



IN THE MATTER OF the *Education Act*, R.S.O. 1990, C.E.2: IN THE MATTER OF Ontario Regulation 305, Regulation made under the *Education Act*, as amended, and IN THE MATTER OF the minor child, born in 1982.

BETWEEN

P. AND P.

Appellants

-and -

THE SUDBURY DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD

Respondent

Tribunal Members :

Wayne Tompkins -Chair
Gary Dubinsky -Member
James Lunney - Member

For the Appellants :

E. P.

For the Respondent :

P. Lauwers

The hearing was held in Sudbury, Ontario, on November 20, 21, 22, 23, 1995.

Introduction

At the beginning of the hearing, the Chair stated that this Tribunal would operate under the *Education Act* and the *Statutory Powers Procedure Act*. The Chair also stated that: "We are here to listen to the arguments and the discussion concerning the identification and placement of [the student]." (Transcript p.2)

There followed a discussion as to whether the hearing before the Tribunal or any part of it should be closed. The father and Mr. Lauwers agreed that the hearing should be open except where personal information about the student, or reflections on the character or competence of School Board employees were raised.

In the course of the discussion as to whether the hearing should be open or closed, the father made the following statement as to what he considered were the issues to be resolved by the Tribunal: "As far as the issues involved here goes, one of the issues that came out of the appeal was - the issue, I really don't think is integration, whether or not [the student] has a right to be in a classroom. [The student] has been in a regular classroom since starting school, [the student] is still in a regular classroom, I don't think that's the primary issue here. The primary issue here is the qualification of the education..." (Transcript p.8)

The father also made the following statement with respect to his perception of the issues before the Tribunal: "The issues are broad ranging in their scope, they're all-inclusive but the primary issue here, above all else, is the quality of education my [child] has received." (Transcript p.11)

As the opening discussion between the parties proceeded, Mr. Lauwers said: "I am a little concerned about the order of proceedings, in particular, what's on the table. I was hoping for an opening statement from [the appellant] so I would understand what it is he's after. I still don't know what he wants by way of remedy at this proceeding. I don't know what he says is wrong with the identification of his child and what he thinks his child should be identified as. I don't know what he thinks the placement should be, I have no idea what his position is on that. Frankly, the quality of his [child's] education is not an issue here in the strict sense of the word; it's an indirect issue arising from [the student's] identification and placement but it isn't the issue. The School Board isn't on trial here. It's simply a question of determining whether the identification and placement are appropriate. So, I would like, frankly, before we go much farther, to know what his position is on both of those things." (Transcript p.15)

The father followed these remarks by saying: "The issue here is not my [child], not as far as I'm concerned. The issue here is the School Board and if that's a metaphor that they are on trial then that's a metaphor that works for me and we will go through that documentation. In other words, did they provide [my child] with the education that [my child] has a right to and did they use the identification process to deny [my child] that education? That's the primary issue here and I expect to lock horns with Mr. Lauwers on that finer point." (Transcript p.17)

The Appellant's Request for the student

The father then proceeded to make his opening statement, in the course of which, he said: "In the same sense, in the case that I quoted, *T. v. Lambton County*, they had used the argument that the *Statutory Powers Procedure Act* was not, *the Education Act* was not bound by it, that they had their own jurisdiction and that the *Statutory Procedures Act* was a general nature Act and specifically in any legislation that it does not apply. So, the argument was and it was found that Acts of such nature do have an override on other jurisdiction. In that sense we have a piece of legislation in this province, that's the *Human Rights Code*. What I'm putting in or submitting is that the *Human Rights Code* be applied to this Tribunal. Now, I'm not so ready to argue that finer point, as far as I can determine that's a point that might be later argued. In bringing in the *Human Rights Code*, **I've never accepted that my [child] was disabled and [my child] is not disabled.** [emphasis added] That's a term that has been used and it's a legal term, so forth and so on. In this sense I would ask for your patience and your indulgence and your confidence in my presentation. In this sense, from the *Human Rights Code*, Part I and Part II in its entirety, I'm arguing on the basis of racism. Again, having said that, I will ask for your indulgence in my presentation because I think I can make a legitimate argument where that should be considered." (Transcript p.19) Further on in his opening statement, the father insisted that the relevant provisions of the *Human Rights Code* be considered and applied to the issues raised before this Tribunal.

The father completed his opening statement and then was addressed by the chairman as follows: "I'm not clear. I'm not sure where Mr. Lauwers is going to come from here, but I'm not clear what the issues are that you've identified. Can you just summarize for me?" To this, the father made a long and rambling and completely unresponsive address which included references to the *Human Rights Code*, the jurisdiction of the Tribunal, damages and other matters but failed to clarify his position with respect to the identification and placement of his child.

The Respondent's Reply for the Sudbury Roman Catholic Separate School Board

Mr. Lauwers then made the following submissions: "I still don't know what the father's case is about. Under section 37 of the *Education Act*, which is the place where you get your jurisdiction, the two issues that are alive before you are identification and placement. Those are two words which I have not yet heard from the father. I think that I'm entitled to know, before this goes any further, what the father's position is with respect to identification and with respect to placement of his [child]. I am not quite certain what the legal effect of his submissions or his opening statement has been so far. It almost seemed like it was a challenge to your jurisdiction under the *Education Act* at one point and now we're talking about damages which is quite remarkable since you have no jurisdiction over damages at all; that is a Human Rights question and you are the wrong Tribunal for that as you yourself said, Mr. Chair. Having raised those two points I have an opening statement, which I would like to make but... If you would like to make a ruling on this question and find out or require the father to let us know what his position is on identification and what his position is on placement because I don't know

what his position is on either of those two issues and those are the critical issues in front of you."

(Transcript p.23)

Once again, the father made a long, rambling and unresponsive response. Mr. Lauwers then said: "I have just three questions that I want answers to. They are very simple questions, Mr. Chair, and then I would like to get on with my opening statement, which won't take very long but I think you need to have it in order to put this case in context. First of all; does [the father] agree that his [child] is properly identified as exceptional? That is question number one. Question number two; does [the father] dispute [the student's] placement as recommended by the I.P.R.C.? Number three; what remedy does [the father] want? Those are the three questions that I really need answered to if I am going to be able to conduct this case properly. I don't think they are very difficult questions".

MR. CHAIRMAN: [to the father] Can you answer those three questions?

THE FATHER: To the point?

MR. CHAIRMAN: To the point.

THE FATHER: First of all, my child is identified as multiexceptional and, no, I do not agree with that. Okay. The second question was - I'm sorry, can you repeat the second question?

MR. LAUWERS: Do you dispute the placement?

THE FATHER: Absolutely.

MR. LAUWERS: Number three is what remedy?

