



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File#11

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 1971;

BETWEEN

J. M. and D. M.

Appellants

AND

THE BRANT COUNTY BOARD OF EDUCATION

Respondent

Tribunal Members:

Tom H. Houghton	Chairman
Ruth Banks	Member
Denis Levesque	Member

For the Appellants:

D. Kevin Davis

For the Respondent:

Margaret A. Scott

The hearing was held in Brantford on December 11, 1985, and on March 24, 25, 26 and 27, and April 10, 1986.

The appellants, on behalf of the child, had originally applied to the Ontario Special Education (English) Tribunal (hereinafter called the "Tribunal") under subsection 36(1) of the *Education Act* (the "Act") for a hearing for leave to appeal to a regional tribunal in respect of the placement of the child as an exceptional pupil, by The Brant County Board of Education (the "Board"). Subsequently, both parties agreed, under subsection 36(3) of the Act, to request the Tribunal, in lieu of granting leave to appeal, to hear and dispose of the appeal.

At the outset of the hearing a question arose as to the status of the appellants as the legal guardians of the child in the deliberations. As a result, the hearing had to be adjourned for over three months while the appellants obtained an order of the Provincial Court (Family Division), dated February 11, 1986, granting them "sole care and custody of the child..." (See Exhibit No. 7.)

Both parties have agreed to certain facts. The child was born in 1971. At birth the child suffered an episode of prenatal asphyxia which has left the child with "moderately severe spastic quadraplegic cerebral palsy, deafness, and intellectual and cognitive deficits". The child can sit unaided for a period of time, uses a wheelchair, and can crawl. The child is dependent on others for feeding, toileting, dressing and grooming. The child does not talk, but communicates by vocal sounds, facial expressions and body gestures.

There is no dispute between the parties as to the identification of the child as trainable retarded in accordance with the guidelines of the Ministry of Education's Special Education Information Handbook, 1984.

The Appellants' Request

The appellants, through their representative, Mr. Kevin Davis, request that their appeal be granted and that the child be placed by the Tribunal in a Grade 8 class at the neighbourhood school (Ryerson Public School) "with an individually adapted curriculum and the support of a teacher's aide".

Alternatively, the appellants request placement of the child in a class for trainable retarded pupils located in a public school "with a curriculum that incorporates significant and meaningful integration" with the other pupils of the school.

The Respondent's Reply

On behalf of the Board, Mrs. Margaret Scott requests that the appellants' appeal be denied and that the Tribunal place the child in the Jane Laycock School (a school for trainable retarded pupils) "with continued involvement with Lansdowne Children's Centre on an outpatient basis and with application of the child's Individual Program Plan".

In the alternative the Board requests "a recommendation to the Identification, Placement and Review Committee (the "I.P.R.C.") for placement in a class for trainable retarded pupils located at the Andrew Donaldson Developmental Centre".

The Appellants' Presentation

In his testimony, the appellant, J.M., describes the child's condition when the child came to live with the appellants in 1983 as: severely, profoundly retarded and very withdrawn; not aware "of things happening around [the child]"; very introverted; participating in self-stimulating behaviour such as rocking and putting [the child's] hands and fingers down [the child's] throat; making strange noises; "virtually totally dependent on all aspects of life"; needing support in a wheelchair with an apparatus of plastic supports and straps; not able to sit up independently; no trunk or body control; not toilet-trained; needing to be spoon-fed a pureed mixture of food because "the child had never learned to chew and swallow properly"; unable to drink fluids other than in a "gulping" fashion.

J.M. then describes the child's condition two years later as: "much more attentive and aware of what is going on around the child"; personable, friendly, outgoing, enjoys the company of others; participates in a passive fashion, recognizing "having cerebral palsy and a hearing handicap"; sits up and crawls "in some fashion"; does not require any special supports in the wheelchair other than a safety belt; can wheel the wheelchair (a right-hand drive because of the child's inability to control the movements with [the child's] left hand); eats any variety of food so long as it is chopped; holds a spoon although the child still does not scoop the food effectively; draws the food on the spoon to [the child's] mouth "without physical prompts or assistance"; reaches for a small glass and raises it to [the child's] mouth "with considerable success" although with a considerable amount of spillage; uses a straw for drinking; "almost totally habit-trained with respect to bowel movements by making opportunities to use the washroom at specific and regular times".

