

## Feminism in Transition: The Margaret Tomen Membership Case and the Formation of the Elementary Teachers Federation of Ontario

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### ABSTRACT

For most of a century, female elementary teachers in Ontario's public schools were represented professionally by the *Federation of Women Teachers' Associations of Ontario (FWTAO)*, while their male counterparts were members of a separate organization, the *Ontario Public School Men Teachers' Federation*. Increasingly, a minority of women teachers sought the right to join the male body, which dropped "Men" from its official name in 1982. One of these, Margaret Tomen, launched both a legal and a human rights case to overturn regulations which forbade her from leaving FWTAO. The court proceedings upheld the status quo, but the human rights appeal resulted in victory for Ms. Tomen. By this time, the two rival federations had agreed to unite, and in 1998, the *Elementary Teachers Federation of Ontario* was founded. The underlying issue of how best to define and achieve equality for women was left unresolved, however—a challenge for subsequent generations.

### RÉSUMÉ

Pendant près d'un siècle, les enseignantes des écoles élémentaires publiques de l'Ontario furent, sur le plan professionnel, représentées par la *Federation of Women Teachers' Associations of Ontario (FWTAO)*, alors que leurs collègues masculins étaient, eux, membres de l'Ontario Public School Men Teachers' Federation. De plus en plus, une minorité d'enseignantes revendiquèrent le droit d'adhérer à l'organisation masculine, laquelle supprima le mot « Men » de son appellation officielle en 1982. Une de ces enseignantes, Margaret Tomen, déclencha des procédures légales et en matière de droits de la personne afin de renverser les règlements lui interdisant de quitter la FWTAO. Les décisions du tribunal maintinrent le statu quo, mais la requête faite en matière de droits de la personne se termina par la victoire de Mme Tomen. Pendant ce temps, les deux fédérations rivales avaient accepté de s'unifier et, en 1998, l'*Elementary Teachers Federation of Ontario* fut fondée. Toutefois la question sous-jacente de comment le mieux préciser et réaliser l'égalité des femmes était irrésolue, demeurant un défi pour les générations suivantes.

For eighty years, the Federation of Women Teachers' Associations of Ontario (FWTAO) had capably represented female classroom teachers employed in the public elementary schools of that province. In 1998, membership numbered in excess of forty thousand. Its finances were sound, its organization intact. Yet, media reports in August of that year indicated that "FW" was holding its final annual meeting. Soon it would be swallowed up in a new association, the Elementary Teachers Federation of Ontario (ETFO), which would include male elementary teachers whose prior membership had been in a rival organization, the Ontario Public School Teachers' Federation (OPSTF). What had happened, after four decades of firmly rebuffing the advances of their male counterparts, to cause the membership of this proudly successful organization to collectively change its mind?

Just such a turnaround had been accurately predicted by Doris French thirty years earlier, in a book entitled *High Button Boots*. Written to commemorate the fiftieth anniversary of the founding of the Federation of Women Teachers' Associations of Ontario, at a meeting held in Toronto on April 3, 1918, the book catalogued the long struggle for professional and personal respect by women teachers across the province. The celebratory volume ended on a sour, if strangely prescient note, however.

It may be that other organizational forms will replace the present FWTAO. It is almost bound to happen, at some future Annual Meeting, that well-intentioned women teachers, to prove they are neither old maids nor feminists, will vote to amalgamate with their male colleagues. And who will there be to remind us then of the long hard fight to overcome the double handicap of being a teacher and a woman too?<sup>1</sup>

As French had accurately predicted, the crucial decision to change direction was taken by the women teachers themselves. Several factors contributed to the change of mind, none more so than a legal challenge launched against the gender-based membership rules of FWTAO by one of its own members, Margaret Tomen.

### **Historical Context**

Most of the leading members of the women's movement in Canada in the 1990s did not wish to lose the Federation of Women Teachers' Associations of Ontario as a separate "of", "by", and "for" women's organization. For many, it was one of the foundational rocks upon which contemporary Canadian feminism had been constructed. Although women teachers would dominate the amalgamated association numerically, feminists were quick to point to research which showed how males might potentially influence the direction and leadership of the new entity, out of proportion to their actual numbers. Arrayed against the traditionalists were a growing number of women teachers who felt their voices would be stronger in an era of growing anti-teacher hostility, if they were combined with their male colleagues in one unified lobbying organization. To the extent that the dispute was seen as playing out within the women's movement, it could be characterized as a battle between the "liberal" feminism that

had dominated the first wave, with its emphasis on equal rights and full citizenship, and the “radical” feminism of the second wave, with its determination to heighten female empowerment and end male patriarchy.<sup>2</sup>

Writing at a time when the Tomen membership case was still wending its way through the courts, two prominent Canadian historians captured the essence of the ambivalence felt by many women over the issue of full integration of female with male, versus a deliberate and strategic separation of the sexes. Linda Kealey and Joan Sangster addressed the topic in the introduction to their edited book of articles entitled *Beyond the Vote*.

Attempts at integration within formal political structures have proved ephemeral and thus the thrust toward separatism has offered, and continues to offer, women a viable alternative. Women working for political change have found women’s groups and organizations more compatible in addressing women’s issues, in providing support groups, and in training women for political activism. Contemporary feminists have not, however, totally abandoned integrationist tactics in the realm of politics.<sup>3</sup>

In many ways, resolution of the dilemma rested upon finding a common definition of equality. As Jacquetta Newman and Linda A. White have pointed out, “if one has equality as a goal, does that mean identical treatment? different treatment? or fair treatment?”<sup>4</sup> There were no easy answers.

