

# Bringing School Choice to Ontario

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# Executive Summary

Ontario has an excellent school system with well-financed and staffed public schools available to all. Yet unlike Alberta, British Columbia, Manitoba, Quebec, and Saskatchewan, 31 US states, and the 12 European countries with the largest economies, Ontario provides no support for independently operated, non-public schools. This denies non-wealthy families their right to choose the education they believe best for their children, and also denies the opportunities for improved educational specialization, innovation and performance associated with school choice. This study explores the idea of school choice, discusses why Ontario should modify its public financing of education to support school choice, and outlines how that can be achieved.

The first section focuses on the meaning of school choice, its status as a universal right, and why meaningful school choice in Ontario has to be pursued through political rather than legal avenues. Publicly financed choices currently available in Ontario's four-lane public and separate, English- and French-language school system are reviewed and shown to fall short of the standards for education freedom recognized in international agreements and demonstrated in other, particularly European, jurisdictions.

The second section concentrates on justifications for school choice as a policy, with specific attention to practical benefits, equity, social cohesion, and commonly marshalled opposing arguments. Specific benefits of school choice include improved learning and engagement for children and parents seeking alternatives to government schools, increased education specialization and diversity, improved responsiveness and enhanced innovation in both independently and government-run schools, together with improved accountability. Central to realizing these benefits is the difference between publicly funded and publicly operated schools. Governments provide education for all by financing schools, but this does not mean government must also run the schools it finances, or at least not all such schools.

The final section considers how meaningful school choice can be brought to Ontario by outlining three stepping stones to a new policy framework. An immediate and major impediment to this goal is the legacy of recent failed attempts culminating in the repeal of the short-lived Equity in Education Tax Credit (EETC) after the 2003 election. Even so, reinstating the EETC or a similar measure is advanced as the first step toward bringing school choice to Ontario. Time has shown the arguments used to justify the repeal of the EETC to have been hollow: despite substantial increased funding of government schools with little evident improvement, enrolment in independent schools continued to increase. Reinstating the EETC, or providing equivalent financial support for ordinary families, will empower them to experience the benefits of school choice currently available only to wealthier families, while also stimulating improvements in public schools.

As a second step, substantial reforms need to be made to the regulation of independent schools in Ontario to ensure all schools—public and non-public—satisfy appropriate operational and educational standards. Care must be taken to ensure these reforms do not unduly constrain or compromise the autonomy needed by independent schools to pursue their defining missions. Shortcomings in the regulatory system that were identified in Bernard Shapiro’s *Report of the Commission on Private Schools in Ontario* (1985) still demand attention, as do issues raised by the more recent 2013 Auditor General’s report.

The third and final step discussed is a thorough overhaul of legislation governing the establishment and operation of independent schools in Ontario aimed at integrating all schools into a modified five-lane education system, while protecting the right to school choice and the independence of non-government schools. This could take the form of a new, more detailed section of the current Education Act or a separate stand-alone statute, as in British Columbia and Quebec.

Bringing school choice to Ontario will further advance the modernization process initiated by Premier Davis when he extended public funding to previously independent Catholic high schools. If done well with due attention to issues discussed in this publication, it will integrate independent, self-governing schools into a revitalized system of public education. This will bring social, economic, and educational benefits and provide education justice to families currently unable to afford the education they believe to be best for their children.

# Introduction

Choice permeates modern life. Whether navigating myriad cable channels, browsing Amazon, deciding where and what to eat, buying clothes, cars or a new house, modern markets offer many choices. Except, it seems, when it comes to schools, where the only apparent choice for many Ontarians is the neighbourhood public school. But this is an illusion: there are some 1,400 non-public schools in Ontario. [1] Yet, despite the real choices offered by these alternatives, they are not an immediately obvious option and, when noticed, are often not affordable.

This is not uniformly so in education. At the post-secondary level, young adults choose between college and university, between competing institutions and programs, and their choices are publicly subsidized through government grants to universities and community colleges, and loans to qualifying students. Ontario’s new Childcare Access and Relief from Expenses (CARE) tax credit also subsidizes eligible costs of a family’s choice of child care. Families routinely choose between neighbourhood sports teams, youth groups, music, dance, drama tutors, and other non-school educational activities for their children. Around a quarter of families are also choosing to purchase tutorial services from private enterprises. [2] Yet when seeing their children off to school, the default choice for most Ontario parents is the local public school.

Tax-funded choices are available for families qualifying for Catholic or French language schools, or who have access to French immersion schools. Wealthier parents can afford a private, non-public school but, with the exception of some religious schools, even modestly priced non-public schools are usually beyond the financial reach of many. Unless, that is, they move to a Canadian province, an American state, or a country that

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[1] 1,401 according to the official list of the Ministry of Education, updated June 23, 2020. “Non-public” is used to denote all JK–12 schools that are not publicly funded, governed, and managed. These schools are commonly referred to as private schools but this term has overtones of exclusivity, privilege, and elitism that do not apply to most non-public schools. “Private” is nonetheless the term used in the Education Act and for this reason, and to capture the more general notion of serving the interests of individuals and distinct communities, this term will also be used on occasion. Synonymous use will also be made of “independent”, “non-government”, “non-state”, “independently operated”, and “alternative” schools as appropriate in context. Also, as appropriate, “government school” and “state school” will be used to refer to the government-financed schools governed and managed by school boards, commonly referred to as “public schools”.

[2] Hart and Kempf (2018: table 1.9) found this proportion to have been essentially constant over the past two decades or so with 24% of surveyed parents in 2002 saying they had purchased private tutoring for their children in the previous three years, rising to a high of 35% in 2015, before dropping back to 25% in 2017. Goffing (2017) writes that “Kumon, Oxford [Learning] and Spirit of Math reported significant increases in enrolment over the past five years”, with Kumon citing an Ontario enrolment of more than 27,000 in October 2017. Home and internet tutoring also appear to be growing. See, for example, the service provided at <<https://www.firsttutors.com/canada/>>.

provides financial support for non-government schools, offers financial assistance to families choosing such schools, or charters privately managed schools. More practically, Ontario could modernize its education system by adopting one or all of these ways of providing meaningful school choice.

Ontario's continuing rejection of school choice not only perpetuates a near monopoly by government over our children's education and the province's economic future, it also actively discriminates against ordinary families not wealthy enough to afford an unsubsidized alternative to a government school. This injustice is exacerbated by the \$30 billion or so annually extracted from taxpayers to exclusively fund government schools. [3] Can such discrimination against ordinary parents and their children continue to be justified in the province with Canada's largest economy, when other provinces have financially supported school choice for decades? What can be done to remedy this? Why should we want to do so?

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[3] \$29.8 Billion base education expenditure for 2019/20 in 2019 budget (Ontario, Ministry of Finance 2019: table 3.13).



# Understanding School Choice

On its face, school choice has a simple meaning: selection of a preferred school. But, this is only possible when there is more than one affordable school available. Availability largely limits the practicality of school choice to urban and suburban areas with effective transportation systems, [4] making it much more feasible in modern Ontario than it was when our current system of public schooling was established in the late nineteenth and early twentieth centuries. The success of the state-managed, mass education systems created in Western societies in those times goes a long way toward explaining the increasing interest in school choice: today's parents are better educated and more demanding; some may also have had experiences in public schools that incline them toward alternatives for their own children.

Today's parents are also richer than earlier generations. Even so, the current policy of limiting tax revenues to the support of government schools creates an often insurmountable barrier for families interested in an alternative education for their children. [5] To be meaningful, school choice must be affordable. Choice without the means to act is like reading a menu outside an exclusive restaurant. The analogy is not overly fanciful. Schools feed growing minds and bodies while nurturing character; they develop

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[4] School choice is possible in smaller, more isolated communities but will logically require smaller schools, raising questions of minimum and appropriate school size and accountability. Size also affects school choices more generally. More schools in an area with a given student population increases available options and will reduce average size. When operating costs are fixed, as in the case of single-payer, government schools, larger schools offer attractive economies of scale to government decision-makers, which, if embraced, reduces choice and may prioritize cost savings over education. In contrast, market competition encourages specialization, which can prompt more schools to open, driving average sizes down. When conditions allow, smaller schools may also have an inherent advantage in some markets. These considerations reflect but one facet of the deep-running, pervasive tensions between centrally planned and delivered schooling and locally provided, autonomous education that undergirds all aspects of school choice and the broader socioeconomic and political issues to which it is connected.

[5] Statistics Canada (2020a) reports a 2017 after-tax median income of \$72,210 for Ontario families with one child, \$79,950 for families with two children, and \$88,360 for families with three or more children. There is no authoritative source for the fees of non-public schools in Ontario, but the limited data available from sources such as *Our Kids* (2019) shows fees vary substantially around a plausible median of \$11,000 or so per full-time pupil per year at what could be sensibly characterized as “regular mainstream” K-12 schools, with more expensive schools charging twice as much or more. Schools typically provide family discounts and offer bursaries and other cost reductions for qualified families, who will usually also face additional costs for uniforms, supplies, transportation, and perhaps before- or after-school or other programs. Statistics Canada (2018) reported average household spending of \$88,088 for Canadian families with children in 2017, including \$3,189 for education. The recent study by Van Pelt, Hunt, and Wolfert of families with children attending Ontario non-public schools “found 72.5 percent (242/334) of married respondents self-report[ing] a household income above \$90,000” (2019: 14).

potential, fulfil promise, and realize dreams. [6] And, just as with peanut and other allergies and difficulties with ingesting gluten and milk, some children are not fully, or even readily, nourished with everyday instructional diets. To imagine the rich potential and aspirations of all children can be satisfactorily served by the educational equivalent of a fast-food chain, however well designed, intentioned, managed, and funded, is plausibly unrealistic and potentially overly restrictive.

