

## THE FULLY INCLUSIVE CLASSROOM IS ONLY ONE OF THE RIGHT WAYS TO MEET THE BEST INTERESTS OF THE SPECIAL NEEDS CHILD

I have both in my professional capacity and as an advocate, presented and advanced the interests of individuals with diverse needs, such as autism, deaf and hard of hearing, aspergers, Tourette's syndrome, attention deficit hyperactivity disorders, developmental disability, physical disability and the learning disabled. In addition to my association with the Learning Disabilities Association of Canada, I am also the solicitor of the Association of Parents of Children with Autism in Manitoba. I recently carried out a workshop at a National Meeting of Educators of the Deaf and Hard of Hearing, addressing the critical issue of complaints by parents of non-disabled children, that their children aren't getting the attention they deserve because of the amount of time spent by classroom teacher having to meet the needs of several special needs students. I designed a mediation structure to assists in resolving these conflicts and presented it at this workshop. I have carried out this mediation workshop for school divisions in Winnipeg.

My reason for sharing this with you is to make clear to you that I have only one parochial interest and that is what should be done in the public school system to best meet the diverse needs of all special needs children.

Some of the provinces have kept very detailed records as to the incidences of the various areas of exceptionality and have recorded the degree of incidences of each as compared to the total number of children receiving special education programs and/or services. The most comprehensive records are kept by the Province of Ontario. Not only are the relative percentages of each area of exceptionality compared to the total of exceptionalities, but also they delineate between those receiving fully self-contained services, partially integrated services, withdrawal assistance, resource assistances and indirect service.

This is the breakdown in areas of exceptionality of the total number comprising that group.

Behaviour	8.11%
Autism	4.16%
Deaf and Hard of Hearing	1.49%
Deaf (alternate program)	0.06%
Learning Disability	38.28%
Speech Impairment	.77%
Language Impairment	7.30%
Giftedness	12.26%
Mild Intellectual Disability	13.50%
Developmental Disability	6.27%
Physical Disability	1.92%
Blind and Low Vision	.44%
Deaf-Blind (alternate program)	.04%
Multi handicapped	<u>5.90%</u>
<b>TOTAL</b>	<b>100.00%</b>

In addition to the approximately 100,000 children comprising the foregoing categories, there are approximately 70,000 children noted as being non-identified students with special needs of whom more than half required withdrawal assistance; one-third required resource assistance, and one-sixth required indirect service.

One of the major problems beginning to confront urban school divisions in the larger urban centres throughout Western Canada and in parts of Ontario (as is currently being experienced in Winnipeg), is the huge increase in the number of aboriginal peoples who have moved to these centres and will continue to do so because their children cannot get the services that they need in their remote communities. A significant number of these children suffer from Fetal Alcohol Spectrum Disorder with accompanying neurological, emotional, behavioural and language difficulties. Facilities such as the Manitoba Adolescent Treatment Centre were established in Winnipeg to meet the needs of children, who, in addition to the foregoing, suffer profound mental difficulties. The Manitoba Adolescent Treatment Centre has both a residential and day component and is staffed by a resource/assessment teacher, psychologists, psychiatrists, social workers, occupational therapists, and the like. The day treatment school maintains an extremely small professional to student ratio that work on a very effective team basis. It also provides neuro-developmental services for children and adolescents aged 3 - 17 years. The neuro-development services provide supports for children and adolescents with development disabilities and complex multi-diagnostic issues.<sup>1</sup> The northern aboriginal communities of Canada, as evidenced by two reports recently completed in the Northwest Territories and of the 62 First Nations of Manitoba, make it clear that FASD among children and youth has reached epidemic proportions. Most school systems are totally unequipped to deal with this ever-increasing problem.

It should be abundantly clear, having in mind the foregoing statistics, that for children who suffer from emotional, mental, behavioural, cognitive, sensory, physical, expressive language, visual and auditory difficulties (and often a combination of some of the foregoing), it is simply not possible to meet their diverse needs in one environment. One shoe simply cannot fit all.

Indeed, total inclusion is a discriminatory concept because it limits the environmental choices, which groups of children and youth with differing difficulties have the right to make in their best interests.

I am completely dedicated to the public school system. I believe it is an integral part of whom and what we are as Canadians living in a democratic society. That means a place where all children are welcomed - regardless of their gender, sexual orientation, ethnicity, colour, religion, physical or mental condition. In other words, the public school system is a place where the social contract guaranteed by the *Charter* and *Human Rights Codes* is fulfilled. That social contract is that every individual is entitled to equality and to be free from discrimination.

However, schools being a welcoming place regardless of gender, ethnicity, colour, religion, physical or mental condition, namely inclusivity, is far different from what is described as "full inclusion" in the general classroom. Full inclusion falls far short of guaranteeing equality.

