



ONTARIO SPECIAL EDUCATION (ENGLISH) TRIBUNAL File #26

IN THE MATTER OF the *Education Act*, R.S.O. 1990, c.e.2;
AND IN THE MATTER OF Ontario Regulation 181/98 made under the *Education Act* as amended;
AND IN THE MATTER OF a minor child, born in 1988;

BETWEEN

D. B. AND R. B.

Appellants

- and -

The Sudbury Catholic District School Board

Respondent

Tribunal Members:

Wayne Tompkins	Chair
Gary Dubinski	Member
James Clemens	Member

APPEARANCES:

For the Appellants:

D. B. and R. B.

For the Respondent:

Peter D. Lauwers, Esq. Counsel

Secretary to the Tribunal

Peter Ferren

INTRODUCTION

The Tribunal was convened on May 10, 1999 in response to the request received from Mrs. B. A second sitting of the Tribunal was necessary on June 29 and 30, 1999 to accommodate the expert witness called by the appellants. At the outset the Chairman reminded the Appellants that the Tribunal operated within the terms imposed by the *Education Act* s.57(4) and the *Statutory Powers and Procedures Act* and was permitted to address issues pertaining only to the Identification and/or Placement of a pupil.

The Appellant and the Respondent Board had already agreed on the Identification of the child as autistic and therefore the Tribunal would hear argument concerning the child's Placement.

The Parent's Opening Statement

The Appellants spoke against the placement proposed for the child by the Sudbury Catholic District School Board (S.C.D.S.B.). They claim that the child's needs cannot be met through the kind of educational program which the Sudbury Catholic District School Board is prepared to offer as detailed in the placement of the IPRC of June 13, 1996. The child's autism can only be remedied through a medically necessary therapeutic program, which will allow the child to be educated. This program must be presented both at school and at home and become a part of the child's life. Placement and program are synonymous. A placement that does not have the resources and trained personnel to execute the proper remedy is inadequate. Such placement must also include integration with "normal" children.

The Appellants are also seeking compensation for the child, reimbursement of lawyer's fees, an inquiry into the IPRC process and reimbursement for lost wages for Mr. B.

The parents detailed the components of a placement, which, in their opinion, would best meet the needs of their child:

- an integrated regular class setting
- enrollment at the neighbourhood school
- clinical in-service training for the teachers and the educational assistant in the method of behaviour modification and education in the disorder of autism
- an educational assistant with training in modification and specific knowledge of PDD/autism assigned to the child for 100% of the school day, and
- a speech pathologist with knowledge and experience in PDD/autism overseeing the program and the involvement of an occupational therapist also with knowledge and experience in PDD/autism (Exhibit 1, Tab 7).

The parents also insist that all of their expectations for placement must be in place before the child enters school.

School Board Response

Mr. Lauwers replied for the Respondent Board and addressed the issues raised by the Appellants. He referred to his letter of May 6, 1999 to the Secretary of the Tribunal noting:

- The complaint of the parents is that the IPRC decision “does not provide.., a therapeutic program that will properly address the child’s very special needs”...The responsibility of the School Board is to provide an educational program, not a therapeutic program. Mr. Lauwers noted on behalf of the Board that:
- it is not the function of the Special Education Tribunal to specify a program for the child. Program decisions are the responsibility of the School Board in the preparation of the individual education plan...the Board’s program decisions are not subject to appeal (Tab 7 Document Brief).

Documentary Evidence Presented by the Appellants

- To support the claim that autism is a neurological disorder that can be cured using the “appropriate therapeutic program”, the appellants cited the Lagrande Appeal, 1989. (Exhibit 1, Tab 1) In this case, parents from New York State successfully sued their health insurance provider for the cost of therapy because their child had recovered as a result of the therapy. (Transcript - p.38)
- The appellants cited an article, “Recovery from Autism Is Possible”, by Bernard Rimland, Ph. D. Of the Autism Research Institute in San Diego, California. (Exhibit 1, Tab 2A) The article contained “documented” cases of recovery or partial recovery from autism. Some of the “recoveries” resulted from use of the kind of therapy practised by a Dr. Ivar Lovaas. None of these cases originated in Canada. (Transcript p. 38)
- The appellants submitted Chapter 3, “Early Behavioural Intervention for Autism - What does Research tell Us?” excerpted from Behavioural Intervention for Young Children With Autism (Exhibit 1, Tab 2B) “Applied Behaviour Analysis and Discrete Trial Therapy: There is Hope” (Exhibit 1, Tab 2C), “An Open Letter from O. Ivar Lovaas” (Exhibit 1, Tab5), and training videos from Dr. Lovaas. These four “documents” and their own experience with Applied Behaviour Analysis and Discrete Trial Therapy (ABADTT), especially as practised by Dr. Ivar Lovaas and his associates at the UCLA clinic, have convinced the appellants that this type of therapy is the only variant that would spell success for their child. Because they recognized that ABADTT was most effective with younger children, they have been requesting that it be part of the child’s program since the child was four or five years old and after the child was enrolled in school. (Transcript - p. 38-41)
- The appellants cited recommendations 35 through 38 of The Royal Commission’s Report, For the Love of Learning, 1995, (Exhibit 1, Tab 3) to show that parents and educators must work together to achieve the best program for a child identified as exceptional. The appellants are of

the opinion that the best program has never been provided for their child and there has been little effort on the part of educators to work with them. The appellants complained that the IPRC, appeal and tribunal process was inefficient in meeting the needs of special education students in a timely manner, (Transcript - p. 42-44)