Their desire to best serve their child's developing needs, abilities, and talents is an obvious reason for why parents may wish to choose from the menu of all available schools, both public and non-public. Parents may also have practical concerns with their child's progress or treatment in their assigned public school, or be dissatisfied with how their concerns have been addressed, worried about how their beliefs, values, religion, and/or culture are being treated. Or, they may simply desire a different education for their child: more progressive, more traditional; classically grounded; sports, arts, or STEM weighted; or any other coherent curriculum acceptable in a free and democratic society. All of these are among the legitimate reasons that families might prefer a school of their choice. Insurmountable financial barriers deny parents and their children the freedom to do this. These barriers can only be realistically overcome through appropriate public subsidies for alternative choices outside the current government-run system.

## Current choices

Government-funded choices are available to parents who qualify for Ontario's Catholic and French-language schools. These are integral parts of the public system that, together with the secular public schools, provide four lanes along which Ontario students pursue their education, as shown in **figure 1**: English public (secular), English Catholic, French public (secular) and French Catholic. These options cannot qualify as offering meaningful school choice because access to all but the default English public lane is limited to minorities satisfying official requirements. [7] Eligibility requirements for Catholic and francophone schools are constitutionally grounded and entirely reasonable given that students and parents have to accept the religious and/or linguistic expectations defining them. Despite the enrolment restrictions this creates, Ontario's Catholic and francophone schools do offer alternative educational lanes for eligible students. The fact that these choices, and only these choices, are fully financed through taxes merely exacerbates the discrimination experienced by parents unable to afford a non-government school of their choice.

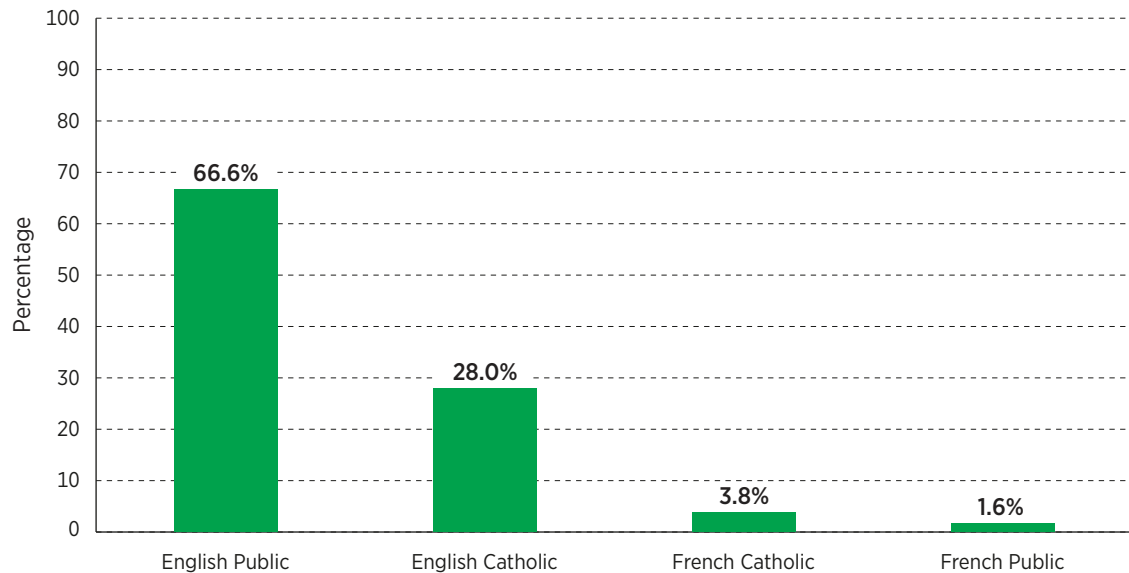
As shown in figure 1, there is a wide range of enrolment in the four lanes. Fully two-thirds of students are accommodated in the 2,444 elementary and 554 secondary schools operated by the 31 district school boards making up the English public lane. Together, the English and French Catholic schools enrol slightly less than a third of all public school students, with the 163 schools operated by the four French public boards educating a relative handful, almost 32,000 students. The fewer schools and students in

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[6] Some also hold a good education, and thus a good school, will feed the soul.

[7] For details see Allison, 2015: 9–11.

Figure 1: Percentage enrolment in Ontario's four-lane public education system, 2017/18



Sources: Enrolment percentages and statistics in text calculated from the School information and student demographics datafile (updated April 6, 2020), from the Ontario Data Catalogue (Ontario, 2020). The small enrolments in provincial schools and school authorities, including the Penetanguishene Protestant School Board, are excluded.

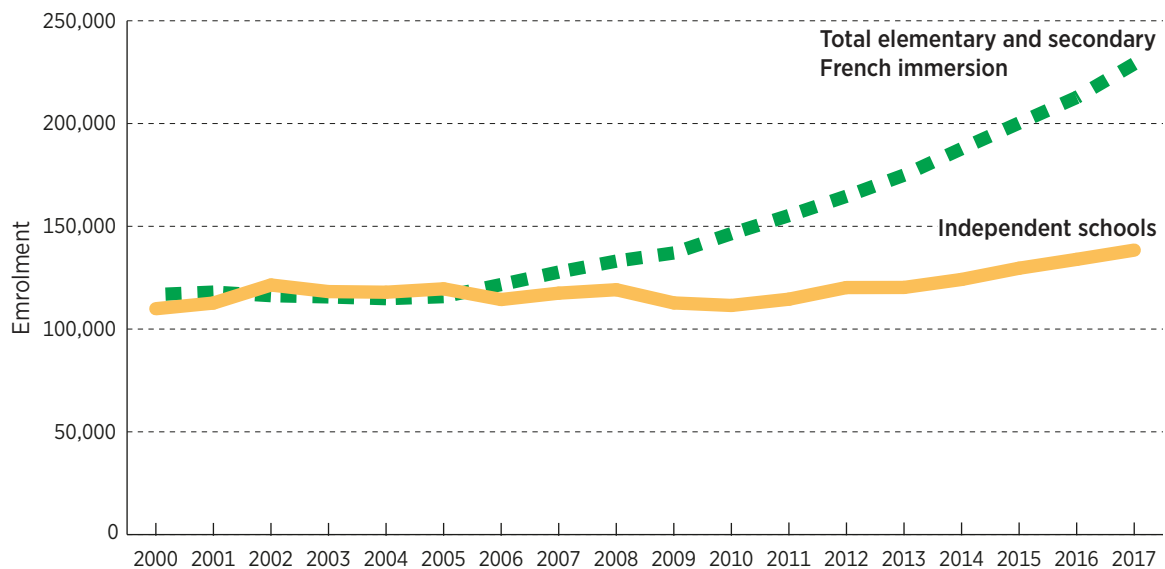
the two smaller lanes of Ontario's current system of public education demonstrate the feasibility of publicly funding smaller school systems, a reality that could be logically extended to a comparably sized, loosely coupled network of independently operated schools. As it is, Ontario already has more than twice as many non-public schools as there are in the two smallest lanes in figure 1 combined, with these independent schools educating a third more students. [8]

An additional government-funded option is a French immersion school or a French immersion program within an English-language school. In this case, availability is determined by school board policy, specifically whether the local English-language school board provides an accessible immersion program that has space. These programs, in which French is the language of instruction for half or more of each school day, have become increasingly popular, with demand outstripping supply in many suburban areas (Dangerfield, 2019). In 2016/17, total Ontario French immersion enrolments reached 229,062, a 72.5% increase over the preceding decade (Ontario, Ministry of Education, 2020c). Despite the obvious promise of bilingual fluency, columnist Margaret Wentz (2013) observed: "The main allure of French immersion is that it provides all the benefits of a private school without the tuition costs (or so parents hope)". There is research evidence showing French immersion schools tend to have smaller proportions of special needs students, fewer disciplinary issues, students from higher socioeconomic

[8] In 2017/18, French Public and Catholic schools enrolled 108,404 students (Ontario, 2020), while 146,340 students attended Ontario independent schools (Statistics Canada, 2020e).

backgrounds, and somewhat higher test scores (for example, Sinay et al. 2018: 80–96). While these are stereotypical features of “private” schools, they do not hold true for all non-public schools, which are characterized by a much richer and more varied mix of attributes. Still, choice is a shared feature of public immersion and non-public schools. **Figure 2** charts comparative enrolment growth in both choices since 2000. Both have been increasing, but with French immersion enrolments accelerating at a greater pace after 2005. The absence of tuition fees provides French immersion with an obvious competitive advantage for parents interested in a different school. Still, taken together the increasing enrolments in the two kinds of choices shown in figure 2 can be reasonably interpreted as representing a growing appetite for alternative forms of education among Ontario parents.

Figure 2: Enrolment in Ontario’s French Immersion and Independent schools, 2000–2017



Note: “Year” is end of academic year (e.g., 2000 = 1999/2000)

Source: Ontario, Ministry of Education, 2020b, 2020c. Count includes elementary and secondary enrolments in public and separate schools, but excludes enrolments in the more specialized extended French programs.

A final publicly financed school choice available to a very small number of Ontario families is provided by the limited number of alternative schools operated by some school boards. As discussed in more detail elsewhere (Allison, 2015a: 19–20; 2015b: 293–294), these typically small schools offer publicly funded and managed specialized programs of various kinds. There is no definitive list of these schools but the websites for the two Toronto boards probably identify most of the choices currently available in Ontario. Toronto’s public board lists 19 elementary and 23 secondary choices, including the Africentric and da Vinci schools, the latter Waldorf inspired (Toronto District School Board, 2020). The Toronto Catholic website lists six specialized arts schools, including St. Michael’s Choir School (Toronto Catholic District School Board, 2020).