Section 15(1) of the *Canadian Charter of Rights and Freedoms* spells out four basic equality rights that every individual, therefore every child, in Canada is entitled to, namely:

- the right to equality before the law; that is the law is to be impartially administered and applied;
- the right to equality under the law; that is the right to equality in respect to the substance of the law;

---

<sup>1</sup> Email: [info@matc.ca](mailto:info@matc.ca); Website: [www.matc.ca](http://www.matc.ca); fax 1-204-783-8948.

- the right to equal protection of the law; that is the right to equality of opportunity and equality of results;
- the right to equal benefit of the law; that is the right to unequal distribution of resources in the case of unequal need.

It is the last two rights that are of critical importance to special needs children.

These fundamental rights given by the *Charter* are constitutional rights and as such, have primacy over all legislation, provincial or federal. Section 1 of the *Charter* does enable an individual's right to equality to be qualified. The Courts have made it abundantly clear that since it is a constitutionalized right, it is a right which can only be removed under the most stringent and rare circumstances.

In addition to the *Charter*, the *Human Rights Codes*, both federal and provincial, guarantee that an individual shall not be discriminated against, because of gender, sexual orientation, colour, religion, physical or mental condition and other grounds. The Courts have determined that *Human Rights Codes* are quasi-constitutional in nature and, therefore, have primacy over all other provincial legislation.

Over the past few of years, there have been a number of decisions by our Courts at various levels, and particularly by the Supreme Court of Canada, which have become critically important building blocks in delineating and expanding upon the fundamental promise by section 15, to the equal benefit of the law. That means for all children the right to equal benefit of what a school system provides. In other words, educational equality.

Education equality is achieved when every child receives an education in the most enabling environment.

An education in the most enabling environment for special needs children means an education that:

1. is based on correctly identified needs, that is by an individual education profile ("IEP");
2. the IEP is implemented by competently trained persons in association with required specialists and in a timely fashion;
3. is carried out in an environment best suited to the child's needs, socially, physically, emotionally, mentally, behaviourally and educationally;
4. provides all those resources which maximizes their ability to make the fullest use of the programs offered by the school system;
5. has a built-in process of regular evaluation and adjustment;
6. has meaningful participation by parents and when appropriate the child, at all stages of assessment, planning, placement and instruction;

7. provides a range of placement options, each being particularly suited to meet the child's best interests as encompassed by the foregoing.

The guarantee of an education in the most enabling environment is the key to the realization of the right to equality. This, by its very nature, means the availability of a variety of placements that best meets all those needs I earlier outlined; that is the child's needs, socially, physically, emotionally, behaviourally, and educationally.

I think it is important to understand what is meant by "full inclusion". A number of different terms or phrases are often used to describe the whole range of the least restrictive alternative placements. You will hear the word "mainstreaming" or the phrases "least restrictive environment" or "regular education initiative". However, they do not mean the same thing as "full inclusion".

"Mainstreaming" refers to a partial or total integration of students into the regular classroom, based on an individual's personal characteristics, capabilities and education needs. Integrating students occurs only when it was appropriate, having in mind all the child's needs and how best to meet those needs. That did not mean that alternative settings were not appropriate and in the best interests of a particular special needs child.

The "least restrictive environment" provided that pull outs, special classes, or separate schooling, from the general classroom should occur when the nature and/or severity of the disability is such that education in regular classes, even with the use of supplementary aides and services, could not be achieved satisfactorily. The least restrictive environment approach was the formulation of an appropriate education program, whether in or outside the regular classroom or a combination thereof.

The most recent expression of the least restrictive alternative is the regular education initiative. It occurs when there is a transfer to the general classroom of the knowledge and curriculum of special education practices for the particular individual in need of that. The classroom teacher must receive the necessary training and the resource teacher becomes an integral part of the teaching team. However, even with this in place, pull-out programs for students with severe disabilities were still quite appropriate.

By comparison with the foregoing, full inclusion means that all students, regardless of the nature and extent of their learning, physical, emotional, psychological, mental, behavioural and other disabilities are included in the general classroom.

Proponents of full inclusion assume that once the general classroom teacher is armed with everything that he/she requires in order to meet the extraordinary, diverse needs of the several special needs children in that classroom, these foregoing needs can be fully met.

It is clear from extensive research that even when a full inclusion classroom is appropriate for some special needs children and their particularly identified needs, success will depend upon all of the following being in place:

- manageable class sizes, which means class sizes significantly less than is currently the case - most probably half the size;

- with respect to the general curriculum, that it will be adapted to meet the diverse needs and learning styles of each student and that teachers are trained to assess all new student's needs for the purpose of adapting the curriculum for each child and, indeed, the teachers have time to do so;
- The teacher-training and regular in-service programs that enable the teacher to acquire all the skills necessary to teach a diverse group of special needs students and concurrently meet the needs of all the other students in the classroom;
- Regular availability of specialists for the classroom teacher, such as resource teacher, remedial reading specialist, language speech specialist, educational psychologist and the like.

