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Résumé de l'article

Cet article conteste la notion voulant que le litige au sujet de l'article 29 découlait de l'hostilité entre Smallwood et Diefenbaker, et il situe le différend dans le contexte historique des relations intergouvernementales. Les deux parties avaient des visions opposées de la façon de régler la situation financière de Terre-Neuve et, à défaut de compter un puissant ministre fédéral provenant de cette province, Diefenbaker se fiait à l'avis de hauts fonctionnaires du ministère des Finances. Inévitablement, la question déboucha sur une âpre querelle. Fidèle à une pratique établie depuis longtemps, Smallwood attaqua Ottawa avec véhémence, démontrant que les gouvernements provinciaux sont des acteurs combattifs et ont des histoires particulières à raconter dans la défense de leurs intérêts.

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RAYMOND B. BLAKE

Cet article conteste la notion voulant que le litige au sujet de l'article 29 découlait de l'hostilité entre Smallwood et Diefenbaker, et il situe le différend dans le contexte historique des relations intergouvernementales. Les deux parties avaient des visions opposées de la façon de régler la situation financière de Terre-Neuve et, à défaut de compter un puissant ministre fédéral provenant de cette province, Diefenbaker se fiait à l'avis de hauts fonctionnaires du ministère des Finances. Inévitablement, la question déboucha sur une âpre querelle. Fidèle à une pratique établie depuis longtemps, Smallwood attaqua Ottawa avec véhémence, démontrant que les gouvernements provinciaux sont des acteurs combattifs et ont des histoires particulières à raconter dans la défense de leurs intérêts.

This article challenges the notion that the dispute over Term 29 resulted from the enmity between Smallwood and Diefenbaker and considers it within the history of intergovernmental relations. The two sides held contrasting views on how to address Newfoundland's fiscal position and, without a strong federal minister from the province, Diefenbaker relied on advice of senior officials in the Department of Finance. Inevitably, the issue erupted into a bitter feud. Smallwood followed a long-established practice and attacked Ottawa vehemently, demonstrating that provincial governments are aggressive actors and have particular historical narratives to tell in the pursuit of their interests.

WHEN NEWFOUNDLAND AND CANADA came together in 1949, both countries shared the basic political goal of all liberal democratic states – that each should flourish under the new constitutional arrangement outlined in the terms of union. However, in the moment of euphoria consummating the union, officials in both Newfoundland and Canada apparently forgot that nation-states and their negotiated constitutions are constructed from particular needs and interests that emerge from particular political cultures. The Canadian negotiators attempted to reconcile the demands of Newfoundland with what Ottawa provided to the other provinces, and they had decided in 1947 – when discussions over union began – that Newfoundland had to fit into the existing political and constitutional mould that had evolved since 1867; Newfoundland could not be offered terms that would create significant differences between it and the existing provinces. The Newfoundland negotiators, however, were determined to win special concessions by arguing for the unique circumstances of a country that had long remained outside the Canadian federation. They insisted on the exceptionalism of Newfoundland – the belief that it was extraordinary because of its peculiar constitutional and economic problems – and that it therefore should not have to conform to all of the normal rules and general

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principles of Canadian federalism. The Canadians, however, largely dismissed such claims, especially in fiscal and financial matters. Yet having invested all of their political capital in successfully negotiating union with Canada, the Newfoundland delegation could hardly return home without a signed deal. Union was achieved, but the leading members of the delegation insisted that Newfoundland's status as the newest province constituted a special case within Canada despite what they had experienced in Ottawa.

With a constitutional arrangement negotiated from such different perspectives, conflict between the federal and provincial governments was inevitable. This occurred most clearly with Term 29. The Canadian and Newfoundland negotiators had had considerable difficulty in 1948 in forecasting accurately the state of Newfoundland's fiscal capacity as a province. Consequently, they agreed in Term 29 of the Terms of Union to appoint a royal commission within eight years of union to review the province's financial position and make recommendations on the form and scale of additional financial assistance, if any, that Ottawa might provide to Newfoundland to allow it to continue the level of public service reached after union without having to impose levels of taxation more onerous than those levied in the Maritime Provinces. Newfoundland argued before the royal commission, when it was appointed in 1956, that because it was a special case within Confederation the federal government had to provide it with generous financial aid to catch up with the Maritimes and the rest of Canada. Joseph R. Smallwood, Newfoundland's first premier and member of the two delegations to Ottawa (1947 and again in 1948), insisted that during the negotiations the Canadian government had committed itself to specific obligations and entitlements that recognized Newfoundland's exceptional and distinctive place in Confederation. When Ottawa refused to implement the commission's recommendations, Smallwood countered that not only was his province's prosperity being threatened but also justice and fairness were being denied. He insisted that the underlying value of accommodation between the two countries that had been the basis of union in 1949 had been torn asunder.¹ Moreover, he maintained the federal government had broken the promise implicit in the constitutional understandings reached in 1949 during the talks over union: that Ottawa was concerned for the well-being of the most vulnerable member of the Canadian political community. Ottawa insisted it had never agreed to any such arrangement, and Smallwood's failure to convince the federal government after union in 1949 to provide special treatment for Newfoundland suggests that the federal government was consistent on that point. Smallwood had failed to secure special deals on fisheries development, on special assistance for local manufacturers that struggled in the face of stiff competition from Canadian imports in post-Confederation Newfoundland, and on special tax arrangements for the province's pulp and paper manufacturers. Newfoundland constituted a special case, Smallwood had argued, because of its late entry into Confederation and its poor economic and fiscal position relative to that of the other provinces. Ottawa had dismissed his claim in each case, insisting that Newfoundland could not be afforded any special

1 For a discussion of the Terms of Union, see David MacKenzie, "The Terms of Union in Historical Perspective," *Newfoundland Studies* 14, no. 2 (1998): 220-7.

consideration that was not available to any of the other provinces. Still, Smallwood could not be dissuaded from his belief in the exceptionalism of Newfoundland in its dealings with Ottawa.

Term 29 has become one of the most important markers in the often-troubled relationship between Canada and Newfoundland, and one of the most vitriolic episodes in the history of Canadian federalism – a history that includes conflict between British Columbia and Ottawa over the building of the railway in the 1870s, Ontario and Ottawa over issues of boundaries and property rights in the 1880s, the Quebec government and Ottawa over a variety of shared-cost programs in the 1960s, and the more recent confrontation between the western provinces and Ottawa over control of natural resources.² When the Newfoundland Royal Commission on Renewing and Strengthening our Place in Canada issued its final report in June 2003, it noted that in the years following union Newfoundland had to rely “on the good faith, vision and courage of successive federal governments in addressing obstacles to its full participation in Confederation” rather than constitutional guarantees. It described Ottawa’s refusal to meet Smallwood’s demand for generous federal payments under Term 29 as “one of the low watermarks of the province’s relationship with the federal government.”³

This recent royal commission did not delve into why Ottawa offered what it (the commission) considered an inadequate solution to Term 29. Others, however, have, and one of the most common explanations is that Prime Minister John George Diefenbaker, along with his Progressive Conservative government, was on a personal quest to punish Newfoundland. According to this view, he was annoyed that it was the only province not to join the Conservative sweep in 1958 and he resented Smallwood’s highly public campaign to secure a generous outcome to Term 29.⁴ Still others, such as J.G. Channing, have argued that Diefenbaker saw Term 29 as a Liberal promise to Newfoundland at the time of Confederation. Because he had not participated in any of the negotiations, he “was evidently not unduly concerned about assurances given to Newfoundland by a Liberal administration.”⁵ Richard Gwyn, the most authoritative biographer of Smallwood, contends that Diefenbaker

2 See Donald V. Smiley, “Federal-Provincial Conflict in Canada,” *Publius* 4, no. 3 (Summer 1974): 7-24; Garth Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity* (Montreal and Kingston: McGill-Queen’s University Press, 2010); Christopher Armstrong, *The Politics of Federalism: Ontario’s Relations with the Federal Government, 1867-1942* (Toronto: University of Toronto Press, 1981); and Robert D. Cairns, “Natural Resources and Canadian Federalism: Decentralization, Recurring Conflict, and Resolution,” *Publius* 22, no. 1 (Winter 1992): 55-70.

3 Newfoundland, *Royal Commission on Renewing and Strengthening our Place in Canada* (St. John’s, NL: Queen’s Printer, 2003), 17-18.

4 See Margaret Conrad, “The 1950s: The Decade of Development,” in E.R. Forbes and D.A. Muise, eds., *The Atlantic Provinces in Confederation* (Toronto and Fredericton: University of Toronto Press and Acadiensis Press, 1993), 413-14, and Corey Slumkoski, *Inventing Atlantic Canada: Regionalism and the Maritime Reaction to Newfoundland’s Entry into Canadian Confederation* (Toronto: University of Toronto Press, 2011), 131-2. See also Harold Horwood, *Joey: The Life and Times of Joey Smallwood* (Toronto: Stoddart, 1989), 223-4, and J.W. Pickersgill, *The Road Back: By a Liberal in Opposition* (Toronto: University of Toronto Press, 1986), 65.

5 J.G. Channing, *The Effects of Confederation on Public Administration*. (Toronto: Institute of Public Administration of Canada, 1982), 81-3.

was out of touch with Newfoundland sentiment; he never bothered, for instance, to consult his two Newfoundland MPs before he delivered his statement on Term 29 in Parliament that declared the government's decision as "final and irrevocable" – words and sentiments that, incidentally, had been used consistently by federal mandarins in their discussions of Term 29 since Ottawa had first discussed the appointment of the royal commission.⁶ Smallwood's motives have also come under scrutiny. Newfoundland historian Sean Cadigan contends that Smallwood fought Ottawa over Term 29 for two reasons: one, to redirect the popular anger against him for his anti-labour legislation towards the federal government, and two, to resist Diefenbaker's refusal to provide the special subsidies Smallwood demanded as this refusal threatened the inflow of federal money that Smallwood felt was needed to build a consumer society in Newfoundland in order to succeed in his class warfare against the working people of the province.⁷ These explanations focus on the apparent personal animosity between Smallwood and Diefenbaker.⁸

This article considers Term 29 within the realm of the history of intergovernmental relations and federalism in Canada. Admittedly, this is an area of study that historians have largely ceded to political science and, even in that discipline, the obsession with contemporary issues obscures the long and often acrimonious history of federal-provincial relations in Canada.⁹ An earlier generation

6 Richard Gwyn, *Smallwood: The Unlikely Revolutionary* (Toronto: McClelland and Stewart, 1968), 180-98.

7 Sean Cadigan, "Regional Politics are Class Politics: A Newfoundland and Labrador Perspective on Regions," *Acadiensis* XXXV, no. 2 (Spring 2006): 163-8; Sean Cadigan, *Newfoundland and Labrador: A History* (Toronto: University of Toronto, 2009). Despite Cadigan's claim that there was genuine anger towards Smallwood's anti-labour stance, there is considerable evidence to suggest that he enjoyed tremendous support throughout the province for his confronting the loggers' unions in 1958-59.

