

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROBERT SEED

Plaintiff

- and -

HER MAJESTY THE QUEEN

IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF DEFENCE

1. The Crown admits that the W. Ross Macdonald School for the Blind (“Ross Macdonald”) is a provincially owned elementary and secondary school for children with visual disabilities, and that the Plaintiff in this proceeding, Robert Seed, was at one time a resident at Ross Macdonald as alleged in paragraph 5 (first and second sentences) of the statement of claim. The Crown further admits the allegations in paragraphs 6 and 56 of the statement of claim.

2. The Crown has no knowledge in respect of the allegations in paragraphs 5 (apart from the first and second sentence), 11 and 24 (first and second sentences) of the statement of claim.

3. The Crown denies all other allegations contained in the statement of claim.

Ross Macdonald and its history

4. The W. Ross Macdonald School for the Blind located in Brantford, Ontario, is a provincially operated elementary and secondary school which provides day and residential educational services for students who are blind and deaf-blind. The school operates pursuant to section 13 of the *Education Act*, R.S.O. 1990, c. E.2, and is under the authority and control of the Provincial Schools Branch within the Learning and Curriculum Division of the Ministry of Education.

5. Sections 3, 4, 5 and 6 of Regulation 296 of the *Education Act* prescribe the criteria for admission into Ross Macdonald.

6. Students are not forced to attend Ross Macdonald; those who enroll in the school have always done so pursuant to a choice made by their parents or guardians in order to allow them to be with their peers and have the benefit of an education program uniquely designed to meet their particular needs.

7. Not all students at Ross Macdonald are residents at the school. A significant part of the student population is made up of day students who continue to live at home away from the school. Every year, there is a summer break, winter break and spring break in the school calendar. During these lengthy periods the students do not attend the school.

8. Dr. Egerton Ryerson established the Institution for the Education of the Blind in Brantford in 1872, during his term as the first Chief Superintendent of Education in Upper Canada. In May of 1872 the school had 11 students, jumping to 36 in the fall of 1873 and 54 in 1854. By 1879, 200 students were enrolled. Subjects taught included reading, writing, arithmetic, geography, music, and shop classes. Although it was known by a few different names during its operation, the school ultimately became known as the W. Ross Macdonald School in 1974.

9. In 1939, the Crown allocated monies toward replacing the main building of the school with a new fireproof building. New construction plans were cancelled with the outbreak of World War II. Ross Macdonald next received funds to improve the school following recommendations contained in the 1950 Report of the Royal Commission on Education in Ontario. Funding for a four-stage construction and modernization program over twenty years saw construction of a new Junior School, Senior Residence, infirmary, auditorium, gymnasium, and indoor swimming pool. The modernization program culminated with the opening of a new main school building specifically designed to support students with visual impairments in 1972.

10. All high school grades were taught by 1939. Matriculation level subjects taught were English, French, Spanish, Ancient and British History, Music, Science, mathematics and typewriting. In addition to academic subjects, the school trained students in piano tuning, chair caning, home economics and other skills. The school has long emphasized regular physical exercise for students who have skated outdoors since the 1930's.

11. Further, not only did the school provide an academic curriculum, it also provided an expanded core curriculum consisting of Orientation and Mobility training, including training in cane travel, to assist the students once they left the school.

12. In 1971 the school began the first educational program in Canada for deaf-blind children.

13. In the early 1980's the Ministry of Education began to fund school boards to provide a teaching assistant in class to braille enabled students. This reduced the number of academically able students who wished to attend Ross Macdonald. The school then expanded its entry criteria to include students with multiple exceptionalities.

The Plaintiff's allegations

14. The Plaintiff makes numerous allegations that those caring for the students at Ross Macdonald have often approached them with contempt, prejudice, indifference and abuse. He also alleged that students have suffered physical and mental abuse at the hands of teachers, residence counsellors, other students and employees of the institutions.

15. The Crown denies all such allegations. In fact the teachers and counsellors who work and have worked at the school have:

- (a) been well trained to perform their functions in accordance with the applicable standards of the relevant time;
- (b) been caring about the students of the school, seeking to teach them in accordance with the standards of the relevant time and provide the students with appropriate skills to flourish in the broader community;
- (c) not been treating the students with contempt, prejudice, indifference or abuse.

16. Further, and in any event, if, an allegation of mistreatment or abuse of a student was made, the Crown made reasonable efforts to investigate the allegation and, if the allegation was substantiated, to take the appropriate steps in response.

