The Dartmouth Schools Question and the Supreme Court of Nova Scotia

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Scholars have often demonstrated that courts in Canada have long been responsive to the political, social, cultural and economic contexts in which they operate. An illustration of the ways in which the Supreme Court of Nova Scotia embodied this role can be found in the Court's handling of a dispute between the Town of Dartmouth and the Roman Catholic Episcopal Corporation of Halifax, often referred to as the "Dartmouth Schools Question" in 1939 and 1940. The case concerned the attempt of the Town of Dartmouth, alone among municipalities in Nova Scotia, to collect local taxes on property used for Catholic schools. This article argues that the justices of the Supreme Court, who represented a diversity of political and religious interests, consciously crafted a compromise solution, which had eluded municipal and provincial authorities, to a contentious issue that threatened the religious and social peace of the province.

Les universitaires ont souvent démontré qu'au Canada, les tribunaux réagissent depuis longtemps aux contextes politique, social, culturel et économique dans lesquels ils évoluent. La façon dont la Cour suprême de la Nouvelle-Écosse a traité, en 1939 et 1940, un différend entre la ville de Dartmouth et la corporation épiscopale catholique romaine de Halifax, affaire souvent appelée « le dossier des écoles de Dartmouth » illustre bien cette attitude des tribunaux. L'affaire portait sur la tentative par la ville de Dartmouth, la seule des municipalités de Nouvelle-Écosse à ce faire, de percevoir des impôts fonciers sur les immeubles utilisés pour les écoles catholiques. L'auteur de l'article prétend que les juges de la Cour suprême, amalgame d'intérêts politiques et religieux divers, ont consciemment élaboré une solution de compromis (qui avait échappé aux autorités municipales et provinciales) à un problème épineux qui menaçait la paix sociale et religieuse dans la province.

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In an era when social advocates and political partisans of every stripe routinely applaud or decry the existence of an "activist" judiciary, it is popularly supposed that there prevailed in some earlier time courts and justices who rendered their decisions free of political considerations. While one may debate whether politics and ideology have come to play an increasingly significant role in judicial decisions in Canada since the adoption of the *Canadian Charter of Rights and Freedoms*, there can be little doubt that the courts in Canada have always been aware of and responsive to their political environment. As Philip Girard, Jim Phillips and Barry Cahill have said in their recent study of the Supreme Court of Nova Scotia, "courts are unique institutions which affect and are affected by the social, economic, and political context in which they operate." This judicial sensitivity to the political and cultural context of the cases that came before them and the decisions they handed down is well illustrated by treatment by the courts in Nova Scotia of the so-called "Dartmouth Schools Question" in 1939 and 1940.

Historians of education and of the Catholic Church in Canada are familiar with the special circumstances which allowed for the development of publicly funded *de facto* Catholic schools in the Maritime Provinces generally and the province of Nova Scotia in particular. As has been ably documented by Sisters Faye Trombley and Francis Xavier, Archbishop of Halifax Thomas J. Connolly and Nova Scotia Premier Charles Tupper worked out in the late nineteenth century an ingenious compromise which provided, in areas where there was a substantial Catholic population, for public school boards to incorporate local Catholic schools into the public system. Under the terms of this unwritten agreement, these public "Catholic" schools were required to follow the public school curriculum and were forbidden to conduct specific denominational instruction during school hours, but they were staffed with and administered by Catholic lay teachers or members of religious communities and permitted to maintain a distinctly Catholic character and approach to all school subjects.

In communities such as Antigonish, or Prospect in Halifax County, or most villages in Inverness County, Cape Breton, which were almost wholly Catholic, public schools were, in fact, Catholic schools. In 1932, all but

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2. K. Fay Trombley, s.c.d.c., *Thomas Louis Connolly, 1815-1867 the man and his place in secular and ecclesiastical history* (Leuven: Catholic University of Leuven, 1983), at 234-236; also, 296-301. See also Francis Xavier, s.c.h., "Educational Legislation in Nova Scotia and the Catholics" (1956-1957) 24 Canadian Catholic Historical Association Historical Papers, 63.
twelve of the forty-five parishes in the Archdiocese of Halifax (which included the current Dioceses of Yarmouth and Bermuda) had some level of Catholic schooling. In areas where the population was relatively evenly divided between Catholics and Protestants, such as Sydney or Halifax, local "gentlemen's agreements" provided for schools, built and financed by Catholic parishes, to be absorbed into the public school system and staffed at public expense by Catholic religious and lay teachers. In other areas, however, where Catholics were fewer and poorer, and where anti-Catholic sentiment was more intense, such informal agreements were not taken up. Where the Catholic population was very small and scattered, e.g., in Lunenburg County, Catholic schools could not be sustained, and Catholic children had to attend public schools. In areas where there was a greater concentration of Catholics, such as Yarmouth, Amherst, New Glasgow, and Truro, Catholic schools were operated as private institutions, receiving no public funding, supported by individual parishes, and facing various degrees of opposition from local authorities and anti-Catholic pressure groups, such as the Orange Order.

