

many others knew, by some means or other, that the poll should not close until 8:00 p.m. Yet, if only thirty-six of the people who did not vote came forward to say that they would have voted if the poll had remained open until 8:00 p.m. it would be reasonable, we think, to assume that all or nearly all of those who intended to vote between 7:00 p.m. and 8:00 p.m. in the Divisions in question have been accounted for. If there were any more they would have come forward when they heard that the petition was taken or would have made themselves known to the petitioner or to his advisers or to some other voter who made himself known. In short, all or nearly all of those who intended to vote between 7:00 p.m. and 8:00 p.m. would have come to the knowledge of the petitioner or his advisers in one way or another; they could not have remained hidden. If others did not come forward to say they had intended to vote between 7:00 p.m. and 8:00 p.m. then in our view, it is reasonable to assume that they did not intend to vote between those hours.

As we have already indicated, there were only sixty people, at the most, witnesses and those only referred to in the evidence, who, if we may put it this way, had either gone to the poll after 7:00 p.m. and were told it was closed, or had intended to go but had been told after 7:00 p.m. it was closed and thus did not go to the poll, or were told after 7:00 p.m. that the poll had closed but who did not appear as witnesses to say whether or not they had intended to vote. It cannot be denied that this number "could" not, let alone "may" not, have affected the result of the election. Even if all of them, or four times as many, had voted and had all voted for Mr. Batten the result of the election could not have been affected, even though Mr. Marshall's majority may have been greatly reduced. Only thirty-six intended voters appeared as witnesses. On what basis, then, are we to assume that if the polls in question had remained open until 8:00 p.m. sufficient additional voters would have voted so that the result of the election may have been affected, that is, that Mr. Batten may have been elected instead of Mr. Marshall? It must be remembered that two hundred and eighty-three additional people would be needed, all voting for Mr. Batten, before Mr. Marshall's majority would have been reduced to nil so that each would then start off on equal terms to vie for a majority of the remaining four hundred and twelve votes.

The witnesses left us with the distinct impression of a lack of activity, rather than a 'last minute rush', at the Divisions in question between 7:00 p.m. and 8:00 p.m. As examples of this lack of activity is the situation at Division 39, where, according to the evidence of the Deputy Returning Officer, only one person tried to vote after 7:00 p.m. and that person came to the Division at 7:45 p.m.; the situation at Division 11, where one person came to vote after 7:00 p.m. and that person came at 7:55 p.m.; the situation at Division 12, where the Deputy Returning Officer had the votes counted and was on his way to the C.N.T. office to send his report to the Returning Office at Corner Brook when he met a person who wished to vote and returned to the poll and voted that person at between 7:15 p.m. and 7:30 p.m.; and the situation at Division 17, where the Deputy Returning Officer kept the station open until 7:30 p.m. awaiting the arrival of a person who, he had heard, wanted to vote.

If the majority here had been comparatively small, say around fifty, there might have been some reason, on the evidence, for asking us to make the assumptions suggested by Mr. Fagan. But the majority is two hundred and eighty-three, not an inconsiderable majority when we remember that the total number of persons on the voter's list who did not vote in the twelve polls under consideration was only six hundred and ninety-five, even if we assume a 100% poll. On the evidence, therefore, we feel that it would be unreasonable and un-