

The Terms of Union in Historical Perspective

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LOOKING BACK at the Terms of Union that brought Canada and Newfoundland together in 1949, it is easy and often convenient to see in them the roots of many of Newfoundland's present problems. This is understandable, because the Terms of Union ushered in a new era for Newfoundland — when Newfoundland stopped being a country and started being a Canadian province. Today, after 50 years, we still live with the legacy of the decisions made in 1947-48.

The Terms of Union set out the constitutional ground rules within which Newfoundland must operate as a Canadian province, and so, when problems arise, it is to those Terms that we look to explain or understand what happened or what went wrong. It becomes difficult — if not impossible — to separate the goals of the people who framed the Terms in 1947-48, and the national and international context within which they worked, from all that has happened since that time. And yet, with the passage of time, it does become a little easier to re-examine and reflect upon the Terms of Union and to sift through the events of 1947-48 to get a clearer picture of the origins of the Terms and the constraints within which those individuals who negotiated them worked.

It is the purpose of this essay to try to do just that: to revisit the Terms of Union after 50 years in an effort to understand how and why they were made the way they were. The long term impact of the decisions made in 1947-48 cannot be ignored, but they must be assessed in the context of the times. This essay is not a behind the scenes examination of the people and politics of the Terms of Union, but it does suggest that, regardless of the political infighting at the time of Confederation, and despite the serious problems and acrimonious debate that have arisen over the successes and failures of the Terms of Union since 1949, there were good reasons

why the Confederation negotiations were brought to a successful conclusion in 1948 and why the Terms of Union turned out the way that they did.

The Terms of Union constitute a fairly straightforward document and political settlement. The goal of the negotiations was simple: to turn Newfoundland into a province like the others. Newfoundland was to have all the responsibilities and privileges of the other provinces; it would also, like the other provinces, receive its rightful share of the benefits of Confederation. On the one hand, therefore, the meetings that produced the Terms were less a forum for bargaining and tough negotiations than they were a chance to exchange information about the changes Newfoundlanders could expect once they became Canadians. On the other hand, of course, no two provinces are exactly the same and each has had its own particular concerns and problems in its relationships with Ottawa and the other provinces — problems that needed to be addressed. Newfoundland was no different.

The first question is, what did Canada hope to gain from bringing Newfoundland into Confederation? Overall, the Canadians were fairly transparent. On one level, the benefits were economic: bringing in Newfoundland would make Canada a much larger and slightly more populous country, and with Newfoundland and Labrador would come their enormous mineral wealth and the potential value of other natural resources. In addition, jurisdiction over the Newfoundland fisheries would fall to Ottawa, removing Newfoundland as a competitor in the fishing industry and permitting larger joint marketing arrangements to sell Canadian fish abroad. Likewise, after union the Newfoundland tariff would disappear and the Canadian tariff would apply to Newfoundland, giving Canadian producers an advantage in the Newfoundland market. Newfoundland was already Canada's eighth largest trading partner, and Confederation would secure this market in the future.²

On another level, the goals were strategic and political. Newfoundland's strategic value had been demonstrated during the war, and as the Cold War unfolded its location in the North Atlantic guaranteed its continued importance. Confederation also would make it much easier to deal with the lingering problems over Canadian-built military installations, and the postwar use of Newfoundland's airports, especially at Gander and Goose Bay.³ Once Newfoundland became a province, jurisdiction over aviation and the airports would fall to the federal government and Ottawa's bargaining position in the negotiation of international bilateral aviation agreements would be considerably strengthened. Without Confederation, however, Canada would have to negotiate with either the British government or an independent Newfoundland government for the commercial use of Newfoundland's airports, and Newfoundland or the British government could negotiate bilateral agreements independently.⁴

On the negative side were those things that might happen if Canada failed to bring Newfoundland into Confederation. Newfoundland would remain as a competitor to Canada in the fishing industry, and there were always concerns that an independent government in St. John's might negotiate a trade agreement with the United States to give Newfoundland fish a competitive advantage over Canadian fish in the American market. Worse, the negotiation of a full scale trade agreement with the United States — or even economic union, the idea that was much discussed during the referendum campaigns — could have serious repercussions on Canada. An economic union with the United States would give American producers a competitive edge in the Newfoundland market, again adversely affecting Canadian manufacturers and business.⁵ Confederation would shift the advantage to Canadian producers; *not* to have Confederation meant that this advantage would be lost and might even shift the other way.⁶

The greatest negative of all was the possibility of Newfoundland's union with the United States. Canadians had long feared "another Alaska" and with the involvement of the United States in Newfoundland during the war, the establishment of US military and naval bases, the influx of US servicemen and US dollars into the economy, the jobs, the personal contacts, the good relations, and so on, the possibility of union seemed greater than ever.⁷ Furthermore, American interest had not diminished with the end of the war; Newfoundland's strategic value remained high well into the early years of the Cold War.⁸ The union of Newfoundland with the United States was the nightmare scenario for the Canadians, and a possibility to be avoided at all cost.⁹