The stakes in the debate were heightened by the reality of an anti-feminist backlash that manifested itself in two key ways. First, in the 1980s, neo-liberal pro-market philosophy began to make inroads with political parties across the spectrum. Deep funding cuts to cherished social programs, including public education, became the order of the day, thus threatening many of the gains made by women over the previous half-century. Second, a rival women’s movement arose around the defense of traditional family values, which seemed to herald a return to separate spheres for males (public) and females (private). For instance, REAL (Realistic, Equal, Active, for Life) Women challenged the mainstream women’s movement by asserting that it was as entitled to represent the views of Canadian women as were the more radical feminists.<sup>5</sup> It was within this context of conflict and change among Canadian women themselves that the Tomen membership case played itself out.

## **Two Parallel Federations**

The beginnings of teacher federations in Ontario can be traced to the late nineteenth century. In 1861, some enterprising teachers had formed an organization called the Provincial Teacher’s Association. Its powers were limited, however, and largely controlled by the Department of Education. In 1886, the Ontario Trustees’ Association affiliated with the Provincial Association of Teachers to form the Ontario Educational Association (OEA). Comprised of members from the provincial Department of Education, school boards, home and school groups, teachers, and private citizens, it

had goals for educational betterment, but did not provide the professional services needed by teachers. Gradually, locally-based independent teachers' associations developed that included both men and women. Membership was voluntary, however, and school board recognition was not assured.<sup>6</sup>

School boards frequently had different expectations of their male and female teachers, resulting in serious pay discrepancies, here described by Mary Labatt in her seventy-fifth-anniversary history of the FWTAO:

In their records women teachers report that even when women's salaries were under discussion the trustees allowed only men to speak. In the urban school hierarchy salary was based on the grade taught. As nurturers of young children women were confined to the lowest grades with less than half the salaries of men teachers. Women teachers endured classes of 50 to 100 pupils, with no opportunity to teach a higher grade with a better salary, no compensation for travelling long distance to a new school and no voice for women in decisions about education.<sup>7</sup>

One result of these systemic biases was that women teachers began to break off from the local mixed-sex associations, and form their own separate female teacher groups. For example, the Lady Teachers' Association of Toronto was created in 1888, becoming the Women Teachers' Association (WTA) of Toronto in 1892, with its own constitution, objectives and elected executive. The Toronto model soon spread to other urban communities across southern Ontario, as local female teacher organizations quietly organized, and warily lobbied for professional recognition and job improvements. One significant early goal was to establish a salary schedule based on length of service, rather than the grade taught.

By 1910, discussions had begun among the local WTAs to create a provincial organization. War intervened, but on April 3, 1918, representatives of nine local women teachers' associations met at the University of Toronto. This inaugural meeting saw the establishment of a constitution, the election of an executive, and the establishment of an annual membership due, which amounted in the first year to ten cents per annum. Three key goals that united the members were "financial equality with men, a reasonable pension in old age and greater opportunities within the education system."<sup>8</sup> FWTAO was first off the mark, but two other teacher organizations followed soon after: the Ontario Secondary School Teachers' Federation (OSSTF) in 1919, and the Ontario Public School Men Teachers' Federation (OPSMTF) in 1920. In this regard, Ontario was following the lead of colleagues in other provinces, all of which had some form of teacher organization by 1917.

Through the 1920s and 1930s, the teacher's lot was an uncertain one. Salaries were generally low, relative to other professions, and job security was non-existent. Standards for admission to elementary teaching were kept low, as most teachers did not remain long in the vocation. Furthermore, many teachers continued to think of their federation as an organization to promote professional development and advocate for school improvements, more than as a union-like body devoted to the

job-related interests of its own members. Things began to change in 1944, though, when the newly-elected Conservative government headed by Premier George Drew brought in the Teaching Profession Act. For the first time, every publicly-employed teacher in Ontario would belong to a teacher federation. Unique to this province, there were five separate bodies to which they might belong, depending upon their circumstance. Female elementary teachers employed by a public board would automatically belong to the Federation of Women Teachers' Associations of Ontario; their male counterparts were required to join the Ontario Public School Men Teachers' Federation. In addition, all teachers employed by a Catholic board would belong to the Ontario English Catholic Teachers' Association (OECTA), while teachers working in public high schools were to be enrolled in the Ontario Secondary School Teachers' Federation (OSSTF). Finally, instructors teaching for a French-language board had to join *l'association des enseignants franco-ontariens* (AEFO). A new umbrella organization, the Ontario Teachers' Federation (OTF), was created to coordinate joint initiatives across the profession. Real power lay with the affiliates, however, not with the newly-created central organization. By the provisions of the Teaching Profession Act of 1944, membership in a federation was compulsory, and the payment of federation dues was also mandatory. These two factors combined to increase the influence of organized teachers to a considerable degree. Nevertheless, the division of Ontario teachers into five separate entities was formally institutionalized. Instead of one voice, there would be five.<sup>9</sup>

Gradually, the teacher federations learned how to make use of their new collective weight in support of improved salaries and better working conditions. Within the ranks of public elementary teachers, FWTAO and OPSMTF found their bargaining power with tight-fisted school boards was magnified when they worked together and presented a united front. They found common ground around such issues as higher salaries, more rigorous standards for admission to the profession, and reduced class sizes. Both federations took a growing interest in professional development, sponsoring in-service workshops and training courses. They promoted similar codes of ethics for their members. When Bill 100, officially the School Boards and Teachers Collective Negotiations Act of 1975, granted the teachers collective bargaining rights up to and including the right to strike, it opened up even more opportunity for elementary teachers to negotiate the terms of their working conditions and environment. Pounding the bricks while carrying a placard also promoted solidarity between members of the two federations. The first two strikes in FWTAO's history were in Peel Region and Brant County. There would be several more in the next decade.<sup>10</sup>

Despite the evidence of unity at the bargaining table and on the picket line, there had also been deep differences between the two public elementary organizations over the years. One longstanding issue was superannuation, that is to say their pension plan. Most male teachers were careerists; many female teachers in the first half of the twentieth century were not. They did not appreciate having premiums taken off an already measly salary for a benefit they were unlikely to claim. Similarly, provisions for survivor benefits loomed larger for men teachers than for women, until the 1960s when married female teachers began to return to the profession in large numbers.