THE FATHER: One of the concerns I have is, I suppose, there's a presentation technique, for lack of a kinder word to put it, of mine where I'm very, very concerned that if I present my damages right off the bat then Mr. Lauwers will see that as an opportunity to prejudice those damages requested and the legitimacy of my argument and even at that, even if Mr. Lauwers doesn't see that, I see that as a possibility it might damage the outcome of this Tribunal if any damages are presented beforehand. This is not a court of law, as you said and as was pointed out by Mr. Lauwers. We have a lot more options here.

If it was a court of law most certainly I would present my damages very distinctly and clearly. What I'm concerned about - because of the nature of the presentation I'm concerned that they might prejudice the outcome but I can assure Mr. Lauwers before he ever has to rely on his part of the presentation that I will make my damages known; it won't be at the end of this Tribunal, it will be at the end of the first part and that is my presentation. So, when he is allowed his presentation he will be given ample opportunity to rebut those damages.

MR. CHAIRMAN: You don't have any comments to make about the remedy you are proposing, then, in answer to Mr. Lauwers' question?

THE FATHER: Not at this time.

MR. LAUWERS: Mr. Chair, may I take that last question of remedy and break it down into two further very simple questions? Number one; what identification does the father say is appropriate for his child? Number two; what placement does the father say would be appropriate for his child? If I have those two things then I have a sense of the remedy that he is after and I can proceed accordingly.

MR. CHAIRMAN: [to the father]

THE FATHER: "First of all, we've always agreed [the student] has a communications exceptionality and a **communications exceptionality only**. [emphasis added] Secondly, we've always insisted that [the student] be in a regular classroom with a regular class program. As far as the damages go this is as specific as I'm going to be at this point. As Mr. Lauwers put out or mentioned, damages can be found in the *Human Rights Code*, damages can be found in section 19 of the *Statutory Powers Procedure Act*. I am going to apply the test of common law damages. As far as specific amounts and as far as specific tasks involved to remedy that, again, I will present at the end of my presentation." (Transcript p.29)

Chairman's Note

At this point, the Tribunal had received vague impressions, but very little in the way of concrete assertions either as to the remedy sought or the facts relied upon in support thereof by the father.

As can be seen from the foregoing, it was very difficult for the father to state clearly his position with respect to the student's identification and placement. At this stage of the proceedings, the father had advised the Tribunal that the student was not disabled. He had also stated that the student had a communications difficulty only. He had also stated that he disagreed absolutely with the placement recommendation in the I.P.R.C.

Mr. Lauwers then made his opening statement on behalf of the School Board, as follows:

This case obviously takes place in the shadow of the E. decision and until the Supreme Court of Canada says that it's not good law it binds all of us and I will govern myself accordingly in the presentation of this case. The student is a 13 year old student enrolled in grade eight at St. Raphael's School in Sudbury. The student is a Down Syndrome child who shares the developmental delays that are characteristic of Down children. The student's developmental delay cuts across the spectrum and most particularly has a communications aspect but it also has a cognitive aspect. In the early years of the student's education the differences between the student and age peer classmates were not very pronounced but now the student is in grade eight in a rotating program, which is typical of grade eight, and those differences are very pronounced.

The form of integrated education that the student has experienced over the years has not worked particularly well and a new approach is needed. Now, the reasons why it hasn't worked, we think, have a lot to do with the degree to which the parents were unwilling to accept the recommendations of the School Board.

Now, if you look at the document brief that I have given you, volume two, which is the fatter one, the I.P.R.C. decision that is at issue here, if you go to tab two you will find that it is at the back, the second last page in tab two and you will see there that the student's identification is simply as an exceptional student without a subcategory identified. It goes on and says, that "It is recommended that updated assessments be provided to all parties." You will learn that has not been done at the insistence of the parents. Second, "That the curriculum be adapted to address [the student's] strengths and weaknesses." Third, "That we continue to liaise with School Health Support Services. Recommended placement; life skills class at St. Pius XII School with integration to a regular class for the school year 1994/1995." This is the I.P.R.C. that is now under appeal to you. The next page simply carries it forward. You will note that at the bottom of the page where the identification and placement is concerned the parents have not either agreed or disagreed; obviously their appeal speaks for itself in respect of their position.

Now, just for your record, the Special Education Appeal Board decision in this matter is found in the thin document brief I've given you at tab four. It is 13 pages, which I think at some point it might be worthwhile for you to read when you have an opportunity to. The bottom line is that the Tribunal upheld or the Board upheld the identification and placement.

Now, just to move on, then, to what the evidence will show from the School Board's perspective so you can put that into context. The evidence will show that the Sudbury District Roman Catholic Separate School Board is committed to integration as the primary mode of special education. Just recalling to mind for a moment the E. decision where it said that there was a presumption in favour of integration; that, in fact, is the way that the School Board operates. The evidence will also show that the Board has bent over backwards to accommodate the parent's concerns and suggestions. The parents' approach, in fact, has been tried and found wanting here. You will hear from the student's teachers as well as an expert on Down Syndrome during the course of the case.

The Board will explain why the proposed placement pays close attention to E., that the placement reflects as much integration as possible consistent with the student's needs and the needs of other children. But the case also has to be distinguished from E. in a very important respect because in E. the child was very much younger than this child is. Full integration in a setting where the child shows virtually no comprehension or responsiveness to the more advanced concepts taught in grade eight; that kind of issue was not even considered in E. and obviously for obvious reasons but it will emerge as a factor here in weighing the nature of the placement.

Finally, it is only fair, I think, to point out to you that the parents have a different view of the student, one that assumes an intellectual normalcy despite all the evidence to the contrary. They have systematically denied that the student has any form of intellectual exceptionality and they have systematically denied the Board access to experts' reports which they have commissioned concerning both the student's physical and cognitive abilities wherever these tests showed some inconsistency with their vision of their idealized vision of the student's capabilities. For a long time they permitted resource withdrawal for the student, but that has most recently been denied. They now want the student to be in a regular grade eight program with no significant withdrawal, no significant modifications.

The result, from our perspective, over the years and why the School Board is now taking this matter as far as it has and pushing it as far as it has. It has not been to the student's benefit. The student has lost the opportunity for the kind of development, that the student is truly capable of while the parents have chased another dream altogether. That's my opening statement. (Transcript. p.30 -34)

Chairman's Note:

To accommodate witnesses and to expedite the hearing, witnesses for both parties were heard out of order. That is, certain witnesses for the respondent were heard before all the witnesses for the Appellant testified. This procedure was agreed to by both parties, and both parties were also assured of the right to recall if they wished.

Summaries of testimony are nevertheless presented in the usual manner with the appellant first followed by the respondent.