Finally, there were the intangibles; those factors which could not be measured, but made bringing Newfoundland into Confederation seem to be the right thing to do. Newfoundland's entry into Confederation did not arouse much public debate in Canada in the late 1940s, but this should not be construed as indifference.¹⁰ For many Canadians, Canada would be a much stronger nation with Newfoundland as a province and a much weaker one with Newfoundland as part of the United States. There were some high profile critics, like Maurice Duplessis, the premier of Quebec, who maintained lingering designs on Labrador, but opposition, such as it was, was usually directed less at the *idea* of Confederation and more at the fear that Newfoundland would become a financial liability, or would receive terms more generous than received by the other provinces.¹¹ For those involved in the political settlement, there was a sense that bringing in Newfoundland would round off Confederation and complete the task begun in 1867, almost as if Newfoundland had a "natural destiny" to join Canada.¹² As Lester Pearson, Canada's Minister of External Affairs, put it late in the final negotiations, "I still feel that the national interest requires that Newfoundland should be brought into federation if at all possible and that the present may be our last opportunity to do so."¹³

Turning Newfoundland into a province like all the others would achieve all the results for which Ottawa hoped. The fisheries, the Newfoundland market, and

control over civil and military aviation would automatically fall to the federal government; the negatives would be avoided simply by having Newfoundland become a Canadian province, and all the intangibles would be realized without having to bend the British North America Act out of shape. The only negative would be the cost, but there were few Canadians involved at any stage of the process who argued against paying the cost, whatever the amount. The one exception, perhaps, was Prime Minister Mackenzie King who became increasingly hesitant as the projected costs escalated; not because of the cost itself, but because of the political ramifications in the Maritimes if Newfoundland was seen to be getting a better deal than they had received.¹⁴

The goals of the Newfoundlanders were straightforward, even basic, although the means to achieve these goals produced some difficult choices. They wanted a return to open and democratic government and to secure Newfoundland's present and future economic situation on a national and personal level, and to prevent a return to the bad old days of depression and economic destitution. Despite the prosperity of the war and early postwar years, many Newfoundlanders — like their Canadian neighbours — remembered the bad times of the Depression and had no wish to return to them. Confederates, like J.R. Smallwood and Gordon Bradley, and many other observers, both inside and outside Newfoundland, played on these fears. Even the Act creating the National Convention asked the Newfoundlanders to examine the state of Newfoundland and make recommendations "bearing in mind the extent to which the high revenues of recent years have been due to wartime conditions."¹⁵

Others argued that Newfoundland was too small and weak a country to survive, let alone prosper, on its own, and that its future lay only in alliance with, or support from others, like the United Kingdom, the United States, or Canada. Most Newfoundlanders wanted a return to democratic government and the feelings for independence were strong, but the question remained: what was the best way to return to democratic government and achieve a degree of economic security at the same time? The lingering support for the Commission of Government, as evidenced in the first referendum vote, suggests that there were many Newfoundlanders who remained hesitant about heading out in an independent Newfoundland. Even among those who supported the return of responsible government there were many who believed in the need for outside economic help for an independent Newfoundland, or the need to establish close relations with either Great Britain or the United States.¹⁶ The British response to the London delegation from the National Convention ruled out any continuing aid, as did the American refusal to discuss compensation for Newfoundland for the use of its bases during the war. The rather cool response of the US State Department to overtures from the Economic Union Party only underlined that an independent Newfoundland would be on its own in an increasingly turbulent world.¹⁷

Confederation, however, could hope to fill many of those needs. The war had sparked great industrialization and development in Canada, and Canada emerged in 1945 as a much more prosperous and powerful nation than ever before. The creation of a wide social security network during the war, in the form of family allowances, unemployment insurance, veterans benefits, and the pre-existing old age pension, promised to raise the standard of living of most Canadians and offered a kind of social security that Newfoundlanders had never had. As the Confederates were quick to point out, and the debates of the National Convention confirm, these social benefits were Confederation's major selling points.¹⁸

There were many problems that would have to be solved to make Confederation a success — guaranteeing the borders of Labrador, jurisdiction over the fisheries, the loss of tariff revenue, Newfoundland's national debt, divorce laws, the school system, the sale of margarine, and so on — but in a general way Confederation offered Newfoundlanders a return to responsible government with the institution of a democratically elected provincial government. With that government came all the powers of the other provincial governments in the areas of health and education and an ability to raise taxes and to protect the interests of Newfoundlanders. At the same time, Confederation would provide Newfoundland with a degree of security by making it part of a larger and more prosperous nation without severing the tie to Great Britain and without the loss of identity or national pride for the people of Newfoundland. Confederation meant that Newfoundlanders could become Canadians without having to stop being Newfoundlanders.

The Terms of Union emerged as the product of two sets of discussions. The first was the talks between Canadian officials and the delegation from the National Convention in the summer of 1947 which was followed by the production of the "Proposed Arrangements for the Entry of Newfoundland into Confederation." The second was the official negotiations that occurred in the Fall of 1948 leading to the signing ceremony on 11 December 1948. The 1947 talks furnished the opportunity to exchange information about Canada, and in most cases it was relatively easy for the Newfoundlanders to adapt to the Canadian system. It was in 1948 that the remaining differences were ironed out and more specific bargaining — particularly concerning the financial arrangements — took place.

The political background and the National Convention need not be examined here, other than to note that the announcement that there would be a Convention to examine Newfoundland's political future set off a chain of events that led, ultimately, to the Terms of Union. With the revival of political debate in Newfoundland interested parties on both sides of the Gulf of St. Lawrence began to examine the specific implications of a union between Newfoundland and Canada. Some Canadians were interested already; they had been convinced by the war experience that

Confederation was the best solution to the "Problem of Newfoundland," and there had been informal discussions about Newfoundland's future with similar officials in London.¹⁹ But it was the creation of the National Convention that brought these informal musings onto the official — and political — level.