Another divisive issue was equal pay for equal work, regardless of gender. When the Ontario Teachers' Federation endorsed the principle in 1948, after years of FWTAO lobbying, the male organization refused to go along. In fact, OPSMTF initiated a public relations campaign against the policy.

Toronto men teachers had advertised in *The Toronto Daily Star* on January 27, 1949 against equal pay for women. The essence of the advertisement was that men assumed more responsibility in a school so they deserved more money. Conversely since women had more responsibility in the home, they could not be expected to do as good a job at school, and could not expect equal pay.<sup>11</sup>

Even after a unified salary schedule was adopted in the mid-1950s, there was still a significant shortfall between the average salary of male and female elementary teachers, because the extra remuneration for positions of added responsibility went disproportionately to the men.

Another notable example where the women's organization differed sharply with its male counterpart was in the area of affirmative action to overcome past discrimination. By the early 1980s, "women made up two-thirds of public elementary school teachers, but only 7 percent of the principals," the FWTAO newsletter reported. "Ministry requests for boards to set up voluntary affirmative action programs so that a representative number of women would become principals and vice-principals had led nowhere."<sup>12</sup> FWTAO addressed the problem in two ways. First, it began to offer professional development workshops and leadership courses specifically designed to nurture potential administrators from within its own ranks. Secondly, it lobbied the provincial government to institute an affirmative action policy to overcome systemic barriers to female promotion. In this endeavour the Federation of Women Teachers did not have the support of OPSMTF, whose members rightly saw that they would find fewer administrative opportunities in the future if affirmative action were implemented. Nonetheless, in 1984 the "Ministry of Education announced a policy that school boards must promote affirmative action for women in their employment relations and in their curriculum, ... provided funding as an incentive for the development of such programmes, and announced legislation converting this policy into law."<sup>13</sup> The numbers of female principals rose gradually at first, to 12 percent by 1987, then more rapidly to 23 percent in 1991, and 42 percent by 1996.

Ironically, one of the chief bones of contention between the two elementary federations was the question of amalgamation itself. From its inception, OPSMTF had favoured uniting the teachers of Ontario in one organization. Article III of its Constitution stated that objective clearly: "To promote as a long-term goal the unification of all teachers in the Province of Ontario into a single unified body without affiliates."<sup>14</sup> The 1944 legislation creating the Ontario Teachers' Federation had not accomplished this goal, since the five affiliates retained significant autonomy. Having been rebuffed by the Ontario Secondary School Teachers' Federation, OPSMTF resolved to begin the process by uniting with their fellow employees in public elementary schools, that is to say, with FWTAO. Accordingly, in 1959 at its provincial

assembly meeting, the wheels were set in motion to investigate the feasibility of an amalgamation. Two years later, the committee that had been formed for that purpose reported that its proposal had been rejected, though offers of cooperation were made in specific areas.<sup>15</sup> Responding to the OPSMTF arguments that one unified organization would be stronger in the public eye, more cost-efficient through the avoidance of duplication, and more reflective of a mixed-gender school system, FWTAO stated that two federations meant double the opportunities for teachers to take leadership roles, and that one of those organizations was guaranteed to promote the interests of women teachers. "In the minds of most FWTAO leaders," Doris French wrote in 1968, "it is still too soon to reconcile all differences, to forget the struggle for equal pay, the quarrels over superannuation benefits, ... the expectation of men teachers to become principals in preference to women."<sup>16</sup>

Doubtless, many women teachers feared that a unified federation would end up being dominated by men in spite of the relative numbers. Certainly, in the 1960s the rest of the Ontario educational system was male-dominated. Though the issue of amalgamation continued to come up at annual meetings through the 1960s and 1970s, the result was always the same: support from OPSMTF, and opposition from FWTAO. In 1972, the erstwhile male-only organization amended its Constitution to permit voluntary membership by individual female teachers. Such 'voluntary' members had the same rights and privileges as 'statutory' members, though a reduced membership fee in recognition of the fact the women members were required by law to support FWTAO as well, through membership dues. By the early 1980s, the voluntary female members of the male elementary organization numbered several hundred, still a small but nevertheless growing proportion of the overall "FW" membership. Annual meetings of FWTAO continued to rebuff the idea of amalgamation, however. In fact, in 1977 a moratorium on formal discussion of the amalgamation idea was passed through the annual assembly. Future debates then focussed on whether or not the moratorium should be lifted. Though some members of FWTAO sought to re-open the question on a regular basis, it remained officially closed off. As part of their own more aggressive strategy to promote union, the men's organization voted in 1982 to drop the "Men's" label from their title, thus officially becoming the Ontario Public School Teachers' Federation (OPSTF). The name change was resented by the FWTAO leadership, who challenged its validity in court "on the basis that the new name implied that they represented all the teachers in public schools."<sup>17</sup> Although the women's federation lost their legal challenge, the fact that they would initiate such action was a clear indication of how dug-in the two sides were. Ongoing antagonism and further court challenges beckoned.

### **The Tomen Membership Case in Court**

The person who first challenged the legal status quo was a woman, Margaret Tomen. At one time an active local member of the Federation of Women Teachers' Associations of Ontario, she was one of the first women to take advantage of the new membership rule of the Ontario Public School Men Teachers' Federation, and became a voluntary

member of it. However, the formal rules required her to maintain her membership in FWTAO, and pay membership dues to it. Increasingly opposed to the principle of gender separation, Tomen went to court in 1985 in an attempt to gain the right to be a full, or statutory, member of the newly-renamed OPSTF, which had for a decade welcomed voluntary female members. Looking back in a 1998 article, in one of the final issues of the OPSTF journal, she explained why:

In 1985, I took court action against the Ontario Teachers' Federation. I wanted to change OTF Bylaw 1 so that, as a female, I wouldn't be obligated to belong to the Federation of Women's Teachers' Associations of Ontario (FWTAO) but would have a right to be a statutory member of OPSTF. This was really a critical time for me. I had been actively involved locally in collective bargaining, and the people who sat on that committee were both men and women. As a school Principal, I was in a situation where men and women worked side by side. So I truly believed in my right to choose my Federation. A teacher is a teacher is a teacher as far as I was concerned, and it was important that we belonged to the same Federation.<sup>18</sup>

Given the unlikelihood of a change of heart by FWTAO on the automatic female membership regulation, Tomen chose to fight her battle in court.

