



TOWARD A WARMER CLIMATE FOR ONTARIO'S PRIVATE SCHOOLS

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Library and Archives Canada Cataloguing in Publication

Allison, Derek J.

Toward a Warmer Climate for Ontario's Private Schools

Includes bibliographical reference:

ISBN 1-896701-34-5

1. Private schools 2. School funding 3. Religious schools 4. School board 5. Ontario policy
6. Shapiro Commission 7. Education sector 8. School choice 9. Cultural diversity
10. Ontario Education Act 11. Ontario Secondary School Diploma

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TOWARD A WARMER CLIMATE FOR ONTARIO'S PRIVATE SCHOOLS

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A. INTRODUCTION

WHAT IS ONTARIO GOING TO DO ABOUT ITS PRIVATE SCHOOLS? The need for a serious policy review has been growing since June, 1984 when then Premier William Davis rose in the Legislature to announce funding for the province's Roman Catholic high schools which, for over a century, had been operating as private schools. In his announcement, Davis acknowledged that his decision "legitimately raises questions about the place of independent schools in our province" and announced a commission to "document and comment on the role of private schools" and the desirability of public funding (Shapiro, 1985, p. 76).

Commissioner Shapiro's report did a fine job of addressing those issues in the context of the times, but there was little appetite for adopting his recommendations following the unpleasantness associated with implementing Davis' policy to publicly fund Catholic schools. The general discussion primarily revolved around Shapiro's plan for private schools to negotiate agreements to share public board services and provincial funding, as had been the case in Saskatchewan since the mid-1980s.¹ Since those discussions almost thirty years ago, funding for Ontario's private schools has been considered and rejected in several court cases, triggered a politically ineffective response from a private petition to the United Nations, and launched two subsequent political initiatives: the tax credit introduced by the Harris government in 2001 and retroactively repealed by the following Liberal government in 2003, and John Tory's 2007 election proposal to fund faith-based schools under a version of Shapiro's associate school model. Each stimulated its own particular paroxysm of political infighting, pre-empting serious consideration of the policy issues at stake, which were then left abandoned in the no-man's-land between the dug-in positions of combatants. Ontario, it seems, has been content to perpetuate the *laissez faire* attitude toward private schools it has followed for over a century.

Yet such an attitude is curious given the massive changes that have taken place in society in general and education in particular, especially given the emergence of school choice as a burgeoning human rights issue in the political discourse of the United States. It is even more curious considering all other major Canadian provinces² have modernized their private school policies in recent decades. The most unfortunate consequence from these discussions may be the sense of debilitating indifference Ontario's stance appears to have engendered. Rather than being viewed and treated as contributing partners in Ontario's educational project, the province's non-public schools and their supporters seem to be barely tolerated by the educational establishment and influential opinion leaders. To borrow a phrase from another context, something of a chilly climate has developed toward non-public schools in Ontario and, in the view of some, this climate has acquired an unhelpfully hostile demeanour in recent years following various administrative changes.

These administrative adjustments include a unilateral reduction in private schools' access to Federal grants supporting French language instruction, a 2009 requirement that principals of public high schools modify official student transcripts by adding a "P" to course credits concurrently earned through an inspected private school, the steep increases in inspection fees for private schools seeking to grant high school credits, the inclusion of private schools

1. The first agreement was signed between the Saskatchewan Valley School Division and the Bergthaler Mennonite Church in 1985 under a provision in the Saskatchewan Education Act permitting Boards of Education to enter into agreements with "specialized institutions". Saskatchewan has since developed a formal policy governing such agreements as laid out in Regulation 11. See Milner (2006) for the history and the Government of Saskatchewan website for the Regulation (<http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/E0-1R11.pdf>).

2. By which I mean Quebec, Manitoba, Saskatchewan, Alberta and British Columbia which account for 55% of the Canadian population and 56% of national GDP. Taken together, these five provinces and Ontario account for 93% of the Canadian population and 93% of GDP.

among the industries chosen for proactive inspections by the Ministry of Labour to assess compliance with the *Employment Standards Act*.³ In September 2013 there was the release of a new *Private Schools Policy and Procedures Manual* (PSPPM) (Ontario, 2013c) which introduced several new requirements, including a more detailed registration process for new private schools which requires a validation visit by a Ministry inspector and an explicit procedure for “delisting” a private school by removing the Ministry assigned BSID number. In many respects the PSPPM is a welcome development which corrects some troublesome uncertainties and should help remedy long standing deficiencies in record keeping, statistical reporting, and some of the other shortcomings in the provinces’ stewardship of private schools identified in the Auditor General’s December 2013 report (Ontario, 2013b, pp. 180-201), a report which provides the latest indicator of the growing need for serious policy review. Yet however desirable these long overdue administrative changes in the PSPPM may be, they and the additional changes the Ministry of Education is planning to implement in response to the Auditor General’s report are nonetheless refinements and extensions of long established legislative provisions, which have been decided by Ministry officials with little if any external consultation and with scant attention to broader policy issues. In essence they amount to tactical adjustments rather than the politically informed, strategically oriented changes that are necessary.

My aim here is to encourage a more supportive government policy toward Ontario’s non-public schools informed by a reappraisal of their contributions to modern society. I will not advocate direct public funding for Ontario’s private schools. I have come to believe such funding is desirable, necessary, and certainly moral, and my bias will no doubt shine through at times. Yet there is little to be gained in attempting to argue the merits of that case under the current chilly conditions. If the long postponed conversation about the future of Ontario’s non-public schools is to be constructively re-engaged, the concerned parties first need to find some common ground on which to build shared understandings and achieve some success. One place to seek such common ground is in Commissioner Shapiro’s (1985) *Report of the Commission on Private Schools in Ontario*.⁴ Although undeniably dated in some respects, the report and its appendices continue to offer the most comprehensive consideration of the place, plight, and promise of Ontario’s private schools.⁵ Leaving aside his recommendation to fund private schools through an associate model, many of his other recommendations remain as pertinent and sensible as when they were originally made, which might be expected given the lack of legislative change.