J.M. states that "the child's attention span is probably typical of any child". The child enjoys watching television and "will watch an entire program in its entirety". The child's self-stimulating behaviour has improved except for "some residual behaviours", occurring when the child becomes bored; and the child has stopped putting [the child's] fist into [the child's] mouth.

Testifying on the child's schooling Mr. M. states that when the child lived in a group home in Kingston the child was enrolled in a class for the trainable retarded in a regular public school operated by The Frontenac County Board of Education. According to Mr. M. the class was designated for pupils with severe multihandicaps and was staffed by a teacher and two teachers' aides. The child's program included occupational therapy to increase gross and fine motor control, some physiotherapy, "some areas of communication" and play therapy.

The child was "unofficially" enrolled in a regular Grade 6 class and attended the Grade 6 opening exercises, music, library and physical education classes. Mr. M. agrees with his counsel that, according to the Frontenac Board, "the actual degree of interaction that the child had with the other pupils in the school was something in the order of ten per cent of the school day"; but argues that if recesses, noon hours and other times of the day are included, "I would say easily 25 to 35 per cent of the time the child was with regular pupils".

After the appellants moved to Brantford, Mr. M. states that he arranged for the child to be enrolled in September 1984, in a class for the trainable retarded in Greenbrier Public School similar to that in Kingston. Mr. Denys Jones, Superintendent of Schools, however, after realizing the extent of the

child's handicaps, notified Mr. M. that the placement at Greenbrier would be inappropriate, noting that pupils with similar handicaps to the child's were placed at the Jane Laycock School, a segregated school for the trainable retarded. Accordingly, the child was enrolled at the Jane Laycock School when school reopened in September 1984.

Mr. M. contends that the placement at Jane Laycock did not meet his wishes for the child, arguing that "segregated school systems for special needs children were wrong; that it was unnecessarily segregating them from a system that would lend itself to creating more independence rather than dependence".

Mr. M. states that in October the child was transferred, on the recommendation of the I.P.R.C., from Jane Laycock to the Lansdowne Children's Centre, a hospital school located in the Lansdowne Public School, where both medical and educational facilities are provided. These include physiotherapy, occupational therapy, speech therapy and social work to assist physically-handicapped pupils in the school system. The transfer was made, states Mr. M., so that the I.P.R.C. could "investigate further the child's physical handicaps, the degree of problems with respect to cerebral palsy and the hearing situation" for what Mr. M. believed was to be for three or four months. In fact the child remained at the Lansdowne Children's Centre for the rest of the school year (June, 1985)

Mr. M. states that he understood the Lansdowne class was "specifically designed for children with severe communication problems or deficits and the curriculum was essentially built around the Bliss symbolics communication system". Mr. M. believes that "the child was not at a level to be participating in that form of instruction in communication".

When the I.P.R.C. reviewed the child's case in February 1985, it decided that the child should be returned to the Jane Laycock School but, according to Mr. M., he didn't agree with this decision because there would be no opportunity for the child to be integrated with regular pupils in a regular school setting.

Mr. M. states that he appealed the decision of the I.P.R.C. because he "desired a placement for the child in a Grade 8 class at the child's neighbourhood school, known as the Ryerson Public School". He states that the Special Education Appeal Board concluded that, even though the Board of Education had complied with the Act and its regulations, "the matter should be reviewed", and the parties should attempt to arrive at a mutually-agreeable solution. Mr. M. states that the Board of Education, when it considered the report of the Special Education Appeal Board at the end of June 1985, rejected its recommendations and let stand the original decision of the I.P.R.C. for placement of the child at the Jane Laycock School.