Further, in order to fulfill special education inclusion requirements, each teacher must have at least the following 6 clusters of special education expertise:

1. Fully understand exceptional conditions that influence the lives of some students, such as their intellectual growth, sensory deficiencies, physical limitations, emotional problems as well as common procedures to accommodate such conditions.
2. The ability to apply IEPs and devise explicit plans for instruction of these individuals and to function within the organizational systems that foster such individualization instructions;
3. Skilled in managing students in complex activities, such as group auditing processes, management of transitions, managing crisis and the like.
4. Skilled in making systematic observations of individual students in social, behavioural, emotional, and other like areas, and be skilled in making referrals to other professional agencies for additional help when needed;
5. Expertise in creating social structures in the classroom to learn and understand and appreciate diversity in human characteristics and that they are skilled in consultative relationships;
6. Understand family dynamics and know how to work with parents of students, with particular emphasis on developing an understanding of particular handicaps and working with parents of such children as partners;<sup>2</sup>

In addition to teachers having these 6 clusters of capability, the following must be an implicit part of the instructional inclusion process that is the special education process in the general classroom, namely:

1. Reoccurring diagnostic appraisals
2. Individualized contingency management systems;
3. Individualized instruction management systems;

---

<sup>2</sup> Dr. James H. Creechan of the University of Alberta

4. Broad-team approaches to planning;
5. Sequential teaching with each component incorporated into successive components.

The foregoing requirements have been applied by the Office of Special Education and Rehabilitation Services, U.S. Department of Education for many years. Clearly, demands on teacher skills are extremely high since special education processes (instructional inclusion) is the essential component in order to make full inclusion work in the general classroom for some special needs children.

Let me make it abundantly clear that even when all the foregoing requirements have been met, the full inclusion classroom is still not in the best interests of a significant number of special needs children. Indeed, the U.S. Office of Special Education has recently re-affirmed its commitment to providing a full continuum of placements being available for students with special needs.

There is no longitudinal, validated research available that full inclusion can provide superior services for all children with disabilities regardless of the nature of the disability. There is, indeed, much research to the contrary.

In An Education Leadership<sup>3</sup>, Jim Kaufman, Professor of Education, University of Virginia states that although full inclusion sounds very engaging and intriguing, what we first should ask is what does this child need? And then ask, what is the least restrictive environment for that child? He stated that if we lose optional placements, we are going to fail a large number of special needs.

In The Journal Focus on Exceptional Children<sup>4</sup>, the authors, James A Kaufman and Patricia Pullan, explored a number of widely held myths about children with disabilities and special education. One of the myths they explored is the devotion to the ideology of full inclusion. They stated that the myth is appealing because of the simplicity (that is one placement for all students) and egalitarianism (students are not physically separated from the mainstream) so they are assumed to be integrated and treated equitably. They stated that the negative consequences of this myth include the placement of students with disabilities in general education classrooms in which neither they nor their classmates can be well-served and the abandonment of pull-out programs such as special classes in schools, which were in fact the least restrictive environment that is most appropriate for such students.

As stated by Liebermann in 1992, the barrage of curriculum activities, syllabi, grade-level expectations for performance, standardized achievement tests, competency tests, and so on, continue to overwhelm even the most flexible and capable of teachers. Accordingly, he states that regular education teachers are faced with insurmountable problems when expected to meet the special learning needs of students without overall class performance deteriorating. This has been further exacerbated by the increasing number of such students being placed in the general classroom, as the result of the closing of pull-out programs in the move towards full inclusion.

Naomi Zigmond, Professor and Chair of the Department of Structural Learning, University of Pittsburgh, one of the leading experts in the field of special education, in an article

---

<sup>3</sup> Volume 52 #4

<sup>4</sup> Volume 28, Issue 5

titled "Full Inclusion for Students with Learning Disabilities: Too Much of a Good Thing"<sup>5</sup>, examined the recent calls to eliminate all pull-out placements in favour of full inclusion in the general education classroom. She noted that many students with learning disabilities in these full inclusion models were clearly students who are still in need of focused, intensive, individualized instruction and who should have received pull-out services, if full inclusion had not been the prevailing central force in the particular areas examined. She explored the efficacy of full inclusion models for students with L.D. She noted that it is impossible in a full inclusion general classroom where there are so many diverse special needs students for the teacher, no matter how expert, to provide the direct and focused special education intervention required to meet each of such student's needs. She concluded the best interests of many children with learning disabilities are met by providing them with a continuum of services.

In an excellent article published in Learning Disabilities Research and Practice, in 1995, Rita Roberts and Nancy Mather of the University of Arizona carried out the most comprehensive research and study of the move towards full inclusion in the United States.

They noted that in all the research they had examined across the United States for over a period of five years, successful integration of students with special needs in the general classroom, for whom it was appropriate, was based on the following assumptions:

- teachers receive all the necessary support, both strategic and administrative;
- the general curriculum utilized had been adapted for all students;
- teachers are fully equipped by the school system with the required training, materials, aides, availability of specialists, and time, including preparation time;
- All special needs individuals, regardless of the nature and severity of their difficulty can be taught successfully in the regular classroom.
- Class sizes are such that enable the teachers to adequately meet the needs of all individuals in the classroom.

