

SUBMISSIONS TO

The Honourable Kathleen O. Wynne
Minister of Education for Ontario

RE

The Public Funding of Religious Schools

FROM

Canadian Civil Liberties Association

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INTRODUCTION

The Canadian Civil Liberties Association (CCLA) is a national organization with more than 7000 paid supporters, 7 affiliated chapters across the country, and some 20 associated group members which themselves represent several thousands of people. Our membership roster includes a wide variety of callings, constituencies, and interests – lawyers, writers, homemakers, clergy, professors, media performers, business executives, minority group members, trade unionists, and others.

Our objectives include the following:

- to promote legal protections against the unreasonable invasion by public authority of the freedom and dignity of the individual and
- to promote fair procedures for the resolution and adjudication of conflicts and disputes.

It is not difficult to appreciate the relationship between these objectives and the current proposal to provide public funds for religious schools. This has become a central campaign issue in the 2007 Ontario elections. A number of fundamental matters are involved: the relationship between government and religious institutions; the equality of religious constituencies; and the nature of intergroup relations. In one way or another, they all bear upon the ability of individuals to effectively enjoy the fundamental freedoms of the democratic system.

EXECUTIVE SUMMARY

- Public funding of religious schools could weaken the public school system and undermine its contributions to the vitality of our democracy.
- Having opened its doors to everyone, regardless of wealth, status, race, religion, and ethnicity, the public school system has performed an integrative and unifying function for Ontario society.
- Within living memory, this country jailed thousands of innocent Japanese Canadians, denied many aboriginal people the right to vote, restricted immigration from developing countries, and turned back Jewish refugees from Hitler's Germany. There is no reason to believe such behaviour could never again be possible.
- Our community must work to shore up our integrative institutions. One of the most important of these is the public schools.
- If the funding proposal goes ahead, public schools could lose significant numbers of students to the religious schools. If this were to happen, the public schools would no longer be able to perform their integrative role. In time, our community could become a much less tolerant place.
- In the event of such public funding, there may well be no legitimate or effective way to control any hateful or discriminatory messages espoused by particular religious schools. Although our democracy may defend the right of any group to hold and attempt to spread such views, it is repugnant for the public purse to *subsidize* the exercise.
- The impetus to inspect, monitor, and control religious programs in schools would raise thorny questions about government intervention in religious affairs.
- The sheer costs of funding many religious schools would likely reduce the quality of the entire educational system.
- Contrary to the arguments of some, the current public funding of Catholic schools cannot justify the critical risks associated with the proposal to fund more religious schools.
- A constitutional amendment should be enacted to end the anomaly of public financing for Catholic schools.

Accordingly, the Canadian Civil Liberties Association recommends as follows:

- (1) At a minimum, there should be no new public funding of any religious schools and
- (2) A constitutional amendment should be enacted to terminate the public funding of Catholic schools.

THE PROPOSED EXPANSION OF PUBLIC FUNDING

The Core of the Issue

The Canadian Civil Liberties Association (CCLA) calls upon the government of Ontario and all political parties, regardless of previous positions, to ensure that, at a minimum, no additional religious schools acquire public funding. At stake, is the effective survival of the public school system and all it contributes to the vitality of our democracy. The widespread public funding of religious schools could spell the end of that system, as we now know it.

In urging resistance to such an initiative, we readily acknowledge the inequity created by the funding that is currently provided to Roman Catholic schools. (More on this below) But this assistance was inherited, not initiated, by contemporary Ontario society.¹ In any event, there is an overriding consideration: the viability of intergroup relations in our community. A basic level of intergroup respect is necessary to the effective enjoyment of all the fundamental freedoms that inhere in our democratic way of life.

Thankfully, Canada and Ontario have come a long way in the achievement of such coexistence. While there is still much left to accomplish in this regard, it is important to acknowledge the progress that has been made even with respect to the past number of decades. Consider the following examples: the wholesale incarceration of thousands of innocent Japanese Canadians; the denial of voting rights to many aboriginal people and the abuse they suffered in the notorious residential schools; the virtual non-existence of immigration from developing

countries; and the exclusion of Jewish refugees fleeing from the persecution of Hitler's Germany.

