as a prerequisite to maintaining the integrity of the public schools which he admired as “the noblest achievement of the past 150 years in North America and the most valuable asset of our society.”⁹⁰

⁹⁰ Charles E. Phillips, “Religion in our Public Schools” (Toronto: The Ethical Education Association, 1961), from a public lecture given on March 22, 1961. CCLAA, FF. REL., Ethical Education Association File.

Another eminent scholar who lent both his name and talents to the Association, was John R. Seeley, Professor of Sociology at the University of Toronto.⁹¹ Seeley contributed a critical sociological analysis of religious education in the public schools. In the EEA brief to the Board of Education of the Township of North York, February 11, 1961, Seeley observed that “Under the present rulings and practices, what is essentially private and familial is dragged into the realm of the public, and what was merely different and permissible, becomes deviant and allowable only by special exemption.” Seeley was concerned that the Drew Regulation contributed to societal divisiveness on multiple counts. Aside from potential divisions within both the schools and the general community, he warned that “Child is divided against child in the classroom... Another child is divided against his own parents--or against his teacher [and] the child may even be divided from religion and morality.”⁹²

Undoubtedly, the academic reputations and erudition of Professors Phillips and Seeley together with the support of others such as Dean Allan Leal of Osgoode Hall Law School, who also spoke out on behalf of the Association, enhanced the legitimacy of the EEA and its respect in the general community. However, for all this, there is no evidence that the EEA made any significant dent in the government’s commitment to the Drew Regulation. This lack of impact exposed a fallacy in the reasoning of Congress. Congress had wanted a bi-partisan organisation to lead the opposition against religious education, because it felt that the obvious partisanship of Congress rendered its pronouncements suspect. True to the expectations of Congress, the Association’s scholarly and heart-felt presentations did engender respectful hearings. But this

⁹¹ Seeley’s most well-known, “popular,” publication was John R. Seeley et al., Crestwood Heights: A Study of the Culture of Suburban Life (Toronto: University of Toronto Press, 1974), a sociological study of the Village of Forest Hill in the City of Toronto.

⁹² CCLAA, FF. REL., Ethical Education Association File.

was little more than the Congress briefs to the Hope Commission and to Premier Frost had accomplished over the first fifteen years of opposition. Indeed, in some ways the EEA was less effective than Congress. Unlike Congress, which represented an identifiable voting constituency, the EEA had no popular widely based constituency to speak of. For all its scholarship and passion, it represented no single body of voters. No ridings hinged on those for whom it claimed to speak. Moreover, its passion was for the cause, rather than the children who suffered from the abuses of the Drew Regulation. Sydney Harris, an admirer of Doris Dodds, and her work on behalf of the EEA, concluded that the EEA had “no emotional tie...religious education in the public schools did not affect their consciousness as it did ours [the Jewish community].”⁹³

By deferring to the EEA, all that Congress accomplished was to replace its own rhetoric with that of others. It may even have alienated some Jews who expected Congress to do more. If the Drew Regulation was going to be seriously challenged, the campaign needed a strategy that would attract the attention of the Ontario government and give the campaign some muscle.

⁹³ Sydney M. Harris, Interview, April 30, 1998.

CHAPTER FOUR

SELF-HELP: THE WILMINGTON PUBLIC SCHOOL CANVASS

Imaginative deployment of human bodies so as to foul up the machinery of the things we are trying to change.¹

At virtually the same time as the EEA was organising, a street-level situation was building in the Toronto suburb of North York that would eventually present an opportunity for Congress to try a new strategy. In the late 1950's, the Township of North York, a suburb immediately to the north of the City of Toronto, was experiencing tremendous growth. Part and parcel of this expansion in North York was the Jewish population extending along the Bathurst Street corridor, a major traffic artery stretching northward from Lake Ontario through North York. One district of North York that was highly favoured by young Jewish families was Bathurst Manor, the area roughly bounded by Bathurst Street on the East, Wilson Heights on the West, Finch Avenue on the North and Shepherd Avenue on the South. These young families felt secure that they were in Jewish-friendly surroundings, replete with synagogues and commercial establishments catering to their dietary and other communal needs.

Even though Jewish Day School branches followed closely on the heels of the movement of Jews into North York, a natural bi-product of the influx of Jews into this suburban area was the rapid increase in the enrolment of Jewish students into specific North York schools. One of the neighbourhood elementary schools that served the Bathurst Manor Jewish community was Wilmington Public School. Constructed in 1954 adjacent to the site that would be occupied a few years later by the Beth Jacob Synagogue and across the street from Beth Emeth Synagogue, one

¹ A. Alan Borovoy, Uncivil Obedience: The Tactics and Tales of a Democratic Agitator (Toronto: Lester Publishing Limited, 1991), 48.

might easily have mistaken this school for an adjunct parochial educational facility.² However, this was, in fact, a public school with a large Jewish student body. It was not long before the increasing awareness on the part of the parents of this considerable Jewish student body of the decided Protestant slant to the religious education program in the school forced a group of them to band together in common cause. How, they wondered, could such a program be permitted in the context of a school population that was estimated on a year-by-year basis as seventy-five to eighty per cent Jewish?³

Initially parent complaints were made to classroom teachers who referred them to school Principal Gordon Barrett. Barrett was open and available but, in the face of the Drew Regulation, explained that his hands were tied. He had to offer the prescribed and compulsory program. A parent delegation then met with the Director of Education Dr. Frederick Minkler and the Superintendent of North York Schools, Dr. Hugh Partlow. Dr. Minkler was a commanding

² Bertram A. Long, The First Twenty-Five Years. A History of the Board of Education for the City of North York 1954-1979 (North York: North York Board of Education, 1979), 85. Wilmington Public School closed in 1978 due to falling enrolment, after holding the distinction in much of the 1960s as the elementary school with the largest enrolment in the system. Its premises were leased by a Jewish Day High School, The Community Hebrew Academy of Toronto.

³ Ben Kayfetz offers his own theory for the persistence of Protestant teachings despite the heavy North York Jewish student population. Kayfetz notes that the rapid growth of North York in the early 1950s far outstripped the resources of teachers colleges. North York was, therefore, required to recruit teachers from smaller Ontario communities which, typically, contained religiously homogeneous communities. With no experience in dealing with minority faiths, these teachers did not hesitate to deliver the religious education curriculum endorsed by the Drew Regulation. Ben Kayfetz, Interview, July 30, 1997. The North York Board of Education's archives did not contain information to either confirm or deny Kayfetz's theory. But John Seeley's description of the understated approach of Forest Hill's public school educators in the face of that municipality's Jewish population but a few years prior to the Wilmington experience, does lend some credence to Kayfetz's theory. Seeley points out that in the "sphere of religious and ethical training" in order to deal with a school system which encompassed both Jewish and Gentile religious groups, the Forest Hill schools' curricula tended to be "emotionally cool, with a central mandate to be nice." But, even in Forest Hill, although conscious efforts were made "to be fair to both Jew and Gentile, Jewish children are widely taught Christian hymns and other practices, by Gentile teachers who simply know these better than others." Seeley, Crestwood Heights, 239-242.

presence at these meetings.⁴ Appointed the first Director of Education for the amalgamated boards that became the Board of Education of the Township of North York in 1954, Dr. Minkler previously had been an inspector with the Provincial Department of Education for ten years. Clare Westcott, William Davis' long-time Executive Assistant described Minkler as "20% academic and 80% entrepreneur," a person with "great ideas" who was "thrilled" to be Director of Education for North York.⁵ As the Jewish parents who met with Dr. Minkler learned, he also believed that his role as Director of Education required him to be a champion of religious education. Indeed, at the very first meeting with Jewish parents and Jewish community representatives (sometimes referred to as "the Wilmington group"), Minkler made it very clear that not only was he in favour of religious instruction in the public schools, but also as long as it was in the curriculum, he would not sanction it being "soft-pedalled." As a token to non-Protestants, Minkler pointed out to the Wilmington group that he had tried to accommodate representatives of other faiths by inviting rabbis and Roman Catholic clergy to give instruction in the program. None took him up on his offer.

As far as the Wilmington group was concerned, Minkler had missed the point. The reason why Minkler had no "success" in attracting Jewish clergy to participate in the religious education program was quite clear. Although rabbis were most keen to give instruction to Jewish students,

⁴ OJA, JCRC Papers, MG8/S, File 8A, 1957. Ben Kayfetz memorandum to file, June 7, 1957.

⁵ Long, The First Twenty-Five Years. A History of the Board of Education For the City of North York, 1954-1979, 10. Minkler developed "great chemistry" with Premier Davis, who, in turn, had considerable admiration and respect for Minkler. Minkler accompanied Davis on trips to the United States to view educational systems. These trips were also an opportunity for Minkler and Davis to get to know each other. Bearing in mind Premier Davis' subsequent strong stand against removing the Lord's Prayer from religious exercises, the close personal relationship between Minkler and Davis may have had an impact on the protracted dealings between Minkler and the Jewish community and Minkler's interpretation of those dealings for his Board. Clare Westcott, Interview, February 7, 1997. In any event, Minkler made no effort to ingratiate himself with Jewish community representatives to whom he appeared difficult and unyielding. Sydney M. Harris, Interview, April 30, 1998.

the Jewish community opposed any and all religious instruction in the public schools. The Jewish position was not seeking to add Jewish content to the public school curriculum. It was to have religious instruction of any description withdrawn from the curriculum.

Given the clamour from Jewish parents, Minkler expressed surprise that so few Jewish students had requested exemption from religious education classes, bearing in mind the large number of Jewish students in the system generally. On the surface, Minkler's observation seemed to undermine the Jewish contention that Jewish children suffered damage from forced religious instruction. Why would parents not avail themselves of the exemption if their children were really being hurt? In part, the responsibility for the small number of exemption requests lay with Congress and, in part, with the tendencies of many Jewish community members to go their own way. When the Drew Regulation was first announced in 1944, Congress informed the Jewish community by way of a general information letter how to apply for an exemption. This precipitated a flurry of exemption requests. Then Congress backed off. Within a few years a new

cohort of Jewish students were not availing themselves of this right.⁶ Why not? In truth, for some Jewish parents religious instruction was simply not a matter of sufficient concern to warrant withdrawing children from classrooms and allowing them to stand out as separate from their classmates. Others saw withdrawal as a negative option and opposed it on principle. Others still bridled at the thought that by seeking an exemption they might be seen as demonstrating their opposition to religion per se. They also felt that this would aggravate relationships with the larger Christian community.⁷ Some may even have thought it might be a good idea if their children learned something about Christianity. After all, the larger civil community was Christian based.

⁶ No statistics were available to confirm the actual number of these early requests for exemptions. In a meeting with Zach Phimister, the Superintendent of Secondary Schools for the Board of Education of the City of Toronto, Congress representatives learned that, save for the first year of the Drew Regulations when there were a number of requests for exemption, by 1952 there were virtually none. This, Phimister said, included Jews and non-Jews and the non-Jews included approximately 4500 Roman Catholic students in the public schools. OJA, JCRC Papers, MG8/S, Box 4, File 2, 1952. Religious Education in the Public Schools Sub-Committee. Both Phimister in the City of Toronto and Minkler in North York used the apparent passivity of the Catholic community as evidence of the fairness of the allegedly Protestant religious education system in the public schools. Yet to compare the status of Jewish and Catholic children under the Drew Regulation was grossly misleading. Whereas Jewish children were made to feel uncomfortable if not culpable during Protestant religious instruction of, for example, the crucifixion, Catholic children were not. Jewish parents feared that Drew Regulation authorised curricular teachings or their interpretation by public school students contained the potential for anti-Semitic outbursts. Catholic parents had no comparable concerns. With Catholic parochial education occupying a privileged position, at least through the Provincial funding of its elementary programming, the Catholic community's major public education emphasis was to obtain an equitable share of tax dollars for Separate Schools and the extension of Provincial funding of these schools to the secondary level. The Catholic community could afford to be somewhat magnanimous toward the Drew Regulation because it truly believed that "the bitter feelings that marked the history of education in Ontario are to a great extent past." Walker, Catholic Education and Politics in Ontario, 484-5.

⁷ Clearly, the position of Jewish student teachers was awkward. These student teachers were not given a choice when presented with teaching doctrinal Protestant subject matter. Even if they balked, the supervising teacher insisted that they teach the curricular material. In response to suggestions that they seek formal exemptions, the student teachers refused for fear of being singled out which might, in turn, reduce their chances of finding a teaching job in the public system. OJA, JCRC Papers, MG8/S, File 4, 1955. Religious Education in the Public Schools Sub-Committee. Memorandum from Ben Kayfetz to Sidney Midanik May 26, 1955, referring to information provided by Rabbi Bernard Rosenzweig who taught at the Toronto Teachers' College in the 1950's. Jewish public school teachers, or for that matter, any teacher, could request exemptions from teaching religious education. However, in the context of the relatively minimal requests made on behalf of Jewish students generally and the vulnerability felt by Jewish student teachers, and in the absence of evidence to the contrary, we can assume that Jewish public school teachers toed the line insofar as they were required to do so by their principals and/or boards.

Literature and the arts were replete with Christian symbolism. Surely their children would benefit from knowing something of the surrounding Christian world. Finally, some may have bought into the idea that Canada was a Christian country. Therefore it would be disloyal and disrespectful to show disdain for the prevailing religion of the country.⁸

The Wilmington group persisted in pressing Dr. Minkler. As Director of Education, he remained key to any change from current practice even though he repeatedly stated his support for religious instruction in North York's public schools. Minkler made himself available to meet on several occasions and these meetings did show progress as far as the parents were concerned. Eventually, Dr. Minkler offered to schedule religious education in North York schools after the end of the school day so if Jewish children chose not to participate, they could be dismissed from school. This proposal, to become known over time as the "3:30 plan," offered encouragement to the Wilmington group. In fact this was really no concession at all. The Drew Regulation already provided that instruction could take place immediately before the end of the school day which, officially, was 4 o'clock.⁹ It also did not remove religious education from the classroom. Yet Congress considered this to be a breakthrough. First, North York effectively acknowledged the legitimacy of the Jewish community's dissatisfaction with current practice. Second, it offered a change from existing practice, even if the change was one to which the Jewish community was entitled by law. And, third, with classes in religious education to take place at the end of the regular school day, it would be much easier for parents and their children to request exemptions since exemptions were tantamount to early dismissal.

⁸ OJA, JCRC Papers, MG8/S, JCRC Minutes, July 22, 1959.

⁹ OJA, JCRC Papers, MG8/S, JCRC Minutes, October 29, 1958.

Congress presented congregational rabbis in North York with an up-date on events so that these rabbis, in turn, could inform and advise their congregants that a solution was at hand.¹⁰ But celebration over the 3:30 plan proved to be premature. Shortly after offering this “compromise” proposal, Minkler advised that he intended to restrict the 3:30 plan to schools with a preponderant majority of Jewish students.¹¹ He also signalled a possible glitch in implementation of the 3:30 plan when he advised that before the plan proceeded he would discuss his plan with, and presumably seek the approval of, local ministerial associations.¹²

As a result, several months went by without tangible progress on the 3:30 plan. Meanwhile, mounting parent complaints, as much against Congress’ inaction as Minkler’s intransigence, forced Congress to explore more creative paths. Something had to be done. And if Congress could not compel some change to religious education practices in North York public schools with their heavy Jewish student populations, then chances of movement anywhere would be even more remote. With this in mind, Congress assigned Alan Borovoy, working with the Wilmington group, to organise a door-to-door canvass of the parents of all Wilmington Public School students.¹³ The purpose of this canvass was to collect requests from as many of these parents as possible for the exemption of their children from religious education classes at Wilmington. Congress and the parent volunteer canvassers were joined by volunteers from two local synagogues, Beth Emeth Congregation and Temple Sinai, and from the National Council of Jewish Women in gathering the exemption requests. Teams of these canvassers were assigned to

¹⁰ OJA, JCRC Papers, MG8/S, JCRC Minutes, October 22, 1958.

¹¹ Saul Cowan, a North York Board of Education Trustee and a member of the JCRC was privy to these private conversations.

¹² OJA, JCRC Papers, MG8/S, JCRC Minutes, November 26, 1958.

¹³ Borovoy, Uncivil Obedience: The Tactics and Tales of a Democratic Agitator, 45-48.

specific blocks. The ultimate goal was to cover every residence within the sixty block area of the Wilmington school district during a two week period before schools closed for the summer break in June 1959.¹⁴ Preparation sessions for canvassers, organised by Borovoy, Sydney Harris and others provided direction and guidance to the volunteers. Each volunteer was provided with a pro-forma question-and-answer script for potential discussions with residents/parents. For example, in response to the question “Why exempt my child?”, householders were told that exemptions were the most tangible and least offensive way to record their objection to the teaching of Protestant doctrine in the public school to which most Canadian Jews were opposed. They were told further that:

- 1) a request for exemption was necessary for their child’s integrity and that of the whole Jewish community, and
- 2) because other religious minorities such as Unitarians, Seventh Day Adventists and Roman Catholics had availed themselves of the right of exemption, the Jewish community should do so as well.

To the question “Will My Child Be Embarrassed?,” emphasis was placed on the heavy Jewish population in Wilmington which, if anything, would find it embarrassing if an exemption was not requested on behalf of every Jewish child. No matter what the question, volunteers were advised to avoid heated arguments and refrain from criticism of government officials or school authorities. The canvassers were made aware that most householders wished to remain inconspicuous as individuals and that they harboured concerns for their children standing out as different. According to Alan Borovoy, “we fed into this concern” by consciously getting

¹⁴OJA, JCRC Papers, MG8/S, File 17A, 1959. Religious Education in the Public Schools Sub-Committee.

signatures on the basis that “everyone’s doing it!” Although hastily put together, this was a well thought out plan.¹⁵

The canvass collected signatures on four hundred and sixty exemption requests out of a Wilmington Public School student population of nine hundred students. Even that total was viewed as an undervaluing of the success of the campaign. Why? Because almost all responses at the door were positive. Yet, even with a strong corps of community volunteers, a great number of residents were not at home when canvassers visited. Since most of the signatures gathered were from Jewish parents and not all Jewish parents had been contacted, Congress reasoned that, time and resources permitting, a recanvass of the neighbourhood would have produced a considerably higher number of exemption requests.¹⁶

The four hundred and sixty requests for exemption were delivered to the Wilmington Principal, Gordon Barrett, together with a covering letter signed by two members of the parents committee. The letter was careful to point out that the canvass, although directed at Wilmington, was not addressed to any

conditions at Wilmington [and] should not be construed as any reflection on your policies or that of your administration [but is deemed to be the] most effective way in which we can secure the long run interests of our children.¹⁷

Barrett had distinguished himself as sensitive administrator and the parent group wanted him to know that “our religious self-respect alone requires such a course of conduct.” Recognising that the number of requests for exemption would impact the religious education program generally, Barrett sought the assistance of North York’s Director of Education.

¹⁵ Alan Borovoy, Interview, March 12, 1997.

¹⁶ OJA, JCRC Papers, MG8/S, JCRC Minutes, June 26, 1959.

¹⁷ OJA, JCRC Papers, File 17A, 1959. Religious Education in the Public Schools Sub-Committee. Cover letter from parents, June 18, 1959.

Dr. Minkler responded no differently to the call for aid from Wilmington's principal than he had to Jewish community complaints for relief from the religious education strictures. Notwithstanding the success of the canvass and previous intimations by Minkler that a demonstrated expression of community concern would lead to a school-wide exemption, when Wilmington's classes resumed in the fall of 1959, two months later, there were no changes to the religious education classes. Dr. Minkler now claimed that he was unwilling to address religious education on a school-by-school basis. Taking the offensive, he challenged the Jewish community to come up with an alternate solution that would be acceptable to and adaptable in all parts of North York. At the same time, Minkler admitted that his concerns were not solely pedagogical nor were they driven by a need for administrative cohesion. Minkler allowed that he was concerned about a negative reaction from the local ministerial associations. He also claimed that he was answerable to those public school students whose parents *wanted* religious instruction.¹⁸ Congress officials had their own reservations about accepting a single school exemption. If Wilmington was finally exempted, Minkler might claim that he had dealt with Jewish community concerns, leaving Jewish students in other North York schools still subject to religious education as prescribed by the Drew Regulation.

While Minkler and Jewish community representatives sparred, the North York Board of Education was also beginning to feel pressure, both from constituents as well as a press that was becoming increasingly sympathetic to dissenting parents. Finally leapfrogging its Director of Education, the Board passed a resolution authorising an application to the Minister of Education for an exemption from religious education for Wilmington Public School, subject to parental response to a questionnaire asking if they wanted religious education for their children. The

¹⁸ OJA, JCRC Papers, MG8/S, JCRC Minutes, December 30, 1959.

format of the questionnaire offered Wilmington parents a choice: they could request that their child receive or not receive religious instruction. To become known as the “double option,” this was another minor victory to be savoured in the opposition camp. Unlike the accepted procedures for seeking exemption from religious education classes which rested the onus on dissenters alone, this format treated supporters and opponents equally.

This “double option” victory could not be enjoyed for long. Even though seventy-five per cent of those parents polled opted for their children not to receive religious instruction, the Director of Education, claiming he was bound by Provincial Regulation and not by the results of polls, would not agree to any change in religious education classes at Wilmington. He explained that he was bound to protect the interests of the twenty-five per cent minority who still wanted classroom religious education. After two years of negotiations, canvasses, polls and resolutions of the Board of Education, the Director of Education was unmoved. As long as religious education remained part of the public school curriculum as prescribed by the Drew Regulation, he would not compromise its place in even one of North York’s public schools.

When Congress presented its original brief to the Hope Royal Commission, or, for that matter, its deposition to Premier Frost, it understood that there would be a hearing and perhaps some questions or dialogue. In neither case was there an expectation by Congress that it would be invited to any follow-up meetings or sessions to promote its position. Congress was prepared to wait for another opportunity. Insofar as the approaches to the North York Director of Education were concerned, the Jewish community found itself playing by different rules. The Jewish population of North York was politically active and growing. The Jewish student population in many North York schools was significant.¹⁹ Therefore, the Wilmington group felt

¹⁹ Borovoy, *Uncivil Obedience*, 48. Borovoy describes the canvass tactic and the meetings that followed as “productive dislocation.”

little or no compunction about returning to the table with Minkler, nor about demonstrating the stiffening of its resolve.²⁰ When Minkler again argued that no concession would be made until parents were polled or flooded their schools with exemption requests the Wilmington group informed Minkler that they were not prepared to repeat their door-to-door canvass only to have him renege on his promise. They warned the Director of Education that, barring an acceptable resolution, then and there, they would take their campaign to an increasingly sympathetic press. Faced with a parental revolt, an exasperated Board and a potential attack from the press, Minkler relented. He placed the 3:30 plan back on the table again.²¹ Wilmington Public School would be a pilot experiment. The Wilmington group saw this as the thin edge of the religious education wedge.²² They were right.²³ A few months later, the 3:30 plan was offered to three other North York public schools with large Jewish student populations.²⁴ Before long, in all North York areas of heavy Jewish population schools were operating on the 3:30 plan.

This may have solved the problem for some students but not for others.²⁵ When the North York Board of Education reviewed the short term results of the 3:30 plan it found that in

²⁰ Those attending included Minkler, and H. R. Partlow, Superintendent of Public Schools, Rabbis Kelman and Pearlson, Messrs. Borovoy and Keyfetz, North York Board of Education Trustee, Dorothy Chandler, and a number of Wilmington parents.

²¹ This time the offer applied to both Wilmington and neighbouring Cedar Grove Public School.

²² Borovoy, Uncivil Obedience, 50. Borovoy saw another possible benefit of the 3:30 plan. Because the 3:30 period was typically the time reserved to help weaker students or to detain those who had been disobedient during the day, it was likely that such a placement would make religious instruction "the most unpopular item on the school curriculum."

²³ NYBEA, North York Board of Education Minutes, 1959, 177.

²⁴ Some felt that Minkler was able to show some generosity of spirit in this regard because all of the schools in question were junior schools, limited to grades one to six. As such, restrictions on religious education classes in these schools would not prevent local Protestant ministerial associations from conducting classes in grades seven and eight in other public schools in North York.

²⁵ OJA, JCRC Papers, MG8/S, File 17A, 1961. Religious Education in the Public Schools Subcommittee. JCRC Minutes, March 27, 1961.

the five schools in which the plan was implemented, the breakdown of students receiving religious instruction was as follows:

Number receiving religious instruction	488
Number excused	2513

In the remaining schools in North York the breakdown was as follows :

Number receiving religious instruction	27,743
Number excused	122

The JCRC's reaction was that these statistics, "suggested that minority rights would not be honoured in the event that they were non-conformist." It was as if North York was telling the Jewish community: "If you do not accept our plan, then ghettoise yourselves and move into a different area where people agree with you." ²⁶ Professor John Seeley described the contemplated scenario in the following terms:

the logical result of this principle [the principle of making special arrangements for Wilmington and other schools with a Jewish majority] would be to draw together into one part of the township all those who favoured any type of religious teaching but the official one, so that we would have geographic segregation along religious lines added to the religious segregation within the other schools that is part of the present system. If parents in five schools may have a different timetable and a different option system, how can the right conceded in practice to some be denied in principle to all?²⁷

Despite what appeared to some to be an example of a patent inequality, the North York Board of Education refused to extend the double option questionnaire to any schools that it deemed unqualified for the 3:30 plan, namely, schools without a substantial non-Protestant

²⁶ OJA, JCRC Papers, MG8/S, File 17A, 1961. Religious Education in the Public Schools Sub-Committee. JCRC Minutes, March 1, 1961.

²⁷ OJA, JCRC Papers, MG8/S, File 20A. Religious Education in the Public Schools Sub-Committee. EEA Brief to North York Board of Education February 13, 1961.

student population.²⁸ In these schools nothing changed. In these schools, parents who also wanted their children protected from forced religious education while refusing to request individual exemptions because of the stigma that accompanied exemption began their own protest. A group calling themselves the North York Parents Committee for a Fair Religious Education Program took a slightly different tack. It attempted to convince the North York Board of Education to expand the 3:30 plan in order to reduce “heightening tensions” in the community. Although these parents argued that they were neither for nor against religious education, their plea was ignored.²⁹ Submissions from Congress and the EEA were equally unsuccessful in their attempts to influence the North York Board of Education.³⁰ However, these

²⁸ In adopting this stance, the Board was supported by a special Citizens’ Committee consisting of parents and clergy from the three North York Ministerial Associations representing the United, Anglican and Presbyterian churches. In the spring of 1961, this Citizens’ Committee, financed by the three ministerial associations, prepared and distributed materials supporting the retention of religious education programs in North York. McLean, Religion in Ontario Schools, 79-80.

²⁹ The North York Parents’ Committee for a Fair Religious Education Program was organised in response to the controversy over religious education which had spread from Wilmington across much of the North York public schools. Indeed, members of the Committee included those for and against the present system as well as members of major Christian and non-Christian congregations who advocated a compromise in the best interests of their children. Committee members expressed fears that the controversy over religious education which already had heightened tensions in the community was bound to have a deleterious effect on their children. To avoid such a situation, they recommended that the 3:30 plan be implemented for all North York schools. Their claim that the 3:30 plan was workable was underscored by the fact that some members of the Committee had elected to have their children *receive* religious education in 3:30 plan schools at the 3:30 period. The Committee’s advocacy of 3:30 religious education classes made these classes optional, a result that committee members who wanted religious education in the schools as well as those who did not could support. The Committee felt that the 3:30 plan was the “only effective compromise that can help ease the burden on those parents who want to exempt their children...Since children are often excused at 3:30, holding religious education classes at this time will be much less likely to embarrass and create unwelcome distinctions.” The other prescribed times, 9:30, 11:30 or 1:30 did not offer the same advantages according to the Committee. OJA, JCRC Papers, MG8/S, File 17A. Religious Education in the Public Schools Sub-Committee. Committee letter to Congress May 10, 1961 seeking support.

³⁰ NYBEA, Minkler Papers, File 5307. Interim Report from the Director of Education to the Board June 1, 1961 and follow-up report June 8, 1961. OJA, JCRC Papers, MG8/S, File 17A. Religious Education in the Public Schools Sub-Committee. Congress to the North York Board of Education, June 5, 1961, EEA and Congress to the North York Board of Education, November 13, 1961 and EEA to the North York Board of Education, May 23, 1961.

organisations were able to raise enough fuss to attract the interest of the press. Since the introduction of the Drew Regulation, the press had provided a platform for supporters and detractors of religious education in the public schools. From time to time, the press also expressed editorial views on the subject. The Toronto Daily Star jumped into the squabble between pro and anti-religious education advocates editorially calling for an end to namecalling and a return to civility.

As for the charge that the opposition to the existing system comes from agitators, Communists and godless people, its irrelevance is shown by the case which was before the [North York] Board last night [February 13, 1961]. In the school districts...opposition to Christian education is grounded in the simple fact that most of the parents are Jewish and naturally do not wish to have their children taught...by a different faith. To talk of Communism and godlessness in such circumstances is to poison controversy on a serious public matter.³¹

North York Board of Education minutes through 1961, 1962 and 1963 reflect the unresolved nature of this religious education issue. Still, except in schools where Jewish students were in a clear majority, Jews in North York were unable to effect change. Eventually, in 1963 the North York Board of Education, tired of dealing with the issue, attempted to pass the baton to the Minister of Education, with a request for the appointment of a commission to deal with the entire area of religious education in the public schools.³² The Board admitted that the impetus for its request was the build-up of frustrations within the Board and the larger community caused by the Board's inability to resolve this issue. With the matter referred to a higher authority, tensions

³¹ Toronto Daily Star, February 14, 1961.

³² NYBEA, Minutes of North York Board of Education from 1961 to 1964. North York Board of Education Minutes, October, 1963 and April 27, 1964.

in North York eased. Congress turned its attention to the Province “in the hope that a satisfactory solution will emanate from Queen’s Park.”³³

Knowing that it had been handed a potential hot potato, the Provincial government had no choice except to accede to North York’s request. Whether it was because it really hoped to delay the need to deal with religious education in the public schools, or because it was truly seeking new thinking on the issue, in January, 1966 the Provincial government appointed the Mackay Committee. Long before the Mackay Committee concluded its hearings, with the political heat lowered, the North York Board of Education finally agreed to request that the Department of Education exempt all North York public schools from compliance with the Drew Regulation. Hoping to rid itself of a local headache, Queen’s Park granted the request commencing in the school year September 1967. Thereafter, the North York Board of Education annually requested and received exemption from the Drew Regulation.³⁴

The universal exemption from the Drew Regulation was forced on North York by a surging Jewish population and a concomitant increase in Jewish political clout at the municipal level. However, while there was satisfaction in Congress that Jewish children in North York were no longer subjected to compulsory Protestant religious instruction in the public schools, Congress also pledged there could be no reduction in its efforts to eliminate religious instruction from all Ontario public schools. Congress was determined that every other Jewish child in Ontario should have the same protection from religious indoctrination as was now the case for the thousands of Jewish children in North York. At the same time, Congress recognised that the

³³ Congress Brief to Mackay Committee, 1967, Appendix A19.

³⁴ North York was not the first school board with significant Jewish student population to obtain exemption. The Village of Forest Hill, (now part of the City of Toronto) obtained such an exemption years earlier as Seeley points out. Seeley, Crestwood Heights, 462, foot-note 26.

North York experience was unique. If similar success was to be achieved where the Jewish population was smaller, even insignificant, Congress would need to employ different tactics and find powerful allies.

GOSFIELD SOUTH

The priest who says less than he believes from the pulpit...who says merely what he thinks people want him to say...who pulls his punches because the religious establishment requires it, loses a portion of his dignity.³⁵

Media coverage of the Wilmington Public School uproar may well have influenced Reverend Donald Gillies, a potentially valuable ally, to join the opposition campaign against religious education in the public schools.³⁶ Assistant Minister of the Bloor Street United Church in midtown Toronto, Gillies, a self-described “failed Baptist,” was won over to the United Church by its liberal social attitudes. During his first pulpit in a suburban church in Mississauga, Gillies befriended the minister of the neighbouring South Peel Unitarian Congregation, a man shunned by ministers from other local mainstream churches. Because of the personal relationship that developed between Gillies and the Unitarian minister, from time to time Gillies addressed the South Peel Unitarian Congregation. He soon became aware of the concern members of this congregation had regarding religious education in public schools and increasingly found himself in sympathy with their position. Through his connection with this congregation Gillies also met the EEA’s Doris Dodds and was recruited to the opposition cause. When, a few years later, and now in a downtown Toronto pulpit, Gillies offered to solicit fellow Christian clergymen to join

³⁵ Pierre Berton, The Comfortable Pew. A Critical Look At Christianity and the Religious Establishment in the New Age (Toronto: McClelland and Stewart, 1965), 114. Berton aligns the “comfortable pew” with the “lukewarm pulpit.”

³⁶ Alan Borovoy felt very strongly that the newsworthy nature of the Wilmington/North York experience “smoked out” Gillies and others like him. Alan Borovoy, Interview, May 12, 1997. Gillies demurs. Although he followed the events in North York in the press, Gillies’ claims that his interest in religious education in the public schools began years earlier. Reverend Donald Gillies, Interview, August 26, 1997.

the opposition ranks, Congress jumped at his proposal.³⁷ At a time when most mainstream Christian clergy were still unwilling to align themselves with the EEA or Congress, Gillies was clearly unique.³⁸

On February 4th, 1965, the day after the Provincial government announced that an appointed Committee would review religious education in the Province, Gillies convened an all-day conference of like-thinking colleagues at Bloor Street United Church to map out a strategy for clergy participation in the opposition campaign.³⁹ This conference issued a statement declaring that the Drew Regulation ran

counter to the long-established democratic and non-sectarian tradition of education in Ontario, [noting that] there is no jurisdiction in North America, apart from this Province, which prescribes religious instruction in the curriculum of the public schools.⁴⁰

³⁷ The Senior Minister at Bloor Street United was Reverend Ernest Howse who subsequently became Moderator of The United Church of Canada. Described by Gillies as having a wonderful and brilliant liberal mind, Howse was the predominant figure at Bloor Street United. This left Gillies scope to explore issues such as religious education in the public schools without worrying that he would be reined in. Reverend Donald Gillies, Interview, August 26, 1997.

³⁸ Of course, Liberal-Protestant clergy were heard from on the issue of religious instruction in the public schools even prior to Gillies and for that matter, long before the Drew Regulation. For example, in response to an attempt by Episcopalian, Presbyterian and Methodist ministers to influence the Attorney General to consider imposing "obligatory reading of and prayers" in Ontario in 1882, Reverend William Robertson registered a strong protest against this incursion into the "freedom of independence and voluntary character of religion." Reverend William A. Robertson, Religion in the School. A Protest (Toronto: Globe Printing and Engraving Company, 1882). But, to be fair, prior to Gillies, formal opposition to the Drew Regulation by churchmen was still unusual and hesitant. Moreover, the critique mounted, for example, by Reverend A. C. Cochrane and other mainstream Christian clergy centred on the type of instruction provided in the program of religious instruction that came out of the Drew Regulation rather than religious instruction per se. To these clergy, the public school religious instruction curriculum was a falsification of the Biblical record in that it was unscriptural and unevangelical.

³⁹ Gillies confirms that in order to influence the political agenda, the meeting of his committee coincided with the formal announcement of the Mackay Committee. Reverend Donald Gillies, Interview, August 26, 1997.

⁴⁰ OJA, JCRC Papers, MG8/S, File 26A, Box 19, 1965. Religious Education in the Public Schools Sub-Committee. Excerpts of the public statement were attached to a May 6, 1965 form letter soliciting further signatures for the anti-Drew Regulation campaign.

The conference statement further declared that any attempt by teachers to follow the Department of Education's Teachers' Manual instructions by confining their scriptural interpretations "to those expressions of the Christian faith upon which all Christian denominations are in substantial agreement [was] theologically and practically impossible, and also out of keeping with the pluralistic nature of our Canadian society." The statement condemned the "publicly tax-supported" school system for its promotion of "beliefs as though they were incontrovertible truths," and of the exemption provision as being both "discriminatory and unfair."

A subsequent press release issued by Gillies denounced the Drew Regulation and called for its removal. The press release and the positive publicity it generated were viewed with great excitement by Congress.⁴¹ For the first time since the introduction of the Drew Regulation, a group of Christian clergy from mainstream denominations were on record opposing it. In endorsing the press release, these members of the United, Anglican and Presbyterian Churches were also dissenting from established policies of their national churches, a major break-through for Congress.⁴² But, in some ways, these few clergy signalled a larger shift in the position of churches in Canada. Churches were then confronting a revolt of the empty pews, awakening to the reality that a substantial portion of their membership had either fallen away or seemed uncaring about church teachings or matters such as liturgy, temperance and divorce.⁴³ Pollsters

⁴¹ Toronto Daily Star, February 5, 1965.

⁴² Of the 18 signatories, 10 were from the United Church, 3 from the Anglican Church, 2 from the Unitarian Church, and 1 each from the Presbyterians, the Buddhists and the Canadian Jewish Congress. OJA, JCRC Papers, MG8/S, Box 19, File 126B. Ethical Education Association newsletter, February 6, 1965.

⁴³ Examples include the 1960 admission by the United Church that many of their members drank in moderation even though the church urged total abstinence; the 1965 relaxation by the Anglican Church of a rule forbidding their clergy to remarry divorced persons; and the issuing of new prayer books, by the Anglican Church in 1959, by the Presbyterian Church in 1964 and by the United Church in 1969. John Webster Grant, "A Decade of Ferment: Canadian Churches in the 1960's," in Stewart Crysdale and Les Wheatcroft (eds.), Religion in Canadian Society (Toronto: MacMillan of Canada, 1976), 208.

confirmed that Protestant Christianity was drawing half as many of its adherents to its churches in the early 1960's as it did in the mid 1940's. And even the Archbishop of Toronto was prepared to concede that religion no longer occupied centre stage in Ontario society:

We survive-great at Coronations, charming at weddings and impressive at funerals as long as we don't eulogise. We are welcome mascots at family do's and offer respectability to the Christmas cocktail circuit. We grace any community as long as we stay out of social issues and do not change a jot or tittle of well-worn liturgy.⁴⁴

But if Protestant officialdom was increasingly aware that Protestantism no longer occupied a pivotal position in English Canadian culture as it did earlier, it had no ready solution at hand. Many in the church community fought change, lagging behind the rush to social change in areas where they had once shown leadership. Even the 1964 Anglican Church trumpeting of its unequivocal pronouncement against nuclear weapons was attacked by some, like Toronto columnist and author Pierre Berton, as too little too late.

If nuclear devices were an affront to the Creator in 1964, why not in 1954 or 1945? Why the 19 year wait? In this case, as in so many others, the atheists, agnostics, Unitarians, socialists and scientists were all on record before the major organised Christian community.⁴⁵

Gillies stood out as exceptional. Building on the foundation laid by his ad hoc committee, he helped set up a campaign to collect further signatures from Christian clergy prepared to go on

⁴⁴ Archbishop Lewis Garnsworthy. The Archbishop's Charge to the 132nd Synod, Toronto Anglican Diocese, 1984. Reginald W. Bibby, Fragmented Gods: The Poverty and Potential of Religion in Canada (Toronto: Irwin Publishing, 1987), 8-12.

⁴⁵ Berton, The Comfortable Pew, 14.

record against the Drew Regulation.⁴⁶ And in an ecumenical gesture, Gillies enlisted several rabbis from Toronto and Hamilton and requested Congress to solicit “other likely [Jewish clergy] souls.”⁴⁷

The following spring a series of events conspired to bind Reverend Gillies more closely to the EEA in opposition to the Drew Regulation. The setting for these events was the Gosfield South School District, thirty miles south east of Windsor Ontario. In Gosfield South fundamentalists held sway on the local school board. Several parents protested that the religious education program of their public school board amounted to unwelcome fundamentalist indoctrination of their children. These complaints were not new. Some parents had complained of visits to public schools by a fire-and-brimstone fundamentalist minister since the early 1950s. Later, parents questioned the purpose of forcing children to memorise psalms under the guise of academic home work. They also registered complaints about the literal reading of Bible stories and other fundamentalist approaches to religious instruction including warning children against eternal damnation. In 1961 opposition grew louder when the Gosfield South Home and School Association recommended that the Bible Movement be invited to teach religion in all grade one and two classes in their jurisdiction. This increased the discomfort of many parents who were already upset with the religious education issue and felt “alone in their anxiety and helpless to do anything about it.” The situation was further exacerbated in 1964 when the wholesale

⁴⁶ Gillies confirms that this ad hoc committee could not be sustained. Many of the signatories, although willing to endorse the clergy statement, were not as devoted to altering the government stance on religious education in public schools as was Gillies. Reverend Donald Gillies, Interview, August 26, 1997. Gillies did manage to revive the vestiges of the clergy committee for the purposes of a formal brief to the Mackay Committee. Thirty ministers, most of whom were associated with the United Church, augmented by a half dozen Anglican colleagues signed the brief which was presented to the Mackay Committee by Gillies on March 31, 1967. PAO, Ministry of Education Papers, RG2-170, Box 10. Brief 108.

⁴⁷ OJA, JCRC Papers, MG8/S, File 26A. Religious Education in the Public Schools Sub-Committee. Ben Kayfetz followed this up by soliciting rabbis throughout the Province.

amalgamation of several school boards under one Gosfield South Board forced the pro-fundamentalist influence onto a raft of new schools. Complaints escalated and in January 1966, a group of thirty disgruntled parents sought out the assistance of the EEA.⁴⁸

The EEA agreed to represent the Gosfield South Parents before the Gosfield South Board of Education. Alan Borovoy, counsel for the Ethical Education Association, delivered a brief to the Board on behalf of the Parents' group. In attendance to demonstrate support for the EEA position were Reverend Donald Gillies and Reverend Robert Mackie of Trinity Anglican Church in Agincourt, Ontario, both wearing clerical collars.⁴⁹

The EEA and the Parents' group made it clear that they objected to religious education in the public schools as a matter of principle as well as exemplified by the specific complaints in Gosfield South. As prescribed by the Drew Regulation, scriptural interpretation "confined to those expressions of the Christian faith upon which all Christian denominations are in substantial agreement," made no sense. But even if such an agreement could be reached, the level of evangelising in the Gosfield South schools went "far beyond what is acceptable to most Christian denominations." To substantiate this allegation, the presentation gave examples from students'

⁴⁸ The scenario leading up to the EEA appearance in Gosfield South is outlined in the Parents Brief to the Mackay Committee on February 3, 1967. PAO, Ministry of Education Papers, RG2-170, Box 10.

⁴⁹ Serving as a resource person providing background information on the history of the religious education curriculum in the public schools, Borovoy developed cordial and informal relationships with those Protestant clergy who became involved along with Gillies. Sessions designed for exchanges of information sometimes concluded with "friendly" poker games. Borovoy's aggressiveness went beyond the card table. Prior to the hearing before the Gosfield South Board of Education, Borovoy told Gillies that he had arranged for coverage by the press. Borovoy believed strongly that the visible presence of a Protestant Minister would add an extra dimension to the EEA presentation. For that reason, Borovoy asked Gillies to wear his clerical collar to the hearing. Gillies, a member of the progressive wing of the United Church, had never worn a collar, even at the risk of forfeiting his ordination. Nevertheless, convinced of the shock value of a Protestant minister in clerical garb objecting to the instruction of Protestant religious teachings in public school classrooms, Gillies acceded to Borovoy's request. The Gosfield South hearing remains the only time when Gillies wore a clerical collar in almost forty years as a United Church minister. Alan Borovoy, Interview, March 12, 1997 and Reverend Donald Gillies, Interview, August 26, 1997.

notebooks including the extolling of prayer as an instrument of healing, offensive remarks about Jews, and suggestions that the devil was the cause of insanity. The Board was told that although examinations in religious education were not prescribed by the Regulation, Gosfield South's religious education curriculum mandated examinations. Moreover, students were told that "they count." Most of the religious instruction was given by Bible Club Movement representatives, who "use our schools openly to recruit attendance for an annual Baptist Rally" which featured blatantly "racist" propaganda."⁵⁰

The EEA presentation to the Gosfield South Board received significant press coverage.⁵¹ If characterising the 475 children in the three schools within this school district as victims of fundamentalist evangelising of a most extreme nature seemed an overstatement, School Board members lived up to this characterisation.⁵² The School District was in an area made famous by the Jack Miner Bird Sanctuary and Miner's son, Jasper Miner, was a member of the School Board. Jasper Miner repeatedly professed to see the hand of God guiding the waterfowl back to the bird sanctuary every spring. He rejected the parents' brief as "ungodly" and expressed pride in "the religion and faith of his forefathers." Other members of the local clergy, following his lead, defended the curriculum. With the press in attendance, Alan Borovoy recalls that Board members called the parents who objected "cowards." Moreover, they implied that the children of

⁵⁰ The Baptist Rally held in that year featured the dramatic reading of a story which contrasted the actions of a wicked Hindu priest with those of a kindly Christian missionary. The brief denounced the tale as "vicious racism." OJA, JCRC Papers, MG8/S, File 130C. Religious Education in the Public Schools Sub-Committee. Submission to Gosfield South Board of Education from a Delegation of Parents, April 19, 1966.

⁵¹ Toronto Daily Star, April 20, 1966, May 3, 1966, May 11, 1966. Toronto Telegram, April 21, 1966.

⁵² When Borovoy heard that children at Gosfield South public schools were taught that religious faith could overcome the law of gravity and that mental disease was a result of being devil possessed, he "salivated." Alan Borovoy, Interview, March 12, 1997.

the complaining parents had low IQ's, that they were uneducated, favoured "paganism" and, that these parents, generally, were behaving like Communists.⁵³

The reaction of the Board was not a surprise to the EEA or its supporters.⁵⁴ Two weeks after the EEA presentation, the Gosfield South Board convened another meeting to announce that religious instruction would continue in Gosfield South schools as before. The Board refused the EEA's request it be allowed to address this second meeting which effectively concluded this matter. Yet, the EEA viewed the experience as a success. Because "We knew we were going to lose going in," even though the specific request for removal of religious instruction from Gosfield South schools was refused, "it was a win."⁵⁵ It was a win because extensive press coverage of this "latter-day Scopes monkey trial," characterised the proponents of religious education as extremists and those in opposition as reasonable.⁵⁶ It was a win because it occurred in a rural community where, typically, religious education rarely was questioned, and even less likely, criticised. It was a win because, with some assistance from the EEA, the dissenting

⁵³ Lieutenant Edith Fisher of the Salvation Army, one of the Gosfield South Board's authorised religious instructors, responded to an accusation from Borovoy by acknowledging that, in fact, she did teach that mentally-ill people were devil possessed and by "shaking her fist at me." Alan Borovoy, Interview, March 12, 1997.

⁵⁴ The extremely hostile atmosphere at the Board meeting was anticipated by the EEA delegation. The Board panel before whom the EEA appeared presented themselves as the "guardians of WASP culture." At the same time, the panel portrayed those who disagreed with their viewpoint, including two Protestant ministers, as the anti-Christ. Gillies was not cowed by this attitude. He felt very strongly that the teaching of religion in public schools was an exercise of political power on the part of the religious establishment that killed the spirit of "real Christianity." Therefore, to Gillies, the implementation of the Drew Regulation was also disadvantaging Protestants. Reverend Donald Gillies, Interview, August 26, 1997.

⁵⁵ Borovoy credits Saul Alinsky, an American radical who founded poor people's organisations, with ascribing to the Gosfield South type of encounter the term "mass jujitsu," using the strength of your opponents for your own purposes. Borovoy, Uncivil Obedience, 48.

⁵⁶ Toronto Daily Star, April 20, 1966. May 3, 1966, May 11, 1966. Toronto Telegram, April 21, 1966.

parents remained united and committed to voice their opposition to the Drew Regulation.⁵⁷ It was a win because the presence of Reverend Gillies of the United Church and Reverend Mackie of the Anglican Church reinforced the argument that opposition to religious education in public schools was not opposition to religion itself.⁵⁸ And from the perspective of the Jewish community which had been in the vanguard of the opposition for over two decades without tasting much success, it was a win because the opposition campaign would no longer be dismissed as a parochial Jewish issue.⁵⁹

Unquestionably, opponents to religious education in the public schools were becoming more confident. Encouraged by the mobilisation of additional and more broad-ranging support than by any tangible results of their efforts, the campaign was developing more energy. The campaign was also gaining added legitimacy from organisations such as the EEA and the Clergy Committee whose key leadership pushed the issue of religious education to a new level of public consciousness. As well, the opponents to religious education were no longer “voices in the wind.” Ontario society, generally, was becoming more secularised. The media was more and more onside and the churches were either internally divided or losing any pretext of having a

⁵⁷ The Gosfield South Parents' Group remained committed to the principle of removing religious education from public schools beyond the environs of Gosfield South. On February 3, 1967, the Parents' Group submitted a brief to the Mackay Committee. PAO, Ministry of Education Papers, RG2-170, Box 10. Brief 85.

⁵⁸ Reverend Gillies' appearance was not well-received by some United Church supporters. Subsequent to the Gosfield South meeting, the Essex Presbytery of the United Church asked the Toronto Centre of the United Church to investigate Reverend Gillies. The Essex Presbytery alleged that Gillies' appearance at the April 19, 1966 meeting in Gosfield South was a “gross breach of ministerial ethics.” Included in the many vitriolic letters Gillies received following his Gosfield South appearance, was one that referred to him as “a puppet of Unitarians and Jews”. Gillies was disappointed that most of his fellow churchmen maintained “a sort of calculated silence on the subject.” Reverend Donald Gillies, Interview, August 26, 1997.

⁵⁹ Borovoy informed a subsequent JCRC meeting that Gosfield South was the first demonstration of significant opposition to religious education which took place in a rural school setting without a Jewish student component. OJA, JCRC Papers, MG8/S, JCRC Minutes, April 27, 1966.

monopoly on value issues in society.⁶⁰ No doubt Christians still attended church, although in reduced numbers, and continued to believe that the church was the “refuge of all mankind.” But only a small percentage of those who attended church were exclusively influenced by it in matters of political decisions or public causes.⁶¹ This meant that opposition voices, at least in urban areas, were no longer necessarily seen at odds with the church or with the public good. True, many religious groups and individuals remained confused and defensive about these changes, determined more than ever to defend their traditional turf. But the decades since the first appearance of the Drew Regulation had witnessed a change in the civil consensus which had long been assumed to support religious instruction in the schools. Nor was Ontario’s government unaware of the controversies created by the Drew Regulation. It had only to await the results of the Mackay Committee set up in the wake of the North York controversy to see how far public attitudes in Ontario had shifted.

⁶⁰ See, for example, editorials in the Toronto Daily Star and the Toronto Telegram, June 29, 1962, approving the Regents’ Prayer decision of the United States Supreme Court. This decision represented the extreme separationist view of that court and was soundly criticised by religious groups in the United States. See 370 U.S. 421 (1963).

⁶¹ Ralph Allen, “The Hidden Failure of Our Churches,” Maclean’s Magazine, (February 25, 1961). This article summarised responses to a 1961 survey of church attendance conducted in Guelph, Ontario.

CHAPTER FIVE

THE MACKAY COMMITTEE: LIGHT AT THE END OF THE TUNNEL

A good parson once said that where mystery begins, religion ends. Cannot I say, as truly at least, of human laws that where mystery begins, justice ends?¹

Authorised by an Order-in-Council dated January 27, 1966, the Conservative government of Premier John Robarts established a Committee to evaluate the program of religious education in the public schools as prescribed by the Drew Regulation. Keiller Mackay, a retired Judge of the Ontario Court of Appeal, was appointed chairman of the Committee. A respected jurist and a strong civil libertarian, Mackay's appointment was applauded by Jewish community leaders who anticipated a far better result from him than they received from Mr. Justice Hope.² With Mackay's reputation as both a respected jurist and a civil-libertarian well-known, it is reasonable to assume that the Provincial government fully anticipated that the Committee would do the government's dirty work by bringing down the Drew Regulation.³ The Mackay Committee was more than Keiller Mackay. It consisted of five members in addition to the chairman, still

¹ Edmund Burke as cited in an editorial advocating repeal of the Drew Regulation. Globe and Mail, May 7, 1965.

² In particular, the Jewish community was grateful for Mackay's 1945 decision in Re Drummond Wren, [1945] O.R. 778, declaring invalid a restrictive covenant denying the sale of property to Jews was invalid. To substantiate his judgement, Mackay reasoned that such covenants were at odds with the spirit of respect for fundamental human rights which had been given an international platform in the United Nations Declaration of Human Rights. In addition, he grounded his judgement in related Ontario statute law including The Community Halls Act, R.S.O. 1937 c. 284, The Insurance Act, R.S.O. 1937 c. 256 s. 99 and the Racial Discrimination Act, S. O. 1944 c. 51, each of which prohibited discriminatory actions in specific circumstances. Sydney M. Harris, Interview, April 30, 1998.