Choice within the current public system could be further increased by relaxing or dissolving attendance boundaries to allow children to enrol in any accessible government school with space. [9] Parents can also exercise choice by buying a house within the attendance zone of a preferred school. This is a sufficiently well-followed practice for real estate firms to routinely include pertinent school information in their listings. At least one Ontario website provides an interactive map of residential listings, school attendance areas, and the Fraser Institute's school-performance data to assist with such decisions (Zoocasta, 2017). Houses providing access to more highly rated schools can command substantial price premiums. [10] Expensive neighbourhoods may provide ready access to more desirable non-public as well as public schools. Either way, the overall effect of school choice by residence further discriminates against less wealthy Ontario families by both limiting access to preferred public schools and making some non-public schools even more inaccessible.

Nevertheless, more desirable public schools, whether Catholic, French language, French immersion, or highly ranked by the Fraser Institute, are all part of the larger, centrally planned, province-wide, bureaucratically directed schooling system that dominates, defines, and confines child and youth education in Ontario, as do its counterparts in other modern states. Although formally governed by elected politicians and trustees, with school councils providing opportunities for parent representation, Ontario's monolithic provincial system is notoriously resistant to reform, prone to union disruption, [11] and often unresponsive to changing social conditions and economic needs.

There is also growing concern that centrally directed state schooling systems are becoming less effective and more inefficient. These concerns are not limited to the Ontario public school system but are common to varying degrees for all centralized, mass

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[9] Alberta and British Columbia have pioneered such policies in Canada with Edmonton becoming a recognized world leader in providing open access to a rich variety of specialized public-school programs. As a result of legal rulings clarifying attendance rights, Ontario students also have open access to public or Catholic secondary schools. See Allison 2015a: 22–26; 2015b: 290–293 for discussions.

[10] A price premium of 20% to 36% for houses giving access to the “best schools” in the Greater Toronto Area in 2015 was reported by Alini (2017). A detailed 2013 analysis of almost 11,000 elementary school attendance areas in 57 metro areas in the United States found houses in top-ranked school areas cost an average of \$50 more per square foot (Unger, 2013). This positive correlation is likely sustained by a positive feedback loop with residents in more expensive neighbourhoods influencing improved school performance, which then attracts additional parents. Still, residential segregation appears less pronounced in Ontario than in the United States as a result of Ontario's preference for mixed housing developments and the trend toward larger elementary schools.

[11] Comparative statistics on work disruptions in public schools are not readily accessible. A list of notable Ontario strikes compiled by the University of Toronto's Industrial Relations and Human Resources Library (2020) includes three teachers' strikes among the 16 notable strikes in all sectors since 1997, including the infamous two-week walkout protesting Bill 160 in October 1997. As shown by the list compiled by Edwards (2015), at least eight other teachers' strikes or lockouts took place since 1997.

schooling structures. [12] From the early criticisms of Friedman (1955) onward, concerned reactions to this bureaucratic stolidity have fuelled growing interest in school choice as a way of opening doors to more productive and satisfactory forms of education. In essence, the level of access, responsiveness, and accountability available to parents from government schools, imprisoned as they inevitably are in an iron cage of official regulations, policies, and procedures, cannot match the responsiveness, adaptability, and accountability routinely expected of, and typically provided by, more nimble, independently governed, managed, and staffed non-government schools.

Some Ontario families are able to meet the financial cost of their preferred independent school by choosing to live in a less expensive neighbourhood, by cutting household budgets, forsaking vacations, accepting contributions from their extended family or a cultural, religious, or other supportive community, or some combination of these measures. Many cannot. But, even if a regular family can scabble together the money needed for a school of their choice, why must they be forced to make substantial personal sacrifices in order to realize their right to education freedom?

### School choice as a right

Freedom of education for all was enshrined in the 1948 Universal Declaration of Human Rights [UDHR] and has been reaffirmed in successive international agreements to which Canada is a signatory. [13] Crucially, this human right bears with it an embedded right to school choice. After declaring “[e]veryone has the right to an education”, which “shall be free, at least in the elementary and fundamental stages”, the UDHR explicitly states “[p]arents have a prior right to choose the kind of education that shall be given to their children” (United Nations, 1948, Article 26). This is confirmed in other international agreements, particularly The International Covenant on Economic, Social and Cultural Rights [ICESCR] ratified by Canada in 1976. After reaffirming the universal right to education, the Covenant commits signatories to respect “the liberty of parents ... to choose for their children schools, other than those established by the public authorities” (United Nations, 1966, Article 13.3).

Notice how the right to at least an elementary education is to be realized by requiring that it be free. Schools, of course, cannot be operated without costs, which must be financed somehow. The most practical way to do this for all children is through government funding. It follows that the parental right to choose must also be underwritten by public funding for, if enrolling a child in a preferred school is not supported by

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[12] This is well documented in both the academic and more popular literature, especially Ivan Illich’s (1971) iconic but still relevant *Deschooling Society* and more recently in Gatto’s (1992, 2017) popular works. The nature and effects of bureaucratic dysfunctions in public schools are also the stuff of popular movies and television shows, some names of which will spring to mind.

[13] The Right to Education Handbook (UNESCO, 2019) offers a recent comprehensive inventory and discussion of international agreements pertaining to education as a human right and the embedded right to choose. This source identifies at least 20 international agreements affirming this right. See particularly section 3.7 on education freedom.

government funds, the right to education is itself denied. Notice also that fulfilment of these rights does not require, nor depend on, the required government funds being used exclusively, or even at all, to finance publicly governed and operated schools. It could be realized, as it effectively is in Belgium, and the Netherlands, though independently operated non-government schools. Both Belgium and the Netherlands guarantee school choice in their constitutions with parents choosing from schools run by various municipal, community, and independent bodies. More than half of the elementary and secondary students in both countries attend independently operated schools that are fully government funded (Friedman Foundation, 2015; Patrinos, 2011).

Signatories to international agreements are not legally bound by their provisions. [14] They have nevertheless accepted the principles expressed as appropriate international standards. Article 2 of the ICESCR further commits signatories to progressively realize the rights recognized “including particularly the adoption of legislative measures”. The ICESCR Committee has further identified Article 13.3’s right to school choice as capable of immediate implementation in signatory states by judicial if not legislative means. As non-sovereign, sub-national entities, Canada’s provincial legislatures, who are assigned exclusive authority over education by the constitution, are not themselves signatories to these agreements. Alberta, British Columbia, Manitoba, Quebec, and Saskatchewan have nonetheless all enacted legislation providing partial public subsidies for non-government schools. To imagine, claim, or argue that Ontario can somehow hold itself aloof from observing this internationally recognized educational standard embraced by Canada’s other most populous and wealthy provinces is a position not easily sustained.

This position is nonetheless legally justified by the non-justiciability of social and economic rights in Canadian jurisprudence. The Ontario Human Rights Code (OHRC) seeks to combat discrimination on designated grounds such as age, creed, or disability. On this approach, financial support for school choice from public funds needs to be justified on socioeconomic grounds, specifically as discrimination against those unable to afford the cost of a non-public school. But socioeconomic status is not a protected ground under the OHRC and the courts have consistently declined to accept cases predicated on such grounds, viewing this as a matter of public policy beyond their judicial writ and competence. The positive rights enumerated in the Canadian Charter of Rights and Freedoms simply do not include freedom of education, [15] although the s.2 fundamental freedoms, especially freedom of thought, expression, association, conscience,

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[14] At least in the sense of compelled compliance. These and other international agreements, conventions, and treaties are routinely referred to as part of the nebulous body of international law but, as noted by Max Weber and others, law must be enforceable and these agreements are not.

[15] In contrast, Chapter IV of Quebec’s Charter of Human Rights and Freedoms does include a right to education as well as the right to choose compliant private schools. Both are nonetheless limited by conditions that do not fully comply with the international standards under discussion. Thus, s.40 recognizes a right to “a free public education” but the s.42 right to choose a private school does not require public subsidy.

and religion, can all be interpreted as subsuming education. Canada's Supreme Court has nonetheless observed the non-justiciability standard and declined to interpret the Charter's equality rights as providing protection against discrimination on socio-economic grounds. [16]

In sum, the internationally recognized right to freedom of education with its embedded right to government-supported school choice is legally unenforceable in Ontario. This could be seen as barring the door to meaningful school choice. School choice nonetheless remains an internationally recognized right, the moral force of which shines through parochial jurisprudence. And, if not accepted as an enforceable right it remains a standard to be aspired to and judged by. More importantly, this is by no means the end of the matter. It just places the issue squarely within the practical realms of policy and politics. Canadian jurisprudence and decisions in a series of legal cases touched on later have made it clear that school choice will not come to Ontario through legal challenges, but through policy arguments and political action. In these arenas, the right to freedom of education becomes the fulcrum on which to rest levers of change. [17] As outlined below, there are strong educational, social, and economic arguments for Ontario to choose school choice. All such arguments rest on, and gain leverage from, the right to freedom of education; and every argument against school choice must confront the reality of this internationally recognized right. Continued denial can only weaken Ontario's human rights record in the eyes of the international community, as well as distance Ontario from its many democratic and economic partners who have already incorporated school choice into their laws.

These include the five other Canadian provinces that have acted to help level the educational playing field through financial support to non-public schools. Specifics vary, but Alberta, British Columbia, Manitoba, Quebec, and Saskatchewan have each implemented the internationally recognized right to freedom of education in ways that shame Ontario. Moreover, Alberta recently amended the preamble to its Education Act to explicitly include the UDHR prior right of parents to choose (Alberta, 2020). To the south, 31 US states have some form of school-choice legislation, some states having more than one program so that no fewer than 66 distinct US school-choice programs were on the legislative books in early 2020 (EdChoice, 2020). [18] European nations have the most varied and extensive school-choice provisions. In 1984, the European Parliament resolved that “[i]n accordance with the right to freedom of education, Member States shall be required to provide the Financial means whereby this right can be exercised in

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[16] By holding social and economic rights to be non-justiciable Canadian jurisprudence has been described as unwarranted, arbitrary, and outmoded by the ICESCR Committee in its General Comment No. 9 (United Nations, 1998, para. 10).