3. Ontario teachers are normally exempted from workplace standards concerning hours of work, rest periods, overtime pay and so forth, but “teacher” is defined under the *Employment Standards Act* with reference to *The Teaching Profession Act* which, in part, requires employment “by a board as a teacher”, with board being defined under the *Education Act* as “a district school board or a school authority”. On a strict interpretation, teachers employed by private schools may not therefore be exempted from the workplace standards established under the *ESA*, an interpretation which would create significant operational issues for private schools.

4. The full text of the report and its valuable Appendices is readily available in a variety of formats at <<https://archive.org/details/reportof-privschools00comm>>.

5. While Shapiro continues to provide the most comprehensive treatment available, a more recent comparative account can be found in Allison and Neven Van Pelt’s (2012) review of non-public schools in Canada.

B. PRIVATE SCHOOLS IN BROADER CONTEXT

AS DISCUSSED IN ROBERT STAMP'S (1985) APPENDIX TO THE SHAPIRO REPORT, Ontario has always had privately established and operated schools. Loyalists and other refugees from the American war were opening community schoolhouses and patronizing private entrepreneurial schools in the territories that were to eventually become Ontario years before Upper Canada was established in 1791. The first pieces of educational legislation enacted in Upper Canada provided annual grants to support regional Grammar schools in 1807 and local Common schools in 1816; yet by the midpoint of the nineteenth century, private schools remained almost as numerous as those grant-aided schools. After that point, Egerton Ryerson's plans for a Prussian inspired System of Public Instruction provided the beginnings from which our current public school systems evolved.

In this perspective—and even more so in the broader sweep of Western history—private schools cease to appear as curiosities that beg for explanation and justification, as they may appear from a modern vantage point. In a broader historical context, expectations that all children should receive a publicly financed and delivered education are anomalous; beliefs that the state and its agents should specify and arbitrate the design and delivery of schooling are novelties; the idea that parents do not insist on the accountability of teachers and school operators through the purchase of their services is incomprehensible; and the assumption that everyone should pay for the education of other people's children is unfair.

Our world is hugely different from those who have gone before. Publicly governed, financed and operated education is now the norm throughout the developed world; yet non-public schools continue to exist and even flourish in some jurisdictions. Do they remain relevant in modern day Ontario?

C. THE CONTINUING RELEVANCE OF ONTARIO'S PRIVATE SCHOOLS

IN HIS BRIEF TO THE SHAPIRO COMMISSION, DALTON MCGUINTY SR.—father of the recent Premier—made a powerful case for the then continuing relevance of private schools in Ontario's commitment to educate its children and youth.⁶ He began by simply pointing to their continuing existence.

In Ontario they number over 500 different school units and have a total enrollment of approximately 80,000 students. And they would appear to be increasing in size and number. They exist by virtue of the interest and sacrifice of a significant number of concerned and dedicated people, who support these schools in addition to paying their school taxes. These schools and their supporters cannot be dismissed with a respectful wave of the hand. These parents are not a lunatic fringe living on the periphery of society. And these schools cannot be accurately and fairly considered as “divisive”, “second class”, or “elitist” and “snobbish” as the label “private” denotes. They are simply and factually significant in number and in size and in quality. And they are a long way from death through discouragement, indifference, or the blight of obsolescence. (McGuinty, 1984, pp. 3-4)⁷

McGuinty's numbers included the 88 Roman Catholic High Schools and their 33,000 or so students that were to become part of the publicly governed and financed separate school system over the following three years. Those numbers have been recouped since then, the number of private schools doubling to the 1,013 cited in the Auditor General's report (2013b, p. 181). Enrolments have also risen, although the published statistics are neither timely nor entirely reliable. As discussed in the Auditor General's report, collecting accurate and up-to-date enrolment numbers is one of various data collection and analysis problems complicating government oversight of non-public schools.⁸ In the careful phrasing of the Auditor General's report, “private elementary and secondary schools in Ontario informed the Ministry they had enrolled approximately 110,000 students” in 2012-13 (2013b, p. 180). This is almost certainly an underestimate, the most recently published Ministry data reporting a total of 112,716 pupils attending 877 private schools in 2009-10 (Ontario, 2012). It is not unreasonable to estimate current non-public school enrolments as being on the order of 125,000 elementary and secondary pupils.

In McGuinty's words, these numbers remain “factually significant” (p. 4) numbers, representing more than five percent of total provincial enrolment in 2009-10. Given the overall decline in birth rates, private school enrollments in Ontario may well stabilize around the five to six percent level in the absence of new sources of assistance for financially challenged families. Yet, as McGuinty anticipated, private school enrolments increased steadily after he penned his brief, rising from 3.3 percent of total provincial enrollment in 1989 to 4.6 percent in 1999, 5.2 percent in 2009 and likely 6.0 percent today. In reflecting on the political significance of these numbers it is perhaps salutary to realize that there are more students enrolled in Ontario's private schools than all the schools operated by the province's twelve Francophone boards.⁹ More surprisingly, perhaps, is that there are roughly as many children and youth attending non-public schools in Ontario as there are attending public schools in Nova Scotia.¹⁰ To echo McGuinty

6. Dalton McGuinty Sr. (1926-1990) was a noteworthy public figure in his own right, serving as a trustee on the Ottawa (public) Board of Education from 1972 to 1985, and as a Liberal member of the Provincial Parliament from 1987 to 1990. He held an academic appointment in the Department of English at the University of Ottawa from 1951 until his retirement as a Full Professor in 1980.

7. McGuinty senior's brief to the Shapiro Commission is not readily available. This and subsequent quotations are taken from the copy available in the Ontario Archives as cited in the references. I am grateful for the assistance provided by L. Ayyoub, A. Ahmadi, and D. Postma in retrieving this document.

8. New reporting requirements and penalties introduced in the recently released *Private Schools Policy and Procedures Manual* (Ontario, 2013c) should lead to the long-overdue publication of more accurate and detailed enrolment figures in the near future.

9. 94,849 students in 2010-11 (Ontario, 2012). The Ministry of Education website reports a total French Language enrolment of 98,695 for 2012-13 < <http://www.edu.gov.on.ca/eng/educationFacts.html> > . Private school enrolments for 2012-13 are not given.