³ Mackay had a distinguished career as a jurist, serving on the Supreme Court of Ontario from 1935 to 1950 and on the Ontario Court of Appeal from 1950 to 1957. Thereafter he served as Ontario's Lieutenant-Governor from 1957 to 1963. Who Was Who, 1961-1970. Volume VI (London: Adam and Charles Black, 1972). Once Mackay was appointed, the Committee became known as the Mackay Committee.

rendering it decidedly smaller than the Hope Commission.⁴ Aside from the emphasis on members experienced in higher education, the Committee also was weighted heavily in the law, with four of its members trained in jurisprudence. On its face, this apparent emphasis on the law seemed a curiosity. Unlike the United States where issues of religion and public education were most often resolved, or at least argued, in a court of law, the law played little or no role in discussions of religious education in Ontario schools.⁵ And as the events evolved, many of the actual presentations to the Mackay Committee centred on philosophical and moral arguments, with references to experience and the practicalities of school situations rather than the law. The terms of reference of the Committee included examining and evaluating the then current religious education program, receiving representations from all interested bodies about the effectiveness of the program, weighing suggestions for change, considering the responsibility of the public schools in religious matters in any event, and making recommendations for the information and consideration of the Minister of Education.

By the time that the Mackay Committee got underway, the Drew Regulation had been in force for almost twenty-two years. There was, therefore, considerable practice that the Committee could call upon. At the first session of the Committee held on February 18, 1966, Education Department staff members provided an overview of the existing religious education

⁴ Included in the Committee were Professor F. C. A. Jeanneret, formerly head of French at University College, University of Toronto and former Chancellor of that University; Harry Waisberg, a County Court Judge; Dr. Mary Q. Innis, an economist and former Dean of Women at University of Toronto; John W. Whiteside, a lawyer active in University of Windsor affairs and W. S. Martin, a St. Catherine's lawyer, active in Brock University matters.

⁵ For examples of discussions of the American experience, see Paul A. Freund, Religion and the Public Schools: The Legal Issue (Cambridge, MA: Harvard University Press, 1965) and Sam Duker, The Public Schools and Religion: The Legal Context (New York: Basic Books, 1966).

program with particular focus on the perspective of public school teachers.⁶ They pointed out to the Committee that although teachers were trained to teach the program, teachers still found the Guides inadequate. Periodical Departmental revisions of the original 1944 program with the assistance of the Inter-Church Committee had not satisfied teacher concerns. The experience of Departmental staff as supervisors of teachers had demonstrated to them that most teachers tended to be uneasy about dealing with religion. Moreover, always circumspect in expressing opinions, teachers were particularly so concerning religious education. This wariness may have been because teachers felt religious education was a values minefield and any wrong move might put their jobs at risk. Or perhaps they just believed that it was impolite to discuss politics or religion in class as much as anywhere else. In either case, Departmental staff conjectured that, although based only upon anecdotal evidence, as many as fifty per cent of all teachers in the Province would be pleased to be relieved of the burden of teaching religious education. By their own admission, Departmental staff were less concerned with teachers who balked at giving religious instruction than those teachers with strong faith beliefs, whose enthusiasm often outdistanced their common sense. Those zealous teachers did not teach, they preached.⁷ The Mackay Committee was also counselled by staff to weigh both the existence as well as the lack of opposition to the religious education programs. If, for instance, negative reactions were more prevalent in urban areas, it may have been due to the greater likelihood of organised group

⁶ PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, January 28, 1966 to December 13, 1968. Committee Minutes, February 18, 1966. Staff members were D. A. Clee, Associate Superintendent of Curriculum and George H. Waldrum, Associate Superintendent, Supervision Division.

⁷ George Waldrum confirmed that this was the case. For the period from 1965 to 1969, Waldrum was heavily involved with the major re-organisation and downsizing of school boards in the Province. From his perspective, the Department of Education did not provide to the School Boards nor did the Principals provide to the teachers, any time, attention or direction as to how to teach religious education. George Waldrum, Interview, April 4, 1997.

pressure. On the other hand, the Committee was advised not to draw the conclusion from the general lack of criticism in rural areas that these settings were content by comparison.

The Committee was also given certain texts to read including E. R. McLean's 1965 Religion in Ontario Schools which was based on the minutes of the Inter-Church Committee on Religious Education in the Schools. This thin volume published just prior to the appointment of the Mackay Committee underscored the close bonds between the Inter-Church Committee and the Provincial Department of Education. Warm acknowledgements were tendered to F. S. Rivers, one of the principle draughtsmen of the original Teachers Manual, and to other former Department members. In this volume McLean reviewed the different underlying principles governing religious education in public schools in Ontario. He argued that religious instruction did not constitute "a dogmatic and compulsive effort to thrust doctrines and convictions upon unwilling minds and captive audiences." Nor was religious instruction "a frill which might be permitted and indulged if the teachers are interested in the subject, if there is time... and if the peace and harmony of the body politic is not disturbed." Instead, McLean described the guiding principle of religious instruction as "corporate compulsion with individual and area freedom." The "corporate compulsion" emanated from the Drew Regulation which provided for obligatory religious instruction in the public schools. The "individual and area freedom" was provided by the exemption provisions in the same Regulation for pupils, teachers and school boards. To McLean, this was a "strangely contradictory but a marvellously practical and workable principle."⁸ The reading that some members of the Mackay Committee gave to McLean's book may have been exemplified by the comment of one Committee member who noted that McLean

⁸ McLean, Religion in Ontario Schools, v.3.

made only a “hairline” distinction between teachers with convictions and the concept of proselytising.⁹

Later in its proceedings, the Committee heard from W. D. E. Matthews, Administrative Assistant to the Director of Education for the Board of Education of the City of London. Matthews was also the author of a work on religious education in the schools.¹⁰ He explained to the Committee that his attitude toward the Drew Regulation had changed in the sixteen years since he first wrote about the subject. In 1950 he had merely catalogued reactions to the Drew Regulation. These reactions were too immediate to the events of the day to call for evaluation. Testifying before the Committee sixteen years later, Matthews made four very distinct and precise points:

- 1) Attitudes towards minorities had changed radically in the years since the imposition of the Drew Regulation.
- 2) The exemption provision had turned out to be wholly inadequate to deal with the issue of freedom from discrimination.
- 3) Knowledge of the Bible was no guarantee of the uprightness of moral behaviour.

⁹ PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, February 25, 1966. Comments of Dr. Innis.

¹⁰ Matthews, considered an expert in the field, had completed a doctoral dissertation in 1950 on religious education. Matthews was requested by the Committee to up-date his thoughts on the nature and the influence of religious objectives on the development of public school education. In his dissertation, Matthews attributed the “co-operation between church and state” which eased the path for the Drew Regulation to the change in the concept of religion from personal faith to an attitude toward life. To Matthews, as long as religion was a matter of personal faith, religion in public education was limited because of the multiplicity of interpretations of that personal faith. But when, as he saw it, churches shifted the emphasis so as to accentuate the ethical interpretation of religion, not only was the sectarian influence minimised, but the churches seemed the most natural agents of a religious education delivery system within the public schools. This left the door open for greater and open church participation in public school religious education. Matthews, “The History of the Religious Factor in Ontario Elementary Education,” 211-215.

- 4) The Christian churches were depending upon the public schools to compensate for their own inability to reach the young people with church originated programs.¹¹

The Committee did not limit its information collection to briefings from Department of Education staff, other experts or texts on the subject. It welcomed briefs from interested individuals and organisations. One such brief, from the Bible Club Movement of Wheatley, Ontario, prompted further sessions with Departmental staff for the purpose of providing the Committee with information concerning the organisation and official function of the Movement in Ontario.¹² The Mackay Committee learned that the Bible Club Movement was American in origin. Its only function in Ontario was the conduct of religious education classes in public schools. Supporters of the Bible Club Movement were described as “moderate fundamentalists” who held to a literal reading of the Bible and regarded the program offered by the Department of Education as being “too bland.” Therefore, although Movement members were in classrooms ostensibly delivering the Provincial religious education program, their training was in Movement institutes and they often came equipped with Movement textbooks.

Even though the Movement representatives were employed by many boards of education in the Province, they received no remuneration from the Department of Education. From time to time, however, Movement teachers did receive remuneration from some of the boards. Clearly, it was at the local and most often rural board level where the Movement felt most comfortable and was made most welcome. In the result, the Movement made no attempt to operate in larger communities which it saw as the preserve of the local and more mainstream ministerial

¹¹ PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, January 27, 1967.

¹² PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, September 30, 1966.

associations. By 1966, the Movement was active in 25 largely rural school boards and over 300 schools across the Province. The Movement's lone message to students was that virtue was rewarded and sin punished. The Movement argued that this was the essential lesson to be learned if the moral and ethical values of Christianity were to have an impact on students' lives.

In addition to the Bible Club Movement, the Mackay Committee heard from another 140 organisations and individuals.¹³ The presenters fell into three main categories:

1) *Retentionists*. Like the Bible Club Movement, they saw nothing wrong with indoctrination in the public schools. Included in their numbers were the Peterborough Inter-Church Committee, the Kingsville and District Ministerial Association, the Christian Reformed Churches of Ottawa and of Chatham, and the Anglican Diocese of Huron.

2) *New Course Advocates*. They wanted to introduce a system of religious education that would be advanced, all-embracing, permissive and broad. They were confident that this system would include all religions without complaint and without raising the need for exemption. Included among the proponents of this plan was the Theology Department of the University of Windsor.

¹³ PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, March 25, 1966. The Committee noted that far too many of the briefs expressed opinions rather than evidence of experience with the program. Concern was voiced that perhaps the advertisement requesting submissions was not worded as felicitously as it might have been so as to encourage more parents of school-aged children to contribute their thoughts. See also PAO, Robarts Papers, RG 3-26 Box 63. Department of Education. Religion in the Schools, 1969. Brief of Anglican Diocese, November, 1969. In a brief to the Ontario government in response to the Report of the Mackay Committee some three years later, the Diocese of the Anglican Church of Canada categorised the Mackay Committee briefs as follows:

- 1) 96 against abolition of the current program
- 2) 3 in favour of released time, a term that was in use in the United States and provided for students of any religious group to be permitted time away from regular classes for religious tuition.
- 3) 42 opposed to the present program. Of the 42 opposed, the Anglican Church stated that 22 of these briefs were submitted by Jewish or Unitarian groups that represented no more than three per cent of the Province's population.

The clear inference from this categorisation was that the rights of minorities should be limited.

3) *Abolitionists*. They saw no redeeming value in current courses in religious education and advocated their removal in toto. The suggestions for replacement were plentiful. A Baptist clergyman, Emlyn Davies, proposed comparative religion courses from grade one forward. The Seventh Day Adventists, preferred absolute abolition but were amenable to a form of released time whereby clergy were permitted to enter classrooms after school hours to instruct those children whose parents had requested it. In effect, they advocated for the status quo prior to the Drew Regulation. The humanists and the Jewish community advocated schools promoting knowledge and information about religion and the various religious groups in society but no religious advocacy.¹⁴

Although these categories describe the principles advocated by various parties, the true distinction was between those who had vested interests in the existing program of religious education and those who did not. Among those who had the greatest vested interest in the program and the most at stake in maintaining the status quo were the long-time proponents of Protestantism and their churches.¹⁵

¹⁴ PAO, Department of Education Papers, RG2-170, Box 3. Mackay Committee Minutes, March 25, 1966. The brief of the Anglican Diocese argued that the breakdown of representations, particularly on the part of those opposed, was helpful in attaching weight, because "judged by the denominational groups with which the population is reported to affiliate, Ontario is a religious province." The Mackay Committee had come to the same conclusion in assessing the raw numbers of briefs. The Committee noted that most submissions "support... the retention of religious education in the public school program." Unlike governments, opposition parties or other vote-counting entities, the Mackay Committee could consider the number of briefs submitted on behalf of a particular view without being bound by the totals.

¹⁵ In his doctoral dissertation, Jack Arthur Mobley attributed the strong and at times unreasonable stance of the Protestant churches respecting maintaining religious education in the public schools to the tense state of relations between Protestants and Catholics in Ontario. Mobley saw Protestants reacting angrily to changing social conditions, specifically the growth of Catholic numerical strength and zeal within the Province. The serious threat posed by Catholics to continued Protestant domination in Ontario made Protestants willing to sacrifice democratic safeguards for all other citizens. Mobley, "Protestant Support of Religious Instruction in Ontario Public Schools," 122.

THE PROTESTANT CHURCHES

If Protestant churches were not nearly as unified on the issue of religious education as several decades earlier, the Inter-Church Committee on Public Education, formerly the Committee on Religious Education in the Public Schools, represented the view of hard-line retentionists.¹⁶ Its brief, the first to be heard by the Mackay Committee, was described as “remarkably non-denominational.”¹⁷ Since its inception some thirty years earlier, the Inter-Church Committee consisted of representatives of the Anglican, Baptist, Church of Christ, Lutheran, Evangelical, Mennonite, Presbyterian and United churches. Not unreasonably, the Committee considered itself representative of a fair cross-section of Protestant Ontario. Consequently, it was most meaningful that, at the outset of its brief, the Committee declared that as a result of some “radical rethinking about the relationship of public education to its roots,” it was determined to advocate a public education system in which “even the smallest minority can find the freedom to preserve its integrity and make its contribution.” The Inter-Church Committee confirmed that “the Church no longer desires to exert control over other groups in the educational system.” This was, in effect, a disclaimer of the previous privileged position of

¹⁶ The change of name was itself a telling statement, shifting the established churches’ focus, in name at least, away from religious education per se and toward interests which the Inter-Church Committee described as “a realistic grappling with the contemporary situation.” PAO, Department of Education Papers, RG 2-170, Box 10. Mackay Committee Briefs. Brief 1, April 1, 1966.

¹⁷ PAO Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, April 15, 1966. Apparently, the Mackay Committee was anticipating a more one-sided treatment from the Inter-Church Committee.

Protestantism in public education in Ontario.¹⁸ In itself, this might seem a radical and ground-breaking statement. But the statement was not accompanied by any recommendation to abandon the existing religious education program.¹⁹ Instead, the Inter-Church Committee affirmed the conviction of those in constituent member churches who believed in “the wholeness of education,” an integral part of which, in the Committee’s mind, was religion. The only recommendation for change that it could come up with was the upgrading of texts and courses so as to encourage free interchanges of ideas by all pupils in response to “the recent revolutionary changes in educational theory.”²⁰

Other church organisations and individual supporters of the existing religious education program were even more unyielding. To them, any change to the Drew Regulation held only negative consequences. Some of these were:

- 1) An adverse impact on “the foundation of Canadian life.”²¹
- 2) Responsive only “to a loud minority [the Jews of North York] who are causing all the difficulty.”²²

¹⁸ The Inter-Church Committee was not alone in this progressive thinking. Later the Mackay Committee interviewed Reverend A. G. Wedderspoon, Secretary of the Commission on Religious Education set up in 1968 by the Church of England Board of Education. Reverend Wedderspoon advised that his Commission determined that the Cambridgeshire Syllabus, heavily relied on by the Department of Education in formulating the initial curriculum for the Drew Regulation, was more Bible related than pupil related and was out-of-date for the 1960’s. PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, April 5, 1966.

¹⁹ On many occasions prior to the appointment of the Mackay Committee, various Protestant organisations had taken similar positions. They were critical of the Drew Regulation but were not prepared to give up the place of religious education in the public schools. Examples included the Christian Women’s Council, in 1962, the Moderator’s Committee of the Presbyterian Church, in 1963, the Council of Baptist Convention in 1964, the Department of Religious Education of the Anglican Church in 1964, and the Committee on Religious Education of the United Church in 1964. Thomas, “The Protestant Churches and the Religious Issue in Ontario’s Public Schools,” 293-309.

²⁰ Inter-Church Brief 1 to the Mackay Committee.

²¹ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 5 to Mackay Committee from Mrs. M. A. Rowland, Sault Ste. Marie.

- 3) Encourage separate Protestant schools to “spring up within the public system and this could weaken our present public school structure.”²³
- 4) Reduction in the opportunities for young people “to achieve their highest potential.”²⁴
- 5) Increase in crime because “most of our young people who are in difficulty with the authorities are children with very little connection with the Christian Church.”²⁵
- 6) Denial of a fundamental right to the youth of Ontario, namely, “to receive a Christian education.”²⁶
- 7) Breach of a basic human right in that “individual rights belong to persons in the majority groups as well as to those in minorities.”²⁷

Recurring themes alluded to in these briefs in support of the status quo included:

- 1) “a minority should not be permitted to impoverish the curriculum of and for the majority;”²⁸
- 2) “Canada, numerically, historically and culturally is a Christian country,”²⁹ and

²² PAO, Department of Education Papers, RG 2-170, Box 10. Brief 7 to Mackay Committee from the Peterborough Inter-Church Committee.

²³ Peterborough Inter-Church Committee Brief 7.

²⁴ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 22 to the Mackay Committee from the East Conference of the Free Methodist Church in Canada.

²⁵ PAO, Department of Education Papers, RG 2-170, Box 9. Brief 24 to the Mackay Committee from the Diocese of Huron of the Anglican Church of Canada. With respect to the exemption provision, this brief declared that “it [the exemption provision] is something which just has to be accepted...cries of discrimination and second class citizens from parents who have sought exemptions for their children are mere nonsense.” The influence of the Diocese of Huron and its efforts on behalf of the Drew Regulation cannot be discounted. Department of Education comments in Department of Education files note that the Diocese brief was accompanied by 6735 signatures supporting the brief.

²⁶ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 26 to the Mackay Committee from Ronald B. Mansell, St. Catherine’s.

²⁷ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 34 to the Mackay Committee from the Kingsville and District Ministerial Association. This was the association that provided support and bible teaching to the Gosfield South Board of Education.

3) “the whole basis of our present Western civilisation, ethically, socially, and judicially, is founded on Biblical teaching.”³⁰

Support for the Drew Regulation went beyond the Protestant churches. The Religious Education Section of the Ontario Educational Association also supported the existing religious education program. The membership in this section consisted almost entirely of teachers and principals actively engaged in teaching religious education. Previously called the Bible Study Committee, in 1942 this section had recommended that a course in “the Christian religion be an obligatory subject in the public and secondary schools...”³¹ Twenty- five years later, before the Mackay Committee, the successor section of the Association saw no reason to change its position. Its brief argued that the existing program should be retained subject only to the revision of texts and improved teacher training.³²

As the Committee members reviewed and commented upon the briefs presented, the Chair reminded them that although the views of professionals, “educationists and academicians” alike were needed, the role of the Committee was to ascertain the attitude of the *people* of the Province, and in particular that the view of “parents was of great importance.” Thus the Committee gave sober reflection to the following words of the mother of a public school student:

²⁸ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 105 to the Mackay Committee from the Ottawa Presbytery of the United Church.

²⁹ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 40 to the Mackay Committee from the Women’s Christian Council on Education of Metropolitan Toronto.

³⁰ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 56 to the Mackay Committee from the Pentecostal Assemblies of Canada.

³¹ OJA, Department of Education Papers, RG 2-170, Box 10. Brief 25 to the Mackay Committee from the Religious Education Section of the Ontario Educational Association.

³² OJA, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, June 10, 1966.

I resent very deeply a law that has made it possible for a teacher to take over my responsibilities as a parent. My understanding of prayer is quite different from the teacher's and while I do not doubt her sincerity, I do not want my daughter taught orthodox ways of praying.³³

THE OTHERS

Those opposed to the continuation of the existing program of religious education were, in the main, Jewish and Unitarian groups joined by a smattering of liberal mainstream clergy.³⁴ These groups were also joined by boards of education in some major centres which expressed the view that the religious instruction course must be discontinued because it was, in principle, "divisive and proselytising." Unlike presentations from church groups which managed to win endorsement from other like-minded groups, the value of the school board presentations was limited somewhat by the lack of a single guiding principle. What the school boards who opposed the Drew Regulation did share was the conviction that the time had come for change. The Scarborough Board's major objection with respect to the existing religious education program was the "massive indifference" on the part of parents, students and teachers alike. Scrapping the existing program was Scarborough's response to this indifference.³⁵ The Board of Education for the City of London argued that the Drew Regulation no longer spoke for a society that had changed radically, both in its composition and in its needs.

³³ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 32 to the Mackay Committee from Mrs. I. Winter, Leamington, October 28, 1966.

³⁴ The 12 submissions by Jewish individuals and/or organisations, together with the 9 Unitarian or humanist submissions and one from the Baha'is of Canada constituted the 22 referred to in the Anglican Diocese brief. The submissions by Jewish organisations and individuals are detailed later. The Unitarian Church submissions came from Peterborough (59), South Peel (91), Toronto (95), Hamilton (97) and London (114). In addition, briefs were received from the Toronto Humanist Association,(36), the EEA (36) and the Canadian Civil Liberties Association (99).

³⁵ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 61 to the Mackay Committee from the Board of Education of the Township of Scarborough.

The presentation by the Ethical Education Association to the Mackay Committee followed closely on the events in Gosfield South.³⁶ It was natural, therefore, for the EEA to describe in some detail the recent Gosfield South experience. The EEA's participation in the Gosfield South Board of Education hearings represented a high point in the EEA's contribution to the co-operative inter-communal effort to overthrow the Drew Regulation. Its forceful brief to the Mackay Committee proved to be the EEA's swan song.³⁷ The EEA delegation included Reverend Don Gillies and Ian McKenzie from Trinity College, University of Toronto. Other supporters included two of the parents from the Gosfield South parent group, reciprocating for the assistance given them by the EEA.³⁸ The portion of the EEA's brief dealing with the argument against the present program was delivered by Alan Borovoy. Referring to the Teachers' Manual, Borovoy pointed out that interpretation of Scriptures was to be "confined to those expressions of the Christian faith upon which all Christian denominations are in substantial agreement." This statement, argued Borovoy, places the public school authority "officially in favour of the Christian interpretation of the scripture."³⁹ Therefore, interpretations of other religious groups would not be accepted by the public school authority, making a clear case of

³⁶ PAO, Department of Education Papers, RG 2-170, Box 10. Brief 36 to the Mackay Committee from the Ethical Education Association.

³⁷ The tenor of the Mackay Committee's Report some two and one-half years later instilled such confidence in the EEA that their goal had been achieved and that sectarian religious education would be abolished that the EEA chose to disband as of April 23rd, 1969. With success imminent, the EEA determined that, from a practical point of view, the absence of a *raison d'être* would leave the cause hard-pressed to raise funds to keep the organisation in operation. OJA, JCRC Papers, MG8/S, File 64B, 1965. Religious Education in the Public Schools Sub-Committee. Form letter to EEA members, April 12, 1969.

³⁸ Gillies recalls that Mackay, a member of Gillies' Bloor Street United Church, did not acknowledge Gillies when Gillies was presented as a member of the EEA delegation. Reverend Donald Gillies, Interview, August 26, 1997.

³⁹ Borovoy also pointed out that the same Manual admonished teachers to remember when teaching about Jesus that "Jesus Christ is more than a hero to be admired; he is the revelation of God in history." Ethical Education Association brief to the Mackay Committee.

religious inequality. The portion dealing with the replacement of the existing program was delivered by Professor Charles Phillips. In a scholarly manner, the brief advocated the examination by public school students of “the relationship between historical development, our social institutions, and the various religious ideologies.” The brief declared that “insofar as the EEA is concerned, a proper objective of public education is the dissemination of facts about various religious ideologies.”⁴⁰ The EEA advocated religious equality and an appreciation of cultural diversity. It argued that promotion of a belief in one religious ideology at the expense of others was a violation of these principles. This did not mean that schools should or could be value neutral. Quite to the contrary. The EEA saw a definite role for public schools in the promotion of ethical attitudes. But instead of basing programs within a religious framework, it proposed to inculcate in public school students the “broad values that sustain virtually all human relationships and that enjoy a consensus among the religious and cultural groups in our community.” These values, such as kindness, consideration and honesty, could be promoted by the schools so long as the schools took “no sides on their various theological underpinnings.”

Mackay Committee members questioned whether such an approach could turn away those who wished some religious component in the public schools. If this were true, would this not result in the proliferation of private parochial schools? The EEA delegation thought this unlikely. In addition, it contended that co-ordination of home and school so as to develop universal values conducive to a proper atmosphere and environment in both would dissuade those requiring sectarian religious education from withdrawing their children from the public schools.

⁴⁰ OJA, JCRC Papers, MG8/S, File 130B, 1966. Religious Education in the Public Schools Sub-Committee. EEA used the facilities of Congress for production of their brief as evidenced by an early draft which mistakenly substituted the words “Canadian Jewish Congress” for “EEA.”

A Mackay Committee member also asked the EEA its policy respecting religious exercises. Borovoy and Phillips responded that since religious exercises had not come within the Mackay Committee's frame of reference, the EEA had not formulated an official position. When pressed for an answer, however, Borovoy suggested that religious exercises that included a silent period of decorum or passages from the Bible which were non-doctrinal in nature and which contained sentiments which were universally acceptable were, in turn, acceptable to the EEA. The two clergymen present, Gillies and McKenzie, were less guarded than Borovoy. In their view, religious exercises were not required in public school classrooms.⁴¹

The brief of the Canadian Civil Liberties Association, (sometimes referred to as the CCLA), marked its initial sortie onto the religious education battlefield. The CCLA was a non-profit organisation formed in 1964 with objects that included the promotion of respect for fundamental rights as well as the legal protection of the freedom of dignity for individuals. In its short-lived tenure the CCLA had submitted briefs to government commissions, including the McRuer Commission, in 1965.⁴² The first President of the CCLA was Keiller Mackay, the Chairman of the Mackay Committee. The first Secretary of the CCLA was Doris Dodds. Other early supporters were Donald Gillies, Sydney Midanik, Sydney Harris and Alan Borovoy. To round out the "old home week" atmosphere of the CCLA's appearance at the Mackay Committee

⁴¹ PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, December 9, 1966. As with Canadian Jewish Congress, the EEA had concentrated its efforts on religious instruction rather than religious exercises and was caught short by the question. Both the EEA and Congress were satisfied that religious instruction was a more clear cut battle to wage.

⁴² Professor Harry Arthurs, Interview (telephone), December 15, 1997. Professor Arthurs suggests that the McRuer Commission was a major impetus for the formation of the CCLA. After the first of the two-staged report of the McRuer Royal Commission was released on March 5, 1968, there was some agitation for a National Bill of Rights so that it would not be "nearly as easy for officialdom to push the ordinary citizen around." Toronto Daily Star editorial, March 18, 1968.

hearings, one of its presenters was Professor Harry Arthurs, he of the Congress-commissioned Arthurs Report.

The CCLA brief recycled the standard argument against the principle of compulsory religious education. Public support of a particular religion constituted interference with the religious freedom of those with other beliefs. In support of this principle the CCLA cited provisions of the Canadian Bill of Rights and the general objects of the Provincial Freedom of Worship Act. In addition, section 7(1) of the Public Schools Act was cited to support the argument that religious education was to be given only to those who requested it. Since the Drew Regulation made religious education compulsory, the CCLA concluded that the Regulation was *ultra vires* the Province.⁴³

The CCLA presentation was well received by the Mackay Committee which was moved to enquire why these arguments had not been tested in a court of law. The CCLA responded diplomatically and hopefully. The anticipated recommendation for repeal of the Drew Regulation by the Mackay Committee would make such a test case unnecessary.⁴⁴

THE CONGRESS BRIEF

Congress' presentation to the Mackay Committee constituted more than just another brief. In many ways, the appointment of the Mackay Committee represented a watershed in the lobbying by the Jewish community for removal of the Drew Regulation. The organised Jewish

⁴³ In response to a request for a legal opinion following the brief from the CCLA, the Attorney General advised the Mackay Committee some months later that the Drew Regulation was not *ultra vires* the Provincial government. PAO, Department of Education Papers, RG2-170 Box 6. Mackay Committee, 1967. H. B. Stevens, to Dr. McCarthy, October 6, 1967.

⁴⁴ At this time the CCLA was still in its infancy and had very little funding. Although there may well have been discussion concerning a test case, Professor Arthurs has little doubt that the CCLA did not have the finances to sustain an action on its own. Professor Harry Arthurs, Interview (telephone), December 15, 1997.

community had long been the backbone of opposition to the program in religious education in Ontario's public schools. However, a number of factors were then conspiring to diminish the high profile role of the Jewish community in the anti-Drew Regulation campaign.

1). The Wilmington/North York experience had been a major undertaking. A tremendous effort had gone into meetings, briefs, information for the media and the forging of alliances. But the effort that went into the process disguised the ultimate impact. Yes, the success of the May, 1959 canvass had been remarkable. But the initial minimal gains had contributed to the sapping of the Jewish community's energy and enthusiasm. When in 1963 the North York Board of Education requested the Minister of Education to appoint a commission to evaluate the status of the religious education program, Congress leaders saw this as solid evidence of a change in attitude by the Board. With the sense of relief and conviction of the inevitability of changes to come, a let-up in the Congress opposition campaign gradually took place.

- 2). The incipient anti-Semitism manifested by some die-hard advocates of religious education caused some in the Jewish community to question the cost-benefit of the Jewish-led campaign.⁴⁵
- 3). Beyond political lobbying and briefs to government, the case had been made for a legal challenge to the Drew Regulation in the Arthurs Report but, clearly, the Jewish community did not have the stomach for a legal confrontation nor for the consequences of losing or even winning a court battle. Thus, if the Jewish community was not ready to go to court, it was putting all its eggs in Mackay's basket. It would be win or lose in this Committee but the community expected to win.
- 4). Compared to Congress which began opposing the Drew Regulation in 1944, the Ethical Education Association, formed in 1959, was a relative newcomer to the campaign. The Ad Hoc Committee of Christian Clergy was only convened on the eve of the Mackay Committee. Yet the organised Jewish community was quick to herald the arrival of both bodies. Even the Gosfield

⁴⁵ The spectre of anti-Semitism merited the concern of the Jewish community. United Church ministers and their publications had spoken out in classic anti-Semitic terms about this very issue. OJA, JCRC Papers, MG8/S, File 8B. Religious Education in the Public Schools Sub-Committee, 1957, respecting the writings of London, Ontario United Church Minister H. R. Rokeby-Thomas and OJA, JCRC Papers, MG8/S, JCRC Minutes, November 12, 1963, respecting public statements made by Toronto suburban United Church Minister Gordon Crossley Hunter. As well, on occasion, the support of "friends" could be equally troublesome. In responding to the attack on Jews by Reverend Crossley Hunter, the Globe and Mail declared that the "white Anglo-Saxon Protestant's claim to dominance has diminished." Globe and Mail, November 10, 1963. Ontario Jews may not have been too comfortable with this pronouncement. At the same time, Jews in the United States were experiencing an anti-Semitic backlash as a result of the United States Supreme Court's 1962 decision in the Regents' Prayer case which confirmed the outlawing of prayer in public schools. The Catholic Journal, America, set the tone with a vicious editorial entitled "To Our Jewish Friends," a phrase that "reeked of patient tolerance and overbearing superiority." The September 1, 1962 editorial not only suggested that an anti-Semitic outbreak was possible as a result of Jewish support for the secularisation of schools, but that it was justified. Naomi W. Cohen, Jews in Christian America. The Pursuit of Religious Equality (New York: Oxford University Press, 1992), 171-177. A year later, Toronto United Church Minister Gordon Crossley Hunter forecast that "when secularism reigns, the Jews will be as they have always been, the first to suffer." The phrasing and the terminology are similar enough to suggest a pattern. Also, see James Brown, "Christian Teaching and Anti-Semitism. Scrutinizing Religious Texts," Commentary, (1956), 494-5, for a discussion of religious-based anti-Semitism. Brown posits that "It is in connection with the crucifixion that the problem of religious anti-Semitism is posed in its sharpest form, for nothing can more quickly create sentiments of antipathy toward Jews in children than the grotesque simplification of the story into the statement that the 'Jews killed Jesus'-however much the particular author may wish to guard against anti-Semitism."

South case, piloted to a great extent by Alan Borovoy, was celebrated as much for the essentially mainstream nature of the opposition as for its actual impact on the issue. These were but a few examples of many instances which confirmed the readiness of the Jewish community to hand over leadership of the campaign against religious education to others.

5). After twenty years, in the 1964 edition, the Teachers' Manuals for grades one to six were finally amended. Some of passages which the Jewish community found to be most offensive were expunged. The changes represented a response to the Jewish community's initial complaints to the first edition of the Teacher's Manuals, some twenty years earlier. The inaction of the Department of Education in the face of an entire generation of public school students being exposed to disapproving descriptions of Jews and Judaism in government sanctioned texts was not lost on the Jewish community, but together with the Mackay Committee, the sense was that victory was at hand if not achieved.⁴⁶

6). Although still early in development, certain elements within the organised Jewish community were beginning to agitate for public funding of Jewish Day Schools. This would rapidly develop into a shadow issue as the Jewish community would be forced more and more to choose between the seemingly incompatible positions of demanding total removal of religious education from the classroom and requesting public support for Jewish Day Schools.⁴⁷

For many, the decision on the part of the Provincial government to convene a Committee to study the issue of religious education in the public schools, had come none too soon. Jewish opposition to the Drew Regulation was flagging after twenty years of struggle. Nevertheless, Congress was unwilling to entrust a twenty-year investment in opposition to the discretion of a

⁴⁶ OJA, JCRC Papers, MG8/S, File 130. Religious Education in the Public Schools Sub-Committee. Ben Kayfetz memorandum to file, September 17, 1964.

⁴⁷ This issue will be dealt with in more detail in Chapter Six below.

government appointed body. Aware that the government was lining up potential candidates for the proposed committee, Congress gave consideration to capable candidates it might suggest, if asked, from within the ranks of the Jewish community.⁴⁸ Names that were raised included Jews with broad profiles in the general civic community, such as University of Toronto Law School Professor Bora Laskin, Toronto Telegram columnist Rabbi Reuben Slonim and Toronto Daily Star executive Burnett Thall. Others suggested were long-time leaders of the Jewish community campaign against the Drew Regulation, Lawyers Fred Catzman, Sydney Midanik and Sydney Harris.⁴⁹ Rabbi David Monson, an ardent Conservative Party supporter, put himself forward as a candidate for the “Jewish seat on the Committee.” This resulted in E. A. Goodman, an influential Conservative Party organiser and fund-raiser, personally and discretely cautioning Education Minister Davis against Monson’s selection as it carried with it the potential for “some very serious ramifications both from the point of view of the Community [i.e. the Jewish community] and of the Government.”⁵⁰ Of course, even if the Committee was to have a Jewish member, it was not within Congress’ purview to participate in the selection, and, indeed, it was not asked.

⁴⁸ The Jewish community was not alone in its desire to participate in selecting candidates for the Committee. The Chair of the Inter-Church Committee on Religious Education in the Schools, Reverend Donald Warne also made an effort to influence the government’s decision. PAO, Robarts Papers, RG-3. Warne to Robarts, April 26, 1965.

⁴⁹ OJA, JCRC Papers, MG8/S, File 126. Religious Education in the Public Schools Sub-Committee. Ben Kayfetz to Sydney Midanik August 4, 1965.

⁵⁰ A hand-written note attached to Goodman’s note, presumably written by an aide to Premier Davis, offered Goodman’s comments as evidence that “Jews discriminate against each other.” PAO, Robarts Papers, RG 3-26, Box 63. Religion in the Schools, November, 1961 to December, 1965. E. A. Goodman to William Davis, May 28, 1965, requesting an appointment with Davis. As for the ominous tone of Goodman’s note, many members of the Jewish community were wary of Rabbi Monson’s outspoken and often undiplomatic partisanship for Jewish causes. Goodman perceived Monson as “extremely unpopular” with many within and outside the Jewish community. He was concerned as well that Monson might offend both other members of the Committee as well as prospective deputants, thereby reflecting badly both on the Jewish community and the government. Edwin A. Goodman, Interview (telephone), January 9, 1998.

When the Mackay Committee members were appointed, in fact, one Jewish member, Judge Harry Waisberg, originally from Sudbury, Ontario was among its numbers. Even though the inclusion of Judge Waisberg was a major change from the non-status of minority representation on the Hope Commission, Congress remained anxious. It feared Judge Waisberg's

lack of close association with Congress over the years preceding his [judicial] appointment to Toronto, [and the fact that] he may not be fully conversant with the position of the community in regard to this matter," [had the potential for] considerable embarrassment to Congress [in the event that] the Jewish member of this Commission were to show any inclination toward compromise of the well known Jewish position.⁵¹

To avoid this possibility, Rabbi Gunther Plaut, Senior Rabbi of Holy Blossom Temple was briefed on the important features of the so-called "well-known Jewish position" on religious education and asked to discuss these points with Judge Waisberg, who was one of Plaut's congregants, prior to any submission by Congress.⁵²

As for the Congress brief itself, all agreed it had to be strong. As soon as the Provincial government announced that it planned to appoint a Committee, the JCRC convened to discuss the preparation of the Congress presentation. Joining in the deliberations were Sydney Midanik,

⁵¹ The concern was voiced by Sydney Harris. This may not have been an entirely accurate or fair estimation of Judge Waisberg's familiarity with the subject matter or the Jewish position. In 1964, Judge Waisberg served as the hands-on Chairman of a Congress Committee on Government Aid to Day Schools which had been formed on an ad hoc basis to determine the Jewish community position on this issue. The other Committee members were Sydney Midanik who represented the opposition to government aid and David Newman who represented the supporters. In addition, Waisberg had spent most of his life in Sudbury which had a small but vocal Jewish community. It is likely that Waisberg's notions about religious education in the public schools and its affect on minorities, particularly Jews, was strongly influenced by his personal experience. Ben Kayfetz, Interview, July 30, 1997.

Sydney Harris, Alan Borovoy and Ben Kayfetz, all old hands in the opposition to the Drew Regulation.⁵³ After Congress' experience in North York, the group agreed that the Committee likely offered the last best hope for success of the Jewish community's long and difficult campaign. Not surprisingly, Congress deliberations also included a self-conscious and defensive discussion of the consequences for the Jewish community if the Mackay Committee recommended repeal of the Drew Regulation. True, this was the preferred resolution for the Jewish community. But unless the Committee offered an educational substitute for the Drew Regulation, it would move the clock back to the status of religious education in the Province prior to 1944. Sydney Midanik forced a conclusion to this discussion with the practical observation that

the course in religious education in the public schools is bad and should come out of the curriculum. As to what happened before 1944, this should be seen in the right perspective-times have changed, and so has society and demography.

Congress knew that it had to weigh in with the Mackay Committee in favour of a complete and total repeal of the Drew Regulation. In order to convince the Committee of the justice of its position, Congress wanted to ensure that the large Jewish community on whose behalf it spoke remained on side. For this reason, it was decided to alert other Jewish communal organisations about the Congress brief. This would fulfil a dual purpose. The Congress self-

⁵² PAC, Plaut Papers, MG 31 F6, Volume 80. Sydney Harris to Rabbi Gunther Plaut, January 31, 1966. Both Harris and Waisberg were congregants of Holy Blossom Temple and knew Rabbi Plaut on a personal basis. Rabbi Plaut saw Waisberg often in communal and social settings. As such, although unable to recall a specific discussion, Plaut feels certain that he addressed the issue with Waisberg once Sydney Harris made the request. Plaut is confident that Waisberg did not disagree with the Jewish community position respecting religious education in the public schools. In any event, Plaut feels that Judge Waisberg was in tune with Jewish community positions generally. So too was Plaut, who held many communal positions including long-term membership on the JCRC. Rabbi Gunther Plaut, Interview (telephone), December 12, 1997.

⁵³ OJA, JCRC Papers, MG8/S, File 130. Religious Education in the Public Schools Sub-Committee. JCRC Minutes, February 22, 1966.

perceived mandate of representing the Jewish community generally, in this case within the Province of Ontario, would be satisfied. As well, it was hoped that this would pre-empt other Jewish organisations from preparing and presenting their own and potentially contradictory position papers.⁵⁴ A flood of presentations from Jewish communities, possibly in opposition to one another, would only serve to confuse the Mackay Committee. Understandably, each community or communal organisation spoke to the particular needs and concerns of its members. In this circumstance however, a variety of perspectives, however salient, might undermine the authority of the Congress position in the eyes of the Mackay Committee. A united front on the part of the Jewish community would better ensure the appreciation of the weightiness of their position on religious education by the Mackay Committee.

As events transpired, Congress was unable to prevent the filing of a number of separate briefs from Jewish organisations and individuals throughout Ontario.⁵⁵ Gratefully, all towed the same general line. At the same time, some could not resist expressing concerns that were specific

⁵⁴ Although Congress preferred to represent the Jewish position before the Mackay Committee, it did not covet the opposition platform for itself. To the contrary, Congress openly solicited other like-minded, non-Jewish organisations for their participation. In particular, in yet another attempt by Congress to add to the opposition to the Drew Regulation by an organisation that was not explicitly Jewish, Congress encouraged the involvement of the Labour Committee for Human Rights, formed in 1947 as the Joint Labour Committee to Combat Racial Intolerance. The fact that the seemingly omnipresent Alan Borovoy served as the Labour Committee's Executive-Secretary facilitated the approach. Congress was impressed with the active role that the Labour Committee had previously played in fighting racial and religious discrimination and in fostering positive group relations in the community. Because of the Labour Committee's public profile in these areas, Congress hoped it would emphasise the damage to group relations resulting from religious instruction in the schools. Although the Labour Committee chose not to file a brief before the Mackay Committee, one was submitted by the Canadian Civil Liberties Association, soon to be staffed by the energetic Alan Borovoy who also had a hand in the brief presented by the Ethical Education Association. OJA, JCRC Papers, MG8/S, File 130C. Religious Education in the Public Schools Sub-Committee. Ben Kayfetz to the Labour Committee for Human Rights, March 14, 1966.

⁵⁵ PAO, Department of Education Papers, RG2-170, Box 9. Mackay Report. Six separate briefs were filed by the Jewish communities, including those from Chatham, (Brief 29), Windsor, (Brief 30), London, (Brief 31), Ottawa, (Brief 48), Sudbury (Brief 125) and Fort William, (Brief 127). Four more briefs were filed by Jewish individuals, one by a Jewish society and of course the Congress brief, totalling in all, twelve out of 141 written submissions.

to their own circumstances. The Fort William Jewish community, for example, addressed the issue of “a Jewish community remote from the larger centres of Jewish population in the South and the East.” This community objected strongly to suggestions that the Provincial government could adopt one standard for the rural or smaller communities and another for the larger centres of mixed population. Rejecting such a “saw-off” unequivocally, Fort William’s Jewish community argued that “there should be no special privileges or arrangements available to the larger centres from which the smaller centres would be excluded.”⁵⁶

The completed Congress brief was impressive. An introduction detailed eighty years of the Provincial government’s rejection of pressure to make religious education in the public schools compulsory prior to the Drew Regulation. Graphic descriptions were offered of the changes wrought by the Drew Regulation. In addition, the brief recalled the Jewish community’s recent experience with the North York Board of Education. Congress reiterated why it was opposed to religious education in public schools, citing

the undermining of the essentially public quality of the public school, the divisiveness created thereby, the psychological problems precipitated by the exemption provision, the diminution of the scope and influence of the religious institutions.

The presentation and the language were reminiscent of Rabbi Feinberg some twenty years before. Instead of the Springfield Plan which was the morals and ethics course of choice in the 1940s, Congress recommended the Committee consider sanctioning replacement of the Drew Regulation with the 1960s version, the Kentucky Plan, which imparted moral and ethical values

⁵⁶ The Fort William community was speaking to the increasing acceptance of multiculturalism in metropolitan centres such as Toronto on the one hand and the aggressiveness of the Lakehead Ministerial Association on the other. The Fort William Jewish community had been nursing grievances concerning religious education for some time. OJA, JCRC Papers, MG8/S, File 3A. Religious Education in the Public Schools Sub-Committee, 1954. Alex J. Devon, Port Arthur to Ben Kayfetz, December 15, 1954, requesting advice on the decision of the Fort William Board of Education to permit the Lakehead Ministerial Association to give religious education classes in public school grade seven classes.

and criteria into everyday classroom experience. Congress made this suggestion because it felt that it was essential for the Committee to adopt some replacement program that would achieve consensus from all sides.

The Congress brief was presented to the Mackay Committee on February 10, 1967.⁵⁷ The hearing was unique in that the Mackay Committee granted an entire day to Congress for its presentation. The delegation in support of the brief totalled twenty-nine in all. Discussion included an airing of the extent to which ethical and spiritual values should and could be inculcated in a classroom setting as an alternative to the existing religious education. The result was a fair but "quite lively discussion."⁵⁸ Unlike its encounter with the Hope Commission, Congress felt that although the questions put by the Mackay Committee members were "probing, frank and revealing," there was no trace of ill-will. The Jewish community's representatives left the Mackay Committee confident that this was one government appointed body that had not only given them a fair hearing but had listened. The Jewish community delegation was also quietly confident that the Committee would be bold in its recommendation that the Drew Regulation be repealed.

⁵⁷ OJA, JCRC Papers, MG8/S, JCRC Minutes, February 22, 1967. The brief was most professional, two different editing committees having reviewed Ben Kayfetz' draft text prior to Sydney Harris bringing it to "advocate's brief" form. Even after pruning, the finished product contained ninety pages of text and seventy-five pages of Appendix, much of this reiterating previous Congress presentations. The formal presentation was made by Sydney Midanik, Chairman of the JCRC and Meyer W. Gasner, Chairman of the Central Region of Congress.

⁵⁸ OJA, JCRC Papers, MG8/S, File 142. Religious Education in the Public Schools Sub-Committee. Information letter to the Jewish community from Congress, August 25, 1967. Once the presentation was made, the Committee congratulated themselves on having received accolades from the Mackay Committee Chair for the presentation's "impeccable English." The Jewish community's "appreciation" of this compliment which it did not consider patronising was an indication that the old habits of an immigrant community were difficult to break.

REPORT AND REACTION

The Mackay Committee's report, Religious Information and Moral Development (Mackay Report), was tabled in the Ontario Legislature on March 14th, 1969. The Report concluded that the course of study as provided for in the Department of Education approved Program for Religious Education in the Public Schools of Ontario and the Teachers' Guides was no longer acceptable because:

- 1) The program exposed students to Christian doctrine from very early grades and promoted the clear implication that the Christian religion was on a higher plain than other religions;
- 2) The exemption provision was not a solution to the rights of minorities, serving only to discriminate against them; and
- 3) Even if the present course was reasonable at its inception, the Province's demographics had changed from a predominantly Christian society to a pluralistic one, rendering the course unsuitable in 1960s' Ontario.

Accordingly, the Mackay Report recommended the repeal of the Drew Regulation and specifically those provisions respecting the teaching of religion for two and one -half hours per week and permitting clergy access to the schools. This fundamental and most unequivocal recommendation of the Mackay Committee adopted Congress' basic principle that a religious education program that permitted Protestant indoctrination was out of place in a public school setting and should be eliminated.⁵⁹ At the same time, the Mackay Committee was solicitous to those for whom the Drew Regulation was meaningful. In order to soften the impact of its

⁵⁹ PAO, Department of Education Papers, RG 2-170, Box 3. Mackay Committee Minutes, January 12, 1968. The various preliminary drafting chores of the Committee's report were parcelled out by the chair. The drafting of an evaluation of the present course and the recommendations for its future disposition was delegated to Judge Waisberg. The JCRC took great pride in the fact that statements and/or arguments made in their brief were mirrored in the Mackay Report. OJA, JCRC Papers, MG8/S, File 64B. Religious Education in the Public Schools Sub Committee. JCRC Minutes, March 18, 1969.

recommendation, the Mackay Committee noted that “those who made decisions before us concerning religious and moral education did so in the context of their times...These recommendations are made in the context of our time.”⁶⁰ In the place and stead of the current program in religious education the Mackay Report recommended:

- 1) The introduction of a universal program designed to pervade all curricular and extra-curricular activities, including fostering character-building, ethics, social attitudes and moral values and principles;
- 2) An optional course of study on comparative religion for grades eleven and twelve of Secondary School;
- 3) The dissemination of information about religion in order to enrich the culture of the pupil; and
- 4) The cessation of Bible readings in the religious exercises part of the program save for the Lord’s Prayer.

The initial response to the Mackay Report was mixed. Toronto newspapers such as the Globe and Mail and the Toronto Daily Star reacted as follows:

Christianity has been the most divisive presence in the public schools of Ontario...[and] the history of Religious Education in the public schools since it was imposed in 1944 has been a shoddy enterprise and a public embarrassment.⁶¹

The Report of the Keiller Mackay Committee on Religion in Ontario public schools should mark the end of an ill-judged experiment using the public schools of the Province for sectarian teaching.⁶²

⁶⁰ Religious Information and Moral Development: The Report of the Committee on Religious Education in the Public Schools of the Province of Ontario, 1969, (Mackay Report), (Toronto: Ontario Department of Education, 1969), preface, xv. 21-36, 73. The title of the report itself and in particular, the reference to “Religious Information” as opposed to “religious instruction or education,” was an indication of the direction of the major recommendation.

⁶¹ Globe & Mail, March 15, 1969.

⁶² Toronto Daily Star, March 17, 1969.

In light of the uncompromising nature of the Mackay Report recommendations, even George Drew appeared somewhat defensive when asked for his impressions:

Changing times make a spiritual background for moral standards essential...In 1944, all I did was to change the structure of teaching. For 100 years there had been Religious education in the Public Schools given by Ministers-all I did was give it some organisation.⁶³

The responses from the balance of the general public were not as uniformly enthusiastic as the Toronto press.⁶⁴ Nor was the vocal portion of that general public as compliant as the elderly George Drew. An overwhelming majority of letters directed to the Minister of Education from private citizens voiced concerns about the Mackay Report's recommendations and urged the Government not to implement them.⁶⁵ Reflecting the local option nature of religious education as it had evolved under the Drew Regulation, many public school boards reacted negatively to the Mackay Report. In particular, the Elgin County Board of Education, presaging the more significant role that it was destined to play, vowed to continue with the existing program of religious instruction until it satisfied itself that the Mackay Report's recommendations were reasonable.⁶⁶ The Waterloo Board of Education went further, warning that the Report, by promoting the removal of religious education from the public schools leaving

⁶³ Toronto Daily Star, March 31, 1969. The article also noted that Drew was sceptical about the Report's proposal to teach comparative religion.

⁶⁴ Toronto's press did not have an exclusive on support for the Mackay Report. For example, the Owen Sound Sun Times, February 12, 1970, urged the removal of the Drew Regulation; the Hamilton Spectator, February 12, 1970, featured an explanation of the Nelson High School Principal's Advisory Committee's opposition to religion in the schools; the North Bay Nugget, February 17, 1970, disclosed that North Bay's public school principal's association had requested school-wide exemptions from religious education since 1969 and an editorial in the Renfrew Advance, February 18, 1970, advocated an end to the Drew Regulation.

⁶⁵ PAO, Department of Education Papers, RG2-45, ACC 11573A, Box A3. Public Inquiries File, 1969. Boxes of letters in these files addressed to the Minister of Education confirm this.

⁶⁶ London Evening Press, August 28, 1969.

Protestant parents no option but to form their own separate schools, signalled a death blow for public schooling.⁶⁷

In response to appeals from their constituents, members of the Legislature expressed serious concerns about the prospects of implementation of the Mackay Report recommendations. One member of the Provincial Cabinet observed that “many of our people...raised the question of public monies being spent to promote Roman Catholic education while comparable instruction is being denied in our Public School system.” His Protestant constituents had looked upon public education as their rightful property which the Mackay Report proposed to deny to them.⁶⁸

Representatives of mainstream churches, with vested interests in the maintenance of the status quo, were vocal in their criticism of the Mackay Report. Motivated by a conviction that the public school was the proper forum in which to dispense religious education, they demonstrated their displeasure by flooding the Department of Education with their objections. Yet their excessive animosity directed towards advocates of the Drew Regulation’s repeal also revealed the negative and discriminatory aspect of their agenda. Not only was the quantity of correspondence in opposition to the Mackay Report impressive. The virulence of this opposition was also remarkable as is seen, for example, in this extract from a letter from Reverend E. A. Lorimer:

I know that there is strong opposition from a noisy minority of Atheists, Unitarians, Jews and others who are not satisfied with the privilege of having their children exempted from Religious Instruction, but insist that all the children of disinterested parents be kept in ignorance as well.⁶⁹

⁶⁷ Kitchener-Waterloo Record, July 12, 1969.

⁶⁸ PAO, Robarts Papers, RG3-26, Box 63. Department of Education. Religion in the Schools, 1969. Minister of Transport, Irwin Haskett to William Davis, March 21, 1969.

⁶⁹ PAO, Department of Education Papers, RG2-45, Acc 11573A, Box A3, 1969. Department of Education, Public Inquiries. Reverend E. A. Lorimer to Minister of Education, March 19, 1969.