A particularly bitter opposition to Catholic schools arose from the 1930s to the 1960s in the Town of Dartmouth. There, under strong pressure from the Protestant Dartmouth Ministerial Association as well as from the local teachers' union, the town not only refused to adopt the "gentlemen's agreement" that had been working well for years in Halifax, but insisted on taxing the land and buildings used for Catholic schools as a private, commercial enterprise, the only jurisdiction in Canada, if not all of North America, to do such a thing. By 1930, the public schools of Dartmouth were overcrowded, and the town was slow to undertake new building. The two Catholic parishes, St. Paul's in north Dartmouth and St. Peter's in south Dartmouth, were encouraged by Archbishop Thomas O'Donnell to open schools to serve Catholics in their areas and in neighbouring parts of Halifax County, as well as any non-Catholics who wished to attend. The Archdiocese would borrow the money necessary for school construction and guarantee the debt, which it expected the parishes to sustain. The schools opened in 1931, St. Paul's in an addition linked to the church, and St. Peter's in rooms at a nearby convent until the opening of a new building in 1932.

4. See infra, note 17.
5. The Sisters of Charity of Halifax had been offering private classes since 1920 at their convent at St. Peter's Church. See Sister Maura (Power), s.c.h., The Sisters of Charity in Halifax (Toronto: Ryerson Press, 1956) at 150.
Although the establishment of these schools in 1931 saved the Dartmouth School Commission thousands of dollars each year in per-pupil costs as well as in construction and building maintenance costs, the Protestant leadership of the town resented the decision to establish parochial schools. On the last Sunday of October, 1931 the sermons in practically all of the Protestant churches of Dartmouth were devoted to the "separate school question." These followed the reading out of a statement made by the Dartmouth Ministerial Association, an organization which included the most prominent Protestant clergymen in the town, and signed by pastors from the Baptist, United, and Anglican churches and the head of the local branch of the Salvation Army. The statement protested against the opening of the two parochial schools, and, while admitting "that our schools are not perfect," insisted, "we are sure that a unified system of training, non-denominational in character, such as given in our Dartmouth schools, is essential in a Canadian democracy" and that the establishment of the schools "threatens friendly relationships and disturbs the peace of the community."

The ministers and the town fathers may well have feared that, once Catholic schools were established, pressure would be brought to incorporate those schools into the publicly funded system as was done in Halifax. Certainly, most Catholics believed that the Halifax agreement was just and worked well, and most did indeed hope that their schools would eventually be absorbed, as Catholic schools, into the public system. Dartmouth, however, was less than 20% Catholic, had only one Catholic on its seven-member town council, and the Ministerial Association was successful in organizing public and private opposition to the Catholic schools."

Initially, the decision by Dartmouth Council to tax the new schools took the parishes and the Archdiocese of Halifax somewhat by surprise. In the mid-1920s the staunchly Presbyterian town of New Glasgow, in the Diocese of Antigonish, had attempted to tax the town’s parochial school, St. John’s Academy. Despite strong protests from the Orange Order in Pictou County, the Council quickly reversed itself when presented with a petition for tax relief from local Catholics, one strongly supported by local

7 See infra note 17.
8 Halifax Morning Herald (26 October 1931) 14.
10 See AAH (O’Donnell, Cont. II, File 124).
newspapers and a number of prominent Protestant citizens. No other jurisdictions had levied taxes on Catholic schools since that decision.

Archbishop O’Donnell saw the town’s actions as an attack on Catholic rights, and while the archdiocese was scrupulous in the payment of other taxes to the town, the claims for tax on the school properties was ignored. By 1936, back taxes had begun to accumulate, and pressure was growing within Dartmouth to collect from the Church. The town solicitor recommended that the school properties be listed under the liens law.