Witnesses:

For the Appellant

Ms Anne Julien
Ms Vivien Hnatiuk
Ms Pauline Lynch
Ms Marilyn Dolmage
Mr. John Murray
Ms Lois Mahon
The father

For the Respondent

Dr. Donald Pearsall
Mr. Michael Csinos
Mr. Paul Mailloux
Ms Suzanne McMullen
Ms Elizabeth O'Neill
Ms Dianne McDonald

Ms Anne Julien

The first witness called by the father was Anne Julien. Ms Julien described her experiences, as the mother of a child identified as exceptional in an I.P.R.C. issued by the School Board, which is a party to these proceedings. The witness described how the child was reported upon as being without exceptionalities up to grade four although the mother observed declining achievement and achievements below the class level.

Subsequently an I.P.R.C. identified the child as exceptional and to the surprise and shock of the mother, the child was identified as having multiple exceptionalities, when she entered grade nine at Mary Mount. The mother did not agree but did not pursue the matter because the child expressed a desire to transfer to another school. The mother alleges that the child was refused admission to Lasalle Secondary School because of the I.P.R.C. from Mary Mount. Eventually, the child was successfully integrated into a public high school.

The father said that he wished to demonstrate the adversarial nature of the relations between this School Board and parents, who did not agree with its identifications or placements. The father particularly asked Ms Julien about her relationship with a particular school principal and she replied that when they met, they spoke. With a little imagination, it might be surmised that relations between Ms Julien and the principal were polite but cool, but there was nothing in her evidence to show that the School Board had dealt with her in a hostile, domineering or adversarial manner. There was nothing in her evidence that was in any way relevant to the issues before this Tribunal relating to the student.

Ms Vivian Hnatiuk

The next witness called by the father was Vivien Hnatiuk. Ms Hnatiuk testified that she graduated from the Ontario Business College as a Human Service Worker. She also stated she has a Life-Skills Coaching Certificate. She works as a volunteer at the Inner City Home where she facilitates groups on anger management and self-esteem and does volunteer work at a number of volunteer placements. Ms Hnatiuk came to the family home to provide in-home help to the student. She also visited the school and discussed with Mrs. McDonald, the special needs teacher, how she could coordinate their work with the student with that of school. Ms Hnatiuk says that Mrs. McDonald informed her that the student was reading and telling stories at the primary level. When she asked for more information specifically in math and telling time, Mrs. McDonald responded by saying that the student was a Down Syndrome. Ms Hnatiuk did not think that this was truly indicative of the student's ability. She further testified that with her dealings with the student, they worked at a higher level. Ms Hnatiuk also testified that she found that the student did not need any kind of encouragement with life skills. She never found the student to be a behaviour problem and the student's memory skills were good. At this time, the student would have been between 11 and 12 years in chronological age. During the cross examination of Ms Hnatiuk, the father said: "I want to make it very clear that I'm not prepared and I don't think it's necessary to argue [the student's] abilities. Now, it's Mr. Lauwers' prerogative to argue the student's disabilities and the justification. From what I remember from his letter, I'm sorry I don't have it in front of me, I think he suggested he's going to have ten to 15 witnesses. Well, these are very, very well-qualified people and it doesn't matter what Viv has said anyway; he will just simply try to argue what she says with their expertise. So, if that's the direction that Mr. Lauwers wants to go in documenting the student's abilities or disabilities, and in the circumstances more, rather, disabilities, then I would suggest to allow him to do that in his presentation. This witness is not qualified to dispute the teachers or the principal or

any member of the Board of Education on determination of the student's qualities and capabilities, she is just simply not qualified for that. That is not why she was asked here today. MR.LAUWERS: "Mr. Chairman, I will accept the concession the father just made and I will cease questioning the witness at this point."

Ms Pauline Lynch

Ms Pauline Lynch testified as to difficulties she encountered while growing up including a three month referral at the age of 13 to the Sudbury-Algoma Sanitarium. No reason or explanation for this referral was ever given to her, and she found it a traumatic experience. She testified to her active role in self-help groups and helping agencies in the eight years following her completion of her education. Although she had obviously had some very painful experiences, she was an impressive witness and won the admiration of the members of the Tribunal. Unfortunately, none of her evidence was even remotely relevant to any of the issues before the Tribunal.

Ms Marilyn Dolmage

The next witness called was Marilyn Dolmage. Ms Dolmage gave evidence that she works for a coalition of organizations under the name Coalition for Inclusive Education. The organizations which make up the Coalition are: Ontario Association for Community Living, Integration Action Group of Ontario, the Down Syndrome Association of Ontario, People First, Youth Involvement Ontario. She testified that every school in Ontario was invited to participate in the activities of the Coalition but that only three schools in the Sudbury area had expressed a desire to become involved. Two schools of the Sudbury Separate School Board were among those wishing to participate.

The Coalition advocates inclusion and integration of children with special needs into the regular classroom settings and is supportive of Ministry direction that the regular classroom should be the first placement consideration at an I.P.R.C. She gave no evidence bearing specifically on the student and no evidence as to the student's needs or as to how they are being met by the Sudbury Separate School Board.

Mr. John Murray

The next witness called was John Murray. Mr. Murray gave evidence of a long and horrific struggle with the Brant Board of Education respecting the placement of his ward. He told of an I.P.R.C. that was appealed and further appealed to a tribunal. He testified that even after the tribunal had handed down its decision the Board was reluctant to implement it. He told of a meeting attended by the school principal, several teachers and over one hundred and twenty-five parents, to prevent his ward from attending their school. The matter received wide publicity in the newspapers of Southern Ontario and on both CBC and CTV television. He related that parents went door to door to solicit funds to hire a lawyer to fight their ward's admission.

Mr. Murray then testified that he is now employed as a Community Development Officer with the Canadian Centre for Social Justice. This organization attempts to educate public bodies such as School Boards with respect to social justice in the context of race relations, attitudes toward developmentally handicapped persons and similar issues.

Ms Lois Mahon

The next witness was Lois Mahon. Ms Mahon testified that she was employed by Child Care Resources, an agency funded by the provincial government. (On cross examination, she indicated that the funding Ministry was Community and Social Services.) This agency impinged on the activities of School Boards at the entrance level usually at the Junior or Senior Kindergarten level. She said that she couldn't really speak to what happened after that because at that level her organization's involvement was terminated. She also testified that leaving aside cases where child abuse was involved, her agency always supported the parents' view.

EXAMINATION IN CHIEF OF THE APPELLANT

In reviewing the information in the Early Identification Screening Inventory ('EISI') from family physicians, psychologists and guidance councillors, the father commented that in his view "[my child's] future was pretty well made up the first day [my child] came into school ... opinions were already formed". The father suggested that the opinions expressed in this report concerning Down Syndrome were based on outdated and statistical information that did not apply to his child. He pointed out that on Page 11 of the report "[my child's] placement was pretty well decided". In his view, there was no objectivity to this assessment. The father testified that the opinions expressed by the school in this report were not generally shared by the professionals in the community at large and pointed to a letter from Dr. Rosenbaum as to how opinions of professionals and people in the community did not always coincide with the opinions of the people at the school level.