- The appellants submitted a press release from F.E.A.T. of B.C. (Exhibit 1, Tab 4) describing a brief to the members of the British Columbia Legislature and the Prime Minister of Canada. The press release stated that sixty licensed psychiatrists in British Columbia supported ABADTT (Lovaas). In the brief, these psychiatrists are on record as urging that ABADTT". . . should be widely available...and funded under the provincial Medical Services Plan or the Ministry of Health, or both." (Transcript p. 44-46)
- The appellants cited the *Education Act* and Regulation 305 (Exhibit 1, Tab 6 and 10A) which require a school board to offer the program that best suits the needs of the student. Thus, in the appellants' opinion, the SDCSB is required by law to provide ABADTT since this is the "best" program for their child. (Transcript - p. 48) Reg. 305 was revoked and replaced by Reg.181/98 which came into force on Sept. 1, 1998
- The appellants identified the gaps between the placement offered by the SDCSB and the child's needs: (Exhibit 1, Tab 7A and Transcript - p. 49-53).
 - speech pathologist involved on a consultative basis only;
 - S.O.P in charge of more than fifty schools;
 - classroom teacher and educational assistant have no special training or knowledge of autism;
 - no specialized approach to teaching using a method proven to be the most successful in dealing with autistic children;
 - no occupational therapist to suggest different methods of sensory stimulation;
 - segregated class with integration only guaranteed as a reward for "good behaviour";
 - no integration with "normal" children;
 - no guarantee that the educational assistant would follow the child into the integrated setting;
 - no effective teaching of language skills, and
 - placement not in the neighbourhood school.

- The appellants claimed that a segregated placement that did not meet their child's needs was discriminatory and in direct violation of the child's "charter rights". To buttress this claim, the appellants cited Eaton v. Brant County; Eldridge v. British Columbia; the Oaks Test, and C.R. v. Alberta. (Exhibit 1, Tabs 8A & 8B and Transcript. 54-57)
- Another press release from F.E.A.T. of B.C. was presented claiming that in Alberta and "Throughout the United States, Lovaas-type treatments are paid for by many state governments resulting from court decisions and legislation supporting the disabled..." (Exhibit 1, Tab 9). The appellants presented this information as a precedent for Ontario to follow. (Transcript p. 57-58)
- The appellants showed a video tape which indicated that the child's experience in an integrated nursery school setting was positive and successful.
- The appellants entered into evidence several letters (Exhibit 1, Tabs 11, 12, 18 & 19) written to officials in various provincial ministries and agencies in their search for assistance for the child. (Transcript - p. 59 and Passim)
- The appellants explained that the child has been at home for approximately five years, not through parental choice but because the parents were not offered a placement which would meet the child's needs. They showed a video which demonstrated the effectiveness of their use of AABDTT (Lovaas) with the child. (Transcript - p. 81)
- The appellants believed that the Life Skills placement offered by the Board did not focus significantly on communication skills. To show that communication skills should be an important part of their child's program, they presented several assessments (Bryson/Honeyman; Lindsblad, and Managhan) of the child's abilities which indicated that communication skills should be addressed. (Exhibit 1, Tab 21, Exhibit 5, Exhibit 7 and Transcript p. 95 and Passim)
- Throughout the hearing the appellants reiterated that the placement for the child in senior kindergarten with the Sudbury Public School board did not meet the child's needs. They also expressed the opinion that, in fact, some of the teachers and educational assistants appeared to be overwhelmed and threatened by the child. (Transcript - p. 9)

Testimony of Appellants' Expert Witness

- The only witness, other than the appellants, was Dr. T. Managhan, Ph. D., C. Psych, currently manager of the Developmental Services of Network North. In her questioning of this witness, Mrs. B. established: the requirements of good Applied Behaviour Analysis therapy, the ability of the child to succeed using such a therapy; the importance of the child's integration with so-called normal children; the necessity of offering ABA in an educational (school) setting, and the absolute lack of any other effective method of teaching autistic children. (Exhibit 7 and Transcript -p.4-18)

In his initial remarks, Dr. Managhan reviewed his considerable experience in working with both children and adults having developmental disabilities. He explained that Applied Behaviour Analysis was his area of expertise within psychology and described some of his successes using this particular therapy. He explained in detail the way in which ABA was practised with both children and adults. In this explanation, Dr. Managhan emphasized the importance of: proper physical environments; the right teaching methods, and the required training of those administering the therapy. He also detailed the impact, in his opinion, of using the wrong approaches with an autistic child.