With the death of Archbishop O’Donnell in 1936, the Vatican named as his successor the Bishop of Hamilton, Ontario, John T. McNally, a native of Prince Edward Island, and a veteran of political battles in Ontario for reform of the funding arrangements for separate schools.

In February 1937, Rev. Charles McManus, the Vicar-Capitular, wrote to Bishop McNally to apprise him of the history of the Dartmouth School Question. Until this time, he wrote, “the town council was very fair” and, since the Catholic schools “relieved the burden of the town in providing school accommodation” the council “was disposed to call it quite enough.” Now, however, the Ministerial Association was demanding the collection of back taxes, and the town solicitor, W.E. Moseley, with the support of an independent legal opinion from a Halifax solicitor, J.E. Rutledge, had ruled that the church schools were liable to taxation. McManus reported that the diocesan consultors had agreed on a court challenge of the right of the town to tax the church schools, but, at the same time, they were concerned about the impact of an adverse judgement on the other parochial schools in the province, which had been exempt from local taxes.

On his arrival in Halifax, Archbishop McNally prepared to challenge in the courts the taxation of parochial schools. He also met in February 1938 with Dartmouth mayor L.J. Isnor and his finance committee to discuss the issue. Earlier in the fall of 1937, the Archbishop had been contacted by town solicitor W.E. Moseley, who informed him that “a considerable number of the town ratepayers are demanding that action be taken,” namely that the properties in question “be sold under the Town’s lien for taxes.” He added that “the Town Clerk has held the properties off the list in the

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11. In New Glasgow, the local papers took up the Catholic cause with vigour. The New Glasgow Evening News (16 April 1929), for example, noted that in Catholic Antigonish, Protestants “have always been generously treated” and indicated that they would be “bitterly disappointed” if tax relief were not granted to the Catholic petitioners, “a majority of whom are plain working men, earning an ordinary day’s pay.” AAH, (O’Donnell, cont. IVB, File 39).
hope that some settlement could be arrived at,” but local officials felt they would be held “personally responsible for the collection of taxes because they failed to sell the properties in the usual course.”

Eventually, McNally followed the advice of his consultors and agreed to fight the town’s claim in the courts, even though the lawyer for the archdiocese, L.A. Lovett, indicated that while the moral case for the Archdiocese was strong, its purely legal case was weak and likely to be dismissed. He noted that, under the British North America Act, there could be no claim for denominational schools as a “right or privilege existing at the time of the union.” Furthermore, even though the schools were open to all the children of the town of Dartmouth, without regard to denomination, they remained “private schools ... managed and supported by a private organization.” Lovett suggested that the archdiocese might focus on the alleged failure of the town to set up a “proper Assessment Court.” He admitted that this line of argument was something of a long shot, but “it is at least arguable and one which a Court might more readily strive to give effect to if it was apparent that the taxation in the present case was under all the circumstances unjust and inequitable.” At the same time, McNally and Lovett believed that the value of a court case would be that “the facts relevant to the whole matter may be given in evidence and could be used later if legislation is sought by us to remedy the situation.”

It was by no means certain that the archdiocese could place what it saw as the relevant facts before the court. In the view of the town’s legal representatives, the facts and arguments at the heart of the defence were utterly irrelevant to what it saw as a straightforward matter of delinquent taxes. The town filed a petition to prevent the entry into evidence of most of the case for the archdiocese, deeming it “bad in law as being a plea to the general issue” and suggesting that it “may tend to prejudice, embarrass or delay the fair trial of the action”; and the matter was brought before Mr. Justice Maynard B. Archibald on 20 December 1938. Interestingly, while Justice Archibald accepted “that the plaintiff is justified in much of his complaint, and that if the application had been made promptly, he could have made out a strong case for the amendment of the defence,” he refused the application, citing “the plaintiff’s delay in applying to the Court.” Although the archdiocese had delivered its defence on 26 September 1938 and the town had submitted its reply on 21 November, the town’s formal

15. Letter from W.E. Moseley to J.T. McNally (27 September 1937), Halifax, AAH (O’Donnell, Cont. IVB, File 241)

16. Letter from L.A. Lovett to J.T. McNally (8 June 1938), Halifax, AAH (O’Donnell, Cont. IVB, File 191)

petition for amendment had not been filed until 15 December. Thus, on the basis of Justice Archibald’s interpretation of a technical point, the major political goal of the archdiocese in the case was achieved.