In sum, the father alleged that the Board of Education consistently rated the student's ability lower than it should have been rated and that the student's marginal success over the years was due to his and his wife's parenting skills and the support they received from certain groups in the community as well as their insistence that the student be in an integrated class. The father testified that the opinion of the Board with respect to the student's abilities was predetermined from the very start.

Therefore, the father alleged that the quality of education that the student received and is receiving is below standard. The father testified that the primary responsibility of the school is to provide the student with the same opportunities that other children have and, in his view, they have not fulfilled that obligation. In his view, school officials did not give the student an opportunity to fail which is important because it is fundamental to a child's growth that the student learn to fail and how to respond to failure.

The father referred to the IPRC held in 1990 in Brantford by the Brant County Separate School Board which identified the student as exceptional in the communications area and recommended that the student be placed in a regular class with support services and speech therapy. He pointed out that he and his wife never disputed that assessment. The father noted that the IPRC indicated that the student was very limited in ability. The student's scores were below the score that were achieved in Dr. Beattie's August 1988 assessment which indicated that the student was operating moderately below the student's chronological age group. The father inferred that the discrepancy in assessing the student's performance was due to the lack of objectivity on the part of the person who was an employee on the Brant County Separate School Board who carried out the assessment. The father pointed to a number of suggestions he made to the school to improve the student's ability to learn which included the use of an abacus, a calculator, participation in a music program and use of a computer. He testified that the recommendations made in a school meeting were not carried out sufficiently to his satisfaction and were not equivalent to the resources provided to other children.

The father pointed to the first IPRC held in Sudbury where the student was identified as multi-exceptional rather than exceptional in the communications area only. The father felt that this was significant because it disregarded the documentation from Brant County Separate School Board which identified the student as exceptional in communications only. In his opinion, this supported his argument that the Sudbury Roman Catholic Separate School Board lacked objectivity in identifying the student and that accordingly, the placement was inappropriate. In other words, his child's fate was predetermined once his child got to Sudbury.

It is important to note, however, that two and one half years transpired from the time the student was assessed in Brantford in June of 1989 to the time the SRCSSB assessed the student in November of 1991. The father stated that this illustrates a lack of consistency. The father pointed to a previous IPRC which took place in June 1990 in Sudbury which, in his view, also illustrates a lack of consistency between the assessment done in Brantford and the assessment done in Sudbury. The significant difference was the fact that the student was identified as multi-exceptional, rather than exceptional only in the communications area and that the views of the Sudbury Roman Catholic Separate School Board of the student's abilities were predetermined by the fact that the student had Down Syndrome. In other words, in the father's view, the SRCSSB never intended to give the student a chance to learn at the student's own level. The father further testified that the student's identification of an intellectual exceptionality was "coloured by the fact that [the student] had trouble communicating". This, in his view, affected the score in the intellectual area. The father has never disputed the fact that the student has a communications exceptionality.

The father pointed to the fact that the student's resource teacher, Mrs. McDonald, admitted to not providing resources for the student at the grade 6 and 7 level, but only at the grade 3 level. In his own opinion, this resulted in the student not being capable of handling the work at the chronological-age-appropriate level. The father noted that the student got 43 out of 75 in a guitar project which the student did independently. This, he

stated, illustrates the student's capacity to do the work at the student's chronological grade level. (Transcript p.200)

The father testified that the student wandered onto the catwalk alone because of a need to be with other children. It was the student's way of wanting to be part of the process that was being denied to the student. In the father's view, integrating the student more might be a solution and may have prevented the student from acting out in this way. Furthermore, in the father's opinion, the incident of the student going outside without a coat in -37/ C weather simply illustrates a problem regarding discipline and is not an indication that the student is a behavioural problem. (Transcript p. 211)

The father again reiterated that what the whole issue revolves around was the motivation of the SRCSSB. An illustration of this is Mr. Mailloux's statement that [if the student] is in the regular classroom, [the student] gets nothing". The father testified that he believed that the IPRC which is the subject of this appeal was just a rubber stamp for the SRCSSB to do what it wanted to do. It should be noted, however, that Mr. Mailloux denied making this statement. (Transcript p.220)

The father pointed to the policies of the SRCSSB on special education which contained much on the enrichment program, but little on educating students like his child. This, in his view, again illustrates the lack of motivation of the Board to provide children like his child, with an equal opportunity to a quality education. (Transcript p.237-8)

The father pointed to a number of articles that illustrate the need for inclusion, i.e. integration of exceptional students. The references also imply that the quality of a child's education is predetermined by his or her genetic make-up. This, in the father's view, affects the motivation of School Boards to provide children like his child with an equal opportunity to a quality education and leads to stereotyping of children's abilities to learn based on their genetic make-up, and creates discrimination in such a way that children who have Down Syndrome don't get the same opportunity to a quality education as do others. (Transcript p.241)

The father quoted from a document entitled "The Goals of Education for the Province of Ontario" displayed at the student's school. He testified that the Board did not fulfil their obligations with respect to the goals described in that document. The reason again in his opinion was the motivation behind the Board's actions. (Transcript p.255-6)

The father commented on an article entitled "Beware the Advozealots" which was displayed in the staff room at Sacred Heart School. The article comments negatively on certain advocacy groups, who zealously advocate for the handicapped persons in a patronizing and self-righteous manner. In his view, this again showed that the SRCSSB was not motivated to provide the student with the quality education to which the student was entitled. In short, the Board chose to disregard the input from those advocacy groups, which try to assess handicapped children and instead provided the type of education that they alone felt competent to provide. This, in the father's view, was the motivation behind the identification and placement determination of the IPRC dated June 4, 1994. (Transcript p.273)

The father referred to Parts 1 and 2 and Section 4 of the Human Rights Code, as well as the Statutory Powers Procedures Act to support his argument that this Tribunal has the jurisdiction to award damages. (Transcript p.286)

The Father's Statement of Issues

During the hearing, the father made several references to the issues of this case as he saw them. His statement of these issues follows:

1. The Sudbury Roman Catholic School Board never intended to give the student an education at the student's grade level.
2. This decision was based primarily on the fact that the student has Down Syndrome.
3. The Board did not offer the student an opportunity to demonstrate the student's potential.
4. They interfered with the student's success to justify their actions or lack thereof.
5. They did not act in the student's best interests nor did they respect the parent's wishes.
(Transcript p.132)

CROSS EXAMINATION OF THE FATHER

Under cross examination by Mr. Lauwers, the father admitted that, in his view, parents know their children best and they should have the final say in the education of their children. The father stated that the parents should have the power to substitute their judgment over that of the IPRC. Mr. Lauwers stated that because of this view the SRCSSB was incapable of satisfying the student's parents. The father's fifth issue concerning the Board not respecting the parent's wishes identified this concern. (Transcript p.292)

The father testified that the student should always be taught at the grade level appropriate to the student's age regardless of achievement. To illustrate this point, Mr. Lauwers pointed to the fact that when the student came to Sudbury from Brantford, the parents enrolled the student into the grade 3 setting, rather than the grade 2 recommended by the Brant County Separate Board of Education.