8 There have been some attempts recently to explore nationalism and nationalist rhetoric in Newfoundland history, particularly within the context of how outsiders such as the British government, Canadian railway promoters and banks, and Confederation itself have been blamed for a series of problems that have confronted the province throughout its history. See Jerry Bannister, "The Politics of Cultural Memory: Themes in the History of Newfoundland and Labrador in Canada, 1972-2003," in *Collected Research Papers of the Royal Commission on Renewing and Strengthening our Place in Canada, Volume 1* (St. John's, NL: Queen's Printer, 2003); Cadigan, *Newfoundland and Labrador*; Margaret Conrad, "Mistaken Identities? Newfoundland and Labrador in the Atlantic Region," *Newfoundland and Labrador Studies* 18, no. 2 (2003): 159-74; and James Overton, "Sparking a Cultural Revolution: Joey Smallwood, Farley Mowat, Harold Horwood and Newfoundland's Cultural Renaissance," *Newfoundland and Labrador Studies* 16, no. 2 (2000): 166-204.

9 Patrick Fafard and François Rocher, "The Evolution of Federalism Studies in Canada: From Dependent to Independent Variable," *Canadian Public Administration* 52, no. 2 (June 2009): 291-311; David R. Cameron and Jacqueline D. Kirkorian, "The Study of Federalism, 1960-99: A Content Review of Several Leading Canadian Academic Journals," *Canadian Public Administration* 45, no. 3 (September 2002): 328-63. There have been two recent articles on federalism in the *Canadian Historical Review*, though both focus on Western Canada: Barry Ferguson and Robert Wardhaugh, "Impossible Condition of Inequality: John W. Dafoe, the Rowell-Sirois Royal Commission, and the Interpretation of Canadian Federalism," *Canadian Historical Review* 84, no. 4 (December 2003): 551-83, and Gregory Marchildon, "The Prairie Farm Rehabilitation Administration: Climate Crisis and Federal-Provincial Relations during the Great Depression," *Canadian Historical Review* 90, no. 2 (June 2009): 275-301.

of political scientists, represented by such scholars as Richard Simeon, argued that Canadian federalism was at its core a matter of federal-provincial diplomacy: federalism works most effectively when it was the politics of accommodation and compromise.¹⁰ This was achieved most successfully in the realm of executive federalism – that is, in negotiations between first ministers who frequently found enough common ground to settle their differences. When the federal and provincial governments belonged to the same political party, a regional minister often intervened to help mediate intergovernmental conflicts.¹¹ This article contends that in the case of Term 29 both compromise and accommodation were tossed aside, and without a strong regional minister to represent Newfoundland's interests within the federal government the Diefenbaker government relied on the advice of senior officials in the Department of Finance for its dealings with Newfoundland. Moreover, Ottawa and Newfoundland held quite different views on how to address Newfoundland's relative economic and fiscal position within Canada. The inevitable result was a bitter war waged primarily by the Newfoundland government against the federal government. In choosing to publicly confront Ottawa, Smallwood followed a long-established practice in Canadian federalism – one that has seen successive provincial governments subscribe to particular historical narratives that help them to pursue strategies aggressively in order to secure a better economic future for their province. Smallwood donned the mantle of a Newfoundland nationalist and invoked the exceptionalism of Newfoundland as the newest entrant and poorest member of Confederation to demand special treatment for his province. Newfoundland saw the resolution of Term 29 not only as Ottawa's final constitutional obligation from the union of the two countries, but also as a measure of Canada's generosity. It also saw Term 29 as a political instrument to extract better terms from the federal government in the manner of Joseph Howe of Nova Scotia in the late 1860s and Mitchell Hepburn of Ontario or William Aberhart of Alberta in the 1930s. But Smallwood was not engaged in province-building – the process whereby provincial governments attempted to expand the scope and nature of their powers and responsibilities to play a greater role in economic and social development of their provinces – in the manner that Alberta, Quebec, and some of the other provinces would embrace later in the 1960s.¹²

For its part, the Diefenbaker government saw Term 29 – just as the previous Liberal administration had – as part of the transitional assistance provided to the new province that by the late 1950s had run its course. Newfoundland was now to be treated as one of the ten provinces. Diefenbaker and his government believed that

10 Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (Toronto: University of Toronto Press, 1972).

11 Herman Bakvis, *Regional Ministers: Power and Influence in the Canadian Cabinet* (Toronto: University of Toronto Press, 1991); Chris Dunn, "Federal Representation of the People and Government of Newfoundland and Labrador," *Collected Research Papers of the Royal Commission on Renewing and Strengthening our Place in Canada, Volume 2* (St. John's, NL: Queen's Printer, 2003), 23-107.

12 Edwin Black and Alan Cairns, "A Different Perspective on Canadian Federalism," *Canadian Public Administration* 9, no. 1 (March 1966): 27-44; R.A. Young, Philippe Faucher, and André Blais, "The Concept of Province-Building: A Critique," *Canadian Journal of Political Science* 17, no. 4 (December 1984): 783-818.

Newfoundland's demand for special assistance could be addressed through new federal-provincial financial arrangements. After all, Diefenbaker believed that he had demonstrated through various intergovernmental agreements, especially with the Atlantic Provinces, that he was sensitive to the fiscal needs of the economically depressed regions of Canada. Because the two levels of government approached the matter from completely different perspectives, they were never on the same page over Term 29. This already difficult situation was exacerbated by a strained political relationship between Smallwood and Diefenbaker, a relationship that would prove largely irreconcilable when the two first ministers fought over the role of the Royal Canadian Mounted Police in a labour dispute in Newfoundland (discussed below). Accommodation and compromise had little chance of success in such circumstances.

The delegation from Newfoundland that negotiated the terms of union with Ottawa in 1948 had learned the limitations and constraints of Canadian federalism. Although it had found Ottawa quite amenable to making special arrangements for the new province on such issues as the production of oleomargarine and the enrichment of flour, or even the placing of constitutional safeguards for denominational education in the courts rather than with the governor in council, the delegation found that making a case for Newfoundland exceptionalism in fiscal matters was much more difficult. Throughout the negotiations, the Canadian cabinet noted that "the basic premise underlying the Canadian offer to Newfoundland was that no special terms could be offered . . . which any of the existing provinces could claim should be extended to them."¹³ Any provision that was made for Newfoundland had to be of a temporary nature and aid only in its transition to becoming a province. At one point in the negotiations Smallwood and Albert Walsh, another member of the Newfoundland delegation, complained to P.A. Clutterbuck, the British High Commissioner in Ottawa, that they had had no success in convincing the Canadian officials of the necessity of providing generous financial terms to allow Newfoundland to bridge the gap in the level of public service that existed between it and that of the other provinces.¹⁴

In 1948, Canada clearly desired union with Newfoundland. It had provided \$42.75 million as financial assistance on a temporary basis,¹⁵ but it was impossible to predict with any measure of certainty the fiscal capacity of Newfoundland as a province. The Canadian negotiators recommended that a provision be made for either a joint commission or a royal commission to review the fiscal situation of Newfoundland after eight or ten years of union to determine if it was able to carry on service at prevailing levels without having to endure a heavier combined provincial and

13 "Report by Subcommittee on Finance and Economic Policy, Interdepartmental Committee on Newfoundland," 1 October 1948," in *Documents on Relations Between Canada and Newfoundland, Volume 2, 1940-49: Confederation, Part II*, ed. Paul Bridle (Ottawa, ON: Minister of Supply and Services, 1984), 1107.

14 Telegram from High Commission, 6 October 1948, DO 114/103/339, p. 200, The National Archives, United Kingdom; Mitchell Sharp, interview by author, 12 February 1990, Ottawa, tapes in author's possession.

15 The financial arrangement of union is discussed in Raymond B. Blake, *Canadians At Last: Canada Integrates Newfoundland as a Province* (Toronto: University of Toronto Press, 1994; rev. ed. 2004), 24-39.

municipal level of taxation than the average in the Maritime Provinces.¹⁶ When Canadian officials first raised this matter, they suggested a joint commission or a royal commission consisting of one nominee of each of the Newfoundland and Canadian governments and a chair selected jointly.¹⁷ However, when the final draft of the terms was completed by Smallwood and Special Assistant to the Under-Secretary of State for External Affairs R.A. MacKay, all references to a joint commission were dropped. The proposed arrangement in 1947 for Newfoundland's entry into Confederation left the appointment of a commission solely to Canada. It also added into the clause the important words "if any" to the form and scale of additional financial assistance that might be needed to maintain the level of public services reached within eight years of union.¹⁸ The Newfoundland delegation was either uninterested in the role that Ottawa might play in the longer-term financial viability of Newfoundland or was outsmarted by the Canadian negotiators. Either way, the delegation failed to protect the financial interests of Newfoundland.

Even when the Newfoundland delegation returned to Ottawa in 1948 to negotiate the final terms of union after the country voted narrowly for Confederation in a second referendum, it readily and quickly accepted the proposed royal commission that failed to give the province any role in its appointment and left with Ottawa all decisions regarding the commission's recommendations. This is surprising given that Smallwood and other members of the delegation understood that the federal government had steadfastly refused for years to provide assistance to the provinces simply on the basis of fiscal need. In fact, on the same day early in the negotiations that the two sides agreed on the financial review as negotiated in 1947, Smallwood reminded his colleagues in the Newfoundland delegation that "the Federal Government of Canada has consistently refused any request from the Provinces for additional monies for the express purpose of meeting their fiscal needs and would undoubtedly adopt the same attitude toward Newfoundland."¹⁹ Yet when Term 29

16 "Minutes of Meeting of Cabinet Committee on Newfoundland," 31 July 1947, in Bridle, *Documents on Relations Between Canada and Newfoundland*, 600-2; "Memorandum from Assistant Secretary to the Cabinet to Secretary of State for External Affairs," 9 August 1947, in Bridle, *Documents on Relations Between Canada and Newfoundland*, 614-17. See also Memorandum to Mr. Sharp, 19 January 1949, prepared by A. Hockin, Records of the Department of Finance, vol. 3912, file 3765-02/vol. 2, Library and Archives Canada (LAC).