The town brought its complaint to the Supreme Court of Nova Scotia on 4 July 1939, claiming before Mr. Justice John Smiley that the archdiocese (the Roman Catholic Episcopal Corporation of Halifax) owed the sum of $7634.87 in taxes and arrears for the years 1933-1938 inclusive on the two Catholic school properties in Dartmouth. Deferring to the earlier judgment of Justice Archibald, Justice Smiley rejected the town’s request that the bulk of the defence of the archdiocese be stricken. The town’s counsel, W.E. Moseley and J.T. Rutledge, argued simply that the governing statute law, particularly the Assessment Act, supported the right of the town to levy taxes on private schools. They noted further that the archdiocese had never appealed their assessments until February 1939.

On behalf of the archdiocese, Lovett attempted to build its case on a number of pillars. First, he argued that the town had failed to appoint a proper “Assessment Appeal Court,” as provided by Section 30 of the Assessment Act. Although the town had established in 1920 a “Court of Tax Appeals,” Lovett noted that this body had not been “given any powers of procedure.”

Second, he claimed that when the two parochial schools were built, the town and board “were not providing reasonable accommodation for the resident children of school age” and had not been doing so for many years prior to 1931-32. He entered into evidence a series of extracts from the minutes of the school board from 1921 to 1939 which made repeated references to “congestion” and overcrowding in Dartmouth’s schools. Under direct examination, the supervisor of Dartmouth town schools, Grover C. Beazley, admitted that several schools had to put some of their classes on half-time programmes because of overcrowding, that the accommodation for students in Dartmouth when the two Catholic schools were built was “inadequate,” and that it would have remained so, even with the addition of a number of new classrooms in the public system.

The defence maintained further that St. Peter’s and St. Paul’s “are and always have been conducted and managed as public schools, giving education in Grades 1 to 8 of exactly the same kind and under teachers with same qualifications as presented by the Education Act and/or the Council for the

18. S.N.S. 1923, c. 56, s. 48.
19. Ibid.
21. Supra note 17. See exhibits 1a, 2a, and 3a.
22. Supra note 17. See exhibits 1a, 2a, and 3a. See also supra note 18 at 51.
of Public Instruction." Beazley confirmed that the schools followed the same curriculum as the public schools, that he personally had set and supplied the schools the examination papers for Grades 7 and 8, and that "the marking of the examination papers by the teachers in St. Peter's and St. Paul's schools have always been accepted by him as qualifying the pupils taking such examinations and having a pass mark of 60% to enter into the Town of Dartmouth High School." Beazley, while insisting that he never supervised the work in the parochial schools or visited them in his official capacity, admitted that he had "considerable business with the Sisters Superior as regards the schools," that he had been in every classroom, and that the schools "have an excellent system."

Testimony was secured from Harding P. Moffatt, the Assistant Superintendent of Education in the province, confirming that since 1935, when regulations providing free textbooks for schools came into effect, both schools had "been recognized by the Council of Public Instruction as entitled to free school books under its Regulation 75" of the Education Act. Furthermore, as officials of the town school board had signed the necessary documents to procure these free textbooks, this suggested that the town had acted as if the schools were part of its educational system. Finally, Lovett argued that the town's implicit acceptance of the parochial schools could be ascertained from its failure to enforce on their pupils the provisions of the compulsory school attendance statutes.

Lovett argued also that if the town had been required to furnish the accommodation for the children in the two parochial schools, their maintenance expenses would rise from $15,000 to $20,000 per annum, beyond the requirement of new capital costs. "If the defendant's schools were closed (by reason of the Court being unable, or the Legislature refusing, to remedy a situation which would be a travesty on British justice) the consequences to the ratepayers will be much more serious than they would be if the Town gave up its unjust and inequitable claim." William T. Smith, the town clerk and secretary of the school board, admitted under questioning that without the existence of the two Catholic schools, which accommodated up to 500 students in any given year, the town of Dartmouth would have had to spend additional money for both capital expenditure and annual upkeep to supply schools for the bulk of those students. Lovett invoked a decision of Lord Watson of the Privy Council in Great Britain on the matter of the Ulster Institute, defining it as "public."