[17] Archimedes is reputed to have said, “Give me a lever long enough and a fulcrum on which to place it, and I shall move the world”.

[18] Canadian provinces offer grants to independent schools meeting eligibility standards; US states have generally preferred to fund a wide range of scholarship programs typically targeted at disadvantaged children.



practice”. [19] An updated statement from the European Parliament in 2018 extended this to specifically recognize “the right of parents to ensure that their children are educated and taught according to their religious, philosophical and pedagogical convictions” (European Parliament, 2018). Many European countries had instituted meaningful school choice much earlier.

As shown in **table 1**, eight of the 12 Western European countries with the largest economies recognize freedom of education in their constitutions, and all make provisions for school choice in domestic legislation. All fund non-public schools, eight at a rate of 70% or more of public school funding. [20] The four Canadian provinces with the largest provincial GDP are included for comparison. Three have legislated provision for school choice, but none fund independent schools at 70% or higher of public school support. Ontario is conspicuous as the only jurisdiction without enabling legislation and no financial support whatsoever for school choice.

The recently published Education Freedom Index (OIDEI, 2016) provides an illuminating way to compare school-choice provisions around the world. Five of the 12 European countries in table 1 place in the top ten of the 136 countries evaluated, each scoring over 70 points out of a possible 100. The United States ranked 17<sup>th</sup> with a score of 67.9; Canada ranked 55<sup>th</sup> with a score of 56.1. Canada’s score, of course, was largely derived from the five provinces funding non-public schools. Table 1 includes estimates of scores on the Education Freedom Index for the provinces shown. Quebec has the highest score of 71.6, followed by British Columbia with 68.7, and then Alberta with 67. Ontario’s score of 49.9 is the lowest among the 12 nations and four provinces in table 1. Moreover this low score places Ontario well below the international median, sandwiched between Macedonia and Equatorial Guinea.

Given these poor comparisons, it is surely well past time for Ontario to live up to international standards by passing legislation that matches or exceeds the support for school choice long available in Ontario’s sister provinces and other major trading partners.

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[19] European Parliament, 1984, para 9, p. 8. The resolution continues by enjoining Member States “to make the necessary public grants to enable schools to carry out their tasks and fulfil their duties under the same conditions as in corresponding state establishments, without discrimination as regards administration, parents, pupils, or staff; notwithstanding this, however, freely established schools shall be required to make a certain contribution of their own as a token of their own responsibility and as a means of supporting their independent status”.

[20] Drawing on Boeskens (2016) an OECD review expands on this account by noting: “In 10 out of 29 OECD countries, privately managed schools receive more than 80% of their funding, on average, from the government; another 8 OECD countries receive more than 50% of their funding from public sources. Countries where privately managed schools receive high levels of public funding include Sweden (more than 99% of total funding), Finland (around 97%), the Netherlands (around 96%), the Slovak Republic (nearly 92%) and the partner economy Hong Kong (China) (around 91%)” (OECD, 2017: 11).

Table 1: School choice indicators in Western European countries and selected Canadian provinces

	GDP rank	School choice mentioned in:		Non-government schools		Education Freedom Index
		Legislation	Constitution	% enrolled	% funding	
Western European countries						
<i>Germany</i>	1	Yes	Yes	7.4	70	66.2
<i>United Kingdom</i>	2	Yes	Yes	56.1	100	77.4
<i>France</i>	3	Yes	No	22.1	70	68.2
<i>Italy</i>	4	Yes	Yes	7.5	30	57.9
<i>Spain</i>	5	Yes	Yes	31.3	65	71.4
<i>Netherlands</i>	6	Yes	Yes	66.0	90	89.6
<i>Belgium</i>	7	Yes	Yes	69.5	80	89.4
<i>Switzerland</i>	8	Yes	No	5.7	30	54.5
<i>Sweden</i>	9	Yes	No	10.0	100	64.9
<i>Austria</i>	10	Yes	Yes	12.6	60	65.2
<i>Ireland</i>	11	Yes	Yes	57.4	80	98.7
<i>Norway</i>	12	Yes	No	5.0	70	66.4
Selected Canadian provinces						
<i>Ontario</i>	1	No	No	6.7	0	49.9
<i>Quebec</i>	2	Yes	No	9.6	60	71.6
<i>Alberta</i>	3	Yes	No	4.0	60	67.0
<i>British Columbia</i>	4	Yes	No	13.1	50	68.7

Notes and sources: [1] GDP rank calculated from World Bank Purchasing Power Parity (PPP) data (<https://datacatalog.worldbank.org/dataset/gdp-ranking-ppp-based>); [2] Legislation, constitutional status and EFI score from OI DEL, 2016; [3] The United Kingdom does not have a written constitution but protects freedom of education in Article 2 of the 1998 Human Rights Act. [4] Enrolment data from OECD, 2019b: annex C, table 2.2 (<https://doi.org/10.1787/888933971955>), supplemented with 2009 data from OECD, 2012: table B1.1 for Belgium and Sweden. [5] Funding data from OECD, 2012: table B1.1, and OI DEL, 2016. [6] GDP data for Canadian provinces from Statistics Canada, 2020c (table 36-10-0222-01); percentage of enrolment calculated from Statistics Canada, 2020e (table 37-10-0109-01); and percentage of funding from Allison, 2015b: table 2. Canadian EFI estimated by author.

# Policy Justifications

Bringing meaningful school choice to Ontario will require appropriate subsidies from the public purse. These could take the form of transfers to non-public schools; scholarships to students; tax credits or other subsidies to parents, communities, charities or other sponsors; or any combination of these. In line with the international conventions discussed above, independent schools receiving public monies would be required to comply with appropriate regulations and accept suitable supervision. Not only do taxpayers need to be assured of the proper expenditure of public funds, parents and other supporters need to be confident their school of choice meets appropriate operational and educational standards.

Having non-public schools comply with the same criteria as public schools would nonetheless defeat the object of any school-choice policy. Some operational standards, especially those having to do with public health and safety, building codes, and provincial testing should obviously apply equally to all schools, both public and non-public. Greater flexibility is required in the areas of philosophy, organization, curriculum, staffing, and management so as to avoid independently operated schools becoming clones of government schools.

Striking the best balance between public accountability and local autonomy has emerged as a key factor in research investigating school effectiveness in general, and has been found to be even more important when designing regulatory frameworks for independently operated schools (OECD, 2019b). The key difference here is between public schools operating within a hierarchy of government authority and regulation that limits discretion, and independently governed and managed schools that, while still subject to regulatory frameworks, have greater autonomy to define their identity and activities. Leaders and teachers in public schools are employed by public school boards and subject to overlapping statutory, professional, and negotiated rules. In independent schools, teachers and leaders are employed by each school's independent governing body and, while still subject to some provincial and professional requirements, typically exercise greater discretion. In this circumstance, public funding of independent schools not only increases parental choice but also professional choice. Together these foster innovation and experimentation at levels rarely, if ever, attained in centrally directed, publicly managed, schools. In both public or independent schools, overly lax provincial regulation or poor supervision may allow malfeasance, fraud, and incompetence, while overly restrictive regulation or oppressive supervision will impede responsible management, invention, innovation, and experimentation. Getting the balance right is crucial and will require serious attention when redesigning Ontario's regulatory framework for independent schools, as discussed further below. Those undertaking this important task will need to be guided by Andreas Schleicher's caution that, "[i]f schools are not allowed to respond to diverse student populations, and to distinguish themselves from each other, choice is meaningless" (2019: 3).

## Practical arguments

In addition to the internationally agreed upon rights-based expectations outlined earlier, there are strong economic, social, and educational policy arguments for making school choice a reality for all Ontario families. These boil down to enriched education, increased effectiveness, improved efficiency, greater accountability, and enhanced innovation. The logic behind these is largely self-evident. A greater variety of schools enriches the range of education available and will diversify the stock of human capital in society. Schools operating under their own independent governing bodies through the leadership of an accountable manager are likely to be more effective in pursuing their missions and to be run more efficiently than those operated by a large, centrally directed but widely distributed public bureaucracy. They will also be more directly accountable to clients, stakeholders, and community sponsors.

Greater effectiveness may not necessarily translate into improved scores on provincial or other comparable tests because of the broader missions of some independent schools. In this respect, alternative ways of assessing effectiveness may be more meaningful, the most obvious of which is parent and student satisfaction (Walberg, 2007). If such alternative assessments were to be applied to independently operated schools, they should be equally applied to government schools. This goes to the broader point of comparable transparency, which would see both kinds of schools being required to make key operational and performance data readily available to the public paying the bills. Even so, independent schools that perform poorly, whether funded or not, risk closure, a penalty not usually faced by government schools and their staff.

A less obvious argument for funding independently operated schools is the positive effect on government schools. Meaningful choice brings government schools and their administrative superstructure into more direct competition with characteristically more innovative and nimble independent schools. In response, public schools and their administrative system can be stimulated to adopt changes that will make them more competitive. A recent review of 33 empirical studies of US school-choice programs by Forster (2016) found 31 that reported such improvements in public schools. Interesting supporting evidence of this effect also comes from a study of publicly funded schools in Ontario, which found significantly increased test scores in newly opened Catholic and public schools competing for students in rapidly growing residential areas (Card, Dooley, and Payne, 2008). Competition between Ontario's public and Catholic high schools in designing and marketing Specialist High Skills Majors course packages is another pertinent example (Allison, 2015: 20).

## Opposing arguments

Arguments against public funding for private (independent, non-public, non-government, non-state) schools typically seek to portray any proposal as a threat to the ideals and benefits of public education. If implemented, the argument goes, public funding for non-government schools will undermine, weaken, damage, or even destroy public education by encouraging an exodus of students, especially the "better" students; by jeopardizing the learning and life chances of underprivileged children; by syphoning off scarce

resources; by compromising social and education equity, and by undermining social cohesion. Such claims lack convincing support. Some students will undoubtedly move out of public schools—that’s the whole idea! Whether the numbers will be substantial or they will be the “best” students, however defined, or whether public schools will be left with a higher proportion of students from disadvantaged circumstances, is by no means predetermined. Much will depend on the regulatory framework, the new options that become available, the funding model used, and the responses of government schools.