10. Statistics Canada (2013, Table 1) reports a total enrolment of 125,540 pupil for Nova Scotia in 2011-12. A more cumbersome but nonetheless illuminating comparison is with the 111, 111 pupils enrolled all public schools in Newfoundland & Labrador, Prince Edward Island and all three territories combined.

once more, this is by no means an insignificant number, especially as Ontario provides no direct financial assistance for these schools or their supporters, unlike all Canadian provinces with higher proportions of students enrolled in non-public schools. And, of course, all Ontario private school pupils have parents who, in McGuinty's words once more, "support these schools in addition to paying their school taxes" and "cannot be dismissed with a respectful wave of the hand" (p. 3). Nor is it the case that private school parents are a rich elite, or religious fundamentalists, or dominated by any other distinctive social group. Statistics Canada (2001) exploded the myth that Canadian private school parents are predominantly rich, reporting that "21 percent of private school students come from families with less than \$50,000 in income, while 37 percent of public school students are from this group." Ontario data from a more recent Fraser Institute study¹¹ conforms to this pattern the authors concluding that private school parents come from all walks of life: "[T]he private school families captured in our data spanned the full income spectrum, ranging from 18 who reported annual incomes of a million dollars or more to 27 with incomes of \$30,000 or less" (Van Pelt, Allison & Allison, 2007, p. 20).

McGuinty Sr. continued his brief by pointing to the right of non-public schools to exist. He did not evoke the guarantees given in the *Universal Declaration of Human Rights* or the *International Covenant on Economic, Social or Cultural Rights*, or pertinent Canadian jurisprudence, simply resting his case on how "they efficiently serve the needs of their pupils and parents, and society, by fulfilling the basic function of the school" (p. 4). That they do this by meeting the expectations of their fee-paying families can hardly be contested, given they survive in a marketplace where the competing brands are legally guaranteed to be free of direct financial charge.

McGuinty defended his claim that private schools fulfill the basic social functions of schools by asking whether it can be shown they "are inadequate as schools," or that they are "academically inadequate" (p. 4), or that they "failed to serve the common good of society, or exerted an influence contrary to that good" (p. 5). Criticisms along these lines have been and will continue to be levelled at non-public schools, but have hardly ever been substantiated, and only in obviously extreme cases. McGuinty offered a partial rebuttal to such accusations by inviting critics to examine the programs and products of what he preferred to call "independent-alternative schools" together with the motivations and expectations of "those concerned and dedicated tax paying citizens who work and sacrifice to support them" (p. 6). This is an oft used and sound line of argument, strengthened by recent Canadian research showing that private school graduates not only tend to achieve similar or higher levels of post secondary education and employment than do their public school counterparts, they also tend to score higher on a wide range of social, civic, and political participation measures (Pennings, Sikkink, Van Pelt, Van Brummelen & Von Heyking, 2012), as do a recent sample of Ontario private school parents (Van Pelt, Allison & Allison, 2007).

But a more robust theoretical defence of the contributions of private schools is available. Portia famously instructed Shylock that the quality of mercy "is twice blest; It blesseth him that gives and him that takes" (Merchant of Venice, Act 4, Scene 1). So too with education: it "blesseth" both those educated and the communities and societies in which they dwell. As long discussed by economists and philosophers since at least the writings of Adam Smith and John Stuart Mill, these two sets of outcomes are recognized as private and public goods respectively. As a private good, education confers exclusive benefits to individuals and their families, chief among which is the expectation that more education provides access to improved employment prospects, enhanced income, and elevated social status. As a public good, education benefits all by fostering a stable, orderly, enlightened society, promoting a productive economy, and consequently enriching the tax base. As is the case with Portia's definition of mercy, both sets of outcomes are intertwined and interdependent. This is so regardless of whether education is purchased privately or through public taxation. Citizens educated in private schools inevitably contribute to the communities and the broader societies in which they participate, just as those educated in the public schools stand to reap the private benefits of their education, even though it was paid for out of the public purse.

There are two ways in which this mutual reciprocity can be impeded: by somehow excluding graduates from the society which nurtured them, or by exposing them to an education which harms society. Some opponents claim that

11. Funded by the Society for Quality Education (SQE), Toronto, with additional financial support from the Ontario Alliance of Christian Schools, Ancaster, and the W. Garfield Weston Foundation, Toronto.

private schools threaten just such an outcome since they have the potential to teach and inculcate knowledge and values that threaten to harm society. But this potential resides in all schools, private or public. Indeed, some hold the view that the educative-bureaucratic complex that is the current public school establishment poses a greater and more immediate threat to social harmony and continued economic development than independently established and operated schools could ever do. Private schools are inherently diverse and competitive, allowing parents to choose an education for their children which will promote, protect, and preserve their values. Public schools typically allow parents to have less meaningful choice and ultimately operate as state agents, making them vulnerable to capture by political ideologies and special interests.

The central issue here is not who operates and pays for schools, but what they teach and how their curriculum is designed and justified. On these crucial questions, there is no tenable alternative to placing our trust in the workings of responsible government and democratic institutions to establish an appropriate legal framework to guide and govern pursuit of a high quality education for all, regardless of the school they attend, and regardless of whether that school is financed by public taxation or private contributions. In either case, schools, their teachers, leaders, trustees or other governors, parents, and supporters have an obligation to ensure that the education dispensed operates within properly established social standards which, in a parliamentary democracy such as Ontario, will be promulgated by the politically accountable legislature, administered by properly qualified officials, interpreted and upheld by the courts, and rooted in shared values. Ultimately, the key question at the heart of the issues under discussion is whether non-public schools can be accepted as part of a modern system of education in a democratic society such as Ontario. McGuinty the elder had no doubt on this point, holding that independent-alternative schools intrinsically satisfied unarticulated but widely accepted educational standards and, in doing so, gained a right to exist “because the common good of our society does not hinge on a single, uniform type of schooling, in a monolithic system” (p. 4). Shapiro had no doubt either, declaring:

[T]here should be no legal public monopoly in education, and private schools that meet the minimum standards specified by the government in terms of its obligation to both society and individual children should have a clear status in recognition both of the rights of citizens to make alternative choices and of the general value of diversity. (1985, p. 40)

Shapiro went on to recommend that these minimum standards should be specified and given legal weight. As discussed further below, Ontario has made only a token gesture in this regard. As such, all supporters of quality education stand to benefit from pursuing this recommendation. Not only would clearly stated, widely supported minimal education standards help address the acceptability of non-public schools, they would clarify society’s expectations for its public schools.