Mr. M. states that, since school reopened in September, 1985, the child has been in attendance at the Andrew Donaldson Developmental Centre, a facility operated by the Brantford and District Association for the Mentally Retarded for pre-school and school-age developmentally handicapped children. Mr. M. reports that the child is much happier and content than at the Lansdowne Centre, although it is still a totally segregated setting. The child is in a classroom where, Mr. M. contends, the program is more specifically designed to meet the child's needs.

Mr. M. wants to give the child “the best opportunities that will ensure that the child is as independent as possible in [the child’s] adult life”. He envisages the child “as moving on from the family circle to other kinds of living situations with non-relatives”. He realizes that the child will always be dependent upon others for assistance in day-to-day life.

In concluding his testimony Mr. M. claims that he wants the child educated in an integrated setting “with maximum opportunities for involvement and participation with regular pupils and regular children”.

In his testimony Norman Kunc presents opinions as to the merits of “mainstreaming” and integration, claiming that benefits will accrue to a handicapped child from the social interaction with a chronological peer group, and the opportunity to develop friendships. Mr. Kunc believes that, if integrated in a regular setting, the child would be able to see appropriate social behaviour. The motivation to copy such role models, in Mr. Kunc’s opinion, would be stronger than attempting to teach similar behaviours. Mr. Kunc readily admits that he does not know the child and therefore cannot comment on the academic side of the child’s educational program.

Philip di Francesco, Co-ordinator of Special Education Programs for The Hamilton-Wentworth Roman Catholic Separate School Board, states in testimony that it is the position of his Board that “all children have a right to attend their neighbourhood school”. He believes that children should not be segregated from their brothers and sisters, but admits that his Board does operate a few segregated classes in spite of its policy. The Hamilton-Wentworth Board has about 130 mentally retarded pupils in its system, of whom about 40 are enrolled in segregated classes. These “segregated” pupils, according to Mr. di Francesco, spend about 50 per cent of the school day in regular classes.

Under cross-examination Mr. di Francesco admits that he has never met the child and therefore is unable to comment on a suitable placement for the child.

Leigh Maulson, a member of a group to which the child also belongs, and Dennis Finucan, the leader of the group, both testify that they have noticed a great change in the child’s behaviour in the two months that the child has been a member. The child no longer disrupts the meetings, and participates in some of the activities, always with a smile on [the child’s] face. Mr. Finucan testifies that he has had no difficulties with the child since the child joined the troop. He believes the child can learn.

Mrs. Gerri Jensen, teacher at the Andrew Donaldson Developmental Centre, testifies that she is responsible for developing, in consultation with others, an Individual Program Plan for the child (see Exhibit No. 3). In Mrs. Jensen’s opinion, the child, since coming to the Centre has developed self-confidence and is very happy. There are no bouts of depression with screaming or disruptive class behaviour. She describes the child’s eating, drinking, wheelchair and toileting habits, noting the progress since the child came. She also describes the child’s social skills, self-help skills and communication skills.

The teachers at the Centre use the Behavioural Characteristics Progression checklist (usually called the “B.C.P.”) to assist in developing the Individual Program Plan.

Mrs. Jensen admits that in communication the child is somewhat inconsistent in responding so that it is difficult for her to determine the extent of the child's development in this area from day to day. She states that there is nothing she is doing with the child that could not be accomplished by a properly-instructed teacher's aide. Mrs. Jensen states that the child's attention span varies from 10-15 seconds to 5-10 minutes. The child demands a lot of attention. The child does not work well independently, but can be left alone with something to keep [the child's] hands occupied for up to 20 minutes.

Mrs. Jensen states that it is difficult to teach the child "cause and effect" and adds that she is not sure that the child has the capacity to understand. Without question, Mrs. Jensen believes that the child performs best in a one-to-one relationship. In Mrs. Jensen's opinion the child's one need not being met at present is interaction with a peer group; and the child's greatest problem is a lack of motivation.

Mrs. Diane Richler, Director of the National Institute on Mental Retardation, refers in testimony to a goal of the Canadian Association for Community Living that

"all children with mental handicaps have access to opportunities and supports for stimulating their growth, development and learning ... That such opportunities and supports be provided in physically and socially integrated environments."