Wisely, most churches focused their attention on the Report's proposals for courses to replace the current program. One of the more outspoken opponents of the Mackay Report's recommendations was the Anglican Diocese of Huron. At its 110th Synod, in May, 1969, the Diocese declared that "this is not the time for wide and unsettling experiments in moral teaching or for the removal of the Christian presence from our public schools."⁷⁰ The Ecumenical Study Commission, formed in response to the Mackay Report by representatives of the United, Lutheran, Presbyterian, Baptist and Anglican churches, echoed these comments with its own warning that

while the Ecumenical Study Commission has little desire to see the present situation perpetuated, it has been hesitant about recommending its immediate abandonment [because it is] inexpedient to abandon what already obtains, poor tho' it is, until some more satisfactory alternative is ready to be substituted.⁷¹

Meanwhile, opponents of the Drew Regulation responded positively to the Report and its recommendations. The Ethical Education Association read the Report as an endorsement of the Association's stance on religious education and declared the recommendations "closely in line with what the Ethical Education Association has advocated during the past ten years...[and that the Report contained nothing] offensive to any minority...."⁷² The EEA board reported to its members within a month of the Mackay Report's release that there was a considerable likelihood that the recommendations would be implemented, "at least to the extent of abolishing sectarian

⁷⁰ PAO, Roberts Papers, RG3-26, Box 63. Department of Education. Religion in the Schools. 1969.

⁷¹ PAO, Ministry Education Papers, RG2-82-5, Acc. 17195, Box 4, 1977. The Ecumenical Study Commission. "Religion in Our Schools: An Ecumenical Reaction to the Keiller Mackay Report." The Ecumenical Study Commission was made up of representatives of United, Anglican, Lutheran, Baptist, Presbyterian and Roman Catholic churches, and was formed in response to the Mackay Report. Over the ensuing years, it made representations to successive Ministers of Education and to special bodies such as the LaPierre Commission.

⁷² OJA, JCRC Papers, MG8/S, File 64B. Religious Education in the Public Schools Sub-Committee. EEA letter to members, April 12, 1969.

religious instruction...[and therefore] the Board felt that the Ethical Education Association had accomplished its purpose.” From a practical point of view, because the opponents of religious education appeared to be on the verge of success “it would be virtually impossible from now on to maintain the vigorous support necessary to keep the organisation [i.e. the EEA] going.” In consonance with this prediction, less than six weeks after the Mackay Report was released, the EEA disbanded.⁷³

The leadership of the Jewish opposition was equally confident. A few days after the release of the Mackay Report, in a newsletter to “Community Leaders,” Sydney M. Harris, a former Chairman of the JCRC and Chairman of the Central Region of Congress, noted that the Mackay Report recommendations “hew very closely to the proposals we [Congress] made in 1967 [in the Congress brief to the Mackay Committee]”.⁷⁴ Although cautiously optimistic, Harris was feeling “a great sense of gratification and vindication.” Recalling twenty-five years of opposition to the Drew Regulation, Harris admitted that the experience had not been without “criticism, hostility, the most vigorous opposition...and regrettably, personal vilification.” He saw the campaign for repeal of the Drew Regulation as one of

forceful militancy, mobilising the social and political resources of the community, combining mass political action with contacts and representation on many levels—with legislators, government, press, school boards, public leaders—and involving collective judgements carefully arrived at on questions of policy, strategy and tactics...A significant by-product of all this was that Congress and the JCRC acquired a body of experience on ‘social action’ of this kind which has stood us in good stead on other similar public issues.

⁷³ The final meeting was held on April 23rd, 1969. For all practical purposes, with \$250.00 in the bank, the EEA was not able to carry on any meaningful activity, and was, for all practical purposes, prohibited from advocating on behalf of the opposition forces. The EEA decided to fund a closing party for active members and to transfer any remaining monies to the Canadian Civil Liberties Association. CCLAA, FF. REL., Ethical Education Association File.

⁷⁴ OJA, JCRC Papers, MG8/S, File 64B. Religious Education in the Public Schools Sub-Committee. Sydney Harris to Community Leaders, March 18, 1969.

In his expressions of appreciation to other participants in the opposition campaign Harris was careful not to restrict his kudos to the Jewish community nor to claim that this was a “Jewish victory.” Instead, combining political savvy with an historic sense of the Jewish community’s inclination to understate its role, Harris characterised the Mackay Report as “a victory for modern religious thought and democratic principles extending throughout the general community.”

At a subsequent meeting of the JCRC, it was reported that the North York Board of Education had endorsed unanimously the recommendations of the Mackay Report. Bearing in mind the decade long battle waged with the North York Board, the Jewish community could have been excused, at this juncture, for “resting on its laurels.” Yet, on the heels of generally favourable responses in the press, the declaration of victory to the Jewish community by Sydney Harris and the pending and not unexpected decision of the EEA to declare victory and disband, unlike the EEA, Congress was not demobilising. It recognised that its task was not completed.

In light of all of the positive signs, Congress’ reaction seemed out of place. Was it contrariness? Even prior to the convening of the Mackay Committee, some members of Congress voiced concerns about possible negative implications arising from a report sympathetic to the Congress position. Now that the Mackay Report had, to the appreciative cheers of Drew Regulation opponents, made the recommendations that Congress had requested, Congress still withheld its celebration. Perhaps the reaction was a holdover of the overly cautious attitudes of a long insecure Jewish community. Or, perhaps, those individuals who had strategised over the Drew Regulation’s repeal since its inception of the Drew Regulation were influencing the current reaction. They had been granted hearings by education ministers, premiers, a commission and a government committee, but to no avail. In the final analysis, their arguments had failed. They attributed their failure, at least in part, to other voices emanating from the Province’s Protestant

heartland. When the Provincial government listened to these voices, they became impervious to the Jewish community's representations. This may well have contributed to the Jewish community's inability to relax and bathe in the afterglow of victory as their colleagues in the EEA were quick to do. Whether derived from the Jewish community's inherent caution or from its specific experience with the Ontario government's intransigence respecting previous calls for the removal of the Drew Regulation, those who counselled a wait-and-see approach, won out. Whereas the EEA took the Mackay Report as an indication to close shop, Congress proceeded otherwise. It formed a committee. In this case, a sub-committee of the JCRC headed by Sydney Midanik, authorised to take whatever measures were thought necessary to help ensure implementation of the Mackay Report.⁷⁵ Much as the Jewish community would have liked to unload the issue once and for all, it saw the battle against religious education in the public schools as far from over.

⁷⁵ OJA, JCRC Papers, MG8/S, JCRC Minutes, March 26, 1969.

CHAPTER SIX

THE POSTMACKAY VACUUM

Experience in this and other countries has clearly demonstrated that, for the most part, the findings of committees and commissions are very seldom implemented.¹

In the face of the optimism created by the release of the Mackay Report, the reservations expressed by some among the ranks of the Regulation's Jewish opponents seemed misplaced. On the whole, attitudes were positive and expectations high. Many thought that if the Drew Regulation was not dead, it was almost so. No longer would there be a need to focus on ways to bring the issue of religious education to the attention of government officials. The Mackay Report had gained their attention. The opposition could now turn the focus on encouraging the government to implement the Mackay Report's recommendations, something most believed was inevitable.

With the focus now on implementation of the Mackay Report recommendations, opposition to the Drew Regulation still rested largely upon the shoulders of the Jewish community. Rabbis throughout the Province were advised by Congress that the Provincial government planned to circulate the Mackay Report widely in order to gauge community reaction.² Congress urged the rabbis to respond positively and supportively to the Report's recommendations on behalf of their communities. The rabbis were also encouraged to reassure the government that the Mackay recommendations had the confidence and support of the larger public. So long as government could be satisfied that not just the Jewish community but the

¹ Larry Kells, "Whatever Happens to Royal Commissions?" Ontario Education, 4, (1972), 20. The comment was attributed to R. W. B. Jackson, Secretary to the Hope Commission.

² In smaller communities, if indeed there was a rabbi, his profile would be significant among the Jewish residents. Whereas Jews in larger communities could choose to affiliate with co-religionists or not, association with one's own in smaller communities was, virtually, a necessity. Also, competing Jewish organisations/officials were few and far between in these small communities.

larger Ontario society went along with the Mackay conclusions, the days of the Drew Regulation were thought to be numbered.³

Nevertheless, some in the Jewish community were concerned that Jews were still too high profile in the attack on the Drew Regulation. With victory, to all appearances, all but achieved, there remained reservations about the consequences of the Jewish community being portrayed as fighting religion in the classrooms. Some JCRC members even questioned whether the implementation of the Mackay Report's recommendations would be in the best interests of the Jewish community.⁴ Perhaps this was just a residual lingering insecurity of a Jewish immigrant past. But by the time that the Mackay Report was released, there were other reasons why some Jewish leaders advised treading softly. Even before Congress and the Ethical Education Association had delivered their briefs, the momentum of the Jewish opposition campaign was losing its energy as some felt that the Jewish stake in the removal of the Drew Regulation was less than it was previously. For two decades those opposed to religious education in the classroom had campaigned with very little success. For almost the entire decade leading up to the Mackay Committee, Drew Regulation opponents had bombarded the North York Board of Education with requests for relief from the religious education program. Although hearings were granted, publicity generated and new supporters attracted, the Drew Regulation remained in force. Then, even as the Mackay Committee was beginning its hearings and as a positive spin was given these hearings by the press, North York finally applied for a board-wide exemption

³ OJA, JCRC Papers, MG8/S, JCRC Minutes, April 25, 1969.

⁴ OJA, JCRC Papers, MG8/S, JCRC Minutes, June 25, 1969.

from religious education for its schools.⁵ As exemption requests were required annually, the second North York application proved an even greater cause for celebration as it was initiated by non-Jewish members of the Board.⁶ With or without the implementation of the Mackay Report, in North York, where most Toronto if not Ontario Jews lived, the battle was won. Surely, other urban boards of education would follow the North York example. What was the point in continuing to hammer away? Wouldn't a high profile campaign by Congress at this juncture only raise tensions in the Christian community unnecessarily?

These concerns caused some rethinking about the public profile of Jewish opposition to religious education in the classroom. As implementation of the Mackay Report recommendations became the goal of the opposition forces in the period immediately following the Report's release, the Jewish community assumed that the Report's recommendations would be implemented. The only issue was how long it would take. In light of this virtual certainty, and the fact that most of Ontario's Jewish children--those in North York were free of classroom religious education and other urban boards were likely to follow North York's lead--a decision was taken to reduce the official lobbying on the issue by Congress. Congress deputations which met regularly with the Minister of Education would respectfully remind the Minister of the need to move on the recommendations and press for a date. Over the years these deputations had taken

⁵ OJA, JCRC Papers, MG8/S, JCRC Minutes, May 31, 1967. The JCRC learned about this almost immediately from North York Board of Education Trustee, Saul Cowan, a JCRC board member. In fact, during the first year's experience under the Drew Regulation, 63 out of 5,405 school boards requested and received exemption. Although Departmental practice was not to disclose the identity of the specific boards, one can assume that, in the main, exemptions were requested by smaller boards which preferred to continue their own religious education programs without interference from the Provincial government. The North York request, made at the behest of the Jewish community, was a far cry from these early exemption requests. OJA, Catzman Papers, MG6/E3, File 5491, Ben Kayfetz memorandum to Fred Catzman, December 13, 1951.

⁶ OJA, JCRC Papers, MG8/S, JCRC Minutes, May 29, 1968. The JCRC continued to prize non-Jewish approbation.

on a set format, usually included in excess of twenty members and were broadly representative of the Jewish community of Ontario. Thus, rabbis of different stripes, representatives of some of the smaller communities, school trustees, presidents of community councils, members of boards of education, Jewish professionals and JCRC members were invited to be a part of the delegation. The resulting delegations were as broadly inclusive as they were multi-agendaed. Implementation of Mackay was now only one of a number of issues to be discussed.

While much less intense in the aftermath of the Mackay Report, what remained of organised Jewish opposition to religious education in the classroom continued to welcome partnership with organisations beyond the Jewish community. This meant propping up old alliances or forming new ones. The Ethical Education Association, a consistent supporter of the opposition campaign for a decade, disbanded shortly after the Mackay Report was released. The EEA had played a vital role, not only in partnering the campaign, but in deflecting some of the attention away from the Jewishness of the opposition. Seeing the Mackay Report's recommendations as the victory it had fought for, the EEA declared its work done and called it quits. Although the EEA would be missed, there was a "new kid on the block." The Canadian Civil Liberties Association had made an impressive presentation before the Mackay Committee on behalf of the opponents of the Drew Regulation. This was not lost on Congress. Now, with the need to press for implementation, Congress was pleased when the CCLA agreed to secure the support of non-sectarian groups in furthering this goal.⁷

There was one problem. All those who thought that the government would move, perhaps slowly, but move nevertheless, to implement the Mackay Report's recommendations were wrong. It didn't. Early optimism that predicted that reform was imminent gradually gave way to

⁷ OJA, JCRC Papers, MG8/S, JCRC Minutes, January 21, 1970.

disappointment. When almost a year passed without a commitment from the government on implementation of the Mackay Report, uneasy Congress leaders requested a meeting with the Minister of Education, William Davis. At that meeting in February, 1970, Congress voiced concern that the Mackay Report was rapidly “gathering dust” and lamented the fact that there had been no public statement of government commitment to reform. Ressurecting some of the passion which seemed to have gone out of the Congress campaign after Mackay, outspoken libertarian Sydney Midanik reassured the government that the Jewish community was not appearing before the Minister of Education on behalf of a narrow and limited corner of an ethnic or religious minority.⁸ Congress’ position, Midanik urged, was in tune with the recommendations advocated by a Provincially appointed Committee, proposals that were widely-held in the Province and “broadly shared by persons and groups of many different origins and faiths.” A supporting memorandum presented to Davis at the meeting was also sent to the Premier and the Opposition leaders and was circulated among all members of the Provincial Legislature.⁹

The Minister of Education’s response came as a shock to many of the Congress delegates, still convinced that Mackay was government policy-in-waiting. Davis informed them that there was a sizeable gap between the recommendations of the Mackay Committee and the position of the Ontario government. Apparently, Ontarians were far less of one mind than Congress believed. In particular, Davis drew a distinction between urban and rural attitudes. He pointed out that although the delegation believed strongly in its point of view, there was “a sizeable sector of opinion in the Province that held a different view--that some form of religious teaching should be retained.” Moreover, Davis, who would become Premier of Ontario within

⁸ The outspoken Midanik admitted his frustration to Ben Kayfetz, comparing getting the Mackay Report implemented to “nailing jelly to the wall.” Ben Kayfetz, Interview, July 30, 1997.

⁹ OJA, JCRC Papers, MG8/S, JCRC Minutes, February 19, 1970.

two years, expressed reservations about a “vacuum” that would be created by the removal of the existing framework for religious education without having an agreed upon replacement in place.

This was the first Congress heard of the “vacuum theory” which would be raised again and again by Davis and other government officials over the next several years as they waved off demands for the elimination of religious education. Speaking to the delegation, Davis conceded that there was preponderant agreement that the courses initiated in 1944 pursuant to the Drew Regulation were undesirable and out-dated. By admitting to this, Davis escaped the criticism for defending outmoded programs. On the other hand, Davis claimed that dropping these courses without a workable replacement--a way of teaching social and moral values--was a non-starter.¹⁰ Congress, Davis allowed, spoke to one point of view, but it was hardly a majority view. The majority, Davis insisted, wanted the “vacuum” filled before the Drew Regulation was discarded. The Globe and Mail had its own take on the “vacuum theory.” Rather than take the heat from rural constituents upset at the Mackay Committee’s conclusions, the Globe felt that the “vacuum theory” allowed the government to effectively avoid implementation and, as a result, put the whole policy debate into “suspended animation.”¹¹

JEWISH DAY SCHOOLS’ DEMAND FOR GOVERNMENT FUNDING

Rather than rebuilding Jewish resolve, the government’s stall on implementation of the Mackay recommendations further divided Jewish leadership. This became evident in the next year when another delegation appeared before a new Minister of Education, Robert Welch. This delegation took a new tack. It avoided the usual lists of grievances and abuses arising out of the

¹⁰ Apparently, the Kentucky Plan, recommended by Congress in its brief to the Mackay Committee and endorsed by the Committee in its Report, was not acceptable to Drew Regulation supporters.

¹¹ Globe and Mail, September 17, 1970.

Drew Regulation, especially in rural Ontario, and replaced it with one simple request--that Mackay be implemented.¹² Welch side-stepped the issue. First, he greeted the delegation with the announcement that one recommendation from the Mackay Report, a comparative religion course for secondary schools, was to be introduced in the coming school term.¹³ Then, as the delegation mulled over the meaning of the new course, Welch raised another issue which knocked the Jewish delegation off balance--the Jewish community's request for government funding to religious day schools. Welch allowed that, arguably, religious education in the public schools bore no relationship to the funding issue. Yet, he had been told that some parents chose Jewish Day Schools so as to avoid having their children face the prospect of religious education in the public school setting. Needless to say, Welch understood that these Jewish parents were not leaving a system with religious education for one without.¹⁴ They were trading one religious program for another. By implication, Welch was questioning the Jewish community's consistency. How was it that this delegation was requesting the removal of religious education

¹² OJA, JCRC Papers, MG8/S, JCRC Minutes, June 10, 1971. The change in education ministers necessitated a revisiting of methodology as well as substance.

¹³ Subsequently, in January 1972 Welch told the CCLA that religious education would not be eliminated from the classrooms until a replacement program was devised, thus raising the vacuum theory once again. Department of Education staff confirmed that reports of Welch's statement to the CCLA resulted in voter correspondence that was "more supportive than critical" of Welch and ranged from "calmly rational to more emotional." PAO, Department of Education Papers, RG2-81-5, Acc. 12917/8, Box H-4. Department of Education, 1971/72. File: Curriculum, DA 100, Religious Education. I. G. McHaffie to D. A. Penny, March 6, 1972.

¹⁴ A trend toward increased enrolment in private schools which commenced in the late 1960's across Canada "derived not only from their religious and moral underpinnings but also from the stress they placed on academic subjects, discipline and deference to authority." Whatever the reasons behind it, the trend to private schooling "was accompanied by demands from parents for a share of public funds to support private schools and correspondingly reduce the financial burdens facing them." It is likely that these trends did not escape the attention of Ontario's Minister of Education. J. Donald Wilson, "Religion and Education: The Other Side of Pluralism," in J. Donald Wilson (ed.), Canadian Education in the 1980's (Calgary: Detselig Enterprises Ltd., 1981), 97-113.

from one publicly-funded system even as the Jewish community was requesting public funds to pay for another in which religious education was pervasive.

Welch had touched on something of an internal Jewish community contradiction and one that would become a sore point for that sector of the community that was in the vanguard of the opposition to the Drew Regulation. Whether the Minister knew it or not, the Jewish community was not of one mind on how to balance opposition to religious education in the public schools and the demand for government funding of Jewish Day Schools. Indeed, the delegation was unable to respond coherently when the apparent contradiction was raised by the Minister of Education.¹⁵ The Drew Regulation of 1944 had focused Jewish community interest on religious education in the public schools because of the obligatory nature of the Regulation. But the Regulation itself had not, in the main, precipitated a movement on the part of Jewish parents to remove their children from the public schools. In fact, for some time, most in the Jewish community in Ontario as elsewhere in Canada and the United States were bedrock supporters of public education. Jewish religious education for many children was satisfied through supplementary afternoon schools or private lessons at home. The supplementary afternoon school was based on an East European model which was wide-spread in pre-war Jewish villages and small towns across Europe. Transferred to North America, it operated in tandem with public schools which virtually all children attended. Over time, supplementary afternoon schools were increasingly recognised as insufficient to meet changing Jewish community needs. The schools suffered from a lack of qualified teachers and curricula that spoke to urban North American Jewish children. Pupils also arrived tired and unresponsive after a full day in public school.

¹⁵ The delegation was “caught completely off-guard” by the Minister of Education. Sydney M. Harris, Interview, April 30, 1998.

Commitment on the part of parents and students was weak.¹⁶ As well, a demonstrated lack of purpose on the part of many of these schools, combined with these other factors, resulted in serious discipline problems and poor attendance. Yet, for a long time, whatever their degree of personal commitment, largely immigrant Jewish parents saw these supplementary afternoon schools as the only option for their children to receive any Jewish religious and cultural education.¹⁷

The Jewish Day Schools to which Robert Welch referred were very different from the supplementary afternoon schools. These were not intended to augment the public school but rather to replace it. Supported by tuition fees from now middle class and often Canadian born parents and infusions of capital from Jewish communal fund-raising, the Jewish Day School provided a General Studies curriculum in conformity with Ministry of Education guidelines for half of the school day and Jewish Studies for the balance. No longer an auxiliary program, the educationally inclusive nature of these Day Schools bespoke the need for better facilities, qualified teachers and extensive programming, all of which required substantially higher fees than those charged by supplementary afternoon schools.

Commencing in the late 1960s, numbers of Jewish children attending Day Schools began to rise exponentially. The increase in the obligation of the Jewish community to subvent the costs of the operations of these private schools caused some fracturing in the ranks of Jewish communal leadership. Arguments for and against efforts to obtain public funding for the Day

¹⁶ Yaacov Glickman, "Jewish Education: Success or Failure," 124.

¹⁷ Even Rabbi Price, the leading Orthodox Rabbi in Toronto in the 1940s and 1950s, was not a great advocate of Jewish Day Schools. His preference was for Jewish children to attend Jewish supplementary schools after public school classes. Price believed that save for the most committed, full-time Jewish education was not yet a reasonable goal for most Jewish families. In addition, active in commercial concerns as well as religious pursuits, Rabbi Price valued certain trappings of the secular world including the public school system. Rabbi Erwin Schild, Interview, December 8, 1997.

Schools were made in Congress committees. Supporters of the Jewish community's campaign against religious education in the public schools were generally in the camp opposing any request for public funding of Jewish Day Schools. They argued that the acceptance of government funding by these Jewish Day Schools would be tantamount to making them into public schools. How could the Jewish community fight religious particularism in public schools and then ask for funding to ensure religious particularism in their own schools? In the words of an old Yiddish saying, the Jewish community could not dance at two weddings at the same time.

There was also a perceived linkage between government funding of Jewish Day Schools and the completion of public funding to Catholic schools through to the end of high school. Such an extension of funding for Catholic schools could provoke the Protestant community into taking a more proprietary position with respect to the public school system. Protestants might conclude that it was not unreasonable to take an aggressive posture with respect to maintaining the religious teaching available to their own children if the public purse completely funded the religious education of Catholic children. If attempts to win government funding for Day Schools were indeed successful, the results, although beneficial to those families who sent their children to Day Schools and to the Jewish community organisations which subvented their costs, could possibly have deleterious affects for the balance of the Jewish community. For, no matter what the funding arrangements were for Day Schools, the majority of Jewish children, it was argued, would continue to attend public schools. Any backlash as a result of from such funding, again, could precipitate a heightened Protestant movement to consolidate its stronghold in the public school system by increasing the Protestant religious education program there. As for Jewish residents of smaller communities for whom the economies of scale precluded the possibility of having a Jewish Day School, this would only serve to aggravate a situation that was already uncomfortable. This scenario could result in the eventual moth-balling of the Mackay Report.

Thus, to some Jewish leaders, the idea of surrendering Jewish opposition to religious education in the public schools for assurances of government support of Jewish Day Schools was equivalent to a betrayal, both of the majority of the Jewish community and of a more than two decades effort to see the Drew Regulation withdrawn.¹⁸

There was, of course, another side to the argument. Jewish Day School advocates were concerned that the Jewish Day School movement eventually would be crushed beneath the heavy burden of school costs and fees unless the Provincial government could be convinced to provide

¹⁸ The bases of the positions were as varied as the positions themselves. Fred Catzman, a former chair of the JCRC, felt that as long as Catholic funding was not extended to the secondary schools, the Mackay Report stood a chance of being implemented because the Protestants would not feel completely threatened. Rabbis on the JCRC such as Schild and Pearlson argued on behalf of public funding of Jewish Day Schools, reasoning that more Jewish education was preferable to less as a matter of principle. Sydney Midanik and Sydney Harris argued vociferously against public funds for Day Schools for the same reason that they opposed religious education in the public schools, also as a matter of principle. OJA, JCRC Papers, MG8/S, JCRC Minutes, March 24, 1971. Midanik made it clear that he was not opposed to Jewish education, just to government funding of Jewish education. Accordingly, he sat as Chairman of the Study Committee on Jewish Education established by the United Jewish Welfare Fund in 1970 to make recommendations on the entire spectrum of Jewish education in Toronto. United Jewish Welfare Fund of Toronto, Study on Jewish Education, November, 1975.

some measure of funding.¹⁹ Parents of Day School students were in the forefront of those who supported this position. These parents who paid both tuition to Jewish Day Schools and supported public schools through their realty tax assessments, felt overburdened and doubly-taxed compared with parents of children attending public school and Catholic Separate Schools. Their plight was winning increasing sympathy from the organised Jewish community. But more than sympathy was at stake. There were serious money issues. Because Jewish community funds were subventing families who could not afford Day School tuition, the Jewish community had an

¹⁹ Commencing in the late 1960s, segments of the Jewish community began formulating organisational strategies to stimulate government interest and support. In the early part of the 1970s the Ontario Committee for Government Aid to Jewish Schools became one of the first of these organisations to press for government funding of Jewish Day Schools. This group was the brainchild of Rabbi Stuart Rosenberg, Senior Rabbi of Toronto's Beth Tzedec Synagogue, a singularly large and influential congregation that served as a platform for some of Rosenberg's interests that extended beyond the four corners of the synagogue itself. The Ontario Committee received its start from the United Parents Association of the Jewish Day Schools in Toronto which argued that Protestant religious instruction given in the public schools compelled Jewish parents to send their children to Jewish Day Schools. Rosenberg extended the plaint of these parents through the Ontario Committee by organising an aggressive campaign which attracted hundreds of supporters within the Jewish community. This Committee adopted a statement of principles which included the right of a parent in a democratic society to choose one school system or another and to request a fair share of Provincial educational grants for the secular education of Jewish children attending Jewish Day Schools. PAC, Stuart Rosenberg Papers, MG 31 F3, Volume 9. Miscellaneous. Subsequently Jewish Day Schools banded together with independent Christian schools to form the Ontario Association for Alternative and Independent Schools (OAISS) to press their joint case. OAISS commissioned studies such as a 1983 Gallup Poll which found that 63 percent of Ontarians supported the concept of Provincial funding of independent schools. Following the extension of funding to Catholic secondary schools, Congress established the Ontario Jewish Association for Equity in Education (OJAEE) to accelerate the Jewish community's lobbying efforts. Canadian Jewish News, January 18, 1996. By 1992 a group of Jewish parents of Jewish Day Schools, frustrated that OJAEE had not resolved what these parents saw as "government discrimination," formed Families For Religious Equality in Education (FFREE) to add yet another voice to the chorus. Canadian Jewish News, January 23, 1992. Eventually, OAISS was folded in to the Ontario Federation of Independent Schools which, together with Congress' OJAEE played a role in the Adler case in which the Supreme Court of Canada rejected public financing of independent religious schools. Adler v. Minister of Education [1996] 3 S.C.R. 609. Canadian Jewish Congress, Ontario Region, Government Funding of Independent Religious Schools. Briefing Book (Toronto: Canadian Jewish Congress, 1996).

active interest in seeking out other sources of revenue for Jewish Day Schools, including government funding.²⁰

Those on one side or the other of the Day School funding debate were at cross-purposes when it came to religious education in the public schools. Congress and certainly the JCRC had a stake in the lengthy campaign against the Drew Regulation. It feared that the growing investment of the Jewish community in Jewish Day Schools could side-swipe progress of the hard-fought campaign to remove religious education from the public schools so carefully nurtured by Congress over the years.

INCULCATING MORALITY IN THE PUBLIC SCHOOLS: CHRISTIAN OR JUDAEO-CHRISTIAN?

Whatever differences of opinion existed within the Jewish community, deputations to Ministers of Education did not cease. In August of 1973, yet another delegation attended on the next Minister of Education, Thomas Wells. Once more, a request was made for the implementation of the Mackay Report recommendations. Again the delegation was set back on its heels. But whereas Wells' predecessor Robert Welch had placed a previous delegation on the defensive by raising the issue of government funding for Jewish Day Schools, Wells accomplished the same result by adopting an aggressive posture. Wells reminded members of the delegation that according to his government's count, the Jewish community represented the

²⁰ Toronto Jewish Congress, (its name was changed to the Jewish Federation of Greater Toronto (Federation) in 1992), was the political and fund raising arm of Toronto's Jewish community and an entirely separate body from Canadian Jewish Congress. (Technically, funding was provided through the United Jewish Welfare Fund which merged into Federation in 1995.) Many members of Ontario's Jewish community served on both Toronto Jewish Congress and Canadian Jewish Congress.

minority view in the Province.²¹ He told them that the majority of Ontario citizens, who were Christian, looked upon the repeal of the Drew Regulation as “godless” and as potentially impugning the morals of young children in the Province. Wells echoed William Davis’ concern about the creation of a vacuum in religious education if the government moved ahead without an alternative program in place.

In truth, the Minister of Education was taking a stronger stance in public defence of the Drew Regulation than his own Ministry. During 1972 and 1973, religious education was reviewed by the Curriculum Development Branch of the Ministry of Education and an intra-Ministry Committee with a view to revising the Drew Regulation. Discussions concluded that although the “present program [which is out of print] is widely held to be unsatisfactory...[it is necessary] to replace it with some arrangement that makes religious education possible on one basis or another.” The principal stumbling block to a replacement was

the fact that the program is obligatory. To attempt to introduce another obligatory program across the entire Province, together with the in-service teacher education necessary to make the move credible or practical, would be so vast as to remove it as a reasonable possibility.²²

²¹ Wells was consistent. Earlier, in response to a request from the Ontario Secondary Schools Teachers’ Federation for implementation of the Mackay Report recommendations, he had stated that this would not be “responsive to the wishes of the Ontario community as a whole.” In fact he predicted that the diversity of viewpoints made it unlikely that Ontarians would see “a community consensus in this area.” PAO, Department of Education Papers, RG-2-81-5, Acc. 12917/8, Box H-4, 1971/72. File: Curriculum, DA 100, Religious Education. March 10, 1972.

²² PAO, Ministry of Education Papers, RG2-82-5, Acc.12917, Box H 4. File: DA 100, Religious Education, 1972. I. G. McHaffie, to J. .K. Crossley, October 6, 1972 respecting Intra-Ministry Committee on the Revision of Regulation: Elementary and Secondary Schools 191, R.R.O. 1970 (the Drew Regulation).

In practice the Ministry of Education was taking a *laissez-faire* attitude to religious education, offering very little curriculum guidance, even when specifically requested.²³ Ministry officials also reasoned that this approach would work best politically.

People in parts of the Province where there is considerable religious homogeneity are probably in favour of some element of religious education on the whole and may be expected to respond adversely to an outright elimination of religious education. [As well] the government would probably not want to appear to take an anti-religion role. Straight-forward implementation of the recommendations of the Mackay Report might produce such an impression.²⁴

Clearly the government was playing a waiting game. In the meantime, it did not want to appear either an accessory to any abuses created by the Drew Regulation or the instigator in any movement for its repeal.

Wells' comments prompted yet another re-evaluation of the Jewish community's lobbying efforts such as they were. At the bare minimum, there was a sense that the Jewish community should be seen to maintain the demand for implementation of the Mackay recommendations, "going through these particular motions [i.e. deputations to Ministers of Education] every once in a while to make sure that the Department [of Education] knows that we are alive."²⁵ But to what effect? For some Jewish leaders Wells' statement confirmed their greatest fears. The government was prepared to play politics with religion. With an election due

²³ For instance, in response to a request for government guidelines for elementary program of study for religious education, the Ministry's Curriculum Department responded to the principal of Commonwealth Public School in Brockville that such guidelines have become "a somewhat rare document." It was further explained that at the time of the Mackay Committee, a decision was made not to reprint the programs and since that time no reprinting had taken place because of insufficient demand. PAO, Ministry of Education Papers, RG2-82-4, Acc. 14525, Box 3. File: World Religions, MA 170/88. R. C. Blackwell to B. Lemon, April 8, 1974.

²⁴ PAO, Ministry of Education Papers, RG2-82-5, Acc. 12917, Box H 4. File: DA 100, Religious Education, 1972. I. G. McHaffie to J. K. Crossley, October 6, 1972.

²⁵ By April, 1972, the Department of Education had become the Ministry of Education, but it took a while for the non-governmental community to catch on to the terminology.

in two years, the Conservative Party was going to be counting on the votes of those many Ontarians who reacted negatively to the Mackay Report. It certainly was not going to do anything to alienate its core vote but Jewish pressure might. Nothing was to be gained by having the Jewish community push the government for what it was absolutely not going to deliver. From this perspective, there was no option other than to gear down the level of the campaign even further. A scaled-back approach could make clear Congress' position on the issue but without the need for confrontation.²⁶

By the early 1970's, those Jewish leaders advocating a go-easy approach to government could argue that the Drew Regulation was a non-issue to most Jewish parents. Many school boards in major centres in Ontario where Jews lived had chosen, for practical purposes, to treat the Drew Regulation as if it were repealed in law. The North York Board of Education led the way with a board-wide annual exemption from religious education. This served to demonstrate that the local option aspect of the Drew Regulation, often seen as a detriment, could also function to the advantage of the opposition campaign. Other boards, including some in greater Toronto, followed suit. As a result, Congress was receiving very few reports of abuses.²⁷

But those in the Jewish community for whom an end to the Drew Regulation was a matter of principle were bothered by one question. Was there a reason, beyond a coming election, why Wells was so protective of religious education at the same time as his Ministry was lenient both in granting exemptions and in policing implementation of the religious education curriculum? A motive could be imputed to Wells. In all likelihood, Wells was seriously

²⁶ OJA, JCRC Papers, MG8/S, File 143, Congress Regional Executive Minutes, August 17, 1973. The arguments to back-off were made most forcefully by Sydney Midanik.

influenced by the recent experience of another of his legislative committees. This committee was charged with consolidating various education statutes so as to reduce confusion and redundancies.²⁸ In early 1973 it recommended amending the legislation so that Ontario teachers would no longer be required by law as part of their duties “to inculcate by precept and example respect for religion and the principles of Christian morality...”²⁹ This section of the Act had been part of Ontario law since “time immemorial, [and although we] hope our children will leave the education system with these virtues...this is not the kind of thing we have in legislation these days.”³⁰ The legislative committee felt this was out of step with the new pluralist reality of Ontario. Wells was not opposed to the move but offered to retain the section “if there is a groundswell of public opinion [against its removal].”³¹

²⁷ It also served as a reminder that not only was the City of Toronto the seat of the Provincial Legislature, it was also the home of much of the power, influence and membership of Congress and specifically of the JCRC. Sometimes, strategic decisions affecting Ontario’s Jewish community were based almost solely on the Toronto experience. See Chapter Seven below for discontent from the “periphery.”

²⁸ The statutes affected were the following:
 The Department of Education Act, R.S.O. 1970 c.111.
 The Ministry of Education Act, S.O. 1972 c.73.
 The Public Schools Act, R.S.O. 1970 c.385.
 The Schools Administration Act, R.S.O. 1970 c.424.
 The Secondary Schools and Boards of Education Act, R.S.O. 1970 c.425.
 The Separate Schools Act, R.S.O. 1970 c.430.

²⁹ The Schools Administration Act, R.S.O. 1970 c. 424, section 22 (1) (c). This was the explanation given by Wells to an Education Ministry conference of educators and school board chairmen meeting in Toronto. Toronto Star, Jan. 29, 1973.

³⁰ The Minister’s reference to “not the kind of thing...” was likely in deference to the multicultural hue of Ontario’s population by the 1970s. The wording of section 22(1)(c) of the Schools Administration Act was much the same as a section in the Common Schools Act, 1850 c.48. That statute required the teacher to “exert his best endeavours, both by example and precept, to impress upon the minds of all children and youth committed to his care and instruction, the principles of piety...” Legislators in 1850 did not feel the need to refer specifically to “Christian morality,” because virtually all of the Province’s citizenry was Christian at that time. For example, it has been estimated that the Jewish population of Toronto in 1850 was less than fifty in toto. Speisman, The Jews of Toronto. A History to 1937, 15, 19.

³¹ Toronto Star, January, 29, 1973.

A groundswell did in fact materialise as “never, previously or since have I had a greater public response on any issue during my time as Minister of Education.”³² Some years later, Wells recalled that “we had inadvertently omitted” the section in question. Such a characterisation of the events does not quite jibe with the Minister’s earlier public statement.³³ In fact, Wells learned that “people didn’t want the requirement removed. People perceived that its omission would have signified the dilution of the proper direction of the schools.” More than seven thousand letters, more or less to this effect, were sent to Wells. One letter from north-western Ontario reflects the tone and substance of the many thousands:

I fail to see where Christian morality among school teachers has gone out of style! We are a Christian country, a Christian Province and live in Christian communities. If the loud voice of non-Christian minorities has prompted this move, I think it is an infringement upon the rights of the majority...If these virtues are not learned in childhood and adolescence, surely we will become an extremely sick society.³⁴

The avalanche of letters served to convince Wells to reinstate the section. Moreover, Wells was moved to offer this significant protest as proof that “schools reflect the reality of society’s behaviour around it.”³⁵ In his judgement, the people who saw the removal of this phrase as a

³² PAO, Ministry of Education Papers, RG 2- 303, Acc. 19391, Box 7. General Correspondence respecting Religion/Morals/Values, 1979. First Congress on Education sponsored by the Canadian School Trustees Association, January 29, 1973.

³³ In correspondence with the Chair of the Human Rights Commission, George Waldrum, the Deputy Minister at that time, confirmed Wells’ earlier description of the course of events which Waldrum described as “the largest volume of communication received by this Ministry on any single issue...[to that date].” Waldrum, who had been with the Ministry since 1961, read the response as “the will of the majority of Ontario citizens...to retain the item as a reflection of the origins and nature of Ontario’s public schools.” PAO, Ministry of Education Papers, RG2-82-5, Acc. 17998, Box 12. File: Religious Education, General, 1978. Waldrum to Dorothea Crittenden, July 27, 1978.

³⁴ Kenora Daily Miner and News, February 1, 1973. Letter to the editor incorporating writer’s correspondence with Thomas Wells.

³⁵ A few years later, Wells’ view had changed. At that stage he summarised the Education Ministry’s position on the relevance of teacher conduct in the dissemination of values as “a tool to assist the students to become aware of the values that Canadians generally consider to be virtuous...[Teachers] should have an opportunity to include these values in their personal value system, not through direct teaching but

dilution of the schools' proper direction and a betrayal of the society whose behaviour the schools were said to reflect, if not a majority, were enough to make life difficult and uncomfortable for the government if the issue was dredged up in an election campaign.

Although the section in question was restored, there was one slight alteration. The revised section read "It is the duty of a teacher...to inculcate by precept and example respect for religion and the principles of Judaeo-Christian morality..." The same wording is found in section 264(1) (c) of the Education Act in force in Ontario in 1998.³⁶

In light of the furore caused by the proposed removal of this provision, what could have prompted the change to "Judaeo-Christian?" It would appear that no substantive change was intended by the term "Judaeo-Christian" and, for all intents and purposes, no real change was made.³⁷ Prior to the abortive attempt to delete the reference to "Christian morality" from the

through the application of their moral reasoning powers and through the constant 'precept and example' of the teacher." CCLAA, FF. REL., File 14. Board of Education for the City of Toronto Submission to the Minister of Education Concerning Religious Exercises and Religious Education in Toronto Secondary and Public Schools, November 22, 1979. Wells form letter to committee members, March, 1976.

³⁵ Neither "Christian" nor Judaeo-Christian" morality seemed to be part of the equation.

³⁶ Education Act, R.S.O. 1990 c. E.2.

³⁷ Literature on the term reveals that "Judaeo-Christian" has no standard definition. It has been used most often as a buy in of Jews into a society driven by Christian values, acknowledging a Jewish presence by declaring Jews parties to the accepted norms of the society. For an in depth consideration of the use and derivation of "Judaeo-Christian" see Mark Silk, Spiritual Politics. Religion and America Since World War Two (New York: Simon & Schuster, 1988), 41-53. Silk suggests that, initially, Judaeo-Christian may have been used to delineate possible connections between Judaism and Christianity in ancient times. However, by the 1930s the term was brought into regular discourse to demonstrate opposition to fascism after a number of fascist and anti-Semitic groups appropriated the term "Christian" almost as a trademark. e.g. Father Coughlin's Christian Front. This then resulted in publications such as the Protestant Digest taking up "Judaeo-Christian" as a catchword for the "other" side. Also, see H-Judaic home page <<http://h-net.msu.edu/~>> May 6 and May 15, 1997. In particular, responses to the meaning of the term "Judaeo-Christian" from Lawrence G. Charap, Johns Hopkins University and Martin Jaffee, University of Washington. "In a civic sense, it's [Judaeo-Christian] been used since the 50s as a rhetorical gesture of inclusion. I've never heard anyone say that this generic use made much sense, historically or theologically, so it should best be thought of as a remnant of the religiosity promoted in the early years of the Cold War." Charap, May 6, 1997. "Judaeo- Christian [is an] ideologically loaded term that seeks to create a reality by imagining the past in a certain way." Jaffee, May 15, 1997.

consolidated Education Act, William Davis, Minister of Education, trotted out the term Judaeo-Christian in response to a suggestion for an alternative and more inclusive religious education program for Ontario.

Many people are as yet unwilling to “demote” Christianity to the level of just one of the world’s religions, when it is the basic religious tradition of the Western World. The Judaeo-Christian Bible and its teachings...are the moral and spiritual basis of our type of society. If religious teaching of any sort is to be permitted in the public school system, this fact can scarcely be disregarded.³⁸

Clearly, when William Davis used the term “Judaeo-Christian” he thought of it as interchangeable with “Christian.” Davis was not alone. His use of the term “Judaeo-Christian” was not unlike that of the Christian Women’s Council of Metropolitan Toronto. The Council’s brief to the Mackay Committee advocated the “presentation of the Judaeo-Christian heritage of Canada in order that every child, whose parents do not object, may have the opportunity to acquire a faith in God and his son Jesus Christ.”³⁹ The fact that Allan Grossman saw value in the changed wording and grabbed credit for it does little to detract from the fact that it was a more genteel and perhaps welcoming way of speaking of “Christian” values.⁴⁰ Even attributing the best of intentions to those responsible for the change, it is unlikely that the linguistic shell game held any positive virtue for the Jewish community. To the contrary, Milton Harris, Congress

³⁸ PAO, Robarts Papers, RG 3-26. File: Education- Religion in the Schools, 1968. Davis to constituent, October 23, 1968.

³⁹ Christian Women’s Council Brief 40 to Mackay Committee.

⁴⁰ Peter Oliver. Unlikely Tory, 117. Grossman was “pleased in 1974 when Education Minister Tom Wells, in response to his [Grossman’s] requests, agreed to make a significant change in the section of the Education Act dealing with teachers’ duties. Henceforth it referred not to Christian beliefs but to ‘Judaeo-Christian’ beliefs.” Another Jewish Tory, Eddie Goodman, for many years a driving force in both the Federal and Provincial Conservative parties as an advisor, fund-raiser and organiser, also placed some significance on the term. He described civic responsibility as obligations which were “imposed by the Judaeo-Christian religions.” Eddie Goodman, Life of the Party (Toronto: Key Porter Books, 1988), 291.

Regional Chairman at the time, took pains to explain that the Jewish community derived little consolation from the term "Judaean-Christian morality."

We are frankly puzzled by the use of the term. Some, no doubt, intend it to refer to the two religions of Judaism and Christianity, recognised as two distinct religions having perhaps certain similarities based on their common derivation or historical development. Others may characterise as "Judaean-Christian" those tenets of faith thought to be shared in common by the two religions. We are bound to say however that in our view the most frequent use of this term employs "Judaean" as a qualifying adjective describing Christianity in contexts which connote Christianity as being the fulfilment of Judaism as prophesied in the Scriptures according to the Christian interpretation thereof. Jews, of course, do not and cannot in any way accept this position. It is inconsistent with modern Christian religious thinking to deny to Jews the respect of equality in the religious spectrum and to accord them, rather, a status of unfulfilled primitivism. In our view the term is ambivalent since its true meaning in any given circumstance depends on context and interpretation. We caution, respectfully, against its casual employment and we feel that in this use it does not alter the sectarian base of the course, for Judaean-Christian to many, is a variant term for the word Christian.⁴¹

A gesture of inclusion toward the Jewish community of Ontario on the part of the Provincial government? Unlikely. A response by the Provincial Cabinet to the request of their colleague Allan Grossman? Improbable. The government's reaction to the backlash from grassroots Ontario and the constant reminders over the previous months both of the Christian nature of the Province and of the connection that many citizens made between Christianity and the public schools?⁴² Likely this was more consistent with the government's past performance.

⁴¹ OJA JCRC Papers, Religious Education in the Public Schools Sub-Committee, 1975. Milton Harris, to the Stormont, Dundas and Glengarry Board of Education, February 19, 1975. Congress' views on the use of the term "Judaean-Christian" have been confirmed by others. See for example Martin Jaffee, H-Judaic, May 15, 1997. "The usual function of the term is to elide the truly important distinctions between historical forms of Judaism and Christianity in service of a liberal homogenization that does justice to neither." Also, Reverend Donald Gillies, Interview, August 26, 1997. Gillies characterised "Judaean-Christian" as a Christian conscription of Judaism in that it attempts to subsume another religion in Christianity."

⁴² Letters to Wells had ranged from mild, "such deletions threaten our parental right to provide religious instruction for our children within the public school system," July 22, 1973, Clarksburg, Ontario to the not-so-mild, "this is a Christian country. Our heritage is that of Western Christian Civilisation. We urge you to keep it that way," January 29, 1973 from Countdown, signed by F. Paul Fromm. PAO, Ministry of Education Papers, RG 2-45, Acc. 12917/2E, Box E4. Public Inquiries, 1973.

Whatever the motivation of the government, the fate of the Mackay Report's recommendations, not just the linguistic sleight of hand, served to remind the Jewish community that there remained in Ontario significant support for the retention of the Drew Regulation.

THE NORTH YORK BOARD OF EDUCATION AND JEWISH DAY SCHOOLS

By 1974, the Jewish community's already weak campaign against the Drew Regulation was barely limping along. But even the minimal level of pressure on government was soon to disappear. The impetus for change was not as a result of the backlash caused by the attempt to remove "Christian morality" from the duties of public school teachers. Nor was it in response to the rebuff by Education Minister Wells. Rather, it was due to the escalating importance of the issue of government funding of Jewish Day Schools. With the costs of Day Schools skyrocketing, Jewish educational leadership began to very seriously explore alternative avenues to relieve parents and the Jewish community of the heavy burden of tuition. The first avenue of attack was to obtain immediate relief through government support. And the nature of their demands put them in conflict with the position presented by the opponents to the Drew Regulation. In effect, the level of protest against the Drew Regulation was in inverse proportion to the level of pressure for government funding of Jewish Day Schools. And, as Day School costs mounted, the proponents of government funding for Jewish Day Schools became exceedingly more aggressive and vocal.

As early as June 1962, Dr. Joseph Diamond, Director of the Toronto Bureau of Jewish Education, confidently stated that Jewish Day Schools had become firmly established institutions

in the Jewish community of Toronto, increasingly replacing the old supplementary system.⁴³ Diamond pointed out that enrolment in Jewish Day Schools had increased 400% in just over a decade, from 337 pupils in 1950 to 1765 pupils in 1962. And growth was expected to continue. However, Diamond also pointed out that over and above parent-paid tuition, or portions thereof, there was a concomitant increase in the Jewish community's financial responsibility for these schools. This came about as a result of Toronto Jewish Congress' agreement to assist those Jewish parents who could not afford to pay the tuition. In the same twelve year period, this commitment translated into an increase in the financial cost to the Jewish community of over 1000%, from \$33,069 to \$338,520. And as pressures grew from parents and educators to increase the professionalism of these schools, Diamond warned that the salaries paid to teachers, still at a level lower than those in public schools, were bound to rise, adding further costs to the bottom line.

Having established our own Day Schools and having provided for their maintenance for the past fifteen years or more, we continue in addition, to support by our taxes the denigration of the "Jewish ideal" and the teaching of the "Christian ideal" in the "Public" schools; although the Catholics are allowed their own taxes for the teaching of their particular "Christian ideal" in their own Separate Schools. Accepting Jewish taxes for Christian teaching does not seem to disturb very much the religious sensibilities of the advocates of religious education in the Public schools.

Anticipating some of the arguments of the members of the Jewish community who opposed government funding of Jewish Day Schools, Diamond concluded that:

We can rest assured that religious education, if it could be intensified, will be intensified without any concern for the rights of Jewish children[except those of exemption], without any regard as to whether we have any Jewish Day Schools of our own to which we might send our children, and without any thought as to

⁴³ OJA, Catzman Papers, MG6/E3, File A6389A. Joseph Diamond, "The Case for Government Aid to Jewish Day Schools in Toronto, Ontario," June, 1962. The Bureau of Jewish Education was established in Toronto in 1949 as a service arm of the various Jewish Day and Afternoon schools. Dr. Diamond, served as the Bureau's first Director until he retired in 1968.

whether such schools are or are not tax supported. Witness the fact that in 1950 when the Royal Commission on Education in Ontario recommended continuation of religious education in Ontario public schools, it did so despite the fact that we hardly had any Day Schools at that time to which we could have withdrawn our children, and despite our earnest plea [through Congress appeal] that religious education be discontinued.

Dr. Diamond's statement prompted Sydney Harris, National Chairman of the JCRC, to deliver an immediate rebuttal entitled "The Case Against Government Support to Jewish Day Schools." At the time, Harris and Congress were in the midst of the continuing battle with North York in the aftermath of the Wilmington canvass. Harris did not relish an internecine feud within the Jewish community. Accordingly, his response to Diamond was measured:

It is extremely important not to turn this debate into a "black and white" issue of whether one is a foe or friend of Jewish education, whether one favours or opposes the existence of the all-day Jewish school or whether or not the issue is Jewish survival. It is far too easy in a case like this to assume that one's enemies are "for sin" and oppose all the time-honoured values of Jewish life. We should direct our attention to one point only: the issue of government support for the day school.

In the minds of those who oppose such government support one of the primary issues is the position of the Jewish community in our society; by the word society is meant the general educational and community life of our city and this nation. The Jewish community is not an entity, separate unto itself with no relationship to the rest of Canada. One of the most essential factors in the argument is to visualise the impact such a move would make on ourselves as citizens of this country. The analogy that a precedent has existed for a century in the case of tax-supported schools for Roman Catholics is not necessarily a favourable one for us to follow...To go now before the government and ask for a third division in the public disbursement of educational funds would be to...perpetuate even longer an irritant and sore spot in the life of the province...However much it may be argued to the contrary, there is not the slightest question in our mind that the moment there is any government subsidy to Jewish-sponsored day schools, the argument will be made that the public school system of Ontario is a Christian, more specifically a Protestant, system, for the Jews now would have government support for "their own schools."⁴⁴

⁴⁴ PAC, Plaut Papers, MG 31, F6, Volume 44. Sydney M. Harris. "The Case Against Government Support to Jewish Day Schools," June, 1962.

The stakes jumped in value in the years that followed the 1962 Diamond-Harris debate as Jewish Day Schools continued to grow. After the 1967 Six-Day War in the Middle East, and Israel's dramatic victory, more Jewish families demonstrated their Jewish bonding by sending their children to Jewish Day Schools.⁴⁵ Seeded by an influx of Jewish families from South Africa, Israel, Quebec, the Soviet Union and elsewhere, by the 1970's, Ontario's, and primarily Toronto's Day Schools were growing at an even faster rate than in the twelve years prior to 1962.⁴⁶ Parents and communal organisations saw their respective costs rising beyond their limited means at the same time that the status of the Day School was shifting from that of a peripheral institution to an accepted core unit in the Jewish community infrastructure. Lobbying for government funding was taken up in earnest by various organisations, including the Ontario Committee for Government Aid to Jewish Day Schools, an organisation cobbled together from

⁴⁵ See Vorspan. "Will Peace Transform American Jewry?" (1993), 10. "North American Jewry, especially since the Six-Day War, when fear of another genocide resonated in trembling within every one of us, has made a kind of psychological *aliyah* [emigration to Israel] without leaving Cleveland, Los Angeles, Toronto or New York." Alvin Schiff. "Israel in American Jewish Schools," Jewish Education, 38, No. 4 (1968), 6-17. Schiff states that "the impact of the Six-Day War [on Jewish education] was like a flash of lightning that has been normalised with the passage of time." Arthur Hertzberg. "Israel and American Jewry," Commentary, 44, No. 2 (1967), 70. "Jews [as a result of the Six-Day War] now feel their [Jewish] identity more than for at least a generation."