In accord with their social missions, government schools characteristically provide multiple programs intended to accommodate all learners, whereas independent schools often specialize in mission-defined programs and services. Sensible school-choice policies will enable new independent schools to open, further expanding the menu of education programs not available in public schools. Other independent schools may specialize in programs available in government schools, but with the new independent options being better defined, managed, or delivered. Good examples are mission-specific, independently operated special-education schools (Davies and Quirke, 2005). Redistribution of students across the new mix of schools will be influenced by many factors, but will ultimately depend on how parents and students evaluate the options available to them once they are no longer required to accept largely undifferentiated, omni-purpose government schools. Importantly, some parents, probably most, will choose public schools. If they like their school, they will have no incentive to change. This is certainly the pattern in Canadian provinces already funding school choice, where the greater majority of students remain in public schools. So, too, in the European countries with comparable government support for public and non-public schools.

Research points to the crucial importance of ensuring pertinent information about all schools is readily available to guide those choosing a school (OECD, 2019b). When offered real choices and good information, children must reasonably be considered more likely to end up in schools better meeting their needs and aspirations as understood by their parents and themselves. Insofar as a government school does this, it will be a preferred choice. But when parents do not see their child being sensibly accommodated by the programs, performance, and philosophy of an omni-purpose government school they will look elsewhere. This is the logic driving school choice in general. It’s also the demonstrated reality of US policies designed to provide families with choices other than failing inner-city public schools, as well as the on-the-ground reality in choice friendly European nations. Must parents be denied this choice in order to prevent schools they judge unsatisfactory becoming even more unsatisfactory?

As for threats to equity and social cohesion, these pose complex questions that interact with the effects of many other demographic, social, and economic factors, all of which are influenced by non-educational policies and contextual circumstances. Meaningful school choice will result in more children being educated with others from similar social, religious, linguistic, and cultural backgrounds. Some increase in students attending gender-specific schools might also be anticipated. By itself, sorting students into more socially homogeneous categories cannot be reasonably expected to have adverse educational outcomes, and may aid student learning. Indeed, there is ample

evidence that appropriately funding non-public schools can enable children from educationally disadvantaged circumstances to attend schools better suited to their needs and aspirations. This is part of the rationale for Afrocentric and other identity-specialized schools operating in some public school districts, and the logic is surely transferable to non-government schools.

### Equity

For many, equity is the key standard by which to judge education systems. The goal is to ensure equal education opportunities for all children. Rooted in the right to education freedom, this is generally taken to mean that the state has a duty to ensure all children, regardless of gender, socioeconomic status, family background, ethnicity, or membership in any other irrelevant identity category, are accorded equal opportunities to do well in school, achieve similar academic outcomes, and have good life chances. This does not mean all students are to obtain equal educational outcomes. That would deny the reality of individual interests, abilities, talents, and aspirations. Rather, the goal is to enable students to reach similar levels of achievement in core cognitive domains such as language and mathematics, while developing individual talents and attaining and maintaining social and emotional well-being, independent of group identity and other contextual factors.

These are lofty goals, which are by no means fully attained by government school systems despite the optimistic assumptions of many supporters. Yet when resisting school choice, supporters of public schools typically argue that requiring children to be educated together in an omni-purpose, government-run school is a more effective way of pursuing educational equity than “allowing” them to be educated by parents choosing from a differentiated network of diverse, more or less specialized, independently run schools. The research evidence is complex but on balance leans away from the single, omni-purpose common school toward more autonomous models providing meaningful choice. [21] With regard to cognitive outcomes, a landmark analysis of test results from over a quarter million students in public and non-public schools in 37 countries concluded that “rather than harming disadvantaged students, accountability, autonomy, and choice appear to be tides that lift all boats” (Woessmann, Luedemann, Schuetz, and West, 2009: xi).

### Social cohesion

Critics of school choice also condemn educational diversity as undesirable in a pluralistic society, claiming alternatives to common schools jeopardize social cohesion by segregating children and their families in ways that can breed isolation, suspicion, superiority, even conflict. Historical examples sometimes cited in support of this view lack credibility, being instances of state policies using government schools as instruments of racial, class, or religious segregation that have no place in modern Western society, and Ontario in particular. Still, these historical cases show that state schools are more likely to impede equity than sensibly regulated choice between state and non-state schools. Moreover, the history of

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[21] Goldhaber (1999) provides an accessible if somewhat dated review; Egalite and Wolf (2016) and Foreman (2017) more recent reviews.

Ontario's publicly funded Catholic and francophone systems, as well as publicly supported independent schools elsewhere in Canada and the world, show that choice by itself is not a threat to equity. Even so, there is an obvious need for an unambiguous, legally enforceable standard against which to judge the educational purpose of any school. Shapiro (1985: 41) made this point in his now dusty and largely ignored Commission report on private schools, urging clarification of Ontario's still current standard of "satisfactory instruction". This remains one of his important recommendations still demanding attention.

Placed in perspective, claims that sensibly regulated independent schools will threaten social cohesion are more akin to scare tactics than serious objections. Indeed, there is good research evidence showing graduates of independent schools in Ontario, other provinces, and US states are equally or more socially engaged, supportive, and tolerant than are public-school graduates. [22] After reporting that Ontario's parents choosing independent schools tend to have "higher marriage rates, levels of education, and higher-status occupations" a recent survey concluded Ontario's "independent school families also have higher levels of civic engagement, countering the stereotype of independent schools as insular communities" (Van Pelt, Hunt, and Wolfert, 2019: 5).

## Costs and benefits

A fundamental yet often overlooked point in debates over school choice is the difference between schools the government runs and those it funds. [23] The two are clearly distinct, and the difference, hugely significant. The distinction is by no means novel: many government services are delivered by non-government agents and agencies in modern-day Ontario and around the world. [24] Privately operated walk-in clinics, the legal aid service, and ServiceOntario franchises are everyday examples. Universities and community colleges are independently governed and managed post-secondary schools primarily funded through government grants and student loans, while hospitals, care facilities, and other components of the public-health system can also be privately owned and operated.

Not only are these prominent examples of government effectively delivering public services by funding privately managed organizations, these independently run organizations are accepted as contributing to the public good. Walk-in clinics and other specialized medical offices are typically operated as business ventures yet accepted as integral parts of Ontario's public-health system; privately run ServiceOntario offices provide public services central to our economy; universities and community colleges are uncritically accepted as part of the broader public education system. Given this reality, elementary

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[22] See particularly the decade of surveys conducted by the Canadian think tank Cardus, especially Pennings, Sikkink and Berner, 2014; Green, Sikkema and Sikkink, 2018a; and Green, Sikkema, and Sikkink, 2018b. See also DeAngelis, 2017 and Fleming, Mitchell, and McNally, 2014.

[23] I am indebted to this way of expressing the point to Berner (2012: 115).

[24] A distinction needs to be made between government-funded and privately operated services as discussed here and public-private partnerships, often called PPPs or P3s. As usually understood, PPP projects are collaborative ventures between government and private companies designed to pool resources, risks, and rewards in large infrastructure projects (CCPPP, 2020).

and secondary schools funded by the government but run by non-government bodies cannot reasonably be portrayed as unprecedented or untried innovations, or as inherent threats to the public good. They are simply an alternative way to realize the goals, aspirations, and benefits of this key public service; and a way of augmenting the right to government-funded education proclaimed in the international conventions; and, as noted earlier, commonplace in European countries such as Belgium and the Netherlands.

Seen as such, properly funded, sensibly regulated, independently operated schools complement rather than threaten public schools by providing alternate modes, types, and forms of education desired by parents and students, but not available through government-run schools. The most obvious Ontario example is religious education that is not Catholic. As discussed further later, a series of court cases have clearly established that, with the exception of the constitutionally protected Catholic schools, Ontario's public schools are to be secular. [25] In consequence, parents wishing to exercise their right to provide some other religious education for their children have no alternative other than a non-government school. So, too, for parents preferring a form of secular education not available in a local government school, such as Montessori, Waldorf, or a dedicated special-education program.

Privately funded, independently managed schools currently providing these and other alternative forms of education are enriching the collective knowledge and understanding of Ontario society in ways that contribute to the public good. This is especially the case in modern Ontario's culturally diverse society. This argument holds even if contributions to social and cultural diversity are discounted. In and by itself a well-educated population contributes to the public good by strengthening society and the economy. This is so regardless of whether children are educated in government or independently operated schools. When government funds only the schools it runs, the social and economic contributions made by independent schools are privately financed public benefits. These could be viewed as charitable contributions to the public good. Regardless, the many benefits accruing to the public good from privately funded independent schools amount to a dereliction of the government's duty to adequately finance the education of all children, as established in the human rights agreements reviewed earlier, and as required by any serious commitment to education equity.

Opponents of school choice nonetheless cling to the implausible claim that public funds must only be used to finance publicly managed organizations. Yet it is surely obvious that publicly funded scholarship programs, publicly chartered independent schools, tax credits for parents with children in independent schools, and grants to publicly regulated but independently operated schools are but alternate ways of providing government funded education that contribute to the public good. Failure to recognize this confuses ends with means: failure to adequately fund the education of all children, regardless of the school they attend, impedes progress toward education equity. Obdurate attempts to preserve the *status quo* by painting school choice as an existential threat to public education deny education justice to those wishing to choose what they believe is a better education for their children.

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[25] With the additional exception of the sole, also constitutionally protected, Protestant separate school.