McGuinty’s third argument for the continuing relevance of non-public schools goes beyond their contributions to the general social good to highlight their capacity to do some things which are not possible or permissible to the same extent within the public system; he said, “These things have to do with academic program, pedagogical techniques and, to use an awkward but I think meaningful phrase ‘the realm of values’” (p. 5). McGuinty singled out religion as providing an arena in which private schools are able to make contributions to society denied to their public counterparts, especially in an increasingly diverse society.

With students and teachers of diverse convictions, the public school must attempt a so-called neutrality on the great issues of life. It must operate with limited horizons. The independent-alternative school is able to assume a clearly defined philosophy of life and a specific orientation in accord with the values of its students and their parents. The public school must serve the interests of those who would keep that dimension out. The independent-alternative school can serve those who would keep it in. (p. 7)

Increasing cultural diversity amplifies the relevance of this unique contribution of private schools. As the number of cultures welcomed in a society increases, so do conceptions of the sacred and levels of religious commitment. One measure of this is the increasing variety of religious private schools. Van Pelt, Allison and Allison (2007, p. 9) estimated approximately 45 percent of Ontario’s private school pupils attended faith-based schools in 2005-06. The

great majority of these schools were Christian (N=329), but there were also notable numbers of Jewish (N=43) and Islamic (N=37) schools and a single Sikh school. A review of declared affiliations on the Ministry's 2012-13 list of private schools suggests slightly increased numbers in all of those categories. The education provided by these religious schools, need it be repeated, is paid for privately through tuition fees, church contributions, and donations. In stark contrast, the religious education received by the 650,000 or so students attending Ontario's 1,662 Roman Catholic Separate schools is paid for by public taxation. This is obviously unjust and needs to be redressed. But the important point for the current argument is that just as society is enriched by the religious contributions made by our publicly funded separate schools, it is also enriched by educational threads woven into our cultural fabric by other religious schools which, of necessity, are private schools.

We should also not let the plurality of faith-based schools overshadow the valuable contributions made by the many secular private schools that offer distinctive programs, such as Montessori and Waldorf schools. The curricular distinctiveness of so-called traditional academic schools such as Ridley or Royal St. George's is also essentially value based. A similar argument can be made for the many special education and activity oriented private schools that enrich educational diversity in Ontario.

McGuinty Sr.'s fourth and final argument revisited the public benefits of private investment in education discussed at some length above, but with a somewhat prescient spin, given modern ecological interests. "All schools have value as a natural resource," he observed, referring to the productive potential their future graduates hold for society; "Only recently," he continued, "have the governments of this country become properly conscious of their responsibility for natural resources" (p. 10). Now that we have become more conscious of these obligations, governments seek to ensure that the natural resources of our planet are neither ignored nor squandered, but are treated with due care and respect. Government, McGuinty argued, surely has an even greater obligation to the most precious natural resource of all, the educated minds and characters of its future citizens, and the schools which form and facilitate their education. And just as a government regulates and supervises the operation of natural resource industries to ensure good stewardship, so does it have an obligation to promote proper care and respect for the schools forming its future citizens, regardless of whether they are public or private establishments. Part of this obligation must surely extend to allowing, even encouraging, alternate forms of education to take root and flourish alongside the dominant strain. Just as biodiversity can strengthen and protect ecosystems, edudiversity can strengthen and protect social systems.

Before closing, McGuinty Sr. made brief reference to how non-public schools "make for a healthy rivalry with a public system which of necessity is characterized by a massive bureaucracy" as well as the manner in which "their existence brings into the educational order the very kind of competitive spirit and comparative standards that we find necessary for the well-being of our political and economic orders" (p. 11). In a sense, this returns us to McGuinty's first point: non-public schools, by their very presence, actively demonstrate alternative ways and means of imagining and delivering education, alternatives which can stimulate innovation in the public schools while providing a range of comparisons and benefits which are enhanced in Ontario by the rich diversity of the privately financed schools available. In a very real sense the continued operation of these schools complements and aids the public system. As the Auditor General observed,

[Ontario] private schools in effect either save the taxpayers over \$1 Billion annually¹² or enable the Ministry to allocate this amount to other education priorities. Accordingly, a strong private school system can benefit the taxpayers as well as both public and private students. (Ontario, 2013b, pp. 180-1).

12. Derived by multiplying the estimated 110,000 non-public pupils by an estimated \$10,000 per pupil cost of public schooling (Ontario, 2013b, p. 180). The Ontario Federation of Independent Schools estimates it would cost taxpayers an additional \$1.6 Billion annually to educate current private school pupils in public schools. See <http://www.ofis.ca/about-us/independent-education-in-ontario/>

D. TOWARD A WARMER CLIMATE

SO WHAT IS TO BE DONE ABOUT ONTARIO'S PRIVATE SCHOOLS? In the course of his brief, McGuinty noted that their right to exist “implies a correlative obligation of government to respect that right in *practical ways*” (emphasis added, p. 4). This does not require government to fund private schools as it does public schools, but it surely obligates government to go beyond the *laissez-faire* stance that has long typified Ontario policy. A preferable stance—and one consonant with all other major English-speaking provinces—would commit the Ontario government to treating private schools as respected partners in the province’s educational project while protecting their independence to pursue alternate paths to democratically approved outcomes and standards. The broad aim would be to create and sustain a culture of respectful partnership in which private schools honour legislated goals and standards for their continuing contributions to the education of Ontario’s future citizens, while the province commits to providing appropriate supervision, support and assistance. Implicit to such a culture of respectful partnership would be an expectation of mutual accountability. Privately financed schools would undertake to demonstrate that their programs and philosophies satisfied legislated standards applicable to all child and youth enrolling schools, including participation in programs of universal student achievement testing. Government and its agents would accept their obligation to establish and equitably administer clear standards that would apply universally in order to deal with and treat private schools as they do public schools (insofar as this is compatible with a private school’s identity and philosophy); to provide administrative, curriculum and other professional advice and support as appropriate; and to consult regularly with private school communities.