The father admitted that teaching a child life skills is necessary. Despite this admission, the father reiterated that he was philosophically opposed to placing the student in a resource class to teach the student life skills because, in his view, this is synonymous with segregation. (Transcript p. 296) Mr. Lauwers pointed to the efforts the SRCSSB made on behalf of the student to comply with the wishes of the parents expressed in

school meetings subsequent to and as a result of a review following the IPRC on June 14, 1994. These included placement of the student in the student's home school, the provision of resource assistance in the regular grade 7 classroom, speech therapy. (Transcript p. 300-302) A moratorium was placed on further home care. There were to be no further assessments of the student and no classroom withdrawal, except for speech. In fact, Mr. Lauwers pointed out that the speech therapy was cancelled by the parents to accommodate a computer class for the student. The parents also requested that the student be exempted from the regular core French program and that the student attend a computer class instead. The Board complied with all these requests made by the parents. Mr. Lauwers also pointed to the fact that it was at the parents' request that a community college student on placement in the school helping the student in the student's daily tasks was asked not to provide the assistance because they wanted the student to get along without any assistance. Mr. Lauwers also pointed out that speech therapy ceased at the parents' request in 1995.

The father admitted that he rejected any suggestion that the student's intellectual capacity was below normal. He believed the student had more mental capacity than others gave the student credit for. (Transcript p. 314) The father testified that he believed the student's cognitive levels were high and that the student was intelligent. (Transcript p. 317)

Mr. Lauwers had the father refer to the CPRI report done by Dr. Mary Beattie which showed that the student's functioning "fell within the range level of mild retardation". The father acknowledged that he did not accept that finding and reiterated his belief that the student does not have an intellectual exceptionality. (Transcript p. 319)

Mr. Lauwers pointed again to the psychometric test completed at the Chedoke-McMaster Hospital in the Family Study Report. Under the heading "General Intellectual Functioning", the student's level of intellectual functioning was stated to be in the moderately retarded range of intelligence. Under the heading "Acquired Knowledge" it found that the student's knowledge fell in the "severely retarded range" and the student's "Memory Tasks" fell within the retarded range. In summary, the test showed that the student's overall level fell in the moderately retarded range. (Transcript p. 320)

Mr. Lauwers referred to the CPRI psychological assessment dated May 14, 1990, which was not shared by the parents with the SRCSSB. Mr. Lauwers further pointed out that the report showed that the student's assessment was further complicated by the parents' refusal to allow the Sudbury Board to receive information from the Brant Board. (Transcript p. 324)

Mr. Lauwers referred to page 37 of the May 1990 CPRI assessment which noted that the Kaufman Assessment Battery Test for Children showed that the student's performance was "well below average, typical of a preschool child". The father rejected this assessment out of hand because it was not consistent with what he knows about his

child. In fact, the father testified that if any test result was not consistent with what he knows about his child, he would reject it out of hand. (Transcript p. 324)

Mr. Lauwers pointed to another finding in the report showing "the picture to be very much one of limited intellectual ability - not a motivation problem or 'shutting down' as a result of frustration". The father also rejected this assessment. Mr. Lauwers further pointed out that the Stanford Binet Test showed the student to have the intelligence of a three and one half year old. In summary, Mr. Lauwers pointed to the findings in this report which indicated that the parents rejected the findings regarding the student's level and defects and instead believed the student's lack of motivation, inattention, lack of experience and the need for an adult to go over what the student had done once the student had finished, resulted in the student failing to secure credit for many items. Despite the psychological assessments completed on the student, the parents believed that a fully integrated program was best for the student in order to develop socialization and communication skills. Furthermore, they felt the student would benefit from exposure to academics taught at a grade level appropriate for the student's chronological age, feeling that the student does "take the information in and comprehends it". (Transcript p. 326)

The father confirmed that the words used by Dr. Murray in the May 1990, CPRI psychological assessment that the "parents are adamant" that the student be fully integrated with no resource withdrawal. This is still their position today. Mr. Lauwers also noted that, in the "In School Meeting" just before the summer of 1991, the request of the school for a new cognitive assessment of the student was not followed up by the parents. (Transcript p. 332)

Mr. Lauwers quoted from another report completed by Network North in November of 1992. This report was not shared by the parents with the Sudbury Board. It stated that "[the student's] performance in all intellectual, academic achievement and adaptive function measures, fell consistently within the mild range of developmental disability" ... based on standardized norms relating the student's performance on the global scales to that of other children of the student's chronological age. It should be noted that this report only came to the Sudbury Board's attention after the Appeal. The report also found that the student fell below the last percentile of other children of the same chronological age. Parts of the report were blacked out. The father stated that his wife likely blacked out portions of this report "if she felt that it was not consistent with our point of view".

(Transcript p. 335)

Mr. Lauwers again referred to the May 14, 1990 CPRI report under "Background Information" which noted the student's academic progress to be much below grade level and to be inconsistent. Specific areas of difficulty include fine motor skills and attention. This report was also not shared by the parents with Network North. In the latter's report and, in particular, the portion dealing with the Vineland Adaptive Behaviourial Scale which assesses the child's performance of daily activities required for personal and social sufficiency, it showed that the student's skills reflect a mild deficit. Mr. Lauwers

pointed out that there were discrepancies in the original version of this report and the copy of the report handed in by the parents to the Sudbury Board.

(Transcript p.341)

Mr. Lauwers stated that the parents do not have any report, (psychological, psychiatric) or any person qualified to carry out intellectual assessments to support their position about the student's intellectual capabilities. He submitted that "there is no outside objective evidence ... that supports the parents' perception of [the student's] intellectual capabilities".

The father countered that his witnesses gave testimony about their perception of the student's intellectual abilities in the community. In his view, people accept the student and the student is not segregated from other students. (Transcript p. 354)

DR. DONALD PEARSALL

Dr. Pearsall described genetically the characteristics of Down Syndrome. In his opinion, the typical range of intelligence on standardized instruments would be between the 20 and 70 range, depending on how severely the person was affected. The standard norm is between 80 and 120. Most Down Syndrome children score between 60 and 70 on these tests.

