

**SCHOOL BOARD TRUSTEES:
SCHOOL CLOSINGS –
THE SCHOOL BOARD TRUSTEES
WHY THEY WERE CREATED AND WHY THEY EXIST.**

A report created by the
Research Team of the
Ontario Landowners Association and
All Rights Research Ltd.,
May, 2017 ©



E.F. Marshall, Director of Research
President All Rights Research Ltd.,
Director of Research for the Ontario
Landowners Association, Secretary -
Canadian Justice Review Board,
Legislative Researcher – MPs, MPPs,
Elected Officials, Legal Researcher –
Green and Associates Law Firm, etc.,
Member of the Steering Committee –
International Property Rights
Association
Author – Property Rights 101: An
Introduction, Second Edition and
various reports.

Tom Black, President
Ontario Landowners Association
1-613-831-2642
thelandowner@bellnet.ca

PURPOSE

Partners in education sector

0.1 (3) All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems. 2009, c. 25, s. 1.¹

¹ Education Act May 2 2017, R.S.O. 1990, CHAPTER E.2 Consolidation Period: From March 27, 2017 to the e-Laws currency date. Last amendment: 2017, c. 3, s. 26.

Copyright and Disclaimer

This document was prepared for the Ontario Landowners Association (OLA)
by E. F. Marshall, Director of Research, OLA and
President of All Rights Research Ltd.

The OLA/ARR, including any of its members or staff are not lawyers and any
information provided or communicated is not legal advice or counsel. It is for
informational purposes only. Please seek legal advice from your lawyer.

Copyright © May, 2017 by the Ontario Landowners Association
and All Rights Research Ltd.

TABLE OF CONTENTS

Introduction	Page 1
Chapter 1 – Questions	Page 5
Chapter 2 - Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities	Page 39
Chapter 3 – Accommodation Review Guideline – Ministry of Education, March 2015	Page 42
Chapter 4 – Right To Attend School	Page 47
Conclusion	Page 54
Bios	Page 57

INTRODUCTION

Since Confederation, education of children was one of the most important issues for government. So important, in fact, the founding Fathers of Canada included it in the Constitution, under section 93.² This was to ensure that education from kindergarten through to grade 8 were paid, by the local residents, for the services provided by the local School Boards.

It was guaranteed, in our constitution (section 93), that there would be no discrimination against the Roman Catholic French or the English Protestant religious communities, enabling both to obtain an education based in either of these two religions. This is laid out so that in Upper Canada (Ontario) if there was the population supportive of a French Roman Catholic School it would be funded and facilitated in the same manner as a Protestant School. It was the reverse in Quebec (Lower Canada) where if a Protestant English School had a population to support it, that school would be funded in the same manner. And there was to be no discrimination involved with the Separate or Dissident Schools. So what happened to the Protestant schools in Ontario – it would seem they have become the Public Schools of the province.

With the introduction of an educational system there were also local township school boards. These local school boards were elected volunteers who worked to ensure that children from kindergarten through to grade 8 were accommodated; that the property and buildings were maintained; that teachers were employed and "to provide adequate accommodation for all the children of the supporters of public schools between the ages of five and sixteen years,

² Education

Legislation respecting Education

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

resident in the municipality as ascertained by the census taken by the municipal council for the next preceding year."³

In present day Ontario, with the amalgamation of the Township/local School Boards, there has become a systemic problem of the Trustees closing schools, or relocating students, based on criteria which may or may not happen and/or numbers, without the formula used, recommended by consulting companies, which cannot be verified.⁴

School Boards are to operate in the best interest of the residents who have elected them, as it is their fiduciary duty. The School Boards also have staff, as expressed in the criteria of an accommodation review, to determine and provide statistics/information and therefore outside consulting firms should not be used to determine whether an school closure or student relocation is to be executed by the School Board. This is the duty of the School Boards and as the schools are paid for by either Development Charges, property taxes, grants from the federal or provincial levels of government, donations from local corporation and even fees charged for the rental/usage of the school properties.

This document will explain that the School Boards may be in violation of the intent of the *Education Act* and their fiduciary duties; that it has been stated that the Minister/Ministry of Education cannot interfere with the decision of the School Boards; and that the Guidelines and procedures produced by the province are to be used after the decision of the School Boards – not to determine whether or not schools should be closed or students relocated. It also must be brought forward that the residents who pay for the schools may also challenge decisions of the School Boards either through the Ontario Municipal Board or the Superior Courts.

No schools should be closed based on student enrollment numbers. That is the intent of the *Education Act* and that is the obligation of the School Boards and their Trustees. It is hoped that with the short document, the School Boards, throughout the province of Ontario, will realize that they are to operate ensuring accommodation for students/pupils and that they are to facilitate the continued operation of any existing schools whether those schools have 8-10 students or 500+ students. The Trustees are elected to enhance student achievement and well-being, all the while maintaining confidence in the province's publicly funded education systems. Well-being includes "a good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity,"⁵ whereas

³ DUTIES OF TRUSTEES.62. It shall be the duty of the trustees of all public schools and they shall have power :— 3. to provide adequate accommodation for all the children of the supporters of public schools between the ages of five and sixteen years, resident in the municipality as ascertained by the census taken by the municipal council for the next preceding year. Statutes of Ontario, 1896, p. 266-269.

⁴ Bluewater District School Board Long Term Accommodation Strategy *Update Report* September 6, 2016 by Watson and Associates Economists Ltd.

⁵ **WELL-BEING** – A good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity; welfare: *to influence the well-being of the nation and its people.*
<http://www.dictionary.com/browse/well-being>

closing schools or relocating students fails to accomplish the purpose of the *Education Act* and the undermines the confidence the people have in the province's publicly funded education systems.

This issue has raised 7 questions. These questions are:

1. Question – Has the School Board Trustees read: the *Education Act*, the *Assessment Act*, the *Development Charges Act*, the *Municipal Act*?
2. Question – Do the Trustees know and understand what a "trustee," is and what their obligations are? Do the Trustees know and understand what "*fiduciary duty*" is?
3. When a D.S.B. decides to move students and/or close schools are they in violation of their *fiduciary duty* to the students, parents, staff and taxpayers? And are they libel to action under the Education Act if they are violating their *fiduciary duties*?
4. Question – Are the School Boards actually the entities which are looking to close the schools or is there confusion as to what entity is to make the decision?
5. Question – If the Ministry cannot close a school that has more than 8 to 10 pupils, how does a School Board, which has been incorporated and elected to represent the residents in a school district area, determine that it has more authority than the province, considering it has been incorporated by the province and is a creature of legislation?
6. Question – If a parent or guardian must ensure that a child between the ages of 6 – 18 must attend school and the D.S.B.s are closing the schools, is this not placing those parents and/or guardians in violation of the Education Act?
7. Question – If it is the responsibility of the parent or guardian to ensure that the children under their care and control attends school, then is it the School Boards acting unlawfully which is placing the parents or guardians in violation of this Act when they close a school, if the requirements of the Education Act under sections 21 (2)⁶ and section 35 (1)⁷ had previously been met? Also, is it not the

⁶ **Compulsory attendance**

21 (1) Unless excused under this section,

When attendance excused

(2) A person is excused from attendance at school if,

(a) the person is receiving satisfactory instruction at home or elsewhere;

(b) the person is unable to attend school by reason of sickness or other unavoidable cause;

(c) transportation is not provided by a board for the person and there is no school that he or she has a right to attend situated,

(i) within 1.6 kilometres from the person's residence measured by the nearest road if he or she has not attained the age of seven years on or before the first school day in September in the year in question, or

(ii) within 3.2 kilometres from the person's residence measured by the nearest road if he or she has attained the age of seven years but not the age of 10 years on or before the first school day in September in the year in question, or

obligation of the D.S.B.s to ensure that there, once the child has entered a specific school, accommodation at that school for the duration of that child's school attendance? It would seem the D.S.B.s must keep the accommodation at the existing school available to that child so that the D.S.B. is not doing indirectly what it cannot do, lawfully, directly⁸ or is the province issuing directives to the D.S.B.s and interfering where it does not have the authority to interfere?

It is hoped that the aforementioned questions will be answered for the education of the Ministry/Minister, the Trustees, the students, and parents, the tax-payers who take the time to seek out the following information in more detail.

-
- (iii) within 4.8 kilometres from the person's residence measured by the nearest road if he or she has attained the age of 10 years on or before the first school day in September in the year in question;
 - (d) the person has obtained a secondary school graduation diploma or has completed a course that gives equivalent standing;
 - (e) the person is absent from school for the purpose of receiving instruction in music and the period of absence does not exceed one-half day in any week;
 - (f) the person is suspended, expelled or excluded from attendance at school under any Act or under the regulations;
 - (g) the person is absent on a day regarded as a holy day by the church or religious denomination to which he or she belongs; or
 - (h) the person is absent or excused as authorized under this Act and the regulations. 2006, c. 28, s. 5 (1).

⁷ **Resident pupil's right to attend more accessible elementary school**

35 (1) Where a resident pupil who is an elementary school pupil of a school section or separate school zone resides,

(a) more than 3.2 kilometres by the shortest distance by road from the school that the pupil is required to attend;

(b) more than 0.8 kilometres by the shortest distance by road from any point from which transportation is provided to the school that the pupil is required to attend; and

(c) nearer by the shortest distance by road to another school of the same type that is in another section or zone than to the school that the pupil is required to attend,

the pupil shall be admitted to the nearer school of the same type, where the appropriate supervisory officer for the nearer school certifies that there is sufficient accommodation for the pupil in that school. 1997, c. 31, s. 16.

⁸ *"It is an evasion of the Act from which the Local Legislature derives its power. The Local Legislature cannot, no more than private individuals, act as it were in fraud of the law, that is, do by indirect means what it cannot effect directly..."* Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

CHAPTER 1 – QUESTIONS

1. Question – Has the School Board Trustees read: the *Education Act*, the *Assessment Act*, the *Development Charges Act*, the *Municipal Act*?

From "*Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities Election*, October 27, 2014:"

"Experience and Knowledge that would be good to have

...Basic understanding of official meeting procedures and governance policies Candidates should review a copy of their board's bylaws, governance policies and Code of Ethics or Conduct. They could also observe board meetings to get an understanding of the process.

Basic understanding of a Trustee's role as a member of a Board Under the Education Act trustee power lies solely in membership on the corporate school board. The corporate board of trustees is legally accountable to the public and to the Minister of Education for the collective decisions of the board and for the delivery and quality of educational services. This means that once the Board of Trustees has voted, it is a trustee's responsibility to act in a manner that promotes and upholds the board's decision and to communicate the board's decision back to the constituency.

Some awareness of the legal, political and legislative parameters in which school boards operate School board operations are often highly prescribed by legislation or regulation or other forms of provincially driven policy. Candidates need to be aware of this fact, especially when making campaign promises.

Willingness to learn

A newly-elected school trustee has a fairly steep learning curve, and must be willing to spend time becoming familiar with existing board policies and relevant legislation."⁹

"Acceptance to serve on a school board assumes an awareness of the legislated expectations and responsibilities conferred through legislation, provincial policy, contractual agreements or any other mechanism. Trustees must act within these parameters, and be aware of the consequences of

⁹ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 6 - 7.

*decisions that don't respect these commitments. Anyone considering candidacy for school board membership should carefully consider these accountability relationships and responsibilities when making the important decisions to serve, or continuing to serve, on a district school board."*¹⁰

Therefore the Trustees, if they have not read the *Education Act*, the *Assessment Act*, the *Development Charges Act*, the *Municipal Act*, the *Planning Act*, they have not fulfilled their *fiduciary duties* nor do they understand the legislative requirements or what a Trustee is to know and understand.

2. Question – Do the Trustees know and understand what a "trustee," is and what their obligations are? Do the Trustees know and understand what "*fiduciary duty*" is?

The guide should have also explained what a "trust", a "trustee," an "educational trust," a "fiduciary," a "fiduciary duty," and a "fiduciary relationship" is. Below are the accepted lawful definitions of what the aforementioned are:

TRUST: - 1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the *trustee*) at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*). For a trust to be valid, it must involve specific property, reflect the settlor's intent, and be created for a lawful purpose. The two primary types of trusts are *private trusts* and *charitable trusts*. 2. A fiduciary relationship regarding property and charging the person with title to the property with equitable duties to deal with it for another's benefit; the confidence placed in a trustee, together with the trustee's obligations toward the property and the beneficiary. A trust arises as a result of a manifestation of an intention to create it.

EDUCATIONAL TRUST - 1. A trust to found, endow, or support a school. 2. A trust to support someone's education. Black's Law Dictionary, 9th Edition, 2009, p. 1647 – 1650.

TRUSTEE – 1. One who stands in a fiduciary or confidential relation to another; esp., one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. Black's Law Dictionary, 9th Edition, 2009, p. 1656.

FIDUCIARY – 1. A person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor. 2. One who must exercise a high standard of care in managing another's money or property. Black's Law Dictionary, 9th Edition, 2009, p. 702.

¹⁰ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 7.

FIDUCIARY DUTY – A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer's client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another). Black's Law Dictionary, 9th Edition, 2009, p. 581.

FIDUCIARY RELATIONSHIP – (1846) A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. Fiduciary relationships – such as trustee – beneficiary, guardian – ward, principal – agent, and attorney – client – require an unusually high degree of care. Fiduciary relationships usu., arise in one of the four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority of influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer. Black's Law Dictionary, 9th Edition, 2009, p. 1402.

And from the Ontario Superior Court of Justice:

"[107] A fiduciary is one who stands in a position of trust to another individual. This does not require a solicitor-client relationship. In the early development of equity a fiduciary duty was created only pursuant to a legal trust enforced in the courts of equity, otherwise known as the courts of conscience. This analytical consideration of a fiduciary has from my analysis of the case authorities after the enactment of the Judicature Act, 1873, 36 & 37 Vict., c. 66, expanded this concept. Where one party has placed trust and confidence in another and the other has accepted expressly or by operation of law, a fiduciary is established. The party bound by the relationship, the fiduciary, is called the trustee and the party reposing the trust and confidence is called the beneficiary. This relationship is not however premised on the existence of a true "trust" or is trust property required to be involved. To refer to Guerin v. R., 1984 CanLII 25 (SCC), [1984] 2 S.C.R. 335 at p. 376, 13 D.L.R. (4th) 321:

This obligation does not amount to a trust in the private law sense. It is rather a fiduciary duty. If, however, the fiduciary breaches this fiduciary duty it will be liable . . . in the same way and to the same extent as if such a trust were in effect."¹¹

3. Question – When a D.S.B. decides to move students and/or close schools are they in violation of their *fiduciary duty* to the students, parents, staff and

¹¹ 2002 Piccolo v. DiBenedetto et al. Court File No. 02-OC-01402. Ontario Superior Court of Justice.

taxpayers? And are they open to action under the *Education Act*, or other Acts, if they are violating their *fiduciary duties*?

From "*Ontario Education Services Corporation - Professional Development Program for School Board Trustees Modules: 1 Effective Governance through Ethical Leadership*" the statement, it would seem, regarding *fiduciary duty* is in conflict with the purpose of the Act, as well as incorrect, if based on the accepted lawful definitions and court rulings of *fiduciary duty*, as it states:

"I Covering the Basics: The Board's Fiduciary Role

The elected board of trustees has the responsibility to competently protect the interests, image and credibility of the school board, to ensure its financial viability, and to act in accordance with all applicable laws, regulations and policies governing the board or enacted by the government.

Undertaking these responsibilities goes far beyond fiduciary oversight. It requires engagement as a leader in determining the effectiveness of the undertaking. It involves asking questions such as: Does the budget reflect our priorities for students? Is it ethical? What can we learn from our audit? Are we treating staff fairly and respectfully?

The following is an overview of fiduciary expectations as articulated in Ontario's Education Act. More detailed orientation to these responsibilities is provided in specific professional development modules and through the handbook Good Governance: A Guide for Trustees, School Boards, Directors of Education and Communities.

Broad, overarching responsibilities of School Boards were spelled out through the Student Achievement and School Board Governance Act, 2009 which amends Ontario's Education Act. This legislation stipulates that every school board shall:

- promote student achievement and well-being;*
- ensure effective stewardship of the board's resources;*
- deliver effective and appropriate education programs to its pupils;*
- develop and maintain policies and organizational structures that,*
 - promote the board's goals and,*
 - encourage pupils to pursue their educational goals;*
- monitor and evaluate the effectiveness of policies developed by the board in achieving the board's goals and the efficiency of the implementation of those policies;*
- develop a multi-year plan aimed at achieving the boards' goals;*
- annually review the multi-year plan with the board's director of education or the supervisory officer acting as the board's director of education; and*
- monitor and evaluate the performance of the board's director of education, or the supervisory officer acting as the board's director of education, in meeting,*

- his or her duties under this Act or any policy, guideline or regulation made under this Act, including duties under the multi-year plan), and
- any other duties assigned by the board."