17 "Memorandum by Representatives of Canada on Sub-committee on Arrangements for Union of Newfoundland and Canada," 8 August 1947, in Bridle, *Documents on Relations Between Canada and Newfoundland*, 616-17.

18 "Prime Minister to Governor of Newfoundland," 29 October 1947, in Bridle, *Documents on Relations Between Canada and Newfoundland*, 682-97; "Minutes of a Meeting of Cabinet Committee on Newfoundland," 31 July 1947, in Bridle, *Documents on Relations Between Canada and Newfoundland*, 600-5.

19 "Minutes of Sixth Meeting Held on the 28th August, 1948," in Bridle, *Documents on Relations Between Canada and Newfoundland*, 1025. Later, when the Privy Council Office submitted a memorandum to the Cabinet Committee on Newfoundland that reminded the ministers of the background of the proposals to Newfoundland, it included an explanatory note on the proposed royal commission: "The basic premise underlying the Canadian offer to Newfoundland was that no special terms could be offered to Newfoundland which any of the existing provinces could claim should be extended to them." See Bridle, *Documents on Relations Between Canada and Newfoundland*, 1107.

emerged as the major irritant in Ottawa-Newfoundland relations in the mid-1950s, Smallwood was adamant that “without that clause [Term 29], there would have been no Confederation.” Without it, he maintained, not only he but also F. Gordon Bradley, the leader of the Confederate Association in Newfoundland, and all of the other members of the Newfoundland delegation would have refused to sign the terms of union. “Term 29,” he wrote in his 1973 autobiography, “was the most important clause in the terms.”²⁰ If this were the case, one must wonder why it was among the first items settled – and with so little discussion. Ches Crosbie, the former leader of the Party for Economic Union with the United States in the first referendum, stood alone in arguing that the fiscal terms were inadequate and that the promise of a royal commission failed to provide a sufficient measure of financial security for Newfoundland.²¹ Crosbie was subsequently proven correct. The review of Newfoundland’s financial position eight years after union gave all the advantages to the Canadian government.²² The seeds of discord between Ottawa and Newfoundland that emerged in 1959 were planted in the negotiations resulting from the Terms of Union in 1948.

At the time of union, Newfoundland had a cash surplus of more than \$40 million dollars, but there were considerable demands on those dollars. It had a small population dispersed over a huge territory – a population that increasingly demanded improvements in the province’s health, education, and transportation systems as well as the provision of services such as electricity and telephones to allow them to catch up to the rest of North America. The province invested heavily in those public services and, together with its rash industrialization schemes, ran budgetary deficits in the range of \$5 to \$15 million per year throughout the 1950s.²³ By 1953, with the province struggling with deficit financing, Smallwood came to regard Term 29 as his primary lifeline. It would be through it that the federal government would provide the fiscal resources that Newfoundland required to raise its level and standards of public services. He wanted to be ready when Ottawa appointed the royal commission,²⁴ and to that end he appointed a provincial royal commission in 1954 to prepare Newfoundland’s case for a revision to Term 29. Lawyer and former Liberal MHA, Philip J. Lewis was appointed chair, and Albert Perlin, Gerald S. Doyle, and Philip Gruchy were named commissioners. Carl

20 Joseph R. Smallwood, *I Chose Canada: The Memoirs of the Honourable Joseph R. “Joey” Smallwood* (Toronto: Macmillan, 1973), 418.

21 “Chesley A. Crosbie to Chairman, Newfoundland Delegation,” in Bridle, *Documents on Relations Between Canada and Newfoundland*, 1238; *Daily News* (St. John’s), 6 and 10 December 1948. Crosbie reportedly said: “Newfoundland will then be at the mercy of the Federally appointed Royal Commission whose recommendations the Canadian government is not obligated to put into effect” (1238).

22 “Extracts from Memorandum by Director, Economic Policy Division, Department of Finance, to Deputy Minister of Finance,” 29 October 1948, in Bridle, *Documents on Relations Between Canada and Newfoundland*, 1163; “Terms of Union of Newfoundland with Canada,” in Bridle, *Documents on Relations Between Canada and Newfoundland*, 1253.

23 David G. Norris, “The Fiscal Position of Newfoundland and Labrador,” in *Collected Research Papers of the Royal Commission on Renewing and Strengthening our Place in Canada, Volume 4* (St. John’s, NL: Queen’s Printer, 2003): 275-429.

24 *Daily News*, 29 July 1953.

Goldenberg, a well-known Montreal Liberal and labour lawyer, was one of the economic advisors appointed to the commission.

The Newfoundland royal commission sat for more than three years, from January 1954 to April 1957, held more than 400 meetings, and heard testimony from more than 100 individuals. It made two substantive recommendations: first, that Ottawa provide Newfoundland with \$15 million annually to maintain its level of public services, and second, that Ottawa should continue periodically to review Newfoundland's fiscal situation and make additional payments when necessary to the province. Smallwood used the commission's report to demand an upward revision in the financial terms of union. If there was no extra money coming from Ottawa, he told a joint meeting of the Atlantic premiers and the Atlantic Provinces Economic Council in Charlottetown in 1957, he would consider Confederation a failure.²⁵

While Smallwood believed that all discussion of Term 29 had to occur within the realm of high politics – at the level of first ministers, rather than of sectoral or low politics – the initial discussions on Term 29 in Ottawa took place at the bureaucratic level or within the realm of low politics. In 1956 R.M. Burns, the senior official in the federal Department of Finance responsible for federal-provincial relations, reminded K.W. Taylor, the deputy minister of finance, that the federal government was constitutionally obligated to appoint a royal commission under Term 29 by the end of March in 1957.²⁶ Smallwood grew increasingly impatient with what he considered Ottawa's tardiness in the matter, and he reminded Prime Minister Louis St. Laurent on several occasions during 1956 and 1957 that the royal commission was vital to the future of Newfoundland. He urged him to appoint Canadians of "high distinction, broad vision and sympathetic understanding" of the matter.²⁷ Finally, at the end of February 1957, St. Laurent appointed John B. McNair, the chief justice of New Brunswick, Albert Walsh, by then the chief justice of Newfoundland, and economist John J. Deutsch to the royal commission. Following the recommendations of his officials, St. Laurent dismissed suggestions that the commissioners investigate the general problems of the Atlantic Region; he tasked the commissioners for "recommendations [that] will be strictly in accord with the terms of union."²⁸ St. Laurent had warned his cabinet that there would undoubtedly be trouble with the recommendations of the royal commission because Newfoundland was expecting more than was provided in the Terms of Union and more than Ottawa could justify to the other provinces. He lamented to his colleagues, quite prophetically, that Newfoundland "would be disappointed eventually."²⁹ Premier Smallwood had

25 John N. Lavis, "Political Elites and their Influence on Health Care Reform in Canada," in *The Governance of Health Care in Canada*, ed. Tom McIntosh, Pierre-Gerlier Forest, and Gregory P. Marchildon (Toronto: University of Toronto Press, 2004), 257-79. The concepts of "high politics" and "low politics" is often used in the study of international relations and foreign policy to distinguish, for example, between issues discussed between heads of state and those discussed at the level of bureaucrats.

26 Burns to Taylor, 23 April 1956, Department of Finance, vol. 3912, file 5765-05-01/vol. 1, LAC.

27 Smallwood to St. Laurent, 4 September 1956, Joseph R. Smallwood Fonds, file 3.10.013 Canada. Prime Ministers Office, 1949-59, Centre for Newfoundland Studies (CNS), Memorial University of Newfoundland.

28 House of Commons Debates, 22 February 1957.

29 "Cabinet Conclusions," 6 September 1956, Office of the Privy Council, ser. A-5-a, vol. 2644, file Newfoundland Royal Commission to review financial position of province: appointment, LAC;

already aroused concerns in Ottawa when he threatened on several occasions to lead Newfoundland out of Confederation if the federal government did not act soon to improve the economic situation in the four Atlantic provinces.³⁰

The Department of Finance took the lead in all matters relating to the royal commission in Ottawa. This can be seen, for instance, in the discussion around how the federal government should be represented at the commission hearings that were to begin in St. John's on 19 June 1957. J.W. Pickersgill, Newfoundland's representative in the federal cabinet and private secretary to Prime Minister Mackenzie King during the negotiations between Newfoundland and Canada in 1947 and 1948, had argued against the appointment of federal counsel because it would suggest that the financial provisions of union were subject to litigation and that Ottawa was prepared to confront Newfoundland over the matter. However, the Department of Finance warned that the Newfoundland government was already misrepresenting to the press and the public alike the meaning of Term 29 in suggesting that Ottawa had no choice but to provide generous financial assistance to bring the levels and standards of services up to those in the other Atlantic provinces and even to those in Canada as a whole. It was no secret that Newfoundland would ask the commission to recommend a generous subsidy. If Ottawa simply stayed on the sidelines and watched the proceedings, federal officials maintained, there would be no one to remind the royal commission of its limited mandate and to challenge Premier Smallwood if he made preposterous requests such as demanding that Ottawa improve the transportation facilities and make other improvements to public services in Newfoundland.³¹ St. Laurent and his cabinet were worried that Newfoundland might attempt to broaden the terms of reference of Term 29, and they were "quite definite in the view that counsel for the Federal Government ought to object to any attempt or tendency to broaden the scope of inquiry beyond the precise terms of reference." The Order-in-Council (P.C. 1957-27) appointing the Royal Commission on Newfoundland Finances asked commissioners "to review the financial position of the Province of Newfoundland and to recommend the form and scale of additional financial assistance, if any, that may be required by the Government of the Province of Newfoundland to enable it to continue public services at the levels and standards reached subsequent to the date of Union, without resorting to taxation more burdensome, having regard to capacity to pay, than that obtaining generally in the region comprising the Maritime Provinces of Nova Scotia,

"Cabinet Conclusions," 21 February 1957, Office of the Privy Council, ser. A-5-a, vol. 1892, file Newfoundland Royal Commission to review financial position of province: appointment, LAC; House of Commons Debates, 22 February 1957. Smallwood told the Charlottetown *Guardian* on 25 February 1959 that he was "delighted" at the choice of members for the royal commission. He described McNair as a "long personal friend" and "a famous fighter for Maritime rights and after we went in for Atlantic provinces rights," Deutsch as "a great friend of Newfoundland and . . . a man of great sympathy for Newfoundland," and with Walsh, he said, "we would not find a better man to represent Newfoundland on this royal commission."