Dr. Pearsall testified that it is possible to have the cognitive abilities of a Down Syndrome child accurately tested, even if they have problems with speech. Dr. Pearsall described the Kaufman ABC test as a mental measurement that is designed to describe more qualitatively the range of capabilities possessed by a child. He testified that it gives a mental composite index, which "correlates fairly well with other measures of global intelligence". The Leiter Test - tests motor capability and reduces the impact of language and speech in estimating mental capability.

The Vineland Adaptive Scale - filled out by parents - tests or measures capabilities of a child on - 19 - items such as self-care or hygiene and other areas of part of living. There is also a teacher's version of this test. (Transcript p. 364)

Dr. Pearsall described the Binet Test as the longest standing and most used standard measurement of intelligence in the world. It attempts to quantify mental abilities and to compare one child against children of his or her own age. (Transcript p. 366) Dr. Pearsall described the Peabody Picture Vocabulary Test as a screening test for speech and language functions.

(Transcript p. 367)

He commented on the reputation of the Child Psychiatric Research Institute (CPRI) in the psychiatric and psychological community. In his opinion, the CPRI is held in high regard by this community. (Transcript p. 367-8)

Dr. Pearsall testified to the pros and cons of integrating children with Down Syndrome at their chronologically appropriate age. While there is an advantage in learning social skills and speech and language development, this advantage diminishes as the child

gets older where the gap between the Down Syndrome child's capabilities vis a vis those of his or her peers widens. Hence, in his opinion, there is a great divergence at an older age in academic performance and the ability of a Down Syndrome child to adapt socially to his or her peer group. This, in turn, may have a negative effect on social interaction between a Down Syndrome child and his or her normal peers.

CROSS EXAMINATION BY THE FATHER

In response to a question from the father as to whether psychologists, in testing, have any pre-conceived notions about a child's capabilities, Dr. Pearsall's answer was "No". (Transcript p. 378)

CONTINUATION OF CROSS EXAMINATION OF THE FATHER

The father confirmed that he and his wife actually helped in the completion of the Vineland Adaptive Behaviourial Scale. (Transcript p. 386)

Mr. Lauwers quoted from the Chedoke-McMaster Initial Assessment Computer Technology Assessment Clinic, a report which stated that " [the student] will benefit from the use of the computer at school with appropriate software to assist ... to integrate and demonstrate [the student's] knowledge while reducing the difficulty [the student] is having with pencil and paper work". This, in turn, led to a lease to the family of a computer for the student for a probationary period. The terms of the probation were that the student be able to write a full sentence independently and to be able to communicate on the computer. (Transcript p. 389)

Mr. Lauwers referred to a letter written by Rick Portelance, a computer consultant with the Sudbury Board to Chedoke-McMaster Computer Technology Assessment Clinic in response to a letter written by the Clinic to the Sudbury Board in July 1991. This letter stated that in order for the student's lease to continue, the student must be able to write a full sentence independently and be able to show that computer usage for computer communication is more functional for the student than handwriting. The letter from the Clinic also stated that the student was unable to meet the conditions required for the continued lease of the computer. As a result, the father took the computer back. The father, however, insists that he observed the student generating text on the computer at home. A video set up at home failed to confirm this. (Transcript p. 390)

Mr. Lauwers reviewed the student's guitar project with the father. The father acknowledged that the project was a family affair and that the student participated in it. (Transcript p. 402-410) The father admitted that he and his wife were reluctant to share psychological assessments with the school boards unless each one was vetted by them first. (Transcript p. 411)

Mr. Lauwers stated that Rose Stevens who worked professionally with the Hamilton-Wentworth Separate Board, is alleged to have said in Mr. Mailloux' office "in all my years of experience in working with the developmentally delayed, I have never encountered a

child working at grade placement level". The father did not deny that this statement was made. (Transcript p. 419)

EXAMINATION IN CHIEF OF MR. CSINOS

Mr. Csinos is the Area Superintendent for Special Education for the Sudbury District Roman Catholic Separate School Board. Mr. Csinos has been in the position for 12 years. He obtained a Masters of Education in 1976 and received his Special Education Specialist Certification in 1980. He is also actively involved in the community concerning Special Education and sits on the Children's Treatment Committee, a sub-arm of the Hospital Board for Laurentian Hospital.

Mr. Lauwers introduced Exhibit #13, Report to The Minister of Education and Training concerning the Provision of Special Education Programs and Services, prepared by the Sudbury Board. Mr. Csinos went on to explain the guidelines set out by the Ministry for the preparation of these plans. Exhibit #14. Mr. Csinos described the range of placements offered by the Board for Spec. Ed. Students, which range from full integration to placement in a Demonstration School. This is consistent with the Ministry guidelines. Mr. Lauwers introduced a letter from the Ministry dated October 20, 1995 giving the SRCSSB the award for Exemplary Practice in Integration. He submitted that this showed that the Board was committed to the Ministry's policy on the integration of exceptional students as the primary choice of placement if the parents agree. This letter was written in recognition of the Board's submission of their Special Education Plan to the Ministry. (Transcript p. 434 and p. 436)

Mr. Csinos reiterated the Board's commitment to keeping children who are in special education programs in community schools wherever possible. Integration, where possible, is the norm in the Board's delivery model. To illustrate the Board's commitment to a full service model for Special Education, Mr. Csinos noted that the Board works with Network North, which operates the Ruth McMillan School for behavioural exceptionalities in Sudbury Algoma Hospital. (Transcript p. 439)

Mr. Csinos described the range of placements for students in special education at St. Raphael School, St. Pius XII and Sacred Heart Schools. He testified that the Board has 8 Special Education consultants who work with all schools, as well as a part-time speech and language pathologist and a psychometrist. (Transcript p. 445-446) Mr. Csinos discussed the June 1993 IPRC. He testified that because the cognitive information was outdated for the student and because of the indication of fine motor difficulties, he described the student as having a global exceptionality. Given the student's "demonstrated performance" as a student, he felt there was an "intellectual concern". (Transcript p. 450)

Mr. Csinos explained the IPRC process and how decisions are made through consensus. Decisions are based on the Board's professional judgment of the Board's

staff with respect to information available on the student. He acknowledged that the parents didn't support the recommendation for a life skills class with a small group setting, but in the Board's professional judgment, this was the best option for the student. Because of parental requests, the student continued in the regular setting. Instead of going from Sacred Heart to Pius XII, the student went to St. Raphael's for grade 7, which is the normal process for pupils coming from Sacred Heart, a kindergarten to grade 6 school. Mr. Csinos testified that the Board had concerns regarding the student's performance level in that the student was not near the intermediate or grade 7 level. He testified that the Board also had concerns about the student's inappropriate behaviours. Mr. Csinos testified that the program the parents wanted for the student would not, in his opinion, have been effective even with a full-time assistant in the classroom. Mr. Csinos described integration at Pius XII and stated that each exceptional child would be integrated up to the level he or she could handle and this would be written into the student's Individual Education Plan (IEP). (Transcript p. 453)

EXAMINATION IN CHIEF OF PAUL MAILLOUX

Mr. Mailloux is the principal of St. Raphael School, the school where the student was now attending. He described St. Raphael's Spec. Ed. programs. Mr. Mailloux testified that he was present for the student's guitar presentation and confirmed that the student didn't explain it, but gave a handout instead.

