



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #15

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 1983;

BETWEEN

H T and H T

Appellants

-and-

THE OTTAWA BOARD OF EDUCATION

Respondent

Tribunal Members:

Tom H. Houghton
Colombe Daigneault
Kenneth J. Weber

Chairman
Member
Member

For the Appellants:

J. Stuart Langford

For the Respondent:

Raymond J. Ostiguy

The Leave-to-Appeal Hearing was held in Ottawa on 27 March 1990.

Introduction

The appellants, applied to the Ontario Special Education (English) Tribunal, pursuant to section 36 of the *Education Act*, for leave to appeal to a regional tribunal in respect of the placement by The Ottawa Board of Education of their child as an exceptional pupil.

Decision of the Tribunal

In letters to the parties dated 2 April 1990, the Secretary of the Tribunal informed the parties that the Tribunal had granted leave to appeal to a regional tribunal. Subsequently, the counsel for the respondent Board of Education requested that the Tribunal provide reasons for its decision.

Reasons for Decision

It is not customary for the Provincial Special Education Tribunal to provide reasons for granting leave to appeal. In this case, however, we have undertaken to provide reasons.

The submissions and materials provided to the Tribunal prior to and during the hearing indicate that counsel for both parties regard identification and placement as the subjects of the leave-to-appeal hearing. The Tribunal also regards this matter as one of identification and placement.

It is our opinion that the materials reveal that there may have been a fundamental breach of natural justice in the procedures by which the original Identification, Placement and Review Committee arrived at its decision regarding identification and placement, through the delay in officially informing the parents of its decision, and the apparent lack of information presented to the parents on how decisions about identification and placement were made.

Submissions provided to the Tribunal prior to the hearing indicate that the child may well have extensive special needs. However, neither the nature of these needs nor the seriousness of the implications to the child's education were made clear to us. Acting in the child's best interests, therefore, it would be irresponsible for us to preclude these being adduced at a full hearing by a regional special education tribunal.

In addition to the reasons noted above, the Tribunal has one further comment. It became apparent during the hearing that confusion has developed over which school board in the Ottawa-Carleton Region had, and has, responsibility for the child's education. It is our opinion that it is beyond the jurisdiction of this Tribunal to determine where such responsibility lies. A mechanism for dealing with this issue is already in place under the Four-Board Agreement. In this connection, however, the counsel for the respondent Board of Education indicated at the hearing, that ***"...from September of 1989 we are saying clearly it is under the jurisdiction of the Ottawa Board..."***

Tom H. Houghton (Chairman)

Colombe Daigneault (Member)

Kenneth J. Weber (Member)

16 July 1990

ROSS & LANGFORD
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and Notaries Public
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J. Stuart Langford
Kenneth J. Ross
(613) 238-6681

January 28, 1991.

Mr. Maurice Marchand,
Secretary,
Ontario Special Education (English) Tribunal,
Ministry of Education,
Mowat Block, 17th Floor,
Queen's Park,
TORONTO, Ontario,
M7A 1L2

Re: The child v Ottawa Board of Education

Dear Mr. Marchand:

Please be advised that the above-captioned matter has now been settled to the satisfaction of all parties.

Accordingly, would you please accept this letter as a formal application to withdraw the parents' Appeal.

I would ask you to extend my personal thanks to the members of the Tribunal for their patience during these protracted settlement discussions. As well, I wish to thank you personally for your assistance throughout this process. Hopefully, the end that all of us have worked towards, a suitable educational placement for this young [person], has been attained.

Yours very truly,

ROSS AND LANGFORD,

J. Stuart Langford

JSL/sp
c.c. Mr. R. J. Ostiguy,
Gowling, Strathy & Henderson