Dr. Managhan expressed this opinion that the child "...has a particularly good prognosis..." (Transcript, p. 9) because the child is more social, more interested in people, because the child relates well; is motivated to and enjoys learning new skills; has the ability to verbalize, and has a good nonverbal I.Q. compared to most of the children with autism. Dr. Managhan testified that "...in terms of teaching new skills, new information the Applied Behaviour Analysis approach would be a maximal for the child. (Transcript, p. 15)

He also recommended that "it would be important for the child to have experienced some degree of integration or experience to play and be with other kids the child's age" (Transcript p. 15) {Italics added} Later in his testimony, he rephrased this requirement for integration: "...in the case of the child, it would be important and desirable to have a certain extent of integration and ability to play with other peers who did not have other problems or do not have autism." (p.16) {Italics added} In this connection, he also expressed the opinion that the child "...would do well with the opportunity of imitating from {sic} so-called normal peers." (Transcript p. 17)

In response to the question "...does this program (ABA) belong in an educational setting?", Dr. Managhan replied: "...I think that the child can learn a number of academic skills...can learn a large number of life skills, domestic, community skills at this age, the best place to do that is at school,...and if that's the best method for teaching a person for the child, then I would like - my fancy would be that {ABA} would be available to some extent at school." (Transcript p. 17)

In response to the final question regarding whether a more effective method of teaching P.D.D., autistic children existed, Dr. Managhan responded: "I think anyone who's perused the research...won't find literature that will indicate that anything is better than Applied Behaviour Analysis." (Transcript p. 17)

Evidence Presented by the Sudbury Catholic District School Board

MARCIA MACDONALD

EXAMINATION IN CHIEF

- Ms. Macdonald was the child's Senior Kindergarten teacher. She has a RN diploma, a Bachelor of Nursing and a Bachelor of Education.
- Her experience with Special Education was limited to completing Part 1. She had no practical experience.

- When she learned that the child would be one of the 30 children in her class she researched all her nursing books on autism. That was the extent of her experience in teaching autistic children.
- She stated that she along with Judy Pilon who was in special education, planned the child's program which was implemented by her and a teaching assistant in her classroom.
- Although Ms. MacDonald's role was that of the child's teacher, both she and the teaching assistant did the academic program and she stated that her direct contact with the child was less teaching and more on the social level (Transcript p. 173)
- In response to a question about the child's behaviour in class, Ms. Macdonald stated that the child rocked a lot, repeated one word sometimes over and over again and would often kick students and teachers. This behaviour was often brought on by excess noise or another form of distraction for the child.
- While the child generally related well to other children, the child primarily engaged in parallel play which would not involve the other students.
- In comparison to the other children, the child was not as coordinated and required assistance. Ms Macdonald also stated that the other children were more independent than the child and unlike the child socialized with one another. The child's academic and communication skills were also below those of the child's peers.
- Ms MacDonald stated that she was primarily concerned that the child's behavioural outbursts and lack of self-control would eventually compromise the other children's safety. In her view, the integrated class setting was not appropriate for the child because it was too noisy and over stimulating. The child needed a quiet environment without distraction.

CROSS-EXAMINATION BY MRS. B.

- In response to a question about the experience she gained from taking Part 1 of the Special Education course, Ms. MacDonald acknowledged that the course consisted only of "learning definitions and things like that", but had nothing about teaching children with special needs. (Transcript p. 180)
- She also could not respond to the question of what her understanding was of the deficits in autism and what causes them; stating that the behaviour of autistic children is caused or related to a 'brain development'.
- She gave evidence that the child's behaviour included kicking and pushing and that the children were afraid of the child even though they wanted to be friendly towards the child.

CAROLINE SAUVE

EVIDENCE IN CHIEF

- Ms. Sauve was an educational assistant for the child. She graduated from Cambrian College in Child Care, which enabled her to work with children who were 'behaviourally and emotionally disturbed (Transcript p. 191). She also ran a family day care centre from her home for children between the ages of six months and ten years. She acknowledged that her experience with autistic children was limited consisting primarily of practical experience of four months training at the first MacMillan School. Her training in behavioural modification as a technique came primarily through her 2-year Child Care course.
- Ms. Sauve stated that she met the child once in August at the family home but at the end of the meeting, she remembered 'feeling not too confident' about her ability to connect with the child. (Transcript p. 194).
- She had asked to meet with the child once she learned (in June) from her supervisor Dr. Shecter that she would be a one on one educational assistant for the child in the upcoming school year. She stated that the child needed hands on and verbal support to get through the daily routines.
- Between September and her departure from Adamsdale in mid November, she observed aggressive behaviours such as unprovoked 'hitting', the grabbing of glasses and kicking. Socialization with the other children consisted of 'parallel play' with little or no interaction (Transcript p. 199)
- She stated that she did not believe that the child improved during the time she assisted the child because one day the child would progress and the next day appear to regress. At times, things would occur for which she didn't see the 'antecedent'. She found that discouraging and stressful and she accordingly asked to be reassigned.

CROSS EXAMINATION BY MRS. B.

- In response to a question from Mrs. B., Ms. Sauve acknowledged that she probably told Mrs. B. that she would have liked some extra training in teaching autistic children.
- While she acknowledged not keeping a record of the team meetings there were, to devise approaches to deal with the child's problems, she did state that some took place but was unclear whether they included advice from the teacher and Dr. Shecter on strategies on how to deal with the child.