They concluded that not only did the research make it clear that these assumptions are rarely, if ever, met, but even if they are met, one must not lose sight of the fact that inclusion is not the right way, but rather only one right way for some students. They concluded that it was critical that a full continuum of services must be maintained to assure the provision of appropriate education for all special needs individuals. They stated that our future goals should focus on improving the existing continuum by providing the necessary accommodation, not dismantling it. The Supreme Court of Canada in a series of recent judgments clearly supports this conclusion.

The Supreme Court of Canada has categorically rejected the kind of contextual analysis that rests on group stereotypes of what is presumed to be in the best interest of a group of persons, regardless of their disability. The proposal that full inclusion will meet the needs of all special needs children is such a group stereotype. In other words, what may be good for one group is therefore good for all groups, no matter their disability. The Supreme Court of Canada has rejected this approach, which, because of its very nature, is discriminatory. The Supreme Court of Canada has made it clear in its 1999 decisions in *Meiorin* and *Grismer* that any

---

<sup>5</sup> Theory and Practice, Volume 35 #1

generalized policy or standard must be designed and adopted in such a way as to accommodate individual differences. Further, that standard or policy must be such that it does not exclude members of a particular group from having their particular needs best met; and that there has been an effective search for alternative approaches including potential accommodation. In other words, to carry out what the Court described as a "reasonably necessary element", the policy or standard, must be designed and adopted in such a way as to accommodate individual differences in an appropriate environment.

Every person born in this world represents something new, something that never existed before, something unique. Every person's earnest wish and indeed their legal entitlement is to have that uniqueness respected and effectively responded to so that they can realize their fullest potential.

To suggest that even with everything in place in the inclusion classroom, it will be the best place for all children regardless of their need, is group stereotyping at its worst. It denies the absolute right of special needs children to be placed other than in the full inclusion classroom, when their parents and qualified professionals view a different placement as one that best meets their interests. In *Eldridge*, a 1997 decision, Mr. Justice LaForest who gave the unanimous decision of the Supreme Court of Canada, stated that persons with disabilities have too long been subjected to insidious stereotyping.

For anyone to insist the inclusion classroom can be the best place for all children regardless of their needs is by its very nature stereotyping and discriminatory.

The Supreme Court of Canada had dealt with this issue in the seminal judgment of *Eaton v. Brant County Board of Education*<sup>6</sup>. It is still the governing decision on this issue. Mr. Justice Sopinka, who gave the unanimous judgement of the Court, stated:

Disability as a prohibitive ground differs from enumerated grounds, such as race or sex, because there is no individual variation with respect to these latter grounds. Disability means vastly different things, however, depending on the individual and the context. This produces amongst other things the 'difference dilemma' whereby segregation can be both protective of equality and violative of equality, depending on the persons and the state of disability.

He made it clear that the accommodation of differences is the true essence of equality. He made it very clear that we must eliminate discrimination based on stereotypical positions.

He further stated:

We cannot forget however that for a child who is young or unable to communicate his or her needs or wishes, equality rights are being exercised on his or her behalf, usually by the child's parents. Moreover the requirements respecting these rights in this setting are decided by adults of authority over this child. For this reason, the decision-making body must further ensure that its determination of the appropriate accommodation for an exceptional child be from a subjective child-centred perspective, namely one which attempts to make equality meaningful from the child's point of view as opposed to that of the adults in his or her life.

---

<sup>6</sup> (1997) 1 S.C.R.

He went on to state:

In some cases, special education is a necessary adaptation of the mainstream world, which enables some disabled peoples access to the learning environment they need in order to have an equal opportunity in education. Integration can be either a benefit or a burden, depending on whether the individual can profit from the advantages that integration provides.

There has been no subsequent decision by the Supreme Court which has in any way altered the foregoing principles enumerated in *Eaton*.

The recent decision by an Ontario Special Education Tribunal in the matter of *Bonnah v. Ottawa Carlton District School Board*, rendered January 14, 2003, ultimately affirmed by the Court of Appeal, dealt with the very issues and principles enumerated by Justice Sopinka and reaffirms those principles. The case arose out of a difference of opinion between the parents and the school division as to the child's placement. The parents were of the view that their child should be placed in a regular education program, whereas the school board was of the view that the child's needs were not being met in an integrated setting and that the decision of the school board to remove the child from the integrated placement was correct. The school board also maintained that it had met the burden of proof as required of it in the *Eaton* decision.

In its decision, the Tribunal referred to another Tribunal decision, namely *Rowat v. York Region Board of Education*, January 24, 1986, where the Tribunal stated as follows:

It is the firm opinion of this Tribunal that the wholesale integration of exceptional pupils into regular classes, solely on the basis of philosophical principle, untempered by due and informed consideration of each individual situation, is directly counter to the best interest of all pupils.