The Education Act and its regulations also specify broad-ranging responsibilities for elected boards such as:

- *Ensuring the operation of schools according to provincial legislation/regulation;*
- *Having a vision statement that reflects the board's philosophy and local needs and priorities;*
- *Setting the board's budget within the provincial grants and accompanying regulations;*
- *Ensuring curriculum is implemented according to ministry curriculum policy;*
- *Approving development and delivery of other programs that reflect provincial policies and local priorities;*
- *Hiring and evaluating the performance of the chief executive officer, the director of education;*
- *Ensuring the maintenance of school buildings and property with regard to student safety and in accordance with provincial legislation;*
- *Monitoring their policies and the achievement of their students and, through the director of education, holding the entire system accountable for meeting provincial and board standards.*

Many of these responsibilities will be delegated by the elected board to the director of education.

Elected boards make sure that services and programs that are vital to children, families and the broader community are in place. The exciting opportunity for the board of trustees is to move beyond oversight and compliance to visionary and proactive future thinking ensuring meaningful involvement of students, staff, parents and the broader community, and continuous building of public confidence in publicly funded education."¹²

In comparison to what is stated in "*Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities Election*," which states:

"The responsibilities of school boards are set out in Ontario's Education Act which states that every school board shall:

- *promote student achievement and well-being,¹³ a positive school climate that is inclusive and accepting of all pupils, and prevention of bullying;*

¹² "Ontario Education Services Corporation - Professional Development Program for School Board Trustees Modules: 1 Effective Governance through Ethical Leadership", p. 6 – 7.

¹³ PURPOSE

Strong public education system

0.1 (1) A strong public education system is the foundation of a prosperous, caring and civil society. 2009, c. 25, s. 1.

- *ensure effective stewardship of the board’s resources;*
- *deliver effective and appropriate education programs to its pupils;*
- *develop and maintain policies and organizational structures that,*
 - (i) promote the boards goals and,*
 - (ii) encourage pupils to pursue their educational goals;*
- *monitor and evaluate the effectiveness of policies developed by the board in achieving the board’s goals and the efficiency of the implementation of those policies;*
- *develop a multi-year plan aimed at achieving the boards’ goals;*
- *annually review the multi-year plan with the board’s Director of Education or the supervisory officer acting as the board’s Director of Education; and*
- *monitor and evaluate the performance of the board’s Director of Education, or the supervisory officer acting as the board’s Director of Education, in meeting,*
 - (i) his or her duties under this Act or any policy, guideline or regulation made under this Act, (including duties under the multi-year plan), and*
 - (ii) any other duties assigned by the board. ¹⁴*

Beyond these broad areas of accountability, the Education Act also spells out duties for school boards that include such obligations as effective operation of schools, setting the board’s budget, implementing the

Purpose of education

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society. 2009, c. 25, s. 1.

Partners in education sector

(3) All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province’s publicly funded education systems. 2009, c. 25, s. 1.

¹⁴ **Board responsibility for student achievement and effective stewardship of resources**

169.1 (1) Every board shall,

- (a) promote student achievement and well-being;
 - (a.1) promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;
 - (a.2) promote the prevention of bullying;
- (b) ensure effective stewardship of the board’s resources;
- (c) deliver effective and appropriate education programs to its pupils;
- (d) develop and maintain policies and organizational structures that,
 - (i) promote the goals referred to in clauses (a) to (c), and
 - (ii) encourage pupils to pursue their educational goals;
- (e) monitor and evaluate the effectiveness of policies developed by the board under clause (d) in achieving the board’s goals and the efficiency of the implementation of those policies;
- (f) develop a multi-year plan aimed at achieving the goals referred to in clauses (a) to (c);
- (g) annually review the plan referred to in clause (f) with the board’s director of education or the supervisory officer acting as the board’s director of education; and
- (h) monitor and evaluate the performance of the board’s director of education, or the supervisory officer acting as the board’s director of education, in meeting,
 - (i) his or her duties under this Act or any policy, guideline or regulation made under this Act, including duties under the plan referred to in clause (f), and
 - (ii) any other duties assigned by the board. 2009, c. 25, s. 15; 2012, c. 5, s. 3 (1).

*Ministry's curriculum policies, and ensuring that appropriate staff are hired as required by schools. Boards will also make determinations about such matters as pupil transportation, school libraries, continuing education, childcare facilities on school sites. More details can be found in section 170 of the Education Act. See: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm."*¹⁵

The province, nor any government, can create a law which creates a violation – that is "*it is impossible to obey contradictions,*"¹⁶ and an unlawful act can never be made lawful, "*So the same thing, at the same time, would be both lawful and unlawful, which is impossible.*"¹⁷ The fiduciary duty of the Trustees are to the residents and students – not the Board's *the interests, image and credibility of the school board*, and not the province – the Board of Trustees is to protect the students' and tax-payers' well-being in a reasonably fiscal capacity. The province, it would seem, is misleading the Trustees or at the very least confusing the obligations of the Trustees with their explanation of the Board's fiduciary duties. The Education Act specifically states:

PURPOSE

Strong public education system

0.1 (1) A strong public education system is the foundation of a prosperous, caring and civil society. 2009, c. 25, s. 1.

Purpose of education

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society. 2009, c. 25, s. 1.

Partners in education sector

(3) All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems. 2009, c. 25, s. 1.¹⁸

The Trustees also must understand the definition of "reasonable care," and "reasonable person" to continue to understand their obligations and duties under the *Education Act*.

¹⁵ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election**, October 27, 2014, p. 3

¹⁶ "For a law which a man cannot obey, nor act according to it, is void, and no law: and it is impossible to obey contradictions, or act according to them.

Therefore I may conclude those things to be mala in se (**my note: mala in se means: wrongs in themselves), which can never be made unlawful." 1673 Thomas v. Sorrell. Upheld in SUPREME COURT OF CANADA, Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37

¹⁷ 1673 Thomas v. Sorrell. Upheld in SUPREME COURT OF CANADA, Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37

¹⁸ Education Act May 2 2017, R.S.O. 1990, CHAPTER E.2 Consolidation Period: From March 27, 2017 to the e-Laws currency date. Last amendment: 2017, c. 3, s. 26.

REASONABLE CARE – As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Also termed due care; ordinary care; adequate care; proper care. See Reasonable Person. Black’s Law Dictionary, 9th Edition, 2009, p. 1380.

REASONABLE PERSON - 1. A hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence; specif., a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others’ interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions. Also termed reasonable man, prudent person, ordinarily prudent person, reasonably prudent person. See reasonable care. “The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man – a term which implies an amalgamation of counter-balancing extremes.” R.F.V. Heuston, *Salmond of the Law of Torts* 56 (17th ed. 1977). Black’s Law Dictionary, 9th Edition, 2009, p. 1380.

As a Trustee, the School Board members have the same onus as any lawyer or other entity that has the authority of a trustee, and therefore the first obligation of the School Board is to the residents who (i) elected the Board, and (ii) the tax-payers of that area. A purported want for the construction of a new school is not necessarily in the best interest of the residents or the tax-payers, considering the debt the province is under. Closing schools on the belief that a new larger school will be constructed is no reason to close schools and/or relocate students, considering the effects that will have the tax-payers of Ontario – present and future. Placing children, and future generations, in financial bondage could be considered a breach of a fiduciary duty and could be considered a breach of trust.

In the 2014 "*Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities*" it asks the question – "What is a School Board?"¹⁹ And this guide states that a School Board is:

"A school board is a body that operates the province’s publicly funded schools. The school board is governed by its publicly elected board members (trustees). Trustees can be elected to one of four different kinds

¹⁹ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 3

of school boards: English public, English Catholic, French public and French Catholic."²⁰

The guide goes on to lay out what the duties of a school board are. They include:

"The responsibilities of school boards are set out in Ontario's Education Act which states that every school board shall:

- promote student achievement and well-being,²¹ a positive school climate that is inclusive and accepting of all pupils, and prevention of bullying;*
- ensure effective stewardship of the board's resources;*
- deliver effective and appropriate education programs to its pupils;*
- develop and maintain policies and organizational structures that,
(iii) promote the boards goals and,
(iv) encourage pupils to pursue their educational goals;*
- monitor and evaluate the effectiveness of policies developed by the board in achieving the board's goals and the efficiency of the implementation of those policies;*
- develop a multi-year plan aimed at achieving the boards' goals;*
- annually review the multi-year plan with the board's Director of Education or the supervisory officer acting as the board's Director of Education; and*
- monitor and evaluate the performance of the board's Director of Education, or the supervisory officer acting as the board's Director of Education, in meeting,
(iii) his or her duties under this Act or any policy, guideline or regulation made under this Act, (including duties under the multi-year plan), and
(iv) any other duties assigned by the board.²²*

²⁰ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election**, October 27, 2014, p. 3

²¹ PURPOSE

Strong public education system

0.1 (1) A strong public education system is the foundation of a prosperous, caring and civil society. 2009, c. 25, s. 1.

Purpose of education

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society. 2009, c. 25, s. 1.

Partners in education sector

(3) All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems. 2009, c. 25, s. 1.

²² **Board responsibility for student achievement and effective stewardship of resources**

169.1 (1) Every board shall,

- (a) promote student achievement and well-being;
- (a.1) promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;
- (a.2) promote the prevention of bullying;

Beyond these broad areas of accountability, the Education Act also spells out duties for school boards that include such obligations as effective operation of schools, setting the board's budget, implementing the Ministry's curriculum policies, and ensuring that appropriate staff are hired as required by schools. Boards will also make determinations about such matters as pupil transportation, school libraries, continuing education, childcare facilities on school sites. More details can be found in section 170 of the Education Act. See: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm.²³

So let's look at what is being stated as the responsibilities of a school board. All of these responsibilities are expressed in section 169.1 and then the guide makes reference to section 170. Should the guide not instruct the Trustee to read the *Education Act*, in its entirety, so that the Trustee understands the Act and the intent of the Act, as well as sections 171, 171.1 – 218 - 257 – 257.105, etc., which are also part of their responsibilities, duties and powers?

Not only are the School Board Trustees to enhance student achievement and well-being but so is the Ministry and all of those involved and prescribed under the Act. So what does the term "well-being" involve? "Well-being" is defined as:

WELL-BEING – A good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity; welfare: *to influence the well-being of the nation and its people.*²⁴

According to Martin Cohn, of the Toronto Star (May 15, 2017) he states that "*School closings can be brutal. Students suffer and parents grieve.*"²⁵ And yet the purpose of the Act is to ensure the well-being of the students.

-
- (b) ensure effective stewardship of the board's resources;
 - (c) deliver effective and appropriate education programs to its pupils;
 - (d) develop and maintain policies and organizational structures that,
 - (i) promote the goals referred to in clauses (a) to (c), and
 - (ii) encourage pupils to pursue their educational goals;
 - (e) monitor and evaluate the effectiveness of policies developed by the board under clause (d) in achieving the board's goals and the efficiency of the implementation of those policies;
 - (f) develop a multi-year plan aimed at achieving the goals referred to in clauses (a) to (c);
 - (g) annually review the plan referred to in clause (f) with the board's director of education or the supervisory officer acting as the board's director of education; and
 - (h) monitor and evaluate the performance of the board's director of education, or the supervisory officer acting as the board's director of education, in meeting,
 - (i) his or her duties under this Act or any policy, guideline or regulation made under this Act, including duties under the plan referred to in clause (f), and
 - (ii) any other duties assigned by the board. 2009, c. 25, s. 15; 2012, c. 5, s. 3 (1).

²³ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities Election , October 27, 2014, p. 3

²⁴ **WELL-BEING** – A good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity; welfare: *to influence the well-being of the nation and its people.*

<http://www.dictionary.com/browse/well-being>

²⁵ <https://www.thestar.com/news/queenspark/2017/05/15/the-elephant-in-the-classroom-amid-school-closings-cohn.html>

SUFFER – 1. To experience or sustain physical or emotional pain, distress, or injury. 2. To allow or permit (an act, etc.). Blacks Law Dictionary 9th Edition, 2009, p. 1570.

GRIEVANCE – 1. An injury, injustice, or wrong that gives ground for a complaint <a petition for a redress of grievance>. 2. The complaint itself <the client filed a grievance with the state-bar committee>. Blacks Law Dictionary 9th Edition, 2009, p. 771.

Question – Based on the information above, when a D.S.B. decides to relocate students and/or close schools are they in violation of their *fiduciary duty* to the students, parents, staff and taxpayers? And are they open to legal action under the *Education Act* if they are violating their *fiduciary duties*? If they are acting in a reasonably informed manner and in good faith – it would seem "NO," but if they are in violation of the *Education Act* and/or the trust extended to them, upon their election to the position of trustee to a District School Board, – it would seem "YES."²⁶

²⁶ CONDUCT OF MEMBERS OF SCHOOL BOARDS

Duties of board members

218.1 A member of a board shall,

- (a) carry out his or her responsibilities in a manner that assists the board in fulfilling its duties under this Act, the regulations and the guidelines issued under this Act, including but not limited to the board's duties under section 169.1;
- (b) attend and participate in meetings of the board, including meetings of board committees of which he or she is a member;
- (c) consult with parents, students and supporters of the board on the board's multi-year plan under clause 169.1 (1) (f);
- (d) bring concerns of parents, students and supporters of the board to the attention of the board;
- (e) uphold the implementation of any board resolution after it is passed by the board;
- (f) entrust the day to day management of the board to its staff through the board's director of education;
- (g) maintain focus on student achievement and well-being; and
- (h) comply with the board's code of conduct. 2009, c. 25, s. 25.

Section Amendments with date in force (d/m/y)

Code of conduct

218.2 (1) A board may adopt a code of conduct that applies to the members of the board. 2009, c. 25, s. 25.

Minister's regulations

(2) The Minister may make regulations,

- (a) requiring a board to adopt a code of conduct under subsection (1);
- (b) governing codes of conduct that apply to board members, whether permitted or required under this section, including,
 - (i) prescribing codes of conduct or parts of codes of conduct, and
 - (ii) prescribing matters to be addressed by codes of conduct. 2009, c. 25, s. 25; 2011, c. 9, Sched. 10, s. 2.

Section Amendments with date in force (d/m/y)

Enforcement of code of conduct

218.3 (1) A member of a board who has reasonable grounds to believe that a member of the board has breached the board's code of conduct may bring the alleged breach to the attention of the board. 2009, c. 25, s. 25.

Same

(2) If an alleged breach is brought to the attention of the board under subsection (1), the board shall make inquiries into the matter and shall, based on the results of the inquiries, determine whether the member has breached the board's code of conduct. 2009, c. 25, s. 25.

Same

4. Question – Are the School Boards actually the entities which are looking to close the schools or is there confusion as to what entity is to make the decision?

(3) If the board determines under subsection (2) that the member has breached the board's code of conduct, the board may impose one or more of the following sanctions:

1. Censure of the member.
2. Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board.
3. Barring the member from sitting on one or more committees of the board, for the period of time specified by the board. 2009, c. 25, s. 25.

Same

(4) For greater certainty, the imposition of a sanction under paragraph 2 of subsection (3) barring a member from attending all or part of a meeting of the board shall be deemed, for the purpose of clause 228 (1) (b), to be authorization for the member to be absent from the meeting. 2009, c. 25, s. 25.

Same

(5) A member of a board who is barred from attending all or part of a meeting of the board or a meeting of a committee of the board under subsection (3) is not entitled to receive any materials that relate to that meeting or that part of the meeting and that are not available to members of the public. 2009, c. 25, s. 25.

Same

(6) If a board determines that a member has breached the board's code of conduct under subsection (2),

- (a) the board shall give the member written notice of the determination and of any sanction imposed by the board;
- (b) the notice shall inform the member that he or she may make written submissions to the board in respect of the determination or sanction by a date specified in the notice that is at least 14 days after the notice is received by the member; and
- (c) the board shall consider any submissions made by the member in accordance with clause (b) and shall confirm or revoke the determination within 14 days after the submissions are received. 2009, c. 25, s. 25.

Same

(7) If the board revokes a determination under clause (6) (c), any sanction imposed by the board is revoked. 2009, c. 25, s. 25.

Same

(8) If the board confirms a determination under clause (6) (c), the board shall, within the time referred to in that clause, confirm, vary or revoke the sanction. 2009, c. 25, s. 25.