⁴⁶ Globe and Mail, February 17, 1995 featured a discussion on the growth of Toronto's Jewish community and, in particular, the virtual doubling of its population from 1961 to 1991. This report cited the growth as "a testament to the rates of immigration, largely from the former Soviet Union, Israel and South Africa and migration from around Ontario and Montreal. See Board of Jewish Education (BJE), Current Files, Toronto. "Report of The Commission on Jewish Education of the Jewish Federation of Greater Toronto," February 7, 1996. Ontario was also the destination for Jewish immigrants from Morocco and other parts of North Africa, the Soviet Union and Israel. One way of connecting these immigrant families with Jewish life in Canada was to make the Jewish Day Schools accessible by providing affordable tuition at the expense of the host Jewish community. See BJE Current Files, Toronto, "Report of Committee on Or Haemet," November, 1982, for discussion on the experience of Moroccan children in Jewish Day Schools from 1960 to 1982; "Report on the Board of Jewish Education Orah Study Committee," June 24, 1993, for a discussion on the alternatives to an attempt to integrate Russian children into normative Jewish Day Schools from 1970 to 1993; and Canadian Jewish News, June 14, 21, 1990, for a discussion of Israeli immigration to Canada from 1948 to 1990.

the United Parent's Association of the Jewish Day Schools in Toronto.⁴⁷ In 1971, the lobbying reached Robert Welch's door. He, in turn, raised the relationship between opposition to religious education in the public schools and the demands for government funding of Jewish Day Schools.⁴⁸ The awkwardness of Congress' meeting with Welch accentuated the murky divide between Day School public funding advocates and the Jewish opponents to the Drew Regulation.⁴⁹ Welch's comment was to the point. How could the Jewish community demand an end to religious instruction in the public school while demanding public funds to pay for religious instruction in the Jewish Day Schools? It was a question that plagued and divided Congress leaders. When the two positions met head-on, the Jewish Day School advocates ultimately outmuscled the Drew Regulation opponents. But in order to avoid public dispute, minds were at first directed to finding a collective and mutually felicitous solution, a solution

⁴⁷ PAC, Rosenberg Papers, MG 31, F9, Volumes 9 and 42.

⁴⁸ OJA, JCRC Papers, MG8/S, JCRC Minutes, June 10, 1971.

⁴⁹ The conflict between advocates of these two positions was an old one. When the Manitoba Royal Commission on Education reported in 1960, two recommendations caught the eye of Canadian Jewry. First, the bolstering of religious education beyond prayer and Bible reading in the public schools, and second, the provision for subsidies to private day schools, denominational and non-denominational, for capital needs, maintenance and teachers' pensions. Although some Jewish Day School supporters in Manitoba were anxious to accept the funds, other members of that Jewish community opposed the idea, fearing, in combination with the first mentioned proposal, the total sectarianism of the public schools. This latter-mentioned view was subscribed to by a joint committee of the United Jewish Welfare Fund and the National JCRC which met on May 1, 1958 to propose a national policy on this point. At that time, no province in Canada contributed funds to private or parochial schools save for the unique circumstances of the Catholic schools. Writing in the Canadian Eagle, a Yiddish language newspaper published in Montreal, S. Belkin claimed that the "hatred to day schools on the part of the Public Relations people [the JCRC] in Toronto has not diminished...The present national chairman of the JPRC [JCRC], a resident of Toronto [Sydney Harris], went to Winnipeg as an 'expert' to the Congress conference there, to explain the 'implications' of the report [of the Manitoba Royal Commission on Education] and why day schools must not take assistance from the government." Notwithstanding the views of the JCRC and the joint committee of the JCRC and the United Jewish Welfare Fund, the "official policy" of Congress was to support Jewish Day Schools. S. Belkin. "Congress, Day Schools and "Public Relations," translated from the Canadian Eagle, July 13, 1960. Also, see the columns of I. Rabinowitz in the Canadian Eagle, July 14 and July 15, 1960. OJA, JCRC Papers, MG8/S, File 12A, Religious Education in the Public Schools Sub-Committee, 1959. Ben Kayfetz to Heinz Frank, Winnipeg, December 22, 1959 and Ben Kayfetz to Ben Schneider, December 23, 1959.

that would provide relief for Jewish Day School funding without scuttling the opposition to religious education in the public schools.

In 1974 the search for a resolution took the Jewish community to the Metropolitan Toronto Separate School Board's doorstep. There was a sense that a *modus vivendi* could be achieved between the Jewish community and the Catholic community which would incidentally resolve some of their joint funding concerns. The government funding of Catholic Separate Schools through grade 10 was an enviable model that the Jewish community hoped to emulate. The Catholic community, on the other hand, had not yet fulfilled its education goal of full government funding of Separate Schools to the completion of high school. As both communities had a wish list for presentation to the government, why not band together? Accordingly, representatives of the Board of Jewish Education (BJE), individual Jewish Day Schools and Toronto Jewish Congress, entered into extensive and detailed negotiations with the Metropolitan Toronto Separate School Board with a view to incorporating the Jewish Day Schools within the Separate School system.⁵⁰

The nascent relationship between the Catholic and Jewish communities proved short-lived. The Ministry of Education did not favour a Catholic-Jewish alliance and threatened to withhold its approval of such an affiliation.⁵¹ Effectively, this concluded any further thoughts about a marriage between the Jewish Day Schools and the Separate School Board. Perhaps as a

⁵⁰ Authorisation to proceed with an application to the Separate School system for admission of Jewish Day School students as non-residents was given at a joint meeting of the officers of the United Jewish Welfare Fund and the BJE, on June 11, 1974. The meeting considered arguments critical of Jewish Day Schools agreeing to "submerge" themselves in the Separate School system and the resultant loss of autonomy. Nevertheless, there was a consensus to proceed because the Jewish Day School costs were excessively burdensome to parents and to the Jewish community. OJA, Ben Schneider Papers, RG 1/A, File A. North York Board of Education, 1974.

⁵¹ Rabbi Irwin Witty, Interview, August, 1997. Rabbi Witty, Executive Director of the BJE, 1969-1997, suggested that because the possible political consequence of a Catholic-Jewish alliance was the extension of government funding of Separate Schools beyond grade ten, the government resisted such an alliance.

gesture of compensation, the Provincial Education Ministry encouraged the Jewish community to explore the possible integration of Jewish Day Schools into the North York Public School system.⁵² In fact, the Education Ministry allowed that it was prepared to give consideration to such an arrangement.⁵³ And there was precedent for this form of arrangement elsewhere in Canada.⁵⁴

The Jewish community wasted no time. On August 27th, 1974, the BJE made a formal request of the North York Board of Education for support of the General Studies (the non-religious) portion of the Jewish Day Schools' curriculum.⁵⁵ The BJE confirmed that the Jewish Day Schools would continue to be responsible for the Jewish Studies component of their curriculum.⁵⁶ In order to explore all aspects of this proposed plan, the North York Board of

⁵² Matchmaking between Jewish Day Schools and the Metropolitan Separate School Board continues. As recently as 1995 a proposal was seriously considered to permit students in the Community Hebrew Academy of Toronto (CHAT), to register in the Separate School Board under the open enrolment provisions of the Education Act. The discussions reached the draft agreement stage in March of 1995 but fell apart when the CHAT board had second thoughts about the prospect of loss of autonomy. BJE Current Files, CHAT, 1995.

⁵³ Globe and Mail, September 19, 1974.

⁵⁴ In 1974 an Alternative School Program was initiated by the Calgary Board of Education. The I. L. Peretz School and the Calgary Hebrew School joined the Calgary Public School Board through this program because each school was able to retain its unique character while becoming an integral part of the public system. These schools agreed to teach certain core subjects, to receive financing on the basis of a formula and to guarantee that there would be open enrolment, i.e. no student would be denied access on any basis. When the Calgary Board of Education chose to terminate this arrangement in 1983, the Calgary Roman Catholic Separate School District No. 1 accepted the Jewish Day Schools under its jurisdiction. Attorney General of Ontario's Files, Re Bal et al v. Attorney General for Ontario et al (Re Bal). Affidavit of Sandra Anderson, July 7, 1994.

⁵⁵ An arm of Toronto Jewish Congress, the BJE functioned quite differently from most public boards. Its primary task was "to provide educational leadership to Jewish schools, (both Day and Supplementary),...by providing in-service training of teachers, consultation with principals, teachers and lay leaders, co-ordination of inter-school activities and the development of emphases and directions in curriculum. In all these activities the Board sought to avoid impinging on the autonomy of the individual school." The Study Committee on Jewish Education, Study on Jewish Education, Section V, 1-4.

⁵⁶ NYBEA, Board of Education Minutes, September 23, 1974.

Education engaged consultants to prepare a feasibility study which became known as the Partlow Report.⁵⁷ The Partlow Report analysed various contingencies, including :

- a) legislative compliance,
- b) capability of implementation within existing Board policies,
- c) substantial provision for the major concepts in applicant's request,
- d) provision for simple, direct lines of responsibility and communication,
- e) suitability for effective operation,
- f) clear and easily supervised program description,
- g) consistency with "public" school concept, i.e. open enrolment,
- h) likely model for integration of other private schools into public school system and
- i) political feasibility.⁵⁸

Ultimately, the Partlow Report recommended that the North York Board could accept responsibility for the Jewish Day School's General Studies programs if it did so within the buildings then occupied by those Jewish Day Schools. This would satisfy the series of criteria established by the consultant, save North York from incurring any capital costs and maintain otherwise declining pupil levels within the North York system.⁵⁹

But you can't always have your educational cake and eat it too. Once it was understood that integration into the North York system--to become public schools--meant open enrolment,

⁵⁷ NYBEA, Board of Education Minutes of a Special Meeting, October 7, 1974. The consultants engaged were Educational Consultants of Canada, one of the principals of whom was H. R. Partlow, formerly Superintendent of Secondary Schools for North York. Partlow had played a role in North York's response to the Wilmington canvass and the events that followed.

⁵⁸ OJA, BJE Papers, RG 41/B, File 66, BJE Minutes, December 2, 1974.

⁵⁹ NYBEA, Board of Education Minutes, December 4, 1974. After hearing an executive summary of the Partlow Report the Board referred the matter to the Ad Hoc Committee Respecting Possible Integration of Educational Alternatives Having a Distinct Cultural Identity.

for example, enrolment of non-Jewish children in Jewish Day Schools or non-observant Jewish children in Orthodox Jewish Day Schools, most of the Jewish Day Schools withdrew their agreement to participate in the proposed integration.⁶⁰ There remained only the 400 student Junior High division of the largest of these schools, Associated Hebrew Schools, willing to proceed on the basis of a pilot project.⁶¹ Even this seriously modified plan failed to materialise.⁶² Associated Hebrew Schools' plan to skirt the open enrolment issue by insisting that the Jewish

⁶⁰ The BJE considered the pros and cons of entering into an arrangement with North York. The issue of open enrolment was a sore point with most of the Jewish Day Schools. Open enrolment meant no student could be turned away. However, provision for a wholly Jewish environment was implicit in the *raison d'être* of most of the Jewish Day Schools. The principle of open enrolment potentially precluded such an environment. Jewish community leader and Day School benefactor Saul Koschitzky argued that if the North York study presented conditions that the Day Schools could not live with, then negotiations should be terminated. Sydney Midanik cautioned that notwithstanding the enthusiasm of some due to the potential savings to parents and to the Jewish community generally, "the Jewish community is not monolithic and there are several viewpoints on government support [including those opposed]." OJA, BJE Papers, RG 41/B, File 67. BJE Minutes, December 2, 1974.

⁶¹ OJA, BJE Papers, RG 41/B, File 67. BJE Minutes, December 9, 1974. Concern that the integrity of the Jewish Day Schools was being placed at risk by a possible relationship with the public system and the resulting interference with their Jewish Studies curriculum caused most of the other schools to back out.

⁶² The failure of the plan to materialise initially could not be laid solely at the feet of the Ministry of Education. In examining the implications of a positive response to Catholic lobbying for religious education for credit in the public (and Separate) schools, implications for Jewish Day Schools in the context of the proposed North York integration were specifically addressed by the Ministry of Education. Ministry officials noted that the addition of religious education for credit would "permit the Jewish Schools to include part of their Jewish Studies program as religious education and to count it as part of the General Studies component of the program...to facilitate to a small degree the implementation of the Jewish Day School proposal...[and] make the transition of the schools to the public sector of education somewhat easier." PAO, Ministry of Education Papers, RG2-85, Acc.17998, Box 12. File: Ecumenical Study Commission on Public Education, 1978. Memorandum to Thomas Wells from G. H. Waldrum, February 20, 1976.

Studies component of the curriculum be compulsory proved unacceptable to the Ministry of Education.⁶³

The irony was not lost on the Jewish community. The exemption provision of the Drew Regulation, thought by many to encourage the “vicious principle” of segregation, had, nevertheless, been used successfully by the Provincial government for over three decades to deflect Jewish concerns about religious instruction in the public schools. Now, when the Jewish community was on the verge of becoming part of the publicly supported educational system, the same Provincial government claimed that the absence of this exemption principle disentitled Jewish Day Schools to membership in the public school system. After eighteen months of negotiations, the proposed integration was dead.

At that stage, the North York Board of Education was unwilling to back away. It continued to covet the increasing numbers of Jewish children attending Day Schools for its own depleting enrolments. Besides, North York’s professional staff and Board committees had invested several years and a prodigious amount of energy in the proposed merger. North York remained convinced that the proposed plan for integration was workable. To press this conviction, North York brought an application before a judge of the Supreme Court of Ontario to determine the following question:

⁶³ The Ministry of Education was supportive of the integration plan until Associated Hebrew Schools insisted that Jewish Studies be made compulsory for all students. When a press report claimed that, according to an Associated Hebrew Schools’ spokesperson, the compulsory aspect of Jewish Studies was workable because the integrated school was really only for Jewish children, Thomas Wells, the Minister of Education was asked to react by the Premier’s Office. Wells, who was visiting with President Reagan in California at the time and was not pleased with having his vacation interrupted, issued terse instructions that, under the circumstances, the Provincial government could no longer support the integration plan. Thereafter, the Ministry of Education advised North York officially that the deal was dead. George Waldrum, Interview (telephone), May 9, 1997. PAO, Davis Papers, RG3-49, CU. Schools, Jewish Amalgamation, 1976. Thomas Wells to Mel Shipman, August 17, 1976. Subsequently, Toronto Jewish Congress’ Executive Committee agreed to prohibit public reports of any attempts to resurrect the arrangement with North York so as to forestall a repeat of the above-noted incident. OJA, Toronto Jewish Congress Papers, RG1/A, Box 15, File C. Executive Committee Minutes, December 16, 1976.

Is it a proper exercise of the jurisdiction of the Board of Education for the Borough of North York under the Education Act to establish and maintain schools whereby pupils are required to read or study in or from a religious book or to attend in an exercise of devotion or religion on an optional basis in schools within its jurisdiction, but not necessarily within each school within its jurisdiction?

The phrasing of the question to the court was purposeful. Associated Hebrew Schools required attendance at its Jewish Studies classes from all its students. An opting out provision for Jewish Studies was anathema to the school's declared purposes. As for Ministry of Education concerns about open enrolment, North York proposed a pre-screening process to determine which student-applicants to the Associated (North York) Hebrew School wanted less than the complete Jewish Studies program. These students would be directed to a neighbouring North York school. North York argued that optionality within a system and not necessarily within a specific school was sufficient to satisfy the requirements of the Education Act.⁶⁴

The court did not agree. Mr. Justice Holland ruled that the clear intention of the Education Act was that no denominational school (other than Catholic) was permitted, that all sectarian studies were to be avoided and that there were to be no mandatory courses in religious instruction forced on students in any school. In essence, the Court determined that because Associated Hebrew Schools would not permit students to be exempted from all or part of the Jewish Studies portion of their integrated program, the Associated and North York agreement was in breach of the Drew Regulation. Such a prospective breach precluded government approval of the plan to integrate the Jewish Day Schools into the North York public school system.⁶⁵

⁶⁴ The Education Act did not provide specifically for optionality. However, many interpreted the exemption provisions under the Drew Regulation and its successor regulations as providing for theoretical optionality.

⁶⁵ (1978) 19 O.R. (2d) 547. (High Court of Justice). The decision was given on March 31, 1978.

The Jewish community's reaction to this decision was mixed. Some were pleased:

The recent judgement of the Ontario court forbidding the teaching of religion in a public school only confirms what the law has been in Ontario for at least a hundred and twenty years. Though greeted with disappointment by some parents at the Associated Hebrew Schools, it should really be seen as a positive judicial stand by the Jewish community at large...Had the decision gone contrarywise, the result could really have been disastrous, upsetting a more than century old prohibition against obligatory religion in the public schools...⁶⁶

But, supporters of government funding for Jewish Day Schools reacted somewhat differently:

The Toronto Jewish community feels very strongly about the regrettable decision of the Supreme Court not to recognise the General Studies Program of the Associated Hebrew Schools and thus deprive the Day Schools of support to which Jewish parents are morally justified. There is no doubt that the majority of the Toronto Jewish community, committed to Jewish survival, regrets this decision which makes it more difficult to secure the development of our Day School system.⁶⁷

What is interesting about the North York integration plan, is that it almost worked. What is even more remarkable is that the attempt was made and almost accomplished despite deep-seated divisions within the Jewish community. Less remarkable is the fact that despite the differences between them, both factions within the Jewish community employed similar methods. Throughout almost four years of negotiation, Jewish representatives of the BJE, the United Jewish Welfare Fund (the funding arm of the Jewish community) and the Jewish Day Schools pursued their goal through completely normal and institutionalised discussion and lobbying.⁶⁸ Throughout this period, all dealings between the Jewish Day Schools and the

⁶⁶ Jewish Standard, April 1, 1978.

⁶⁷ Jewish Times, April 7, 1978.

⁶⁸ An analysis of the North York integration plan as a forum for the creation of a social movement was undertaken in an unpublished paper by Gerald Alton, Don Farrow, John Guenin and Greg Ross, "An Investigation into the Attempt to Integrate Jewish Private Schools into the Public School System of North York," Department of Educational Administration, OISE, University of Toronto, December, 1976.

Ministry of Education were funnelled through North York as an intermediary.⁶⁹ And when the matter reached the courts, North York was on one side and the Ministry of Education on the other. Insofar as being a party to the action, the Jewish community was nowhere to be seen.⁷⁰ This was the Jewish community's preferred profile, whether the goal was the removal of the Drew Regulation or government funding of Jewish Day Schools.⁷¹ In adopting this approach, the

⁶⁹ Long after the courts turned down the North York application, Jewish Day School advocates continued to lobby for some form of integration along the lines of the North York plan. One suggestion was a "modified North York" option which included a funding formula for independent schools generally and for Jewish Day Schools specifically. Because of the Jewish Day Schools' continuing concern for autonomy, the BJE concluded that the only "modification" that would work was a "total immersion" program which included a prohibition against opting out of prescribed aspects such as Jewish Studies. Since it was unlikely that a Provincial government would agree to such a change, Jewish Day School advocates shifted the emphasis of their efforts to a system whereby the "grant follows the child." A modification of the "voucher" system, this would allocate proceeds from education taxes to fund the schooling of the parents' choice, save for religious (Jewish Studies) portions which would continue to be funded by tuition. BJE Current Files, (1983). Memorandum from Rabbi Irwin Witty to Lionel Schipper, November 3, 1983.

⁷⁰ The CCLA did attempt to intervene against the integration plan but was refused standing by Mr. Justice Holland. In the application for intervenor status, John Sopinka, representing the CCLA, argued that a "creed should not be a criterion for admission to a public school." Sopinka claimed that the proposed integration plan contravened the Ontario Human Rights Code which prohibited discrimination on the basis of creed in a public place. Globe and Mail, February 9, 1978.

⁷¹ Of course the Jewish community could not remain invisible forever. On the eve of the North York integration trial, Educom, an association of 75 home and school associations in North York, voiced their opposition to the proposed integration. In particular, Educom objected that the request for integration emanated from the "Jewish School Board" instead of a private citizens' group as provided for by Ministry of Education guidelines. In any event, Educom viewed the entire process as "freeloading," an indirect attempt by the Jewish community to obtain reimbursement of Jewish Day School tuition. Toronto Star, February 8, 1978. The following day, the Toronto Star published an editorial criticising the Jewish community for attempting "to hitch a ride on the Heritage Language Program," a federal multicultural initiative. In fact, the Jewish Day Schools had made an application for Heritage Language funds for the Hebrew language portion of their curriculum. In light of the publicity received from the North York integration proposal, the Heritage Language application was incredibly poorly timed. The Heritage Language Program, introduced in 1977 by the federal government, provided funding for heritage language instruction for two and one-half hours per week and, clearly, was not intended for a Day School format. The fact that the Jewish community was taking a run at integrating with the North York public board, lobbying for Provincial funds for Jewish day Schools and applying for Heritage Language status, simultaneously indicated the aggressiveness and shotgun approach of Jewish Day School advocates. Toronto Star, February 9, 1978.

Jewish Day School advocates did the Drew Regulation opponents proud.⁷² In the end, notwithstanding the accelerated agenda of the Day School advocates, their abortive attempt at integration with North York did not impact greatly on harmony within the Jewish community.⁷³ Moreover, defeat in the courts did not prohibit the Jewish Day School advocates from shifting their campaign to the political level.

The experience, however, taught the Jewish Day School advocates a lesson learned to their pain by other colleagues in Congress; namely, that any change in religious education in Ontario, be it in instruction or in funding, was part of a larger societal process. This was because religious education was not perceived by Ontarians as the sole domain of government, educators or parents. Religious education resonated beyond Ontario's public school classrooms and into its communities. This precluded interested parties, such as the North York Board of Education and Associated Hebrew Schools, from entering into an arrangement that suited their own purposes.⁷⁴

⁷² Even after the decision of Mr. Justice Holland was released, the Jewish community, notwithstanding what must have been a major disappointment, maintained an understated approach. Arthur Tannenbaum, Executive Administrator of Associated Hebrew Schools, appeared before the North York Board of Education on May 1, 1978 to express Associated Hebrew Schools' appreciation for North York's efforts and pledged further co-operation. But it was the North York Board, later at the same meeting, that approved funds for an appeal of Holland's decision. (The Appeal was denied in an unreported decision). NYBEA, North York Board of Education Minutes, May 1, 1978.

⁷³ This was particularly remarkable in light of what was at stake for the Jewish community. The 1975 allocation to Associated Hebrew Schools by United Jewish Welfare Fund was \$720,000. Under the integration plan the allocation would have been reduced to \$125,000. And individual tuition would have been reduced from \$1250 per student to \$500 per student. When applied across the board to all potential schools totalling thousands of students, the amounts at stake were very significant. The relative calm of the Jewish community in the face of the loss of this funding source is somewhat surprising. OJA, United Jewish Welfare Fund Papers, RG1/A, Box 13. Executive Committee Minutes, October 7, 1975.

⁷⁴ In all likelihood, advocates of the North York integration plan looked with envy at the concurrent experience in Edmonton. There, Talmud Torah Hebrew School began to operate as part of the Edmonton Public School Board in 1975. Originally defined as a language-based school rather than a religious one in order to side-step a legislative barrier, the Edmonton/Talmud Torah Hebrew School arrangement was solidified by a change in Provincial legislation in 1988 permitting religious alternative schools within the public system. Lois Sweet. God in the Classroom: The Controversial Issue of Religion in Canada's Schools (Toronto: McClelland and Stewart Inc., 1998), 68-71.

It also served to remind the Jewish Day School advocates why slow and steady, the preferred course of action of the campaign against religious education in the public schools, was likely the only option.⁷⁵

THE LORD'S PRAYER: A CATCH-22 FOR THE JEWISH COMMUNITY

For all practical purposes, Jewish opposition to religious education was in hiatus for much of the four years of negotiations between the Jewish Day Schools and North York. But once the courts ruled against the integration plan, Congress leaders felt comfortable revisiting the religious education issue. Once again, events not of Congress' making influenced the tenor of an otherwise unprovocative Jewish approach. This time, in January 1980 an approach was made to yet another Education Minister, Dr. Bette Stephenson. Initially, the well-worn mantra of the 1970's was repeated. The delegation expressed the displeasure of the Jewish community at the failure of the government to act on the "unequivocal" recommendation of the Mackay Committee to abandon religious education programs in the public schools. Pointing to the changing demographics in Ontario due to more recent immigration, the delegation also reminded the Education Minister of the "greatly diversified picture of religions in the Ontario community today. There are Sikhs, Muslims, Buddhists, Taoists, Zoroastrians in addition to the many varieties of dissenting communions[sic] within the Christian faith."⁷⁶ These were not unexpected

⁷⁵ For its part, the Provincial government gave the Jewish community a sympathetic hearing and encouragement while effectively moving the negotiating arena away from the Ministry of Education and over to North York. In this way, the Provincial government responded to some of its critics because it could not be seen as compromising the public school system. One of these critics, Reverend E. M. Howse, former Moderator of the United Church, warned that commitment to integration with North York was a commitment to fund Jewish schools which "establishes a principle that could shatter beyond repair our essential democratic institution, the public school system." Toronto Star, September 11, 1976.

⁷⁶ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee. Memorandum from Ben Kayfetz to Morley Wolfe and Jordan Pearlson, January 28, 1980.

points to be raised. On the other hand, what proved to be a radical departure from past discussions of this ilk was the delegation's decision to raise the subject of the Lord's Prayer and, specifically, its prescribed recitation as part of the religious exercises under the Education Act.⁷⁷ In countless previous meetings and depositions to ministers and appearances in front of commissions and committees the Jewish community's agenda had never before included the Lord's Prayer. This most uncharacteristic change in approach was precipitated by a series of events that came to a head in the months immediately prior to the January meeting with Dr. Stephenson.

What proved to be a highly charged issue started innocently enough several years earlier, in May 1976, when the Toronto Board of Education created a Values Committee to undertake a long-term study of the question of religious exercises in Toronto schools.⁷⁸ At that time the recitation of the Lord's Prayer in public schools was authorised by section 28(1) of Regulation 704 made pursuant to the Education Act as follows:

a public school shall be opened or closed each school day with religious exercises consisting of the reading of the Scriptures and the repeating of the Lord's Prayer or other prayers approved for use in schools.

According to section 28(13), students could be exempted from religious exercises just as they could from instruction in religious education. Notwithstanding the possibility of exemption, the virtually obligatory nature of religious exercises in the public schools proved to be a serious bone of contention for the Committee. At public meetings held over the next year Board of Education

⁷⁷ Education Act, R.S.O. 1990. Regulation 704, section 28(1). PAO, Robarts Papers, RG3-26, Box 63. Department of Education. Religion in the Schools, 1969. It is of interest that the Mackay Report, which was so unequivocal in its opposition to religious education, recommended that prayer should form a part of opening exercises, and did not exclude the Lord's Prayer. According to the Report, inclusion of the Lord's Prayer ensured an understanding on the part of public school students that religion plays an integral part in the lives of citizens of the Province. Mackay Report, (1969), 39.

members and professionals and interested members of the public exchanged views on this issue. To get a better grasp of the issues, the Committee reviewed moral and religious education programs from other jurisdictions and considered input from authorities in the field.⁷⁹ It also conducted an in-depth review of the Mackay Report. Ultimately, a key recommendation contained in the Committee's Report, approved by the Toronto Board of Education in April, 1978, called for the Lord's Prayer to be replaced with prayers of a universal nature.⁸⁰ Because no agreement could be reached on a satisfactory list of prayers, in the place and stead of a universal prayer, the Board recommended a "minute's silent meditation." This decision was in response to the requests of organisations such as the First Unitarian Congregation of Toronto which argued that "in our growingly more cosmopolitan community, it is clear that no words exist which can serve as a prayer suitable for us all."⁸¹ In November 1979, the Director of Education for the Toronto Board, Duncan Green, advised the Minister of Education, Dr. Bette Stephenson, of the proposed change in the prayer format for religious exercises in Toronto Board schools.⁸²

Even before the Minister of Education received official notice of the proposed change, the subject exploded in the press. Claire Hoy of The Toronto Sun, later to become Premier Davis' biographer, publicly registered his dismay. Hoy lamented that Canadian culture had been chipped away, leaving but a few vestiges, "one of these is the Lord's Prayer and Religious

⁷⁸ CCLAA, FF. REL., File 14. Submission to the Ministry of Education by the Board of Education for the City of Toronto Regarding Religious Exercises, November 22, 1979.

⁷⁹ These included Clive Beck from OISE, Professor John Myers from the University of Windsor and Robin Smith from the United Church of Canada.

⁸⁰ There was also a recommendation to exempt teachers from the requirement to participate in religious exercises. Unlike the corresponding provisions in the Regulation respecting religious instruction, there was no comparable exemption respecting religious exercises.

⁸¹ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, 1981. First Unitarian Church of Toronto to Fiona Nelson, April 6, 1979.

Education in the elementary schools.”⁸³ Responding to his Toronto Sun colleague, Douglas Fisher equated the Toronto Board of Education’s decision to that of former Federal Immigration Minister, Tom Kent, over a decade earlier. According to Fisher, Kent’s immigration policy was designed “to break up Tory and Wasp Toronto through polyethnic immigration.” Linking the two decisions, Fisher celebrated the actions of the Toronto Board in seeking to remove the Lord’s Prayer from religious exercises in public schools, seeing in them further evidence that the Kent policy had succeeded, for “Toronto is now overwhelmingly non-Christian and secular.”⁸⁴

In the wake of this pending action respecting the Lord’s Prayer, the Jewish community stayed back in the weeds. In an internal memorandum, a Congress official likened opposing the Lord’s Prayer to opposing “Motherhood. One would only succeed in arousing indignation, sensitivity and protest at removing this harmless prayer, acceptable to all and objectionable to none.”⁸⁵ With the issue of public funding for Jewish Day Schools temporarily on the back burner after the unsuccessful attempt to integrate Jewish Day Schools into the North York public school system, Congress had restricted itself to its other main goal, the removal of the Drew Regulation. To get dragged into the controversy over the Lord’s Prayer could serve only to undermine efforts toward that end. To accentuate the degree to which avoiding this debate was indeed a concern, Congress officials anguished about any possible perception that the assault on the Lord’s Prayer

⁸² CCLAA, FF. REL., File 14. Duncan Green, to Dr. Bette Stephenson, August 31, 1979.

⁸³ Toronto Sun, August 26, 1979.

⁸⁴ Toronto Sun, August 27, 1979.

⁸⁵ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee. Memorandum from Ben Kayfetz to Alan Rose, September 6, 1979.

was being pushed by the “Jews.” In fact, comments such as those of Claire Hoy were seen as an indication that “the backlash has started.”⁸⁶

As it turned out, fears that the Toronto Board’s letter to the Minister of Education, and the response from the press might snap back at the Jewish community proved needless. No fingers pointed at the Jews as being behind the movement against the Lord’s Prayer. More to the point, the Minister of Education disallowed the proposed change. The Toronto Board was told that it had no authority to effect changes to the content of religious exercises as they were governed by regulations made under Provincial statute.⁸⁷ At the same time, in a letter to the Chairman of the Toronto Board, William Davis, now Premier of Ontario, placed his personal stamp of approval on the Minister of Education’s position

[not as Premier but as] a parent and as a concerned citizen...[I] offer the view that it [the Lord’s Prayer] is not a prayer which imposes an exclusive religious doctrine upon anyone, and while it may not have any specific meaning for some, its general application for so many surely is sufficient to evoke respect from all.⁸⁸

Premier Davis was criticised by some for suddenly dredging up his religious roots.⁸⁹ But, overall, Davis was praised for his position.⁹⁰ The Toronto Board made no attempt to contravene

⁸⁶ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee. Memorandum from Ben Kayfetz to file, August 27, 1979.

⁸⁷ CCLAA, FF. REL., File 14. Dr. Bette Stephenson, to Duncan Green, September 13, 1979.

⁸⁸ PAO, Davis Papers, RG 3-49, CU-1-1, 1979. File: Schools-Lord’s Prayer. Premier William Davis to Fiona Nelson, September 13, 1979. In a letter to a Conservative Party supporter, Premier Davis reiterated that “as a parent and as a concerned citizen, the decision [of the Toronto Board] disturbed me greatly, [but] as Premier of Ontario I found it totally unacceptable.” William G. Davis to Mrs. E. D. Scott, October 3, 1979.

⁸⁹ Peterborough Examiner, October 2, 1979. His religious roots were United Church. Although this column and others attempted to needle Premier Davis, Davis had taught Sunday School as a young man and was strongly influenced by his Moral Re-Armament mother. Clare Westcott, Interview, February 7, 1997.

⁹⁰ PAO, Davis Papers, RG3-49, CU-1-1, 1979. There are scores and scores of letters in these files applauding Davis’ comments on the Lord’s Prayer. Many of the letters coupled the Lord’s Prayer issue with religious instruction.

the Minister of Education's directive. Instead, all board schools were instructed to comply strictly with the religious exercises regulations.⁹¹

Given the course of these events, the Jewish community delegation to Dr. Stephenson felt obliged to make a formal statement on the Lord's Prayer. It feared that for the Jewish community to remain silent after all the public controversy might imply indifference. Worse still, it might even suggest that the Jewish community agreed with the government's position. To set the record straight, the delegation advised the Education Minister that it was only because of the Jewish community's paramount concern for removal of the Drew Regulation that it had not opposed the principle and content of religious exercises. The delegation reminded Dr. Stephenson that since 1944 opposition to compulsory religious instruction in the public schools, a war-time innovation, had been a major focus of Jewish community concern and that compulsory religious education was considerably in conflict with what the Jewish community understood to be the tradition of public education in Ontario. On the other hand, and whether or not the Jewish community approved of it, the Lord's Prayer had been part of the public school classroom scene, indeed the public scene generally, since early in the nineteenth century. As such, the Lord's Prayer was solidly lodged in the minds of Ontarians regardless of their religious affiliation. The Jewish community did not endorse the Lord's Prayer but, in the scheme of things, it was less an irritant than the Drew Regulation.

This was somewhat of an uncomfortable compromise for the Jewish community. Its previous silence on the Lord's Prayer issue now made an about face only because the recitation of the Lord's Prayer in public schools was the subject of public discussion. Accordingly, the delegation went on record with the Minister of Education to voice its objection to devotional

⁹¹ CCLAA, FF. REL. November 22, 1979 submission to Ministry of Education from the Board of Education of the City of Toronto.

prayer as a required part of religious exercises. In the place and stead of this prayer the delegation recommended the elimination of classroom prayer altogether. Knowing this was unlikely, it suggested a variety of prayers could be read as examples of religious or ethical views but not necessarily as devotional prayers in and of themselves.

Although quite direct and unequivocal in its opposition to devotional prayer in general, the Jewish community remained loathe to criticise the Lord's Prayer directly. This resulted in a somewhat circumspect and half-hearted stand.

Please do not misunderstand us. We are not saying this particular prayer is objectionable or offensive. Far from it. Its language is taken from Hebraic sources and its sentiment and moral level is of the highest. But its origin and its historic context is perceived as a sectarian prayer, representative of a specific religion, [and making reference to Chapter V of the Book of Matthew to substantiate their position].⁹²

Then, as if it was necessary to cushion this rather mild rebuke, the delegation explained that any concern about the Lord's Prayer "would equally apply to many if not most prayers."

This was just another example of the Catch 22 faced by the Jewish community. By definition, the "Lord," for Christians, being represented by Jesus Christ, the Lord's Prayer was

⁹² According to Reverend Donald Gillies, "It is clear that 'the Lord' referred to in the prayer is Jesus and that the prayer itself is not God's prayer, but Jesus' prayer and if you say the prayer, that is what you are buying in to." Reverend Don Gillies, Interview, August 26, 1997. Nevertheless, Gillies admits that the advocates of the Lord's Prayer make their case very convincing when they claim that, rather than a vehicle of proselytising, it is a part of Canadian culture.

unacceptable to Jews.⁹³ But the larger civic community had demonstrated for over one hundred

⁹³ But not to all Jews. Nathan Phillips was the first Jew to serve as Mayor of Toronto, from 1955 to 1962. In the gentlest of terms, Sydney Harris (writing as he put it, not as Chairman of the National Joint Public Relations Committee, but on a personal basis), requested that Phillips “refrain from leading in the [Lord’s] prayer, whatever the occasion, rather than to conform to the mistaken concept that Jews and Christians are united in this devotional exercise.” Phillips refused to accede to Harris’ request. Phillips thanked Harris for his “technical letter on the Lord’s Prayer [and although] I am not a student of religion, I have always understood that Jesus did not renounce his Judaism... I know nothing about technicalities, and in any event, it was a prayer that I recited in school in Cornwall [Ontario] when I was a child.... It is part of the Council [City of Toronto Council] procedure and it is there because I could see no objection to it.... When it became part of the Council proceedings many years ago, I believe there were other members of the Jewish faith in Council at the time, and I have never heard any objection, and it is rather late in the day to disturb the procedure and I certainly don’t intend to do so. I recite the prayer as a prayer to the God of Israel...” A Postscript notes “I have written this letter by hand for an obvious reason.” OJA, Harris Papers, MG6/H, File 78, 1960. Harris to Phillips, October 30, 1960. Phillips to Harris, November 3, 1960. Phillips had been involved in municipal politics for decades, having served as a City of Toronto Alderman from 1924 to 1951. Phillips was not unaware of his Jewishness, but regarded it at times as an impediment. A long-time supporter of the Conservative Party whose mother was born in Lochgarry County in 1871, Phillips felt he was once denied nomination for a seat in the Provincial Legislature “because I wasn’t an Orangeman and didn’t walk on the 12th of July [the Orange Parade].” Toronto Star, August 3, 1974 and City of Toronto Archives, Mayors’ Files, Nathan Phillips, 52. Also see Maclean’s Magazine, February 27, 1960. Phillips’ claimed that Leslie Saunders, his opponent in the 1955 Mayoralty campaign made “a deliberate attempt to defeat me on the racial issue,” by making references to the Protestant tradition in Ontario.

years that the Lord's Prayer was an integral part of public schools' religious exercises. So much so that many believed that for Jews to question the Lord's Prayer could jeopardise the standing of the Jewish community in the eyes of the general community. Yet, to avoid taking a position on the Lord's Prayer, when the propriety of this prayer had been challenged by a secular body (the Toronto Board of Education), and was, in fact, not really acceptable to Jews, could weaken Congress' status within the Jewish community. The dilemma explained Congress' careful handling of the Lord's Prayer issue. It also underscored the lingering sense of insecurity within the Jewish community that militated against the pace of progress and the opportunities for success of the Jewish opposition to the Drew Regulation.

CHAPTER SEVEN

RELIGIOUS EDUCATION IN SMALLER COMMUNITIES

Nothing is more certain than that the improvement in human affairs is wholly the work of the uncontented characters.¹

In his September, 1945 introduction to the Congress brief to the Hope Commission, Rabbi Feinberg noted that “Jewish youngsters dwell at present in 354 cities, towns, villages and rural municipalities of Ontario.”² Undoubtedly, Rabbi Feinberg was quoting this statistic for effect. He hoped to impress the Hope Commission with the expanding Jewish presence in Ontario. Stating aside, that the Congress brief spoke to the issues of members of 354 Ontario communities was not an insignificant statement. In the decades after the Hope Commission, Jewish communities in the larger centres of Toronto, Ottawa, London and Hamilton grew considerably. Not so for Jewish populations in these smaller centres.³ Many Jews in small towns moved to larger centres of Jewish concentration or, when Jewish children left to go to university, they never came back. As Jewish numbers dwindled, so did services available to them. With smaller communities declining in size, the effort to ensure Jewish continuity also became more difficult and the fear of slippage among Jewish children increased. As a result, throughout the several decades in which the Drew Regulation was extant, Congress was peppered with requests from worried Jewish families in many smaller Ontario communities for assistance in dealing

¹ John Stuart Mill as cited in Joel Bakan, “Constitutional Interpretation and Social Change: You Can’t Always Get What You Want (Nor What You Need),” Canadian Bar Review, 70, (1991), 328.

² Canadian Jewish Congress Brief to the Hope Royal Commission. Introductory remarks by Rabbi A. L. Feinberg, September 19, 1945.

³ According to Statistics Canada’s 1981 Census, by 1981 96 percent of Canadian Jews lived in cities with populations in excess of 100,000, 2 percent lived in cities with populations from 10,000 to 99,999 and the remaining 2 percent in communities with populations of under 10,000. Reginald W Bibby, Fragmented Gods, 116.

with religious education issues. These requests for assistance challenged Congress leaders, most of whom resided in Jewishly secure Toronto, their children little affected by the Drew Regulation after release of the Mackay Report.

Small town Ontario was different. Here the Drew Regulation was often an in-your-face reality. Angered by the force feeding of Protestant teachings in their public schools, Jews in those communities, neither individually nor as members of often tiny Jewish communities, felt powerful enough on their own to take on local authorities. In Toronto Jews could and did mobilise. This was most evident in the Toronto suburb of North York, the largest centre of Jewish concentration, where the combination of grass-roots community protest and organised political pressure eventually terminated religious instruction for most Jewish children in the public schools.

But, Congress well knew that similar strategies would be ineffective in smaller Ontario communities where Jews represented a minimal presence. Beginning in the mid-1950s, Congress files are filled with correspondence between Congress and representatives of smaller Jewish communities attempting to cope with the issue of religious instruction. Questions were seldom about philosophy. They were about immediate problems. How do we stop the Port Arthur Ministerial Association from giving religious instruction to our children?⁴ What do I do when my child is the only Jewish child in his grade in his Galt public school?⁵ How do I respond to a religious instruction teacher in St. Catherines who claims that “the Jewish religion advocates

⁴ OJA, JCRC Papers, MG8/S, File 3A, Religious Education in the Public Schools Sub-Committee. Alex J. Devon (Port Arthur) to Canadian Jewish Congress, December 15, 1954. The answer was “you can’t.”

⁵ OJA, JCRC Papers, MG8/S, File 3A, Religious Education in the Public Schools Sub-Committee. Sam Bregman (Galt) to Canadian Jewish Congress, May 5, 1954. The answer was to request an exemption, perhaps questionable advice bearing in mind that this was a small community.

bashing heads of anyone who harms you?”⁶ Do I complain when my children in Chatham public schools are required to recite New Testament passages for credits?⁷ Congress did not have all the answers. However, parents were supplied with helpful hints on how to arrange for withdrawal of individual children and, in some cases, Congress intervened with local authorities pointing out problem areas, sometimes easing the situation.

The complaints continued into the 1960's, only slowing down later in the decade, perhaps in anticipation of positive results from the Mackay Committee.⁸ But there were more complaints than ready solutions and, of course, not all Jews looked to Congress for help. Some complained directly to Provincial educational authorities. A letter to Robert Welch, Minister of Education, from a Jewish mother in Kirkland Lake, a small community in Northern Ontario, relating the experiences of her public school-aged child, summed up the surreal nature and the feelings of isolation often experienced by Jewish families in such communities when she concluded with a telling comment that bore witness to her pain: “I am not sure whether its amusing or sad-when a whole classroom of children draw King Solomon's Temple with a cross on the roof....”⁹

⁶ OJA, JCRC Papers, MG8/S, File 3A. JCRC Minutes, January 28, 1955. Sol Granek (St. Catherines) to Congress, November 4, 1954. The response from Congress recommended registering a complaint to the Board of Education. In fact, the Board of Education agreed to issue a public statement confirming that the social and ethical values of Judaism were equal to those of Christianity and that there was nothing “barbarous or derogatory about Judaism.”

⁷ OJA, JCRC Papers, MG8/S, File 6. Leon N. Kahane (Chatham) to Congress, January 30, 1956. The parents were advised to go to the teacher, but refused for fear of making “an issue of it...[explaining that they] would rather let the matter slide.”

⁸ The slow-down in complaints may also have been due to the fact that many Jewish families left these smaller communities for larger communities with more Jews. Then too, other Jews were becoming more distanced from their backgrounds and more prone to assimilation. As well, in some cases, a greater sense of mutual comfort developed within these smaller communities between the small Jewish component who remained and the larger civic community because those Jewish families who remained often made significant contributions to the community.

⁹ PAO, Department of Education Papers, RG2-81-5 Acc. 12917/8, Box H. Curriculum Department. File: D. A. 100. Religious Education, 1971/2. Mrs. Marianne Aidelman to Robert Welch, February 1, 1972.

THE METCALFS OF DELTA: A SINGULAR EXPERIENCE

The manner in which another Jewish mother chose to confront religious education in a small community's public school is instructive.¹⁰ In the summer of 1976 Myrna Metcalf and her family moved to the Village of Delta, thirty kilometres north-west of Brockville in south-eastern Ontario. By this time thirty-two years had passed since compulsory religious instruction was introduced into Ontario's public schools. But, for Myrna Metcalf, the Drew Regulation was a new experience. She moved to Delta from Montreal where her son Ron, seven, had been a student in a Jewish Day School. In Delta Ron was enrolled in Beverley Elementary Public School where he was the only Jewish child. The prospect did not cause the Metcalfs much concern at first. But when Ron came home from school singing Protestant hymns, Myrna Metcalf became uneasy. Furthermore, her son's second grade work book graphically illustrated the importance given to religious education in the Delta public school. Upon inquiry, she learned of the twice weekly half-hour sessions of Protestant religious instruction, augmented by religious exercises that included a daily twenty minute session of hymn singing and scripture reading.

Myrna was not intimidated by the fact that her son was the only Jewish child in his grade. She still felt that it was her right to object on his behalf. Accordingly, she spoke to Ron's teacher about the examples of Protestant indoctrination to which Ron was being subjected in religious instruction classes. In response, the teacher referred Myrna to the school curriculum guidelines which prescribed the basic outline of the lessons that she was teaching. This explanation failed to satisfy Myrna who took her concerns to Beverley Elementary's principal. He explained to Myrna that the religious instruction that Ron was receiving was mandated by Provincial legislation (the Drew Regulation), and that he was powerless to change it. Taking her discontent to the next

¹⁰ Much of this narrative is derived from interviews with Myrna Metcalf, April 20, 1997 (telephone), and May 14, 1997 (Ottawa).

level, Myrna sought relief from the Leeds-Grenville Board of Education. At this stage, a lawyer who acted on behalf of the Board and who was a friend of the Metcalfs, forewarned Myrna against pursuing matters any further at the local level. She was cautioned this could result in some “possible discomfort” for her son. Further discussion with this lawyer confirmed for Myrna that, considered an outsider, her protests would only mark her as a trouble maker.¹¹ Unfriendly to outsiders or to their ideas, the local community rallied in defence of its religious values, values Myrna regarded as of the “crudest, fundamentalist nature.” They would tolerate no straying from accepted norms. Hitting a stone wall in efforts to find a solution locally, Myrna was obliged to go outside the community for redress.¹²

Myrna’s decision to fight rather than give in to local authority was a personal decision. There is no way of knowing how many Jews in other smaller communities in Ontario chose to lay low lest they and their children stand out; perhaps most did so or quietly pressed Congress to carry the fight for them.¹³ Not so Myrna, who attacked the issue head on. First, as a parent, she sought to shield her son from both the day-to-day religious instruction to which he was subjected and any backlash her actions might evoke. She also bridled at the notion of withdrawing Ron

¹¹ Other examples of this attitude toward outsiders observed by Myrna included ostracism of a Protestant who married a Roman Catholic, Myrna’s Peugeot not considered a “white man’s” car and villagers boycotting the services of a French Canadian handyman.

¹² MM Papers. Myrna Metcalf to Bruce McLeod, December 4, 1977.

¹³ Jews in small communities did face predicaments that were not faced by their co-religionists in larger urban centres. Whether or not the perception was stronger than the actual problem, they were often persuaded more by fear than by principle. In response to the appearance in Peterborough elementary classrooms of Reverend Jocz, a self proclaimed “Christian Jew,” presumably a Jewish convert to Christianity, the Peterborough Jewish community contacted Congress for assistance and direction. But when, as a result, the concerns of the Peterborough Jewish community were divulged in the Peterborough Examiner, Congress was asked to refrain from making any further public statements or taking any action in connection with this incident because the local Jewish community was made to feel uncomfortable. OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, File 12B. Ben Kayfetz to Ruth Moldaver (Peterborough) January 28, 1959. Peterborough Examiner, February 16, 1959.

from these classes. She feared that he would be embarrassed if he was made to stand in the hall while his class-mates remained in class. This would turn her seven year old into “an object of curiosity and hostility.”¹⁴ Furthermore, withdrawal would isolate her young son from his class-mates. In a rural school “if a child is ostracised by his class, he becomes entirely friendless.”¹⁵ The alternative, allowing Ron to remain in the classroom receiving lessons on Christ’s divinity and crucifixion by the Jews, was equally unacceptable.

Taking on local authorities single-handedly got Myrna nowhere. She had neither the resources nor the support systems available to Jews in larger communities. In her favour, however, was her own considerable ingenuity and persistence. To deal with the immediate problem, and with the co-operation of the Beverley Elementary principal, Myrna agreed to a compromise in which Ron received French language tutoring during the religious instruction periods. This was making the best of a bad situation. Ron *was* required to withdraw from class, and thereby made to feel and appear different. But, at least, once withdrawn, he was not simply marking time. His time was usefully occupied.

Aware that this interim solution papered over the problem rather than addressed its cause, early in 1977 Myrna went outside her local community for assistance. For the next three years, she attempted to enlist the support of two Provincial Ministers of Education, the Ontario Human Rights Commission, the Ontario Ombudsman’s Office, the Canadian Civil Liberties Association and the Canadian Jewish Congress.

¹⁴ MM Papers. M. Metcalf to Tom Wells, January 11, 1977.

¹⁵ MM Papers. M. Metcalf to Bruce McCleod, December 4, 1977.

Minister of Education Thomas Wells encouraged Myrna to take advantage of the exemption provision provided for in the Drew Regulation.¹⁶ Wells also reassured her that any feelings of exclusion on the part of exempted children were minimal and were not demonstrated to have long-term psychological effects. Myrna was not impressed, especially as the Minister of Education seemed to minimise her concern, comparing children exempted from religious education classes with those excused from Physical and Health Education classes. Myrna termed his response “insensitive and patronising.” She indicated as much to Wells, stressing her resentment for his “equating of non-Christian belief to a physical disability.”¹⁷

Bette Stephenson, who succeeded Wells as Minister of Education, objected to Myrna’s characterisation of the religious instruction program approved by her Ministry as “sectarian.”¹⁸ Myrna was quite convinced of the correctness of her claims. She asked Congress to corroborate the case she had made to the Education Minister. Congress was happy to provide Dr. Stephenson with other striking examples of the overtly Protestant nature of the Province’s religious education courses.¹⁹ Nevertheless, the Minister of Education staunchly held to the legalistic position that “the degree to which a given school...manages to implement the provisions of the

¹⁶ At the same time as Wells was recommending that Myrna Metcalf have her son exempted, his Executive Assistant, Larry Kent was learning from other Ministry of Education staff that the foundation of the 1944 religious education courses was the study of Scriptures and entirely Christian in outlook. Kent was told that the Ministry of Education considered this acceptable for homogeneous Christian communities in Ontario even though estimates of this homogeneity took little count of changes including immigration since World War II. The Ministry of Education further acknowledged to Kent that where there was heterogeneity in Ontario communities, it was accompanied by a “more secular societal outlook.” PAO, Ministry of Education Papers, RG2-82-5, Acc. 17195, Box 4. File: Religious Education, General, 1977. R. C. Blackwell to L. Kent, March 18, 1977.

¹⁷ MM Papers. Tom Wells to M. Metcalf, February 3, 1977, M. Metcalf to Tom Wells, February 14, 1977.

¹⁸ MM Papers. Bette Stephenson to M. Metcalf, October 17, 1978.

¹⁹ MM Papers. Ben Kayfetz to Bette Stephenson, May 4, 1979.

[religious education] Regulations...should not...cloud the issue of the actual requirement of the Regulation.”²⁰

As far as Myrna was concerned, the responses given her by both Wells and Stephenson indicated total insensitivity to the problem at hand. Her son, she felt, was the victim of discrimination inflicted by a curriculum authorised by a Provincial regulation. The Provincial politicians with whom she corresponded refused to acknowledge the damage caused by the Drew Regulation or to take any responsibility for the manner in which the Regulation was implemented. Still determined to seek redress, in the spring of 1979 Myrna looked to the Ontario Human Rights Commission.

Ontario had consolidated various pieces of human rights legislation into the Ontario Human Rights Code in 1962.²¹ Administration of the Code was the responsibility of the Ontario Human Rights Commission which was established at that time to replace the Anti-Discrimination Commission which had been in operation only since 1958.²² The purposes of the Code, as set out in its preamble, were as follows:

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And whereas it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, nationality or place of origin;

²⁰ MM Papers. Bette Stephenson to M. Metcalf, May 25, 1979.

²¹ S. O. 1961-2 c.93.

²² S. O. 1961-2 c. 63.

Clearly, the Code and its enforcement arm, the Human Rights Commission, were designed to deal with issues of discrimination.²³ But the issues were restricted, according to the provisions of the Code, to the occupancy of accommodation, contracts, employment and membership in vocational associations and trade unions. Moreover, the Commission had the discretion to refuse to deal with any complaint.²⁴ These were technicalities which did not deter Myrna.²⁵ Determinedly, she described to the Commission how her son was being discriminated against. How he was being forced to leave his public school class in order to avoid religious indoctrination into a faith other than his own.

Dorothea Crittenden, Chairman of the Ontario Human Rights Commission was impressed with the unfairness of the situation and sympathetic to Myrna's plight. However, faced with the strict limitations of the Code, Crittenden was unable to exercise jurisdiction over allegations of

²³ But then, so was the Canadian Bill of Rights. In response to a concern voiced by the Chairman of the Waterloo County Board of Education that there was a conflict between the Canadian Bill of Rights and the practice of religious education in Ontario schools, Wells declared that the guarantee by the Canadian Bill of Rights that all religions were on an equal footing was "safeguarded by the Department (sic) of Education's legislation dealing with religious education." PAO, Ministry of Education Papers, RG2-82-4, Acc. 14525, Box 3, File: World Religions, MA 170/88. Wells to H. E. Janke, February 6, 1974.