17. At paragraph 29 of the statement of claim, the Plaintiff quotes from the 1950 Royal Commission on Education in Ontario (the “Royal Commission Report”), and suggests that it supports the allegation that there were “substandard and unsafe” conditions at Ross Macdonald. However, the Plaintiff has taken the quote out of context, and fails to refer to other passages in the report. In particular, the quoted excerpt refers to the school buildings, but the Royal Commission Report specifically notes that the residences were in a satisfactory condition.

18. In addition, the Royal Commission Report noted that the methods of instruction were suitable:

“We do not propose to make suggestions in regard to methods of instruction to be followed at the Ontario School for the Blind. The present methods appear to be suitable: we were impressed by the understanding and sympathetic attitude displayed toward the students; and we assume that the specially trained staff will keep abreast of all developments in the field and attempt to make the Ontario School for the Blind a centre for research and experimentation.” [at page 384]

19. Following the release of the Royal Commission Report, the Crown implemented a number of changes in accordance with the recommendations in that report.

20. At paragraphs 32-33 of the statement of claim, the Plaintiff refers to a 1991 “Report of the Review of Student Care at the Provincial Schools for the Deaf and Blind and Demonstration Schools” (the “1991 Review”), and lists a number of purported findings in that report which he asserts described the conditions at Ross Macdonald. However, the Plaintiff has mischaracterized the findings in the report and fails to note that the report was a review of all of the provincial schools for the deaf and blind, as well as two demonstration schools. Indeed, the report expressly stated that “...the observations, findings and conclusions are those which the Review team believe apply to circumstances in the schools collectively...Detailed findings on individual schools are not included in this report.”

21. In that regard, none of the purported “findings” listed in paragraph 33 of the Statement of Claim was specifically stated to be in reference to Ross Macdonald. To the contrary, one of the very first findings listed in the report stated that:

“The Blind-Deaf Program at W. Ross Macdonald School is a unique service which is effectively managed and delivered. The Orientation Mobility Program is also a valuable service to children at that school.”

22. Following the release of the 1991 Review, the Crown implemented a number of changes in accordance with the recommendations in that report.

23. In the circumstances, the Crown specifically denies the Plaintiff’s allegations that:

- (a) Students were treated with contempt, prejudice or indifference;
- (b) Students suffered capricious, violent or humiliating punishment;
- (c) Mealtimes were a horrible experience and Ross Macdonald had a military atmosphere; and
- (d) Staff were unqualified and failed to supervise students.

Indeed there was no such suggestion in either the Royal Commission Report or in the 1991 Review.

24. As to the allegation that “everything was regimented with bells, whistles and lining up”, it should be noted that pattern and routine are an important and necessary part of life at the school because they help blind students master concepts that are normally visual, and gain transferrable skills for life outside the school environment.

Robert Seed

25. The Plaintiff Robert Seed alleges that he was 7 years old when he entered Ross Macdonald, and that he suffered abuse as a student and resident of the school.

26. In fact, his school record indicates that he was 8 and a half years old when he enrolled, and contains no reference to any abuse or complaint of abuse.

27. The Crown denies that Mr. Seed suffered abuse at the hands of Mr. Halliwell or Mr. Barnie. Alternatively, if he did suffer such abuse, no abuse was reported to Ross Macdonald or other relevant authorities at the relevant time.

Defence to Allegations of Negligence and Breach of Fiduciary Duty

28. The establishment and operation of Ross Macdonald was and is to the benefit of the students of Ross Macdonald. In particular, the students who have been residents at the school benefited from having an opportunity for education with their peers in a learning environment attuned to their needs.

29. The Crown, her employees, agents and servants, have acted at all times in the best interests of the students of Ross Macdonald.

30. The Crown, her employees, agents and servants have provided a reasonable standard of care for the students of Ross Macdonald, having regard to all applicable constraints including budgetary constraints.

31. To the extent there may have been inadequacies in the operation and management of Ross Macdonald, which is expressly denied, these inadequacies were the result of funding decisions. The decisions regarding the funding of Ross Macdonald, and all institutions like it, are policy decisions. These decisions are made, at the highest levels of government, based on an assessment by the Crown of the competing demands for public resources and the government's responsibility to taxpayers to work within approved budgets.

32. To the extent the Crown owes common law duties of care, which is not admitted, such duties oblige the Crown to act as a reasonable person would in the operation and management of Ross Macdonald. The Crown did so act. The Plaintiff has improperly pleaded the nature of common law duties of care owed by the Crown.

33. The Crown has breached no common law, fiduciary or statutory duty in the funding, operation, management, administration, supervision or control of Ross Macdonald.

34. Throughout their time at Ross Macdonald, students have received supervision, care, education, training and guidance in accordance with the standard of care at the time and appropriate to their needs and abilities.