Same

(9) If a sanction is varied or revoked under subsection (7) or (8), the variation or revocation shall be deemed to be effective as of the date the original determination was made under subsection (2). 2009, c. 25, s. 25.

Same

(10) Despite subsection 207 (1) but subject to subsection (11), the part of a meeting of the board during which a breach or alleged breach of the board's code of conduct is considered may be closed to the public when the breach or alleged breach involves any of the matters described in clauses 207 (2) (a) to (e). 2009, c. 25, s. 25.

Same

(11) A board shall do the following things by resolution at a meeting of the board, and the vote on the resolution shall be open to the public:

1. Make a determination under subsection (2) that a member has breached the board's code of conduct.
2. Impose a sanction under subsection (3).
3. Confirm or revoke a determination under clause (6) (c).
4. Confirm, vary or revoke a sanction under subsection (8). 2009, c. 25, s. 25.

Same

(12) A member who is alleged to have breached the board's code of conduct shall not vote on a resolution to do any of the things described in paragraphs 1 to 4 of subsection (11). 2009, c. 25, s. 25.

Same

(13) The passage of a resolution to do any of the things described in paragraphs 1 to 4 of subsection (11) shall be recorded in the minutes of the meeting. 2009, c. 25, s. 25.

Same

(14) The *Statutory Powers Procedure Act* does not apply to anything done under this section. 2009, c. 25, s. 25.

The guide, "*Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities Election*," goes on to say:

"A trustee's role is to maintain a focus on student achievement and well-being and to participate in making decisions that benefit the entire board district while representing the interests of his or her constituents. Trustees must also communicate the views and decisions of the board back to their constituents."²⁷

"A trustee is responsible for identifying the needs and priorities of their community and for ensuring these are considered in the decisions that result in practical educational opportunities for students."²⁸

"A school board must place all students first when making any decision."²⁹

"Trustees are responsible for establishing policy direction. Policies set out the expectations about what should happen or how services are to be provided within the school board. A well-written policy describes to parents, the public and the board's staff, what they can expect. The Board of Trustees ensure that the director of education carries out responsibilities for implementing board's policies. They entrust the day to day management of the board to its staff through the board's director of education."³⁰

"Trustees, as members of the board, are accountable to the province. The Board of Trustees is accountable to the Province of Ontario for the proper conduct of their duties and powers, including the implementation of provincial policy and the use of provincially allocated funds."

"Trustees are accountable to their electorate. As elected officials trustees must balance the demands of the community with the duties required by the Ministry of Education. By law, they are required to consult with parents, students and supporters of the board on the board's multi-year plan and bring the concerns of these groups to the attention of the board. This can be challenging and takes dedicated leadership coupled with a willingness to seek innovative ideas and the courage to implement them."³¹

"Attending Community Meetings as a representative of the School board

²⁷ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election**, October 27, 2014, p. 4.

²⁸ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election**, October 27, 2014, p. 4.

²⁹ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election**, October 27, 2014, p. 4.

³⁰ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election**, October 27, 2014, p. 4.

³¹ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election**, October 27, 2014, p. 4.

One of a trustee's key responsibilities is to facilitate communication between the board and community groups. Trustees may be asked to attend meetings such as: school council meetings, community groups, municipal councils and municipal committees, meetings with MPPs and MPs, and other community agencies such as district health councils and library boards. Community meetings are often held at night to enable working parents to attend. Attending school events and community functions will give candidates a fuller picture of the role."³²

*"Responding to the concerns of parents and others
A trustee is often the first point of contact for parents and community members who have questions and/or concerns about their local school. While individual trustees do not have the authority to direct board staff to undertake any particular action they can help in answering questions, finding solutions or facilitating interaction with the school and board administration."³³*

Having attended a public meeting, hosted by the Ministry of Education, because of the out-cry regarding the closure of rural schools, a questionnaire³⁴ was presented to the attendees. These questions were presented for people to answer the questions and have a round table discussion, allowing 1 spokesperson per table. This spokesperson was to vocally express the comments made at the table. The questions, based on the comments made by the attendees of the meeting I attended, are biased, redundant, and are not clear as to what assistance they will be. Nor do these questions allow for the express opinions of the students or tax-payers, unless they meet the requirements of the questions. These questions are:

What steps can the provincial government, municipal government, and community partners take to better support early and collaborative community planning to make the most of all public resources, including schools?

Public resources is a very vague and ambiguous statement. There is also the issue that the purpose of the meeting pertains to school closures not the entirety of public resources and as the school boards, and schools are not part of municipal government nor community partners this question does not pertain to the school boards when making reference to "public resources."

There are only 3 pieces of legislation, in Ontario, that make reference to "public resources." They are: The *Courts of Justice Act*, the *Environmental Bill of Rights*

³² Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 5-6.

³³ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 6.

³⁴ Ministry of Education Rural Education Strategy Meeting Workbook.

and the *Voluntary Blood Donations Act*. The *Courts of Justice Act* states, in section 71³⁵ – Goals - *The administration of the courts shall be carried on so as to, (e) promote the efficient use of public resources. 2006, c. 21, Sched. A, s. 14.*

The *Environmental Bill of Rights Act* defines "public resources" as:

Environmental Bill of Rights, 1993

PART VI

RIGHT TO SUE

HARM TO A PUBLIC RESOURCE

Definitions, Part VI

82. In this Part,

"public resource" means,

- (a) air,
- (b) water, not including water in a body of water the bed of which is privately owned and on which there is no public right of navigation,
- (c) unimproved public land,
- (d) any parcel of public land that is larger than five hectares and is used for,
 - (i) recreation,
 - (ii) conservation,
 - (iii) resource extraction,
 - (iv) resource management, or
 - (v) a purpose similar to one mentioned in subclauses (i) to (iv), and
- (e) any plant life, animal life or ecological system associated with any air, water or land described in clauses (a) to (d). 1993, c. 28, s. 82; 2001, c. 9, Sched. G, s. 4 (1); 2002, c. 17, Sched F, Table.

And the *Voluntary Blood Donations Act*, 2014 states:

Purpose

1. *The purpose of this Act is to provide for recognition of the following principles:*

- 1. Within Ontario's health care system, blood donations are viewed as a public resource.*

³⁵ Courts of Justice Act

PART V

ADMINISTRATION OF THE COURTS

Goals

71 The administration of the courts shall be carried on so as to,

- (a) maintain the independence of the judiciary as a separate branch of government;
- (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice;
- (c) encourage public access to the courts and public confidence in the administration of justice;
- (d) further the provision of high-quality services to the public; and
- (e) promote the efficient use of public resources. 2006, c. 21, Sched. A, s. 14.

Question – what "public resources" is the Ministry of Education making reference to in their questionnaire and how does any of these "public resources" pertain to the *Education Act* or the School Board decisions? Therefore "public resources" is a very vague and ambiguous statement, and it would seem, have no relevance to the topic of Education and/or school closures/student re-location.

Where the will exists for community partnerships, what are the hurdles to effectively implement, and how can governments, school boards and partners work to overcome them?

According to the Education Act one must first go to the *Partnerships Act* to determine what a "partnership" is. It states:

Partnership

2. Partnership is the relation that subsists between persons carrying on a business in common with a view to profit, but the relation between the members of a company or association that is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act. R.S.O. 1990, c. P.5, s. 2.

Based on this definition it says that a partnership is a relationship between persons carrying on a business for a profit but that a company or association that is incorporated under the authority of any special or general Act in force in Ontario or elsewhere or is registered as a corporation under any such Act is not a partnership within the meaning of this Act. The *Partnerships Act* continues with:

Rules for determining existence of partnership

3. In determining whether a partnership does or does not exist, regard shall be had to the following rules:

1. Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

2. The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

3. The receipt by a person of a share of the profits of a business is proof, in the absence of evidence to the contrary, that the person is a partner in the business, but the receipt of such a share or payment, contingent on or varying with the profits of a business, does not of itself make him or her a partner in the business, and in particular,

(a) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him or her a partner in the business or liable as such;

(b) a contract for the remuneration of a servant or agent or a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;

(c) a person who,

(i) was married to a deceased partner immediately before the deceased partner died,

(ii) was living with a deceased partner in a conjugal relationship outside marriage immediately before the deceased partner died, or

(iii) is a child of a deceased partner,

and who receives by way of annuity a portion of the profits made in the business in which the deceased partner was a partner is not by reason only of such receipt a partner in the business or liable as such;

(d) the advance of money by way of loan to a person engaged or about to engage in a business on a contract with that person that the lender is to receive a rate of interest varying with the profits, or is to receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing and signed by or on behalf of all parties thereto;

(e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him or her of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such. R.S.O. 1990, c. P.5, s. 3; 1999, c. 6, s. 52; 2005, c. 5, s. 55.³⁶

As school boards are to be a non-profit entity how does this fit in with "partnerships" as defined? As for the hurdles – if there is no partnership as defined this could evidently be a hurdle as well as there is no profit for the non-school board entities. Obviously this has nothing to do with school boards or this issue unless one looks to section 237 of the Education Act which states:

School support, partnership or corporation other than designated ratepayer

237 (1) In this section,

“partnership” means partnership within the meaning of the *Partnerships Act*.³⁷ 1997, c. 31, s. 113 (1).

Non-application to designated ratepayer

³⁶ Partnerships Act, R.S.O. 1990, CHAPTER P.5. Consolidation Period: From December 15, 2009 to the e-Laws

³⁷ **Partnership**

2. Partnership is the relation that subsists between persons carrying on a business in common with a view to profit, but the relation between the members of a company or association that is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act. R.S.O. 1990, c. P.5, s. 2.

(2) This section does not apply to a corporation that is a designated ratepayer as defined in subsection 238 (1).³⁸ 1997, c. 31, s. 113 (1).

Right of corporation or partnership

(3) Subject to subsections (9)³⁹ and (11),⁴⁰ a corporation or partnership by notice to the assessment commissioner in a form approved by the Minister of Finance under the *Assessment Act* may,

- (a) require the whole or any part of its assessment for residential property that it owns and that is within the jurisdiction of an English-language Roman Catholic board to be entered and assessed for English-language Roman Catholic board purposes;
- (b) require the whole or any part of its assessment for residential property that it owns and that is within the jurisdiction of a French-language separate district school board to be entered and assessed for French-language separate district school board purposes; or
- (c) require the whole or any part of its assessment for residential property that it owns and that is within the jurisdiction of a French-language public district school board to be entered and assessed for French-language public district school board purposes. 1997, c. 31, s. 113 (1).

³⁸ “designated ratepayer” means,

- (a) the Crown in right of Canada or a province,
- (b) a corporation without share capital or corporation sole that is an agency, board or commission of the Crown in right of Canada or a province,
- (c) a municipal corporation,
- (d) a corporation without share capital that is a local board as defined in the *Municipal Affairs Act*,
- (e) a conservation authority established by or under the *Conservation Authorities Act* or a predecessor of that Act, or
- (f) a public corporation;

³⁹ **Re corporation**

- (9) The portions of an assessment of a corporation that are assessed other than for English-language public board purposes shall not bear a greater proportion to the whole assessment of the corporation than,
- (a) in the case of assessment assessed for English-language Roman Catholic board purposes, the number of shares held in the corporation by supporters of an English-language Roman Catholic board bears to the total number of shares of the corporation issued and outstanding;
 - (b) in the case of assessment assessed for French-language separate district school board purposes, the number of shares held in the corporation by supporters of a French-language separate district school board bears to the total number of shares of the corporation issued and outstanding; and
 - (c) in the case of assessment assessed for French-language public district school board purposes, the number of shares held in the corporation by supporters of a French-language public district school board bears to the total number of shares of the corporation issued and outstanding. 1997, c. 31, s. 113 (1).

⁴⁰ **Re partnership**

- (11) The portions of an assessment of a partnership that are assessed other than for English-language public board purposes shall not bear a greater proportion to the whole assessment of the partnership than,
- (a) in the case of assessment assessed for English-language Roman Catholic board purposes, the interest of partners who are supporters of an English-language Roman Catholic board in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment;
 - (b) in the case of assessment assessed for French-language separate district school board purposes, the interest of partners who are supporters of a French-language separate district school board in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment; and
 - (c) in the case of assessment assessed for French-language public district school board purposes, the interest of partners who are supporters of a French-language public district school board in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment. 1997, c. 31, s. 113 (1).

Duty of assessment commissioner

(4) On receiving a notice under subsection (3) from the corporation or partnership, the assessment commissioner shall enter separately on the assessment roll to be next returned the corporation's or partnership's school support for each type of board specified in the notice. 1997, c. 31, s. 113 (1).

Same

(5) The assessment commissioner shall separately enter and assess for English-language public board purposes any assessment of the corporation or partnership not specified in the notice. 1997, c. 31, s. 113 (1).

Notice to clerk

(6) The assessment commissioner, on receipt of the notice from the corporation or partnership, shall forward a copy of the notice to the clerk of the municipality in which the residential property referred to in the notice is located. 1997, c. 31, s. 113 (1).

Duty of clerk

(7) On receiving the notice from the assessment commissioner, the clerk shall enter the corporation or partnership in the tax roll and enter separately the corporation's or partnership's school support for each type of board specified in the notice. 1997, c. 31, s. 113 (1); 2002, c. 17, Sched. F, Table.

Same

(8) The clerk shall separately enter and show as assessed for English-language public board purposes any assessment of the corporation or partnership not specified in the notice. 1997, c. 31, s. 113 (1).

Re corporation

(9) The portions of an assessment of a corporation that are assessed other than for English-language public board purposes shall not bear a greater proportion to the whole assessment of the corporation than,

(a) in the case of assessment assessed for English-language Roman Catholic board purposes, the number of shares held in the corporation by supporters of an English-language Roman Catholic board bears to the total number of shares of the corporation issued and outstanding;

(b) in the case of assessment assessed for French-language separate district school board purposes, the number of shares held in the corporation by supporters of a French-language separate district school board bears to the total number of shares of the corporation issued and outstanding; and

(c) in the case of assessment assessed for French-language public district school board purposes, the number of shares held in the corporation by supporters of a French-language public district school board bears to the total number of shares of the corporation issued and outstanding. 1997, c. 31, s. 113 (1).

Same

(10) Subsection (9) does not apply to a corporation without share capital or a corporation sole. 1997, c. 31, s. 113 (1).

Re partnership

(11) The portions of an assessment of a partnership that are assessed other than for English-language public board purposes shall not bear a greater proportion to the whole assessment of the partnership than,

(a) in the case of assessment assessed for English-language Roman Catholic board purposes, the interest of partners who are supporters of an English-language Roman Catholic board in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment;

(b) in the case of assessment assessed for French-language separate district school board purposes, the interest of partners who are supporters of a French-language separate district school board in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment; and

(c) in the case of assessment assessed for French-language public district school board purposes, the interest of partners who are supporters of a French-language public district school board in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment. 1997, c. 31, s. 113 (1).

School support if corporation, partnership is tenant

(12) A corporation or partnership that is a tenant of residential property may, subject to subsection (13), by notice to the assessment commissioner in a form approved by the Minister of Finance under the *Assessment Act* indicate the board or boards to which it wishes the amounts levied under section 257.7⁴¹ in respect of such property to be distributed and the

⁴¹ **Levying of taxes for school purposes**

257.7 (1) Subject to the regulations, the following shall, in each year, levy tax at the rates prescribed under section 257.12:

1. Every municipality, on residential property and business property in the municipality, including territory without municipal organization that is deemed under section 56 or subsection 58.1 (2) to be attached to the municipality, taxable for school purposes, according to the last returned assessment roll.
2. Every English-language public district school board the area of jurisdiction of which includes territory without municipal organization that is not deemed under section 56 or subsection 58.1 (2) to be attached to a municipality, on the residential property and business property in that territory taxable for school purposes, according to the last returned assessment roll.
3. Every district school area board the area of jurisdiction of which includes territory without municipal organization that is not deemed under section 56 or subsection 58.1 (2) to be attached to a municipality, on the residential property and business property in that territory taxable for school purposes, according to the last returned assessment roll. 1997, c. 31, s. 113 (2); 2006, c. 33, Sched. Z.3, s. 8 (10).

Collection

(1.1) The taxes levied in a year under subsection (1) shall be collected as follows:

1. The municipality that levies taxes under paragraph 1 of subsection (1) shall collect the taxes.
2. The taxes levied under paragraphs 2 and 3 of subsection (1) shall be collected under the *Provincial Land Tax Act, 2006* as if they were taxes imposed under that Act. 2006, c. 33, Sched. Z.3, s. 8 (11).