LINDA VIGNA
EXAMINATION IN CHIEF

- Ms. Vigna was the child's educational assistant in the senior kindergarten class at Adamsdale commencing November 15th after Ms. Sauve was re-assigned. She had a one on one relationship with the child.
- She has a diploma in early childhood education from Cambrian College and was halfway through her psychology and sociology degree when she came in contact with the child.
- She worked for a year in a school for special needs children. There were three autistic children in this class as well as one with "global" developmental delays.
- Subsequently Ms Vigna was placed for 3 years in a class where she had a one on one relationship with a child identified as autistic.
- Following this she worked with the Board's Education Centre on the itinerant program as an educational assistant where she assisted in developing behaviour programming for autistic children. She also attended one course in autism.
- She stated that she was always in close proximity to the child who often exhibited behaviours such as kicking, hitting and on one occasion punching another student as well as grabbing another student's eyeglasses. She herself was hit by the child on occasion.
- She described how the academic portion of the program was modified for the child and stated that she used objects in the classroom that the child enjoyed as "the reinforcement menu" (Transcript p. 215)
- She stated that the child's relationships and interactions with other children were limited because she would never leave the child alone with another child because of her concern for the safety of the other children. Relative to the other children, the child was not as independent and most often the child's play was parallel in nature. Much of the child's communication was not verbal but through body language and facial expressions but at times the child would use swear words.
- Ms. Vigna stated that she personally preferred the integration model when teaching special needs pupils and developed a document for the school board on integration after working with an autistic child for 3 years. In response to a question of whether she thought an integrated setting was appropriate for the child at that time, Ms. Vigna stated that she honestly didn't know if the child had a fair chance to start off initially.
- She attributed this to the fact that there were "a lot of variables in the way" and that she was not sure that the "consistency" in approaches to the child's learning between "the home and the school" which are important was taking place (Transcript p. 221) However, Ms. Vigna stated that the child was given an excellent program at Adamsdale with "constant

communication” between her, the teacher, the principal, some with Paula Barber the Superintendent and some with Dr. Shecter and the resource teacher who designed the child’s I.E.P.

CROSS EXAMINATION BY MRS. B.

- In response to questions from Mrs. B., Ms. Vigna elaborated on her experience and described her approach to assist the teacher in delivering an academic and behavioural modification program for the child, which included the use of a positive reinforcement menu. When asked by Mrs. B. whether she remembered telling her that she “couldn’t teach the child”, she replied “never”. (Transcript p. 227)
- She stated that there was not a balance between the child’s learning and other behaviours, the latter being the stronger of the two impairing the child’s ability to learn.

PAULA BARBER

EXAMINATION IN CHIEF

- Ms. Barber stated that throughout the relevant time period she was the Public Board’s superintendent responsible for Special Education and Student Services. She has a BA and M. ED in psychology and a Bachelor of Education degree and also a specialist in special education guidance and visual arts. She has taught children with learning disabilities.
- She stated that she was not involved in the first IPRC but assisted in getting Dr. Konstantareas to come to the Board to assess the child (as well as a number of other children) in preparation for the child’s first IPRC in October 1993.
- She stated that autism is a fairly “rare type of exceptionality” and because Dr. Konstantareas was a “world renowned expert in autism”, she considered the Board very fortunate to be able to avail themselves of her services to assess autistic children.
- She first came in contact with the B. case after the Appeal from the October 1993 IPRC was initiated. She attempted to mediate but was unsuccessful and the Appeal proceeded.
- She stated that she chaired the second IPRC in December of 1993, but prior to that spent about one and a half hours observing the child in the classroom. She observed the child having difficulty trying to keep [the child’s] focus and on several instances “lashing out”. (Transcript p. 235)
- She chaired the second IPRC replacing the principal Mr. Rapsky who normally would be the chair but who was in hospital. In attendance at the IPRC were the following:
- Dr. Shecter, Chief psychologist for the Public Board who had the closest contact with Dr. Konstantareas.

- Rita Delavadora, special education consultant.
- Jack Calemeechi soon to be appointed principal of Adamsdale School
- Judy Pilon, the resource teacher on site at Adamsdale. The appellants were invited but didn't attend.
- In reviewing the minutes of the IPRC, she noted that it recommended movement of the child to a self contained special communication class at Wembly, being the community school for children with autism or PDD. It offered a very intensive program with "a lot of support from community agencies in speech, psychology and occupational therapy and many professionals coming into the classroom" (Transcript p. 239)
- Ms. Barber stated that this class had been recognized as "a model classroom" for children with communication exceptionalities" (Transcript p. 239) and stated that Dr. Konstantareas, after observing the class noted in a letter that the segregated context with partial integration may be the "optimal mode of service provision for the previously developmentally disordered children" (Transcript p. 240). Ms. Barber stated that the child's needs could best be met in that kind of setting.

MR. CSINOS

EXAMINATION IN CHIEF

Mr. Csino is in his fifteenth year as the Superintendent of Education and Special Education Student Services for the Catholic Board in Sudbury. He has a Bachelor of Arts, Masters of Education in Educational Administration, Bachelor of Education and supervisory officer certificate as well as specialist qualifications in Special Education and qualifications in guidance and primary education.

- In referring to the annual school board review of the Board's Special Education Plan Mr. Csinos described the continuum of placement options offered with most students placed in a regular class, some of these receiving support through an in school resource model and some in full or half day classes at community schools. The Board also offers five Life Skills classes and the support of an educational assistant assigned to "designated schools" who works with provincial agencies in cases of more "extreme placements" (Transcript p. 247)
- Mr. Csinos described the kind of instruction and support offered students in each type of placement both in the elementary and secondary panel. He stated that the Board always considers what is age appropriate for the child given their exceptionalities. Taking the child's exceptionalities into account and the fact the child would soon be turning eleven, Mr Csinos saw the child being placed in the Life Skills Class at Pius XII, the child's home school. Ms. Csino stated that he was present at the IIPRC held on June 13, 1996, which made this recommendation.