Several months before the opening of the National Convention on 11 September 1946 the Canadian government established a small inter-departmental committee to examine the problems of integrating Newfoundland into the Canadian system, and to look at the impact on Canada of Newfoundland's entry into Confederation. Over the following months several meetings were held with participants from many different government departments, and very early on what would become the major sticking point in the negotiations appeared, namely, that Newfoundland would likely experience serious financial difficulties as a province.²⁰ Just how big a problem and how much it would cost was still uncertain, but the feeling was clear that Ottawa would have to come to the aid of the new province.

The situation became more formalized after a Cabinet meeting on 30 October 1946, when it was decided to receive a delegation of Newfoundlanders if they wanted to send one. In anticipation of such a request, two committees were to be established to lay the ground work for union. The first was a cabinet committee to "consider and advise the government on questions relating to Newfoundland." It was chaired by Louis St. Laurent, the minister of external affairs, and included Brooke Claxton, C.D. Howe, J.L. Ilsley, and Frank Bridges, among others. The second was an interdepartmental committee, chaired by R.A. MacKay, a former Dalhousie professor and an authority on Newfoundland, who was an early supporter of Confederation.²¹ Its goal was "to report to the Cabinet Committee upon political, economic, financial and other phases of proposals for the entry of Newfoundland into Confederation."²² With these two decisions, preparation of the Terms of Union began.

The National Convention's decision to send a delegation to Canada to examine the basis for union accelerated the preparations in Ottawa. For the most part, the work was fairly straightforward, but the questions concerning the future of Newfoundland's debt, the loss of its tariff and customs duties, and the impact on Canada's trading arrangements increasingly became the focus of Canadian concern.²³ And, even though the delegation was not authorized officially to negotiate terms of union²⁴, the arrival of the delegation focused Canadian attention. On 19 June 1947, the Cabinet made official what had been and would continue to be Canadian policy with respect to any terms of union; "in the forthcoming discussions," the delegation from the National Convention would be informed that:

should the people of Newfoundland indicate a desire for union with Canada, the government would be prepared to offer to the island the position of a Canadian province and to accord it the treatment accorded other provinces; further, that the government would be prepared to discuss with representatives of Newfoundland authorized to negotiate for federal union with Canada methods by which a Newfound-

land provincial government might (with assistance from the federal government over a transitional period) maintain a reasonable standard of provincial services and balance a provincial budget.²⁵

The Newfoundland delegation was headed by Gordon Bradley and included Smallwood and five others from the National Convention: Thomas Ashbourne, Charles Ballam, the Reverend Lester Burry, P. W. Crummey, and Gordon Higgins. The Newfoundland delegation to London had had a difficult time earlier that year, and the Newfoundlanders correctly anticipated a much warmer reception in Ottawa. They arrived with facts and figures about Newfoundland's population, economy, and finances, but otherwise were somewhat less prepared than the Canadians, which is not surprising given the exploratory nature of the discussions. The Newfoundland members were picked for political reasons, not for any expertise that they had with respect to Canadian affairs, and they were very much on their own in their dealings with the Canadians. Smallwood emerged as the key figure on the Newfoundland team and over the course of the summer he played a central role in the discussions. He had invested more time in learning about Canada and Confederation than any of the others, and given his designs on a future political career, he probably had more at stake and more to gain from a successful outcome to the talks in Ottawa.

The meetings between the National Convention delegation and the Canadian government ministers and officials lasted most of the summer of 1947. They were informal in nature and widespread in scope. At the first meeting the Newfoundlanders supplied the Canadians with information about Newfoundland and the Canadians presented the Newfoundlanders with documents sketching out how Newfoundland would fit into the Canadian system. Then the two sides adjourned so both sides could study the documents. Later, almost a dozen sub-committees were established to examine in greater detail specific areas of concern, including Economic Development, Fisheries, Public Debt, Transportation, Unemployment Insurance, 'Indians and Eskimos,' Housing, and Veterans' Benefits.²⁶ Subsequently, there were relatively few formal plenary sessions, and meetings were often held merely to enable the Newfoundlanders to present questions to the Canadians on the impact on Newfoundland of some issue or aspect of union.

The purpose of the 1947 discussions was to exchange information on how Newfoundland would adapt to provincial status, and what Confederation would mean to the people of Newfoundland. Within this context, there were limits to what even such a dynamic and knowledgeable individual as Joe Smallwood could do. Like the others, he had to deal with the Canadian constitution as it was written and he could not turn a federal responsibility into a provincial one, or vice versa.

At the same time, the Newfoundlanders immediately understood that there would be an element of risk in union with Canada regardless of how clear the constitutional arrangements were. From this uncertainty and sense of risk — especially over the financial viability of a Newfoundland provincial government

— evolved what would eventually become term 29 in the Terms of Union, calling for a royal commission eight years after union to examine Newfoundland's financial position and to make recommendations for additional financial assistance if necessary. Here Smallwood could use his talents as a negotiator to the full. In his memoirs he recalls how he and R.A. MacKay "sweated out" the creation of term 29: "We two were locked up all day in a room in the East Block of [the] Parliament Buildings, without air conditioning, in the heat of July and August. I usually stripped to the waist — and still sweated in that oven."²⁷ It was an important matter at the time and became an issue of great importance years later. In addition, because it was dealing less with the constitution and more with the unknown future, it was one occasion for more straightforward negotiating.