30 Burns to Harris, 26 February 1957, Department of Finance, vol. 3912, file 5765-05-01/vol. 3, LAC. See also *Ottawa Journal*, 21 June 1955, and *Toronto Star*, 6 July 1955.

31 Taylor to Harris, 16 May 1957, including Memo "The Royal Commission on Newfoundland Finances," prepared by J.E. Howes, 14 May 1957, Department of Finance, vol. 3912, file 5765-05-01/vol. 1, LAC; see also *Evening Telegram* (St. John's), 13 February 1957.

New Brunswick, and Prince Edward Island.”³² The federal counsel was to present Ottawa’s understanding of Term 29 and, it was hoped, avoid problems later on. Although the federal government rarely presented briefs to the royal commissions it appointed, it thought one might be necessary in this instance to rebut the evidence that Newfoundland was expected to present at the hearings.³³ Federal officials did not trust Smallwood, and there was little indication that the federal government was willing to negotiate and compromise with the Newfoundland premier. K.W. Taylor, for example, told his minister that “it has been this Department’s view that if this [Newfoundland’s fiscal capacity] must be considered it must be within the broad pattern of Federal-Provincial fiscal relations and not in connection with the specific and limited terms of Section 29 of the Terms of Union.”³⁴

The commissioners cancelled the first of their public hearings scheduled for St. John’s when John Diefenbaker and the Progressive Conservatives won a surprise minority government on 10 June 1957. Even with the change of government, though, the Department of Finance continued to be the government’s window on the royal commission. Roland A. Ritchie, a Second World War veteran and Halifax lawyer, was subsequently appointed federal counsel to the royal commission hearings and his instructions were to correct any misinformation that was presented there by Newfoundland.³⁵ Finance also sent R.M. Burns and J.E. Howes, the department’s experts on federal-provincial relations, to assist Ritchie.³⁶

The hearings began in St. John’s on 22 July, and examined Newfoundland’s case. Premier Smallwood’s was the first submission and he left little doubt about his expectations of the commission. “My Lords,” he began, “you will by your recommendation write the final, fateful term of the terms of Union.” He told the commission that he had done everything he could to raise the levels and standards of public services, including imposing high rates of taxation and spending all of the \$42 million surplus that the province had brought into Confederation. Still, Newfoundland had only been able to reach the levels of public services enjoyed by Nova Scotia and New Brunswick in 1920. Newfoundland had no more financial resources to tap, and the hopes of all Newfoundlanders, he said, rested on the generous recommendations of the royal commission.³⁷

P.J. Lewis and H. Carl Goldenberg presented the details of Newfoundland’s case. Using an array of statistics, they claimed that Newfoundland was clearly subjected to

32 Taylor to W.R. Jackett, Deputy Minister of Justice (31 May 1957), “Royal Commission on Terms of Union with Newfoundland” (memo prepared by Taylor for Minister, 21 June 1957), and “The Government of Canada’s Case” (memo prepared by J.E. Howes, 31 May 1957), Department of Finance, vol. 3912, file 5765-05-1/vol. 1, LAC.

33 “Cabinet Conclusions,” 27 May 1957, Privy Council, ser. A-5-a, vol. 1892, file Newfoundland Royal Commission to review financial position of province: appointment of federal counsel, LAC.

34 Taylor to the Minister, 26 June 1957, Department of Finance, vol. 3912, file 5765-05-1/vol. 1 LAC.

35 Deputy Attorney General of Canada to Ritchie, 18 July 1957, Department of Finance, vol. 3912, file 5765-06-01, LAC.

36 Fleming to Diefenbaker, 11 September 1957, Donald M. Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1957, LAC.

37 Presentation by Premier Smallwood, 22 July 1957, Royal Commission on Newfoundland Finances, Hearings, vol. 1, LAC.

levels of taxation higher than those of the three Maritime provinces as it struggled to maintain public services at the level and standards reached since 1949. Their argument rested on four suppositions: first, personal incomes and personal incomes per capita were lower in Newfoundland than those throughout the Maritimes; second, the cost of living was 12 percent higher in Newfoundland; third, the burden of taxation was greater on a proportional basis in Newfoundland than in the Maritimes; and fourth, the level and standards of public services – transportation infrastructure, education, health, public welfare, and local government services – were lower in Newfoundland than in the Maritimes. The annual cost of maintaining public services was \$41.1 million, but when depreciation and the anticipated expenditures for population growth were factored in the cost rose to \$53 million. Revenue from a variety of provincial and federal sources left the province with a budgetary deficit of \$15 million. Because Newfoundland taxpayers were already paying a higher level of taxation than those in the Maritimes, Goldenberg told the commissioners the province needed \$15 million per annum under the Term 29 settlement to continue existing levels and standards of public services. Newfoundland also demanded that Ottawa continue to review its financial and economic position and provide additional financial aid under Term 29 when necessary.³⁸

Federal officials were dubious of Newfoundland's claims made during the hearings. They considered much of the presentation an enquiry into the social and economic conditions in Newfoundland, which was clearly outside the royal commission's mandate. Roland Ritchie intervened at the hearings primarily to remind the commissioners that any discussion of the alleged deficiencies in the levels and standards of provincial government services in Newfoundland and the cost of improving and reaching new levels and standards were clearly outside the terms of reference of the royal commission. R.M. Burns agreed, but on a general basis he thought there should be some federal assistance for Newfoundland on a limited term because of the province's particular circumstance. He also informed Donald Fleming, the federal minister of finance, that the state of the social and economic position of Newfoundland was not the subject of the review. Rather, it was the financial position of the province; if the commission adhered to a strict interpretation of Term 29, then it would have to recommend that Newfoundland had failed to show in its submission that additional federal subsidies were required. The federal officials also dismissed the provincial request for further reviews of Newfoundland's fiscal capacity stemming from the Terms of Union beyond the present royal commission. Ritchie believed that the royal commission constituted the final disposition of the Terms of Union, and insisted on the "finality of the Commission's recommendation." Finance officials stressed the difficulties and inequities that would result in Ottawa's handling of the federal-provincial file if Newfoundland, alone of all the provinces, had the right to have its problems reviewed by a succession of royal commissions.³⁹

38 This is based on a variety of sources, including "The Royal Commission on Newfoundland Finances Under the Terms of Union of Newfoundland with Canada," and memo prepared by J.E. Howes, 14 August 1957, Department of Finance, vol. 3912, file 5765-05-1/vol. 2, LAC. The initial demand had been for \$17 million, but this was later revised to \$15 million.

39 Memorandum to the Minister of Finance, prepared by R.M. Burns, 27 August 1957, Department of Finance, vol. 3912, file 5765-05-1/vol. 2, LAC.

When the royal commission moved to Ottawa in early October 1957, Robert Duffy, a columnist for the Toronto *Globe and Mail*, described the two-day hearings as the federal government's attempt "to bring some pretty fanciful Newfoundland economic thinking down to earth."⁴⁰ Officials in the Department of Finance prepared Ottawa's submission; there is no indication that Diefenbaker was involved in any of the discussions about it. The 65-page submission expressed sympathy with the general problems of the development of public services in the province, but it reminded the commission that its task was not to solve the problems facing Newfoundland. If the commission accepted Newfoundland's recommendations, the federal government would become "shackled by a fixed formula that is based upon a combination of uncertain statistics, unprecedented economic theories, constructed figures and future predictions." It also urged the commissioners to abide with a strict interpretation of the Terms of Union, and focus on the level of financial assistance that was necessary for Newfoundland to continue to provide the level and standards of public services reached since union in 1949; the commissioners should not be driven by any sense of what the levels and standards of public services should be in an ideal world.⁴¹ Ottawa also insisted that the commission's recommendations represented the final act under the Terms of Union; there was no provision in either the Terms themselves or the commission's mandate to re-open the issues raised by Term 29 at a later date.⁴² The Department of Finance had insisted on the "finality of any settlement under Term 29" since the issue had been first discussed in 1956; any additional payments were part of the period of adjustment and had to be considered part of the transitional assistance provided to Newfoundland.⁴³ However, Goldenberg reminded the commissioners that Canada had created a unique and special arrangement for Newfoundland at the time of Confederation in 1949 that had to be continued. Smallwood had the last word; he pleaded with the royal commission to recommend a generous federal grant, and reminded the prime minister that the commission's recommendations were morally binding on the Canadian government.⁴⁴

The McNair Commission presented its report in July 1958, acknowledging that Newfoundland had a long history of poverty and that the task of modernization that lay ahead was going to be difficult. Confederation had helped to "remove the edge of poverty" through transfer payments to individuals that had supplemented and stabilized incomes of many Newfoundlanders. Still, the province remained far

40 *Globe and Mail*, 8 October 1957.

41 This point is considered in Stephen May, "The Terms of Union: An Analysis of their Current Relevance," *Collected Research Papers of the Royal Commission on Renewing and Strengthening our Place in Canada*, Vol. 1 (St. John's, NL: Queen's Printer, 2003), 177-80.

42 Ritchie to Fleming, 12 September 1957, Department of Finance, vol. 3912, file 5765-05-01/vol. 2, LAC; Fleming to Diefenbaker, 11 September 1957, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1956, LAC.

43 Memorandum to the Minister of Finance, prepared by R.M. Burns, 27 August 1957, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1956, LAC. Fleming sent a copy of the memorandum to the prime minister on 11 September 1957.