22. Supra note 20 at 51.
23. Supra note 17.
24. Supra note 17. See also supra note 23.
25. Supra note 20 at 52.
in view of the "terms on which and the circumstances in which education is given." He, in turn, wished to claim that the schools were public, and, therefore, exempt from tax because:

a) they perform a public service without profit or emolument;
b) they give free education, supported by voluntary subscription;
c) all the parents and subscribers are taxpayers who pay school taxes;
d) they relieve other taxpayers; and that
e) private ownership or management should not be an issue, any more than it would be for the universities or the Catholic schools of Halifax.\textsuperscript{28}

Counsel for the plaintiff denied that the two Catholic schools were "public schools" under the meaning of the Education Act and insisted that none of the acts of cooperation with the schools could be deemed recognition or formal approval of their work. Harding Moffatt testified that, with the cooperation of public school officials, a number of private schools received free textbooks, while Grover Beazley testified that he exercised no control over how the schools were run, who was admitted, who was hired to teach, what the teachers were paid, and so on.\textsuperscript{29}

It was Lovett's conclusion that "Equity relieves against manifest injustice especially if the party asserting a legal claim does not come into the Court with clean hands." Had Dartmouth provided the necessary schools, it would have cost much them much more. "It is really the taxpayers of the Town who have been escaping payment of what legally they should be compelled to pay, and large amounts at that, who are now trying in the name of the Town to exact taxes which they ought to pay, from the taxpayers who not only contribute their proportion of taxes to the support of the public schools but also support by voluntary subscription the schools which relieve the first named taxpayers from payment of taxes they should be paying." And in a final flourish, Lovett claimed, "Democracy is a word. Its meaning if interpreted in the light of such circumstances as exist in this case will not make the designation of Hitler and Mussolini as dictators a term of reproach."\textsuperscript{30} Outside the court, Lovett said bluntly, "The ratepayers of Dartmouth are accepting charity and slapping the face of the donor."\textsuperscript{31}

In a letter to Fr. John Quinan, Lovett offered the opinion that "[t]he Judge appeared to be completely in our favour so far as the merits were concerned and I feel sure he will only be debarred from giving us judgment

\textsuperscript{28} Supra note 17. See also, AAH (O'Donnell Ps., Cont. IVB, File 15).
\textsuperscript{29} Supra note 20 at 50-52.
\textsuperscript{30} Supra note 20 at 50-52.
\textsuperscript{31} Halifax Mail (5 July 1938) 2.
if he feels that the statutes render such action impossible.” Even if the judgment were to go against the archdiocese, Lovett contended, “The most important result, however, is that we have now got in evidence our complete moral case and if we go to the Legislature I think the moral case will be found to be unassailable.”

In the original judgment, rendered by Mr. Justice John Smiley in December 1939, the claims of the town of Dartmouth were upheld, and the archdiocese was ordered to pay almost $6800 in back taxes and assessed costs. Smiley dismissed the claim that Dartmouth lacked an assessment appeal court, noting that a provision in an Act relating to the town of Dartmouth (1920), constituting a court of tax appeals, repealed “by implication” the requirement of the Assessment Act for an assessment appeal court. He also rejected the contention that the town had, in effect, accepted the two schools as part of the provision of schooling that was required of it. Smiley pointed out that the town “never had [exclusive] control or management over the schools” as required by sec. 153 of the Towns’ Incorporation Act, and that it would, in any case, have been “beyond the authority” of the town to adopt the schools, except by statute. The judge wrote that there was no evidence that the town had failed to provide adequate school accommodation for those entitled to it, but, in any case, “it is the exclusive duty of the Board” to do so, and relief against any failure to provide such accommodation “can be obtained through proper legal sources.” He also swept away the claim that the two Catholic schools were “public schools,” insisting that only schools under the board of commissioners’ “exclusive control and management” as provided in the Towns’ Incorporation Act could claim that designation. Finally, Mr. Justice Smiley rejected the Church’s arguments about the unfairness of the taxation, observing simply that “an equitable construction is not admissible in a taxing statute.”

The decision was appealed immediately to the Supreme Court of Nova Scotia in banco, which heard arguments on 11 January 1940. No new arguments were brought forward, but the archdiocese again pressed its moral case for relief from local taxation, while the counsel for the town held to its right under statute to tax the schools.