Over the course of the discussions a question developed over the final product of the talks. The Newfoundlanders hoped for a final document — an offer to be made by the Canadians — so that they could return to Newfoundland after their long sojourn with something concrete that they could defend in the National Convention and, perhaps, at a later referendum. The Canadians were less eager; for one thing, the Newfoundlanders were not empowered to negotiate terms of union, only to exchange information and explore the issue, and second, the death of Frank Bridges, the New Brunswick minister in the government, made it politically difficult to announce any proposed terms for fear that they might become an issue in the by-election to replace him. At the same time, however, Ottawa had no desire to come up with one set of terms only to have a second Newfoundland delegation come back later and try to use them as a starting point for better terms.²⁸

In the event, Ottawa decided to postpone the compilation of the proposed terms until after the New Brunswick by-election and after the Newfoundland delegation had returned home.²⁹ To satisfy the request of the Newfoundlanders, the Canadians put together a "Summary of Proceedings" comprising many of the documents prepared for the summer discussions, including the sub-committee reports on various important issues. These documents could be taken back to St. John's and debated in the National Convention. The "Proposed Arrangements for the Entry of Newfoundland into Confederation" would be prepared after the Newfoundlanders were gone and forwarded to Newfoundland through the proper channels — the Governor and the Commission of Government — and then made public for the National Convention. Consequently, the meetings with the Newfoundlanders concluded on 29 September 1947.

The Canadians went to work preparing a more formal offer of union and these "Proposed Arrangements" were completed near the end of October, after the 20 October by-election to replace Bridges.³⁰ The "Proposed Arrangements" were sent to Governor Macdonald and were distributed to the members of the National Convention early in November 1947. The Canadians informed the governor that there was "a basis for union... that would be fair and equitable to both countries." Mackenzie King went on, however, to explain the limits of the Canadian position:

I feel I must emphasize that as far as the financial aspects of the proposed arrangements for union are concerned, the Government of Canada believes that the arrangements go as far as the Government can go under the circumstances. The Government could not readily contemplate any change in these arrangements which would impose larger financial burdens on Canada. On the other hand, with respect to those matters which are primarily of provincial concern, such as education, the Government of Canada would not wish to set down any rigid conditions, and it would be prepared to give reasonable consideration to suggestions for modification or addition.³¹

The "Proposed Arrangements" of 1947 contain many elements of the final Terms of Union. First and foremost, Newfoundland would have "the status of a province of Canada with all the rights, powers, privileges and responsibilities of a province," and its borders would include Labrador as decided in the 1927 court decision. Next, the "Proposed Arrangements" listed the public services that would be extended to Newfoundland, including family allowances, unemployment insurance, old age pensions, assistance under the National Housing Act, and the services that would be taken over by Canada after union, including the Newfoundland Railway, civil aviation, Defence, Customs and Excise, and the public radio broadcasting system. Regarding the financial arrangements, Canada would assume responsibility for that part of Newfoundland's public debt that had been guaranteed by the British government, Newfoundland would remain liable for the rest. Newfoundland would retain its financial surplus, under a few imposed conditions. In addition, the subsidies and transitional grants for Newfoundland were listed, and information provided about a tax rental agreement. Rough versions of what became terms 18 and 29, concerning the continuation of Newfoundland's laws and a royal commission to review Newfoundland's financial condition after Confederation, were included as well. Other matters dealt with the maintenance of steamship and rail services, the continued sale of margarine, the preservation of Newfoundland's denominational school system, the extension of Canadian citizenship, the pensions of Newfoundland government workers, and representation in the Senate and House of Commons. All of these items were ultimately included in the Terms of Union, although some in slightly different form.

The "Proposed Arrangements" were debated in the National Convention beginning in November 1947 and were well aired across Newfoundland over the following weeks, thanks to the efforts of Smallwood and the fact that the Convention's proceedings were being broadcast. Consequently, Newfoundlanders had a fairly good opportunity to learn how Confederation would work by the time they went to the polls in the summer of 1948. This was the only occasion that either the people of Newfoundland or Canada were given the opportunity to vote on the Terms of Union, however. Indeed, the Canadians had even less say with respect to the Terms of Union than the average Newfoundlander, who at least got the opportunity to vote in a referendum in full knowledge of the basic framework of union as laid out in the 1947 "Proposed Arrangements."

The victory of Confederation in the 22 July 1948 referendum opened the final chapter in the history of the Dominion of Newfoundland. The Canadian government decided to proceed with the union and work on the final Terms of Union began in earnest on both sides. Near the end of July Ottawa informed the governor that the Canadian government would welcome a delegation to negotiate official Terms of Union, but on the basis of the "Proposed Arrangements" of the previous autumn and the conditions that accompanied them.³²

Governor Macdonald quickly responded with the announcement of the Newfoundland delegation which was chaired by A.J. Walsh, the Commissioner for Justice and Defence, and included Smallwood, Bradley, John McEvoy, a St. John's lawyer and onetime chair of the National Convention, Philip Gruchy of the Anglo-Newfoundland Development Company, Gordon Winter, a businessman and former president of the Newfoundland Board of Trade, and Chesley Crosbie, the influential anti-confederate and leader of the now defunct Economic Union Party. Having a concrete Canadian proposal to work with enabled the Newfoundlanders to prepare themselves better than the previous year, and in the weeks following the second referendum these men studied the 1947 "Proposed Arrangements" and began making plans for their talks.³³ Moreover, this delegation was empowered to speak for Newfoundland, was led by a government official, and was aided by government bureaucrats in St. John's and by those who accompanied the delegation to Ottawa. Its task was to negotiate Confederation — not debate it — and it faced the same kinds of structural limitations as did the previous delegation; but it was a stronger team with clearer goals than in 1947.