The Tribunal in *Bonnah* also referred to the Supreme Court decision in *Eaton*, above noted, where the Court had stated that "integration can be a benefit or a burden depending on whether the individual can profit from the advantages that integration provides."

The Tribunal in *Bonnah* went on to state as follows:

Given the discussion on "integration" by other decision making bodies, the Tribunal believes that it cannot make a definition of integration that would be better than the synthesis of the earlier discussion that an integrated setting must meet the needs of the child. The Tribunal believes that in arriving at whether a placement is appropriate to meet the needs of a child, the people making decisions need to take into account the child's academic, social, emotional and physical and safety needs.  
(my emphasis)

The Tribunal in the *Bonnah* case then went on to state that it did not agree with the submission of the school board that the test in *Eaton* is that the school board must demonstrate that an integrated placement is not in the child's best interests. What the Tribunal stated was that "in our view, the test in *Eaton*, 1997 is that the placement must be in the best interest of the child considering all the needs of the child."

The Ottawa-Carlton District School Board applied for judicial review of the judgment by the Tribunal. This was dismissed by the lower court in March 2002. It was ultimately appealed

by Ottawa-Carlton School District to the Court of Appeal of Ontario<sup>7</sup>, which dismissed their appeal. This constitutes a strong re-affirmation of the principles enunciated in *Eaton*.

Pearl Eliadis, who until recently was Research Director for the Ontario Human Rights Commission, in a recent article in the publication Charter and Human Rights Legislation noted that by its decisions in *Mercier*, *Grismer*, *Meiorin*, *Law* and *Granovsky*, the Supreme Court of Canada has emphasized the need to adapt society so as to include persons with disabilities in its design, structure and concept. This shift in the approach to disability law affirms the centrality of dignity in achieving equality and the importance of individual differences in respecting the person. She stated that the further practical result of these decisions is that in most cases of discrimination on the grounds of disability, individualized accommodation is necessary.

The Supreme Court of Canada, in a series of decisions since 1985, has put a very high value on achieving equality in Canadian society and on accommodation as a means by which such achievement will occur. This was evident in its decision in *B.C. (Superintendent of Motor Vehicles) v. B.C. (Council of Human Rights) ("Grismer")*.

The Supreme Court noted that the duty to accommodate recognizes that true equality means respect for people's different conditions and needs. Needs that must be accommodated result from factors such as disability, sex, age, family status, ethnic or national origin, and religious belief. Accommodation helps ensure that the opportunities of all Canadians are not limited for discriminatory reasons.

It also noted that the modes of accommodation, short of undue hardship, required to extend equality to persons with disabilities because of the greater heterogeneity of disabling conditions, is invariably broader and more complex than those required by other protected grounds. In the case of most other protected grounds, accommodation can be accomplished through a change in policies or programs together with a campaign to reform social attitudes. The responses necessary to ameliorate the disadvantages of disablement, however, will frequently be more diverse, more individually tailored,

In its recent judgment in *Meiorin*, the Supreme Court found that a standard, if it is to be justified under human rights legislation must accommodate factors relating to the unique capabilities and inherent worth and dignity of every individual up to the point of undue hardship.

As is noted by Ms. Schucher in an article titled "Weaving Together the Threads: A New Framework for Achieving Equality in Workplace Standards"<sup>8</sup>, if the deficiency lies in the standard itself, the duty to accommodate shifts to the need to change the standard in order to reflect the needs, abilities and experiences that the standard has failed to incorporate. She noted that accommodation requires systemic changes to standards and that this equally applies to the provision of service standards. This systemic change extends both to a recognition of the distinctive realities among groups and individuals as well as to more individually focused remedies or exceptions. She noted that accommodation is in the formal model of equality and that in turn means accommodating the distinctive needs, distinctive abilities and distinctive realities, including social realities of persons with disabilities.

It is clear, then, in order to accomplish the declared social policy objective of equality, recognition must be given to the fact that many persons with disabilities will require various

---

<sup>7</sup> 2003 O.J. 156

<sup>8</sup> (2000) 8 Canadian Labour and Employment Law Journal at pp. 325-354

measures of accommodation in order to enable them to participate optimally in the social institutions that comprise our society.

By trying to establish one standard, namely that the inclusive classroom will meet the diverse needs of all special needs children, is directly contrary to the clear principles established by *Meiorin*.

A good example of the consequences of unjustifiable negative systemic attitudes concerning people with disabilities is found at a decision of the Federal Court of Canada (June 2000) in *Green v. Canada (Public Service Commission)*, dealing with discrimination by a Federal Department of Government against an employee with learning disabilities. The original finding by the Tribunal, which was affirmed by the Federal Court in the subsequent appeal, was that:

If the practices and procedures had been based on these policies, most of which were written policies, this complaint would never have been made. The practices and procedures would have ensured that Ms. Green's learning disability was acknowledged and accommodated...This did not happen, because personnel involved in the interpretation and application of the policies appeared from the evidence to be caught by systemic attitudes concerning persons with learning disabilities and exacerbated by a complex system of intersecting responsibilities.