²⁴ Reasons for such refusal, as set out in the Ontario Human Rights Commission Complaint Procedures Manual, included:

- 1) lack of jurisdiction;
- 2) subject matter which is trivial, vexatious or made in bad faith;
- 3) facts in the complaint over 6 months old; or
- 4) availability of a more appropriate procedure.

²⁵ Another Jewish parent, frustrated with the "unfairness" of the Provincial government's refusal to fund Jewish Day Schools, also sought the assistance of human rights' legislation. In this case, on February 29, 1996, Aryeh Waldman filed a claim with the United Nations Human Rights Commission alleging that Canada had violated international law by refusing to fund Jewish Day Schools in Ontario on an equal basis. Waldman claimed that the distinction between Catholics who received funding and all other religious denominations who did not was clearly discriminatory. The Jewish community was appalled by this public attempt to embarrass the Provincial government and prevailed upon Waldman to withdraw his claim. Waldman agreed, at least until the Supreme Court of Canada heard the appeal in the Adler case which was questioning the constitutionality of withholding funding from Jewish Day Schools. Although the Adler appeal was lost, Waldman did not revive his claim. BJE Current Files. Government Funding to Day Schools, 1996.

discrimination arising from the Drew Regulation. To interfere under these circumstances, Crittenden regretted, would require the Commission to exceed its powers.²⁶ But, in an attempt to rise above the characterisation of the Human Rights' Commission as "the Iron Hand in the Velvet Glove," Crittenden did go to bat for Myrna.²⁷ Crittenden attempted to persuade the Ministry of Education that the exemption provision

does not seem to provide adequate safeguard for persons in communities with a small minority of non-Christians, and it tends to be the children in such communities who experience the greatest sense of alienation because they do not embrace the majority's religious beliefs.

The Ministry of Education's response dodged Crittenden's argument. The Ministry explained that Regulation 191 [the Drew Regulation] had been under review for several years.

²⁶ OJA, JCRC Papers, Religious Education in the Public Schools Sub-Committee. Ontario Human Rights Commission to Ben Kayfetz, May 14, 1980. The experience of Chris Scott, in the Village of Lanark, west of Ottawa, illustrates the cumbersome procedures involved in making a complaint to the Human Rights Commission. Scott filed a complaint with the Human Rights Commission on February 2, 1990. He objected to the opening exercises in his daughter's grade 2 class at Maple Grove School in Lanark County, which he claimed "directly encourage values pertinent to the Christian faith." Scott chose to file his complaint after discussions with the school principal and the Director of Education did not produce a satisfactory result for him. The process provided for a response from the Lanark Board of Education which was not received by Scott until October, 1990, already a six month delay. In the interim, the Lanark County Parents for Religious Freedom, a coalition of parents of various faiths and philosophies, made a presentation to the Lanark Board requesting that the anthology of readings, which claimed to be balanced but was almost entirely Christian, be dispensed with. When the Board chose not to accede to the Coalition's request, the Coalition threatened to commence legal action. Simultaneously, the Coalition put the Ministry of Education on notice of its plan to proceed through the courts. The Ministry had been unresponsive in the previous eight months of requests for assistance by the Coalition. Given a 10 day deadline, the Ministry instructed the Lanark Board to cease and desist from using its current program until putting in place an appropriate balance in its anthology of readings. Four days later, the Lanark Board of Education agreed to provide this balance. On this basis, Scott discontinued his Human Rights Commission complaint. Chris Scott Personal Papers and Interviews with Chris Scott and Jackie Seaton, spokesperson for the Coalition, May 13, 1997, Macdonald's Corners and Perth, Ontario. The indecision on the part of the Ministry of Education until legal action was threatened and the intransigence of the Lanark Board of Education is also instructive.

²⁷ Walter S. Tarnapolsky, "The Iron Hand in the Velvet Glove," *Canadian Bar Review*, 46, (1968), 565-590 and Maxwell Cohen. "Human Rights: Program or Catchall? A Canadian Rationale," *Canadian Bar Review*, 46, (1968), 554-564. Cohen saw human rights legislation as a catchall for social claims. As such, because this kind of legislation also served as a rallying cry, it tended to be too general and potentially, less effective.

Insofar as religious instruction was concerned, the Ministry had decided not to recommend any official syllabus. According to the Ministry's thinking, this relieved the Ministry from responsibility for religious education programming because "the option for local schools to handle these matters in relation to the nature and wishes of the local community, for example, in a pluralistic manner, is allowed."²⁸ This meant that if a local community chose to require its school board to institute religious instruction in its public schools reflective of pluralistic realities in that community, the Ministry of Education would not object. Also implicit was the likelihood that the Ministry would not object to a local community's insistence that the religious education program reflect Protestant majoritarian teachings. The Human Rights Commission did not pursue this matter any further.

After her experience with the Human Rights Commission, Myrna feared that the Provincial Ombudsman's Office would adopt a similar stance on jurisdiction. To avoid this possibility, she couched her complaint in terms of the unevenness of the enforcement of the Regulation by local authorities, namely the school boards:

The law requiring religious instruction was prejudicial because it was not uniformly enforced across the Province. Enforcement of the regulations and the degree of enforcement is left up to individual boards and in many cases within boards, it is left to the discretion of individual principals and even teachers. This means that had we chosen our address with more care, my child could be attending a school where Opening Exercises would consist simply of O Canada. I think it is discriminatory that only certain residents of the Province are required to obey a Provincial regulation while others are not.²⁹

²⁸ MM Papers. Dorothea Crittenden, to G. H. Waldrum, July 17, 1978, G. H. Waldrum to Dorothea Crittenden, July 27, 1978.

²⁹ MM Papers. M. Metcalf to Donald Morand, November 19, 1979.

Myrna pointed out to the Ombudsman's Office that, ironically, "the discrimination required" by the Education Act resulted in children being left without the recourse to which adults are entitled in the normal course.

The Ombudsman's Office seemed a likely intermediary. Officially proclaimed in 1975, the Ombudsman Act provided that:

The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organisation and affecting any person or persons in his or its personal capacity.³⁰

The Ombudsman's Office opened a file on the Metcalf matter and made some inquiries.³¹

In the end, the Ombudsman too refused to lodge a complaint against the Leeds-Grenville Board of Education, concluding that the actions of the school board constituted the lawful implementation of a government regulation. In its determination, were it to object to the actions of the school board, the Ombudsman's Office felt it would, in effect, be impugning the legitimacy of a Provincial statute. Therefore, it had no option but to refuse to intervene.³² As far as the Ombudsman was concerned, although Myrna's protest was legitimate, the Ombudsman's Office was not the appropriate agent through which she could seek a solution.³³

³⁰ The Ombudsman Act, S.O. 1975 c. 42, section 15(1).

³¹ MM Papers. Correspondence with Ombudsman's Office making reference to file #22520. The Ombudsman's Office would not make their file available.

³² Besides, section 18 of the Ombudsman Act specifically provided for the discretion on the part of the Ombudsman to determine whether or not to investigate.

³³ When the concept of an ombudsman to safeguard "unjustified encroachments on the rights of individuals," as suggested in the Report of the McRuer Royal Commission on Civil Liberties (Second Report dated October 28, 1969), was pursued, the Ontario Minister of Justice proudly declared that such a concept was "more suited to the parliamentary and legislative form of government than the republican because bureaucratic agencies were not responsible to the legislators in the United States." PAO, Robarts Papers, RG3-26, Box 34, File: 1961-65, Royal Commission on Civil Liberties. A. A. Wishart to J. K. Reynolds, February 2, 1970.

Myrna's experience with administrative tribunals improved only marginally when she dealt with non-governmental advocacy organisations. The Canadian Civil Liberties Association, for instance, showed understanding for her problem. However, when approached in 1977 for assistance in 1977, although sympathetic, the CCLA was embroiled in other controversies and without sufficient staff to deploy to an isolated incident such as this.³⁴

Minimally more helpful than the CCLA, the Canadian Jewish Congress staff provided supportive feedback but also was unable to provide much help to Myrna. The Jewish opposition campaign was in its geared-down mode, periodically reminding government of the Mackay Report recommendations but doing little more. What is more, Congress did not want to upset talks underway to integrate Jewish Day Schools with the North York public system by muddying the educational waters with a high profile attack on religious education in the public schools.³⁵ And, in a way, Myrna's complaint was somewhat anomalous because it appeared just as complaints against the Drew Regulation fell off. In part, this reflected the unilateral decision taken by some public school boards in larger urban centres where most Jews lived, to implement the spirit of the Mackay Report without government approval. As well, for Congress, if the issue of religious education was placed on the back burner, it was because other issues were not. Hate mongering, neo-nazi vandalism and anti-Israel propaganda on behalf of the Palestine Liberation Authority, were seen to be on the rise. The fact that Congress professional staff was hard-pressed

³⁴ Myrna was told that the CCLA was working on several matters at that time including the issue of homosexuality in the R. C. M. P. Myrna Metcalf, Interview (telephone), April 20, 1997.

³⁵ A few years later, Toronto Rabbi Baruch Taub addressed the dilemma of the Jewish community having to choose between Jewish families in smaller communities facing intolerable choices and the issue of Provincial aid to the Jewish Day Schools. His preferred course of action, until "the issue of government aid to the Day schools was solidified," was to work at the local school board levels, avoiding any court action. In the final analysis, the concerns of families like the Metcalfs were probably compromised when the Congress felt constrained to prioritise community needs. OJA, JCRC Papers, MG8/S, JCRC Minutes, April 17, 1985.

to see to these matters coincidentally militated against the possibility of Congress taking up the Delta case as it might have earlier. When a Congress official told the Metcalfs “that it’s a long time since we’ve had a complaint such as yours,” Myrna Metcalf understood this to mean that she would have to continue going it alone.³⁶

It was therefore a very solitary Myrna who attended the November 14th, 1979 meeting of the Leeds-Grenville Board of Education, Education Committee to speak to what she saw as the problem of religious exercises in the County’s schools. The issue of religious instruction never did get on the agenda but Myrna’s argument against religious exercises was the same as with religious instruction. Like religious instruction, religious exercises were force feeding Protestant values and theology on all children including non-Protestants. Before Myrna spoke to the issue, she listened to the Brockville and District Ministerial Association representative declare that the inclusion of non-Christian prayers was

an insult to people of every faith...[because] the reading of Scriptures and the repetition of the Lord’s Prayer are reverent acts of appreciation for the heritage of the majority of the people whose faith and striving have provided the best society in the world.³⁷

Then she heard Reverend Arthur Ettinger of the Highway Temple in Brockville warn of “a grave danger lurking ahead in allowing prayers of other world religions to be used in our schools.” The Chairman of the Board of John Knox Christian School followed this ominous statement with the

³⁶ MM Papers. Ben Kayfetz to M. Metcalf, January 19, 1977. Actually, later that year, complaints by a Jewish family (the Lindsays), respecting the religious education program in Etobicoke public schools led to the Lindsay family receiving threatening phone calls and poison pen letters. After this occurred, police agreed to cruise the area of the Lindsay home. As well, the *Shomrim*, a volunteer Jewish security force, placed guards in the Lindsay home. OJA, JCRC Papers, MG8/S. Ben Kayfetz to Lou Ronson, November 8, 1977.

³⁷ Brockville Recorder and Times, November 15, 1979.

admonition that to leave out the Lord's Prayer was to leave out the essence of Christian belief which constituted "a denial of the Christian faith."³⁸

Myrna's presentation to the Committee was very different from those that preceded her.

First, it was very personal:

I would like to tell you what it is like to be a non-Christian parent and to have to send your child to school in Leeds and Grenville. I would like to point out some of the specific difficulties and problems which we face in the hope that you will bear these in mind when drawing up your recommendations for the Board of Education...Until my son started attending school in Ontario I thought children were sent out of the classroom only as punishment for bad behaviour. My son has, in years past done his time in the halls. This year we are lucky. He has a particularly sensitive and understanding principal and teacher and there is no need for him to leave the room during Opening Exercises. However, my husband and I have begun proceedings to adopt four school-aged children-two are Buddhist and two are Hindu. I do not know how or if they will be accommodated.

Second, it was accusatory:

I will not say to my child that he is being separated from his classmates because his beliefs are of less value than those of others...I know very little about Christianity but it seems to me that the assumptions underlying the present legislation are in effect, and perhaps even in intent, ultimately, unChristian.

Third, it was poignant:

Please understand that I am not advocating Godlessness or even the end of religion in the schools. What I am doing is imploring you to find a way of allowing my children to go to your schools with the same dignity and self-respect you allow to your own children.³⁹

Myrna's plea made no recognisable impact.⁴⁰ The Committee recommended the retention of the existing program including the recitation of the Lord's Prayer. Myrna had lost yet another

³⁸ Comments such as these were in tune with Premier William Davis' reaction to the Toronto Board of Education's attempt to discontinue the reading of the Lord's Prayer.

³⁹ MM Papers. M. Metcalf brief to the Education Committee of the Leeds-Grenville Board of Education, Nov. 14, 1979.

⁴⁰ Myrna Metcalf's address to the Committee was simply a plea. She had no practical solution to offer beyond the elimination of prayer and religious instruction.

battle. On the heels of her string of defeats at the hands of teachers, principals, boards and administrative tribunals, Myrna finally conceded the war itself. The following year, the Metcalfs moved out of the jurisdiction. Myrna had given a good account of herself. Denied a remedy in law and without the active support of those who might otherwise have rallied to her side, she had had the gumption to present briefs and make representations in unfriendly surroundings. But, she was outgunned and isolated. Without a powerful supporting cast, without other like-minded parents and supporters in her corner or active engagement by Congress or the CCLA, Myrna was compelled to contest the implementation of the Drew Regulation in Delta single-handedly. This meant that she risked labelling herself and her son as antagonists opposed to the established norms of this small community.⁴¹ Challenging Protestant religious indoctrination in the local public schools, Myrna had highlighted her “otherness.” To be both different and alone was not a recipe for comfortable integration into a small community in Ontario. Conceding defeat, the Metcalfs left Delta.

What most doomed the Metcalfs’ protest to failure was that they were forced to contest the religious education program on their own. There were other local minority groups and organisations that might have stood at their side. Like Congress and the CCLA, they too did not step forward. This included, for example, the significant Jehovah’s Witness population in the county. Jehovah’s Witness families addressed the issue of religious education by requesting and obtaining exemptions from the religious education classes for their children. But that was as far as they were willing to go. They would not participate in any further protest. Perhaps fearing the

⁴¹ A noted social scientist has warned against succumbing to stereotypes in religious behaviour in Canada. For example, rural Canada is often depicted as religiously committed whereas urban Canada is seen as more secular. This stereotype “lives on, no doubt, partly out of nostalgia,” and may be far removed from current reality. However, current reality should not detract from the difficulties non-conformists encounter in these smaller communities for lack of a place to hide. Bibby, *Fragmented Gods*, 92.

consequences of standing out in so small a village, they were not willing to draw attention to distinctions between themselves and the balance of the local community.⁴²

Myrna Metcalf fared no better with the press. In North York, during the Wilmington canvass, protesters found themselves supported by the major dailies. While the Kingston Whig-Standard was sympathetic to her position, Myrna's local press, the Brockville Recorder and Times, tended to support local opinion. This did not bode well for Myrna.⁴³

What of Congress' low-key role? For all its disagreement with the Drew Regulation, when push came to shove, Congress counselled Jewish parents to take advantage of the exemption provision, subject, of course, to what it described as "the extraordinary circumstances of small communities." When it made this exception, Congress admitted that Jews in smaller communities were subjected to unusual pressures. In many cases, these pressures contributed to the gradual Jewish abandonment of these communities. If parents in larger Jewish centres might also rationalise that their children's largely Jewish peer group would blunt any Christian indoctrination, thereby precluding the need for withdrawal, circumstances were radically different for Jewish children in small rural communities. Jews in these rural and small town settings felt far more vulnerable to Protestant proselytisation and were concerned that their

⁴² Myrna Metcalf, Interview (telephone), April 20, 1997. Besides, protest is not within the Jehovah's Witnesses credo. They believe that they are living in Satan's world awaiting the arrival of God's Kingdom. Until that time, they pay taxes but refuse to vote, salute the flag or serve in the army, in essence, living in the "present" world only to the extent necessary, but hardly being a part of it. William Kaplan, State and Salvation. The Jehovah's Witnesses and Their Fight for Civil Rights (Toronto: University of Toronto Press, 1989), 4. See also J. W. Werner Cohn, "Jehovah's Witnesses as a Proletarian Movement," The American Scholar, 24, No. 3 (Summer, 1955), 284-288, who describes Jehovah's Witnesses as "radically alienated from enviroing society."

⁴³ A case in point was the variation in coverage of the November 14, 1979 meeting in Brockville. The Brockville Recorder and Times reported on the meeting in its issue of November 15, 1979. Two days later, the Kingston Whig-Standard, November 17, 1979, published a scathing editorial, rebuking the Committee for providing a hearing for individuals, who, in the main, exhibited "an appalling example of 'Christian' intolerance."

children would be centred out for religious indoctrination. But without a large support group of co-religionists, these Jews often refrained from publicly objecting to practices which offended them and their beliefs or compromised their children. By its statement that “the extraordinary circumstances in very small communities may require special consideration,” Congress acknowledged that Jews in these settings might have deep reservations about following the Congress recommendation to remove their children from religious education classes in public schools.⁴⁴

As far as the Metcalfs were concerned, they felt they left Delta as they found it, a community that was inhospitable to newcomers who were unwilling or unable to adapt to the practices and customs of the larger population. At the same time, this experience, distressing as it was for the Metcalfs, highlights the bedrock support that small Ontario communities like Delta could give to the Drew Regulation. Whatever inroads were made by the opposition to the Drew Regulation in larger centres in Ontario, rural Ontario would tolerate no tampering with the Drew Regulation and the government knew it.⁴⁵

The variation in coping strategies between Jewish communities in large and small communities offers a metaphor for Jewish opposition to the Drew Regulation. Ontario’s Jews responded to the Drew Regulation according to their particular circumstances and, depending on these circumstances, differed in the strategy they adopted to deal with it. For the same reason they were seldom at one philosophically. Even after the Mackay Report Jews in small towns still remained uneasy and self conscious, tolerated but not accepted, and leery of acceptance as an

⁴⁴ OJA, JCRC Papers, JCRC Minutes, January 21, 1952.

⁴⁵ It is probably also true to say that Canadian Jewry was equally unimpressed with rural society. According to Statistics Canada, the 1981 Census revealed that only 2 per cent of Canadian Jews lived in communities of less than 10,000 people. Bibby, *Fragmented Gods*, 116.

assimilationist ploy. Without the cushion of a large Jewish community they felt themselves in a no-man's land between isolation and assimilation and rejected both. The impact of the Drew Regulation left them vulnerable on both sides. Unlike Jews in larger centres who could rightly say, "we are every bit as much citizens as they are," and, as a result, were increasingly less willing to tolerate offence to customs and traditions if the offence impinged on the democratic right to express one's Jewishness, many small town Jews felt they had to lay low or leave. These differences in circumstances, in turn, were reflected in varying responses to the Drew Regulation. Jews in Toronto could deliver briefs to Commissions and deputations to Ministers of Education or engage in more direct and at times confrontational political actions, as, for example, with the Wilmington Public School canvass. Most small town Jews, unlike Myrna Metcalf, felt they did not have this luxury. They might be asked to provide representation for a quorum so as to establish the Province-wide nature of the Jewish community's complaints, but the clout remained with the larger communities and the major Jewish population. When small town Jews depended on Congress for assistance, Congress could not always deliver. If Congress were forced to balance its concern for Provincial funding for Jewish Day School education against protesting religious instruction in the public schools, the latter would come up short. In the result, small town Jews may well have been sold out--even as Ontario's largely urban Jewish community grew in numbers and relative stature in the larger civil community.⁴⁶

⁴⁶ OJA, JCRC Papers, MG8/S, JCRC Minutes, May 28, 1984. This meeting of the JCRC was as good an indicator of the disparity of views as any. In response to renewed examples of abuses of the current religious education system in small communities, comments from JCRC members included:

- 1) "More information as to the specific nature of abuses is required in order to assist in launching a legal action."-Alan Borovoy.
- 2) "The information is interesting because it provides more ammunition with which to complain to the Minister of Education."-J. Sydney Midanik.
- 3) "We are fighting a battle that is no longer there. Even though religious education in the public schools is a negative, it reminds the Jewish student that he is Jewish."-Mira Koschitzky.

But, even as the Jewish community's size and positive profile grew generally, there remained a certain irony implicit in its opposition to religious education. Since the inception of compulsory religious education in the public schools, the Jewish community had been the Drew Regulation's most outspoken and consistent opponent. Yet, for all its organisation and much vaunted political know-how, the Jewish community had not triumphed. Although time had witnessed certain de facto changes to the practical application of the Drew Regulation, especially exemptions for larger urban school boards, the Provincial government was not, as yet, prepared to endorse any changes in the law. Deputations, briefs and protests had effected some movement in public opinion, but not enough or enough in the places that mattered--where the government's voter base rested.⁴⁷ By the early 1980s there seemed only one option left. Those opposed to the Drew Regulation began to seriously eye the courts.

⁴⁷ The Conservative government's own civil servants were equally ineffective in influencing the government to make changes to the Drew Regulation in the face of the entrenched position of its voter base. In 1975, a legislative committee received a Ministry of Education staff recommendation that "the present course of study in religious education in the elementary schools of Ontario be discontinued, and that its aims as set out in related legislation, programs of studies, regulations and guide books, be abandoned." In 1980, a Ministry of Education report recommended wholesale changes to the Drew Regulation. These recommendations were never pursued. PAO, Ministry of Education Papers, RG2-82-5, Acc. 17195, Box 4. File: Religious Education, General, 1977. Memorandum from W. E. P. Fleck to Members of the Committee on the Teaching of Religion in Ontario, January 3, 1975. PAO, Ministry of Education Papers, RG2-303, Acc. 20129, Box 5. File: Ministry-Internal, 1980, Volume 2(b), (Religious Education/ Morals/Values). The Summary Report of the Ministry Response to Bulletin 1980 D. M. No. 23 .

CHAPTER EIGHT

RELIGION, PUBLIC SCHOOL AND THE LAW

In a pluralistic society, given the idea of religious liberty to which the country is constitutionally dedicated, solutions that will protect the rights of all persons can be found only in the legal context.¹

Often during the first four decades of the Drew Regulation the Jewish opposition flirted with the possibility of legal redress. The flirtation never managed to blossom into a full-fledged romance. In their early years Congress, abetted by the EEA and the CCLA, did not have the funds nor sufficient motivation to launch legal actions when the results were uncertain at best.² Aside from the issue of cost, the practical task of mounting a legal action received little support, particularly from those in the Jewish community charged with decision-making authority.³ Their reserve was rooted outside the legal realm. They wavered for fear that a test case would inevitably shift the focus to the parties to the action, likely to be Jews, and away from the Drew Regulation and the injustice of continued government enforcement of the Regulation. This was a significant deterrent because the anti-Drew Regulation position was at odds with the position

¹ Richard C. McMillan, Religion in the Public Schools: An Introduction (Macon, Georgia: Mercer University Press, 1984), ix. McMillan wrote this monograph for parish ministers willing to accept the proposition that individuals in a free society have a right to choose religious faith without public pressure. He concluded that the relationship between religion and government could only be viewed within a legal context.

² This was particularly so when their opponents would be the Provincial government, the proverbial deep-pockets litigant. Non-legal approaches such as the Wilmington Public School canvass orchestrated by Congress in the late 1950's and the Gosfield South hearing promoted by the EEA in 1966, depended upon volunteer support, were relatively short term and therefore, not costly.

³ Professor H. Allan Leal, Dean of Osgoode Hall Law School, Professor Harry Arthurs, a future Dean of Osgoode Hall Law School and Professor Frank Scott, Dean of the McGill Law School, all advocated a litigious approach to the Drew Regulation. However, the JCRC's Legal Committee, comprised of a number of excellent legal practitioners and academics, was not convinced to proceed in this manner.

known to be held by the larger Ontario community--another reminder that, justified or not, many Jews still felt themselves vulnerable outsiders.⁴

But on a practical level, a major stumbling block to a test case was the glaring lack of statute law and precedent upon which to base an action. Unwilling to proceed on the basis of far-fetched arguments founded upon obscure statutes and questionable case law, proponents of a legal approach looked with envy at the experience in the United States. In the process, they learned that whereas they could look to the United States, they could not touch. For although there were countless similarities shared by Canadians and Americans, particularly cultural and social ones, there were as well, major differences. Significant among these differences was the relationship between church and state. American constitutional law and practice spoke of the separation of church and state. On the other hand, the glaring absence of any reference to such a separation in Canadian constitutional law spoke to the yawning chasm between the two countries that would have to be bridged before the language of separation of church and state could be employed for Canadian purposes. Since the Drew Regulation appeared, however, Jewish opposition failed to be intimidated by this obvious barrier. Some like Rabbi Feinberg, were blinded by their own American upbringing. Other Congress activists were subjected to the influential although not necessarily applicable opinions of American experts.⁵ Yet, still others, like Harry Arthurs, recognised that the American experience was a trap insofar as it could not be

⁴ This was not to suggest that the Jewish community avoided all contentious issues. To the contrary. For instance, the Jewish community was instrumental in pursuing the case of Noble and Wolf v. Alley, which involved restrictive covenants against selling land to Jews, all the way to a successful conclusion in the Supreme Court of Canada (1951).

⁵ Congress' 15th Annual Regional Conference in St. Catherines promised to answer the question "What Should The Parents Really Do About Religious Education In Public Schools?" The advertisement for the Conference listed several possible responses including exploring the legal position of the separation of church and state. The discussion was led by Professor Isadore Chein, a Social Scientist from New York University. OJA, JCRC Papers, MG8/S, Box 19, File 3A. Conference Bulletin, 15th Regional Conference, November 6 and 7, 1954.

depended upon to convince Canadian jurists. The brief overview of the historical background of the American First Amendment that follows is designed to assist in the development of a fuller appreciation of the merit in distinguishing the Canadian experience from that of the United States. At the same time, the First Amendment's progress as a vehicle in the struggle over religion in American public schools, its treatment by the American Supreme Court and the reaction of the American people to the pronouncements of that Court will serve to contextualise the Drew Regulation's ultimate test before Ontario's courts.

THE FIRST AMENDMENT: A LEGAL HOOK

The First Amendment to the United States Constitution, which is also the first section of the American Bill of Rights, essentially prevents the American Congress from establishing or otherwise benefiting or privileging any religion. It states:

Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof.⁶

As a result of the Fourteenth Amendment, passed after the American Civil War, the First Amendment could apply equally to the acts of all state legislatures.⁷ While the Bill of Rights was intended to protect citizens from unjust laws the First Amendment, specifically, dealt with religious aspects of Americans' lives and became a medium for ensuring the separation of church and state.

⁶ December 15, 1791, cited in Donald E. Boles, The Bible, Religion and the Public Schools (Ames, Iowa: Iowa University Press, 1961), 1.

⁷ July 21, 1868. The Fourteenth Amendment states that "no state shall make or enforce any law which shall abridge the privileges of the citizens of the United States; nor...deprive any person within its jurisdiction of the equal protection of the laws [of the state]." Boles, The Bible, Religion and the Public Schools, 1.

From the beginnings of colonisation in what was to become the United States, rarely was there unanimity with respect to the relationship between political and religious authority. One would have thought that many of the early colonists who had fled from religious persecution of one kind or another would have considered the concept of established religion as anathema.⁸ Yet, often, they set up governments in the Colonies that enshrined one religious sect or another. It was said, for example, of the early Massachusetts colonists that, for them “The Trinity was as real as Plymouth Rock and just as granatic.”⁹ One established a church in many different ways. Indicators of “established” included state subsidisation of the church either by the allocation of tax monies or land or enforcement by the state of church doctrines by punishment of offenders. But, unlike the Anglican Church in England, no one church could claim to be the only established church. For example, the Anglican Church was established in Virginia, Georgia and the Carolinas, and the Calvinist Congregational Church was established in New England.¹⁰ Eventually, during the 18th century, establishment perspectives were exchanged for a separationist outlook, one that strove to distinguish church from state. This change was encouraged by the growth of unestablished denominations such as Baptists, Presbyterians and Methodists, all of whom emphasised personal religious freedom.

The multiplicity of religious faiths grew with the continued immigration of the first half of the 18th century. This served only to emphasise the distinction between the establishment and separationist views, the latter benefiting more in numbers from the arrival of these immigrants.

⁸ The term “established” is used in the sense of “favoured.” It has been suggested that even if colonists came to America seeking religious freedom, this was a freedom that was personal to them. These colonists were not tolerant, particularly to others who worshipped differently than they did. Religious tolerance then, was not part of the tradition brought by colonists to America. Lynda Beck Fenwick, Should The Children Pray? (Waco, Texas: Markham Press Fund, 1989), 11.

⁹ Paul Blanshard, Religion and the Schools: The Great Controversy (Boston: Beacon Press, 1963), 9.

¹⁰ Cynthia Stokes Brown, “No Amen For School Prayer,” Learning, 12, No. 1 (August, 1983), 42-43.

The influence of these new arrivals was not lost on the framers of the Bill of Rights, men such as Thomas Paine, Thomas Jefferson and James Madison. Religious dissenters and followers of secular humanism argued persuasively for the overthrow of the established churches by the acceptance of the principle of separation of church and state. In fact, the predominance of this line of thinking was so strong that many states refused to sign the United States Constitution absent the promise that there would be amendments guaranteeing individual rights, especially those concerning freedom of religion.

Despite its ostensibly simple wording, the First Amendment's religion clauses evoked a controversial history.¹¹ What passed for simple was almost purposefully vague. In this manner, various interpretations of the essence of establishment and free exercise could be entertained.¹² Nominally, the First Amendment prevented any preference in favour of religion as well as ensuring that no one could be disadvantaged because of his religion.¹³ But its essential purpose was to protect freedom of conscience and religious liberty.¹⁴ This followed from the fact that many of the Bill of Rights' framers were products of the Protestant enlightenment and considered religion a matter of personal conscience. Of course, this did not prevent religion from fulfilling a central role in assisting governments to maintain order in society. What gradually

¹¹ Philip E. Johnson, "Concepts and Compromise in First Amendment Religious Doctrine," California Law Review, 72, (1984), 817-846.

¹² H. Jefferson Powell, "The Original Understanding of Original Intent," Harvard Law Review, 98, (1985), 885-948. Powell concludes a lengthy review of materials on the framers of the First Amendment with the determination that the framers intended the words of the First Amendment to stand for themselves.

¹³ Each aspect was given equal weight so that neither the religious nor the non-religious was singled out for special treatment. Abington School District v. Schempp, 374 U. S. 203 (1963), 232.

¹⁴ Leonard W. Levy, Constitutional Opinions: Aspects of the Bill of Rights (New York: Oxford University Press, 1986), 131.

evolved among governing authorities was an accommodationist attitude to religion, pluralism and, for that matter, to those with no religion.¹⁵

There arose one major anomaly in the relationship between the First Amendment and public schooling. In the latter part of the 18th century, there were scarcely any public schools in existence.¹⁶ This precluded any anticipation of the widespread impact on the teaching of religion in public schools. Moreover, when universal, compulsory and state-supported public schooling began to take shape toward the middle of the 19th century, the express purpose for which many of these public schools were formed was to advance the interests of a particular religion.¹⁷ It was only later, when it was recognised that the furnishing of universal, common education was a responsibility of the state, that the state took over these church operated schools.¹⁸ Truth be told, for the period of time when population was relatively religiously homogeneous, the repercussions of a church and state alliance in education were inconsequential. The only issue to be avoided was state supported sectarianism. This was dealt with by excluding sectarian comment on the Bible, while still maintaining Bible study as part and parcel of the curriculum.

¹⁵ Leonard W. Levy, The Establishment Clause: Religion and The First Amendment (Chapel Hill: The University of North Carolina Press, 1994), 172-173.

¹⁶ One of the first American public school systems originated in the Massachusetts Bay Colony in the middle of the seventeenth century. The statute that established these schools was called "Ye Olde Deluder Satan Act". The major purpose of this statute was to teach children to read the Bible to avoid being taken in by Satan. Nicholas Piediscalzi, "Public Education Religion Studies in the United States," Religious Education, 78, No. 2 (March/ April, 1978), 144-158.

¹⁷ Douglas Laycock, "A Survey of Religious Liberty in the United States," Ohio State Law Journal. 47, (1986), 402-451 at 409. Of course, the schools established by the early colonists were generally expected to indoctrinate pupils in Protestant dogma. In the Puritan school system, the public supported a single, established religion and dissenters' schools were not permitted. Boles, The Bible, Religion and the Public Schools, 3-7.

¹⁸ By this time, the Puritans in New England and other sects in other areas were no longer the majority. These demographics led to the ultimate elimination of Protestant indoctrination in the public schools. Boles, The Bible, Religion and the Public Schools, 8-10.

As long as public religious expressions were made within a relatively homogeneous population, that is, as long as the Protestant majority prevailed, there was a *modus vivendi*. This was disturbed by the significant and continuous Roman Catholic immigration after the first quarter of the 19th century.¹⁹ The result was a change in the balance of power in many large communities. For the first time, non-sectarian Protestants were considered a sect themselves.²⁰ The Catholic community even made some concerted and bold attempts to obtain state support for their own Catholic parochial schools. These attempts were unsuccessful. Thereafter, insofar as the public school system was concerned, the American Catholic community focused its efforts on the elimination of Protestant influences in the public school system.²¹ If Catholics were not to be granted their own state supported schools, then they were determined to protect their own children from anti-Catholic indoctrination in the public schools. At the same time, the Catholic community devoted considerable effort and prodigious funds to building a parochial school system without the support of state funding. With no grand scheme to apply to religious

¹⁹ In some states, such as Maryland, an earlier Catholic presence accelerated these problems.

²⁰ The Catholics were not the only religious outsiders. Although it provided a less pervasive threat than the Catholics, the Mormon immigration to the United States in the latter part of the nineteenth century was equally unwelcome. The First Amendment did not protect the Mormons from persecution. Laycock. "A Survey of Religious Liberty in the United States," 417. Laycock points out that in the 1890s in the American West voters were required to swear that they were not Mormons much like the Stuart test oaths imposing civil disabilities on Catholics in seventeenth century England.

²¹ Catholic anti-Protestant strategy included opposition to Bible reading in the public schools. The Protestant dominated public schools used the King James' version of the Bible which Catholics objected to. This objection stemmed from the fact that the King James version was a "Protestant" translation which omitted some aspects of the Catholic canon. In addition the Catholic community objected to religious instruction being given by poorly trained public school teachers. Boles, Bible, Religion and the Public Schools, 190. As Piediscalzi points out, the Catholics were not being overly sensitive. The King James version, in its preface, contains some very derogatory remarks about the Pope. As well, in the latter part of the 19th century, the Protestant insistence upon having their own way with religious education in American public schools actually provoked street battles. In cities such as Cincinnati, a somewhat notorious altercation became known as the Rifle War and in Philadelphia, people were killed over the issue of which translation of the Bible was to be read in school. In New York City, the Bishop of New York actually hired troops to protect his churches because a church had been burned down in Philadelphia. Nicholas Piediscalzi, "Public Education Religious Studies in the United States," 145.

education in public schools, save where the Catholic community made a fuss, religious education in the public schools was left to be dealt with as a form of local option.

Remarkably, for almost a century and a half after the proclamation of the First Amendment, this hallmark of American civil liberty was seldom called upon in the courts. Many factors were at play here. Conflict was kept to a minimum because of local option, many communities were in fact virtually homogeneous and many recent immigrants were reticent to oppose the status quo. Because the Catholic Church served the largest non-conformist constituency in the United States, other non-Protestants were amenable to permitting the Catholic Church to serve as watch-dog over any spread in the influence of Protestantism. The Church was aided, somewhat curiously, by the forces of secularism and humanism. In the result, this combination of circumstances led both to a general acceptance of the principle of separation of church and state, and a communal tendency to turning a blind eye to its widespread breach.²² Somehow, for a long time there was no perceived need to call upon the protection promised by the First Amendment.

When the legal attack finally began, it produced a raft of contradictory court decisions based on a variety of local policies and state laws. As early as 1850, the Ohio State Supreme Court upheld a decision of the Board of Education of the City of Cincinnati to eliminate prayer,

²² From the passing of the First Amendment until 1912 there was "a gradual but widespread elimination of religious and church influences from public education...[due to]...the sacred regard by the state for the religious opinion of the individual citizen." During that period, religious teaching was not legislated but rather a matter of practice. There was, however, considerable late 19th century state legislation which 1). prohibited religious or sectarian instruction in public schools, 2). forbade sectarian text books, and 3). forbade the establishment of religious tests. Samuel Windsor Brown, The Secularization of American Education (New York: Russell and Russell, 1967-a re-issue of the 1912 publication), 56-67, 68-81, 82ff.

Bible reading, hymns and other sectarian religion from the classroom.²³ A similar decision was confirmed by the Illinois Supreme Court in 1910.²⁴ But, for some time, the Supreme Court of the United States refused to accept jurisdiction in these cases claiming that the cases lacked federal substance.²⁵ Furthermore, because the First Amendment only made reference to Congress, it was argued that the federal court lacked the jurisdiction to deal with state legislation respecting issues of church and state.²⁶ This changed in 1940 when the Court held that First Amendment guarantees were applicable to actions by State legislatures by virtue of the Fourteenth Amendment.²⁷

Once the nation's highest federal court agreed to accept jurisdiction over matters of religion and state, First Amendment considerations were regularly brought to bear upon public schooling issues in the United States. Aside from the jurisdictional issue, many other factors contributed to the sudden appearance of the First Amendment in this context after a century and a half hibernation, including:

²³ Boardman W. Kathan, "Prayer and the Public Schools: The Issue in Historical Perspective and Implications for Religious Education Today," Religious Education, 84, No. 3 (Spring, 1989), 243 and Anson Phelps Stokes, Church and State in the United States Volume II (New York: Harper and Brothers, 1950), 562. Stokes calls the case, John D. Minor v. Board of Education, "one of the most important decisions in the relation between Church and State in this country." There were not many to choose from. An exhaustive review of religious education prior to 1912 turned up 30 cases decided from 1850-1912 by state supreme courts of 21 different states that dealt with the proper relationship of religion and public education. The tally was pro-secular-17 and pro-religious-13. Brown, The Secularization of American Education, 82 ff.

²⁴ This case also discussed a provision for exemption. The court decided that exemption excludes the "pupil from this part of the school exercise in which the rest of the school joins, separates him from his fellows, puts him in a class by himself, deprives him of his equality with the other pupils, subjects him to a religious stigma and places him at a disadvantage in the school..." Brown, The Secularization of American Education, 139-140.

²⁵ For example, State of Washington ex rel Clithero v. Showalter, 284 U.S. 573 (1931).

²⁶ Barron v. Baltimore, 32 U. S. 244 (1833). The court determined that every state has its own constitution and may provide whatever limits it chooses.

²⁷ Cantwell v. Connecticut, 310 U. S. 296 (1940).

- 1) Exponential increases in serious crimes from the late 1930's to the late 1940's,
- 2) Certain experiences in World War II contributing to less regard for law and order,
- 3) The disintegration of the American home, and
- 4) An increase in juvenile delinquency.²⁸

These factors and others created the impetus for a series of cases to be brought before the United States Supreme Court from 1946 through 1963. After having occupied a back-seat for such a protracted period of time, in less than twenty years the Supreme Court of the United States became a leading policy-maker for the role of religion in the United States. In the process, the Supreme Court

firmed and buttressed the constitutional wall of separation between church and state as championed by Thomas Jefferson until the position of religion in education...has become one of the hottest legal issues in American life today...[for] partly because of this new legal definiteness, we are now in a period of crisis in the history of religion and education... [1963].²⁹

The first of these cases, Everson v. Board of Education, responded to the specific question of whether Catholic parents who sent their children to Catholic parochial schools could be reimbursed for the cost of school bus transportation from municipal funds.³⁰ Invoking the First Amendment's rejection of the preference of one church over other churches, the Court determined that failing to reimburse the Catholic parents in these circumstances would have been

²⁸ Clyde Lamont Hay, The Blind Spot in American Public Education (New York: The McMillan Company, 1950), 3-10. Donald E. Boles took the opposite position arguing that there was no conclusive evidence that the absence of religious instruction contributed to any of these problems. Moreover, he objected to teaching religion in public schools because of the potential for proselytisation as well as the abdication of the function of the home and the church. Boles, Bible, Religion and the Schools, 245-247.

²⁹ Blanshard, Religion and the Schools: The Great Controversy, 7.

³⁰ 330 U.S. 1 (1947).

discriminatory.³¹ While it was at it, the Court also confirmed that the establishment clause applied to state and local government entities and not just the federal government. This not only validated an earlier decision giving the Supreme Court jurisdiction in cases such as this.³² It also removed local option as a matter of right, and gave non-conformists a cause of action, no matter what the religious composition of their community might be.

The next case to attract widespread interest was McCollum v. Board of Education.³³ This case revolved around the issue of “released time,” a program which allowed for various denominations to operate religious education classes within the school day and within the school premises. Once these classes were specifically requested by their parents, public school students were permitted to attend such classes. Released time was the most recent in a series of experiments by church leaders. Previous attempts were made to address religious education through Sunday Schools, Saturday Schools, Vacation Schools and after-school programs. None of these succeeded. For the vast majority of public school families, religious education was relegated to a minor role, akin to “piano lessons.” It was in its response to these attitudes that released time found favour among proponents of religious education in American public schools. The use of released time was designed to shift the emphasis of religious education from a filler program in the timetable to one with an elevated profile. Released time addressed the issue of the relative importance of religious education by having the instruction during the young person’s

³¹ In essence, the Court decided that this was a transportation and public safety issue rather than a religious issue. Although some saw the Everson case making a statement for the imposition of the establishment clause, others have seen it as marking the “thin edge of the wedge... [and a] rationalization of further demands on the public till.” Samuel Rabinove, Legal director of the American Jewish Committee, in David Dalin (ed.), American Jews and the Separationist Faith: The New Debate on Religion in Public Life (Washington, D.C.: Ethics and Public Policy Centre, 1992), 116.

³² Cantwell v. Connecticut, (1940).

³³ 333 U. S. 203 (1948).

“business hours.”³⁴ This was accomplished by arranging for the public schools to release some of the valuable time during which they had the care and control of the students in favour of the churches. Initially, the programs were conducted in the church buildings on Wednesdays. But, beginning in 1915 in schools in Gary, Indiana, released time religious education programs found their way into actual public school buildings.

The religious education program in the McCullum case was the product of the Champaign County Council of Religious Education, a voluntary association of Jewish, Roman Catholic and Protestant parents. The Council took responsibility for all program costs. The lessons, materials and curriculum, which were selected by representatives of the Council, generally dealt with Biblical readings without interpretation. This did not impress Mrs. McCollum.³⁵ She instituted the original action against the Champaign Board of Education, because her son, the only member of his class who chose not to be a participant in this program, was made to feel excluded by it.³⁶

The Supreme Court characterised the Champaign County program of religious education as intricately woven into the working scheme of the school. Because of this arrangement, the Court perceived that the school was able to exert considerable pressure in the interest of religion. The fact that the pressure was not used to discriminate *against* any one or *in favour of* any one religion was irrelevant. According to the Court in McCullum, the First Amendment required public bodies to abstain from “the fusion of secular and religious activities by government

³⁴ Duker, The Public Schools and Religion: The Legal Context, 119-122.

³⁵ Religion, in general, offended Mrs. McCollum. Calling herself a rationalist and an atheist, Mrs. McCollum attacked the released time program strenuously. To be fair, she attacked both Christianity and Judaism alike. Cohen, Jews in Christian America. The Pursuit of Religious Equality, 141.

³⁶ Mrs. McCollum describes the case and her trials and tribulations in choosing to challenge released time in the courts in Vashti Cromwell McCollum, One Woman’s Fight (Boston: Beacon Press, 1952).

itself...and especially through its educational agencies..."³⁷ The treatment of all religions equally in this context was not sufficient to convince the Court of the acceptability of the Board of Education's actions.

McCullum together with the case of Brown v. Board of Education are often referred to as the Magna Carta of the American public school system; McCullum for assuring equality to religious minorities and Brown for assuring equality to racial minorities. Magna Carta or not, McCullum provoked a widespread reaction. Some Protestant leaders were critical because the American public school system had been Protestant before it was public.³⁸ Even so, the Protestant critique was relatively mild. This could be taken as an indication of the commitment of American Protestants to the principle of the separation of church and state. A secular public school system was an integral part of such a principle.³⁹

On the other hand, the reaction from the Catholic Church was far less yielding. The Supreme Court ruling in McCullum was condemned by the Church as an establishment of secularism. For years thereafter, the Church waged a strong campaign to reverse what they saw as an anti-religious trend in public education. In the process, the Jewish community became an

³⁷ Frankfurter J., concurring in the majority opinion in McCullum, 333 U.S. 1 (1948).

³⁸ The decision was called, among other things, a "green light to atheism." and seen as having "embarrassed the whole released time enterprise." Hay, The Blind Spot in American Public Education, 54-58.

³⁹ Part of the reason the criticism was so mild was that, in many cases where the communities were relatively homogeneous, released time programs continued after McCullum. It was estimated that in 1950 three thousand communities involving student enrolment in excess of two and one half million public school pupils, were enrolled in released time programs. Hay, The Blind Spot in American Public Education, 21-24. Obviously, Protestants could have chosen to open their own parochial schools as Catholics had done. According to some Protestant spokespersons, the failure to do so was not due to lack of resources, but rather that "devotion to their own faith [was] not equal to it...Virtually the entire adult membership of our Protestant churches is the product of the public school. Such a membership cannot be expected to rise to any high responsibility to provide an education to their children which they themselves did not receive." Charles Clayton Morrison, "Protestantism and the Public School," Christian Century, 63, No. 1 (April, 1946), 490-493.

adversary of the Church. This scenario became inevitable because after World War II Jews in the United States were more willing to risk exposure in advocating for social justice. Naomi W. Cohen attributes this to “disparate stimuli” such as

the assertiveness of a generation imbued with the confidence of native-born Americans and pride in the state of Israel; the lessons of Nazism and the Holocaust, which underscored the urgency of shoring up Jewish security; and the New Deal’s legacy of an activist government where experts planned for the extension of economic and social democracy.⁴⁰

This was reflected in disproportionate activity on the part of the American Jewish Congress, the American Jewish Committee and the Anti-Defamation League of the B’nai Brith in areas of church and state which these organisations viewed as discriminatory.⁴¹ It was this new-found activism that prompted the National Community Relations Advisory Council of the American Jewish Congress to intervene in the McCullum case in opposition to the released time program.⁴² Ultimately, this intervention aligned the Jewish community with the American Civil Liberties Union, the Seventh Day Adventists, Unitarians and others. It also made an enemy of the Catholic Church which viewed McCullum decision advocates as spokespersons for godlessness in the United States.

A few years after McCullum, with the Zorach case, released time was offered a second chance by the Supreme Court. The result was a slight pull-back from the earlier position in McCullum. Because, in Zorach, the religious education of the New York State pupils took place in religious centres of their choice, *outside school premises*, the Court determined that there was

⁴⁰ Cohen, Jews in Christian America. The Pursuit of Religious Equality, 123.

⁴¹ Until this time, much of the resources of these organisations were channelled into monitoring anti-Semitism. Some felt that following World War II anti-Semitism in the United States was in decline. Charles H. Stember et al., Jews in the Mind of America (New York: Basic Books, 1966), 7-10.

⁴² The NCRAC brief was drafted by the Assistant Director of American Jewish Congress’ Commission on Law and Social Action, Leo Pfeffer, who subsequently earned a reputation as a leading authority in matters of church and state. Leo Pfeffer, Church, State and Freedom (Boston: Beacon Press, 1953), 318.

no violation of the First Amendment. State funds were not being used, even impliedly, in this off-campus endeavour.⁴³ Speaking for the majority in Zorach, Mr. Justice Douglas emphasised the importance of religion in the United States, stating that “we [Americans] are a religious people whose institutions pre-suppose a Supreme Being.” This boarding of the religious bandwagon was a product of its times. The Zorach case was heard at the height of the McCarthy era in American politics. Senator Joseph McCarthy and his supporters saw communism as being pervasive in the United States. The Supreme Court, in turn, responded to this feeling. Clearly, the decision in Zorach was the Supreme Court’s affirmation of the American people’s loyalty to religious values and its rejection of atheistic communism.⁴⁴

In the balance of the decade following the Zorach case, the federal government made several conciliatory gestures to the religious lobby.⁴⁵ The phrase “under God” was added to the pledge of allegiance to the flag. The motto “In God we Trust” was initiated. The “prayer for peace” cancellation stamp was issued.⁴⁶ Presidents of the United States became conspicuous church-goers, Cabinet meetings opened with a prayer, and prayer became associated with labour, sports and business organisations. All of these acts were reflective of a period of extensive public

⁴³ Zorach v. Clausen, 343 U.S. 306 (1952). In his analysis of Zorach, Leonard Levy found the case indistinguishable from McCullum. Levy suggested that the Supreme Court distinguished the cases because it confused an objection to compulsion with an objection to religion. Levy, The Establishment Clause: Religion and the First Amendment, 181.

⁴⁴ Cohen, Jews in Christian America. The Pursuit of Religious Equality, 148-150.

⁴⁵ These gestures confirm the view that “When Supreme Court decisions are considered within the historical context of the times in which they were rendered, [usually, it is] seen that there was a movement within the nation toward the decision.” Fenwick, Should the Children Pray? 121.

⁴⁶ Fenwick. Should The Children Pray? 178. Fenwick questions whether these symbols did any thing to enhance the spiritual lives of Americans. She concludes that they probably served to trivialise spiritual concepts to such an extent that the religious connection would eventually go unnoticed.

religiosity in the United States.⁴⁷ As a result, this was not a time when separationists were made welcome in public settings. Jewish defence organisations observed this uncomfortable atmosphere even during the planning stages of the Zorach case. This contributed to the bail-out from this intervention by the rest of these organisations, except for American Jewish Congress. Nevertheless, many Christian clergy, and particularly Catholics, continued to associate the Jews with the villains of their anti-atheists and secularists campaign.⁴⁸

American mainstream institutions maintained the religious party line for almost a decade after Zorach. Then, in 1962, the case of Engel v. Vitale, provided the Supreme Court with another opportunity to change its mind.⁴⁹ The New York State Board of Regents, the body governing New York State public schools, had attempted to please all elements within its constituent communities by formulating a bi-partisan prayer. In accordance with a “Statement on Moral and Spiritual Training in the Schools,” the Regents recommended the prayer which read as follows:

Almighty God, we acknowledge our dependence upon Thee and we beg Thy blessings upon us, our parents, our teachers and our country.

In 1958, recitation of this prayer, which was entirely voluntary, was approved by the New Hyde Park Board of Education in Long, Island, New York. A coalition of minority parents complained, pursuing their cause all the way to the United States Supreme Court. The Supreme Court found that this prayer violated the First Amendment. The Regents’ Prayer was deemed an attempt to enlarge Pan-Protestantism and Pan-Christianity into Pan-religion through a catch-all “to whom-

⁴⁷ OJA, JCRC Papers, MG8/S, File 13C, Religious Education in the Public Schools Sub-Committee, 1959. Leo Pfeffer, “Religion, The Public Schools and the Jewish Community. A Thirteen Year Review, 1946-1959.” A Paper presented to the Conference for a Re-assessment of Strategies and Approaches in Implementing Policies on Religion and the Public Schools, Washington D. C., December 13-15, 1959.

⁴⁸ Pfeffer, Church, State and Freedom, 385.

⁴⁹ 370 U.S. 421 (1962).

it-may-concern” prayer. Because the prayer was a religious activity, the Court found it to be in contravention of the establishment clause of the First Amendment.⁵⁰ The fact that it was voluntary made it no more acceptable. Because children were susceptible to peer pressure in these situations, there was no real choice available. Either you participated in the prayer or you appeared godless.

There was a mixed response to Engel v. Vitale, commonly referred to as the Regents’ Prayer decision.⁵¹ To those who advocated for a place for religion in public places, including schools, without preferring any specific sect over another, this was a blow.⁵² To the liberal press as represented by The Washington Post it was “an act of liberation.” To the Jewish community, after Zorach had depleted the gains made in McCullum, the Regents’ Prayer decision was a most important legal breakthrough. “It frees school children from...forced participation in an act of worship.”⁵³ To Protestants leaders, reaction ranged from “horror to delight.” To American politicians, especially Congressmen from the South, the decision was abhorrent. They attacked the decision, as did certain high profile religious leaders such as the Evangelist, Billy Graham,

⁵⁰ Freund, Religion and the Public Schools: The Legal Issue, 11-15.