If we have learned anything from the ordeals of the 20th and early 21st centuries, it is that intergroup tension is endemic to the human condition. During this period, our fellow human beings in various countries have been subjected to genocide, apartheid, and terrorism. Usually, one racial, religious, or ethnic group has inflicted such horrors on another.

Of course, this intergroup tension has also expressed itself in less extreme ways. There is a wide variety of indignities, discrimination, segregation, and elementary unfairness that has characterized the intergroup experience here and elsewhere. There is no reason to believe that the propensity to commit more serious intergroup injustice is beyond the capacity of today's and tomorrow's Ontario society.

In this regard, we believe that the more positive side of Ontario history has an important lesson to convey. As indicated, this province has made substantial progress in its intergroup relations. Although prejudice and discrimination remain alive, their frequency and impact have substantially eroded. Much of this progress must be seen as an outgrowth of Ontario's culture, in particular, the various institutions our society has created and the roles those institutions have played.

The Role of the Public Schools

A key institution, in this regard, is the common, public school system. Having opened its doors to everyone, regardless of wealth, status, race, religion, and ethnicity, the public school system has performed an integrative and unifying function for Ontario society. This is not to overlook the faults and the flaws that have periodically marred the contributions that the public schools have made. It is simply to recognize that, regardless of their shortcomings, the schools have produced a special situation.

When young people from many different backgrounds collaborate together in the classroom, on the baseball diamond, and in the auditorium, something important can happen. As our common sense and common experience indicate, many of these young people acquire a comfort with diversity that could well last a lifetime.

Psychological and sociological research further confirm this impression. Scores of studies were conducted in the analogous area of race relations, particularly in connection with school desegregation in the United States. A substantial number of these studies produced encouraging conclusions about the value of intergroup interaction in the school system.

An early review of the literature expressed a theme that would be repeated many times:

Out of hundreds of tabulations, there emerges the major finding that *in all the surveys and all communities and for all groups, majority and minorities, the greater the frequency of interaction, the lower the prevalence of ethnic prejudice.*² [emphasis in original]

In a 1978 study on the attitudes of children in a desegregated setting, Stephan and Rosenfield made the following observation: “... it was found that students who increased in inter-ethnic contact developed more positive attitudes”.³ Hawley’s 1978 review of the literature virtually echoed the same conclusion: “Almost all researchers acknowledge the positive influence of such steps as desegregation at early ages ”.⁴

While social propositions of this kind are not susceptible to definitive proof, it is hard to disagree with the following position articulated by Schofield and Sayer in their 1983 article summarizing the literature.

There is much evidence suggesting that cooperation can and often does have positive effects on interpersonal and intergroup relations.⁵

Even in the more intractable setting of South Africa, similar conclusions have been reached. In a 1981 study, Luiz and Krige found that co-operative activity was associated with “more positive attitudes” between racial groups.⁶ A number of more recent studies have produced largely comparable outcomes.⁷

To whatever extent co-operative contact may have helped to produce an improved interracial situation in places as troubled as the United States and South Africa, we can reasonably expect similar results in the relations among religious groups in

relatively tranquil Ontario. Thus, there is strong reason to believe that the public schools can be a helpful instrument in breaking down barriers among people of different backgrounds.

Some have argued that, in the actual setting of the public schools, self-segregation is a common feature of intergroup relations. A statement by one of the prominent social scientists in this field has effectively answered this argument:

... if a positive change in ethnic relations is desired, opportunities for intergroup contact should be provided. Though ... such contact does not necessarily produce positive results, without it changes cannot even be hoped for.⁸

The Impact on the Public Schools

The greater the level of public funding that the religious schools acquire, the greater will be the risk that they will attract progressively more students from the public schools. At some point, such an exodus could appeal also to mainstream Protestants, the largest religious constituency outside of the Catholic Church. Having had their prayers and instruction removed from the public schools, scores of mainstream Protestants might well feel compelled, by an across-the-board funding arrangement, to open their own separate schools. If that were to happen, the public school population could be severely depleted.