Those "FW" women who supported the status quo rightly saw the Tomen court action as a direct challenge to the gender-specific nature of their organization. They, too, saw the issue as a question of principle. Here is how the FWTAO legal team described the contrasting views:

Margaret Tomen's theory of sex equality was gender neutral: Equality is best sought by treating women and men the same, without regard to existing social inequalities. FWTAO's theory of sex equality, on the other hand, is gender specific: Equality is best sought by measures which recognize women's inequalities in order to eliminate them. Thus, according to this gender-specific theory of equality, measures like the OTF membership rules as they apply to women are protected by sex equality guarantees because they operate to eliminate women's actual inequality ... FWTAO's gender-specific model of equality focuses attention directly on the ways in which women's inequality is constructed through male dominance behaviours, male control of institutional power and resources and male opposition to sex equality.<sup>19</sup>

The leadership of FWTAO was no more likely to change its mind than Margaret Tomen was inclined to alter her course. A lengthy, expensive, and at times bitter, legal battle was assured.

The crux of the court case was the applicability of Section 15 of the Charter of Rights and Freedoms, only recently entrenched in the Canadian constitution. Although the Charter as a whole was enacted in 1982, Section 15 did not take effect for another three years. Its provisions were as follows:



15(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

15(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>20</sup>

Ironically, FWTAO had been part of a coalition of women's organizations that had lobbied strongly for section 15's inclusion in the Charter, with strong and effective language to protect and, indeed advance, the rights of women. Now, that very provision might prove to be the undoing of the women-only teacher federation.

On April 18, 1985, one day after the Charter moratorium was lifted, Tomen applied to the Ontario Teachers' Federation (OTF) to transfer her statutory membership from FWTAO to OPSTF. Arguing that she was limited in her choice to join a union because she was a woman, Tomen charged that By-Law 1 of the OTF constitution constituted sexual discrimination. Subsection 2(a) of the By-Law assigned women elementary teachers in public schools to membership in FWTAO, and 2(c) assigned their male counterparts to OPSTF. Once the Ontario Teachers' Federation had rejected her application, Tomen took her first legal step on July 16, 1985 by filing a Notice of Application for Judicial Review. A Divisional Court hearing was scheduled for July, 1986. Tomen's lawsuit named OTF and OPSTF as the respondents. Though FWTAO was not listed in the filing, the women teacher's organization involved itself in the legal proceedings from the outset. Its president, Elaine Cline, did not mince words as she outlined her organization's assessment of the situation.

This case is not about equality .... Ms. Tomen already has the freedom of choice to belong to OPSTF as a voluntary member and she has done that. And incidentally, did OPSTF challenge that part of By-Law 1 which assigns male elementary school teachers to OPSTF? No. Let's call it what it is. OPSTF is simply using the Charter of Rights as a disguise for raiding members from FWTAO ... Make no mistake, FWTAO's dues are an attractive target of OPSTF's takeover efforts.<sup>21</sup>

Were Tomen to win her case, it was obvious, the result could be very detrimental to FWTAO's membership base, currently protected by OTF's By-Law 1.

FWTAO's legal counsel filed a motion to quash the application, arguing that the Divisional Court, a division of the Supreme Court of Ontario which deals with administrative law, did not have jurisdiction because administrative law focuses on the supervision of activities of governmental agencies created by statute. The Ontario Teachers' Federation, while created by a provincial law, was not itself an arm of the government. The motion to quash the applications was argued before a panel of three judges. Their decision, issued in July 1986, favoured FWTAO and the application

was quashed. The three judges found that OTF By-Law 1 was merely a private house-keeping rule governing internal membership within the association.<sup>22</sup> Round One went to FWTAO.

In December, 1986 a revised application was filed in the name of Margaret Tomen with the Supreme Court of Ontario. OPSTF was no longer listed as a respondent; in fact, it openly supported her lawsuit. Named as respondents were FWTAO and OTF.<sup>23</sup> Justice Eugene Ewaschuk of the Supreme Court of Ontario issued his decision on September 16, 1987. In dismissing the case, he made two key points. First, the Ontario Teachers' Federation had the authority to pass By-Law 1, as an internal membership matter. Secondly, the Charter of Rights did not apply to the case because, in the judge's view, "The Charter was designed to protect individuals from governments' tyranny." The question of the most appropriate internal organizational structure for the teachers of Ontario was a matter for the teachers themselves to decide, as a group and following due democratic process.<sup>24</sup> Given the stakes in the issue, no one was surprised when Tomen and OPSTF announced their decision to appeal this ruling to the Ontario Court of Appeal. A three-judge panel heard the case in May of 1989, and unanimously upheld the lower court's conclusion. When the litigants appealed this decision to the Supreme Court of Canada, the latter body declined to hear the case, announcing its decision in June, 1991.<sup>25</sup> The original judgment of Justice Ewaschuk stood. The Ontario Teachers' Federation had the right to create By-Law 1, and this by-law was not subject to the Charter of Rights. The only venue left to Tomen and OPSTF was the Ontario Human Rights Commission.