⁵¹ Paul Blanshard, an advocate for a common sense approach to this issue, viewed the Regents’ Prayer case as trivial in that it did not deal with any major theological issue. As well, no issues of the public purse were involved. Because “most” Americans were “neutral” on the subject of prayer, because the prayer was voluntary, and not sectarian in that it did not represent a particular “brand” of religion, Blanshard felt that this was the wrong issue on which the Court should take a stand. Furthermore, he saw this case establishing secularism as a national religion. Blanshard, Religion and the Schools. The Great Controversy, 94-95.

⁵² William Bennett was an example of one who held to this position. As Secretary of Education he sought to restore morality to the public schools. Levy, The Establishment Clause: Religion and the First Amendment, xvi.

⁵³ Leo Pfeffer, although he was a leading legal spokesperson for the Jewish social activist position, was not anxious to join the opposition to the Regents’ Prayer. Pfeffer worried that the Regents’ Prayer was too innocuous and preferred to fight a case against the more sectarian Lord’s Prayer. In the end, Pfeffer did file a brief and the decision in the Regents’ Prayer case made Pfeffer’s argument against the Lord’s Prayer all the stronger. Cohen, Jews in Christian America. The Pursuit of Religious Equality, 168.

and the Catholic leader, Cardinal Spellman. The Regents' Prayer decision also placed the first Catholic President, of the United States, John F. Kennedy, in the awkward position of mediating a potential dispute between the Catholic Church and the state. In the end, President Kennedy finessed this matter. He offered "a very easy remedy and that is to pray ourselves."⁵⁴ President Kennedy's diplomatic approach aside, the same loosening climate in the United States that permitted the election of a Catholic President contributed to a growing assertiveness among many Catholic Americans. Publications such as The Brooklyn Tablet, the official organ of the Brooklyn Diocese of the Catholic Church, linked religious liberalism with communism.⁵⁵ The Catholic magazine, America, criticised Jewish involvement in the case by suggesting that

The time has come for these fellow citizens of ours to decide among themselves what they conceive to be the final objective of the Jewish community in the United States-in a word, what bargain they are willing to strike as one of the minorities in a pluralistic society?⁵⁶

Shortly after the Regents' Prayer decision, the Supreme Court ruled on the case of Abington School District v. Schempp.⁵⁷ The complainants, members of a Unitarian Church in Germantown, Pennsylvania, objected to state legislated reading and the studying of certain verses from the Bible in the public school.⁵⁸ The decision of the Court had two prongs. First, the establishment clause was a bar to state-initiated devotional exercises in public school classrooms as part of a curricular program. Second, the schools were to be encouraged to promote the

⁵⁴ Blanshard, Religion and the Schools: The Great Controversy, 43-74.

⁵⁵ Blanshard, Religion and The Schools: The Great Controversy, 27-29.

⁵⁶ Joseph Richard Preville, "American Jews and the Religion Clauses," Tikkun, 7, No. 2 (March/April, 1992), 30, 89-92.

⁵⁷ 374 U. S. 203 (1963).

⁵⁸ High school student Ellory Schempp demonstrated this objection most dramatically by reading from the Koran while his fellow students listened to verses from the King James Bible over the school's public address system.

objective teaching about religion as part of other school programs. As far as the Supreme Court was concerned, its duty was to protect the separationist position. It followed that “the majority cannot use the machinery of the State to practice its beliefs.”⁵⁹

The Supreme Court’s decisions in the Regents’ Prayer and Schempp cases did not put an end to debate on these issues. But they did succeed in changing the forum from the courtroom to the political arena. There, rhetoric prevailed. Because the Supreme Court was viewed as very much the domain of its Chief Justice, Earl Warren, many Southern states demanded Warren’s impeachment. Furthermore, as many as forty-nine State Governors demanded an amendment to the Constitution to preclude the federal court from taking jurisdiction with respect to religious education in public schools.⁶⁰ For the next two decades, again and again, attempts were made to amend the Constitution so as to permit religious education in the public schools.⁶¹ Although the

⁵⁹ See discussions in Boles, The Bible, Religion and The Schools, 55ff and Blanshard, Religion and the Schools: The Great Controversy, 1-10. Boles reviewed the case from the perspective of a strong separationist whereas Blanshard demonstrated his preference for an American democracy which served as the vehicle of a common American faith. Laycock, “A Survey of Religious Liberty in the United States,” 423, points out that the Court in Schempp could have decided the case summarily by simply following the Regents’ Prayer case. Instead, the Court chose to respond to the protest precipitated by the Regents’ Prayer decision with an opinion that rambled for over 100 pages explaining why the states could not conduct religious exercises consistent with the First Amendment.

⁶⁰ Blanshard, Religion and the Schools: The Great Controversy, 53.

⁶¹ In the seven years following the Schempp decision, in excess of 150 separate Congress resolutions were introduced, all of which were aimed at reversing the impact of Schempp. Angela Rodney Holder, “Old Wine in New Bottles? The Right to Privacy and Future School Prayer Cases,” Journal of Church and State, 12, No. 2 (Spring, 1970), 289-307 at 297.

pro-religion supporters came very close to success, they always fell short of the votes necessary for a constitutional amendment.⁶²

Once again, in reacting to the Schempp decision, the Protestant leadership was not as exercised. On the other hand, true to form, the Catholic community made a public display of its deep disappointment with both the Court and the decision. Major Catholic public figures issued statements condemning the position of the Supreme Court, establishing the Catholic community in the United States as the country's religious conscience.⁶³ In this instance, the Catholic community may have captured the national mood. Despite the fact that a notice of the decision

⁶² The Becker Amendment put forward by Senator Frank Becker of New York, faced heavy opposition from House Judiciary Chairman, Emmanuel Celler, and although ultimately permitted to proceed, never overcame the American Congress' strict procedural hurdles. In 1966 the Dirksen Amendment, sponsored by Senator Everett Dirksen of Illinois, again lacked a two-thirds majority, on this occasion by just nine votes. This did not phase Senator Dirksen who introduced his amendment annually thereafter. In 1971 the amendment missed the two-thirds majority required by the House of Representatives by just twenty-three votes. In 1984 the pro-amendment forces, in a well-orchestrated campaign, filibustered the House of Representatives into an all-night session. They held rallies, demonstrations and prayer vigils at the Capitol and the Supreme Court Building and employed the persuasive talents of celebrities such as Pat Boone and others for letter and telephone drives. The subsequent vote in the Senate still fell eleven votes short of the two-thirds necessary for an amendment. Kathan, "Prayer and the Public Schools: The Issue in Historical Perspective and implications for Religious Education Today", 232-248 at 233-234.

⁶³ Cardinal Cushing of Boston said that the "Communists are enjoying this day," Philadelphia Evening Bulletin, June 18, 1963, cited in Ellis Katz, "Patterns of Compliance With The Schempp Decision," Journal of Public Law, 14, (1965), 396-408 at 398. It is also likely that the Catholic community saw these cases as the advance column in a battle against Catholic declared values respecting abortion, sexual equality and racial issues.

was sent to all school districts by state superintendents of education, actual implementation of the decision was left as essentially a local matter.⁶⁴

As far as the Supreme Court was concerned, the law was clear. These decisions established a basic principle; namely, that governments, at every level, are required to remain strictly neutral in all matters relating to religion. Merely abstaining from a preference toward one religion over another is not, in and of itself, acceptable. The series of cases culminating in Schempp spoke to this clear statement which supported the separation of church and state. By extension, these cases stated clearly the permitted sweep away of religious education from the public schools. Curiously, schools in most states chose not to abide by these decisions.⁶⁵ And since Schempp more or less confirmed the decision that had been made in McCullum, those public schools which persisted in teaching sectarian religion were permitting practices that had been declared unconstitutional since 1948.

What do these actions of American public schools, flying in the face of Supreme Court decisions to the contrary, indicate? Perhaps merely that although the Supreme Court was the last

⁶⁴ Katz, "Patterns of Compliance With The Schempp Decision," 401ff., conducted a survey to ascertain the level of compliance by municipalities. He discovered that there was widespread disdain for the decision. Katz saw this as dispelling a notion, perhaps his own, that society automatically responds to a Supreme Court decision. Katz's research was confirmed by Canadian Law Professor, Harry J. Glasbeek. Glasbeek describes Brown v. Board of Education, a 1954 case in which the American Supreme Court decided in favour of the integration of public schools, as the "high water mark of progressive judicial intervention in the United States." After this decision the American Supreme Court ordered that integration be undertaken with all deliberate speed. These instructions fanned the hopes of the anti-discrimination forces. Some years later the local school board trustees in Topeka, Kansas attempted to enforce integration, citing the Brown v. Board of Education decision in a court proceeding. The irony here was that the Board of Education that the Supreme Court was dealing with in the Brown case some 27 years earlier was the Topeka Board. Harry J. Glasbeek, "Some Strategies for an Unlikely Task: The Progressive Use of the Law," Ottawa Law Review, 21, (1989), 387-418 at 392.

⁶⁵ Katz, "Patterns of Compliance with the Schempp Decision," 396.

word on the law, it was not yet reflective of a national consensus.⁶⁶ As some schools saw things, just because a court, even the highest court in the land, applied the First Amendment to some fact situations was insufficient to resolve issues that struck such sensitive chords. What added to the sensitivity of this controversy over religious education in the public schools of the United States that sparked so many legal cases was that it was not just about religion. True, it was about religious factions testing their limits. But it was also about states abusing their power. In the final analysis, whatever side promoted its own cause found a way to employ the First Amendment as a tool to craft an argument. Religious education, in its myriad applications, was paraded before the United States Supreme Court on a number of occasions. It was difficult to predict what precedent the Court would heed. Sometimes it responded to historical patterns. Sometimes it ignored or distorted them. Sometimes it responded to public opinion. At other times it chose to strike out on its own. But, on the basis of the establishment clause in the First Amendment, it generally came down against religious education in the public schools.⁶⁷ However, even with the First Amendment firmly in place, until such time as the overwhelming opinion of the American

⁶⁶ As recently as 1996 the American Civil Liberties Union, an American civil liberties lobbying group of long standing, felt obliged to publish a joint statement on the current Law concerning Religion in the Public Schools because the "law is not as well known as it should be." Signatories to the joint statement included the American Jewish Congress, the American Jewish Committee, B'nai Brith, the American Ethical Union, the American Humanist Association and a dozen other like-minded organisations. Internet, <<http://www.aclu.org>> Church & State, November 11, 1996.

⁶⁷ Levy, The Establishment Clause: Religion and the First Amendment, 221-222.

people represented by its organised political forces concurred with the spirit of these decisions, the place of religious education in the public schools of the United States was not resolved.⁶⁸

Canadian opponents to religious education in the public schools faced very different obstacles. There was no Canadian equivalent to the First Amendment. The British North America Act which established the Canadian nation did not provide for the separation of church and state. To the contrary, the guarantees of religiously-based schooling in Ontario and Quebec validated those connections. Given the supremacy of the legislature in Ontario, the Drew Regulation not only attracted far-reaching public support but also was well within Canadian political and legal traditions. Therefore, as opponents of the Drew Regulation edged toward court action, they could only dream of having a First Amendment at their disposal. What they did have in its place and stead was a lengthy and continuing trail of evidence of the abuses of religious education in the public schools and a wish to see it end.

⁶⁸ Notwithstanding his own status as a Supreme Court Justice, or possibly because of it, Robert H. Jackson considered the Supreme Court helpless in its attempts at enforcing civil liberties without the co-operation of an enlightened and vigorous public opinion. An admitted Anglophile, Jackson envied British concern for the most "slight invasion of British individual freedom or minority rights by officials of government" and for the fact that, inevitably, this was addressed in Parliament. Jackson applauded the British for not depending upon the courts to resolve these issues as Americans did. Robert H. Jackson, The Supreme Court in the American System of Government (Cambridge: Harvard University Press, 1955), 81-82.

CHAPTER NINE

LAW AND ETHICAL PROPRIETY: CANADA'S CHARTER OF RIGHTS AND FREEDOMS

Even conceding that there is a majority who wants this program and that the majority has a legal right to it, this argument confuses legal right with ethical propriety. Clearly, it is not always ethically proper for the majority to do what it has a legal right to do...Legally, a Parliamentary majority [in the United Kingdom] has the right to burn and sack the City of London. Notwithstanding the legal right to do so, no reasonable person would grant the ethical propriety of such an outrage. In the case of religious education in the public schools, even if there is a majority in favour of it, and even if the majority has a legal right to do what it pleases,...we consider the program an ethical impropriety.¹

Even as the Ethical Education Association made this case before the Mackay Committee, American advocates of the separation of church and state were pressing the issues of religion and public schooling, not before appointed study committees but in the highest court of their land. Why was there such a disparity in approach? In part it was due to the contrast between the American and Canadian legal principles. In a 1962 public address, Professor H. Allan Leal, Dean of Osgoode Hall Law School in Toronto, decrying the difficulties faced by Canadian lawmakers compared with their American counterparts, admitted as much.

One of the basic principles of the Canadian constitution is the supremacy of Parliament...Parliament is not precluded in the exercise of Legislative power by any civil liberties and fundamental freedoms guaranteed to the citizens by a written constitution in striking contrast to the situation in the United States...²

Frustrated by the constraints of Canadian constitutional law, Leal preferred the American model. As well, he admired the pragmatism of American jurists who understood that it was impossible "to delete all references to religion in any scheme of meaningful education."³ But, lest he set a

¹ CCLAA, FF. REL., File 32. Brief of the Ethical Education Association to the Mackay Committee, December 9, 1966.

² CCLAA, FF. REL., File 32. H. Allan Leal. Address at Oakwood Collegiate in Toronto, September 26, 1962.

³ Mr. Justice Jackson in McCullum v. Board of Education, (1948).

poor example, he cautioned Ontarians against falling into the trap of seeing matters only through an American perspective. "However similar the sociological structure in the United States may be to our country...the legal framework by which freedoms are established, preserved and enlarged is strikingly different." In order to stress this distinction, Leal pointed out that the legislation authorising religious education in Ontario involved both religion and education. And, if both religion and education were within the Province's legislative competence, the legal validity of the Provincial legislation could not be questioned because there was no constitutional guarantee over-riding the supremacy of a Provincial legislature. Just as Harry Arthurs had done in his legal memorandum to the Canadian Jewish Congress, Leal cited the Canadian Supreme Court cases of Saumur and Birks to buttress his argument that the Drew Regulation was promulgated for a religious purpose.⁴ Like Arthurs, Leal was obliged to seek relief through the application of an obscure 1851 statute, The Freedom of Worship Act.⁵ Leal claimed that the purpose of that Act as set out in its preamble was to protect religious worship. He also noted that the legislation strictly forbade religious discrimination and religious preference—a legal opening for a case against the Drew Regulation.

But, in the final analysis, Leal jettisoned his legal arguments and was reduced to rhetoric.

I am convinced that, even if the Province has the legislative power, which, as a legal matter, I doubt, the Government ought not to legislate in a manner authorising religious education in public schools. In this, I am only too acutely aware that in some quarters it invites the charge of being sacrilegious, areligious [sic], anti religious or downright paganistic.

⁴ See Arthurs' arguments in Chapter Three above. Presented as an Appendix to the EEA submission to the Mackay Committee, this was re-cycled from an address that Leal had given at Oakwood Collegiate on September 26, 1962. Leal's address was given at approximately the same time that Harry Arthurs was finalising his report to Canadian Jewish Congress. Leal made many references to American precedent while Arthurs did not. The distinction was that whereas Leal was making a speech to draw attention to an issue, stimulate the public consciousness and raise funds for the EEA, Arthurs was giving an opinion for the purpose of contemplated litigation. CCLAA, FF. REL., File 32.

⁵ 1851 c. 175 section 1, subsequently R.S.O. 1897 c. 306, section 1.

In his brief to the Mackay Committee on behalf of the Canadian Civil Liberties Association, Harry Arthurs, now a law professor at the University of Toronto Law School, took Leal's argument one step further. Citing section 1(c) of the Canadian Bill of Rights, Arthurs declared that public support of a particular religion interferes with the religious freedom of those who behave otherwise. Moreover, it creates financial and psychological burdens for them. In his presentation, Arthurs did not restrict himself as he had done in his earlier Canadian Jewish Congress memorandum. This time, he referred to "recent decisions of the Supreme Court of the United States," which he felt demonstrated that a statute such as the Canadian Bill of Rights "may be relied upon to secure the integrity of the public school system against this type of encroachment." Arthurs admitted that the Canadian Bill of Rights lacked the clout of the First Amendment's prohibition against the establishment of religion.⁶ Without the benefit of a bill of rights on the United States model, Arthurs returned to the familiar territory of his Congress brief. Once again, he commandeered the Freedom of Worship Act of 1851, describing this seldom used and somewhat esoteric statute in hyperbolic terms as "a bulwark against state favouritism for a particular religion."

Perhaps the most forceful of Arthurs' arguments was his claim based on historical precedent. Arthurs traced the history of religious education in the Province for the previous hundred and more years. He then argued that the imposition of the Drew Regulations in 1944 was so out of sync with precedent, that to make these substantive changes without changing the legislation and thereby giving the legislature an opportunity to review it, was tantamount to "an illegal ministerial action." In the instance of the Drew Regulation, "Regulations have been

⁶ For a more detailed critique of the Canadian Bill of Rights see pages 278-279 below.

enacted and courses of study promulgated by administrative fiat, without legislative sanction and indeed in the teeth of legislative policy.”⁷

Clearly, without their own rendering of the First Amendment, Canadian legal minds were relegated to arguments that relied on obscure statutes and somewhat esoteric grounds in order to make the case against the Drew Regulation. This was necessary because there was no other existing legal hook upon which to base a case. Lawyers who had actively supported the Jewish opposition to religious education in the past were fully aware of these deficiencies in Ontario/Canadian law. As a result, many of them looked beyond the law for solutions. Alan Borovoy, actively involved in the opposition to the Drew Regulation since the late 1950's, occasionally drafted a legal memorandum for Congress. But he spent much of his time recruiting organisations or individuals to the “cause,” mapping out strategies, seeing to their implementation and drafting briefs to government. Fred Catzman, Sydney Midanik and Sydney Harris struggled with this issue as active members of the JCRC and of the Congress executive. Their legal acumen, albeit useful, was limited to the crafting of resolutions defining the Jewish community's position and the drafting of briefs to Ontario and local officials. The JCRC's Legal Committee, chaired from the late 1950's to the early 1960's by Professor Bora Laskin, gave serious consideration to this issue but always fell short of recommending legal action. In spite of the arguments presented to the Legal Committee by Harry Arthurs in 1962, the opposition forces was offered no encouragement to test the Drew Regulation in the courts. In the absence of an

⁷ The Mackay Committee complimented Arthurs on his legal argument. As four of the six committee members were trained in the law, they may very well have enjoyed the legal diversion. After he finished the Committee asked Arthurs why there had been no test case based on the CCLA arguments. Arthurs responded that the CCLA was preparing one at that time, but had ceased their preparations due to the appointment of the Committee. “In the past our practice of equality has enabled much to be done in the court of public opinion, and it is to be hoped that in this instance the authorities can once more be persuaded to act in a libertarian manner without the necessity of litigation.” PAO, Department of Education Papers, RG2-170, Box 8. Mackay Committee Minutes, February 24, 1967.

effective legal hammer, some form of legislative support that would prop up a case, Ontario's religious education program remained safe from contradiction.

Since Confederation, any lawyer looking for the statutory foundation for a case against compulsory religious education in the public schools had to consult the BNA Act. Section 93 of the BNA Act provided that

In and for each Province, the legislature may exclusively make laws in relation to education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union; and

(3) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor-General in Council from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

This 1867 legislation provided for the protection of those minorities in existence at the time of union, namely, Catholics in Ontario and Protestants in Quebec. But it provided for little else. It was silent on the historic issues of church and state, leaving the field open for a wide array of interpretations. One of these interpretations suggested that whereas Canadians assumed the presence of an unwritten requirement of the separation of church and state, at the same time, they also accepted the essential connection between religious principles and national life. This was described in a peculiarly negative Canadian manner as "legally disestablished religiosity."⁸ Another interpretation emphasised that the BNA Act provided Canadian law and society with a legacy of accommodationism between the church and the state.⁹ Yet another saw that this

⁸ Moir, *Church and State in Canada. 1625-1867*, xiii. From its formulation as a Loyalist asylum, Upper Canada had a religiously pluralistic society in which Anglicans were only a small proportion. Although churches were significant, there were plenty to choose from.

⁹ Pauline Cote, "Religious Minorities and the Charter of Rights and Freedoms in Canada," a Paper prepared for the 45th Annual Meeting of the New York State Political Science Association, New School For Social Research, New York, April 12-13, 1991.

legislation provided proof that the public policy makers of early nineteenth century Canada were greatly influenced by the powerful and dominant sectarian forces of the time.¹⁰

What is eminently clear from a reading of section 93 of the BNA Act is that it does not expressly provide for freedom of religion in sharp contrast to the American Constitution which entrenches religious freedom within the First Amendment. Furthermore, whereas the First Amendment expressly denies the establishment of religion, in Canada, to the contrary, established religions are definitely given some safeguards.¹¹ Nineteenth century Canadian lawmakers never quite caught on to, or were not inclined to concern themselves with, the concept of constitutional guarantees of rights as in the United States Bill of Rights.¹² In the place and stead of constitutional guarantees, Canadians' basic rights were protected by certain traditions of liberty and other political undertakings that supported the supremacy of Parliament and the provincial legislatures.¹³

Even though Canadian law furnished ample evidence of the intention that Canadians' human rights were to be protected, the actual results were uneven at best. When the *Drew Regulations* were instituted in Ontario in 1944, human rights legislation was in its infancy in

¹⁰ Terri A. Sussel, Canada's Legal Revolution: Public Education, The Charter and Human Rights (Toronto: Emond Montgomery Publications Limited, 1995), 136.

¹¹ Irwin Cotler, "Freedom of Conscience and Religion," Gerald-A Beaudoin and Ed Ratushny (eds.), The Canadian Charter of Rights and Freedoms (Toronto: Carswell, 1989), 166.

¹² Save, of course, for very specific guarantees within the BNA Act such as those respecting specific denominational schools and linguistic rights (sections 93 and 133 respectively).

¹³ Gerard V. La Forest. "The Canadian Charter of Rights and Freedoms," Canadian Bar Review, 61, (1983), 19-29 at 20. La Forest, who later served on the Supreme Court of Canada until his retirement in 1997, stressed that the courts, whether or not constitutional guarantees were enacted, had a history of protecting individual rights and freedoms from being arbitrarily abridged by government. This manner of thinking was prominent among those who opposed, in theory, human rights legislation, which they felt was "inappropriate and unnecessary in a parliamentary democracy where rights were appropriately rooted in precedent." Jonathan Branch-Black, "Traditions, Rights and Realities: Legal, De Facto and Symbolic Influences of the Canadian Charter of Rights and Freedoms on the Administration of Education in Canada," unpublished Doctoral Dissertation, University of Toronto, 1993, 20.

Ontario.¹⁴ In that same year, the Ontario Racial Discrimination Act was passed, prohibiting posting of “racist” notices in public places.¹⁵ This followed the Community Halls Act which prohibited discriminatory acts in buildings supported by public funds.¹⁶ In 1950 The Conveyancing and Law of Property Act was amended to provide that restrictive covenants in deeds of land based upon religion, race or ancestry were void.¹⁷ These statutes were evidence of the movement toward entrenching certain civil and human rights. But a comprehensive theme was lacking. Even in the case of the Ontario Human Rights Code. Yes, Ontario boasted that it had the Code, but its influence was negligible.¹⁸

As the small number of statutes dealing with the rights of individuals demonstrated, the idea of guaranteeing rights was continually put in front of provincial and federal legislators during this period.¹⁹ This human rights hodgepodge culminated with the enactment of the

¹⁴ It has been suggested that the United Nations Charter was the first to employ the phrase “human rights and fundamental freedoms” in a major document of international significance. Cohen, “Program or Catchall? A Canadian Rationale,” 556.

¹⁵ R.S.O. 1944 c.51.

¹⁶ S.O. 1936 c. 284.

¹⁷ Arnold Bruner. “Citizen Power: The Story of Ontario Human Rights Legislation,” Viewpoints, 3, No. 1 (Summer, 1981), 4-5. The amendment to the Conveyancing and Law of Property Act only related to future restrictions.

¹⁸ “The Iron Hand in the Velvet Glove,” the title of Walter S. Tarnapolsky’s article on Human Rights Legislation in Canada, is an apt description of the Ontario Human Rights Code. In 1961 the Code consolidated other human rights legislation in the Province to be administered by the Ontario Human Rights Commission. Tarnapolsky, “The Iron Fist in the Velvet Glove,” 565-590.

¹⁹ Examples of these statutes include:

- 1) The Conveyancing and Law of Property Act, R.S.O. 1960 c. 66, s. 22, invalidating covenants concerning the sale, ownership, occupation or use of land because of race, creed, colour, nationality, ancestry or place of origin of any person;
- 2) The Fair Accommodation Practices Act, R.S.O. 1960 c. 131;
- 3) The Fair Employment Practices Act, R.S.O. 1960 c. 132; and
- 4) provisions in the Labour Relations Act, R.S.O. 1960 c. 202.

In toto, these statutes represent an open rejection of the principle of “separate but equal” and an acceptance of the principle “together and equal”. CCLAA, FF. REL., File 32. Appendix to Brief of

Canadian Bill of Rights in 1960.²⁰ The Canadian version could not, by any stretch of the imagination, be compared to the American Bill of Rights. Confined to the federal level, the Canadian Bill of Rights did not apply to provincial legislation. And, as it was not a constitutional statute, it did not limit sovereign power as was the case with the American Bill of Rights. It *did* enjoin the courts to construe statutes so as not to violate certain rights and freedoms set out in the Canadian Bill of Rights. And in some cases, it encouraged the courts to declare a statutory provision inoperative.²¹ This was, however, more the exception than the rule. To add to the somewhat neutral effect of the Canadian Bill of Rights, in the main, the judicial approach to the Bill of Rights tended to be ginger.²² And perhaps that was because it contained a built-in contradiction. On the one hand, the Canadian Bill of Rights was advertised as an expression of Parliamentary self-restraint, providing a guide for judicial interpretation of Acts of Parliament. Yet, its very presence had just the opposite effect on the courts. Because of the Canadian Bill of Rights, courts were often intimidated from using its provisions against the body (Parliament) that prescribed its use. Legislation that courts might otherwise have found to be suspect, was, as a

Ethical Education Association to Mackay Committee.

²⁰ S. C. 1960, c. 44. The desire for a Bill of Rights was far from unanimous. Some disagreed as a matter of principle, arguing that parliamentary democracy by its nature guarantees human rights. Others were concerned about the probable increase in litigation, the de-emphasising of civic responsibilities and the possibility that the Bill of Rights might serve to protect the criminal element instead of and/or at the expense of law-abiding citizens. Branch-Black, "Traditions, Rights and Realities: Legal, De Facto and Symbolic Influences of The Canadian Charter of Rights and Freedoms on the Administration of Education in Canada," 20.

²¹ *R. v. Drybones*, [1970] S.C.R. 282. Here the Supreme Court of Canada decided that section 94 of the Indian Act was unlawful because, by making it an offence for an Indian to be intoxicated in private places off a reserve whereas other citizens could not be so charged, the Indian Act offended the equality guarantees of section 1 b) of the Canadian Bill of Rights.

²² It was the opinion of Mr. Justice LaForest that the effect of the Bill "in terms of judicial protection of rights, has been modest." LaForest pointed out, however, that, having regard to the Canadian tradition of fair-play, it was not going to be likely that there would be an excessive number of statutes that violated fundamental rights. LaForest. "The Canadian Charter of Rights and Freedoms," 22-23.

result, left in place.²³ For opponents of compulsory religious education in the public schools, the Canadian Bill of Rights was something to be waved, something to be quoted, something to prop up an ethical argument. It was definitely not the legal basis upon which to test the validity of the Drew Regulation in court.

Such a legal basis finally surfaced in 1982, amidst much patriotic fanfare, when Canada, at one and the same time, repatriated its Constitution and entrenched within that Constitution, a Charter of Rights and Freedoms.²⁴ Among the fundamental freedoms set out in section 2 of the Charter, to which every Canadian was entitled, were (a) freedom conscience and religion and (b) freedom of thought, belief, opinion and expression. Included in the Charter rights were equality rights which provided that:

every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.²⁵

Moreover, the enforcement of guaranteed rights and freedoms was specifically provided for so that “anyone whose rights or freedoms...have been infringed or denied...[was able] to apply to a court of competent jurisdiction to obtain...[a] remedy....”²⁶

²³ At the time that the Bill of Rights was being drafted, no violation of human rights could be found in any federal legislation save for a provision in the Fisheries Act. On that basis, a criticism of the Bill of Rights, or of the Courts for failing to use it, was compared to a claim that the piracy sections in the Criminal Code were useless because no pirates had been convicted under those sections in years. Elmer A. Driedger, “The Meaning and Effect of the Canadian Bill of Rights: A Draftsman’s Viewpoint,” Ottawa Law Review, 9, (1977), 303-320 at 303-304.

²⁴ The repatriated constitution, The Canada Act 1982 (U.K.) c.11, among other things, left in place the BNA Act of 1867, which meant that education remained within Provincial jurisdiction.

²⁵ See section 15(1). Implementation of this section was delayed for three years, until April, 1985, so that provincial and federal legislation could be amended where necessary to reflect the purport of this provision. There appears to be no study on the Charter similar to Driedger’s on the Bill of Rights detailing how many pieces of legislation required amendment during that time frame, if any.

²⁶ See Section 24(1).

Entrenchment of the Charter within the Canadian Constitution assured that fundamental rights and freedoms would “not be set aside by a transient majority.”²⁷ This contributed to the considerable, although not unanimous, enthusiasm which greeted the Charter. To many, the arrival of the Charter meant that when it came to protecting basic human rights, Canada was finally taking its rightful place with other Western nations.²⁸ Some predicted that the Charter would be instrumental in the creation of a new relationship between legislature and the courts arising from the re-formulation of legislation declared invalid by the Courts.²⁹

But others felt the Charter was just a political move designed to change the decision-making mechanism for protection of fundamental freedoms.³⁰ And still others bemoaned the

²⁷ J.-G. Castel, “The Canadian Charter of Rights and Freedoms,” Canadian Bar Review, 61 (1983), 1-2.

²⁸ W. S. Tarnopolsky, “The Equality Rights in the Canadian Charter of Rights and Freedoms,” Canadian Bar Review, 61, (1983), 243ff.

²⁹ LaForest, “The Canadian Charter of Rights and Freedoms,” 25-29.

³⁰ Peter H. Russell, “The Political Purposes of the Canadian Charter of Rights and Freedoms,” Canadian Bar Review, 61, (1983), 30ff. Russell warned that if Canadians believed that their fundamental freedoms were likely to be afforded better protection just because of the Charter, they had been victimised by false advertising. Results were not guaranteed. Writing over a decade later than Russell, Michael Mandel’s characterisation of the Charter made Russell’s comments seem generous by comparison. Mandel saw the Charter as “pretend law,” because instead of assisting those who have been victimised by the system, by filtering opposition to government actions through the courts it actually strengthened the country’s great social inequities. Mandel contended that this “legalisation of politics” was created by changing the forum for discussion from the legislature to the courts. Michael Mandel, The Charter of Rights and the Legalisation of Politics in Canada (Toronto: Thompson Educational Publishing, Inc., 1994), xi.-5, 43. This is to be distinguished from the reaction of those in the United States who, in their opposition to their Supreme Court’s strict interpretation of the separation of church and state, changed the forum from courtrooms to the political arena. See The First Amendment: A Legal Hook above, p. 266.

continued inaccessibility of the protection of individual rights supposedly provided by the Charter because of the excessive cost of litigation for oppressed or disempowered groups.³¹

Each of these hopes, fears and/or predictions had a measure of validity, which, over time, would be tested. But, initially, for those in need of a statutory hook upon which to hang some litigation, the Charter looked as though it offered immediate relief.³² Unlike the American First Amendment, which, with a few exceptions, was treated with some circumspection insofar as

³¹ There are of course some funds for groups or individuals who cannot pay. But, generally, the process for accessing funding is almost as inaccessible as the litigation itself. Glasbeek, "Some Strategies For an Unlikely Task: The Progressive Use of the Law," 387. Bakan proposes that another reason for the inaccessibility of the Charter for many levels of society is the dominant ideology of the judiciary. "Dominant ideologies," oftentimes the result of elitist backgrounds and social positions, place a certain legitimacy on certain institutions and question others. Bakan, "Constitutional Interpretation and Social Change: You Can't Always Get What You Want (Or Need)," 318-323.

³² In a lengthy article written shortly after the Charter appeared (not all of the article was published), Donald Hambling, a former City Solicitor for Ottawa and by that time semi-retired and living in Collingwood, argued that a case could be made for attacking the Drew Regulation without even looking to the Charter. First, Hambling argued that section 93 of the BNA Act limited the power of the Province to legislate respecting education without any religious component; second, that the Province had invaded federal territory by virtue of the "peace, order and good government" provision of section 91 of the BNA Act which gave residual powers to the federal government which would include religion; and third, the Freedom of Worship Act, which in its preamble recognised legal equality among all religious denominations, conflicted with and superseded section 50 of the Education Act which obliged pupils to participate in sectarian religious instruction. "Is it lawful to teach religion in the public and secondary schools in Ontario?" CCLAA, FF. REL., File 32. Hambling sent the CCLA the complete text of his article, some fifty rambling pages. A shorter version is found in "Religion Has No Place in Ontario's Schoolrooms," Ontario Lawyers Weekly, (September, 1983), 2.

religious education was concerned for an incredibly long time, the Charter of Rights and Freedoms hit the ground running.³³

But the Charter could not make an impact on its own. In order to make inroads against the established program of religious education in Ontario's public schools, the Provincial government would have to accede to some judge-made law. To that end, a succession of Ontario governments had permitted the Drew Regulation to remain more or less as originally constituted four decades earlier, notwithstanding numerous submissions, commissions and committees.³⁴

Following the Mackay Report, although the government refused to officially adopt its recommendations, unofficially, it avoided giving any curricular direction to school boards in the Province. This left religious education in the Province's public schools to be determined by local option. Religious education's abuses were paraded in front of boards of education from South

³³ It is possible that there was some paranoia about American influence on our legal system. Mandel, "The Charter of Rights and the Legalisation of Politics in Canada," 61-62. Mandel saw the Charter as part of the Americanisation of Canada rather than the cause of it. Mandel, who argued that the Americans had almost 40 years experience in this field, did not consider the First Amendment to have any significance until the United States Supreme Court applied First Amendment arguments in religious education cases. This was long before the Charter and long before Canada entered this arena. Mandel claimed that the groundwork for most Canadian Charter decisions was laid by American "state of the Art." To prove his point, Mandel noted that United States jurisprudence and scholarly commentary was cited in almost every Charter decision (to 1994). Mandel is correct although Canadian jurists were not *ad idem* respecting the relationship between American and Canadian jurisprudence. For example, in R. v. Big M Drug Mart Ltd., (1985) 18 D.L.R. (4th) 321, Mr. Justice Dickson claimed, on the one hand, "recourse to categories from American jurisprudence is not particularly helpful in defining the meaning of freedom of conscience and religion under the Charter," (356) and yet concluded that "what unites enunciated freedoms in the American First amendment...is the notion of the centrality of individual conscience and the inappropriateness of governmental intervention to compel or to constrain its manifestation..." (361). For yet another perspective, consider LaForest's prediction that because the institutions in Canada and the United States were so different from one another the Canadian courts would take on a different role from that in the United States. LaForest, "The Charter of Rights and Freedoms," 24-25.

³⁴ Of course, there was no constitutional prohibition against religion in the schools in Ontario or elsewhere in Canada unlike the position in the United States whose First Amendment effectively prohibited religion in the schools. The Charter did not change that distinction between Canada and the United States. Judith C. Anderson, "Effect of Charter of Rights and Freedoms on Provincial School Legislation," in Michael E. Manley-Casimir and Terri A. Sussel (eds.), Courts in the Classroom. Education and the Charter of Rights and Freedoms (Calgary: Detselig Enterprises Limited, 1986), 183-201.

Gosfield to North York to Leeds and Grenville. The response to these representations depended upon the culture of the communities. More and more of these communities were becoming sensitised to the feelings of minorities, but only on an ad hoc basis. Opponents of the Drew Regulation were forced to refight their battle time and time again. This was both frustrating and a waste of talent and energy. A legal ruling would carry with it Province-wide applicability. All that was needed was a willing and viable plaintiff. For all the indignities suffered by Jewish families at the hands of the Drew Regulation, and for all the leadership that the Jewish community had contributed to seeking its ouster, the self-same Jewish community's long-standing reticence to support any attempts to determine whether the Regulation would hold up in court left it outside the ambit of decision making when a test case was finally mounted.

THE ELGIN COUNTY CASE

The Millington family, James and Nancie and their three children, resided in the City of St. Thomas, in Elgin County in south-western Ontario.³⁵ In 1983, Andrea, their eldest child, was a grade two student at Forest Park Elementary School. Forest Park was one of 25 elementary schools in the Elgin County Board of Education, which supervised a total student population of 8,100. During the fall term, Andrea began to experience recurring nightmares from which she would awaken seriously distressed. She described to her parents that in her nightmares she was being pursued by a devil to a fiery furnace called "hell." To the Millingtons, the explanation was as puzzling as the nightmares themselves.

³⁵ Many of the facts of this case, The Corporation of the Canadian Civil Liberties Association v. The Minister of Education and the Elgin County Board of Education, (Elgin County), (1988) 64 O.R. (2d) 577 (Divisional Court), (1990) 71 O.R. (2d) 341 (Ontario Court of Appeal), were obtained from the Court of Appeal File 364/88, Court of Appeal Office, Osgoode Hall, Toronto.

The Millingtons were members of the Baha'i Faith. To a Baha'i, the concept of "hell" exists as a state of mind, not as a physical place. The Millingtons were raising their children in that faith. Where then was Andrea learning about this place called "hell?" When they questioned Andrea, they discovered that she had been taught about "hell" during religious education classes. Not only did Andrea learn about "hell" in these classes, she also learned that she would go to "hell" if she did not profess belief in Jesus.

The Millingtons recognised that this was a serious problem and wrestled with the appropriate response. They decided to explain the bases of some of their personal religious beliefs to their young daughter at a level that she could comprehend. Thereafter, they encouraged Andrea to share these thoughts with her religious education class.³⁶ Andrea balked at this plan. She feared that it would anger her religious education teacher, Mr. Plum. In discussing alternatives with her parents, Andrea was equally unwilling to be withdrawn from these classes anticipating being branded as different from and by her classmates. Despite their serious misgivings, the Millingtons deferred to their daughter's wishes and did not seek to have her exempted. They understood the social dynamics of the classroom and the over-riding concern of their child to "fit in."

On the other hand, the Millingtons did not let the matter rest. Instead, they attempted to find an alternate resolution to the problem that was plaguing their daughter. Initially, they interviewed their daughter's grade 2 teacher who informed them that the religious education teacher, Mr. Plum, had no teaching responsibilities in the school other than religious education. Mr. Plum, a self-described "born-again Christian," proved most forthright but unhelpful. He

³⁶ Among its precepts, Baha'i does not deify Jesus nor does it treat Heaven or Hell as particular places, whether of definite or indefinite extent, but rather as states of mind. Gloria Faizi, The Baha'i Faith, (New Delhi: Baha'i Publishing Trust, 1992).

explained that his credentials for teaching the religious education classes were that he was a member of the Elgin County Bible Club. He professed to no formal or practical teacher training for this job which was, in any event, a volunteer position. The Millingtons found Plum “a very gentle, sincere man who is obviously sacrificing a lot to devote his time and energies to his work.” Nevertheless, in response to a request by the Millingtons that reference to other faith beliefs be included in his classes, Plum made it very clear that he had “no intention or interest to expose the children to any other beliefs as he felt there was only one true way.”³⁷ Having obtained no satisfaction in the classroom, the Millingtons hoped for some relief from the school’s principal. In the fall of 1983, they met with Forest Park’s principal, Mr. Moore, who advised them that Mr. Plum’s teachings were in accordance with and within the parameters of the curriculum provided by the Board. As a consequence, he was powerless to intercede on their behalf. At least Moore’s successor, Mr. Lovelock, offered some prospect of relief when he agreed to observe some of Mr. Plum’s classes. Unfortunately for the Millingtons, as far as Mr. Lovelock was concerned, there was little to criticise in Mr. Plum’s classes as his personal observations indicated that Plum “only talked about the Devil occasionally.”³⁸

Andrea Millington continued to attend Forest Park Elementary through grades 2, 3 and 4. Mr. Plum was her religious education teacher in all three grades. By the time she had reached grade four, Andrea, by now a nine year old, constantly questioned her parents’ personal beliefs. Because of his role as her teacher, Mr. Plum had become a serious threat to the spiritual authority of Andrea’s parents. Three years at Forest Park’s religious education classes made it increasingly

³⁷ From a letter from Nancie and James Millington to the Religious Education Committee for the St. Thomas Board of Education, March 30, 1985, attached as an exhibit to Nancie Millington’s affidavit, July 12, 1986. Elgin County Court of Appeal File 364/88.

³⁸ Elgin County, (1988) 64 O.R. (2d) 577 at 614.

difficult for Andrea to balance Mr. Plum's claims with those of her parents. The Millingtons became increasingly concerned. They asked the Elgin County School Board to amend the curriculum.³⁹ Their request referred to the Mackay Report recommendation that the teaching of religions should be a subject of study rather than a manifestation of faith. Their request was denied.

At this point, the Millingtons were stymied. They had sought assistance from teacher, principal and board and received none. Coincidentally, just prior to the Millingtons' request of the Elgin County Board of Education, the Canadian Civil Liberties Association (the CCLA) wrote to Keith Norton, Minister of Education, complaining about certain excesses in religious education classes in schools within the Elgin County Board of Education. The letter quoted passages from the Elgin County curriculum such as an instruction to teachers to point out to their students that "only through the blood of Jesus can...sin be taken away."⁴⁰ This was not the CCLA's first statement of concern over the abuses of Ontario's religious education program. It had presented briefs to the McRuer Commission on Civil Rights in 1965 and the Mackay Committee in 1966 and had attempted to rally support for the adoption of the Mackay Report in the early 1970's. It had also made a representation to the Toronto Board of Education, in 1979, urging opposition to the enforcement of the regulation requiring the recitation of the Lord's Prayer as part of public school opening exercises.⁴¹

The human rights issue created by the perceived discrimination in the public school classrooms harmonised with the CCLA's mandate. CCLA personnel, on both a professional and

³⁹ Elgin County Court of Appeal File 364/88. Millingtons to St. Thomas Board of Education, March 30, 1985 and re-routed to the Elgin County Board. Sandra Westaway, Superintendent of Education for the Elgin County Board of Education, acknowledged the Millington letter.

⁴⁰ CCLAA, FF. REL., Elgin County File. CCLA to Minister of Education, March 14, 1985.

⁴¹ Alan Borovoy, Interview, March 12, 1997.

lay level, made the fit that much easier. Since May of 1968, Alan Borovoy had been the CCLA's senior professional. Borovoy's personal and professional involvement with religious education included stints with Canadian Jewish Congress and the Ethical Education Association. The first President and honorary life member of the Association, Keiller Mackay, had served as Chairman of the Mackay Committee. Sydney Midanik, a driving force in the creation of the CCLA, was also a long-time member of the JCRC. Harry Arthurs, who also served on the CCLA executive, was the draftsman of the 1962 legal memorandum on religious education to Congress and presented the CCLA's brief to the Mackay Committee. Reverend Donald Gillies, who served for a time as a vice-president of the CCLA, had spear-headed the Ad-Hoc Clergy Committee's participation in the Drew Regulation opposition campaign. Doris Dodds, the first Secretary of the CCLA, was the driving force and the first President of the EEA. These numerous connections served to strengthen the CCLA's roots in the ongoing opposition to religious education in the public schools.

For a long time the CCLA harboured no grand notions that it could effect a change to the status of religious education in Ontario's public schools. Since its own beginnings, the CCLA had received complaints from parents of public school students, like Myrna Metcalf in Delta, Ontario, detailing abuses suffered by their children in religious education classes. Although the CCLA maintained files on these individual incidents, lack of staff and budget rarely permitted a follow-up. In most cases, CCLA staff could only offer a sympathetic ear.⁴²

This all changed when the Charter of Rights and Freedoms was entrenched in the Constitution in 1982. Thereafter, anticipating the spring, 1985 effective date of the Charter's

⁴² CCLAA, FF. REL. Miscellaneous. The files often contain the bare reporting of an incident by the individual(s) involved in the form of a letter or a clipping from a local newspaper or as a brief and sometimes hand-written memorandum of a telephone report to a CCLA staff person. The experience of Myrna Metcalf of Delta, Ontario was not unique.

anti-discrimination provisions, the CCLA's activity level on the religious education scene heated up. The CCLA reviewed publications such as the Toronto Board of Education's Readings and Prayers for use in Toronto Schools.⁴³ It also began to hone some Charter arguments for application to the issue of religious education.⁴⁴ Along with Congress and others, it conducted a spate of surveys that looked into the status of religious education throughout the Province. These surveys provided essential intelligence and information on religious education programs in Ontario's public schools.⁴⁵ Throughout, the CCLA had become more assiduous in monitoring the

⁴³ CCLAA, FF. REL., File 14. Publications.

⁴⁴ On June 25, 1985, Alan Borovoy appeared before the Windsor Roman Catholic Separate School Board (Windsor R.C.S.S.B.) on behalf of the Pervin family of Windsor, Ontario to object to the nature and practice of religious education in the Windsor R.C.S.S.B. The Pervin's 8 year old daughter attended classes in one of the Board's schools even though the Pervins were not Catholic. This arose because Mr. Pervin, who was Jewish, wanted his daughter educated in French which was not offered as the language of instruction in any of the schools within the Windsor Public School Board. In circumstances such as these, the public school boards made arrangements with the Separate School boards to provide access for public school students to the latter boards' French language programs. The Windsor R.C.S.S.B. required all students of Board schools to attend Catholic religious education classes. These classes were clearly designed to indoctrinate students with Catholic religious practices and beliefs. The Pervins objected. Because there was no other Windsor school offering French instruction, there was no option under Windsor R.C.S.S.B. rules and regulations but for their daughter to attend the Catholic school's religious education classes. To add to the Pervin family's agitation, the religious instruction curriculum focused on accusations of Jewish involvement in the crucifixion of Jesus. Borovoy argued before the Windsor R.C.S.S.B. that in the pre-Charter era, non-Catholics attending Catholic schools were entitled to exemption from Catholic instruction. In view of the Charter's guarantees of freedom of religion and conscience, Borovoy argued that the Pervin situation was an *a fortiori* case. While he had the opportunity, Borovoy also asked the Board to amend their religious education curriculum by deleting those aspects which potentially promoted anti-Semitic behaviour. As a result of the CCLA presentation, the Pervin child was exempted from religious education classes. However, the Pervins told Borovoy that, notwithstanding their own success, 120 other non-Catholics in the Windsor R.C.S.S.B. chose not to request exemptions from the religious education program. As well, the Board did not make any changes to the content of its religious education curriculum. CCLAA, FF. REL. Miscellaneous CCLA brief June 25, 1985, CCLA to Windsor R.C.S.S. Board, July 19, 1985 and Pervin to CCLA, September 9, 1985.

⁴⁵ CCLAA, FF. REL., File 9. In October of 1984, the CCLA conducted a survey of 28 School Boards in the Province. The survey found that the lack of Provincial guidelines for religious instruction in the public schools led to many school boards delegating religious instruction in their schools to Bible Clubs. Surveys conducted in December, 1985 and January, 1986 also revealed a dearth of core curriculum documentation. Information for these surveys was obtained by CCLA staff under the pretext that they were collecting research for graduate theses, a ploy used quite often by the CCLA to obtain information from sources which otherwise would not be forthcoming. CCLAA, FF. REL., File 10. Moliner and Bazilli surveys.

experiences of religious education in public schools in communities outside of Toronto. The goal was the possible target for a test case.⁴⁶

The problems were sufficiently widespread throughout the Province that the CCLA was presented with more than one choice. The Northumberland-Newcastle Board of Education was also a potential objective. The CCLA received its introduction to that Board's religious education program from Meira Wheeler of Newtonville, Ontario, a small community near Port Hope, about seventy miles east of Toronto. Wheeler approached the CCLA in March 1984, seeking some guidance and assistance respecting the difficulties she was experiencing with the Dr. Hawkins Public School in her community. Because she opposed the sizeable program of religious education at this school, Wheeler arranged to have her kindergarten-aged son exempted from religious education once he began first grade. Convinced that exemption was a form of religious discrimination, Wheeler asked the Northumberland-Newcastle Board to substitute the existing religious education program with one in comparative religion. This provoked a significant backlash from the local community: "These people [presumably Wheeler who had made the request and who was Jewish] are entitled to their own religious beliefs but nobody invited them to our country."⁴⁷ The Board rejected Wheeler's request.

A disappointed Wheeler held her ground: "The Charter of Rights does guarantee religious freedom and it [religious education] is in contravention of the Charter, in my opinion." Wheeler was convinced that the question of religion on the schools would eventually be settled in the

⁴⁶ At this time, the trustees of the Niagara Falls School Board were reputed to be ardent supporters of the teaching of religious education in public schools. They welcomed the comments of Reverend Robert J. Davies, President of the Niagara Falls Evangelical Ministerial Fellowship who claimed that keeping religious education out of public schools was "the first step to turning Canada into Nazi Germany or the Soviet Union." Niagara Falls Review, November 16, 1983. CCLAA, FF. REL., File 6.

⁴⁷ Toronto Star, December 3, 1984, Frank Jones column, quoting Reverend David Gagnon, a local minister and teacher at the Hawkins Public School.

courts.⁴⁸ In order to accelerate the process, she attempted to raise funds to litigate the matter on her own. She worked on this with a Collingwood lawyer, Donald Hambling, who had previously contributed articles to legal journals on the illegality of the Drew Regulation. Because fundraising proved unsuccessful, Wheeler never did commence a lawsuit. Of course this did not mean that for Wheeler personally, the issue was resolved. To the contrary, still frustrated by the course of events, in June 1985 Wheeler told a CCLA staff person that her son, now seven, resented being removed from religious education classes. She said he asked her if he could remain in class with his friends, telling her: "Mommy, I promise not to listen."

The Wheeler situation never did form part of the CCLA's plans. Perhaps it was because Wheeler was Jewish and the CCLA did not want to focus on a Christian-Jewish clash. Perhaps they did not find the Wheeler story very compelling. Perhaps it was Wheeler's own litigious bent and her unsuccessful attempt at going it alone that turned off the CCLA. Perhaps it was because she had teamed up with Donald Hambling, the Collingwood lawyer and was receiving legal advice from him.⁴⁹ Whatever the reason, the Wheeler's story remained one of many that failed to get resolved at the local level, leaving unhappy parents and children awaiting a satisfactory resolution from a higher level.

Because of the Charter, the CCLA was not alone in its attempts to ferret out abuses from small communities that could form the basis of an action against the Drew Regulation. The Charter also managed to stir up some litigious thoughts in the typically restrained Jewish community. In 1984 two Niagara Falls area parents, frustrated at the attitude of the Niagara

⁴⁸ Cobourg Daily Star, May 3, 1984.

⁴⁹ CCLA's subsequent decision to adopt Elgin County as its test case rather than Northumberland-Newcastle more than likely did not relate to the attractiveness of the Millington story over that of Wheeler, but rather the availability of curriculum materials from Elgin County. CCLAA, FF. REL., Wheeler file and Alan Borovoy, Interview, April 12, 1997.

Board, asked Canadian Jewish Congress to consider invoking the Charter in a court challenge of the Niagara religious education program. While Congress was still shy of court action, it took the matter seriously enough to employ a student during the summer, 1984 to visit several small Jewish communities in Ontario to gather evidence about experiences with religious education. In these communities, including St. Catharines, Niagara Falls and Brantford, most of those interviewed seemed unwilling to rock the boat and resigned to religious instruction in their public schools. Congress accepted these results on their face, unwilling to dispute what precipitated such an attitude. Any thought of mounting a Congress test case was set aside once again. Otherwise super-sensitive to the hint of any slight to individual or group rights to express Jewishness, when it came to religious education, Congress always managed to find a rationale for retreat. In this case, Congress felt that without the enthusiastic support of most local Jews, it was best that Congress not lead in initiating legal action.⁵⁰

The CCLA was not so constrained. Unchallenged in its role as legal advocate for human rights abuses in religious education, and armed with extracts from Elgin County Board of Education curricula for religious education, the CCLA commenced an application for judicial review of the Drew Regulation in 1986. The application requested a Declaration that the Drew Regulation and the Religious Education Curriculum of the Elgin County Board of Education infringed or denied the freedom of conscience and religion and the right to equality before and under the law and the equal protection and benefit of the law guaranteed by sections 2(a) and

⁵⁰ Susan Jackson, Interview, January 31, 1998. See also OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, 1984.