44 Royal Commission on Newfoundland Finances, "Proceedings," 1504, 1604-05, 1616; Ritchie to Fleming, 22 October 1957, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1956, LAC.

behind the national average on any measure of income and wealth. On the main issue of levels of taxation, the commission concluded that the burden imposed in Newfoundland was approximately equal to that of the Maritimes in a mathematical sense. However, it noted that the element of burden could not simply be measured in such austere terms; the commission also had to consider how the “special factors” of Newfoundland’s situation affected the burden of taxation in the province and the adequacy of future revenue to meet financial needs. In doing so, it noted several factors: first, the greater vulnerability of the Newfoundland economy to exports than that of the other Maritime provinces (which meant a great variation in annual taxation revenues); second, lower levels of accumulated wealth and capital in Newfoundland compared to those of the three Maritime provinces; third, lower per capita incomes in Newfoundland; and fourth, a higher cost of living in Newfoundland. Because of those special factors and the uncertainties in Newfoundland’s economy, the commission recommended that Canada provide additional financial assistance of \$8 million per annum, minus the transitional grants provided at the time of union for fiscal years 1958 to 1960.⁴⁵

McNair pleased neither the federal nor the provincial government. Smallwood was devastated. The royal commission had let him down. He had told Newfoundlanders repeatedly in the years leading up to the review of Term 29 that Ottawa would provide the financial resources the province required to meet future needs. In both the 1956 and the 1957 budget speeches, for instance, he noted “Newfoundland faces the future with unwavering hope and confidence. She is part of the great Canadian nation and she will go up with that nation. Great Canada wanted Newfoundland, and Great Canada will treat her now with justice and generosity.”⁴⁶ Smallwood, though, saw little of that attitude in the commission’s report. It was “trash” he told the legislature, adding: “The Commission was a dead loss. The Commissioners were a dead loss. God help me, I had something to do with choosing them.”⁴⁷

45 Royal Commission on Newfoundland Finances, *Report* (Ottawa: Queen’s Printer, 1958), 1-9, 40. Browne claims in his autobiography that Deutsch later told him that “they [the commission] would not have awarded as much as they did if Sir Albert Walsh had not pleaded to the other Commissioners so strongly that they yielded to his plea and increased their award to the figure that was eventually recommended.” See W.J. Browne, *Eighty-Seven Years a Newfoundlander, Volume II: 1949-1965, Memoirs of William J. Browne* (St. John’s, NL: Dicks and Company, 1981), 282.

46 Government of Newfoundland, *Budget Speech*, 1956, and *Budget Speech*, 1957. In 1956, the minister of finance said it is “inevitable” that after the royal commission considers the state of public services in Newfoundland compared to that of the Maritime Provinces and taking account of Newfoundland’s capacity to pay, they will demand “considerably increased federal assistance for Newfoundland.”

47 Statements by Smallwood, July 1958, Smallwood Fonds, Coll-075, file 7.05.003, CNS (quoted in Gwyn, *Smallwood*, 188). It is noteworthy that Gordon Bradley, the major proponent of Confederation along with Smallwood in 1949 and Newfoundland’s first federal cabinet minister following union, thought that Diefenbaker’s decision had “at least a sound excuse in the conventions of the constitution.” Bradley described Smallwood’s reaction after he was refused millions from Ottawa for his “quagmire of incompetence” as a “tragic-comic burlesque.” He also accused Smallwood of orchestrating the student demonstration at Memorial. In Bradley’s view, Smallwood had become a dictator and he controlled the province with hardly a word of opposition from anyone.” Bradley described it as “joeyitis,” created by ten years of “lying propaganda.” See Bradley to Sears, 19 April 1959, F. Gordon Bradley Papers, file George Sellars, correspondence 1953-59, CNS.

Ottawa was no more impressed with the commission's report than was St. John's, but for very different reasons. R.M. Burns, who had managed the file in the Department of Finance, was "completely unimpressed" with the document and the "cavalier manner" in which the commissioners treated the federal submission. While acknowledging the difficult task the commissioners had faced, he felt that they had made their decision based on a "feeling of sympathy" for Newfoundland rather than on sound financial reasoning. The report was flawed both in principle and on technical grounds, and he warned that if the federal government accepted the report uncritically it might cause problems with the other Maritime Provinces – especially Prince Edward Island, which was the poorest province in the region. With that in mind, Burns reminded Fleming that "the cloudiness of Term 29 would seem to make an arbitrary decision unavoidable and under the circumstances it must in the final analysis quite properly be a political one based on an assessment of what appears fair and equitable not only in Newfoundland, but to the rest of Canada as well." He noted, too, as Diefenbaker would when he tabled the report in the House of Commons, that the decision on Term 29 brought "finality to the terms of union between Newfoundland and Canada."⁴⁸

It is worth noting that the Diefenbaker government was fundamentally opposed to special deals for individual provinces; it had embraced a regional approach to economic disparity. The Conservatives supported the principle of equalization that had been introduced in 1956 as a means to address the social and economic disparity across the country; they realized, also, that regional agreements were necessary to deal with economically depressed regions of Canada. When Diefenbaker raised the matter of financial adjustments to the general financial arrangements between the federal and provincial governments at the Dominion-Provincial Conference in 1957, some of the provinces voiced their dissatisfaction with what might be called side-agreements. Douglas Campbell, the premier of Manitoba, represented that view, and he reminded Diefenbaker that the federal government must ensure the equitable treatment of all provinces. A national agreement was absolutely necessary, he insisted, and once such an agreement was in place then the national government should provide additional financial aid as it was needed in certain regions of the country.⁴⁹ The participants at the 1957 Dominion-Provincial Conference agreed that the economic conditions and fiscal situation in the Atlantic Provinces lagged that of the rest of the country, and that special grants to them were justified.⁵⁰ The federal government subsequently provided \$22.5 million in adjustment grants for the Maritime Provinces in the *Federal-Provincial Tax-Sharing Arrangements Act* for four fiscal years beginning in 1958. Newfoundland was not originally included in those grants, as it was thought it would be covered by a separate arrangement resulting from the royal commission examining Term 29. After considerable lobbying by Premier Smallwood and Nova Scotia Premier Robert

48 Memo: Report of the Royal Commission on Newfoundland Finances, prepared by Burns for Donald Fleming, Minister of Finance, 29 July 1959, Department of Finance, vol. 3912, file 5765-05-01/vol. 3, LAC; Burns to Ritchie, 30 July 1959, Department of Finance, vol. 3912, file 5765-05-01/vol. 3, LAC.

49 Campbell to Diefenbaker, 18 December 1957, tabled in House of Commons Debates, 11 January 1958, 3227-9.

50 House of Commons Debates, 27 January 1958, 3843-7.

Stanfield, however, Newfoundland was included. The four provinces agreed on a formula that saw 30 per cent of the adjustment grants going each to New Brunswick, Newfoundland, and Nova Scotia while 10 per cent went to Prince Edward Island; the adjustment grants were also increased to \$30 million after Newfoundland was included. Those special grants were to raise public services in Atlantic Canada to a level comparable with those existing in the other provinces. Therefore, beginning in 1958 Newfoundland's particular situation was addressed as part of regional strategy within the larger context of the federal-provincial fiscal arrangement. The federal government believed that when Smallwood accepted this arrangement he had abandoned the notion of additional and special arrangements between Newfoundland and Ottawa.⁵¹

Still, the federal cabinet realized that it had to respond to the recommendations of the McNair Commission; it would, however, take eight months to make a decision. When Fleming first brought the subject forward in August 1958, he warned that whatever the government decided would be a source of controversy – not only in Newfoundland but possibly in other parts of Canada as well. For that reason, he insisted that whatever arrangement was made it had to be the final settlement of the Terms of Union.⁵² In cabinet, W.J. Browne, the minister representing Newfoundland, urged his colleagues to provide the award of \$8 million the McNair Commission had recommended; to do otherwise would be seen as a refusal to help Newfoundland. Browne insisted that the backwardness of public services generally in Newfoundland in relation to those in other provinces made it a special case for federal help. The cabinet, however, feared that given Smallwood's strenuous objection to the McNair recommendation any payment short of the \$15 million would be decried by the premier as insufficient; Smallwood had shown "absolutely no thanks" for the Atlantic Province Adjustment funds. Moreover, he seemed to have no sense of financial probity as he had spent the province's pre-Confederation surplus recklessly. Some ministers insisted that the federal government "should do nothing to strengthen" and encourage such profligate and reckless fiscal tendencies by providing him additional funds. Others suggested that the recommendations were unclear, and if they acted quickly to provide the \$8 million that McNair recommended it would be extremely difficult to reduce the amount later even if a reduction were justified. In typical Diefenbaker fashion, the cabinet procrastinated and decided further study was required.⁵³

Diefenbaker's procrastination allowed Smallwood time to build his case against the McNair recommendation and mobilize the political forces in Newfoundland to demand a more generous award. Malcolm Hollett, the leader of the opposition in Newfoundland, joined Smallwood to denounce the inadequacy of the \$8 million award. They both hoped that Diefenbaker's delay meant that Ottawa was working on a richer arrangement for Newfoundland.⁵⁴ Smallwood told the press that the

51 House of Commons Debates: 27 January 1958, 3849; 25 January 1958, 3795-8.

52 Memorandum to the Cabinet, Re: Report of the Royal Commission on Newfoundland Finances, 6 August 1958, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances, 1955, LAC.

53 "Cabinet Conclusions," 8 August 1958 and 12 August 1958, Privy Council Office, ser. A-50, vol. 1899, file Royal Commission on Newfoundland Finances, LAC.