Private schools in other jurisdictions have typically agreed to participate in government accountability programs in exchange for partial funding of some kind. Legislation in British Columbia and Alberta currently ties the acceptance of public funding to variable levels of public accountability, higher funding levels require more extensive accountability. Such a *quid pro quo* is not being proposed here. It is conceivable that some form of direct funding could evolve from a policy of respectful partnership over time, but the initial expectation is that private schools would accept a moral responsibility to be accountable to democratically established educational expectations as part of their ongoing commitment to educate their pupils for participation in that society. In the language used earlier, private schools would be publicly demonstrating their commitment to the public good. Government, in its turn, would be acting to establish and equitably administer fundamental standards for the education of all children and youth, regardless of whether they attend public or private schools.

Subsection (2) of Section 0.1 of the Ontario *Education Act* provides an excellent starting point, declaring: “The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society.” One can quibble over the embedded limitations, but this is surely an acceptably broad statement that encompasses both public and private outcomes of education. As such it readily accommodates the objectives of public and non-public schools. The preceding subsection (1) of the Act is a less felicitous statement, for in declaring, “A strong public education system is the foundation of a prosperous, caring and civil society,” it appears to deny the potential of non-public education to contribute to the formation of such a good society. This was surely unintended, but it nonetheless crystallizes a fundamental political issue at the heart of the policy stance under consideration. As such, an amendment to remove “public” from subsection (1) would provide a strategic pivot for the debate needed to clear a path toward a policy of respectful partnership. More specific steps toward a more hospitable and collaborative climate for Ontario’s private schools include the following.

SATISFACTORY INSTRUCTION

The compulsory attendance provisions of the *Education Act* require everyone from six to eighteen to attend a public school unless specifically excused, the first reason for possible excuse being if “a person is receiving satisfactory instruction at home or elsewhere” (S. 21(2)(a)). The Act and its accompanying Regulations are silent on what may qualify as “satisfactory instruction,” this definition having long been left to interpretation by officials. Shapiro argued that this made the standard “empty of content” and potentially unenforceable. “What is needed,” he urged, “is some specification of the common and substantive, if minimal, standard that will be required of all schools—public, private or other; publicly funded or not” (1985, p. 41), as was argued at some length earlier in this paper, and for just the same

reasons: to ensure that all partners in Ontario’s educational enterprise are committed to a common understanding of how schools will advance the common good. Shapiro recommended that satisfactory instruction “be defined in law as programmes which:

- use English or French as the first language of instruction;
- include learning experiences in the arts, Canadian and world studies, language, mathematics, physical education and science;
- do not promote or foster racial or ethnic superiority, religious intolerance or other values inconsistent with a democratic society;
- contain specific plans to provide students with the opportunity to develop critical thinking skills in both the intellectual and spiritual spheres;
- provide students with ready access to alternative points of view about their areas of study.” (1985, pp. 41-2)

Whether these five criteria can be accepted as establishing an acceptable minimal standard for education in all of today’s schools is properly a matter for public discussion and political debate, as Shapiro well understood and expected. That debate was postponed when he presented his report, but as noted at the outset of this paper, there are pressing reasons to reopen discussion. One such reason lies in what appears to be a revitalized preference for managing Ontario’s private schools through administrative procedures rather than public policy. As noted earlier, the Ministry of Education recently released an entirely new *Private Schools Policy and Procedures Manual* (PSPPM). In many respects this is a welcome development that consolidates established procedures and introduces various refinements and extensions. One innovation is a validation visit to ensure that all new private schools satisfy operational standards. In the words of the Manual,

On the day of the validation visit, the inspector will confirm that the school has at a minimum the following characteristics of a private school, as listed on the NOI [Notice of Intention to Operate]:

- A principal in charge of the school;
- Control of the content of the program or courses of study;
- Control of the quality of instruction and evaluation of student achievement;
- A common school-wide assessment and evaluation policy;
- A common procedure for reporting to parents;
- A common school-wide attendance policy; and
- A central office for the secure maintenance of student records.

If your school does not meet each of the above criteria, it will not pass the validation process and will not be able to continue operating. (Ontario, 2013c, p. 17)

It could be argued that these seven characteristics constitute a *de facto* official definition of satisfactory instruction. In a sense, they do, but it is a limited, one-dimensional, essentially administrative conception, dealing solely with organizational features of the place of instruction, rather than the substantive content of that instruction. Moreover, as the Notice of Intention to Operate a Private School (NOI) (Ontario, 2013c, Appendix A) states, these characteristics are Ministry of Education policy rather than requirements approved by the Legislature or Cabinet. They appear to have been developed and approved under the Section 16(3) powers of the Minister and are thus entirely proper; nor are they in any way objectionable as operational standards for any school, private or public, but they are not, cannot, and should not be seen—still less accepted— as providing a definition of satisfactory *instruction*.¹³ Nor should any attempt be made to develop and promulgate such a definition through the internal administrative process that produced these seven administrative criteria. Within the legal framework created by Ontario’s *Education Act*, the

13. There is no intent to imply that this is or was ever the case: the point is any attempt to accept them as such should be rejected.

concept of satisfactory instruction is the common policy touchstone between public and private schools. Its meaning needs to be clarified through the legislative process to democratically establish the minimally acceptable standard for the public and non-public education of Ontario's young citizens.