15(1) respectively of the Charter.⁵¹ When the Millingtons and the CCLA became aware of one another, the Millingtons joined the CCLA application.⁵²

Theirs was a perfect match. The Millingtons were anxious to challenge Elgin County's religious education curriculum which had marginalised their daughter. The response they had received at all local education levels was a rigid defence of the majoritarian religious education program prescribed by the Ministry of Education.⁵³ As non-Christians, they felt discriminated against. But as members of the Baha'i faith, a very small faith group in Canada, they had little or no communal support upon which to draw. However, what the Millingtons did have was the sufficiently deep-seated convictions necessary to sustain the emotional staying-power required for a legal action. They had demonstrated this by their willingness to stand up for their principles and to challenge the establishment in their St. Thomas community. For its part, the CCLA, now armed with the Charter of Rights and Freedoms, experienced a re-charging of its batteries as the champion of victims of breaches of civil liberties. Although limited in resources, it had access to

⁵¹ Elgin County, (1988) 64 O.R. (2d) 577. By this time, the Drew Regulation was cited as section 28(4), Regulation 262, Education Act. R.R.O. 1980.

⁵² The CCLA explained to the Millingtons that Robert Sharpe was retained as counsel in the matter and that there would be "no charge to you whatsoever for Mr. Sharpe's services." The Millingtons were assured that they would be indemnified if costs in the action were awarded against them. On the other hand, any costs awarded in their favour would accrue to the benefit of the CCLA. The Millingtons agreed with Sharpe's explanation that the CCLA "will have the primary control over the litigation although, of course, we will keep you advised as to all developments and consult with you regularly as the litigation progresses." CCLAA, FF. REL., Elgin County File. Kenneth P. Swan to James and Nancy (sic) Millington, June 24, 1986. Two other parents, Edith Louise Hough and Elizabeth Sebestyen also asked to be added to the action. Although, initially, Hough and Sebestyen were not deemed crucial to the case, when the Millingtons moved out of the jurisdiction in 1987, the CCLA was pleased to have the other parents in the event they were needed to maintain the cause of action.

⁵³ Even after commencing their joint action, the Millingtons and Borovoy appeared before the Elgin County Board of Education to explain the nature of their concerns regarding the Board's program of religious instruction. The Millingtons continued to urge the Board to cease and desist from its current practices. This meeting may well have planned to lend credence to the bona fides of the Applicants in the action. In any event, the Board refused to provide any assurances to the Millingtons that its practices would change. Elgin County, Court of Appeal File 364/88. Nancie Millington's affidavit.

personnel together with sufficient resources to launch an action. This capability was beyond the reach of most private citizens and certainly beyond that of the Millingtons.⁵⁴

In Ontario's Divisional Court, the Applicants argued that the Drew Regulation had no legislative purpose other than the promotion and inculcation of majoritarian Christian religious beliefs upon pupils enrolled in public schools. This infringed on rights guaranteed under the Charter of Rights and Freedoms. The Applicants were careful not to allege that religious education in itself was constitutionally impermissible. There was, after all, no anti-establishment clause in the Charter. Instead, they objected to the unconstitutionality of Provincial legislation that permitted religious indoctrination in majoritarian beliefs. The Applicants also submitted examples of religious education curricula similar to the Elgin County model in Norfolk County, Frontenac County and in the County of Northumberland and Newcastle. This was done in order to demonstrate that Elgin County was not unique. The Applicants wanted to turn aside any possible claim that the Elgin County abuses did not warrant a Province-wide remedy.

In the Divisional Court, Mr. Justice Austin found merit in the Applicants' arguments. He agreed that the exemption provision itself confirmed the doctrinal nature of the Drew Regulation simply because this was the only instance in the Education Act for which exemption was stipulated. He reasoned that if religious education was, in fact, harmless, it would not merit exemption because no one would be seeking to have their child withdrawn from class. In any event, because he was satisfied that the clear purpose of the enabling legislation was religious

⁵⁴ The major cost factor was not just the services of legal counsel. Many excellent legal counsel were willing to accept cases, *pro bono*, (i.e. without fee, literally, for the good of the community). Any counsel would benefit from resources that the CCLA offered, including, the accumulation of twenty years of evidence, contacts and community resources, a general counsel, Borovoy, with thirty years experience in the opposition campaign against religious education in the public schools and access to clerical and research personnel, both permanent and voluntary, to conduct time-consuming and otherwise costly clerical and investigative chores. Without all this, the prospect of mounting an action against the Ministry of Education and a public board of education would have been out of the question.

indoctrination, Mr. Justice Austin was predisposed to accept the Applicants' argument. "Exercises of devotion or religion" suggested to this judge something much stronger than an objective study of religion.⁵⁵

Unfortunately for the Applicants, Mr. Justice Austin represented the minority opinion in the Divisional Court. The Majority was untroubled by the existence of the exemption provision. The fact that the exemption provision was equally available to Christian and to non-Christian students was, for the Majority, an effective denial of the Applicants' claim that the exemption provision was essentially inequitable. Once over the exemption hurdle, the Majority of the Court reasoned that any who were offended by the Elgin County Board of Education curriculum could withdraw under the exemption provision with impunity. Therefore, the Majority concluded that the Drew Regulation and religious education programs made pursuant to it were perfectly acceptable.⁵⁶

The Divisional Court's ruling which denied the relief requested by the Applicants was released on March 28, 1988. Nevertheless, with the continuing agreement of the Millingtons and the remaining parent Applicants, the CCLA was determined to appeal the decision. Gratified by Mr. Justice Austin's dissent in support of its case, the CCLA felt confident that, on appeal, the arguments accepted by the Majority of the Divisional Court could be overturned. Before mounting this appeal, however, the CCLA and the Millingtons were faced with yet another obstacle, placed in their way, not by opponents but by sympathisers.

⁵⁵ Elgin County, (1988) 64 O. R. (2d) 577 at 702.

⁵⁶ The majority decision of Watt J., Elgin County, (1988) 289 ff.

The obstacle was in the form of another legal action that focused on issues of religion and public schooling. The case was Zylberberg, heard by the Divisional Court in April, 1986.⁵⁷ Unlike Elgin County, Zylberberg did not deal with the religious instruction provisions of the Drew Regulation. Instead, its concern was the required recitation of the Lord's Prayer as a component of the religious exercises in public schools, as permitted generally in Ontario and specifically within schools operated by the Sudbury Board of Education. The Applicants in Zylberberg were parents of children attending public schools in Sudbury. They included Jews, a Moslem and a "non-practising" Christian. Their objection to the content and purpose of religious exercises was not dissimilar from the objection to religious instruction by the Applicants in Elgin County. First, they claimed that the very act of requesting an exemption from the religious exercise portion of the school program put undue pressure on pupils. This left pupils no alternative other than to participate in the religious exercises. Such a result created an infringement of their Charter right to freedom of religion. Second, the impugned curriculum discriminated against non-Christians by prescribing only Christian texts and sources. They claimed that this constituted a breach of the anti-discrimination provision of the Charter.

In delivering the majority judgement of the Divisional Court, Mr Justice O'Leary showed little patience for the claim that the Lord's Prayer was an example of discrimination. Offering the opinion that the requirement to recite the Lord's Prayer was not onerous, Mr. Justice O'Leary made short shrift of the Applicants and their arguments when he rattled off the usual grounds for maintaining the status quo. There were no penal sanctions for non-participants and no provisions for coercing these non-participants. Exemptions were available. If students felt embarrassed by the prospect of being singled-out, embarrassment was a "fact of life." Mr. Justice O'Leary

⁵⁷ Re Zylberberg et al. and Director of Education of the Sudbury Board of Education, (Zylberberg), (1986) 55 O. R. (2d) 749 (Divisional Court).

further reasoned that public schools were obliged to teach morality because the home and the church were not doing so. The conclusion to be drawn from all this was that the inculcation of morality was a legitimate educational objective. If in the process of delivering this objective, the rights of minorities were infringed, such infringement was justified because it was “within reasonable limits.” The foundation of Mr. Justice O’Leary’s judgement was that

Where a country is founded on the principle of the supremacy of God, there is no obligation on the schools to spend the same profit reinforcing the belief of non-believers that God does not exist as in teaching believers about the nature of God.⁵⁸

It was clear where Mr. Justice O’Leary’s sentiments lay. He held no truck with non-believers.⁵⁹ Moreover, no judge who believed that Canada was founded on “the principle of the supremacy of God,” was going to rule against the Lord’s Prayer. As in Elgin County, the Applicants did take some considerable solace from a very supportive dissenting opinion. In this case, Mr. Justice Reid’s dissent found that the regulation which provided for religious exercises mandated performance of a solely religious activity. This restricted choice and caused embarrassment. The imposition of an accepted standard of religious exercises forced those who disagreed with the standard to seek exceptional status. The present course of action subjected public school students to choose between not conforming and peer pressure. Since willing conformists paid no price to conform, objectors should not be placed in an inferior position

⁵⁸ Zylberberg, (1986), 760, 763. Moreover, Mr. Justice Anderson, in support of the majority decision, placed almost no weight on the American Supreme Court’s decisions in McCullum, Regents’ Prayer and Schempp. He reasoned that religion was dealt with differently by the Charter than by the First Amendment. Zylberberg, (1986), 780-782.

⁵⁹ Evidently, Mr. Justice O’Leary felt that non-believers forfeited certain constitutional rights otherwise available to others. In discussing the constitutional rights of “Communities on the Fringe,” Ed Morgan concludes that “the fundamental question arises as to whether society can discover within itself norms which accommodate the values of those who reject it.” Ed Morgan, “Religion, Education and Communities on the Fringe,” in Legal Images of Our Schools in the 21st Century, Canadian Bar Association-Ontario, 1996 Institute of Continuing Legal Education, Toronto, January 25-27, 1996.

because they objected. As far as Mr. Justice Reid was concerned, the public schools could adopt another approach. They could make religious exercises optional and delineate a less prominent time for their recitation. Because the exemption provision did not provide a true option for those who did not wish to participate in religious exercises, Mr. Justice Reid concluded that the Applicants' Charter rights were infringed.⁶⁰

The Applicants in Zylberberg took more than simple solace from Mr. Justice Reid's dissent. They saw it as the basis for an appeal which they filed for immediately. This presented an unexpected and potentially disastrous complication for the CCLA's plans to pursue the Elgin County case to appeal.⁶¹ As the CCLA saw it, the Court of Appeal in Zylberberg would be compelled to confront the mystique of the Lord's Prayer. Charter arguments aside, this prayer was widely supported across the Province and the country. The CCLA foresaw the Court of Appeal taking judicial notice of the prayer's universal acceptability and struggling to find a way to retain that prayer as part of the public school program.⁶² For this reason, the CCLA strongly believed that Zylberberg would lose on appeal. This could set the tone that could influence the Court of Appeal's consideration of Elgin County. Therefore, as far as the CCLA was concerned,

⁶⁰ In the course of giving his reasons, Mr. Justice Reid dismissed as fatuous the argument that, by being singled out, non-conformist children were actually given an advantage. This argument maintained that minority children were, through adversity, given the opportunity to build character. Reid pointed out that such a claim granted greater rights to the majority than to the minority. Zylberberg, (1986) 769-770.

⁶¹ Philip Zylberberg, a Sudbury lawyer, and one of the named Applicants, was "running" the case with the support of counsel. The CCLA may have been unenthusiastic because Zylberberg was not their case. Still, the CCLA had intervened on behalf of the Zylberberg Applicants and CCLA's counsel's written and oral argument provided support to the Applicant's case. B'nai Brith had left the JCRC by this time and had also gained Intervenor status in support of the Applicants. OJA, JCRC Papers; MG8/S, JCRC Minutes, November 11, 1987. CCLAA, FF. REL., Elgin County and Zylberberg Files. Alan Borovoy, Interview, April 12, 1997. Zylberberg Divisional Court File 414/85, CCLA Factum.

⁶² Alan Borovoy, Interview, April 12, 1997. Although the Court of Appeal didn't have to deal with the perceived threat of communism which faced Americans and their judiciary in the 1950's, the Court of Appeal did understand the basic religiosity of Ontarians.

the order in which these two appeals were to be heard was crucial. Religious instruction was not nearly as acceptable as the Lord's Prayer. Even though the arguments that religious instruction in public schools was discriminatory were easily stronger than those pertaining to the Lord's Prayer, if the Court of Appeal ruled in favour of the Lord's Prayer, conceivably, the Elgin County case against religious instruction would be that much more difficult.

Attempts to convince the Zylberberg Applicants to wait for the Elgin County appeal proved unsuccessful. Zylberberg's appeal was heard by the Court of Appeal in June, 1987, prior to the hearing given to Elgin County. Amazingly, and to the shock of many observers, a majority of the Court of Appeal in Zylberberg overturned the Divisional Court decision, and ruled that the regulation respecting religious exercises *did* contravene sections 2(a) and 15 (1) of the Charter.⁶³

In delivering its opinion, the Court of Appeal in Zylberberg relied heavily on the reasoning contained in Mr Justice Reid's dissent in the Divisional Court. Together with extensive references to First Amendment decisions of the United States Supreme Court, the Court of Appeal concluded that imposing conformity on students rather than permitting them to exercise rights of exemption was a constraint on the freedom of religion guaranteed by the Charter. The Court of Appeal also recycled certain views expressed in the Mackay Report. In particular, the Court agreed that the very existence of religious exercises forced students to make a *religious* statement whether they were in or out. This, in itself, was discriminatory. Furthermore, it objected to the Divisional Court finding that the delivery of moral values by public schools was so vital that it sanctioned infringements of civil liberties. Instead, the Court decided that the clear purpose of the religious exercises regulation was not education but religion. As religion was beyond the purview of Provincial legislation, no concessions could be made to permit the

⁶³ (1988) 65 O.R. (2d) 641.

implementation of this regulation.⁶⁴

Immediately after the decision of the Court of Appeal in Zylberberg, the Ministry of Education responded by making opening or closing exercises truly optional.⁶⁵ Initially, the Ministry provided no real assistance respecting the content of religious exercises other than to declare that it was to reflect the “spirit” of the Court of Appeal’s decision in Zylberberg. Eventually, on January 12, 1989, the Ministry of Education issued Policy Memorandum #108 dealing with religious exercises.⁶⁶ Only the anthem was compulsory. Anything else was optional. However, these options were required to be “representative of our multicultural society.” Prayers, including the Lord’s Prayer, could be included but only as a reading.

Chaos ensued. Many Boards took the position that they would take no action based on the Court of Appeal decision in Zylberberg until ordered otherwise. Shades of the reaction to The Regents’ Prayer and Schempp cases in the United States some twenty-five years earlier! The American Catholic community had reacted to those cases as the standard bearer for maintaining a religious presence in American public schools. In Ontario in 1988, with Separate Schools now fully funded by the Provincial government, the fight to retain religion in Ontario schools continued in the hands of those who had prolonged its existence until then.

⁶⁴ (1988) 65 O.R. (2d) 641 at 657 and 659. The Majority quoted liberally from the Schempp decision, fastening on phrases such as “the excusal provision in its operation subjects them [pupils] to a cruel dilemma.” Zylberberg (1988) 655 citing Schempp, (1963) 374 U.S. 203 at 288. Favourable references were also made to the Regents’ Prayer case and to the Mackay Report. Zylberberg, (1988) 655-656. The Court also concluded that the “notwithstanding” clause, section 1 of the Charter, could not justify a majoritarian religious purpose.

⁶⁵ The decision was released on September 23, 1988 and the Ministry’s memorandum was dated September 28, 1988.

⁶⁶ Ministry of Education Policy Memorandum 108, January 12, 1989, to Chairs and Directors of School Boards and Principals of Public Elementary and Secondary Schools With Reference To Opening Or Closing Exercises. CCLAA, FF. REL, Elgin County File.

Several years later, the decision of the Court of Appeal in Zylberberg was called a “fundamental benchmark in Canadian jurisprudence and...a key indicator that a profound change was occurring in Canada’s legal culture.”⁶⁷ Certainly, the decision in Zylberberg augured well for the success of the forthcoming appeal in Elgin County. Just as a defeat for the Applicants in Zylberberg would have been difficult for the Applicants in Elgin County to surmount, so too, the Zylberberg Applicants’ victory made the Elgin County case an *a fortiori* argument against the Drew Regulation.

In light of the decision in Zylberberg, the CCLA encouraged the Attorney General to reconsider the position of the Ministry of Education in the Elgin County case in order to obviate the necessity of an appeal. In so doing, the government could “bring about the immediate repeal of the current regulation on religious instruction in the public schools,...[thereby sparing taxpayers] the expense of a foolish court case...[and families of religious minorities] further encroachments on their integrity and equality.” The CCLA reasoned that if the Court of Appeal was willing to overturn a regulation authorising the recitation of a widely embraced prayer such as the Lord’s Prayer, which took a half minute in the morning when students were half asleep, then surely, the Court would see the injustice of two formal thirty minute periods per week of Christian indoctrination. Earlier, Congress’ legal counsel for intervention in Elgin County made a similar request of the Assistant Deputy Attorney General.

The reasoning of the Court of Appeal in Zylberberg, which the Province has now determined to accept, appears to apply equally to the religious instruction portion of the regulations at issue in this case. I would appreciate your confirming whether the Province’s intention to revise the regulations extends to the portion of the regulations dealing with religious instruction.

⁶⁷ Terri A. Sussel, Canada’s Legal Revolution: Public Education, The Charter and Human Rights, 132. Sussel was impressed by the progressive thinking of the Court of Appeal and the signal that was given for the future selective use by Canadian courts of American “rights-oriented” jurisprudence.

The Attorney General responded that the government would “hold in abeyance any amendments to the religious instruction regulation pending the Court’s opinion on the current regulation and the report of the Commission.” Even at the eleventh hour, the Provincial government continued to man the barricades in defence of religious instruction in the public schools.

There was more to the CCLA’s request than met the eye. CCLA’s general counsel, Alan Borovoy, was cognisant of the potential cost of the “loss” of the appeal. The Ministry of Education fully intended to force the Applicants to make their case before the Court of Appeal. Even taking into account the success of Zylberberg, a win was not assured. CCLA’s counsel fees were provided for, but, in the event of an adverse decision, a court could award the costs to the victorious party. Such an expense would be a huge burden to the CCLA. Borovoy placed these concerns before a meeting of the JCRC, seeking authority for a request to Congress to fund the Elgin County appeal. Borovoy was sufficiently concerned about the potential cost of defeat that he offered carriage of the action to Congress in exchange for Congress’ agreement to fund what was only a contingent liability.

Ultimately, Congress’ Central Region refused Borovoy’s request. Once the CCLA was in place as the lead institutional applicant, Congress preferred to remain in the back seat. This was not simply a decision based upon dollars and cents. It was also a question of profile. By conceding the lead role to the CCLA, neither Congress nor the Jewish community which it represented, could be accused of being “anti-religion.” Furthermore, Congress, which had been an unwilling participant in the recent hate literature action against Ernst Zundel, was loathe to

take another position in a legal action.⁶⁸ In any event, Congress was still attempting to resolve the dilemma of being seen in the forefront of an action decrying religious education in the public schools while advocating for government funding of Jewish Day Schools.⁶⁹ Congress' traditional stance on litigation and its particular predicament in the instance of religious education in the public schools did not garner Borovoy's sympathy. Borovoy was deeply disappointed that Congress would so absent itself from the crusade it had led for years. But without active Congress support, Borovoy was further convinced that the CCLA would be best served by "settling" the matter out of court.⁷⁰

The CCLA was getting a taste of the treatment that Congress and the EEA had received from the government in previous decades. Clearly, fearing a backlash from its traditional voters if it acted unilaterally, Ontario's Conservative government was not prepared to alter the Drew

⁶⁸ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee. JCRC Minutes, July 30, 1986, citing a decision by Congress to seek leave to intervene in the Zundel appeal to be heard on September 22, 1986. Initially unwilling to grant Ernst Zundel notoriety by pressing charges under the "hate literature" provisions of the Canadian Criminal Code, Congress ultimately joined in the prosecution of the claim. At that juncture, the CCLA opposed Congress' stance, reluctantly adopting a Charter free speech argument in Zundel's defence. See R. v. Zundel, [1992] 2 S.C.R. 731.

⁶⁹ In this context, the Ontario Jewish Association for Equity in Education, Congress' Jewish Day School advocacy committee (OJAEE), was adamant in its opposition to Congress giving support to the CCLA's Elgin County action. OJAEE preferred to leave Elgin County to the CCLA so as not to compromise OJAEE's lobbying campaign for government funding of Jewish Day Schools. BJE Current Files, 1985. Minutes of OJAEE Steering Committee, July 4, 1985.

⁷⁰ CCLAA, FF. REL., File 32. Alan Borovoy, to Ian Scott, February 24, 1989. John B. Laskin to Larry Taman, October 20, 1988. Alan Borovoy, Interview, April 12, 1997. OJA, JCRC Papers, MG8/S, JCRC Minutes, November 10, 1988. Congress' refusal marked a break between Congress and Borovoy after a thirty year relationship.

Regulation without a fight. Better to be forced to act by the courts.⁷¹ And in the interim, it would continue to hedge by turning to an oft-used government ploy, the commission.⁷²

This time, the commission was the Watson Commission on Religious Education in the Public Schools. In the midst of defending actions against government sanctioned programs in religious education, the Provincial government viewed its decision to name yet another Commission as: "acting upon an excellent educational opportunity to firmly establish Ontario's classrooms as a cradle of tolerance and understanding."⁷³ The one person Commissioner was Dr. Glenn Watson, formerly the Director of Education for the County of Brant. The Commission's terms of reference included reviewing the Drew Regulation, in light of the Charter. The Commission was to report its findings to the Minister of Education on or before January 31, 1990.

⁷¹ CCLAA, FF. REL., Elgin County File. Ian Scott to Alan Borovoy, March 20, 1989. Borovoy to Ian Scott, April 14, 1989. Even when a government committee (the Mackay Committee), produced an unequivocal recommendation for repeal of the Drew Regulation, the government stalled implementation while it sought consensus on a suitable program to fill the "vacuum."

⁷² Dr. Bernard Shapiro delivered the Report of The Commission on Private Schools in Ontario (Shapiro Report) in October, 1985. A few months later, Dr. Shapiro was appointed Deputy Minister of Education by David Peterson's Liberal government. Shapiro believed in the Report's recommendations and asked his Ministers (Sean Conway and later, Chris Ward) to give some consideration to their implementation. Nothing ever came of his Report because there was a lack of "political will" to see the recommendations through. Dr. Bernard Shapiro, Interview, March 31, 1998.

⁷³ Globe and Mail, January 13, 1989, reporting on the statement by Chris Ward, the Minister of Education, in the Provincial Legislature on January 12, 1989. Alan Borovoy, far less optimistic, accused the government of engaging in "an exercise of political spinelessness." Charles Campbell, who had acted as legal counsel for the Applicants in Zylberberg viewed the government's appointment of the Watson Commission as avoiding the spirit of the Court of Appeal decision in Zylberberg. Campbell suggested that the government was "trying to slither and slide through the middle and be all things to all people." By this time, the government under attack was no longer the Tories, the Liberal Party under Premier David Peterson, having formed the first non-Conservative led government since the Hepburn era.

The Commissioner's call for submissions, produced, in toto, 408 briefs and 990 letters.⁷⁴ But, unlike previous inquiries, this Commission was conducted in the midst of serious legal challenges to the Drew Regulation. This was an atmosphere that was more welcoming for the Jewish community. Once again, Canadian Jewish Congress prepared a submission. Although it backed off from playing any leadership role in the legal assault on the Drew Regulation, and was torn by the seeming contradiction of requesting funds for Jewish Day Schools, Congress had not abandoned its position on religious education in the public schools. It remained opposed. Congress' main thrust was to persevere for the repeal of the Drew Regulation.⁷⁵

This is not to say that Congress leadership was in total agreement over even this degree of Congress involvement in the religious education issue. As the CCLA and others mounted their court challenges to the constitutionality of the Drew Regulation, Congress weighed its role. Internal to Congress, reports were delivered on "evangelism" and "Christological practices" in the public schools.⁷⁶ But there were also ongoing debates over the implications of pressing the religious education issue while others in Congress pushed for government aid for Jewish Day

⁷⁴ The Report of the Ministerial Inquiry on Religious Education in Ontario's Public Elementary Schools. (Watson Report). (Toronto: January 31, 1990), 5.

⁷⁵ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, 1990. Submission to Watson Commission. Congress had been submitting briefs like this for 45 years. However, for the first time Congress attached an addendum advocating funding of Jewish Day Schools by the Province. Congress described the government opposition to such funding as "morally unacceptable...not to offer a publicly-funded option for those parents who desire a religious parochial school for their children."

⁷⁶ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-Committee, 1984. Ben Kayfetz, Background Memorandum, January, 1984. Easter and Christmas observances were typical of these Christological practices.

Schools.⁷⁷ With no unanimity, arguments continued over the role of the Jewish community in the Zylberberg and Elgin County actions.⁷⁸ Congress staff, often more committed to the long battle against the Drew Regulation than some of the new lay leadership, assisted local Jewish communities in initiatives where circumstances warranted.⁷⁹ Lobbying of Provincial Cabinet Ministers on behalf of Jewish Day School funding was undertaken with the new Liberal

⁷⁷ OJA, JCRC Papers, MG8/S, JCRC Minutes, April 17, 1985. Committee members were reminded that Premier Davis had left Congress with the distinct impression that the government would not give consideration to even “touching” religious education in the public schools while he served as Premier. JCRC Chair, Rose Wolfe, commented that opportunities for change might occur after Davis’ announced imminent retirement because his apparent successor, Frank Miller, did not seem as strongly opposed to change.

⁷⁸ OJA, JCRC Papers, MG8/S, JCRC Minutes, April 17, 1985 and March 26, 1986. Congress also considered formal requests for Congress involvement in the Elgin County case and assistance with its financing as set out in letters from Alan Borovoy to Rose Wolfe, February 10, 1986, and Robert Sharpe to Congress, April 3, 1986 and in the Zylberberg case. JCRC Minutes, March 2, 1986. Charles Campbell, legal counsel for the Applicants in Zylberberg, suggested that whereas he was approaching the case from the secular point of view, Congress’ appearance as an Applicant could be helpful if seen as representing “religious interests.” Ultimately, Congress assumed Intervenor status in both the Elgin County and the Zylberberg actions.

⁷⁹ OJA, JCRC Papers, MG8/S, JCRC Minutes, July 30, 1986 and September 24, 1986. The JCRC provided input for the Ottawa Jewish Community Council’s presentation to the Carleton County Board of Education with respect to that Board’s proposed change of its religious education policy that included the introduction of pastoral counselling and more hands-on participation in religious education and religious exercises in its public schools. With Congress’ collaboration, the Ottawa Council’s submission relied heavily on the dissent of Mr. Justice Reid in the Divisional Court decision in Zylberberg. In response, although the Carleton Board refused to alter its new policies it did agree to reconsider matters in the following year.

government.⁸⁰ Attempts were made to interface with “mainline church groups” in an effort to find a “neutral” path to religious education in the classroom.”⁸¹ A Congress discussion paper suggesting religious education alternatives was prepared for presentation as necessary.⁸² And in an effort to find common ground for an acceptable alternative, Congress even agreed to help the government develop a list of “readings” for opening exercises in light of the Zylberberg decision.⁸³

As was Congress’ brief, the CCLA’s submission to the Watson Commission was also condensed and to the point. This brevity may have spoken to the fact that the opposition to

⁸⁰ OJA, JCRC Papers, MG8/S, JCRC Minutes, July 30, 1986. In July, 1985 following the Liberal Party’s election victory over the Conservatives, the JCRC tried to arrange a meeting with the Liberal Education Minister, Sean Conway. Conway postponed such a meeting until after the report of the Shapiro Committee (October, 1985). The optimism of the Jewish community in light of the Shapiro Report’s positive approach to the funding of alternative (including denominational) schools waned in the months following release of the Shapiro Report as it became clear that the government was unwilling to move on the Report’s recommendations. In July, 1986 a group of Congress officers met with Provincial Treasurer Robert Nixon to discuss both the removal of religious education from the public schools and government funding of Jewish Day Schools. The delegation reminded Nixon of the role his father, Harry C. Nixon, had played as a Provincial Liberal Party leader in opposing the introduction of the Drew Regulation. In fact, Harry. C. Nixon predicted early on that “From this course...very serious difficulty and dissension is going to be the outcome.” See D. Fox, 1945 Battles With Ontario School Religion (Toronto: D. Fox, 1963), 41, citing Ontario Legislature Debates, March 22, 1945. Although Robert Nixon declared his personal support of the Jewish community’s position on both fronts, he claimed that there was little support for either in the legislature.

⁸¹ OJA, JCRC Papers, MG8/S, JCRC Minutes, November 2, 1986. The JCRC considered reports of Congress meetings with representatives from the Anglican Diocese of Toronto on the subject of teaching “about” religion. Although the JCRC demonstrated real enthusiasm for the possibility of co-operation with these church groups, it was allowed that the Anglican Church would have difficulty in settling for a “neutral” approach to the study of religion.

⁸² OJA, JCRC Papers, MG8/S, JCRC Minutes, November 25, 1987. As the Jewish community had not made any formal submissions on religious education since the Mackay Committee, an update since the Mackay brief was useful. And as it turned out, the discussion paper laid the groundwork for the Congress submission to the Watson Commission.

⁸³ OJA, JCRC Papers, MG8/S, JCRC Minutes, August 9, 1989. The decision to participate was not uncontested. Ben Kayfetz, with forty-five years of experience, reminded members of the JCRC that a “hands-off” attitude was consistent, “since our position is that there should be no religion in the public schools whatsoever.” When notwithstanding Kayfetz’ comments, the Committee voted to participate in this endeavour, Toronto’s Rabbi David Ochs was critical of the modification of the Jewish community’s long-term stance. OJA, JCRC Papers, MG8/S, JCRC Minutes, November 7, 1989.

religious education was tiring of the campaign and of the process of commissions and committees. As well, the CCLA had determined that legal redress was the more likely route of successful opposition. When Alan Borovoy appeared before the Commission on behalf of the CCLA on October 18, 1989, he claimed that

The Report of the Mackay Committee, the multicultural composition of the community, The Charter of Rights and Freedoms, the Court of Appeal decision in the Sudbury [Zylberberg]case...should make it clear, once and for all that there are no longer respectable arguments to be made in favour of religious indoctrination in our public schools.⁸⁴

These were brave words in light of the Ministry of Education's predictions that the Watson Commission would uphold mandatory religious education. Even after the Court of Appeal's decision in Zylberberg, a ranking Ministry official felt that it was "highly unlikely" that Watson would decide otherwise.⁸⁵ Sensing a certain amount of stiff-neckedness on the part of the Watson Commission, after delivering his brief Borovoy warned that the "inquiry was being used to help the Ontario government to abdicate its responsibility, when civil liberties are being violated in this province."⁸⁶

As commissions go, Watson was on a tight schedule. Hope and Mackay delivered their Reports five and three years after first convening, respectively. The Watson Report was delivered within its one year time limit, on January 31, 1990 hard on the heels of the Court of

⁸⁴ CCLAA, FF. REL., File 32. Submission to Ministerial Inquiry on Religious Education, October 18, 1989. The submission, all of 5 pages, was "padded" with copies of the correspondence between Borovoy and Ian Scott. Although the Court of Appeal had not yet ruled on Elgin County, the CCLA was unwilling to invest significant time and energy on this submission.

⁸⁵ Globe and Mail, June 6, 1989, quoting Wally Beevor, Assistant Deputy Minister of Education.

⁸⁶ Globe and Mail, October 19, 1989. In the same article, the Commissioner stated that he "estimates that a majority of those whom he has heard from favour religious education in the public schools." Borovoy's comment provoked Christina Blizzard to remark that "there's something about Alan Borovoy that makes you want to disagree with him—even when you strongly suspect he's right." Toronto Sun, October 24, 1989.

Appeal's decision in Elgin County. The Watson Report concluded that the Drew Regulation was appropriate for its time. The nature of Ontario's society, the expectations of the populace, and the framework within which public institutions such as the public school system operated, were different in the 1940's in Ontario.⁸⁷ Such a society found it perfectly acceptable to assign to public schools the obligation "to nurture pupils in Christian faith through religious instruction."

Watson acknowledged that Ontario of 1990 was a pluralistic society which could not abide these previous conditions. In order that religious education in public schools keep pace, Watson recommended that "religious education" should be replaced by "religious studies." These "studies" were to be *about* religion. The curricula would be non-confessional and multi-faith. However, in order to preserve the "cultural heritage of Canadians," Watson recommended that fully one-third of the religious studies curriculum should be devoted to the study of Christianity. Watson felt that the imbalance of time was justified because of Christianity's prominence "in our history," and because "some people emigrate to Canada because it is a Christian country and has Christian standards." Moreover, he concluded that his inquiries had turned up no substantial information to support the removal of religious education from the public schools⁸⁸

As events unfolded, the case presented by counsel on behalf of the Ministry of Education in the Elgin County appeal reflected the spirit of the as yet unreleased Watson Report. Based upon a recognition of a majoritarian principle, the Ministry's arguments went as follows:

1) The Drew Regulation did not mandate the teaching of any specific religious faith.

⁸⁷ Watson Report, (1990), 1-3.

⁸⁸ Watson Report, (1990), 91, 57-71 and 97-104.

2) Parent complainants in Elgin County were not opposed to objectively-taught religious education.

3) Any Protestant orientation to the Province's public schools' religious education curriculum was not evidence of a doctrinal purpose but merely reflective of "the demographic reality of the times."⁸⁹

The Court of Appeal in Elgin County did not accept these arguments or the principles upon which they were based. It also blindsided the Watson Report. Handing down its decision a day before the Report was released, the Court determined that the purpose and effect of the Drew Regulation and the resulting religious education curriculum of the Elgin County Board of Education was to indoctrinate public school children in the Christian faith. This was no secret. In 1950, the Hope Report acknowledged and lauded the doctrinaire Christian nature of the legislation and the state of religious instruction in public schools. Hope saw this as laudable and recommended that the program be extended into the secondary schools. In 1969, the Mackay Report also confirmed that the purpose of the Drew Regulation and the resulting curricula was to indoctrinate students in Protestantism. Mackay saw this as unacceptable and recommended repeal of the Drew Regulation. In neither case was there a dispute of the characterisation of Ontario's religious education program's doctrinaire Christian foundation. In neither case was the recommendation followed.

The Drew Regulation, in its original formulation, seemed to have taken on a life of its own. Certainly, the majority in the Divisional Court in Elgin County had concluded as much. In relying heavily upon Mr. Justice Austin's dissent in the Divisional Court, the Court of Appeal in Elgin County refused to sustain the permanence of the place of religious education in the public

⁸⁹ Elgin County, Court of Appeal File 364/88. Respondents' Factum filed July 26, 1989, 11-24.

schools. It accepted Mr. Justice Austin's observation that the Elgin County Board curriculum was "exclusively Christian, Protestant, fundamentalist and evangelical...from content and layout, [and] was used for indoctrination rather than education."⁹⁰ This Court found that this alone constituted a breach of the right to religious freedom provided by the Charter. The right made available to non-conformists to claim exemption did not change the nature of this breach. Adopting the reasoning of the Court of Appeal in Zylberberg, the Court of Appeal stated that "the exemption provision imposes a penalty on pupils from religious minorities who utilise it, by stigmatising them as non-conformists and setting them apart from their fellow students who are members of the dominant religion."⁹¹

Not only did the Court of Appeal rule that the Drew Regulation was no longer of any force or effect, it also enjoined the Elgin County Board of Education from any further use of the current religious education curriculum. After forty-six years, compulsory religious education was declared illegal in Ontario's public schools.

⁹⁰ Elgin County, (1990) 71 O.R.(2nd) 341.

⁹¹ Elgin County, (1990) 363 referring to Zylberberg, (1988) 656. Once having established a *prima facie* infringement of freedom of religion, the Court was obliged to take a further step, namely, to determine whether the government could justify the infringement as being reasonable under section 1 of the Charter (the "notwithstanding" clause). Here, the Court scotched any possibility that the notwithstanding clause justified the Drew Regulation or the Elgin County Board's curriculum. The Court posited that young people's moral values could be encouraged "without trespassing on personal religious beliefs which they have learned at home or in their places of worship." Elgin County, (1990), 380.

CHAPTER TEN

A LEGAL POSTSCRIPT

“It ain’t over til it’s over.”¹

After the Watson Commission hearings were completed, a Commission employee inquired when the decision of the Court of Appeal in Elgin County was forthcoming. Why the interest? Because, “If the decision comes down and there’s to be no religion in the schools, what are we [the Watson Commission] doing?”² The Commission employee had a point. The decision of the Court of Appeal in Elgin County was released on January 30, 1990, one day prior to the Watson Report. The court decision left little room for religion in the schools. And the Watson Report, in light of the decision of the Court of Appeal, was considered redundant and relegated to obscurity.³

The Ministry of Education recognised that the decision of the Court of Appeal in Elgin County could not be received in the same manner as government commission reports. A February 28, 1990 Ministry directive to all public schools in the Province declared that the Drew

¹ With apologies to Yogi Berra.

² CCLAA, FF. REL., File 32, Elgin County File. Internal CCLA memorandum, October 5, 1989. This discussion took place between a CCLA employee and a Watson Commission employee. A more apt question might have been “What was the government thinking when they authorised such a commission in the first place?” Timing was not of the essence. However, the release of the Elgin County Court of Appeal decision requiring removal of religious education from Ontario’s public school classrooms one day before the Watson Commission reported that Ontarians wanted religious education to remain in the public school classrooms highlighted the government’s dilemma.

³ The Ministry of Education’s February 28, 1990 interim memorandum, advised schools how to deal with the Elgin County decision subject to the caveat that the Ministry was continuing to study the Watson Report. Ministry of Education Memorandum, February 28, 1990 To Directors of Boards of Education and Principals of Public Schools. CCLAA, FF. REL, Elgin County File. The Ministry of Education’s final memorandum of December 6, 1990 made no mention of the Watson Report. Furthermore, in response to reporters’ enquiries respecting the Watson Report’s status in light of the release of the December 6, 1990 memorandum, Marion Boyd, Minister of Education stated that the Report’s basic recommendations “would give primacy to that [Christian] faith and would contravene the Charter as interpreted by the Court of Appeal.” In other words, the government admitted that Watson was off-base. Globe and Mail, December 7, 1990. Osgoode Hall Court of Appeal Files, Elgin County, File C20558.

Regulation was “inconsistent with freedom of conscience and religion guaranteed by section 2(a) of the Canadian Charter of Rights and Freedoms and consequently is of no force or effect.” The Ministry explained that the Court of Appeal was satisfied that “education designed to teach about religion and to foster moral values without indoctrination in a particular religious faith would not breach the Charter.” Because of the difficulty in drawing the line between indoctrination and education, the Court of Appeal’s statement of distinction was set out, *verbatim*:

- 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 one of 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 to inform the student about various beliefs, but should not seek to conform him or her to any one belief.⁴

As an interim measure, boards were directed to provide “education about religion,” so long as board programs accorded with the Court of Appeal’s ruling. Almost ten months later, Ministry of Education Policy Memorandum Number 112, December 6, 1990, effective January 1, 1991 set out the Ministry’s permanent policy respecting religious education. This permanent policy specified that:

- 1) Boards of education may provide programs in education about religion in Grades 1 to 8 during the school day for up to 60 minutes per week.
- 2) Boards of education may continue to provide optional credit courses in World Religions in secondary schools.
- 3) Schools and programs, including programs in education about religion, under the jurisdiction of boards of education must meet both of the following conditions:

⁴ CCLAA, FF. REL, Elgin County File. Ministry of Education Memorandum to Directors of Education et al., February 28, 1990.

- a) They must not be indoctrination.
 - b) They must not give primacy to any particular religious faith.
- 4) Boards may continue to provide space before the beginning or after the close of the instructional program of the school day for indoctrination religious education...boards choosing this option must make space available on an equitable basis to all religious groups.”⁵

The regulations under the Education Act were amended soon after to mirror this policy.⁶ The Ministry of Education explained that these changes were reflective of the “long-established vision of the public elementary and secondary schools as places where people of diverse backgrounds can learn and grow together.”

To no one’s surprise, neither the decision of the Ontario Court of Appeal nor a Ministry of Education policy memorandum could erase the effects of the Drew Regulation immediately or completely. After all, religious education was authorised by Provincial fiat for over forty years. Before that, it had been in place, de facto, prior to Confederation. Without some strong supervision and reinforcement, change would come slowly.

Slowness to change was one thing. Open defiance another. Within weeks of the Elgin County decision, a group calling itself the Coalition of the Concerned Citizens of Sault Ste. Marie complained to the Sault Ste. Marie Board of Education about overt Protestant religious indoctrination given in board schools by fundamentalist ministers. The Coalition included

⁵ CCLAA, FF.REL, Elgin County File. Ministry of Education Policy Memorandum No. 112, December 6, 1990.

⁶ Sections 28(1), (2) and (3) of R.R.O. 1990, Regulation 298 read as follows:

- (1). A board may provide in grades one to eight and in its secondary schools an optional program of education about religion.
- (2). A program of education about religion shall,
 - (a) promote respect for freedom of conscience and religion guaranteed by the Canadian Charter of Rights and Freedoms; and
 - (b) provide for the study of different religions and religious beliefs in Canada and the world, without giving primacy to, and without indoctrination in, any particular religion or religious belief.
- (3). A program of education about religion shall not exceed sixty minutes of instruction per week in an elementary school.

parents from a variety of Protestant faiths, Baha'is, Jews and unaffiliated. When the Sault Ste. Marie Board refused to alter its practice of permitting these fundamentalist ministers the right to teach religious education in Board schools, openly challenging the interim policy of the Ministry of Education, the Coalition appealed to Canadian Jewish Congress.⁷ With Congress' support, the Coalition commenced injunction proceedings against the Board, seeking the changes it had requested. In the face of this legal action, the Board reluctantly agreed to abide by the Ministry's interim policy.⁸

This Sault Ste. Marie intervention was yet another issue on which Congress and Alan Borovoy failed to agree. In a seeming reversal of roles, Borovoy urged Congress not to encourage any overt legal action so soon after the Elgin County decision. Borovoy feared that such action could irritate the supporters of the Drew Regulation and ultimately encourage them to appeal the decision. Likely, Borovoy was also still stinging from Congress' rebuff of the CCLA's request for financial support for the Elgin County appeal, even though the CCLA was not out-of-pocket as a result. But Borovoy was also apprehensive because of the course of events that followed on the heels of the Court of Appeal decision in Zylberberg. At that time, some church groups, including a group called "People for Prayer," made a concerted effort to raise funds for an appeal to the Supreme Court of Canada. As well, to demonstrate its sympathy for the Sudbury Board of Education's decision to launch an appeal, and its belief in the primacy of the Lord's Prayer, the Peel Board of Education actually passed a resolution to join the court challenge. In all, in excess of thirty thousand dollars was raised. When the Peel Board received legal advice that the appeal to the Supreme Court was likely to fail, it rescinded its decision as

⁷ OJA, JCRC Papers, MG8/S, JCRC Minutes, March 6, 1990.

⁸ OJA, JCRC Papers, MG8/S, JCRC Minutes, March 23, 1990.

did the Sudbury Board. Thereafter, all plans for an appeal foundered. Unsuccessful though the proposed appeal of the Zylberberg decision to the Supreme Court of Canada may have been, Borovoy remained wary of a similar possibility in Elgin County. Borovoy did not want to chance any repetition of this process. For its part, Congress did not share Borovoy's concern. It had received advice from counsel that it was unlikely that either the Ministry of Education or the Elgin County Board of Education would pursue an appeal. This assessment was accurate. Religious education did not evoke the same emotions as the Lord's Prayer. Following the Court of Appeal decision in Elgin County, no appeal movement ever surfaced.⁹

Admittedly, some post-Elgin County incidents could be attributed to the vagueness of the interim memorandum of February 28, 1990.¹⁰ But others that occurred long after the issuance of a permanent policy, as set out in Policy Memorandum 112, bore testimony to the reluctance of some Ontario boards to agree to change, no matter how clear a directive was issued. For instance, in the College Street Public School in Smithville, in the County of Lincoln, the following incidents took place in October, 1991:

- 1) A "rock singer" teacher required her grade 4 students to participate in "prayer healing" each morning.
- 2) Kindergarten pupils were required to say a prayer at snack time.
- 3) Students were given "prayer rocks" to be kept in their beds as a reminder for them to say their prayers.

In response to complaints, the school received a stern warning from the Ministry of Education.¹¹

In some cases, warnings were insufficient. This was due, in part, because Lincoln County was one of the Districts serviced by the Christian Service Centres of Canada. This organisation which

⁹ OJA, JCRC Papers, MG8/S, JCRC .Minutes, March 6, 1990; CCLAA, FF. REL., Zylberberg File. Globe and Mail, December 21, 1988.

¹⁰ For instance, the Norfolk Board of Education was forced to cancel its "indoctrinal Christian religious education" program after a stern warning on May 31, 1990 from the Regional Director of Education for the Ministry of Education. This followed a May 29, 1990 decision by the Norfolk Board of Education to permit the Christian Services Centre to continue to teach religious education in the Board schools. Simcoe Reformer, May 30, 1990 and Brantford Expositor, June 6, 1990. CCLAA, FF. REL., File 24.

¹¹ CCLAA, FF. REL., File 23.

originated in Woodstock, Ontario in the late 1940s had a vested interest in maintaining the religious instruction programs. In fact, the stated purpose of Christian Services Centres of Canada Inc. was

to serve as a guide to groups concerned with the carrying out of Regulation 262 [the Drew Regulation]...[by means of a curriculum that] has as its primary aim, a desire to help the pupil gain a clearer understanding of God the Father, His Son, Jesus Christ, and the Holy Spirit.¹²

Supervision of individual board religious education policies continued to present a problem. For the most part, beyond issuing directives to local school boards demanding they adhere to the new regulations, the most the Ministry of Education could do was to respond to individual complaints of violation.

It was predictable that the fall-out from the Elgin County decision included clashes between defenders of the Drew Regulation and those opposed. Somewhat less predictable was the argument advanced by the Ontario Multi-Faith Coalition for Equity in Education representing the Ontario Council of Sikhs, the Christian Coalition for Religious Freedom in Education, the Islamic Society of North America, and the Hindu Vishnu Temple. The Coalition, an advocate for religious education programs within the public school system, favoured religious instruction in the schools which complemented the pluralism of faith groups in the school--a form of multi-faith Drew Regulation rather than one granting Protestants primacy. In the early 1990s it rightly observed that Policy Memorandum 112 of the Ministry of Education prohibited such programs. The Coalition attacked the constitutionality of Policy Memorandum 112 and the regulation made pursuant to that policy. A Coalition spokesman argued that "We are where we were prior to the Elgin County decision-the only change is that the Christian majoritarian religion has been

¹² CCLAA, FF. REL., Miscellaneous. Booklet compiled by the Christian Service Centres. n.d.

replaced by secularism. Minorities who have a religious faith other than secularism are discriminated against.”¹³

In 1994 the Coalition pressed their position in a legal proceeding in the General Division of the Ontario Court in the case of Re Bal.¹⁴ Although the Applicants included Sikhs, Hindus and Muslims, the Mennonite-Christian Sturgeon Creek Alternative Program (SCAP) in Stratton, Ontario was the focus of the action. SCAP was an alternative religious school which had been associated with the Fort Frances/Rainy River Board of Education since 1977. Primarily structured to serve the needs of the Mennonite Christian community in that locale, SCAP, called the Christian Day School until 1985, taught everything from its particular Christian perspective. This had been the operating formula of the school prior to 1977 when it operated as a private Christian school. The formula did not change when SCAP became integrated with the Fort Frances/ Rainy River Board of Education even as SCAP received direct financial support from the Board. It was also in 1977 that the proposal to integrate Jewish Day Schools into the North York Board fell apart when the Ministry of Education balked at Associated Hebrew Schools pre-condition prohibiting students from opting out of the Jewish Studies portion of the program. There was no opting out in the SCAP school either. But the SCAP-Fort Frances/Rainy River arrangement had the advantage of location. In the far north-western, underpopulated region of Ontario, Stratton did not have the profile of North York, a half hour's drive from the Provincial legislature. Of course, from SCAP's perspective there was no coercion respecting the religious nature of the program. A public school was available nearby for those who preferred it. The local

¹³ Reverend David Freeman, Interview, September 30, 1997. Reverend Freeman, Minister of the Ancaster Alliance Church, an evangelical church, is a member of the executive of the Coalition.

¹⁴ (1994) 21 O.R. (3rd) 681.

community seemed content with this arrangement. Why should SCAP be required to radically change its raison d'être?¹⁵

A parent of two SCAP students put the position most cogently:

My wife and I have a very strong Christian faith and believe that it is essential for our children to grow in the Christian faith, that they attend a religious school which provides an education in which the entire curriculum is taught from a Christian perspective. We do not believe that we can fulfil our obligations as Christian parents to God and our children if we merely teach them about Christianity in the home and attend the local church on Sunday, but send them to a secular public school during the week. For this reason, we, along with other Christian parents in the area, have sent our children to the Christian day school. However, as a result of recent policies of the Ministry of Education, as communicated to our local public school board and to us, we have now been told that the government will no longer permit, in our school, the type of Christian religious education for which the school was founded. We have been advised that there can be no religious instruction within the curriculum of the school, there can be no bible reading or instruction in the school and the school is no longer permitted to hold chapel services, as has been the custom, in the school premises, and the curriculum cannot be taught from a Christian perspective, notwithstanding that the school building is owned by the Mennonite Fellowship Church. Essentially, as a result of current government policy, we no longer have the ability to function as a religious school unless the school withdraws from its association with the local Fort Frances/Rainy River Board of Education which would have very significant financial consequences.¹⁶

In presenting their case the Applicants were buoyed by some of the statements found in the Report of the Commission on Private Schools in Ontario (Shapiro Report).¹⁷ In the context of

¹⁵ Ministry of Education officials did attend at the school requesting changes in line with Policy Memorandum 112. Attorney General of Ontario Files, Re Bal.

¹⁶ Attorney General of Ontario Files, Re Bal. Affidavit of Phillip Friesen dated April 10, 1992. This parent's testimony is not unlike that of the Roman Catholic Director of the Ontario Roman Catholic Separate School Trustees Association in the Daly case. There, arguing on behalf of the Separate Schools' right to discriminate against non-Catholic teachers, Dennis Murphy claimed that in Separate Schools, "all academic subjects are not only taught from the perspective of the distinct value system of the Christian belief but also are oriented to a preferred set of expectations or outcomes reflecting Christian belief." Attorney General's Files Daly et al v. Attorney General of Ontario, Court File RE 5776/95. Affidavit of Dennis J. Murphy, January 4, 1996. See Daly et al v. Attorney General of Ontario, (1997) 154 D.L.R. (4th), 464.

¹⁷ Shapiro Report. Bernard J. Shapiro, Commissioner (October, 1985).

the public funding of independent schools, the Applicants referred to the Shapiro Report's conclusion that

On moral grounds, limiting public support to Roman Catholic schools seems indefensible, for the constitutional provisions that are usually advanced to justify the special status of such schools serve only to describe its history...It does seem inappropriate to the Commission for Ontario to continue to offer to its Roman Catholic community an educational option not offered to other communities as well.¹⁸

They were also warned by the fact that Shapiro, who saw parental choice as an essential educational imperative, viewed "Associated schools" of the SCAP variety, to "be encouraged, not so much for the potential economies involved as for the positive effect of the continuing interaction between the school communities."¹⁹

¹⁸ Shapiro Report, (1985), 48. The Attorney General for Ontario cross-examined Dr. Shapiro with respect to the Shapiro Report's assertions concerning the discriminatory nature of education funding in Ontario. Dr. Shapiro responded that the decisions in Re Adler and Elgin County had not altered his opinion. Attorney General's Files, Re Bal. Cross-examination of Dr. Bernard Shapiro, August 12, 1994. Dr. Shapiro still sees no reason to change his mind. He reasons that the decision to extend public funding of Catholic Separate Schools to the secondary level was based on government policy rather than on constitutional right. Therefore, although the courts are still bound by the strictures of constitutional law as they were in Tiny Township, once the government went beyond the strict boundaries of law, it became fair game for a charge of discrimination under section 15 of the Charter of Rights and Freedoms. Dr. Bernard Shapiro, Interview, March 30, 1998. When Bill 30 proposed extending funding of Catholic Separate Schools through the Secondary level, the Provincial government agreed to a constitutional review by way of a reference to the Ontario Court of Appeal. Although the majority of the Court found in favour of Bill 30, in his dissenting judgement, Mr. Justice Howland found that the extension of funding benefited one religious group over another thereby infringing section 15(1) of the Charter. Reference Re An Act to Amend The Education Act, (The Bill 30 Reference), (1986) 53 O. R. (2nd) 513 at 521. In the Supreme Court of Canada's review of this case, the issues of freedom of religion and discrimination merited only scant discussion. See [1987] 1 S.C.R. 1148.