- The decision was taken by the I.P.R.C. members after reviewing the OSR which made a unanimous decision to place the child in the Life Skills Class at St. Anthony “with integration as warranted” because it offered a smaller setting where the various areas of the program could best be delivered. Mr. Csinos stated that normally the teacher, the special education consultant along with other people including the parents would collaborate in developing an Individual Education Plan (IEP) (Transcript p. 253)
- The Life Skills Class contemplated for the child would have ten students with a teacher and possibly two educational assistants, one full time, another part-time with a possibility of later becoming full time. This would produce a possible five to one ratio rather than a regular integrated class of twenty-eight to thirty-two students of which eight to ten would have an identified exceptionality.
- He stated the Board also avails itself of the services of the Geneva Centre which services the board’s staff and assistants including the Board’s speech pathologist. Given the child’s profile, Mr. Csino did not think a classroom of thirty to thirty-two students would be a successful placement for the child. He acknowledged that while the Board doesn’t have a lot of students with autism, it tries to place the child in their home schools.
- Some of these children who are higher functioning are placed in a regular class others with more cognitive delay along with autism would be in a Life Skills program with less and more functional academics. He stressed that placements were not static and would be changed depending on the child’s progress.

**DR. SHECTER
EXAMINATION IN CHIEF**

Dr. Shecter holds a PHD in psychology from York University and is also a registered psychologist with the Ontario College of Psychologists.

- He is Head of the psychological services department for the Sudbury Board of Education and the Rainbow District School Board both public boards. He stated that the Board’s psychology department provides primarily assessment services for children and adolescents with learning and behavioural difficulties. It provides guidance for the development of IEP’s and to help the IPRC decide on placements.
- As with the Catholic Board, Dr. Shecter pointed out that the Sudbury and Rainbow District School Boards offer a wide spectrum of special education services and programs that run from the “least intrusive to more specialized services and program supported by a resource teacher and or an educational assistant which at its ultimate would be a specialized program in a self contained classroom setting” (Transcript p. 289-290).
- With approximately eighteen thousand students within the Rainbow District School Board about six to eight percent are placed in self contained units but integration is the model the Board favours. All efforts are made to maintain and to return the student with special needs to

“regular classroom programs” (Transcript p. 291)

- Dr. Shecter estimated that the Board has about thirty to forty students with pervasive developmental disorders some of which have been diagnosed with autism; Of the thirty to forty students with this exceptionality, there is a range of symptoms, some common to all students some not. One of the common symptoms is less social interaction with others. Some students are “repetitive in terms of saying what they hear,” some are “fixated” on particular routines; some have difficulty organizing their “motoric response to their environment”. Some have a lot of difficulty with their “attention span”, and some have disruptive behaviour control issues where behaviours are quite threatening or cause “safety concerns for others in the child’s immediate environment” (Transcript p. 293)
- He stated that autism is a neurological disorder, developmental in nature, affecting the child’s development. The type of recommended placement for a child with autism depends on the severity of the symptoms described above. Some are placed in regular classes with minimal support, or with educational or resource teacher support in community schools. Others are in self-contained programs including so called communication classes. In his view the students in the Board identified with this exceptionality are making progress in their respective placements.
- The child in this case first came to his attention during the summer of 1993 as one of the children to be assessed by Dr. Konstantareas prior to September enrolment. He stated that Dr. Konstantareas was “renowned as an Ontario expert in the field of autism” (Transcript p. 296).
- In the time frame leading up to the October 1993 IPRC, Dr. Shecter had obtained access to a number of other assessments relating to the child, one being a report done by Dr. D. F. Marr who is a child psychiatrist at Networks North.
- The child was referred to Dr. Marr by the principal of the Ruth MacMillan School on the grounds of “Sudbury Algoma Hospital for children in need of care and treatment for disruptive as well as psychiatric behaviourally related needs” (Transcript p.298). Diagnostically, Dr. Shecter interpreted Dr. Marr’s report as indicating that although developmentally delayed, the child was gradually developing appropriate social skills beyond parallel play, a knowledge of self help and like skills and progress in speech and language with the aid of a speech pathologist all in all “a positive indicator of potential for the child” (Transcript p. 303). Dr. Shecter also interpreted the report from Child Care Resources, a resource for families with special needs children, as sort of a positive indicator for the child’s development.
- Dr. Shecter acknowledged that there were other reports on the child he had not seen, one from Claire Becket a speech language pathologist, one from a pediatrician Dr. Goldboom and one from a child psychiatrist Dr. Reacall.
- In comparing Dr. Marr’s assessment of the child to Dr. Konstantareas report Dr. Shecter found the latter to be more thorough, and comprehensive because Dr. Konstantareas’ used a wide variety of well known reliable and acceptable tests or instruments in assessing the child. Dr.

Konstantarea's assessment stated that the child's communication delays were not just due to a neurological speech language dysfunction but were part of the "autistic pervasive developmental spectrum" (Transcript p. 312).