54 Statement by Premier Smallwood, 16 August 1958, Smallwood Fonds, Coll-075, file 7.05.003, CNS; James McGrath to Fleming, 22 August 1958, Fleming Papers, vol. 101, file R-11 Royal

prime minister “is deeply conscious as we all are, of the fact that what is involved in this matter is the final writing of the Terms under which Newfoundland gave up her independence within the Commonwealth and threw in her lot with Canada.” He called on Diefenbaker for “big-hearted visions,” and asked him to make an interim payment of \$8 million as McNair had recommended so that the province could avoid making drastic cuts to public services as a cost-saving measure in a difficult financial year. The Newfoundland House of Assembly unanimously agreed upon the request for an interim payment.⁵⁵

Diefenbaker’s response foreshadowed the federal position on Term 29. He reminded Smallwood that Ottawa had given Newfoundland nearly \$9 million in special grants (Atlantic Provinces Adjustment Grant and a transfer in tax revenues) in the two years since the Conservatives came to power – which he also reminded the premier exceeded the amount McNair recommended. Those payments should enable the province to meet its current fiscal conditions. Ottawa realized, too, that an interim payment would have tied the federal government to that amount as a minimum going forward. Given its reservations about the McNair Report, the government refused to provide an interim measure. After all, Diefenbaker told the premier, there had to be a discussion about the amounts involved and the minister of finance would have to handle those discussions – in essence, relegating the matter to low politics and away from first ministers. At the same time, Diefenbaker was receiving warnings from some in Newfoundland about how Smallwood had squandered the province’s fiscal resources after Confederation. Arthur E. Harnett, the private secretary to W.J. Browne, warned him that Smallwood had “total control of the province and no more funds should be placed at his disposal.” The Newfoundland Board of Trade wrote the prime minister informing him that it was more interested in infrastructure improvements than in the financial arrangement between Newfoundland and Ottawa.⁵⁶ And Newfoundland Liberal Senator F. Gordon Bradley echoed these sentiments, describing the federal government’s refusal to provide the level of financial support that Smallwood demanded as “sound and practical.”⁵⁷

For Smallwood, the McNair recommendation was an issue that could only be discussed in the realm of high politics – that is, between premier and prime minister.

Commission on Newfoundland Finances 1958, LAC. McGrath recommended that Diefenbaker promise to fund a highway across the province at a cost of approximately \$90 million. Many of the newspapers in the Maritimes also believed that Diefenbaker would be generous with Newfoundland. See *Daily Gleaner* (Fredericton), 20 August 1958.

55 Smallwood to Diefenbaker, 23 August 1958, Smallwood Fonds, file 3.10.013, CNS; *Daily News*, 18 August 1958; Smallwood to Diefenbaker (telegram), 11 August 1958, J.W. Pickersgill Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1958, LAC; Smallwood to Diefenbaker (telegram), 23 August 1958, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1958, LAC; Smallwood to Diefenbaker, 3 September 1958, Diefenbaker Papers, PMO ser., MG/01/vi/4532, vol. 326, file 361.21 Provincial Governments – Newfoundland – Cabinet – Premier 1957-63, Diefenbaker Canada Centre (DCC), University of Saskatchewan.

56 See Diefenbaker Papers, PMO ser., VI/4461, vol. 322, file McNair: Federal Government Administration – Royal Commissions – McNair, 1955-1960, especially Harnett to Diefenbaker (4 September 1958), John Higgins to Diefenbaker (26 September 1958), and Newfoundland Board of Trade to Diefenbaker (18 September 1958).

57 Bradley to Sellars, 19 April 1959, Bradley Collection, file George Sellars, corresp. 1953-59, CNS.

This was not a matter for civil servants. Smallwood fired off a series of telegrams and letters to Diefenbaker, asking for an opportunity to present a formal submission on the inadequacy of the McNair recommendation. There was a “universal expectation” in Newfoundland, he wrote Diefenbaker, that Ottawa be more generous than McNair had been. He also reminded the prime minister that an additional financial award was the province’s constitutional and provincial right under the Terms of Union, which were included in the Canadian constitution.⁵⁸ Smallwood’s request to send a delegation to Ottawa arrived just as Diefenbaker was leaving for an extended tour of Commonwealth countries in the fall of 1958 and, considering the issue to be simply another fiscal arrangement between a province and the federal government, Diefenbaker thought it would be best handled at the ministerial and bureaucratic level. He asked Smallwood to send to Fleming any materials that would help his department understand Newfoundland’s position and urged Smallwood and his officials to meet with Fleming and Department of Finance officials. Smallwood refused; he would wait until the prime minister’s return to Ottawa. This caused further delay in settling the matter.⁵⁹

Although he did not realize it at the time, Smallwood might have fared better in the fall of 1958 with officials in the Department of Finance than waiting for the prime minister. While finance officials continued to insist that the McNair recommendation was flawed and not supported by the facts, they understood better than the cabinet that Term 29 had the potential to disrupt relations between St. John’s and Ottawa. They recommended what was essentially a political solution. R.M. Burns and others in the Department of Finance, worried about the precarious fiscal situation in Newfoundland, realized that the province needed help. Burns told Taylor that the department would have to deal with the situation in Newfoundland eventually, and if the government accepted the McNair recommendation it would do the “least harm” to the relations between the two governments – and it might even strengthen Ottawa’s position in Newfoundland. Burns noted, too, that Smallwood saw – just as the Newfoundland royal commission had – that the financial compensation from Term 29 was the only possible way to improve public services in Newfoundland as well as the best way of dealing with the current fiscal crisis in the province. Because Newfoundland never considered the primary issue as simply being the continuation of the level of services reached since 1949, it dismissed any notion of adhering to a strict interpretation of Term 29. This view was reflected in the 1956 *Budget Speech*, when Newfoundland’s minister of finance emphasized the inadequacy of government services in Newfoundland compared to that in the Maritime Provinces and said that those differences illustrate “the fundamental character of our need for substantial improvements in the amount we are to get each year under Term 29.” Moreover, Burns wondered if it were proper for Ottawa to amend or alter the McNair

58 Smallwood to Diefenbaker, 18 September 1958, Diefenbaker Papers, PMO ser., VI/4461, vol. 322, file McNair: Federal Government Administration – Royal Commissions – McNair, 1955-1960, LAC; Diefenbaker to Smallwood, 26 August 1958, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1958, LAC; Smallwood to Diefenbaker, 11 August, 3 September, and 18 September 1958, Smallwood Fonds, Coll-075, file 3.10.013, CNS.

59 Diefenbaker to Smallwood, 10 October 1958, Smallwood Fonds, Coll-075, file 2.3.10.013, CNS; Smallwood to Diefenbaker, 16 October 1958, and Diefenbaker to Smallwood, 24 October 1958, Department of Finance, vol. 3912, file 5765-02/vol. 3, LAC.

recommendation. The royal commission was constitutionally mandated and had a “quasi-sacrosanct nature,” even if its final report was economically and financially suspect. He thought that acceptance of the McNair recommendation, even if it was excessive, would result in the least controversy: “Anything less,” he recommended, “might do more harm to the long-term relations with the Province and its attitude toward Confederation, than the money would be worth.” With that in mind, Burns recommended that Ottawa accept the McNair recommendation beginning in 1957-58 for a limited period, ending in either 1962 or 1967 to coincide with the quinquennial renegotiations of the principal fiscal arrangements. Even as he told the deputy minister this, he noted that there was some “natural disinclination to provide additional unconditional funds to the Province in view of its record of financial profligacy.”⁶⁰

Fleming forwarded the recommendation from Burns to the prime minister, but neither Fleming nor Diefenbaker saw the matter as particularly pressing (though they would eventually accept the Department of Finance’s recommendation). The department, however, became increasingly worried with the delay, and, on 2 January 1959, nearly five months after the cabinet first considered the matter, Taylor urged Fleming to make a decision on the McNair Commission. The issue, he told his minister, “may become an embarrassing constitutional matter . . . [and] it will be difficult to justify giving less than what the report recommends”; to do otherwise would result in a “rather nasty row” with Newfoundland. However, the government had to fix a terminal date for the award and Taylor recommended 31 March 1967, when the Federal-Provincial Tax Sharing Arrangement Act was to be renegotiated and Newfoundland’s situation would be reviewed and considered with that of the other Atlantic Provinces.⁶¹ Fleming urged Diefenbaker to accept the department’s advice; the matter was discussed in the cabinet on 13 January 1959, but a decision was deferred until the prime minister met with Smallwood.⁶²

Smallwood’s visit to Ottawa tilted familiar terrain, but he also came with a new proposal for Diefenbaker. He reminded the prime minister of Canada’s constitutional obligation under Term 29, and told him that the resolution of the matter was “a final act in the Terms of Union with Canada and that generosity on the part of Canada would pay dividends in the more whole-hearted acceptance of Confederation in the Province.”⁶³ Yet he was also willing to compromise: he

60 Burns to Taylor, 24 November 1958, and Memo: Report of the Royal Commission on Newfoundland Finances, 24 November 1958, Department of Finance, vol. 3912, file 5765-02/vol. 3, LAC; “Notes for Proposed Meeting with Premier Smallwood,” prepared by R.M. Burns, 22 January 1959, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1959 (January-June), LAC.

61 Fleming to Diefenbaker, 30 December 1958, and Taylor to Fleming, 2 January 1959, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1959 (Jan-June), LAC.

62 Fleming to Diefenbaker, 8 January 1959, Diefenbaker Papers, Diefenbaker Correspondence, MG 01/XII/A/148.3, vol. 5, 1959, DCC.

63 Memorandum to the Minister, Re: Newfoundland Royal Commission Report prepared by R.M. Burns, 28 January 1959, and Notes of Meeting with Premier of Newfoundland, 26 January 1959, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1959 (January-June), LAC; Statement by Premier Smallwood, 27 January 1959, Smallwood Fonds, Coll-075, file 7.05.003, CNS.

suggested that if Ottawa could not meet Newfoundland's demands within the purview of the McNair Commission then perhaps it might consider some other form of financial aid to satisfy Newfoundland. Would Ottawa assume responsibility for some public service that was a burden to the province, such as assuming the full cost of the TransCanada Highway and the cost of constructing new roads throughout the province? Federal officials dismissed such overtures as they would surely create problems in Ottawa's relations with the other provinces; Diefenbaker also refused to negotiate, but he was left wondering if Smallwood's earlier demands of a \$15 million minimum under Term 29 had been more bluster than substance. Smallwood continued to insist on additional reviews of his province's fiscal situation.⁶⁴

Fleming and Diefenbaker took the Term 29 recommendation to the Cabinet on 5 March 1959. The first order of business on the agenda that day was a labour dispute in Newfoundland that further heightened the cabinet's suspicion of and antipathy towards Smallwood. The International Woodworkers of America (IWA) had organized loggers in Newfoundland and had launched a strike on New Year's Day against the Anglo-Newfoundland Development Company, which owned the paper mill in Grand Falls. On 7 February, strikers raided a logging camp working for contractors hired by the company to cut pulp wood and sent loggers scrambling into the winter night. A few days later, on 13 February, Premier Smallwood unleashed the might of his government against the union, which he castigated as "outsiders" intent on destroying the peace and tranquility of Newfoundland; he announced plans to decertify the IWA and establish his own loggers union that, he said, would be willing to negotiate sensibly with the paper company. The legislation was among the most punitive anti-labour bills in Canadian history, and the Canadian labour movement appealed to the federal government to disallow it. Davie Fulton, the minister of justice, told the cabinet that the Canadian Labour Congress planned formally to request that the federal government instruct the lieutenant-governor of Newfoundland to either disallow or reserve the Newfoundland legislation proposing to decertify the IWA and bar the International Brotherhood of Teamsters from the province.⁶⁵

The Diefenbaker government opposed Smallwood's legislation. It was embarrassed that the Conservative members of the Newfoundland legislature had supported Smallwood's attack on labour.⁶⁶ The federal cabinet discussed using its

64 Memorandum to the Minister, Re: Newfoundland Royal Commission Report, prepared by R.M. Burns, 28 January 1959, and Notes of Meeting with Premier of Newfoundland, 26 January 1959, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1959 (January-June), LAC; Donald Fleming, *So Very Near: The Political Memoirs of the Honourable Donald Fleming, Volume 2: The Summit Years* (Toronto: McClelland and Stewart, 1985), 31-2.