# Bringing School Choice to Ontario

By most standards, Ontario has an excellent public school system. Government schools are available to all, staffed by well-prepared professionals, and well financed. Our students have performed well on the international tests in the Programme for International Student Assessment (PISA) since they began in 2000. Yet, Quebec has consistently performed better than Ontario on the PISA math tests, Alberta outperforms us on the reading test, and Alberta and British Columbia on the science test. [26] Internationally, Ontario has been slowly declining in the PISA rankings with lower scores than top-performing Singapore, Hong Kong, and Estonia in the most recent results. These nations and the three provinces outperforming Ontario all have well-established school-choice programs and all outscore Ontario on the Freedom of Education Index by substantial margins.

This is not to claim that implementing meaningful school choice will boost Ontario's PISA scores, although it may. At any rate, there is clearly room for Ontario's schools to do better and providing meaningful school choice is the most straightforward, most promising, most equitable, and cost-efficient way to attempt this. The last two decades of exclusive reliance on an increasingly entrenched system of centrally managed government schools have not delivered observable increases in performance, even though spending on public schools has increased substantially [27] while enrolments have declined (Hill, Li, and Emes, 2019). In contrast, implementing meaningful school choice together with long overdue reforms in how independently run schools are regulated promises to strengthen an expanded public education system and help stop or even reverse the slow slide in PISA scores. As outlined earlier, benefits of meaningful school choice can include improved learning and engagement for children and parents seeking alternatives to government schools, increased educational specialization and diversity, improved responsiveness and enhanced innovation in both independent and government-run schools, together with improved accountability. More speculative but not unreasonable ripple effects over time could include a loosening of rigid provincial curriculum requirements to allow greater teacher discretion and classroom adaptability in government schools, a restructuring of teacher employment conditions and staffing practices that would encourage greater mobility among schools, smaller elementary schools, more differentiated and distributed secondary schools, and the possible replacement of parts or all of the separate Catholic system with networks of parochial and

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[26] With the exception of the most recent 2018 results where Ontario had the third-highest science score after Alberta and Quebec. Rankings from the Education Quality and Accountability Office (EQAO, 2016) and OECD (2019a).

[27] Statistics Canada (2020d) reports Ontario public school expenditures of \$14.5 billion in 1996/97 compared to \$28.2 billion in 2016/17, the latest year available. Using the Consumer Price Index calculator at <<https://inflationcalculator.ca/>>, \$28.2B at 2016/17 prices equates to \$20.9B in 1997 purchasing power, a 44% increase (Canadian Inflation Calculator, 2020).

diocesan Catholic schools funded in the same way as other independent schools. Also, and importantly, Ontario would move its system of public education into the twenty-first century by finally living up to international standards of education freedom through a modernized system of government funded education for all children, rather than only the majority attending government schools.

Ontario can best achieve meaningful school choice by moving to a five-lane system of public education where eligible parents and students choose among the current government-operated English secular, French secular, English Catholic, French Catholic schools and a new lane of government-subsidized and regulated but independently operated schools. Over time the level of financial support for schools in all five lanes should ideally approach equality although, as recognized in the resolution of the European parliament noted earlier, there are advantages to requiring some monetary contribution from all but the least financially able independent school clients. [28] The goal should nonetheless be to ensure all children are able to pursue an education suited to their needs, abilities, talents, and parental choice in one of the five distinct education lanes for which they are eligible, regardless of household income.

Incorporation of the fifth lane into Ontario's system of public education will not be achieved overnight. The legislative and regulatory changes needed to satisfactorily bring all schools together within a single expanded public system while protecting the autonomy of independent schools will require study, consultation, compromise, and good will. For this reason, the five-lane public system would most sensibly be reached across a series of policy stepping stones, the first of which would demonstrate commitment to the principle of choice, bring quick relief to ordinary families choosing independent schools, and initiate the reforms needed to move to a well-designed five-lane system.

### Lessons from history

The major impediment to this plan, or any other way of bringing meaningful school choice to Ontario, is the legacy of recent failed attempts. Premier Bill Davis' 1984 extension of public funding to previously independent Catholic high schools opened up the broader question of funding other independent schools. The Shapiro Commission (1985) appointed to look into the issues recommended partial funding for independent schools together with improved regulation. Although delivered promptly, Shapiro's detailed report was ignored by a new Liberal government preoccupied with legal tussles over the extension of funding. The issues, of course, persisted.

Two legal cases (*Zylberberg*, 1988; *Elgin*, 1990) affirmed that Ontario's government schools are to be secular, and the subsequent *Adler* (1996) and *Bal* (1997) decisions

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[28] See footnote 21. The resolution of the European parliament refers to "token" contributions by parents as a way of demonstrating involvement and shared responsibility. Such benefits can be gained through non-financial contributions made in the form of volunteer work or similar contributions and often are in independent and, to a lesser extent, public schools. Requiring at least a minor financial investment from all parents can nonetheless builds a sense of community and fosters awareness of school life, further contributing to a supportive school climate.

established the government has no obligation to fund religious schools other than the constitutionally protected Catholic schools, but can do so if desired (Dickinson and Dolmage, 1996). This *status quo* was challenged in 1999 when the United Nations Human Rights Committee declared Ontario’s funding of other Catholic schools discriminatory and called for equal treatment for other religions. The Canadian government, the state party to the applicable international agreements, declined to interfere, and Ontario’s then Progressive Conservative government sidestepped the issue by declaring it would abide by its constitutional obligations.

In the spring of 2001, Finance Minister Flaherty nevertheless announced an Equity in Education Tax Credit (EETC) that allowed parents a limited, phased-in tax credit for tuition fees paid to independent schools. As outlined in more detail later, this was opposed by the opposition parties as an assault on public education and became a major issue in the 2003 provincial election. Once installed, Dalton McGuinty’s newly elected Liberal government moved quickly to retroactively repeal the EETC, denying parents the opportunity to claim the tax credit for the single year it had been in effect.

In 2005, the UNHRC again called for an end to Ontario’s selective funding of Catholic schools only and the Progressive Conservative (PC) platform in the 2007 election included a plan to fund faith-based independent schools largely lifted from the Shapiro report. The Progressive Conservative’s comprehensive election defeat was foretold by widespread negative reactions to the plan, including among potential beneficiaries. This 2007 election was the last political attempt to bring school choice to Ontario, the outcome and the negative reactions expressed in opinion polls and editorials convincing many that this had become, or always had been, the third rail of Ontario politics. A poll reported by Karen Howlett (2007) in *The Globe and Mail*, for example, found 71% of the 850 surveyed “totally oppose having the province fund Jewish, Muslim, and other religious schools”.

Throughout this period, the Progressive Conservative party supported school choice, although generally not coherently, while the Liberals and New Democratic Party mounted a powerful and successful opposition. Mindful of the unyielding political attacks on the EETC and their electoral defeats in 2003 and 2007, Ontario’s PC’s have shied away from committing to school choice ever since. The election manifesto of the current Ford PC government made no mention of school choice and ministers have avoided the question. [29] While this implies the prospect of significant change in the short term is remote, the arguments supporting a revitalized and reconceptualized move to bring meaningful school choice to Ontario are sufficiently strong and the stakes sufficiently high, to warrant optimism. Three policy stepping stones could lead to this goal.

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[29] Even so, the platform included a commitment to creating “a 75% refundable tax credit for child care costs for children aged 0–15 and respect parents by leaving to them the choice of what kind of child care is best for their kids”. This proposal was realized in the 2019 Budget as the Childcare Access and Relief from Expenses (CARE) program. That this did not extend to education costs while many of the child-care spaces will be provided in government schools is notable, especially given the explicit rationale of respecting choice (Ontario PC, 2020).

## Reintroduce the Equity in Education Tax Credit

In retrospect the Equity in Education Tax Credit (EETC) was Ontario's Camelot moment in the quest for school choice. As King Arthur crooned in the musical, "once there was a spot, for one brief shining moment, that was known as Camelot". For ordinary parents seeking alternatives to government schools, the year when the EETC was in place gave relief and hope, both of which were dashed when the tax credit was summarily repealed. That hope would be reborn, and a firm step taken toward education justice, by reinstating and updating the EETC or a similar measure. The original initiative authorized an initial tax credit of \$700 per child to eligible parents, which would have risen to \$3,500, or half of the eligible tuition fees paid. These figures would need to be increased to better match current costs, perhaps to \$1,200 in the first year rising to a maximum of \$6,000 per child or half of the receipted tuition cost over a five-year phase-in period. [30]

If the EETC or something analogous were introduced, similar objections would be raised to those voiced when the credit was initially introduced. Four points can be made in response. First the EETC would be a straightforward way to bring school choice to Ontario through reinstating previously existing legislation. Second, 17 years and five elections is an aeon in politics; times have changed and new doors have opened, including those represented by the principles underlying the CARE program. Third, the repeal of the original EETC gave successive Liberal governments free rein to follow their preferred education policies, which have neither lived up to their promised goals nor delivered obvious progress. [31] Finally, inflation-adjusted spending on government schools rose 38.2% under 14 years of Liberal stewardship while enrolment *decreased* 7.3%. There was no increase in government spending on independent schools, of course: it remained zero, while operational and compliance costs increased. Yet enrolment in Ontario's independent schools increased by 14%.