32. Letter from L.A. Lovett to J.L. Quinn (6 July 1939), Halifax, AAH (O’Donnell, Cont. IVB, File
33. An Act Relating to the Town of Dartmouth, S N.S. 1920, c. 106, s. 14
34. Supra note 20 at 53.
35. Supra note 20 at 54.
36. Supra note 20 at 54.
37. Supra note 20 at 57.
The Supreme Court of Nova Scotia, which contained adherents of different political parties and religious faiths, was no doubt aware of the divisiveness and political thorniness of this issue. R. Blake Brown and Susan S. Jones have noted that a "political career for those appointed [to the Supreme Court of Nova Scotia] before 1967 was ... more the rule than the exception," and at this time Court included a number of former politicians, including two Attorneys-General.\(^{39}\)

The religious issue was a highly sensitive one in Nova Scotia, one that had bedevilled political leaders throughout the history of the province and had nearly undone even the charismatic Joseph Howe.\(^{40}\) J.R. Miller notes that anti-Catholicism in Canada had been "a constant and influential force in Canadian life" into the early part of the twentieth century,\(^{41}\) but there had been a particularly bitter turn in Catholic-Protestant relations in Nova Scotia just prior to Confederation. In the wake of a small riot involving Catholic and Protestant railway labourers near Windsor, Nova Scotia early in 1856, Joseph Howe engineered a public campaign against the political aspirations of the Catholic minority, suggesting that the rights of Protestants could be safeguarded only through the exclusion of Catholics from official positions.\(^{42}\) While Howe eventually attempted to repair the breach, Catholics remained seriously under-represented in the political, professional and economic life of Nova Scotia.\(^{43}\)

Tracing the stages of anti-Catholic sentiment in Canada, J.R. Miller argues that the anti-Catholic movement was beginning to wane by the end of the First World War.\(^{44}\) Yet despite comprising nearly a third of the population of the province and nearly half of that of the provincial capital, Catholics experienced periodic attacks on their loyalty and were cautious in pressing

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39. Justice William L. Hall served as Attorney-General from 1926 to 1931 and Justice John Doull from 1931 to 1933.
43. Meagher, ibid. at 78-80. Meagher, himself a former justice of the Supreme Court of Nova Scotia, writing in 1927 is clearly sensitive to the disadvantaged position of Catholics in Nova Scotia, noting, at 9, that Catholics "were a minority, and minorities generally suffer."
44. Miller, supra note 41 at 41.
their political claims. By the late 1920s, however, as part of a gradual process of accommodation of the interests of this significant minority, it was generally accepted that two seats on the Supreme Court of Nova Scotia would be held by Catholics.45

Relative peace had been secured through a variety of informal local understandings which recognized the contributions and aspirations of both Catholics and Protestants, and the stance of the Dartmouth town council threatened to disturb that peace. At the same time, the judges, like the members of the Legislative Assembly, were reluctant to interfere with municipal autonomy. In the absence of any provincial action, it appeared that the town was well within its rights to tax the parochial schools. Finally, even if courts were not as prone as today to pay special attention to the needs and rights of children, the fact that the town's actions would have an effect on the education of children put the matter in a somewhat different category than other tax disputes.

The Supreme Court rendered its judgment on 21 March 1940. Perhaps not surprisingly, the Court was divided in its response to the case. Writing for the majority, including Chief Justice Sir Joseph Chisholm and Justice William F. Carroll, Mr. Justice R. Henry Graham recognized the strong moral case presented by the Church, while rejecting many of its specific arguments.46 He rejected the claim that Dartmouth's "Tax Appeals Court" was not the "Assessment Appeal Court" called for in an earlier statute; the town had merely changed the name of the body, and to accept the argument of the archdiocese, he wrote, "would frustrate the whole system of assessment."47 He rejected, too, the contention that the two schools were "public schools." Even though "the schools are conducted as Town schools are," they "are not maintained by, nor are they under the supervision and control of the Town school commissioners."48 Further, he claimed that the meaning of the term "public school" was "so well established by the Education Act and so generally understood" that he could not accept the analogies made with public universities.49 Finally, he swept away the claims that the town had given implicit sanction to the schools by virtue of its procurement of free textbooks, provision of examinations, and failure to enforce the compulsory school attendance statutes. "The conduct of the Board's officials seems to have been unauthorized personal concessions to comity, indicating only an inclination on the part of the officials not to

45. Brown & Jones, supra note 38 at 212.
46. Supra note 20 at 62-72.
47. Supra note 20 at 71.
48. Supra note 20 at 63.
49. Supra note 20 at 66.
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aggravate the situation. There is a clear distinction between agreeing to accept the schools and abstaining from interfering with them.”