REVISIT SHAPIRO'S RECOMMENDATIONS 55 & 56

Recommendation 55 advocated for the establishment of an Independent School Branch of the Ministry of Education; while Recommendation 56 encouraged greater collaboration between Ministry officials and leaders in the private school community. The Private Schools and Attendance Unit (PSAU) of the Ministry of Education is currently responsible for administering private school policy. According to the Government of Ontario Directory (Ontario, 2013a). There are at present three professional staff members in the PSAU, one of whom is designated as co-ordinator. In addition, two dozen or so Education Officers based in the Ministry's six regional offices are assigned to spend approximately one day a week on private school matters, time which is primarily devoted to inspecting private schools that grant OSSD credits. The Auditor General concluded that this amounts to the equivalent of eight FTE professional staff assigned to oversee all of Ontario's private schools. The Government Directory shows the PSAU as being a sub-group within the School Programs and Standards Unit, which is one of eight¹⁴ entities comprising the Field Services Branch, which, proceeding up the hierarchy, is one of four Branches in the French-Language, Aboriginal Learning and Research Division. There are eight Divisional level agencies within the Ministry of Education, each under the direction of an Assistant Deputy Minister. In short, responsibility for government supervision of over a thousand private schools educating more than one-twentieth of all Ontario's children and youth is currently assigned to an arguably understaffed office at the lowest bureaucratic level within the Ministry. In comparison, the Ontario Directory lists a total of 73 professional staff in the French Language Education Policy and Programs Branch charged with offering provincial level curriculum and policy leadership for Ontario's French Language public schools which, as noted earlier, enrol fewer students than the province's private schools. The comparatively small size of the unit responsible for provincial supervision of non-public schools may have been appropriate for the smaller scale of operations under the *laissez faire* policy approach of earlier eras, but it is hardly credible for our current time, and hopelessly inadequate for promoting a more supportive policy of the kind envisaged. Indeed, the lowly organizational status assigned to non-public schools within the Ministry structure communicates an impression of dismissive unimportance consistent with other aspects of a chilly climate. If Ontario is to modernize its stance toward non-public schools and foster a warmer climate supporting their well-established contributions to the public good, the Minister will need to not only augment allocated resources but also enhance the internal profile of the responsible department.

Serious pursuit of a new policy of respectful partnership would further benefit from short-term Ministry secondments of individuals from private schools or support organizations such as the Ontario Federation of Independent Schools, the Ontario Alliance of Christian Schools, the Conference of Independent Schools, and similar bodies, as encouraged in Shapiro's Recommendation 56. Consideration could also be given to Shapiro's recommendation to involve experts and agencies from the private school sector on a contract basis. Cross appointments of this kind would not only provide meaningful bridges between the Ministry and non-public school communities, they would foster opportunities for members of the two worlds to better understand each of those worlds and their particular needs, strengths and promises, as well as providing resources for forming more representative and better informed problem-solving working groups.

A case in point is the so-called "Scarlet Letter" news cycle which was triggered by the recently introduced practice of attaching a "P" to transcript entries for diploma credits earned from inspected private schools by students registered in public schools (Ontario, 2011, p. 87). When first announced, this requirement caused dismay and anger within parts of the private school community since it was initially seen as an attempt to discredit their schools. This unfortunate outcome could have been avoided if representatives from the non-public school communities had been actively involved in addressing the underlying issues from the beginning. These issues have to do with serious concerns over

14. Three as listed in the Directory, but one of those entries subsumes all six Regional Offices, which have been counted separately.

so-called “credit mills” which, as discussed in the Auditor General’s 2013 report, may be inflating grades and engaging in other frauds (2013b, p. 191). This is a difficult problem area demanding the kind of in-depth appreciation and understanding that can only be satisfactorily addressed through the collaborative involvement of experienced individuals from the areas concerned. Engaging Ministry officials and private school leaders in addressing common problems such as this would not only yield higher quality solutions that would better benefit the public, it would build respect, nurture valuable working relationships, and generate expertise, all of which would enhance the capacity of the Ministry to better discharge its duty to the public.

ELIMINATE FEES

Ontario private schools must pay three different fees: a one-time registration fee accompanying their initial Notice of Intention to Operate, a recurrent inspection fee (usually every two years) paid by schools wishing to grant credits toward the Ontario Secondary School Diploma (OSSD), and per student fees for candidates sitting Education Quality and Accountability Office (EQAO) tests. These charges might seem reasonable, but are difficult to justify since they serve to impede rather than improve efficiency and accountability. By far the great majority of private schools are not-for-profit organizations, and any fees will necessarily be paid out of operating revenues, which increases the cost of a privately financed enterprise benefiting the public. Even the one-time \$300 initial registration fee could be a less than minor payment for small schools financed by few families of modest means. Such payments are not required in other provinces that actually fund non-public schools; how can they be justified in a province that chooses not to provide such funding? One obvious answer could be that an initial fee discourages frivolous applications, but the current application and validation process is surely sufficient to screen out less than serious applicants.

Another possible justification is to offset costs. This argument is explicitly evoked for the OSSD inspection fee section of the new *Policy Manual* and was also used in a Ministry memo announcing increases in this fee from \$1,650 in 2011-12 to \$4,050 in 2014-15. These are clearly not insubstantial charges, but at the same time one must wonder if they can ever cover the full costs involved. The Auditor General’s report (2013b, p. 196) states the Ministry expects the \$4,050 fee to recover the full cost of inspections, but the estimated costs fail to incorporate additional activities recommended by the Auditor General to address deficiencies identified in current practices. But that is not really the point. The purpose of these inspections is to ensure that courses offered for OSSD credit meet Ministry requirements and course and student records are properly maintained so as to maintain the integrity of Ontario’s high school graduation credentials. This is undeniably important, but will charging a fee guarantee this? A counter argument maintains that the integrity of the graduation diploma is so important to the social and economic well being of the province that the Ministry must not be distracted from its high duty to ensure appropriate quality standards by the potentially distorting effects produced by collecting fees, especially when those fees are supposedly intended to cover costs. This rationale also further distracts from the primary purpose of ensuring quality by directing attention to the generation of revenue, and even less to “breaking even” somehow on one small sliver of a gargantuan government budget. Charging fees for vitally important activities inevitably encourages goal displacement and distraction. What is important, the integrity of the OSSD or the revenue? And do all privately financed secondary schools really need to be inspected on a two year cycle, or is this also justified as means of covering costs? Eliminating this fee would help eliminate doubts and criticisms about the purposes of the exercise and enable all participants to focus more fully on the real objective.