He referred to Exhibit #6, the IPRC of June 14, 1994 which states "In recognition of the parents' wishes, [the student] will continue in the home school (St. Raphael) for the school year 1994-95". This was communicated to the parents on September 21, 1994. (Transcript p. 472) Mr. Mailloux testified concerning the efforts of the school to comply with parents' wishes as outlined at the In School Review Meeting, which took place on September 21, 1994. In particular, the school ensured that the student received no withdrawal assistance except for speech. Mr. Mailloux testified that he sent a letter (October 27, 1994) to the parents expressing his concern that the student's program needed modification to meet the student's needs. (Transcript p. 474-92)

He also acknowledged that he sent another letter (February 2, 1995) to the parents expressing his concern about the student being up on the catwalk [alone] and he contacted the parents in January of 1995 because the student was wandering outside without proper clothing in -37/C weather. He also expressed concern about the fire alarm incident and how the student's actions caused the in-school suspension for what he characterized as "conduct injurious to the physical or mental well-being of others in the school".

Mr. Mailloux testified that, in his opinion, the student's habit of leaving the school premises and having other pupils look for [the student] put the children at risk. He also described some of the student's inappropriate behaviours, including sexual touching.

Mr. Mailloux discussed the tasks that Stephen Kerr, a Cambrian College placement student, undertook in dealing with the student's physical needs and confirmed that, at the request of the parents, Mr. Kerr was no longer permitted to help the student because, in their view, it would be better if the student learned how to cope.

Mr. Mailloux summarized the student's inappropriate behaviours and the negative and disruptive effect it had on the other children in the school. He confirmed that the student withdrew from school at some point in grade 7 in April of 1995. (Transcript p. 490)

EXAMINATION IN CHIEF OF SUZANNE McMULLEN

Ms. McMullen set out her qualifications as a specialist in Special Education. In addition to being a specialist, Ms. McMullen testified that she had twelve years experience in teaching Special Education. She was the student's resource teacher in 1994-95 when the student was in grade 7. She first learned about the student in June of 1994, from Dianne McDonald, the resource teacher at Sacred Heart, who explained the student's program to her. On the basis of information provided by Dianne McDonald, she prepared an individual lesson plan in accordance with Ms. McDonald's information about the student's program. She taught the student at the grade 1 level, on a resource withdrawal basis from September 12, 1994 to September 20, 1994. (Transcript p. 500)

Ms McMullen testified that resource withdrawal ended at the parents' request on September 20, 1994. Exhibit #18 was introduced by Mr. Lauwers. This was the Individual Education Program (IEP) for the student dated September 21, 1994 which she prepared. (Transcript p. 504) She was also present at the In School Review Meeting on February 17, 1995. No changes in the student's program were made as a result of the In School Review Meeting because the parents wanted a regular grade 7 program for the student. Ms. McMullen testified that, in her opinion, the student was not competent to do grade 7 work and was not comprehending the grade 7 program. (Transcript p. 507)

She showed an example of the student's work to illustrate her view that the student could not do grade 7 work nor comprehend it. (Transcript p. 509) This bothered her because she believed the student's program "was not best meeting [the student's] needs and preparing [the student] for life ..." (Transcript p. 515) She observed the student in the classroom and some inappropriate behaviours which included sleeping in class, sucking [the student's] thumb, taking [the student's] clothes off in the washroom and masturbating in class. In her view, based on her expertise as a Special Education Specialist, the student needed a life skills placement. The parents, however, were not in favour of this, believing that the student would get more life skills in the regular class. However, she believed that the student could not be properly taught life skills in an integrated class setting.

Ms. McMullen admitted that she implemented 100% of Dianne McDonald's program. On re-examination by Mr. Lauwers, Ms. McMullen stated that it was her own observations of

the student's abilities that caused her to concur 100% with Ms. McDonald's assessment and recommendations for programming. (Transcript p. 521)

EXAMINATION IN CHIEF OF ELIZABETH O'NEILL

Ms. O'Neill taught the student computers in the 1994-95 school year. She had the student for 60 to 70 minute periods once a week. In her opinion, the student was not competent to do grade 7 work in computer and art. She testified that the student was only competent to do work at a "very primary level". (Transcript p. 526)

Ms O'Neill went on to testify that the student exhibited inappropriate behaviours in class such as taking naps, putting [the student's] head down on the desk, sucking [the student's] thumb, playing with toys, lying on the floor under the chair and wandering through the halls. In her professional experience as a Special Education Specialist, she believed that the student's placement should be in the life skills program.

EXAMINATION IN CHIEF OF DIANNE McDONALD

Ms. McDonald has taught Special Education since 1971 and has been a resource teacher since 1972. She has been at Sacred Heart School since 1980 and was the resource withdrawal teacher for the student from time to time when the student arrived at Sacred Heart in September 1990. At that point, the student was in grade 3.

In her view, the integrated classroom setting was not conducive to the student's ability to learn. She testified that the student was easily distracted in diagnostic testing. She believed this indicated that the student was not at the same level as the student's classmates. By the time the student left grade 6, the student was reading at mid-grade 1 level. She testified that the student's work was inconsistent. In addition, she stated that the student easily forgot what the student learned and was not capable of age appropriate work.
(Transcript p. 532)

The Closing Submission of the Father

The father, the Appellant, had presented six witnesses and voluminous documentation to support his argument in favour of a placement for the student in the regular classroom. "The very heart of the issue is the intent, the motivation behind the I.P.R.C. recommendation of June 14, 1994. The law says placement is not an issue." He then continues, "I have established the five facts that I set out on Tuesday. Number one: this School Board never intended to offer my [child] the education others may take for granted. Two: they made this decision entirely on the basis of [the child's] genetic make-up. Three: they did not offer any real opportunity to demonstrate [the child's] potential. Four: they interfered with [the child's] successes to justify their actions or lack of. Five they did not act neither in [the student's] best interest nor with respect to [the student's] parents' wishes. (Transcript p.546)

Chairman's Note

Having regard to the evidence presented identification and placement are issues.