¹⁹ The Applicants might also benefit from charter schools which currently only operate in Alberta. These schools are provided with a charter from the province or from a local school board and thereafter operate independently. The growth in charter schools could encourage the general privatisation of public schooling which could then be run on a voucher system. Such an eventuality would place the Applicants on an equal playing field with other parents in the Province who either don't care about the religious education of their children or send them to a publicly supported Catholic Separate School. Globe and Mail, December 19, 1997.

Counsel for the Applicants argued that Elgin County arbitrarily mandated a completely secular public education system.²⁰ This secular view, he claimed, was not religious neutrality but, to the contrary, was tantamount to a form of anti-religion, sometimes called humanism or secular humanism.²¹ The Applicants claimed that this was a violation of the rights of religious minorities guaranteed by section 2(a) of the Charter. Furthermore, because religious schools were essential to the cultural and religious survival of minority faith communities, it was argued that these minority faith communities were being discriminated against in contravention to their rights to freedom from discrimination guaranteed under section 15 (1) of the Charter.²²

This argument was not accepted by the Court in Re Bal. Instead, Mr. Justice Winkler put a very generous spin on Elgin County and on secularism:

The Elgin County decision and the ensuing policy memorandum and regulations signify the end of majoritarian Christian influence, and mark the beginning of a

²⁰ Secularisation has been called “the process by which religious institutions, actions and consciousness lose their significance.” See Bibby, Fragmented Gods, 244-245, referring to remarks made by English sociologist, Bryan Wilson.

²¹ Humanists or secular humanists see themselves as non-religious rather than anti-religious. However, those who object to the “practice” of secular humanism portray it as ungodly or atheistic. Secular humanism’s role in the public school curricula has resulted in legal challenges from time to time in American courts as well. In the case of Smith v. Board of School Commissioners, 827 F. 2d 684 (1987), the Eleventh Circuit Court considered an appeal from a lower court decision of Alabama Justice William Brevard Hand who had decided that “any definition of religion must not be limited, therefore, to traditional religions, but must encompass systems of belief that are equivalent to them for the believer.” Applying certain characteristics that he identified as preconditions for a belief system to be constituted a religion, Hand ruled that “For purposes of the First Amendment, secular humanism is a religious belief system, entitled to the protections of, and subject to the prohibitions of, the religion clauses [of the First Amendment]. It is not a mere scientific methodology that may be promoted and advanced in the public schools.” Smith v. Board of School Commissioners, 655 F. Supp. 939 at 978-983, (1987). In this instance, Judge Hand was more concerned about prohibitions than protections. Judge Hand’s decision was encouraging to Christian fundamentalists and others who were concerned about the increased secularisation evident in the curricular and instructional practices of American public schools. On appeal, however, the Eleventh Circuit Court found that the use of secular materials in the public schools complied with the First Amendment’s requirement for a strict separation of the state from religion. See also Eugene C. Bjorklun, “Secular Humanism: Implications of Court Decisions,” The Educational Forum, 52, No. 3 (Spring, 1988), 211-221.

²² Attorney General’s Files. Appellants Factum in Re Bal, Court of Appeal File C20558.

period of secularism in education, based on an awareness of a changing societal fabric and Charter protection for minority rights to freedom of religion.²³

The Court determined that the Applicants' purpose was not to seek a remedy for a discriminatory practice. Rather, "by seeking to place alternative minority religious schools within the public school system, the Applicants are, directly or indirectly, seeking public funding for minority religious schools." Public funding for minority religious schools had been denied in a previous proceeding before the Ontario Court of Appeal.²⁴ This left Mr. Justice Winkler with no alternative but to dismiss the application in Re Bal. In 1997 the Court of Appeal concurred with Mr. Justice Winkler, recharacterising the Applicants' case in the process.

While we sympathise with the concerns of the appellants about the positive and negative influences of the educational experience on their children, their plight is no different from that of the majority of Canadians who cannot afford, or do not wish, to send their children to privately funded religious schools. Although it was repeatedly denied before us,...this case primarily involves funding. No freedoms have been violated. The problem for these parents, and for many others, is that the province has decided not to fund religious schools.²⁵

In a way, the Applicants in Re Bal were the recipients of one of the mixed blessings of pluralism in Canadian society. Years earlier, American public schools were forced to deal with a similar reality after the Regents' Prayer case. When that occurred, commentators there acknowledged that "as long as America remains a multi-ethnic and multi-religious community, there can be no equitable alternative to political neutrality in religious affairs."²⁶

²³ Re Bal, (1994) 21 O. R. (3rd) 680 at 684.

²⁴ At the time of the trial decision in Re Bal, Adler had been decided by the Court of Appeal, (1994) 19 O.R. (3rd) 1. Subsequently, the decision of the Court of Appeal in Adler was confirmed by the Supreme Court of Canada, [1996] 3 S. C. R. 609.

²⁵ (1997), 34 O.R. (3d) 484.

²⁶ Richard Rubenstein, "Church and State: The Jewish Posture," in John F. Wilson (ed.), Church and State in American History (Boston: D.C. Heath and Company, 1965), 181.

Prior to Elgin County, for forty years Jewish and other opposition to religious education in Ontario's public schools argued for governmental and church recognition of pluralism with limited success. Finally, with its decision in Elgin County, the Ontario Court of Appeal took judicial notice of the existence of pluralism in Ontario society. To the religious minorities represented in re Bal, recognition of pluralism carried with it a neutral stance in religious matters. To them, such a stance was discriminatory. But to those Jewish opponents of the Drew Regulation, it was a blessing. Although it worked against the interests of those advocating funding for Jewish Day Schools, after more than 40 years of agitation for an end to the Drew Regulation, the courts had responded where the political process had not. One had to understand that the courts were not always willing to march in the vanguard on behalf of minority claims. Accordingly, as the Catholic community learned in Tiny Township in 1928 and as those seeking government funding for Jewish Day Schools and the Ontario Multi-Faith Coalition for Equity in Education learned in Re Adler and Re Bal in 1996 and 1997 respectively, their time had not arrived.

CONCLUSION

I am sure that what is best in our countrymen comes from the habits and wisdom bred in them by centuries of Christianity. But it may be that we are, in a sense, living on the moral capital which past generations have built up. Traditions which have no living basis soon become meaningless, and our children will suffer if we have no more to offer them than the virtues which we ourselves owe to an age of greater truth.¹

By the time that George Drew's Conservative party came to power in Ontario, Protestant moral capital built up over generations was largely depleted. Ontario could no longer boast of the "best kept Sabbath" in the world. The Protestant churches felt the strain. They lashed out, blaming all kinds of societal ills on the lack of formalised religious education in the public schools. The Drew Regulation was the rallying cry for their counter-offensive.

Opposing views had little status. Most minority-faith groups were small in number. Human rights organisations were only just beginning to form. And after much discussion in the press, concern about the discriminatory aspects of the Drew Regulation were given little weight by the general community. By default, opposition therefore fell to the Jewish community. Thereafter, for decades, through the Canadian Jewish Congress and its community relations committee, the JCRC, the Jewish community stayed the course against the Drew Regulation while allies came and went. Never coveting a high profile position, especially one that might arouse deeply-felt emotions in the general community, the Jewish community soldiered on. Without consistent and constant allies, with so many other issues on the Jewish communal plate which sapped resources and with the Drew Regulation supported by the very voting public on which the entrenched Conservative government depended, the anti-Drew campaign went

¹ PAO, Department of Education Papers, RG 2-170, Box 10. Queen Elizabeth II, shortly before her accession to the throne as cited in Brief 76 to the Mackay Committee from the Board of Education for the City of London, December 28, 1966.

nowhere at the provincial level for decades. And even within the Jewish community there were voices urging that Canadian Jews should simply acknowledge that Canada was a Christian country. Living with the Drew Regulation they said was the price that Jews paid to live in a Christian country--and it was a small price indeed.

Early in the struggle, an incident occurred which offered a portent of what could follow. To become known as the Christmas carol controversy, it arose innocently enough as a result of a Sabbath-eve sermon delivered by Rabbi Abraham Feinberg to Holy Blossom Congregation in Toronto on December 1, 1950.² Rabbi Feinberg devoted his remarks to the public school observance of Christmas and its effect on Jewish students and their families. He advocated greater sensitivity to the plight of minorities as the "best proof of peace and good will" by safeguarding the welfare of "one non-Christian child in a school which numbers a thousand Christians." He argued that because public schools were designed for and supported by all elements of the population, sectarian teaching, including Christmas carols, was a violation of this stated principle and purpose of the public school. Feinberg warned that

Once the temptation to utilise the public school for sectarian teaching is condoned and accepted, a similar invitation goes out to all and sundry sectarian elements, and the competition for mastery of the public school will eventually convert our greatest hope of democratic co-operation into a battleground of clashing clerical interests.

Responding to the argument that Christmas carols were just seasonal songs, Feinberg pointed out that many of the carols' references were the subject matter of "theological preachment." And as for the claim that Christmas was not a religious holiday but a folk festival, Rabbi Feinberg countered that "to identify it [Christmas] with a political entity such as a Canadian nation or any other, is to rob it of its eternal and spiritual significance." Furthermore,

² AJA, Feinberg Papers, Box 6, Series B, Folder 7. Rabbi Abraham Feinberg, Sermon, Holy Blossom Temple, Friday, December 1, 1950, 8:15 p.m.

he did not accept celebrating Hanukkah in the public schools as an acceptable trade-off, arguing that “what is wrong when done by Christians is not right when shared by Jews.”³

When the press picked up on the Rabbi’s sermon, the Christian community responded immediately. The press printed the reactions of a number of Christian clergy upset at the Rabbi’s comments:

“If this goes on, minority groups will soon be dominating majorities.” Rev. G. A. Wells, Assistant Anglican Bishop of Toronto.

“I don’t believe that minorities should demand that majorities do as they say. After all, majorities have some rights too.” Rev T. B. McDormand, General Secretary of the Baptist Convention of Ontario and Quebec.

“We should be broad-minded in our attitudes, but this is a Christian country, and why should our children refrain from singing carols?” Reverend Robert H. .M. Kerr, Beaches Presbyterian Church, Toronto.

“In several schools that I have visited I noticed that Jewish children were asked if they wished to leave the room while carols were being sung. Without exception they stayed and sang just as heartily as the others.” Reverend William J. Johnston, Eglinton Avenue United Church, Toronto.⁴

In a particularly vehement editorial entitled “A Deplorable Proposal,” the Globe and Mail castigated Feinberg for having chosen Christmas carols “as an argument to illustrate a form of prejudice against a religious minority...” The Globe continued with the following warning to Ontario’s Jewish community:

³ AJA, Feinberg Papers, Box 6, Series B, Folder 7. Rabbi Feinberg Sermon, December 1, 1950.

⁴ Toronto Telegram, December 2, 1950. Similar comments in the Toronto Daily Star, December 2, 1950.

The Jewish people in Canada are on the whole an admirable element of the community. But they are a minority of one to 100. The majority has an absolute right to hold its own beliefs and express them in a manner acceptable to itself....Nobody should ask [the majority] to give up their right to be Christians in the full expression of that word, just to avoid hurting the minority's feelings."⁵

Feinberg responded to this editorial with a personal letter to Oakley Dalgleish, the Globe and Mail's editor-in-chief, explaining that his "only objective [in the sermon in question] was to deal with the question of Christmas in the public schools as part of the larger issue of sectarian religious instruction in the public schools..."⁶

This was a perfectly reasonable explanation on Feinberg's part. As Chair of the JCRC since 1944, Feinberg was charged with making the Jewish community's case concerning the Drew Regulation before the Hope Commission. Even though the reception from the Hope Commission to the Congress delegation was disappointing, Feinberg was undeterred in his zeal to press the community's position. Feinberg knew full well that the singing of Christmas carols in public schools was not precisely a curricular expression of the Drew Regulation. But it was yet another platform from which he could advocate for the Jewish community's disaffection with religious education in the public schools. Rabbi Feinberg understood that he could expect flack from the Christian community and from the press but he marched into the showdown, guns blazing, nevertheless. Feinberg knew 1950s' Toronto well enough to understand that his argument would make little headway in the larger community. But he felt that he could not be silent. What was not expected, and far more disappointing to Feinberg was the failure of many in

⁵ Globe and Mail, December 5, 1950. The editorial's title was, no doubt, a play on "A Modest Proposal," Jonathan Swift's eighteenth century essay satirising Ireland's age-old problem of too little food and too many children. Swift's essay proposed converting the over-supply of children into a resource for the under-supply of food. The Globe and Mail saw Feinberg's suggestion of doing away with Christmas carols in order to satisfy the sensitivities of a small minority as akin to a Swiftian "throwing out the baby with the bath water."

⁶ AJA, Feinberg Papers, Box 6, Series B, Folder 7. Feinberg to Dalgleish, December 13, 1950.

the Jewish community to rally around him. In fact many lay and rabbinical members of the Jewish community publicly disagreed with him. Easily, the most damaging of these bushwhackers were three of Toronto's Orthodox Rabbis, Abraham A. Price, Gedaliah Felder and Erwin Schild.⁷ In a public statement reprinted in three Toronto daily newspapers, these three rabbis disassociated themselves and the Jewish community from Feinberg's remarks. Discounting the mandate of the JCRC, the three rabbis claimed that since Feinberg had no authority to speak on behalf of the Jewish community, his remarks must be regarded as personal.⁸ Giving expression to a view of the Jewish community as a respectful and dutiful minority, the three rabbis objected to "any attempt by a minority to regulate the majority." In a curious example of politics making strange bedfellows, the three rabbis endorsed a position espoused by Drew Regulation supporters since the inception of the Drew Regulation.

the majority is free to operate schools' or other public services for the best advantage of the greatest number. It would be absurd therefore to eliminate Christmas, which plays such an important part in the religious life of Christian Canadians of all denominations, from its rightful place in our schools. Moreover as religious leaders, we welcome and appreciate that Christian children love and observe their religion, for religion is indispensable to our Canadian way of life

⁷ Rabbi A. A. Price was the senior rabbi of the three, having obtained his rabbinical ordination in Poland in 1919. After coming to Toronto in 1937, Price founded the Yeshivat Torah Chaim centre of learning and established himself as a leading voice for Orthodox Judaism in Toronto. Felder, also born in Poland, came to Canada as a child and received his ordination in 1940 from Rabbi Price's Yeshivat Torah Chaim. Rabbi Schild, born in Germany and interned as an alien in Canada, received his ordination from Rabbi Price as well, in 1947. Who's Who in Canadian Jewry. (Ottawa: Jewish Institute of Higher Research, Central Rabbinic Seminary of Canada, 1964).

⁸ Toronto Daily Star, December 4, 1950; Globe and Mail, December 4, 1950 and Toronto Telegram, December 4, 1950.

and the strongest bulwark against the inroads of atheistic ideologies which threaten democracy.⁹

Taking a position somewhere between Rabbi Feinberg and the three Orthodox rabbis, Congress advocated

the universal brotherhood of man...as one of the cardinal principles of Judaism and Christianity and in these times of stress the fostering of the spirit of goodwill becomes all the more necessary, [nevertheless it suggested that] as Christmas carols have a religious connotation, we believe their singing should be kept on a purely voluntary basis, with due regard to the sensibilities of minority religious groups.¹⁰

To place into focus Congress' stance on this issue, it is instructive to review yet another contentious matter relating to Jewish students in public schools which occurred only a few months prior to the Christmas carol controversy. In that instance, Congress learned that for the school term commencing September, 1950, Forest Hill's Board of Education, then still a separate Board from that of neighbouring Toronto, had allocated students to classes in grades 8 to 12 in the Forest Hill Secondary School solely on the basis of whether they were Jewish or non-Jewish.

The setting for this controversy, Forest Hill Village, was unique.¹¹ A very well-to-do community in mid-town Toronto, Forest Hill was sometimes referred to as the "richest square

⁹ Although this was a joint statement made by the three rabbis, clearly the leading spokesman was Rabbi Price. Price had two personal beliefs that coloured his attitude in this matter. First, he was not troubled by Jewish children receiving their education in public schools because he was convinced that a strong example in the home and elsewhere in the Jewish community would offset any untoward notions that Jewish children might receive in the public schools. Second, because Price did not recognise the legitimacy of the Reform movement or its rabbinate, he had no compunction about reproaching Rabbi Feinberg in public, leaving him to respond to both Christian and Jewish criticism. Rabbi Erwin Schild, Interview, December 8, 1997. The position taken by the three rabbis was in tune with that of American Jewish social activist Leo Pfeffer, the leading spokesperson for separation of church and state in the American Jewish community, who felt that "it would be fatuous to believe that Christmas can be banished from the public school. It is as much part of the American school culture as Thanksgiving and graduation day." Pfeffer, Church, State and Freedom, (1953), 490.

¹⁰ Toronto Daily Star, December 5, 1950.

¹¹ Time Magazine, November 13, 1950, 38 and Toronto Daily Star, October 14, 1950.

mile of residential area in Canada.” Forest Hill’s Jewish residents, it was estimated, comprised 40 per cent of its 18,000 residents. This included the cream of Toronto’s Jewish establishment unlike the North York Jewish community, many of whom were immigrants and young couples. Following the rapid growth of Forest Hill’s Jewish population after World War II, the number of Jewish students in the Forest Hill public school grew out of proportion to Forest Hill’s Jewish population. Generally younger than their gentile neighbours, the Jewish residents had more school-aged children. Then too, many of the wealthy gentile residents sent their children to private schools which were then closed to Jews. As a result there was indeed a greater proportion of Jewish students in the public school system, estimated in grades above Grade 8 “in the neighbourhood of 66%.” What is more, a few years later, it was estimated that about a third of the Jewish pupils at Forest Hill schools were enrolled in Rabbi Feinberg’s Holy Blossom Religious School.¹²

When Congress’ investigations disclosed that the Forest Hill Board of Education had, in fact, grouped students in classes “based, in part, on the non-Jewish or Jewish identity of its pupils,” it objected.¹³ Forest Hill’s Board defended its actions on the basis of necessity, claiming

¹² OJA, JCRC Papers, MG8/S, Minutes of Special Sub-Committee on Forest Hill Schools, November 8, 1955. By 1955 it was estimated, that the Jewish enrolment in the Forest Hill system was about 1,900 or 2,000 out of a total enrolment of 2,700.

¹³ OJA, JCRC Papers, MG8/S, Minutes of Special Combined Meeting of the Regional Executive of Congress and the JCRC, September 29, 1950. A meeting between Congress representatives and the Director of Education, Donald Graham, and the Principals of Forest Hill Collegiate and Forest Hill Junior High, Messrs. Tough and Chellew, held earlier that day was reported to the meeting. The Forest Hill educators explained that the class composition issue arose out of the interest that the school administration took in the social aspect of teen-age life. At that stage, they observed pressures on students from both Jewish and non-Jewish homes to select their friends from their own religious denomination. They also observed that as many as 50% of non-Jewish female students in Grades 10 to 12 were being removed to private schools as part and parcel of this pressure. Attempts to maintain an equal number of Jews and non-Jews in each class, (because there were more Jews, the practice was to make one class in each grade all Jewish!) was described by the Board as a response to the possibility of Forest Hill becoming a “particularly Jewish community.” In a way, the Forest Hill Board saw themselves facing a reverse form of *Judenrein*.

that the Board felt obliged to placate gentile students who were feeling outnumbered. To accomplish this end, at least one class in each Secondary School grade was limited to Jewish students so as to increase the ratio of gentile to Jewish students in the remaining classes in each of those grades.

After receiving this explanation, Congress remained dissatisfied but couched its objections in terms of a breach of democratic principles within a larger statement laudatory of the Board:

We deem it necessary to inform you that...neither the Executive [Committee of the Canadian Jewish Congress] nor the Joint Public Relations Committees {the JCRC} have at any time entertained any doubts as to the good motives of the Forest Hill School authorities in this matter. We know that the members of the school board, the administration and staff of the schools are people of good will who in the past have displayed genuine consciousness of the need for cultivating constructive group relations...Our representations are being made because we believe that the present course at Forest Hill is a mistaken one. We earnestly hope that your Board will see its way clear to reviewing the matter immediately and will revert to an arrangement of classes as soon as is practicable, on a basis other than the one to which a substantial proportion of the Forest Hill community objects, since in effect it is at odds with a principle at the very base of our democratic tradition."¹⁴

Congress backed off quickly when the Forest Hill Board of Education agreed to consider an alternative course of action for the following year.¹⁵ As far as Congress was concerned, it had brokered a satisfactory resolution for the Jewish community, and forestalled extensive public discussion. For its purposes, nothing more was necessary. Time Magazine commented at the time that "the situation would have provoked an uproar in the United States, but with typical

¹⁴ OJA, JCRC Papers, MG8/S, Minutes of Special Combined Meeting of Regional Executive of Congress and the JCRC, October 18, 1950, referring to a letter to the Forest Hill Board of Education from Irving Oelbaum, Chair of the Central Region of Congress, October 16, 1950.

¹⁵ OJA, JCRC Papers, MG8/S, JCRC Minutes, November 16, 1950. The decision to retreat was based on the understanding that the Jewish community's resentment had largely dissipated.

Canadian restraint, Jewish organisations decided against a public outcry because the Board [of Education] had acted in good faith.”¹⁶

The Christmas carol controversy did not disappear so easily. As desperately as many members of the Jewish community wanted the carol issue to fade from view, it was kept alive by, of all things, the Jewish press.¹⁷ One of these, the Canadian News lectured Congress for being “diplomatic and cautious, if not timid...however infinitely less truckling in tone than that of the statement signed by the Rabbis.”¹⁸ Another, the Toronto Hebrew Journal took up the cause of Rabbi Feinberg, reasoning that “this tempest in a teapot would soon have blown over had not...several Orthodox Rabbis rushed into print heatedly endorsing the singing of Christmas carols, as though Christian children would not learn them without their (the rabbis) prior approval.”¹⁹ To the Journal, by agreeing to “bow and scrape before the Christian community,” the three rabbis were guilty of over-reacting.

When Feinberg issued a public statement in response to all the fuss his sermon had provoked, the Journal declared that he suffered from “too much humility.”²⁰ The Journal termed Rabbi Feinberg’s plea to the Christian community “to believe that [he had] the most profound respect and reverence for the sanctity of the faith which they hold dear,” not so much an attempt to mollify the Christian community “as [an attempt] to calm the rather too-easily alarmed Jewish

¹⁶ Time Magazine, November 13, 1950, 38.

¹⁷ By “Jewish press” is meant Yiddish language press.

¹⁸ Canadian News, December 8, 1950.

¹⁹ Toronto Hebrew Journal, December 8, 1950.

²⁰ Toronto Hebrew Journal, December 14, 1950 For his part, Feinberg claimed that he might have succeeded in riding out the criticism “save for the desertion by colleagues, Jewish communal leaders and panic-stricken co-religionists” Feinberg, Storm the Gates of Jericho, 310.

public.”²¹ The Canadian News, following a similar tack, refused to believe that Rabbi Feinberg had caved-in willingly, conjecturing that

seeing their Rabbi assailed by Christian clergymen for unChristian conduct and by rabbis for unJewish conduct, some members of Rabbi Feinberg’s congregation, it is reasonable to assume, may have pressed him to make a public retraction of his remarks lest they imperil the friendly relations that have been slowly but successfully forged between Toronto Christians and Jews.²²

For all its bluster, the Journal foresaw the built-in dangers of the “cap-in-hand” attitude of some Jewish leaders. Seeing Christmas carols as only the beginning, the paper warned,

nobody will now dare to question the right of the Christian majority to have Christmas carols sung in the public schools [and]...that no one will raise a voice of protest if the public schools should be transformed into full-fledged religious institutions.²³

This was the essence of the predicament that would plague Ontario’s Jewish community over the next four decades. The head-to head confrontation between Rabbi Feinberg and the three Orthodox rabbis foreshadowed many of the problems that would face the Jewish community in its attempt to lead the opposition against compulsory religious education in the public schools.

To Rabbi Feinberg, Christmas carols were not in the best interests of Jewish children; to the three Orthodox rabbis, it was not Feinberg’s place to make that judgement on behalf of the Jewish community.

To Rabbi Feinberg, Christmas carols represented a violation of the democratic principles inherent in the concept of public schooling; to the three Orthodox rabbis, any religious

²¹ Toronto Hebrew Journal, December 12, 1950.

²² National Jewish Post, January 26, 1950. Suggestions were made after the fact that the incident precipitated Rabbi Feinberg’s resignation from the chairmanship of the JCRC. Feinberg denied this, citing “constantly increasing duties in his congregation.” Canadian News, December 15, 1950. In fact, Rabbi Feinberg claimed that his own congregation exerted no pressure on him. Feinberg, Storm The Gates of Jericho, 310.

²³ Toronto Hebrew Journal, December 14, 1950.

behaviour, even someone else's, guarded against atheistic behaviour, which, to them, was a far greater concern.

To Rabbi Feinberg, Christmas carols were imposing doctrinal Protestant religion on Jewish children; to the three Orthodox rabbis, the teachings of the Jewish home and community would safeguard against the influence of such public school practices. Moreover, their position of preferring religious over non-religious Christians as class-mates for Jewish children in public schools, was entirely tenable within Ontario's Jewish community in 1950.²⁴

To Rabbi Feinberg, an American by birth, training and inclination, the idea of an established church had to be rejected out of hand; to the three Orthodox rabbis, without Feinberg's American background steeped in the constitutionally supported concept of the separation of church and state, there was no benchmark against which to measure the reasonableness of Feinberg's argument. Nor was the apparent discounting of the rights of minorities and the corresponding rule by the majority a black-and-white issue to these rabbis. Unlike Feinberg, each one of these rabbis was born in Europe. Their experience taught them on the one hand to be grateful for the benefits of public education, often unavailable to Jewish children in Eastern Europe, and at the same time, to be careful, respectful and accepting in their dealings with government authorities. Moreover, they viewed the majoritarian Protestant tradition as part and parcel of the ruling authority in the country and specifically in the Province of Ontario.

As for the other Jewish players in the Christmas carol controversy, to Congress, although it supported Feinberg's position as a matter of record, damage control was paramount. To the

²⁴ With his American background, Feinberg viewed the separation of church and state as a means by which Jews could attain equality. This might have worked within the context of American tradition which urged "conformity with the religion-blind Constitution," but traditions were very different in Canada. Cohen, Jews in Christian America. The Pursuit of Religious Equality, 5-7.

Jewish press, any public retreat from Feinberg's statements was an admission of wrongdoing which it categorically denied.

For all their posturing, clearly, the three Orthodox rabbis were not really endorsing Christmas carol singing by Jewish children or supporting the Drew Regulation. Whereas the Christian clergy and the press were defending majoritarian prerogative, these three Orthodox rabbis, by allowing that majority religious traditions had a place in the public schools, were attempting to deflect criticism of Feinberg's statements lest such criticism generate disfavour of the Jewish community by the larger community. At the same time, they were declaring that they were not ceding the Jewish community's agenda to a Reform rabbi.

Interesting as it was, internal Jewish community squabbling over Rabbi Feinberg's statements should not detract from the lesson taught by this incident. The general community's reaction to Rabbi Feinberg's seeming attack on Christmas carols served as a warning to the Jewish community. Certain traditions and trappings of the Protestant-dominated society in Ontario were held up as inviolable. One of these was Christmas; and another was the Lord's Prayer.²⁵ What the Jewish community had to come to grips with was the possibility that, as the Journal had predicted, Protestant religious instruction could also become an immovable institution in Ontario's public schools.

²⁵ This has not changed appreciably in the 1990s if the complaint of a Jewish parent of a student at Withrow Public School in the City of Toronto is any determinant. In December, 1994 when the parent, Hal Koblin, learned that, as part of her daily classroom activities, his six year old daughter, was rehearsing the Christmas carol, "Away in the Manger," for a school concert, he objected. The school principal responded by removing this carol from the program. This resulted in the press villainising both the principal and Koblin. Among other things, Koblin's complaint and the principal's attempt at a remedy was characterised by Globe and Mail columnist Michael Valpy as "the secular evisceration of a Christian holy day." Globe and Mail, December 16, 1994, and generally in the Globe and Mail, December 12, 16, 20 and 24, 1994. As for the Lord's Prayer, the unsuccessful attempt by the Toronto Board in 1979 to eliminate this prayer from Board schools' opening exercises attested to this prayer's special status. See Chapter 6 above.

The Jewish community was aware of the danger in permitting the Drew Regulation to become institutionally entrenched. To obviate this possibility, through the medium of Congress it constantly voiced objection to the Regulation. This became the refrain of the opposition to the Drew Regulation. Jewish community leaders knew that they had to sing that refrain but could not decide on when, where and how loud to sing it. Thus, response to the Drew Regulation became a forum for the debate between members of the Jewish community who advocated proactive positions and those who did not. Most vocal in their activism, albeit different in expression, were Rabbi Feinberg and Alan Borovoy who took more aggressive stances. They found sympathy among community leaders like civil libertarians Sydney Midanik and Sydney Harris who were prepared to join the fray but also knew the value of patiently working toward their goal over an extended period of time. If these were among the major Jewish figures who carried the Jewish communal ball on the Drew Regulation, they knew there were also those, like the three rabbis, who believed there was little to gain and much to lose by attacking motherhood issues such as Christmas carols, the Lord's Prayer and the Drew Regulation. As in the Christmas carol controversy, community spokespersons had to be mindful of the naysayers even as they pushed ahead against the Drew Regulation. This helped shape the boundaries of Jewish activism and the organisation of the opposition campaign, including:

1) The Jewish community's reticence to test the Drew Regulation in the courts, in the early 1960s, despite the compelling arguments of a young Harry Arthurs, endorsed by the Dean of McGill Law School, Frank Scott. Among other concerns was the fear that raising the issue in a test case would associate Jews with godlessness.²⁶

²⁶ OJA, JCRC Papers, MG8/S. JCRC Minutes, November 28, 1962.

- 2) The Jewish community's need to bring credibility to the opposition campaign by seeking out alliances with non-Jewish organisations.²⁷
- 3) The frustration caused by the inability of Jewish public school parents in North York in the late 1950s and early 1960s to obtain school-wide exemptions from religious instruction, even in schools where Jewish students were in the majority.²⁸
- 4) The helplessness of the Jewish community in the face of the Provincial government's unwillingness to risk the negative political repercussions of implementing the Mackay Committee recommendation to repeal the Drew Regulation.²⁹
- 5) The continuing dilemma posed by the lobbying for government funding on behalf of Jewish Day Schools.³⁰

All of this begs an important question. When Jewish communal organisations led by Congress take on a cause, who do they really represent?" Sydney Midanik claimed that many, and particularly the Jewish man on the street, "Chaim Ginsberg from Wawa Junction," felt that Congress acted without their authorisation. Realistically, testing grass-roots Jewish opinion was impractical. Sydney Harris long held the view that Ontario's Jewish community vested trust in and authority to Congress to speak on the community's behalf--as if it was of one mind. That is,

²⁷ For example, The Ethical Education Association, a valued ally of Congress from 1959 to 1969. Alan Borovoy, Interview, March 12, 1997.

²⁸ OJA, JCRC Papers, MG8/S, Religious Education in the Public Schools Sub-File. JCRC Minutes, 1959-1961.

²⁹ Globe and Mail, September 17, 1970.

³⁰ The competing arguments within the Jewish community for and against seeking Provincial funding for Jewish Day Schools were most ably outlined early on in the debate by Joseph Diamond, the Director of the Bureau of Jewish Education and Sydney M. Harris, National Chairman of the JCRC. PAC, Plaut Papers, MG 31, F6, Volume 44, June, 1962. See also, Harvey A. Raben, "The History of the Board of Jewish Education. 1949-1975. A Study of Autonomy and Control," unpublished Doctoral Dissertation, University of Toronto, 1992, 130-135.

it allowed Congress leadership the latitude to ferret out the issues, assess potential problems for the Jewish community and then propose solutions. To Harris who, as a Jewish community activist, participated on a hands-on basis in much of the Drew Regulation opposition from his position as a committed member of the Congress and the JCRC executive, community leaders had to be mindful of all the views held in the community but, in the end, educate their rank and file to back its leadership.³¹ In the case of the Drew Regulation, Congress and the JCRC did just that. In the name of the Jewish community, they decried instruction in any denominational religion as absolutely contrary to the concept of the public school; they favoured the giving of courses in comparative religion provided they were taught by competent teachers to children old enough to appreciate what was involved; and they even objected to the teaching of Judaism to Jewish children within public schools because this fed into the classification of a specific religion as being favoured by the state. Generally speaking, these positions were widely reflective of the larger Jewish community. While some might question his tactics, Alan Borovoy did not differ with these goals whether he campaigned against the Drew Regulation on behalf of Congress, the EEA or the CCLA. This obviated the necessity for Sydney Midanik to amend his arguments against compulsory religious education in Ontario's public schools whether he spoke on behalf of Congress or the CCLA. This permitted Harry Arthurs' brief to the Mackay Committee on behalf of the CCLA to ring true as reflective of his earlier legal memorandum to Congress. But the fact that these activists also spoke for and were involved in other organisations that did not represent the Jewish community *per se* confirms that religious education in the public schools was not exclusively a Jewish issue. Nevertheless, from the commencement of the Drew Regulation in 1944 to its end in 1990, because of the presence of a large cohort of Jewish

³¹ Sydney M. Harris, Interview, April 30, 1998.

children in the Province's public schools, Jewish opposition to the Drew Regulation remained a constant.

Whatever arguments the Jewish community brought forward against the Drew Regulation, it was never claimed that the Drew Regulation was deliberately designed to discriminate against Jewish public school students, although, in smaller communities, it often had that effect. In truth, the Regulation was intended to entrench Protestantism in Canadian society not erode the Jewish community or its traditions. Truthfully, Drew did not give the Jewish community much thought. It was not necessary. When the Drew Regulation was introduced in 1944, Jewish interests did not count for much and Jewish opinion was not solicited. And when the Jewish community objected, it was patronised and its objections were hardly taken seriously. This was not unusual. For some years, when the general community judged the actions and pronouncements by Jews or the Jewish community as having overstepped reasonable bounds, as in the Christmas carol controversy, the Jewish community was reminded it was still a guest in Canada and, as a guest, was expected to behave.³² This reinforced the Jewish community's predilection to caution. It heeded internal warning bells to exercise restraint when opposing accepted communal norms. The alternative was to run the risk of exhausting its allocation of goodwill, "as if it [the goodwill] was a 'measurable resource.'"³³

Thus, for much of the 1940s, the 1950s and into the early 1960s, the Jewish community's opposition did not advance much beyond a cap-in-hand plea for special indulgences. The responses received offered little encouragement to go further. The Congress deposition to the Hope Commission was the Jewish community's introduction to the rules of the game. The

³² Alan Borovoy, Interview, March 12, 1997.

³³ Sydney Midanik, Interview, September 12, 1996.

introduction was not encouraging. Congress received an unsympathetic hearing which sometimes verged on antagonism. The Hope Report reflected no sensitivity to the positions of minority faiths in Ontario.

Save for an occasional foray into the political process, the Jewish community nursed its wounds from the Hope Commission for some time. Meanwhile, it went back to the drawing board to map out strategies it felt were more appropriate to the times. What evolved was a regularised series of lobbying attempts, exploration of legal alternatives and attempts to forge alliances, punctuated from time to time by street-level organisation such as the Wilmington canvass. This approach was much like guerrilla warfare--incursions against the authorities mounted by forces that were hopelessly outnumbered who would retreat to their own community after each little push forward was rebuffed.

This set the stage for the Mackay Committee. Here, for the first time, was a government-appointed committee designated to deal exclusively with the issue of religious education in the public schools. In previous decades, Ontarians had paid lip-service to the rights of minorities through the enactment of legislation such as the Anti-Discrimination Act, the Fair Accommodation Practices Act, the Fair Employment Practices Act, provisions in the Conveyancing and Law of Property Act and the Labour Relations Act. In 1960 the federal government got into the act with the passing of the Canadian Bill of Rights. Although largely ineffective, the Canadian Bill of Rights represented an attempt to reflect the spirit of the times by speaking to the rights of individuals and minority groups. This attitude was further augmented when Canada's hosting of Expo' 67 introduced a new spirit of worldliness into the Canadian character. The notion of an inclusive Canadian citizenship was given an added boost when Prime Minister Pierre Trudeau gave a strong endorsement to the findings of the Royal Commission on Bilingualism and Biculturalism and in particular the commitment of the federal government to

assist the desire of minority groups' "collective will to exist."³⁴ Into this changing societal landscape came the Mackay Committee. With the appointment of the civil libertarian Mackay to chair, and the placement of a Jewish member on, the Committee, the Jewish community felt it had cause to expect tangible results. It got them. If in fact the 1970s were to be "the decade of organised minorities," what better opening volley than the 1969 Mackay Report's recommendation that, in light of the changing demographics in Ontario since the Regulation's inception in 1944, the Drew Regulation should be removed.³⁵

The Mackay Committee's reasoning was correct. Ontario had changed dramatically since 1944--demographically, politically and legally. In 1944 the fact that some minority groups such as the Jewish community were affected to their detriment by majoritarian Protestant religious education was not a consideration for legislators. But, by 1960 Ontario's cultural map was changing so radically that the "unofficial establishment of Christianity had virtually come to an end."³⁶ The significance of the media's support of the Congress and EEA campaign for a blanket exemption in North York in the early 1960s underscores this view. For, by then, Toronto at least was showing signs of the new pluralism which included a more liberal attitude toward cultural expression in a broader frame, thereby beginning the urban/rural split on the Drew Regulation. This would reveal itself more pervasively when, eventually, large urban school boards would win exemptions from the Drew Regulation.³⁷

³⁴ Pierre-Elliott Trudeau, House of Commons Debates, 8545-8, October 8, 1971.

³⁵ John Porter, "Canada: Dilemmas and Contradictions of a Multi-Ethnic Society," Transactions of the Royal Society of Canada, Series IV, 10, (1972), 193.

³⁶ Grant, The Church in the Canadian Era, 202.

³⁷ North York received its first exemption in 1967, Waterloo in 1976, York, Halton and Hastings in 1979, Bruce and Durham in 1980. PAO, Ministry of Education Papers, RG2-303, Acc. 19391, Box 7. Religion/Morals/Values, 1979. R. A. L. Thomas to G. R. Podrebarac, October 22, 1979.

To add to the mix, on the eve of the convening of the Mackay Committee, Ontario's Jewish community was experiencing a transition as well. With the guidance of Congress, the modicum of success achieved at Wilmington Public School and elsewhere in North York had increased the self-confidence of this upwardly mobile and politically astute generation of Jewish parents. Just as with the previous generation, these Jewish parents bought into the public school system for their children. However, these parents were far less willing to accept Protestant religious teachings in the classroom as the price they and their children would have to pay for access to public education.

In the wake of changing times, what had been a Jewish argument was now transformed into a mainstream argument. The Provincial government understood this. Furthermore, it understood that the mere convening of a Committee to investigate religious education in Ontario represented a symbolic change, an acknowledgement that the Province was divided on the subject of religious education in the classroom. Ontario was no longer a Protestant stronghold. Constantly, although sometimes cautiously, upbraided by the Jewish community since the inception of the Drew Regulation, and more recently by the Ethical Education Association and the Ad Hoc Clergy Committee, Provincial Tories would be pleased to see the end of the Drew Regulation. In the appointment of liberal-minded Keiller Mackay to chair the Committee the government may well have been counting on Mackay's Committee to recommend the scuttling of religious education in the public schools, a decision that the government could not make unilaterally without risking grave political repercussions.

Mackay surprised no one. After giving due consideration to all the submissions, most of which were in favour of retaining the Drew Regulation, the Mackay Committee recommended its repeal. But, as events transpired, the government was not out of the woods yet. For, when mainstream church organisations, especially from Ontario's rural heartland, which represented

the core of Tory voting strength, reacted explosively and negatively to the suggestion of a pull-back from the Drew Regulation, the government lost the political will to implement the recommendations of the Mackay Report.

This reaction to the Mackay Report also affected the Jewish community. After celebrating the apparent victory that the Mackay Report signalled, the Jewish community awaited the implementation of the Report's recommendations. Sydney M. Harris recalls that when it became clear that implementation was not forthcoming, the Jewish community realised that it had "shot its bolt [with Mackay],...an army exhausts itself, [at that stage] new soldiers [and new strategies] were needed."³⁸ At the same time, sensing that there was little likelihood of an all out victory, the Jewish community chose to remain a less visible target until the potential for victory improved.³⁹ This was an acceptable strategy, and it seemed pragmatic. Although the Jewish community opposed the Drew Regulation, it was not prepared to make compulsory religious education a major issue even if, in the result, many public schools functioned as Protestant schools. In the grander scheme, this did not rank with "Cossacks on horseback, engaging in pogroms, whose sole purpose was to kill you."⁴⁰

Such a response did not mean that Jews, individually or communally, were happy with religious instruction in the schools. They were not, and within the limits of protest available to Jews in Ontario civic society, they organised a lobbying campaign against the Drew Regulation.

³⁸ Sydney M. Harris, Interview, April 30, 1998.

³⁹ Dr. Bernard Shapiro takes this argument one step further. He suggests that Congress may have determined early on that victory was nowhere in sight. Accordingly, one of the purposes of its ongoing opposition to the Drew Regulation was to satisfy its own community that something was being done. Guerrilla warfare tactics, therefore, were undertaken primarily so as to create a sense of embattlement rather than a strategy looked upon with any likelihood of success. Dr. Bernard Shapiro, Interview, March 31, 1998.

⁴⁰ Ben Kayfetz, Interview, August 13, 1996.

This campaign definitely took on a Jewish persona as individual Jews and Jewish organisations and organisations with Jewish spokesmen remained in its forefront. Other individuals, organisations, religious groups within the Christian umbrella and without, joined the opposition but rarely had either the level of commitment or the staying power of the Jewish community.⁴¹ On the other hand, the Jewish opposition may well have offered a convenient target for a rear-guard action by those who were anxious to maintain the Drew Regulation in place. Whether characterised as ungrateful guests or as “Christ-killers,” Jews could be portrayed as patently prejudiced against religion.⁴² After all, Jews had a vested interest in doing away with the teaching of Christian doctrine.⁴³ And if this kind of talk no longer found acceptance in large urban, multicultural centres, it often had currency in smaller, more homogeneous, rural communities.

⁴¹ Reverend Donald Gillies, considered an outstanding supporter of the campaign against religious education, was an exception. Gillies was not concerned about how his congregants would react. Bloor Street United Church was a classic liberal congregation, made up of academics and professionals in the main. They viewed Gillies’ participation as “cute” as in “look, the young Assistant Minister has a cause.” Occasionally they asked him to speak to a small group of members about the issue. But Gillies’ members, as conscious of human rights issues as any Ontarians, had no real interest in the affect of religious education on non-Protestants. For his part, Gillies was not comfortable recruiting members “for the cause.” Gillies exerted insignificant influence over the members at that time. Neither the senior minister, Edgar Howse, nor the congregants had any enthusiasm for the issue. Within their relatively tolerant milieu, Gillies’ congregants still thought that certain Christian attitudes were the norm for society. Based upon this premise, Bloor Street United Church congregants wanted Christianity’s basic values preserved, even if it meant that others would be inconvenienced as a result. Reverend Donald Gillies, Interview, August 26, 1997.

⁴² Jonathan D. Sarna, “Jewish-Christian Hostility in the United States: Perceptions from a Jewish Point of View.” in Robert N. Bellah and Frederick E. Greenspahn (eds.), Uncivil Religion: Interreligious Hostility in America (New York: The Crossroads Publishing Company, 1987), 5-22, describes this perception in the United States.

⁴³ Feinberg, Storm the Gates of Jericho, 310. This realisation proved very frustrating for Rabbi Feinberg in the aftermath of the Christmas carol controversy. In commenting on the criticism he had received from the Jewish community, Feinberg wrote “one would have thought that my sermon had created instead of merely revealed anti-Semitism.”

To complicate matters further, in the midst of leading the campaign to oust religious education from the public schools, the Jewish community shifted its internal gears. The financial pressures of supporting Jewish Day Schools raised Jewish demands for government funding. This resulted in an intra-community squabble that forced the Jewish community more and more to take a secondary role in the campaign against the Drew Regulation, particularly when the forum for the struggle shifted to the courts.

The decision of the Court of Appeal in Elgin County to repeal the Drew Regulation was a measure of the march of pluralism in Ontario between 1944 and 1990 in Ontario, particularly urban Ontario. After the Provincial Tories refused to implement the Mackay Report's 1969 recommendation to repeal the Drew Regulation, it became obvious that such a change was not deemed politically wise. This would prove to be the case, even by 1989, when a succession of Ontario governments, mostly Conservative, but the last two, Liberal and N.D.P. respectively, still refused to implement the Mackay recommendations.

Almost to the very end, except for the Jewish community and a handful of human rights advocates, few Ontario voters joined the call for the repeal of the Drew Regulation.⁴⁴ Politicians faced with a choice between favouring those who advocated for the Regulation's repeal rather than those who called for the status quo immediately saw that there was no contest. Without any

⁴⁴ Discussions with Deputy Ministers of Education who served during the period from 1974 through 1987 disclosed that the repeal of the Drew Regulation never received serious consideration for this reason. Interviews with: George Waldrum, Deputy Minister to Thomas Wells, 1974-1978, April 4, 1997 and May 9, 1997 (telephone); Harry Fisher, Deputy Minister to Bette Stephenson, 1979-1984, May 7, 1997 (telephone) and Bernard Shapiro, Deputy Minister to Sean Conway and Chris Ward, 1986-87, March 31, 1998. A 1980 Ministry of Education Bulletin reveals the contradiction in terms that the Ministry faced. Notwithstanding a Ministerial review that concluded that 71 percent of public schools surveyed did not provide religious education on a formal basis, no attempts were made to change government policy (i.e. repealing the Drew Regulation) because of "conflicting viewpoints...in the larger society (Conservative Party voters)." PAO, RG2-303 Acc. 20129, Box 5. File: Ministry-Internal Vol. 2(b). Ministry of Education Bulletin, 1980, D. M. G. No. 23, Harry K. Fisher, January 28, 1980. Values Education/Moral Education/Religious Education; Research and Education Branch.

political will, the courts proved the only solution for redress on this issue. By the time the Elgin County decision of the Ontario Court of Appeal determined that public school was not the appropriate venue for religious education, religion had pretty well disappeared from most larger urban schools in any event. As a result, Elgin County may not qualify as a true landmark decision. At the same time, Elgin County did more than mark the “death of the consensual Protestant model of education.”⁴⁵ It also precipitated re-consideration of the role of religion in public schools.

Although the courts were willing accomplices, the death blow to religious instruction could only have been delivered through the medium of the Charter of Rights and Freedoms. Yet, even the Charter represented a reflection of the changes that had occurred in Ontario since the inception of the Drew Regulation. With its accent on the rights of minorities, the Charter would not have found acceptance from the Ontario of 1944. But the advent of multiculturalism in Canada had changed all that. In addition, the Charter permitted Drew Regulation opponents ready access to the courts, enabling them to force issues for the first time. Prior to the Charter, the Provincial government loomed as the defender of the Drew Regulation. This pitted anyone who dared to question the Drew Regulation against the Provincial government, an adversary that had the advantage in almost every category, including financial strength, research resources, access to Ministerial and board records and, for a great deal of the time, the support of a significant sector of the press and the body politic. Then too, there was a certain psychological disadvantage. If you were against the Drew Regulation you were against God. And, if you were against God you were against the basic values of Ontario society. A legal action changed these

⁴⁵ Mark Holmes, “The Place of Religion in Public Education,” Interchange, 24, No. 3 (1993), 205-223. Holmes argues that there is a legitimate place for genuine religious education within publicly supported schools in Western pluralist democracies.

dynamics; not completely, but enough to place the competing parties on an equal playing field. The change of forum also gave the Drew Regulation opposition a leg up. The Charter helped to shift the forum from Minister's offices where complainants behaved as unwelcome guests, to courtrooms, where the parties to an action were given equal opportunity to make their case before an impartial adjudicator. The complainants were also no longer religious renegades but Canadians demanding their human rights as guaranteed by the supreme law of the land, the Charter of Rights and Freedoms. Once the forum was changed, this meant, among other things, that American experience could be and was relied upon notwithstanding the lack of an equivalent in Canadian and Ontario law to the First Amendment. Clearly, the Ontario Court of Appeal in the Zylberberg and Elgin County cases had bought into the American concept of separation of church and state.

Until the Charter provided a legal and moral tool for the opposition, the Jewish community, mainly through Congress, was the major, long-term, consistent advocate for repeal of the Drew Regulation. Support from advocacy groups, such as the EEA and the CCLA and the Ad Hoc Clergy committee was welcome but ineffective because these organisations lacked the backing of a significant constituency or the staying power of Congress. Often alone, the Jewish community did not relish playing the public role in the religious instruction issue. Initially, a major concern was the precipitation of an anti-Jewish backlash. Latterly, however, it feared that the Provincial government would question how one group within Congress could advocate for the removal of religious instruction from public schools while another lobbied for public funding for Jewish Day Schools in which religious instruction was compulsory. Although this internal disagreement generally escaped discussion or exposure within the non-Jewish community, the differences of opinion were glaring within Congress and forced Congress to move to the margins.

Long before the concerns expressed by Christian theologians in the United States over the “naked public square,” Ontario’s minority faiths and majoritarian Protestants alike struggled to come to terms with the rightful place of religion in public schooling.⁴⁶ However, as long as the Drew Regulation was extant, the issue could not be addressed because addressing it carried with it the potential of compromising majoritarian religious convictions. But, once Elgin County prohibited religious teaching as it had been known for years in Ontario, it was a whole new ball game. Certainly, to those for whom religion represented a significant element in their lives, Elgin County was a setback.⁴⁷ Yet, at the same time the resulting backlash from Elgin County opened up some possibilities for advocates of a religious presence in public schools. For, now that secularism seemed to be king, proponents of a pluralist model of religious education in the public schools were prepared to take the offence, supported, in all likelihood, by new voices in the

⁴⁶ Richard John Neuhaus, The Naked Public Square: Religion and Democracy in America (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1984). Neuhaus complained that the American polity was paying the price of taking the path of least resistance. By choosing to fudge the presence of religion in public places in order to avoid discussion which could lead to confrontation, Neuhaus claimed that society succeeded in derailing the fanatic, but at the cost of a position which compromised the democratic process. Neuhaus contended that although most Americans agreed with the principle of separation of church and state, many could not accept the American Supreme Court’s application of this principle which was hostile to religion. Other theologians echoed Neuhaus’ thoughts. See Martin E. Marty, “Hell Disappeared. No One Noticed. A Civic Argument,” Harvard Theological Review, 78, (1985), 381-398. The Jewish community in the United States also participated in this discussion and some adopted Neuhaus’ arguments. See Dalin, American Jews and the Separationist Faith: The New Debate On Religion in Public Life. Bernard Shapiro suggests Christian and Jew alike missed the point. Whereas the issue of the “naked public square” may be a concern to current political and church leaders Shapiro feels that the schools are the wrong arena in which to join the battle. Dr. Bernard Shapiro, Interview, March 31, 1998.

⁴⁷ Re Bal, (1994) 21 O.R. (3rd) 681. See also Stephen L. Carter, The Culture of Disbelief: How American Law and Politics Trivializes Religious Devotion (New York: Basic Books, 1993). As with the claimants in Re Bal, Carter makes the case for Americans taking religion seriously, arguing that there is nothing wrong with religious groups pressing their moral claims in the “public square” as long as they don’t oppress others. To deny this right, he claims, is to trivialise the foundation of the faith beliefs of a substantial portion of the population. The Court of Appeal’s decision in Elgin County finally brought Ontarians into a debate that had been raging elsewhere for some time. Peter D. Lauwers suggests that Ontarians cared deeply for the role of religion in education too long to stand still for “the current strategy of bleaching the public school system of religious influence...” Lauwers, “Religious Education in the Public Schools of Ontario,” 2.

Jewish community seeking public funding for Jewish Day Schools. The end of the Drew Regulation did not end the debate over religious education in public schools. It only shifted the direction and the timber of the voices.

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ABBREVIATIONS

The following abbreviations have been used in the footnotes, the bibliography, and, in some cases, in the body of this dissertation:

A.C.	Appeal Cases
AJA	American Jewish Archives (Cincinnati, Ohio)
BJE	Board of Jewish Education
Congress	Canadian Jewish Congress
CCLA	Canadian Civil Liberties Association
CCLAA	Canadian Civil Liberties Association Archives and Files
CJCNA	Canadian Jewish Congress National Archives (Montreal)
D.L.R.	Dominion Law Reports
EEA	Ethical Education Association
JCRC	Joint Community Relations Committee
MM	Myrna Metcalf
NYBEA	North York Board of Education Archives, North York
O.E.A.	Ontario Education Association Archives
OJA	Ontario Jewish Archives, Toronto
O.R.	Ontario Reports
PAC	Public Archives of Canada, Ottawa
PAO	Public Archives of Ontario, Toronto
R.S.O.	Revised Statutes of Ontario
S.C.	Statutes of Canada
S.C.R.	Supreme Court Reports
S.O.	Statutes of Ontario
TA	City of Toronto Archives, Toronto, City Hall
TBEA	Toronto Board of Education Archives, Toronto
U.C.Q.B.	Upper Canada Queen's Bench
U.S.	United States Supreme Court Reports

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