- The child's global score for non verbal ability gave the child a mental age of three years eleven months at a time when the child was five years two months of age placing the child in the lower end of the average range and indicating a "mild delay in non-verbal intellectual ability" (Transcript p. 313).
- For language, the child's results showed the child as having a severe language delay. Notwithstanding these results, Dr. Konstantareas concluded that in comparing the child with other children with developmental as well as pervasive developmental delays the child has done relatively well and could be considered to be high functioning but in comparison to other so called normal children the child was still well below the average.
- Dr. Shecter was also asked to review another report prepared under the signature of Susan Honeyman a speech pathologist and Susan Bryson, an Associate Professor of Psychology at York University. Another version of the report was also signed by Larry Tuff who unlike the other two signatories to this report has the professional designation of a Certified Psychologist (C. Psych) for Ontario. However, the only difference in the two reports was that the one signed by Larry Tuff included a recommendation for the establishment of stronger routines within which flexibility can later be introduced which would give the child the basis of language. This was not in the original report signed by Ms. Honeyman and Ms. Bryson but appeared to be of no particular significance to the child's placement.
- Dr. Shecter noted that this report observed that the child's behaviour both at play and in a more structured test situation suggested that the child had particular "difficulty controlling [the child's] attention and communicating effectively with others, which in his view, is to be expected of a child with an autistic disorder" (Transcript p. 324).
- While this report concurred with the findings of Dr. Konstantareas that the child was 'cognitively capable' in that the child was a high functioning child in relation to others with pervasive development disorders, Dr. Shecter preferred the findings of Dr. Konstantareas whose assessment in his view was more comprehensive using well respected and reliable tests. It found the child to have a mental age of three years eleven months in respect to cognitive abilities and not six years one month as found by the signatories of the assessment which put the child in the "normal range of non verbal intelligence" (Transcript p. 325). While this assessment highly recommended a "placement in a regular class for the child," Dr. Shecter observed that this report did not note any "interfering components such as attention span and behaviour compromising the safety of other students that were observed by Ms. Macdonald, Ms. Vigna and Ms. Sauve during the time the child was in the class at Adamsdale School. He also noted that none of those individuals were contacted by the signatories of this report to get information about how the child would function in an "integrated setting" although in his view "good practice" would dictate this (Transcript p. 330). However in his view both Dr. Konstantareas's report and that of Mr. Tuff and Susan Honeyman had a fairly positive

prognosis for the child regarding the child's ability to develop both cognitive and social skills.

- In response to a question about the second IPRC which took place on December 17, 1993, Dr. Shecter acknowledged that he had (at the parent's request) not performed an assessment on the child. This IPRC was a follow up to the first IPRC in October to be better able to address the child's exceptionalities and needs as described in Dr. Konstantareas's assessment, and to deliver a program to meet the child's needs. The parents did not attend this IPRC. Because of the Public Board's experience at Adamsdale with the safety issues surrounding the child's behavioural outburst, Dr. Shecter felt that placement of the child in a classroom of thirty students would not be appropriate.
- Dr. Shecter was also of the view that autistic children respond best to a "predictable safe environment" where a "very routinized setting" seems to "settle children with that type of disorder who were highly distractible" and have a "high behavioural component". This formed the foundation for the IPRC's recommendation of a "self contained program" where there are fewer children and more predictability of environment and routine which will optimize the chance to establish a basic foundation relationship with the child and build a program as outlined in the IPRC statement of needs." In his view a one-on-one program would be difficult to sustain in an integrated setting especially when there are safety concerns (Transcript p. 337-338).
- Dr. Shecter went on to describe the Applied Behavioural Approach Program ('ABA') with respect to autism and in particular the Discrete Trial Therapy, a treatment also known as A.B.A.D.T.T. which attempts to shape the behaviour through environment and reinforce it in some form of "reward and punishment" (Transcript p. 343). This approach or program requires consistency both at home and in other environments, a team approach and gains the best results when it is started early before the child is five years old, done at home and is applied intensively and rigorously. Dr. Shecter indicated that the jury was still out on whether aversive therapy or negative reinforcement is necessary or not and that more research was needed on this issue.
- He did state that it is a rigorous, intensive and intrusive type of therapy which requires a trained therapist who is also supervised and monitored because there are specific behaviours you are trying to shape and reinforce. As such, it would not in his view be an appropriate program for School Boards to deliver because it is primarily a clinical therapeutic approach to treating autistic children requiring a highly specified skill set. In his opinion this type of program could not be delivered in a school setting.
- Dr. Shecter sees ABA being used in the school context by having the school work collaboratively with the community's clinical and support services who work with children and their families at home in order to use the principle developed as best they can within a school setting. He acknowledged that in Sudbury there was no agency that actually employed the A.B.A.D.T.T. approach, the so-called Lovass Method.
- Dr. Shecter stated that his mandate as Head of the psychology department for the Board was

to provide assessment not therapeutic service. In that sense he is consulted by Board personnel on how to deliver a school based program.

- While Dr. Shecter classified speech pathologists as therapists, he acknowledged that School Boards hire them to develop speech articulation programs to enhance an exceptional student's speech and language skills. As such they could also be described as educational assistants and part of the "continuum" of educational services provided by a School Board for exceptional children.
- He also acknowledged that the clinical and assessment services in the community for these children have as their primary mandate to help families prior to school admission. After school admission they continue to be a resource to families but not to School Boards.

Furthermore he stated that different agencies within the community might employ different approaches to treating or developing programs for autistic children. Given the above, it is often difficult to deliver a comprehensive program for students with developmental disorder and in that sense developing a program for these children is a "tough nut to crack" (Transcript p. 354).

CROSS EXAMINATION BY MRS. B.