65 For a discussion of the IWA Strike, see Gwyn, *Smallwood*, 199-210, as well as Dufferin Sutherland, "We Are Only Loggers: Loggers and the Struggle for Development in Newfoundland, 1929-1959" (PhD diss., Simon Fraser University, 1995).

66 "Cabinet Conclusions," 5 March 1959, Privy Council Office, ser. A-5-a, vol. 2744, LAC. Sean Cadigan has suggested that Diefenbaker condemned Smallwood's involvement in the IWA Strike because of "the antagonisms between the federal and provincial regimes rather than any serious disagreement about the rights of labour." A reading of the Diefenbaker papers suggests that it was Diefenbaker's stand on the rights of labour that led to the acrimony between Diefenbaker and Smallwood over IWA – not antagonisms between the federal and provincial regimes as Cadigan suggests. See Cadigan, "Regional Politics are Class Politics," 163-8.

constitutional privilege either to reserve or disallow the legislation, but decided against such action after a protracted discussion. The Progressive Conservatives had traditionally been the party of provincial rights, and most ministers realized that the provinces jealously guarded their powers; federal use of the powers of reservation and disallowance of provincial law would surely come with an immense political cost. Reluctantly, the cabinet decided not to interfere with the Newfoundland legislation; the episode, though, served as an indication for Ottawa of how ruthless and undemocratic Smallwood and his government had become.⁶⁷

With its decision on the Newfoundland labour legislation rendered, the cabinet turned to the McNair Report. Diefenbaker and Fleming reported that their meetings with Smallwood had failed to find any resolution. Given that Smallwood was willing to negotiate over Term 29, however, they suggested that he was no longer committed to the issue as a matter of principle. The cabinet had two options: recognize its obligation under Term 29 and pay the amount McNair Commission had recommended, or refuse its recommendation. Diefenbaker and Fleming argued that the federal government had no alternative other than to implement the recommendations of the royal commission if they were to “keep faith with the Terms of Union with Newfoundland.” Fleming proposed that cabinet authorize the \$8 million annual payment as the royal commission had recommended and the Department of Finance had endorsed. The award would continue without any conditions until 1966-67; Newfoundland had to understand, however, that no further supplementary benefits would be considered. The grant was a “final and irrevocable settlement of Term 29, and any future payment to Newfoundland [was to] be divorced from the Terms of Union and considered as part of a general fiscal arrangement between Ottawa and the provinces.”⁶⁸

The proposal spawned considerable debate in the cabinet. Of course, it was soon evident that policy could not be separated from politics. All members of the cabinet fully understood that Smallwood was “politically hostile” to the Conservatives, and because of that it never seriously entertained Smallwood’s demand for a \$15 million award.⁶⁹ Moreover, even the Department of Finance, which favoured a political settlement with Newfoundland, rejected Smallwood’s demand for \$15 million. The cabinet realized that if it gave Smallwood the full amount he requested, he would take full credit for Ottawa’s generosity and the federal government would receive

67 “Cabinet Conclusions,” 6 March 1959, Privy Council Office, ser. A-5-a, vol. 2744, LAC. Smallwood enjoyed widespread support for his condemnation of the IWA and his decision to establish a new union for loggers. Hundreds of loggers from around the province sent telegraphs applauding his actions. A telegraph from Ronald and Lester Wells in Seal Cove, Fortune Bay is typical: “Heard your broadcasts many thanks[.] Please form a new union for the loggers of NFLD.” See Ronald and Lester Wells to Smallwood, 13 February 1959, Smallwood Fonds, Coll-285, Telegrams, February 1959, file 15.03.148, CNS.

68 Fleming to Diefenbaker, 2 February 1959, Guest (for Diefenbaker) to Fleming, 10 February 1959, and Fleming to Diefenbaker (through Guest), 11 February 1959, Diefenbaker Papers, PMO ser., VI/4461, vol. 322, file McNair: Federal Government Administration – Royal Commission – McNair, 1955-1960, LAC; Fleming to Diefenbaker, 25 August 1958 and Ritchie to Fleming, 21 August 1958, Fleming Papers, vol. 101, file R-11 Royal Commission on Newfoundland Finances 1958, LAC.

69 Fleming, *So Very Near*, 32.

scant praise for the Term 29 award (with no political gain for the Conservatives in Newfoundland). The cabinet also considered how reckless Smallwood had reportedly been with Newfoundland's financial resources after 1949, a view shared by the Department of Finance; Browne reminded his colleagues that Smallwood had stated publicly that if he were granted the award in perpetuity as he had demanded he would use it to borrow \$175 million and repay the loan over a 15-year period. Limiting the term of the financial award under Term 29 would make it more difficult, cabinet believed, for Smallwood to increase the indebtedness of Newfoundland, an issue that increasingly worried the Department of Finance in Ottawa. The cabinet was also concerned that if the award were given in perpetuity it might mean that the Newfoundland government would see the federal treasury as its protector no matter how it squandered its revenue; perpetuity, from this point of view, would surely not encourage prudent financial management in the province.⁷⁰

The cabinet agreed with Fleming that it should offer no more than the \$8 million the McNair Commission had recommended. Yet it also realized that it could not punish the people of Newfoundland for Smallwood's profligacy.⁷¹ In the long-term interest of promoting Newfoundland's integration into Canada it had to provide some measure of financial assistance under Term 29. The cabinet accepted Fleming's recommendation. However, it maintained that Smallwood should be admonished for his alleged financial waste and for his hostility to the Conservatives. It did so by refusing Fleming's recommendation to provide the award until 1967; it set 1962 as the termination date – the alternative offered by the Department of Finance. From that point forward, Newfoundland would participate in the federal-provincial fiscal arrangements on the same basis as all the other provinces. Such an arrangement would signal the integration of Newfoundland into Canada, and it would mean that Newfoundland would not be "treated perpetually as an orphan" but would join the rest of Canada as far as the method of providing fiscal assistance to the provinces was concerned. Yet, as the Atlantic Adjustment Grants demonstrated, that did not mean that special fiscal arrangements could not be negotiated between any province (or region) and the federal government. In the end, Fleming and Diefenbaker both agreed that Newfoundland had "fared well in financial assistance from the federal government since we [the Conservatives] took office."⁷²

Before the federal government announced its decision on the McNair Commission recommendation, the IWA strike in Newfoundland became more violent and further strained relations between St. John's and Ottawa. Diefenbaker was under considerable pressure from labour groups and some elements in the press either to disallow or have the lieutenant-governor reserve the new labour laws passed by the Smallwood government. As much as Diefenbaker wanted to do so, his government realized that it

70 "Cabinet Conclusions," 5 March 1959, Privy Council Office, ser. A-5-a, vol. 2744, LAC; Memorandum to Cabinet from Fleming, 18 February 1959, Department of Finance, vol. 3912, file 5765-03/vol. 3, LAC; Memorandum for the Prime Minister, 15 July 1959, Diefenbaker Papers, ser. PMO, VI/4461, vol. 332, file McNair: Federal Government Administration – Royal Commission – McNair, 1955-1960, LAC.

71 "Cabinet Conclusions," 13 January 1959, Privy Council Office, ser. A-5-a, vol. 2744, LAC.

72 "Cabinet Conclusions," 2 April 1959, Privy Council Office, ser. A-5-a, vol. 2744, LAC; Fleming, *So Very Near*, 32.

was political suicide to get involved in matters, such as labour laws, that fell within provincial jurisdiction. Federal intervention smacked of a centralization of power in Ottawa, something that Diefenbaker had railed against for years.

Although Diefenbaker was able to skate around Smallwood's labour legislation, he soon became embroiled in another controversy with Smallwood when the Newfoundland attorney-general requested additional Royal Canadian Mounted Police (RCMP) officers to deal with the insecurity created in Newfoundland during the IWA strike. Under the terms of the policing contract between the federal government and the province, a request could not be legally denied unless the attorney-general of Canada determined that the RCMP was unavailable because of a crisis elsewhere. Both federal Minister of Justice Fulton and RCMP Commissioner L.H. Nicholson – as well as a cabinet committee appointed to study Newfoundland's request – believed that the federal government had no legal option but to grant Newfoundland's request. The commissioner threatened to resign if Ottawa refused to send additional officers. Diefenbaker stood alone in cabinet; he believed that Smallwood was playing politics with the IWA strike, and he insisted that the RCMP could not be seen to be engaged in a labour dispute in which they might be regarded as strikebreakers. Smallwood had become personally involved in the labour dispute, and Diefenbaker was adamant that the integrity of the RCMP should not be compromised even if Ottawa had to break a contract with the province to do so.⁷³ Diefenbaker's decision on the RCMP was a political one, though the opposition parties, including Pearson's Liberals, did not criticize the prime minister for his decision not to dispatch additional RCMP officers; the federal Liberals were clearly embarrassed by Smallwood's actions.⁷⁴

Smallwood was outraged, however, and so was much of Newfoundland. He turned Ottawa's refusal to dispatch additional RCMP officers, and the widespread condemnation throughout Canada of Smallwood's intervention in the strike, into a struggle of Newfoundland against the outsider. An *Evening Telegram* headline proclaimed "They Do Not Understand" – a cry that was later echoed by Minister of Education Fred Rowe. Don Jamieson, a prominent broadcaster and later Liberal MP, told the *Toronto Star* they "just don't understand us . . . after ten years, Canadians haven't a clue about us." The *Daily News*, a strong Liberal supporter, turned to what it described as "The Inadequacies of Mr. Diefenbaker." It also defended Smallwood and charged that Diefenbaker did not understand the situation in Newfoundland. Where did he get the audacity, it asked, to declare that the premier had gravely aggravated the labour dispute? The *Daily News* listed Diefenbaker's inadequacies and his neglect of Newfoundland: he had unduly and excessively delayed the implementation of the McNair recommendation, he had failed to fill the position of chief justice of the Newfoundland Supreme Court, and he had refused to send reinforcements to provide peace and security in Newfoundland.⁷⁵

73 This issue was discussed at length almost daily in the cabinet from 5 to 18 March. See "Cabinet Conclusions" for this period, in Privy Council Office, ser. A-5-a, vol. 2744, LAC.