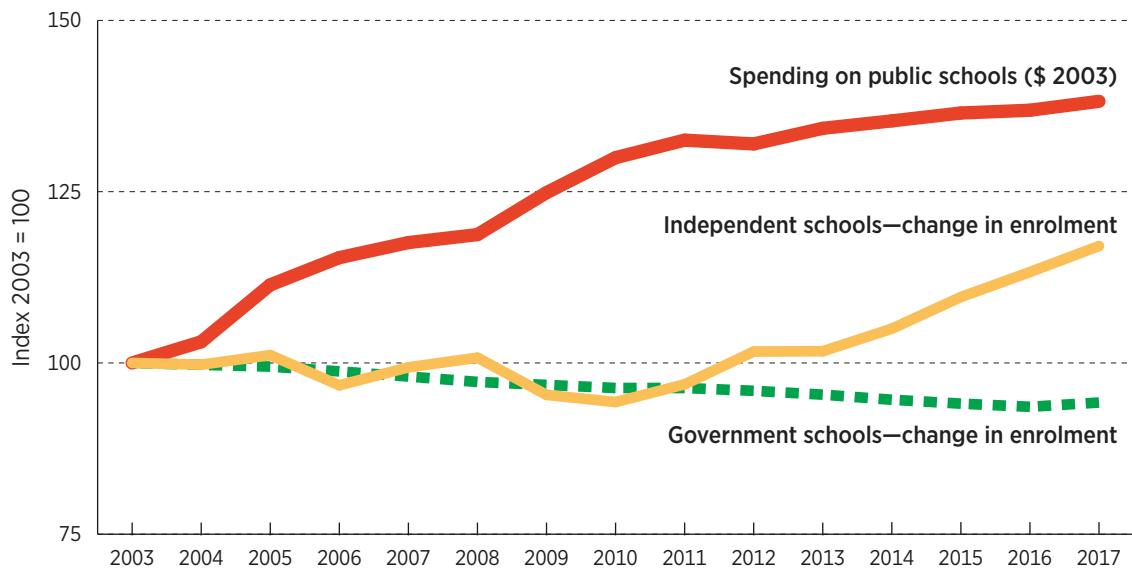
**Figure 3** offers a graphical comparison of these trends using values indexed to a base year of 2003. Government school enrolments declined steadily if slowly with a slight upturn in recent years. The index of inflation-adjusted government school spending nevertheless increased year over year except for a pause between 2011 and 2012, after which it continued to increase at a slower pace. Over the first eight years government school spending increased particularly steeply, rising 32.5% from 2003 to 2011. The index of independent school enrolments was variable until 2010, after which it increased with an hiatus in 2011 to 2012. It continued to increase as the government school enrolment index turned upward in 2016/17.

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[30] These suggested amounts are higher than inflation-adjusted equivalents but are offered as reasonable candidates for the hypothetical discussion that follows. If strictly adjusted using the CPI the comparable amounts would be \$979 and \$4,895, respectively.

[31] Specific promises included improvements in elementary level test scores and improved secondary school retention and achievement, none of which have been unequivocally realized, with the debatable exception of reduced high-school dropout rates, which are likely largely attributable to increasing the compulsory attendance ceiling to 18 years.

Figure 3: Ontario's expenditure on government schools, and changes in enrolment at government and independent schools, 2003–2017, indexed to 2003



Note: "Year" is end of academic year (e.g., 2000 = 1999/2000)

Sources: Expenditure data from Statistics Canada, 2020d, deflated using CPI from Statistics Canada, 2020b. Enrolment statistics from Ontario, Ministry of Education, 2020b, 2020c.

These developments directly contradict the main arguments used against the EETC in hearings of the Standing Committee on Finance and Economic Affairs (Ontario, 2001). Opposition voices claimed the tax credit would lead to an exodus from public schools and rob them of desperately needed resources. The opposite actually happened: spending on government schools increased substantially with no significant improvements. Yet more families switched to independent schools despite being denied government support. So why not give the rejected policy a second, serious chance?

Together these four arguments provide a solid platform from which to begin rehabilitating and re-establishing the EETC or an equivalent. All of the reasoning presented earlier together with additional research can be marshalled in support as needed. One matter that will need to be specifically addressed is cost. As demonstrated by attacks against the original EETC, the key issues here are not so much absolute cost but the relative shares of school financing directed to government and independent schools. There are currently perhaps 150,000 students attending independent schools in Ontario. [32] Assuming full tax credits of \$1,200 were disbursed for all in the first year, this would amount to \$180 million, a veritable drop in the current school budget of \$30 billions.

Actual reimbursements would be lower once progressive income adjustments were applied. On this point, accusations of the EETC being a gift to the rich could

[32] Statistics Canada (2020e) reports a total of 146,340 for 2017/18.

be avoided by explicitly modelling a refurbished education equity credit on Ontario's new CARE program, which was presented as helping families with low and moderate incomes meet their child care costs. A refurbished EETC would do just the same for education costs.

Once in place the new EETC would stimulate growth in independent school enrolments but, given experiences elsewhere as discussed earlier, would not produce the exodus claimed by critics. Even so, every child switching from a government-run to an independently run school would provide a substantial net saving to tax payers. Government schools would no longer incur costs for students switching and would not receive grants for such students. Given the average per-pupil grant is currently around \$12,000, [33] students moving from a government to an independent school and generating the maximum tax credit would save tax payers at least \$10,000 in the first year and \$6,000 or more when the program was fully phased in.

Even so, tax credits for students already enrolled in independent schools would ensure a net increase in overall spending. Assuming a total enrolment of 200,000 independent school pupils eligible for a maximum credit of \$6,000 after a five-year phase-in, theoretical maximum undiscounted total costs would rise to \$1.2 billion. Actual costs would again be substantially less once limits on tuition amounts and income adjustments were applied. Yet, even if we generously assume an annual cost of half a billion dollars after five years, this will still be a small fraction of the by-then-increased budget for government schools. It will also be one of the smallest proportional levels of financial support for school choice in Canada, and far less than levels of support in many European countries as shown in table 1. And it would still fall far short of the costs needed to guarantee the equal financial support for every child needed to meet the internationally recognized education freedom standard. On that point, it's worth noting that using an estimated average per pupil grant of \$12,000, parents of the estimated 150,000 students currently attending independent schools are contributing a privately funded subsidy of \$1.8 billion to the public accounts.

Whether the initial and fully phased-in costs of an updated EETC can properly be viewed as new spending after all costs and obligations are fully accounted for will remain a debateable issue. Even though tax credits supporting education in independent schools will be contributing to the education of Ontario's children and youth, and hence investing in the province's future at half of the per-student cost of students in government-run schools, the ideologically opposed will still protest. This is ultimately a no-win situation where any attempt to defend the new budget line through savings elsewhere, especially the net savings generated by students transferring to independent schools, will be decried. Still, stressing what will undoubtedly continue to be generous funding for government schools would blunt protests, as would reiteration of the public's obligation to educate all children.

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[33] Projected non-capital education grant funding for 2019/20 was \$24.6 billion (Ontario, Ministry of Education, 2019: 16) for an estimated 2018/19 enrolment of 2,040,432 (Ontario, Ministry of Education, 2020a).

Costs cannot be realistically assessed without consideration of benefits. A five-year phase-in provides a short period over which to judge effects of the modest first step toward school choice provided by the EETC. A much longer time span would be needed to assess results. Some measurable effects should nonetheless be detectable earlier. Useful indicators would include surveys of parent and student satisfaction, both of which would be expected to increase in both independent and government schools.

According to the periodic surveys published by the Ontario Institute for Studies in Education (OISE) surveys, public support for funding Ontario “private” schools has hovered around 25% since 1984, although a sharp drop to 15% was reported for 2017, which may be attributable to methodological changes (Hart and Kempf, 2018: table 2.3, p. 65). Support peaked at 34% in 2002 when the EETC was in the public eye, and support may well increase again when the issue of school choice returns to the public agenda. This generally weak and volatile public support points to the need for well-based information initiatives on the meaning and benefits of school choice in general and the EETC specifically. The program was not well defended in the 2003 election campaign, even though public support was historically high. Two key points to be observed are the overall goals and the innovative means to reaching those goals.

On the first point, the goals are equal education opportunities for all and improving schools for the public good. The goal is not to provide funding for non-Catholic faith schools, although this will be one outcome. In this respect, the UNHRC decision handicapped rather than empowered the prospects for school choice in Ontario by focussing attention on one facet of the diverse landscape of independent schools, and directing it away from the central issue of choice. It is an important facet, religious schools of all faiths accounting for around half of Ontario independent school enrolments (Allison, Hasan, and Van Pelt, 2016). But school choice is not about equal treatment of state operated and other religious schools; it is about freedom to choose any properly approved school, religious or not, government managed or independently run, innovative or conventional, specialized or comprehensive, progressive or traditional. Nor is school choice about improving test scores, productivity, or efficiency, although such gains will be realized in some instances. School choice is about choice for all. Attempting or allowing it to be justified solely in terms of improved performance or as a way to provide public support for faith schools leads inevitably to a blind alley. The faith-school argument is also least favoured by the public, with funding for all “private” schools being favoured 2:1 over funding for only faith schools in the OISE surveys (Hart and Kempf, 2018: table 2.3).

Second, and as shown by its name, the Equity in Education Tax Credit helps families who would not otherwise be able afford the education they believe to be best for their children. Even then, because it covers only a portion of the tuition fee, the EETC will be insufficient to make this possible for all families. As outlined earlier, parents can have many reasons for deciding their children would be better in an independent school. Particularly pressing reasons will derive from concerns over a child’s unhappiness or poor development in his or her current school, perhaps intensified by the school’s apparent failure to respond appropriately. The EETC will allow parents in such circumstances to give their child a new start in an alternative school of their choice. Without the EETC,

or some other financial support, many parents in such a position are forced to keep children in what they can legitimately see as a failing school. By directly supporting parents rather than the schools themselves, the EETC directly empowers parents dissatisfied with their current school. Providing direct support for parents who need it, rather than supporting schools themselves, is a superior way of providing meaningful school choice, and will promote greater diversity and enhanced accountability by empowering clients rather than subsidizing school budgets.

While the Ontario public appears indifferent or even hostile to public funding for non-public schools, this does not mean the public uncritically supports the current system of public education. The OISE surveys show public satisfaction with public schools has hovered around 50% since 1980, dropping from a high of 63% in 2009 to 50% in 2017 (Hart and Kempf: table 1.4). Nor will the public necessarily want to support continued discrimination against middle- and working-class families interested in choosing a school better suited to their children once the issues are made clear. Nor should public indifference or hostility be accepted as an insurmountable barrier to including school choice in discussions of improving public education. Moving to reinstate the EETC would open up this discussion, providing opportunities for the development of a more diverse, accommodating, and efficient public education system.