In Ottawa, the cabinet and interdepartmental committees were re-established, and all government departments were requested to consider the impact of union and to draw up plans to smooth the administrative takeover of Newfoundland.³⁴ Five additional committees were created, to examine Finance and Economic Policy, Organization of Administrative Services, the Fisheries, and Transportation and Communications and a steering committee, chaired by MacKay, to co-ordinate their operations.³⁵ The work of these committees and in the departments progressed rapidly and the Canadians were fairly well prepared by the time the Newfoundland delegation arrived.

The final negotiations of the Terms of Union began in Ottawa on 6 October 1948. The plenary sessions were chaired by Walsh and, on the Canadian side, by Louis St. Laurent, who became prime minister during the negotiations, and Brooke Claxton, the minister of defence. Things were very busy behind the scenes as well, with the continued meetings of the Canadian cabinet, the cabinet committee, the interdepartmental committee and its sub-committees, the departmental committees, within the Newfoundland delegation, and between all these various groupings. As in 1947, meetings between the two sides provided an opportunity to ask questions, and considerable time was devoted to the exchange of information and dealing with the administrative problems that would accompany union.

With a couple of important exceptions, however, there was little need to map out a negotiating strategy or bargaining tactics on either side. For one thing, much had been accomplished in 1947 in the "Proposed Arrangements" and needed only to be transformed into constitutional wording. The wording of term 29 in the Terms of Union, for instance, is very similar to that of article 14 of the 1947 arrangements, although the former is more explicit and elaborate. For another, what Newfoundland could expect as a province was self-evident in the BNA Act and in the example of the other provinces.³⁶ The negotiators were not creating something new in Ottawa in 1948, they were trying to fit Newfoundland, as best they could, into the Canadian mould. When a problem arose it was usually a matter of interpreting how the rules would apply to Newfoundland. For example: would those unemployed in Newfoundland at the time of union be covered by unemployment insurance, or would they have to work for a period after union to qualify? What would happen to Newfoundland government workers? Which government would be responsible for the buildings where both federal and provincial activities occurred? For the most part, as in 1947, these questions could be settled relatively smoothly.

The two major exceptions in 1948 were the financial arrangements and the fate of the fisheries. The Newfoundland Fisheries Board had been successfully marketing Newfoundland fish since its creation in 1936, and there were strong feelings that this system should be maintained after Confederation, even though fisheries would normally come under federal jurisdiction. The Newfoundland delegation, with the support of the Newfoundland Fisheries Board and the Newfoundland Associated Fish Exporters Ltd., made a strong case for the preservation of the Board after union. It created a dilemma for the negotiators, captured in the report of the fisheries sub-committee:

The Newfoundland Delegation is likely to be mainly concerned over the future of the Newfoundland Fisheries Board. That Board which has operated through twelve years of rising prices and strong markets is associated in the minds of many Newfoundlanders with the return of prosperity. There will be, therefore, pressure for the maintenance of this instrument and its powers. On the other side, this Board now exercises powers which are a Federal responsibility; these powers go beyond any granted to any Canadian Board by Parliament; it has created a single selling agency for the whole salt fish trade, regulating markets and prices and acting in keen competition with the salt fish exporters of the Maritime Provinces and Quebec. On occasion it has dumped in their markets. The permanent continuation of this Board might lead to a demand for similar Boards in the Maritime Provinces as a defence mechanism.³⁷

It was an interesting matter, and illustrative of the process leading to the Terms of Union. The Newfoundlanders were asking for something that clearly clashed with the Canadian system, and although the Canadians were sympathetic they were bound by the constitution and the division of powers in the Canadian federal system. As in most other cases there could be give-and-take, but ultimately Newfoundland

would have to fit into the Canadian system. With respect to the fisheries, the two sides agreed, as a transitional matter, that the Newfoundland Fisheries Board would be permitted to continue its operations for five years after Confederation. After the transitional period it was absorbed by the federal Department of Fisheries.³⁸

The financial terms were the focus of the most serious debate, both between the two delegations and within the Canadian government itself. Present statistics and estimates for the future were distributed and debated, but the conclusion was always the same: a provincial government in Newfoundland would be unable to raise sufficient tax revenue to operate without a significant budget deficit. The only questions were 1) how big would the deficit be and 2) what kind of an arrangement could be made with Ottawa to bridge the gap between revenue and expenditures? The Newfoundlanders and Canadians discussed provincial revenues and taxes to answer the first; the Canadians argued amongst themselves to answer the second.

The details of the negotiations are well-documented and need not be examined here.³⁹ The same is true for the financial figures; indeed, in hindsight the specific amounts, although important, appear less significant in determining the ultimate success of the negotiations. For many of the participants, especially on the Canadian side, there was "history" and "destiny" to be considered; the Canadians had come too far to back out at this stage — to do so might indefinitely postpone the next opportunity for Confederation. St. Laurent had spoken to these feelings a few months earlier in the House of Commons when he said "I may be an optimist, but I do believe that the Canadian nation is destined to occupy an important place in world affairs. I do believe, further, that the place in world affairs would be better preserved by a territory which extended right out to the broad ocean and if access thereto was not closed to Canada by another sovereignty over the territories of Newfoundland and Labrador."⁴⁰ Giving a little more at this stage would help win the day and make the offer of union more appealing to the average Newfoundlander. For the Canadians, therefore, it was a matter of finding a compromise position between the highest amount that they could allow without aggravating the other provinces and the lowest amount that the Newfoundlanders could accept with dignity and sign the terms.