The issue of appropriate accommodation has been recently dealt with in two decisions. The first decision is a decision in *Sparks v. Newfoundland Ministry of Health and Community Services*, a complaint under s.6 of the *Human Rights Code* of that province. It was a decision of the Newfoundland Board of Inquiry out of the *Human Rights Act*.<sup>9</sup> In this case, the Board of Inquiry had to decide whether the delay of one year in the provision of treatment constituted discrimination; more specifically, whether the delay in treatment to an autistic child constituted a failure to make reasonable accommodation.

This case also is important because it dealt with the issue of equity. In other words, whether there was equitable treatment between children with different disabilities. In this case, as found at para. 109, the Board found that discrimination was established because children with serious illnesses, such as cancer, were served more quickly than children with autism.

In determining whether in fact undue hardship had been proven, which would have excused the Government from its action, the Board noted that the Government always bears the burden of demonstrating that the standard applied by it incorporates "every possible accommodation" to the point of undue hardship.

In the leading case of *Eldridge v. British Columbia*<sup>10</sup>, Mr. Justice LaForest gave the unanimous judgments of the Supreme Court where he stated:

In the case of s. 15(1), this Court has stressed that it serves two distinct but related purposes. First, it expresses a commitment - deeply ingrained in our social, political and legal culture - to the equal worth and human dignity of all persons. ... Secondly, it instantiates a desire to rectify and prevent discrimination

---

<sup>9</sup> [2002] N.H.R.B.I.D. No. 7

<sup>10</sup> [1997] 3 S.C.R. 624

against particular groups 'suffering social, political and legal disadvantage in our society'. (Emphasis added)

Mr. Justice LaForest further stated:

This Court has repeatedly held that once the state does provide a benefit, it is obliged to do so in a non-discriminatory manner.... The Government will be required, at least at this section 15(1) stage of analysis, to take special measures to ensure that disadvantaged groups are able to benefit equally from the government services. (Emphasis added)

This makes it very clear that each special needs individual within the public school system is entitled to those special measures, including optional placements to ensure that they are able to benefit equally from the services that the school system provides to all other children.

The Supreme Court of Canada in *Law v. Canada (Minister of Employment and Immigration)*<sup>11</sup>, emphasized that if the differential treatment reflects the stereotypical application of presumed personal characteristics of a group, it will be a violation of essential human dignity and in violation of s.15(1).

In *Granovsky v. Canada (Minister of Employment and Immigration)*<sup>12</sup>, Binnie J., speaking for the Court stated that:

What s.15 of the Charter can do and it is a role of immense importance is address the way in which the state responds to people with disabilities. Section 15(1) ensures that governments may not, intentionally or through a failure of appropriate accommodation, stigmatize the underlying physical or mental impairment or attribute functional limitations to the individual that the underlying physical or mental impairment does not entail, or fail to recognize the added burdens which person with disabilities may encounter in achieving self-fulfillment in a world relentlessly oriented to the able-bodied. (Emphasis added)

Of considerable importance is a recent decision of the Supreme Court of Canada, *Mercier v. The City of Montreal*<sup>13</sup>, which concluded that:

The right to equality and protection against discrimination cannot be achieved unless we recognize that discriminatory acts may be based as much on perception, myths and stereotypes as on the existence of actual functional limitations.

Imposing a standard, namely that the inclusive classroom meets all needs, is a perception not based on reality and is stereotypical. In other words, the standard takes the position that one environment meets the needs of all special needs children. By its very nature, such a standard is discriminatory, as was made clear by the Supreme Court of Canada in the *Meiorin, Grismer, Law* and *Mercier* decisions.

Madam Justice McLachlan who is now the Chief Justice of the Supreme Court of Canada stated in an address:

---

<sup>11</sup> [1999] 1 S.C.R. page 51

<sup>12</sup> [1999] 1 S.C.R.,

<sup>13</sup> [2000] 1 S.C.R. 665

As this Court has repeatedly held the essence of equality is to be treated according to one's own merit, capabilities and circumstances. True equality requires that differences be accommodated.

Given the clear decisions of the courts, I think it is important to ask why full inclusion is being advanced in certain areas as the only way to effectively meet the diverse needs of all children with special needs.

First, I believe that inclusion is wrongly perceived by education policy makers and others as to what equality really means. They believe that one generic solution for all means equality. As evidenced by the decision in *Eaton* in 1997 and other decisions earlier referred to, "equality" clearly means the entitlement to benefit and protection according to one's particular individual interests and needs, and in an environment that best suites those needs. As stated earlier, a sensitive contextual analysis does not rest on group stereotype. It is stereotyping at its worst when one body representing a particular area of disability states to another group representing another area of disability - "because it is best for our children, it is best for all children".