### **A Human Rights Issue**

In 1985, the same year she launched her court case, Margaret Tomen had filed a complaint against OPSTF and OTF with the Ontario Human Rights Commission (OHRC), alleging that the organizations' rules did not permit her to become a statutory member of the Ontario Public School Teachers' Federation because she was a woman. The OHRC responded to this complaint with an initial investigation, but the issue languished in the background while Tomen's legal case wound its way through the courts. In an attempt to prod the OHRC into action, the two federations involved in appealing the Ewaschuk decision, OPSTF and OSSTF, opted for more overt political action. They circulated a petition among their members urging the Ontario Teachers' Federation to amend its membership by-law to conform to the wording of the Ontario Human Rights Code. Some thirty thousand signatures were presented to the OHRC, and also to Gerry Phillips, the provincial cabinet minister responsible for human rights issues.<sup>26</sup>

At about the same time, a York Region elementary teacher, Linda Logan-Smith, appealed an OTF Executive decision denying her request to change her statutory membership from FWTAO to OPSTF. The OTF's Board of Governors decided to hear her appeal on April 9, 1988. A teacher with previous experience in Manitoba, Logan-Smith questioned the need for a gender-specific, females-only

teacher federation for Ontario's elementary teachers, when such was not the case for secondary-school teachers, Catholic-board teachers, or francophone teachers in the same province. Nor was it the case in other provinces across Canada. The Board of Governors, by a split decision, upheld their own Membership By-Law, causing representatives of the two dissenting federations, OPSTF and OSSTF, to walk out of the meeting. Those supporting the status quo were, besides FWTAO itself, OECTA representing Catholic teachers, and AEFO—the voice of French-language teachers. A protest march by miffed members of OPSTF and OSSTF was organized outside the meeting's Toronto venue, to garner media coverage, and keep the heat on the government. Finally, in September 1988, the Minister of Citizenship and Culture appointed Dr. Daniel Baum as a one-person Board of Inquiry to handle the human rights complaints of Tomen and Logan-Smith.<sup>27</sup>

Four parties—OTF, FWTAO, OECTA and AEFO—moved to have the inquiry dismissed, alleging insufficient evidence of harm to warrant public hearings. In dismissing their motion, Baum ruled that there was cause to investigate the complaints of Tomen and Logan-Smith, who contended that their membership dues were directed, against their wishes, to “an organization whose purposes and causes they do not want to support.” He also refused to countenance the accusation that the complaints were made in bad faith. “The evidence thus far,” the arbitrator declared, “leads me to believe that they initiated these complaints because they held at the time and continue to hold the sincere belief that they are denied equal treatment in their ability to become statutory members of OPSTF solely because of their sex.”<sup>28</sup> The Ontario Human Rights Commission's Board of Inquiry headed by Baum proceeded to hold 137 days of hearings over the next three years, receiving some 900 exhibits. FWTAO, which had been granted intervener status, was responsible for calling many of the witnesses who appeared before the inquiry.

The women's federation sought to establish that the gender-specific nature of membership in FWTAO was not discriminatory. Rather, they maintained, it was a form of affirmative action, a concept accepted by Section 13 of the Human Rights Code. The crux of their case was that female elementary teachers in Ontario had not yet reached a position of equality with their male counterparts, and that the gender-based membership rules were a vital part of attaining that equality. One of their key witnesses, Joy Parr, a prominent Canadian historian at Queen's University in Kingston, Ontario, had explained the issue this way before the Supreme Court of Ontario:

The historical evidence suggests that: a) even in predominantly female bargaining units, male unionists have not always represented women equitably; b) where strong women unionists have been in leadership positions, women employees have done better; c) in women-only organizations, women have a stronger collective identity and are more effective in organizing to meet their distinctive needs; but d) within mixed gender workers' organizations, where men's and women's interests conflicted women's interests were treated by the organizations as subsidiary, even when women outnumbered men.<sup>29</sup>

While Tomen and Logan-Smith did not challenge FWTAO's right to a separate existence, they did challenge the rule that required all women teachers in the public elementary system to belong to it. FWTAO countered that such a rule was necessary to safeguard the existence of a collective body dedicated to the achievement of full equality for all women teachers.

Though the Board of Inquiry had begun its work in 1989, Dr. Daniel Baum did not announce his decision until March 31, 1994—some nine years after Margaret Tomen had first lodged her complaint. Baum concluded that the rights of Margaret Tomen and Linda Logan-Smith had been denied since both women were not permitted to become statutory members of the Ontario Public School Teachers' Federation. Under the Ontario Human Rights Code's Section 6, Baum declared that the Ontario Teachers' Federation's By-Law 1 was unfair, on the basis of gender discrimination. Although FWTAO's right to exist was not altered, its compulsory female membership rule was found in violation of the province's Human Rights Code. He did not question the validity of compulsory teacher membership in OTF and any one of its affiliates. What he did rule against was the requirement that all female elementary teachers in the public elementary system must belong to FWTAO. In his ruling, Baum gave the contending parties (OTF and its affiliates) six months to work out a solution to the problem, or he would impose one.<sup>30</sup>

### **The Human Rights Appeals**

Baum's ruling left the Federation of Women Teachers' Associations of Ontario in a quandary. If the decision stood, then all their previous legal victories meant nothing. The same afternoon that the decision was announced, faxes were sent to each local president of FWTAO, apprising them of the decision. An emergency meeting of the provincial council was scheduled for Toronto on April 4, 1994, and immediately following that gathering, the local presidents were to hold meetings with their membership right across Ontario. Public relations materials were prepared for the public, the news media, and the educational community. FWTAO encouraged its members to write letters to Jim Head, president of the Ontario Teachers' Federation, urging him to appeal the Baum decision. A handout was created that listed some ideas needed for an effective letter. In particular, correspondents were encouraged to express concern about the continuing lack of equality for women in Ontario's education system.<sup>31</sup> At its provincial meeting, the FWTAO Board of Directors voted to challenge the decision of the one-man Board of Inquiry. In an open letter, the federation's president called the Baum decision "dangerous to contemporary concepts of human rights and equality," and, if not reversed, "the beginning of the dismantling of one of the most remarkable equality-seeking organizations in Canadian history."<sup>32</sup>

Members of the Ontario Public School Teachers' Federation viewed the situation rather differently. "This is a great victory for women's freedom of choice," said Margaret Tomen. "This decision completely vindicates my struggle." The president of the federation to which she voluntarily belonged, Gene Lewis, proclaimed that "the barriers have been torn down today."<sup>33</sup> At the next executive meeting of the Ontario

Teachers' Federation, the OPSTF representatives presented a motion to change the affiliate memberships of Margaret Tomen and Linda Logan-Smith from FWTAO to OPSTF. The motion was tabled, because a majority of the OTF Board of Governors voted to appeal the Baum decision. Once again it was a split decision, with the Ontario Secondary School Teachers' Federation joining OPSTF in opposition to the other three affiliates.<sup>34</sup> The chaos at the top was mirrored in school staffrooms around the province. While they belonged to separate federations, the members of FWTAO and OPSTF were teaching colleagues, often long-time friends, and not uncommonly, spouses. It was a time of mixed emotions, an uneasy expression of opinions, and occasionally, sharp words of rebuke.