Under cross-examination Mrs. Richler admits that her organization's position may not agree with that of the Ontario Association for the Mentally Retarded with regard to integration:

"However, considering the degree and number of individual needs of some exceptional pupils, there may be a need to provide, for varying periods of time, a protected environment, special equipment and materials, and highly specialized personnel." (See Exhibit No. 20.)

Margot Scott, Chairman of the Education Committee of the Ontario Association for the Mentally Retarded, in her testimony clarifies one of the goals of her Association by referring to her Committee's report, Follow Up to 'Future Success' (Exhibit No. 20). She states that the focus of her Association has been that "the education of a child, regardless of his or her age, should be in as least restrictive and integrated a setting as possible".

Under cross-examination, however, Mrs. Scott indicates that this focus is "an ultimate goal" and that there are steps to this ultimate goal. She further states that her Association "would support the idea of a segregated class in a public school so that there is interaction with age-appropriate pupils". In her opinion, trainable retarded schools, which are totally segregated settings, should not be in existence; indeed, they should all be phased out. She states that her Committee projects that "within five years we should see the integration of pupils into our public and high school system", although when pressed by the counsel for the Board, she admits that at the present time there are almost no school boards in Ontario with total integration of all pupils.

In summary the appellants argue that the child should be placed in a class, preferably a Grade 8 class in a neighbourhood public school, so that the child may have maximum opportunities for involvement and participation with regular pupils. If the child is to make significant gains in realizing [the child's] intellectual and developmental capabilities, the appellants claim that the child will require a considerable amount of highly-intensive, supportive one-to-one kinds of education and training.

The Respondent's Presentation

Denys Jones, Superintendent of Schools for the Board and responsible for special education services, referring to the Board's multi-year plan (Exhibit No. 6), explains the programs and services for trainable retarded pupils within its jurisdiction. The possible placements for these pupils include the Jane Laycock School for the trainable retarded, two self-contained classes at Greenbrier Public School, three at Brantford Collegiate Institute and Vocational School and two at Pauline Johnson Collegiate and Vocational School. He also testifies that the Board's goal is "that these youngsters would be in the mainstream of education in so far as it is possible, feasible". Currently, he affirms that more than 50 per cent of trainable retarded pupils are attending self-contained classes for the trainable retarded outside the segregated trainable retarded schools. He indicates also that it has been the practice of the Board to phase out some of the special education classes and to assign a special education resource teacher in every school.

Mr. Jones also outlines the basis and the process of the decision made concerning the child's educational placement. He affirms that in the view of the I.P.R.C., the educational system cannot meet the child's needs in any other setting than the Jane Laycock School at this time.

Under cross-examination Mr. Jones reaffirms that the Board has been moving for a number of years to a more integrated approach to the provision of special education programs and services. He adds that no pupils with needs as severe as the child's have been placed in an integrated setting. Pupils in these settings presently are higher functioning and older than the child.

Robert Peever, Supervisor of Special Education Services for the Board and Chairman of the I.P.R.C., describes the function of the personnel in that department and the procedures for the referral of a pupil to the I.P.R.C., the consideration of data and information, the actual decision-making and the follow-up activities concerning the whole process of identification and placement.

With specific reference to the child's case, Mr. Peever explains the information-gathering process in preparation for the I.P.R.C. meeting. The information made available to the I.P.R.C. members was obtained from the parents, from personnel of the Board and of The Frontenac County Board of Education as well as reports from health professionals in both communities.

Referring to the therapy and education reports, he further explains the basis upon which the I.P.R.C. meeting of January 29, 1985 arrived at its decision to place the child at the Jane Laycock School, a decision which was reaffirmed at the February 21 meeting after consideration of additional material presented by the parents.

During cross-examination the Special Education Appeal Board decision is raised with specific reference to the need for the Board to consider integration, interaction, and mainstreaming in the re-examination of the decision. Mr. Peever states that the child's retardation and "lack of communication from the retardation" were the overriding factors in support of the Jane Laycock placement. The need for further assessments at the Children's Psychiatric Research Institute (C.P.R.I.) and The Robarts School is indicated as being raised to provide additional, up-to-date information in the areas of intellectual and hearing abilities, but followed up neither by the Board nor the parents.

