



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #2a

IN THE MATTER OF the *Education Act*, R.S.O. 1980, c.129;
IN THE MATTER OF Ontario Regulation 554/81, Regulation made under the *Education Act*,
AND IN THE MATTER OF the minor child, born in 1966;

BETWEEN

W. B. AND J. B.

Applicants

- and -

THE BOARD OF EDUCATION FOR THE CITY OF NORTH YORK

Respondent

Tribunal Members:

Tom H. Houghton	Chair
Ronald J. Christie	Member
W. John R. Johnson	Member

For the Applicants:

Richard Johnston

For the Respondent:

Donald H. Rogers, Q.C.

The hearing was held in Toronto on January 6, 1984.

The applicants, on behalf of their child, have applied to the Ontario Special Education (English) Tribunal ("Tribunal") for leave to appeal to a regional tribunal under subsection 36(1) of the *Education Act*.

Authority of Tribunal to Hear Appeal

Before the hearing could commence, Mr. Rogers, speaking for The Board of Education for the City of North York ("Board") questioned the authority of the Tribunal to hear the application on the grounds that, at the time the application for leave to appeal was made, the student was not a pupil in a school operated by the Board. It was pointed out that, since the first school day in September, 1983, the student has been attending a private school. Counsel for the Board referred to the recent decision of the Divisional Court in the case of Maw vs. Scarborough Board and Kowalchuk and Townsend vs. Etobicoke Board in support of the contention that the Tribunal has no authority to hear the leave applications.

An examination of the Divisional Court decision shows that the Divisional Court was concerned about section 34 of the Act which deals with pupils who are defined as "hard to serve" because of mental and one or more additional handicaps, and are unable to profit from instruction. Because the children concerned were not pupils enrolled in a school operated by the board concerned, the parents were not entitled to a 'hard to serve pupil' hearing under subsection 34(2) of the Act.

Mr. Johnston, speaking for the parents contended that, at the time the application for a hearing was made (July 20, 1983) the student was considered to be a pupil enrolled at Bathurst Heights Secondary School, operated by the Board, and the student was not removed from a North York school until school re-opened in September, 1983. Mr. Johnston contended that, once commenced, the appeal process should be allowed to continue until completed.

The Tribunal concludes that a decision on the jurisdiction question requires that consideration be given to subsection 36(1) of the Act. That subsection provides:

(1)Where a parent or guardian of a pupil has exhausted all rights of appeal under the regulations in respect of the identification or placement of the pupil as an exceptional pupil and is dissatisfied with the decision in respect of the identification or placement, the parent or guardian may apply to the secretary of a Special Education Tribunal for a hearing for leave to appeal to a regional tribunal established by the Minister under subsection (2) in respect of the identification or placement.

The Tribunal relies on the ordinary meaning of the wording used in this subsection, and concludes that, if the parents have exhausted all their rights of appeal under the regulations, they will have the right to appeal to the Tribunal. We find that the parents have indeed exhausted their rights, and therefore have the right to make application. If they have the right to apply, they have a right to be heard.

Secondly, there is no question that the student was enrolled in a school operated by the North York Board at the time application was made, and the Tribunal believes that the appeal process should be allowed to continue until completed.

Leave to Appeal

Special Education Tribunals have been established for the purpose of assisting parents and school boards to resolve disputes with regard to identification or placement of exceptional pupils. In this case the issue is the placement of a pupil who has been identified as an exceptional pupil.

With respect to the application for leave to appeal to a regional tribunal we find that there is a significant controversy between the parents and the Board concerning the appropriateness of the proposed special education placement of the student as an exceptional pupil. The nature of this dispute is such that in our judgment a further adjudication by a regional tribunal is warranted.

Accordingly, the Tribunal concludes that leave to appeal to a regional tribunal should be granted, and so orders.

T. H. Houghton, Chairman

January 26, 1984