Exception

(2) This section does not apply in respect of property taxed under section 240. 1997, c. 31, s. 113 (2).

Subclass reductions

(3) Section 313 of the *Municipal Act, 2001* or section 278 of the *City of Toronto Act, 2006*, as the case may be, applies with necessary modifications with respect to the rates levied under this section on land in a municipality. 1997, c. 31, s. 113 (2); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 15 (12).

proportions of the amounts to be distributed to each board, and the amounts shall be distributed to the board or boards in the proportions indicated in the notice, and any portion of the amounts not indicated in the notice to be distributed to a specific board shall be distributed to the English-language public board that has jurisdiction in the area in which the property is located. 1997, c. 31, s. 113 (1).

Application of subss. (9), (10), (11), (14), (15) and (16)

(13) Subsections (9), (10), (11), (14), (15) and (16) apply with necessary modifications to a notice given under subsection (12). 1997, c. 31, s. 113 (1).

Effect of notice

(14) A notice given by a corporation under this section pursuant to a resolution of the directors or other persons having control or management over the affairs of the corporation is sufficient and shall continue in force and be acted on until it is withdrawn, varied or cancelled by a notice subsequently given by the corporation pursuant to a resolution of the directors or those other persons. 1997, c. 31, s. 113 (1).

Same

(15) A notice given by a partnership under this section is sufficient if signed by a partner and shall continue in force and be acted on until it is withdrawn, varied or cancelled by a notice subsequently given by a partner. 1997, c. 31, s. 113 (1).

Inspection of notices

(16) Every notice given under this section shall be kept by the assessment commissioner in his or her office, and shall at all convenient hours be open to inspection and examination. 1997, c. 31, s. 113 (1).

Type of board

(17) For the purposes of subsections (4) and (7), the following are types of boards:

1. English-language Roman Catholic boards.
2. French-language public district school boards.
3. French-language separate district school boards. 1997, c. 31, s. 113 (1).

So technically there is no partnership as the corporate/commercial entities referred to are already taxed through the *Assessment Act* and/or the *Development Charges Act*, unless the Ministry of Education is attempting to do indirectly what it cannot do directly, which is to induce corporate/commercial entities to subsidize, through other avenues, the financial support that is the obligation of the Ministry to provide under a specified funding formula. Of which is sadly lacking to sustain these schools and yet there is funding for alternative specialty schools.⁴²

⁴² As of April 28, 2017

https://www.thestar.com/sports/amateur/2008/09/04/bill_crothers_secondary_a_school_unlike_any_other.html

*What are the opportunities for schools boards to share space in your area?
What do you see as obstacles?*

There are no requirements for school boards, other than office space of the school board to share space. As for the obstacles – this might include staff accommodation of the school boards.

What should the provincial government and schools boards be doing to ensure the opportunities to co-operate are supported?

As stated many times by those people in attendance – the funding formula must be re-established pre the Harris government era. There is also the issue of specialty schools which the Ministry is funding, as in from the Toronto Star:⁴³

Bill Crothers Secondary a school unlike any other

By **DAVID GROSSMAN** Sports Reporter

Thu., Sept. 4, 2008

Taylor Smith didn't think a time would come when he would spend his summer vacation anxiously counting the days until school started.

A 15-year-old sports fan, Smith likes to talk about how fortunate he is to have had his application accepted to attend a brand new York Region high school, one entirely publicly funded to boot.

But this just isn't any regular school.

Located on a former 31-acre Unionville golf course, Bill Crothers Secondary isn't a traditional school, one that fits sports around academics.

At Crothers it's the opposite, yet neither sports nor academics suffers.

"This place is a sports fantasy," said Smith, who was among the first group of 250 students in Grades 9 and 10 that began classes last month at nearby Unionville Secondary because workers were still putting on the finishing touches.

"It's so much easier to go to school when everyone is talking sports, playing sports and thinking about sports," said Smith, who plays hockey and football.

He is among the first group able to use the four-level building that has three gyms, two turf fields, an eight-lane track, state-of-the-art training rooms, a walking trail and even a broadcasting booth.

The complex, which can accommodate 1,700 students, came with a price tag of \$32 million.

The school also has an agreement with the municipality for use of a nearby swimming pool and arena.

But what makes Bill Crothers Secondary different from other sports academies with gifted athlete programs in the Greater Toronto Area is its

⁴³ As of April 28, 2017

https://www.thestar.com/sports/amateur/2008/09/04/bill_crothers_secondary_a_school_unlike_any_other.html

emphasis on programs that focus on job opportunities in a variety of sports fields, such as management, promotions, coaching and health sciences. Which is what is so appealing to Smith.

"I'm interested in a career in sports medicine, maybe coaching. I know the reality of playing professional sports just won't happen. This school gives me a chance to play sports, study sports and eventually pursue career options also in sports."

Smith plays a variety of sports, but becoming an elite or professional athlete is not in his plans.

"I play football and hockey for fun, but my future is in a sports management position," said Smith, who commutes from his home in Newmarket. "Most likely sports medicine and maybe becoming a head coach some day."

Named after the Canadian middle-distance running star, Bill Crothers Secondary is touted as an innovative facility open only to York Region students and links training commitments for elite student athletes with a standard academic package.

York Region District School Board officials figured naming the school in honour of Crothers was a natural fit. A national track icon, he was inducted into the Canadian Sports Hall of Fame and is a former chairman of the York school board.

Crothers is known for his supremacy in the 800 metres, an event he dominated in the 1960s. He competed in two Olympic Games, winning a silver medal in 1964 in Tokyo while being awarded the prestigious Lou Marsh trophy as Canada's athlete of the year.

Having met Crothers for the first time yesterday, Smith didn't know much about his accomplishments.

Smith, however, did realize the importance of raising the image of amateur sports.

"I knew he had a track background," said Smith. "If he had any say in the development of this school, the guy is great. It's an amazing place, everything is new, the facilities are outstanding – it's hard to believe it's a school."

The school-sports concept started in a conversation in a coffee shop almost 10 years ago, according to Bill Hogarth, director of the York school board.

"Now a dream has become a reality," said Hogarth.

"Sports and education are a team and we want to ensure that young people know that both are necessary to succeed. I am confident that we'll be graduating some future Canadian star athletes, and I know that national and provincial sport organizations are talking about staging major events here."

Crothers principal Becky Green said school officials were able to get around the thorny issue of eligibility.

"We have students specializing in 26 sports, even cycling and equestrian, which aren't offered at other schools," said Green.

"There are still items to be worked out, but we're not stacking this place with elite athletes from the Region, and there certainly is no recruiting.

"When it comes to playing against other schools, lots of (Crothers) students will choose not to compete because they'll be too busy either at various international events or simply not able to commit to playing for their school."

Judith Crombie, whose daughter Anne attends the school, said she's thrilled with the new facility.

"She is a downhill skier and missed some 40 days of school because of competitions," she said. "Teachers at her former school were not always supportive of a kid missing so many classes.

"They think school comes first, sports second. She's in the new school to benefit from coaches, leadership opportunities and to get an education."

Perhaps the Ministry may be involved in discrimination considering the Ministry is prepared to fund specialty sports schools in larger urban areas and yet not allow regular public schools to be funded adequately in the other areas of the province?

How can the Province best support a meaningful conversation about the impact of schools on local communities and student well-being through the pupil accommodation review process?

There does not need to be a "conversation" with the Province, as the Ministry, the Province and the School Boards have a fiduciary duty to ensure the student's well-being which would include the well-being of the local communities. The financial economic impact of school closures is displayed quite readily in Markdale with the impact it will have on the local industry – Chapman's Ice cream and the agricultural community which surrounds Markdale. If the residents and the agricultural/commercial/industrial owners and/or their staff do not have a school for their children then industry will not exist supporting the local community – not complicated nor a conversation. The well-being of the students is founded in the well-being of their parents and this includes the well-being of the local industry, which supplies employment opportunities, including spin off businesses; property taxes (including both residential and commercial/ industrial property taxes), for continued community sustainability.

How can the Province ensure that the feedback from the community is given full consideration, and that this input is reflected in the review process?

Inform the School Boards that their fiduciary duty is to ensure that the schools are to remain open and that students and tax-payers are the only entity they should be listening to – not staff or failed recommendations/reports, including reports from third party consultants.

What is working well now to help students and rural communities have a positive learning experience and quality education? What could be improved?

As stated by on student in attendance – stop teaching frivolous courses that are (i) not relevant, (ii) have no reality of life, and (iii) are not constructive to the successful achievement or well-being of the student.

How could the Province best recognize and address the unique funding needs of your region and community through the funding formula?

As stated many times by those people in attendance – the funding formula must be re-established pre the Harris government era.

Is there anything else you would like to share?

See below.

5. Question – If the Ministry cannot close a school that has more than 8 to 10 pupils,⁴⁴ how does a School Board, which has been incorporated and elected to represent the residents within the geographical boundaries of a school district area, determine that it has more authority than the province, considering it has been incorporated by the province and is a creature of legislation?

Like Municipalities the Province cannot grant the School Boards more power than it has itself,⁴⁵ therefore the School Boards are restricted by (i) the power of the province, and (ii) the legislation and the School Boards fiduciary duties.

⁴⁴ **District school area board to be inactive**

66 (1) Where the number of public school pupils of compulsory school age residing in a district school area is fewer than ten and the board has ceased to operate a school, the Minister may declare the district school area board inactive as of the 31st day of December in any year. R.S.O. 1990, c. E.2, s. 66 (1).

Accounts in inactive area

(2) When a district school area board is declared to be inactive, the board shall liquidate its assets, settle its accounts and have them audited, and forward to the Ministry the audited statement of accounts, the auditor's report and the balance of the funds for deposit in the Consolidated Revenue Fund. R.S.O. 1990, c. E.2, s. 66 (2).

Board dissolved

(3) If the Minister is satisfied that the board has carried out its duties under subsection (2), the Minister shall dissolve the board and the district school area shall cease to exist as of the date that the district school area board was declared inactive under subsection (1). R.S.O. 1990, c. E.2, s. 66 (3).

Records to be forwarded to Ministry

(4) The records of the dissolved board of the district school area shall be filed as the Minister may direct and, for the purposes of this Act, the pupils resident in such area shall be deemed not to reside in a school section. R.S.O. 1990, c. E.2, s. 66 (4).

Closing of school by Minister

(5) Where in any district school area there are for two consecutive years fewer than eight persons between the ages of five and fourteen years residing therein, the Minister may direct that the public school of the area shall no longer remain open, and the school shall thereupon be closed until the Minister otherwise directs. R.S.O. 1990, c. E.2, s. 66 (5).

⁴⁵ "[51] It is settled law that the Municipality is a creature of statute; it has no greater powers than those conferred upon it by the province which created it." GREATER POWER CITATION: SIOUX LOOKOUT v. CANADA ET AL, 2010 ONSC 2137

DISTRICT SCHOOL AREA BOARD TO BE INACTIVE

Under section 66 (1)⁴⁶ it states that where the number of public school pupils in a district school area is fewer than ten (10) and, only after the board has ceased to operate said school, may the Minister declare the school board area inactive as the end of the year. Under 66 (2)⁴⁷ once the district school board has been declared inactive, the board shall liquidate the assets, settle outstanding accounts with audits, and forward the information to the Ministry, with the auditor's report and the balance of the funds to be deposited into the Consolidated Revenue Fund. Under section 66 (3)⁴⁸ when the Minister is satisfied that the Board has fulfilled its obligations under subsection (2) the Minister shall dissolve the board and the district school area shall cease to exist. Under 66 (4)⁴⁹ the records of said dissolved School Board will be transferred to the Minister. And finally, under section 66 (5)⁵⁰ – Closing of school by Minister – it states that in any district school area there are for two (2) consecutive years fewer than eight (8) persons between the ages of five and fourteen years residing therein, the Minister may direct that the public school of the area shall no longer remain open, and the school shall thereupon be closed until the Minister otherwise directs. In conclusion the authority of the Ministry to close a school, in a District School Board area, is only when there are merely 8 – 10 persons, of school age, attending said school.

Under section 5,⁵¹ of the *Education Act*, the Minister (with the approval of the Lieutenant Governor [L.G.]), may temporarily close a school. Under this section

⁴⁶ **District school area board to be inactive**

66 (1) Where the number of public school pupils of compulsory school age residing in a district school area is fewer than ten and the board has ceased to operate a school, the Minister may declare the district school area board inactive as of the 31st day of December in any year. R.S.O. 1990, c. E.2, s. 66 (1).

⁴⁷ **Accounts in inactive area**

66. (2) When a district school area board is declared to be inactive, the board shall liquidate its assets, settle its accounts and have them audited, and forward to the Ministry the audited statement of accounts, the auditor's report and the balance of the funds for deposit in the Consolidated Revenue Fund. R.S.O. 1990, c. E.2, s. 66 (2).

⁴⁸ **Board dissolved**

66. (3) If the Minister is satisfied that the board has carried out its duties under subsection (2), the Minister shall dissolve the board and the district school area shall cease to exist as of the date that the district school area board was declared inactive under subsection (1). R.S.O. 1990, c. E.2, s. 66 (3).

⁴⁹ **Records to be forwarded to Ministry**

66. (4) The records of the dissolved board of the district school area shall be filed as the Minister may direct and, for the purposes of this Act, the pupils resident in such area shall be deemed not to reside in a school section. R.S.O. 1990, c. E.2, s. 66 (4).

⁵⁰ **Closing of school by Minister**

66. (5) Where in any district school area there are for two consecutive years fewer than eight persons between the ages of five and fourteen years residing therein, the Minister may direct that the public school of the area shall no longer remain open, and the school shall thereupon be closed until the Minister otherwise directs. R.S.O. 1990, c. E.2, s. 66 (5).

⁵¹ **Closing of school or class**

5 (1) Subject to the approval of the Lieutenant Governor in Council, the Minister may order the closing of a school or any class thereof for a specified period. R.S.O. 1990, c. E.2, s. 5 (1).

Pupils deemed in attendance

(2) Where a school or class is closed for a specified period under subsection (1), the pupils in such school or class shall for all purposes, including the calculation of legislative grants and fees, be deemed to be in attendance. R.S.O. 1990, c. E.2, s. 5 (2); 1997, c. 31, s. 4.

pupils do not lose any attendance time, including the calculation of grants and/or fees. Again, if the Minister may only close a school temporarily, with the approval of the L.G., than the province does not have the authority to grant to a D.S.B. the authority to close any school and/or remove students from established schools. This would violate the purpose of the Act and the Legislators intent.

As previously mentioned the Ministry/Minister may create guidelines for the D.S.B.s to follow once the decision is made to close a school. This is established under section 8 (1) paragraph 26,⁵² and does not grant the Ministry nor the Minister authority to instruct a D.S.B. to close a school as the Minister/Ministry is limited to temporarily closing a school under section 5 of the Act and only with the approval of the L.G.

Under section 19 (1),⁵³ of the *Education Act*, the S.B. may close or authorize the closing of a school or class for a temporary period. This is only allowable for a failure of transportation or inclement weather, fire, flood, the breakdown of the school heating plant, the failure of an essential utility or a similar emergency. Section 19 (2)⁵⁴ states the S.B. may also close a school in the case of a teacher's strike or lockout, this includes (3)⁵⁵ that a teacher is not entitled to pay during the time the teacher is on strike or locked out. This is for the protection of the students and property. The definition of "strike" and "lock-out" can be found in the *Labour Relations Act, 1995*.⁵⁶ Again these school closures are merely temporary and do not grant the S.B. the authority to permanently close a school or class. The S.B. may also close the schools for civic holidays under section

⁵² **Powers of Minister**

8 (1) The Minister may, **guidelines respecting school closings**

26. in respect of schools under the jurisdiction of a board, issue guidelines respecting the closing of schools and require that boards develop policies therefrom with respect to procedures to be followed prior to the closing of a school by decision of the board; R.S.O. 1990, c. E.2, s. 8 (1), par. 26.

⁵³ **Closing of school or class by board**

19 (1) A board may close or authorize the closing of a school or class for a temporary period where such closing appears unavoidable because of,

- (a) failure of transportation arrangements; or
- (b) inclement weather, fire, flood, the breakdown of the school heating plant, the failure of an essential utility or a similar emergency. R.S.O. 1990, c. E.2, s. 19.

⁵⁴ **Same**

19. (2) In case of strike by members of a teachers' bargaining unit or a lockout of those members, the board may close one or more schools if it is of the opinion that,

- (a) the safety of pupils may be endangered during the strike or lockout;
- (b) the school building or the equipment or supplies in the building may not be adequately protected during the strike or lockout; or
- (c) the strike or lockout will substantially interfere with the operation of the school. 1997, c. 31, s. 10.