Experience strongly suggests that, at significant funding levels, religious schools would be able to attract increasing numbers of students. Even in Canada, this seems to have been the case. After the funding of private schools began in British

Columbia, Alberta, and Manitoba, those schools began to enjoy a significant rise in student recruitment.⁹ And this happened even though those schools continued to charge substantial fees.¹⁰ In Quebec, where public funding of non-public (including faith-based) schools has reached 60%, about 17% of the province's students are now enrolled in such schools.¹¹

The situation in the Netherlands might be even more telling. There, private schools have obtained *full* public funding and they continue to co-exist with the neutral public schools. Following the change in funding arrangements in the early part of the 20th century, public school attendance in that country dropped from *more than 65%* in 1901 to *less than 30%* in the 1990s.¹²

Thus, to whatever extent such a development were to occur here, our school system could become substantially balkanized along religious lines. That, in turn, would deprive our community of a valuable instrument for promoting cooperative co-existence.

The Impact on the Relationship Between Government and Religion

Most Canadians are deeply uncomfortable at the thought of government involvement in matters that are predominantly religious in nature. Indeed, a number of religious organizations intervened recently before this country's highest court, to argue that, even if same-sex marriages received legal sanction, objecting clergy should not be required to officiate. A general theme of their interventions was that if freedom of religion were to have meaning, the state should stay out of the temples and chapels. The court and Parliament concurred. While same-sex

marriages were recognized, the conscientious objection to performing them was protected.¹³

This is no minor point. If the Ontario government starts funding religious schools, it will find itself becoming immersed in matters of religious doctrine. It is all very well to require religious schools to follow the Ontario curriculum, but will such schools also be required to desist from teaching some of their central tenets and texts? To what extent is it appropriate for the government to prescribe or proscribe what religious doctrines are acceptable for religious schools to promote? Conversely, if religious freedom means religious teachings and practices should be left alone, does that mean religious schools would have free rein to teach their beliefs as they will? To what extent is it appropriate for publicly-supported schools to promote, for example, those fundamentalist Christian doctrines that promise salvation for only their adherents and damnation for everyone else?

Heterogeneous Ontario includes a wide variety of religious faiths from the very moderate to the quite extreme and many versions in between. Once public funding is extended beyond the Catholic schools that enjoy a constitutional entitlement, virtually *all* religious denominations could become eligible. The equality section (15) of the Charter would appear to require just such an outcome. How could the newly-subsidized schools be monitored so as to ensure that public funds are not used to promote hate or discrimination?

Although there might well be ready co-operation with government inspection of the schools' secular activities, their religious programs may not be so amenable to such scrutiny.¹⁴ Indeed, we can expect quite a bit of resistance – by the schools

and even within government itself – to any attempt the state might make to inspect such religious activity. And yet, if there is to be any unacceptable propagandizing, one place where it could very well occur is in the *religious* program. Of course, the boundaries of the religious program may be difficult to discern because religious doctrines are often infused throughout all the school’s classes and activities. Inevitably, therefore, the increased public funding of religious schools is laden with a conglomeration of unacceptable risks and consequences.

The Impact on Religious Minorities

Given the financial burdens involved in maintaining a school, it is the *large* religious groups that could well benefit from this funding, not the smaller ones. Moreover, experience suggests that “community” schools may only be able to attract and retain their very devout constituents if those schools meet the most devout standards. This factor may serve to pressure the entire school to adopt the most orthodox positions possible. In effect, then, religious school culture often becomes far more orthodox than the community it is supposed to serve.

This concern has been expressed, for example, by the president and senior vice-president of the Muslim Canadian Congress. According to them, the public funding of religious schools would mean that “more Muslim children will attend religious schools, and therefore have less contact with other Canadians”.¹⁵ In their view, our society can anticipate that “a new generation of young Muslims will come to embrace a more orthodox and archaic understanding of Islam”.¹⁶ While everyone is entitled to embrace whatever religious views they prefer, the state should not *subsidize* any of them.

On another note, there is good reason to believe that in certain areas, the only available local school may well end up a religious one. Indeed, the *Education Act* clearly contemplates the development of such situations.¹⁷ In these circumstances, families would face an unfair dilemma: transport the children to a distant public school or send them to the local religious school. If they choose the former, this would force these youngsters to commute, and could limit their ability to study and socialize with their classmates, while affecting their access to neighbourhood peers. The alternative choice is perhaps even worse: placing children in the local religious school against their conscience and religion.