Respondent's Closing Submission

The Respondent correctly pointed out that this case is being heard under the Education Act section 37 and Regulation 305 but also in the shadow of the judgement of the Court of Appeal for Ontario as delivered by Madam Justice Arbour in the case of *E. v Brant (County) Board of Education 22 O.R.(3d) (C.A.) p1* Madam Arbour's judgement expresses a clear presumption in favour of integration, as the placement of choice. An I.P.R.C. recommendation for another form of placement must be justified.

Mr. Lauwers requested that the appeal be denied because the father had failed to provide objective evidence to show that the student had not been properly identified and that a placement suited to the student's needs had not been offered.

Decision:

Re: the student

The Tribunal unanimously denies the appeal and affirms the decision of the I.P.R.C. of June 14, 1994.

Basis for the Decision:

The Tribunal appointed under the Education Act Section 37 accepts the fact that we must be guided in our decision by the Charter of Rights, and by Justice Arbour's ruling in the *E.* case, concerning the Charter and its precedence over the Education Act.

It is true that the *E.* decision came down heavily in favour of integration. Justice Arbour identified a discretionary power conferred on School Boards under the Education Act Section 8, which is in the opinion of the Court not justified under Section 1 of the Charter. Justice Arbour states that "Section 8 of the Act should be read to include a direction that, unless the parents of a child who has been identified as exceptional by reason of a physical or mental disability consent to the placement of that child in a segregated environment, the School Board must provide a placement that is least exclusionary from the mainstream and still reasonably capable of meeting the child's special needs." *E. v Brant (County) Board of Education at p.21*

The *E.* case sets out the court's expectations for a Board of Education. It expresses a clear presumption in favour of integration and ultimately requires a School Board in terms of the I.P.R.C. process to justify another form of placement.

E. continues, "When parents agree on behalf of their child that he/she should be educated in a special class for disabled students there is no constitutional impediment to the School Board proceeding accordingly. However, when this is not the case, the School Board must select a segregated class as a last resort, having made all reasonable efforts to integrate the disabled child. Reasonable efforts are analogous to reasonable accommodation under human rights legislation. It is unnecessary to speculate as to what reasonable inclusionary measures would be. Such measures could obviously include partial or occasional withdrawal from the regular class. (*E.* at p.21)

The notion of partial withdrawal or occasional withdrawal from the regular class, which is referred to by the Court of Appeal is seen as congruent with their concept of integration.

"The measures would only have to meet a reasonableness standard which incorporates concern for the needs of the other pupils in the classroom regardless of its perceived pedagogical merit, a non-consensual exclusionary placement (should) be recognized as discriminatory and not be resorted to unless alternatives are proven inadequate." (*E.* at p.22)

This Tribunal is unanimously of the opinion that the Sudbury District Roman Catholic Separate School Board did everything in its power to satisfy all of the criteria enunciated in the *E.* decision. It did this, in spite of the demands from the parents that the Board should provide programs for the student, which were clearly not in the student's best interests.

The evidence shows that the father failed to appreciate the true nature of his child's exceptionalities and that from time to time the parents objected to the provision of assistance available.

The father does not accept the Identification or the Placement recommendations of the June 14, 1994 I.P.R.C. (Transcript p.27). He claims in his Five Points that the Board "did not offer [his child] a real opportunity to demonstrate [the child's] potential and that they interfered with [the child's] success to justify their actions." (Transcript p.546)

The Tribunal finds that there is no evidence to support this or any of the five allegations of the father.

In the opinion of this Tribunal the witnesses whom the Appellant called did not give evidence which addressed the issues before the Tribunal e.g. one of the Appellant's witnesses, Ms Marilyn Dolmage, Project Coordinator for the Building Inclusive Schools project reported that the Building Inclusive Schools project planned professional development activities "looking for good things that are happening (with integration) and having teachers communicate what works." (Transcript p.92) The Sudbury R.C.S.S.B. has made one of the three submissions from the region to this exchange of best practices for the current year with one planned for 1996. (Transcript p.98)

The Tribunal is unable to find evidence in the testimonies of the Appellant's witnesses to change the Identification or Placement recommendations of June 14, 1994 I.P.R.C. The Tribunal is satisfied on the evidence that the recommendations of the I.P.R.C. are in the best interests of the child.

Doctor Donald Pearsall, consulting psychiatrist for the Regional Children's Psychiatric Centre and Assistant Professor in the Faculty of Medicine at the University of Western Ontario, was called to testify as an expert witness for the Respondent. The development of a child with Down Syndrome between the ages of 4 (Junior Kindergarten) and 13 was compared with that of a developmentally normal child. The pros and cons of an integrated placement for a pupil with Down Syndrome were also reviewed. In the opinion of this expert witness, the issue of integration of Down Syndrome children is one about which there has been no consensus. "It is an extremely controversial area." (Transcript p.368)

Justice Arbour has developed a series of principles, which applied to the E. case and subsequently concern the application of The Charter to the Education Act:

- the placement must be least exclusionary and still reasonably capable of meeting the child's special needs;
- a segregated class must be a last resort to be used after the School Board has made reasonable efforts to integrate the child;
- the efforts used to integrate the child may include partial or occasional withdrawal from the regular class;
- the needs of other children in the classroom must be respected and accommodated;
- parental consent to the placement is not necessary if the preceding criteria are met.

On the evidence presented the School Board has discharged the onus imposed upon it by the E. decision to justify the I.P.R.C. report of June 14, 1994.

The Tribunal finds no evidence presented by the Appellant to indicate that the Board is not following acceptable procedures for the Identification and Placement of exceptional students.

Human Rights

The father also attempted to raise an issue based on the Human Rights Code. We have considered his submissions and the relevant provisions of the Human Rights Code in the light of all the evidence and can find no factual basis for any allegation that the School Board was in breach of any provision of the Human Rights Code in its dealings with the student or the parents. We make this finding solely for the purpose of discharging the duties imposed by law upon this Tribunal. We do not assert any authority or jurisdiction that may have been conferred by law upon any other court, board or tribunal.

It is not the intention of this Tribunal to attempt to preclude the Appellants from pursuing any remedy under the Human Rights Code. This determination is limited only to finding that the evidence adduced before this Tribunal failed to disclose any breach of the provisions of the Human Rights Code.

Costs:

In the unanimous opinion of the Tribunal, the Appellants have completely failed to satisfy the onus placed upon them in these proceedings. Accordingly, there will be no order as to costs for the Appellants.

The Sudbury R.C.S.S.B. did not ask for costs and accordingly this Tribunal makes no order as to costs.

The Tribunal urges the Appellants to meet with the appropriate staff members of the Sudbury R.C.S.S.B. to work out the placement details and to collaborate creatively in a continuing effort to meet the student's needs.

Wayne Tompkins, Chair

Gary Dubinsky, Member

James Lunney, Member