In his testimony Donald L. Reilly, Superintendent of Special Services for The Niagara South Board of Education, outlines the programs and services available for trainable retarded pupils within his jurisdiction. He states that there are a variety of settings, both segregated and integrated, but only a very small number (8 out of 175) of trainable retarded pupils are placed in regular classrooms. All the other pupils are placed in segregated classrooms with some integration, and in segregated schools with very limited interaction. He points out that the Brant County Board offers "very similar programs, very similar alternatives, very similar procedures, very similar philosophy" to those provided by the Niagara South Board.

Mr. Reilly affirms that he has had the opportunity to observe the child at the Andrew Donaldson Developmental Centre and to examine the documentation relating to the child. He has also visited available placements for the child in the City of Brantford. On the question of the most appropriate placement for the child at the present time, he says, "I believe that the kind of one-to-one instruction, care and treatment that the child's getting now is far superior to what [the child] could get in a regular classroom where there are 20 or 30 other pupils ... ". If the child were in the Niagara South system, Mr. Reilly claims that the child's needs would best be met in a developmental day care centre or in a trainable retarded school at this time. He also points out that because of the child's age and progress, at the next I.P.R.C. review the child might well benefit from a secondary school trainable retarded program such as the one offered at Pauline Johnson. At present some low-functioning pupils are enrolled in that program which offers opportunity for social interaction within the learning and the extracurricular environment.

Under cross-examination Mr. Reilly indicates that he supports the Individual Program Plan (I.P.P.) prepared for the child and also agrees with the activities derived from the I.P.P. and the resource services provided in support of the program. He considers that the three important factors in the integration of a low-functioning pupil are the child's means of communication (receptive and expressive), the child's ability to be directed and the child's attention span sufficient to ensure acceptable behaviour.

William Neeb, Principal of Jane Laycock School, in his testimony describes the accessibility features of the school for the physically handicapped and the resources that are available to the pupils. He describes the behavioural objectives and typical educational activities of the programs at Jane Laycock. He talks of 25 pupils who speak fluently, thus making for a highly vibrant milieu. Ten of the pupils do not speak and require toileting assistance. He indicates that if the child were enrolled at Jane Laycock, the child would be assigned to a class of five pupils with a full-time teacher's aide. The program would be similar to the Individual Program Plan outlined in Exhibit No. 3.

Under cross-examination Mr. Neeb explains that grouping of pupils is done on the basis of age and ability. All trainable retarded pupils at Jane Laycock School who can speak well and function on their own are transferred to Greenbrier Public School. All pupils at Jane Laycock need one-to-one assistance and constant supervision, concludes Mr. Neeb.

In his testimony Allan Nicholls, teacher at the Lansdowne Children's Centre, describes the physical facilities, the staff, the programs and services (therapy and education) of the Centre. He explains in

detail the activities and the techniques concerning the communication programs with reference to specific needs of the pupils in this area. With reference to specific activities, Mr. Nicholls outlines the child's program while at Lansdowne, indicating some evidence of progress although on an inconsistent basis. He estimates that the child's functional communication skills are at about the 18-month level. At times the child can recognize some symbols from a picture board and communicate through gestures, facial expression and basic vocalization.

Under cross-examination, with reference to Exhibit No. 25, he acknowledges that increased interaction with different peers would enhance the child's development of social and communication skills. He also says that his evaluation of the child's communication functional level of 18 months is based on observation of behaviours, and may be somewhat subjective.

Rick Denton, Special Education Consultant for the Board, explains in his testimony the different levels of programs and services available for trainable retarded pupils within the schools and different centres, emphasizing the different needs of pupils attending each of these. In his liaison role between Lansdowne Children's Centre and the Board's programs, he participates in the planning of programs and equipment required for the pupils, although the final responsibility for programming rests with the principal. As a member of the I.P.R.C., his secretarial functions are basically information-gathering from all available sources when a reference is made, and to record the information during the meeting.