74 See House of Commons Debates (16 March 1959) as well as Pearson to Chevier (17 March 1959), Lionel Chevier Papers, vol. 12, file Newfoundland, LAC.

75 Gwyn, *Smallwood*, 210; *Daily News*, 18 March 1959.

It was within this vortex of poisoned politics, fervent nationalism, and Smallwood's populist appeal that had been whipped up in Newfoundland that Diefenbaker rose in the House of Commons on 25 March 1959, just six days before the tenth anniversary of Confederation, to announce his government's decision on Term 29. He reviewed the significance of Term 29, the work of the royal commission, the Government of Newfoundland's opposition to the McNair recommendation, and his government's study of the report. Parliament would be asked to authorize a special annual payment of \$8 million until 1962 under Term 29 as the McNair Commission had recommended. Finance officials had used the words "final and irrevocable" frequently in the months during which they had discussed the McNair Commission's recommendations; those words had simply meant there would be no further review of Newfoundland fiscal capacity as Smallwood had demanded. Yet when Prime Minister Diefenbaker uttered those exact words he could not have chosen any more incendiary language given the situation then existing in Newfoundland, even if the phrase had been part of the vocabulary around Term 29 for several years: "The proposed payments will be unconditional and will be in final and irrevocable settlement of the provisions of article 29 and the contractual obligations of the union consummated in 1949."⁷⁶ As he sat down, Diefenbaker realized his error.

The reaction in Newfoundland was as fierce as it was predictable. Smallwood was already smarting over Diefenbaker's decision to refuse additional RCMP officers during the IWA strike and the federal government's portrayal of him as a dictator intent on using the power of the state to crush a labour union. Diefenbaker's provocative phrase regarding Term 29 played into Smallwood's hand, and he launched a full-pitched battle to bring the prime minister to heel. Diefenbaker had turned a joyous celebration into one of sorrow and despair. Smallwood described Ottawa's decision as an "unspeakable betrayal of Newfoundland" and ordered three days of official mourning. Flags were hung at half-mast and the doors around government buildings were draped in black. Smallwood, himself, donned black coat and black hat to lead the mourning and to excoriate the province's new enemy. Students at Memorial University took to the streets in anger. When they arrived at the Colonial Building, the famed home of the Newfoundland assembly, carrying placards that read "Secede," Smallwood told them that the "rest of Canada is ready to rise up in rebellion against Mr. Diefenbaker's betrayal of Newfoundland." That night they burned Diefenbaker in effigy. The formal dinner to mark the tenth anniversary of union was cancelled; a dinner was held in Smallwood's honour instead.⁷⁷

76 House of Commons Debates, 25 March 1959. It is worth pointing out that Ritchie wrote Diefenbaker on 2 April, informing him that during the commission hearings Newfoundland had insisted on the finality of Term 29. Smallwood had said, in part, on the opening day of hearings in St. John's: "My Lord, you will by your recommendation write the final fateful terms of the Terms of Union." See Ritchie to Diefenbaker, 2 April 1959, Diefenbaker Papers, ser. PMO, VI/2261, vol. 332, file McNair: Federal Government Administration – Royal Commissions – McNair, 1955-1960, LAC.

77 Smallwood Statement, 25 March 1959, Smallwood Fonds, Coll-75, file 7.05.003, CNS; Gwyn, *Smallwood*, 190-1.

The press across Canada expressed sympathy for Newfoundland and expressed bewilderment both at Diefenbaker's timing and his cavalier and supercilious handling of the announcement, even if many supported the principle behind the federal position. The Toronto *Globe and Mail* best captured the sentiment outside Newfoundland: it was "an example of doing the right thing in the wrong way, at the wrong time." And Gwyn wrote "mystifyingly, Diefenbaker had staked out all the low ground for himself."⁷⁸ Yet the federal decision followed the pattern that had been in place in Ottawa since 1949 in its dealing with Newfoundland. The decision had its origins in the federal bureaucracy and it was not solely Diefenbaker's decision, as had been the case with the government's refusal to dispatch RCMP officers to the province; the decision was the one recommended by senior officials in the Department of Finance and essentially accepted by the cabinet with very minor changes. The Tory cabinet agreed with the recommendation of its officials that the financial position of Newfoundland should not be considered separately from that of the other provinces after 1962, when the existing federal-provincial fiscal arrangements were set for re-negotiation. The cabinet agreed that there should be no exceptions made for Newfoundland nor should it be "treated as an orphan in perpetuity"; it was also agreed that the province should "join" the rest of Canada in 1962 and be part of the national process that decided financial assistance to the provinces.⁷⁹ In this, the Conservative government acted as the Liberal government had since discussions first began with Newfoundland in 1947.

Yet when Diefenbaker made the announcement, he did so without explanation or empathy. Moreover, he had failed to realize the importance of the tenth anniversary of union to Newfoundlanders and how Smallwood might exploit the occasion if he did not get the concession from Ottawa he wanted. Despite its insistence that Newfoundland had to be treated no differently than the other provinces, the Department of Finance had suggested to Diefenbaker on a couple of occasions that Ottawa take the high ground on Term 29 and use it to strengthen the positive attitude in Newfoundland towards Confederation. That he did not have an effective regional minister from Newfoundland to make a strong case for the province only exacerbated the situation. Browne never made a passionate and convincing case for his province in cabinet; on the contrary, he frequently reminded his colleagues of Smallwood's waste and inappropriate spending and urged Ottawa not to provide him with the means to continue with such profligacy. Moreover, he failed to warn Diefenbaker and the cabinet how Smallwood had successfully manipulated much of the province to believe that the IWA was an epic struggle with an outside organization that threatened to destroy the peace and tranquility of Newfoundland and that he was sure to use the same rhetoric against Ottawa if he failed to secure the agreement he desired under Term 29. With his announcement Diefenbaker handed Smallwood a bludgeon with which to beat Ottawa, and a very useful platform from which to attack the Conservative government.

For Smallwood, the Term 29 settlement became another issue of the failure of outsiders – this time, the prime minister of Canada – to understand how the historical

⁷⁸ Gwyn, *Smallwood*, 190.

⁷⁹ "Cabinet Conclusions," 20 March to 30 April 1959 and 2 April, 1959, Privy Council Office, vol. 2744, file 7, LAC.

and comparative circumstances of Newfoundland made it not just different from the other provinces but also extraordinary and exceptional. For Smallwood, it was an issue of “us against the rest of Canada – the people of Canada just don’t understand Newfoundland.” What Diefenbaker failed to realize was that many in Newfoundland believed that by treating Newfoundland equally with the other provinces, without taking the province’s historical development into consideration, really amounted to discrimination against it.⁸⁰ For Smallwood, the exceptionalism of Newfoundland within Canada had to be maintained. Diefenbaker, he charged, had not understood the province’s historical development outside of Canada, nor the tremendous odds that the province faced even within Confederation; nor did he understand that special fiscal arrangements were essential for Newfoundland to develop and catch up with the rest of Canada. If all went extraordinarily well, it would have taken perhaps a generation for Newfoundland to bridge the gap in public services that existed between it and the rest of Canada. Moreover, Canada had desperately wanted Confederation, and the treaty to bring Newfoundland into the fold, Smallwood maintained, came with an implicit promise to make life better for Canada’s newest citizens. Smallwood’s reaction to Diefenbaker’s decision was not without an eye to political opportunism, but it was also based on his staunch Newfoundland nationalism.

Diefenbaker never trusted Smallwood after their fight over Term 29, but in 1961, during the federal-provincial conference on fiscal arrangements between the provinces and Ottawa, Diefenbaker extended the McNair payments to Newfoundland for an additional five-year period to include the fiscal year 1966-67 as part of the Federal-Provincial Tax-Sharing Arrangements Act.⁸¹ Smallwood wrote in his planner that the offer was “not too bad for Newfoundland.”⁸² During the 1962 federal election campaign, Liberal opposition leader L.B. Pearson promised to enshrine in statute the permanency of the special payments to Newfoundland. Smallwood delivered six of seven seats to the Liberals, but Diefenbaker hung on with a minority government only to be defeated a year later when the Liberals claimed a slim minority – helped in no small part by winning all seven Newfoundland seats. Delighted that Diefenbaker was finally defeated, Smallwood went to Ottawa and watched from the public gallery as Pearson and his government took their seats in Parliament on 27 May 1963. Pearson kept his election promise and introduced legislation for the annual payments to Newfoundland, which continued until a cash-strapped Newfoundland government negotiated a lump-sum payment of \$50 million that relieved the federal government of its obligation until 2016 (when the matter is due to be again negotiated). When those negotiations take place, however, Ottawa will have no constitutional obligation to resume the payments.

80 H.T. Renouf, Executive Manager, Newfoundland Board of Trade, to Smallwood, 13 April 1959, Diefenbaker Papers, MG 01/XII/A/55, vol. 20, file Newfoundland – Term 29 [306.1 Nfld] 1959, DCC.

81 Memorandum, *Newfoundland Additional Grants Act*, 17 May 1961, Department of Finance, vol. 3912, file 5765-02/vol. 3, LAC.

82 Daily Planner, 23 February 1961, Smallwood Fonds. file 1.10.005, CNS. Smallwood called Diefenbaker and invited him to attend the official opening of Memorial University. Diefenbaker was worried that Smallwood would use the occasion to embarrass him, but Smallwood assured him he would do nothing of the sort and the prime minister came. See Daily Planner, 2 October 1961.