For their part, the Newfoundlanders could ask for more, but their only recourse was to refuse to sign the terms and return home to Newfoundland. This possibility was taken seriously by the Canadians; Crosbie was known to be skeptical and if more than one Newfoundlander balked at the terms then the outcome would be in jeopardy. And knowing of this possibility probably helped to make the Canadians loosen the purse strings. But the Newfoundlanders, and especially the Confederates among them, had also committed themselves to the success of the project, and as a result most members were inclined to make the negotiations succeed. After all, the people of Newfoundland had voted for Confederation — on the basis of the 1947 "Proposed Arrangements" — and the purpose behind sending the delegation to Ottawa was to negotiate the best deal possible. In the event, the Canadians agreed

to increase the original transitional grant offered to Newfoundland by \$16.5 million spread over twelve years, an amount that was accepted by the Newfoundland delegation. The other issues had been settled by this time, and the final wording to the Terms of Union was agreed upon early in December.

The final document includes a total of 50 terms. Most important, the first three terms state that Newfoundland, with its territorial integrity intact, would become a province of Canada and subject to the British North America Act, in other words, a province like all the others. There were a few exceptions and most are covered in the Terms of Union; furthermore, there were a few matters left outstanding to be dealt with at some future date.

Not surprisingly, the final terms were similar in many ways to the 1947 "Proposed Arrangements." The Terms of Union went into more detail concerning the Newfoundland provincial legislature and constitution, representation in the House of Commons and Senate, and the shape of the electoral map, which comprised the first sixteen terms. The similarities with 1947 appear in the terms focusing on preserving the denominational educational system (term 17), the sale of margarine, (term 46), public services and properties (terms 31-36), welfare and other services (terms 40-42), the review of Newfoundland's financial position after eight years (term 29), and the continuation of existing laws in Newfoundland after union (term 18). The latter was designed to help in the administrative take over of the new province, and the Canadians had discussed including a term similar to section 129 of the BNA Act as early as November 1946. It was also considered as a possible method to maintain the Newfoundland Fisheries Board after union, but this idea was quietly dropped.⁴¹ The agreement to maintain the Newfoundland Fisheries Board was embodied in term 22.

The financial arrangements were similar to the 1947 "Proposed Arrangements" but they reflected the changes agreed to in the final negotiations. Ottawa agreed to assume Newfoundland's debt (term 23) while leaving Newfoundland's surplus in the new province's control, with a few conditions (term 24). Information about a tax agreement was provided, as in 1947 (term 27), and the annual subsidy payments were set out (term 25). In addition, the Terms contained the new transitional grants, totaling \$42,750,000, to be paid to Newfoundland declining over twelve years (term 28). Other terms dealt with citizenship (43), natural resources (37), veterans (38), and the Statute of Westminster (48).

The Canadian cabinet gave its approval on 10 December and the Terms of Union were signed the following day. Only Chesley Crosbie refused to sign, claiming his dissatisfaction with the financial arrangements and the lack of protection afforded to Newfoundland business in the transitional period.⁴² The Commission of Government approved them late in January 1949, and following approval from the British government and with royal assent, the Terms of Union came into effect on 31 March 1949. Debate over the terms and the procedure began almost immediately.⁴³

The Canadians achieved just about all of their goals in the Terms of Union. Turning Newfoundland into a province removed the problems that had confronted the Canadians with respect to Newfoundland in the years following the end of the Second World War. In strategic and economic terms, the achievement of Confederation was a great success, and moreover, the lack of any substantial criticism from the other provinces, and the lack of sustained criticism in Newfoundland itself, only made it better. There were problems left over, nevertheless, in particular concerning the American military and naval bases that Canada inherited with union. The Terms could not solve this problem and it would have to be taken up with the Americans after Confederation. But it was now clearly a federal matter.⁴⁴

The Newfoundlanders were equally successful in achieving their goals of economic security, territorial integrity, and the revival of democratic institutions. The problems of the subsequent fifty years should not obscure this point. In the context of 1948, the Terms were generous, even attractive to a new province that lagged behind Canada in providing services to its citizens. Today, however, they are seen as something of a mixed blessing, and the original promise of Confederation has never been completely realized.

Could the Newfoundlanders have done better, either in 1948 or after the return of responsible government? It is doubtful, given that both sides were hamstrung by the Canadian constitution over the division of powers. There was a degree of flexibility inherent in the situation, but not very much. Asymmetrical federalism was an idea of the future, or at least not one much discussed in 1947-48. Newfoundland was, after all, joining a nation that already existed. It was not 1864-67, when the division of powers between governments was up for negotiation; the Canadian and Newfoundland negotiators were not creating a new constitution, they were fitting Newfoundland into the existing one — the room for manoeuvre was very limited. In that context, Newfoundland received pretty much all that it could from the Terms of Union; the only room for negotiation was in the size of the transitional grants and other special financial arrangements. But given the reluctance of the Canadian government to raise the amount even further after increasing it from the 1947 levels, which King had already declared was the highest that the Canadians would go, it was unlikely that Ottawa would have been much more generous after additional bargaining.