Referring specifically to the child's placement and subsequent programs, Mr. Denton indicates that he has had many opportunities to meet the child and the child's teachers for assessment and programming. He has had many contacts with the child over the last two years. He states that a recent assessment using the Portage Guide to Early Education (Exhibit No. 28), places the child within a functioning level of 1-to-2 years but indicates that the cerebral palsy and the hearing impairment would adversely affect the scores on some behaviours. He is confident that the Jane Laycock placement is better for the child because of the one-to-one assistance. The child's functioning is considerably lower than those in attendance at the segregated classes at Greenbrier and significantly different from regular Grade 8 pupils. Mr. Denton claims that the factors to be considered for a change in placement are functional level and chronological age.

Responding to cross-examination questioning Mr. Denton reaffirms the inappropriateness of a Grade 8 placement for the child but does not rule out future placement at Pauline Johnson Collegiate, a secondary school where self-contained classes for trainable retarded pupils are located in order to enhance interaction and cooperative programs. At the suggestion of the appellants' counsel, he reassesses the scoring on the Portage Guide in light of the appellants' input. The end results are basically the same except for the sub-test on social skills, which yields a slightly higher level, going from a 1- to 2-year level to a 2- to 3-year level. Other levels showed no difference.

In summary it is the Board's position that the child's needs as evidenced by testimony and exhibits presented, require intensive one-to-one involvement by people with skills, supported by considerable additional services. On a continuous basis, the Board has been assessing the development of the child and the programs provided for the child. At each of its meetings the I.P.R.C. considered all assessment materials available before coming to its original decision and subsequent reaffirmation. The Board contends that the child requires the intensity of the programs provided either at Jane

Laycock School or at the Andrew Donaldson Developmental Centre. These are the most appropriate placements to meet the needs of the child, in the opinion of the respondent.

Basis for Decision

1. From testimony and argument presented the Tribunal is convinced that the child needs the intensive assistance provided on a one-to-one basis because of the child's inability or severe difficulties in the areas of comprehension, communication, locomotion, hearing and basic care (feeding, toileting, etc.).
2. The child's functional level in social, communications and motor skills, being in the range of 18 months to three years, precludes in our judgement, regular class placement. The special educational and other professional services required to meet the child's needs are those provided within a specialized setting.
3. We note that, because of the child's multiplicity and severity of handicaps, evaluations and assessments have tended to be subjective, based on perception. We believed that there is a danger in drawing conclusions that may not be supported by more objective and definitive testing.
4. The Tribunal notes that both the Board and the appellants have not ruled out the possibility at a future date of a placement for the child in a segregated class for low-functioning trainable retarded pupils at Pauline Johnson Collegiate and Vocational School. As the child will be 15 years old in [the fall of] 1986, we believe that such a placement in the future would be reasonable.
5. The evidence of the Board officials, as supported by the special education multi-year forecast and review (Exhibits Nos. 4 and 6), convince us that The Brant County Board of Education has a wide range of programs and services for exceptional pupils, including trainable retarded pupils, and these programs and services are acknowledged as being in line with the guidelines of the Ministry of Education.
6. Although we take note of the testimony of those witnesses who urged us to consider total integration of trainable retarded pupils, we have taken care not to permit the philosophical debate of "integration vs. segregation" of exceptional pupils to become a major factor in reaching a decision on the appropriate placement for the child. In our judgement the child's placement must be determined on the basis of evidence presented about [the child's] particular needs.

Decision

The Tribunal, having examined all the evidence presented, dismisses the appeal and directs that the child be placed in a class for trainable retarded pupils in a regular public school that is accessible to the handicapped.

Although the identification of the child as an exceptional pupil is not an issue before the Tribunal, we believe that in the child's best interests the parties should obtain a multi-disciplinary assessment such as provided by the Children's Psychiatric Research Institute, London, and an appropriate hearing assessment at a facility such as The Robarts School, London.

There is no order as to costs.

Tom H. Houghton, Chairman

July 17, 1986