The chilly climate that has developed toward private schools can be partially attributed to the distorting effects of the OSSD inspection fee, which is another reason for eliminating it. There is an anecdotal report of a Ministry inspector telling a private school principal, “If you want our franchise, you can pay.” It is doubtful a Ministry officer would so misunderstand the situation, but some members of the private school community view this statement as reflecting the established official attitude toward non-public schools. Obviously, the Ministry does not own the OSSD and neither does it market a franchise for the diploma. The Minister issues the OSSD to qualified graduates on behalf of the people of the province, and her officials contribute to establishing appropriate standards and ensuring they are properly implemented and applied. For the great majority of graduates the integrity of the diploma is maintained by public school principals and officials in their employing school boards, with the OSSD inspections coordinated by

the PSAU performing a parallel function for credit granting private schools. The inspector quoted above appears to have been distracted by the fee, perhaps imagining this was being charged in exchange for permission to offer OSSD credits. A more accurate, respectful and constructive view would appreciate these inspections as opportunities for collaborative accountability which invite schools to demonstrate their strengths and their compliance, and allow Ministry personnel to apply, interpret, and explain the requisite requirements in professional, formative, and supportive ways. There is no reason why OSSD inspections could not be conducted in such a manner with the standards and procedures in the *Policy Manual* serving as the guiding framework. Consideration could also be given to forming inspection teams composed of Ministry officials, private school Heads, and other leaders and public school principals. Such teams could visit four or five schools during a week with all members and their organizations benefiting from the shared professional experiences. Once the distracting effect of the fee is removed, collaborative approaches to ensuring the integrity of the OSSD in private schools would generate the expertise and confidence needed to adopt a more discretionary and flexible inspection schedule. Such a collaborative approach could also provide a particularly effective way of addressing problems posed by the minority of credit-granting private schools identified by the Ministry as chronically non-compliant. Any school that consistently fails to comply with fundamental program standards threatens to bring others into disrepute, while also weakening confidence in the supervisory system. For these and other reasons reputable non-public schools can confidently be expected to participate in upholding the integrity of the system.

Little needs to be said about the dysfunctional practice of charging fees for private school students to participate in provincial testing programs. It is in everyone's interest for all schools, whether financed and operated privately or publicly, to satisfy common performance standards. This is the basic rationale for OSSD inspections as discussed above, and the reason why private school candidates for the OSSD are required to pass the Literacy test administered by the EQAO. But why should private schools be faced with a \$95 charge for every student taking this test? Any attempt to justify this stands on even weaker logical and moral grounds than the OSSD inspection fee itself. So, too, with the \$55 per student fee currently charged for private school pupils sitting the reading, writing and math tests in Grades 3 and 6, and the Grade 9 math tests. It is surely in the interests of society to have all non-public schools participate in these tests, and any barriers to such participation should be promptly removed.

REVISIT SHAPIRO'S RECOMMENDATIONS FOR LIMITED SUPPORT

Commissioner Shapiro recommended three programs of limited financial support for independent schools which he justified as a way of acknowledging the contributions they make to the public good. First he recommended that non-public schools be placed "just below the priority basis for other school boards for the lease and/or purchase of surplus school board facilities and in such cases the use of these facilities be defined as fulfilling educational purposes" (1985, p. 51). The intent here was to allow public boards to dispose of surplus buildings to non-public school operators before they were offered for sale or lease on the general market. To achieve this objective today would require amending Regulation 444 to include non-public schools in the list of entities authorized to submit proposals for purchase or lease of surplus school board property. Various options would be available with some potentially complex choices, making this idea well suited for consideration by a working group with expert representation from all partners. Consonant with Shapiro's original intent, the aim would be to place non-public schools on an equal footing with public bodies in acquiring surplus property for educational purposes. Any financial advantages would be modest at best, but such a development would do much to advance the advocated policy of respectful partnership, especially at the local level.

Shapiro's recommendations 18 and 19 would have funded school boards to transport private school pupils within their jurisdictions, and recommendation 20 would have provided access to provincial grants funding the purchase of instructional materials. Ontario does not require uninspected (non OSSD credit granting) private schools to follow the provincial curriculum although most, probably almost all, do because this is what their clients expect.¹⁵

15. Natour's (2003) survey of private school web sites identified a common promotional paradigm which included statements declaring "conformity with Ministry of Education approved curriculum" (p. 77). This was a limited (N=30) and non-random sample, but there are good logical reasons to

In consequence, Ontario's non-public schools are not only contributing to the public good by providing privately financed education, their contributions generally conform to official curriculum expectations, while augmenting those standard expectations by teaching enriched programs of study appropriate to each school's distinctive mission.

Textbooks and other learning materials are expensive, and it seems only fair to fund those required to teach the provincial curriculum on the same basis as they are funded in public schools, leaving the costs of additional learning materials associated with a non-public school's distinct mission to be financed through additional charges to parents. Once again it is in society's interest to help ensure that provincial educational expectations are being met and this goal will be advanced by ensuring pupils in non-public schools have ready access to the Ministry approved textbooks used to teach the provincial curriculum in public schools. Indeed, it could be argued that government has a duty to ensure all children and youth have equal access to the instructional materials used to teach the provincial curriculum. Similarly, teachers and students in non-public schools should benefit equally from provincial agreements negotiated to provide access to copyrighted materials by teachers in public schools. To exclude non-public school teachers and learners from reaping the modest yet often pedagogically enriching benefits enjoyed by public school colleagues under such agreements further limits society's interest in ensuring an enlightening education for all. Equal access should also be available to online curriculum development and learning support resources sponsored by provincially funded agencies.

The argument for funding pupil transportation is similar in the sense that society has an interest in ensuring all children are conveyed to and from their schools in a safe and timely fashion, regardless of whether the school is financed publicly or privately. To this can be added the arguments for efficiency and conservation: as long as publicly financed buses are travelling the routes that non-public pupils must take to school and home, resources are conserved and used more efficiently if they transport both public and non-public pupils, especially as the actual costs are being met out of tax revenues paid by both kinds of families. Once again, working out the details for shared transportation arrangements will provide further opportunities for nurturing respectful partnerships between the public and non-public school spheres. Similar arguments can be made for other education related government services, especially health services delivered in schools. Again, all children, regardless of the school they attend, have an equal right to services provided by the public health system. Yet jurisdictional difficulties can arise. For instance, exceptional students may be denied appropriate diagnostic testing or subsequent access to medical supports because they do not attend a public school. This is another area which needs careful collaborative study aimed at developing policies and procedures appropriate to a mutually respectful partnership between public and non-public educators.