⁵⁵ **Teachers' salary**

19. (3) A teacher is not entitled to be paid his or her salary for the days on which the school in which he or she is employed is closed under subsection (2). 1997, c. 31, s. 10.

⁵⁶ **Definition - 19. (4) In this section,**

"strike" and "lock-out" have the same meaning as in the *Labour Relations Act, 1995*. 1997, c. 31, s. 10.

20,⁵⁷ so it would seem they are limited to temporary closures under these sections.

6. Question – If a parent or guardian must ensure that a child between the ages of 6 – 18 must attend school and the D.S.B.s are closing the schools, is this not placing those parents and/or guardians in violation of the *Education Act*?

7. Question – If it is the responsibility of the parent or guardian to ensure that the children under their care and control attends school, then is it the School Boards acting unlawfully, placing the parents or guardians in violation of this Act when the D.S.B.s close a school, if the requirements, of the *Education Act* under sections 21 (2)⁵⁸ and section 35 (1),⁵⁹ had previously been met? Also, is it not the obligation of the D.S.B.s to ensure that, once the child has entered a specific school, accommodation be sustained at that school for the duration of that child's school attendance? It would seem the D.S.B.s must keep the accommodation at

⁵⁷ **Closing of schools on civic holiday**

20. Where the head of the council of a municipality in which a school is situate proclaims a school day as a civic holiday for the municipality, the board may, by resolution, close any of the schools under its jurisdiction on such day. R.S.O. 1990, c. E.2, s. 20.

⁵⁸ **Compulsory attendance**

21 (1) Unless excused under this section,

When attendance excused

(2) A person is excused from attendance at school if,

- (a) the person is receiving satisfactory instruction at home or elsewhere;
- (b) the person is unable to attend school by reason of sickness or other unavoidable cause;
- (c) transportation is not provided by a board for the person and there is no school that he or she has a right to attend situated,
 - (i) within 1.6 kilometres from the person's residence measured by the nearest road if he or she has not attained the age of seven years on or before the first school day in September in the year in question, or
 - (ii) within 3.2 kilometres from the person's residence measured by the nearest road if he or she has attained the age of seven years but not the age of 10 years on or before the first school day in September in the year in question, or
 - (iii) within 4.8 kilometres from the person's residence measured by the nearest road if he or she has attained the age of 10 years on or before the first school day in September in the year in question;
- (d) the person has obtained a secondary school graduation diploma or has completed a course that gives equivalent standing;
- (e) the person is absent from school for the purpose of receiving instruction in music and the period of absence does not exceed one-half day in any week;
- (f) the person is suspended, expelled or excluded from attendance at school under any Act or under the regulations;
- (g) the person is absent on a day regarded as a holy day by the church or religious denomination to which he or she belongs; or
- (h) the person is absent or excused as authorized under this Act and the regulations. 2006, c. 28, s. 5 (1).

⁵⁹ **Resident pupil's right to attend more accessible elementary school**

35 (1) Where a resident pupil who is an elementary school pupil of a school section or separate school zone resides,

- (a) more than 3.2 kilometres by the shortest distance by road from the school that the pupil is required to attend;
 - (b) more than 0.8 kilometres by the shortest distance by road from any point from which transportation is provided to the school that the pupil is required to attend; and
 - (c) nearer by the shortest distance by road to another school of the same type that is in another section or zone than to the school that the pupil is required to attend,
- the pupil shall be admitted to the nearer school of the same type, where the appropriate supervisory officer for the nearer school certifies that there is sufficient accommodation for the pupil in that school. 1997, c. 31, s. 16.

the existing school available to that child so that the D.S.B. is not doing indirectly what it cannot do, lawfully, directly⁶⁰ or is the province issuing directives to the D.S.B.s and interfering where it does not have the authority to interfere?

Under section 21⁶¹ of the Act brings in compulsory attendance and it states in section 21 (5)⁶² that it is the duty of the parent or guardian of a person, required to attend school, is to ensure that child attends school as required unless the person is at least 16 years old and is no longer under parental control. A person who is required to attend school is any person who reaches the age of 6 before the first school day in September, and they must attend an elementary or secondary school, while the school is in session, from the first school day in September until they reach the age of 18 years; and every person who is 6 years of age after the first school day in September in any year must attend an elementary or secondary school, while the school is in session, from the first school day in September in the next succeeding year until the last school day in June in the year until they reach the age of 18 years. Section 21 (6) and (7)⁶³ lays out the rules for the Roman Catholic separate school supporters/attendees.

In section 21 (1.1)⁶⁴ it expresses information in regards to equivalent learning and under section 21 (2)⁶⁵ gives the reasons a person is excused from attending. These include:

⁶⁰ *"It is an evasion of the Act from which the Local Legislature derives its power. The Local Legislature cannot, no more than private individuals, act as it were in fraud of the law, that is, do by indirect means what it cannot effect directly..."* Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

⁶¹ **Compulsory attendance**

21. (1) Unless excused under this section,

(a) every person who attains the age of six years on or before the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in that year until the person attains the age of 18 years; and

(b) every person who attains the age of six years after the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in the next succeeding year until the last school day in June in the year in which the person attains the age of 18 years. 2006, c. 28, s. 5 (1).

⁶² **Duty of parent, etc.**

21. (5) The parent or guardian of a person who is required to attend school under this section shall cause the person to attend school as required by this section unless the person is at least 16 years old and has withdrawn from parental control. 2006, c. 28, s. 5 (1).

⁶³ **Separate school supporters**

21. (6) Nothing in this section requires the child of a Roman Catholic separate school supporter to attend a public school or a Protestant separate school, or requires the child of a public school supporter to attend a Roman Catholic separate school. R.S.O. 1990, c. E.2, s. 21 (6).

Persons 16 and over – religious rights

21. (7) Nothing in this section requires a person who is at least 16 years old and has withdrawn from parental control to attend,

(a) a Roman Catholic separate school, if he or she is qualified under section 36 to be a resident pupil in respect of a secondary school district of a public board; and

(b) a public school, if he or she is qualified under section 36 to be a resident pupil in respect of a separate school zone of a separate district school board. 2006, c. 28, s. 5 (2).

⁶⁴ **Participation in equivalent learning**

21. (1.1) A person shall be considered to be attending school when he or she is participating in equivalent learning if the equivalent learning program, course of study or other activity and the group, organization or entity providing it have been approved under paragraph 3.0.1 of subsection 8 (1). 2006, c. 28, s. 5 (1).

⁶⁵ **When attendance excused**

21. (2) A person is excused from attendance at school if,

- the person is receiving satisfactory instruction at home or elsewhere;
- the person is unable to attend school by reason of sickness or other unavoidable cause, this does not include, under section 21 (3)⁶⁶ a person who is blind, deaf or has a developmental disability;
- transportation is not provided by a board for the person and there is no school that he or she has a right to attend situated,
 - (i) within 1.6 kilometres from the person’s residence measured by the nearest road if he or she has not attained the age of seven years on or before the first school day in September in the year in question, or
 - (ii) within 3.2 kilometres from the person’s residence measured by the nearest road if he or she has attained the age of seven years but not the age of 10 years on or before the first school day in September in the year in question, or
 - (iii) within 4.8 kilometres from the person’s residence measured by the nearest road if he or she has attained the age of 10 years on or before the first school day in September in the year in question;
 (**Note: Distances can also be found under section 35 – the Right to Attend School).
- the person has obtained a secondary school graduation diploma or has completed a course that gives equivalent standing;
- the person is absent from school for the purpose of receiving instruction in music and the period of absence does not exceed one-half day in any week;
- the person is suspended, expelled or excluded from attendance at school under any Act or under the regulations;
- the person is absent on a day regarded as a holy day by the church or religious denomination to which he or she belongs; or

-
- (a) the person is receiving satisfactory instruction at home or elsewhere;
 - (b) the person is unable to attend school by reason of sickness or other unavoidable cause;
 - (c) transportation is not provided by a board for the person and there is no school that he or she has a right to attend situated,
 - (i) within 1.6 kilometres from the person’s residence measured by the nearest road if he or she has not attained the age of seven years on or before the first school day in September in the year in question, or
 - (ii) within 3.2 kilometres from the person’s residence measured by the nearest road if he or she has attained the age of seven years but not the age of 10 years on or before the first school day in September in the year in question, or
 - (iii) within 4.8 kilometres from the person’s residence measured by the nearest road if he or she has attained the age of 10 years on or before the first school day in September in the year in question;
 - (d) the person has obtained a secondary school graduation diploma or has completed a course that gives equivalent standing;
 - (e) the person is absent from school for the purpose of receiving instruction in music and the period of absence does not exceed one-half day in any week;
 - (f) the person is suspended, expelled or excluded from attendance at school under any Act or under the regulations;
 - (g) the person is absent on a day regarded as a holy day by the church or religious denomination to which he or she belongs; or
 - (h) the person is absent or excused as authorized under this Act and the regulations. 2006, c. 28, s. 5 (1).

⁶⁶ **Blind, deaf or developmental disability**

21. (3) The fact that a person is blind, deaf or has a developmental disability is not of itself an unavoidable cause under clause (2) (b). 2006, c. 28, s. 5 (1).

- the person is absent or excused as authorized under this Act and the regulations.

Section 21 (4)⁶⁷ states that if a person is enrolled and yet is under the compulsory age of 6 – 18 that person shall attend school as if that person is of the compulsory age of 6 – 18.

It states in section 30 (1)⁶⁸ that a parent or guardian of a child, aged 6 – 18, that refuses or neglects to make that child attend school, unless the child is 16 and is no longer under parental control, is guilty of an offence and is liable to a fine of not more than \$200.00. 30 (2)⁶⁹ states that when a parent or guardian is convicted of the offence of refusing or neglecting to force a child to attend school, the court may add conditions to the fine that the child shall attend school.

To continue with committing offences, under section 30 (3)⁷⁰ if a company hires anyone, during school hours, who is to attend school, except those 16 years of age or older (not under the control of a parent or guardian), is guilty of an offence and if convicted can be fined up to \$200.00. This includes that every director and officer of the corporation who authorizes, permits or turns a the other way, and allows anyone, during school hours, who is to attend school, except those 16 years of age or older (not under the control of a parent or guardian), to continue to work [30 (4)⁷¹].

Under section 30 (5)⁷² explains about absenteeism from school for those under the age of 18, unless they are 16 years of age and not under the control of a

⁶⁷ **Person under compulsory age**

21. (4) Where a person under compulsory school age has been enrolled as a pupil in an elementary school, this section applies during the period for which the person is enrolled as if he or she were of compulsory school age. 2006, c. 28, s. 5 (1).

⁶⁸ **Offences: non-attendance**

Liability of parent or guardian

30 (1) A parent or guardian of a person required to attend school under section 21 who neglects or refuses to cause that person to attend school is, unless the person is 16 years old or older, guilty of an offence and on conviction is liable to a fine of not more than \$200. 2006, c. 28, s. 7 (1).

⁶⁹ **Bond for attendance**

30. (2) The court may, in addition to or instead of imposing a fine, require a parent or guardian convicted of an offence under subsection (1) to submit to the Minister of Finance a personal bond, in a form prescribed by the court, in the penal sum of \$200 with one or more sureties as required, conditioned that the parent or guardian shall cause the person to attend school as required under section 21 and, upon breach of the condition, the bond is forfeit to the Crown. 2006, c. 28, s. 7 (1).

⁷⁰ **Employment during school hours**

30. (3) Anyone who employs during school hours a person required to attend school under section 21 is, unless the person is 16 years old or older, guilty of an offence and on conviction is liable to a fine of not more than \$200. 2006, c. 28, s. 7 (1).

⁷¹ **Offences by corporations**

30. (4) Subsections (1) and (3) apply with necessary modifications to a corporation and, in addition, every director and officer of the corporation who authorizes, permits or acquiesces in the contravention is guilty of an offence and on conviction is liable to the same penalty as the corporation. R.S.O. 1990, c. E.2, s. 30 (4).

⁷² **Habitually absent from school**

30. (5) A person who is required by law to attend school and who refuses to attend or who is habitually absent from school is, unless the person is 16 years old or older, guilty of an offence and on conviction is

parent or guardian. This section brings in the *Provincial Offences Act*, Part VI and section 266 (2) of the *Education Act*. Firstly one must go to Part VI of the P.O.A. to find the definition of "parent," which states an adult with whom the young person ordinarily resides. A "young person" is defined as a person who is 12 to 16 years of age,⁷³ and that a person under the age of 12 will be convicted of an offence.⁷⁴ Under section 96⁷⁵ a notice must be delivered to a parent if a young person has been charged and a summons issued. The rest of Part VI pertains to sentencing, etc., for a provincial office under that Act.

Section 30 (6) of the *Education Act*, works in conjunction with section 30 (5) and explanation is not required. Section 30 (7)⁷⁶ states that if charged the court may

liable to the penalties under Part VI of the *Provincial Offences Act* and subsection 266 (2) requires that the information be included in the record. 2006, c. 10, s. 35 (4).

Proceedings under subs. (5)

30. (6) Proceedings in respect of offences under subsection (5) shall be proceeded with only in accordance with such subsection. R.S.O. 1990, c. E.2, s. 30 (6)

⁷³ **YOUNG PERSONS**

Definitions, Part VI

93. In this Part,

"parent", when used with reference to a young person, includes an adult with whom the young person ordinarily resides; ("père ou mère")

"young person" means a person who is or, in the absence of evidence to the contrary, appears to be,

(a) twelve years of age or more, but

(b) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he or she was twelve years of age or more but under sixteen years of age. ("adolescent") R.S.O. 1990, c. P.33, s. 93.

⁷⁴ **Minimum age**

94. No person shall be convicted of an offence committed while he or she was under twelve years of age.

R.S.O. 1990, c. P.33, s. 94.

Offence notice not to be used

95. A proceeding commenced against a young person by certificate of offence shall not be initiated by an offence notice under clause 3 (2) (a). R.S.O. 1990, c. P.33, s. 95.

⁷⁵ **Notice to parent**

96. (1) Where a summons is served upon a young person or a young person is released on a recognizance under this Act, the provincial offences officer, in the case of a summons, or the officer in charge, in the case of a recognizance, shall as soon as practicable give notice to a parent of the young person by delivering a copy of the summons or recognizance to the parent.

Where no notice given

96.(2) Where notice has not been given under subsection (1) and no person to whom notice could have been given appears with the young person, the court may,

(a) adjourn the hearing to another time to permit notice to be given; or

(b) dispense with notice.

Saving

96. (3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceeding against the young person. R.S.O. 1990, c. P.33, s. 96.

⁷⁶ **Reference to provincial counsellor for inquiry**

30. (7) Where, in a proceeding under this section, it appears to the court that the person may have been excused from attendance at school under subsection 21 (2), the court may refer the matter to the Provincial School Attendance Counsellor who shall direct that an inquiry shall be made as provided in subsection 24 (2) which subsection shall apply with necessary modifications except that the Provincial School Attendance Counsellor shall, in lieu of making an order, submit a report to the court. R.S.O. 1990, c. E.2, s. 30 (7); 2006, c. 28, s. 7 (6).

Section Amendments with date in force (d/m/y)

Proceedings under s. 30: rules

31 (1) Prosecutions under section 30 shall be instituted by the school attendance counsellor concerned. R.S.O. 1990, c. E.2, s. 31 (1).

send this to a Provincial School Attendance Counsellor⁷⁷ if the court determines that the failed attendance was exempted under section 21 (2).⁷⁸

In conclusion section 30 of the *Education Act* is for mandatory attendance of pupils and makes the parent or guardian responsible for this. It also makes businesses liable to fines of up to \$200.00 for hiring a student, if that student is not over the age of 16 or is not under the control of a parent or guardian. The

Certificate of principal as evidence

(2) In prosecutions under section 30, a certificate as to the attendance or non-attendance at school of any child, signed or purporting to be signed by the principal of the school, is proof in the absence of evidence to the contrary of the facts stated therein without any proof of the signature or appointment of the principal. R.S.O. 1990, c. E.2, s. 31 (2); 1993, c. 27, Sched.

Proof of age

(3) Where a person is charged under section 30 in respect of a child who is alleged to be of compulsory school age and the child appears to the court to be of compulsory school age, the child shall, for the purposes of such prosecution, be deemed to be of compulsory school age unless the contrary is proved. R.S.O. 1990, c. E.2, s. 31 (3).

Order re school attendance

(4) An order made under subsection 24 (2) shall be admitted in evidence in a prosecution only where the prosecution is in respect of the school year for which the order was made. R.S.O. 1990, c. E.2, s. 31 (4).

