

promote inferior status, worth and position. *De facto* segregation appeared natural and proper because of the numerous examples of legally sanctioned state-approved discrimination.

SEGREGATION AND THE EDUCATION ACT

Education for children with mental handicaps has been, and continues to be, a disturbing combination of both forms of segregation. In some provinces, school acts made specific provisions for children with mental handicaps to be educated in "special" schools and classrooms (*de jure*). In other places, the practice and policies of school boards has been to treat children with disabilities as "special" and in need of a separate educational program outside the regular classroom (*de facto*). However, the *Charter* and human rights legislation have provided parents with powerful new weapons in the fight they wage daily on behalf of their children to gain access to an equal education.

The First Legal Challenges

In the first case to challenge segregated education, Mr. and Mrs. Bales of British Columbia, on behalf of their son Arron, claimed that their school board had failed to fulfil their educational duty of care when it exercised its statutory power to decide to place the child in a segregated, self-contained, special school on the basis that the child had a mental handicap. The *Bales v. Central Okanagan Board of School Trustees* case was framed in negligence because it took place before the equality rights provision of *Charter* came into force.

The trial judge held that the *School Act* did impose a duty on the school board to provide sufficient school accommodation and tuition, free of charge, to all children of school age. However, while the judge was sympathetic to the evidence that integration was becoming the norm, he followed the judicial tradition of legally sanctioning segregation. It is notable that this decision came prior to the existence of any