On April 29, 1994, the notice of appeal was filed, and FWTAO legal counsel identified thirty-two grounds for appealing the Baum decision. The case would be heard in Ontario Divisional Court. Because the province's Statutory Powers and Procedures Act stated that, if a Board of Inquiry decision was appealed its application would be stayed, the immediate effect of the appeal was to freeze the six-month time frame Baum had granted for implementation of a remedy. In response, OPSTF's legal counsel filed a notice of motion to quash the appeal, arguing that it was premature to appeal before the six-month grace period, granted by Baum for the federations to find an internal solution acceptable to all, had expired. Justice White of the Ontario Divisional Court ruled in favour of FWTAO, and the appeal proceeded.<sup>35</sup>

The appeal was heard by three judges: Justice Edward F. Then, Justice Marc Rosenberg, and Justice Janet Boland. The crucial issue in the appeal was whether the membership by-law which required all female public elementary teachers to belong to FWTAO was discriminatory or not. The result was a split decision, with Justices Then and Rosenberg ruling that it did constitute discrimination, while Justice Boland demurred. The two male judges on the panel also disagreed with the FWTAO contention that their mandate to promote equality entitled them to an exemption from the anti-discrimination provision of the Ontario Human Rights Code. "Affirmative action for women can be carried on by FWTAO whether every woman is forced to become a member or not" they declared in the majority decision. The third member of the panel, Justice Boland, disagreed fundamentally with her peers. "I believe," she stated "the Board erred in law in determining there was discrimination in the absence of a disadvantage or a real, material and objective prejudice." Furthermore, she regretted the imposition of a ruling that favoured the individual rights of a few over the democratic voice of the many. "The OTF By-Law 1 was passed democratically, can be changed democratically and should only be changed democratically in these circumstances." Though her twelve-page dissent represented the minority opinion this time, it seemed to offer to FWTAO grounds for hope that an appeal to the next court level would fare better.<sup>36</sup>

The Ontario Court of Appeal did agree to hear the case, and they issued their ruling in November of 1997. By the time the appeal was heard, though, discussions had begun between FWTAO and OPSTF for a possible merger and by the time their decision was released, the two federations had agreed in principle to unite. Two of the three judges, Justice Hilda McKinlay and Justice James Southey, did not find

the appeal moot. The third judge, Justice Rosalie Abella, did find the appeal moot, though she agreed that the decision to merge the two organizations lessened the immediacy of the court's decision. Nevertheless, she vigorously disagreed with the majority opinion of the Divisional Court, which had supported Dr. Baum's finding of discrimination, in spite of an absence of economic, social or political disadvantage. "The disturbing irony of this draconian remedy," she asserted, "is that the structure it purports to destroy in the name of correcting discrimination, is one that has been instrumental for almost fifty years in reversing and preventing discrimination for the overwhelming majority of its membership." Abella sided with the minority judgment of Justice Boland that gender differences could be accommodated by using different treatments, and that not every distinction was discriminatory.<sup>37</sup> Despite these strong dissenting arguments, however, the majority decision was to dismiss the appeal. Initially, the leadership of FWTAO decided to appeal this decision to the Supreme Court of Canada, but as the movement toward union with OPSTF gained momentum, that decision was reversed. The original ruling of Dr. Baum, that the OTF By-Law requiring female public elementary teachers to become members of FWTAO was discriminatory under the provisions of the Ontario Human Rights Code, was allowed to stand.

### **Moving Towards Union, 1994–98**

The Baum report was released in the early spring of 1994. Though the leadership of FWTAO had immediately declared their intent to appeal the decision through the courts, it was clear that prudence required the development of a fallback position. A growing number of women elementary teachers were opting for voluntary membership in OPSTF. Though still less than 10 percent of total FWTAO membership at this time, the trend-line was not encouraging.<sup>38</sup> Accordingly, at the 1994 annual summer meeting, the women's federation approved five basic principles that would serve as the foundation of any new federation that would include female elementary teachers. These principles were "participation and leadership by women, funding for women's programmes, some form of regional structure, equity issues in the broader society, and the protection and maintenance of teacher rights." Two other motions from that meeting revealed the cautious mindset of FWTAO at the time. First, they agreed that "no final decision be made on any other option in the membership case unless the appeal route is no longer viable." Secondly, the delegates stipulated that "an every member vote be held if the Board of Directors wishes to propose a merger with another teacher organization or organizations."<sup>39</sup> In view of the fact that prior annual meetings had routinely renewed the moratorium on discussions of amalgamation, these resolutions were indicative of a new openness to a previously unthinkable option.