It is nice to think that an elected government in Newfoundland would have had more leverage or could have better protected the fisheries, but it is hard to see how. Newfoundlanders would have found that, as in the case of Great Britain and the United States, there was a limit to how far the Canadians could go, especially if any new proposed terms threatened to go beyond what the other provinces already had. It would have been a hard sell in the provinces to permit Newfoundland a significantly different arrangement with respect to the fisheries, or to raise the

transitional grants much higher than offered in 1948. Moreover, there were no fishermen in the National Convention or on either delegation to Ottawa; a delegation from a newly-elected responsible government would likely have consisted of the same faces and it is unlikely that this delegation would have achieved any significantly different results, given the nature of Canadian federalism and the constitution.⁴⁵ This new delegation might have demanded more protection for Newfoundland business against Canadian competition or for a more concrete development plan for Newfoundland; it is also likely that they would have asked for better financial arrangements. It may be too fine a point, but the critics of the Terms of Union were calling for "better" terms, not "different" terms.

The Terms of Union turned Newfoundland into a province like the others, and it was here that a basic weakness of the 1948 agreement lay. What the Canadians wanted was Newfoundland as a province; what Newfoundland became was a *small* province; a relatively weak voice among ten. With only seven MPs and six senators and a lot of catching up to do, Newfoundland entered Confederation in a difficult position, and it quickly learned the limits of its power in Confederation, especially when it came to making itself heard on the national stage. In any dispute or debate with the other stronger provinces, in particular with Quebec, Newfoundland would have a hard time getting its way. In the Canadian constitutional system, as reflected in the Terms of Union, the provinces are not all equal.

In his memoirs John Crosbie wrote: "I am proud of Canada as a nation and of the fact that I am a Canadian. I love Canada, but Newfoundland is my homeland. I'm a Newfoundlander first, and I believe that most persons born in Newfoundland feel the same way. This may be because I was a Newfoundlander for eighteen years before I became a Canadian."⁴⁶ As the son of the only person to refuse to sign the Terms of Union in 1948 it is an interesting reflection. A reluctant Canadian at first, Crosbie now professes to be both a proud Newfoundlander and a proud Canadian. The Terms of Union — warts and all — helped to make that possible.

Notes

¹An abbreviated version of this paper was given at the Newfoundland Historical Society's "Encounters with the Wolf" symposium, 20 March, 1999.

²These arguments are developed in National Archives of Canada (NAC), R.A. MacKay Papers, MG30 E159 vol. 3, file: ICCNR; General Correspondence, May 1947, "Trade and Tariff Aspects of Union of Newfoundland and Canada."

³See David MacKenzie, *Inside the Atlantic Triangle: Canada and the Entrance of Newfoundland into Confederation, 1939-1949*. (Toronto 1986), 87-114, and Peter Neary, "The Diplomatic Background to the Canada-Newfoundland Goose Bay Agreement of October 10, 1944," *Newfoundland Studies* 2, 1 (1986), 39-61.

⁴MacKenzie, *Inside the Atlantic Triangle*, 121-6. More generally, see also David MacKenzie, *Canada and International Civil Aviation, 1932-1948*. (Toronto 1989), 212-21.

⁵*Ibid.*

⁶On the Economic Union Party see Don Jamieson, *No Place for Fools: The Political Memoirs of Don Jamieson*. Vol. 1. (St. John's 1989), 93-121, and David MacKenzie, "Economic Union and the 1948 Referendum Campaigns: The View from Washington." *Newfoundland Quarterly* 83, 3 (Winter 1988), 24-31.

⁷On the Americans in Newfoundland during the war, see: John Cardoulis, *A Friendly Invasion: The American Military in Newfoundland, 1940-1990* (St. John's 1990), Malcolm MacLeod, *Peace of the Continent: The Impact of Second World War Canadian and American Bases in Newfoundland* (St. John's 1986), MacKenzie, *Inside the Atlantic Triangle*, 66-86, and Peter Neary, "Newfoundland and the Anglo-American Leased Bases Agreement of 27 March 1941," *Canadian Historical Review* 67, 4 (December 1986), 491-519.

⁸See David Bercuson, "SAC vs Sovereignty: The Origins of the Goose Bay Lease, 1946-52," *Canadian Historical Review* 70, 2, (June 1989) 206-22.

⁹See NAC, MacKay Papers, MG30 E159 vol. 3, file: Nfld, Despatches and Memos, Oct 46-Sept 47, J.S. Macdonald, "The Present Position in Newfoundland with Particular Reference to the Question of Confederation," 17 October 1946.

¹⁰See the polling results in Paul Bridle, ed., *Documents on Relations Between Canada and Newfoundland* (Ottawa 1984), vol. II, Part I, 573, "Co-director, Canadian Institute of Public Opinion, to Second Political Division," 17 July 1947.

¹¹See, for example, Peter Neary, *Newfoundland in the North Atlantic World*, (Montreal and Kingston, 1988), 358-9.

¹²Neary, *Newfoundland in the North Atlantic World*, 304. Others recognized this natural or special relationship as well. For example, in 1940 the British government recognized that Canada had a special interest in Newfoundland when it came to leasing base sites to the United States, and the Protocol of the 1941 Anglo-American Leased Bases Agreement "recognized that the defence of Newfoundland is an integral feature of the Canadian scheme of defence, and as such is a matter of special concern to the Canadian Government." Bridle, *Documents*, vol. I, Appendix B, 1404.

¹³NAC RG2 18 vol. 130, file: n-18 1948 (July-Dec), Pearson to Louis St Laurent, 5 November 1948.

¹⁴See, among others, Raymond B. Blake, "WLMK's Attitude Towards Newfoundland's Entry Into Confederation," *Newfoundland Quarterly* 82, 4 (Spring 1987), 31-3.