The Impact on the Budget

Maintaining a good, high quality, properly funded public education system is a matter of fundamental rights. Without a strong public school system, educational and life opportunities for many children may be badly diminished. This is a critical issue, because funding both religious and public schools will cost the province a great deal more than the current system in Ontario. As the experience in Newfoundland demonstrates, the costs involved in funding multiple religious schools are substantial.¹⁸ They include additional expenses for staffing, buildings and maintenance, administration, busing of students, development and enforcement of standards, and more. And this is not to mention the costs associated with an exodus of students from the public system, such as changes in staffing and the amalgamation of schools. As was the case in Newfoundland, the costs could be prohibitive.

In Newfoundland, costs were a key issue in producing an educational crisis, a public inquiry, a referendum, and ultimately a constitutional amendment disbanding the province's denominational school system. Today, Newfoundland has a unified public school system.

Conclusion

We readily acknowledge that much of the foregoing analysis is based upon predictions as to what is likely to happen under a regime in which religious schools received significant public funding. Of course, no one can claim to be clairvoyant. None of us really *knows* the many consequences that this Province would sustain. But, in view of what we do know about human behaviour in various situations, we believe that the proposed funding is simply not a risk worth taking.

For all the foregoing reasons, Ontario should not provide public funding for additional religious schools. As unfair as it is for the public purse to assist only the Catholic schools, the situation would be exacerbated, rather than ameliorated, if all other religious schools received such support.

THE PUBLIC FUNDING OF CATHOLIC SCHOOLS

One of the central arguments for extending support to additional religious schools is that it is unfair to provide such funding exclusively to the Catholic schools. But the funding of Catholic schools, also, is unwise, inequitable, and unjust. Those schools have been receiving public funding not because of any perceived argument for it today, but because of a pre-Confederation bargain that was forged more than 130 years ago.¹⁹ Whatever arguments there might have been for such an arrangement then, the situation is dramatically different today.

Ontario society is no longer for only Protestants and Catholics. It is multi-religious, multi-cultural, and heterogeneous. Our society has managed to attract a healthy mix of racial, religious, ethnic, and cultural orientations from all over the world. There is simply no justification – if ever there was one – for conferring special benefits on the Catholic community at this time, and it would be unwise to extend such funding to every other group. Significantly, both Quebec and Newfoundland initiated constitutional amendments that effectively disbanded the public Catholic and other religious school systems then in place.

What is needed is a constitutional amendment *in Ontario* that will put an end to our anomalous situation: public funding of Catholic schools should end.

SUMMARY OF RECOMMENDATIONS

The Canadian Civil Liberties Association recommends as follows:

- (1) at a minimum, there should be no new public funding of any religious schools and,
- (2) a constitutional amendment should be enacted to terminate the public funding of Catholic schools.

Notes

¹ *British North America Act* Section 93. This provision effectively red-circled public support for denominational school systems as of the date of Confederation – 1867. This meant full public funding of the Protestant schools in Quebec and the Roman Catholic schools in Ontario. Recently, there has been a constitutional amendment that led to the effective dismantling of the public Catholic and Protestant school systems that then existed in Quebec.

² Robin Williams, Jr., Strangers Next Door: Ethnic Relations in American Communities (Englewood Cliffs: Prentice-Hall, 1964) at 167-8.

³ Walter G. Stephan and David Rosenfield, “Effects of Desegregation on Racial Attitudes”, *Journal of Personality and Social Psychology* 36 (1978): 7950804, at 800.

⁴ Willis D. Hawley, “The New Mythology of School Desegregation”, Law and Contemporary Problems 42 (1978): 312-233, at 222.

⁵ Janet Schofield and H. Andrew Sager, “Desegregation, School Practices, and Student Race Relations”, in The Consequences of School Desegregation, EDS. Christine Rossell and Willis Hawley (Philadelphia: Temple U. Press, 1983), at 78.