At the same time, however, Mr Justice Graham noted that this “is the first instance of taxation of church schools in Nova Scotia,” and was in no doubt as to where the stronger moral claim lay. “There is clear inequity. The taxation of these schools creates manifest hardship, and I would extend the exemption to prevent this clear injustice, if I were not precluded by the language of the statutes.”

In a partial victory for the Church, the Court upheld the original decision but did offer an exemption to St. Paul’s School, on the grounds that it was part of the same building as the tax-exempt church. Mr. Justice Graham noted that s. 4(b) of the Assessment Act exempted churches from taxation, while the town of Dartmouth had a provision which held that exemption from tax would not extend “to any buildings other than churches, nor to any building which is not used as the regular and usual place of worship of the congregation worshipping therein, nor to the land in connection with any church of a greater area than 4,000 square yards.”

He held, however, that the “section must be read strictly,” noting that it did “not exclude a part of the building not used as a place of worship; that being so, since St. Paul’s School occupies part of the church building, it is exempt from taxation.” It was held that the town could recover nothing in respect of arrears for the St. Paul’s property. The Court also did not assess costs “since each party failed in part.”

A partial dissent was registered by Mr. Justice William L. Hall, who, while concurring that the two parochial schools could not be judged to be public schools under the meaning of the Education Act, objected to the exemption for St. Paul’s School. He judged that the archdiocese had failed to show that St. Paul’s School qualified as an integral part of the church, despite its being conducted in the same building. The most that the evidence presented by the archdiocese could establish -- if verified, and he denied that it had been verified -- “is that there is a dual purpose building, one wing of which is used for church purposes and the other wing is used for school purposes. One can point to many public halls and even school houses in the province which are used regularly for ‘church purposes’ and as places of public worship but it does not follow necessarily that they

50. Supra note 20 at 70.
51. Supra note 20 at 63.
52. Supra note 20 at 70.
53. An Act to Consolidate the Acts Relating to the Town of Dartmouth, S.N.S. 1902, c. 56, s. 48.
54. Supra note 20 at 65.
55. Supra note 20 at 72.
56. Supra note 20 at 72-79.
are 'churches'." He criticized the defence as "discursive" and quoted approvingly the town's claim that the "pleas contained [in the defence]" — those entered into evidence perhaps only because of the non-committal acquiescence of Mr. Justice Archibald — "are prolix, unnecessary, scandalous, and tend to prejudice, embarrass and delay the fair trial of this action." Finally, he rejected any consideration of the moral aspects of the case: "[t]he fairness or unfairness of this Assessment is not before the Court. That is a matter of policy for the town of Dartmouth." In response, Mr. Justice John Doull, concurring with the majority, noted that "there is evidence that St. Paul's School is in a church building" and that the lawyers for the town had not raised objections to the evidence when it was presented that it was part of the tax-exempt church.

The court's decision no doubt went as far toward addressing the inequities claimed by the Church as the statute would allow. It seems likely that the grant of immunity from taxation to the smaller St. Paul's School was given to mitigate the financial burden facing Church authorities, perhaps to signal the court's sympathy with the moral argument advanced by Church's lawyers, and perhaps to bolster the decision not to assess costs in the case. One can only speculate, of course, about the reasons for the court's ruling, but it is certain that all of the justices involved were keenly aware of the impact their decision would have on the political and cultural sensibilities of the province. Every one of the justices who ruled on the Dartmouth Schools question had been active in political life at different levels in Nova Scotia and involved with one or the other of the two major parties. They came from different parts of the province and comprised a good cross-section of Nova Scotia's religious diversity. Each would have been well aware of the passions raised on both sides by the issue before them.

Justices John Smiley, Maynard Archibald, and John Doull were adherents of the United Church, Sir Joseph Chisholm and William Francis Carroll were Roman Catholics, William L. Hall was a Baptist (albeit of the less ferocious Annapolis County variety), and Robert Henry Graham a Presbyterian. Chisholm, brother-in-law to former Prime Minister Sir John S.D. Thompson and editor of the letters and speeches of Joseph Howe would have learned from Howe's stormy career of the corrosive nature of religious factionalism in Nova Scotia. Living in Halifax, Chisholm