Section Amendments with date in force (d/m/y)

⁷⁷ **Inquiry by Provincial Counsellor**

(2) Where the parent or guardian of a child considers that the child is excused from attendance at school under subsection 21 (2), and the appropriate school attendance counsellor or the Provincial School Attendance Counsellor is of the opinion that the child should not be excused from attendance, the Provincial School Attendance Counsellor shall direct that an inquiry be made as to the validity of the reason or excuse for non-attendance and the other relevant circumstances, and for such purpose shall appoint one or more persons who are not employees of the board that operates the school that the child has the right to attend to conduct a hearing and to report to the Provincial School Attendance Counsellor the result of the inquiry and may, by order in writing signed by him or her, direct that the child,

- (a) be excused from attendance at school; or
- (b) attend school,

and a copy of the order shall be delivered to the board and to the parent or guardian of the child. R.S.O. 1990, c. E.2, s. 24 (2)

⁷⁸ **Compulsory attendance**

21 (1) Unless excused under this section,

When attendance excused

(2) A person is excused from attendance at school if,

- (a) the person is receiving satisfactory instruction at home or elsewhere;
- (b) the person is unable to attend school by reason of sickness or other unavoidable cause;
- (c) transportation is not provided by a board for the person and there is no school that he or she has a right to attend situated,
 - (i) within 1.6 kilometres from the person's residence measured by the nearest road if he or she has not attained the age of seven years on or before the first school day in September in the year in question, or
 - (ii) within 3.2 kilometres from the person's residence measured by the nearest road if he or she has attained the age of seven years but not the age of 10 years on or before the first school day in September in the year in question, or
 - (iii) within 4.8 kilometres from the person's residence measured by the nearest road if he or she has attained the age of 10 years on or before the first school day in September in the year in question;
- (d) the person has obtained a secondary school graduation diploma or has completed a course that gives equivalent standing;
- (e) the person is absent from school for the purpose of receiving instruction in music and the period of absence does not exceed one-half day in any week;
- (f) the person is suspended, expelled or excluded from attendance at school under any Act or under the regulations;
- (g) the person is absent on a day regarded as a holy day by the church or religious denomination to which he or she belongs; or
- (h) the person is absent or excused as authorized under this Act and the regulations. 2006, c. 28, s. 5 (1)

province, nor any government, can create a law which creates a violation – that is "*it is impossible to obey contradictions*,"⁷⁹ and an unlawful act can never be made lawful, "*So the same thing, at the same time, would be both lawful and unlawful, which is impossible.*"⁸⁰

⁷⁹ "For a law which a man cannot obey, nor act according to it, is void, and no law: and it is impossible to obey contradictions, or act according to them. Therefore I may conclude those things to be mala in se (**my note: mala in se means: wrongs in themselves), which can never be made unlawful." 1673 Thomas v. Sorrell. Upheld in SUPREME COURT OF CANADA, Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37.

⁸⁰ 1673 Thomas v. Sorrell. Upheld in SUPREME COURT OF CANADA, Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37.

CHAPTER 2 MAKING A DIFFERENCE FOR KIDS RUNNING FOR ELECTION AS A SCHOOL BOARD TRUSTEE GUIDE FOR CANDIDATES AND COMMUNITIES

The "*Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities*" has failed to explain to the reader that the purpose of the *Education Act* needs to be primary of/to their duties as a Trustee. This is found in section 0.1 of the Act, and states:

PURPOSE

Strong public education system

0.1 (1) A strong public education system is the foundation of a prosperous, caring and civil society. 2009, c. 25, s. 1.

Purpose of education

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society. 2009, c. 25, s. 1.

Partners in education sector

(3) All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems. 2009, c. 25, s. 1.⁸¹

But we must continue through the guide first to determine if schools can actually be closed or students relocated to other schools after they have already been enrolled in one certain school.

The guide continues to explain what a school board is not. It states:

"A school board is not:

- a parliament with party divisions. A school board is a single body made up of members, i.e., trustees. A school board should speak with one voice on the decisions it has collectively made.*
- interested only in the opinions of families with children. A school board must recognize that all of society has a stake in public education.*
- a sub-committee of the municipality. In fact, school boards govern budgets substantially greater than those of most municipalities.*

⁸¹ Education Act May 2 2017, R.S.O. 1990, CHAPTER E.2 Consolidation Period: From March 27, 2017 to the e-Laws currency date. Last amendment: 2017, c. 3, s. 26.

- *a closed or private body. All school boards are public institutions and their meetings are open to the public.*⁸²

Now we understand what the Ministry interprets a school board to be and what it is not to be – but the School Board Trustees are still the decision maker.

And yet the guide adds to confusion because instead of including all criteria in one area of the guide, the guide continues with an even larger interpretation of what a school board is responsible for. It states that "*They are locally-elected representatives of the public, and they are the community's advocate for public education.*"⁸³

So are they making reference to the residents as the "public," and if so the residents pay to sustain the financial viability of the schools, so shouldn't the School Boards be responsible to the residents and tax-payers? From the *Education Act*.

"residential property" means residential property as defined in section 257.5"⁸⁴

"Definitions

257.5 In sections 257.6 to 257.14,

"business property" means,

- (a) property in the commercial property class, the industrial property class or the pipe line property class, all as prescribed under the *Assessment Act*,
- (b) property in a class of real property prescribed by the regulations, or
- (c) property described in paragraphs 1 and 2 of subsection 315 (1) of the *Municipal Act, 2001* or paragraphs 1 and 2 of section 280 of the *City of Toronto Act, 2006*, as the case may be;

"residential property" means,

- (a) property in the residential property class, the farm property class, the managed forests property class or the multi-residential property class, all as prescribed under the *Assessment Act*, or
- (b) property in a class of real property prescribed by the regulations."

Therefore should this also be included in the guide, considering section 257 – 257.105 are mentioned extensively throughout the *Education Act*?

"Can anyone be a School Board Trustee?

A person is qualified to be elected as a school board trustee if the person is qualified to vote in a school board election and is a resident of the school board district. When filing a nomination a candidate must meet all of the following requirements:

⁸² Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 3

⁸³ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 4.

⁸⁴ Section 1 – Interpretation – Education Act.

- a resident within the jurisdiction of the board;
- a supporter* of the board;
- a Canadian citizen;
- at least 18 years old;
- Roman Catholic (if running for a separate school board);
- not legally prohibited from voting; and
- not disqualified by any legislation from holding school board office.

(*“Supporter” refers to the individual’s support for one of the four publicly funded school systems. A list of supporters for each system is kept by the Municipal Property Assessment Corporation.)

Note: A candidate, if nominated, must remain qualified throughout the election and, if elected, throughout the term of office. The term of office is 4 years. School board candidates should confirm that they have the qualifications described in section 219 of the Education Act. It is the responsibility of the candidate to determine whether he or she is qualified to be elected to and hold office.”⁸⁵

⁸⁵ Making a Difference for Kids Running for Election as a School Board Trustee Guide for Candidates and Communities **Election** , October 27, 2014, p. 6.

CHAPTER 3 ACCOMMODATION REVIEW GUIDELINE - MINISTRY OF EDUCATION March 2015

It has been found, on the Province of Ontario web-site – in regards to the Accommodation Review Committees and the Pupil Accommodation Review Guidelines, that "*The Ministry of Education cannot overrule or change these decisions,*"⁸⁶ in regards to the decisions of the School Board. It goes on to say:

*"Your school board will usually undertake a pupil accommodation review process – led by an Accommodation Review Committee (ARC) – when it is contemplating closing a school. This process must follow the school board's policy that governs accommodation reviews. The new Pupil Accommodation Review Guideline also outlines circumstances when a school board does not have to undertake a full accommodation review process."*⁸⁷

In regards to the Ministry not having an ability to interfere with the decision of a school board, under section 8⁸⁸ of the Act (Powers of Minister), it is only after a decision has been made, by the School Board that the Ministry may create guidelines in respect to school closings specifying that the school board develop policies in respects to the procedures to be followed prior to the closing of a school by decision of the Board.

The Minister, under section 29,⁸⁹ may interfere when it appears that the board of a district school area is not providing accommodation or instruction for its resident pupils either in schools operated by the board or under an agreement with another board in schools operated by such other board, or has failed to

⁸⁶ <http://www.edu.gov.on.ca/eng/policyfunding/reviewGuide.html>

⁸⁷ <http://www.edu.gov.on.ca/eng/policyfunding/reviewGuide.html>

⁸⁸ **Powers of Minister - 8** (1) The Minister may, guidelines respecting school closings

26. in respect of schools under the jurisdiction of a board, issue guidelines respecting the closing of schools and require that boards develop policies therefrom with respect to procedures to be followed prior to the closing of a school by decision of the board; R.S.O. 1990, c. E.2, s. 8 (1), par. 26.

⁸⁹ **Provincial counsellor as trustee - 29** Where it appears to the Minister that the board of a district school area is not providing accommodation or instruction for its resident pupils either in schools operated by the board or under an agreement with another board in schools operated by such other board, or has in other respects failed to comply with this Act and the regulations, or that the election of members of the board has been neglected and no regular board is in existence, the Minister may authorize and direct the Provincial School Attendance Counsellor to do all things and exercise all powers that may be necessary for the provision and maintenance of accommodation and instruction for the resident pupils of the board including the erection of school buildings and the conduct of schools, and generally whatever may be required for the purpose of establishing, maintaining and conducting schools in accordance with this Act and the regulations, and thereupon the Provincial School Attendance Counsellor has, for such period as authorized by the Minister, all the authority and powers vested in, and may, during such period, perform the duties of, the board. R.S.O. 1990, c. E.2, s. 29; 1997, c. 31, s. 11.

comply with this Act and the regulations, or the election of members to the Board have been neglected or there is no regular Board. In these cases the Minister may direct the Provincial School Attendance Counsellor to do all things and exercise all powers that may be necessary for the provision and maintenance of accommodation and instruction for the resident pupils and the Minister may vest in the Provincial School Attendance Counsellor all authority and powers to fulfill the obligations of a Board.

Question – if the Ministry cannot close a school that has more than 8 to 10 pupils, how does a School Board, which has been incorporated and elected to represent the residents in a school district area, determine that it has more authority than the province, considering it has been incorporated by the province and is a creature of legislation?

There is also the issue O. Reg. 132/12 – Class Sizes which states the maximum class size for junior-kindergarten/kindergarten (Section 2⁹⁰) shall be 26; elementary classes, grades 1, 2 and 3 (section 4, 5, 6,⁹¹) shall be a maximum of 23 or fewer pupils or as states in 5 (2) shall have 20 or fewer pupils; grades 4, 5, 6, 7 and 8 shall not exceed, (a) for a board listed in the Table to this section, the number set out in Column 2 of the Table opposite the name of the board; and (b) for all other boards, 24.5,⁹² and in mixed grades of 4, 5, 6, 7 and 8 the class shall have 23 or fewer pupils;⁹³ and in secondary school (high-schools) secondary

⁹⁰ Class size average - 2. The average size in each school year of a board's full day junior kindergarten and kindergarten classes shall be 26. O. Reg. 132/12, s. 2; O. Reg. 80/14, s. 2.

⁹¹ **Application** - 4. Sections 5 and 6 apply to classes of a board that consist only of pupils enrolled in the primary division, **unless** the class consists only of pupils enrolled in full day junior kindergarten or kindergarten. O. Reg. 132/12, s. 4; O. Reg. 80/14, s. 4.

Class size limit

5. (1) A class to which this section applies shall have 23 or fewer pupils. O. Reg. 132/12, s. 5 (1).

(2) In each school year, at least 90 per cent of the classes described in section 4 shall have 20 or fewer pupils. O. Reg. 132/12, s. 5 (2).

Class size determination

6. The size in a school year of the classes of a board to which this section applies shall be determined for the school year as of the date selected under subsection 3 (1).

O. Reg. 132/12, s. 6.

⁹² **Class size limit** - 7. The average size in each school year of the classes of a board that include one or more pupils enrolled in any of grades 4, 5, 6, 7 and 8 shall not exceed,

(a) for a board listed in the Table to this section, the number set out in Column 2 of the Table opposite the name of the board; and

(b) for all other boards, 24.5.

Class size determination - 8. The average size in a school year of the classes of a board that include one or more pupils enrolled in any of grades 4, 5, 6, 7 and 8 shall be determined for the school year, as of the date selected under subsection 3 (1), as follows:

1. Determine the number of pupils enrolled in the board's classes that include one or more pupils enrolled in any of grades 4, 5, 6, 7 and 8.

2. Determine the number of the board's classes that include one or more pupils enrolled in any of grades 4, 5, 6, 7 and 8.

3. Divide the number determined under paragraph 1 by the number determined under paragraph 2.

O. Reg. 132/12, s. 8.

⁹³ **Class size limit** - 9. (1) If a class includes one or more pupils enrolled in the primary division and one or more pupils enrolled in grade 4, 5, 6, 7 or 8, the class shall have 23 or fewer pupils. O. Reg. 132/12, s. 9 (1).

school classes shall not exceed 22,⁹⁴ again how can a S.B. determine that, based on the criteria in O. Reg. 132/12 relocate students and/or close schools beyond the authority of the Ministry?

According to "*Ministry of Education – Pupil Accommodation Review Guideline, March 2015*" it is the School Boards who are to make the final decision as to whether a school is closed and/or students relocated.

"IV. SCHOOL BOARD ACCOMMODATION REVIEW POLICIES

School boards are responsible for creating and implementing a policy to address pupil accommodation reviews to serve their local needs. The Ministry of Education expects school boards to consult with local communities prior to adopting or subsequently amending their pupil accommodation review policies.

All pupil accommodation review policies must be clear in stipulating that the final decision regarding the future of a school or group of schools rests solely with the Board of Trustees. If the Board of Trustees votes to close a school or schools in accordance with their policy, the school board must provide clear timelines regarding the closure(s) and ensure that a transition plan is communicated to all affected school communities within the school board."⁹⁵

In regards to the Accommodation Review Committee (ARC), there seems to be confusion as to what their duties and powers are. It states in the "*Ministry of Education – Pupil Accommodation Review Guideline, March 2015*" that the ARC is merely a "*conduit for the transfer of information,*" and it is not the decision maker for relocation of students or school closures. From the "*Ministry of Education – Pupil Accommodation Review Guideline, March 2015*":

"VII. THE ACCOMMODATION REVIEW COMMITTEE

Role

School boards must establish an ARC that represents the school(s) under review and acts as the official conduit for information shared between the school board and the school communities. The ARC may comment on the initial staff report and may, throughout the pupil accommodation review process, seek clarification of the initial staff report. The ARC may provide other accommodation options than those in the initial staff report; however, it must include supporting rationale for any such option.

The ARC members do not need to achieve consensus regarding the information provided to the Board of Trustees.

The school board's staff resources assigned to the ARC are required to compile feedback from the ARC as well as the broader community in the

(2) For greater certainty, subsection (1) does not apply to classes that consist only of pupils enrolled in full day junior kindergarten or kindergarten. O. Reg. 80/14, s. 5.

⁹⁴ **Class size limit** - 12. The average size in each school year of a board's secondary school classes shall not exceed 22. O. Reg. 132/12, s. 12.

⁹⁵ Ministry of Education – Pupil Accommodation Review Guideline, March 2015, p. 5.

*Community Consultation section of the final staff report (see Section XI) to be presented to the Board of Trustees.*⁹⁶

Again we must remember that the final decision is that of the Trustees – not the ARCs.

As for the Staff's role – that is expressed in part XI of "*Ministry of Education – Pupil Accommodation Review Guideline, March 2015.*" It states:

"XI. COMPLETING THE ACCOMMODATION REVIEW

Final Staff Report

At the conclusion of the pupil accommodation review process, school board staff will submit a final staff report to the Board of Trustees which must be available to the public as determined in the school board's policy, and posted on the school board's website.

The final staff report must include a Community Consultation section that contains feedback from the ARC and any public consultations as well as any relevant information obtained from municipalities and other community partners prior to and during the pupil accommodation review.

*School board staff may choose to amend their proposed option(s) included in the initial staff report. The recommended option(s) must also include a proposed accommodation plan, prepared for the decision of the Board of Trustees, which contains a timeline for implementation.*⁹⁷

It states that the staff may choose to amend their proposed options included in the initial staff report. This is curious because the entire process has been initiated on the initial staff reports, therefore why would the staff amend their recommendations?

"VI. ESTABLISHING AN ACCOMMODATION REVIEW

Initial Staff Report

Prior to establishing a pupil accommodation review, the initial staff report to the Board of Trustees must contain one or more options to address the accommodation issue(s). Each option must have a supporting rationale.