This position will likely not only be challenged in the Courts by parents of special needs children who do not buy into that ideology, but also by parents of non-special needs children who are increasingly expressing their concern that their children are being deprived of full educational entitlement as a result of inclusion.

Second, there is the belief that complete inclusion of all children with disabilities in the general classroom is the only way to achieve the kind of social integration, the kind of mutual awareness and understanding that is desirable. There is much research that there are diverse ways to achieve this objective, all depending on the particular needs of the child and these options are not dependent upon only being carried out in the general classroom. Indeed, some are best carried out, outside of the classroom

An excellent paper titled "Thinking about inclusion and Learning Disability: A Teacher's Guide", published in 1994 by Katherine Garnet, explores what might be done to achieve inclusion as one of the viable placement options in the special education continuum that should be made available to children<sup>14</sup>.

A recent study carried out in the United States in 2002 titled "The Social Face of Inclusion: Are Students With Learning Disabilities Really Included In The Classroom?" by Shireen Pavri and Richard Luftig made it clear that they are not. They explore alternative placements that can more effectively achieve that objective.<sup>15</sup>

There was recently a wonderful article in the Globe and Mail about a boy with severe autism who has nevertheless achieved extraordinary success as a jazz pianist. I am sure many of you read it. For him the general classroom was an impossible place. What they did do was bring the general classroom to him in a separate setting. Learning and other environments were created for him outside the classroom. These were progressive steps that ultimately have enabled this young man to achieve not only what he has in the musical field, but in his interpersonal relationships and the like.

---

<sup>14</sup> The website is [http://www.ldonline.org/ld\\_indepth/teaching\\_techniques/dld\\_ecologies.html](http://www.ldonline.org/ld_indepth/teaching_techniques/dld_ecologies.html).

<sup>15</sup> The website is: [http://www.ldonline.org/ld\\_indepth/teaching\\_techniques/the\\_social\\_face.html](http://www.ldonline.org/ld_indepth/teaching_techniques/the_social_face.html)

The prime emphasis of school boards has been to provide physical access and social interaction instead of a continuum of services. This is because it is so easy, so obvious, so dramatic, and so much less costly than providing a continuum of programs with all the attending required professionals.

The third reason that most compels governments and its delegates, the school system, to get on to the inclusion bandwagon, is financial savings. However, the cost of providing a continuum of services and the special education component in order to achieve instructional inclusion, are insignificant when compared to the long term payoff - one that far exceeds the initial cost. But it is the larger front-end costs that consume most governments' and school boards' thinking and planning.

Inclusion has become a safe issue for politicians. They cynically use the desire of parents to have their children considered normal, to justify inclusion with the resultant reduction in costs or holding the line. In all sorts of insidious ways, parents are encouraged by the school system to express their wish for total inclusion so that administrators and politicians can say "we are doing only what parents' want".

There are serious by-products of the total inclusion initiative. Governments cynically use this argument to reduce costs by de-categorizing children with special needs, except for the most severe. This is particularly so for children with mild or moderate cognitive, behavioural, emotional and social difficulties, including those with learning disabilities. They remove the funding that such categories previously received, followed by integration in the general classroom, with no or very little support. The opportunity for special placement and special education services that these children once enjoyed has disappeared. It also enables school systems to maintain the façade that, yes, they are serving children with learning disabilities, while in fact children, mildly or moderately affected, are totally lost in the general classrooms in most school systems. Once these special services are discarded, the expertise of specialists (psychologists, reading clinicians, speech/language pathologists, resource teachers, etc.), can then be severely limited or totally discarded. Teaching assistants, those who have little or no training and work for not much more than minimum wage, assume the prime responsibility for the special needs children in the classroom. The least well-trained are serving the neediest children in the school population. Many of them become no more than behaviour modifiers carrying out the "out of sight" objective.

One of the excuses used by some professionals and the school system, school administrators and government itself to move towards full inclusion, is that de-categorizing children with learning disabilities removes a pejorative label and its alleged negative effect on children. We label children with such terms as measles, mumps, cancer, cerebral palsy, autism, Tourette's syndrome, aspergers, etc. This simply identifies the condition and points to the treatment required. Yet, for some conditions some argue that we should not identify a child's difficulty because there is some misconstrued idea that identification might have a pejorative effect. How can one possibly determine a specific course of action if there isn't a precise assessment and then precise identification? Do you know why have they picked on the learning disabled to de-categorize? It is because there are so many L.D. as compared to others and therefore more money to save!