- In response to a request to elaborate on the evidence previously given about the 'excellent program' for the child at Adamsdale, Dr. Shecter stated that not only was he not present to hear this evidence but that he had been excluded by the parents from "being directly involved in the child's program or assessment" and as such could not "speak with any authority (Transcript p. 360).
- Dr. Shecter did state that the Board officials who planned and implemented the child's program at Adamsdale are "experienced" and they have an "excellent" attitude in that they are "very caring and most dedicated to trying to help students with varying special needs: (Transcript p. 368). He went on to state that they used tried and true behavioural principles along the lines of those enunciated in the ABA approach by encouraging and reinforcing appropriate behaviour which at times may include aversive or negative restraints.
- He disagreed that if the behaviour continues, it is evidence that no progress was being made or that the approach has to be changed. In his view, you should not abandon the approach for something else because you will lose the consistency. He acknowledged that a good program required a team effort involving the parents but disagreed with the appellants' allegation that this was not the case in implementing the child's program at Adamsdale.
- He also disagreed with Mrs. B.'s allegation that the Board personnel were not qualified and experienced to deliver the child's program. He stated that they implemented a behavioural program with behavioural management techniques similar to the applied behavioural analysis program but without the same intensity and duration. However, he acknowledged that he didn't participate in developing the program or observe its implementation, so he didn't really know

the details of the behavioural approach used by the Board personnel at Adamsdale. Dr. Shecter disputed Mrs. B.'s assertion that comparing the child to the norm as was the case in Dr. Konstantareas's assessment was unfair because in his view, "the purpose of the assessment is to understand as best we can the needs of the child and where they are "in order to be better able to set benchmarks and develop a specialized program that will address these deficits to bring the child as close to the average or normal development as possible" (Transcript p. 374). In his view standardized tests like the ones used by Dr. Konstantareas give results that are "valid and reliable" (Transcript p. 375). He reiterated that the child is high functioning in relation to other autistic children diagnosing the child with a mild developmental delay, but not in relation to children who don't have these compromising features.

- In sum, notwithstanding his belief that more research was needed on the ABA approach, he stated that the Board would implement whatever approach they could in either a "regular or self contained placement" (Transcript p. 381). This included using the fundamentals of the ABA approach but that the pure ABA/Lovass approach was different because of its stress on early intervention before the child attends school and its intensity as well as the specific skills and expertise required to deliver it which in his view went "well beyond" what the school could provide. However, he did state that the school would collaborate with other service providers and that ABA may have a "role in education" (Transcript p. 372).

APPELLANT'S CLOSING STATEMENT

The placement offered by the Sudbury Catholic District School Board is no more than "a place to put the child". The Board has failed to demonstrate why this placement is the best one for the child and how it will meet the child's special needs. The SCDSB has relied on assessments and evidence from approximately five years ago when the child was enrolled in the Public School Board. The child must be placed where ABADTT can be applied by trained personnel and where the child can also be integrated on a regular basis with "normal" children to practise the skills learned using this particular therapy. (Transcript p. 6-15).

Summation and Closing Statement by Mr. Lauwers

- Mr. Lauwers began by stating that the Board's position was that the appropriate placement for the child now would be Piux XII School, the child's home school with "integration as appropriate." He stated that there is only one full psychological and diagnostic evaluation on the child that the Board has and that is the one prepared by Dr. Konstantareas who is an expert in autism and also recognized as such by Dr. Managhan (Transcript p. 16).
- Mr. Lauwers stated that Dr. Konstantareas's report found the child to be "at a higher level of functioning than other children presented with characteristics at the child's chronological age" and that the child would benefit from intense educational inputs. This he noted was a view shared by others who assessed the child including Dr. Managhan but was not to be interpreted that the child is "normal or close to normal" in the objective sense (Transcript p. 18).
- Mr. Lauwers pointed out that the assessment by Ms. Honeyman, Ms. Bryson and Mr. Tuff

which presented a particularly optimistic perspective indicating the child was cognitive and capable and noting the absence of significant behavioural problems, was not a full evaluation and not as comprehensive as the assessment made by Dr. Konstantareas. As well, it was not consistent with the observations and evidence of the personnel of the public board including Ms. MacDonald, Ms. Sauve, Ms. Vigna who were in the child's class at Adamsdale and Paula Barber Superintendent of Special Education who also observed the child in the classroom. The behaviour he cited included "swearing, kicking, head butting and hitting" and little if any interactions with other students who were also afraid of the child because of [the child's] behaviour. He submitted that the child's behavioural difficulties were caused in part by the child's inability to cope in a noisy integrated setting with 30 other students. A small segregated setting would have allowed the child to better progress and cope as do other autistic children when taken out of an integrated class and placed in a smaller more segregated setting. Mr. Lauwer stressed that Dr. Shecter disagreed with the assessment of Ms. Honeyman, Ms. Bryson and Mr. Tuff that recommended placement in a regular classroom (Transcript p. 20).