There must be a recommended option if more than one option is presented.

*The initial staff report must also include information on actions taken by school board staff prior to establishing a pupil accommodation review process and supporting rationale as to any actions taken or not taken.*⁹⁸

If the initial staff report is incorrect shouldn't there be ramifications for the wasted efforts of the School Boards, the ARCs, as well as wasted tax-payer money, time and effort based on errors in the original staff reports, considering the impact the staff reports may cause? If the staff reports have errors or unsubstantiated/failed

⁹⁶ Ministry of Education – Pupil Accommodation Review Guideline, March 2015, p. 7.

⁹⁷ Ministry of Education – Pupil Accommodation Review Guideline, March 2015, p. 11.

⁹⁸ Ministry of Education – Pupil Accommodation Review Guideline, March 2015, p. 6.

predictions/recommendations why should the staff be able to amend their reports – shouldn't those errors be made known to the Trustees? Considering the School Board Trustees are making their decisions based on information relayed to them through the ARCs and then staff, should all of the information be (i) supported, and (ii) be in good faith and not amended?

Also shouldn't the Trustees have multiple open meetings for their own feed-back from the residents, considering the School Boards have a duty of care to their electorate? As stated in "*Ministry of Education – Pupil Accommodation Review Guideline, March 2015*":

"XI. COMPLETING THE ACCOMMODATION REVIEW

"Decision of the Board of Trustees

The Board of Trustees will be provided with the final staff report, including the compiled feedback from the public delegations, when making its final decision regarding the pupil accommodation review.

*The Board of Trustees has the discretion to approve the recommendation(s) of the final staff report as presented, modify the recommendation(s) of the final staff report, or to approve a different outcome.*⁹⁹

There is nothing in this guide which states that the School Board Trustees *must* close schools or relocate students. If the Trustees are fulfilling their obligations under the *Education Act* and their fiduciary duties to the residents and students, they must take the statements of the residents and the students as the first line and not subscribe to amended statements of staff or the ARCs.

⁹⁹ Ministry of Education – Pupil Accommodation Review Guideline, March 2015, p. 12.

CHAPTER 4 RIGHT TO ATTEND SCHOOL

Under section 32 (1)¹⁰⁰ there is a right for a student to attend a school in a school section, separate school zone or secondary school district, in which the person is qualified to be a resident pupil without payment of a fee. There is, however, exemptions to the fees which are not applicable under this section as 32 (2). Section 32. (2)¹⁰¹ brings in sections 49 (6) and 49 (7),¹⁰² involving certain criteria

¹⁰⁰ Resident pupil right to attend school

32 (1) A person has the right, without payment of a fee, to attend a school in a school section, separate school zone or secondary school district, as the case may be, in which the person is qualified to be a resident pupil. 1997, c. 31, s. 13.

¹⁰¹ Admission without fee

32. (2) Despite the other provisions of this Part, but subject to subsection 49 (6), where it appears to a board that a person who resides in the area of jurisdiction of the board is denied the right to attend school without the payment of a fee, the board, at its discretion, may admit the person from year to year without the payment of a fee. 1997, c. 31, s. 13.

¹⁰² **Fee payable - 49 (1)** Where a person qualified to be a resident pupil of a secondary school district or separate school zone attends a secondary school that the person has a right to attend under subsection 39 (1), the board of which the person is qualified to be a resident pupil shall pay to the board that operates the secondary school attended by the pupil the fee, if any, payable for the purpose under the regulations. 1997, c. 31, s. 24 (1).

Same - (2) Where a person qualified to be a resident pupil of a board attends a public or secondary school in the area of jurisdiction of another board under section 48.1, the board of which the person is qualified to be a resident pupil shall pay to the board that operates the school attended by the pupil the fee, if any, payable for the purpose under the regulations. 1997, c. 31, s. 24 (1).

(3) REPEALED: 1997, c. 31, s. 24 (1).

Admission of resident pupil to another school by reason of distance to school - (4) A child who resides with his or her parent or guardian in a residence that is assessed to the support of public schools and who may be excused from attendance under clause 21 (2) (c) may be admitted to a public school in another school section if the appropriate supervisory officer certifies that there is sufficient accommodation for the child, and the board of the section in which the child resides shall pay to the board of the other school section the fee, if any, payable for the purpose under the regulations. R.S.O. 1990, c. E.2, s. 49 (4); 1997, c. 31, s. 24 (2).

Admission of qualified non-resident pupil - (5) A board may admit to a school that it operates a person whose admission with or without the payment of a fee is not otherwise provided for in this Act but who, except as to residence, is qualified to attend such school, and may, at its discretion, require the payment by or on behalf of the person of the fee, if any, payable for the purpose under the regulations. R.S.O. 1990, c. E.2, s. 49 (5); 1997, c. 31, s. 24 (3).

Fees for pupils - (6) Despite any other provision of this Part but subject to subsection (7), if a board admits to a school that it operates a person who is a temporary resident within the meaning of the *Immigration and Refugee Protection Act* (Canada) or a person who is in possession of a study permit issued under that Act, the board shall charge the person the maximum fee calculated in accordance with the regulations. 2002, c. 18, Sched. G, s. 5 (1); 2005, c. 21, s. 2.

Non-application of subs. (6) - (7) A board shall not charge a fee to,

- (a) a person who is a participant in an educational exchange program under which a pupil of the board attends a school outside Canada without a fee;
- (b) a person who is a dependant within the meaning of the *Visiting Forces Act* (Canada);
- (c) a person if that person, his or her parent or someone else with lawful custody of him or her is in Canada,
- (i) under a temporary resident permit issued under the *Immigration and Refugee Protection Act* (Canada),
- (ii) under a diplomatic, consular or official acceptance issued by the Government of Canada, or
- (iii) claiming refugee protection under the *Immigration and Refugee Protection Act* (Canada) or having had such protection conferred on him or her;

under the *Immigration and Refugee Protection Act* of Canada, and generally it is rare that there are any fees applicable or interferes with resident pupils.

Section 33 (1)¹⁰³ is in regards to "resident pupil qualifications" and states that a person who is 6 years old, after September 1, is qualified to be a resident pupil in an English-language public district school board or of a public school authority until the last school day in June in the year that person attains the age of 21 years if, (a) the person resides in the school section; and (b) the person's parent or guardian who is not a separate school supporter or a French-language district school board supporter resides in the school section. This is subject to sections 44¹⁰⁴ where a child who would have the right to attend school moves into a school section, separate school zone or secondary school district with his or her parent or guardian to a residence where the assessment does not support that right, and the latest date on which the assessment of the residence may be changed has passed, on the filing of a notice of change of support for the

-
- (d) a person if that person is awaiting determination of an application for permanent residence in Canada under the *Immigration and Refugee Protection Act* (Canada) or an application for Canadian citizenship and his or her parent or someone else with lawful custody of him or her is a Canadian citizen resident in Ontario;
 - (e) a person if his or her parent or someone else with lawful custody of him or her is in Canada,
 - (i) under a work permit or awaiting the determination of an application for a work permit under the *Immigration and Refugee Protection Act* (Canada),
 - (ii) as a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (Canada) or is awaiting determination of an application for permanent residence in Canada under the *Immigration and Refugee Protection Act* (Canada),
 - (iii) as a religious worker authorized to work in Canada under clause 186 (l) of the Regulations made under the *Immigration and Refugee Protection Act* (Canada),
 - (iv) in accordance with authorization under the *Immigration and Refugee Protection Act* (Canada) to study in Canada and is a full-time student at a university, college or institution in Ontario, including an institution that is an affiliate or federated institution of a university or college, that receives operating grants from the Government of Ontario, or
 - (v) in accordance with an agreement with a university outside Canada to teach at an institution in Ontario, including its affiliated or federated institutions, that receives operating grants from the Government of Ontario;
 - (f) a person who is a member of a class of persons prescribed by regulation for the purposes of this subsection. 2005, c. 21, s. 3.

Regulations - (8) The Minister may make regulations prescribing one or more classes of persons for the purposes of subsection (7). 2005, c. 21, s. 3.

¹⁰³ **Resident pupil qualification: elementary English-language public district school boards and elementary public school authorities**

33 (1) Subject to sections 44 and 46, a person who attains the age of six years in any year is, after September 1 in that year, qualified to be a resident pupil in respect of a school section of an English-language public district school board or of a public school authority until the last school day in June in the year in which the person attains the age of 21 years if,

- (a) the person resides in the school section; and
- (b) the person's parent or guardian who is not a separate school supporter or a French-language district school board supporter resides in the school section. 1997, c. 31, s. 14.

¹⁰⁴ **Admission where pupil moves into residence not assessed in accordance with his or her school support**

44 Where a child who would otherwise have the right to attend school in a school section, separate school zone or secondary school district moves with his or her parent or guardian to a residence the assessment of which does not support that right, and the latest date on which the assessment of the residence may be changed has passed, on the filing of a notice of change of support for the following year with the appropriate assessment commissioner, the child shall be admitted, without the payment of a fee, to a school that will be supported by the taxes on the assessment of the residence on the effective date of the change of school support. 1997, c. 31, s. 22.

following year with the appropriate assessment commissioner, the child shall be admitted, without the payment of a fee, to a school, and 46,¹⁰⁵ the person who resides in a school section, separate school zone or secondary school district in which the person's parent or guardian resides, on land that is exempt from taxation for the purposes of any board, is not qualified to be a resident pupil, unless the person or his or her parent or guardian is assessed with respect to other property for the purposes of a board. The fee, if any, payable under the regulations in respect of a person's attendance who resides on land that is tax exempt shall be admitted to a school that is accessible to the person where the appropriate supervisory officer has certified that there is sufficient accommodation for the person in the school for the current year, except where the regulations provide otherwise in respect of such fees, be prepaid monthly by the person or by his or her parent or guardian.

Section 33 (2)¹⁰⁶ is basically the same rules for French-language public schools, 33 (3)¹⁰⁷ English-language separate district school board or of a Roman Catholic school authority for elementary school purposes, 33 (4)¹⁰⁸ separate school zone

¹⁰⁵ **Tax exempt land - 46** (1) A person who resides in a school section, separate school zone or secondary school district in which the person's parent or guardian resides, on land that is exempt from taxation for the purposes of any board, is not qualified to be a resident pupil of the school section, separate school zone or secondary school district, unless the person or his or her parent or guardian is assessed with respect to other property for the purposes of a board in the school section, separate school zone or secondary school district. 1997, c. 31, s. 22.

Resident on land exempt from taxation - (2) Subject to subsection (3), a person whose education is not otherwise provided for and who is otherwise qualified to attend an elementary or secondary school and who resides on land that is exempt from taxation for the purposes of any board shall be admitted to a school that is accessible to the person where the appropriate supervisory officer has certified that there is sufficient accommodation for the person in the school for the current year. 1997, c. 31, s. 22.

Fee - (3) The fee, if any, that is payable under the regulations in respect of a person's attendance under subsection (2) shall, except where the regulations provide otherwise in respect of such fees, be prepaid monthly by the person or by his or her parent or guardian. 1997, c. 31, s. 22.

¹⁰⁶ **Resident pupil qualification: elementary French-language public district school boards**

33. (2) Subject to sections 44 and 46, a person who attains the age of six years in any year is, after September 1 in that year, qualified to be a resident pupil in respect of a school section of a French-language public district school board until the last school day in June in the year in which he or she attains the age of 21 years if,

- (a) the person is a French-speaking person;
- (b) the person resides in the school section; and
- (c) the person's parent or guardian resides in the school section and,
 - (i) is a supporter of the French-language public district school board, or
 - (ii) is not in respect of that residence a supporter of any board. 1997, c. 31, s. 14.

¹⁰⁷ **Resident pupil qualification: elementary English-language separate district school boards and elementary Roman Catholic school authorities**

33. (3) Subject to sections 44 and 46, a person who attains the age of six years in any year is, after September 1 in that year, qualified to be a resident pupil in respect of a separate school zone of an English-language separate district school board or of a Roman Catholic school authority for elementary school purposes until the last school day in June in the year in which he or she attains the age of 21 years if,

- (a) the person resides in the separate school zone; and
- (b) the person's parent or guardian who is a separate school supporter and who is not a French-language separate district school board supporter resides in the separate school zone. 1997, c. 31, s. 14.

¹⁰⁸ **Resident pupil qualification: elementary French-language separate district school boards**

33. (4) Subject to sections 44 and 46, a person who attains the age of six years in any year is, after September 1 in that year, qualified to be a resident pupil in respect of a separate school zone of a French-language separate district school board for elementary school purposes until the last school day in June in the year in which he or she attains the age of 21 years if,

of a French-language separate district school board for elementary school purposes.

Section 33 (5)¹⁰⁹ expresses that it is the responsibility of the parent or guardian to submit evidence that the child has a right to attend an elementary school, including proof of age. And section 33 (6)¹¹⁰ states that a person who is a qualified resident pupil if the person enrolls in an elementary school operated by the board of the school section or separate school zone, or in a school operated by another board, if (a) to which the board of the school section or separate school zone pays fees on the person's behalf; or (b) with which the board of the school section or separate school zone has an agreement relating to the provision of education to the person.

You are a resident pupil if there is a kindergarten, or junior kindergarten and you are under the age of 6 (section 34).¹¹¹ Section 35¹¹² is for the distances for resident pupils.

-
- (a) the person is a French-speaking person;
 - (b) the person resides in the separate school zone; and
 - (c) the person's parent or guardian who is a French-language separate district school board supporter resides in the separate school zone. 1997, c. 31, s. 14.

¹⁰⁹ **Evidence as to right to attend**

33. (5) It is the responsibility of the parent or guardian to submit evidence that the child has a right to attend an elementary school, including proof of age. 1997, c. 31, s. 14.

¹¹⁰ **Resident pupil, elementary**

33. (6) A person who is qualified to be a resident pupil in respect of a school section or a separate school zone is a resident pupil if the person enrolls in an elementary school operated by the board of the school section or separate school zone, as the case may be, or in a school operated by another board, (a) to which the board of the school section or separate school zone pays fees on the person's behalf; or (b) with which the board of the school section or separate school zone has an agreement relating to the provision of education to the person. 1997, c. 31, s. 14.

¹¹¹ **Kindergarten**

34 (1) If a board operates a kindergarten in a school, a child who is otherwise qualified may become a resident pupil at an age one year lower than that referred to in section 33. 1997, c. 31, s. 15.

Junior kindergarten

(2) If a board operates a junior kindergarten in a school, a child who is otherwise qualified may become a resident pupil at an age two years lower than that referred to in section 33. 1997, c. 31, s. 15.

Beginners class

(3) A board may provide a class or classes for children to enter school for the first time on or after the first school day in January and, where the board so provides, a child whose birthday is on or after January 1 and before July 1, who resides in an area determined by the board and who is eligible to be admitted to an elementary school or kindergarten, as the case may be, on the first school day in the following September, may become a resident pupil in respect of such class. 1997, c. 31, s. 15.

¹¹² **Resident pupil's right to attend more accessible elementary school**

35. (1) Where a resident pupil who is an elementary school pupil of a school section or separate school zone resides,

- (a) more than 3.2 kilometres by the shortest distance by road from the school that the pupil is required to attend;
 - (b) more than 0.8 kilometres by the shortest distance by road from any point from which transportation is provided to the school that the pupil is required to attend; and
 - (c) nearer by the shortest distance by road to another school of the same type that is in another section or zone than to the school that the pupil is required to attend,
- the pupil shall be admitted to the nearer school of the same type, where the appropriate supervisory officer for the nearer school certifies that there is sufficient accommodation for the pupil in that school. 1997, c. 31, s. 16.

Same

To qualify as a secondary resident pupil (section 36 (1)¹¹³) one must: (a) the person and the person's parent or guardian who is not a separate school supporter or a French-language district school board supporter reside in the secondary school district; (a.1) subject to any regulations made under section 43.3,¹¹⁴ the person is 16 or 17 years of age, has withdrawn from parental control and resides in the secondary school district; (b) the person is an English-language public board supporter and resides in the secondary school district and is an owner or tenant of residential property in the secondary school district that is separately assessed; or (c) the person is not a supporter of any board, is at least 18 years of age and resides in the secondary school district. Section 36 (2)¹¹⁵ is for French-language public district school board qualifications. 36 (3)¹¹⁶

(2) Where the pupil is admitted to a nearer school, the board of the school section or separate school zone of which the pupil is a resident pupil shall pay in respect of the pupil the fee, if any, payable for the purpose under the regulations. 1997, c. 31, s. 16.