This belief that labels stigmatize a child can be taken to ridiculous lengths. For example, evidence was given in the recent case of *Moore v. Her Majesty The Queen In Right Of The Province Of British Columbia, As Represented By The Ministry Of Education and North Vancouver School District #44* (in which I represented the LDAC as Intervenor) that when this

particular child reached grade three, although of normal intelligence, he was still a total non-reader and couldn't count to 10. Despite psychological testing that has determined he had severe learning difficulties in kindergarten, the school system refused to categorize him as learning disabled because they thought it might stigmatize him and affect his self esteem. Finally, by the end of grade three he was classified as severely learning disabled, which enabled the required funding for special services to be obtained for the following year. And yet, despite the child's lack of progress, even at this point the school system inquired of the parent whether she wanted the child labelled as severely learning disabled because, in their view, the label would stigmatize the child. The parent's response was this: I don't care what label they affix to my child so long as he will now get the funding to provide him with the help that he should have received when he was first identified in kindergarten as having a severe learning difficulty.

Many academicians and administrators have jumped on the bandwagon of non-stigmatization. Indeed, there are those who still believe that there is no such thing as a learning disability. They argue that this is just a means by which middle class parents can excuse their own failures. It is always so easy to blame the parents or the children, when it is really the failure by school system itself.

This community of interest by governments wishing to save money; by those who believe labelling is stigmatizing and should be dispensed with and by those are stuck in a time warp that there is no such thing as a "learning disability" has resulted in government actions that have had a severely negative impact on special children. They are as follows:

- No longer categorizing children with mild or moderate learning disabilities as a specific category deserving of special monetary support and now describing them as children having "unspecified learning difficulties" to dump them into the general classroom and no longer providing specific funding;
- Establishing arbitrary waiting periods – two to three years – before providing meaningful service to see "if they will grow out of it". In the meantime, many of these children suffer irreparable harm;
- Cancelling all pull-out programs for such children, which did provide them with specialized assistance, including regular timely support by specialists for the child and classroom teacher;
- Early identification and timely effective assessment and remediation have become severely delayed as a result of dismissal of or extraordinary reduction in the number of personnel such as resource teachers, language pathologists, reading clinicians and the like. The result is that such services are provided so intermittently as to be useless.

And the final area of concern is with regard to those who take the doctrinaire position that total inclusion classroom is in the best interests of all special needs children. We have on many previous occasions seen the near religious fervour that resulted in the rigid adherence to single solution approaches such as open area classrooms with its enormous costs both in terms of money and the damage to so many children before it fell by the wayside.

Another "magic pill" approach was by the whole language proponents, which denied so many children of basic reading and writing skills before it also fell by the wayside. One of the continuing failures of that initiative is the broad failure to teach phonetic awareness.

The position that single minded ideologies take, namely that there is only one right answer for all special needs children, lacks a solid basis of research and is an affront to the dignity of many children with special needs. It flies in the face of fact and the right to equality.

In order to achieve equality for all children in the school system, I urge you in your deliberations to consider a new paradigm other than aspiring to the full inclusion classroom.

That new paradigm, in order to achieve equality, is that the school system must provide all children with an education in the most enabling environment - one that will:

- (a) effectively and in a timely fashion address all their needs: socially, emotionally, physically, behaviourally, mentally and educationally;
- (b) provide the necessary accommodation that enables them to fully access all the programs provided by the school system; and
- (c) provide a continuum of placements in order to fulfill the foregoing.

It would also urge that all organizations dedicated to the interests of special needs children, indeed, all children, dedicate themselves to achieving the following objectives.

1. Revisions to *The Public Schools Act* in order to incorporate *The Charter of Rights* guarantee of equality as encompassed within the foregoing paradigm;
2. School funding formulas should be revised in order to provide equitable funding for special needs children. In the event of cut backs, these should be proportional in respect of services to all children.
3. Faculties of Educations shall provide to all teachers as a requirement, training that incorporates special education modules.
4. All schools shall provide regular in-service programs incorporating special education modules to all teachers.
5. All school systems shall have specialists such as psychologists, reading clinicians, speech/language pathologists, resource teachers, etc. in sufficient numbers to provide the services when required.
6. Individual Education Profiles shall be developed for all special children and all classroom teachers be training to analyzed and implement the same.
7. All schools should establish effective partnership between them and parents and, when appropriate, the child.

When all the foregoing is in place, every child's earnest wish to have their uniqueness respected and responded to, so they can realize their full potential, will move from simply being a dream to a reality. That is what equality is all about.

Yude M. Henteleff, C.M., Q.C.  
National Summit on Exclusive Education  
November 24, 2004

**THE FULLY INCLUSIVE CLASSROOM IS ONLY ONE OF THE RIGHT WAYS TO MEET THE  
BEST INTERESTS OF THE SPECIAL NEEDS CHILD**

Presented by Yude M. Henteleff, C.M., Q.C.  
to the  
**C.A.C.L. NATIONAL SUMMIT ON INCLUSIVE EDUCATION  
OTTAWA, ONTARIO  
NOVEMBER 24, 2004**

The comments contained in this paper are personal to Yude M. Henteleff, C.M., Q.C., Winnipeg, Manitoba and were made for the sole purpose of presentation to **C.A.C.L. National Summit on Inclusive Education** and is not to be distributed to any other party or made use of without acknowledging the source.

850681\02\0.0