The judgment of the Ontario Divisional Court, upholding the decision of the Baum Inquiry, was released in June, 1995. Later that summer, FWTAO elected a new provincial president, Sheryl Hoshizaki, whose views on a possible merger were decidedly less antagonistic than most of her predecessors. Under her leadership, the

women's federation established a committee to consult with its membership around the province on future directions for the federation. Early in 1996, while the second appeal was in process, the FWTAO leadership approached OPSTF about a possible amalgamation. By August, discussions had proceeded to the point where the FWTAO Annual Meeting approved a lengthy set of principles to serve as the basis for the creation of a new federation to represent elementary teachers in the public school system in Ontario. The delegates also directed the Board of Directors to continue to work with their counterparts in OPSTF to develop an acceptable constitution for a new federation. By the winter of 1997, the two federations were cooperating in a joint publicity campaign, dubbed "It's Elementary," to persuade their respective memberships of the merits of amalgamation.<sup>40</sup> In the spring of 1997, a mail-in ballot was conducted by the full membership of each federation on the question of forming a new federation, the Elementary Teachers' Federation of Ontario (ETFO). On the basis of a turnout of approximately 55 percent of eligible electors in each federation, support for the new federation was overwhelming: 88 percent of "FW" voters in favour, and 92 percent of "OPS" voters in support.<sup>41</sup> Accordingly, a joint transition team was established in the autumn of 1997, and on July 1, 1998 the Elementary Teachers' Federation of Ontario officially came into being. In August, the two founding organizations held their final annual meetings, immediately followed by the first annual meeting of ETFO. It was thirteen years since Margaret Tomen had legally challenged the rule which required her, against her wishes, to hold membership in, and pay dues to, FWTAO.

One key factor in the change of heart by the FWTAO leadership was the aggressive stance by the Progressive Conservative (PC) government led by Premier Mike Harris to curb the influence of the teacher federations. Elected in 1995 on a neo-conservative platform of tax cuts and lean government, the Harris PCs helped to create a new sense of solidarity among all the affiliates of the Ontario Teachers' Federations. In 1997, while the two public elementary federations were still in transition from separate to unified, the provincial government brought in a highly contentious piece of school legislation, Bill 160, which provoked an unprecedented province-wide teacher walkout. For two weeks, the schools remained closed, as Ontario teachers protested legislation which aimed to strip local school boards of their taxation powers, lay off teachers, and remove most conditions of work from the collective bargaining process. After two weeks the teachers' unity splintered, however, with OSSTF and OECTA eager to continue the protest, and the other three associations reluctantly convinced they must return to class. Though they were still represented by two separate federations, the public elementary teachers acted together—walking out in harmony with their peers on October 27, and returning to the same schools arm-in-arm, two weeks later.<sup>42</sup> An event that might have broken the proposed new federation before it started, instead became one of the formative events that bridged past differences.

While the official rhetoric of the leadership cadre insisted that the new Elementary Teachers' Federation of Ontario represented an equal union of two proud organizations, the reality was not so clear. In terms of membership, FWTAO was twice the size of OPSTF. Yet a significant minority of "FW" members were also voluntary

members of "OPS". Significantly, both retiring federations were headed by women: FWTAO by Maret Sadem-Thompson, and OPSTF by Phyllis Benedict. The two women had both played prominent leadership roles in the 1997 school walkout. At the 1998 founding convention, Benedict defeated Sadem-Thompson and another "FW" candidate, Florence Keller, to become the first president of ETFO. The powerful administrative position of General Secretary went to Gene Lewis, a former OPSTF president. Certainly in the initial stages, the smaller of the two federations had managed to attain a prominent position in the new association. On the other hand, specific articles in the ETFO constitution offered assurance that the worst fears of merger opponents concerning male domination would not be realized. For instance, Article X, Section 4 committed 6 percent of the annual federation budget to fund programs designed for women teachers. Furthermore, one vice-presidential position on the union executive and four executive-at-large positions were reserved for women only.<sup>43</sup> Joan Westcott, long-time executive director of the women's federation, summed up the ambivalence felt by many, on the eve of ETFO's official launch. "I admit readily that the grieving process has still not been easy, nor is it yet complete," she wrote to her fellow "FW" members in the spring of 1998. "I regret that there remain members and friends of FWTAO who are unable to support the changes to our federation structure. But move on we must."<sup>44</sup>

## Conclusion

The Tomen membership case raised a significant issue for Canadian feminists. To what extent did an individual woman's right to freedom of choice place limits upon the collective right of women, historically disadvantaged in the public sphere, to enact measures designed to alleviate women's inequality? The Federation of Women Teachers' Associations had traditionally supported the latter position, contending that a separate federation for women was the key to winning eventual equality with their male counterparts. Increasingly, as the twentieth-century progressed, a minority of women teachers contested this viewpoint. A teacher is a teacher, they argued. What women wanted, and deserved, were rights identical to their male colleagues. To press this point, they voluntarily began to join the rival OPSTF, which had at one time been open to men only. But the rules of the Ontario Teachers' Federation required them to remain statutory members of FWTAO, and pay its annual dues. In 1985 one of these women, Margaret Tomen, decided to challenge the validity of this arrangement, first as a Charter issue before the courts, and then as a human rights case. The legal challenge ultimately failed, but when the Board of Inquiry established by the Ontario Human Rights Commission finally issued its decision in 1994, it sided with her. Two appeals of this decision, launched by FWTAO, were unsuccessful, though in each case an articulate minority opinion offered hope to the appellants. At this point, however, rapidly-moving events on the ground overtook the legal process. In the face of overt hostility to teacher unions from the provincial government of the day, a majority of the active members of "FW" opted to emphasize their solidarity with other teachers, rather than their uniqueness as women. It was a landmark



collective decision at a critical point in time, and one from which there could be no turning back for FWTAO.

But did the Tomen human rights case set a binding legal precedent for other disputes between the contending views of equal rights: identical and thus fair, or fair because distinctive? That seems unlikely. The final appeal to the Supreme Court of Canada was never launched. The vigorous minority opinions of Justices Boland and Abella may yet be given life in some future ruling issued by this ultimate judicial tribunal.