57. Supra note 20 at 78-79.
58. Supra note 20 at 76-77.
59. Supra note 20 at 79.
60. Supra note 20 at 79-80.
was also familiar with the accommodations among religious groups that had been reached in the capital, where a mixed system of public schools had operated peacefully under one of several "gentlemen's agreements," another of which ensured that Protestants and Catholics would serve alternately as mayor of Halifax, an office which Chisholm himself held from 1909 to 1911. Carroll had served as a federal Member of Parliament for Cape Breton South, which included Glace Bay, where Catholic schools were also maintained by the public school board. Justices Smiley, Graham, Hall, and Doull had all been members of the provincial House of Assembly. Smiley, born in New Brunswick, had practised law in Amherst, where the minority Catholic population maintained the private and untaxed St. Charles School. Doull and Graham had both been mayors of New Glasgow, which had briefly considered but ultimately drew back from a plan to tax its local Catholic school. William L. Hall, son of a Baptist minister, was born in Annapolis County but practised law in Queen's County, which he represented in the Assembly as a member from 1910 to 1920, and from 1916-1920 as Leader of the Opposition. Only Archibald had not served in elective office, but even he had run unsuccessfully for both the House of Assembly and the House of Commons.

It may well be that from the relative safety of their positions, the justices of the Supreme Court of Nova Scotia brought their collected political and social experiences together with their legal judgment to effect a compromise that would, without doing violence to the law as they understood it, signal the disapproval of the wider community of the town of Dartmouth's tax vendetta against their Catholic schools. The Court allowed the Archdiocese a forum in which to present its case, and the majority decision applied principles of equity likely as far as they could be applied to a local taxation decision and effectively handed back to the legislature and the town of Dartmouth the responsibility for reaching a permanent solution to the question.

The length of time it took to reach such a solution is an indication of the political challenge raised by the Dartmouth Schools question. The province's Catholic premier, Angus L. MacDonald, while personally sympathetic to the position of the Catholic schools, was reluctant to legislate on the matter and would not have been able to persuade his cabinet to support a government initiative.62 Not until 1943 did the House of Assembly agree to a bill to permit the town of Dartmouth to set a low fixed assessment on school properties, which would effectively limit the tax burden on the Catholic schools, and only if such a special assessment

62. Letter from J.L. Quinan to J.T. McNally (12 April 1940), Halifax, AHH (O'Donnell, Cont. IVB, File 38).
was approved in a local plebiscite. In the face of intense opposition by the Dartmouth Ministerial Association and its allies in the local teachers' union, that plebiscite failed in September 1943 by three votes, with twenty ballots spoiled. Despite several efforts by local Catholic pastors after the Second World War to persuade the town council to revisit the question, the taxation of Catholic schools in Dartmouth remained in place until 1960. By this point, although the Ministerial Association mounted a vocal opposition to tax relief, as a body it no longer commanded a level of political support that threatened Council members.

Dartmouth's stubborn refusal to lift the tax burden on its Catholic schools was, as has been shown, an exception to common municipal practice in Nova Scotia. By the late 1950s, however, several factors likely influenced the town council in Dartmouth to bring an end to its anomalous taxing policy. As part of a growing trend of awareness in North America of discriminatory practices, the House of Assembly in 1955 enacted legislation to prevent discrimination in employment and trade union membership, and it extended that ban to forbid discrimination in public accommodations in 1959. The opening of the Angus L. MacDonald Bridge across Halifax Harbour in 1955 had begun to change Dartmouth both demographically and culturally, as the Town became more fully integrated as part of the Halifax metropolitan area. Finally, and perhaps most significantly, a growing sense of religious tolerance (or indifference) in an increasingly secular Canadian society in general had made limited tax relief for Catholic schools seem to its partisans a less important issue than it had been in previous decades. Indeed, within seven years, Dartmouth's Catholic schools had been accepted as part of Dartmouth's public school system, and within a further ten years, the schools had almost completely lost their distinctive religious character.

It is for those better versed in the law than this writer to comment on the jurisprudential character of the legal decisions in the Dartmouth Schools question. An historian following the case, however, is struck by the ways
in which the Supreme Court of Nova Scotia interpreted the law to impose a compromise that seemed beyond the capacity of local and provincial politicians to reach. With no readily available documentation of the social or political calculations of the justices involved, we can only speculate about their motivations and the sources of their extra-legal reasoning. We must also appreciate the political insight and courage of the justices of the Supreme Court of Nova Scotia in producing decisions which provided an opportunity for the archdiocese to put publicly its political and moral case, offered partial relief for the financially stretched Catholic parishes of Dartmouth, protected the autonomy of the Town of Dartmouth, and helped to contain the strong religious passions that seethed below the surface of public life in Nova Scotia.