35. The Crown denies the examples of improper conduct set out in paragraphs 13-27 of the Statement of Claim.

36. The Crown also denies each of the alleged breaches of fiduciary duty set out in the Statement of Claim.

37. The Crown denies that any student of Ross Macdonald was abused, mistreated or neglected by the Crown's employees, representatives or agents during the time they were students at Ross Macdonald and the Crown holds the Plaintiff to the strict proof of this allegation.

38. If abuse, mistreatment or neglect have occurred, which the Crown expressly denies, the Crown specifically denies that it had or should have had any knowledge or information concerning the allegations of abuse, mistreatment and neglect in the Statement of Claim. If the abuse, mistreatment and neglect have occurred, which is expressly denied, the Crown was not made aware of these allegations at the relevant time. The Crown denies that any of the abuse alleged by the Plaintiff was known or foreseeable by this Defendant. The Crown puts the Plaintiff to the strict proof of these allegations.

39. If any student has been abused, mistreated or neglected, which is not admitted but expressly denied, such conduct was not carried out as part of the authorized duties of its employees, representatives or agents. If such conduct was carried out upon the representative Plaintiff or any other student of Ross Macdonald, then such conduct was in no way authorized, condoned or permitted by the Crown nor was it carried out with the knowledge of the Crown. With respect to the allegations of abuse, mistreatment and neglect, which are expressly denied, the Crown denies that it is in any way vicariously liable for any such alleged acts.

40. If the students of Ross Macdonald suffered any form of abuse, mistreatment, assault or neglect, which is not admitted but denied, there was an ongoing opportunity to report such alleged abuse so that it could be investigated in a timely fashion. The Crown ensured that Ross Macdonald had in place all appropriate safeguards to ensure that abuse was prevented and that, if it did occur, it could be reported and appropriately addressed.

41. The Crown has responded appropriately and in accordance with the standard of care to any and all information it received regarding allegations of abuse or mistreatment.

42. The Crown has responded appropriately and in accordance with an appropriate standard of care to any and all reports, article and studies and any other information received by it concerning the management and operation of Ross Macdonald.

43. The Crown denies that it has failed to adequately monitor, train or supervise its staff.

44. The Crown denies that it has ever forced any individual to reside at Ross Macdonald.

45. The Crown, her employees, agents and servants, have managed the school as appropriate to ensure that the students were safe and well cared for.

46. The Plaintiff cannot assert a claim against the Crown for inadequate funding of Ross Macdonald. Such a claim is not recognized at law.

47. The Plaintiff cannot assert a claim for breach of statutory duty. Such a claim is not recognized at law.

48. The Crown is immune to any claims in tort prior to September 1, 1963 when the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27 was first enacted. No claim in tort can be asserted against the Crown for any actions or events which predate the passage of this *Act*.

49. Any and all claims brought by the Plaintiff are statute-barred by virtue of the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B, and any and all predecessor legislation.

50. The Crown states that, due to the many years that have elapsed since the alleged events occurred, the documentary and evidentiary record is incomplete and cannot be reconstructed. The lengthy passage of time has also resulted in the death or unavailability of many potential witnesses and recollection difficulties for any witnesses that can still be found. Accordingly, the Crown suffers severe prejudice in its ability to fully defend this action in that it has insufficient information or knowledge either to confirm or deny the Plaintiff's allegations. The Crown relies upon the doctrine of *laches* and states that the Plaintiffs are estopped from bringing this action as against the Crown.

51. The Crown denies that the students of Ross Macdonald have suffered any loss or damages as alleged.

52. In the alternative, if the students of Ross Macdonald have suffered any loss or damages, such loss or damages were as a result of acts or omissions not within the power or control of the Crown. Any such loss or damages resulted from pre-existing physical, emotional or psychological problems which were not caused or contributed to by the Crown.

53. In the further alternative, any such loss or damages were caused by matters arising subsequent to the Plaintiff's stay at Ross Macdonald and were unrelated to any conduct of the Crown.

54. If the students of Ross Macdonald have suffered any loss or damages as alleged or otherwise, which is not admitted but denied, such alleged loss and damages are excessive and too remote and the Plaintiff is put to the strict proof thereof.

55. The Plaintiff has failed to mitigate his alleged loss or damages.

56. The Crown states that nothing in its conduct warrants the awarding of punitive or exemplary damages.

57. The Crown pleads and relies upon the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, the *Education Act*, R.S.O. 1990, c. E.2, the *Ontario Schools for the Blind and Deaf Act*, R.R.O 1990, Regulation 296, the *Child and Family Services Act*, R.S.O. 1990, c. C.11 and the *Negligence Act*, R.S.O. 1990, c. N.1 and all amendments thereto.

58. The Crown asks that this action be dismissed.

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STATEMENT OF DEFENCE

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