Lawton (1985) estimated the financial support for textbook purchases and transportation recommend by Shapiro would "significantly aid private schools" (p. 183) at little relative cost to the province, depending on how many non-public schools decided to accept such support. Even if all were to do so, the cost to the provincial treasury would fall far short of the \$1.6 Billion the Ontario Federation of Independent schools estimates would be required to accommodate all private school pupils in public schools. Given the magnitude of this annual saving, investing in a warmer climate for non-public schools by adopting these programs of limited support, foregoing current fees, and funding a more appropriately sized and resourced administrative unit must surely be seen as a sound and sensible investment.

A PLACE AT THE TABLE

Notice was taken earlier of the statements of purpose in Section 0.1 of the *Education Act*. Under the heading "Partners in education sector", Subsection (3) reads as follows: "All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems." Ontario's private schools see themselves as partners in the education sector. They are just as committed to enhancing student achievement and well being as the named partners, and they willingly accept that they too have a role to play in

expect that the great majority of private schools would follow such a policy. In most cases, private school programs of study can be expected to supplement and extend rather than displace or ignore the public curriculum.

maintaining confidence in the public systems. It could not be otherwise given their dependence on the integrity of the provincial curriculum and the OSSD, their everyday interactions with public schools, and their multitudinous connections to Ontario society in its rich diversity. At heart, public and non-public schools seek the same ultimate goal of a good education for their students which will empower their adult lives and enrich society, choosing only to follow different paths to this end. It is common today for the public systems to dominate, not just because of their size and strategic position, but because they are agents of the provincial government. As such, it was perhaps inevitable that public and non-public education sectors would be kept apart by structural divisions which limited not just interaction but also understanding, fostering a less than warm and supportive climate for non-public schools. Yet it need not remain so. With good will and clear vision Ontario's leaders can foster a new, more constructive and responsive regulatory climate that will support rather than hinder non-public schools' continuing contributions to the education of all young citizens.

The suggestions that were sketched above were offered as stepping stones toward a warmer, more mutually supportive climate that would nurture a new culture of respectful partnership between public and non-public schools, their leaders, professional staff, supporters, and missions. A culture in which the partners build and maintain confidence in both the province's publicly and privately funded schools. Each of the suggested stepping stones toward this culture would require constructive discussions between appropriate public officials and representatives from the non-public school sectors to explore practical possibilities and develop plans. Implementation would require further discussions and other interactions, all of which will be invaluable in forging mutual understanding and respect. Detailed work of this kind must nonetheless be sanctioned and guided through political leadership. Leaders in the private school communities can encourage and support, but it will fall to political leaders on the provincial stage to initiate long overdue steps toward a new, cooperative and productive partnership between publicly and privately funded educational contributions to Ontario society.

E. CONCLUSION

IT IS TIME FOR ONTARIO'S PRIVATE SCHOOLS TO BE BROUGHT IN FROM THE COLD. Almost three decades have passed since the provincial Commission charged with looking into their future presented its report, but nothing of importance has been done. Ontario remains content, it seems, to cling to the *laissez faire* attitude towards policy inherited from earlier eras. The two failed attempts at policy change that were attempted in recent years approached the issues from an inappropriate direction, and did so too precipitously. While theoretically admirable, the Harris-Eves tax credit was launched in the face of fierce opposition under hopelessly inappropriate circumstances, while John Tory's recycled associated school model was an overly limited and limiting solution to but one part of a poorly understood policy challenge. Even so, Ontario's non-public school sector has continued to expand, providing alternate education opportunities to thousands of families despite a total lack of the direct financial support provided by all other large Canadian provinces, and in spite of an administrative environment increasingly tinged with hostility. In addition, as convincingly shown by the recent Auditor General's report, Ontario's neglect of its non-public schools has allowed fraud and administrative malfeasance to grow and taint not only the reputations of the many privately financed schools that benefit the public good, but also the work and reputation of the public service. It is time for change: a change for the good which will ensure accountability to democratically sanctioned education standards in all publicly and privately financed schools, change that will respect and protect prior parental choice, and welcome non-public schools as respected partners in the education of Ontario's citizens.

In retrospect, the Harris and Tory initiatives were akin to jumping into the deep end of the policy pool without provident preparation. A more appropriate approach would begin at the shallow end of the policy pool, moving into deeper water as conditions improve. A sensible first step would be to lay aside any immediate interest in seeking direct funding for private schools. Instead the goal should be to foster a more open, constructive and equitable policy environment intended to support a new era of respectful partnership between government and private schools. As discussed at some length, McGuinty Sr. laid out the main arguments supporting such a partnership. Chief among these are the many real and valuable contributions privately financed schools make to society in all its richness and diversity. These benefits make a policy of supportive partnership far more sensible than one of cold disdain, but any calculus should also take into account the substantial savings to the provincial treasury realized by having one-twentieth of the population schooled at private expense.

The practical suggestions offered in the final section of the essay can be reduced to three broad initiatives. The first would seek changes to better integrate non-public schools into the legislative and administrative frameworks governing and regulating education in Ontario. As recognized in Commissioner Shapiro's recommendations, the centrepiece of these changes should be a statutory definition of satisfactory instruction which would establish minimal educational standards for all schools, private and public. This initiative would also include an expansion of the Ministry of Education's capacity to oversee and work with non-public schools. The second initiative would be aimed at removing unnecessary impediments to the fuller participation of non-public schools in Ontario's education project. The most obvious of these are the fees currently charged for initial registration, OSSD inspections, and EQAO testing. Eliminating these fees would not imply any reduction in regulation. To the contrary, the Auditor General's report clearly establishes a pressing need for improved oversight of the establishment and operation of non-public schools and enforcement of OSSD requirements. But the emphasis must be placed on achieving and maintaining appropriate standards rather than imposing more intrusive rules or blindly raising fees. The broader intent and spirit of this initiative would encourage more collaborative and supportive approaches to important responsibilities, such as ensuring the integrity of graduation diplomas and provincial testing regimes. Third, Commissioner Shapiro's recommendations for limited indirect financial support for student transportation, purchase of instructional materials, and access to surplus property should be revisited.

Ontario's private school communities need to be invited in out of the cold. Discussions need to begin within and between the private school communities, the government, the Ministry, and political parties on how to move this agenda forward. The broad aim must be to welcome non-public schools to the education policy table. Whether the specific proposals advanced here come to pass or not, a place at the table will at least acknowledge the contributions to the educational and social well-being of the province made by privately financed schools.

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