⁶ Dolores Luiz and Patricia Krige, “The Effect of Social Contact Between South African White and Coloured Adolescent Girls”, Journal of Social Psychology 113 (1981): 153-8, at 157.

⁷ See, for example, “Racial Identity of Children in Integrated, Predominantly White, and Black Schools” by Dutton, Suzanne E., Singer, Jefferson A., Devlin, Ann Sloan, Journal of Social Psychology, 00224545, February 98, Vol. 138, Issue 1. The authors sum up the findings of their experiments as follows:

Our findings suggest that the children in the segregated schools do not lack pride or identity; rather, they lack the level of acceptance enjoyed by children in the integrated schools. ... exposure to other races may also explain why the children from the integrated schools chose opposite-race friends more often than did the black children from the non-integrated school. This finding may stem from the daily contact the children in the integrated setting have with other races, supporting the hypothesis that the children in the integrated schools are more accepting of other races.

⁸ Yehuda Amir, “The Role of Intergroup Contact and Change of Prejudice and Ethnic Relations”, in Toward the Elimination of Racism, Ed. Phyllis Katz (New York: Pergamon Press, 1976) at 272.

⁹ In British Columbia the number of students enrolled in private schools was about 4.3% of the student population in 1977 (Sweet, L., *God in the Classroom* (Toronto: McClelland & Stewart

Inc., 1997) and in 2006–07, that number has risen to 10.5% (British Columbia Ministry of Education website www.gov.bc.ca/bced).

In 1978–79, private school attendance in Alberta was 5509 (Alberta Department of Education, “Education in Alberta: Facts and Figures, 1989”). And by 2006–07 this number had increased to 25,280. In Manitoba, 0.2% of students were in private schools in 1986 (Manitoba Education and Training, 1995 Statistics) and in 2004–05 6% of students in Manitoba attended a funded independent school (<http://www.edu.gov.mb.ca>).

¹⁰ The Vancouver Christian School charges \$4520 per year for Grade 1 to Grade 8 (ERLINK"<http://www.vancouverchristianschool.org>"www.vancouverchristianschool.org) For Grades 1–9, the Fort McMurray Christian School (www.FtMcmurraychristianschool.ca) charges 2650 per year and the Calgary Webber Academy (non–religious) charges \$11,300 per year for Grades 7–9. (www.webberacademy.ca)

“Research ... shows that tuition fees charged by private schools range from a low of less than \$1000 per year to over \$6000 per year. In 1995, just over half the parents paid between \$2000–\$4000 tuition each year. ... and almost 23% pay more than \$4000.” (Alberta government website) Tuition costs for private schools are almost as diverse as the types of schools out there, and typically increase with the child’s age. “Parents can expect to pay \$5000 to \$15,000 or more a year for students who live at home and close to \$40,000 a year for boarding school.” (Manitoba – <http://www.mfis.ca/base.phpmanitobafederationofindependentschools>).

¹¹ “Quebec Funds Faith Schools Editorial”, Thursday, August 2, 2007, *The Peterborough Examiner* (<http://www.ourkids.net/Quebec-private-schools.php>).

¹² S. Lawton, “Public Support for Catholic Denominational Schools: An International Perspective” (Paper prepared for the annual conference of the Ontario Association of Education Administrative Officials, Toronto, Ontario, October 31–November 2, 1984).

¹³ *Reference re Same-Sex Marriage*, 2004, SCC 79. In its intervention before the Supreme Court of Canada in this case, the Canadian Civil Liberties Association supported both the recognition of same-sex marriage, and the right of conscientious objection to performing such marriages.

¹⁴ Some have argued that religious school funding could be made to support only secular activities. This distinction is artificial. Such funding necessarily assists the *whole* school, thus facilitating the very segregation of religious groups and depletion of public schools, that have provoked our concerns.

¹⁵ Farzana Hassan and Salma Siddiqui, “Funding Religious Schools is Bad Policy”. *National Post*, August 9, 2007.

¹⁶ Ibid.

¹⁷ Section 42 (11).

¹⁸ Voice of Reason (The Newsletter of Americans for Religious Liberty 2003, #4 [85]).

¹⁹ See note 1 above.