¹⁵"The National Convention Act," in James Hiller and Michael F. Harrington, eds., *The Newfoundland National Convention 1946-1948*, vol. 2, *Reports and Papers*. (Montreal, 1995), 1. See also Dominions Office, "Report on the Financial and Economic Position of Newfoundland, June 1946," 16-52, which was distributed to the members of the National Convention. It also underlined how the present prosperity was largely due to wartime circumstances.

¹⁶See for example, Raymond B. Blake, *Canadians at Last: Canada Integrates Newfoundland as a Province*. (Toronto 1994), 20.

¹⁷On the London delegation, see Neary, *Newfoundland in the North Atlantic World*, 298-303; for the State Department's views, see MacKenzie, "Economic Union."

¹⁸In his memoirs, Joey Smallwood claims thirty-four days exclusive debate on the benefits of Confederation in the final days of the National Convention. See Joseph R. Smallwood, *I Chose Canada: The Memoirs of the Honourable Joseph R. "Joey" Smallwood*. (Toronto 1973), 275. See also Blake, *Canadians at Last*, 6.

¹⁹See Neary, *Newfoundland in the North Atlantic World*, 229-33, MacKenzie, *Inside the Atlantic Triangle*, 144-60, and Peter Neary, "Great Britain and the Future of Newfoundland, 1939-45," *Newfoundland Studies* 1, 1 (Spring 1985), 29-56.

²⁰MacKenzie, *Inside the Atlantic Triangle*, 169-70.

²¹See MacKay's book, *Newfoundland: Economic, Diplomatic and Strategic Studies* (Toronto 1946).

²²NAC, RG2 16 vol. 7, Cabinet Conclusions, 30 October 1946.

²³The minutes of this committee can be found in NAC MacKay Papers, MG30 E159 vol. 2, file: "ICCNr, Minutes of Meetings."

²⁴NAC, R.A. MacKay Papers, MG30 E159, vol. 3, file: ICCNR: General Correspondence June-July 1947, J.S. Macdonald, "Outline of Points to be Considered in Connection with the forthcoming Discussions with Newfoundland," 11 June 1947.

²⁵NAC, RG2 16 vol. 10, Cabinet Conclusions, 19 June 1947.

²⁶Bridle, ed., *Documents*, vol. II, Part I, 558, "Minutes of meeting between Newfoundland and Canadian representatives," 7 July 1947.

²⁷Smallwood, *I Chose Canada*, 416-17.

²⁸These issues are discussed in NAC, MG 30 E159 vol. 3, file: ICCNR, General Correspondence June-July 1947, "Meeting with Mr. St. Laurent regarding Newfoundland on July 11th," 12 July 1947.

²⁹NAC, RG2 16 vol. 10, Cabinet Conclusions, 25 August 1947.

³⁰Bridle, *Documents*, vol. II, Part I, 636-42: "Minutes of a Meeting between the Delegation to Ottawa from the National Convention of Newfoundland and Representatives of the Government of Canada," 13 September 1947.

³¹Bridle, *Documents*, vol. II, Part I, 682, Prime Minister to Governor of Newfoundland, 29 October 1947. The "Proposed Arrangements" follow in this document.

³²NAC, MacKay Papers, MG30 E159 vol. 6, file: Memos on Nfld, Personal (1947-49), "Office of the Prime Minister, Press Release," 30 July 1948.

³³A full set of minutes and documents from these meetings can be found in Paul Bridle, ed., *Documents*, vol. II, Part II, 1007-1103.

³⁴NAC, RG2 16 vol. 13, Cabinet Conclusions, 3 August 1948.

³⁵NAC, RG2 18 vol. 129, file: N-18 1948 (August-Sept), Lester Pearson to Secretary of State for External Affairs, 6 August 1948. The reports of the various sub-committees can be found here as well. A complete list of committees and their membership can be found in Bridle, *Documents*, vol. II, Part II, 1103-06.

³⁶See MacKenzie, *Inside the Atlantic Triangle*, 212-13.

³⁷Bridle, *Documents*, vol. II, Part II, 1111, "Report by Sub-Committee on Fisheries, Interdepartmental Committee on Newfoundland," n.d.

³⁸Blake, *Canadians at Last*, 150-2.

³⁹See Neary, *Newfoundland in the North Atlantic World*, 327-29, MacKenzie, *Inside the Atlantic Triangle*, 211-17, Blake, *Canadians at Last*, 24-41.

⁴⁰Canada, House of Commons, *Debates* 19 June 1948, quoted in MacKenzie, *Inside the Atlantic Triangle*, 206.

⁴¹See NAC, RG2 18 vol. 89, file: N-18 1947 (April-May), "Report of the Legal Sub-Committee," 22 November 1946; and Bridle, *Documents*, vol. II, Part I, 645, Stewart Bates to R.A. MacKay, 26 September 1947.

⁴²Neary, *Newfoundland in the North Atlantic World*, 328-9, Blake, *Canadians at Last*, 37.

⁴³See William Gilmore, "Law, Constitutional Convention, and the Union of Newfoundland and Canada," *Acadiensis* 18, 2 (Spring 1989), 111-26.

⁴⁴See Blake, *Canadians at Last*, 122-45.

⁴⁵See the interesting commentary by Sean Cadigan, "Missed Opportunity: The Rock at Fifty," *The Beaver* 79, 1 (February/March 1999), 6-7.

⁴⁶John C. Crosbie, with Geoffrey Stevens, *No Holds Barred: My Life in Politics* (Toronto 1997), 476.