## Notes

- 1 Doris French, *High Button Boots: Federation of Women Teachers' Associations of Ontario, 1918–1968* (Toronto: The Ryerson Press, 1968), 205.
- 2 For a full discussion of the contrasts and commonalities between liberal and radical feminism in Canada, see Jacquetta Newman and Linda A. White, *Women, Politics and Public Policy: The Political Struggles of Canadian Women* (Toronto: Oxford University Press, 2006), especially chapter 2, “Modern Feminist Theory,” 23–43. For the key role of FWTAO in the broader women’s movement see Penney Kome, *Women of Influence: Canadian Women in Politics* (Toronto: Doubleday Canada, 1985), especially 21, 56–57, 94, 139.
- 3 Linda Kealey and Joan Sangster, ed., *Beyond the Vote: Canadian Women and Politics* (Toronto: University of Toronto Press, 1989), 12.
- 4 Newman and White, *Women, Politics and Public Policy*, 14.
- 5 See the following for insights into the impact of neo-liberalism and anti-feminist women’s groups: *ibid.*, 85–86; Kealey and Sangster, *Beyond the Vote*, 13; Manon Tremblay and Caroline Andrew, ed., *Women and Political Representation in Canada* (Ottawa: University of Ottawa Press, 1998), 7–8; Veronica Strong-Boag, “Daughters of the True North, 1900–1995,” *Beaver* 74, no. 6, December 1994/January 1995: 32.
- 6 R.A. Hopkins, *The Long March: History of the Ontario Public School Men Teachers' Federation* (Toronto: Baxter Publishing, 1969), 17–37; French, *High Button Boots*, 12–28.
- 7 Mary Labatt, *Always a Journey: A History of the Federation of Women Teachers' Associations of Ontario, 1918–1993* (Toronto: FWTAO, 1993), 6.
- 8 *Ibid.*, 10.
- 9 R. D. Gidney, *From Hope to Harris: The Reshaping of Ontario's Schools* (Toronto: University of Toronto Press, 1999), 21–23. See also Pat Staton and Beth Light, *Speak with Their Own Voices* (Toronto: Federation of Women Teachers' Associations of Ontario, 1987), 117.
- 10 *FWTAO Newsletter*, May/June 1998: 14.
- 11 Labatt, *Always a Journey*, 51.
- 12 *FWTAO Newsletter*, May/June 1998: 13.
- 13 Mary Eberts, Florence I. Henderson, Kathleen A. Lahey, Catharine A. MacKinnon, Sheila McIntyre, and Elizbaeth J. Shilton, *The Case for Women's Equality* (Toronto: Federation of Women Teachers' Associations of Ontario, 1991), 192.
- 14 *Ibid.*, 15.
- 15 Hopkins, *The Long March*, 290, 300, 307, and 350.
- 16 French, *High Button Boots*, 128.
- 17 Labatt, *Always a Journey*, 300.
- 18 Margaret Tomen, “At the Heart of it All,” *OPSTF News* (May, 1998): 18.

- 19 Eberts et al, *The Case for Women's Equality*, 21.
- 20 Government of Canada, *Charter of Rights and Freedoms* (Ottawa: Department of Justice, 2005).
- 21 Labatt, *Always a Journey*, 304.
- 22 Joan Westcott, *The OTF Membership Issue* (Toronto: FWTAO, September 1988).
- 23 Eberts et al, *The Case for Women's Equality*, 24.
- 24 *Ibid.*, 25.
- 25 *Ibid.*, 659–67.
- 26 C. Morgan, "Thirty Thousand Teachers Protest Bylaw 1," *Newstoday* 9, no. 8, April 1988: 1–4.
- 27 Federation of Women Teachers' Association of Ontario, *The OTF Membership Issue* (September, 1988): 1–4.
- 28 D. J. Baum, *Election and Motion to Dismiss Third Interim Award* (October, 1989): 29, 30.
- 29 Eberts et al, *The Case for Women's Equality*, 428–29.
- 30 D. J. Baum, *Final Decision* (March 1994): 1–355.
- 31 FWTAO, "What You Can Do: Letter Writing" (April 6, 1994); FWTAO, "The Baum Decision" (April 18, 1994).
- 32 M. Bruce and Barbara Sargent, "Women Teachers to Challenge Human Rights Decision" (Open Letter – April 4, 1994).
- 33 *Windsor Star*, "Principal Hails Ruling to Join Male Colleagues" (April 5, 1994); *ibid.*, "Rights Commission Rules Against Teachers' Union" (April 4, 1994).
- 34 R. Ferland, "From the President," *OPSTF News* (October 1944): 3.
- 35 Barbara Sargent and Joan Westcott, "A Blow to Human Rights," *FWTAO Newsletter* (May/June 1994): 2–5; Ferland, "From the President": 3; Joan Westcott, "Membership Issue Clarified," *FWTAO Newsletter* 13, no.1, (September/October 1994): 41.
- 36 Janet Boland, Marc Rosenberg, Edward Then, Ontario Court (General Division) Court File No. 271/94 (Toronto, 1995); 1–43.
- 37 Canadian Legal Information Institute, Ontario Human Rights Commission v. Tomen (November 4, 1997), [www.canlii.org/on/cas/onca/1997/1997onca/0586.html](http://www.canlii.org/on/cas/onca/1997/1997onca/0586.html) (accessed September 26, 2004).
- 38 A Jarvis, "Gender-Bias Case Upheld by Court," *Windsor Star* (June 23, 1995).
- 39 Federation of Women Teachers' Associations of Ontario, "Disposition of Resolutions," *FWTAO Newsletter* 13, no. 1, (September/October 1994): 50–61.
- 40 Joan Westcott, "It's Elementary," *FWTAO Newsletter* 15, no. 4 (March/April 1997): 28; Federation of Women Teachers' Associations of Ontario, "1996 Annual Meeting," *FWTAO Newsletter* 15, no. 1 (September/October 1996): 10–11.
- 41 Ontario Public School Teachers' Federation, "It's Elementary: Referendum Results," *OPSTF News* (June, 1997): 1.
- 42 Gidney, *From Hope to Harris*, 257–64.
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- 44 Joan Westcott, "Working Towards a Smooth Transition," *FWTAO Newsletter* 16, no. 5 (May/June 1998): 32.