### Reform the regulatory framework

The Shapiro Commission identified many troublesome aspects of how Ontario's non-public schools were regulated and supervised in 1985, with most of his 61 recommendations addressing these shortcomings. Yet hardly anything has changed. Some minor administrative adjustments were made after a troubling Auditor General's report on private schools (OAG, 2013), but the regulatory framework is long overdue for extensive reform. Those two reports are the only official investigations ever undertaken of the schools currently educating a little over than one-twentieth of Ontario's children. [34]

Given the Auditor General's concerns over poor compliance with even straightforward requirements, such as submitting regular operating reports, disreputable practices in so-called diploma mills, and chronic understaffing in the administrative unit responsible for oversight of some 1,400 schools, there are good reasons to believe Ontario's non-public schools have long been systematically ignored by education officialdom. But poor administration is readily traced to legislative and government indifference. Compared to the legislative provisions in Canada's other large provinces, [35] the notice taken of non-public schools in Ontario's statute books is minimal, while the inaction of the government officials in place when Shapiro and the Auditor General tabled their recommendations speaks for itself.

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[34] An estimated 6.7% of all Ontario students in 2017/18, based on the author's calculations from data in Statistics Canada, 2020e, 7.3% of enrolment in government schools.

[35] See Van Pelt, Hasan, and Allison, 2017 for a detailed overview of legislation and regulations concerning independent schools in each Canadian province.



One plausible reason that the current ineffective situation has been ignored for so long is that the needed reforms would independently raise the question of funding independent schools, if only as a means of forcing compliance with monitoring and reporting requirements. The Auditor General did not visit independent schools during the 2013 audit because they were not receiving provincial grants (OAG, 2013: 181). If they were receiving public funds, government agencies and agents would be able to more readily engage in direct supervision and gain compliance with official requirements. These would not be objectionable developments; to the contrary, improved oversight and accountability of Ontario's independent schools should be a central goal of regulatory reform. But justifying government funding as a means of forcing compliance is clearly putting the administrative cart before the educational horse, and in the current case specifically the school-choice horse.

Still, regulatory reform should lead to financial support for independent schools for a variety of good policy reasons. This support could include subsidies to level the playing field with government schools by providing, for example, access to, or compensation for, government-financed textbooks, consultative services, and bussing, as well as grants to offset the costs of complying with health and safety and other mandatory programs. Additional subsidies could be considered desirable for teacher in-service activities, for harmonizing computer systems, and supporting other taken-for-granted support services in government schools. Any such compensatory funding for independent schools that appeared desirable should not be confused with or supplant the direct support to parents provided by the EETC or its equivalent. This is another reason for wanting to reinstate the EETC separately from reforming the regulatory framework. Not only is it necessary to distinguish needed support for parents from compensatory support for schools, the EETC can be reinstated quickly whereas regulatory reform will take time.

As discussed earlier, school autonomy is central to school choice. In this respect, care must be taken to ensure any government funding that may be extended to independent schools does not unnecessarily encroach on their autonomy by, for example, mandating employment of teachers with stipulated qualifications or forcing adherence to provincial curriculum documents. Attaching such strings to school funding would severely constrain the flexibility essential to ensure diversity, innovation, and the prospects for reactive improvements in government schools. For this reason, reform efforts will need to focus on legislative and administrative improvements designed to increase accountability and transparency in the establishment, operation, and performance of independent schools without unreasonably interfering with or limiting their autonomy. Even so, wherever possible without infringing on this autonomy, the new regime should seek to ensure both government and independent schools operate under the same reporting and performance standards.

As part of the right balance, all schools of both kinds could reasonably be expected to file common official reports, participate in all appropriate provincial testing programs, and post common reports for public review. Independent schools are currently required to submit the same official reports as government schools, but this was one of the areas identified by the Auditor General as lacking full compliance. In contrast, independent

schools are not currently required to participate in the provincial testing program, except for the Grade 10 literacy test required for high-school graduation. Independent secondary schools are also required to undergo recurrent Ministry inspection if they wish to offer course credits towards the graduation diploma, but government schools are not. This is largely justified by the supervision provided for government schools by qualified school board officials, even though some independent schools are administered by leaders with similar qualifications and also meet high additional accreditation standards. Still, equal treatment of all schools in an expanded public-education system would properly require both independent and government schools granting diploma credits to participate in comparable quality assurance activities, with any schools giving grounds for concern subject to special inspection.

Currently, independent schools must also pay not insubstantial fees for the inspections needed to offer credit courses. Those wishing to participate in provincial testing must also pay per-pupil fees. These requirements illustrate the deeply embedded division in assumptions and attitudes currently permeating the regulation and supervision of Ontario's schools. As a Ministry official was reputed to define the relationship, "[i]f you want our franchise, you can pay" (Allison, 2013: 16). Whether apocryphal or not, this attitude reflects a deep "us-them" division between Ontario's education officialdom and the "other" world of independent education. It is an unhealthy separation that will have to be healed if progress is to be made toward an expanded five-lane system of public education, or any other form of meaningful school choice.

This is not the place to list other needed reforms. The key point is that the way Ontario currently regulates, supervises, and officially regards independent schools is in need of a long overdue housecleaning. This is needed whether there is any movement toward meaningful school choice or not. But there are obvious advantages to linking the two. Successful reform will depend on building currently lacking cooperation and mutual respect. Demonstrating commitment to independent schools through reinstating the EETC or some similar choice program would be a firm step in this direction. How the reforms would best be accomplished is an open question. Whatever organizational vehicle is chosen, care should be taken to involve respected representatives of the non-public school communities in meaningful ways. At the very least these communities must be sensibly consulted, as should knowledgeable officials in other provinces able to share their knowledge and experiences of different regulatory models. There are also strong arguments for seconding or otherwise directly and actively involving members of the non-public school world in the discussions, decisions, and drafting of the new regulatory framework. Indeed, there is much to be said for inviting the independent school communities to themselves draft new requirements aimed at ensuring quality, confidence, accountability, and transparency in the operation of their schools.

### Legislate a modern public education system

Many of the specific improvements needed can be achieved through new regulations and administrative adjustments. Establishing a new five-lane public education system will nonetheless require legislation. The extent of the needed changes will not be easily

accomplished through piecemeal amendments and additions to the current Education Act, and may well justify adding a new Part to the Act dealing with independent schools. Alternatively, consideration could be given to a separate statute covering independent schools, as in British Columbia and Quebec. Consideration should also be given to placing the licensing, supervision and funding of independent schools under a government agency separate from the ministry of education but accountable to the Minister, similar to Quebec's Private Education Advisory Board (Quebec, Ministère de l'Éducation de l'Enseignement supérieur, 2020).

Whatever form of organization is adopted, it is clear that Ontario's modernized, five-lane system of public education will have to include a considerably expanded capacity for overseeing independently operated schools. Both Shapiro and the Auditor General expressed concerns on this point. Currently, oversight of the largest network of non-government schools in the country is assigned to a small office buried deep in the bureaucratic hierarchy. This is inadequate for current conditions but even a substantially enlarged unit with similarly subordinate status would be unsuited for a suitably modernized system. Not only will much greater administrative capacity be needed, the impression of dismissive unimportance conveyed by the current arrangements will need to be replaced with a new ethos embodying a positive, integrative attitude toward independent schools that encourages mutual respect and cooperation between all members of the expanded public-education enterprise.

While the first steps of the reform process can be accomplished internally, the full legislative package will properly need to receive wider attention and review through public hearings. In the interests of building public support and strengthening the legislation through sensible amendments, hearings would appropriately be held across the province.

Passage of the "Independent School Choice Act" or the "Expansion of Public Education Act", or whatever the chosen name turns out to be, will be a true milestone in the evolution of public education in Ontario. Opening a well engineered, well resourced, accessible fifth lane within the public education system will complete the integration process initiated by Premier Davis when he extended public funding to all Catholic high schools. It will also complete the long pursued project of public education in Ontario by integrating self-governing schools into a revitalized system of public education, while ensuring their independence. This will substantially contribute to Ontario's growth toward education and democratic maturity by extending education freedom for all through meaningful school choice.

## Conclusion

Universal education is an uncontroversial policy. All children have a right to an education. To realize this right the nations of the world agree that elementary and, where possible, secondary education is to be financed by the state. Governments are obligated to fund schools to achieve this, but not necessarily to run them. Even though governments may establish and operate extensive school systems, the international community also agrees parents can freely choose to educate their children in other schools that satisfy appropriate standards. This is recognized as a universal right, not a luxury reserved for the wealthy, or an optional extra. Denying parents the financial support needed to educate their children in a school of their choice denies them and their children full rights to education, and denies society a full and complete public education system.

Despite Ontario's fully financed Catholic and francophone schools, the province's continuing failure to support parents choosing to educate their children in non-government schools renders the province's public education system incomplete. It is time to address this deficiency by implementing meaningful school choice for all and reaping the many benefits this will bring.

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Derek J. Allison, B.Ed., M.Ed., Ph.D., is a Professor Emeritus in the Faculty of Education at the University of Western Ontario. Prof. Allison began his teaching career in England, before moving to Alberta, where he was a school principal. After completing his graduate work at the University of Alberta, he accepted a position with the faculty of education at the University of Western Ontario where he taught social and legal foundations of education for 36 years, and skillfully guided hundreds of graduate students through advanced research and study. He gained acclaim for his teaching, especially his outstanding lectures, and his skill as a mentor and advisor to graduate students. He has an extensive record in research and publication with particular interests in the organization and operation of schools, theories of leadership, and the philosophy of inquiry. He is the recipient of 10 teaching awards and the Distinguished Service Award of the Canadian Association for the Study of Educational Administration.



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