

Settlement Ends Hostilities in Becky Till Case

by Orville Endicott

The long legal battle between the Till family of Sharon, Ontario, and the York Region Board of Education has come to an end, not with a bang, but not with a whimper, either. It began very shortly after Linda and King Till made Becky, then 11 years old, a part of their family in 1985. Becky had spent her whole life up until that time in a nursing home, where her natural parents had placed her because of the severity of her disability caused by cerebral palsy. The dispute ended with the signing of an out-of-court settlement on January 25, 1994.

For the first year or so after Becky came to live with the Tills, the school board categorically refused to accept any responsibility for her education at all. When they finally agreed to accept her as a pupil, board officials would only consider enrolling her in a segregated class for children with intellectual and other disabilities in a school some distance from the community in which she lived. After she had spent a year in the segregated, congregated class, the Tills took Becky out of school. Then, four years ago, they accepted the invitation of the York Region Roman Catholic Separate School Board to enroll Becky in a regular class at Sacred Heart High School in Newmarket. Becky continues to make excellent progress in this fully integrated setting.

Before Becky was given the opportunity to attend Sacred Heart High School, the Tills retained Toronto lawyer Allan Rock to represent them and to initiate legal action against the York Region Board of Education in defence of Becky's right to be educated in a manner and a setting that fully respected her right to equality with other pupils. Mr. Rock was a very highly esteemed litigation lawyer in the firm of Fasken, Campbell, Godfrey. The firm offered the Tills the services of Mr. Rock and other lawyers in its litigation department without charging fees.

On Allan Rock's advice, the Tills filed a complaint against the school board and the minister of education for Ontario with the Ontario Human Rights Commission. The *Ontario Human Rights Code* says that "every person has a right to equal treatment with respect to services ... without discrimination because of ... handicap". A 1986 amendment to the *Code* stipulates that those against whom a complaint of discrimination

on the grounds of handicap is made have an obligation to offer "reasonable accommodation" of the special needs the individual may have because of his or her disability. Only if it would cause "undue hardship" to make these accommodations can the respondent be excused from a finding of discrimination. Before the board of inquiry began Mr. Rock left the case and is now Minister of Justice.

It took more than four years before a board of inquiry was appointed by the Ontario Minister of Citizenship, on the recommendation of the Human Rights Commission, to conduct a hearing to determine whether Becky Till had been discriminated against contrary to the *Ontario Human Rights Code*. The board of inquiry consisted of one person, George Carter, a lawyer whose experience has been largely in representing accused persons before the criminal courts.

The Human Rights Commission and the Tills presented their evidence in support of a finding that Becky had been discriminated against because of her handicaps. More than a dozen witnesses, in addition to Linda and King Till themselves, testified about the value of inclusive education, both in general terms and for Becky in particular. The witnesses included experts from the Atlantic to the Pacific and from both Canada and the United States. There were teachers, teachers' assistants and fellow pupils who had taught Becky and been taught alongside of her. The overwhelming weight of their evidence was that the only possible way to achieve equality in educational services to persons with any degree of disability is to provide such services where all other children are educated.

After several weeks of considering and submitting offers and counter-offers, a settlement agreement was reached in late January of this year. The Tills had to balance their specific concerns for Becky's future with the objective of establishing a precedent that would guarantee full inclusion for other pupils with disabilities. Their original hopes that the Board of Inquiry would hand down such a favourable landmark decision were seriously dampened. Fortunately, without compromising the central principle of inclusion, they obtained guarantees for Becky that exceed the board of inquiry's possible remedies, even if the board had decided that she had been a victim of discrimination.

It had been the Tills' intention all along that, come what may, Becky would continue to attend Sacred Heart High School. The settlement provisions include contingency arrangements in the event that the separate school board should fail to maintain its present policies of inclusion. There have been recent disclosures of financial strains being experienced by that board which could force them to reduce the level of support currently offered to children with disabilities.

Significantly, the first clause of the settlement agreement sets out a commitment by the York Region (Public) Board of Education to the belief "that the integration of exceptional pupils into local community schools, preferably in their neighbourhood, is a worthy goal", "that exceptional students should be educated in regular classes comprised of pupils in an appropriate age range", and "that parental input is a critical factor in the determination of placement and program for exceptional pupils". This is the school board that, up until now, had a reputation for resisting integration of children with disabilities in regular classes more forcefully than any other in the province, if not in all of Canada. In recent years this board has spent hundreds

of thousands of dollars defending its practice of segregation against parents before appeal boards, special education tribunals, human rights boards of inquiry and in the courts.

The Becky Till settlement agreement is the first clear sign that the corner has been turned. In point of fact, however, the same York Region Board of Education is appearing before another human rights board of inquiry that began in March, again to defend itself against a complaint of discrimination on grounds of handicap for excluding Kathleen Lewis from regular classes. Jaclyn Rowett and her parents also have a lawsuit under the *Charter of Rights and Freedoms* pending against the board, alleging that Jaclyn was denied equal benefit of the law when she was barred from the regular classroom. Either or both of these cases may produce the prize that eluded Becky Till — a judicial decision that segregated education is the kind of discrimination that violates our laws.

It is encouraging that the Ontario Human Rights Commission continues to recognize that segregation of school children on the basis of their disabilities deserves the full scrutiny of a board of inquiry, because such segregation partakes of the essential qualities of discrimination contrary to the *Human Rights Code*. The Commission took as firm a stand as possible to ensure that society will no longer tolerate such inequality in the provision of educational services. The Commission took no position with respect to the settlement agreement, presumably because it is still committed to pursuing a finding of discrimination in other cases. The Ministry of Education also declined to be a party to the agreement, although the Ontario government continues to say it is committed to full inclusion of children with disabilities when their parents wish it.

Perhaps the settlement agreement that ends the hostilities in Becky Till's case will mean that society can get to work actualizing the principle of non-discrimination all the sooner. It is now up to schools and parents. Becky Till has blazed a trail which others are now free to follow. She has not yet reached the logical end of that trail but she has travelled far enough that we now know with confidence where it leads.

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