- Mr. Lauwers stated that there is no evidence that the child's behaviour has changed over the years and submitted that Dr. Managhan's report which was based on impressions gathered from the parents on three home visits could not be relied upon to show any significant change in the child's behaviour. He pointed out that even Dr. Managhan found that the child was functioning "well below that of the Grade 6 peers" the child would be with if placed in an integrated setting, the one the parents were asking for (Transcript p. 24).
- Mr. Lauwers submitted that the only program the parents will be satisfied with is Applied Behaviour Analysis Discrete Trial Therapy according to the Lovass Method which was not available in Sudbury or for that matter in Ontario. He noted that neither Dr. Shecter nor Dr. Managhan "suggested a single approach" nor did Dr. Managhan in his view endorse the Lovass Method as the only approach for the child because he was not adverse to using negative reinforcements and aversive methods. He submitted that the pure A.B.A.D.T.T. Lovass Method is rigorous, intensive and requires extensive training under the supervision of a trained professional and that the school board should not be forced to accede to the parents wishes to implement this program. (Transcript p. 25)
- In support of his submission that the appeal be dismissed, Mr. Lauwers stated that the Board had successfully established that the child would be appropriately placed in the life skills class at Pius XII Catholic School, that the teaching aspect of the child's program "could be delivered well in a small class setting" and that the presence of other exceptional children would not be a problem as long as there are no distractions." A fully integrated setting would not be appropriate for the academic portion of the program for a Grade 6 student. He agreed with Dr. Managhan that the evidence suggested that integration where appropriate in a social setup would benefit the child. He stated that there was no evidence that a pure ABADTT was the only approach for the child pointing out that Dr. Managhan didn't support the parent's wishes for a placement in a fully integrated setting (Transcript p. 28).
- On jurisdictional questions, Mr. Lauwers submitted that the Special Education Tribunal has jurisdiction to place a student in a class but not to require the Board to operate a particular

program. He further submitted that a special education program is intended to be educational “not therapeutic” and in his submission, the parent’s request for a mandatory ABA program is a request for a therapeutic program (Transcript p. 30). Responsibility for the program should be with educators not the Tribunal, or the IPRC. He did acknowledge that the *Education Act* does not define “placement” and that the difference between what is a placement and program was blurred, but stated that the wording of Section 26 of the Regulations supports his submission that “placement” and “program” are two different concepts. This section provides for an EPRC to make a decision about the identification and placement of an exceptional pupil, a decision that may be appealed. He noted that the Committee shall not make decisions but only recommendations about “special education services” or “special education programs”. In his submission a recommendation is not a decision and is therefore “not appealable” (Transcript p. 32).

- Mr. Lauwers went on to state that the jurisdiction of the Special Education Tribunal under Section 57 is limited to the jurisdiction of the IPRC. The latter cannot order The Board to implement a certain program but like the Committee this Tribunal can make recommendations to the School Board about the delivering of certain programs for an identified student.
- Mr. Lauwers submitted that based on the evidence given at this hearing the ABADTT Program is therapeutic not educational in nature and therefore beyond the jurisdictional scope of School Boards to deliver or this Tribunal to order, the Board to deliver. In support of this submission, he pointed to the evidence of Dr. Shecter who stated that this program was therapeutic and not educational, as well as the parents’ own submission that the child needs this ABADTT therapy “to make [the child] educable (Transcript p. 35).
- Mr. Lauwers went on to stress the factors that pointed to ABADTT being a therapeutic program, namely, its intensity, the need for trained therapists, supervision by and under the control of a trained psychologist and the fact that it is best delivered in a home setting prior to the child attending school. He pointed out that in Dr. Shecter’s opinion, school psychologists and speech language pathologists are not in the business of treating students or providing a health service, but rather provide assessments to help teachers develop a program for students. He did acknowledge that the dividing line between what is an educational or health service is not always clear as evidenced by Ministerial Memorandum #81 (Transcript p. 36). While this memorandum recognizes that the dividing line between the two is not clear, he did acknowledge that the Ministry of Education has made a statement encouraging school boards to cooperate with service providers to support the educational involvement of special needs students even though boards are not mandated to hire speech and language pathologists or to provide other treatment or therapeutic services.
- In his submission, the therapeutic program sought by the parents for the child falls “outside of education” but he stressed that it really hinges on what the word “appropriate” means in the Regulations (Transcript p. 39). In his submission, it should not be interpreted to require that the Board provide the best placements everywhere in Ontario without regard to the services or resources available in any geographical location. He did stress that the Board is prepared to liaise with Developmental Clinical Services and Dr. Managhan to avail themselves of “any

training that can be made available through his good auspices” (Transcript p. 41).

Mr. Lauwers submitted that the parents’ claim for compensation, reimbursement for legal fees and lost wages was beyond the jurisdiction of this Tribunal.

Decision of The Tribunal Re the Child

The jurisdiction of this Tribunal is limited by the *Education Act* to the consideration of the identification and the placement of the child. Neither the appellants nor the respondent has raised any question about the identification of the child and therefore this appeal is concerned with the most appropriate placement for the child.

Based on the evidence presented to the Tribunal by both parties the Tribunal recommends that:

- the child must receive daily instruction in language skills from a trained educational assistant
- in the development of the I.E.P. benchmarks and appropriate activities and resources must be specified
- in planning and implementing this special education program, and services including the necessary in-service for staff, in particular the educational assistant, the Board should avail itself of the services and expertise of Dr. Managhan and his staff at Network North
- the selection of the teacher and the educational assistant who work with the child must be done with great care
- the selection of materials and the training of staff must become a high priority of the Catholic Board to ensure that the child has a successful school experience.
- the placement for the child be in a life skills program with appropriate integration. The child, an eleven year old child, has been taught at home by the child’s parents. The child’s participation with other children in the social setting of the school must be encouraged to further develop the child’s social skills. The child must have opportunities to work and to play with children who do not suffer from autism and therefore it is recommended that the child be integrated into regular classes at a pace which is consistent with goals and benchmarks set out in the I.E.P.

COSTS

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

The Sudbury Catholic District School Board did not ask for costs and accordingly this Tribunal makes no order as to costs.

Wayne Tompkins, Chair _____

James Clemens
Gary Dubinsky

September 21, 1999