Same

(3) For the purposes of this section, the following are types of schools:

1. English-language public schools, which are schools governed by an English-language public district school board or a public school authority.
2. French-language public schools, which are schools governed by a French-language public district school board.
3. English-language Roman Catholic schools, which are schools governed by an English-language separate district school board or a Roman Catholic school authority.
4. French-language Roman Catholic schools, which are schools governed by a French-language separate district school board. 1997, c. 31, s. 16.

¹¹³ **Resident pupil qualification: secondary English-language public district school boards and secondary public school authorities**

36. (1) A person is qualified to be a resident pupil in respect of a secondary school district of an English-language public district school board or of a public school authority if,
(a) the person and the person's parent or guardian who is not a separate school supporter or a French-language district school board supporter reside in the secondary school district;
(a.1) subject to any regulations made under section 43.3,¹¹³ the person is 16 or 17 years of age, has withdrawn from parental control and resides in the secondary school district;
(b) the person is an English-language public board supporter and resides in the secondary school district and is an owner or tenant of residential property in the secondary school district that is separately assessed;
or
(c) the person is not a supporter of any board, is at least 18 years of age and resides in the secondary school district. 1997, c. 31, s. 17; 2006, c. 28, s. 8 (1, 2).

¹¹⁴ **Regulations: attendance rights of 16 and 17 year olds**

43.3 (1) The Lieutenant Governor in Council may make regulations prescribing circumstances in which a person who would otherwise be qualified as a resident pupil under clauses 36 (1) (a.1), 36 (2) (a.1), 36 (3) (a.1) and 36 (4) (a.1) shall not be so qualified. 2006, c. 28, s. 10.

General or particular

(2) A regulation under this section may be general or particular. 2006, c. 28, s. 10.

¹¹⁵ **Resident pupil qualification: secondary French-language public district school boards**

36. (2) A person is qualified to be a resident pupil in respect of a secondary school district of a French-language public district school board if,
(a) the person is a French-speaking person, the person and the person's parent or guardian reside in the secondary school district and,
(i) the person's parent or guardian is a supporter of the French-language public district school board, or
(ii) the person's parent or guardian is not in respect of that residence a supporter of any board;
(a.1) subject to any regulations made under section 43.3, the person is 16 or 17 years of age, has withdrawn from parental control, is a French-speaking person and resides in the secondary school district;
(b) the person is a French-language public district school board supporter and resides in the secondary school district and is an owner or tenant of residential property in the secondary school district that is separately assessed; or
(c) the person is a French-speaking person, is not a supporter of any board, is at least 18 years of age and resides in the secondary school district. 1997, c. 31, s. 17; 2006, c. 28, s. 8 (3, 4).

is separate school zone of an English-language separate district school board for secondary school purposes. 36 (4)¹¹⁷ is for a separate school zone of a French-language separate district school board for secondary school purposes. 36 (5)¹¹⁸ states that a person qualified to be a resident pupil in a secondary school district or a separate school zone is a resident pupil if the person enrolls in a secondary school operated by the board of the secondary school district or separate school zone, as the case may be, or in a secondary school operated by another board, (a) to which the board of the secondary school district or separate school zone pays fees on the person's behalf; or (b) with which the board of the secondary school district or separate school zone has an agreement relating to the provision of education to the person.

Section 36 (6)¹¹⁹ is clarified by 36 (7)¹²⁰ and states only a French-speaking person may be admitted to a school of a French-language public district school

¹¹⁶ **Resident pupil qualification: secondary English-language separate district school boards**

36. (3) A person is qualified to be a resident pupil in respect of a separate school zone of an English-language separate district school board for secondary school purposes if,

(a) the person and the person's parent or guardian who is a separate school supporter and is not a French-language district school board supporter reside in the separate school zone;

(a.1) subject to any regulations made under section 43.3, the person is 16 or 17 years of age, has withdrawn from parental control, is a Roman Catholic and resides in the separate school zone;

(b) the person is a separate school supporter and is not a French-language district school board supporter and resides in the separate school zone and is an owner or tenant of residential property in the zone that is separately assessed; or

(c) the person is a Roman Catholic, is not a supporter of any board, is at least 18 years of age and resides in the secondary school district. 1997, c. 31, s. 17; 2006, c. 28, s. 8 (5, 6).

¹¹⁷ **Resident pupil qualification: secondary French-language separate district school boards**

36. (4) A person is qualified to be a resident pupil in respect of a separate school zone of a French-language separate district school board for secondary school purposes if,

(a) the person and the person's parent or guardian who is a French-language separate district school board supporter reside in the separate school zone;

(a.1) subject to any regulations made under section 43.3, the person is 16 or 17 years of age, has withdrawn from parental control, is a French-speaking person and a Roman Catholic and resides in the separate school zone;

(b) the person is a French-language separate district school board supporter and resides in the separate school zone and is an owner or tenant of residential property in the zone that is separately assessed; or

(c) the person is a French-speaking person and a Roman Catholic, is not a supporter of any board, is at least 18 years of age and resides in the secondary school district. 1997, c. 31, s. 17; 2006, c. 28, s. 8 (7, 8).

¹¹⁸ **Resident pupil, secondary** 36. (5) A person who is qualified to be a resident pupil in respect of a secondary school district or a separate school zone is a resident pupil if the person enrolls in a secondary school operated by the board of the secondary school district or separate school zone, as the case may be, or in a secondary school operated by another board,

(a) to which the board of the secondary school district or separate school zone pays fees on the person's behalf; or

(b) with which the board of the secondary school district or separate school zone has an agreement relating to the provision of education to the person. 1997, c. 31, s. 17.

¹¹⁹ **Certain elementary-only school authorities** 36. (6) Subject to subsection (7), where a person is qualified to be a resident pupil of a school authority, other than a public school authority, that provides elementary education only, and the area of jurisdiction of the school authority is the same in whole or in part as the area of jurisdiction of a public district school board, the pupil shall be admitted to a secondary school operated by the public district school board or to a secondary school operated by another board,

(a) to which the first-mentioned district school board pays fees on the person's behalf; or

(b) with which the first-mentioned district school board has an agreement relating to the provision of education to the person. 1997, c. 31, s. 17.

¹²⁰ **French-speaking persons** 36. (7) Only a French-speaking person may be admitted to a school of a French-language public district school board under subsection (6). 1997, c. 31, s. 17.

board. Finally section 36 (8)¹²¹ makes it the responsibility of the person or the person's parent or guardian to submit evidence that the person has a right to attend a secondary school.

In the *Education Act* one has a right to attend school, therefore if one has began their educational life in one school and community the School Board has a duty to ensure that the student continues in said community and is not removed based on misinterpretation of the Act and/or confusion created by conflicting statements in Trustee Guides, failed formulas, or some extended need for accommodation reviews. It would seem this has less to do with providing sustainable education for the achievement and well-being of students and more to do with erroneous and continuous over abundant regulation and bureaucratic tendencies.

¹²¹ **Evidence as to right to attend**

36. (8) It is the responsibility of the person or the person's parent or guardian to submit evidence that the person has a right to attend a secondary school. 1997, c. 31, s. 17.

CONCLUSION

The questions asked were:

1. Question – Has the School Board Trustees read: the *Education Act*, the *Assessment Act*, the *Development Charges Act*, the *Municipal Act*?
2. Question – Do the Trustees know and understand what a "trustee," is and what their obligations are? Do the Trustees know and understand what "*fiduciary duty*" is?
3. When a D.S.B. decides to move students and/or close schools are they in violation of their *fiduciary duty* to the students, parents, staff and taxpayers? And are they libel to action under the Education Act if they are violating their *fiduciary duties*?
4. Question – Are the School Boards actually the entities which are looking to close the schools or is there confusion as to what entity is to make the decision?
5. Question – If the Ministry cannot close a school that has more than 8 to 10 pupils, how does a School Board, which has been incorporated and elected to represent the residents in a school district area, determine that it has more authority than the province, considering it has been incorporated by the province and is a creature of legislation?
6. Question – If a parent or guardian must ensure that a child between the ages of 6 – 18 must attend school and the D.S.B.s are closing the schools, is this not placing those parents and/or guardians in violation of the Education Act?
7. Question – If it is the responsibility of the parent or guardian to ensure that the children under their care and control attends school, then is it the School Boards acting unlawfully which is placing the parents or guardians in violation of this Act when they close a school, if the requirements of the Education Act under sections 21 (2)¹²² and section 35 (1)¹²³ had previously been met? Also, is it not

¹²² **Compulsory attendance**

21 (1) Unless excused under this section,

When attendance excused

(2) A person is excused from attendance at school if,

(a) the person is receiving satisfactory instruction at home or elsewhere;

(b) the person is unable to attend school by reason of sickness or other unavoidable cause;

(c) transportation is not provided by a board for the person and there is no school that he or she has a right to attend situated,

(i) within 1.6 kilometres from the person's residence measured by the nearest road if he or she has not attained the age of seven years on or before the first school day in September in the year in question, or

the obligation of the D.S.B.s to ensure that there, once the child has entered a specific school, accommodation at that school for the duration of that child's school attendance? It would seem the D.S.B.s must keep the accommodation at the existing school available to that child so that the D.S.B. is not doing indirectly what it cannot do, lawfully, directly¹²⁴ or is the province issuing directives to the D.S.B.s and interfering where it does not have the authority to interfere?

Trustees, if they have not read the *Education Act*, the *Assessment Act*, the *Development Charges Act*, the *Municipal Act*, the *Planning Act*, etc., have not, it would seem, fulfilled their fiduciary duties nor do they understand what a Trustee is to know and understand. There is also the issue that once the Trustees are elected, the information supplied is in conflict with the purpose of the Act, again skewing the fiduciary duties of the Trustees, the Ministry and all involved under the Act.

The province, nor any government, can create a law which creates a violation – that is "*it is impossible to obey contradictions*,"¹²⁵ and an unlawful act can never be made lawful, "*So the same thing, at the same time, would be both lawful and*

(ii) within 3.2 kilometres from the person's residence measured by the nearest road if he or she has attained the age of seven years but not the age of 10 years on or before the first school day in September in the year in question, or

(iii) within 4.8 kilometres from the person's residence measured by the nearest road if he or she has attained the age of 10 years on or before the first school day in September in the year in question;

(d) the person has obtained a secondary school graduation diploma or has completed a course that gives equivalent standing;

(e) the person is absent from school for the purpose of receiving instruction in music and the period of absence does not exceed one-half day in any week;

(f) the person is suspended, expelled or excluded from attendance at school under any Act or under the regulations;

(g) the person is absent on a day regarded as a holy day by the church or religious denomination to which he or she belongs; or

(h) the person is absent or excused as authorized under this Act and the regulations. 2006, c. 28, s. 5 (1).

¹²³ **Resident pupil's right to attend more accessible elementary school**

35 (1) Where a resident pupil who is an elementary school pupil of a school section or separate school zone resides,

(a) more than 3.2 kilometres by the shortest distance by road from the school that the pupil is required to attend;

(b) more than 0.8 kilometres by the shortest distance by road from any point from which transportation is provided to the school that the pupil is required to attend; and

(c) nearer by the shortest distance by road to another school of the same type that is in another section or zone than to the school that the pupil is required to attend,

the pupil shall be admitted to the nearer school of the same type, where the appropriate supervisory officer for the nearer school certifies that there is sufficient accommodation for the pupil in that school. 1997, c. 31, s. 16.

¹²⁴ "*It is an evasion of the Act from which the Local Legislature derives its power. The Local Legislature cannot, no more than private individuals, act as it were in fraud of the law, that is, do by indirect means what it cannot effect directly...*" Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

¹²⁵ "For a law which a man cannot obey, nor act according to it, is void, and no law: and it is impossible to obey contradictions, or act according to them.

Therefore I may conclude those things to be mala in se (**my note: mala in se means: wrongs in themselves), which can never be made unlawful. " 1673 Thomas v. Sorrell. Upheld in SUPREME COURT OF CANADA, Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37

unlawful, which is impossible."¹²⁶ The fiduciary duty of the Trustees are to the residents and students – not the Board, and not the province – the Board of Trustees is to protect the students' and tax-payers' well-being in a reasonably fiscal capacity. The province, it would seem, is misleading the Trustees or at the very least confusing the obligations of the Trustees with their explanation of the Board's fiduciary duties. The Education Act specifically states:

PURPOSE

Strong public education system

0.1 (1) A strong public education system is the foundation of a prosperous, caring and civil society. 2009, c. 25, s. 1.

Purpose of education

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society. 2009, c. 25, s. 1.

Partners in education sector

(3) All partners in the education sector, including the Minister, the Ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems. 2009, c. 25, s. 1.¹²⁷

The Trustees also must understand the definition of "reasonable care," and "reasonable person" to continue to understand their obligations and duties under the *Education Act*.

Like Municipalities the Province cannot grant the School Boards more power than it has itself,¹²⁸ therefore the School Boards are restricted by (i) the power of the province, and (ii) the legislation and the School Boards fiduciary duties.

It is hoped that the aforementioned questions will be answered for the education of the Trustees, the students, and parents, the tax-payers who take the time to seek out the following information in more detail. This is for the benefit of the residents, the students and the Trustees.

¹²⁶ 1673 Thomas v. Sorrell. Upheld in SUPREME COURT OF CANADA, Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37

¹²⁷ Education Act May 2 2017, R.S.O. 1990, CHAPTER E.2 Consolidation Period: From March 27, 2017 to the e-Laws currency date. Last amendment: 2017, c. 3, s. 26.

¹²⁸ "[51] It is settled law that the Municipality is a creature of statute; it has no greater powers than those conferred upon it by the province which created it." GREATER POWER CITATION: SIOUX LOOKOUT v. CANADA ET AL, 2010 ONSC 2137

BIOS

Tom Black – President, Ontario Landowners Association
Algonquin College – Electronic Technology
Current – Full Time Farmer
Email – thelandowner@bellnet.ca
Phone – 1- 613-831-9061 or 1-613-831-2642

Elizabeth Marshall – Director of Research for the Ontario Landowners Association,
Secretary - Canadian Justice Review Board,
Legislative Researcher – MPs, MPPs, etc.,
Legal Researcher – Green and Associates Law Firm, etc.,
Member of the Steering Committee – International Property Rights
Association.

President All Rights Research Ltd.,
Author – Property Rights 101: An Introduction, Second Edition

Presently OLA information is being used at the University of Guelph. The OLA has done various radio talk shows and have been guest speakers throughout Ontario, New Brunswick and Quebec.

The OLA have produced the following reports:

MPAC: Its Creation and Its Conflicts, May, 2011©
Response to the Ontario Bar Association: “Back Off Government: What Municipal Lawyers Need to Know about Crown Patents”, July, 2011 ©
Why Complete Title Searches and Supporting Documents are Imperative, January 2012 ©
TERANET/POLARIS: The Problems, the History and the Present, January 2012 ©
Conservation Authorities: Legislation Out of Control, March 16, 2012 ©
Mackie v. Niagara Escarpment Commission: Where Justice has Gone Wrong, June 2012 ©
Tree Cutting By-Laws: What Municipal Councils Need to Know, October 2012 ©
Property Standard By-Laws: What Municipal Councils Need to Know, November 2012© - Updated 2015.
Official Plans: What Municipal Councils Need to Know, December 2012©
The OSPCA Act: Hidden Denied Oversight. January 2013 ©
Conservation Authorities: The Legislators Intent. Oct. 2013 ©
Camping, Trailer and Tent By-Laws: What Municipal Councils Need to Know. Aug. 2013 ©
Ontario Electrical Power Pricing: Is It Criminal? Feb. 2014 ©
Planning Ontario: The History and The Intent. Sept. 2014 ©
The Municipal Councilors' Guide: Making Ontario a Better Place to Grow Oct. 2014 ©
Democratic Rights and Senate Reform Dec. 2014 ©
Ontario Heritage Act: Municipal Authority, and Lawful Procedure for Implementation. Jan 2015 ©
The Municipal Councilors' Guide: Making Ontario a Better Place to Grow Supplement to 2014, 2015. Feb. 2015 ©
The Green Energy Act, Environmental Protection Act, The Electricity Act, The Ontario Energy Board Act: Where are the Democratic Rights? July 2015 ©
The Ramifications of Bill 118: "Great Lakes Shoreline Right of Passage Act" Jan. 2016 ©
The Ramifications of Bill 100: "An Act to enact the Ontario Trails Act, 2015 and to amend various Acts." Feb. 2016 ©
Conservation Authorities, Conservation Ontario: Redundant and Grasping for Power, by OLA Aug. 2016©
Niagara Escarpment Commission & the NEPDA: The History and the Intent, by OLA © Aug. 2016